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*Papua land of peace*  
the faith based network on West Papua



**ASIAN HUMAN RIGHTS COMMISSION**

# Human Rights in Papua



2010/2011

## Human Rights in Papua 2010/2011

### The following organizations have collaborated to the Report:

Asian Human Rights Commission  
Indonesian Human Rights Committee for Social Justice (IHCS)  
Mensen met een Missie  
Peace Brigades International  
TAPOL  
The Evangelical Christian Church in Papua (GKI-TP)  
Watch Indonesia!  
West Papua Netzwerk


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FI would like to thank CORDAID for the financial support received for the work on Papua

### Layout & Design

 meinhardt Verlag und Agentur  
Magdeburgstraße 11, 65510 Idstein, www.meinhardt.info  
Idstein, November 2011

### Co-Published by Asian Human Rights Commission (AHRC):

Unit 701A, Westley Square, 48 Hoi Yuen Road, Kwun Tong, Hong Kong  
Telephone: +(852) 2698-6339, Fax: +(852) 2698-6367,  
Email: ahrc@ahrc.asia, Web: www.humanrights.asia

### Printed by Clear-Cut Publishing and Printing Co.:

A1, 20/F, Fortune Factory Building,  
40 Lee Chung Street, Chai Wan, Hong Kong

November 2011  
ISBN: 978-962-8314-52-2 (Paperback Print)  
ISBN: 978-962-8314-52-9 (PDF)  
AHRC-PUB-003-2011

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## Foreword

Since 2003, the Faith-based Network on West Papua (FBN) has supported the religious leaders of Papua in their campaign “Papua, land of peace”.<sup>1</sup> The project aims to create a peaceful and just Papua where its indigenous population lives without fear and experiences social equality, economic prosperity and the rule of law. In other words, a place where human rights are guaranteed for all people regardless of their religious and ethnic background.

For decades, the indigenous people of Papua have been suffering under militarization, human rights violations, exploitation and discrimination. In 1998, Indonesia entered a reform and democratisation process which improved the human rights legislation and the development of institutions. However, in Indonesia’s easternmost province the indigenous people of Papua remain subject to severe human rights violations committed by Indonesian security forces and state authorities.

To date, the Indonesian Government barely provides access for international journalists, humanitarian aid and human rights organisations to Papua. Due to isolation from the outside world, the human rights situation in Papua has remained undocumented for decades.

Indigenous human rights defenders still face intimidation and harassment in their work for justice and accountability. With the alleged killing in 2010 of the critical journalist Ardiansyah Matra’is, the situation of human rights defenders deteriorated further.

In 2010, hundreds of indigenous people participated in peaceful demonstrations in the cities of Papua demanding human rights, justice and accountability for human rights violations. In July, the indigenous community returned Law No. 21/2001 on Special Autonomy for Papua to the Indonesian Government as its regulations had barely been implemented by the state. Despite improved legislation, a Human Rights Court and a Truth and Reconciliation Commission for Papua have never become a reality.

While the perpetrators of torture and extrajudicial killings enjoy impunity, indigenous Papuans making use of their civil and political rights are facing detention and conviction.

To date, the Indonesian Authorities in Papua employ the articles of the Indonesian Criminal Code that deal with subversion and incitement against indigenous Papuans who peacefully express their opinion in demonstrations, protests and publications. In 2010, critical Papuan voices were again put behind bars.

Economic and political interests in Papua remain the driving force behind the human rights violations in Indonesia’s easternmost region. In August 2010, the Merauke Integrated Food and Energy Estate (MIFEE) was launched in the Merauke Regency, Papua Province, with the view to developing a plantation of 1.2 million hectares for cash-crops. This development poses a threat to the economic, social and cultural survival of the indigenous people in southern Papua. Violations of land rights and violations of Free

<sup>1</sup> The term Papua here includes the Provinces of Papua and West Papua.



*Demonstration in Abepura, West Papua Province in 2010*

Prior Informed Consent (FPIC) are reported from numerous indigenous villages affected by MIFEE and other areas of natural resources exploitation.

The Human Rights Report 2010/2011 by the Faith-based Network on West Papua (FBN) documents social, political, economic, and cultural human rights violations against the indigenous people of Papua in 2010/2011. It does not claim to be exhaustive as many human rights violations in Papua remain unreported to date. The report aims at documenting what we know is happening in Papua at present. Local, national and international organizations and individuals provided their expertise on the human rights situation in Papua and made this compilation of articles possible. May it strengthen the cause of the religious leaders in Papua to create a “Papua, land of peace.”

**Kristina Neubauer**

*On behalf of Faith Based Network on West Papua*



Map of Indonesia

## Introduction

### Ending Human Rights Abuses in Papua

2010 and 2011 have been particularly singular for the indigenous Papuans who live in the Western half of the Island of New Guinea. In 2010 episodes of torture perpetrated against Indigenous Papuans were displayed worldwide. Through shocking and horrific video images, the entire world has discovered how the Indonesian Army deliberately commits torture against Indigenous Papuans.

The Indonesian government's policy of isolating Papua from the rest of the world – not allowing access to foreign journalists, international human rights workers, researchers and diplomats – has not been able to cover up the brutalities committed by members of the Army against the Papuans. However, the 2010 torture episode has not been the first case of torture committed by the Indonesian security forces against Papuans, and it will not likely be the last one either.

In fact, Papuans have suffered for a long time because of the human rights abuses committed by Indonesian authorities. Since Indonesia took over the territory of Papua in 1963, the Indonesian Army has conducted at least ten massive military operations against indigenous

Papuans. Papuans living in places where military operations have been conducted have horrific stories to tell about the abuses they have suffered. They describe, for example, how they have watched their houses burning down, their gardens and source of livelihoods being destroyed. They give accounts of how they watched their friends, acquaintances and family members being intimidated, tortured, and killed during military operations.

The government's promise of justice is nothing more than empty words for the simple fact that very few military personnel have been held accountable for human rights abuses committed against Papuans. Moreover, perpetrators of abuse have been, at times, even recognized as national heroes by the government. Papuans have never heard any stories about the government's success in imprisoning human rights abusers.

Even if the perpetrators are identified and punished, torture and other human rights violations will likely continue in the future. The reason is that three new battalions have been established in Papua, and several



new military district commands have been expanded. Thousands of troops have also been deployed along the border with the independent state of Papua New Guinea. More human rights abuses are also expected to occur because, not only do the security forces not consider Papuans as Indonesian citizens, they do not even consider them as human beings. Each indigenous Papuan is suspected of being a separatist or a supporter of the separatist movement that supposedly poses a threat to Indonesia's territorial integrity. As a consequence, Indonesian troops deployed among Papuans consider themselves to be among enemies of the Indonesian state. They are instructed that their main duty is to maintain the territorial integrity of Indonesian state, and therefore eradicate separatism in Papua.

As a result of this, thousands of Papuans are believed to have been victims of military operations conducted to eradicate separatism. Many Papuans suffered from maltreatment and various other forms of abuse committed by security forces. Past experience demonstrate that any Papuan can easily be killed by the military or police anytime and anywhere in Papua, based on the suspicion of being a separatist.

The central government should put in place policies to prevent its troops from committing further human rights violations against civilians in Papua. Documenting past cases of human rights abuse is also a necessary step so that the same violations are not repeated in future.

Many parties in Indonesia have realized that more human rights violations are likely to occur in Papua unless the root causes of Papuan separatism are resolved. The government and the indigenous people of Papua should thus engage in a constructive dialogue to identify these root causes and settle them without unnecessary bloodshed. The government should take the initiative by showing the international community its willingness and commitment to settle the Papuan separatism issue through dialogue with Papuans.

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## Section 1 – Indonesia’s Human Rights Obligations

The country has gone from a dictatorial regime to a democratic form of government in which all public institutions are formally bound by the Constitution, human rights principles, the rule of law and criteria for good governance, and international law.<sup>2</sup> The Constitutional Court and the Supreme Court form the judicial branch of the government. While the former has the power to determine the constitutionality of the laws (Undang-Undang), the latter has the power of judicial review over them. Administrative Courts are the forum in which to challenge public administrative decrees (officially issued by public administration offices) which contain directives for single citizens or legal entities.<sup>3</sup> The official inclination towards the establishment of a democratic and constitutional state which guarantees fundamental rights to its citizens and protects them is evident. It is therefore not surprising that Freedom House<sup>4</sup> has testified to a fundamental change from a ‘Not Free Country’ (NF) to a ‘Partly Free Country’ (PF) in 1998–99, and finally to a ‘Free Country’ (F) in 2006.<sup>5</sup> Among the members of the Association of South East Asia Nations (ASEAN), Indonesia is currently the only one in the category ‘Free Country.’

The Indonesian government has expressed its willingness to properly address human rights issues, in accordance with its membership of the Association of South East Asian Nations (ASEAN). However, Indonesia’s primary approach to achieving stability appears to be predominantly based on national security, addressing issues such as the war against terror and drugs. Consequently, the organisation of the public order follows the lead of this regulatory policy.

The reality in the country is quite different from what the norms currently in force establish and the Courts uphold. Impunity is widespread for the killings and massacres committed during Soeharto’s dictatorship; enforced disappearances, torture and extrajudicial killings are still particularly frequent in West Papua; the murder of Munir Said Thalib, prominent Indonesian human rights defender, is still unsolved; non-Muslim religious communities, such as the Ahmadiyah, are frequently threatened; the freedom of expression is not sufficiently guaranteed. Lastly, January 2010, the President of Indonesia – Susilo Bambang Yudhoyono – promoted the General Lieutenant Sjafrie Sjamsuddin as Vice Minister on Defence, despite

2 See Art. 2 of the ASEAN Charter of 2007 that calls for the adherence to democratic values, respect for human rights, and fundamental freedoms (ASEAN: Association of Southeast Asian Nations).

3 The Indonesian Legal System and Legal Research By Alamo D. Laiman, Dewi Savitri Reni, Ronald Lengkong, Sigit Ardiyanto, Globalex, at: <http://www.nyulawglobal.org/Globalex/Indonesia.htm#supremecourt> (last visited 8 August 2011).

4 Freedom House is an independent INGO working for freedom and democracy around the globe. The watchdog publishes an annual survey on the development of freedom in 193 countries worldwide.

5 See Freedom House, Freedom in the World Country Ratings 1972–2011; <http://www.freedomhouse.org/template.cfm?page=439>.

solid allegations that the General was involved in the 1998 rebellions where severe human rights violations were perpetrated.

The judiciary is facing corruption and pressure from political sources. The Constitutional Court is increasingly turning to conservative interpretations of fundamental norms that give priority to the state's interests and maintains the political legacy of the previous regime.<sup>6</sup> Foreign media, churches, and NGOs are barred from West Papua and the government justifies this prohibition by claiming that the area is too volatile due to unrest caused by the separatist movement and to the difficulties of implementing the Papuan Autonomy Law.

In addition, military institutions are exempted from civilian rules. For instance, in conflict regions such as West Papua, military institutions have built up parallel structures which are not consistent with the rule of law. The Rule of Law is generally understood as the way to preserve the power of the central state and not as the tool to guarantee the citizens from the abuses perpetrated by the state. As a consequence, human rights are perceived as an obstacle to national regulatory policies. However, thanks to civil society's pressure, human rights institutions and mechanisms have been established.<sup>7</sup>

What are Indonesia's human rights obligations vis-a-vis international law?

The term obligation used in the following text is to be understood as a binding legal provision deriving from an international instrument – such as a treaty, covenant or convention – enacted by Indonesian law (e.g. Act No. 24 of 2002<sup>8</sup>).

### 1.1 National and International Human Rights Standards and Instruments Applicable in Indonesia

Among the international human rights instruments, consideration must be given to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Elimination of All Forms of Racial Discrimination (ICERD), the International Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the Convention on the Rights of Persons with Disabilities (CPD), and the International Convention for the Protection of All Persons from Enforced Disappearance (CED).<sup>9</sup>

In relation to national instruments, a number of laws dealing with human rights are to be mentioned: Law No. 68/1958 on the ratification of the Convention of Women's Political Rights, Law No. 7/1984 on the ratification of CEDAW, Presidential Decree No. 36/1990 on the ratification of CRC, Law No. 5/1998 on the ratification of CAT, Law No. 9/1998 on Freedom of Speech, Act No. 29 of 1999 on the ratification of ICERD, Law No. 39/1999 on Human Rights, Law No. 26/2000 on the Human Rights Court, and Law No. 21/2000 on Labour Unions.

The National Commission for Human Rights of Indonesia (Komnas-HAM) received an "A" status accreditation in 2001,<sup>10</sup> and it has been confirmed in March 2007. Nevertheless, a number of UN Human Rights Bodies – the Committee against Torture (CAT) in 2001, the Committee on the Rights of the Child, in 2004, and the Committee on the Elimination of Racial Discrimination (CERD) in 2007 – have expressed concerns regarding the insufficient impartiality and independence of Komnas-HAM. The Special Representative of the UN Secretary-General on the situation of human rights defenders was concerned about the ineffectiveness of Komnas-HAM's power of inquiry and the lack of a mandate to investigate common human rights violations.

On governance, the relevant national instruments are Law No. 20/1982 on basic principles of the National Defence and Security of the Republic of Indonesia, Law No. 1/1998 on the amendment of Law No. 20/1982 concerning basic principles of the National Defence and Security of the Republic of Indonesia, Law No. 2/1988 on the Indonesian Armed Forces, Law No. 26/1997 on the discipline of the Indonesian Armed Forces, Law No. 22/1999 on the local governments, and Act No 14 of 2008 on the transparency of public information (Freedom of Information Act). The

6 See e.g. FIDH / Imparsial / KontraS [eds.] (2011); *Shadows and Clouds. Human Rights in Indonesia – shady legacy, uncertain future*, or International Crisis Group and its assessment on the new and controversial intelligence bill in July 2011.

7 Ibid.

8 Act No. 24 provides that treaties relating to national security, human rights and the environment have to be ratified by an Act of Parliament while others can be ratified by Presidential Decree.

9 See the status of ratification via <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

10 The International Coordinating Committee of NHRIs (ICC), at <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>.

right to access information is further guaranteed by Act No. 39 of 1999 on Human Rights (Article 14), and Act No. 23 of 1997 on Environmental Management (Article 5 and 10(h)).<sup>11</sup> Conversely, Law 15/2003 on anti-terrorism severely impairs human rights activities.<sup>12</sup>

On resource management, the following legal instruments foster a Rule of Law approach; Law No. 5/1960 on basic principles of the agrarian sector; Law No. 21/1964 on the courts on Land Reform; Law No. 11/1967 on basic principles of mining; Law No. 22/1974 concerning irrigation matters; Law No. 23/1997 on the environmental management; Law No. 41/1999 on forestry; Law No. 25/2000 on the National Development Programme; Law No. 22/2001 on oil and gas; Law No. 25/1999 on the balance of financial budget between the central and the local governments; and Law No. 2/2002 on the Indonesian National Police.<sup>13</sup>

## 1.2 Indonesia's Compliance with International Human Rights Obligations

Many of the principles of the UDHR are included in the Indonesian Constitution (Preamble, Article 26, Article 271 paragraph 1 and 2, Article 28, Article 29 paragraph 2, Article 31 paragraph 1) as well as in the People's Consultative Assembly (MPR) Decree No.XVII/MPR/1998 on Human Rights (with annex 2 on the Universal Declaration).

Indonesia has also ratified many of the major international human rights core treaties. In October 2005 it ratified the ICESCR and the ICCPR, however, Indonesia placed its reservation on the right to self-determination, affirming that this right does not apply to peoples within a sovereign nation-state (such as the Moluccas, Aceh or West Papua). Indonesia has still not ratified the Optional Protocols to the ICCPR establishing complaint mechanisms for victims of abuses.

Notwithstanding Indonesia's international obligations, threats to the right of freedom of religion and belief are frequent in the country. This is due to the recurrent clashes between fundamentalist Muslims and other religious communities, to the proliferation of laws limiting the rights of religious minorities, and the failure to prosecute those who attack religious minorities or infringe on their rights to freedom of religion. All the minority communities – Muslim (Ahmadiyah), Christians, Hindus, and Buddhists – have faced increasing discrimination and violent attacks. According to the Communion of Churches in Indonesia, there have been 430 attacks against churches over the past six years. The Ahmadiyah documented 183 attacks against their villages, mosques and houses since President Susilo Bambang Yudhoyono issued a decree against Ahmadiyah in June 2008.<sup>14</sup>

The UN Human Rights Committee (HRC) also expressed its concern on the legal distinctions made between different religions. Men and women of different religions are still facing difficulties in registering their marriages and their children are not provided with birth certificates. The Government has been taking religious community leaders into custody under the pretext of protection and later charging them with blasphemy.<sup>15</sup> Attacks and threats against Ahmadiyah are even justified by law.<sup>16</sup> Those incidents reflect a pattern of religious discrimination and the complicity of state institutions in acts of religious persecution.

With regard to the Convention on Elimination of All Forms of Racial Discrimination (ICERD), Indonesia has placed a reservation in relation to Article 22: "The Government (...) does not consider itself bound by the provision of Article 22 and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute."<sup>17</sup> The Indonesian government submitted its first

11 See <http://dte.gn.apc.org/ilaw.pdf>.

12 Ibid.

13 See <http://www.hampapua.org/skp/legislation.html>.

14 See recently Andreas Harsono in *The Jakarta Globe*, June 27, 2011, On Faith, Indonesia Still Unenlightened. Andreas Harsono is a researcher for the Asia division at Human Rights Watch; also the latest urgent action by Amnesty International on the congregation of the Taman Yasmin Indonesian Christian Church (Gereja Kristen Indonesia, GKI) in Bogor, West Java; UA: 212/11 Index: ASA 21/017/2011 Indonesia of July 2011.

15 See document No. A/HRC/WG.6/1/IDN/2.

16 See the Joint Ministerial Decree (SKB – Surat Keputusan Bersama) on June 8, 2008, between the Ministry of Religious Affairs, the Home Ministry and the Attorney General, which limit the freedom of Ahmadiyah to spread their religion and to practice it openly.

17 Article 22 states: "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement." See [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en).

report to the UN Committee (CERD) in 2006, though the report was due six years before. Independent reports have also been submitted, including one by 11 Non Governmental Organisation (NGOs). They dealt with – among other issues – the threat posed to the survival of indigenous peoples in Kalimantan by oil palm plantations proposed by the government.<sup>18</sup> CERD expressed concern about this fact in its concluding observations.<sup>19</sup> In March 2009, within its ‘Early Warning Procedure’, CERD conveyed its concern to the Indonesian government in relation to the draft regulations on Reducing Emissions from Deforestation and Forest Degradation (REDD) for being incompatible with indigenous rights.<sup>20</sup>

With respect to the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Indonesia placed a reservation to Article 29, relating to the interpretation and application of the Convention itself. The CEDAW Committee expressed concern about the draft law on gender equality and discriminatory provisions in the Marriage Act 1974, and called for the removal of family and spousal consent requirements in the areas of women’s employment and health.

Although Indonesia ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988, the Indonesian Penal Code, still does not criminalize nor define torture; it only recognizes “ill-treatment”. The CAT Committee has expressed concern about the large number of allegations of torture and ill-treatment committed by police forces, especially the mobile police units (Brimob), the army and paramilitary groups reportedly linked to authorities, and, in general, in areas of armed conflict. The Optional Protocol to CAT, which provides an international inspection system for places of detention, has not been ratified by Indonesia.

All these international instruments establish states’ obligation to submit regular reports to the relevant UN Committee on how the rights are being protected. Indonesia submitted most of the reports with a delay.

Indonesia signed but did not ratify the following instruments: the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (signed in September 2004); the Convention on the Rights of Persons with Disabilities (signed in March 2007); and the International Convention for the Protection of All Persons from Enforced Disappearance (signed in September 2010).<sup>21</sup>

In relation to the International Labour Organisation (ILO) standards, Indonesia ratified ILO Convention No. 29 on Forced or Compulsory Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Application of the Principles of the Right to Organize and to Bargain Collectively, Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, Convention No. 105 on the Abolition of Forced Labour by Act No. 19 (1999), Convention No. 138 on the Minimum Age for Admission to Employment by Act No. 20 (1999), Convention No. 111 on Discrimination in Respect of Employment and Occupation by Act No. 21 (1999), and Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

The ILO commended the Indonesian government on its decision to ratify the eight key labour conventions because it is the first country in the Asia-Pacific to do so.<sup>22</sup> Among the relevant international human rights instruments, Indonesia has not ratified the Rome Statute of the International Criminal Court. Furthermore, although Indonesia voted in favour of the UN Declaration on the Rights of Indigenous Peoples adopted in 2007 by the UN General Assembly, the Government noted that the rights in this Declaration did not apply in the context of Indonesia. Indonesia, also, did not ratify ILO Convention 169 on Indigenous and Tribal People.

Especially relevant in the Indonesian context is the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in December 1998.<sup>23</sup> Although this

18 See “Indonesian NGO Alternative Report\_ICERD. Breaking the smoke-screen of Racial Discrimination and Impunity in Indonesia” via <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO-Indonesia>.

19 See CERD, Concluding Observations, document No.CERD/C/IDN/CO/3, 15 August, 2007; at [http://www.bayefsky.com/pdf/indonesia\\_t4\\_cerd\\_71.pdf](http://www.bayefsky.com/pdf/indonesia_t4_cerd_71.pdf).

20 See [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia130309.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf).

21 See <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/IDIndex.aspx>.

22 (Elimination of forced and compulsory labour (Conventions 29 and 105), abolition of child labour (Conventions 138 and 182), elimination of discrimination in respect of employment and occupation (Conventions 100 and 111), and freedom of association and collective bargaining (Conventions 87 and 98). See [http://www.oecd.org/document/20/0,3343,en\\_39048427\\_39049464\\_42744852\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3343,en_39048427_39049464_42744852_1_1_1_1,00.html); also document No. A/HRC/WG.6/1/IDN/2.

23 See General Assembly Resolution A/RES/53/144.

is not a binding document, it generated high expectations towards state's performance, and the corresponding mandate of the Special Procedures pushed the Indonesian government to investigate allegations of abuses and to strengthen the protection for human rights defenders. Nevertheless, the list of violations against them is still long, including extrajudicial, summary and arbitrary executions, enforced disappearances, torture, ill-treatment, instances of excessive use of force, arbitrary detention, restrictions on freedom of expression, assembly, association and movement and labelling of defenders as separatists and stigmatisation, particularly in West Papua. Frequently, law enforcement authorities harass defenders and restrict their access to victims and sites of human rights violations, again, particularly in West Papua. There is an absolute lack of accountability for police, military and intelligence services.<sup>24</sup>

Although Indonesia has not yet issued standing invitations to special procedures mandate holders,<sup>25</sup> some mandate holders have been able to visit the country anyway and report to the UN Human Rights Council on the situation of human rights defenders (in 2008),<sup>26</sup> on torture and other cruel, inhuman or degrading treatment or punishment (2008),<sup>27</sup> on the human rights of migrants (2007),<sup>28</sup> and on the independence of judges and lawyers (2003).<sup>29</sup>

The Special Rapporteur on torture has pointed out that his fact-finding mission would only have been fully effective if he could have enjoyed unrestricted freedom of inquiry, freedom to visit places of detention without prior announcement, and to privately interview detainees. In his report, he regretted that in a number of instances his access to places of detention had been compromised, including his ability to carry out private interviews with detainees.

Among the mandate holders, who are yet to visit Indonesia are the Special Rapporteur on freedom of religion or belief, due to visit since 1996; the Special Rapporteur on the right to freedom of opinion and expression, due since 2002; the Special Rapporteur on extrajudicial, summary or arbitrary executions, due since 2004, and the Working Group on Enforced or Involuntary Disappearances, due since 2006.

