

Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 3<sup>rd</sup> Universal Periodic Review of the Republic of Indonesia during the 27<sup>th</sup> Session



**SUBMITTED BY:**

Unrepresented Nations and Peoples Organization (UNPO)

The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organisation. Its members are indigenous peoples, minorities, and unrecognised or occupied territories that have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them.

**Contact Information:**

Unrepresented Nations and Peoples Organization (UNPO)

Avenue Louise 52

1050 Bruxelles

Belgium

## Table of Contents

I. Introduction.....	3
II. Human Rights Issues .....	4
1. Freedom of Assembly and Association.....	4
2. Extrajudicial Authority .....	5
3. Public Accountability.....	5
4. Indigenous Rights.....	6
5. Torture and Other Ill-treatment.....	7
III. Recommendations.....	8

## **I. Introduction**

1. This report, submitted by the Unrepresented Nations and Peoples Organization (UNPO) on the occasion of the 27<sup>th</sup> session of the Universal Periodic Review (UPR), during which the Republic of Indonesia is under consideration, will focus on the main human rights violations occurring in the country, with a special emphasis on the Acehese and West Papuans communities. First, the report will open with a brief introduction to the Acehese and West Papuans. Second, it will outline the main human rights violations taking place in Indonesia, with a focus on the UN Human Rights Council's List of Recommendations from Indonesia's 2<sup>nd</sup> Cycle's Universal Periodic Review. Third, it will present a series of recommendations aimed to facilitate constructive discussions during the 27<sup>th</sup> Session of the UPR.

### **Acehnese**

2. Aceh has been involved in an almost continuous power struggle for its self-determination as a free nation, due to multiple colonial campaigns. Upon independence of Indonesia in 1949, Indonesian troops were dispatched to annex Aceh, causing resentment over what some Acehese viewed as another foreign occupation.

3. In 1976, Aceh re-declared its independence and since that time has struggled against the Indonesian government for recognition, resulting in the death of thousands of Acehese, and severe crimes against humanity perpetrated by the Indonesian government.

4. In the 1990s, thousands of troops entered Aceh to crush the armed insurgency, resulting in more conflict and casualties. Finally, in 2002, the government of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka – GAM) agreed to a peace deal. In this peace agreement, the people of Aceh was allowed to administer themselves freely and democratically, as well as to keep 70% of the revenue generated from the province's oil resources, but this end of the agreement has not yet held up.

5. In the aftermath of the 26 December 2004 tsunami, peace talks were declared, establishing a 2005 Memorandum of Understanding, according to which a Human Right Court and a Commission for Truth and Reconciliation would be established for Aceh. Unfortunately, until now both institutions were not set up yet<sup>1</sup>. Moreover, the Government of Indonesia's adherence to the United Nation's International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, has not been addressed in any legal document.

### **West Papuans**

6. The region of West Papua, currently split into the two Indonesian provinces of Papua and Papua Barat, it is inhabited by a diverse group of indigenous communities of Melanesian origin which currently amount to more than 200 tribes and respective languages.

7. In 1962, West Papua became part of Indonesia as a consequence of a UN-ratified agreement between Indonesia and The Netherlands. As a province of Indonesia, West Papua saw the implementation of a number of policies that led to discrimination and relocation of a great part of its indigenous population. The main issues of concern for indigenous West Papuans derive from the exploitation of ancestral lands for industrial purposes, with few of the profits actually benefitting the local community.

8. In addition, the implementation of transmigration programmes that are transforming the ethnic composition of the region, and excessive violence perpetrated by the numerous security personnel stationed in the area are also seen as a huge cause for concern by the indigenous group.

## **II. Human Rights Issues**

9. Despite the promise of progressive policies made by President Jokowi during his 2014 election campaign<sup>2</sup> for the benefit of the West Papuan and Acehnese communities<sup>3</sup>, it seems that no significant signs of progress have been seen in the routine violations of their Human Rights. Due to lack of reporting and lack of governments' interest, violations regarding minorities and indigenous peoples often go unseen.

### **1. Freedom of Assembly and Association**

10. While recommended to intensify its efforts to respect and uphold freedom of expression during their second Universal Periodic Review cycle<sup>4</sup>, Australian authorities have still made use of legislation which is used to severely restrict activities of peaceful assembly and association and freedom of opinion and expression. There are systemic constraints imposed on media, political opponents, human rights defenders, lawyers, journalists and citizens from all sectors of society.

