

**Joint Stakeholders' Submission on:  
The Human Rights Situation in Papua**

**Submitted by:**

**Coalition for Enforcement of Law and Human Rights in Papua**

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**Elsham Papua**

**KPKC Sinode GKI Di Tanah Papua**

**KPKC Sinode Kingmi Papua**

**SKPKC Franciscans Papua**

**Perkumpulan Jubi**

**Aliansi Demokrasi untuk Papua  
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(LP3BH)**

**Lembaga Bantuan Hukum (LBH)  
Papua**

## I. Introduction

1. This report is a joint submission by several organisations mentioned above. The report highlights concerns, particularly with regard to the human rights situation in West Papua<sup>1</sup> since the last Universal Periodic Review in 2012 in the following areas: **Enforcement of Law and Human Rights, Freedom of Expression, Protection of Human Rights Defenders, Extrajudicial and Arbitrary Executions, Torture, Impunity, Rights of Convicts, and Harmonization of National Regulations in West Papua.**
2. The data and information which were collected for this submission come from various sources and resembles contributions from **Elsham Papua, KPKC Sinode GKI Di Tanah Papua, KPKC Sinode Kingmi Papua, SKPKC Fransiscan Papua, Perkumpulan Jubi, AIDP, LP3BH, and LBH Papua.**
3. Elsham Papua is a leading human rights non-governmental organization based in Jayapura, Papua, Indonesia. Since its establishment in the 1985 the Institute of Human Rights Studies and Advocacy, or Elsham as it is better known, has been a trusted Papuan group which reports human rights violations in Papua.
4. KPKC Sinode GKI di Tanah Papua was found in 2002 in Jayapura and works for justice, peace and integrity of creation (Human Rights and Environmental Protection) as one of the Desks with the structure of the Synod of Christian Protestant Church in the Land of Papua or GKI di Tanah Papua.
5. KPKC Sinode Kingmi Papua was found in 1997 in Jayapura and works for justice, peace and integrity of creation desk of Jayapura based Papuan Tabernacle Church (KINGMI Papua) Synod office.
6. SKPKC Fransiscan or the Office of Justice and Peace, an integral part of the Catholic Diocese of Jayapura in Papua, Indonesia. This office focuses on five priorities including advocacy on the situation on human rights in Papua, research and documentation, inter-faith dialogue, peace and reconciliation and ecological justice.
7. Perkumpulan JUBI is a Non-Governmental Organisation which works in the media field where it focusses on the distribution of information. Perkumpulan JUBI was established in Jayapura in 2001.
8. AIDP was found in Jayapura in 2000. AIDP actively works in the area of law and human rights enforcement.
9. LP3BH is the abbreviation for the Institute of Research, Analyzing and Development for Legal Aid, based in Manokwari. LP3BH was established in 1996.
10. LBH Papua is the abbreviation for Papua Legal Aid Institute, based in Jayapura and was established in 1986. LBH Papua provides legal services for poor, suppressed people or persons lacking a basic understanding of their rights and law enforcement.

## II. Discrimination in Law Enforcement

11. The enforcement of law and human rights towards civil society members strongly differs from that of state agents, which committed violent acts against civil society members in Papuan. This

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<sup>1</sup> The term West Papua refers to the region comprised of the two Indonesian Provinces *Papua* and *Papua Barat*

discrimination is reflected in various cases, e.g. in peaceful demonstrations by Papuan civil society, as they have been conducted by the West Papua National Committee (KNPB). Police officers unlawfully arrested, detained as well as tortured protesters and initiated criminal charges against those who had been suspected of having organized the protests. This practice of criminalization has resulted in heavy court verdicts for civil society activists who had been processed with article 106 on treason, article 160 on incitement of the Indonesian Criminal Code, or the Indonesian Emergency Law No. 12 / 1951 which regulates the possession of sharp weapons, firearms and ammunition.

12. Between 2012 and 2016 the majority of perpetrators who committed acts of torture, arbitrary arrests or unlawful detention remained untouched by law enforcement. During the reporting period only two cases, which were committed by members of the police and military, resulted in legal charges and sentences against the perpetrators<sup>2</sup>. Particularly, the sentences against the police officers, which were the outcome of a public trial, are highly disproportionate to the committed crimes against the victims. Out of a large number of cases committed by security force members, which included heavy criminal offenses like torture and extra-judicial executions, none of the perpetrators were legally processed<sup>3</sup>.

### **13. We urge the government of Indonesia to**

- stop the utilization of article 106 on treason, article 160 on incitement of the Indonesian Criminal Code, and the Indonesian Emergency Law No. 12 / 1951 against Papuan political activists and civil society members participating in peaceful demonstrations
- implement and monitor law enforcement procedures against perpetrators from security forces, who are directly and indirectly responsible for human rights violations against Papuan civil society members

### **III. Freedom of Expression and Decreasing Civil Society Space**

14. Since 2014 one can observe an increase in the number of peaceful demonstrations in which indigenous Papuans expressed their dissatisfaction regarding various issues in West Papua. Many peaceful protests ended with repressive interventions by Indonesian security forces and resulted in unlawful mass arrests.