In general, Indonesia has replied to about 40 per cent of the communications directed to the government. Between 1 January 2004 and 31 December 2007 64 communications were sent to Indonesia and they concerned particular groups as well as 119 individuals of which 32 were women. While Indonesia replied to 25 communications, it did not answer to any of the 12 questionnaires sent by the Special Rapporteurs.<sup>30</sup> Indonesia was one of the first countries to be reviewed under UPR.<sup>31</sup>

### 1.3 Regional Human Rights Obligations

At the regional level, the 2007 ASEAN Charter – which Indonesia ratified in October 2008 – must be considered. Article 2 of the Charter calls for adherence to democratic values, respect for human rights and fundamental freedoms, as well as adherence to international law. Article 14 provides for an ASEAN Intergovernmental Commission on Human Rights. To date, however, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers has been the only regional instrument that refers to the international human rights framework.

In October 2009, within the ASEAN framework, the Intergovernmental Commission on Human Rights (AICHR) was created, followed by the Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), in April 2010.

The main criticism of the establishment of the AICHR is that the Commission does not have the competence to carry out investigations on its own and eventually sanction human rights violations and/or non adherence to its decisions.

However, the existence of such an institution represents progress at the regional level, as it might foster respect for human rights throughout ASEAN members, including Indonesia. In this respect, AICHR shall support ASEAN members in ratifying and implementing the relevant human rights conventions, and it shall provide guidelines for the working group which will draw up the draft of the ASEAN Declaration on human rights.

Based on the ASEAN framework, about 130 civil society organisations and movements of Southeast Asian

24 See FIDH / Imparsial / KontraS (2011); op. cit.

25 On Special Procedures see <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.

26 See document No. A/HRC/7/28/Add. 2.

27 See document No. A/HRC/7/3/Add. 7.

28 See document No. A/HRC/4/24/Add. 3.

29 See document No. E/CN.4/2003/65/Add. 2.

30 See document No. A/HRC/WG.6/1/IDN/2.

31 See full documentation at <http://www.upr-info.org/-Indonesia,31-.html>.

countries met in Jakarta in May 2011 in relation to the study on Corporate Social Responsibility conducted by AICHR. The meeting discussed the current performance and corresponding guidelines on mining activities in the region.

## 1.4 Conclusions

The recent progress made by the Indonesian government shows an encouraging tendency to move toward the rule of law and democratic procedures.

The next institutional challenge will be trying to adapt the administration, its doctrine, culture and curriculum to the Rule of Law and, in particular, to international human rights standards. An additional effort is also needed to accordingly prepare the future administrative

employees working as security services and/or public servants.

As well, the general population needs to continue engaging with rule of law and human rights principles. The recent Gerlach's publication titled "Extremely Violent Societies: Mass Violence in the Twentieth Century", with special reference to the 1965 and 1966 killings of people identified as "Communists" in Indonesia, has shown the indispensable need to draw attention and raise awareness on the issue of mass murders.<sup>32</sup> Consequently, the commitment of the civil society to demand the rule of law, democracy, and human rights needs to be supported as it is an invaluable instrument in challenging the inertia of government institutions and the entrenched attitudes that have endured from the previous regime.

## Section 2 – Civil and Political Rights

### 2.1 Freedom of Expression

#### 2.1.1 Restrictions on International Organisations, Representatives and Journalists in Papua

Humanitarian organizations and international bodies are known to face many more hurdles implementing their programs in 'sensitive areas' like Papua compared to other areas in Indonesia. In January 2011, the international organization Peace Brigades International (PBI) closed its operations in Papua and withdrew from Indonesia altogether. After working for six years in Indonesia's easternmost provinces, the legal framework and visa regulations among other factors made it impossible for PBI to effectively protect human rights defenders at risk. Two years before, in April 2009, the International Committee of the Red Cross (ICRC) was ordered by the Foreign Ministry to close its offices in Papua and Aceh because the "... organization had been operating in the two provinces without proper legal documentation and had failed to comply with new official operational procedure."<sup>33</sup>

Likewise, other international humanitarian organisations have experienced severe difficulties in conducting their

work in Papua and have been pressured to close their programmes. The state uses different means to discredit and limit international organizations working in Papua, including the manipulation of the bureaucracy to delay and disrupt NGOs' operations and accusations of supporting separatism. As a result, international organizations are asked to leave or decide to withdraw due to heavy limitations and restrictions. While the Foreign Ministry maintains that it is open to foreign organizations working in Papua, strings are attached: they are forbidden from supporting political work and must focus on humanitarian projects.<sup>34</sup> In this context, the definition of political work is determined by the state and international humanitarian organisations are easily accused of supporting separatism despite their non-partisanship.

International journalists are usually denied permission to visit Papua. Baudouin Koenig, a French journalist, was arrested, interrogated and deported after filming a peaceful demonstration in Jayapura, in July 2010<sup>35</sup>. In April 2010, Al Jazeera was pressured to pull back its documentary 'Pride of Warriors' which broaches the issue of military presence and human rights abuses in Papua.<sup>36</sup>

32 See Christian Gerlach (2010); *Extremely Violent Societies: Mass Violence in the Twentieth Century*. Cambridge University Press; also in German (2011); *Extrem gewalttätige Gesellschaften – Massengewalt im 20. Jahrhundert*. DVA, München.

33 The Jakarta Post, 04/25/2009.

34 <http://www.thejakartapost.com/news/2010/08/07/ri-still-open-foreign-ngos-papua.html>.

35 <http://www.guardian.co.uk/commentisfree/libertycentral/2010/jun/09/indonesian-democracy-papua>.

36 <http://www.engagemedia.org/Members/traverser11/news/al-jazeera-censored/>.

Diplomats are usually “recommended” by the Indonesian authorities not to visit the country’s easternmost provinces. Günther Nooke, at the time the German Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, was denied access to Papua in 2009.

#### **a. The Example of the Peace Brigades International (PBI)**

Following a request from a local human rights organization, PBI conducted an exploratory mission to Papua in 2003 and one year later it opened its first office in Jayapura, capital of Papua Province. In 2005, a second office was opened in Wamena, Jayawijaya District.

The international volunteer organization provided protective services to human rights defenders at risk and held workshops in the field of peace education. All local partners of PBI were legally registered and strongly committed to non-violence and human rights. PBI frequently met with government representatives and the security personnel and reported regularly on its meetings and activities in accordance with PBI’s principles of transparency and non-partisanship.

However, allegations arose that PBI was favouring separatists and PBI’s partner organizations were part of the secessionist movement. In Papua, these allegations of separatism against civil society organizations are a common strategy used to criminalize and discredit individuals, organizations and their activities. Allegations against PBI’s partner organisations have never been proven. A remark by a police officer in the presence of PBI volunteers stating that the EU, together with PBI, follows a hidden agenda of supporting the independence movement in West Papua typifies the general mistrust that foreigners have to face when working in Papua.

It is likely that this distrust contributed to the refusal to issue travel permits (surat jalan) for PBI volunteers, in January 2010. These travel permits are needed by foreigners in Papua and West Papua in order to be able to visit the regions outside the capital cities of Jayapura and Manokwari. In no other provinces in Indonesia are such travel permits required. Without these documents the work of PBI volunteers in Papua became impossible. As a consequence, the Wamena office was closed in early 2010.

Furthermore, under new legislation enacted following the tsunami in 2004, now a foreign worker has to be supervised by two Indonesian nationals at all times. A multi-ministerial clearing house comprising

representatives of the Department of Foreign Affairs, Home Affairs, the Indonesian Military and Police Intelligence, the Ministry of Human Rights and Justice, and the Ministry of Social Affairs and the Ministry of Culture and Tourism questioned PBI’s national staff and other international NGOs working in Papua have also been obliged to undergo this process which is not conducted in a transparent manner.<sup>37</sup> These measures severely restricted PBI’s work and were leading factor in the project’s decision to withdraw from Indonesia.

#### **b. Silence of the International Community**

Indonesia is the world’s third most populous democracy, it has the world’s biggest moderate Islamic population, and its importance at the international level is growing rapidly for economic (it is rich in natural resources) and political (fight against terrorism) reasons.

However, it seems that the problems affecting Papua – its largest and easternmost province, now divided into two provinces, West Papua and Papua – and the limited access granted to journalists and international organizations are addressed only superficially or they are not addressed at all by the international community. The topic is perceived as potentially damaging to fruitful relationships with the Indonesian Government, and detrimental to economic interests and cooperation agreements.

International organizations facing restrictions working in Papua often decide not to apply public pressure fearing a negative backlash as a result.

For instance, in 2010, in Papua, the United States officially resumed cooperation with Kopassus, the Special Forces of the Indonesian military allegedly responsible for severe human rights abuses in Papua, Aceh and Timor.

New large scale projects – such as the Merauke Integrated Food and Energy Estate (MIFEE) involving a variety of foreign investors, or the US \$900 million project led by the German firm Ferrostaal AG, in West Papua – are examples of the growing opportunities to invest in Papua. Such large scale projects might further threaten democracy, community participation, and sustainable development in this region.

#### **c. Impacts in Papua**

Despite the progress, the Papuan human rights community is doubtful of the authenticity of the government’s commitment to human rights. For instance, the Alliance of Independent Journalists – AJI (Alliansi

37 <http://www.thejakartapost.com/news/2010/08/07/ri-still-open-foreign-ngos-papua.html>.





*Demonstration in Jayapura, Papua Province, 2010, demanding a referendum*

Journalis Independen) criticizes the virtual ban placed on foreign media operations in West Papua.<sup>38</sup> Members of the National Human Rights Commission – Komnas HAM (Komisi Nasional Hak Asasi Manusia) welcome the presence and work of international human rights organizations and their support of local NGOs, and former local partner organisations of PBI stress the importance of an international presence of human rights organizations in Papua. However, limited foreign funds for local human rights projects negatively affect their work and sustainability.

The current situation gives rise to certain questions. Why does the Indonesian Government place restrictions on international observers, donor organizations, and international NGOs if there is nothing to hide in Papua? Why are human rights abuses given such little attention in Papua?

With the current restrictions, the situation of Papuan people remains virtually invisible to the rest of the world, except for information that emerges from underground and informal reporting. This might also have a negative influence on a peaceful solution to the problems affecting Papua by fuelling the grievances of Papuan civil society towards the central Government and its approach to Papua.

### 2.1.2 Freedom of Press

Even though Indonesia is praised for its high level freedom of press in South East Asia, the reality of the situation does not always reflect this. In Indonesia, the freedom of press seems to deteriorate each year. If we compare the statistics of “Reporters without borders” we can see that

while in 2002 Indonesia was ranked 57th in the World Press Freedom Index, in 2010, the position of the country slipped to 117th out of 178 countries listed. The reasons for this decline are reportedly due to outdated laws against the press, the killing of two journalists, and the intimidation practices against numerous others.<sup>39</sup>

In particular, in remote Indonesian regions, such as Papua, critical journalists are subject to intimidation and threats. Journalists reporting on corruption, environmental destruction, and various forms of human rights violations are at risk. A prominent example is the case of Ardiansyah Matra’is, in 2010.

#### a. The Killing of Ardiansyah Matra’is

On 30 July 2010, 06:30am, the corpse of the journalist **Ardiansyah Matra’is (25)** was found in Maro River, Merauke Regency, Papua Province. Before his death, Matra’is reported on illegal logging carried out by military officers, the upcoming controversial local elections in Merauke Regency, and the controversial investment project MIFEE (Merauke Integrated Food and Energy Estate). According to his family and colleagues, Matra’is received threatening Short Message Service (SMS) on his cell phone and he had been followed by unidentified persons in the weeks before his death.

Matra’is worked for the national television station ANTV, the Papuan magazine Jubi, and the local TV station Merauke TV. He was kidnapped in 2009, allegedly because of his investigation leading to the disclosure of the military’s involvement in the illegal logging in Keerom Regency, Papua Province. Before and after

<sup>38</sup> <http://blogaji.wordpress.com/2006/09/14/aji-soal-pembatasan-pers-asing-di-papua/> Pembatasan pers asing di Papua, 2006.

<sup>39</sup> See Reporters Without borders: 2010 World Press Freedom Index. Asia-Pacific Area; The Alliance of Independent Journalists: The threat from within. 2010 Annual Report of the Alliance of Independent Journalists.

Matra's death, other local journalists also reported having received threatening SMS, such as the following: "To cowardly journalists, never play with fire if you do not want to be burned. If you still want to make a living on this land, do not do weird things". The messages also pointed out that Papuan journalists critical of the government would be killed and "no action will be taken by the police or military". A letter allegedly written with blood was placed outside the house of another journalist in Merauke.<sup>40</sup>

Indonesian and international human rights organisations suspect that Matra's was killed by state actors due to his investigative work. The police's findings about the cause of his death remain controversial. While the police in Merauke report his death to be an accident or a suicide, the police headquarters in Jakarta affirmed the opposite saying that Matra's body bears signs of violence caused before his death. The investigation carried out by the Indonesian Alliance of Independent Journalists – AJI (Aliansi Jurnalis Independen) also confirms that Matra's had been subjected to physical abuse before his death.<sup>41</sup> While Indonesian NGOs ask for further investigations into Matra's death and for the prosecution of the perpetrators, the investigation of the police seems to have come to a halt.

The case of Ardiansyah Matra's is typical of a pattern of violence and intimidation against investigative journalists in Indonesia, in particular in remote areas such as Papua. The Indonesian Government should guarantee the safety of journalists in Papua and guarantee the freedom of the press as a crucial pillar of democracy.<sup>42</sup>

#### **b. International Journalists in Papua**

Another matter of concern is the tight limitations imposed on international journalists in the Indonesian provinces of Papua and West Papua. While foreign journalists can obtain permission for most of the other regions of Indonesia, access to Papua remains strictly limited. International journalists receiving access to Papua are reportedly followed and restrained in their work.

In May 2010, the French journalist **Baudouin Koenig** was arrested by the Indonesian Police for filming a peaceful demonstration in the city of Jayapura, Papua. Koenig was in possession of a journalist visa which

would have allowed him to report from almost all regions in Indonesia, including the Provinces of Papua and West Papua. While Koenig was able to report on sensitive issues such as the killing of communists, sharia law, terrorism and corruption in other parts of the country, he was arrested and expelled from Papua due to the fact that he was recording a demonstration.<sup>43</sup>

In February 2010, relatives and colleagues of the deceased Australian journalist **Mark Worth** called for the re-opening of the investigation about the journalist's death in Papua. Mark Worth was found dead in a hotel room in Sentani City, Papua Province, on 15 January 2004, and the cause of death was reported to be pneumonia. Worth had reported for more than 15 years on the Papuan independence struggle and his documentaries have been widely published in the Australian media. Strangely enough, Worth died two days after the ABC announced the forthcoming premiere of his documentary "Land of the Morning Star". His death is considered suspicious by many.<sup>44</sup>

In terms of transparency and democracy, the Indonesian Government should provide access for international journalists to visit Papua and West Papua as it does provide access to other regions in the country. The freedom of press should not be stopped at Papua's front-door.

#### **2.1.3 Demonstrations and Peaceful Protests**

During 2010, the Faith-based Network on West Papua (FBN) noted a further increase of peaceful demonstrations, protests and rallies organized by indigenous Papuans to express their concern about social, economic, environmental, and political situations affecting their homeland. These protests mainly focused on the failure of Law No. 21/2001 on Special Autonomy for Papua. Notwithstanding the purpose of the law, the marginalisation of indigenous Papuans has been further exacerbated and it has led to even greater dissatisfaction on the part of indigenous communities toward the state. Different parts of Papuan society demand the establishment of a constructive dialogue with the central government, even if it requires international mediation, in order to solve the ongoing problems in Papua. Other groups, however, still reject the possibility

40 Reporters Without Borders: Harassment and threats. How was investigative reporter pushed to kill himself?, 6 August 2010.

41 Jubi 05.11.10: 100 hari kematian Ardiansyah Matra's.

42 See also Asian Human Rights Commission: The State of Human Rights in Indonesia in 2010, pg 6 to 9.

43 Koenig, Baudouin: Why does Indonesian democracy stop at Papua? In: guardian.co.uk, 09.06.10; Radio Australia 28.05.10; Antara News 25.05.10.

44 Australian Associated Press and The Sydney Morning Herald, 26.02.10.

of dialogue and demand a referendum to define the political status of Papua.

The indigenous protestors have repeatedly drawn public attention to the ongoing and unresolved human rights violations in Papua. They demand the investigation and prosecution of those responsible for torture and extrajudicial killings of indigenous Papuans, they call for the end of institutionalised impunity in Papua, and they seek the establishment of a Human Rights Court and a Truth and Reconciliation Commission, as already provided for by Law No. 21/ 2001 on Special Autonomy. Further requests regard the closure of the Freeport-McMoRan Copper & Gold Inc. mine in Timika, compensations in cases of land grabbing, the regularisation of the migration fluxes to Papua, the recognition of the rights of the indigenous Papuans, and the demilitarization of Papua.

Though the Special Autonomy Law 21/2001 permits symbols of Papuan identity, the Morning Star Flag is often interpreted as a separatist flag and, as such, is prohibited under Article 6 of Governmental Regulation 77/2007. Papuans carrying the Morning Star Flag to peaceful demonstrations risk being arrested and sentenced for treason. In 2010, numerous indigenous Papuans were arrested and put on trial because of the use of the Morning Star Flag during peaceful protests (see in detail chapter 2.12).

The majority of the demonstrations and protests held by indigenous Papuans are peaceful and include prayers and songs, however they are always kept under tight surveillance by the police and military forces and the protestors are subject to intimidation, ill-treatment and arbitrary detention by the Indonesian security forces.

#### **Overview of the protests and demonstrations that occurred in 2010:**

■ On 27 January, several hundred Papuan people reportedly took part in a demonstration in the city of Timika, Papua Province, demanding a referendum on the political status of West Papua. The demonstrators also expressed their support for two international support groups for Papuans, the London-based International Parliamentarians for West Papua (IPWP) and the Brussels-based International Lawyers for West Papua (ILWP).<sup>45</sup>

■ On 22 February, several hundred Papuan people reportedly took part in a peaceful demonstration in the city of Jayapura, Papua Province, calling for an end of repression. In front of the Papua legislative assembly DPRD (Dewan Perwakilan Rakyat Papua) the protestors demanded the demilitarization of Papua, an immediate release of all political prisoners and an end to extra-judicial killings and impunity in Papua.<sup>46</sup>

■ On 18 March, several hundred Papuan students reportedly took part in a demonstration in Jayapura, Papua Province, calling for US-President Barack Obama's attention to the conflict in Papua. The demonstration was held at the campus of Cenderawasih University and in front of the Papua legislative assembly under tight police surveillance.<sup>47</sup>

■ On 22 March, the Indonesian Police forcefully broke up a peaceful demonstration in Jayapura, Papua Province. The demonstration was organized by the West Papua National Committee KNPB (Komite Nasional Papua Barat) and requested US-President Barack Obama to be informed about the problems in Papua before his planned visit to Indonesia. The organizers reportedly had obtained a police permit for the demonstration. Nevertheless, the police reportedly fired warning shots to disperse the crowd and arrested 15 Papuans. All but two were later released. Mara Koyoga and Linus Pagawe were charged for alleged possession of "sharp implements" under Law 12/1951 regarding possession of weapons. The mass arrests were condemned by the Deputy Chairman of the Provincial Legislative Assembly DPRD, Yehuda Gobay, who said that repressive actions by the police have become a tradition when Papuans are exercising their freedom of expression.<sup>48</sup>

■ In regard to President Barack Obama's visit to Indonesia, peaceful demonstrations were also held in the cities of Sorong, Manokwari, Wamena and Serui on 22 March. The demands of the protestors included the withdrawal of organic and non-organic troops from Papua, the closing of the Freeport-McMoRan Copper & Gold Inc. mine and a review of the so-called "Act of Free Choice". The demonstration in Manokwari occurred reportedly under strict police surveillance.<sup>49</sup>

45 Jakarta Post, 28.01. 10; West Papua Advocacy Team (WPAT): West Papua Report, February 2010.

46 West Papua Netzwerk (WPN): West Papua Rundbrief Nr. 49, April 2010, pg. 7; WPAT: West Papua Report, March 2010.

47 Tabloid Jubi Online, 19 March 2010: Mahasiswa Uncen Demonstrasi, Kuliah ditiadakan.

48 WPN: E-Informationsbrief 29 March 2010; WPAT: West Papua Report, April 2010; Bintang Papua 23 March 2010 (abridged in translation by TAPOL).

49 See above.

■ On 22 April, Indonesian security forces violently broke up a peaceful demonstration in the city of Manokwari, West Papua Province. A video on Youtube shows members of the Indonesian Police, the Mobile Police Brigade (Brimob) and the Special Detachment 88 (Indonesian anti-terror squad) beating and kicking several protestors. 17 were reportedly arrested and later released. Pictures of the demonstration reveal the demand for a referendum and the closure of the Freeport mine.<sup>50</sup>

■ On 26 April, hundreds of students took part in a peaceful demonstration in the city of Jayapura, Papua Province, rejecting the resumption of the Indonesian transmigration programme for Papua. The transmigration programme was an official state policy that relocated thousands of Indonesian settlers to Papua, and other provinces, and severely contributed to the marginalization of indigenous Papuans in their own land. The Governor of Papua reportedly signed a Memorandum of Understanding about transmigration to the Central Highlands of Papua in 2010. The students oppose these plans.<sup>51</sup>

■ On 3 August, hundreds of members of the Moni tribe demonstrated in front of the Mimika District People's Representative Council DPRD (Dewan Perwakilan Rakyat Daerah) demanding guarantees that they will not be evicted from their traditional land located in a protected forest area managed by PT Freeport Indonesia. The protestors called for the return of their traditional land by the Freeport mine.<sup>52</sup>

■ On 14 December, a group of approximately 50 activists including students participated in a peaceful march in the city of Manokwari, West Papua Province, protesting against injustice and human rights violations by the Indonesian security forces against Papuans. The march also commemorated the 22nd anniversary of the Proclamation of the Independence of West Melanesia. The police arrested five students who were involved in the peaceful protest. These were Alex Duwiri, Yance Sekeyab, John Raweyai, Penehas Serongon and Jhon

Wilson Wader. In 2011, they were put on trial for treason.<sup>53</sup>

■ On 14 December, the two political activists Melki Bleskadi and Daniel Yenu took part in a peaceful event in the city of Manokwari, West Papua Province, to mark the 22nd anniversary of the Proclamation of the Republic of Melanesia. When Bleskadi gave a speech while holding the Morning Star Flag he was immediately arrested by the Manokwari police. The police also arrested Danile Yenu who had been asked to say a prayer at the end of the ceremony. In 2011, the two men were put on trial for treason.<sup>54</sup>

#### **a. The Return of the Special Autonomy**

The Special Autonomy Law came into force on 1 January 2002 with the purpose of protecting, guaranteeing, and strengthening the rights of the indigenous Papuans within the Republic of Indonesia. However, ten years after the Special Autonomy Law came into force, the Indonesian Government has still failed to take all necessary steps to implement the law. Despite this legislation, the rights of the indigenous Papuans remain unprotected. In actual fact, the Indonesian Government has issued policies violating the Special Autonomy Law, such as the Presidential Instruction No. 1/2003 on the establishment of the provinces of West Papua and Papua without approval of the Papuan People's Assembly (MRP), and Law No. 35/2008 which revised several articles of Law No. 21/2001.

In addition to this, Special Autonomy funds have been distributed indiscriminately in Papua. This has contributed to the increase of corruption and has attracted business people from other parts of Indonesia. Clearly, the Special Autonomy Law did not succeed in protecting indigenous rights and in empowering indigenous communities; rather, it has benefited other people and different interests.<sup>55</sup>

In June 2010, the MRP together with representatives of indigenous institutions, groups, and tribes held a General Assembly to discuss and evaluate the Special Autonomy Law in Jayapura. The two-day forum concluded that the

50 WPAT: West Papua Report, May 2010.

51 Bintang Papua, 26 April 2010: Stop transmigration to Papua (abridged in translation from Tapol); Meili, Reto: Demonstration in Jayapura gegen Transmigration und Kolonialismus in West Papua (informal report from 6 May 2010).

