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I. Introduction

1. This stakeholder report is a joint submission by Watch Indonesia! and the West Papua Network (Westpapua-Netzwerk, WPN). The report highlights key concerns, trends and significant developments in the human rights situation in Indonesia including a particular focus on the region West Papua¹ between June 2017 and March 2022 in the following areas: ***torture, maltreatment and enforced disappearances; extra-judicial or arbitrary executions; freedom of expression and peaceful assembly; the role of the military in West Papua; women's rights; human rights defenders and West Papua; and indigenous peoples. This report will conclude with a set of recommendations.***

2. Watch Indonesia! is a Berlin based human rights NGO working since 1991 to address human rights, democracy and environmental issues in Indonesia and Timor-Leste. It has been actively engaged in doing lobby and advocacy work in Germany, at the EU and the UN level together with its local, national and international partners.

3. The West Papua Network has been monitoring and documenting the human rights and conflict situation, the legal and institutional framework in Indonesia and has been supporting a peaceful solution to the long lasting conflict in West Papua for more than 25 years. It operates jointly with other organisations in the International Coalition for Papua (ICP).

¹ The term West Papua refers to the region comprising the Indonesian easternmost provinces Papua and Papua Barat.

II. Violence by Security Forces in West Papua

A. Torture, Maltreatment and Enforced Disappearances

4. While indigenous Papuans currently make up less than half of the population of West Papua and the demographic development points towards a continuing downward trend,² nearly all the victims of arbitrary arrest, torture and ill-treatment in West Papua are indigenous Papuans. Compared to citizens of other parts of Indonesia, indigenous Papuans experience a double standard when it comes to the right to freedom of expression and assembly and face racial discrimination when it comes to victims' rights in police custody, in courts of law, and in everyday life. Cases of torture in West Papua were reported in 22 out of 40 regencies in the provinces of Papua and Papua Barat throughout 2019 and 2020.³ As in previous years, 99.1% of the victims of torture and ill-treatment between 2019 and 2020 were indigenous Papuans.⁴

5. Despite the concerns expressed during the third UPR of Indonesia in 2017, torture and maltreatment remain institutionalised practices commonly applied by military personnel and law-enforcement members in West Papua. After the highest number of victims of torture and maltreatment in 2014 with 244, the numbers decreased in 2016, 2018, 2020 and 2021 to less than 100, while the annual number of victims of torture in 2017 was 184 and in 2019 126.⁵ In all these years the number of torture and maltreatment cases have remained relatively unchanged with a maximum of 34 cases in 2020.⁶ The high number of victims in 2017 was caused by a higher frequency of incidents as well as by the mass arrests in the town of Nabire on 4 and 5 July, when police officers allegedly tortured 119 supporters of the 'West Papua National Committee' (KNPB) during detention. The high number of victims of torture and maltreatment in 2019 was related to the Anti-Racism-Protests in the second half of that year and the very high number of 1521 cases of arbitrary arrest during the uprising. The increase in mass arrests and police brutality during demonstrations affected a large number of people.

6. Cases of enforced disappearances⁷ have significantly increased since the start of widespread military operations in Nduga Regency in December 2018. Six cases were documented between then and December 2020, all of which occurred exclusively during military operations against the West Papua National Liberation Army (TPN PB) in the Intan Jaya and Nduga regencies. Between 2019 and 2021, at least 22 persons were reported missing.⁸ The victims either got lost attempting to escape military offensives or were arrested by army members and never returned to their homes. All were indigenous Papuans. The cases often follow two patterns – either the perpetrators arrest indigenous Papuans suspected to be members of the TPN PB and their bodies are never found after the arrest, or army members appear to open fire at civilians during a combat situation in remote areas and subsequently make the bodies disappear to avoid legal consequences.

2 A census in 1971 reported a total population of 923,000 inhabitants, consisting of 96% Papuans and only 4%, or 36,000 inhabitants, of non-Papuan descent. By 2010, the population had increased to 3,612,854 people, consisting of 47.9% indigenous Papuans and 52.1% non-Papuans, cf. Jim Elmslie (2017): *The Great Divide: West Papuan Demographics Revisited; Settlers Dominate Coastal Regions but the Highlands Still Overwhelmingly Papuan*, <https://apjif.org/2017/02/Elmslie.html>.

