

# What Future for Papua?

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The Helsinki agreement of 2005 marks the historic peace process for Indonesia's westernmost province Aceh. After three decades of violence and repression, the long self-determination conflict is in the process of being resolved. Both the Free Aceh Movement and the Indonesian government have made substantial concessions for this to happen. However, for the second most burning and long lasting self-determination conflict, concerning Indonesia's easternmost region Papua, formerly called Irian Jaya, such steps are nowhere near in sight. But they need to be undertaken, and soon, lest the volatile situation escalates and Papua sinks deeper into the downward spiral of violence and 'counter-violence'. This paper will describe the developments in and concerning Papua over the course of the past eight years and will seek to explain key problems that need to be addressed in order to reach a sustainable resolution of the conflict.

## **Indonesia's *reformasi* in Papua**

During the first months after the fall of Suharto in May 1998, the spirit of the reform era or *reformasi* that had gripped the country could not at all be felt in its easternmost province. Its status as Military Operation Zone (*Daerah Operasi Militer*, DOM) remained in place for another five months and the security forces suppressed the now more assertive independence demonstrations with the familiar brutality: several protestors were killed during independence rallies in various cities. Sweeping arrests took place. The worst such incidents occurred in the coastal town of Biak in July that year.<sup>1</sup> As regards reactions in Jakarta, certain repercussions of the *reformasi* spirit could be discerned when the national parliament (DPR) sent a fact-finding team to Papua after the violence. Its members met also with the Forum for the Reconciliation of Irian Jaya Society (*Forum Rekonsiliasi Rakyat Irian Jaya*, Foreri), which had just been formed by a group of intellectuals, church leaders, NGO activists and traditional leaders. Foreri suggested that a national dialogue on a solution for the situation of Papua should be held whereby the options were to include autonomy, a federal system, and independence.

The Habibie administration reacted somewhat positively to the idea of such a national dialogue but aimed at restricting discussions to an autonomy solution. In autumn, various meetings between Papuan leaders, provincial government officials, representatives of the State Secretariat and the national parliament took place and paved the way for a

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<sup>1</sup> HRW 1998: 6ff for details.

meeting of Papuan leaders with the President in February the following year. The so-called Team of 100, a group which Human Rights Watch characterised as “the most representative body of Papuans ever assembled”<sup>2</sup> and which was led by the traditional leader Tom Beanal, got the unprecedented chance to present the Papuans’ concerns and aspirations directly to President Habibie and his cabinet.

In its statement then, the team expressed the Papuans’ wish to secede from Indonesia and proposed that the United Nations become involved in the independence process by overseeing a transitional government. President Habibie who had reportedly been advised not to meet the delegation, answered spontaneously to its statement showing understanding and even sympathy. “The aspirations you have expressed are important, but founding a country isn’t easy; let’s contemplate those aspirations again,” Habibie was reported as having said. “Go home, and take my greetings to the Papuan people.”<sup>3</sup>

In the aftermath of the meeting, however, the forces that had tried to prevent it seemed to gain the upper hand: the envisaged next stages of the national dialogue never got off the ground. All this has, of course, to be seen against the backdrop of the turn of events unfolding in East Timor at the time, where President Habibie had just opened the door for a referendum. Whereas these developments fanned hopes in Papua that independence might be within reach, the very idea of embarking on a similar journey for Papua as for East Timor was certainly a nightmare for nationalists and security forces alike.

The government’s response to the Team of 100’s statement, which Foreri was busy socialising among Papuans, was a renewed upsurge in Suharto-era style repression combined with a divide-and-rule tactic. In April 1999, the provincial police banned, among others things, the dissemination of results of the Team of 100’s meeting with Habibie and ordered the dismantling of the communication posts (*poskos*), which had previously been set up all over the province to socialise Foreri’s ideas and activities. Scores of protestors were detained after flag-raising events and charged under the corresponding notorious criminal code provisions with inciting rebellion and spreading hatred against the government.<sup>4</sup>

Furthermore, in co-operation with the central government a number of provincial officials began promoting the idea of partitioning the province. This was then given a legal form by Law No. 45/1999, which the Habibie government and the last Suharto-era DPR enacted shortly before leaving office and which, as one commentator put it, “smelled of the New Order”<sup>5</sup>. Law 45/1999 determined that two new provinces, Cent-

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<sup>2</sup> For this and for details on the above HRW 2000: Ch. IV.

<sup>3</sup> Ibid.

<sup>4</sup> HRW 2000: Ch. V, VI.

<sup>5</sup> ICG 2003: 3; for details on the following *ibid* and HRW 2000: Ch. VII.

ral Irian Jaya and West Irian Jaya, were to be carved out of Irian Jaya, as Papua was still called then. In October 1999, Drs. Herman Monim and Brigadier-General Abraham Atururi were sworn in as governors of the two new provinces. This occurred despite Governor Freddy Numberi who had been among those promoting partition plans then advising otherwise. The move to partition Papua was met with a storm of protests and demonstrations. The protests did not remain unheard by the new provincial parliament, which recommended to the government in Jakarta that the law be repealed.

This was only days before Abdurrahman Wahid was sworn in as Indonesia's new president. It was during the initial stages of his presidency that a breeze of change could also be felt as far as Papua, although this did not result in an end of human rights violations by the security forces there.<sup>6</sup> The new administration officially acknowledged the provincial parliament's rejection of the law and halted its implementation. Signs of the changed attitude of the Wahid administration were also that the political birthday 'party' of prominent pro-independence leader, Theys Eluay, in November, and the celebration of what Papuans refer to as their independence day on 1 December could take place. On the latter occasion, the raising of the Morning Star flag, which had hitherto been a "virtually assured route to arrest on rebellion charges"<sup>7</sup>, was not repressed by the security forces.

A month later, on a presidential visit to the province, Wahid demonstrated another conciliatory move of high symbolical importance when he declared: "On this day, together with the rising sun, I declare Papua the name for this province."<sup>8</sup> The name Irian Jaya meaning 'victorious Irian' had always been widely rejected.<sup>9</sup> In this unprecedented opening of political space in Papua, two important events took place. In February 2000, exactly one year after the Team of 100 had met President Habibie, around 400 Papuan leaders from all over the province, as well as representatives from the armed resistance movement OPM (*Organisasi Papua Merdeka*) resident in neighbouring Papua New Guinea, convened and held what was called the Great Papuan Consultation (*Musy-awarah Besar Papua, Mubes*). The main topics discussed at the *Mubes* were the need to 'rectify history', to draft a political agenda and to consolidate the movement. The *Mubes* established the 18 member-strong Papuan Presidium Council that had the task of leading the movement. Members represented different groups, including *adat* (customary law), women, politicians, intelligentsia, youth, religion, and former political prisoners.