15. Despite unlawful mass arrests, security force also committed acts of violence and torture against the protesters during arrests and detention at local police stations. In numerous cases university students<sup>4</sup> and journalists became victims as law enforcement officers applied unnecessary violence or excessive force during crack downs on demonstrations. In some cases security personnel opened fire at peaceful protesters, resulting in the death of demonstrators<sup>5</sup>. In

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2 One case of police violence against three Papuan civil society members which occurred in Base-GBeach, Jayapura. The second cases committed by members of the Timika Military Base KODIM Timika resulted in the death of two men and serious injuries of further five residents.

3 Case examples are the Paniai Case in 2014 or the Tolikara Case in 2015, where security forces opened fire at a group of civilians

4 On 15 August 2014 university students of the Papuan Students and Peoples Movements (GempaR Papua) conducted a peaceful demonstration in commemoration of the New York Agreement at the Cenderawasih University campus in Abepura, Jayapura City, Papua Province. Nine students, namely Yason Ngelia, Yulius Gobay, Markus Dumupa, Gerson Rumbrapuk, Beny Isage, Claus Pepuho, Abraham Demetow, Regina Wenda and Ribka Komba were arrested. Moreover, a journalist named Aprilia Wayar was intimidated by police officers .

5 On 8 December 2014, a group of residents conducted a peaceful protest in Enarotali City, Paniai Regency, in

some cases police officers carried out repressive acts against christian priests<sup>6</sup>. Various arrests resulted in criminal treason or incitement charges and imprisonment sentences against Papuan activists, because they organised demonstrations in which Papuan people expressed their political opinions<sup>7</sup>. Some of these arrested activists were subjected to ill-treatment by law enforcement officers during detentions<sup>8</sup>.

16. On May 2016, 1.692 indigenous Papuans were arrested by police officers as they wanted to demonstrate in front of the Papuan Provincial Parliament (DPRP). Subsequently, the protesters were brought to the Mobile Brigade Headquarters of the Papuan Regional Police (POLDA Papua). The arrest constitutes the biggest mass arrest, that had ever occurred in West Papua<sup>9</sup>.

17. Indonesian law guarantees the freedom of assembly for demonstrations. It requires demonstrators to inform the police beforehand but does not require a permit from the police. However, in West Papua, the police usually uses the lack of a “police acknowledgement letter” (STTP)<sup>10</sup> in response to a notification letter for a demonstration as reason to declare demonstrations illegal. The police often does not issue the “police acknowledgement letter” (STTP) in order to prevent indigenous Papuans from the enjoyment of their freedom of expression. If demonstrations take place, police forces frequently disperse the protests with the reason that the organizing entity did not receive the STTP. The West Papua National Committee (KNPB) is one of the organizations to which police officers frequently denied the approval of a STTP. Since 2013, KNPB members and supporters have been arrested because they conducted peaceful demonstrations, even though police officers in charge did not approve the STTP as a respond to KNPB's notification letters. The international Coalition for Papua (ICP) documented a total number of 548 arrests in 2013 and 370 arrests in 2014. In the following years the number of arrests increased drastically, with 1083 arrests in 2015 and 4198 arrests between January and June 2016<sup>11</sup>. Most of the arrestees were KNPB members or supporters.

18. On 1<sup>st</sup> July 2016, the Papuan Regional Police (POLDA Papua) issued an edict as an attempt by the Papuan Police to limit the democratic space and freedom of expression for indigenous

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which they demanded legal consequences for a group of security force members who had maltreated several minors the previous day. As the residents gathered at the Karel Gobay field in Enarotali, security forces from police and military opened fire at the crowd, resulting in the death of four senior high school students.

- 6 On October 2015 six catholic monks who had organized a demonstration in which they demanded a law enforcement process against the security force perpetrators in the Paniai shooting, which caused the death of four students. The monks and othr protesters were arrested and intimidated by police officers. They were finally released after police officers detained the monks for one hour in a police truck.
- 7 On 20 May 2015, Alexander Nekenem, a West Papua National Committee (*Komite Nasional Papua Barat*, KNPB) leader, Yomboram Magai, Othen Go (alias Maikel Aso), who are also KNPB members, and Narko Murib (alias Novi Umawak), a student, were amongst 75 people arrested for taking part in a demonstration in Manokwari in support of the membership of the United Liberation Movement for West Papua (ULMWP) in the Melanesian Spearhead Group (MSG). They were charged with incitement under Article 160 of the Indonesian Criminal Code which carries a maximum sentence of six years. Lawyers reported that the four detainees were denied access to health care, family and lawyers during detention at the Brimob headquarters
- 8 The detention of Steven Itlay, chairman of the West papua National Committee (KNPB) in Mimika Regency, is violating the legal regulations for detention. Police officers have detained Steven Itlay in an closed cell without windows at Miru Sub-district police station, Mimika Regency, papua Province. Steven Itlay only gets a breeze of fresh air when the cell door is opened.
- 9 Almost 1700 Arrests in West Papua Demos <http://www.radionz.co.nz/international/pacific-news/302973/almost-1700-arrests-in-west-papua-demos>
- 10 Indonesian Government Regulation No. 9/ 1998 about the Freedom to Expression in Public
- 11 E-document: Dalam 2 Tahun 1127 Warga Papua Ditangkap, Link: <https://m.tempo.co/read/news/2016/04/12/078761930/dalam-2-tahun-1-127-warga-papua-ditangkap>

Papuans<sup>12</sup>. The edict states that anyone who participates in a demonstration which is categorized as separatist may be charged with treason charges and will receive a criminal record in case of a legal process. The edict has far reaching consequences, particularly for high school or university students, where a criminal record may obstruct students future with regard to education and employment.