3 ICP (2021): *Human Rights in West Papua*, p.46.

4 ICP (2021): *Human Rights in West Papua*, p.47.

5 ICP (2019): *Human Rights in West Papua*, p.82; ICP (2021): *Human Rights in West Papua*, p.47.

6 ICP (2021): *Human Rights in West Papua*, p.47.

7 Response to UPR recommendation 139.6, Source of position: A/HRC/36/7 - Para. 139.

8 ICP (2021): *Human Rights Update West Papua – 4th Quarter 2021*; ICP (2021): *Human Rights in West Papua*, p.33.

7. During the last UPR in 2017, several states made recommendations⁹ to take measures to put an end to torture and ill-treatment practised by the police forces and to combat the impunity of people responsible for such offenses, including by ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. Several states also recommended to make all acts of torture offences under criminal law, including in the Criminal Code of Indonesia (KUHP), consistent with its binding obligations under the Convention against Torture. To date (March 2022), Indonesia has neither taken legal measures to introduce torture as a crime in its national criminal code KUHP, nor has the government ratified the Optional Protocol of the Convention against Torture and Inhuman or Degrading Treatment (OP-CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance.

B. Extra-judicial or Arbitrary Executions

8. The pattern of cases points to a strong correlation between cases of torture or maltreatment and extra-judicial killings (EJKs). All victims of documented extra-judicial killings from 2017 to 2020 – with one exception – were indigenous Papuans. This is emblematic of the continuing pattern of state violence, violations of the right to life and the persistent racial discrimination which indigenous Papuans face in Indonesia. The majority of EJKs in 2017 and 2018 were caused by acts of severe torture, resulting in the victims' death. 2019 recorded the highest annual number of victims of extra-judicial executions over the past decade, with 33 victims.¹⁰ In 2019 and 2020 the majority of extra-judicial executions (14 of 16 cases)¹¹ were committed by joint security forces. As in previous years, the vast majority of executions were not related to political activity. Only 12.5% of all reported cases of extra-judicial executions occurred because the victims had engaged in a political protest or other forms of peaceful political activism.¹² Of the 32 reported extra-judicial executions in 2019 and 2020, eight cases were related to torture and the victims died as a result of the injuries they sustained.¹³ In 2021 the ICP counted 17 cases of extra-judicial executions.¹⁴

9. The lack of commitment in combating torture and extra-judicial executions has resulted in widespread impunity for perpetrators, which is still particularly high in West Papua. Instead of being brought to justice through court trials, the perpetrators are often given lenient sentences and disciplinary sanctions through internal procedures. Human rights violations, in particular torture and extra-judicial killings have largely remained unpunished leaving victims and their families without justice. One such case is the unresolved death of Reverend Yeremias Zanambani, apparently killed by the military in September 2020 in Intan Jaya, Province Papua. There has been no prosecution or trial concerning this case. The police and military in Indonesia attempt to settle such cases through internal procedures which lack transparency, accountability and fail to bring justice for the victims. The recommendations made by various states during the UPR 2017 to end impunity¹⁵ for particular human rights violations in Papua have not been implemented.

9 For example Response to UPR recommendations 139.5 (Bosnia and Herzegovina), Source of position: A/HRC/36/7 - Para. 139; 141.7 (France), 141.2 (Kazakhstan), 141.6 (Czechia), Source of position: A/HRC/36/7/Add.1 - Para. 10.

10 ICP (2021): Human Rights in West Papua, p.36.

11 ICP (2021): Human Rights in West Papua, p.35 f..

12 ICP (2021): Human Rights in West Papua, p.37.

13 ICP (2021): Human Rights in West Papua, p.37.

14 ICP (2021): Human Rights Update West Papua – 4th Quarter 2021.

15 Response to UPR recommendations 141.7 (France), 141.61 (Turkey), 141.63 (Australia), Source of position: A/HRC/36/7/Add.1 - Para. 10.

III. Freedom of Expression and Peaceful Assembly

A. State Policies and Institutions and its Impact on Democratic Space¹⁶

10. Independent media, journalists and human rights defenders, as well as environmentalists and ordinary citizens, are under ever-increasing pressure from legal and police persecution. The instrumentalisation of existing laws, such as the Information Transactions Act (ITE) to criminalise critics, threatens not only journalists but also human rights defenders and environmentalists as well as citizens who voice grievances. In addition, the Indonesia Cyber Police established in 2018 fuels a climate of intimidation. This is a team under the Indonesia Criminal Investigation Agency (Bareskrim Polri) which is tasked to enforce the law against cybercrimes in Indonesia. It is more commonly known as Cyber Crime Directorate (Dittipidsiber). Its so-called cyber-patrols are supposed to prevent the spread of false information, slander and "hoaxes".¹⁷ The government however, tends to classify any information that is not in line with its political messages, especially regarding Covid-19, the controversial Omnibus Law and West Papua, as false news, leading to an increase in criminal charges against individuals. For 2020, the internet watchdog SAFEnet recorded at least 84 criminal cases against internet users, almost four times as many as the year before.¹⁸ Additionally, the lack of checks and balances makes the unit prone to be deployed as a mouthpiece for government campaigns. In 2020 at the height of the public protests and strikes against the Omnibus law, the police directives included mandates to launch "cyber patrols" and "counter-narratives" on social media to mobilise public opinion against the strikes.¹⁹

