

*Statement in response to the Permanent People's Tribunal session on state and
environmental violence in West Papua, 27-29 June 2024*

The State of Indonesia has declined to respond to the Indictment that has been put before this Permanent People's Tribunal.

The notification and indictment was sent by email to the Indonesian Embassy in Britain and Italy on 22nd May. The notification and indictment was hand delivered to the Indonesian Embassy in Italy on the 17th June.

This statement is based upon the public declarations and published material that indicates Indonesia's position on the issues raised in the charges and testimonies.

Charge 1 - The Indonesian state is accused of taking the ancestral land of the Indigenous Papuan people against their will, employing racial discrimination which leads to the loss of culture, traditions and Indigenous knowledge, erases their history and subsumes them into the Indonesian national narrative.

The State of Indonesia claims to promote the protection of indigenous peoples and their rights globally, as referred to in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Indonesia voted in favour of the adoption of the UNDRIP during the 61st UN General Assembly Plenary Meeting while making an explicit statement on its non-applicability in Indonesia.¹ Indonesia claims that it does recognize the existence of 'masyarakat adat' or 'masyarakat hukum adat', meaning 'customary law societies', on its territory and has taken appropriate measures to safeguard the customary laws of these communities in its domestic legislation.²

Indonesia has introduced 'adat' laws, the traditional rights of customary law societies, into domestic legislation. The third amendment of the Indonesian Constitution recognizes *adat* laws in article 18B(2). Articles 28A-28J of the Constitution provide that all laws and regulations adopted in Indonesia shall respect and protect human rights without discrimination. Moreover, Article 32 guarantees the rights to practice and develop cultures including local languages. Indonesia has also adopted Law No. 39/1999 on Human Rights, which includes reference to customary law societies, and Law No. 26/2000 on

¹ UN General Assembly. (2007). *General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' towards Human Rights for All, Says President* [Meetings Coverage GA/10612]. <https://press.un.org/en/2007/ga10612.doc.htm>

² Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization (WTO), and other international organizations in Geneva. (2022). *Reply of the Government of Indonesia to the Joint Communication of the Special Procedures Mandate Holders Ref. No. AL IDN 11/2021 of 22 December 2021*. No. 26/POL-II/II/2022.

Human Rights Court which protects nations, races, ethnicities and religious groups from gross human rights violations, including genocide and crimes against humanities through prosecution.

In response to criticisms surrounding claims over land and ‘land-grabbing’, Indonesia notes that under international law, it is the sovereign entity with supreme authority within its entire territory, including the Papua provinces. As the sovereign entity Indonesia is able to decide and administer its own laws that determine the use of its land.

In relation to historical claims surrounding the legitimacy of the ‘Act of Free Choice’ of 1969, Indonesia argues that the referendum was in accordance with the relevant provisions of the New York Agreement, concluded between Indonesia and The Netherlands. Indeed, Article XVIII of this Agreement provided for the Indonesian practice of ‘*musyawarah*’, a traditional method of consultation consisting in reaching a decision based on discussions.³ The ‘Act of Free Choice’ produced an overwhelming vote in favor of integrating former Dutch New Guinea into the territory of Indonesia. This vote was accepted by the UN General Assembly in Resolution 2504.⁴ It is further argued that integration of former Dutch New Guinea into Indonesia also complies with the principle of *uti possidetis iuris*, which has developed into a norm of international law governing territorial delimitations and has been accepted as generally applicable within the context of decolonization.⁵

All subsequent changes to structures of democratic government, Indonesia argues, have been done firstly to benefit the people and secondly are only done after wide consultation with stakeholders. For example, in relation to the creation of 4 new provinces in 2022, the Indonesian state noted in its report to the UN that:

“The establishment of four new provinces in Papua, were carried out with close coordination processes with stakeholders and related local governments...The formation of new provinces in Papua region was carried out to provide equitable development across the Papua region and increase government efficiency. This was also the result of the aspirations of the people of Papua to improve their welfare and facilitate services to the people of Papua. The four new provinces were named based on their geographical location and physical characteristics. The government consulted with stakeholders and the community to determine the names.”⁶

The Indonesian state does not accept that its policy of transmigration aims to dominate or eradicate Papuan people and Papuan culture. Conversely, Indonesia argues that the policy is predicated on the advancement of all Indonesian people in ways that will ultimately strengthen national unity. The relocation of families from densely populated regions of Indonesia to less inhabited parts of its territory

³ UN Doc. A/RES/1752 (XVII). (1962).

⁴ UN Doc. A/RES/2504 (XXIV). (1969).

⁵ Frontier Dispute (Burkina Faso/Mali), Judgment, I.C.J. Reports 1986, p. 554, para 23.

⁶ United Nations Group of Experts on Geographical Names. (2023). *Naming process of new provinces in Papua Region, Indonesia*. Doc. No. GEGN.2/2023/50/CRP.50.

has been done, according to the state, to assist in the process of development. Indeed, Indonesia claims to have devised this policy as central to its efforts to alleviate poverty through employment creation ensuring economic development and progress for all. To achieve this aim, Indonesia has made major investments in agricultural research, village improvement, education and health systems in rural areas.⁷ Furthermore, Indonesia has noted that this policy of transmigration has not been exclusively applied to this context, but has been implemented across the Indonesian archipelago.

