



Franciscans International

A voice at the United Nations

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

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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 Civil and Political Rights (ICCPR) on 23 February 2006, with a declaration on article 1 of the Covenant objecting to the “right to self-determination” within a sovereign independent state.¹ Indonesia has not signed or ratified Optional Protocols 1 and 2 of the Covenant. The focus of the present submission is the implementation of the ICCPR 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. This submission uses the term West Papua to refer to those provinces.

3. West Papua is currently the only region in Indonesia with an ongoing armed conflict. 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 of 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. Armed clashes have extended to areas outside the central highland in the last few years.²

4. According to the Indonesian State Institute of Sciences (LIPI), which is now known as the National Research and Innovation Agency (BRIN), the primary sources of conflict in West Papua are different positions on 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 Government of Indonesia grants minimal 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 targeting parts of or the entire region - under the pretext of curbing incitement to violence – that have resulted in the 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 February 2024, Prabowo Subianto, is a prime example. He is a former Indonesian army lieutenant general. 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

¹ United Nations. (1966). *IV 4. HUMAN RIGHTS 1 4. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*. <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>

² IPAC (Institute for Policy Analysis of Conflict). (2022). Escalating armed conflict and a new security approach in Papua (pp. 4–11). [bee931a2f167212f094a76778c93c4ab.pdf\(understandingconflict.sgp1.digitaloceanspaces.com\)](https://www.ipac.or.id/wp-content/uploads/2022/09/UnderstandingConflictSGP1.pdf)

³ Cahyo Pamungkas, & Suma Riella Rusdiarti. (2017). *Updating Papua Road Map*.

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

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

6. In December 2022, the Indonesian Parliament adopted a new criminal code (KUHP), which will go into effect only in January 2026, most probably due to pushback by civil society. In early 2023, the government pledged to consult with stakeholders, embassies, businesses, and civil society groups on implementation regulations. The consultations were one-sided briefings by officials in which no input was solicited.⁵ Articles in the new code will violate the rights of women, religious minorities, and lesbian, gay, bisexual, and transgender (LGBT) people and undermine the rights to freedom of speech and association.⁶ Consensual sex outside of marriage will become a criminal offense.⁷ While the crimes of sex or cohabitation outside marriage can only be prosecuted on the complaint of the husband, wife, parents, or children of the accused, this will disproportionately impact women and LGBT people who are more likely to be reported by husbands for adultery or by families for relationships they disapprove of.⁸ Since same-sex couples cannot marry in Indonesia, this clause effectively renders all same-sex conduct illegal.⁹ This is the first time in Indonesia's history that adult consensual same-sex conduct has been proscribed by law.¹⁰

7. Indonesia has not indicated plans to accede to the first Optional Protocol to the Covenant on the individual complaint mechanism, allowing individuals to complain to the Human Rights Committee about violations of the Covenant, nor the second Optional Protocol on the abolishment of the death penalty. Regarding capital punishment, the reviewed Criminal Code (KUHP) considers the death penalty as an alternative punishment. It should be seen as a first step towards its abolition. Judges will no longer issue death sentences when the new Criminal Code takes effect in 2026. Death row inmates should undergo a 10-year probation period, with the possibility of converting their death sentence to life imprisonment or 20 years in prison. Despite this change, Indonesia continues the imposition of death sentences. Currently, there are 27 death sentence verdicts, of which 20 sentences were issued by District Courts, followed by three sentences from High Courts and four from the Supreme Court. The 27 cases are comprised of 18 for drug-related offenses, 7 for premeditated murder, and 2 for other sexual violence crimes.¹¹

Recommendations:

- Immediately review the new Criminal Code through an inclusive, meaningful consultation process with stakeholders, including civil society organizations, with a view to ensuring that it is compatible with Indonesia's international human rights obligations.
- Accede to the first Optional Protocol to the ICCPR with a view to ensuring that victims alleging violations of their rights are able to submit complaints to the Committee.
- Accede to the Second Optional Protocol to the ICCPR on the abolishment of the death penalty.

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art. 2)

⁵ Human Rights Watch. (2024, January 11). *Indonesia: Events of 2023*. Human Rights Watch. <https://www.hrw.org/world-report/2024/country-chapters/indonesia#7d00e5>

⁶ Human Rights Watch. (2024, January 11). *Indonesia: Jokowi's Term Ends with a Whimper on Rights* | Human Rights Watch. <https://www.hrw.org/news/2024/01/11/indonesia-jokowis-term-ends-whimper-rights>

⁷ Human Rights Watch. "Indonesia: New Criminal Code Disastrous for Rights." Human Rights Watch, 8 Dec. 2022, www.hrw.org/news/2022/12/08/indonesia-new-criminal-code-disastrous-rights.

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ KontraS. (2023). *Executive Summary Report on the 2023 Anti-Death Penalty Day: The Challenging Path to Abolishing the Death Penalty*. <https://kontras.org/en/2023/10/10/executive-summary-report-on-the-2023-anti-death-penalty-day-the-challenging-path-to-abolishing-the-death-penalty/>

8. Several regional legal instruments apply in parallel to national law in Indonesia, such as Sulawesi Selatan Province Regional Regulation Number 12 of 2021 concerning the Recognition and Protection of Customary Law Communities, the Nusa Tenggara Timur Province Regional Regulation Number 14 of 2021 concerning Recognition and Protection of Customary Law Communities and the Buleleng Regency Regional Regulation Number 12 of 2021 concerning Customary Forest Management.

9. In West Papua, customary law also applies parallel to national laws. This is confirmed in Law No. 21/2001 concerning Special Autonomy Law for Papua, which states, "customary law applicable to traditional law communities in Papua Province is part of the national legal system."¹² Article 66 paragraph (2) of the Special Autonomy Law for Papua goes on to state, "the Papua Provincial Government, Regency/City Government, and other related institutions/agencies are obliged to involve the Papuan Traditional Council in the process of forming laws and regulations relating to the legal community custom."

10. Apart from Papua Province Regional Regulation Number 5 of 2022 concerning Recognition and Protection of the Rights of Customary Law Communities, other legal instruments have not been revised to comply with the provisions of Law No. 21/2001, namely Recognition and Protection of the Rights of Customary Law Communities Number 10, 2006 in Biak Numfor Regency, Jayapura Regency, Keerom Regency, Merauke Regency, Mimika Regency, Nabire Regency, Paniai Regency, Bintang Mountains Regency, Sarmi Regency, Supiori Regency, Tambrauw Regency, Teluk Bintuni Regency, and Waropen Regency. In practice, these regional regulations often cannot protect communities or their customary lands from encroachment by large infrastructure projects or other projects related to national strategic plans, including the Merauke Integrated Food and Energy Estate (MIFEE) program or the expansion of palm oil and extractive industries.

Recommendations:

- Ensure the implementation of Article 66 of the Special Autonomy Law for Papua.
- Establish an independent oversight mechanism to monitor the implementation of the ICCPR, with meaningful involvement of civil society organizations.

Anti-corruption measures (arts. 2 and 25)

11. Law No. 19 of 2019 on the Corruption Eradication Commission, as the revision of Law No. 30 of 2002, has weakened the independence and capacity of the Corruption Eradication Commission (KPK). Previously, it was an independent agency and is now considered a central government body. Its focus has also shifted from corruption eradication to corruption prevention, producing a weakened decision-making structure. The Investigators of KPK now fall under the category of civil servants.

12. In 2023, the KPK, the Office of the Attorney General, and the Indonesian National Police found several corruption cases involving state officials, which include the following:

- The first case involves the Minister of Communications and Information, Johnny G. Plate, and several other officials.
- The second case involves the Minister of Agriculture Syahrul Yasin Limpo and other officials. Syahrul Yasin Limpo is suspected of receiving bribes from businessmen related to projects at the Ministry of Agriculture.
- The third case involves corruption in the procurement of medical equipment at the National Disaster Management Agency. This case involves the Chairman of the Corruption Eradication Commission, Firlil Bahuri, and several other officials. Firlil Bahuri is suspected of receiving bribes from businessmen related to a medical equipment procurement project at the National Disaster Management Agency.
- The fourth case is the corruption allegation of Lukas Enembe - then the Governor of Papua Province – and other officials on the land acquisition case.