52 BBC Monitoring Asia Pacific, 4 August 2010: Hundreds of locals in Indonesia's Papua protest over Freeport land use; The Jakarta Post, 4 August 2010: ICG: Government must recognize Papua beyond money terms.

53 Amnesty International: Indonesia must end criminalization of peaceful political protests in Papua; LP3BH (Institute of Research, Analysis and Development for Legal Aid) report on the trial of five students in Manokwari.

54 See above.

55 See also: Tebay, Neles: "Papuans want a negotiated solution" (unpublished article).



The occupation of the Papuan Legislative Assembly in 2010, demanding a referendum to resolve political uncertainty in Papua.

Special Autonomy Law failed to answer the needs and fulfil the basic rights of the Papuan peoples. In its recommendations, the Papuan People's Assembly and the Indigenous People of Papua decided to return the Special Autonomy Law to the Government of Indonesia and to demand a dialogue between the Indonesian Government and the People of Papua under international mediation.<sup>56</sup>

In accordance with this decision, the Special Autonomy Law was thereafter returned and approximately 2000 indigenous Papuans joined a peaceful march toward the Papua legislative assembly (DPRP) in Jayapura to demonstrate their support for the MRP's decision. In front of the DPRP, the Papuan leaders delivered the official decision and recommendations from the MRP to representatives of the DPRP. The provincial parliamentarians promised to forward the decision and the demands to the central government in Jakarta.

On 8 July 2010, due to the silence of the Indonesian Government, several thousand indigenous Papuans joined another march to the DPRP in Jayapura. They were dressed in traditional clothing and they sang and danced Papuan songs. The protestors occupied the DPRP building until the day after, making of it the most effective demonstration Papua has seen in the last decade.

The return of the Special Autonomy Law was an historic moment within the Papuan struggle for justice, peace, and for the acknowledgement of the indigenous rights. The mass demonstrations carried out under the strict

surveillance of the Indonesian security forces have always remained peaceful, partly because of the well-led negotiations between them and Papuan leaders.<sup>57</sup>

#### 2.1.4 Makar Charges Put Dozens of Papuans Behind Bars

Thirteen years after Indonesia entered a new political era with the downfall of Suharto, there have been significant improvements in the political and democratic rights of its citizens. However, in Papua, basic human rights are violated almost daily. Papuans know that simply by participating in a peaceful demonstration and holding aloft a flag of their own choosing they can land in jail on the charge of makar (treason or rebellion).

Article 106 of the Indonesian Criminal Code defines the crime of Makar as:

*"The attempt, undertaken with intent, to bring the territory of the state wholly or partially under foreign domination or to separate part thereof (...)"*

In Manokwari, seven people (including five students) are currently being tried for makar after having been arrested on 14 December 2010 for attending a peaceful rally to protest against human rights violations and celebrate the anniversary of the independence of 'West Melanesia'.<sup>58</sup> Others have been incarcerated for taking part in events celebrating West Papua's national day on 1 December 2010. The Papuan currently serving the longest sentence (15 years) for makar is Filep Karma who was arrested in

56 Keputusan MRP Nomor 02/MRP/2010, 16 June 2010.

57 WPN: Informationsbrief 22. Juni 2010: Papua Volksrat gibt Sonderautonomiegesetz an Regierung zurück – Forderung nach Referendum; Informationsbrief 23. Juni 2010: Warum die Sonderautonomie gescheitert ist – Der Vorsitzende des Papua Volksrates A. Alua zieht Bilanz; Informationsbrief 15. Juli 2010: Tausende Papua demonstrieren für die Rückgabe der Sonderautonomie – Provinzparlament schweigt.

58 A group known as Bintang 14 (14 Stars) advocates the independence of West Papua as West Melanesia. Its anniversary is celebrated on 14 December, the day in 1988 when its founder, Thomas Waggai, was arrested after leading an independence rally.

December 2004 because he was waving the Morning Star flag. In early 2011, the leading human rights organizations, KontraS Papua and the Commission for the Disappeared and the Victims of Violence, published a report on makar cases in 2010. It highlighted how often the offence is used to criminalize peaceful political activity:

‘In 2010, cases with a political dimension have characteristically become ensnared by the charge of makar, the Indonesian word for treason or rebellion... altogether in 2010, 32 people were charged or investigated in connection with Article 106 on makar.’

#### **a. Summary of Cases**

##### **Kasepo Airstrip: Peaceful Raising of the Morning Star Flag.**

On 1 April, **Nataniel Runggamusi (27)** and **Yance Mambuai (34)** were charged with makar and then sentenced by the Jayapura Court District to two and a half years’ imprisonment. On 14 June, **Yusuf Aninan (27)** was also sentenced to two and a half years’ imprisonment and **Yeret Runawere (59)** to two years and three months imprisonment under the same article. The four men were charged for makar because of their alleged involvement in the raising of the Morning Star Flag at Kasepo Airstrip, Mamberamo Raya Regency, Papua Province, in May 2009.

##### **Biak: Peaceful Raising of the Morning Star Flag.**

On 23 April, **Septimus Rumere (62)** was charged with makar in relation to the raising of the Morning Star flag in front of his house in Biak Timor district on 1 December 2009. He was sentenced to six months’ imprisonment.

##### **Jayapura: Peaceful Demonstration**

On 11 August, **Semuel Yaru** and **Luther Wrait** were sentenced to one year of imprisonment for incitement, under article 110 of the Indonesian Penal Code. Yaru and Wrait had been among the leaders of a peaceful demonstration organized in front of the Papua People’s Council MRP (Majelis Rakyat Papua), in November 2009 to criticize the failure of the Special Autonomy Law.

##### **Demta: Peaceful Raising of the Morning Star Flag**

Seven men between 27 and 53 years old were arrested and charged with makar for waving the Morning Star flag outside the house of a community leader and the office of the Dewan Adat Papua (Papua Customary Council), in October 2010. Following a period of time in detention, they have been released by the police and it appears no further action has been taken.

##### **Wamena: Nine Persons at Trial**

The security forces arrested nine people from Wananuk (Yalengga sub-district, Jayawijaya Regency, Papua Province), in November 2010 and seized two Morning Star

flags, a machete, and a knife as evidence. All nine persons have been interrogated by the police in Jayawijaya and, at the time of writing, have been tried by the Wamena District Court.

##### **Arrested: Human Rights Activist Sebyy Sambon**

On 4 December, the indigenous human rights activist **Sebyy Sambom** was arrested when he was about to fly to Hong Kong via Jakarta to attend a human rights advocacy training organised by the Asian Human Rights Commission (AHRC). Neither the arrest warrant nor a record of his belongings which were confiscated have been given to Mr Sambom. Mr Sambom was taken to the prosecutor’s office where he was interrogated without the presence of a lawyer. He was told that he had been arrested following an order of the Indonesian Supreme Court, which authorised the Jayapura District Court to sentence him to a two year imprisonment in Doyo Narcotics Prison, Sentani. The basis for the Supreme Court order is not clear. After the interrogation, the police produced a Morning Star flag wrapped in a plastic bag which they said they had found in Mr Sambom’s laptop case, but he denied that it belonged to him. On 30 December 2010, Mr Sambom was questioned by the police on suspicion of makar and kept in jail until the end of July 2011.

##### **Manokwari: Peaceful rising of the Morning Star Flag**

On 14 December 2010, to welcome the 22<sup>nd</sup> anniversary of the Independence of the West Melanesian Republic held in Sanggeng, West Manokwari district, several people were arrested by the Manokwari police on suspicion of raising the Morning Star flag and for making political speeches. Seven people were arrested and taken to Manokwari police headquarters: **Melkianus Bleskadit**, Secretary-General of the National Council to Prepare for the Independence and Sovereignty of West Melanesia; **Daniel Yenu**, a priest; and five students from the State University of Papua (Universitas Negeri Papua, UNIPA) **Alex Duwira**, **Jhon Rawiyai**, **Peneas Serongan**, **Yance Sekenyap** and **Jhon Wilson Wader**.

They were questioned by the police and charged under Articles 106, 107 and/or 160 of the criminal code. The accused were assisted by a legal team from Manokwari LP3BH which drew attention to the unsatisfactory conditions in which they were being held. In cells with leaking roofs, they had to sleep on thin mattresses on the wet floor. The ventilation was poor and they fell ill with malaria and gastric disorders because bags of trash had been left in the cells.

The complaints made by the lawyer have been ignored and the trial began in June 2011.

## **b. Judicial Review of Makar Articles**

In April 2011, a group of Papuan lawyers and human rights NGOs announced their intention to call for a Judicial Review of the makar articles<sup>59</sup> in the Criminal Code. They described these norms as inappropriate for a country whose Constitution guarantees the right to freedom of expression. “The makar articles”, they said, “have been used to prevent Papuan people from freely expressing their views and aspirations, particularly criticisms of the injustices and discrimination experienced by Papuan people for several decades.”

The amendment or repeal of all articles in the Indonesian Criminal Code that have been used to imprison individuals for their legitimate peaceful activities, including articles 106 and 110 of the Criminal Code on ‘rebellion’ was also recommended in a June 2011 report on Conflict Management in Indonesia drafted by the Geneva Indonesian Institute of Sciences.<sup>60</sup>

## **2.2 Human Rights Defenders’ Situation in Papua**

In 1998, the United Nations General Assembly adopted the Resolution 53/144 now widely known as the Declaration on Human Rights Defenders which acknowledges the “(...)Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.” Furthermore, it stipulates the need and the means to protect human rights defenders (HRDs), their work, and the legitimacy of their activities.

The necessity of protection measures becomes clear when we look at the situation of Papuan HRDs. Searches at home and at the office conducted by security forces and unidentified persons, intimidating phone calls and text messages, dissemination of wrong or discrediting information, permanent surveillance at home and at work, criminalization through defamation, death threats, and a lack of regular income are only some examples of the conditions HRDs had to face in Papua in 2010. These conditions apply to HRDs working on both Civil and Political Rights and on Economic, Social and Cultural Rights. Also, journalists who express their criticism are the target of threats, intimidation, harassment, and killings.

Restrictive and Discriminative legislation, such as the makar – or the subversion article contained in Article 106

of the Indonesian Penal Code, and the presidential decree 77/2007 – banning local cultural symbols like the morning star flag as “separatist symbols” – are detrimental to the work and safety of HRDs in Papua.

In Papua, most activists have to face allegations of working for a hidden secessionist agenda when exercising their right to investigate and demand justice for past human rights abuses or when they criticize the mismanagement of their government. Their work and efforts for social, economic and political change are constantly stigmatized, criminalized and illegitimated. The national security approach used by the central government towards Papuans, the absence of measures and policies to ensure the protection of HRDs and the ongoing impunity – especially of security forces personnel – are exacerbating the difficulties for HRDs in Papua.

### **a. The year 2010 – Signs of Hope ...and Discouragement**

In 2010, the human rights movement saw positive developments. For instance, the massive peaceful Papuan protests against the Special Autonomy Law – held in June and July 2010 and organized by well known HRDs and members of civil society – represented a positive step toward the freedom of expression and assembly.

The granting of necessary medical treatment for some political prisoners after persistent efforts and campaigning by international and local Human Rights organizations can also be considered as a success in the struggle for the respect of human rights, although some of the prisoners are still unable to access adequate medical care.

National and international NGOs continue to support the work and security of Papuan HRDs through security workshops, capacity building, advocacy, roundtable events, visits, funding and many more activities. The Jakarta-based NGO Imparsial continues to lobby for a special law granting the protection of HRDs.

### **b. 2010 Tragic Losses, Intimidations, Arrests and Structural Weaknesses**

■ **Ardiansyah Matra’is, Merauke:** On 30 July, 07:00am, the corpse of the critical journalist Ardiansyah Matra’is was found in the Maro River, Merauke Regency. Matra’is had reported on illegal resource extraction, unresolved cases of past human rights violations and corruption. Matra’is claimed to have been intimidated as a consequence of his work. Police investigations concluded that he had committed suicide even though

59 Articles 106 and 107 of the criminal code on subversion and incitement (the ‘makar’ or subversion articles) of the Indonesian Criminal Code (KUHP).

60 ‘Conflict Management in Indonesia: An Analysis of the Conflicts in Maluku, Papua and Poso.’

the autopsy revealed signs of physical abuse. Before and after Matra's death other journalists also reported threats and intimidation to the police.<sup>61</sup>

■ **LP3BH (Lembaga Yayasan Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum), Manokwari:** In September, members of the legal aid and human rights organization LP3BH in Manokwari were threatened by unknown persons while investigating the killing of civilians by Brimob suspects. On 17 September, LP3BH reported receiving threatening text messages from unknown numbers demanding LP3BH to stop its investigation of the incident.<sup>62</sup> On 14 December, the lawyer Simon Banundi from LP3BH was arrested while monitoring a peaceful march for the 22nd anniversary of the Proclamation of the Independence of West Melanesia where the 14 star flag had been waved. While Simon was released without charge, 5 other students associated with the march were charged with Makar (subversion) and incitement under articles 106 and 160 of the Penal Code.

■ **Humi Inane, Wamena:** Members of the women and children's rights NGO Humi Inane (Women voice), in Wamena, had to undergo home visits carried out by members of Indonesia's special military forces known as Kopassus (Komando Pasukan Khusus). They still continue to face intimidation when assisting victims of domestic violence. When the perpetrators are police or high government officials, the chances of a proper investigation and legal proceeding against the perpetrator are reduced, while the risk of retaliation against the HRD who is supporting the victim increases.

■ **United For Truth BUK (Bersatu untuk Kebenaran), Jayapura:** Members of the victims' organization BUK have been continually harassed, intimidated, and even forced to move house. This is thought to be the result of their campaign to demand access to proper healthcare for two political prisoners, Filep Karma and Ferdinand Pakage.

■ **Prominent Papuan leaders:** On 8 September, two documents of the Military's Special Forces Kopassus were published. They revealed that Papuan leaders have

been constantly monitored by Kopassus. In these documents, the leaders were mentioned as political separatists and associated with the Free Papua Movement OPM (Organisasi Papua Merdeka). Among the 14 leaders listed, Sokratez Sofyan Yoman (President of the Baptist Church in Papua), Dr. Benny Giay (President of the Kemah Injil Church in Papua), Markus Haluk (Traditional Council of Papua DAP) and Agustinus Alue Alua (Chairman of the Papuan People's Council MRP) were mentioned.

■ **Emanuel Goo, Nabire.** In May 2010, Nabire Emanuel Goo, a 34 year old journalist and human rights activist, died of a malaria infection because he could not access adequate care in the disastrous health system in Papua. Deficiencies in the education system and in the health services might be indeed considered indirect obstacles to the work of HRDs.

■ The circulation of text messages from an unknown source denouncing Papuan activists as secretly working for the state intelligence agency continued in 2010. This can be seen as an attempt to spread mistrust among civil society.

■ **Komnas HAM Papua:** According to one member of the local branch of the National Human Rights Commission (Komnas HAM), this institution continues to have a weak mandate and lacks legal and financial support. This is hampering the Commission's ability to contribute to the work of the HRDs.

### c. Geographic Aspects-Still Important in 2010

Individuals or small NGOs based in the more remote areas of Papua have to face additional obstacles compared to organizations based in the cities. They often suffer from the lack of support networks, infrastructure, and limited access to funding and information. This issue is not given enough emphasis as human rights violations occur more often in remote areas such as Puncak Jaya, Merauke, and Timika<sup>63</sup>. In these areas, monitoring and reporting is particularly dangerous because of the militarization of the areas and the absence of the rule of law. All these factors result in a low number of civil society organizations working in those remote regions where there is a strong need for them.

61 Joint press statement on the Murder of Two Indonesian Journalists, 26th August, Forum Asia, AJI, Imparsial.

62 The content of the text messages was as follows: "You think you are brave? You think you are cool and you want to play with us?". When LP3BH inquired who the sender was, the sender replied "Aren't you afraid?"

63 f. ex. Publication by Human Rights Watch „What did I do wrong“ on Abuses by Indonesian Special Forces against Papuans in Merauke.



#### **d. Summary**

Even though there have been some positive developments for HRDs working in Papua in 2010, they continue to be exposed to threats, intimidation, and criminalization for their work. A multilayer approach is needed to improve the situation of HRDs and civil society in order to create a safer space where they can give voice to concerns and strive for empowerment, development, justice, freedom, and democracy.

A less dangerous environment for Papuan HRDs can only be established if the state openly recognizes their work, security forces start operating according to human rights principles, the judiciary is free from corruption, and the state guarantees the protection of human rights and fair criminal proceedings and punishments.

### **2.3 Torture in West Papua**

In October 2010, a video depicting two incidents of torture of indigenous Papuans committed by the Indonesian armed forces (TNI) was leaked and published by the Asian Human Rights Commission.

The first video,<sup>64</sup> taken with a cell phone in the Tingginambut area, in West Papua, recorded the maltreatment inflicted on indigenous Papuans in the custody of the TNI. In the second case, the video showed two Papuan men, Tunalior Kiwo and Telangga Gire, being interrogated and brutally tortured by Indonesian soldiers.

Due to the increasing international criticism and pressure, a case against the military personnel was filed before a military tribunal in Jayapura, Papua. The tribunal convicted three members of the Army's Strategic and Reserve Command (Kostrad) 753rd battalion – Second Sgt. Irwan Rizkiyanto, First Pvt. Jackson Agu, and First Pvt. Thamrin Mahamiri – for disobedience to their commander's orders to release the two Papuan men. The three soldiers were sentenced to eight to ten months of imprisonment on 24 January 2011.

Severe miscarriages of justice took place in the military trial. Firstly, the case was held in a military tribunal run by the armed forces without the presence of witnesses and of the victim, rather than being tried by civilian judges. Secondly, only three out of the six soldiers depicted in the videos were prosecuted. Thirdly, the three were only charged with the minor offence of violating military discipline and disobedience, instead of the actual crime of torture. Lastly, sentences ranged from ten

months, through nine months, to eight months, and were unjustifiably minimal, given that the maximum penalty under the military criminal code is thirty months' imprisonment. The continued reliance on the military court system and arbitrary punishment demonstrates that the Indonesian government has not shown any credible commitments to improve the military torture practices in Papua.

Mr. Tunalior Kiwo, the victim, has still not received any compensation or proper medical and psychological treatment and continues to remain hidden for fear of retaliation by the local military forces.

Indonesian soldiers have been committing criminal acts, torture, and serious human rights violations for decades in Papua. The Army regularly perpetrates abuses against Papuans while conducting anti-separatist sweeping operations, which often include the burning of villages, killing of livestock, arbitrary arrests, and other forms of intimidation. The people who suffer the most from the military action are innocent civilians and villagers. This practice of intimidation against alleged OPM supporters and entire communities aggravates tensions and social conflict.

#### **a. The Indonesian Military Justice System**

Despite the grave human rights abuses committed, the Indonesian military personnel are granted immunity from being held accountable by civilian courts. According to the Indonesian military Law no. 31 of 1997, soldiers who have committed crimes against civilians can only be tried in a military court. With its own prosecution division military prosecutor (oditur militer), the military court has jurisdiction over all crimes committed by members of the Army. The courts generally consist of poorly trained military judges whose decisions cannot be further challenged before the Supreme Court.

Military court proceedings do not respect due process principles. Very lenient punishments have been imposed on some of the most serious human rights abuses and the Military Penal Code, modeled on the colonial civilian Penal Code, has not been reformed in accordance to the international human rights instruments ratified by Indonesia.

For instance, although Indonesia ratified the UN Convention against Torture in 1998 and it is therefore legally bound to prohibit torture and other forms of ill-treatment, both the military and the civil criminal codes

64 INDONESIA: Indonesian military tortures indigenous Papuans, available at: <http://bit.ly/iDOmsx>.

have yet to criminalize torture. Military tribunals are largely free from public scrutiny making it considerably difficult for the public to obtain information. The lack of proper investigations and adequate judgments feeds a culture of impunity which indirectly encourages the commission of human rights abuses and prompts arbitrary arrests and torture.

The official response given by a military spokesperson deploring the leaking of the two torture videos rather than denouncing the crimes committed shows the lack of a commitment to justice within the TNI. According to the daily newspaper *Merdeka Rakyat*, the Indonesian army's Inspector General, Lt. Gen. M. Noer Muis, has openly admitted that the Army is far more interested in "looking for people who distributed it [the footage], because it is very detrimental to us [the armed forces].", President Yudhoyono reinforced this sense of impunity dismissing the torture as a "minor incident".<sup>65</sup>

The websites that published the videos were sabotaged. These disruptions to their Internet service were most likely intended to make the videos unavailable. The perpetrators cannot be conclusively identified for technical reasons.<sup>66</sup>

#### **b. Cases of Torture in Papua**

The following list gives an overview of cases of torture and ill-treatment in the Indonesian Provinces of Papua and West Papua in 2010. It does not claim to be exhaustive and it must be assumed that many cases of torture, ill-treatment and violence by the Indonesian security forces in Papua remain unreported.

■ On 17 March, **Rev. Kindeman Gire** and the indigenous church worker **Pitinus Kogoya (36)** from the Evangelical Church in Indonesia GIDI (*Gereja Injili di Indonesia*) were severely tortured by members of Infantry Battalion Yonif 756 of the Indonesian Military. Rev. Kindeman was reportedly shot dead afterwards. The incident occurred in Kalome Village, Tinggimambut District, Puncak Jaya Regency, Papua Province.

At 3:30pm, Rev. Gire arrived by car in Kalome delivering some petrol. Members of the Indonesian Army interrogated Rev. Gire about the intended use of the

petrol. Rev. Gire explained that it was for the church. Members of the Indonesian Army then started beating Rev. Gire.

At 5:30pm, Pitinus Kogoya was stopped on the street by members of the Indonesian Army. The military personnel asked Kogoya what he was doing. He explained he wanted to buy cooking oil. The soldiers asked Kogoya if he knew Rev. Gire. Kogoya confirmed that they were both working for the church. The soldiers then interrogated Kogoya about the OPM (Organisation for a Free Papua) and asked if he worked for the OPM. Kogoya said that he was not working for the OPM. Kogoya was then beaten with a rifle by members of the Indonesian Army.

At 6:00pm, Rev. Gire and Pitinus Kogoya were brought to the same location where they were further tortured by members of the Army. While one soldier was kicking Kogoya's left neck, another one kicked his shoulders and back. Kogoya eventually managed to escape.

At 7:30pm, Kogoya heard two gunshots from the direction where he had left Rev. Gire with the soldiers. A moment later, he saw a car leaving the scene.

On 22 March, the corpse of Rev. Gire was found by local people in a rice bag in the Yamo River which is close to Yambuni village.<sup>67</sup>

■ On March 18, the indigenous Papuans **Tives Tabuni** and **Wotoran Wenda** were tortured by Indonesian soldiers of Infantry Battalion (Yonif) 753/ Nabire in Tinggimambut District, Puncak Jaya Regency, Papua Province.

The perpetrators were brought to the Military Court (Kodam XVII Cenderawasih) in Jayapura and on 11 November sentenced under article 103 of the Military Panel Code KUHPM (*Kitab Undang-Undang Hukum Pidana Militer*) for disobeying orders. The soldiers Syahmin Lubis, Joko Sulistyono and Dwi Purwanto were sentenced to five months of imprisonment and Second Lieutenant Cosmos to seven months of imprisonment. The soldiers confessed that they tortured the victims through beatings.<sup>68</sup>

65 The Jakarta Post, 22.01. 2011: SBY describes Papua torture as "minor".

66 Asian Human Rights Commission (AHRC), 02.11. 2010.

67 Testimony Pitinus Kogoya, Jayapura 13.01. 11; The Jakarta Post, 21.10. 10; Report by Piron Moribnak, 24.03. 2010, Mulia, Puncak Jaya.

