



TAPOL's Submission to the Permanent Peoples' Tribunal on West Papua (27-29 June 2024 in London, UK)

Introduction

This submission is prepared by TAPOL¹ a human rights organisation based in the United Kingdom. It campaigns for human rights, peace and democracy in Indonesia as well as to raise awareness of human rights issues in Indonesia, including in the contested territory of West Papua. Founded on grassroots campaigning, TAPOL works closely with local organisations in Indonesia and West Papua to advocate for truth and justice and to encourage the international community to take action.

Our data for this submission draws on several TAPOL reports from the period, especially TAPOL's annual Freedom of Expression and Freedom of Association Reports; reports from Papuans Behind Bars; submissions to various UN human rights mechanisms; periodic briefings which provide in-depth analyses of issues affecting Indonesia and West Papua (for example, special autonomy legislation, growing security force power and influence; and the Government's counter-terrorism policy in West Papua); and an extensive report on the 2019 West Papua Uprising.

Indonesia has ratified many core international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child (CRC), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In September 2011, Indonesia signed the UN Convention for the Protection of All Persons from Enforced Disappearance, but has not ratified it. Indonesia has not ratified the Rome Statute of the International Criminal Code.

Indonesia has always been elected as a member of the UN Human Rights Council at every available opportunity and continues to play an important role in the ASEAN (Association of Southeast Asian Nations) Intergovernmental Commission on Human Rights (AICHR).

Indonesia's Papua region is known internationally as West Papua and refers to the western half of the island of New Guinea. The Government of Indonesia considers the term, West Papua, to have a pro-independence meaning. In 2003, Indonesia split Papua into two provinces: Papua and Papua Barat (West Papua). In 2022, the central government and parliament set up four new provinces in West Papua; Papua Tengah (Central Papua), Papua Selatan (South Papua), Papua Pegunungan (Highland Papua) and Papua Barat Daya (Southwest Papua). The splitting of West Papua into the new

¹ See <https://www.tapol.org/>.

provinces was decided by the central lawmakers without getting approval from the Papuan Peoples' Council (MRP), as mandated by the Papuan Special Autonomy Law.

The indigenous population in West Papua is Melanesian with ethnic characteristics distinct from other parts of Indonesia.² Most of the indigenous Papuans are Christian, a minority within the country with the largest Muslim population in the world. The West Papua region only has a population of a few million (about 5.5 million) and constitutes only 2.2% of the total population in the country (about 280 million), but it constitutes almost a quarter of Indonesia's land territory.³

West Papua has a history as a part of Indonesia different from other regions. When Indonesia unilaterally declared its independence on 17 August 1945, West Papua was still a Dutch colony. Indonesia claimed that its territory covered all the former Dutch East Indies, which was rejected by the Dutch government. The New York Agreement, brokered in August 1962 by the UN at its headquarters, gave Indonesia de facto authority to administer West Papua on 1 May 1963, with a provision that a referendum should be carried out by 1969. Between 1963 and 1969, Indonesian military forces conducted human rights violations mainly against Papuan political activists, to ensure that Indonesia would win the referendum.⁴ These human rights violations included mass killings, arbitrary detention and forced displacement.⁵

In mid-1969, the Indonesian authorities conducted the "Act of Free Choice" - known in Indonesian as PEPERA or *Penentuan Pendapat Rakyat* - under United Nations supervision. The plebiscite produced a vote for integration. However, the manner in which it was conducted has been considered by many observers to be unfair: out of a population of roughly 700,000 only 1022 handpicked traditional leaders were allowed to vote.⁶

Despite reservations expressed by UN observers and others, including African states such as Sierra Leone, Ghana, Zambia and Togo, concerning the unfair nature of the plebiscite, the UN General Assembly accepted Papua's integration into Indonesia on 19 November 1969.⁷

During the "New Order" era (between 1965 and 1998) under the Suharto military regime, the Indonesian security forces carried out widespread human rights violations in West Papua with

² This refers to Article 1(t) of the Law No. 21/2001 on Special Autonomy for Papua Province.

³ See

<https://databoks.katadata.co.id/datapublish/2024/02/15/jumlah-penduduk-di-38-provinsi-indonesia-desember-2023>.

⁴ ICTJ (International Center for Transitional Justice) and ELSHAM Papua, *The Past That Has Not Passed: Human Rights Violations in Papua Before and After Reformasi*, June 2012, p. 7 and 13-18, available at <https://www.ictj.org/sites/default/files/ICTJ-ELSHAM-Indonesia-Papua-2012-English.pdf>.

⁵ Carmel Budiardjo & Liem Soei Liong, *West Papua: the Obliteration of a People*, TAPOL, 3rd Edition 1988, p. 15-25.

⁶ Article XVIII(d) of the New York Agreement actually provided 'one person one vote' system as it stipulates that "the eligibility of all adults, male and female, not foreign nationals to participate in the act of self-determination to be carried out in accordance with international practice, who are resident at the time of the signing of the present Agreement and at the time of the act of self-determination, including those residents who departed after 1945 and who return to the territory to resume residence after the termination of Netherlands administration". See Carmel Budiardjo & Liem Soei Liong, *West Papua: the Obliteration of a People*, TAPOL, 3rd Edition 1988, p. viii.