¹² Art. 66 para. 1 of the Papuan Special Autonomy Law

13. However, under the weakened mandates of KPK, out of these cases, a conviction has only been handed out in one case - the land acquisition corruption case involving Lukas Enembe. Mr. Enembe was suspected of receiving bribes of IDR 17.7 billion and gratuities of IDR 1.99 billion related to infrastructure projects in Papua. He was sentenced to 8 years in prison by the Corruption Crimes Court in October 2023.¹³ Mr. Enembe passed away in police custody in December 2023. Corruption cases are a serious problem in Indonesia, as evidenced by the number of cases, and accountability remains few and far between, with few convictions handed out thus far.

Recommendations:

- Revise Law No. 19 of 2019 on the Corruption Eradication Commission to restore the function of the Corruption Eradication Commission as an independent institution under the coordination of the President of Indonesia and the special status of its investigators and change the composition of the Corruption Eradication Commission Supervisory Board with a view to making it more representative and independent.
- Ensure that law enforcement bodies focused on prosecuting corruption are strengthened through legal reform, increased professionalism and efficacy of law enforcement officers, and stringent measures targeting corruption within law enforcement.

Non-discrimination (arts. 2, 19, 20 and 26)

14. Indonesia received and supported several recommendations regarding the need to have anti-discrimination legislations. During its 4th cycle Universal Periodic Review in 2022, Indonesia accepted several recommendations to adopt comprehensive anti-discrimination legislation. However, the recommendations have not yet effectively implemented those recommendations.¹⁴ In the first CESCR review in 2014, one of the Concluding Observations was a call for Indonesia to adopt comprehensive anti-discrimination legislation to prohibit direct and indirect discrimination against vulnerable groups, including Indigenous Peoples.¹⁵ This has not been fully implemented either.

15. Papuan Indigenous Peoples suffer from direct and indirect discrimination in terms of economic development. The National Bureau of Statistics (BPS) recorded that despite the high number of gross regional domestic product in West Papua,¹⁶ people who live in the region are the poorest in the country.¹⁷ BPS has also released an annual Human Development Index (*Indeks Pembangunan Manusia/IPM*), in which the lowest scores are in the Papua and Papua Barat Provinces.¹⁸

Recommendations:

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

¹³ Alliance of Democracy for Papua (ALDP). (2024). *GENERAL SITUATION OF HUMAN RIGHTS IN 2023 IN PAPUA*

¹⁴ Human Rights Council. (2022). A/HRC/52/8/Add.1. Report of the Working Group on the Universal Periodic Review Indonesia (Addendum), 17 March 2023, Recommendation 140.70 (Norway) and 140.254 (Ireland). https://www.upr-info.org/sites/default/files/country-document/2023-02/a_hrc_wg.41_ID_E.pdf

¹⁵ Economic and Social Council. (2014). E/C/12/IDN/CO/1, para. 10. *Concluding observations on the initial report of Indonesia*. <https://documents.un.org/doc/undoc/gen/q14/067/42/pdf/q1406742.pdf?token=vtRXrTk2qLv7nCofpP&fe=true>

¹⁶ 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/d5ce181590472cea3abbb80c/gross-regional-domestic-product-of-provinces-in-indonesia-by-industry-2018-2022.html>

¹⁷ BPS Prov Sumatera Selatan. (2023). *Jumlah Penduduk Miskin menurut Provinsi (RibU Jiwa), 2021-2023*. <https://sumsel.bps.go.id/indicator/23/588/1/jumlah-penduduk-miskin-menurut-provinsi.htm>

¹⁸ 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>. The data collected by BPS carried out before the establishment of new provinces in West Papua.

Fight against impunity and past human rights violations (arts. 2, 6, 7, and 14)

16. Law No. 26/2000 on the Human Rights Court stipulates that cases of gross human rights violations – defined as genocide and crimes against humanity - must be dealt with through special legal enforcement.¹⁹ The inquiry should be carried out by the National Human Rights Commission (Komnas HAM) as an independent body to conclude whether or not gross human rights violations have been committed, following which the Office of the Attorney General should prepare criminal investigation and prosecution before a human rights tribunal. However, any other serious human rights violations, such as extra-judicial execution, torture, or enforced disappearance - which are common in West Papua - that do not come under genocide and crimes against humanity have to be dealt with under the standard criminal justice system.

17. With regards to crimes against humanity in West Papua, the Human Rights Court heard two cases in West Papua: the Abepura case (2001) and the Paniai case (2014), with evidence drawn from investigations conducted by Komnas HAM and the Office of the Attorney General. The Human Rights Court adjudicated the Paniai Case in 2022. Only one defendant was presented to the court in person, while the others were not even made to appear before the court. Both cases resulted in the acquittal of all defendants, either by the first ruling or on appeal.

18. On August 2022, President Joko Widodo issued Presidential Decree Number 17 of 2022 on establishing the Human Rights Violations Settlement Team (PPHAM) as a Non-Judicial mechanism to resolve past serious human rights violations. This decision prompted a strong reaction from civil society, victims, and their families, accusing the government of attempting to absolve perpetrators of any responsibility. According to the presidential office, the decree would assist in relieving the nation of historical burdens and does not rule out the possibility of bringing these cases to court. The team is tasked with reviewing 13 cases it selected out of 17 instances recommended by Komnas HAM, including two cases in Papua (Wasiur-Wamena), and recommending reparations for victims. There will be no criminal liability through this mechanism.

19. Law No. 31/1997 on the Indonesian Military Court stipulates that military personnel can only be tried in military courts. This includes even criminal offenses relating to individual cases of serious human rights violations such as torture, enforced disappearance, and unlawful killings. All parties in the military criminal justice system – from the investigation to prosecution and further to the conviction - are military officials. There are several main concerns regarding the military court mechanism, which include a lack of transparency from the investigation process to the prosecution stage, light sentences compared with the gravity of the crimes committed, implicating low-rank personnel while excluding those responsible under the chain of command; and the conviction not being used as a vetting policy for promotions further down the road. Law No. 34/2004 on the Indonesian Armed Forces requires the amendment of Law No. 31/1997 on the military court mechanism to ensure that any non-military offense committed by military personnel should be dealt with by the civilian court. However, no amendment has taken place.

20. With regard to the allegation of serious human rights violations committed by the members of the Indonesian National Police, the criminal investigation is also conducted by the police internal affairs unit (Propam). Independent state agencies such as Komnas HAM can carry out investigations. However, their findings cannot be used in legal proceedings or prosecution. Human rights groups believe the failure to end impunity in Indonesia correlates directly with the lack of accountability under the military court system.²⁰

21. Law No. 21/2001, amended by Law No. 2/2021 on Special Autonomy for Papua, stipulates the establishment of the Truth and Reconciliation Commission in Papua Papuan TRC. One of the objectives is to carry out historical clarifications to maintain national unity and formulate a strategy for reconciliation. When Law No. 21/2001 was adopted, only one West Papua province existed. However, the Government of Indonesia in 2022²¹ has taken the

¹⁹ Amnesty International's Comments on the Law on Human Rights Courts (Law No.26/2000). <https://www.refworld.org/pdfid/3c29def1a.pdf>

²⁰ Alliance of Democracy for Papua (ALDP). (2024). *GENERAL SITUATION OF HUMAN RIGHTS IN 2023 IN PAPUA*.

²¹ "In 2022, four laws were enacted concerning the formation of four new provinces in Papua, namely Law Number 14 of 2022 on the Formation of Papua Selatan (South Papua) Province, Law Number 15 of 2022 on the Formation of Papua Tengah (Central Papua) Province, Law Number 16 of 2022 on the Formation of Papua Pegunungan (Mountains Papua) Province, and

policy to divide the region into six provinces. The creation of new provinces makes the plan to establish Papuan TRC more complex and challenging, including whether there should be only one Papua TRC for the whole region of West Papua or one Papua TRC in each province.

Recommendations:

- Set up an independent investigative mechanism for allegations of serious human rights violations committed by the police or military personnel, with the power to investigate, prosecute, and hold the perpetrators accountable.
- Amend No. 31/1997 on Military Court as recommended by Law No. 34/2004 on Indonesian Armed Forces to ensure that any non-military offenses are dealt with in civilian court.
- Establish the Papuan Truth and Reconciliation Commission (Papuan TRC) through meaningful participation by representatives of the Papuan people.

Gender equality (arts. 3, 25 and 26)

22. The participation of women in politics and administration in the Provinces of Papua and Papua Barat is still below the statutory quota of 30%. In Papua Barat Province, from the total number of 45 elected members for 2019-2024, there are only seven women, approximately 15.5% of the total. Among those, Indigenous Papuan women are further underrepresented. Three out of seven women are Indigenous Papuan women, 4.4% of the elected parliamentarians. In the previous period of 2014-2019, there were only two women in the provincial parliament of Papua Barat Province. For Papua Province, the 2019-2024 Provincial parliament has only eight women out of 49 elected members, or 16%. Of the eight women, five or 10% are Indigenous Papuan women.