<sup>6</sup> Tebay 2004: 132ff; SKP 1999, 2000.

<sup>7</sup> HRW 2001: 10; for details also SKP 1999; ICG, 2001: 11.

<sup>8</sup> Chauvel & Bhakti 2004: 27.

<sup>9</sup> The First Papuan Council had determined to call the land West Papua. Indonesian and pro-Indonesian politicians understood the probably originally Biak term Irian to mean *Ikut Republika Indonesia Anti Nederland*, i.e. follow the Indonesian Republic against the Netherlands; for this and other details on the name issue Zöllner 2005.

The Presidium was chaired by Theys Eluay and Tom Beanal. In its concluding statement the *Mubes* rejected the flawed UN-sponsored Act of Free Choice, which had led the international community to accept Indonesian rule over Papua, and underlined Papuan aspirations for independence.<sup>10</sup>

Three months later, the Second Papuan People's Congress was held with more than 20,000 Papuans participating, among them also representatives from the various communities in exile. The Congress repeated the *Mubes*' statement and gave the Presidium a mandate to organise the movement. President Wahid had intended to open the congress, which his government sponsored with one billion Rupiah. But Wahid backed down at the last minute and, after the event, distanced himself from it, stressing that he did not recognise the congress and considered it illegitimate as it did not represent all sectors of Papuan society.<sup>11</sup>

This U-turn on Papuan policies was to no avail: in the eyes of his opponents, who were just tipping the internal power balance in their favour, Wahid had gone too far. The president's renegeing on his promise to speak at the congress could be seen as the beginning of a power and policy shift in the administration. Wahid's policies came under a heavy concerted attack during the annual session of the People's Consultative Assembly (MPR) in August that year. The MPR did not endorse the presidential initiative to change the name of the province and to allow the Morning Star flag to be raised in Papua.<sup>12</sup> Rather, the Assembly, to which the President was at that time still accountable, ordered Wahid to take decisive measures against separatism. Special autonomy, which the MPR had already devised in its 1999-2004 binding policy guidelines as a step to be taken for Aceh and Papua, was seen as one means to this end.

Apart from pursuing the special autonomy option, the government employed both 'carrots' and 'sticks': The 'carrots' came in the form of the 'Cash Program', special funds for Papua to be distributed at the district level over a period of four months to increase social welfare.<sup>13</sup> The 'sticks' were put into action again by the security forces<sup>14</sup> whose numbers had been increased in Papua after the MPR session: crack-downs against inde-

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<sup>10</sup> For details SKP 2000.

<sup>11</sup> SKP 2001; HRW 2001: 10f; Chauvel & Bhakti 2004: 28f; ICG 2001: 17.

<sup>12</sup> SKP 2001; ICG 2001: 23.

<sup>13</sup> For details ICG 2001: 18.

<sup>14</sup> The security forces, alarmed by the recent developments, handed their own list of recommendations to the Minister of Home Affairs on how to deal with the looming threat of Papuan independence. Autonomy, acceleration of the partition of the province, i.e. implementing the defunct Law 45/1999, and creating new administrative districts (which due to parallel administrative and military – territorial – structure implied the establishment of corresponding new military posts) were among the suggestions, as were a number of overt and covert actions ranging from co-optation to East Timor-style support for pro-Indonesia militias; Chauvel & Bhakti 2004: 29.

pendence supporters took place with mounting frequency. The raising of the Morning Star flag was again mercilessly suppressed. Violent clashes between the security forces and protestors increased, leaving many people dead and wounded.<sup>15</sup> The worst cases of violence that year were in the town of Wamena in October and in Abepura in December.

Also the time around 1 December differed markedly from the previous year; the show of military force and repression were the rule of the day: shortly before the 'Independence Day', Theys Eluay and four other Presidium members were detained on familiar charges of subversion. As reasons for the charges served apparently several activities, which had been if not openly supported and accepted then at least condoned by the Wahid administration.<sup>16</sup>

### **Special Autonomy**

As mentioned, the MPR had determined that special autonomy legislation for Aceh and Papua should be released, and this at the latest on 1 May 2001. Apart from the government, leading figures in Papua also started work on draft legislation.<sup>17</sup> A working group was formed under the leadership of Frans Wospakrik, Rector of Cenderawasih University. As the option of autonomy, albeit special autonomy, did not have many supporters in Papua – it had been promised before but left unfulfilled – the working group aimed at broad participation from different societal groups, and it sought the advice of independent experts and discussions with members of the national parliament. The official hearing of the draft, in its 13<sup>th</sup> version, resulted in a tumult, which left one person dead and many wounded. But the law drafting process went ahead nonetheless. The provincial parliament unanimously endorsed the 14<sup>th</sup> and final version of the Papuan Draft Special Autonomy Law, which was then submitted to President Wahid. Surprisingly, the national parliament then opted for the draft from Papua as the basis for its deliberation. Finally, in November 2001, the Law on Special Autonomy for Papua, as the province was now officially named, was enacted. The law carries the signature of Megawati Sukarnoputri, who had in the meantime succeeded Abdurrahman Wahid as President.

The Special Autonomy Law contains a number of provisions, which, if implemented comprehensively, are no doubt to the benefit of the Papuan people. But, as was to be expected, the law is an extremely watered down version of the original Papuan draft.

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<sup>15</sup> ICG 2001: 18f; ICG 2003: 5 for details.

<sup>16</sup> ICG 2001: 20f.

<sup>17</sup> For details on the following Zöllner 2004: 12f.