⁷ Carmel Budiardjo & Liem Soei Liong, *West Papua: the Obliteration of a People*, TAPOL, 3rd Edition 1988, p. 26; *Politics of Papua Project at the University of Warwick, Assessment Report on the Conflict in the West Papua Region of Indonesia*, April 2016, p. 14.

impunity.^[13] In West Papua, the security approach was intensified by the central government in order to crush both the armed and peaceful pro-independence movement.

An assessment by the National Human Rights Commission (Komnas HAM) in 2010 showed that military operations launched by the Indonesian security forces between 1963 and 1998 – known as the DOM (*Daerah Operasi Militer* or Military Operations Zone) in West Papua – resulted in around 10,000 unlawful killings.⁸

The Indonesian government grants very limited access to West Papua for international human rights observers and has shown little tolerance for freedom of expression. International funding agencies, which are obliged to register with the central government, are not allowed to provide financial support freely to West Papuan NGOs, in particular those which work on human rights issues.

The Government of Indonesia has failed to fulfil its own human rights pledges delivered at various international human rights forums. In May 2017, during Indonesia's third review under the UN Universal Periodic Review, the Minister of Foreign Affairs made a statement that the Attorney General would proceed with the criminal investigation and prosecution of cases of gross violations of human rights in West Papua (the Wasior and Wamena cases) in a special human rights tribunal under the Human Rights Court Law (Law No. 26/2000). In February 2018, President Joko Widodo invited the then-UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein to visit West Papua for an official discussion on a range of human rights issues in Indonesia. However, to date, a UN mission to West Papua has not been carried out, nor have those responsible in cases of gross human rights violations in West Papua been prosecuted.

According to the National Research and Innovation Agency or BRIN, which was known previously as the Indonesian State Institute of Sciences (LIPI), the main sources of conflict in West Papua are different interpretations of West Papua's political status in terms of integration into Indonesia, ongoing impunity to human rights violations, the failure of development in the region and the marginalisation and discrimination of indigenous Papuans.⁹

After 1998 *Reformasi*; Serious human rights violations persist with almost total impunity

After the fall of the Soeharto military government in 1998, Indonesia underwent legal and institutional reforms that have incorporated international human rights norms and standards on the pretext of preventing mass atrocities. On the other hand, the opening space for political protest revived the call for Papua's political aspiration for independence or to re-enact the Papuan peoples' rights to self-determination.¹⁰ Some Papuan political leaders lobbied the new central government to achieve this political aspiration, whilst other Papuan activists organised mass demonstrations for the same goal. One of these mass demonstrations took place in Biak in early July 1998. On 2 July 1998, the protesters, including Filep Karma, unfurled the banned 'Morning Star' (*Bintang Kejora*) flag atop a 35-metre-tall water-tower in Biak harbour, supported by a crowd of between 500 and 1,000 people. However, the Indonesian authorities branded this as a separatist action, warranting a violent

⁸ Komnas HAM's Papua Military Zone Assessment Team, Gross Violation of Human Rights in Papua 1963 – 1998, p. 180 & 181.

⁹ LIPI, Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future, 2009, available at (short English version): <https://cupdf.com/document/papua-road-map.html>.

¹⁰ The same period also saw a similar situation in Aceh – the western most area in Indonesia – where it had a history of independence movements, like West Papua. The Aceh political movement, led by the youth, intensified mass demonstrations to call for a referendum to separate from Indonesia.

response. Hundreds of demonstrators were encircled and fired upon early on the morning of 6 July. Residents in the neighbourhoods of Pnas, Wapnor and Saramon, in Biak City District were rounded up and driven to the harbour area where they were tortured or ill-treated. Hundreds of people were arrested and ill-treated, dozens sustained gunshot wounds and were driven by military trucks to two hospitals where they received inadequate medical care.¹¹ The case has been known as the 1998 Bloody Biak incident.

The bodies of six of those who died have still not been returned to their families; the authorities say they were 'dispensed of' in the sea. Given the intimidation to which the local population was subjected, it has been extremely difficult for concerned groups to conduct thorough investigations. The atmosphere worsened when dozens of 'mysterious corpses' were washed ashore in Biak shortly after the Biak tragedy. Without permitted autopsies, the government and the armed forces claimed that they were victims of the tsunami disaster that struck Aitape in Papua New Guinea on 7 July 1998.¹² Similar mass protests, which were met by violent and unnecessary use of force and arbitrary detention by Indonesian security forces in the same period were recorded by Papuan human rights organisations, including ELSHAM Papua, in Jayapura, Wamena, Manokwari, Sorong.¹³

In 2000, Indonesian lawmakers passed the Human Rights Court Law (No. 26/2000), establishing a special tribunal mechanism to address allegation of mass atrocities (genocide and crimes against humanity), referring it to the Rome Statute of the International Criminal Court.¹⁴ The Human Rights Court Law was established by Indonesia to avoid international pressures on Indonesia after the mass atrocities committed by Indonesia's security forces and their auxiliary militia groups in East Timor during the 1999 referendum.