68 Jubi, 05.11. 10: Empat TNI Akui Lakukan Penganiyaan dan Kekerasan di Tinggimambut.

Similar to the torture case of Tunaliwor Kiwo and Telangga Gire the case was tried at a military court and failed to meet international standards. The perpetrators were charged for disobedience instead of the actual crime of torture.

- On 18 March, at 5am, members of the Indonesian army reportedly **attacked a traditional hut (honai)** on the way from Kalome village, Tingginambut District, to Mulia, the capital city of Puncak Jaya Regency. The 13 inhabitants of the hut were reportedly ill-treated by the soldiers.<sup>69</sup>
- On 25 March, the indigenous civilian **Ikimo Kosay (26)** was ill-treated while in police custody at the police station at PasarJibama, Wamena city, Jayawijaya Regency, Papua Province. The Police officer Daniel Tapilatu poured hot water over Ikimo Kosay in a cell. The victim experienced serious burns at his left cheek, right ear, and backside.<sup>70</sup>
- On 4 October, the three indigenous civilians **Amos Wetipo, Franz Lokobal and Alex Wetapo** were beaten by members of the Indonesian Police in the city of Wamena, Jayawijaya Regency, Papua Province. Amos Wetipo experienced injuries at the back of his head, Franz Lokobal was injured at his left thigh and Alex Wetapo experienced head injuries due to beatings with a rifle. The case was linked to a conflict between the police and members of Petapa (Penjaga Tanah Papua/ Guards of Papua) at the Wamena airport in which Ismael Lokobal was shot dead.<sup>71</sup>
- On 14 November, at 7:30am, the indigenous civilian **Adam Marandof** was tortured by members of the Indonesian Air Force in Sisingamangaraja Street, Biak City, Papua Province. On his way to church, Marandof passed a person dancing to loud music on the street in front of a pick-up van with opened doors. Marandof asked one of the watching members of the Military

Infantry Unit to reduce the volume as it was nearly the time for prayer. One Air Force Unit member insulted Marandof and together with six other soldiers started beating Marandof in the ribs, stomach and legs and forced him to the ground until he lost consciousness. The soldiers locked Marandof in the nearby restaurant “Harto Moro”, where one Air Force member, Bripka Basuki reportedly started to torture him until Commander Joko Ariwibowo came. The victim begged forgiveness, but Joko Ariwibowo strangled Marandof, hit him repeatedly in the face and ordered the continuation of the torture. The soldiers reportedly threatened to kill Marandof who eventually was able to escape and helped by members of a police patrol on the street.<sup>72</sup>

- On 17 November, at 8:00pm, **Rifky Tuti (28)** was reportedly shot with three bullets by two Indonesian policemen in plain clothes. The incident occurred in the transmigration settlement Arso 2, Keerom Regency, Papua province. It is reported that the police brought Rifky Tuti to the Police Hospital in Jayapura the same evening. Since then Tuti has been missing.<sup>73</sup>

- On 1 December, at 11:00am, the indigenous civilians **Atil Wenda (35)** and **Melius Tabuni (46)** were shot by members of Infantry Battalion (Yonif) 355 in Yugum Village, Bolakme District, Jayawijaya Regency, Papua province. Members of Yonif 355 were near Yugum village and when a group of indigenous civilians appeared the soldiers immediately opened fire and shot at Atili Wenda and Melius Tabuni. Atili Wenda was shot in the left arm and Melius Tabuni in the left elbow. A delegation of the National Human Rights Commission (Komnas HAM) visited the site and confirmed the case. According to Komnas HAM, this particular region is highly militarized and the local population is traumatized.<sup>74</sup>

None of the perpetrators of the abovementioned cases have been brought to justice and sentenced for torture.

69 Report by Piron Moribnak, 24.03. 2010, Mulia, Puncak Jaya.

70 Letter (Nr. 065/SRT-LKP/JAPH-HAM/Kab.Jayawijaya/2010) of the Human Rights Organisation “Jaringan Advokasi Penegakan Hukum dan HAM Pengunungan Tengah Papua” to the chief of police in Jayawijaya Regency.

71 West Papua Netzwerk (WPN): Rundbrief Nr. 51. Wuppertal, December 2010, pg. 5.

72 Justice, Peace and Integrity of Creation (JPIC) Desk, Evangelical Christian Church in the Land of Papua GKI-TP (Gereja Kristen Injili di Tanah Papua): Routine Report about the situation in Papua between October 2010 and January 2011 Papua Pos, 16. 11. 10.

73 Informasi Awal Kondisi Keamanan di tapal batas RI-PNG per September–November 2010. Teror dan Pembunuhan Terjadi lagi di daerah Perbatasan RI-PNG.

74 Perwakilan Komis Nasional Hak Asasi Manusia Provinsi Papua: Laporan Peristiwa Penyerangan Aparat TNI-Polri di Yugum, Bolakme, Kabupaten Jayawijaya, Papua pada hari Rabu, tanggal 01 Desember 2010.

## 2.4 Extrajudicial, Summary or Arbitrary executions

The Indonesian Provinces of Papua and West Papua have a long history of extrajudicial, summary and arbitrary killings, since Indonesian troops entered the former Western New Guinea in 1962. Numerous indigenous Papuans have been reportedly killed during military operations since then.<sup>75</sup> When the military regime under President Soeharto came to an end in 1998, the indigenous Papuans hoped that after decades of military oppression, justice, peace, and democracy would also be installed in Indonesia's easternmost provinces. Today, indigenous Papuans certainly enjoy more freedom and safety than they did under the Soeharto Regime, but despite Indonesia's institutional improvements in human rights and democracy, extrajudicial and arbitrary killings by members of the Indonesian security forces still occur in praxis and remain unpunished.

Under the Special Autonomy Law, the National Human Rights Commission (Komnas HAM) documented gross human rights violations in Papua, such as the Abepura Case (2000), the Wasior Case (2001) and the Wamena case (2003) which all included extrajudicial and arbitrary killings of indigenous Papuans by Indonesian security forces. To date, despite the Human Rights Law No. 26/2000, none of these cases have been tried before the National Human Rights Court.<sup>76</sup> Throughout 2010, indigenous NGOs from Papua continued to push to obtain judicial accountability for these cases.<sup>77</sup>

In particular, in isolated regions such as the central highlands of Papua, indigenous peoples remain unprotected and subject to extrajudicial and arbitrary killings committed by the Indonesian security forces. As in previous years, the Faith Based Network (FBN) notes an increase of killings perpetrated by Indonesian security forces in the Puncak Jaya Regency. This is a militarized region in the central Highlands and it has been the target of repeated sweeping operations conducted by the Indonesian Army in search of alleged OPM members.

The following is an overview of extrajudicial and arbitrary executions perpetrated by the Indonesian security forces in the Provinces of Papua and West Papua, in 2010. The list does not claim to be complete as many cases of human rights violations in Papua remain unreported.

■ On 17 March 2010, at 05:00pm, the indigenous Papuan **Rev. Kindeman Gire** from the Evangelical Church in Indonesia GIDI (Gereja Injili di Indonesia) was killed by members of the Infantry Battalion Yonif 756 of the Indonesian Military in Kalome, Tinggimambut District, Puncak Jaya Regency, Papua Province. Reportedly soldiers tortured Rev. Gire for 1 ½ hours and then killed him with two gun-shots. A video about the torture of Rev. Gire appeared on the Internet in October and received international attention.<sup>78</sup>

■ On 19 March 2010, the indigenous Evangelist Perianus Tabuni was reportedly killed by members of the Indonesian Military in Kalome, Tinggimambut District, Puncak Jaya Regency, Papua Province. The victim was put into a bag and thrown into a river. The corpse was found at the estuary of Garugi Bar River.<sup>79</sup>

■ In March 2010, a video about the torture of the indigenous Papuan **Yawan Wayeni (39)** was published on the internet. This torture resulted in the death of Wayeni on 3 August 2009. That day members of the Mobile Brigade of the Indonesian Police (Brimob) raided the house of Yawan Wayeni in Matembu village, Serui City, Papua Province and shot him in his left calf. Outside the house Brimob officers tied Wayeni's arms and legs to a log, then an officer plunged a bayonet into his stomach, spilling out his bowels. Wayeni was then forced to walk around the village. In the evening, Wayeni's family was informed that his body was at Serui hospital.<sup>80</sup>

■ On 17 May 2010, security forces shot and killed the indigenous Papuans **Warius Telenggen** and **Yarton Enumbi** in Yambi village, Puncak Jaya, Papua Province. The victims were alleged members of the Free Papua Movement OPM (Organisasi Papua Merdeka).<sup>81</sup>

75 For example the 1970 massacre of more than 85 indigenous Papuans in Biak, the bombardment and killing of several thousand villagers in Jayawijaya in 1977, the use of napalm and chemical weapons against villagers during Operation Clean Sweep in 1981 (see Allard K. Lowenstein International Human Rights Clinic Yale Law School: Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control).

76 Indonesia has four permanent National Human Rights Courts.

77 Solidaritas Korban Pelanggaran HAM Papua (SKHP): Press Release 4 April 2010: Mengenang tragedi Wamena berdarah, 4 April 2003. Negara bertanggung jawab atas kasus Wasior 2001 dan Wamena berdarah, 4 April 2003.

78 The Jakarta Post, 21. 10. 10; Report by Piron Moribnak, 24. 03. 2010, Mulia, Puncak Jaya.

79 US Department of State: 2010 Human Rights Report: Indonesia, pg 2; Markus Haluk: Laporan kekerasan Negara terhadap rakyat bangsa Papua September 2009 – September 2010, pg 6.

80 West Papua Advocacy Team (WPAT): West Papua Report, September 2010; The Jakarta Post 20./21. 10. 10.

81 Markus Haluk, pg 9.



*Scene of crime where Yawan Yaweni was tortured.*

■ On 30 July 2010, the corpse of the journalist **Ardiansyah Matra'is (25)** was found in Maro River, Merauke Regency, Papua Province. Before his death, Matra'is had reported on illegal logging by military officers and the upcoming controversial local elections in Merauke Regency. According to family and colleagues, Matra'is received threatening SMS and was followed by unidentified persons the weeks before his death. Indonesian and international Human Rights organisations suspect that Matra'is was killed by state actors due to the critical nature of his work.

■ On 15 September 2010, 8 p.m., the indigenous Papuan **Naftalia Kwan**, a pastor of the Christian Fellowship Bible Church of Indonesia (GPKAI), was shot dead by members of the Mobile Brigade of the Indonesian Police (Brimob). A conflict between civilians and members of Brimob had occurred due to a traffic jam allegedly caused by a Brimob member. Brimob members opened fire and killed Naftalia Kwan. The incident took place in Esau Sesa Street, South Manokwari, West Papua Province. The next morning, at 9.30am, the corpse of the indigenous Papuan **Septinus Kwan** was found on the edge of a ravine.<sup>82</sup>

■ On 4 October, 9 a.m., **Ismail Lokobal (36)** was shot dead by the Indonesian Police in the city of Wamena, Jayawijaya Regency, Papua Province. Approximately an hour before, members of the Indonesian Police (Polsek) searched the luggage of Petapa (Penjaga Tanah Papua, Guards of Papua) members at Wamena airport, confiscated some of the luggage and attempted to arrest one man. This caused a conflict between

members of Petapa and the police in which Ismael Lokobal was shot dead and three civilians were injured by members of the Indonesian Police.<sup>83</sup>

■ On 15 October 2010, 8.30 p.m., the indigenous Papuan **Riky Abraham Zonggenau (22)** was allegedly killed by members of a Special Team of the Indonesian Military (Timsus 753) in Aikai Village, Enarotoli District, Paniai Regency, Papua Province. According to witnesses, Zonggenau was walking towards the house of a friend when two motorbikes stopped behind him and four people got off and attacked Zonggenau, beating and kicking him. Witnesses report that the motorbikes were made by Tiger and belonged to the military unit Timsus 753. The corpse of Zonggenau was seen 15 minutes later in a gutter and guarded by an armed person. When witnesses and family members returned to the location 30 minutes later, the corpse was missing. Witnesses and local human rights defenders suspect members of Timsus 753 of killing Riky Zonggenau. The Indonesian Army denies this allegation.<sup>84</sup>

■ On 3 December 2010, 12.30 p.m., the indigenous Papuan **Hiron Weitipo** was shot dead during a joint operation conducted by Jayapura municipality police officers and local military. Hiron Weitipo had escaped from Abepura Prison. The killing occurred in Tanah Hitam Village, Abepura District, Jayapura Regency, Papua Province.<sup>85</sup>

To date, the perpetrators of all these killings enjoy impunity.

82 LP3BH (Institute of Research, Analysis and Development for Legal Aid): Report on Manokwari Shooting Incident; The Jakarta Globe, 17.09. 10.

83 West Papua Papua Netzwerk (WPN): Rundbrief Nr. 51. Wuppertal, December 2010, pg. 5.

84 Yones Douw, 27.10.10: Note regarding a demo which took place in Enarotoli.

85 The Jakarta Post, 05. 12. 10.

## Section 3 - Economic, Social and Cultural Rights

### 3.1. The Right to Health in Papua<sup>86</sup>

For this analysis, reference will be made to General Comment No. 14 of the Committee on Economic, Social, and Cultural Rights (CESCR),<sup>87</sup> concerning the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). The General Comment delineates the component parts of the right to the highest attainable standard of health, namely the right to available, accessible, acceptable and qualitative health services, prevention, treatment and control of diseases, as well as the right to healthy living environments.

The right to health in the Indonesian constitution is covered in Section XA (Fundamental Human Rights) by article 28H, stating that “each person has the right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care.”<sup>88</sup>



Health worker weighing children

In the specific context of Papua, attention needs to be given to the right to maternal and reproductive health and to the right to prevention, treatment and control of diseases.

#### 3.1.1 Overview of Health and Disease Indicators in Papua

The lack of reliable and accessible data – together with the fact that health conditions vary considerably within Indonesian provinces and regions, and among socio-cultural groups – makes it difficult to evaluate the general health status of the Papuan population.

Nonetheless, using a demographic health survey conducted in 2007 in the two provinces of Papua and West Papua,<sup>89</sup> reports from the provincial and district health authorities, data from local and international organisations, faith based organisations, and the United Nations, it is finally possible to delineate some useful indicators about the health status of the population.

##### a. General Life Expectancy

The general life expectancy in Indonesia is 68 years old, however data are not disaggregated with respect to the province of Papua and West Papua or its indigenous population. Experience and estimates from the highlands would roughly estimate life expectancy to be 10 years lower for the indigenous population.

##### b. Under-5 Mortality Rate

The national average has decreased to 39 deaths per 1000 live births.<sup>90</sup> In 2006, UNICEF estimated the U-5 mortality rate in Papua to be around 60-100 deaths per 1000 live births. Although the estimate is conservative, they seem to be confirmed by experiences of several organisations working in both the highlands of Papua as well as in West-Papua province.<sup>91</sup>

86 This article was written by Dr. Remco van de Pas, who is an international public health expert. He worked in 2007 and 2008 in Papua on primary health care and HIV/AIDS and is as adviser still involved with health programmes in Papua.

87 The right to the highest available standard of health. 11. 8. 2000. E/C.12/2000/4. (General Comments), available at: <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En>.

88 The 1945 Constitution of the republic of Indonesia.

89 Statistics Indonesia (Badan Pusat Statistik-BPS) and Macro International. 2008. Indonesia Demographic and Health Survey 2007. Calverton, Maryland, USA: BPS and Macro International.

90 World health organization. Indonesia Country health profile. 2011.

91 Rees SJ, van de Pas R, Silove D, Kareth M. Health and human security in West Papua. *Med J Aust.* Dec 1-15;189(11-12):641-3. 2008. Leonie de Haan. Gezondheidszorg in de vogelkop. Een kwantitatief onderzoek naar de sterfte onder zuigelingen en kinderen in de Kebarvallei, West-Papua (2010).

### **c. Maternal Mortality Rate**

The national maternal mortality rate is 240 deaths per 100.000 live births. With regard to Papua, the provincial health authority has indicated the maternal mortality to be 362 per 100.000 live births.<sup>92</sup> Other organisations have indicated higher maternal mortality rates in some districts, such as Asmat. In 2008, up to 1000 deaths per 100.000 live births have been estimated there.<sup>93</sup> The situation is similar in the highlands.

### **d. HIV/AIDS Prevalence**

The official HIV prevalence rate in Papua still stands at 2.4% of the general population, with a difference in prevalence rate of 2.8% between indigenous Papuans and 1.5% for non-Papuans.<sup>94</sup> At the end of 2010, the provincial AIDS commission reported 3093 registered cases of HIV and 3210 cases that have developed into AIDS, in the Papua province. The majority of persons who are HIV infected have not been tested or registered by the local authorities. HIV prevalence is expected to infect a maximum of 5% of the general population in the regions of the central highlands and the districts around the cities of Timika, Merauke and Sorong.

### **e. Tuberculosis and Malaria**

Both diseases are still a major cause of mortality and high morbidity for the Papuan population. In the highlands, the number of tuberculosis cases has increased considerably, as it is a frequent co-infection in HIV patients. The case detection rate for Papua is reported at 40.8%,<sup>95</sup> so the majority of TB cases remain undetected. An anonymous report claims that in 2009 the Mitra Masyarakat Hospital (Rumah Sakit Mitra Masyarakat -RSMM) in Timika treated 1500 patients with a TB diagnosis. The same documents mention an incidence of 300 cases per 100.000 inhabitants.

Malaria is another common disease in Papua. The same report mentions an incidence rate of 876/1000 persons suffering from malaria at least once a year in the Mimika district. The fatality rate is reported at 5%. It must be noted that malaria remains a major cause for U5 children mortality.

### **f. Epidemics**

Besides the chronic HIV epidemic, no major epidemics have been confirmed by the government in 2010, both in 2006 and 2008, cholera and acute watery diarrhoea outbreaks were seen in the districts of Jayawijaya and Paniai. In 2010, the media reported diarrhoea outbreaks that led to fatal cases in the districts of Mikima, Agats and Waropen, but the exact number remains unknown. In Paniai district, cases of measles were reported, as well as new cases of acute watery diarrhoea, suspected to be caused by cholera. All these outbreaks were naturally contained, without reported intervention from the health authorities.

### **g. Malnutrition**

The exact rate of malnutrition in Papua is unknown. In general, acute malnutrition ('wastage') is rarely seen in the province, as energy-rich carbohydrate foods are available (i.e. sweet potatoes in the highlands and sago in the lowlands). However, rice has complemented or replaced this traditional food. Increased food prices force people to increasingly ration food. Indigenous Papuans have less (financial) access to varied foods that include proteins (meat/fish) and minerals (vegetables), as access to their lands has diminished in regions with palm-oil plantations. The problem of chronic malnutrition ('stunting') is therefore frequently encountered.

The effect on young children is that their growth and their learning and developmental abilities are hampered. In addition, their immune system is less able to cope with infectious diseases. In 2005, a report mentioned a prevalence rate of 30% malnutrition in the general population in Jayawijaya.<sup>96</sup> This conservative number can be confirmed through the experience of the population in Puncak Jaya and Agats in 2010. The national average malnutrition rate is 17%. From April to August 2010 the highlands of Papua experienced a serious drought, that led to reduced crop outcomes, hunger and unconfirmed numbers of fatalities in the Yahukimo regency.

92 Dinas Kesehatan Propinsi Papua. Profil Kesehatan 2009. 2010.

93 Medecins sans Frontieres – Belgium. Final project report Asmat mother and child health program 2006–2008.

94 BPS Statistics, Ministry of Health, Indonesian Government. Risk Behaviour and HIV Prevalence in Tanah Papua 2006 (Results of the IBBS 2006 in Tanah Papua). 2007.

95 Indonesia. Keementerian Kesehatan. Pusat Data dan Surveilans Epidemiologi. Indonesia Country Profile 2010 – Jakarta: Kementerian Kesehatan, 2010.

96 SKP Jayapura. Sehat itu sa pu hak. Memoria Pasionis no. 17. Nov. 2008.

#### **h. Fertility Rate**

The official fertility rate in Papua is 3,4 children per woman, well above the 2.6 national average. However, a distinction needs to be made between the Papuan population – to which the data refer – and the fertility rate of the indigenous Papuans, for whom it is considerably lower. Non-published early 2000 findings from Jayawijaya demonstrate that the fertility rate is about 1.5 per woman for the local highland population. Observations made between 2007 and 2010 in Puncak Jaya and Asmat confirm that, due to Sexually Transmitted Infections (leading to infertility), HIV mortality, and poor nutrition, the fertility rate is well below 2 children in the highland regions, and higher (2–3 children/woman) in the lowland district of Asmat. The divergence contributes to the disparities in population growth and demographic proportions between indigenous Papuans and other ethnic groups.<sup>97</sup>

### **3.1.2 State's Obligation to Fulfil the Right to Health**

#### **a. Health Policies & Leadership**

The Indonesian national health policy is known as Indonesia Sehat 2015. With regard to the two Papuan provinces, the government focused on community based primary health care as a means to provide good health services. An alternative health strategy for the two provinces has not been provided. Moreover, neither specific interventions nor allocations of resources to address the poor health status of the (indigenous) population have been envisaged. Nonetheless, some specific interventions have been introduced: availability of free generic medication and free health care services, specific HIV services (“Safe Papua” Program) and an extra budget for the training of indigenous midwives. Even so, these development programs are limited in time, scope and resources, and they are not legally protected by provincial bylaws.

The health management is decentralised to the districts and consequently the role of the provinces has diminished considerably. The installation of new districts led, in many cases, to a temporary rupture of the health service delivery, as a new district health office has to be organised and managed with limited capacity and resources. About

8.9 % of the general public budget and 12 % of the overall Special Autonomy OTSUS budget is reportedly spent on health, with large variations among the different districts. The public health budget per capita has more than doubled from 2004–2008.<sup>98</sup> However it is not clear what proportion of these resources actually reaches people with healthcare needs (for instance, in Puncak Jaya only 4% of the general public budget is spent on health).

#### **b. Availability of Health Services**

Official data from the government indicate that West-Papua has the highest rate of health centres per population (14.2/100.000 population), in Indonesia. This contradicts reports which claim that in Jayawijaya district 44.9 % of the population does not have healthcare and that 72.72% of households in and around the cities does not have access to medical facilities.<sup>99</sup>

Due to the politics of ‘Pemekaran’ (Decentralisation) many small districts and sub-districts have been created and each of them has a public health centre (Pusat Kesehatan Masyarakat, Puskesmas). However there is a deficiency of staff; on average there is 1.2 workers/1000 inhabitants. While each health centre, on paper, must have, midwives, nurses, and at least one doctor, in reality, in many remote health centres staff and managers are not present. In both Asmat and Puncak Jaya district, health staff is at half capacity, and the situation is worse for doctors who, in general, according to arrangements with the government (Pegawai Tidak Tetap, PTT) work between 6 months and 2 years in remote areas. This leads to a high turnover of staff. Doctors are often not present in the Puskesmas as they have private practices in the district centre and prefer to provide consultations.<sup>100</sup>

Even if health care workers are available, they are mostly based in the health centres and few of them go to the communities on a regular basis. At the national level, birth attendants are present in 73% of cases. In Papua, the attendance rate is estimated to be 39%. In the highlands and remote coastal areas this percentage is considerably lower (around 10%). The result is that most Papuan women give birth without health facilities, within their communities and for socio-cultural reasons they are often alone or left with a traditional birth attendant (Dukun Bayi). Furthermore, hospitals and health centres

97 Jim Elmslie. West Papuan demographic transition and the 2010 Indonesian census [electronic resource]: “slow motion genocide” or not? CPACS Working paper no 11/1. September 2010.

98 World Bank. Papua public expenditure 2009 : The dynamic of public financial management and service delivery provision in a special autonomy province Papua. 2009.