One of the key problems has always been that Papua is the poorhouse of Indonesia despite the province's riches. For decades, the natural resources have been ruthlessly exploited, at the expense of the people and the environment. Profits have been transferred to Jakarta and abroad, leaving the local people in poverty and despair. The Special Autonomy Law addresses these grievances determining that 70 to 80 percent of the revenues from the exploitation of the natural resources are to remain in the province – at least for the next 25 years, after which Papua's share of oil and gas revenues will be reduced to 50 percent. Apart from this, the province shall receive a number of other special autonomy funds.<sup>18</sup>

Enhancing the role of indigenous Papuans in the governance of the province is another issue that the law addresses: the most notable move in this direction is the introduction of a new institution, the Papua People's Council (*Majelis Rakyat Papua*, MRP). The MRP can be seen as a cornerstone of the original Papuan draft. It is to be staffed entirely with indigenous Papuans, representing in equal parts *adat* (customary law) communities, religions, and women. Although the MRP does not have the strong standing of a second chamber of the provincial parliament, as the Papuan draft had proposed, it is still granted considerable political authority including a role in the legislative process. *Inter alia*, MRP approval is mandated for gubernatorial candidates, for provincial legislation, for contracts with third parties that touch on indigenous Papuans' rights and, last but not least, for any plans to partition the province. Measures to enhance Papuan representation in the other branches of government are that the Governor has to be an indigenous Papuan and that indigenous Papuans are accorded the right to priority appointment as judges and prosecutors.<sup>19</sup>

Theoretically, Papuans could also opt to defend their rights and promote their ideas and concerns through Papuan political parties; the Special Autonomy Law grants every Papuan citizen the right to do so. However, in practical terms this right is rendered meaningless, as according to other national legislation any political party in Indonesia has to have representations in at least half of the country's provinces – an unlikely event for any Papua-specific party.<sup>20</sup> The issue may come back to the agenda, now that after the Helsinki Peace Agreement concerning Aceh the new law on government in Aceh allows local parties for the province. This could serve as a precedent, which Papuans, among others, might want to invoke.

Papua is the province with the lowest population density in Indonesia. Thus, for decades people from overpopulated areas on other islands have moved to Papua, partly

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<sup>18</sup> Art. 34 Special Autonomy Law (Law No. 21/2001); for an English translation of selected provisions of the Special Autonomy Law cf. FES, West Papua Network & Watch Indonesia! 2004: 163-194.

<sup>19</sup> Art. 19, 20, 76, 12, 62 Special Autonomy Law.

<sup>20</sup> Art. 28 Special Autonomy Law; Art. 2 Party Law (Law No. 31/2002).

also through official transmigration programs. The migration has led to the fact that in some urban areas indigenous people no longer constitute the majority of the population. The Special Autonomy Law has not followed the proposal in the draft law to stop all transmigration programmes, but only determined that the governor has a say in these policies as well.<sup>21</sup>

Against the background of Papua's former status as Military Operation Zone and the long history of repression suffered at the hands of the security forces, their massive presence and their conduct are matters of great concern for Papuans. Security matters are, however, among the areas which remain firmly under central government control. The law allows for the deployment of military and non-Papuan police forces to the province whereby, with only the governor being accorded a rather unspecific co-ordinating role, Papuan institutions do not have much of a say in the process. Again, the draft had included different proposals.<sup>22</sup>

Ending human rights abuses and the impunity of security forces, as well as dealing with past human rights abuses, are other key demands that need to be addressed in order to achieve a sustainable resolution of the long-lasting conflict and to make special autonomy an attractive option for the majority of Papuans. The way in which these issues are dealt with in the chapter 'Human Rights' of the Special Autonomy Law differs considerably from the proposals in the draft. For the implementation of the central and provincial government's obligation to promote and protect human rights, branches of the National Human Rights Commission, of the Human Rights Court and of the Truth and Reconciliation Commission are to be established in Papua. The authors of the draft had envisaged independent Papuan institutions. Furthermore, as Papuans have long demanded a review of the Act of Free Choice, 'rectification' of Papua's historical record was another important issue that the Papuan draft had included. The draft law envisaged that the central government and the provincial parliament would take steps towards resolving the issue in the case that results of the work of the envisaged Commission for the Rectification of History showed that the integration of Papua into Indonesia had not been in accordance with international law.<sup>23</sup> The Special Autonomy Law foresees no such steps nor such a commission. Rather, it mandates as one task of the Truth and Reconciliation Commission to "clarify the history of Papua in order to stabilise the unity and integrity of the nation within the Unitary State of the Republic of Indonesia".<sup>24</sup> With this and the fact that the statutes for the national Truth and Reconciliation Commission (of which the Papuan commission is to be a branch) are strongly

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<sup>21</sup> Art. 61 Special Autonomy Law; van den Broek 2004: 78.

<sup>22</sup> Art. 4, 49 Special Autonomy Law; van den Broek 2004: 77f.

<sup>23</sup> Van den Broek 2004: 80f.

<sup>24</sup> Art. 46 (2) Special Autonomy Law.

biased in favour of perpetrators,<sup>25</sup> the law is a far cry from the demands of Papuans and the proposals of the draft. The issue of Papuan history has in the meantime received some attention at the international level, though, especially after in 2005 a comprehensive study on the Act of Free Choice was published. Conducted by Prof. Pieter Drooglever on behalf of the Dutch Ministry of Foreign Affairs, it shows the flaws of the process.<sup>26</sup> The study has been welcomed by Papuans, some of whom see it as supporting their cause for independence.

The Special Autonomy Law, which was finally passed in October 2001, was rejected by members of the Papuan Presidium Council, including its chairman, Theys Eluay, who had independence on their agenda. For Eluay, it had not always been so. As a traditional leader, he had been among the 1,026 Papuan leaders who had determined the outcome of the Act of 'Free' Choice, whereby Eluay had apparently campaigned for integration into Indonesia. A member of the ruling Golkar party, Eluay had long worked as a parliamentarian during the Suharto era. He is said to have had close contact to certain groups within the security forces, including to Kopassus, the Army's Special Forces.<sup>27</sup>

Three weeks after of the Special Autonomy Law was passed, Eluay was murdered on his way home from a reception at the local Kopassus base. Several members of the notorious Special Forces were eventually found guilty and sentenced to, at the most, three-and-a-half years in jail – verdicts which were strongly criticised.<sup>28</sup>

### **Under the Megawati Government Partitioning Papua Back on the Agenda**

Policies of the Wahid administration towards Papua had already changed following the 2000 MPR session. But under Wahid's presidential successor, Megawati Sukarnoputri, this was even more the case. Increasingly, the Special Autonomy Law, which carries her signature but had been drafted in the largest part when Wahid was still at the helm of Indonesian policies, was counteracted. Necessary implementing legislation, especially for the important institution of the Papua People's Council, was delayed – infinitely, it seemed. This increased frustration in Papua over the law, which many had viewed with suspicion all along. In January 2003 then, Megawati issued the controversial Presidential Instruction 1/2003 on the Acceleration of the Implementation of Law 45/1999. With this instruction, implementing the partition of Papua was back on the agenda. Protests

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<sup>25</sup> For details e.g. ICTJ 2005.