23. At the regency level in Papua Province, women do not hold any positions of leadership. This situation is the same in Papua Barat Province, where there is no woman leader in any regency. The newly established provinces of Papua Pegunungan, Papua Tengah, Papua Selatan, and Papua Barat Daya have not had any elected local parliamentarians. According to Indonesia's Central Bureau of Statistics (BPS), the proportions of women in local parliaments - under BPS' Index of Gender Inequality (IKG) - in Papua and Papua Barat Provinces is 14.20% and 14.55%, respectively, and they are below the national average of 21.89%.²²

24. Government-led development projects in West Papua, such as the Merauke Integrated Food and Energy Estate (MIFEE), which planned to convert at least a million hectares of forests and swamp into privatized concessions, have particularly affected Marind Indigenous women who live in the area. Sago trees found in the forest have been their primary source of food. In addition, the destruction of the forest for the project undermines the unique relationship of Marind men, women, and children to the plants and animals of this forest.²³ Due to the deforestation for the project, the Marind women were also deprived of their access to water. It is also reported that some Marind women were subject to sexual and physical violence while on their way to collect water from other sources.²⁴

Law Number 29 of 2022 on the Formation of Papua Barat Daya (Southwest Papua) Province Papua was divided into three provinces, making a total of four provinces: Papua, South Papua, Central Papua, and Mountains Papua. Meanwhile, West Papua was divided into two provinces, West Papua and Southwest Papua (Papua Barat Daya)". UN Group of Experts on Geographical Names. 2023 Session. May. GEGN.2/2023/50/CRP.50. [GEGN.2_2023_50_CRP.50_revised.pdf \(un.org\)](https://www.un.org/Depts/los/geographical_names/egnsession_2023/EGN.2_2023_50_CRP.50_revised.pdf)

²² BPS Statistics. (2022, December 19). *Kajian Penghitungan Indeks Ketimpangan Gender 2022*. <https://www.bps.go.id/id/publication/2022/12/19/5268e769d853ff2f930c0834/kajian-penghitungan-indeks-ketimpangan-gender-2022.html>

²³ Chao, Sophie. "In West Papua, Oil Palm Expansion Undermines the Relations of Indigenous Marind People to Forest Plants and Animals." *The Conversation*, 16 Oct. 2019, www.theconversation.com/in-west-papua-oil-palm-expansion-undermines-the-relations-of-indigenous-marind-people-to-forest-plants-and-animals-124885 .

²⁴ Mutaya, Sarah. "Perempuan Adat Paling Rentan Terkena Dampak Konflik." *Tempo*, 8 Mar. 2016, www.bisnis.tempo.co/read/751969/perempuan-adat-paling-rentan-terkena-dampak-konflik . Accessed 5 Feb. 2024.

Recommendations:

- Provide capacity building on political leadership skills and strengthen awareness-raising campaigns on the fact that the full, equal, free, and democratic participation of women in political and public life on an equal basis with men is a requirement for the full implementation of Indonesia's international human rights obligations.
- Take into consideration the disproportionate impact of large-scale development projects such as the Merauke Integrated Food and Energy Estate (MIFEE) on women and girls and make special efforts to mitigate the harm caused by such projects, especially with regard to basic necessities such as access to water and sanitation.

Violence against women and domestic violence (arts. 2, 3, 6, 7 and 26)

25. In 2016, UNDP estimated that 38% of partnered Papuan women between the ages of 14 and 64 years old experienced at least one form of physical and/or sexual violence by a male intimate partner in their lifetime. "One in three partnered women (33 %) reported experiencing some form of physical intimate partner violence in their lifetime, while one in five partnered women (20%) had ever experienced sexual intimate partner violence."²⁵

26. Indigenous Papuan women continuously experience multiple human rights violations. During the military operations in West Papua, many women had to flee for their safety from their houses. They are displaced either to the forest or any other safe place. Their access to livelihood is severely affected since they fear becoming victims of the military operation. Unfortunately, some Indigenous Papuan women were arbitrarily arrested and detained, often being accused of supporting pro-independent movements. During their detention, several Indigenous women experienced abusive interrogation and torture, including sexual violence. Unfortunately, there has been no accountability for violence committed by the members of security forces against Indigenous women during the military operations in West Papua. Many women suffer difficulties in speaking out about their experiences due to shame, fear of stigma and judgment, concerns about confidentiality, and lack of confidence in the rule of law.²⁶

27. In 2023, two Indigenous Papuan women from Yahukimo, who had been internally displaced, were reported to have been mutilated and killed. This is in addition to an attack by security force members in which twelve residential houses were reportedly burnt to the ground and livestock killed.²⁷ Before the incident, the military had declared the vegetable garden area near the Kampung Baru Village a conflict red zone, prohibiting civilians from entering the site. According to local informants, male civilians were banned from entering the area, where security forces could misidentify them as TPNPB members. Only women were allowed to enter the area to harvest sweet potatoes and taro. They were also required to report to the nearby military post anytime they accessed their garden. Despite the risk of being shot if they were mistaken as members of TPNPB, the women went to the gardens due to the severe lack of food. IDPs have not received sufficient humanitarian attention from the local government.

28. Local Special Law (Perdasus) No. 1/2011 was issued on the redress of Papuan women's rights for victims of violence and human rights violations and was passed by the Papua Province. However, it was adopted without public consultation and continues to lack critical sub-regulations for implementation. Several discussions and meetings have taken place since 2018 to form sub-regulations. The Indonesian Commission on Violence against Women (Komnas Perempuan) pushed for the formation of a Governor's Regulation by holding several meetings with the Papuan People's Assembly (Majelis Rakyat Papua/MRP). However, as of this submission, there has been no implementation or adoption of sub-regulations for the Perdasus No. 1/2011.

²⁵ United Nations Development Program. (2016). *Study on women's and men's health and life experiences in Papua, Indonesia*, pp 13-14. <https://www.undp.org/content/dam/indonesia/2016/press-doc/Papua%20Final%20Report%20OK-2.pdf>

²⁶ AJAR | Asia Justice and Rights. (2022, May 18). *Enduring Impunity: Women surviving atrocities in the absence of justice*. <https://asia-ajar.org/2015/11/enduring-impunity-women-surviving-atrocities-in-the-absence-of-justice/>

²⁷ Human Rights Monitor. (2023, October 24). *Two internally displaced Papuan women killed and mutilated in Yahukimo Regency – Relatives demand prosecution of perpetrator(s)* - <https://humanrightsmonitor.org/news/two-internally-displaced-papuan-women-killed-and-mutilated-in-yahukimo-regency-relatives-demand-prosecutions-of-perpetrator/>

29. In 2021, the Papua Legal Aid Institute (LBH Papua) received and assisted 57 cases of violence against women and children. In some cases, the alleged perpetrators are law enforcement officers or public officials/state civil servants. Violence against women and children perpetrated by law enforcement officers or public officials is often difficult to resolve through the judiciary and is ultimately left to “peaceful settlement” by using non-judicial mechanisms. Meanwhile, the Papua Provincial Police stated that in 2021, they received and handled 221 reports of cases of violence against women and children in Papua Province.²⁸

Recommendations:

- Take urgent steps to stop human rights violations and violence against women, in particular indigenous Papuan Women.
- Ensure the adoption of key sub-regulations necessary for the effective implementation of Perdasus No. 1/2011 and the formation of a Governor Regulation as recommended by the Indonesian Commission on Violence against Women (Komnas Perempuan).
- Take urgent steps to build up infrastructure, particularly in rural areas, to ensure that women and girls affected by gender-based violence are provided with basic services such as medical treatment, psychological counseling, legal assistance, and protection orders. Ensure adequate human, technical, and financial resources to ensure shelter for survivors is available and that the Integrated Service Centre for Women Empowerment and Child is operational everywhere.

Right to life (art. 6)

30. According to General Comment No. 36 of the Human Rights Committee, “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”²⁹

31. The right to a healthy environment is guaranteed through Article 28H (1) of the Indonesian Constitution. However, business activities related to the extraction of natural resources in West Papua, particularly mining and palm oil plantations, continue to negatively impact the environment and human rights.