11. The most prominent law in conflict with the guarantee of freedom of expression and press freedom is the Law 11/2008 on Information and Electronic Transaction. The imprecise wording of its criminal provisions allows them to be widely abused. State authorities, and people in positions of power often use the law to target their critics. This (mis)use of the law has escalated rapidly under the administration of President Joko Widodo. The Institute for Criminal Justice Reform (ICJR), recorded 768 people charged under the law between 2016 and February 2020. Cases were relatively evenly split between defamation (37%), morality (32%) and hate speech (28%). The study recorded a conviction rate of nearly 97%, or 744 cases. Some 88% of those convicted received prison sentences.²⁰

B. Freedom of Expression and Peaceful Assembly in and related to West Papua

12. The Indonesian government continues to put strong restrictions on freedom of expression and peaceful assembly in West Papua, particularly with regard to demonstrations on politically sensitive issues. An important incident in relation to West Papua took place on 15th-17th August 2019 in Surabaya, East Java. 43 West Papuan students were besieged in their dormitory and subjected to racial abuse, following false rumours that they had disrespected the Indonesian national flag. On 17th August, the police arrested the 43 West Papuan students for questioning. This incident in Surabaya led to mass civilian protests inside West Papua which was a trigger for

16 Response to UPR recommendation 139.76, Ensure that the freedom of speech of civil society organizations and special interest groups is promoted and respected across Indonesia so that they can, within the legal framework, voice their views and concerns, even on issues that can be sensitive (Netherlands), Source of position: A/HRC/36/7 - Para. 139.

17 <https://cfd.s.fisipol.ugm.ac.id/2021/02/05/the-existence-of-indonesia-cyber-police-what-does-it-mean-for-us-netizens/>.

18 https://safenet.or.id/wp-content/uploads/2021/05/2020_Digital-Situation-Report-2020.pdf.

19 <https://www.scmp.com/week-asia/politics/article/3104412/indonesians-begin-protests-against-omnibus-jobs-law-amid-online>.

20 <https://www.merdeka.com/peristiwa/676-kasus-uu-ite-berakhir-di-jeruji-besi.html>.

the West Papua Uprising from 19th August to 30rd September 2019. This protest in turn led to mass forced dispersals, arrests, violence and extrajudicial killings within West Papua. It swept across 23 towns in West Papua and 17 cities in other parts of Indonesia between 19th August and 30th September.²¹ TAPOL counted more than 1013 arrested people.²² The highest number of arrests was in September 2019 when as many as 759 people were arrested throughout that month.

13. The COVID-19 pandemic has provided a pretext for the Government to crack down on street protests in Indonesia. West Papua has seen increasing numbers of security forces deployed on the streets. Even though there have been strict Covid-19-Protocols and restrictions for public demonstrations in 2020 and 2021, the ICP counted 37 peaceful demonstrations/assemblies/gatherings about Papua related to political issues that have been forcefully intervened by security forces in 2020.²³ Various arbitrary dispersals took place during protests about West Papua, with dozens of intimidation and harassment incidents taking place before and during protest dispersals. Intimidation and harassment also took place online. Many West Papua-related public discussions that were held online were attacked by unknown individuals with the intention of disrupting them, and event speakers received intimidating "zoombombing" phone calls and threatening messages.

14. The shrinking space for freedom of expression also took place in the internet shutdown during the Uprising in August/September 2019 in West Papua. The Government imposed an Internet and mobile shutdown for the first time in West Papua during The Uprising. This act was ruled unlawful by the state administrative court in Jakarta in June 2020.²⁴

IV. Role of the Military in West Papua

15. After the Coordinating Minister for Political, Legal and Security Affairs Mahfud MD officially classified the West Papua National Liberation Army TPNPB as a terrorist organisation, the armed conflict between the TPN-PB and the TNI military apparatus continued to heat up. Even before that, more and more troops had been stationed in West Papua over the years. According to official statements, the military is supposed to take action against the so-called separatists, but too often innocent civilians fall victim to violent military operations. In 2020, at least 24 civilians were killed in the central highland region of Intan Jaya in clashes between the Indonesian military and the TPNPB. The Association of Human Rights Defenders (PAHAM) and the Commission on Missing Persons and Victims of Violence (KontraS) documented 63 incidents of military and/or police violence from January to December 2020, involving 304 civilian victims. Of these, 33 involved police officers (POLRI), 22 involved the military (TNI) and eight involved joint police/military action.²⁵

16. Military operations in the highlands of West Papua have caused thousands of people to leave their homes in fear of military and police brutality. Fleeing into the woods and to makeshift

21 TAPOL (September 2020): The 2019 West Papua Uprising, Protests against racism and for self-determination, p. 117, available at: <https://www.tapol.org/sites/default/files/The%202019%20West%20Papua%20Uprising.pdf>.