19. During the Universal Periodic review in 2012, Maroko<sup>13</sup>, Argentina<sup>14</sup>, Germany<sup>15</sup>, Australia<sup>16</sup> and South Korea<sup>17</sup> recommended that the government of Indonesia should improve law and human rights enforcement with regard to professionalism of law enforcement personnel and effectiveness. Germany even recommended to stop the utilization of the articles on treason and incitement for participants of peaceful demonstrations<sup>18</sup>. However, arrests, torture, maltreatment and imprisonment remain police forces' frequent response to political mass demonstrations in West Papua and reflect the government's contrary position with regard to the freedom of expression, as it is guaranteed by international human rights treaties.

20. Many international NGOs working in Papua have also experienced the government's attempt to control and limit civil society space. After the International Red Cross (ICRC), the Catholic Organisation for Relief and Development Aid (CORDAID) and Peace Brigades International (PBI) were forced to end their operations in West Papua prior to 2011. Oxfam International had to close their Papua office in December 2015, due to Social Affairs Ministry's decision that all working permits of expats employed by international NGOs in Papua may not be extended<sup>19</sup>. A report by Human Rights Watch states that the conditions for International NGOs in West Papua do not much differ from the situation of foreign journalists and international observers in the region. Foreign workers have to deal with strict surveillance because the government fears that the presence of foreigners potentially destabilizes national security.

21. During the last UPR in 2012, Germany<sup>20</sup> recommended to the Indonesian government to allow the ICRC in carrying out its humanitarian work in West Papua. Until 2016, the government has not re-granted access for the ICRC to West Papua.

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12 E-document: Inilah Isi Maklumat Kapolda Papua Tentang Penyampaian Pendapat Di Muka Umum Yang Resmi Berlaku 1 Juli 2016, Link: <http://www.nabire.net/inilah-isi-maklumat-kapolda-papua-tentang-penyampaian-pendapat-di-muka-umum-yang-resmi-berlaku-1-juli-2016/>

13 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.47. Continue its efforts to promote human rights education and training at all levels of education, including capacity building for persons in charge of enforcing current human rights laws, policies and measures (Morocco);

14 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.68. Continue the efforts to fight against all forms of discrimination and to respect the rights of religious minorities (Argentina);

15 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.116. Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech (Germany);

16 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.89. Ensure fair and proper legal action in relation to those investigated and prosecuted, including impartial trials and reasonable sentences, as well as detention standards that meet international norms (Australia);

17 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.55. Facilitate the visits of the Special Rapporteur on Adequate Housing and on Health, as well as requests for visits by others, including the Special Rapporteur on Freedom of Expression (Republic of Korea);

18 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.116. Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech (Germany);

19 E-document: LSM Internasional Tutup Kantor di Papua, Link: <http://www.cmindonesia.com/nasional/20151213103053-20-97861/lsm-internasional-tutup-kantor-di-papua/>

20 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 109.10. Immediately grant access to the delegates of ICRC to the Papua provinces in order for them to fulfill their mandate (Germany);

22. The protection and fulfillment of press freedom is a further important issue in realizing the freedom of expression in West Papua. According to the Indonesian Association of Independent Journalists AJI, the cases of violence and intimidation against journalists in the provinces Papua and Papua Barat still frequently occur because such incidents are generally not processed by law<sup>21</sup>. As a consequence most cases of violence against journalists during media coverage end with impunity for the perpetrators and tend to re-occur in the future. According to data from AJI Papua, most of such cases in West Papua were committed by members of the police.

23. Moreover, the government still strongly restricts access to West Papua for foreign journalists. The French Journalists Thomas Dandois and Valentine Bourat were arrested, legally prosecuted and imprisoned because they did not have the proper visa to conduct journalistic activity in West Papua<sup>22</sup>. Despite President Joko Widodo's public statement in May 2015, that foreign journalists are free to work in West Papua<sup>23</sup>, AJI Indonesia still documented cases, in which foreign journalists were obstructed in their attempt to conduct media coverage in West Papua, e.g. the journalists Cyril Payen<sup>24</sup> and Marie Dumiere<sup>25</sup>.

24. During the UPR 2012, Germany recommended to the Indonesian Government to undertake steps that the criminal code, such as articles 106 and 110, are not misused to limit the freedom of expression and restrict peaceful democratic activities<sup>26</sup>. The reality in West Papua shows that repressive measures and criminalization are institutionalized tactics amongst local law enforcement agencies and remain still frequently applied practices in response to peaceful demonstrations organized by indigenous Papuans. Instead of reviewing the interpretation and utilization of particular regulations, the Papuan Regional Police (POLDA Papua) has taken efforts to create new policies to decrease democratic space in West Papua. The drastically increasing numbers of arrests in 2015 and 2016 clearly reflect this situation. Police and military members remain the main perpetrators of intimidative and repressive acts against people making use of their freedom of expression. Perpetrators from security forces still enjoy impunity as the number of cases and convictions of security personell shows.

