

NGO JOINT SUBMISSION THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN

Contribution to the annual report on violence against indigenous women and girls

1. This is a joint submission of Franciscans International (FI); Asia Justice and Rights (AJAR); the Commission of Justice, Peace, and Integrity of Creation of Franciscans in Papua (SKPKC Fransiskan Papua); Women Department of the Evangelical Church in Papua (Departemen Perempuan Gereja Injili di Indonesia – GIDI); The Justice, Peace and Integrity of Creation of the Synod of the Christian Protestant Church in Papua (KPKC Sinode GKI di Tanah Papua) and TAPOL. The information for this submission is based on two NGO reports¹² submitted for the review of Indonesia during the 80th Session of the UN Committee on the Elimination of the Discrimination Against Women (CEDAW).
2. Indonesia's Papua region is known internationally as West Papua and refers to the western half of the island of New Guinea. The Government of Indonesia (GoI) considers the term West Papua to have a political nuance with a pro-independence meaning. In 2003 Indonesia split Papua into two provinces of Papua and Papua Barat. In this submission, the term West Papua is used to refer to both provinces. Currently in Indonesia, it is only in the West Papua region that the country faces both peaceful and armed independence movements. According to the Indonesian State Institute of Sciences (LIPI – *Lembaga Ilmu Pengetahuan Indonesia*), the main sources of the conflict in West Papua are different interpretations of the West Papuan political status in terms of integration into Indonesia, ongoing human rights violations with impunity, the failure of development policies in the region – which have been considered as bringing the unequal benefits of development efforts among the population in the region, leading to the marginalization and discrimination of indigenous Papuans. The Indonesian government grants very limited access to West Papua for international human rights observers and restricted the enjoyment of right of freedom of expression.

Background on the situation of indigenous people in West Papua

3. The Indonesian region of West Papua refers to the western half of the island of New Guinea. In August 1962, the New York Agreement between Indonesia and the Netherlands called for the transfer of authority for the territory from the Netherlands to Indonesia and included a guarantee that the Papuan people would be allowed an 'Act of Free Choice' (referendum) to determine the political status of West New Guinea. The referendum was organized in 1969. In breach of the provision in the Agreement that stated that "The eligibility of all adults, male and female, not foreign national, to participate in the act of self-determination to be carried out according to the international practice..."³, there were only 1.026 Papuan representatives participating, out of a population of an estimated 800.000.⁴ The result was that all representatives pronounced themselves in favor of the territory remaining in Indonesia. However, because of the process not being in line with the New York Agreement, several groups in West Papua and the diaspora have strongly rejected the result and do not recognize the process as "the Act of Free Choice".

¹ Joint NGO Submission of AJAR and other NGOs, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fIDN%2f46784&Lang=en

² Joint NGO Submission of Franciscans International and other NGOs, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fIDN%2f46761&Lang=en

³ See Article XVIII.d of the Indonesian and Netherlands Agreement (with Annex) concerning West Guine (West Irian), known also as New York Agreement, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20437/volume-437-I-6311-English.pdf>.

⁴ See the report of the UN General Assembly, A/7723, 6 November 1969, Report of the Secretary General regarding the Act of self-determination in West-Irian, available at <https://digitallibrary.un.org/record/843562?ln=en>

4. In 2001, the GoI adopted the Law of the Republic of Indonesia No. 21 on the Special Autonomy for the Papua Province (*OTSUS Law for Papua*),⁵ which is applicable to Papua and Papua Barat Provinces.⁶ In its considerations, *OTSUS Law for Papua* acknowledges that “that the administration and implementation of development in the Papua Province so far has not fully fulfilled the sense of justice; has not fully provided people with welfare; has not guaranteed the rule of law, and has not fully implemented the respect for human rights in Papua Province, especially for the Papuan indigenous people”.⁷ The *OTSUS Law for Papua* recognizes the existence and rights of native Papuans (*OAP -Orang Asli Papua*).⁸ This shows that the Law was adopted to acknowledge and respond to the on-going concerns of injustice experienced by the indigenous Papuans.
5. The *OTSUS Law for Papua* has a specific provision on the establishment of a Papua People’s Assembly (*MRP – Majelis Rakyat Papua*) as the cultural representative of the native Papuans which has a certain authority in protecting the rights of the native Papuan.⁹ It has several mandates including to give approval to the candidacy for the position of Governor and Vice Governor in Papua; to provide views and opinions on the adoption of provincial legislations; to provide considerations on matters related to indigenous issues.¹⁰
6. In this context, the indigenous people, in particular women, who advocate in defense of their customary lands against dispossession and degradation related to business projects are often intimidated by both the State’s security apparatus and the companies. Although most victims of violence and threats are men as the usual rights-holders of the land in a patrilineal inheritance system, intimidation and threats of violence are also received by women and children of those in the affected communities.¹¹