<sup>26</sup> Pieter J. Drooglever: *Een Daad van Vrije Keuze. De Papoea's van westelijk Nieuw-Guinea en de grenzen van het zelfbeschikkingsrecht*, Amsterdam, Uitgeverij Boom, 2005

<sup>27</sup> For details on Eluay Ipenburg 2002; ICG 2001: 12.

<sup>28</sup> For details ICG 2002: 3.

were voiced from different sides, and also prominent legal experts stressed that the presidential instruction was against the Special Autonomy Law.<sup>29</sup>

The legal problem here was that the status of Law 45/1999 had not been addressed in the Special Autonomy Law. Thus, two laws concerning Papua were in place with contradictory provisions: Law 45/1999 – although not implemented – still determining the establishment of the provinces West and Central Irian Jaya; and the Special Autonomy Law, mandating the approval of the – at that time not yet established - Papua People’s Council and the provincial parliament for any partition of Papua.

Despite the protests, the central government pressed ahead with the establishment of the two new provinces: West Irian Jaya was officially established in February 2003, with its acting governor, Abraham Atururi, officially appointed to the position in November of the same year. As regards Central Irian Jaya after violent clashes, which left several people dead, the central government announced in August 2003, that it had put on hold plans to go ahead with the establishment.

Papuan leaders meanwhile pursued other ways to alleviate their grievances over recent developments and sought legal recourse: following one legal claim, the Jakarta State Administrative Court obliged the government to revoke the appointment of Atururi as Governor in June 2004.<sup>30</sup> In November 2003, the chairman of Papua’s provincial parliament, John Ibo, submitted a petition for a judicial review of Law 45/1999 to the Constitutional Court. In its highly controversial verdict in November 2004 the Court ruled that with the enactment of the Special Autonomy Law the validity of Law 45/1999 was unconstitutional and that Law 45/1999 no longer had any binding legal force as of the date of the announcement of the verdict. However, in a puzzling legal argument that displays a number of inconsistencies the court declared the existence of West Irian Jaya as valid.<sup>31</sup>

### **The Papua People’s Council**

Apart from the return to divide-and-rule tactics, the central government under President Megawati dragged its feet in implementing a key tenet of the Special Autonomy Law: the Papua People’s Council was only established under her successor, Bambang Susilo Yudhoyono, who had scored rather well in Papua during the presidential elections. Shortly after taking office, at Christmas 2004, he went to Papua and brought with him as a kind of *kado natal*, or Christmas present, the long awaited government regulation concerning the establishment of the MRP. The gift was, however, ungraciously re-

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<sup>29</sup> For one legal argument on the matter Alrashid 2004.

<sup>30</sup> *Tempo Interaktif* 14.06.2004.

<sup>31</sup> For an analysis of the verdict and details on the following Stockmann 2006 (forthcoming).

ceived – and for good reason: the government regulation further reduced the authority of the Papua People’s Council, which is of such high importance to Papuans, or at least to those among them who against all odds still advocate special autonomy. By the procedural small print in this implementing legislation, the political authority, which the MRP is accorded in the Special Autonomy Law, has been crippled almost beyond recognition.<sup>32</sup>

It took another ten months before the MRP was eventually inaugurated in October 2005. The establishment process was fraught with difficulties: for one, the *Dewan Adat Papua* (Papuan Customary Council), representing 253 Papuan *adat* communities – i.e. those communities that would send one-third of the representatives to the MRP – displayed its attitude towards the Special Autonomy Law most drastically when it set a deadline for the government to properly implement the law and, deciding that this had not been forthcoming, symbolically handed back the law in August 2005. Furthermore, religious institutions, responsible for sending another third of the representatives to the MRP, refused for a good while to nominate candidates. And that the provincial branch office of the Ministry of Home Affairs was given the authority to coordinate the (s)election process did not help to raise confidence in the mechanism. However, in the end, difficulties and rejectionist attitudes could be overcome to such an extent that the MRP was eventually established. Irregularities in the process have somewhat tainted the legitimacy of the Council but have not led to discrediting it completely. MRP-chairman, Agus Alue Alua, who at the same time is deputy secretary-general of the pro-independence Papua Presidium Council, and his deputy, Frans Wospakrik, former rector of the Cenderawasih University and, as mentioned, a chief architect of the Special Autonomy Law, have certainly played a part in gaining the acceptance of the Council. Apparently, both the pro-independence Presidium and the rejectionist *Dewan Adat* cooperate more or less formally with the MRP.<sup>33</sup>

As of the day of writing (August 2006), the situation is complicated and – as the violence in March this year has shown – extremely volatile. West Irian Jaya’s political and administrative institutions are largely established, it has an elected parliament and a governor directly elected by the people, Abraham Atururi by name. However, it remains unclear what the legal basis of the province will be. If West Irian Jaya is not covered by the Special Autonomy Law for Papua but by the law regulating decentralisation, the Papuans living there will miss out on the increased share of revenues from exploitation of the resources and other funds granted under the special autonomy.

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<sup>32</sup> For details Stockmann 2005.

<sup>33</sup> For details ICG 2006.

### Excursus: Exploitation of Natural Resources

The protests and clashes in several parts of Papua during the first months of the year 2006 erupted on a scale not seen before, for example in Timika, where on 14 March angry crowds attacked and damaged a hotel, and in Abepura, where two days later clashes between students and mobile brigades of the national police (Brimob) had fatal consequences. Four policemen, one student, and one soldier died, and civilians were wounded. Security forces responded with sweepings and detentions. Arrested civilians held in police custody are said to have been tortured; hundreds of others escaped detention by fleeing to the highlands.