22 TAPOL (August 2020): West Papua 2019 Freedom of Expression and Freedom of Assembly Report, p. 14, available at: https://www.tapol.org/sites/default/files/sites/default/files/pdfs/WESTPAPUA2019_FOA_FOE_REPORT_TAPOL.pdf.

23 ICP (2021): Human Rights in West Papua, p.17.

24 Jakarta Post (3.6.2020): Internet ban during Papua antiracist unrest ruled unlawful, available at:

<https://www.thejakartapost.com/news/2020/06/03/internet-ban-during-antiracism-unrest-in-papua-deemed-illegal.html>.

25 KONTRAS (2021): <https://kontras.org/wp-content/uploads/2021/08/FA-LAPORAN-PAPEDA-SPREAD.pdf>.

accommodation in neighbouring areas, the living conditions of the internally displaced people (IDP) are precarious. The lack of access to food, health services and education have led to malnutrition and diseases; a situation further exacerbated by the Covid-19 pandemic. In November 2021, different sources report that the number of IDPs currently unable or afraid to return home was between 50,000 and 60,000 people, many of whom are women and children.²⁶

V. Women's Rights

A. Lack of legal protection and ongoing legal discrimination

17. The already epidemic level of violence against women in Indonesia has been exacerbated by the COVID-19 crisis. At the same time survivors of sexualised violence and domestic workers remain without sufficient legal protection.²⁷ Laws that would provide comprehensive protection in accordance with CEDAW and long standing demands of Indonesian Civil Society Organisations like the Domestic Worker's Act or the Elimination of Sexual Violence Bill are being deferred repeatedly. Additionally, legal reform initiatives which, if passed, would seriously further hamper women's rights, gain traction and political support. The draft Criminal Code which contains clauses that criminalise free sexual choice and expression and limits access to sexual health education, contraception and family planning is scheduled to be passed this year.

18. Domestic workers are one of the largest groups of female workers in the country. According to the adjusted estimate of a survey conducted by the international Labour Organisation Jakarta published in 2017,²⁸ the number of domestic workers in Indonesia amounted in 2015 to 4,034,190 million, with at least 75% of them being women. Domestic workers are widely considered "helpers" and are not legally acknowledged as employees. Housework, especially by live-in domestic workers, the majority of which are women as well as under-aged children, is commonly perceived as a 24-hour-a-day activity, hindering the regulation of working hours and allowing rest days. Domestic workers in Indonesia lack legal protection under the Manpower Act of 2003 (Law No.13/2003) as well as the recently passed Job Creation Law of 2020 (Law No. 11/2020) as their – largely informal work – is not covered by these laws. They are, therefore, vulnerable to a wide range of abuses and exploitation, such as excessive working hours, unpaid wages, physical and/or sexual abuse, forced labour and trafficking.

19. Currently there are several laws and regulations that potentially address sexualised violence (e.g. Domestic Violence Law, Child Protection Law, Pornography Law, Human Trafficking Law, Human Rights Court Law, Health Law, the Criminal Code and the Criminal Procedure Code). However, besides some of those regulations containing gender bias specifications, the scope and implementation of the passages which do set out to curb sexualised violence are still limited and crucial issues are not covered by them. Furthermore, due to a number of obstacles rooted in the Indonesian legal system it remains difficult for victims of sexual violence to get access to justice. So far, the positive law recognizes rape as a criminal act under Article 285 of the Criminal Code. However, the narrow interpretation of rape as sexual intercourse defined as penetration with the burden of proof on the victim alone, leaves legal gaps. Other

26 ICP (2021): <https://humanrightspapua.org/news/2021/update-on-situation-of-idps-in-west-papua-throughout-november-2021/>.

27 Response to UPR recommendation 139.34, Review and amend its national legislation that discriminates against women, and challenge the social acceptability of violence against women and practices harmful to women and girls, such as female genital mutilation and early and forced marriage (Czechia), Source of position: A/HRC/36/7 - Para. 139.

28 International Labour Organisation Jakarta (2017): Toward a better estimation of total population of domestic workers in Indonesia, available at: https://www.ilo.org/jakarta/whatwedo/publications/WCMS_628493/lang--en/index.htm.

sexualised offences are subsumed under the concept of ‘crimes against decency’ in Article 289 of the Criminal Code. There is currently no fixed standard of what ‘decency’ is. The Elimination of Sexual Violence Bill (RUU TPKS)²⁹ will provide a legal definition of what sexual violence is. By defining sexual harassment, forced marriage, forced contraception, forced abortion, rape, sexual exploitation, forced prostitution, sexual slavery, and sexual torture the bill addresses existing legal gaps. At the same time it will provide a pro-victim recourse to justice. It guarantees a clear reporting mechanism to victim assistance and protection during investigation.