32. According to Indonesia’s Central Bureau of Statistics (BPS), in 2022, forest land coverage in West Papua, which is 34.3 million hectares, covers around 36% of Indonesia’s forest land coverage of 95.9 million hectares. The forest land coverage in Papua Province is 25.3 million hectares (ha), and in Papua Barat Province, it is 9.13 million ha.³⁰ Almost 78% of West Papua is covered by forest land. Forests of this size contain a variety of ecosystems and biodiversity and play an essential role in maintaining the stability of the global ecosystem. The forest land coverage in West Papua remains the highest in Indonesia compared to other regions. However, between 2001 and 2018, West Papua lost at least 713.766 hectares of its forest, mainly because of the expansion of palm oil plantations, the production of pulpwood, selective logging, and the continuous clearance for infrastructure expansion.³¹ In 2018 alone, palm oil concessions were extended to 1.8 million hectares, while concessions for pulpwood production were extended to 813.000 hectares.³² A study conducted on palm oil plantations in West Papua shows that this activity contributed to changes in environmental conditions in the areas of the plantations,

²⁸ Redaksi, T. (2023, June 5). *Kekerasan Terhadap Perempuan di Papua Tertinggi di Indonesia, Harus Segera Diatasi*. VOI - Waktunya Merevolusi Pemberitaan. <https://voi.id/bernas/284430/kekerasan-terhadap-perempuan-di-papua-tertinggi-di-indonesia-harus-segera-diatasi>

²⁹ Human Rights Committee. (3 September 2019). CCPR/C/GC/36. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf

³⁰ BPS Statistics. (n.d.). *Rekapitulasi Luas Penutupan Lahan Hutan dan Non Hutan Menurut Provinsi Tahun 2014-2022 (Ribu Ha) - Tabel Statistik*. Wwww.bps.go.id. Retrieved February 4, 2024, from <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>

³¹ Gaveau, D. (n.d.). Drivers of forest loss in Papua and West Papua. Retrieved February 4, 2024, from https://www.cifor.org/publications/pdf_files/factsheet/7444-factsheet.pdf.

³² Ibid.

particularly in water and air quality.³³ Chemical substances used in the production process, particularly insecticides and pesticides, enter the water systems around the plantation area. The plantation drainage systems are typically connected to small rivers and swamps that are often used by the local communities for fishing, drinking water, and bathing. Communities living around the plantations are increasingly concerned about water contamination, and that they will no longer be able to find fish or be able to access clean water for their daily use.

33. Mining activities also contribute to environmental degradation. One of the emblematic cases is the case of the mining activities of Freeport McMoRan that has been operating since 1973 in West Papua.³⁴ Over the past few years, the company has also been criticized for fuelling the armed conflict in the Mimika Regency.³⁵

34. The Indigenous Amungme and Kamoro communities have been impacted by mining activities taking place on their customary land in the Timika area of West Papua. The tailings of PT Freeport Indonesia were allegedly dumped into the Agabagong-River, which discharges into the Aikwa-River and afterwards into the Arafura Sea. These bodies of water have been polluted, causing significant loss of biodiversity. Dumping of mine waste can be seen in Lake Wanagong. Other consequences of these mining activities are higher levels of metals, such as copper,³⁶ in marine life and contaminated waters due to acid rock drainage.³⁷ The activities and operations of PT Freeport Indonesia have allegedly caused sedimentation to over 166 square kilometers of formerly productive forest and wetlands, and fish have largely disappeared.³⁸ In August 2017, despite the allegation that the company has been responsible for human rights abuses and has contributed to environmental degradation, the Government of Indonesia signed a contract to extend the Freeport's mining concession until 2041 without any free, prior, and informed consent (FPIC) process with the affected indigenous communities.³⁹

35. In general, the use of manipulation, corruption, intimidation, or violence against the local Indigenous people has been reported in relation to the extraction of natural resources.⁴⁰ Instead of improving living conditions, the activities of the mining, palm oil, and logging industries in customary lands and forest of the Indigenous Papuan communities have been contributing to the poverty in which local Indigenous communities live. Indigenous Papuans are often left with the option of either leaving their lands altogether or agreeing to an arrangement with the company, which can push them into a more marginalized situation.

36. Extrajudicial executions continue to take place in the Provinces of Papua and West Papua, perpetuated by members of the police and military. Security forces use the pretext of maintaining public order. The majority of cases of extrajudicial executions in both provinces reveal that victims are Indigenous Papuans, including minors. A root cause of this violence is racially based prejudices and opinions prevailing amongst Indonesian security forces in West Papua, including that Indigenous Papuans generally support separatist groups.⁴¹

³³ Andrianto, A., Sedik, B., Waridjo, H., Komarudin, H., & Obidzinski, K. (n.d.). *The impacts of oil palm plantations on forests and people in Papua A case study from Boven Digoel District*.

https://www.cifor.org/publications/pdf_files/WPapers/WP163Andrianto.pdf

³⁴ TAPOL. (n.d.). *Special Report: PT Freeport Indonesia and its trail of violations in Papua: human, labour and environmental rights*.

https://www.tapol.org/sites/default/files/sites/default/files/pdfs/PT_Freeport_Indo_tail_of_violations_in_Papua_Dec20.pdf

³⁵ Ibid.

³⁶ Schuyler, O. (2013). *Lessons learned from Case Studies of International Investment in Extractive and Land-use Industries Best Practices for Transnational Investment in Extractive and Land Use Sectors International Financial Flows and the Environment*. <https://www.american.edu/sis/gep/upload/wri-au-practicum-final-report-5-31-2013.pdf>

³⁷ Ballard, C. (2001). *Human Rights and the Mining Sector in Indonesia: A Baseline Study* (p. 53). The Australian National University Canberra, Australia.

https://www.researchgate.net/publication/237524542_Human_Rights_and_the_Mining_Sector_in_Indonesia_A_Baseline_Study

³⁸ Cardiff, S., Coumans, C., Hart, R., Sampat, P., & Walker, B. (2012). *Troubled waters, How mine Waste dumping is Poisoning our Oceans, Rivers, and Lake*. Earthworks and MiningWatch Canada. <https://earthworks.org/resources/troubled-waters/>

³⁹ Kunjana, G. (2015, July 3). *Konsesi Tambang Freeport - Halaman all*. Investor.id. <https://investor.id/archive/konsesi-tambang-freeport>.

⁴⁰ Cisneros, E., Kis-Katos, K., & Nuryartono, N. (2021). *Palm oil and the politics of deforestation in Indonesia*. *Journal of Environmental Economics and Management*, 108(108), 102453. <https://doi.org/10.1016/j.jeem.2021.102453>

⁴¹ Franciscans International. *Agenda Item 4: General Debate Joint Oral Statement*. 36th Session of the Human Rights Council. https://franciscansinternational.org/fileadmin/media/2017/Asia_Pacific/UN_Work/2017.09.19_Oral_Statement_WestPapua.pdf

37. Between January 2010 and February 2018, 69 cases of suspected unlawful killings by security forces in the two Provinces, resulting in 95 victims, were recorded. Most of the victims (85 of them) have Papuan ethnicity.⁴²

38. In December 2022, a special court convened in Makassar acquitted an army officer, Isak Sattu⁴³, of charges related to the infamous 2014 Bloody Paniai massacre in West Papua during which soldiers fired on hundreds of protesting Papuans⁴⁴ for over 7 minutes, killing four teenagers and injuring as many as 21 other people, including women and children.⁴⁵ From the outset, victims' families and human rights groups were concerned that the prosecutor only named and prosecuted one perpetrator, a retired low rank military personnel, since Komnas HAM suggested there were at least nine military personnel who should be investigated further as potential perpetrators.⁴⁶

39. Between 2017 and 2018, human rights defenders and local media outlets reported a total number of 21 cases of extrajudicial killings, which resulted in the death of 33 victims, allegedly perpetrated by members of the Indonesian security forces. All victims were indigenous Papuans. Investigations were conducted in only three cases out of 21. In all prosecutions, the perpetrators received minor sentences or were only required to apologize publicly for their misconduct. On 13 April 2020, two Indigenous Papuan students, ages 19 and 23, were shot and killed by the members of Indonesian security forces in Timika, Papua Province. The two were carrying fishing gear and were mistakenly thought of as weapons by the security forces. The police have admitted the killing and subsequently apologized, but no one has been held accountable.