The attacks and the anger of the Papuans targeted the mining corporation Freeport-McMoRan Copper & Gold Inc. (FSX), specifically its Indonesian subsidiary PT Freeport Indonesia (PT-FI). The Timika hotel was attacked because high ranking Freeport staffs were gathering there, while the clashes between students and security forces on 16 March were the result of protests against the same corporation. Protesters – not only in Papua but also in other parts of Indonesia – even demanded the closure of Freeport’s mining operations situated near the town of Tembagapura.

The anger was not new, and not only a result of the violent events a month earlier. In February 2006, after illegal gold diggers had been expelled from the tailing deposits near the Freeport mining area, clashes with police had been so intense that Freeport was forced to suspend the mining operations for some days. Rather, the resentment is deep-rooted and persistent. Mentioning the name of Freeport only evokes bad images in the mind of Papuans. Not only for them has ‘Freeport’ become a synonym for the linkage between environmental destruction and human rights violations. The Freeport case highlights the fundamental root cause of the Papua conflict: Papua’s wealth in natural resources,<sup>34</sup> and the denial of the Papuans’ right to enjoy their share.

The control over natural resources is closely linked with Papua’s political, social and human rights problems. One might conclude that one reason why the Special Autonomy Law has not been comprehensively implemented, are the strong economical interests of parts of the political and military elite to maintain that control. Papua is too important a contributor to state and corporate revenues, especially Freeport. In this part let us have a closer look at this company and the relation between exploitation of natural resources and the Papua conflict, mainly during the last eight years.

Since the fall of Suharto in 1998, there have been fundamental changes concerning the exploitation of natural resources. Notably these are:

- Indonesian business interests are more diverse and extend beyond the former elite around Suharto and his cronies;

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<sup>34</sup> This is mainly gold, copper and nickel, gas and oil, timber and forest products.

- decentralisation opens opportunities for local stakeholders and at times brings about decentralisation of corruption;
- the business role of the security forces is more exposed;
- mining production has greatly increased and mining technology has advanced, thus cutting production costs but increasing profits and environmental destruction;
- forests are the last frontier of trans-national companies, i.e. from China and Malaysia, and fast clear-felling;
- environmental and social problems have reached a new dimension;
- *reformasi* demands more transparency and public accountability.

### **Mountain of Wealth, River of Waste:<sup>35</sup> Freeport**

Only an aerial view gives an idea of the size of the mining area.<sup>36</sup> The Grasberg, the mountain whose gold and copper have been exploited since 1991, is a decapitated mountain with an open pit two kilometres diameter and a huge down gate inside. Initially, Freeport was attracted to Papua in the sixties by an ore mountain, the Ertsberg. According to Freeport itself, this region is the richest copper and gold deposit in the world. In 2005, Freeport produced more than 2000 tons of copper, 400 kg of silver and 240 kg of gold daily.<sup>37</sup> Economic analysts state a striking increase in turnover and profits over the last few years and expect more in the future.

This area is home to the Amungme and Kamoro. They believe that they have never received a fair share of the enormous profits of the company. Rather, they suffered from its devastating social impacts. Amidst the richness of the nature of the area they remain poor. Despite the fact that Papua is a main contributor to state revenues,<sup>38</sup> its poverty rate is one of the highest in Indonesia. In Timika, the town near the Freeport mining area, outsiders outnumber the indigenous Papuans by far. The marginalisation of Papuans is not only due to the fact that few find employment.<sup>39</sup> It is even visible in normal life: in the markets of the town, in the streets, in social life, non-Papuans dominate. Community development sponsored by the Freeport Partnership Fund for Community

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<sup>35</sup> Perlez, Jane and Raymond Bonner (2005) *The Cost of Gold, The Hidden Payroll. Below A Mountain of Wealth, A River of Waste*. In: *New York Times* 27.12.2005.

<sup>36</sup> Freeport's concession area covers 230 km<sup>2</sup>; Tapol 2006.

<sup>37</sup> Calculated on data of: *Finanzen.net / Aktiencheck.de* AG 13.07.2006.

<sup>38</sup> According to Freeport, the company's direct and indirect benefits to Indonesia accumulate to \$ 33 billion, including \$ 64 million for community development projects. In 2005, Freeport paid \$ 1.2 billion in taxes, royalties, dividends, and fees to the Indonesian government.

<sup>39</sup> The workforce at the Freeport mine consists mainly of outsiders and only 20 percent are Papuans. Amungme and Kamoro from local communities are less frequently employed. These peoples consider this dilemma to be a major source of frustration for them; cf. interviews conducted by WALHI n 2005/2006 in WALHI 2006.

Development seems to fail, despite the fact that Freeport has worked to improve its standing and employed more locals.<sup>40</sup> In a recent report two Papuan civil society organisations ask: “Where are the Kamoro and Amungme university graduates? You can count with your fingers the number of graduates in the last decade. These are the people who are directly impacted. Where have the funds gone?”<sup>41</sup>

Remaining poor, some Amungme and Kamoro, together with Papuans from other communities and non-Papuan migrants, participated in illegal gold-panning, desperate to make a living on the waste of the – in the words of former Freeport manager, George A. Mealey – “richest deposit of copper and gold in the world”. The illegal digging started just recently, around the year 2000. Down to Earth argues that, initially diggers from outside arrived in the area because of economic reasons.<sup>42</sup> But the fact that during the last eight years the volume of waste has, compared to 1997, quadrupled, may also have attracted the diggers.

In 1995, the British-Australian Rio Tinto, a global mining giant, established a joint venture with Freeport McMoRan. After an investment of US\$ 1.7 billion, production and likewise the waste disposal rate at the Grasberg open pit mine have doubled.<sup>43</sup> Since then, it may be estimated that worldwide no other industrial activity produces bigger volumes of waste (overburden and tailings)<sup>44</sup> than the new joint venture Freeport-Rio Tinto.<sup>45</sup> Overburden and tailings contain considerable quantities of heavy metals. The surprisingly high level of metals is the result of the flotation process used by Freeport.<sup>46</sup> In the long run, heavy metals are leaching out of the tailings, and the rocks become acid (‘go acid’), thus destroying the ecosystem and sensitive aquatic species in the river. The rivers, surroundings and the estuary become dead zones. The waste is dumped into the Aghawagon-Otomona-Ajkwa river system, and finally washed into the estuary and out

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<sup>40</sup> ICCA 2005; Freeport’s response at <http://icca-corporateaccountability.org/PDFs/PTFIResponse05.pdf>.