25. Furthermore, the Indonesian government still restricts foreign journalists and international organisations to access West Papua. Local journalists, particularly those of indigenous Papuan origin, become often victims of intimidation, threat and are stigmatized as separatists. Media and civil society reports referring to injustice may not be freely distributed in public. Indonesian government agencies still misuse birocracy and national regulations to obstruct international

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21 Data Kekerasan terhadap Jurnalis di Papua oleh Aliansi Jurnalis Independen Papua

<https://www.dropbox.com/s/0akeyoixlr8of3f/Tabel%20Kekerasan%20thdp%20Jurnalis%202013.pdf>

22 The two French journalists Thomas Dandois and Valentine Bourat were sentenced to two months imprisonment, E-document: Why Indonesia should release two detained French journalists, Link: <https://rsf.org/en/news/why-indonesia-should-release-two-detained-french-journalists>

23 E-document: Foreign Journalists Now Free Report Papua Says Jokowi, Link:

<http://www.thejakartapost.com/news/2015/05/10/foreign-journalists-now-free-report-papua-says-jokowi.html>

24 Cyril Payen visa application at the Indonesian embassy was rejected because he had made a documentary about West Papua, which was disliked by the Indonesian government. E-dokument: RSF Urges Indonesia to Lift Ban on French Reporter Cyril Payen, Link: <https://rsf.org/en/news/rsf-urges-indonesia-lift-ban-french-reporter-cyril-payen>

25 Marie Dumiere, who works for the French Radio station Radio France stated that police officers in West Papua searched for her because she planned to conduct media coverage in an area which local police officers in charge did not state in her travel permit (Surat Jalan), E-document: Indonesia's Papua Reporting Paranoia, Link:

<http://thediplomat.com/2016/01/indonesias-papua-reporting-paranoia/>

26 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.116. Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech (Germany);

organisations and therefore indirectly restrict access to West Papua. Foreign journalists have to face strict surveillance during media coverage in West Papua. The above mentioned observations indicate that the Indonesian government did not show serious attempts to implement the recommendation to grant free access to journalists and NGOs to West Papua, as suggested by France during the UPR in 2012<sup>27</sup>.

## **26. We urge the government of Indonesia to**

- issue a standing invitation to the UN Special Rapporteur on the Freedom of Expression. The invitation should allow the special procedures mandate holder to visit West Papua for an assesment regarding the situation of freedom of expression in the region.
- Recognize the freedom of expression, opinion and peaceful assembly as well as the indigeous Papuans right to self determination, as stated in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on the Rights of Indigenous Peoples.
- Conduct adequate trainings to civil servants working in government institutions and administration which should aim to increase understanding of the the government's obligation to respect, protect and fulfill the freedom of expression, opinion and peaceful assembly as well as the right to self determination
- ensure unlimited access for international humanitarian and human rights organisations as well as international journalists to West Papua

## **IV. IV. Human Rights Defenders**

27. Human rights defenders in West Papua are subjected to various coercive measures, aiming to obstruct their work, including surveillance, criminalization, treason-stigmatization and threats regarding their physical integrity. Such acts may be applied to journalists, public figures, religious leaders, university students and civil society activists. Especially lawyers, defending Papuan activists during trial<sup>28</sup>, which have been charged with treason, as well as journalists<sup>29</sup> occupying a rather critical position towards the Indonesian government, often become victims of intimidation and physical attacks. Common measures to criminalize human rights defender are often camouflaged by misusing article 310 of the Indonesian criminal code (KUHP) regulating humiliation or government regulation No. 11 / 2008 on Electronic Information and Transaction (UU ITE). Both laws reportedly had negative impacts regarding the safety of human rights defenders and the effectiveness of their work. The bad working conditions for human rights defenders in West Papua are additionally worsened by the widespread impunity and the lack of adequate government policies protecting human rights defenders. In remote areas of West Papua most human rights defenders have to deal with a shortage of basic resources, lack of infrastructure and a particularly high physical risk due to heavy military presence and weak law enforcement in such areas.

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27 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.114. Ensure free access for civil society and national journalists to Papua and West Papua (France);

28 On 25 Augustus 2014, human rights lawyer Gustaf Kawer was reported to the police by a judge of the Jayapura Court for State Administration with the accusation of having committed criminal acts against public authorities, as stated in articles 211 and 212 of the Indonesian Criminal Code KUHP

29 On 26 May 2016, Papuan journalist Abeth You who works for the local media platform Tabloid Jubi, was reported to the police with the accusations of humiliation because of a social media post

28. During the UPR in 2012, Indonesia accepted recommendations made by South Korea<sup>30</sup>, Greece<sup>31</sup>, Norway<sup>32</sup> and France<sup>33</sup> to increase efforts in providing adequate protection for human rights defenders as well as to improve the human rights situation of ethnic groups, religious minorities and human rights defenders, including those working in West Papua. The recommendations suggest the government to ensure conditions, which enable human rights defenders to carry out their duties. However, the presence of multiple repressive measures under direct or indirect involvement of state authorities obstruct the work of human rights defenders in West Papua. During the past years, regulations have become more strict whilst the government is actively restricting access for international NGOs, journalists and humanitarian organizations to West Papua.