Under a Human Rights Court, any allegation of genocide or crimes against humanity has to be investigated by the National Human Rights Commission (Komnas HAM), which is an independent body. However, with the exception of genocide and crimes against humanity, all allegations of human rights violations, such as unlawful killings, torture, or other serious violations committed by the police or military personnel, can only be investigated by their own internal investigators. Most cases of human rights violations committed by Indonesian security forces (the police and military) in Papua are dealt with by their own internal accountability mechanism, with a significant number of the cases not having been investigated at all.¹⁵ When the police or military have proceeded with the report, most of the police and military personnel accused of committing abuses in West Papua have only

¹¹ TAPOL Bulletin No. 153, July 1999, p. 18-19, available at https://vuir.vu.edu.au/25987/1/TAPOL153_compressed.pdf.

¹² Ibid.

¹³ Ibid.

¹⁴ The Human Rights Court Law was drafted by the Indonesian lawmakers, taking many definitions of crimes of genocide and crimes against humanity from the Rome Statute of the International Criminal Court, but left out war crimes. It is believed that the omission of war crimes from the Law was intentionally done by lawmakers who foresaw military operations in Aceh, then an area that was experiencing a secessionist armed insurgency led by the Free Aceh Movement (GAM).

¹⁵ Some example of these are Amnesty International's Report, "Don't Bother, Just Let Him Die": Killing with Impunity in Papua, July 2018, available at: <https://www.amnesty.org/en/documents/asa21/8198/2018/en/>; Human Rights Watch's Report, Out of Sight; Endemic Abuse and Impunity in Papua's Central Highlands, July 2007, available at: <https://www.hrw.org/sites/default/files/reports/papua0707webwcover.pdf>. See also ICP (International Coalition for Papua), Human Rights Quarterly Update West Papua – April 2021, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_April_2021.pdf; Human Rights Quarterly Update West Papua – October 2020, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_October_2020.pdf.

received disciplinary sanctions, which fell under the outdated Indonesian Criminal Code (KUHP) and Criminal Procedure Code (KUHP).

After the enactment of the Human Rights Court Law, there have been three cases of mass atrocities being investigated by Komnas HAM. First, the case of Abepura in December 2000 when the police personnel committed torture and ill-treatments and unlawful killings, that amount to crimes against humanity from the Komnas HAM's investigation, against Papuan people as retaliation for an attack against a police post in Jayapura.¹⁶ Komnas HAM's investigation named 22 individuals responsible for the Abepura case and recommended them to be tried at the Human Rights Court.¹⁷ However, the Attorney General Office who is in charge of the prosecution only brought two police personnel to the Court. Eventually, the two suspects were acquitted.

The second case was gross human rights violations that occurred in Wasior (2001) and Wamena (2003). Both cases have similar features with the police, through its infamous Brimob (Mobile Brigade) paramilitary unit, committed serious human rights violations against Papuan people after some of its personnel were killed and some weapons were taken away by the armed groups. The Komnas HAM investigation found that in the Wasior case, there were four victims of extrajudicial killings, 39 people were tortured, one Papuan woman was raped and five Papuans were disappeared.¹⁸ In the Wamena case, Komnas HAM found nine people were killed, hundreds of Papuan people suffered forced eviction, with 42 of them (the Internally Displaced People/IDPs) dying as a result, 15 people were arbitrarily detained and 38 people being tortured.¹⁹ In both cases, Komnas HAM concluded that crimes against humanity had been committed by the police personnel and recommended the Attorney General to bring the cases to the Human Rights Court. However, this has not yet happened.

The third case was the Paniai Shooting in 2014. In the morning of 8th December 2014, hundreds of Papuans staged a protest near the local military and police headquarters in the town of Enarotali in Paniai District, Papua Province. The protest was a response to a violent incident the day before when some military personnel allegedly beat and kicked 11 Papuan children. When protesters started throwing stones and pieces of wood at some state buildings, members of the security forces opened fire on the crowd from different directions, killing four people and injuring dozens of others. Several weeks later, at a national Christmas ceremony in Papua, newly elected President Joko "Jokowi" Widodo made a statement to the effect that he was committed to bringing those responsible for the killings to justice as soon as possible.

Subsequently, the police and military announced that they had set up separate internal investigation teams but no result was made public. Komnas HAM also set up a different investigation team within months of the incidents, but only in February 2020 did it finalise its judicial inquiry, concluding that there was enough evidence to call the 2014 Paniai shootings a crime against humanity.²⁰ In February 2022, the Attorney General named only one suspect, a low rank retired military figure, disregarding Komnas HAM's findings that eight individuals from the police and military forces, including those

¹⁶ Komnas HAM's Summary Briefing of Gross Violations of Human Rights Cases, *Merawat Ingatan Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat*, November 2020, p. 136-147.

¹⁷ Ibid.

¹⁸ Komnas HAM's Summary Briefing of Gross Violations of Human Rights Cases, *Merawat Ingatan Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat*, November 2020, p. 239.

¹⁹ Ibid, p. 240.