99 JUBIR (Jujur Bicara), ‘Medical facilities for Papuans are far from adequate’. 20th of January 2011.

100 Van de Pas, R. Human resources for health, opportunities and challenges in the Indonesian province of Papua. Royal Tropical Institute, 2010.





*Health worker with government officer in West Papua*

equipped to manage complications during childbirth (such as a retained placenta or caesarean section) are located in the cities on the coast, making the delay to reach them often fatal for both the mother and the baby.

Part of the national strategy involves reaching the communities via a formal health outreach service called Posyandu; health workers support the clinics with immunisation, growth monitoring and basic health care in the communities. Traditionally, this work has been done by the Paramedics (mantris), that is nurses trained by the missionaries and incorporated into the community. In recent years, many of them have reached the age of retirement, and as they are not usually paid, it is not possible to know the number of persons still working as community health workers.

Monthly outreach immunisation and growth monitoring programs function reasonably well, and to a lesser extent, so does the program for antenatal care for pregnant women. Prevention, case detection and disease control programs for TB, HIV, STIs, diarrhoea and malaria are largely absent outside the main cities. The response in cases of epidemic, such as the cholera epidemic in 2008 is therefore delayed.

HIV/AIDS and STI prevention, counselling, testing and treatment have expanded rapidly over the last 5 years. In the main cities on the coast, the so called Voluntary Consulting Test (VCT) centers provide treatment and the larger hospitals (Dok-II Jayapura, RMSS Timika) provide prevention from mother to child transmission. Local branches of the organisation which coordinates the HIV/AIDS response called 'Komisi Penanggulangan AIDS, KPA' should be available in each district. However, often,

outside the main cities, the organization does not function, leaving NGOs and social organisations as the sole providers of support to persons affected with HIV.

The stigma still associated to HIV/AIDS,<sup>101</sup> the low quality of the treatments administered, and the frequent unavailability of services, especially in the highlands, restrict the number of persons who receive anti retroviral treatment to less than 1000 cases.

### **c. Accessibility of the Health Services**

In Papua, primary health services and medications are provided free of charge, as under the Autonomy Law, all Papuans are considered "poor" and hence eligible for the health insurance scheme called Askeskin which was introduced in 2008. Persons eligible must show an insurance card to benefit from the health services, however bureaucratic procedures (including fees to obtain the card) have hindered the majority of the population from receiving it. Health clinics, however, do accept patients who do not have this insurance card, but this is expected to be more strictly regulated in the future.

In general, most central Puskesmas and hospitals are sufficiently equipped with essential medications. Due to logistic challenges and poor management, however, remote health clinics frequently lack medications. Accessibility to quality services remains a big issue, particularly, referrals for hospital care. Proper secondary care is mostly limited to the big city hospitals and this is a problem for people living in the hinterlands. District authorities can only pay for transportation in cases of acute need, and people cannot afford their own transport or the cost of maintaining themselves. Remote district public hospitals (RSUDs) often lack competent staff or resources to provide good secondary care (e.g. complicated malaria infections, AIDS and TB care, severe malnutrition, birth complications).

Discrimination against indigenous people is also evident in accessibility of health care services. For instance, the private hospital Rumah Sakit Mitra Masyarakat in Timika is managed by Caritas and it is financially supported by PT Freeport. It provides the best quality of care in Papua, but it provides free health services only to members of 7 ethnic groups who are resident and registered in Mimika district, and are affected by the operations by PT Freeport. Persons from other ethnic groups and/or residing in other districts must pay for the services.

101 Butt L. et all. Stigma and HIV/AIDS in the highlands of Papua. UNCEN, June 2010.

In areas affected by the current conflicts, such as the sub-districts of Kwiawage in former Jayawijaya district and Tingginambut in Puncak Jaya district, health care services have been suspended and healthcare staff are often intimidated to prevent them from working in these areas.

#### **d. Acceptance of the Health Care Services**

Health care services in Papua are not really accepted by the indigenous population. Generally, Papuans usually visit the Puskesmas just for chronic infectious diseases like TB and HIV preferring to rely on local healers who perform rituals derived from the adat (the Indonesian customary law). The local healing practices differ from one ethnic group to another.

The following statements demonstrate the general mistrust among the Papuans of the healthcare system:

- “Doctor, in the hospital (RUSD) I will be given a deadly injection by the nurses. So many of us have already passed away after visiting the hospital” (Puncak Jaya, 2007)
- “The epidemic has started after pendatang (migrants) poisoned our food and our wells. They throw in tablets so that we all got infected and now die with diarrhoea” (Paniai, 2008)
- “We don’t want to spend the night in the hospital for treatment. Last year a person died in the hospital. Our soul can be taken away by this spirit and not return to our body in the morning” (Asmat, 2010).

Another form of deeply rooted mistrust is associated with medicines. The essential medications freely available in the Puskesmas are generic medications administered in the form of tablets and produced in factories in Java. Generic tablets are regarded as inferior or even harmful compared to branded medicines. Proper treatments are associated with branded foreign medications administered in the form of vials and injections. These were first introduced in Papua by the missionaries. Papuans visit the healthcare centres and hospitals when there is no other alternative, but this usually happens in the latter stages of illness, when options for treatment are limited. Under the “Safe Papua” banner, the national government initiated the 2008-2010 outreach program to test and counsel HIV infected persons in the communities three times per year. A district health team visited about five remote communities in the district. This program appeared to be inappropriate because it is designed just

to detect if a person is infected with HIV, but does not provide direct treatment. It only makes a referral to a hospital. Post-test counselling and follow-up is also poorly managed.

For women and the elderly in particular, these difficulties are compounded by a language barrier. Bahasa Indonesia, the official language, is spoken in the health centres but is not widely understood among older people or women who, by and large, have received little formal education.

#### **e. Quality of the Health Care System**

The quality of public health services remains poor, though there are a few exceptions, such as the public hospital at Dok 2 in Jayapura (RSUD Dok II). In Papua, the best health care is provided by faith-based organisations, such as the RSMM in Timika, the Dian Harapan hospital in Waena, the Kalvari clinic in Wamena, and the Santa Monica hospital in Manokwari. In comparison to these private clinics, public health services offer low quality care, with doctors and midwives working in the public system in the morning and in the private system later on in the day. Private consultations are only available in the cities and the district capitals.

Public hospitals and Puskesmas have the medications, the new infrastructure, and the equipment (all provided by OTSUS) to provide quality services. The deficiency is in human resources; many health centres lack motivated, capable, and well-managed staff. The number of young Papuans that are trained as health workers is increasing considerably, but many of them prefer to stay in the cities or outside Papua rather than to work in their communities.

#### **3.1.3 Right to Health of Indigenous Papuans**

Indigenous concepts of health and the health conditions to which they are particularly prone are generally not taken into consideration by the health authorities. A recent review on the health of the aboriginal population in Australia concluded that there is a 17-year gap in life expectancy between the indigenous and non-indigenous populations in Australia. The two main reasons mentioned are social disadvantage and a marginal position in relation to mainstream society.<sup>102</sup> These findings allow for certain comparisons between Australian aboriginals and indigenous Papuans.

Indigenous concepts of health, illness, wellbeing and death are considerably more comprehensive than modern medicine recognizes. There is an emphasis on the importance of balance. All four elements of life – physical,

102 Michael Marmot. Social determinants and the health of Indigenous Australians. *Med J Aust* 2011; 194 (10): 512–513.

emotional, mental, and spiritual wellbeing – are intrinsically related to each other. Balance extends beyond the individual so that good health and healing also require that each person lives in harmony with their community and the spirit worlds. For Indigenous peoples, land, food, and health are key components of a good life.<sup>103</sup> Vulnerability to mental illness and alcohol addiction, loss of culture, land and identity, and the effect of urban migration all seriously affect the health of indigenous people. The Indonesian government views indigenous Papuans as Indonesian citizens, representing several ethnic groups in the multi-ethnic pluralistic republic. Consequently, political space for cultural identity, autonomy, and self-determination are restricted and this directly marginalises and affects the well-being of the indigenous population.

Countries such as Canada, Australia and New Zealand have started special indigenous health policies to address their specific needs and rights.<sup>104</sup> Such measures are not expected to be implemented by the Indonesian government soon. Nonetheless, to improve primary health care, the government could start by increasing the number of skilled Papuan health workers, legalising and protecting rituals, medicinal plants, and recognising indigenous concepts of health.



*Basic health service for the indigenous Papuan*

Sexual and reproductive health protection deserves a particular mention. Papuans are often blamed for the spread of HIV and STI's because they practice polygamy. Public information on HIV prevention often includes messages on abstinence, monogamy, fidelity, and the use of contraception. The state policy of 'dua anak cukup' (two children is enough) promotes the use of family planning to limit population growth. The alleged involuntary injection of hormones for family planning in the '80s caused the Papuan population to be very wary of using contraception and hormones. Prevention and treatment require the authorities to understand and respect the specific role and patterns of sexuality and fertility.

### **3.1.4 Conclusions**

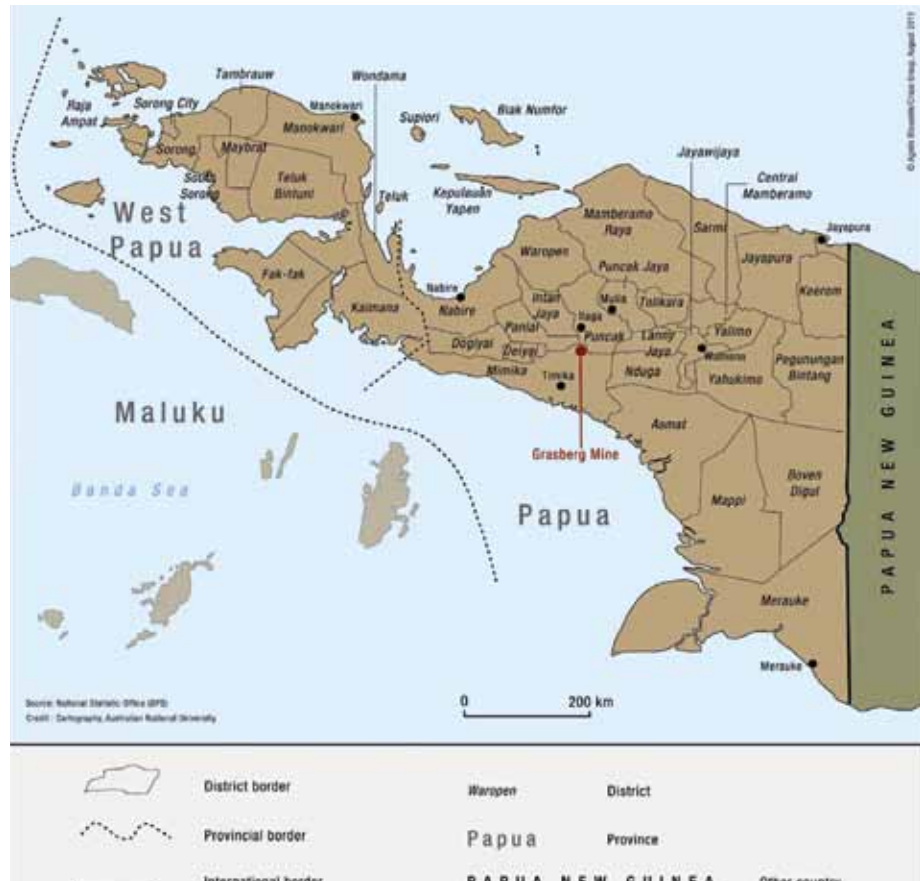
The Government addresses health services in Papua as it would address health services in other parts of the country. The claim is not that Papuans are discriminated against in their access to health, but that in relation to the particular socio-cultural, political, and environmental circumstances, as well as in relation to the issue of HIV, the Government does not provide sufficient attention to the healthcare needs of the Papuan population.

Despite efforts and improvements in healthcare policies, budgets and services; access and availability to health services have not really improved for the Papuan population over the last years. Healthcare is focused on basic healthcare services, rather than on prevention or on addressing the root causes of the generally poor state of health among the population.

When health services are available, they do not address the specific concerns of the communities. Trust, communication, and incorporation of values, languages, and indigenous health concepts are key to this. This requires leadership at the district, provincial and national level, as well as the cooperation between the state, the church, the organisations and the adat representatives.

<sup>103</sup> Prof Malcolm King PhD, Alexandra Smith MD, Prof Michael Gracey MD. Indigenous health part 2: the underlying causes of the health gap. *The Lancet* - 4 July 2009 ( Vol. 374, Issue 9683, Pages 76-85 ).

<sup>104</sup> Prof Ian Anderson MBBS, Sue Crengle MBChB, Martina Leialoha Kamaka MD, Tai-Ho Chen MD, Neal Palafox MD, Lisa Jackson-Pulver PhD. Indigenous health in Australia, New Zealand, and the Pacific. *The Lancet* – 27 May 2006 ( Vol. 367, Issue 9524, Pages 1775–1785 ).



Map of West Papua<sup>106</sup>

## 3.2 MIFEE: The Merauke Integrated Food and Energy Estate

### 3.2.1 Introduction

On 11 August 2010, the Indonesian Minister of Agriculture officially launched the Merauke Integrated Food and Energy Estate (MIFEE), a mega project covering 1.28 million hectares in Merauke regency, southern Papua.<sup>105</sup>

MIFEE is an extensive collection of commercial plantations meant to be part of the President Yudhoyono's vision to "feed Indonesia, feed the world". The proposed plantation development is based on overly optimistic economic assumptions and it does not take into full account its social implications and environmental impacts. The project, as such, poses a threat to the culture, livelihoods, and identity of indigenous Papuans in the Merauke area. So far, at least 36 investors have secured concession permits. Most companies are Indonesian, but Japanese, Korean, Singaporean and Middle Eastern companies are also involved.<sup>107</sup> The principle commodities to be produced under the umbrella of MIFEE are timber, palm oil, corn, soya bean and sugar cane.

Given the vast land areas designated for plantation, the large financial investments involved, and the pressure to proceed with the implementation of the MIFEE program, there are numerous risks requiring urgent consideration by all stakeholders. The issues linked to MIFEE and outlined below are likely to become more widespread.

There are indications that investments are being driven through at a rate that is overwhelming for local communities whose lands are targeted and, as a result, their capacity to respond and protect their own interests is limited.

Highlighted below are some of the main risk areas, their implications for the local population and the environment, and recommendations for corrective action.

### 3.2.2 Land-grabbing – the Papua Context

Officially, the goal of MIFEE is food and fuel production. In reality, there are powerful vested interests, among others in the military, which are pushing this project forward to reach different goals.

<sup>105</sup> Figures for the actual size of the project vary. The official figure in 2010 was 1.282.833 ha to be cultivated over a period of 20 years, but 1.6.000 ha is the most quoted figure. However, the area covered by the designated concessions totals 2.051.157 ha (see Figure 2 map). Recent reports (in many newspapers, including the Merauke Post, 15 February 2011) suggest that the new Regency Head (Bupati) of Merauke, Romanus Mbaraka, has negotiated with the central government for a reduction in the designated area to 500.000 ha.

<sup>106</sup> 'Indonesia: Hope and Hard Reality in Papua', Asia Briefing No.126, Jakarta/Brussels, International Crisis Group, p.15, 22 August 2011. Available at [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/B126%20Papua%20-%20Hope%20and%20Hard%20Reality.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/indonesia/B126%20Papua%20-%20Hope%20and%20Hard%20Reality.pdf).

<sup>107</sup> BAPINDA, May 2010 and Warta Ekonomi, March 2010.

MIFEE is part of a global land-grabbing phenomenon.<sup>108</sup> Powerful national and international economic actors – from corporations to governments – have identified Merauke as an empty land and a site for fuel and food production.<sup>109</sup> However, MIFEE is different from most land-grab projects because of the military-business-political framework and the climate of political intimidation and oppression present in West Papua. It is situated in a context of political fragility and insecurity and is driven by strong political and corporate interests.

The Papuans' experiences of Freeport and former transmigration programmes are likely to have a great influence on how their resistance to MIFEE develops.<sup>110</sup> However, local communities lack vital information about the impacts of MIFEE and the power imbalance means that they are in a weak position when it comes to responding to powerful corporate investors in an effective way.

Key players in MIFEE, on the contrary, all have political connections. The Comexindo Group, for example, is owned by Hashim Djojohadikusumo, the brother of ex-Kopassus general and son-in-law of Soeharto, Prabowo Subianto.<sup>111</sup> In this case, the lines between political, security, and corporate interests appears, at best, blurred.

### 3.2.3 Economic, social and cultural impacts of MIFEE

**Socio-cultural gap:** A report published in 2010<sup>112</sup> by the Jakarta-based NGO PUSAKA provides the most comprehensive study to date on the social, cultural, political, and economic implications of MIFEE. It concludes that MIFEE is not designed to provide jobs or development for the local population because their way of living off the land as hunter-gatherers has not prepared them for commercial farming or equipped them with the necessary skills or technical knowledge.

A number of indigenous communities live in the MIFEE designated area, including the Malind, Muyu, Mandobo, Auyu and Mappi peoples. They are essentially hunter-gatherers whose livelihoods depend on collecting wild foods and hunting rather than farming. They use various dwelling sites in the forest, which is also where their ancestral lands and sacred sites are located. Thus, their culture and way of life is very much embedded in their land and resources and these cannot easily be replaced or re-located elsewhere. The direct and indirect consequences of MIFEE will be the wiping out of customary land tenures, in areas targeted by the project, and their full incorporation into the state system for controlling land.<sup>113</sup>

**Migration:** The regency's population of 230.000–250.000 will not be enough to meet the labour requirements of MIFEE. Estimates vary greatly about the number of migrant workers to be expected, but even conservative predictions suggest that the current population of Merauke would at least double if the project is fully implemented. This would dramatically change the demographics of the region. For local indigenous communities these changes will have severe social and economic implications. The scale of MIFEE and the expected influx of migrant workers will displace these communities from their customary lands and livelihoods, bringing a drastic change to their way of life and culture.

**Food and energy...or pure economics?** Although planned as a "food and energy estate," the largest part of the project will be mainly dedicated to industrial timber plantations (over 970.000 ha), oil palm (over 300.000 ha) and food crops (69.000 ha).<sup>114</sup> These data suggest that MIFEE is hardly motivated by food and energy security concerns but pure economic interests.

108 Borras Jr., S. and Franco, J. C. 2010. Towards a broader view of the politics of global land grab: rethinking land issues, reframing resistance. ICAS Working Paper Series 001. Amsterdam: Transnational Institute (TNI).

109 Ibid: 209.

110 Longgena Ginting and Oliver Pye, 2011. Resisting Agribusiness development: The Merauke Food and Energy Estate in West Papua, Indonesia. Land Deal Politics Initiative.

111 Ginting and Pye, *ibid*.

112 Zakaria, Y., E.O. Kleden, and F. Samperante. 2010. Beyond Malind imagination: Beberapa catatan atas upaya percepatan pembangunan cq. Merauke Integrated Food and Estate (MIFEE) di Kabupaten Merauke, Papua, dan kesiapan masyarakat adat setempat dalam menghadapinya. Jakarta: Pusat Studi dan Advokasi Hak-hak Masyarakat Adat (PUSAKA).

113 <http://www.thejakartapost.com/news/2011/04/30/mifee-must-benefit-indigenous-papuans-everyone.html> Note: Indonesia's legal framework means that indigenous peoples are weakly protected when companies seek access to forests and lands. See M Colchester, P Anderson, and Ahmad Zazali, 2010, Field Dialogue on Free, Prior, Informed Consent, Briefing Paper, the Forests Dialogue.

114 <http://www.vhrmedia.com/MIFEE-Is-Damaging-Food-Security-in-Papua-news5751.html> and Ginting and Pye, *op. cit*.

**Environmental impacts and sustainable livelihood:** MIFEE extends into the so-called “Trans-Fly” eco-region in southern New Guinea, bordered by the Digul and Fly rivers, which consists of savannah, grasslands, wetlands, reeds and monsoon forest.<sup>115</sup> The Trans-Fly contains a network of fresh-water streams and rivers that drain southwards towards the southern plains. From the environmental perspective, planned agricultural and industrial timber plantations are likely to have a severe impact on the endemic wildlife in the area. There is a risk of toxic waste pollution to the rivers and streams that provide people with drinking water and fish, further undermining the ability of local Papuans to meet their livelihood needs and their right to clean water. Besides that, MIFEE is disastrous for the existing forests in Merauke. Greenomics calculated that if the government continues its plan to develop 1.600.000 million hectares in Merauke, some 1.100.000 hectares of the land would be from the conversion of areas classified as forests.<sup>116</sup>

The clearing of forests and land to this extent will also have major climate-change implications. Furthermore, MIFEE will seriously weaken the ability of local communities to adapt to climate change in the future.

There are real fears that these changes will lead to the further marginalization and impoverishment of indigenous Papuans who will end up on the lowest rung of the economic ladder. The large influx of migrants will reduce the relative number of Papuans and constrain their access to political and economic power.<sup>117</sup>

### 3.2.4 Security Concerns and the Potential for Conflicts

**Vertical:** Merauke occupies a key strategic position as Indonesia’s south-easternmost regency with a land border with Papua New Guinea and a sea border with Australia. The regular district military command (KODIM) is reinforced by ‘non-organic’ troops deployed for border security, but in addition to that function, this military presence plays a significant role in protecting and promoting the interests of corporate investors involved in MIFEE and other projects.

The presence of the Army often makes local communities fearful of challenging companies, lodging complaints

about their activities, or insisting that companies meet their commitments. Military personnel also play an active role in persuading communities to accept MIFEE investments on their land. Most companies employ people with a military or intelligence background to influence communities to accept foreign investments as well as to protect the projects, and the interests of the companies once they are operational. Alliances are also created between local government officials and police and military personnel making it difficult for communities to resist or challenge the companies.

Kopassus special forces troops are present in the area and supportive of corporate interests. Their involvement in human rights violations in Merauke was highlighted in a 2009 Human Rights Watch report, ‘What Did I Do Wrong?’<sup>118</sup>

**Horizontal:** As indigenous Papuans are being increasingly exploited and marginalized, ‘horizontal’ conflicts between indigenous Papuans and migrants, and between villages and clans over land ownership and compensation is a possible threat that should not be ignored. There is a friction that could potentially lead to clashes, between the indigenous Papuans resisting the project and migrant farmers living in Merauke who tend to welcome the project because of the opportunities the project could afford them.<sup>119</sup>

The interests of the two groups are contradictory and it will be difficult to overcome this gap.

### 3.2.5 Grassroots Experiences of MIFEE

By mid 2011, more than half-a-dozen of the investors granted permits for MIFEE are thought to have started working in their concession areas, including companies associated with the powerful Medco and Rajawali groups. Indigenous peoples’ right to give or withhold their free, prior and informed consent is recognized under international law.<sup>120</sup> However, this right has not been implemented in the Indonesian legal system. Even the limited rights that communities may have to oppose a project are, in practice, largely rendered ineffective for different reasons.

115 Bove, Michael (2007) “One Landscape, Two Lands: What the international border means for community-based natural resource conservation in southern New Guinea” WWF Indonesia, available at: [http://www.worldwildlife.org/wildplaces/ng/pubs/TransFly\\_and\\_transboundary.pdf](http://www.worldwildlife.org/wildplaces/ng/pubs/TransFly_and_transboundary.pdf).

116 <http://www.thejakartapost.com/news/2010/03/24/food-estate-projects-dig-deeper-forests.html>.

117 PUSAKA, 2010 and Ito et al. 2011.

118 <http://www.hrw.org/en/reports/2009/06/24/what-did-i-do-wrong>.