20. The planned legal reform of the Criminal Code (KUHP)³⁰ contains several Articles which will particularly impact lesbian and bisexual women, sex workers and transgender people. It will also exacerbate and encourage existing discriminatory practices that put women at a disadvantage and further limit access to vital information and education on sexual health and family planning as well as criminalise abortion in most cases.³¹ While there have been oral statements by government officials and politicians towards Indonesian Civil Society Organisations that the revision of contentious passages demanded by a broad civil society coalition in 2019 has taken place, there is no evidence for this so far.³² Hence it can be assumed that the following Articles will still be part when the bill is tabled for the ballot in 2022:

Article 417 punishes extramarital sex by up to one year in jail. **Article 419** states that couples who live together without being legally married could be sentenced to six months in prison. A village head could report these couples to the police. Both articles do not specifically mention same-sex conduct. However, since same-sex relationships are not legally recognized in Indonesia, this provision effectively criminalises all same-sex conduct. It will also subject all sex workers to criminal prosecution. **Article 421** criminalises “obscene acts” in public with a penalty of up to six months in prison. Against the backdrop of an increasingly hostile political discourse regarding LGBTI and the lack of regulations which protect the rights, lives and safety of LGBTI, particularly this article poses a risk for LGBTI people to be targeted and criminalised. Articles 417, 419, and 421 violate the right to privacy for consenting adults that is protected under international law. A heightened impact on women is to be expected as they may face pressure to enter forced marriages if accused of sex outside of marriage or an increase in societal “policing” of their behaviour. **Article 413** criminalises the production or distribution of pornography which moreover, is poorly defined. Based on the fact that the 2008 Law on Pornography, that defines portrayals of “deviant sexual intercourse” to include lesbian and male homosexual sex, has been used for discriminatory targeting of LGBT people, the additional criminalisation of LGBTI by way of the Criminal Code is to be expected. **Article 414** states that anyone who is “to show, to offer, to broadcast, to write or to promote a contraception to a minor” – children under age 18 – could face a prison term or fine. **Article 416** specifies some narrow exceptions for health professionals and authorized “competent volunteers” to discuss contraception in the context of family planning, preventing sexually transmitted infections, or providing health education.³³

21. During the UPR 2017 a number of states parties have made recommendations to amend and repeal all local regulations that discriminate against women and contradict their constitutional

29 Response to UPR recommendation 139.117, Strengthen laws on violence against women, including by punishing all forms of sexual violence (Liechtenstein), Source of position: A/HRC/36/7 - Para. 139.

30 Response to UPR recommendation 141.44, Ensure that national and regional laws and policies do not discriminate against any individuals in society, including lesbian, gay, bisexual, transgender and intersex persons, and are in line with its international obligations, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights (Sweden), Source of position: A/HRC/36/7/Add.1 - Para. 10.

31 Human Rights Watch (2019): Indonesia: Draft Criminal Code Disastrous for Rights,” Human Rights Watch news release, September 18, 2019, available at: <https://www.hrw.org/news/2019/09/18/indonesia-draft-criminal-code-disastrous-rights>.

32 Conveyed to Watch Indonesia during a consultation with the women’s rights organisation Kalyanamitra on 8th March 2022.

33 Ibid.

rights as well as Indonesian international human rights obligations.³⁴ From 2009 to 2018, the National Commission on Violence Against Women (Komnas Perempuan) recorded 421 discriminatory policies of which 333 violate particularly the rights of women. Komnas Perempuan also states that the numbers are rising since.³⁵ Clearly the recommendations have not been acted upon by the Indonesian government.

The regulations are issued by local governments in the form of regional regulations, governors' or mayors' decrees, but also by individual ministers on the level of central government. Invoking morality and religion, mostly referencing a literalist understanding of Islamic sources, these policies include forcing women and girls to wear the jilbab (head cover) in government buildings, schools or public places, prohibiting them from wearing close-fitting clothing and imposing curfews and other restrictions on women and girls. Since 2001 Aceh is the only one of Indonesia's 34 provinces that can legally adopt provincial bylaws derived from *Sharia* (Islamic law). The *Aceh Qanun (Aceh Regional Islamic laws) on Jinayat (criminal law)* is a union of Islamic bylaws and Islamic criminal law which created a number of criminal offenses that are also extended to non-Muslims. The law imposes dress codes and criminalises consensual same-sex sexual acts as well as all *zina* (sexual relations outside of marriage), *Ikhtilath* (flirting), sexual harassment, rape, *Qadzaf* (false adultery accusations), *liwath* (sodomy) and *mushahaqaf* (lesbian practice). Dress codes at first sight appear not to specifically discriminate against women as there are also requirements for men. Likewise, the inclusion of rape and sexual harassment seem to address women's rights. However, the underlying structural discrimination of women fuelled by a literalist patriarchal understanding of religious sources and a prevalence of a culture of victim blaming make women and LGBTI particularly vulnerable to charges and (false) accusations. The dress codes, moreover, impose far more onerous restrictions on women. The criminal code permits punishment of up to 100 lashes, and up to 100 months in prison for same-sex sexual acts, while *zina* violations carry a penalty of 100 lashes.³⁶