²⁰ Ibid, p. 677.

who held command responsibility, should be tried by the Human Rights Court.²¹ In December 2022, the Human Rights Court's judges acquitted the defendant.

Security Situation in West Papua

West Papua is currently the only area within Indonesia where peaceful and armed movements are calling for independence. Some studies have stated that the security situation in West Papua has worsened since 2018, with a significant increase of armed clashes between Indonesian security forces and Papuan armed pro-independence groups ("West Papua National Liberation Army" - Tentara Pembebasan Nasional Papua Barat- TPNPB).²² In the last five years the number of armed clashes has doubled compared to the previous 15 years. Furthermore, in the last five years, Papuan pro-independence armed groups have acquired greater abilities to obtain firearms and ammunition and to recruit new members. In early 2021, they killed a high-ranking member of the security forces. The Papuan pro-independence armed movement, the TPNPB, consists of various groups with different leaderships that have carried out sporadic attacks, mainly on military and police targets, but also recently against non-Papuan populations within West Papua. They have also committed human rights abuses, including killings, hostage-taking and abductions. In April 2021, the central government declared Papuan pro-independence armed groups to be 'terrorists'. Since 2018, the armed clashes between Indonesian security forces and Papuan pro-independence armed groups have also spread to new areas to the west in Maybrat regency and to the east in Pegunungan Bintang regency from the Central Highlands area of West Papua.²³

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

Civilians continue to be viewed by the security forces as being suspect, being accused of having loyalties to the TPNPB. This situation has persisted and has become worse and civilians have been reportedly targeted by the security forces.²⁵ The Government's official reason for the terrorism classification, of 'protecting civilians', is having the opposite effect to its stated objectives. Indeed,

²¹ Ibid, p. 686.

²² IPAC (Institute for Policy Analysis of Conflict), 'Escalating Armed Conflict and a New Security Approach In Papua', 13 July 2022, pp. 5-11 and Made Supriatma, "Don't Abandon Us"; Preventing Mass Atrocities in Papua, Indonesia', Simon-Skjoldt Center for the Prevention of Genocide, June 2022, p. 20.

²³ IPAC (Institute for Policy Analysis of Conflict). (2022). 'Escalating armed conflict and a new security approach in Papua' (pp. 5–11); Center for the Prevention of Genocide. (2022). "Don't abandon us": Preventing mass atrocities in Papua, Indonesia' (p. 1–4). TAPOL. (2023). 'Displaced and Disempowered: Military expansionism at the cost of civilian lives' (p. 5-8).

²⁴ United Nations Human Rights Special Procedures 'Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid', 1 March 2022, available at <https://www.ohchr.org/en/press-releases/2022/03/indonesia-un-experts-sound-alarm-serious-papua-abuses-c-all-urgent-aid>. As a result of fleeing violence, a small number of people have crossed the land border into Papua New Guinea.

²⁵ The security forces have reportedly shot at and bombed villages during operations, described in TAPOL's '243 deaths in West Papua: the international community must call for an impartial investigation and an end to the security forces' operations', 12 February 2020, available at <https://www.tapol.org/news/243-deaths-west-papua-international-community-must-call-impartial-investigation-and-end>.

counter-terrorism operations in Indonesia have previously been guided more by the security forces' economic interests than any objective of protecting civilians.²⁶

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

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

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

The security and human rights situation in West Papua markedly worsened in August 2019, with various riots, mass arrests and detention, unlawful killings, and other human rights violations across many cities in the two provinces. The widespread violence was triggered by racist chants against Papuan university students in some cities in Indonesia. These chants were carried out by groups of Indonesian people who were backed by the local security forces. These actions triggered widespread

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

<https://www.tapol.org/publications/indonesian-military-and-counter-terrorism-new-business-same-old-ways>.

²⁷ Detik.com 'Sederet Rekomendasi Gugus Tugas UGM Terkait Eskalasi Kekerasan di Papua' 8 June 2021, available at

<https://news.detik.com/berita-jawa-tengah/d-5597525/ sederet-rekomendasi-gugus-tugas-ugm-terkait-eskalasi-kekerasan-di-papua>.

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

²⁹ Detik.com 'Komnas HAM Soroti Gedung Sekolah di Hitadipa Papua Dijadikan Pos Koramil' 6 June 2021.

<https://news.detik.com/berita/d-5595640/komnas-ham-soroti-gedung-sekolah-di-hitadipa-papua-dijadikan-pos-koramil>.

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

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26909>.

³¹ Ibid.

anti-racism protests in West Papua, as well as in other provinces of Indonesia. Since then, the number of Papuan political prisoners increased significantly in a short time, including women detainees, and a more restrictive atmosphere prevailed across West Papua, such as shutting down internet access in almost all areas in the region, and deploying more military and police personnel, which hampered the work of Papuan human rights defenders.