40. Extrajudicial killings increased after the plan to establish new provinces in West Papua, following the amendments of Law No. 21/2001 in Special Autonomy for Papua. There was an increased number of demonstrations across West Papua rejecting both the establishment of new provinces and the amendments to the Law. Those demonstrations were responded to through the excessive use of force, as well as arbitrary detentions. According to findings by PUSAKA, most victims were Indigenous Papuans. In total, there were 26 incidents of arbitrary arrest, as well as excessive use of force in dispersing peaceful protestors by the Indonesian police between January and December 2022.⁴⁷ The security forces used both live and rubber bullets.

41. The TAPOL Annual Report "*West Papua 2022 Freedom of Expression and Freedom of Assembly Full Report*" found a 25 percent increase in intimidation and harassment incidents, including torture and killings.⁴⁸ Conflict areas inhabited mainly by Indigenous Papuans, such as those in Pegunungan Bintang Regency, Papua Pegunungan Province (then Papua Province until 2022), were most at risk. Indonesian security forces reportedly repeatedly attacked eight Indigenous villages in the Kiwirok District, using helicopters and drones. The helicopters allegedly dropped mortar grenades on civilian homes and church buildings while firing indiscriminately at civilians.⁴⁹

⁴² In 34 of the cases the alleged perpetrators came from the police forces, in 23 cases they came from the military, and in 11 cases both security forces were allegedly involved. One more case also involved the municipal police, a body under local government and tasked to enforce local regulations. *Indonesia: "Don't bother, just let him die": Killing with impunity in Papua*. (2018). Amnesty International. <https://www.amnesty.org/download/Documents/ASA2181982018ENGLISH.PDF>

⁴³ Amnesty International. (2022). <https://www.amnesty.id/indonesia-verdict-in-2014-paniai-tragedy-a-slap-in-the-face-for-victims/>

⁴⁴ Human Rights Watch. "Indonesia: Hope for Justice in 2014 Papua Massacre." 23 Sept. 2022, www.hrw.org/news/2022/09/23/indonesia-hope-justice-2014-papua-massacre.

⁴⁵ Human Rights Watch. (2024, January 11). Indonesia: Events of 2023. Human Rights Watch. <https://www.hrw.org/world-report/2024/country-chapters/indonesia#a3f418>

⁴⁶ Komnas HAM. (2020). *Merawat Ingatan Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat*, (pp. 684–686).

⁴⁷ *Dong Penjarakan Tong Pu Suara dan Pikiran - Pusaka Bentala Rakyat*. (2023, May 4). Pusaka.or.id. <https://pusaka.or.id/dong-penjarakan-tong-pu-suara-dan-pikiran/>

⁴⁸ TAPOL. (2023, May 10). *West Papua 2022 Freedom of Expression and Freedom of Assembly Full Report | Tapol*. www.tapol.org. <https://www.tapol.org/reports/west-papua-2022-freedom-expression-and-freedom-assembly-report>

⁴⁹ HRM. (2023, August 16). "Destroy them first... discuss human rights later" exposes Indonesian military attacks on indigenous villages in West Papua -. Humanrightsmonitor.org. <https://humanrightsmonitor.org/reports/kiwirok-report-2023/>

Recommendations:

- Adopt policies and take the necessary measures to ensure that the natural resources extraction activities do not violate human rights and, in particular, the right to a clean, healthy, and sustainable environment, in particular in West Papua.
- Ensure that corporate actors are obligated to respect Indigenous women's rights, including the mandatory free, prior, and informed consent of indigenous women in cases pertaining to land acquisitions.
- Recognize and guarantee that the principle of free, prior, and informed consent is fully respected and applied to any development project that impacts the land rights and livelihood of Indigenous Peoples.
- Ensure that all perpetrators of the Paniai case, as recommended by the report of Komnas HAM, are brought to the Paniai Human Rights Court.
- Immediately establish a Human Rights Court for Wasior and Wamena Cases and provide adequate reparations to the families of victims and survivors of the cases above and the Paniai case.
- Immediately stop military operations in West Papua and find peaceful and sustainable solutions to the conflict, mainly through dialog.

Treatment of aliens, including migrants, refugees, and asylum seekers (arts. 7, 9, 12, 13, and 24)

42. Since the end of 2018, there has been an increase in armed clashes between the Indonesian security forces and TPNPB, leading to the internal displacement of Indigenous Papuans.⁵⁰ Fatalities among IDPs are very concerning. Between December 2019 and July 2020, several thousand Indigenous Papuans from the Nduga region in Papua Province were internally displaced following the conflict between the Indonesian security forces and TPNPB, following the killing of 19 Indonesian contract workers by members of TPNPB on 8 December 2019. It is reported that in the eight months that followed, 243 civilians died. All the victims were Indigenous Papuans, 77 out of them women. Most of the deaths occurred due to famine and other illnesses caused by poor living conditions in the shelters.

43. The Indonesian authorities do not provide the actual number of Internally Displaced Persons (IDPs) in West Papua. The data collected by various NGOs shows that there were between 60,000 and 100,000 IDPs, mainly women and children. They were found across West Papua, in the regencies of Mimika, Intan-Jaya, Puncak, Lanny-Jaya, Nduga, Yahukimo, Kiwirok and Maybrat.⁵¹ Most of them have not been able to return to their villages. Many of the IDPs live in appalling conditions with no access to clean water and health services. Many had walk for hours daily to get clean water from nearby rivers. They are required to report to the military along the way. 304 IDPs in Nduga died due to a lack of health services, lack of food, and dire living conditions.⁵² A recent visit in November 2023 by representatives of all Catholic Justice and Peace Secretariat (SKP) in West Papua to the temporary shelters in Sorong for the IDPs from Maybrat found a similar situation where more than a dozen IDPs died because of the hardship they faced during their displacement.⁵³ Komnas HAM also recorded that 138 Maybrat people died during their displacement due to a lack of access to basic necessities. In 2023, 3,689 civilians were displaced in Papua as a result of armed conflicts.⁵⁴

44. In Sugapa town, Intan Jaya, Pegunungan Tengah Province, in mid-January 2024, hundreds of Indigenous Papuans were forced to take refuge in several churches or neighboring areas after local military personnel shot two people, fatally wounding one. The military accused them of being members of TPNPB, a claim disputed by the victims' families and their neighbors. The shootings took place after people in Sugapa organized several

⁵⁰ Komnas HAM. (2019 and 2020). Annual reports of the Indonesian National Commission for Human Rights (Komnas HAM). [https://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-\\$V1GFW5HE.pdf](https://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-$V1GFW5HE.pdf) . [https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--\\$R1X5O.pdf](https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--$R1X5O.pdf). Papuan NGOs involved in this submission, mainly affiliated with Christian Churches in West Papua also monitor and provide humanitarian aid to the IDPs.

⁵¹ Franciscans International. (2022). UPR 4th Cycle of Indonesia (JS16), para. 17.

⁵² Information received on 27 March 2022 from a human rights defender from Nuga region, who works with IDPs. Due to her safety, her name cannot be mentioned in this submission.

⁵³ HRM. (2023b, November 17). *IDP's humanitarian crisis in Papua: Catholic Church calls for immediate government action* -. <https://humanrightsmonitor.org/news/humanitarian-crisis-in-papua-catholic-church-calls-for-immediate-government-action/>

⁵⁴ Alliance of Democracy for Papua (ALDP). (2024). *GENERAL SITUATION OF HUMAN RIGHTS IN 2023 IN PAPUA*.

protests against a plan for a new gold mining project in the region. The displaced people were still afraid to return to their homes, and no independent investigation has been carried out on the shooting incident. The armed clashes happen mainly in highland areas where mining companies have concessions.⁵⁵ In that regard, there seems to be a close alignment between economic and political interests, as recent research has documented.⁵⁶

Recommendations:

- 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;
- Facilitate the free and safe repatriation of IDPs to their hometowns through meaningful consultations with displaced people.
- Provide IDPs with remedies or reparations for the losses they have suffered while ensuring that they are consulted and involved in all decision-making processes.
- Carry out thorough, transparent investigations in all cases of alleged violations against civilians and hold perpetrators accountable.