<sup>41</sup> Yahamak 2006.

<sup>42</sup> Down to Earth, Newsletter 26.05.2006.

<sup>43</sup> WALHI (2006) argues that the rate of tailings disposal was relatively low at Grasberg’s predecessor, the Ertsberg mine (1973-1991). With the establishment of the Freeport-Rio Tinto joint venture, a permit was granted in 1997 to increase ore processing.

<sup>44</sup> Waste rock is the overburden lower grade ore lying above the higher grade ore. Tailings are the ground ore after the extraction of valuable minerals. According to John McBeth, Freeport’s tailings contain 14 percent of copper from the ore; cf. WALHI 2006.

<sup>45</sup> WALHI (2006) estimates that the tailings dumped over the first quarter century of mining at Freeport amounted to only a quarter of the tailings so far; three-quarters had been released in the eight years following Rio Tinto’s investment, from 1998 onwards.

<sup>46</sup> Extracting copper and gold by flotation has certain advantages compared to extraction by cyanides: it is cheap and fast, and is therefore promising high revenues. Unfortunately, the flotation process uses chemicals, which are toxic e.g. to aquatic life.

into the Arafura Sea.<sup>47</sup> The drastic increase of Freeport-Rio Tintos's waste disposal of metal-rich tailings, together with poverty and economic marginalisation, may have lured people there for income.

It is difficult to estimate the real threat to the environment and to health because for independent investigators access to the area is strictly limited. Monitoring is mainly done by the company itself, which operates under a shroud of secrecy in remote Papua; independent institutions depend on Freeport and government data.<sup>48</sup> The government admits to having been inactive: "To be honest," says B. D. Djanuarto, Environmental and Technical Director of the Directorate-General of Minerals, Coal and Geothermal Energy, "up until now there has certainly not been any monitoring of the environment, because it is outside our priority work area"<sup>49</sup>. Because of the government's lacking capacity (and political will) to pursue the violations of environmental laws, multinational corporations such as Freeport seem to enjoy immunity.

The Indonesian environmental network WALHI (Friends of the Earth Indonesia), has done the government's homework and recently documented the environmental damages of Freeport's mining activities. Based on unreleased Freeport and government data, the experts consider Freeport's practices as damaging to the environment and violating several laws and regulations which for example prohibit the disposal of waste into rivers, lakes and the sea.<sup>50</sup> The Minister for the Environment, Rachmat Witoelar, had already warned Freeport in March 2006 to obey the law and to obtain proper li-

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<sup>47</sup> Cf. satellite images of the damages to the floodplain, river system, and forests in the mine's concession area, between the years 1988 and 2003 at [http://skytruth.mediatools.org/content/objects/view.acs?object\\_id=9081](http://skytruth.mediatools.org/content/objects/view.acs?object_id=9081). Since then, the mine has expanded and the tailings burden increased. Cf. satellite image of the tailings plume at <http://www.tinylink.com/?U2nk65prt2>.

<sup>48</sup> According to WALHI (2006), the government has stated that Freeport-Rio Tinto:

- has been negligent in waste rock management, responsible for repeated slips at the Lake Wanagon waste rock dump culminating in a fatal accident and uncontrolled release of toxic waste (in year 2000);
- should build a tailings containment dam, which complies with the legal engineering standard for dams instead of the current inadequate levee system (in year 2001).
- relies on legally invalid permission from a local official to use the highlands river system to transport tailings. The company has been asked to build a tailings pipeline to the lowlands (in years 2001, 2006);
- is polluting the river system and estuarine environment in breach of regulatory water quality standards (in years 2004, 2006);
- is discharging acid rock drainage without a hazardous waste licence, at levels breaching industrial effluent standards, and has failed to establish mandated monitoring points (in year 2006).

<sup>49</sup> Interview by *Business Indonesia* (2006).

<sup>50</sup> I.e. Law on Environment (1990), Law on Environmental Management (1997), Regulations on River Management (1991), Regulations on Hazardous Waste Management (1999), Regulations on Water Quality and Water Contamination Control (2001), Ministerial Decree on Quality Standard of Sea Water (2004).

cences. “The damage caused by PT Freeport has been so serious, but I do not bring the data,” Witoelar said.<sup>51</sup>

What a dilemma for the Indonesian government! Enforcing the law on behalf of the environment would demand the halting of Freeport’s mining activities. But closure would have, according to President Susilo Bambang Yudhoyono, harmful effects on the national economy.

To understand Freeport’s extraordinary position and role in today’s Indonesia, one should not forget the early beginnings. Actually, it is not easy to answer the question about the hen and the egg: which was earlier, the establishing of the New Order or Freeport’s presence in Papua? The first Contract of Work with Indonesia was signed in 1967, two years after Suharto’s accession to power and even two years before Papua was incorporated into Indonesia after the Act of Free Choice in 1969.<sup>52</sup> Suharto himself opened the first open pit mine at the Ertsberg mountain, whose copper was exploited for the next twenty-four years.

“President Suharto has led the Republic of Indonesia since 1967, and the calm political climate under his leadership has allowed steady economic development”, writes George A. Mealey. It was a win-win deal for both; Freeport contributed intensely to state revenues and Suharto’s personal wealth, while Freeport enjoyed broad powers over people and resources. For PT Freeport Indonesia and its Indonesian business partners, the last years of the New Order, 1991 to 1998, were golden years. In 1987, the company had discovered a new mountain, extraordinarily rich in minerals, the Grasberg, the richest gold deposit worldwide, and the third-richest in copper deposits. The government declared the Grasberg mine a strategic national asset. Under a new Contract of Work dating from 1991, Freeport got the right to exploit the Grasberg for the next 50 years. The company advanced to become an important player in the global gold and copper business, and Indonesia participated in this venture. The company had not only become Indonesia’s largest taxpayer, but also a close business crony of the Jakarta elite, as “company officials found themselves under pressure to cut Soeharto’s family and friends into business deals. Freeport McMoRan helped Soeharto allies to buy shares in the mine”<sup>53</sup>.