29. Based on observations in the field throughout the past four years, the Coalition for the Enforcement of Law and Human Rights in Papua is highly concerned about the Indonesian government's lack of commitment in providing adequate support and protection for human rights defenders in West Papua. Particularly Indonesian law enforcement officials who actively obstruct human rights defenders in the fulfillment of tasks.

### **30. We urge the government of Indonesia to**

- Implement the recommendations issued by the UN Special Rapporteur on the Situation of Human Rights Defenders, after his visit to Papua in 2007<sup>34</sup>
- Designing adequate human rights trainings for law enforcement officials and increase cooperation with civil society actors. The impact of the trainings should be evaluated through the establishment of a monitoring body
- Take active steps against intimidation, harassment and physical violence against human rights defenders and journalists in West Papua and ensure that all perpetrators will be prosecuted in public and fair trials

## **V. V. Extra-judicial, Summary or Arbitrary Executions, Torture and Impunity**

31. Despite the organizational improvement of human rights institutions, arbitrary killings, torture and unlawful arrests committed by Indonesian security forces remain highly common human rights violations in West Papua. Until now, torture and ill-treatment are frequently applied practices, particularly if arrests are carried out by a large quantity of fully equipped security force members and the suspects are accused of having committed a crime against the state. One of the most common pattern of torture is the practice that a group of security force members alternately punch and kick suspects during arrest. Likewise, various torture methods are often applied during the first

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30 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations :108.115. Enhance efforts to provide adequate protection to human rights defenders and to improve the human rights situations of ethnic and religious groups in certain regions, including Papua (Republic of Korea);

31 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations :108.117. Continue efforts to fully guarantee the protection and independence of human rights defenders (Greece);

32 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations :108.118. Ensure a safe and enabling environment for all human rights defenders (Norway);

33 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations :108.119. Conduct impartial and independent investigations into acts of violence committed against human rights defenders, to bring those responsible to justice and fully guarantee freedom of expression (France);

34 Human Rights Council, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Ms. Hina JILANI



interrogation after being arrested. However, the state rarely conducts investigations towards state agents from police or military who have been accused of torture.

32. During the past four years more than 10 pupils, most of them minors have been killed by Indonesian police and military members during incidents in Timika<sup>35</sup>, Paniai and Sugapa<sup>36</sup>. The frequency of extra-judicial killings in the provinces Papua and Papua Barat remained stable, whilst promises by state agencies and law enforcement bodies in handling such cases have not brought any improvement in the situation. In all cases of extra-judicial killings the victims were indigenous Papuans. The cases indicate that particularly the indigenous population is more likely at risk to become victims of state violence due to racial discriminative prejudices amongst Indonesian security forces in West Papua<sup>37</sup>. The authorities cover up these cases by forwarding the cases to nontransparent internal investigation bodies, such as PROPAM in case of the police, and the perpetrators are seldom held accountable.

33. The pattern of extra-judicial killings is dominated by cases that were initiated by complaints from civil society members to the police or military members<sup>38</sup>. Most of such cases are not related to political demands for political independence. Commonly, non-Papuan residents file complaints against indigenous Papuans who were drunk in public and are considered as a disturbing factor to public safety and public order. Heavy maltreatment and extra-judicial executions most commonly occur because police and military members fail to handle such situations professionally by following a, deescalating approach<sup>39</sup>, but often try to solve such situations by using exaggerated authoritarian behavior<sup>40</sup>.

Sweeping and search operations are often carried out in public places or places of worship<sup>41</sup>. Such

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35 On 28 September 2015 Indonesian police officers killed vocational high school student Kalep Zera Bagau (18) and seriously injured his class mate Efrando I.S. Sabarofek (17) with bullets in Timika City, Papua province.

36 On 25 August 2016, senior high school student Otinus Sondegau was deadly injured by bullets in the highland city Sugapa, Intan Jaya regency. Members of the police mobile brigade had opened fire at Otinus and three other friends because they were drunk in public. The officers killed Otinus in front of his house after he had tried to run away.

37 On 17 July 2015, at 08.30, an unknown number of military members opened fire at a group of approximately eleven youth members of the GIDI Church, as they wanted to discuss the use of speakers with the local muslim community, whose members were currently praying. The shooting caused the death of Endi Wanimbo. (15 years), ten other youth members were seriously injured by bullets, namely Amaten Yikwa, Keratas Togolom, Erandinus Yikwa, Yulianus Lambe, Perinus Wanimbo, Aitelu Wenda, Ares Kogoya, Alesi, Yetimbuluk Yikwa, Edison Pagawak.

38 On 18 September 2014, John Agapa was shot dead by a military member in Nabire. According to an eyewitness a truck driver had reported John Agapa to the local military base, because he and a friend had set up a road block, asking passing vehicles for compensational payments for John's pig, which had been hit by passing vehicle.