Over the last decade or so, Indonesia has prioritised production and productivity of food, energy, and minerals to grow the economy in order to increase wealth in its entire territory for the benefit for all Indonesian peoples, including those residing in its Papua provinces. Through the Special Autonomy Law, Indonesia claims to have enabled a larger representation of Papuans in the Papuan People's Representatives and People's Assembly. In combination with the expansion of the Papua administration from two to six provinces, these measures are claimed to improve public services and accelerate development for the people of the Papua region.

Charge 2 - The Indonesian state is accused of violent repression, including unlawful detention, extra-judicial killing, and population displacement in West Papua as a means of furthering industrial development.

Indonesia argues that it deals with all allegations of human rights violations and criminal actions by state personnel appropriately. They are fully investigated and where there is evidence of violations, the perpetrators are prosecuted.

Indonesia has responded to a number of allegations against military forces of torture, extra-judicial killings and human rights violations by launching an inquiry into the incident and the role of those involved. Where appropriate, it has detained personnel for questioning, and taken action to prosecute and sanction those responsible, as shown by the following examples:

In response to the incident on the 3rd of February 2024 involving the death of Warinus Kogoya and the torture of Defianus Kogoya and Alianus Mirok, the Indonesian military said it investigated videos of the torture of Defianus Kogoya and confirmed they were authentic. Forty-two soldiers were investigated and 13 detained for their role in the videoed torture (though they were not held and questioned in relation to the death of Warinus Kogoya or the torture of Alianus Mirok). In response to this incident an Indonesian military spokesperson noted, "We will investigate it thoroughly," and that "Nobody should escape – those who were involved will be punished in accordance with the existing laws".⁸

⁷ World Bank Group. (1988). *Indonesia - The transmigration program in perspective*. Doc. No. 10929.

⁸ Brennan, D. (2024). *Indonesian officials confirm 13 soldiers arrested after torture video of Papuan man goes viral*. National Indigenous Times. <https://nit.com.au/26-03-2024/10460/indonesian-officials-confirm-13-soldiers-have-been-arrested-after-torture-video-of-papuan-man-goes-viral>

In relation to the mutilation case in Mimika, evidence of which was heard in this Tribunal, Indonesian President Joko Widodo said at the time that he had ordered the armed forces chief to help local police with the legal process, stating “Once again, the legal process must be carried out so that the public’s trust in the Armed Forces does not fade. I think the most important thing is to investigate thoroughly and then proceed to the legal process”.⁹ Six soldiers were arrested as suspects. Rahmat Amin Sese and Risky Oktav Mukiawan received life imprisonment, Robertus Putra Clinsman was sentenced to 20 years in prison, and Pargo Rumbouw was given a 15-year prison term. Furthermore, all four individuals were discharged from the Indonesian Army service.¹⁰

In relation to the Abepura massacre, evidence of which was also heard at this Tribunal, the case was solved by the human rights court in Indonesia established by Law No. 26/2000 on National Court of Human Rights.¹¹

These examples are provided as evidence that Indonesia is taking all allegations of human rights violations on its territory seriously, conducting investigations and holding perpetrators accountable where misconduct is supported by evidence.

The Tribunal heard evidence of incidents in Kiwirok. Indonesia argues that it has been forced to deal with terrorist groups in Kiwirok, primarily against the violent separatist movement OPM. This group was categorised as ‘terrorist’ in 2021 when Indonesia’s coordinating minister for political, legal, and security affairs Mahfud MD announced that “organizations and people in Papua who commit mass violence are categorized as terrorists”.¹² The state argues that any military operations conducted in Kiwirok, including any searches of villages or air raids are proportionate and are part of expanded operations to eradicate the OPM and protect the civilian population.

Charge 3 - The Indonesian state is accused of organised environmental degradation, including the destruction of eco-systems, contamination of land, the poisoning of rivers and their tributaries and of providing the permits, concessions and legal structure of non-compliance for national and foreign companies to invest in West Papua in a way that encourages environmental degradation.

The Indonesian state has for decades promoted a progressive economic development agenda in the Papua provinces. The state’s development approach has been defined by a ‘normative commitment to

⁹ Mambor, V. & Gozali, Idrus, P. (2022). *Jokowi orders military to help investigate soldiers suspected of killing 4 Papuans*. Benar News. <https://www.benarnews.org/english/news/indonesian/killing-probe-08312022152548.html>

¹⁰ Human Rights Monitor. (2024). *Supreme Court rejects appeal of military members accused in Mimika mutilation case*. <https://humanrightsmonitor.org/news/supreme-court-rejects-appeal-of-military-members-accused-in-mimika-mutilation-case/>

¹¹ UN Doc. CCPR/C/IDN/2. (2022). *Second periodic report submitted by Indonesia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*. Para. 87.