The loser in this ‘development’ was the local community. The Amungme and Kamoro had no say in any agreement; they had to surrender their ancestral lands; they were and are exposed to dramatic social changes; they are witnesses of the destruction of their environment, and from the beginning on in the early 1970s, they had to face violence. The military was part of Freeport’s security forces, and after the new Contract of Work in 1991, a permanent military detachment was installed. During the last years of Suharto’s

<sup>51</sup> JATAM (2006) *Damage Caused by Freeport to Environment is Serious: Minister Says*. Statement, Jakarta, 26.1.2006.

<sup>52</sup> The pre-contract was signed in April 1965, five months before the coup on 30<sup>th</sup> September.

<sup>53</sup> Global Witness 2005: 10.

regime, PT Freeport Indonesia became notorious for human rights abuses, perpetrated by Indonesian soldiers, who have not been brought to justice.<sup>54</sup> John Rumbiak states that Freeport is not an exception. “In Papua – and Indonesia as a whole – we have seen countless examples of the military committing widespread human rights violations in the name of safeguarding some economic interest – whether its own or that of a multinational corporation such as ExxonMobil, Freeport McMoRan Copper & Gold, or Rio Tinto,” Rumbiak says.<sup>55</sup>

Since 1998, after the fall of Suharto and Freeport-Rio Tinto’s expansion of production, there has been no significant change in Freeport’s security approach, on the contrary. Eventually, during the last eight years or so, up to one thousand Indonesian soldiers and policemen were permanently in charge of safeguarding the mine, and in other parts of Papua, the military presence increased, too. Freeport’s security department even has its own intelligence group, labelled ‘Security - Intelligence Collection’ whose job is to collect information on potential separatists. In the words of the late Munir: “The TNI has degraded into a bunch of paramilitar[ies] paid to protect Freeport’s interests.”<sup>56</sup> It is believed that the military has been actively provoking conflicts to justify its presence in the area, thereby defending not only corporate and national but also its own economic interests.

Freeport is paying for the military’s services, and bribing officers. Transparency about the kind of payments made is still missing, even after in 2002 two New York pension funds called for specific information concerning the relationship with the military. The pension funds had grown suspicious after the killings of three Freeport teachers and the murder of Papuan leader, Theys Eluay, and were concerned that Freeport might face risks concerning its reputation and share value. According to Global Witness, “failure to be transparent, and to install proper safeguards, may encourage a culture of graft and rent-seeking around companies that might well prefer not to pay bribes. A company can become complicit in a crime, in regions where the rule of law is absent”.<sup>57</sup> For the first time, there have been revelations about bribes to the military.

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<sup>54</sup> Walton (2004) lists the following: “Torture, rape, indiscriminate and extrajudicial killings, disappearances, arbitrary detention, racial and employment discrimination, interference with access to legal representation, and severe restrictions to freedom of movement; violation of subsistence rights resulting from seizure and destruction of thousands of acres of rainforest, including community hunting grounds and forest gardens, and contamination of water supplies and fishing grounds; violation of cultural rights, including destruction of a mountain and other sites held sacred by the Amungme; and forced resettlement of communities and destruction of housing, churches, and other shelters.”

<sup>55</sup> Rumbiak, John (2003) Remarks at the conference “Europe in the world: EU external relations and development”, 19.05.2003, Brussels.

<sup>56</sup> Tapol 2006.

<sup>57</sup> Global Witness 2005: 4.

## Conclusion and View Ahead

Freeport is only one exemplary case that shows the complexity of interconnected problems that characterise the situation in Papua. It is obvious that efforts to minimise, for instance, the environmental damage caused by the mine which, although a top priority, would by no means be sufficient to significantly change the overall perception of Freeport as long as other key issues like the exploitation of natural resources, human rights violations, and the role of the security forces remained unresolved.

Another example already mentioned is the partition of the province. It is a striking fact that the public debate is more focussed on the legal aspects than on the substantial pros and cons of that partition. The partition is not in the first place criticised because of its potential negative effects, but for the reason that once again Papuans feel betrayed by the central government.

A glimpse at the map of Papua gives an idea about the underlying problem: a straight line from north to south marks the border between the Indonesian province Papua and the neighbouring independent state of Papua New Guinea. It is obvious that this border was the result of a political deal between former colonial powers rather than a boundary demarcating different ethnic or cultural entities. Nowadays everybody living west of that border is a citizen of Indonesia, regardless of whether his grandfathers suffered under Dutch colonialism or never happened to see any Dutch person in this remote part of the world. But from the very beginning the self-image of the Republic of Indonesia has been its existence as the independent successor state to the former Dutch colonies in Southeast Asia, including Papua. A famous slogan of the Indonesian independence movement was the term ‘from Sabang to Merauke’ – referring to the westernmost harbour island in Aceh and to the easternmost city close to the border of Papua New Guinea. In Indonesia’s nationalist camp, a heavyweight in the country’s political landscape, this slogan is still of immense importance. It is a backbone of national pride, and therefore – despite the fact that Papua became officially part of the country only two decades after Indonesia’s independence – the territorial integrity of the unitary state of Indonesia is sacrosanct.

On the other hand, indigenous Papuans hardly identify themselves as citizens of Indonesia. A recent study shows that 96 percent of interviewees are proud to be Papuans, but 52 percent are of the opinion that the culture of Papua is distinct from Indonesian culture(s), and only 14 percent identify themselves as Indonesians.<sup>58</sup> As Indonesian citizens their rights and duties are defined by the constitution. In theory, constitutional rights protect every citizen of a state. Activist lawyer Johnson Panjaitan cites Muhammad Hatta and Sutan Sjahrir, two founding fathers of the republic, who repeatedly stated that the ability of the state to protect every single individual is the fore-

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<sup>58</sup> SNUP 2006.

most standard to be applied. According to Hatta and Sjahrir the state was no longer relevant if it failed to fulfil that standard. But, states Panjaitan, the Papuans “never enjoyed a guarantee that the constitution also protects them”<sup>59</sup>. Whether supported by facts or not, in any case this statement reflects the perception of many people in Papua. Therefore it seems impossible to simply demand the people’s loyalty to the unitary state and its constitution. It has to be the Indonesian government that takes pro-active steps to win the hearts and minds of the Papuans. There is no alternative to trust building measures, dialogue, and a genuine will to understand the factual situation and the Papuans’ mindset, if Indonesia does not want to risk an escalation of the conflict.