39 On 30 April 2013 local residents in Aimas, Sorong regency, had gathered to commemorate the 1<sup>st</sup> May, when West Papua was firstly integrated into the Indonesian state. At 20.00 security forces approached the location and dispersed the assembly while releasing warning shots. Later security force officers indiscriminately opened fire at the crowd killing Abner Malagawak and Thomas Blesias who both died on the spot. Another resident died several days later in the hospital due to the bullet injuries.

40 On 28 August 2015, two military members named Makher and Ashar released shots at a group of indigenous Papuans in Ahmad Yani Street, Timika City, Mimika Regency, Papua Province. The shooting was an act of revenge because one of their comrades was beaten by several residents in Koperapoka village because the man had disturbed a tribal ceremony. The retaliation resulted in the deaths of Imanuel Herman Mairimau (23) and Yulianus Okoware (23). Five other persons named Sedangkan Thomas Apoka (24), Martinus Imaputa (17), Moses Emepu (24), Martinus Afukafi (24) and Amalia Apoka (female, 19) were seriously injured by bullets.

41 On 26 January 2014, joint security forces carried out sweeps in the villages of Dondowaga, Kulirik, Dolugowa, Yambidugun, Kalome, Yalinggua and Talilome in the regency of Puncak Jaya. The operation was in response to the capture of eight firearms from a police post at Kulirik by local OPM forces on 24 January 2014. The sweeping operation in Kulirik was conducted inside a church, as people had gathered to attend a worship ceremony. Security

security operations are often accompanied with shootings causing panic amongst affected communities and frequently resulting in the deaths of wanted person, suspects and even bystanders<sup>42</sup>. Victims who were injured by gunfire during security force operations are usually taken to police or military hospitals, which often fail to provide appropriate health services to the victims and access for family members<sup>43</sup>. Police officers and military members frequently justify excessive use of force and utilization of fire arms by stating that persons resisted the arrest or tried to escape if they are questioned by their superiors. Security forces' misconduct has resulted in numerous cases of extra-judicial killings during the past years but the reality is more of those killed in cases like this

34. Torture is often used against persons who have been accused of treason, particularly during arrest or if a person surrenders to the police<sup>44</sup>. In some cases, the torture was so severe that the victims died before being taken to hospital for medical treatment<sup>45</sup>. In many cases the police officers do not have an arrest warrant, arrest the wrong persons<sup>46</sup> and are unable to explain the reason for the arrest<sup>47</sup>. Subsequently, the prosecutor charges those arrested with Article 106 of the

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forces tortured several residents, killed two people and burnt the local GIDI church to the ground.

42 On 2 July 2014, Indonesian police officers released several shots at a public bus and its passengers at Yotefa Market Abepura in Jayapura city. Subsequently the officers arbitrarily arrested four Papuans from the highlands and allowed bystanders to beat the men with bare hands and tools. Simultaneously three other indigenous Papuans from the highlands were killed in different locations near Yotefa market. The incidents happened in response to the death of police officer Asriadi, who was killed during the attempt to disperse a group of people who were gambling at Yotefa market.

43 Oktovianus Tabuni (15), Tigabur Tabuni and Caban Tabuni (29) were arrested during a sweeping operation in Kulirik on 26 January 2014 because police officers accused them of being involved in the theft of firearms. The three detainees were taken to an unknown location. There, Tigabur was shot and killed. Oktavianus was shot in the left knee and in the lower abdomen in order to force him to confess to the theft of the firearms. Caban was shot in both knees and chest. Both men were evacuated to Bhayangkara Police Hospital in Jayapura, where Caban died on 29 July 2014 as a result of his injuries. Chairman of the Papuan Peoples Council (MRP) Timotius Murip witnessed that the police attempted to bury his body without informing the family members. Oktavianus was evacuated to Papua New Guinea by human rights defenders, where he was sent into surgery at the public hospital. A surgical clamp was discovered in his stomach, left by doctors from Bhayangkara Police Hospital.

44 Local Fisherman Salmon Windesi was arrested on 1<sup>st</sup> February 2014 in Sasawa, Kabupaten Yapen, because police officers accused him of treason. Salmon stated that police and military members punched and kicked him during arrest. The officers also arrested Peneas Reri, Kornelius Woniana, Obeth Kayoi, Rudi Otis Barangkea, Jimmi Yemias Kapanai and Septinus Wororai. The men were tied together with a rope and forced to rob to the yard in front of Salmon's house, while security force member delivered beatings to the men. Later all arrestees were again beaten and kicked as they arrived at Yapen police station

45 On 1st December, 2015, Erick Manitori together with his friends raised the Morning Star flag in front of Erik Manitori's house at Wanampompi Vkkage, Kepulauan Yapen Regency. After the flag-raising ceremony Erik Manitori and his friends went home. Shortly TNI-Police joint forces came to the village because they had received information of the flag raising ceremony. As Erik and his approached the security force, they were instantly attacked with firearms, resulting in the deaths of four people, namely: 1. Erik Manitori; 2. Yonas Manitori; 3. Darius Andiribi; and 4. Julian Robaha. Eight other villagers suffered gunshot wounds.

46 On 27 August, 2015, at 23:00, four members of the police arbitrarily arrested Eliezer Awom (26), Yafeth Awom (18) and Soleman Yom (24) in Deplat-Base-G Beach, Jayapura. The police officers forced the men to enter a silver car which brought them to West Sentani. The officers tortured and threatened to execute the three young men if they would not make a confession regarding the theft of a motorcycle. In early 2016 two police officers from Jayapura district police named Suherman and Jarius Triyono Damanik were sentenced to 1 year and 6 months imprisonment.