Impact of the armed conflict on the indigenous women and girls in West Papua

7. Since the end of 2018, there has been an increase in armed clashes between the Indonesian security forces and pro-Papua armed independence groups, mainly in highland areas. The armed pro-independence groups consist of various groups that have carried out sporadic attacks, mainly on military and police targets, but also recently against non-indigenous Papuans. They also engage in human rights abuses, including unlawful killings, hostage-taking and abductions. The armed clashes have caused an increase in the internal displacement, mainly from Papua’s central highland areas who feared being the military operation’s targets.

The situation in the Puncak Regency

8. In Puncak Regency, central highland area in Papua Province, where the armed conflict between the West Papua National Liberation Army (TPNPB) and Indonesian security forces is taking place, official data of the Regency’s Social Affairs Department, it is estimated that there are at least 4,862 internally displaced indigenous Papuans from 5 districts. The conflict has significantly intensified since 25 April 2021 in response to the killing of Papua Intelligence Chief, Brigadier General IGPN Karya Nugraha.
9. Specific and updated information for the area could be collected by a team consisting of humanitarian workers of the Evangelical Church in Indonesia (GIDI) and one member of the Papuan Provincial Parliament (DPRP) during a field trip between 6 and 12 July 2021.
10. The humanitarian team recorded the death of two women IDPs have died since April 2021, due to bad health and inadequate access to care. The team received the allegations that that Indonesian security forces in Puncak Regency continue to use methods of warfare that do not discriminate between civilians and combatants. Methods applied by security force members include the use of firearms and explosives in indigenous settlements, torture, extrajudicial executions, and enforced disappearances of indigenous civilians. Further, members of the security forces continue to restrict the access to the Puncak Regency and other hotspots of the

⁵ Special Autonomy Law for Papua No. 21/2001, the unofficial English translation by the United Nations Refugee Agency (UNRA) is available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=84431

⁶ In February 2003, the GOI decided to divide West Papua into Papua Province and Papua Barat Province.

⁷ Special Autonomy Law for Papua No. 21/2001, Preambular Paragraph f.

⁸ Article 1.t of the Special Autonomy Law for Papua defines Papua native as a person originating from the Melanesian race group, comprising native ethnic groups in Papua Province and/or a person accepted and acknowledged as a Papua native by the Papua Adat community.

⁹ Idem, Article 1.g

¹⁰ Idem, Article 19 to 24 on the Papua People’s Assembly.

¹¹ Pusaka, Year-end note “No Respite Despite the Pandemic,” A Portrait of The Fight for Environmental Human Rights in Papua and Central Kalimantan in 2020, available at: <https://pusaka.or.id/assets/2021/02/Year-end-note-Pusaka-2020-Eng.-Vrs.pdf>

armed conflict for journalists and human rights observers. This appears to be an attempt to prevent the publication of information on human rights violations during security force operations in the national and international media. During their field visit, the humanitarian team received information that the Indonesian government does not take the necessary measures to attend to the needs and to respect the rights of IDPs in the Papuan central highlands. The majority of IDPs in the Puncak Regency are women and children who have to live in appalling situations with no access to clean water and health services. Many of them walk for four hours every day to get clean water from nearby rivers and need to report to the military post along the way. Their children cannot go to school. Security operations are still being conducted by the police and military forces.