B. Women's Rights in West Papua

22. Women in West Papua and particularly indigenous women are vulnerable to violence and human rights violations. Their denial, gender-based discrimination, racist prejudice, and stigmatisation are major factors leaving Papuan women vulnerable to poor health, poverty and social exclusion. A large number of women in West Papua continue to find themselves trapped in a circle of domestic violence, economic marginalisation, and exploitation. Despite their essential role in ensuring the family's wellbeing and the preservation of indigenous culture, women are often excluded from decisions over land and resources. A 2019 research team established by the NGOs AJAR, Yasanto, eL_AdPPer, Katane Support Group and Jayapura Support Group found that 41 out of 42 female participants living in West Papua had experienced violence at some point

34 Response to UPR recommendation 141.26, Review and repeal local by-laws that may limit rights guaranteed by the Constitution, especially as they relate to the rights of women, sexual minorities and religious minorities (Norway), Source of position: A/HRC/36/7/Add.1 - Para. 10; Response to UPR recommendation 139.104, Protect women's rights and promote gender equality by ensuring that all district and provincial laws and regulations align with the Constitution of Indonesia and are consistent with its human rights obligations under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, as well as by improving coordination among responsible agencies and ministries (Canada), Source of position: A/HRC/36/7 - Para. 139; Response to UPR recommendation 139.29, Amend all local laws and regulations that discriminate against women and marginalised groups (Denmark), Source of position: A/HRC/36/7 - Para. 139.

35 <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-kasus-pemaksaan-busana-dengan-identitas-agama-27-januari-2021>.

36 https://www.hrw.org/news/2021/09/20/updated-submission-committee-elimination-discrimination-against-women#_ftn3.

in their lives.³⁷ The most common form of domestic violence involves physical abuse. The study also found that services for female victims of violence are poorly developed compared with HIV/AIDS health services. Women from various areas of West Papua reported that the political stigma as separatist or OPM supporter had an intergenerational impact on the lives of their children. The children reportedly faced discrimination in accessing education and finding employment. Such discrimination increases the likelihood of impoverishment.

23. Papuan women living in conflict-affected areas also have to cope with the constant threat of state violence by security force members. Women living in central highland regencies such as Nduga, Intan Jaya, Puncak, and parts of Mimika Regency are exposed to security force raids that frequently take place in response to armed clashes between the West Papua National Liberation Army (TPN PB) and Indonesian police or military. In 2020 alone, at least seven female victims were tortured and three were killed by security force agents.³⁸ The most common forms of state violence were loss and destruction of property (36%), followed by loss of indigenous lands (23%) and the enforced disappearances of relatives (19%).³⁹

24. Women's participation in governance across West Papua remains extremely low. The provinces of Papua and Papua Barat are among the regions in Indonesia where gender inequality in local governments is noticeably high. In 2017, 6.7 percent of lawmakers in the provincial parliament of Papua Barat were women, while the percentage was more than twice as high for the province of Papua, with 14.5 percent.⁴⁰ The same situation applies to women in Papuan politics.⁴¹ In 2019, 12.7% of the local parliament members in Papua province were women. The percentage for Papua Barat province was slightly higher at 14.3%. Overall, women's political involvement in West Papua remains far below the national average of 20.5%.⁴² In 2019, only 40.4% of civil servants in the province of Papua were female and 43.5% in Papua Barat province.⁴³ These are the two lowest participation rates in Indonesia, where the average participation rate is 51.5%.

VI. Human Rights Defenders and West Papua

25. Despite the fact that during the previous UPR various states made recommendations⁴⁴ to ensure a safe and enabling environment for all human rights defenders, those in West Papua or working on human rights concerns in Papua continue to work in a highly repressive environment. The conflict region is characterised by a heavy security force presence. While the government often justifies the employment of military for national security purposes in the conflict region, law enforcement authorities limit human rights as well as elementary freedoms under the pretext of maintaining public order and enforcing national laws. The government of Indonesia continues to restrict access to West Papua for international organisations, foreign journalists and observers.

