**UN Seminar of Expert Mechanism on the Rights of Indigenous Peoples EMRIP**

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***“UN Expert Seminar on the Impact of Militarisation on the Rights of Indigenous Peoples”***

**Concept Note:** “Violence and other crimes against the physical and cultural survival of Indigenous Peoples as a result of militarization”

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Mr. Chair, Vice Chair and Expert Members, permit me to greet you all with my language - Waa waa waa!

I want to begin by paying my deep respects to the first sovereign Indigenous peoples around the world. I acknowledge and honour their tenacity in defending their territories and lands, and in maintaining and asserting their distinct cultural and political philosophy. I also pay my great respects to the ancestors of more than 250 Tribes of indigenous people of West Papua, to the Lanni Tribe - Murib Tabuni and Giniagalo, the Tribes from which my cultural and political identity is rooted from.

**Background**

The historical and ongoing military violence and other crimes against physical and cultural survival of indigenous people of West Papua,[[1]](#footnote-1) that was rooted in the history of foreign interventions in the 19th century,[[2]](#footnote-2) is gravely concerning one. The historical wrong that was begun with an illegal incorporation of West Papua into Indonesia under illegitimate agreement of ‘the 1962 New York Agreement’,[[3]](#footnote-3) which was unilaterally signed between the Netherlands and Indonesia without indigenous Papuans’ consent.[[4]](#footnote-4) and further denial of the internationally recognised right of the Papuans to determine their own destiny in the Act of Free Choice in 1969, through the direct military involvement of Indonesia.[[5]](#footnote-5) Indigenous West Papuans continue to dispossess their legitimate place in international law, including the rights affirmed in the Declaration on the Rights of Indigenous Peoples (the Declaration).[[6]](#footnote-6) It is a story of human betrayal dispossessing the Papuans from gaining the benefit of international law. It is a story of cultural loss, destruction, greed, genocide, ecocide, imperialism and political manoeuvring.[[7]](#footnote-7)

This study highlights persistent violent conflicts and other crimes against the physical and cultural survival of Indigenous Peoples of West Papua, as a result of ongoing Indonesia’s rule and increasing militarization. With its historical records (historical wrong) and ongoing human rights violations, the legal issue of West Papua is considered as an international character, matters of international concern and responsibility, and therefore required an international approach-based solution. Including the resolution within the framework of indigenous human rights regime that is grounded in the UNDRIP.

**Declaration Provision**

The UN Declaration on the Rights of Indigenous Peoples UNDRIP (the declaration), provides the legal framework for the protection of the rights of indigenous peoples. Including the provisions to avoid the violent crimes against the physical and cultural survival of Indigenous Peoples as a result of militarisation. In this intervention, I want to relate the provisions of **articles 7, 10, 30** and **36** of the UNDRIP,[[8]](#footnote-8) and the situation of the indigenous people of West Papua, to see whether there is any progress in the fulfilment of these provisions.

* Article 7 affirmed indigenous peoples, individually and collectively have the rights to life, physical and mental integrity, liberty, security of person and to live in freedom, peace and security as distict peoples and shall not be subjected to any act of genocide or any other act of violence.
* Article 10 articulates that Indigenous peoples should not to be removed from their lands or territories, and no relocation shall take place without their free, prior and informed consent.
* Article 30 provides that military activities shall not take place in the indigenous lands and territories without the agreement or request by indigenous peoples; and
* Article 36 outlines that indigenous peoples who are divided by the international border have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

Above mentioned articles, provide legal protection to indigenous peoples, individually and collectively not to be subjected to any act of genocide or any other act of violence; removed from their lands and territories without their consent; conducted any military activities in the indigenous lands without their request, and not to be prevented from maintaining their unbreakable relationships they have had between indigenous peoples who are divided by international border. While the Declaration guarantees these as the legal rights to indigenous peoples, it also provides the legal obligations to the state parties to comply with the international duty to implement those affirmed rights. Such duty enumerated in articles 30.2 and 36.2,[[9]](#footnote-9) which required the states that effective measures should be in place, and in doing so through effective cooperation and participation of indigenous peoples themselves through their representative institutions.