119 Ginting and Pye, op. cit.

120 See UN Declaration on the Rights of Indigenous Peoples.

1) Usually, local people do not have enough information on and a proper understanding of the project because there is no opportunity for them to consult with the companies running the projects. The result is that while negotiating with these large corporations, local people are in a weak and exploitable position which consequently exposes them to abuses. Many hectares of land that once belonged to local peoples have been handed over in exchange for money, motorcycles, or outboard motors, but such transactions ultimately leave indigenous peoples worse off.<sup>121</sup>

2) The authorities and investors use different tactics to obtain locals' consent. These include:

- Using security personnel to influence and intimidate communities;
- Accusing those who resist or challenge the companies of supporting separatism or being associated with the OPM;
- Discriminating against communities that oppose MIFEE investments in the allocation of local government development aid;
- Securing a deal with one village in order to persuade the neighboring ones to sign up.

Thanks to monitoring activities conducted on the ground, numerous examples of the issues delineated above have been identified.

Table 1: Specific cases related to MIFEE

Case	Background
<b>July 2010</b> Death of the journalist Ardiansyah Matra's	Ardiansyah Matra's was found dead in the Gudang Arang River, Merauke. The death was linked to his reporting of upcoming local elections in Merauke which generated intense political debate over MIFEE. <sup>122</sup>
<b>December 2009 onwards</b> Bribes and corruption in Zenegi village	A subsidiary of the Medco Group, PT. SelarasInti Persada (PT.SIS), operated in lands belonging to the village of Zenegi. PT.SIS planned to set up a wood chip plantation in the village. Local indigenous leaders were persuaded to give away their forest resources for 300 million rupiah in December 2009. Village youths blamed their elders for giving up their forests. The "gift" gave Medco the right to log timber for a fee of 2000 rupiah per m <sup>3</sup> although the normal rate is ten times higher. <sup>123</sup>
<b>August 2010</b> Oil palm plantation launched without informed consent in Serapu village	MIFEE was officially launched in Serapu village by the then Regency Head, Johannes Gluba-Gebze, in August 2010, shortly before his term of office ended. However, villagers had not been informed about what was actually being launched. They only realized several weeks later. When bulldozers started to demolish their sago forests, they realized that this was the 'ceremony of the dispossession of their land'. Villagers have been completely excluded from benefiting in any way from their customary land. <sup>124</sup>
<b>November 2010</b> Domande villagers fleeced of compensation	Villagers in Domande agreed on a 6-billion rupiah compensation package with the powerful Rajawali group to surrender lands to be used for sugar-cane plantations. Within the first few days after the payment was made, traders from Merauke descended on the community to sell goods ranging from massage oils, to jeans, to motor bikes at up to 10–20 times the common market price. Despite the fact that there's no signal anywhere near the village, even mobile phones were sold. Most of the money has now been spent, leaving the villagers without land or compensation. <sup>125</sup>
<b>April 2011</b> Disturbance at Medco office involving aggrieved locals in Okaba District, Kampung Sanggase	On April 20th 2011, around 20 people from Kampung Sanggase, Okaba District, in traditional attire, went to the Medco Papua office to claim the sum of 65-billion rupiah they should have received as compensation for having agreed to give away their land. Angered by the lack of response from the company, the local people entered the office and started banging and kicking chairs and tables. Frightened Medco workers ran through the back door. <sup>126</sup> To date the company continues to deny clarifications regarding compensation. The locals do not see evidence of goodwill on the part of the company to compensate them for their forests and land that have been used by the companies for over three years. The company allegedly claimed that a traditional ceremony to reject the project was an independence ceremony. This led to the deployment of the military to quell the disturbance.

121 Kompas Daily, 6 August 2010.

122 TAPOL and Down to Earth, the International Campaign for Ecological Justice, 2010: <http://tapol.gn.apc.org/press/files/pr100811.html>.

123 Ginting and Pye, op. cit.

124 Takeshi Ito, Noer Fauzi Rachman, Laksmi A. Savitri, 2011. Naturalizing Land Dispossession: A Policy Discourse Analysis of the Merauke Integrated Food and Energy Estate. Land Deal Politics Initiative.

125 Information provided to TAPOL by a protected source, April 2011.

126 tabloidjubi.com, April 20<sup>th</sup> 2011.

### 3.2.6 Conclusion

MIFEE represents a real challenge and threat to the social and economic rights of indigenous Papuans in Merauke. The government and powerful corporate interests are planning a food and energy mega-project which will completely change the demographics of the region and will involve the loss of lands, resources, livelihoods and cultural heritage of indigenous communities embedded in these territories. The overall impact on the indigenous peoples is going to be potentially catastrophic unless urgent action is taken to protect them.

The reaction of Indigenous peoples and NGOs to the project has been impressive. This gives us the hope that there is a real possibility to stop major parts of the MIFEE project before they are implemented.

This will also largely depend on the capacity to extend the opposition to the project to build political space for the communities so they will be able to advocate for the recognition and protection of their rights, to press existing and potential investors, to empower local communities to ensure that agri-business will be carried out sustainably, and to ensure that responsibility for future damages is identified a priori.<sup>127</sup>

## 3.3 Palm Oil in Papua

Indigenous Papuans consider palm oil, the main commodity designed to replace forest and traditional lands, a threat to their livelihood, food security and cultural identity. The governments of Indonesia and several districts of Papua and West Papua are pursuing their plans to develop seven million hectares of land and forests for large-scale palm oil plantations in Papua and West Papua.

Papua has already more than 25 years of experience with palm oil plantations, though on a smaller scale than the current developments. Until recently (2006), 21 companies hold land concessions on about half a million hectares proposed for palm oil in both Papua and West Papua. An estimated 38,000 hectares of these concessions have been planted with oil palms, equal to only 7.6% of the designated area. Experiences with these old plantations, including state and private plantations in Manokwari and Bintuni Bay (West Papua), and Keerom, Jayapura and Boven Digul (in Papua province), show a high rate of destruction of primary forest – which leads to negative ecological impacts like erosion and floods – and a very low level of productivity. Also, access to water and wildlife is increasingly limited.

The local population has been persuaded, in some cases forced, by security personnel to agree to the transfer of their traditional land. Military personnel are stationed at the plantations as security guards, creating an environment of fear and an increase in the likelihood of incidents of human rights abuse. Experience shows that indigenous peoples have lost access to their traditional land and livelihood, are rarely able to find jobs as plantation workers or farmers, and are marginalized by migrants from other Indonesian islands. Several researchers suggest that living standards of indigenous Papuan communities has declined in respect of environmental, economic, social, and cultural conditions.

### 3.3.1 Land Grabbing and Marginalization of Indigenous Peoples

In contrast to past palm oil activities, the current expansion of agro-industrial estates is on a far greater scale. Several politically powerful business groups – including the former son-in-law of the President Soeharto, Prabowo Subianto, and the oil tycoon Arifin Panigoro – are involved in large-scale land acquisitions in Jayapura and Keerom districts, as well as in Manokwari and Merauke. In particular the Southern districts Merauke, Boven Digul and Mappi are expected to convert up to four million hectares of land and forests for food and agro-energy estates. Civil society groups, churches and indigenous leaders are being pressured to support the implementation of the estates, with the effect that horizontal conflicts evolve within civil society, church institutions, and communities.

Since 2008, thousands of hectares have been allocated for palm oil cultivation in Merauke, Manokwari and Keerom. In August 2010, the Merauke Integrated Food and Energy Estate (MIFEE), was officially launched. At the moment, this is the most ambitious project, as it is expected to involve half a million hectares of land belonging to the Malind tribal groups.

The MIFEE scheme has been condemned by several groups, including the Indigenous Peoples Alliance (AMAN) and the Justice and Peace Secretariat of the Catholic Church's Merauke diocese (SKP-KAM), for various reasons.

There are serious concerns that migrant workers will outnumber vulnerable Papuan tribal groups, thus leading to dramatic demographic and cultural change in Merauke. On 23 April 2010, before MIFEE was launched, in a statement presented to the 9th session of the UN Permanent Forum on Indigenous Issues, AMAN stressed

127 Ginting and Pye, op. cit.



that the demographic changes that will be caused by MIFEE will “acutely threaten the existence of Indigenous Peoples”.<sup>128</sup> In other territories, such as Manokwari, indigenous peoples are expected to move to the remaining forests and surrender their land and territories to public or private business-interests. It seems that palm oil companies will resume the controversial transmigration program.<sup>129</sup> Relocation of local inhabitants and new transmigration can contribute to horizontal conflicts, particularly in sensitive areas such as Papua.

There have been episodes of intimidations which have been denounced by local activists opposing the project. These people are forced to remain anonymous to avoid violent retaliation. The murder of the journalist Ardiansyah Matra’is in Merauke is possibly linked to his investigation into the MIFEE project. He was found naked, handcuffed and tortured in Maro River in mid 2010.<sup>130</sup>

#### **b. Palm Oil and Human Rights**

There are three main categories of human rights violations related to the palm oil industry: “institutionalized” violations linked to development policies and laws resulting in forced eviction and relocation; the violation of the right to food and adequate standards of living; the violation of the freedom of expression.

Despite the fact that episodes of intimidation and tension are widespread in the palm oil business, data on human rights violations in Papua is difficult to obtain, mostly due to the fear of retaliation. According to data from the Indonesian palm oil farmers union SPKS, in 2010, 129 palm oil farmers have been brutalised and 20 have been murdered across Indonesia.

In Papua, people are forcibly evicted for the economic interests of the palm oil companies and the Indonesian legal framework does not impede such action. Although the Constitution of the Republic of Indonesia

acknowledges “customary law communities,” the State maintains control over lands and natural resources so they can be used for the benefit of the entire population. The Agrarian Law also recognises customary rights, however, as they are operated over state lands, the development projects cannot be opposed.

Under the Forestry Law, nearly all forests are within the jurisdiction of the state. Moreover, new laws and regulations simplify the acquisition of lands for the sake of the national interests; this includes, however, interests related to agro-industry and palm oil plantations.

The national legal framework thus benefits large-scale business and it neglects the economical, social and cultural rights of the local and indigenous peoples. Moreover, it creates a context within which a wide array of human rights violations occurs. For instance, relocated people often face extreme poverty and the denial of other basic rights such as the right to have access to water.

Mr. Olivier de Schutter, the UN Special Rapporteur on the right to food, denounced large-scale land acquisitions as “land grabbing” and a threat to human rights.<sup>131</sup> According to de Schutter, land acquisitions particularly affect indigenous peoples, therefore each state has to guarantee full respect of their rights, as affirmed in the 2007 UN Declaration on the Rights of Indigenous Peoples.<sup>132</sup>

Typically, the principle of free, prior, and informed consent is one of the most neglected. Traditional leaders are often tricked, defrauded and even coerced to release lands and forests. In addition, they are unaware of the fact that the released lands become state lands and, as such, traditional land tenure rights will no longer be applicable.

AMAN concludes that “large-scale business in Indigenous Territories, without their Free, Prior and Informed Consent (FPIC) will only exacerbate the human rights situation, leading to forced evictions and other human rights violations”.<sup>133</sup>

128 AMAN’s Statement before the 9th Session of the UN Permanent Forum on Indigenous Issues, New York, 23 April 2010, <http://www.aman.or.id/en/component/content/article/7/179.html>.

129 Dinamika Transmigrasi, Rencana Penandatanganan MOU dengan Investor, DepNakerTrans, 2007. [http://www.nakertrans.go.id/statistik\\_trans/DINAMIKA%20TRANS/2007/JUNI/DT\\_juni02.php](http://www.nakertrans.go.id/statistik_trans/DINAMIKA%20TRANS/2007/JUNI/DT_juni02.php).

130 ASIAN Forum for Human Rights and Development, Joint Press Statement on the Murders of Two Indonesian Journalists, 28 August 2010, [http://www.forum-asia.org/index.php?option=com\\_content&task=view&id=2619&Itemid=129](http://www.forum-asia.org/index.php?option=com_content&task=view&id=2619&Itemid=129).

131 ‘UN Special Rapporteur on the Right to food recommends principles and measures to discipline “land grabbing”’, UN Press Release, 11 June 2009, at p. 1. <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/5A171ADA855BF615C12575D30010CEBF?opendocument>.

132 Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge. Mr. Olivier De Schutter, Special Rapporteur on the right to food, 11 June 2009, p. 7–8, 12. <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

133 AMAN’s Statement before the 9th Session of the UN Permanent Forum on Indigenous Issues, New York, 23 April 2010, <http://www.aman.or.id/en/component/content/article/7/179.html>.

#### **We conclude that:**

- The UN Special Rapporteur on the Rights of Indigenous Peoples should conduct a thematic study on large-scale development projects including palm oil estates in Papua and their impacts on cultural integrity and the human rights situations of indigenous peoples.
- Furthermore, the Government of Indonesia should invite the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights to Food, to visit and report on the situation of Indigenous Peoples in Papua and West Papua affected by palm oil and other agro-industrial development.
- Relevant institutions should urge companies to uphold the principle of Free, Prior and Informed Consent and comply with the UN Norms for Multinationals on Human Rights and labour conditions, and comply with national and international human rights and labour laws.

#### **We recommend the Government of Indonesia to:**

- Uphold its obligations under international law, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.
- Uphold the UN Declaration on the Rights of Indigenous Peoples.
- Revise laws, regulations and practices which discriminate against, and override the rights of, indigenous peoples. Revise laws such as Investment Law No 25/2007, and Presidential Regulation 65/2006 to ensure that communities obtain the right to Free, Prior and Informed Consent.

## **Section 4 - Vulnerable Groups**

### **4.1 Women's Rights in Papua and West Papua**

*“Everywhere, we are being raped and subjected to sexual molestation, in prisons, out in the fields, whenever seeking refuge, whenever the army and the police conduct operations in the name of security, and even in our own homes. We are victims of violence. And when we scream for help, they reply that it’s a family matter.” [...] “Everywhere, we are increasingly facing the danger of HIV/AIDS and our lives are being lost. For how much longer will this situation continue?”* Hana Hikoyabi, the deputy chair of the MRP, “The Day to Combat Violence against Women”, Jayapura, December 2010.

This quote summarises the situation of Papuan women in an adequate manner. Papuan women have been suffering from violence, discrimination, and other forms of abuses both outside and inside their homes for the past 40 years, and they have done so in silence.<sup>134</sup>

Most of the information reported here is drawn from the recently published report STOP SUDAH!<sup>135</sup> concerning violence and human rights violations perpetrated against women between 1963 and 2009 in Papua. The report is the result of the collaboration between 19 Indigenous women and 3 men from 11 organizations across Papua, Majelis Rakyat Papua (MRP), Komnas Perempuan, together with the International Center for Transitional Justice.<sup>136</sup> In 18 months, the team collected 261 stories of women survivors in 11 kabupatens (regencies).

The report distinguishes between three types of violence:

- State violence against women;
- Domestic violence;
- Serial violence (multiple or combined forms of violence).

The report does not contain a lot of information on the situation of Papuan women in 2010. However, since the

<sup>134</sup> <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-021-2011>.

<sup>135</sup> Stop Sudah!! Kesaksian Perempuan Papua Korban Kekerasan dan Pelanggaran HAM 1963–2009: [http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new\\_buku%20laporan%20stop%20sudah%20papua\\_revisi%2004102010.pdf](http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new_buku%20laporan%20stop%20sudah%20papua_revisi%2004102010.pdf).

<sup>136</sup> <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-021-2011>.

abovementioned collaboration successfully collected and documented 261 cases of human rights violations against women, there is some hope that a more structured documentation of cases will take place in the future.

#### 4.1.1 State Violence against Women

The national security approach implemented in Papua allows for acts of violence by the law enforcement personnel, especially towards women.

STOP SUDAH! documents 138 cases of state violence against women, mostly perpetrated by the security forces. As result of the political conflict, Papuan women are often targets of violence. The cases portray both sexual violence, such as rape, sex slavery, forced abortion, as well as abuses not specifically related to sex, such as displacement during military action, murder, imprisonment, and disappearances. The Special Autonomy Law has not prevented the occurrence of human rights violations against women, on the contrary, cases of rape and other forms of abuse by the military have continued to take place after the “reformasi” in 1998, and the Special Autonomy Law, in 2001. The report identifies 57 such cases that occurred in the period 1999–2009. The identified perpetrators are the Brimob (Mobile Brigade of Indonesian Police), the Indonesian Police, and the Indonesian National Armed Forces TNI (Tentara Nasional Indonesia).

Table 2: Actors of state violence against women

Actor	Number of cases 1963–1998	Number of cases 1999–2009
<b>Brimob</b>	2	12
<b>Police</b>	4	5
<b>Military</b>	71	41
<b>Other (mobs, intelligence, companies)</b>	9	3

The crimes by the military, brimob and police that were documented since 1963 include:

Table 3: Types of state violence against women

Crime	Number of cases
<b>Killings and disappearances</b>	8 cases
<b>Attempted killings and shootings</b>	5 cases
<b>Illegal detention</b>	18 cases
<b>Assault</b>	21 cases
<b>Torture</b>	9 cases
<b>Sexual torture</b>	6 cases
<b>Rape</b>	52 cases
<b>Attempted rape</b>	2 cases
<b>Sexual slavery</b>	5 cases
<b>Sexual exploitation</b>	9 cases
<b>Forced contraception or abortion</b>	4 cases
<b>Displacement</b>	24 cases

#### 4.1.2 Domestic violence

The report documents 98 cases of violence that occurred in households (Kekerasan Dalam Rumah Tangga – KDRT). Indigenous women report high rates of domestic violence perpetrated by their husbands or partners, while receiving little protection from police or state agencies. Ironically, the funding component of the Special Autonomy package granted to Papua since 2001 seems to have increased the level of alcohol consumption, unprotected sex, and incidents of domestic violence.<sup>137</sup>

Gender discrimination is partly rooted in the Papuan custom (Adat), and so violence against women is tolerated. Gender based discrimination, with regard to division of roles, property, inheritance, and participation in decision making processes is very common as well.

137 <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-021-2011>.

With regard to domestic violence, the report documents various forms of abuse. These are outlined below.

Table 4: Types of domestic violence

Crime (Indonesian)	Crime (English)	Number of cases
Poligami	Polygamy	22
Selingkuh	Adultery	22
Penganiayaan	Abuse / violence	58
Penelantaran ekonomi	Economic abandonment	51
Ancaman	Threat	15
Pembatasan aktivitas/ ruang gerak	Restriction of activities/ movement	3
Aniaya	Ill treatment, oppression	4
Perkosaan Anak	Rape of children	2
Caci maki	Psychological abuse	6
Perkosaan dalam perkawinan	Rape within the marriage	7
Dihina	Humiliation	1
Tertular HIV/ AIDS	Transmittance of HIV/Aids	5
Pemaksaan/ dipaksa kawin	Forced marriage	3

#### 4.1.3 Serial violence

The investigation team of STOP SUDAH! has identified cases where female victims of human rights violations were later subjected to domestic violence because of the stigma attached to victims of human rights abuses. In total 14 of such cases were found.

#### 4.1.4 Conditions Contributing to Violence against Indigenous Women in Papua

Looking at the stories and cases collected by the reporting team, it can be concluded that in Papua various factors contribute to the ongoing violence against indigenous women:

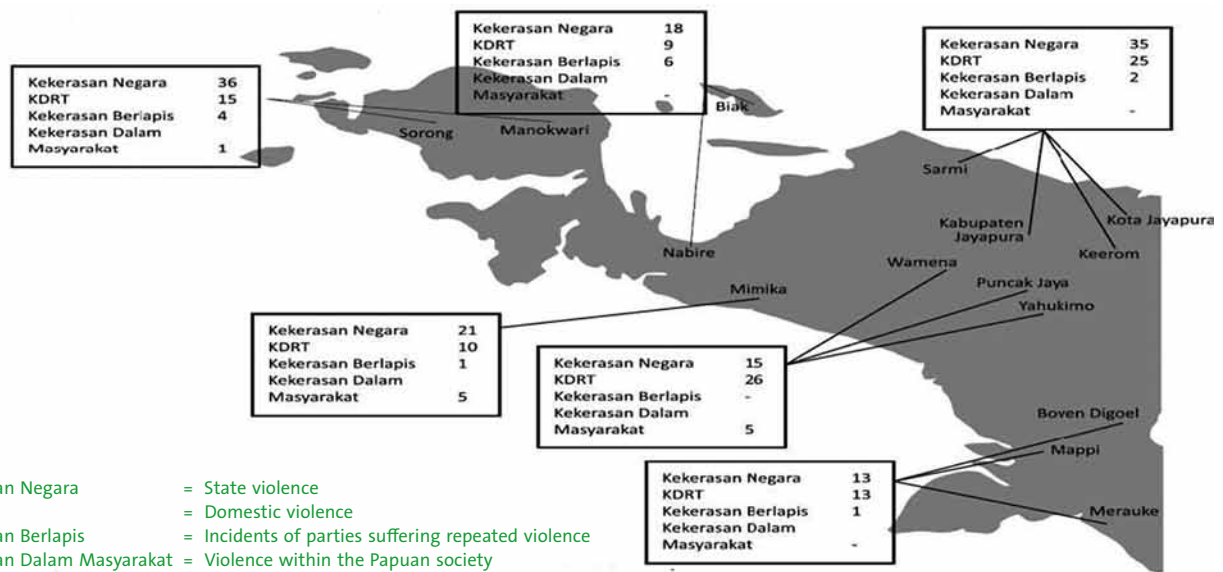
- The central government maintains a national security approach which leads to violence, including specific gender violence and impunity for the perpetrators of human rights violations.
- There is discrimination against women in the Papuan indigenous culture which leads to a tolerance of violence against women.
- The ongoing conflict over natural resources, the political situation, and the local-to-national-level struggle for power have contributed to the creation of a context of violence against women, both in the public and private realms.
- A clear response from the government and the political will to address violence against women are clearly lacking. Proper legislation exists, but it is not implemented.
- Indigenous Papuan women who experience violence and abuse do not have access to social security services. This, coupled with the fact that impunity exists at all levels of the Indonesian government,<sup>138</sup> reinforces the trend of the victimization of women and causes many to live in a state of perpetual distress.<sup>139</sup>

#### 4.1.5 Impact of Natural Resources Exploitation on Women's Rights

The continued conflict over natural resources and the huge influx of investors create a context of increased vulnerability for Papuan women. The New Order regime under President Soeharto opened up opportunities for large scale exploitation of natural resources in Papua, with hundreds of new contracts for mining, logging, palm oil plantation, oil and gas, as well as various other development projects. Various forms of violence against women have occurred in relation to mining, oil palm plantations and other industries.

138 Report written by Rev. Socrates Sofyan Yoman, President of the West Papuan Baptist Churches, July 2005.

139 Stop Sudah!! Kesaksian Perempuan Papua Korban Kekerasan dan Pelanggaran HAM 1963–2009: [http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new\\_buku%20laporan%20stop%20sudah%20papua\\_revisi%2004102010.pdf](http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new_buku%20laporan%20stop%20sudah%20papua_revisi%2004102010.pdf).



The expanding investment in palm oil plantations and other types of industry poses a threat to the basic right to life. Families lose their customary land rights and are displaced and unable to access new employment opportunities as investors employ workers from outside Papua. Besides violations occurring in connection to palm oil plantations and other projects involving land exploitation, Papuan women are exposed to other social problems. For instance, many women used to collect sago (starch extracted from certain types of palm trees – a major staple food) from their ancestral lands. Once these lands are converted to plantations<sup>140</sup> they will lose their occupation as well as their position in the society.