¹² Williams, H. (2022). *One Year Later: Papua in the Wake of Indonesia’s Terrorist Designation*, Centre for Strategic and International Studies. Center for Strategic & International Studies. <https://www.csis.org/blogs/new-perspectives-asia/one-year-later-papua-wake-indonesias-terrorist-designation>

an activist state', in which state interventionism in the economy seeks to 'engineer fast economic growth' and to 'direct industrial upgrading'.¹³ Indonesia argues that economic growth in the region will increase quality of life and specifically that this scale of development is necessary for job creation. For example, Indonesia supports BP's claims that the Tangguh LNG facility has created 6,000 jobs; the recent expansion of the plant has involved 13,500 construction and associated workers. In 2022 alone, the central government provided USD 3.6 billion to the Papuan government for infrastructure and special autonomy funds.

Indonesia accepts that major industrial development projects have environmental consequences. It argues that it takes the same approach to those risks as other comparable states. Indonesia has a regulatory system that expects all parties to comply with its environmental laws.

Indonesia has ratified the Paris Agreement through Law No. 16/2016 on the Ratification of Paris Agreement to the United Nations Framework Convention on Climate Change. This domestic law obliges the Indonesia to achieve a set of Nationally Determined Contributions that are compliant with the Paris Agreement. Indonesia claims that industrial development in all of its territories, including the Papua provinces, is compliant with those goals. Presidential Regulation No. 98/2021 on Implementation of Carbon Economic Value to Achieve Nationally Determined Contribution Targets and Control Over Greenhouse Gas Emissions in Relation to National Development sets concrete targets for Paris-compliant emissions reductions to 2030.

Indonesia claims to have strict regulations for controlling industrial pollution. Indonesian emission quality standards set the limit or level of pollutant that is allowed to be discharged. A company may dispose of waste only if it fulfils the emission quality standard and has obtained approval from the government. Minister of Environmental and Forestry Regulation No. 5/2021 on Procedures for the Issuance of Technical Approvals and Operational Feasibility Certificates for Environmental Pollution Control Sector requires business actors to have certified emission controls. Those apply to both air pollution and to the disposal of industrial waste. Negligent breaches of emission quality standards will result in administrative sanctions and/or criminal sanctions against business actors.

Furthermore, Indonesia had noted its commitment to scaling up the efforts to address environmental challenges while guaranteeing the rights of customary law societies, pointing out that these efforts are evidenced by the Basic Agrarian Law No. 5/1960, the MPR Decree on Agrarian Reform No. X/2000, the Act on Management of the Coastal Zone and Small Islands No. 27/2007, the Act on the Environment No. 32/2010 and Government Regulation No. 23/2021, all explicitly guaranteeing the rights of customary law societies. In particular, Government Regulation No. 23/2021 recognizes customary law societies as one of the key actors in achieving an environmental balance, improved welfare and socio-

¹³ Warburton, E. (2018). A New Developmentalism in Indonesia? *Journal of Southeast Asian Economies* 35(3) 355-368.

cultural dynamics in managing Customary Forests. By the end of 2021, the Ministry of Environment and Forestry claims to have established 75 Customary Forest units exceeding a total area of 50,000 hectares, providing benefits for almost 40,000 families. Additionally, an area exceeding 1,000,000 hectares was allocated including over 100 different customary law societies.¹⁴

Charge 4 - The Indonesian state is accused of colluding with national and foreign companies to cause environmental degradation, population displacement and sustain violent repression in West Papua.

The state of Indonesia argues that it is committed to progressive economic development. Several key reforms and initiatives have been initiated for this purpose, while also adopting new laws and regulations, as demonstrated above, to maintain and environmental balance, prevent discrimination and safeguard the traditional rights of customary law societies. These efforts notwithstanding, the state claims that too often the opponents of Indonesia stand in the way of this progress.

Indonesia partners with global corporations in its efforts to facilitate national economic growth. Central to this process of development is the construction of the Trans-Papuan highway, mineral expansion, including a new major gold ore mine, Wabu Block and the expansion of the Tangguh liquefied natural gas (LNG) facility at Bintuni Bay in the far west of the Papua region. Additionally, the Papua region is now one of the fastest expanding areas of palm oil production in Indonesia, the largest exporter of palm oil in the world. Furthermore, Indonesia has taken steps to ensure that palm oil is sourced sustainably in accordance with both international (RSPO) and domestic (ISPO) standards.

Indonesia argues that organised opposition to industrial upgrading is exploited by terrorist groups, seeking to hinder economic development and progress. The Papua region has seen a rise in violent separatist movements which required the deployment of military forces to safeguard the sites of commercial activities and associated infrastructure, as well as to protect the population. This intervention finds its legal basis in Article 7 of Law No. 34/2004 on the Indonesian National Army (TNI), according to which the TNI can legally be involved in military operations other than an armed conflict.

¹⁴ UN Doc. CCPR/C/IDN/2. (2022). *Second periodic report submitted by Indonesia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*. Paras. 289-296.

Annex 1: Statements by the Republic of Indonesia to United Nations bodies.