37 AJAR (01.03.2019): I am here, Voices of Papuan Women in the Face of Unrelenting Violence, available at: <https://asia-ajar.org/wp-content/uploads/2019/04/I-am-Here-Voices-of-Papuan-Women-2019.pdf>.

38 ICP (2021): Human Rights in West Papua, p. 89.

39 AJAR (01.03.2019): I am here, Voices of Papuan Women in the Face of Unrelenting Violence, available at: <https://asia-ajar.org/wp-content/uploads/2019/04/I-am-Here-Voices-of-Papuan-Women-2019.pdf>.

40 ICP (2019): Human Rights in West Papua, p. 160.

41 ICP (2021): Human Rights in West Papua, p. 92.

42 Indonesian Ministry for Women Empowerment and Protection of Children (2020): Profil Perempuan Indonesia Tahun 2020, p. 166, available at: <https://www.kemempna.go.id/index.php/page/read/26/3057/profil-perempuan-indonesia-tahun-2020>.

43 Ibid. p.158.

44 Response to UPR recommendation 141.56 (Norway), Source of position: A/HRC/36/7/Add.1 - Para. 10; 139.64 (Ecuador), 139.65 (France), 139.66 (Iraq), Source of position: A/HRC/36/7 - Para. 139.

The number of reported cases of threat, intimidation and physical violence against human rights defenders shows that the West Papua region remains a dangerous and difficult place to conduct human rights work. In 2017 HRDs reported ten cases of assault, obstruction, intimidation and harassment. In 2018, there were seven cases.⁴⁵ This situation significantly deteriorated after West Papua-wide protests against racism triggered a wave of criminalisation of protesters, activists, and human rights defenders in September 2019. Consequently, the number of reported violations against HRDs more than tripled from four in 2019 to thirteen in 2020.⁴⁶ A lot of them were conducted via cyberattacks due to the Covid-19 Pandemic.

26. On 7 November 2021, an explosion occurred in the morning in front of the house of Veronica Koman's parents in Jakarta. Veronica Koman is a lawyer and human rights activist in exile who campaigns for the rights of Papuans and acts as their legal representative in several cases. This is the first case in which bombs have been used against people working on issues related to West Papua outside the region. Koman's case is the latest in a series of incidents targeting human rights defenders. Other people who have been targeted recently include activists Haris Azhar and Fatia Maulidiyanti, who have been investigating politicians who support mining companies in West Papua. Another prominent case is Victor Yeimo, a pro-independence activist and the international spokesperson for the KNPB, who was arrested by Indonesian police in May 2021 in the context of the 2019 anti-racism protests. On the day of his arrest, he was denied access to legal assistance and to his family. Since his arrest, he has been suffering from severe health conditions. Victor Yeimo has been charged with treason under Articles 106 and 110 of the Indonesian Criminal Code.

VII. Indigenous Peoples

27. Indonesia is home to about 50 to 70 million Indigenous people and over 2,330 Indigenous communities. Most Indigenous communities have not been legally recognized due to a poorly established and implemented regulatory framework. After 20 years of a Special Autonomy Status for West Papua NGOs, local movement organisations and Papuan intellectuals argue that the special autonomy has not only failed to bring prosperity for indigenous Papuans but also to improve the human rights situation in West Papua. Only a small political elite has benefited from the large special autonomy funds, which do not reach the Papuan people, particularly those living in remote areas of West Papua. This argument is supported by a majority of Indigenous Papuans who have expressed their disappointment with the implementation of the special autonomy in public protests throughout the past decade. In July 2021 the Special Autonomy Law was revised. Art. 76 of the revised Special Autonomy Law stipulates that new provinces in West Papua can be established in future by decisions of the central government and the national parliament and takes away the previous possibility for the people's councils of the provinces of Papua and Papua Barat to shape the formation of new provinces in a self-determined manner. Furthermore, the central government will control the allocation of Special Autonomy funds in the future and thirdly, the institutional representation of Papuans through local political parties will be abolished. This gives the central government in Jakarta more power over West Papua and further calls into question the actual implementation of special autonomy in West Papua.