Women have been excluded from the decision making process regarding new development projects, despite the fact that they were used to holding important roles in the management of natural resources and the maintenance of sustainable livelihoods to support their families.<sup>141</sup>

Many cases of **sexual violence** related to plantations, mines, and illegal smuggling of natural resources, such as timber, have also been registered. In a 2006 report, Nick Chesterfield writes about the reality of women living on the border of a timber smuggling route: “Wherever they [the smugglers] tread, they leave behind a wake of

violence and intimidation”. However, sexual slavery is not limited to the smugglers. Prostitution is so common near logging camps in ESP and Sandaun that up to half of the women are believed to have had some personal experience of prostitution. It is common for loggers and other “white [Indonesians] men” to go there to look for women and girls. “Many times, these women disappear for days at a time, and then come back bruised, used and abused. Local women are often forcibly kidnapped from their villages and taken to the logging camps. They are then forced to perform sex acts on loggers and Police, and sometime have to “service” the whole camps.”<sup>142</sup>

#### 4.1.6 HIV/Aids and Women

Papua has the highest HIV/AIDS rate (2.4%) in Indonesia. The Indonesian National AIDS commission blames extramarital sexual relations for this. Most of the infected women are indeed housewives who have contracted HIV through their unfaithful husbands.

Another vulnerable group are sex workers.<sup>143</sup> The AIDS commission declared that the gender gap is largely responsible for the spread of HIV/AIDS, because under feudal traditions still present in Papua women have to be submissive to men, even if that means putting themselves at risk of contracting diseases. Alcoholism and unsafe sexual intercourse among young generations have also contributed to the spread of the infection.

140 Stop Sudah!! Kesaksian Perempuan Papua Korban Kekerasan dan Pelanggaran HAM 1963 – 2009: [http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new\\_buku%20laporan%20stop%20sudah%20papua\\_revisi%2004102010.pdf](http://komnasperempuan.or.id/publikasi/Indonesia/materi%20publikasi/Laporan%20Pemantauan/new_buku%20laporan%20stop%20sudah%20papua_revisi%2004102010.pdf).

141 Down To Earth (2007). The impacts of oil palm plantations on women: <http://www.downtoearth-indonesia.org/old-site/74eim.htm>.

142 Chesterfield, N (2006). Terror-razing the forest: <http://www.forestnetwork.net/rhw/pdf/Terror-razingtheForest.pdf>.

143 Jakarta Post (2011): <http://www.thejakartapost.com/news/2011/01/24/housewives-account-most-hiv-aids-cases-papua-govt.html>.

Victor C. Mambor, the coordinator of Stop AIDS Now! Papua has said that: “The weak promotion of women’s rights leaves them with no bargaining power in facing men, and this has contributed to the increasing prevalence of HIV/AIDS among housewives”<sup>144</sup>.

## 4.2 Indigenous Peoples

Indonesia has not yet ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples, but it has been one of the countries that have consistently supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, since 2006.

Although Indonesia has adopted some national laws, for example those related to Mining (UU No. 11/1967) or Forestry (UU No. 5/1967) which contains the government’s obligation to acknowledge and protect indigenous peoples’ rights, indigenous Papuans are still heavily marginalized in the name of development and national state policies. The Special Autonomy law, despite the fact that it contains several articles to ensure the protection of indigenous cultural rights (UU No. 21/2001, pasal 44) and land rights (UU No. 21/2001, pasal 38 [ayat 2] & pasal 43 [ayat 1–5]), it fails to protect indigenous Papuans from land rights violations and exploitation.

Many Papuans are thoroughly disappointed in the Special Autonomy Law which, to date, has failed to bring any positive change for indigenous peoples in Papua. Particularly, with regard to land rights protection, the central and local government has not shown any commitment towards indigenous groups and has failed to provide assistance in land rights issues, such as Free, Prior and Informed Consent procedures (UN Declaration on the Rights of Indigenous Peoples, Article 11 [2]), for indigenous communities.

Until now there has not been clear frameworks dealing with customary land rights and most indigenous Papuans do not understand their rights or the commercial value of their land (ICG, 19 July 2007, p. 5). In particular, those whose settlements and villages are located in areas of commercial interest of private investors lost their land and suffered displacement as result of violations of their rights.

Besides the lack of effective legal protection at the national level, indigenous Papuans have to face increasing marginalization caused by uncontrolled migration and related national government policies. In 2010, gross

violations of indigenous peoples’ rights occurred mainly as the result of military sweeping operations conducted in the Puncak Jaya region (central highlands), and in conjunction with ongoing mining activities in the Paniai Regency and huge agricultural projects like the Merauke Integrated Food & Energy Estate (MIFEE). Particularly in regions like Raja Ampat, Paniai and Mimika, where mining companies operate close to indigenous communities, indigenous peoples have to face a permanent presence of police and military forces.

The security forces are paid by the companies to protect their mining operations and create a climate of intimidation among the indigenous local population. The situation going on in the US based Freeport-McMoRan Copper & Gold Inc. mine in Mimika Regency (Grasberg Mine) is a clear example; security forces take advantage of lucrative security contracts signed with the US corporation and therefore do not have any interest in creating a conflict-free environment (Braithwaite et. al., March 2010, p. 71).

### 4.2.1 Displacement

In 2010, cases of displacement of indigenous Papuans resulted from military sweeping operations in Puncak Jaya Regency (IDMC, 13 October 2010), development projects like the MIFEE project in Merauke Regency (Zakaria, Kleden, Franky, January 2011, p. 67) and tribal clashes in Mimika Regency (Jakarta Globe, 24 May 2010 / Jakarta Post, 25 May 2010).

In May and June 2010, an unknown number of indigenous Papuans were internally displaced by several military sweeping operations against OPM rebels in the central highlands Regency of Puncak Jaya. Since the Army has denied access to the remote region to several organizations which sought to provide basic humanitarian help and healthcare to the victims, the number of displaced people can only be estimated between several hundred to several thousands. During the sweeping operations, indigenous villagers in the Puncak Jaya Regency had to flee to the forests where access to food, shelter, water, and healthcare is difficult.

In the past, indigenous people who were forced to flee similar military operations often suffered from malnutrition, diseases, and sometimes even death. (IDMC & NRC, 13 October 2010, p.1). Such operations have often been accompanied by gross human rights violations, such as the burning of homes and properties, the destruction of gardens and other means of livelihoods, rapes, physical

144 Jakarta Post, December 2009: <http://www.thejakartapost.com/news/2009/08/12/papua-better-protecting-women-against-hiv-aids.html>.

abuse, torture, and extrajudicial killings. These abuses have been perpetrated by members of the Indonesian Military Forces (TNI) who did not make any distinctions between members of OPM and indigenous civilians (HRW, 5 July 2007, pp. 4, 5).

During the military operations of May and June 2010, members of Brimob (Mobile Brigade Police Force) and the military (TNI) reportedly killed two civilians in Tingginambut District raped a pregnant woman in Tinggineri village (Tingginambut District), burned 12 houses and 2 churches in Gwenggu Pilia, killed all livestock in three villages in the Tingginambut district, and forced civilians to work for them in Pos Nalime (Tingginambut district). While many indigenous people had hidden in the forests, some villagers in the districts Yambi, Agandugume and Ilaga Peak escaped to Majesty Towogi district. Some people from Tingginambut district have fled to the forests, while others have sought refuge in Kuyawagiastir, Tiom and Lani Jaya district (WPAT, 30 June 2010, pp. 2, 3/WPAT, 31 July 2010, p. 2).

None of the perpetrators of the above mentioned human rights violations have been brought to justice. The impunity enjoyed by Indonesian security forces was criticized by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2008 (UNSR, 10 March 2008, p. 15).

In 2010, the displacement of indigenous Papuans in Merauke Regency allegedly happened in connection with the support offered by the Government to the MIFEE project.

In Boepe village, Kaptel district, the indigenous Malind population had to be relocated from its original site. The old village is now being used by Pt. Medco Papua Industri Lestari and it has become a restricted area. Plans to build a fabric and a wood plantation for paper production in Boepe, followed by the relocation of the villagers, have been in development since 2009. Although PT Medco Papua Industri Lestari has promised to pay compensation for the relocation of Boepe Village, the indigenous Malind population has not yet received any payment and the new village has not been prepared for the villagers' resettlement. To rebuild their houses, most villagers had to use the money they received (Piagam Penghargaan) for having given their consent to the company's presence in the village. Others decided to look for shelter at relatives' houses in other Malind villages (Zakaria, Kleden, Franky, January 2011, pp. 11, 67).

In May 2010, the tabloid Jubi reported that Malind people from Boepe village were experiencing difficulties in

accessing wood and animals for hunting as a result of the village relocation three kilometers away from its original site. Boepe villagers also have suffered from shortages of clean drinking water because PT Medco Papua Industri Lestari has thrown industrial pulp production waste into the nearby river (Tabloid Jubi, 14 May 2010, p. 1).

In addition, in 2010, displacement episodes have been caused by tribal clashes in Mimika Regency. During the tribal warfare of May 2010, members of the tribes from Wamena and Paniai started assaulting villages close to Timika to kill members of the Kei tribe. An unknown number of indigenous people, mainly women, elders and children, fled and sought refuge in an Indonesian military base. The attack was carried out as an act of revenge for the death of a Kei man (Jakarta Globe, 24 May 2010 / Jakarta Post, 25 May 2010).

#### **4.2.2 Land Rights**

Land rights violations are one of the most serious problems indigenous communities have to face as their way of life, their livelihood, and their cultural and ancestral heritage are closely linked to their land and natural environment. Land rights violations mostly occur in areas where agricultural, mining, palm oil or logging companies launch their operations. The companies' operations and the presence of non-Papuan labor often lead to the heavy marginalization of affected indigenous groups.

In most Papuan ethnic groups, lands are collectively owned and divided among inner-tribal units like clans or sibs. The fact that companies often bargain only with the leaders of certain clans or villages and not with all parties involved has caused serious tensions and conflicts within indigenous communities. Moreover, compensation payments are often characterized by a lack of transparency and are not divided in accordance with customary law (Rosaryanto, Petege, January 2010, pp. 9, 10). Other conflicts occur when, within an indigenous community, one party accepts and another one rejects an investment.

Besides horizontal conflicts within indigenous communities, vertical conflicts between indigenous peoples and operating companies seem to be a serious problem all over Papua. Such disputes normally arise when indigenous people receive little or no compensation for the use of their land. In Merauke regency, several such cases have been documented (Zakaria, Kleden, Franky, January 2011, p. 60).

In 2010, serious violations of indigenous peoples' land rights reportedly took place in connection with illegal mining operations, in Paniai regency, and as a result of

the MIFEE project, in Merauke regency. Again in 2010, illegal gold mining operations at Degeuwo River in the Bayabiru region, Bogobaida district, Paniai regency, started in 2002 and made the area a hotspot for social tensions and land rights violations.

The increasing presence of migrants from other Indonesian islands and other parts of Papua have caused serious land conflicts between mine operators and members of the Wolani and Mee tribe who own the land rights in this area. The mine operators in the area have mining licenses (SIPE – Surat Izin Pertambangan Emas) issued by the Mining Department of Nabire Regency, but operate illegally in the Paniai regency (Rosaryanto, Petege, January 2010, p. 3/Gobai, 10 June 2009, pp. 2 f). Several written requests made in 2009 by the district government and the head of Paniai regency, Naftali Yogi, to stop illegal mining operations in the area were ignored by the mine operators (Rosaryanto, Petege, January 2010, p. 14).

Indigenous landowners were given little compensation by mine operators and shop owners who have set up businesses such as billiard bars, karaoke bars and small stores. In the case of the Bayabiru area, payments had been handed over to the village head and tribal leader who did not distribute the money to the landowning clans. This fact has caused widespread resentment among the Wolanis and led to conflicts between mining operators and indigenous landowning clan members (Rosaryanto, Petege, January 2010, p. 9).

The presence of Mobile Brigade Police forces (Brimob) and military forces (TNI) protecting the illegal gold mine operation has created serious tensions and a climate of intimidation in the Bogobaida district. Members of the indigenous population have been beaten and shot at (Rosaryanto, Petege, January 2010, p. 3/John Gobai, 10 June 2009, p. 4). The military activities in the region represent a violation of indigenous peoples' rights according to the UN Declaration on Indigenous Peoples' Rights (article 30), as they cannot be justified by a relevant public interest nor did the indigenous population ever agree to the presence of police and military forces.

The illegal mining operations in Bogobaida district is causing serious environmental pollution and have also led to an increase of illegal logging in the area, due to the fact that miners need wood to build their houses and maintain their gold mines. During a visit to Bayubiru area, the Secretariat for Justice, Peace and Integrity of Creation (SKP KC) of Fransiskan Papua from Jayapura reported that the indigenous landowners were only given small compensation – between IRP 500.000 and IRP 1.000.000 – per tree (Rosaryanto, Petege, January 2010, p. 8).

Other violations of indigenous land rights were reported in 2010 in Merauke regency and they are related to the implementation of the MIFEE project which the Indonesian Central Government supports and promotes as the ultimate solution to the growing demand for food. The MIFEE project is supposed to maintain the national food security for Indonesia's increasing population (Jakarta Post, 02 September 2010). One of the indigenous groups in Merauke Regency which is mainly affected by the project is the Malind Arnim tribe. The Malind Arnim do not practice farming or gardening, but survive by hunting, fishing, gathering, and harvesting wild sago stocks (Zakaria, Kleden, Franky, January 2011, pp. 74 f).

According to data from BAPINDA Merauke Regency, 36 companies made investments in the Regency, almost all of them having received legal permission from the government of Merauke regency (BAPINDA Kabupaten Merauke, May 2010). Indigenous land owners, despite being legitimate inhabitants and owners of the land, were not informed or even taken into account in spatial planning and land allocation, although the national law grants every Indonesian citizen the right to be informed about any spatial planning (UU 26 Tahun 2007, Pasal 60, huruf a). The non-participative procedures show the Government's lack of commitment towards the indigenous population in the regency and have laid the foundation for land rights violations committed by several companies in 2009 and 2010 (Zakaria, Kleden, Franky, January 2011, pp. 14 f).

Indigenous land rights violation cases in Merauke have been reported in the village of Zenegi, Kaliki and Boepe. In all cases, subsidiary companies of the Medco group, namely PT Selaras Inti Semesta and PT Medco Papua Industri Lestari, were involved.

In Kaliki village, Kurik district, PT. Selaras Inti Semesta contacted the representatives of the four local clans and arranged a few meetings in 2008. During a meeting on 3 March the company promised to build houses and a school, pay education fees for their children, build a new road to the village and give some motorbikes to the villagers. On 29 October 2008, the clan leaders signed a contract agreeing that the company would build an industrial wood plantation (Hutan Tanaman Industri) in the Kaliki area (JPIC GKI, 03 March 2011, p. 1). For the lease, which was signed in October 2009, the company only bargained with the representative of one clan. This contract mentions neither the size of the leased land nor the compensation payment. According to the lease, the compensation payment is set by the company. The contract only makes reference to compensation between IRP 1.500 to 2.000 per cubic meter for the cut trees



(Perjanjian Pengelolaan Lahan No: 46/PPL/SIS/ X/2009, 06 October 2009, p. 4).

Besides the written six year lease, PT. Selaras Inti Semesta made an oral agreement with the clan representative to use 20 hectares for an Acacia plantation and provide IRP 20.000.000 and several motorcycles as compensation. Contrary to the oral agreement, the company extended their plantation to an estimated size of 100 hectares in 2010. The presence of PT Selaras Inti Semesta caused conflicts and jealousy among the villagers. PT Cenderawasih Jaya Mandiri and PT Karya Bumi Papua, both subsidiary companies of the Rajawali Group, have already received operating licenses for the Kurik district in 2010 and plan to build a sugarcane plantation and a sugar factory in the Kaliki area (Nerotouw, 07 December 2010, pp. 1 f).

In 2010, a similar case was reported in Zenegi village where PT Selaras Inti Semesta gave IRP 300.000.000 to the head of Zenegi village and to one indigenous leader. The company called the money an award (Piagam Penghargaan) for the indigenous villagers of Zenegi village, because they had agreed that the company could launch its operations in the area around the village. This act seems to be part of the company's common strategy to get in contact with the people and convince them to accept the companies contractual conditions. Later, PT Selaras Inti Semesta mentioned the given award in the MoU as compensation payment for the land usage, which caused not only tensions between the company and the indigenous population in Zenegi, but also horizontal conflicts as PT. Selaras Inti Semesta only bargained with one of the six clans holding land rights in Zenegi (Zakaria, Kleden, Franky, January 2011, pp. 57 f.).

As in the case of Kaliki Village, PT Selaras Inti Semesta has not adhered to the contractual arrangements. According to the MoU, logging operations should not be conducted within 2 km of hunting grounds, sacred sites and sago stocks. Villagers from Zenegi complained that the company carried out their logging operations only 50 meters away from protected areas. Other agreements, like the construction of a school, a small clinic and a new church in Zenegi village, have not yet been realized (Zakaria, Kleden, Franky, January 2011, pp. 65 f.).

A worse case of fraud has been reported in Boepe village where PT. Medco Papua Industri Lestari has only paid IRP 100.000.000 compensation for 1000 hectares of land to the villagers (IRP 10 per square meter). Similar to the episode in Zenegi Village, the company gave money and material goods as an award to the people in order to convince them to sign a MoU. Later on, the money and material were mentioned as compensation payments in the written MoU. The document also mentions the

companies right to obtain the land rights from the authorized government institution in charge. This makes the company the legal owner of the land and deprives the indigenous Malind of Boepe from the possibility of laying claim to their ancestral lands (Zakaria, Kleden, Franky, January 2011, p. 63).

Such cases are particularly common in Merauke Regency, where the government issued permits for companies without any Free, Prior, and Informed Consent of the affected indigenous population, constituting a clear violation of articles 8/2 (b, c, d), 10, 11 (2), 18 of the UN Declaration on the Rights of Indigenous Peoples. The local government in Merauke failed to take effective measures to discipline the companies or protect the affected indigenous people's rights. It seems more concerned about creating an investment-friendly environment for companies than making commitments to the indigenous population. Similar observations were made by USAID in 2009, when it expressed its concern over the government's investment policy and its apparent disregard for customary land ownership rights (USAID, February 2009, p. 107).

#### **4.2.3 Indigenous Cultural Rights**

Violations of indigenous cultural rights are closely related to violations of land rights. Most indigenous Papuans consider their land as their "Mother", land of their ancestors, or origin. This implies that the land does not have just a value related to livelihood for them, but it also has a deep sacred meaning. The forced severance of the close bond that exists between indigenous peoples and their lands is detrimental to their livelihood, culture and traditions of indigenous Papuans.

In 2010, various companies' operations had a deep impact on the Papuan environment. The affected indigenous communities were hardly able to practice their traditional methods of production or gain access to sacred places. This constitutes a violation of several articles of the UN Declaration on the Rights of Indigenous Peoples (articles 3, 8 (b), 12/1, 12/2). Such violations of cultural rights happened, for example, in Merauke regency, particularly in Zenegi and Boepe village. A majority of the affected indigenous populations belong to the Malind Arnim whose economy is based on hunting, fishing and the harvesting of wild sago stocks. The population of the Boepe village reported difficulties finding firewood and water, and hunting. Residents of Zenegi village complained that logging operations by PT. Selaras Inti Semesta took place close to hunting grounds, sacred sites and sago stocks and therefore constitute a threat to the people's livelihood and ancestral traditions (Tabloid Jubi, 15 May 2010/Zakaria, Kleden, Franky, January 2011, pp. 65 f.).

The ongoing influx of Indonesian migrants opening businesses in remote areas close to indigenous peoples' settlements leads to an increase of alcohol consumption, gambling and prostitution and creates a deep impact on indigenous societies. The situation in Degeuwo, Paniai regency, in 2010 is one example. The presence of illegal mining sites launched by migrants who are opening shops, billiard and karaoke bars have a deep impact on the indigenous people's culture in the area. The indigenous Wolani in Degeuwo have come into contact with prostitution, gambling and alcohol, including children under the age of eighteen. Many Wolani, have started to look for gold instead of cultivating their gardens which is traditionally the major economic activity in the Wolani culture.

Most indigenous people are also highly attracted by the goods sold in the newly established shops. According to a report from SKP KC Fransiskan Papua, some people are already getting used to buying expensive food in the shops rather than cooking traditional food. This situation slowly creates a dependency on money and gold among local indigenous Wolani (Rosaryanto, Petege, January 2010, pp. 13 f).

Since most of the indigenous people's land has already been sold to mine operators, the local Wolani face an uncertain future. The environment in the area has also been highly degraded. The illegal logging, the erosion resulting from the gold exploitation, and the heavy pollution of the drinking water caused by the use of mercury and other chemicals, make it unlikely that indigenous people in the area will be able to carry on gardening, gathering, and hunting in the future (Gobai, 10 June 2009, p. 3).

#### 4.2.4 Indonesian Influx

In 2010, the Provincial Governments of Papua and West Papua did not take any legal steps to control the increasing migration flux of Indonesians attracted by Papua's growing business opportunities.

According to the 2010 census, 2.85 million people live in Papua Province, and the smaller West Papua Province has a population of 0.76 million people. (Hasil Sensus Penduduk 2010 Provinsi Papua, August 2010, p. 7/Hasil Sensus Penduduk 2010 Papua Barat, August 2010, p. 1).

Comparing the data from the 2000 census, when the two provinces were not yet divided, the population has

increased by 65%. This cannot be simply explained by a high birth rate. The rapid growth of the population is in fact the result of an uncontrolled migration flux from other parts of Indonesia (Flor, November 2010, p. 3). So far, the provincial governments have not yet taken any legal measures to control the migration, with the result that indigenous Papuans are becoming a minority on their own island.

The latest 2010 census does not contain disaggregated data about the composition of the population. Therefore it is difficult to determine the exact ratio of Papuans to non-Papuans.

Based on historical growth rates, members of the Center for Peace and Conflict Studies of the University of Sydney concluded that Papuans have already become a minority with a population ratio of 48.73% Papuan to 51.27% non-Papuan in 2010.<sup>145</sup>

If Papuans have already become a minority in the urban regions, they still constitute the majority in the remote areas which are less attractive to non-Papuans because they lack access to essential services such as health care, education and other infrastructure (Elmslie, September 2010, pp. 4 ff.).

The ongoing uncontrolled migration to Papua is leading to competition for land and severe economic gaps between migrants and indigenous Papuans as businesses and commercial trade are mostly in the hands of non-Papuans. This situation is generating increasing tensions between both groups. In 2010, several fatal attacks perpetrated by Papuans against Indonesian migrants have been documented (IRIN, 13 August 2010/ICG, 16 June 2008, p. 1).

The increasing migration from other parts of Indonesia is reinforced by the huge development projects requiring specialized labour, which is lacking in Papua. For example, most indigenous Papuans do not have experience in working on rice fields or cash crop plantations. In the Merauke regency, the population does not satisfy the labour requirements of the MIFEE project and this will likely push companies to seek for workers in Java, Sulawesi, and other overpopulated islands in Indonesia.

This situation is expected to lead to serious conflicts between indigenous peoples and migrants who will compete for land and resources. According to the Central

145 According to the census in 1971, indigenous Papuan were the dominant population with a majority of 96,09%. The scientists estimated that Papuan people will become a minority with only 28,99% in 2020, with the assumption that both populations, Papuans and non-Papuans, are growing according to the historic growth rate.



People from Marind Anrim Tribe in the Merauke area during a traditional ceremony in Kaliki village.

Government, the population in Merauke might grow from 175.000 to 800.000 (Jakarta Globe, 5 March 2010). As a consequence, the Malind Anrim people, who have already become a marginalized minority during the Soeharto era, will be further marginalized by the realization of the MIFEE project (Zakaria, Kleden, Franky, January 2011, p. 80 f, see also Klute, November 2010, p. 19).

Although transmigration programs supported by the central government were stopped after the Suharto era, local governments are still pushing transmigration instead of taking legal measures to control it effectively. On 4 March 2010, demonstrations took place in the city of Sorong, West Papua, where indigenous Papuans protested against an agreement between the Governors of West Papua and West Java stating that 7.000 people from West Java should be relocated to the West Papua Province. The demonstrators criticized the Provincial Government of West Papua which declared its willingness to prepare 7.000 houses for the migrants, but showed little commitment towards indigenous Papuans living in poor conditions (JPNN, 05 March 2010). In the past, the establishment of settlements for migrants, planned and developed by the government, often resulted in displacement of indigenous Papuans.