Deforestation and Environmental Issues in West Papua

West Papua is also home to the largest forest land coverage in Indonesia but in recent years has faced accelerated deforestation due to the expansion of oil palm plantations, mining and food estate projects that have also brought a large number of non-Papuans to the region. Indonesia's Central Bureau of Statistics (BPS) reported that in 2022, the natural forest area of West Papua covers around 36% (34.3 million hectares) of the total forest area of Indonesia (almost 96 million hectares).³² West Papua's forest area is the largest, compared with other regions in Indonesia which have already lost forest cover due to mining, logging and oil-palm plantations.³³ The 34.3 million hectares of forest area in West Papua covers 78% of the total land territory of the region.³⁴ The deforestation rate in West Papua is also worrying. Between 2001-2019 West Papua lost 663,443 hectares of forest area or 34,918 hectares per year.³⁵

Deforestation in West Papua is overwhelmingly caused by the expansion of oil-palm plantations (80 per cent of deforestation).³⁶ However, business activities, such as mining and national food estate projects, have also contributed to deforestation. As the COVID-19 pandemic began in 2020, the Indonesian Government proposed to establish 'Food Estates': massive expansions of agricultural land spanning millions of hectares of land across Indonesia, including West Papua, and producing a variety of crops. The Government's reasons were that it wanted to anticipate a food security crisis caused by the pandemic. A mammoth 3.2 million hectares of land in the southern part of West Papua (Merauke, Boven Digoel and Mappi Regencies; all are now part of Papua Selatan Province) has been proposed by the Ministry of Environment and Forestry (MoEF) as an Area of Interest.³⁷ In mid-2020 President Joko Widodo appointed the Ministry of Defence to oversee the Food Estate Project, including in West Papua, an already militarised area, on the grounds that food security is part of national security. TAPOL documented a list of cases of violence, intimidation and manipulation by the military and police against indigenous Papuans surrounding the implementation of the Food Estate project.³⁸

³² BPS, forest land coverage in Indonesia per province (2014-2022), see <https://www.bps.go.id/id/statistics-table/1/MjExMCMx/rekapitulasi-luas-penutupan-lahan-hutan-dan-non-hutan-menurut-provinsi-tahun-2014-2022--ribu-ha-.html>. According to BPS, there are 25.3 million hectares of forest area in Papua Province and 9.13 million hectares in Papua Barat Province. BPS has not broken down the detail into six provinces of West Papua.

³³ Greenpeace, 'Licence to Clear; the Dark Side of Permitting in West Papua', April 2021, p. 12.

³⁴ BPS, *opcit.*

³⁵ Koalisi Indonesia Memantau (Indonesia Monitoring Coalition), 'Menatap Ke Timur, Deforestasi dan Pelepasan Hutan di Tanah Papua' (Planned Deforestation: Forest Policy in Papua), February 2021, p.8.

³⁶ *Ibid*, p. 5.

³⁷ TAPOL & awasMIFEE!, 'Pandemic Power-Grabs: Who benefits from Food Estates in West Papua?', April 2022, p. 7, available at

<https://www.tapol.org/publications/pandemic-power-grabs-who-benefits-food-estates-west-papua>.

³⁸ TAPOL & awasMIFEE!, 'The Military's Role in Food Estate Plans', September 2022, p. 23-25, available at <https://www.tapol.org/sites/default/files/TAPOL-AwasMIFEE%2009-22%20-%20Military%27s%20Role%20in%20Food%20Estate%20Plans%20%282022%29.pdf>.

For several decades, the transnational mining company Freeport McMoRan, has conducted mineral exploitation activities in West Papua. The company – through its Indonesian subsidiary PT Freeport Indonesia (PTFI) – is the largest foreign taxpayer in Indonesia and the largest employer in Papua province. Over the past few years, the company has been criticised for fuelling armed conflicts in Mimika Regency, where its mining operations are based, resulting in large-scale environmental degradation and multiple human rights violations against the indigenous Amungme and Kamoro tribes. These violations added to the government’s failure to protect indigenous communities from environmental pollution and ensure their right to free prior informed consent (FPIC) regarding the utilisation of their ancestral land for national interests. Freeport-McMoRan’s Indonesian subsidiary, PT Freeport Indonesia, has been responsible for the large-scale destruction of marine and forest areas. This is having a serious impact on the livelihood of indigenous Kamoro and Amungme communities, who are the legitimate owners of the customary land. The Indonesian government has tolerated these violations and continues to ignore the rights of these communities to FPIC, by excluding them from ongoing negotiations with PTFI over the extension of Freeport’s mining concession until 2041.³⁹

In October 2020, the parliament passed the Omnibus Job Creation Law (No. 11/2020)⁴⁰ - which modified at least 80 other laws - under the pretext of better stimulating and accelerating economic investment. Many provisions in the Omnibus Job Creation Law reduced environmental safeguards, usurped local government authority on economic policy and provided for criminal charges to be brought against any person deemed to have disrupted a mining project.

Freedom of Expression, Peaceful Assembly and Association in West Papua

After the 1998 Reformasi, Indonesia in general has improved the situation of the rights to freedom of expression, peaceful assembly and association through legislative and institutional reforms. However, Papuan people have enjoyed less of these rights. Under the pretext of maintaining national integrity and to suppress the separatist movement, the central government takes no different approach to its repressive stance against both armed groups and peaceful political groups that demand the right to self-determination or independence. In many cases, the central government has also harassed and intimidated Papuan human rights defenders who are accused of being supporters of the independence movement.