Access to justice, independence of the judiciary, and fair trial (arts. 2 and 14)

45. Civilians living in conflict areas in West Papua are often accused of being combatants without due process, as security forces find it challenging to identify TPNPB members. In one instance in Kisor, Sorong, Papua Barat Province in 2021, three civilians were arrested by Indonesian joint forces (Indonesian Army/TNI and Indonesian Police) following the murder of 4 members of the Indonesian Army. One of the civilians, Mr Simon Waimbeyer, formerly worked as a civil servant who served as a staff member of the Civil Service Police Unit (SATPOL PP), while another person worked as a farmer. Mr Waimbeyer was released in September 2021. Mr Yaam was reportedly tortured while in police custody. He was sentenced to 20 years in prison on 31 May 2022, having been found guilty of committing premeditated murder, as regulated in Article 340 of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code.⁵⁷

46. The arbitrary arrest of a teenager named Mr. Mispo Gwijangge is another example. He was accused of involvement in the killing of dozens of trans-Papua road workers on 2 December 2018. The Jayawijaya District Attorney's Office charged him with five articles under the Criminal Code, with a maximum penalty of death sentence. Mr. Gwijangge was transferred to Jakarta for trial in December 2019. However, the panel of judges at the Central Jakarta District Court rejected the charges against Mr. Gwijangge through an interlocutory decision on 8 April 2020. The judges stated that the prosecution against Mr. Gwijangge should be terminated, and he was released from detention. One of the considerations of the panel of judges at that time was that Mr. Gwijangge was still a minor. According to dental examinations by the Dentistry Team of the Army Central Hospital (RSPAD) and Padjadjaran University (Unpad) Bandung, Mr. Gwijangge's age at the time of trial was predicted in the range between 16 and 18.9 years, or an average of 17.5 years.⁵⁸ Mr. Gwijangge eventually died in police custody on 6 January 2021. Mr. Gwijangge suffered lung damage and repeated beatings by police forces during interrogation.⁵⁹

⁵⁵ HRM. (2022, January 10). *The Armed Conflict in West Papua throughout 2021 – Trends, Developments and Future Indications*. Human Rights Monitor. <https://humanrightsmonitor.org/news/wp-armed-conflict-2021>

⁵⁶ JATAM. (2021, August 18). *Political Economy of Military Deployment in Papua*. JATAM. <https://www.jatam.org/en/political-economy-of-military-deployment-in-papua/>

⁵⁷ Sekenyap, E. (2021, September 11). *Laporan Koalisi: Tiga Pemuda yang Ditangkap TNI dan Polri Tidak Terlibat Penyerangan Posramil Kisor*. Suara Papua. <https://suarapapua.com/2021/09/11/laporan-koalisi-tiga-pemuda-yang-ditangkap-tni-dan-polri-tidak-terlibat-penyerangan-posramil-kisor/>

⁵⁸ Pademme, A. (2020, December 1). *Trauma, korban kriminalisasi Mispo Gwijangge enggan berobat*. Arsip.jubi.id. <https://arsip.jubi.id/trauma-korban-kriminalisasi-mispo-gwijangge-enggan-berobat/>

⁵⁹ Polisi Manipulasi Kasus Brigadir J Sama Dengan Alm Mispo Gwijangge. (2022, August 15). Cepos Online. <https://www.ceposonline.com/kota-jayapura/1993202441/polisi-manipulasi-kasus-brigadir-j-sama-dengan-alm-mispo-gwijangge>

Recommendations:

- Ensure mandatory human rights training for law enforcement officials, including members of security forces, conducting interrogations of suspects.
- Ensure that robust accountability measures are in place to hold perpetrators accountable.
- Provide remedies to victims and their families in cases of deaths in custody, torture, and cruel or inhumane treatment, intimidation, and actions violating human dignity.

Freedom of expression (arts. 19 and 20)

47. In West Papua, the authorities arbitrarily arrest and prosecute Indigenous Papuans for peacefully expressing support for self-determination. The authorities also restrict travel and access to West Papua by foreign media, diplomats, and human rights monitors.⁶⁰

48. In April 2023, prominent human rights defenders (HRDs) Mr. Haris Azhar and Ms. Fatia Maulidiyanti were placed on trial in Jakarta for criminal defamation pursuant to a complaint by Mr. Luhut Binsar Pandjaitan, a senior minister in President Jokowi's cabinet, under Indonesia's Electronic Information and Transactions Law (ITE Law), relating to statements they made about Mr. Pandjaitan's alleged involvement in a gold mining project in West Papua.⁶¹ The East Jakarta District Court acquitted Mr. Azhar and Ms. Maulidiyanti on 8 January 2024. The Indonesian government has already signed its intention to appeal the verdict in the Supreme Court. In 2023 alone, the ITE law was used in at least 37 cases against 46 individuals.⁶²

49. The Government of Indonesia continuously restricts the right of the Indigenous Papuans to express their opinion, especially political opinions, as well as their right to peaceful assembly. The restriction aims to control the political activism in West Papua. Critical voices from Papuan people have been faced with excessive use of force and reprisals, leading to arbitrary detentions, torture, and, in some cases, extrajudicial executions.

50. In August 2019, a series of racist assaults targeted Indigenous Papuan students in Surabaya and Malang cities. On 16 August 2019, 43 Indigenous Papuan students were taken to the district police headquarters after the Indonesian Police fired teargas and forced their way into a student dormitory in Surabaya.⁶³ The police used excessive force by deploying SWAT (Special Weapons and Tactics) teams, who were armed with riot shields and used excessive force. The students were accused of vandalizing the Indonesian flag. During the raid, members of Indonesian nationalist organizations were present along with the security forces. There have been allegations that the Police threatened to kill Papuan students while shouting racist insults such as 'animals,' 'dogs,' 'pigs,' and 'monkeys.' In another city, Malang, members of nationalist mass organizations attacked a group of Papuan protesters, who organized a peaceful demonstration in commemoration of the New York Agreement of 1962 that gave Indonesia control over West Papua. The incidents in Surabaya and Malang triggered mass demonstrations of Indigenous Papuans against racial discrimination in all large cities and towns across West Papua. Although the majority of protests in West Papuan cities in late August 2019 remained peaceful, some demonstrations were responded to by excessive use of force in the cities of Fak-Fak, Sorong, Deiyai, Jayapura, Manokwari, Timika, Waghete and Wamena.

⁶⁰ Human Rights Watch. (2024, January 11). *Indonesia: Jokowi's Term Ends with a Whimper on Rights* | Human Rights Watch. Hrw.org. <https://www.hrw.org/news/2024/01/11/indonesia-jokowis-term-ends-whimper-rights>

⁶¹ Human Rights Watch. (2024, January 11). *Indonesia: Events of 2023*. Human Rights Watch. <https://www.hrw.org/world-report/2024/country-chapters/indonesia#7d00e5>

⁶² Somad, D. F. A., Abdus. (2023, September 1). *Kebebasan Sipil di Papua Terenggut Pasal Makar dan ITE*. Jaring. <https://jaring.id/kebebasan-sipil-di-papua-terenggut-pasal-makar-dan-ite/>

⁶³ Pacific Media Watch. (2019, August 18). *Indonesian police raid Papuan student dormitory with tear gas, arrest 43* | Asia Pacific Report. <https://asiapacificreport.nz/2019/08/18/indonesian-police-raid-papuan-student-dormitory-with-tear-gas-arrest-43/>

51. On 21 August 2019, responding to the anti-racism protests in several cities in the Provinces of Papua and Papua Barat, the Government of Indonesia shut down the internet throughout the two provinces. As a result of this shutdown, human rights defenders and activists had no access to internet communication and social media, which de facto deprived them of their primary communication channels. Access to the internet and social media have been considered tools to empower the Papuans to disseminate first-hand information to the public and also for them to learn about events happening in the two Provinces and elsewhere. The internet shutdown was also considered an intentional disruption of communications by the Indonesian authorities to exert control over the flow of information. On 4 September 2019, internet services were partially restored.⁶⁴

52. 86 people were questioned on charges of treason⁶⁵ in relation to the anti-racism protests in the Provinces of Papua and Papua Barat. Fifty-six people were in detention on treason charges. They were arrested either for organizing or participating in protests. The arrests had more to do with their political affiliations as opposed to their responsibility for committing a specific crime, other than that of organizing peaceful protests. In addition, human rights activists who shared information regarding incidents that led to the mass civilian anti-racism protests in the Provinces of Papua and Papua Barat were criminalized. The Government of Indonesia is using treason charges, Articles 106 and 110 of the Criminal Code, and the Electronic Information and Transaction Law⁶⁶ (known as ITE Law) to arbitrarily arrest and charge peaceful political activists and human rights activists on the issues of West Papua. Journalists and legitimate news organizations in the Provinces of Papua and Barat were facing severe threats to their security and were being targeted by digital disinformation campaigns to distort their work.⁶⁷ Local Indigenous Papuan journalists have also faced death threats and assaults, which were reported to the authorities but are currently pending official investigations.