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*A mother and her child have to walk a long distance to collect clean water due to the environmental damage*



### 4.3 Indigenous Peoples' Rights Violations by Freeport Indonesia

On 7 April 1967, when a contract between Freeport Indonesia Incorporated (now Freeport Indonesia Company) and the Government of Indonesia was signed, the occupation and exploitation of the Amugme indigenous people's land started. The contract was renewed for 30 years on 30 December 1991.

The mining process has caused severe environmental damages, the loss of hunting areas and sources of food, and the contamination of Wanagon Lake. Such exploitation and destruction has angered local people, especially those who use the water of Lake Wanagon daily, both as a source of livelihood and as sacred place.

Freeport waited more than 30 years to respond to the suffering of the indigenous people caused by mining. On July 13th 2000, a Memorandum of Understanding (MoU) was signed by Freeport Indonesia Company, The Amungme Indigenous People Institution LEMASA (Lembaga Masyarakat Adat Suku Amungme), and The Kamoro Indigenous People Institution LEMASKO (Lembaga Musyawarah Adar Suku Kamoro). The MoU states that Freeport Indonesia Company ***“will continue to acknowledge and respect the adat and land (‘ulayat’) rights of the Amungme dan Kamoro and will strive to finalize the agreement for voluntary additional ‘recognisi’ (Trust Fund), which Trust Fund, in whole or in part, it is contemplated can be used to purchase shares of stock in Freeport- McMoRan Copper & Gold Inc. thereby assuring an ongoing interest in and ownership of the mining operation by the Amungme dan Kamoro.”***

However, the MoU has not been implemented yet by Freeport Indonesia. Consequently, several representatives from three villages affected (Tsinga, Banti (Waa), and Arwanop) approached the Indonesian Human Rights Committee for Social Justice (IHCS) to ask for assistance. Soon after the IHCS conducted a field trip to the Freeport operational area, in Timika Papua and met with several stakeholders. The designation of IHCS as advocate for the three villages represented the first step toward the goal of opening a dialogue with the Freeport Indonesia Company.

Two meetings were arranged on 11 and 15 September 2008, but little progress was made, due to the fact that Freeport Indonesia Company appeared unwilling to address the matter. The IHCS with representatives from the three villages reported the matter to the Indonesian National Commission for Human Rights (Komnas HAM) and asked it to mediate in the case.

Komnas HAM invited the parties several times to engage in a dialogue. While the leaders of the Amugme and Komoro<sup>146</sup> indigenous people attended, no one from Freeport Indonesia Company came. They sent a letter asking to postpone the meeting to 15 November 2010. The commissioner ordered Freeport Indonesia Company to attend the second meeting on 19 October 2010. On the appointed day, Freeport Indonesia Company sent one member of its legal staff and one member of its government relations staff. The Papuan leaders refused to talk to them because they believed that their rank did not qualify them to talk to the community leaders and to take significant decisions. Komnas HAM later arranged another mediation date on 27 October, but again, Freeport Indonesia Company failed to attend the appointment. Several high level officers of Freeport Indonesia Company eventually attended another mediation date on 22 November. The meeting then continued on 10 March 2011.

It is worth noting that in the middle of the mediation process, Titus Natkime, a former staff member of Freeport

and also a member of the Amungmes, suddenly registered a civil suit in Southern Jakarta district court against Freeport regarding his ancestral land. In the suit, he claimed to be representative of all the Amungme.

There were two major discrepancies in this process. Firstly, Titus Natkime was working with Freeport. In fact, in the first meeting between the indigenous people and Freeport, Titus acted as the representative of Freeport. Secondly, Titus claimed to be the representative of the Amungmes though he never declared this to the Amungme tribe. The Amungmes' land, which occupies the Grasberg Mountain is divided into several different areas that are each managed by different families such as the Bugaleng, Beanal, Natkime, Magal, Mamang, Ketenangame, Onawame, Jamang, Eanam, Omabak, Jangkup, and Abugau.

For this reason, the IHCS and the Amungmes considered Titus' action an effort to interfere in the mediation process which was conducted by the Indonesian National Commission for Human Rights.

## Section 5 – Security Sector and Human Rights in Papua

The Indonesian public has called for security sector reforms since the Soeharto downfall in 1998. The report "Securitization in Papua – The Implication of Security Approach towards Human Rights Conditions in Papua" by Imparsial<sup>147</sup> clarifies the link between the security reform adopted in Papua and its impacts on the human rights situation in the province. It shows that, in Papua, the Indonesian Army applies a security approach that leads to a wide range of human rights violations such as intimidation, murder, terror, torture, rape and violence. Moreover, the implementation of the Special Autonomy Law in 2001 has yet to significantly alter the existing security approach.

### 5.1 Background

Since Papua was integrated into the administration of the Government of Indonesia (1963) and the Act of Free Choice (1969), the Government has adopted a security/military approach for the maintenance of the State's

sovereignty. The aim of this policy is to completely eradicate separatist movements which are perceived as a threat against the State's security and sovereignty.

This military approach is implemented by the Government when dealing with civil society movements that are critical of to the government or Papuan groups that are against the integration of the Papua Province in Indonesia. As peace is not the result of violence, the security and military approach does not result in any conflict resolution. On the contrary, it fuels and maintains the existing conflicts and perpetuates the substantial human costs associated with widespread violations of human rights in Papua.

The presence of security personnel is very much evident in the daily life of Papuans. Military and Police forces from outside Papua continue to be deployed at an increasing rate, both in terms of numbers and frequency of tours of duty. It remains difficult, however, to find out the actual

146 In the meeting, IHCS received power of attorney from the Kamoros.

147 This Section is fully based on the report 'Securitization in Papua – The Implication of Security Approach towards Human Rights Conditions in Papua' by Imparsial. Authors (Imparsial Team): Al Araf, Anton Aliabbas, Ardi Manto, Bhatara Ibnu Reza, Cahyadi Satriya, Ghufron Mabruhi, Jaky Nurhasya, Junaidi Simun, Muchamad Ali Safa'at, Poengky Indarti.

number of troops deployed since there is no policy transparency.<sup>148</sup> Besides this, there is also an increase of military and security activities ranging from operations aimed at eradicating groups deemed separatists to groups conducting basic community and social work. For the locations and numbers of military personnel in Papua see the map on p. 57, showing Indonesian military (TNI) commands, bases and deployed units in West Papua.

## 5.2 Implications of the presence of the Army on the Human Rights Conditions in Papua

Clearly, the presence of the military does not improve the security of the people in Papua. The label of “separatists” given to people who oppose the government often leads to acts of violence. There are many examples of human rights violations before, during, and after the New Order. Below, two cases from 2010 mentioned in the Imparsial report are described.

### ■ The case of an arbitrary search, based on the testimony of Workwana-Arso people in Keerom district.

On November 26th, 2010, the Airborne Infantry Battalion Task Force of the Army Strategic Reserve Command came with two military trucks and dressed in combat uniforms to raid and search the house of any individuals suspected of being related to Lambert Pekikir, a member of the Free Papua Movement. Lambert was believed to be already in Papua New Guinea at that time. This search left the family in a tremendous state of fear. This was not the first arbitrary house search. In September 2010, other troops had conducted a similar operation, searching the houses and gardens of the people suspected to be related to Lambert.

■ **The case of the torture videos in Tingginambut, Puncak Jaya.** This case is described in more detail in Chapter 2.2.1 and 2.2.2 of this report. In 2010, two videos appeared on the Internet showing the practice of torture by Indonesian military against members of the local community. The first video records violence perpetrated in March 2010, in the Gurage village. The second one shows the interrogations of OPM leaders conducted by military personnel in the same area, in May 2010. The legal proceeding that followed demonstrates that human rights violations committed by the military in Papua are not seriously addressed.

■ **Gender based violence.** Since the area is continuously engulfed by conflicts, Papuan women face serious gender based violence, especially because the central government continues to use such a heavy-handed military approach to security. Many women are victims of rape or other forms of assault, leaving them with deep traumas. For instance, on September 11th 2010, 5 border security troops from Infantry Battalion 527/BY raped women in Yuruf (Keerom River). Later in September, the security personnel divulged a memo requiring signatures from local villagers and religious leaders that they would not press charges against the military personnel involved in the rape case.

■ **Human rights defenders.** In Papua, the work of human rights defenders is seriously hampered by the intimidation and violence of the military personnel.<sup>149</sup> Victims include NGO activists, students, journalists, religious leaders, and community leaders. Many face threats through SMS or phone calls, become targets of wiretappings and surveillance, or victims of direct violence. Others face violence, threats of being arrested or detained, assaults and torture during their detention, disruption to meetings, limitations of freedom of expression and assembly, attacks on their property, death threats and even murders.

The justification given is often related to crimes, provocations, and acts of treason allegedly committed by the human rights defenders against the state. In particular, separatism is cited as a reason for targeting these individuals. The conclusion of the Special Rapporteur on Human Rights Defenders – Ms. Hina Jilani – after her visit to Papua in 2007 is still relevant: “Despite visible progress in the country’s democratic development, human rights defenders continue to experience serious constraints in conducting their activities for the protection of human rights. Such constraints are imputable to the continuing activities of the police, the military and other security and intelligence agencies as well as religious fundamentalist groups that are aimed at harassing and intimidating defenders or restricting their access to victims and to sites of human rights violations”.

148 Imparsial estimates that there are 14.842 military personnel deployed in the region.

149 The 15 cases documented since 1998 include intimidation, arrest, assault, torture and murder.

Other human rights and security issues in which the military is said to be involved are:

- Shootings around PT Freeport;
- Illegal logging;
- Land conflicts, particularly the involvement of the military in the arrest of local people and forced relinquishing of indigenous land;
- Distribution of illegal alcohol;
- The confiscation of traditional instruments of rituals.

### 5.3 Security (military) Policies, Politics, and Challenges in Enforcing Human Rights

“The military is Indonesia, Indonesia is the military” is the common perception of the Papuans. The bitter history of years of violence and human rights violations naturally resulted in tension and conflicts. To realize the ‘Papua land of peace’ image one needs a political approach instead of the enforced security approach.

The current security policies implemented in Papua seriously challenge any improvement in the human rights situation. Several reasons for the worsening human rights situation in relation to militarization can be identified as follows.

- A. The primacy of national security over individual security in government policy:
  - **Lack of trust between Jakarta and Papua.** The relationship between Jakarta and Papua is based on suspicion and a lack of trust. The central government is suspicious of every move made by Papuan separatist groups and employs the “separatist stereotype” against Papuans in general. From the Papuan point of view, Jakarta is seen as manipulative and deceitful.
  - **Widespread prejudice related to separatism as a potential source of violence.** Military personnel at all levels bear such prejudice and are therefore prone to subject people to abuse and ill-treat people.
- B. The politics of Papuan security policy:
  - **Military domination and repression.** There is an overconcentration of military personnel in Papua with approximately 15,000 soldiers in the region. Their way of operating is based on domination and manipulation.
  - **Legitimacy and justification of the roles of the military.** Voices of dissidents and dissatisfaction remain strong, and one of them is the Free Papua Movement (OPM). Although the movement is seen to be lacking the strength to pose a serious threat to the unity of Indonesia,

Jakarta considers them an important justification for the security policies implemented in Papua. By repeatedly emphasizing the OPM threat, Jakarta accumulates public support for its policy.

The abovementioned securitization in Papua generates increasing violence and human rights violations. The victims of human rights abuses committed by the military personnel in Papua are from various backgrounds, ranging from political activists, to journalists, to ordinary people. Those who are investigating human rights cases or critically questioning the human rights situation are often labeled as being part of the separatist movement. This influences the expansion of military surveillance.

### 5.4 Conclusion and Recommendations

The pattern of securitization in Papua is related to the inadequate efforts at security reform, and the low professionalism of the military personnel. As a result, human rights conditions in Papua remain at best unchanged with limitations of freedom of expression, limitations of freedom of movement, intimidations, arrests, torture, sexual violence, confiscations of goods and belongings, and arbitrary killings.

Not many cases have been brought to justice so the culture of impunity remains. The security policy implemented in Papua makes the existing conflicts more complex and difficult to handle.

In the future, to improve security and human rights enforcement in Papua, radical political and policy changes are needed. According to the Imparsial report, the conflicts can only be solved and the respect for human rights can only be achieved if the central government will take into consideration the following points:

- 1. Accelerating security sector reform, particularly military reform;
- 2. De-securitization and reduction of military personnel;
- 3. Adoption of peaceful conflict resolution, including a Jakarta-Papua dialogue and evaluation of the implementation of the Special Autonomy Law;
- 4. Eradication of impunity for past human rights violations;
- 5. Strengthening civil authority and public scrutiny.



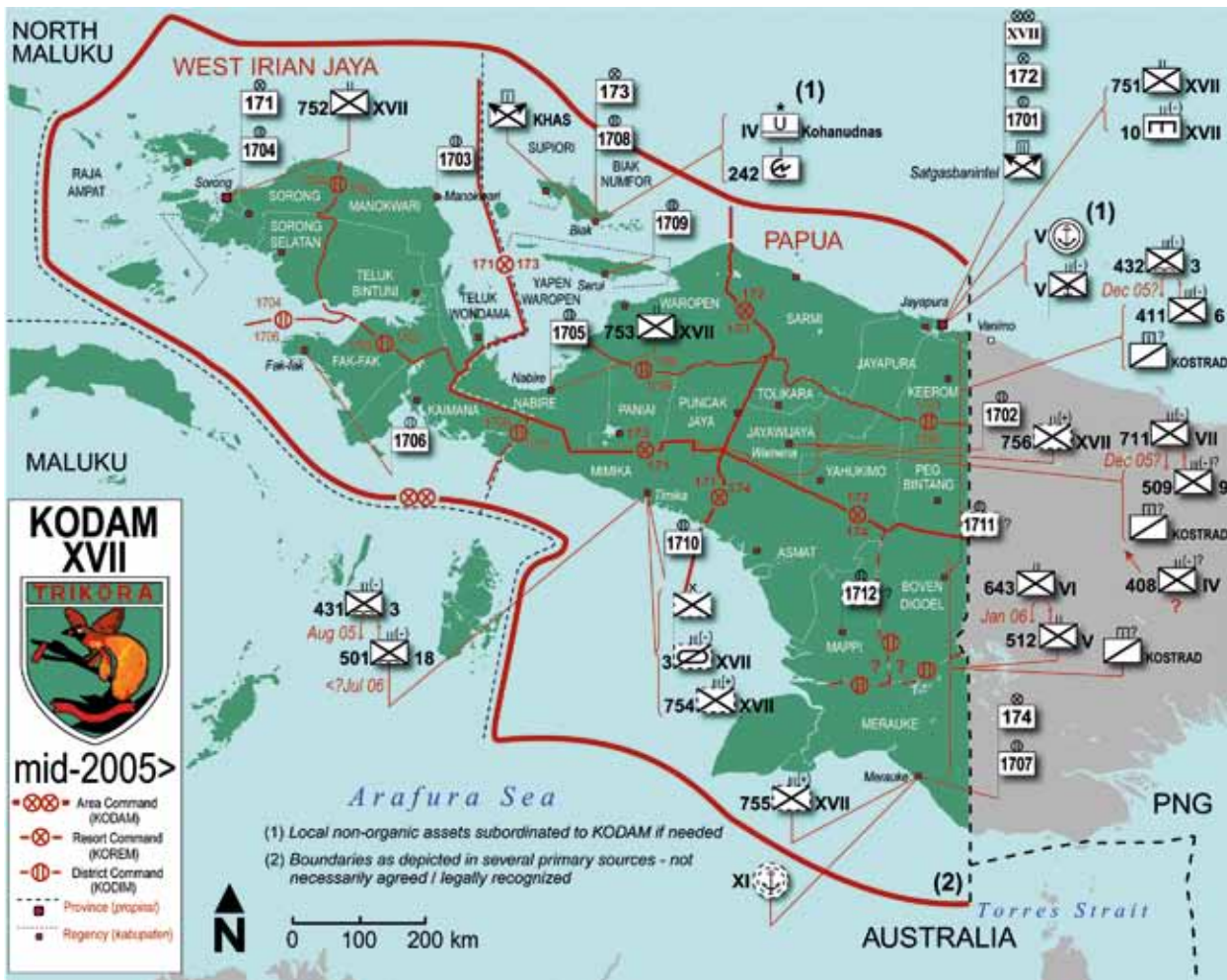


Figure 1: Indonesian military (TNI) commands, bases and deployed units in West Papua<sup>150</sup>

## Section 6 – Recommendations

The present 2010/2011 Human Rights Report on Papua indicates in no uncertain terms that an enormous effort must be exerted to transform the current human rights situation in Indonesia and ensure the full enjoyment of human rights of the Papuans. The following paragraphs contain the recommendations to the Government of Indonesia and its institutions, to the International Community and to the European Union and its member states.

### 6.1 To the Government of Indonesia and its Institutions

In light of the findings of this report, the Government of Indonesia is recommended to adapt its institutional infrastructure in accordance with existing international standards. The adaption and implementation of these

measures will have a significant impact on the state of human rights in the Indonesian provinces of Papua and West Papua.

In particular, the Government of Indonesia should ratify:

- Rome Statute of the International Criminal Court;
- Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment;
- Optional Protocols 1 and 2 to the International Covenant on Civil and Political Rights;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography;
- International Convention on the Protection of All Persons from Enforced Disappearance.

150 Matthew N. Davies, 'TNI and POLRI Forces in West Papua: Restructuring and Reasserting Sovereignty' in Austral Special Report 06–2.85, p. 7, 17 August 2006, Nautilus Institute for Security and Sustainability

The Government of Indonesia should extend a standing invitation to all UN Special Procedures, to enhance its engagement with the Special Procedures mechanism and to benefit from their recommendations, in order to adapt the national legislation to the international human rights standards, and in particular the recommendations by the UN Special Rapporteurs on Freedom of Religion or Belief, on Freedom of Expression and Opinion, and on the protection of human rights while countering terrorism. The UN Special Rapporteurs should be allowed to have unlimited access to the Indonesian provinces of Papua and West Papua and be able to meet with representatives of civil society without restrictions.

In relation to the institutional framework, the government of Indonesia should take concrete measures to:

- guarantee the independence of the judiciary and prevent attempts of interference in judicial affairs by government officials;
- harmonise local laws with national and international standards and strengthen national and regional human rights institutions;
- ensure the effective civilian oversight of the military through the establishment of a civilian criminal court jurisdiction over members of the military responsible for crimes perpetrated against civilians;
- improve the procedures for civilians to complain against military and police personnel, and amend the Law of Criminal Procedures to limit the ability of the security forces to delay or discontinue legal proceedings against its members;
- ensure the judicial oversight of Section 31 of Law 15/2003 in order to prevent violations of the freedom of expression and amend Law 15/2003 to narrow the definition of terrorism in accordance with international standards and thus prevent abusive interpretations of the law and criminalisation of legitimate and peaceful activities and opinions;
- eliminate provisions in Section 26 of Law 15/2003 which allow uncorroborated intelligence to be used as legal evidence for investigation and detention;
- cease the arbitrary labelling of individuals as ‘terrorists’ and arbitrary arrests, e.g. family members of those suspected of terrorist activity;
- introduce effective legislation that establishes a transparent and accountable oversight of the intelligence agencies, and ensure that the use of evidence obtained through coercion or torture is absolutely prohibited in law and in practice.

The Government of Indonesia needs to take concrete measures to combat impunity, especially for the human rights violations in the Indonesian provinces of Papua and West Papua.

The Government of Indonesia should:

- devote adequate attention, resources, and political will to properly investigate, prosecute and punish perpetrators, in particular, in cases pending in court;
- conduct effective, transparent, independent, and impartial investigation into allegations of human rights abuses, especially those allegedly committed by state security forces;
- conduct prompt and effective investigations into allegations and cases of torture and provide adequate remedies to victims;
- include the crime of torture in the Criminal Code.

In order to establish a culture of the rule of law, there is a need to raise awareness and enhance the competence, capacity, and professionalism of the state officials.

The Government of Indonesia should:

- provide training to institutional personnel such as judges, prosecutors, lawyers, law enforcement officials (such as military, police, and intelligence agents) and ensure the effectiveness of the training through monitoring and evaluation;
- engage further in dialogues at the regional and international levels, and share best practices;
- support education and training dealing with women and children’s issues, e.g. related to trafficking in persons;
- provide reliable and substantiated statistical information and data on fundamental elements of social life in the Indonesian provinces of Papua and West Papua, such as demography, governance and administration, education, health, the conditions of employment, and income generation.

The human rights situation in the Indonesian provinces of Papua and West Papua requires special attention as it is a conflict area. There are many aspects to be considered that are beyond this report’s remit.

Nevertheless, the Government of Indonesia should:

- recognise fundamental rights such as freedom of expression and opinion, peaceful assembly, and self-determination of the peoples in accordance with the UN Declaration on the Rights of Indigenous Peoples (Indonesia voted in favour in 2007), and instruct employees of the government and administration to fully respect, protect and adhere to those rights;
- cease the intimidation, harassment and physical violence against human rights defenders, journalists, and religious leaders in Papua;

- permit unrestricted access to Papua for international humanitarian and human rights organisations, international journalists, and parliamentarians;
- conduct prompt and effective investigations into all cases of human rights violations against Papuans, in particular, allegations of torture and extrajudicial killings reportedly perpetrated by members of the military and identify and prosecute those responsible and provide adequate remedies to the victims;
- establish a Human Rights Court and a Truth and Reconciliation Commission in Papua, as stipulated in Article 45 of the Law No. 21/2001 on Special Autonomy for Papua;
- guarantee that the Attorney General's Office will take up its responsibility to further investigate gross human rights violations in Papua, in particular, the Wasior case of 2001/2002 and the Wamena Case of 2003 which were submitted to the Attorney General's Office by the National Human Rights Commission (Komnas HAM) in 2004;
- reduce the number of military forces in Papua and ensure the adherence to human rights principles of Indonesian security forces;
- provide access to detention facilities in Papua for human rights monitoring institutions including the International Committee of the Red Cross;
- recognize, respect, and protect the rights of indigenous people, in particular indigenous land rights and the rights over indigenous natural resources;
- ensure access to basic healthcare, education, and economic opportunity for the indigenous people of Papua.

Furthermore, the Faith-based Network on West Papua (FBN) would like to encourage the Government of Indonesia to engage in an open dialogue with the indigenous people of Papua concerning these unresolved issues.

### 6.2 To the International Community

The international community must support the Government of Indonesia and at the same time take into consideration the delicate balance between support and interference.

The International Community, therefore, should:

- assist the Government of Indonesia in its commitment to fulfill its international human rights obligations;

- strengthen the capacity of civil society actors;
- cooperate and facilitate the UN Special Procedure mandate holders in their work in Papua as well as cooperate and facilitate with the national NGOs, churches, and other stakeholders.

### 6.3 To the European Union and its Members

The European Union and its members should:

- raise the problem of human rights violations in the Indonesian Provinces of Papua and West Papua within the on-going Human Rights Dialogue between the European Union and the Government of Indonesia, with particular focus on impunity;
- support the Government of Indonesia in fulfilling its international obligations and implementing the recommendations issued by the relevant UN bodies and procedures;
- strengthen the capacity of government officials to conduct prompt and effective investigations on human rights violations and thereby prosecute and punish the culprits;
- tailor the economic and military assistance to Indonesia's specific needs with the aim of improving the human rights situation in Papua, and provide for an effective control mechanism for cases of non-compliance (in particular in relation to the training of Indonesian military and police).

Far from being exhaustive, this is a list of recommendations which addresses the human rights situation in the Indonesian provinces of Papua and West Papua which urgently require resolution.



*Children from Papua land of Peace*

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