The New Criminal Code (KUHP)⁴¹ provides criminalisation for up to four years’ imprisonment for any person who spreads and develops communism/Marxism-Leninism or other ideas that are against Pancasila – the state ideology - in public, verbally or in writing, including spreading or developing them through any media (Article 188).⁴² This is a continuation of the existing Criminal Code. This provision can be used by the security forces or any mass organisations to disrupt or disband public activities, including public discussions on the topic of West Papua.

³⁹ A joint report by international, Indonesian and West Papuan NGOs, ‘PT Freeport Indonesia and its trail of violations in Papua: human, labour and environmental rights’, December 2020, p. 5, available at https://www.tapol.org/sites/default/files/PT_Freeport_Indo_tail_of_violations_in_Papua_Dec20.pdf.

⁴⁰ In November 2021, the Constitutional Court suspended the Omnibus Job Creation Law on the ground that the legislation process was flawed by not accommodating meaningful participation from the public. In December 2022, President Joko Widodo issued a government regulation in lieu of law to reinstate the Omnibus Law which eventually was passed by the parliament in March 2023 through Law No. 6/2023.

⁴¹ The New Criminal Code was passed by the parliament in December 2022 (Law No. 1/2023) and will enter into force in January 2026.

⁴² Under the New Criminal Code, the exception is only for academic activities.

One particular incident of attacking public discussion was very worrying. In Merauke on 17 November 2020, the local police force arrested 55 people, including two members of the Papuan Peoples' Council (MRP), an independent state institution set up by the Papuan Special Autonomy Law. The people arrested organised a public hearing to criticise the draft law of the Papuan Special Autonomy Law revision. The police arrested them and initially wanted to charge them with treason (*makar*).⁴³ The following day, all of them were released without charges. However, the planned two day public discussion in Merauke was disbanded. Before the arrest, the Papua Province Chief of Police (Kapolda) issued a warning decree (Mak/1/XI/2020) prohibiting any gathering that could "disrupt national security, treason (*makar*) or [which supported] separatism" along with prohibiting gatherings of more than 50 to prevent COVID-19 infections.⁴⁴

In May 2015 President Joko Widodo declared that the Government of Indonesia would open up access to West Papua for foreign journalists. However, this promise has yet to be fulfilled. There have been many cases since then where access to foreign media was limited or refused. Further, there are several cases of foreigners visiting West Papua who have been deported from Indonesia on suspicion of being journalists.⁴⁵ In May 2019, the head of the immigration division in the regional office of the Ministry for Law and Human Rights in Papua Province reaffirmed a "clearing house" system for any foreign journalist wanting to visit West Papua.⁴⁶ If a permit is granted, the foreign journalist will then be supervised by the security forces during their whole working trip in West Papua.

The Information and Electronic Transactions Law (ITE) has continued to be used to stifle and criminalise activities and free expression online, including in relation to West Papuan issues. Veronica Koman, a human rights lawyer representing West Papuan students in Surabaya, was named as a suspect by the East Java police in September 2019. Police accused her of inciting violence via hate speech and of broadcasting hoaxes of incidents in a Surabaya dormitory on her Twitter account, which had led to the 2019 Papua Uprising. They said this violated Article 45A section (2) of the Electronic Information and Transactions (ITE) Law, Article 160 of the Criminal Code (treason or *makar*), Article 15 of the Criminal and Procedure Law, and Article 16 of the Elimination of Racial and Ethnic Discrimination Law. Because Ms Koman was in Australia at the time, police announced that they were seeking a 'red notice' from Interpol. Police also threatened to freeze Ms Koman's bank accounts and cancel her passport. Before Ms Koman was named as a suspect, the Indonesian Ministry of Communication had already claimed that an incident on 17 August in a Surabaya dormitory that had been shared by Ms Koman was a hoax, but later it apologised.⁴⁷

Prominent human rights defenders Haris Azhar and Fatia Maulidiyanti were charged with criminal defamation under the ITE Law over comments they made relating to the Coordinating Minister of Maritime and Investment Affairs due to his involvement in business interests in West Papua. In

⁴³ TAPOL, 'West Papua 2020 Freedom of Expression and Freedom of Assembly Report', September 2021, p.4, available at <https://www.tapol.org/publications/west-papua-2020-freedom-expression-and-freedom-assembly-full-report>.

⁴⁴ PUSAKA, Report, *Dong Penjarakan Tong Pu Suara & Pikiran; Laporan pemantauan penikmatan hak atas berkumpul dan menyampaikan pendapat di muka umum secara damai di Papua sepanjang 2022*, May 2023, p. 3.

⁴⁵ TAPOL, see https://www.tapol.org/sites/default/files/TAPOL%20Jubi%20written%20evidence%20_0.pdf.

⁴⁶ Human Rights Monitor, <http://www.humanrightspapua.org/news/31-2019/439-government-continues-restrictive-policy-on-access-of-foreign-journalists-to-west-papua>.

⁴⁷ TAPOL, 'The 2019 West Papua Uprising; Protests against racism and for self-determination', September 2020 p. 23-24, available at <https://www.tapol.org/publications/2019-west-papua-uprising-full-report>.