47 On 12 July, 2014 morning, joint military and police forces conducting searches in the village Wara, Pisugi district, Jayawijayaregency. 13 people were arbitrarily arrested. Initially police received information that the villagers had planned to boycott presidential election as a result of previous activities by the political civil society group KNPB. In reality the Presidential Election proceeded safely, so police officers accused villagers of making explosives. 13 arrestees were Joseph Siep, Karlos Alua, Saul Sorabut, Pius Sorabut, Yance Walilo, Jos Pahika, Yorasam Sorabut,

Criminal Code, Article 53 /1 and Article 55 Paragraph (1) / 1 of the Criminal Code or Article 108 Paragraph (1) / 2 of the Criminal Code and Article 55 Paragraph (1 ) / 2 or Article 2 Paragraph (1) of the Emergency Law No. 12 of 1951. This means that commonly suspects are either accused of treason (aanslag), and / or accused of rebellion (opstand) and accused of possessing arms and ammunition without permit.

35. Police and military personnel also commonly “confiscate” valuables, destroy housing facilities and kill domesticated animals during security force operations. In some cases security forces apply torture methods to a suspect' s family members, because they were accused of having assisted the suspect<sup>48</sup>.

36. During the UPR in 2012, Germany<sup>49</sup>, Canada<sup>50</sup>, South Korea<sup>51</sup>, Mexico<sup>52</sup>, Slovenia<sup>53</sup>, Australia<sup>54</sup> and Austria<sup>55</sup> recommended to the Indonesian government to immediately stop extra-judicial killings, arbitrary arrests as well as torture in West Papua, and end the impunity for perpetrators from the police or military. Between 2012 and 2016 security force perpetrators of extra-judicial killings, torture and arbitrary arrests still enjoy impunity, as part of a widespread “culture of impunity”. The accountability of military courts and even trials against members of the police with charges of unlawful killings, arbitrary arrests and torture is still highly doubtful. The law enforcement process does not meet international standards for fair and independent trials.

37. The Coalition for Enforcement of Law and Human Rights in Papua draws the conclusion that the Indonesian government has not taken adequate measures to tackle institutionalized impunity in West Papua, which allows security forces to commit extra-judicial killings, unlawful arrests and

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Wilem Hubi, Anas Walilo, Marsel Marian, Ardis Wilil, Aila Alua and Beni Wilil. After the first arrest wave police again arrested five other villagers without a warrant.

- 48 Despite the search operation on July 12, 2014, in Wara village, District Pisugi, Jayawijaya regency, police and military members were damaging property belonging to villagers. Security forces desperately broke netbags which were handmade by Joseph Siep's family. They furthermore injured some of his pigs with machetes and knocked over one sack of rice belonging to the family of Josep Siep. Security forces also threatened to burn the house Josep Siep and Yance Walilo. Josep's wife was beaten on her ear, which caused damages to her hearing. Ape Wetipo was beaten on the chin, and later got sick because she was unable to chew normally.
- 49 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.95. Hold accountable officials of all ranks responsible for human rights violations in the Papua provinces (Germany);
- 50 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.91. Take measures to guarantee accountability by ensuring that human rights violations, including abuses committed by Indonesian security forces are investigated and that those deemed responsible are prosecuted in a fair prompt and impartial manner (Canada);
- 51 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.69. Accelerate efforts for early enactment of the draft new bill which includes the definition of torture consistent with CAT (Republic of Korea);
- 52 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.71. Fully implement CAT, emphasizing the strengthening of training and capacity building programmes for the police and military officers, and the harmonization of local laws with the Convention (Mexico);
- 53 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.88. Ensure all cases of human rights violations are impartially investigated and prosecuted in proportion with the crimes committed (Slovenia);
- 54 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.89. Ensure fair and proper legal action in relation to those investigated and prosecuted, including impartial trials and reasonable sentences, as well as detention standards that meet international norms (Australia); UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.90. Ensure prompt, comprehensive, and effective investigations into credible allegations of human rights violations by members of the security forces, and examine options for establishing an independent review mechanism with the ability to recommend prosecutions (Australia);
- 55 UPR of Indonesia (2<sup>nd</sup> Cycle – 13th session), Thematic list of recommendations : 108.96. Take further effective measures to end impunity in cases of violence and torture committed by security forces (Austria);

torture without fearing legal prosecution.

### **38. We urge the government of Indonesia to**

- Issue a standing invitation to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution to visit Indonesia. The invitation should allow the special procedures mandate holder to visit West Papua for an assesment regarding the situation of Extra-judicial Killings in the region.
- Issue a standing invitation to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Indonesia. The invitation should allow the special procedures mandate holder to visit West Papua for an assesment regarding the situation of torture and other cruel, inhuman or degrading treatment in the region.
- Review Military Court system to allow the military perpetrators who are accused of crimes against civilians to be tried by civilian courts in an independent, fair and transparent trial
- Conduct prompt and effective investigations in all cases of human rights violations against people in West Papua, in particular allegations of torture and extra-judicial executions committed by members of the military; The legal process should be capable of clearly identifying suspects, prosecute the perpetrators; and provide an adequate remedy for the victims.
- Reduce the number of deployed military troops and police officers in West Papua and ensure compliance of Indonesian security forces procedures with the universal principles of international human rights
- Provide free access for monitoring institutions, including international human rights and humanitarian organizations such as the International Committee of the Red Cross (ICRC) to all detention facilities in West Papua.