53. In February 2018, Ms Rebecca Henschke, a BBC journalist based in Jakarta since 2006, was arrested and expelled shortly after arriving in Papua Province on the grounds that she had “hurt the feelings” of soldiers in a tweet. She had traveled with a special permit to visit Papua with a crew to cover a military aid operation.⁶⁸ Immigration officers held her for 24 hours before being escorted out of Papua. In August 2018, a Polish national, Mr. Jakób Fabian Skrzypski, a freelance journalist, was arrested in Papua Province. He entered the Papua Province with a tourist visa. He was accused of helping the separatist groups in Papua. Mr Skrzypski is the first foreigner to be found guilty of an attempt to overthrow the Indonesian government and imprisoned under Article 106 (treason) of the Indonesian criminal code. He was sentenced to five years in May 2019 by the Papua Provincial Court.⁶⁹ In October 2019, the European Parliament referred to Mr Skrzypski as a political prisoner and expressed concern over his continued incarceration, given the unrest in West Papua.⁷⁰ His appeal to the Supreme Court was rejected.⁷¹ The Supreme Court raised Mr Skrzypski’s sentence from 5 to 7 years.⁷²

⁶⁴ Human Rights Watch. “Indonesia: Investigate Deaths of Papuan Protesters.” 7 Sept. 2019, www.hrw.org/news/2019/09/07/indonesia-investigate-deaths-papuan-protesters; Idris, Ika Karlina. “The Internet Shutdown in Papua Threatens Indonesia’s Democracy and Its People’s Right to Free Speech.” *The Conversation*, 23 Aug. 2019, www.theconversation.com/the-internet-shutdown-in-papua-threatens-indonesias-democracy-and-its-peoples-right-to-free-speech-122333. Accessed 5 Feb. 2024.; Aljazeera. “Indonesia Restores Internet Access in Parts of West Papua.” *Al Jazeera*, 5 Sept. 2019, www.aljazeera.com/news/2019/09/indonesia-restores-internet-access-parts-west-papua-190905040815981.html. Accessed 5 Feb. 2024.

⁶⁵ TAPOL. “NGO Joint Statement - 43rd Session of the Human Rights Council | Tapol.” 11 Mar. 2020, www.tapol.org/news/ngo-joint-statement-43rd-session-human-rights-council. Accessed 5 Feb. 2024.

⁶⁶ LAW OF THE REPUBLIC OF INDONESIA. LAW CONCERNING ELECTRONIC INFORMATION and TRANSACTIONS. 2008. 11.

⁶⁷ TAPOL. “Media Freedom in West Papua: Submission to the House of Commons Foreign Affairs Committee Inquiry | Tapol.” *www.tapol.org*, 11 June 2019, www.tapol.org/news/media-freedom-west-papua-submission-house-commons-foreign-affairs-committee-inquiry. Accessed 5 Feb. 2024.

⁶⁸ RSF. (2018, February 6). *RSF’s decries journalist’s expulsion from Indonesia’s Papua region* | RSF. [rsf.org](http://rsf.org/en/news/rsfs-decries-journalists-expulsion-indonesias-papua-region).

⁶⁹ Jayapura High Court Decision. (14 July 2019). 54/PID/2019/PT JAP. <https://putusan3.mahkamahagung.go.id/direktori/putusan/53f58c7c1515dfa7a7fddb10972242b6.html>

⁷⁰ European Parliament. (2019). https://www.europarl.europa.eu/doceo/document/TA-9-2019-0044_EN.pdf

⁷¹ Indonesian Supreme Court. (2019). Decision 1081 K /Pid/2019.

<https://putusan3.mahkamahagung.go.id/direktori/putusan/8a3f6a8a31ec28ae7898fa990d9bbd5d.html>

⁷² Aljazeera. “Indonesia Increases Jail Term for Pole Convicted of Treason.” 18 Dec. 2019, www.aljazeera.com/news/2019/12/18/indonesia-increases-jail-term-for-pole-convicted-of-treason. Accessed 5 Feb. 2024.

54. Freedom of media in West Papua has been restricted. Since the last review of Indonesia by the Committee in 2013, there have been reports of attacks on Indonesian journalists, while foreign journalists were obstructed or attacked by members of the Indonesian security forces. Attacks against local journalists, in particular Indigenous Papuan journalists, have often occurred during coverage of political protests. Despite the announcement of President Jokowi in 2015 that foreign journalists would be allowed access to West Papua, this access has been restricted. To get permission to go to West Papua, journalists have to undergo a series of bureaucratic hurdles ranging from demands for details of itineraries and focus of news coverage to the need to supply multiple “recommendation letters” from prospective interviewees/sources.

55. In 2023, the Papua Province had the lowest rate of press freedom among all provinces in Indonesia, according to the Indonesian Freedom of Press Index. It is in the “rather free” category, just one category above “rather not free.” The index has been issued annually by the Indonesian Press Council.⁷³

Recommendations:

- Adopt legislation and policies to prevent intimidation, threats, harassment, and violence against HRDs, particularly by recognizing and protecting the rights they are defending, including Indigenous land rights.
- Recognize, empower, and protect HRDs, including female HRDs, by developing and implementing effective legislative and policy measures to protect them from intimidation, violence, military intervention, criminalization, and murder by state officials and to investigate reports of such.
- Repeal or revise the ITE Law to bring it in line with international standards with regard to freedom of expression and to ensure that it is not used to limit the enjoyment of the right to freedom of expression.
- Ensure that internet shutdowns align with Indonesia’s international obligations, are proportional to the threat faced, and are not aimed at curtailing the right to freedom of expression and assembly.
- Allow foreign journalists to access and report in West Papua without undue bureaucratic restrictions and move freely around the territories.
- Ensure that local journalists reporting on West Papua can operate freely and do their work without intimidation, interference, or harassment.

Peaceful Assembly (art. 21)

56. The right to peaceful assembly in West Papua has often been curtailed by the criminal codes. In the last five years, the Regional Police Chief (Kapolda) has issued at least two edicts aimed at limiting peaceful assembly. The first was published in 2019 amidst protests in West Papua against the use of a racial slur by several members of the military and (Community Organizations) in Surabaya. The edicts contained six points meant to curtail opinions and debate that may lead to riots, spread the idea of separatism, fake and provocative news, and those that used “forbidden symbols”, such as the Morning Star flag⁷⁴. The second edict was issued in mid-November 2020 in response to a public hearing about the second plan to introduce amendments to the Special Autonomy Law for Papua. The public hearings were organized by the Papuan People’s Council (Majelis Rakyat Papua -MRP) in five regencies reflecting the five customary regions. In addition to the issue of implementing the COVID-19 prevention protocol, in this edict, the Papua Police Chief warned the participants of these public hearings not to discuss or make any plans that could disrupt state security and spread separatist ideas.

57. In 2023, Papuan activists held a demonstration in solidarity with Mr. Victor Yeimo, who was in detention, having been charged with treason. In response, one person was arrested, and several participants suffered

⁷³ Aranditio, Stephanus. “Indonesian Press Freedom Index 2023 Decreases.” *Kompas.id*, 1 Sept. 2023, www.kompas.id/baca/english/2023/08/31/en-indeks-kemerdekaan-pers-indonesia-2023-menurun . Accessed 5 Feb. 2024.

⁷⁴ *Dong Penjarakan Tong Pu Suara dan Pikiran - Pusaka Bentala Rakyat*. (2023, May 4). *Pusaka.or.id*. <https://pusaka.or.id/dong-penjarakan-tong-pu-suara-dan-pikiran/>

beatings.⁷⁵ In the same year, the police forcefully dispersed a peaceful rally in Jayapura held by KNPB protesting the New York Agreement, calling it legally flawed.⁷⁶ Police brutality in response to Papuan's exercising their freedom of assembly has become routine, and this normalization of violence has led to fears and distrust of the government of Indonesia.

Recommendations:

- Ensure the right to peaceful assembly in West Papua, including for the Indigenous Papuans.
- Ensure that security forces respect the right to peaceful assembly and avoid the excessive use of force.
- Conduct transparent investigations on the actions of members of security forces against peaceful assemblies and eventually prosecute those responsible if they are proven guilty.

Rights of the child (arts. 23, 24 and 26)

58. Indigenous Papuan children have been suffering due to the armed conflict between Indonesian security forces and armed pro-independence groups. There have been allegations that Indigenous Papuan children are recruited and trained as child soldiers by pro-independence groups.⁷⁷ Indigenous Papuan children are also among the tens of thousands of persons who have become IDPs as a result of the current armed conflicts in the region.⁷⁸ For example, the majority of IDPs in Puncak are women and children. They live in appalling situations with no access to clean water and health services. The displaced children do not have access to schools. After years of conflict, IDP children have been traumatized by the operations of security forces and fear the presence of the police and military.