January 2024, the East Jakarta District Court acquitted them of charges, saying that their online statement was based on research. However, the prosecutor filed an appeal against the court decision.

Six West Papuan activists were arrested in May 2022 for their online posting, which was considered by the police to violate the ITE Law, to call the people to take to the streets to protest against Special Autonomy in a number of cities in Papua.⁴⁸ All of them were released without charges by the police.

The Government of Indonesia enforced a massive crackdown on social media, blocking over 1,750 accounts by 29 August 2019, during the Uprising.⁴⁹ Many West Papuan activists complained that their social media accounts were suspended during this period. Indonesia imposed internet throttling and shutdown in West Papua from the very first day of the Uprising, calling it a matter of 'national security', and issuing five announcements between August and September 2019. According to SAFEnet,⁵⁰ bandwidth was throttled in several areas of Papua and West Papua provinces on 19 August 2019. A complete internet shutdown was imposed in 29 districts in Papua province and 13 districts in West Papua province from 21 August to 4 September 2019. From 4 to 9 September 2019, the internet shutdown continued in four regencies in Papua province (Jayapura city, Jayapura regency, Mimika regency, and Jayawijaya regency) and two cities in West Papua province (Manokwari and Sorong). Civil society groups in Jakarta filed a lawsuit at the Jakarta Administrative Court (PTUN) in November 2019. In June 2020, the Court ruled that the internet shutdown was unlawful. However, SAFEnet documented that the internet shutdowns were still being carried out partially at the local level in West Papua, usually if there were incidents of political tension.⁵¹

Papuan Political Prisoners

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

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

⁴⁸ TAPOL, 'West Papua 2022 Freedom of Expression and Freedom of Assembly Report' May 2023, p. 36, available at

<https://www.tapol.org/reports/west-papua-2022-freedom-expression-and-freedom-assembly-report>.

⁴⁹ The Jakarta Post, K.M. Tehusijarana, 'Government gets Youtube to block satirical West Papua advertisement', 29 August 2019.

⁵⁰ Damar Juniarto, 'The rise of internet shutdown in Southeast Asia', 31 July 2020

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

⁵¹ SAFEnet, 'Digital Rights In Indonesia Situation Report 2022; the Collapse of Our Digital Rights', p.15-18.

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

Despite the fact that the Minister of Law and Human Rights had issued a decree letter – claiming to follow the UN’s recommendations - releasing at least 32 thousand prisoners as of February 2021, none were West Papuan political prisoners.⁵² Prisoners eligible for early release had received less than five years’ imprisonment and had to have fulfilled certain qualifications. This move was not in line with a call from international bodies that the government should prioritise the release of prisoners who were sentenced for non-violent offences during the COVID-19 pandemic.⁵³

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

Impunity and Lack of Effective Human Rights Accountability

After the fall of the Soeharto military government (1966-1998), Indonesia endured legal and institutional reforms that have incorporated international human rights norms and standards. However, the establishment of the Human Rights Court mechanism was driven more by international pressure on Indonesia after the mass atrocities committed by Indonesia’s security forces and their auxiliary militia groups in East Timor during the 1999 referendum. The new Government of Indonesia led by then President BJ Habibie and his successor President Abdurrahman Wahid managed to convince the UN Security Council not to set up an international criminal tribunal and instead to set up a national tribunal to try those responsible for the 1999 East Timor mass atrocities.⁵⁴

This led to the passage of Law No. 26/2000 on Human Rights by Indonesian lawmakers in November 2000. Hence, the Human Rights Court is a criminal tribunal specific to ‘gross violations of human rights’ and not to be confused with other human rights courts such as the European Court of Human Rights Court (ECHR), Inter-American Court of Human Rights (IACtHR) and African Court of Human and Peoples’ Rights which are not criminal courts.

⁵² See

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

⁵³ Joint Statement of UNODC, WHO, UNAIDS and OHCHR on COVID-19 in Prisons and Other Closed Settings, 13 May 2020, available at

[https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings#:~:text=Respect%20human%20rights,option\)%20and%20non%20arbitrary](https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings#:~:text=Respect%20human%20rights,option)%20and%20non%20arbitrary).

⁵⁴ Report of the International Commission of Inquiry on East Timor to the Secretary General, January 2000 (UN Docs. A/54/726 and S/2000/59). See ICTJ & KontraS, *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, p. 37-38 and ICG (International Crisis Group), *Indonesia: Impunity Versus Accountability For Gross Human Rights Violations*, February 2001, p. 6-9 and p. 13-15, available at

<https://www.crisisgroup.org/asia/south-east-asia/indonesia/indonesia-impunity-versus-accountability>.

The Human Rights Court Law was drafted by the Indonesian lawmakers, taking many definitions of crimes of genocide and crimes against humanity from the Rome Statute of the International Criminal Court but left out war crimes. It is believed that the omission of war crimes from the Law was intentionally done by lawmakers who foresaw military operations in Aceh, then an area that was experiencing a secessionist armed insurgency led by the Free Aceh Movement (GAM).