**Situation on the Ground**

On a plausible ground of the historical and ongoing plights of West Papua, there is a consistent demand by indigenous Papuans for secession from Indonesia. Indonesia in response, increased more of its military personnels to retain its territorial claim.[[10]](#footnote-10) As a consequence, the manifestation of the state’s international obligations required by the UNDRIP is hardly seen in West Papua, as the situation on the ground is predominantly occupied by the state brutality, inequality and the extreme military act of violence against the physical and cultural survival of indigenous Papuan people.[[11]](#footnote-11)

More than sixty years since the 1960s, West Papua has been a Military Operation Zone by the Indonesian security forces declaring war targeting indigenous Papuans, with the aim of cracking the separatist movement in several regions under the various Military Operations (MO). According to human rights groups, there have been at least 15 major military operations since the 1960s.[[12]](#footnote-12) The operations cost thousands of indigenous West Papuans lives. The death toll as a result of Indonesia’s militarisation is estimated to be as many as 500,000 lives.[[13]](#footnote-13) Many studies have concluded that, West Papua is the place of evolving genocide, including a study by the Yale Law School, which argued that the Indonesian government is responsible for genocide against indigenous West Papuans.[[14]](#footnote-14) As a result, indigenous Papuans live under constant fear, terror, intimidation in their own land.

One of the worst cases is the displacement and killing of thousands of people to make way for the giant American and British-owned Freeport mine, the largest gold mine in the world, which has reduced a sacred mountain to a crater and poisoned the local river system.[[15]](#footnote-15) Extra judicial killing in West Papua has been an ongoing issue since the 1960s. The airstrike bombardment of Indonesia’s military is destroying the indigenous Papuans villages and their gardens, which indigenous Papuans are forced to flee from their lands and territories finding a safe place. Most recently, Security officers dropped 32 mortar rounds, five of which exploded, damaging public facilities and setting houses on fire during the airstrikes, which were claimed to be in pursuit of armed pro-independence groups.[[16]](#footnote-16) In July 2018, in Alguru village of Nduga Regency, two Papuans were shot dead and many others injured through a military helicopter bombing attack (four times) with a huge explosion, resulting the gardens and houses of the people in Alguru’s village are flattened with the ground.[[17]](#footnote-17) According to an independent investigation, at least there were 206 deaths within twelve months from 2018-2019.[[18]](#footnote-18)

In the last four years from 2018-2022, huge numbers of military deployment into West Papua caused the mass displacement of civilians from Nduga, Intan Jaya, Deiyai, Dogiyai, Puncak Jaya, Yahukimo and in Maybrat Sorong.[[19]](#footnote-19) Many reports are indicating that people are dying from starvation, disease, and cold weather in the jungle. Others fled to neighbouring regencies for safety, facing difficulties as no humanitarian aids came in from the state, instead the government deployed more heavy military personnel in the name of national security.[[20]](#footnote-20) In August 2022, Four indigenous West Papuans were mutilated by the members of Indonesia’s special forces. After shooting the four men, soldiers cut off their heads and legs, stuffed them in sacks, and dumped them in a village river.[[21]](#footnote-21) For 59 years since 1963, Indonesia has appeared conspicuously in forms ranging from military posts, violence, injustice, the marginalisation, and the failure of human rights development, to a whole history of denial of the fundamental rights of indigenous Papuans.

**Good Practices and Challenges**

In 2001, the Special Autonomy for Papua province was introduced through law No 21,[[22]](#footnote-22) for the duration of twenty years. In one sense, this can be viewed as the state’s political policy imposed in response to the growing demands for secession by indigenous Papuans. In another sense, it can be seen as an example of an internal self-determination model of good practices. This understanding shall be expected with greater positive outcomes, where indigenous Papuans are recognised and guaranteed the authority to form and run self-government by themselves, and fulfil their own internal affairs in economic, social and cultural development within the Indonesian state. While acknowledging small changes, in two long decades after its implementation, however, there had been no significant improvement to indigenous Papuans. Many studies have concluded that the implementation of the special autonomy continues to fail, and blaming the government for failing to accommodate the imagination of Papuanness within the frame of Indonesianness.[[23]](#footnote-23)

As the term of the special autonomy law came to an end in 2021, the Papuans through Papuan People Petition PRP,[[24]](#footnote-24) rejected the plan to renew it, reasoning that twenty years of its implementation amplified a long pain of grievances.[[25]](#footnote-25) They believed that the special autonomy was a further threat to their physical and cultural survival, and consistently called on the Indonesian government to create a space for dialogue under international supervision.[[26]](#footnote-26) Jakarta however, once again accelerated with re-extension of the special autonomy status through the enactment of Law No. 2 of 2021,[[27]](#footnote-27) regarding the second amendment to Law No 21 of 2001, concerning Special Autonomy for Papua Province for further 20 years until 2041,[[28]](#footnote-28) without the Papuans' consent. This is a deliberate violation of article 77 of law No. 21 of 2001 itself, which required proposals for amendments to be submitted by the Papuan people.[[29]](#footnote-29) Such policy constitutes a denial of the constitutional promise guaranteed by the special autonomy law itself. With its first two decades of failure, it has a potential to bring another twenty years of further threat to indigenous West Papuans.