## **VI. Rights of Victims**

39. Despite the enactment of Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts, the national regulations remain incapable to prosecute perpetrators of human rights violations in West Papua. This applies to cases of past human rights violations (before 2000) and new cases which occurred after 2000. The nature of this human rights law is retroactive, which means it requires a strong political will of the executive to make decisions for the legal processing of past human rights violations.

40. The period of past human rights violations in West Papua was documented by human rights institutions in Papua and in Indonesia, beginning since 1963. The range of violations covered cases of arrest, detention arbitrary, extra-judicial killings, shootings, disappearances, sexual violence <sup>56</sup>,

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56 In 1983 Naomi Masa was arbitrarily arrested after her husband was interrogated and tortured in an Indonesian Military post at Besum Village, Jayapura regency, because he was accused of being a member of the Papuan Independence Movement OPM. When the husband was released he went to the jungle to hide in the fo rest. Later the security force members forced Naomi lead them to her husband's hide-out. Naomi was tortured in a military truck on the way to the forest. She was detained in a military post for more then 10 hours, where Naomi was beaten, electrocuted, tied up and raped by five soldiers. As a result of the sexual violence she suffered an injury at her genitals. The violence Naomi experienced has influenced her entire life until now. In 2005 her husband divorced Naomi and remarried another women. Naomi beliefs that her husband divorced her because she was raped. A few years ago her daughters died due to lung disease, which according to Naomi firstly appeared after the

and destruction of property. Victims of human rights violations in Papua experienced the full impact of political stigmatization, reproductive health problems for women victims of sexual violence, prolonged trauma, exclusion from public services in the village, such as access to education, economic support programs and health<sup>57</sup>.

41. In 2016, the Indonesian Coordinating Minister for Political, Legal and Security Affairs formed a team to investigate past and recent cases of human rights in West Papua. The formation of the team does not meet general human rights criteria such as the participation and involvement of victims. Furthermore, the establishment of this team was widely considered to weaken the position of the National Commission on Human Rights, which has the legal mandate to investigate and process human rights cases in Indonesia. The Coalition for Enforcement of Law and Human Rights in Papua occupies the position that the establishment of this team has no legal foundation and is contrary to Law No. 39 / 1999 on Human Rights and Law No. 26 Year 2000 on Human Rights Courts.

42. In March 2006, the United Nations General Assembly adopted the “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law”. The document elaborates the right to reparation, including: 1. The right to *restitution*, namely: the return of the victim's condition to the situation prior to the violation, including the right to freedom, fundamental rights, identity, family life, citizenship, place of residence, employment, and property; 2. *compensation* for economic losses proportionate to the gravity of the violation; 3. *rehabilitation*, namely: medical, psychological, legal and social services; 4. guarantee of *non-repetition* through institutional reform; and 5. the right to *satisfaction* that includes the ending of the violation, the recognition of truth, the search for missing persons, including excavation.

43. Between 2014 and 2016 civil society organizations documented the findings of past human rights violations. Until today, the Indonesian government failed to fulfilled the rights of victims of past human rights violations, which also affects the fulfillment of victims' rights in recent cases. The systematic pattern of violence and impunity for perpetrators of human rights violations continues to occur in West Papua. The processing of cases of human rights violations in West Papua - outside or within the legal framework - so far is not capable to produce decisions or verdicts that fulfill the rights of victims in accordance with international standards as stipulated in the “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law”.

#### **44. We urge the government of Indonesia to**

- Fulfill its obligations towards victims' right to *restitution*, namely the reestablishment of the victim's condition to the situation prior to the violation, including the right to freedom, fundamental rights, identity, family life, citizenship, place of residence, employment, and property;

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soldiers had arrested and detained Naomi and her children.

57 Tineke Rumkabu was one of the victims and witness of sexual violence committed by Indonesian military force members during the dispersal of a peaceful demonstration on 6 July 1998 in Biak, which ended with the raising of the Papuan morning star flag. She was burned with fire during arrest until she lost consciousness. She was blindfolded and handcuffed. When the security force members removed the blindfold she realized that she was sitting in a puddle of blood, surrounded by other victims who were either dead or suffered serious injuries due to torture. Tineke saw how other women's breasts were mutilated by Indonesian soldiers. Tineke is still traumatized until today, suffers psychological and physical disorders and is in urgent need of therapy.

- Fulfill its obligations towards the victims' right to *compensation* for economic losses proportionate to the gravity of the violation
- Fulfill its obligations towards the victims' right to *rehabilitation*, namely medical, psychological, legal and social services
- Provide guarantee of *non-repetition* through institutional reform
- Fulfill its obligations towards the victims' right to *satisfaction* that includes the ending of the violation, the recognition of truth, the search for missing persons, including excavation