11. Police in Papua frequently obstruct protests and demonstrations by refusing to issue receipt of notifications of public gatherings, and/or using the repressive Social Organizations Law to de-legitimize civil society groups. Police make public announcements in the lead-up to anniversaries of atrocities, instructing the public not to demonstrate or hold gatherings. Demonstrations have routinely been shut down using heavy-handed tactics including mass arrests<sup>5</sup>. Law requires demonstrators to provide police with a written notification three days before any planned demonstration and for police to issue a receipt for the written notification. This receipt acts as a de facto licence for the demonstration, which the Police in Papua have routinely refused to issue<sup>6</sup>.

12. Indonesian authorities have also prevented the display of the Morning Star flag in Papua, and the Free Aceh Movement (GAM) Crescent Moon flag in Aceh, even after Aceh's legislature made it the province's official flag in 2013. The Central Government has declared that it does not accept the provincial flag and that raising the GAM flag is still prohibited. On 29 July 2015, police and military personnel removed GAM flags on public display in Pasie Raya, Aceh<sup>7</sup>.

13. Despite the recommendation to ensure free access of civil society and national journalists to Papua and West Papua<sup>8</sup>, Indonesian Police still requires accredited foreign journalists to apply for a travel permit to visit Papua, and the Ministry of Foreign Affairs requires such journalists "to notify" the ministry of their schedules and activities in Papua<sup>9</sup>.

## **2. Extrajudicial Authority**

14. Even after recommendations to implement comprehensive human rights training for all military and police personnel<sup>10</sup>, a clear lack of transparency facilitates abuses and impunity against the minority communities, as thousands have been arbitrarily arrested and many have been subjected to other serious human rights violations. Individuals have in several instances been detained<sup>11</sup>, with no outside contact for long periods of time, without charges or trial.

15. Indonesia's National Commission on Human Rights (Komnas HAM) has recommended an inquiry into the December 2015 killing of four students in Papua province,<sup>12</sup> as Indonesian security forces allegedly opened fire on hundreds of peaceful protesters. Also in Timika, police shot two unarmed high school students during a "security operation" in September 2015, killing one<sup>13</sup>. In addition the death of Mako Musa Tabuni, Vice-Chairman of the National Committee for West Papua was killed by police officers alleging armed resistance, but eyewitnesses denied this was the case<sup>14</sup>.

16. Furthermore, new evidence of the Simpang Kertas Kraft Aceh (KAA) incident in Aceh, 3 May 1999 having resulted in the killing of 23 civilians shot dead by the National Armed Forces (TNI) has yet to be recognised by Indonesian authorities<sup>15</sup>.

## **3. Public Accountability**

17. While recommended to guarantee accountability by ensuring that human rights violations by Indonesian security forces are investigated<sup>16</sup>, the Indonesian government's approach to institutional reforms has highlighted a lethargic approach to investigate and prosecute Indonesian authorities responsible for past crimes against humanity in Aceh. Severe delays in setting up institutions and improving accountability have been commonplace.

18. The Truth and Reconciliation Commission (TRC Qanun Aceh), which promised to provide answers as part of the peace agreement, was repeatedly annulled by the Indonesian Constitutional Court over ten years after the peace agreement<sup>17</sup>. In addition, while the local

Parliament has made progress in researching past abuses conducted by Indonesian security forces, it can only examine cases involving local actors, and it does not have any authority to investigate on policymakers outside of Aceh<sup>18</sup>.

19. In addition, implementation of the powers of the Acehese government concerning the use of natural resources and land, as prescribed by the Law on the Governing of Aceh, has been slow because the Indonesian government has not defined exact rules for the implementation of these provisions<sup>19</sup>.

20. The extremely difficult status for NGOs working in the West Papua region is often government stigma of NGOs supporting the pro-independence movement<sup>20</sup>. Security forces and intelligence agencies tended to regard with suspicion foreign human rights organizations. The government has also prevented the ICRC from conducting confidential meetings with prisoners<sup>21</sup> imprisoned in West Papua

21. In May 2015, President of Indonesia Joko Widodo, announced the lifting of restrictions on foreign media access to Papua, but allowed senior government officials to effectively defy the new policy without consequences. In August 2015, Widodo announced that the government would form a “reconciliation commission” to address gross human rights abuses of the past 50 years, but did not mention considerable details.<sup>22</sup>

22. Despite recommendations to better investigate enforced or involuntary disappearances<sup>23</sup>, Human Rights Groups have also documented a range of crimes committed by members of the security forces and their auxiliaries against the civilian Aceh population, including unlawful killings, enforced disappearances and torture which have been left unanswered<sup>24</sup>.