More and more indigenous Papuans feel like foreigners in their own land. Migrants from other parts of Indonesia already constitute about half of Papua’s population. Like in other parts of the world, the presence of migrants has led to conflicts over land rights, markets, political influence, and the like. But in most other places, public opinion as well as government policies tend to side with the indigenous people, whereby sometimes, unfortunately, even xenophobia is invoked. Not so in Papua. Since this remote part of the world has been part of the giant state of Indonesia, Indonesian public opinion has predominantly been sympathetic towards the migrants. Politicians, army, police, and, last but not least, the national press are dominated by ‘Javanese’ as they are called in Papua – native Malays, regardless of whether they originate from Java, Sulawesi, the Moluccas or any other part of Indonesia outside Papua. Indigenous Papuans are tolerated in the ideological framework of the national motto *bhinneka tunggal ika* (unity in diversity). But if there is any trouble in Papua, particularly when conflicts between indigenous and migrants erupt, almost the entire Indonesian public will side with the migrants, whose cultural background is so much closer to their own than that of the ‘primitive and savage’ natives of Papua.

As mentioned above, tentative improvements in one or the other area are not sufficient to bring about significant change. A sustainable solution of the Papua conflict can only be reached through a comprehensive approach that takes into account financial matters, the human rights situation, rule of law, public health, environmental protection, education and many other determining factors. Any such approach must guarantee that the Papuans have full ownership of that process and that their cultural identity is honoured. Initially, many believed that the Special Autonomy Law could fulfil most, if not all the mentioned criteria. „However, more than four years after its passage, the special autonomy law remains only partially implemented, which has been worse than no implementation at all, because expectations of change have been raised and then dashed again,” comments a recent study by the Council on Foreign Relations (CFR).<sup>60</sup>

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<sup>59</sup> Panjaitan 2005: vii.

<sup>60</sup> King 2006: 22.

Special autonomy has not significantly changed the daily lives of most Papuans, who are in fact in even deeper frustration today. The central government has to be criticised for the half-hearted implementation of the law, in particular for the much delayed establishment of the Papua People's Council (MRP). What is worse, many Papuans saw the way the government went ahead with the partition of the province as just another betrayal. Nevertheless, it seems far too easy to just blame the central government for all the unfulfilled expectations. A recent report on public expenditure in Papua shows that quite a substantial amount of special autonomy funds was transferred to the province by the central government. However, the authors, who comprise experts from the provincial government, universities, and the World Bank, found that only a little of that money was spent to improve people's welfare. Remarkable sums were spent on government facilities, and, most worryingly, a huge amount of money was simply unaccounted for.<sup>61</sup>

Thus, there is an obvious lack of good governance, not only in Jakarta, but – maybe even more so – in Jayapura. Misperceptions, lack of information, and a tendency on both sides to stick to 'traditional' prejudices bear the risk that matters worsen further. While people in Papua tend to blame the central government, people in Jakarta may see themselves proven right in viewing Papuans as ungrateful and their political elites as incapable. If this holds true, then in the course of special autonomy, which many had hoped would help bridge the gap, the divide between Jakarta and ordinary people in Papua has only deepened.

But is there an alternative? Political independence, albeit attractive to some, does not seem at all like a viable solution. The idea of special autonomy has to be revived, either by improving the existing law or by a complete overhaul of the concept. There is an urgent need for dialogue between Papua and Jakarta, and it seems that there are at least some Indonesian decision-makers who are aware of that need. Maybe they are still in a minority position, but constructive support and prudent policies by the international community could help strengthen them. After all, this was possible in the case of Aceh – however, only after the devastating tsunami of 2004.

A more complicated question is: dialogue with whom? Blair A. King from the CFR proposes to hold a joint session with representatives of the Papua People's Council, the Papuan provincial parliament and of the West Irian Jaya provincial legislative. Other indigenous Papuans' organisations, such as the Papuan Presidium Council and the Papuan Customary Council, should be invited as observers to monitor the proceedings, Blair suggests.<sup>62</sup> It will be difficult enough to convince decision-makers in Jakarta to accept the pro-independence Presidium Council as an observer. And it is far from certain

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<sup>61</sup> World Bank 2005.

<sup>62</sup> King 2006: 19f.

that the Presidium will accept to be nothing more than that. But even if all these hurdles could be taken, it would still be questionable whether the delegates of such a diverse forum could guarantee for the behaviour of their fellow citizens. The organisational degree of the militant Free Aceh Movement (GAM), on the other hand, was strong enough to enable its negotiators to give credible guarantees on a cessation of hostilities. It is questionable whether any group or institution in Papua, or even all of them combined, could give that sort of guarantee.

For the time being, any free and objective dialogue on Papua's future will be complicated by the usage of highly emotionally charged terms, on the meaning of which there is so far no common understanding. '*Merdeka*' is only the most prominent of these terms. CFR recommends that: "Papua should also be encouraged to develop a political discourse that distinguishes between *merdeka* (social freedom or emancipation) and *kemerdekaan* (political independence), two terms that are conflated in current discourse."<sup>63</sup>

According to this interpretation the nationalist camp can calm down. '*Merdeka*' does not necessarily mean political independence. Muridan S. Widjojo, an Indonesian political scientist, supports this interpretation, but continues to dialectically explain that the meaning of *merdeka* may be even more than that: "... I am inclined to say that when Papuans talk about *merdeka* they expect and imagine more than just political independence. Yet authorities in Jakarta mostly interpret their social and religious movements as simply political in nature. This may be the most painful miscommunication between Papuans and policy makers in Jakarta"<sup>64</sup>.

In lieu of a conclusion, we would like to let Widjojo speak once more: "There should be support for the powerful efforts within the central government to change the nationalist hard-line perception and the related political judgement concerning the conflicts in Papua. We should assert the understanding that in essence the idea of *merdeka* is a set of dreams and hopes for a better life. These beliefs do not necessarily threaten the unity of the nation-state Indonesia. I believe that being a nationalist defending the unity of the state and progress for all its citizens is justifiable, but it should be done by winning the hearts of the Papuans and not by frustrating them further. It should be done by the development and implementation of sincere policies and actions that safeguard the humanity, basic rights, human autonomy and a better future for its people. Jakarta should develop such an approach to Papua that would convince the Papuans that being Indonesian is meaningful for their well-being."<sup>65</sup>

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<sup>63</sup> Ibid: 17.

<sup>64</sup> Widjojo 2005.

<sup>65</sup> Ibid.

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