45 ICP (2019): Human Rights in West Papua, p. 54.

46 ICP (2021): Human Rights in West Papua, p. 28.

28. It is estimated that between 2001 and 2017, Indonesia lost 24 million hectares of forest cover, mostly on the islands of Sumatra, Kalimantan, and Papua. Oil palm plantations account for over half of all forest depletion in Indonesia.⁴⁷ Particularly in connection to the oil palm industry, land conflicts are pervasive. Some in-depth studies arrive at a figure of 4000 current cases in connection with oil palm alone.⁴⁸ Deforestation on such a massive scale threatens the livelihoods, well-being and culture of the Indigenous population. Research by Human Rights Watch found no evidence oil palm plantations it investigated had adequately consulted with affected households until after forests were significantly destroyed. In West Kalimantan for instance, some families were forced to relocate their homes but did not receive any compensation for the loss of their indigenous forest and livelihoods derived from it.⁴⁹

29. Various states made recommendations with regard to the improvement of Indigenous peoples' situation in Indonesia during the UPR in 2017. They recommended the ratification of ILO Convention 169,⁵⁰ the establishment of mechanisms that allow Indigenous peoples to be guaranteed the right to their ancestral lands⁵¹ and to extend an invitation to the Special Rapporteur on the rights of Indigenous peoples to visit Indonesia, including Papua.⁵² The number of cases of land rights violations, the re-centralisation approach of the revised Autonomy Law, loss of livelihood and violence against indigenous communities during the past five years are a strong signal that Indonesia still lacks true commitment to improve national laws on indigenous peoples and monitor its proper implementation.

VIII. Recommendations

Concerning Violence by Security Forces

- Put an end to torture and ill-treatment practised by the police forces;
- Prosecute and punish perpetrators of torture and extra-judicial killings including military personnel and thoroughly and transparently investigate past human rights abuses in West Papua;
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Invite the Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment to Indonesia including to West Papua;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Concerning Freedom of Expression and Peaceful Assembly

47 Human Rights Watch (2019): "When We Lost the Forest, We Lost Everything": Oil Palm Plantations and Rights Violations in Indonesia (New York: Human Rights Watch, 2019), available at: <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palms-plantations-and-rights-violations>.

48 Berenschot, Ward/Dhiaulhaq, Ahmad/Afrizal/Hospes, Otto, a joint publication of KITLV Leiden, Andalas University, Wageningen University, Lembaga Gemawan, Scale Up, Walhi West Sumatra, Walhi Central Kalimantan, Epistema Institute and HuMA (2021): Palm Oil Expansion and Conflict in Indonesia: an evaluation of the effectiveness of conflict resolution mechanisms, available at: https://www.forestpeoples.org/sites/default/files/documents/ENG_Ekspansi%20Konflik%20Kelapa%20Sawit%20di%20Indonesia-EN-FA.pdf.

49 Human Rights Watch (2019): "When We Lost the Forest, We Lost Everything": Oil Palm Plantations and Rights Violations in Indonesia (New York: Human Rights Watch, 2019), available at: <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palms-plantations-and-rights-violations>.

50 Response to UPR recommendation 141.19 (Guatemala), Source of position: A/HRC/36/7/Add.1 - Para. 10.

51 Response to UPR recommendation 141.74 (Peru), Source of position: A/HRC/36/7/Add.1 - Para. 10.

52 Response to UPR recommendation 141.24 (Mexico), Source of position: A/HRC/36/7/Add.1 - Para. 10.

- Guarantee the freedom of assembly and refrain from arresting demonstrators, particularly in West Papua;
- Ensure that the freedom of speech is promoted and respected across Indonesia and in particular in West Papua and end prosecutions under articles 106 and 110 of the Criminal Code for exercising freedom of expression and peaceful assembly;
- Investigate attacks and harassments of journalists reporting on West Papua and other critical issues;
- Allow foreign journalists, human rights organisations and UN Special Rapporteurs to visit West Papua;
- Refrain from prosecuting human rights activists in West Papua and other regions with treason and other crimes under the Criminal Code.

Concerning Role of the Military

- Prohibit business activities of the military as such as well as of its members and investigate instances of corruption;
- Review military court law to ensure that members of the military are held accountable in civilian courts for acts of torture and killings as well as corruption.

Concerning Women's Rights, Human Rights Defenders and Indigenous Peoples

- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Include domestic workers in the Labour Code and grant reasonable working hours, regular breaks and a minimum wage;
- Ratify ILO Convention No. 189⁵³;
- Adopt the Domestic Workers Protection Act (RUU PRT);
- Adopt the Elimination of Sexual Violence Bill (RUU TPKS);
- Protect the work of human rights defenders, particularly in West Papua and human rights defenders working on West Papua;
- Revise the draft Criminal Code to ensure that all Clauses that discriminate against women and LGBTI and bear the potential to criminalise LGBTI are erased;
- Eliminate clauses in the draft Criminal Code that criminalise free access to contraception as well as education on sexual health and family planning;
- Require free prior and informed consent from Indigenous Peoples before exploiting ancestral land and resources, including for development programs;
- Ensure that the rights of women and minorities are upheld, respected and promoted - particularly the right to health, access to education and access to equal justice – and ensure that female IDPs in West Papua receive appropriate help.

⁵³ Response to UPR recommendation 139.7, Consider ratifying the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) (Philippines), Source of position: A/HRC/36/7 - Para. 139.