#### **4. Indigenous Rights**

23. Despite the recommendation to ensure the rights of indigenous and forest dependent peoples to traditional lands, territories and resources<sup>25</sup>, poverty remains a critical defining factor of West Papua, as in 2014 it was highest in Indonesia in the provinces of Papua (27.8%) and West Papua (26.3%) than any other region<sup>26</sup>. Therefore, it is hard for indigenous West Papuans to be seen as beneficiaries of the local economic plan.

24. The continued exploitation of indigenous peoples’ forests for industrial purposes does not only represent a threat to indigenous peoples’ means of subsistence, environment, and health, as the loss of access to their customary forests or the very destruction of forest-areas threatens their cultural survival.

25. The perception of official denial of the rapid deforestation in the provinces of Papua and West Papua exists due to suspect deforestation compared to the rest of Indonesia. As a result, conflicting numbers published by the government and NGOs tell vastly different stories of deforestation on the ground<sup>27</sup>.

26. Despite recommending more resources for implementing programmes in favour of vulnerable ethnic minorities<sup>28</sup>, West Papua and its environment remain subject to the decisions made by the Indonesian government, having been granted by the Indonesian Authorities to multinational and Indonesian companies, through concessions without consultation and compensation to Papuan landowners or indigenous peoples<sup>29</sup>.

27. According to respondents' perceptions, the conversion of forest land for oil palm estates on the Prafi Plain has detrimental environmental impact, including the loss of forest cover, increased erosion, flooding, decreased water quality and scarcity of clean water. These changes generally have negative socioeconomic and sociocultural effects, with traditional communities experiencing loss of land for swidden farming and difficulty collecting forest products. Once the land has been transferred to the company, the local community loses its land rights and has limited ability to carry out subsistence activities on the customary land they previously controlled<sup>30</sup>.

28. There is no effort being made to designate the boundaries of Papuan territory on official maps and documents; locals face legal obstacles in their efforts to claim legitimacy; indigenous women face discrimination on multiple levels; government agencies (including the police) and the military have been working in the interest of the private sector and not for the indigenous communities, and there is no ministerial level institution with the mandate to resolve the prolonged land conflicts<sup>31</sup>.

## **5. Torture and Other Ill-treatment**

29. Despite a recommendation to expand effective measures to end impunity in cases of torture committed by security forces<sup>32</sup>, cruel or degrading treatment is still routinely and widely used, producing a situation where perpetrators are confident that they can commit these crimes without redress. Although Indonesia signed the UN Convention against Torture in 1998, it has yet to amend its criminal laws to incorporate a definition of torture. Although under the current legal framework, perpetrators could be prosecuted for a variety of offences that already exist under the criminal code<sup>33</sup>, adding another layer of protection for them.

30. Official tolerance for practices involving torture in West Papua, accompanied by impunity for perpetrators, has encouraged human rights violations by representatives of the Indonesian security forces. Despite the horrendous nature of the crimes committed, few perpetrators have been brought to justice. Military tribunals were held for some cases of torture, but even in these isolated examples the perpetrators have received light sentences<sup>34</sup>.

31. In spite of recommendations to ensure the Criminal Code is not misused to restrict freedom of speech<sup>35</sup>, NGOs have estimated that as many as 51 political prisoners from the provinces of Papua and West Papua were imprisoned under charges of treason and conspiracy related to the display of banned pro-independence symbols, and many are

serving lengthy sentences<sup>36</sup>. In the first seven months of 2015 alone, the number of people arbitrarily detained in Papua from 2014 showed a severe increase and political detainees were denied access to lawyers<sup>37</sup>.

### III. Recommendations

Given the above-mentioned human rights situation, the Unrepresented Nations and Peoples Organization urges the Government of Indonesia to consider the following recommendations:

- 1. Respect the distinct rights to self-governance afforded to the West Papuan and Acehnese communities by the United Nations Declaration on the Rights of Indigenous Peoples;*
- 2. Respect the freedom of expression of indigenous peoples and release political prisoners arrested for acts of peaceful political activism, including raising flags;*
- 3. Stop land-grabbing practices which deprive indigenous peoples of their means of subsistence and engage regional ethnic communities affected by resource extraction under the principles of free, prior and informed consent;*
- 4. Guarantee the conservation of indigenous peoples' cultural sites and their access to them;*
- 5. Enable existing human rights courts to address cases of serious crimes that ensure victims' right to truth, justice and reparations, as well as measures to strengthen the independence of the judiciary;*
- 6. Uphold, in law and in practice, procedural guarantees to ensure due process of law;*
- 7. Remove, in law and in practice, all forms of torture and other cruel, inhuman or degrading treatment or punishment;*
- 8. Fulfil its obligations under international law and deliver on its promise to establish a human rights court and a truth commission for Aceh, an integral part of the 2005 Helsinki Memorandum of Understanding.*

---

<sup>1</sup> UNPO/TFD Conference Report: Prospects for Minority and Indigenous Rights in South East Asia – Towards Regional Cooperation? Arif Fadhillah Pg. 44

<sup>2</sup> UNPO Article, May 26<sup>th</sup> 2015

<sup>3</sup> UNPO Article, June 6<sup>th</sup> 2014

<sup>4</sup> Recommendation 108.113: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Australia)

<sup>5</sup> Griffith Journal of Law and Human Dignity Vol.3 No. 2015 - Harvey G.: The Price of Protest in West Papua

<sup>6</sup> United States Department of State - Report on Human Rights Practices for 2015 - Indonesia Pg. 19

<sup>7</sup> United States Department of State - Report on Human Rights Practices for 2015 - Indonesia Pg. 13

<sup>8</sup> Recommendation 108.114: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (France)

<sup>9</sup> Human Rights Watch World Report: Indonesia “Events of 2015”



- 
- <sup>10</sup> Recommendation 108.42: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (New Zealand)
- <sup>11</sup> ABC News: 12<sup>th</sup> May 2015, “Free West Papuan activists detained without charge”
- <sup>12</sup> Asia Pacific Forum of National Human Rights Institutions: 5 August 2015
- <sup>13</sup> Amnesty International Annual Report 2015/2016
- <sup>14</sup> European Parliament subcommittee on Human Rights Jan 23<sup>rd</sup>, 2014: Human Rights in West Papua
- <sup>15</sup> Tempo.Co: Komnas HAM Finds Rights Violations in Simpang KKA Aceh
- <sup>16</sup> Recommendation 108.91: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Canada)
- <sup>17</sup> Channel News Asia: Victims Of Aceh Armed Conflict Demand Answers Three Decades On
- <sup>18</sup> Asian Human Rights Commission – HRC 33
- <sup>19</sup> Amnesty International: A Lost Decade for Victims of Indonesia’s Aceh conflict
- <sup>20</sup> University of Warwick: Assessment Report on the Conflict in the West Papuan Region -July 2016
- <sup>21</sup> United States Department of State - Report on Human Rights Practices for 2015 - Indonesia Pg. 27
- <sup>22</sup> Human Rights Watch World Report: Indonesia “Events of 2015”
- <sup>23</sup> Recommendation 109.15: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Morocco)
- <sup>24</sup> Amnesty International: Appointment of Aceh Truth Commission Selection – 30 Nov 2015
- <sup>25</sup> Recommendation 109.36: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session – (Norway)
- <sup>26</sup> Asian Development Bank: Summary of Indonesia’s Poverty Analysis Pg.3
- <sup>27</sup> Mongabay: Harfenist E. – Deforestation may be Ramping up in West Papua 27 Jan 2015
- <sup>28</sup> Recommendation 108.58: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Vietnam)
- <sup>29</sup> UNPO: Human Rights Situation in West Papua 16 Feb 2015
- <sup>30</sup> Centre for International Forestry Research: Case Study on the Prafi Plain Pg.8 (2014)
- <sup>31</sup> Mongabay: Indonesia’s Indigenous People still suffer HR violation – Bell L. 18 Mar 2015
- <sup>32</sup> Recommendation 108.96: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Austria)
- <sup>33</sup> TAPOL: The Practice of Torture - 7 Oct 2015 Pg.15
- <sup>34</sup> TAPOL: The Practice of Torture - 7 Oct 2015 Pg.4
- <sup>35</sup> Recommendation 108.116: Universal Periodic Review of Indonesia 2<sup>nd</sup> Cycle – 13th session (Germany)
- <sup>36</sup> United States Department of State - Report on Human Rights Practices for 2015 - Indonesia Pg. 12
- <sup>37</sup> Franciscans International: Increasing Arbitrary Arrests in West Papua - 30<sup>th</sup> Session of UN HRC