Most cases of human rights violations committed by Indonesian security forces (the police and military) in Papua are dealt with by their own internal accountability mechanism with a significant number of the cases not having been investigated at all.⁵⁵ When the police or military proceeded with the report, most of the police and military personnel accused of committing abuses in Papua have only received disciplinary sanctions which fell under the outdated Indonesian Criminal Code (KUHP) and Criminal Procedure Code (KUHAP).

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

The main concerns on these internal accountability mechanisms include a lack of transparency of the process: from the investigative stage to the prosecution stage; light sentences compared with the gravity of the crimes; only implicating low rank personnel; excluding those with command responsibility; and convictions not being taken into account and used as a vetting (promotion and dismissal) policy.⁵⁶

Against the weak human rights accountability mechanisms under the Criminal Procedure Code, most victims and human rights organisations in Indonesia would prefer to bring serious human rights cases before the Human Rights Court where at least cases can be investigated by an independent institution, namely the National Human Rights Commission (Komnas HAM). Under the Human Rights Court Law, any allegations of gross violations of human rights (genocide and crimes against

⁵⁵ Some example of these are Amnesty International's Report, "Don't Bother, Just Let Him Die": Killing with Impunity in Papua, July 2018, available at: <https://www.amnesty.org/en/documents/asa21/8198/2018/en/>; Human Rights Watch's Report, Out of Sight: Endemic Abuse and Impunity in Papua's Central Highlands, July 2007, available at: <https://www.hrw.org/sites/default/files/reports/papua0707webwcover.pdf>. See also ICP (International Coalition for Papua), Human Rights Quarterly Update West Papua – April 2021, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_April_2021.pdf; Human Rights Quarterly Update West Papua – October 2020, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_October_2020.pdf.

⁵⁶ ICTJ (International Center for Transitional Justice) and KontraS (the Commission for the Disappeared and Victims of Violence), Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto, March 2011, p. 50-51. The plan to amend the military court system was officially confirmed in 2004 to address its flaws, but it has never been finalised. Law on Indonesian Military Force (No. 34/2004) mandated the reform of the military court system so that military personnel committing criminal offenses, including human rights violations, can be brought under the civilian court's jurisdiction. The 2004-2009 national parliaments had discussed a draft law on the amendment of the military court system and almost passed it in 2009, but the Minister of Defence asked for a delay. There has been no plan in the near future to amend the Military Court Law.

humanity) should only be investigated by a pro justicia team (KPP HAM) set up by Komnas HAM.⁵⁷ In its inquiries, Komnas HAM can summon and interrogate any relevant individuals and collect evidence.⁵⁸ If the pro justicia team concludes that there is sufficient preliminary evidence that gross violations of human rights has occurred, Komnas HAM delivers an inquiry report to the AGO (Attorney General's Office)⁵⁹ to recommend continuing the criminal investigation and prosecution.⁶⁰ To date Komnas HAM has already submitted 15 inquiry reports of gross violations of human rights to the AGO and only four cases have been brought by the AGO to the Human Rights Court.⁶¹

The Human Rights Court has been used to try perpetrators of gross violations of human rights in three cases: the atrocities in East Timor (now Timor-Leste) surrounding the 1999 Referendum; atrocities in Tanjung Priok, Jakarta in 1984 against Islamist activists; and unlawful killings, arbitrary and torture against in Abepura, Papua, in 2000 and extrajudicial killings in the Paniai Shooting in 2014. In the four cases, the AGO prosecuted a total of 35 individuals, although Komnas HAM's inquiry reports suggested that more individuals be indicted and the Human Rights Court at the first instance convicted 16 individuals. However, the final outcomes on appeal to the Supreme Court resulted in zero convictions.⁶²

Under the Special Autonomy Law for Papua (Law No. 21/2001 and No. 2/2021) there should be established a truth and reconciliation commission (TRC) by a presidential decree. This local TRC should carry out historical clarification on Papua to strengthen the national unity and to formulate measures for reconciliation. To date there is no indication that the central government would like to set up the Papuan TRC.

⁵⁷ Human Rights Court Law (No. 26/2000), Article 18. Under the Law, Komnas HAM can also appoint members of the KPP HAM, usually prominent human rights activists or lawyers, from outside the institution. However, for KPP HAM in the Paniai case, all of the members were from Komnas HAM.

⁵⁸ Human Rights Court Law, Article 19.

⁵⁹ AGO is part of the government (executive) body working under the President. The Human Rights Court Law does not provide any provision that could challenge the decision of the AGO not to proceed a case to the Human Rights Court.

⁶⁰ Human Rights Court Law, Articles 21-23. AGO can also appoint members of prosecutors from outside of their office, but in practice there has been no independent prosecutor involved in any trials under the Human Rights Court mechanism.

⁶¹ These were the 1999 East Timor Atrocities, 1984-85 Shootings in Tanjung Priok-Jakarta, 2000 Abepura-Papua and 2014 Paniai Shooting in Papua.

⁶² ICTJ (International Center for Transitional Justice) and KontraS (the Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, March 2011, p. 4, available at

https://www.ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English_0.pdf.