The situation in other regencies in the central highlands

11. Since the killing of 19 construction workers in the Regency of Nduga, allegedly by the members of TPNPB, on 2 December 2018, additional military forces have been deployed in various regencies of the central highlands to hunt down the perpetrators and as a demonstration of military strength against TPNPB.¹² The central highlands are largely isolated from public services and are known to be the stronghold of the TPNPB. The area is mainly populated by indigenous Papuans, except for a few small towns where non-indigenous Papuans maintain small businesses or work in government positions.
12. According to the Indonesian National Commission on Violence against Women (*Komnas Perempuan*), the conflict has resulted in the displacement of the indigenous people, with the majority of them were women and children.¹³ The data collected by the International Coalition for Papua shows that more than 41,851 indigenous Papuans, many of them are women and girls, from the regencies of Mimika, Intan Jaya, Puncak, Lanny Jaya, and Nduga were internally displaced between 4 December 2018 and early March 2020 because of security operations.¹⁴ The situation of pregnant women among IDPs is very much of concern. They are part of the vulnerable groups which also include children and people with chronic conditions. Their source of meal is mainly from the yams, without additional side dishes to provide further nutrients.¹⁵
13. The majority of IDPs from Nduga have not received any humanitarian aid supplies from the central government. The central government has failed to set up IDP camps in coordination with local governments in IDP hotspots. Such camps could help to coordinate the distribution of aid deliveries and coordinate the effective provision of humanitarian services such as shelter, basic healthcare, and education. Many IDPs – particularly children – have been traumatized by the security force operations and fear the presence of police and military members in their villages.
14. On 2 September 2021, an armed pro-independence group claimed that they were responsible for the attacks against a military post in Maybrat Regency, Papua Barat Province causing the death of four soldiers and injuring several others. The following days, the local military regional headquarters dispatched at least a hundred soldiers to hunt down the attackers in the area. Fearing being the target of the military's retaliation, an estimated 2,000 villagers, mostly women and children in the surrounding areas fled to the forests. The local head of administration and regional military commander have called on the IDPs to return to their villages. In December 2021, *Komnas Perempuan* visited Maybrat Regency to meet with the indigenous women IDPs affected by the conflict. After the visit, the Chairperson of *Komnas Perempuan* expressed her concern in the negative impacts of the conflict to the Papuan women IDPs, in particular the loss of sense of security among the indigenous women and their difficulty to access to livelihood for their children and family.¹⁶

¹² Submission by the International Coalition for Papua (ICP) to the UN Human Rights Committee Review of Indonesia, available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IDN/INT_CCPR_ICS_IDN_42310_E.pdf

¹³ Information from the Press release of the National Commission on Violence against Women, available at <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-merespon-berbagai-kerusuhan-di-papua-jakarta-25-september-2019>

¹⁴ See ICP, YKKMP, ELSHAM Papua and JPIC Kingmi Papua, the Humanitarian Crisis in West Papua; Internal Conflict, the Displacement of People and the Coronavirus Pandemic, July 2020, p. 2, available at: https://www.humanrightspapua.org/images/docs/HumanitarianCrisisWestPapua_IDPCovid_July2020.pdf.

¹⁵ See the article by ReliefWeb of the United Nations Office for the Coordination of Humanitarian Affairs Service, available at <https://reliefweb.int/report/indonesia/invisible-victims-papua-conflict-nduga-regency-refugees>

¹⁶ Statement of the Ms Andri Yetriyani, the Chairperson of Komnas Perempuan, as quoted in Papua Tribunews, available at <https://papua.tribunnews.com/2021/12/09/komnas-perempuan-pantau-kondisi-mama-mama-pengungsi-di-maybrat?page=2>

Recommendations:

- States should allow free and unimpeded national and international humanitarian access to areas of conflict to ensure that the rights of IDPs, including indigenous women and girls, are respected, protected and fulfilled under the international human rights treaties.
- States should adopt effective measures to address the specific needs of indigenous IDP's women, particularly in situation of armed conflict such as in West Papua.
- States should review police, military and other security forces' policies and practices to ensure that civilians, including indigenous women and girls, should protected.