Recommendations:

- Take special measures to ensure that IDP children and their families are adequately rehabilitated, resettled, and provided adequate support, including mental health support.
- Ensure access to education for the internally displaced children affected by the armed conflicts in West Papua.

Participation in public affairs (arts. 25 and 26)

59. The 'Noken system' will be dispensed with for the upcoming Indonesian Presidential Elections in February 2024. This system, used in mountainous regions of West Papua, consisted of a bag instead of a ballot box and led to election disputes, mainly as villages voted as blocs, with tribal or village heads making the final decision. Voters will now be able to exercise their voting rights directly. It is hoped that this change will lead to a more democratic political process. The Presidential elections in February 2024 will be the first since the creation of the New Autonomous Region (DOB), establishing four additional provinces in West Papua.⁷⁹

60. Law No 21/2001 on Special Autonomy Law for Papua, in particular Article 28(1), stipulates that "People in Papua Province can establish political part(ies)." However, the Constitutional Court delivered its judgment that

⁷⁵ Redaksi. "Polisi Bubarkan Aksi Mimbar Bebas Rakyat Papua Melawan Rasisme (RPMR) Di Jayapura." *Dipta Papua*, 11 Apr. 2023, www.diptapapua.com/polisi-bubarkan-aksi-mimbar-bebas-rakyat-papua-melawan-rasisme-rpmr-di-jayapura/ . Accessed 5 Feb. 2024.

⁷⁶ Pabika, Agus. "BREAKING NEWS: Massa Aksi KNPB Di Sentani Dibubarkan Paksa Aparat Kepolisian." *Suara Papua*, 15 Aug. 2023, www.suarapapua.com/2023/08/15/breaking-news-massa-aksi-knpb-di-sentani-dibubarkan-paksa-aparat-kepolisian/ . Accessed 5 Feb. 2024.

⁷⁷ The Jakarta Post. "Insight: Acknowledge Child Soldiers to Save Papua's Children - Opinion." *The Jakarta Post*, 9 July 2019, www.thejakartapost.com/academia/2019/07/09/insight-acknowledge-child-soldiers-to-save-papuas-children.html . Accessed 5 Feb. 2024.

⁷⁸ "IDP's Humanitarian Crisis in Papua: Catholic Church Calls for Immediate Government Action -." *Human Rights Monitor*, 17 Nov. 2023, www.humanrightsmonitor.org/news/humanitarian-crisis-in-papua-catholic-church-calls-for-immediate-government-action/ .

⁷⁹ Antara News. "Papua to Dispense with Noken System in Upcoming Elections." 19 Oct. 2023, www.en.antaranews.com/news/296574/papua-to-dispense-with-noken-system-in-upcoming-elections . Accessed 5 Feb. 2024.

the provision was not to be interpreted as a policy to allow the establishment of a local political party in the region.⁸⁰ In the amendment of the law, lawmakers deleted Article 28(1) to close any provision that could be used to justify the establishment of any local political party in West Papua.

61. The members of the National Committee for West Papua (KNPB), an organization in West Papua 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. The articles cover crimes against the security of the state and impose life imprisonment as a maximum punishment.⁸¹ The Indonesian authorities have used these criminal code provisions to prosecute dozens of peaceful pro-independence political activists legitimately exercising their rights to freedom of expression, association, and peaceful assembly in Maluku and Papua over the last decade.⁸² The restrictions on the rights to freedom of expression imposed under Articles 106 and 110 of the Criminal Code go beyond the permissible limitations allowed under the ICCPR.⁸³ The use of the treason articles curtailing the freedom of expression of Papuans⁸⁴ comes from a racist and stigmatic perspective. Instead of acting as a deterrent against the political activism of Papuans, the use of Articles 106 and 110 further reinforces the public perception that the State is acting arbitrarily against and singling out Papuans. It conveys the message that the State does not distinguish between activists exercising their rights to peacefully expression their opinion and those pursuing violent means to achieve their ends. It sends the message that the State considers all Papuans to be violent.⁸⁵

62. Mr. Victor Yeimo, the international spokesperson of KNPB, 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.⁸⁶ Mr. Yeimo's health deteriorated significantly during pre-trial detention. However, 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, Mr. Yeimo 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 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.⁸⁷ 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.

Recommendations:

- Ensure the Indigenous Papuans can fully participate in the democratic processes using the adapted approach according to their culture, such as the Noken System.

⁸⁰ Constitutional Court. (2019). Decision No. 41/PUU-XVII/2019. https://aacc-asia.org/content/summarydecisions/93_Decision%20Summary%2041_PUU-XVII_2019.pdf

⁸¹ Amnesty International. "Indonesia: Open Letter on the Increasing Use of Makar Charges against Papuan Activists to Stifle Freedom of Expression." Amnesty International, 2 Oct. 2019. www.amnesty.org/en/documents/asa21/1108/2019/en/. Accessed 5 Feb. 2024.

⁸² Ibid

⁸³ Ibid

⁸⁴ Somad, Damar Fery Ardiyan, Abdus. "Kebebasan Sipil Di Papua Terenggut Pasal Makar Dan ITE." Jaring, 1 Sept. 2023. www.jaring.id/kebebasan-sipil-di-papua-terenggut-pasal-makar-dan-ite . Accessed 5 Feb. 2024.

⁸⁵ Ibid.

⁸⁶ For a full list of the charges, please see: Amnesty International. "Indonesia: Papuan Political Activist Faces Life Imprisonment." www.amnesty.org.uk, 28 May 2021, www.amnesty.org.uk/urgent-actions/papuan-political-activist-faces-life-imprisonment.

⁸⁷ TAPOL. "Update on Victor Yeimo - Trial Adjourned due to Deteriorating Health Condition, Delayed Medical Treatment, Responses from the UN | Tapol." www.tapol.org, 21 Sept. 2021, www.tapol.org/news/update-victor-yeimo-trial-adjourned-due-deteriorating-health-condition-delayed-medical . Accessed 12 Jan. 2024.

- Repeal the amendment of Article 28 (1) of Law No 21/2001 on the Special Autonomy Law for Papua to allow the establishment of local political parties in West Papua.
- Repeal or revise provisions within Articles 106 and 110 of the Indonesian Criminal Code with a view to reducing the broad scope of their applicability and their disproportionate use against individuals expressing their fundamental right to freedom of expression and opinion.

Rights of minorities (art. 27)

63. In the current legal system in Indonesia, there is limited legal recognition of the ownership and control of customary lands of the Indigenous people. The Bill on the Recognition and Protection of the Rights of Indigenous Peoples (*Masyarakat Hukum Adat*), 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. Therefore, there is no legal requirement to obtain the consent of Indigenous Peoples before 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. In several cases, the authorities inform the Indigenous communities on the already agreed concession of government development projects. Their right to use their lands is subordinated to the interests of corporations contracted with government development projects.

64. In November 2023, the Jayapura Administrative Court (PTUN) rejected a legal suit filed by the Awyu Clan, an Indigenous Papuan community from the Boven Digoel area, against the Investment Office (DPMPTSP) of Papua Province. The Awyu clan filed the legal suit because the Investment Office issued a permit 2022 to a palm plantation company in their customary land without any consultation with their representatives. The land that the Awyu community claims is about 39,000 hectares, which is very important for the livelihood and survival of this Indigenous community. In its decision, the Jayapura Administrative Court mentioned that free, prior, and informed consent principles and meaningful consultation were unnecessary for the government to issue a permit for exploitation. Furthermore, the Jayapura Administrative Court failed to mention the Constitutional Court Decision No. 35/PUU-X/2012, which stipulates that Indigenous/customary forests are excluded from state forests. The Constitutional Court's decision underlines the recognition of Indigenous Peoples on forests and Indigenous communal land in Indonesia. Thus, the decision of the Jayapura Administrative Court is in contradiction with the Constitutional Court's decision, which demanded the government and companies recognize the rights of Indigenous people in Indonesia.

Recommendations:

- Expedite the enactment of the Bill on the Recognition and Protection of the Rights of Indigenous Peoples to ensure that Indigenous Peoples' rights to land and FPIC principles are incorporated into national legislation after securing Indigenous Peoples' informed participation and consent to it.