Indigenous women's participation in transitional justice processes

15. Papuan women have experienced abusive interrogation and horrific torture, including sexual violence, while detained without trial during military operations. Women were forced to flee from military operations abandoning their family and losing their means of subsistence. There is no accountability process for the violence against indigenous women committed by security forces.¹⁷ Women victims of sexual violence live with the consequences of their perpetrators' impunity and suffer difficulties in speaking out about their experiences, due to shame, fear of stigma and judgment, concerns about confidentiality, and lack of confidence in the rule of law.¹⁸
16. When the *OTSUS Law for Papua* was adopted, it embodied many of the transitional justice mechanisms. However, as the Law was reaching its 20th anniversary, the majority were yet to be put in place. While some amendments to the *OTSUS Law for Papua* were adopted in July 2021, this trend of inaction is likely to continue. Article 46 of *OTSUS Law for Papua* included the establishment of a Truth and Reconciliation Commission (TRC) tasked with "historical clarification and reconciliation". To date, this promise has not been honored. Since 2019 however, there have been calls for the establishment of a TRC in Papua, while others question this initiative in the light of continuing violations.
17. Article 45.2 of the *OTSUS Law for Papua* promised the establishment of a Human Rights Court. While this has not been honored, a representative office of the National Human Rights Commission has been established in Papua. Articles 45-47 of the 2001 law have not been amended, meaning that the promise of a Human Rights Court in Papua remains.
18. The Indonesian Commission for Human Rights (*Komnas HAM*) also completed ad hoc inquiries for cases called Wasior (2001-2002), Wamena (2003), and the Paniai (2014). Particularly in Wasior and Wamena, each has at least one woman as victims of sexual violence.¹⁹ These cases are unresolved cases of gross human rights violations caused by the State apparatus in Papua. Similarly, the Attorney General has not followed up on the judicial process since 2004. The last case to be tried by the Indonesian Ad Hoc Human Rights Court was the Abepura case that took place in Papua (2001). All perpetrators were acquitted, and no gender-based crimes have ever been brought to trial.
19. From 2009 to 2010, the Women's Working Group of the Papuan People's Assembly (*Pokja Perempuan MRP*) worked with the *Komnas Perempuan* and civil society actors to conduct a study on violence against Papuan women since 1963. The report, titled "Enough is Enough!", documented some 260 cases of State and domestic violence as well as a compelling record of human rights violations against women that took place both before and after "*Reformasi*" period which started in 1999. The report was handed to the chair of the MRP in a public ceremony held in Jayapura.
20. In response to this report, the MRP and Papuan parliament passed a local law in 2011 establishing a provincial-level commission to provide assistance to women victims. This Special Local Regulation (*Perdasus*) on the Recovery of the Rights of Indigenous Papuan Women Victims of Violence and Human Rights Violations would

¹⁷ Asia Justice and Rights, Enduring Impunity, available at <https://asia-ajar.org/2015/11/enduring-impunity-women-surviving-atrocities-in-the-absence-of-justice/> <http://www.asia-ajar.org/files/ENDURING%20IMPUNIY%20final-23%20Nov-press.pdf>

¹⁸ Fact sheet 1, Fulfillment of Women Human Rights Situation in Papua, CEDAW Papua report, November 2016. This needs to be specified from whom that is

¹⁹ Indonesian Commission for Human Rights (Komnas HAM), Executive Summary: Investigation Reports on Gross Human Rights Violations, available at: https://perpustakaan.komnasham.go.id/opackomnas/index.php?p=show_detail&id=10549&keywords=

provide a local mechanism to acknowledge Papuan women's experiences of violence and provide urgent assistance. Although the regulation was passed into law in 2011, it has not been implemented a decade later.

21. In response to the lack of official truth-seeking processes of mass human rights violations, civil society has led the documentation and unofficial truth-seeking of mass human rights violations. Papuan Women's Working Group (PWG) conducted participatory research called "Stone & Flower",²⁰ which integrates human rights, legal, and psycho-social approaches to assist victims, particularly victims of sexual violence during conflict. It addresses human rights violations, the social and political impacts of violations, and provides an environment where healing can take place.²¹

Recommendations:

- States should adopt legislation to include remedy and reparation for victims of serious crimes, for indigenous women, such as in West Papua,
- States should adopt measures to strengthen the independence and impartiality of the judiciary.
- States should ensure the effective implementation and improvement of existing legislation to address the specific human rights violation against indigenous women, such as the regional legislation in West Papua on *Recovery of the Rights of Indigenous Papuan Women Victims of Violence and Human Rights Violations*.

²⁰ Asia Justice and Rights, Stone & Flowers, available at <http://www.asia-ajar.org/files/stone%20%26%20flower.pdf>

²¹ Later, AJAR adapted these tools for work with survivors of torture and their communities. See "Mosaic: Rebuilding Lives and Communities after Torture" at: <https://asia-ajar.org/wp-content/uploads/2018/01/Mosaic-Unlearning-Impunity-Series-Manual-2018.pdf>