The Indonesian government should have interpreted the special autonomy initiative as the best approach for internal self-determination of good practices, in line with the principles that were required under the UNDRIP. In doing so, the ongoing violent conflicts and militarisation in West Papua in some degree may reduce and the rights of indigenous Papuans guaranteed in the declaration can be achieved. However, imposing its policies towards Papua, alway been not genuine and political and there is no nexus of legal reference of such domestic regulation with the UNDRIP. Consequently, the indigenous West Papuans continue to dispossessed to obtain the benefit of the UN Declaration on the Rights of Indigenous Peoples.

**Effective mechanism**

To reduce the military violent conflict in West Papua, there have been domestic judicial and political remedies attempted by indigenous people of West Papua through their own representative institutions. Including Presidium Dewan Papua PDP (Papua Presidium Council) in 2000,[[30]](#footnote-30) Jaringan Damai Papua JDP (Papua Peace Network),[[31]](#footnote-31) including the United Liberation Movement for West Papua (ULMWP),[[32]](#footnote-32) consistently demanding the government of Indonesia to conduct an open dialogue between the state and the indigenous West Papuans under the third party’s mediation. However, all these efforts are consistently ignored by the government, which suggests the failure of the domestic approach.

As the driving factor of violent conflict and militarisation against the indigenous West Papuans originated from the historical wrong, there is legally justified and morally reasonable to argue that the legal claim of indigenous people of West Papua for a statehood has a legitimate ground, and therefore it should be considered as an international character or international matter. As such, it requires the international legal remedial approaches, especially under the guiding principles of Indigenous Rights Regime that was grounded in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and other broad principles of international human rights instruments. And to achieve such a claim, the collective struggle by indigenous peoples and by international communities must not stop on a global stage and put more pressure on the Indonesian government to be in compliance with its international obligations.

Thank you.

Waa waa waa!

1. West Papua is the name of the territory of western half of the Island of New Guinea, geographically located in the Southwest Pacific. In 1828, it was named as West New Guinea and the Netherlands New Guinea after the Hollands laid its colonial claim to the territory. In 1961, Indigenous Papuans officially adopted ‘West Papua’ as the name of their country through the Netherlands-sponsored West New Guinea Council as part of the Decolonisation process. In the 1960s, when Indonesia recolonised the territory, it gave its own name as ‘Irian Barat’ and then ‘Irian Jaya’ until 1999, and in 2000, the Papuans chose to put their mother lands back to its original name as ‘West Papua’ through 2000 Papuan Congress. When it refers to Indonesia’s administrative terms, there are two provinces; Papua and West Papua. But ‘West Papua’ is the original name preferred by Indigenous West Papuans and it is well-known to International communities. Therefore, this thesis is preferred to use the original name of the territory “West Papua” as the whole of the western half of the New Guinea Island. [↑](#footnote-ref-1)
2. John Saltford *The United Nations and the Indonesian Takeover of West Papua, 1962-1969: The Anatomy of Betrayal* (Routledge, NY, 2002) at 5. [↑](#footnote-ref-2)
3. GA Res A/RES/1752/(XVII) “Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian). [↑](#footnote-ref-3)
4. In the 19th century, West Papua became a colonial property under the aegis of the Dutch until the promise of decolonisation of the 1960s. Dramatic changes began with the second wave of colonisation (recolonisation) by Indonesia in the second half of the 20th century. Since then, Asian and Javanese immigrants settled throughout the territory. In 59 years, they gained control of most of the economy through the alienation of sacred lands. Imposing their culture, dominating and suppressing the indigenous West Papuans and their distinct cultures through a military style of government. These changes most affected the indigenous West Papuans who had no voice in their own destiny or in the alteration of their long-established cultures and ways of life. [↑](#footnote-ref-4)
5. During the period leading up to the act of self-determination in 1969, Indonesia deployed about 16,000 military personnel in the region under Brigadier Sarwo Edhie. Sudjarwo, in his speech said that; “an Act of Free Choice would take place but there could be no question of their voting for anything other than Indonesia. The Indonesian officials therefore handpicked about 1025 representatives out of nearly one million inhabitants. In July 1969, prior to the act of self-determination, those selected members of assembly had been directed to the isolation camp by Indonesian authorities. All of them were either bribed, threatened, and intimidated by the Indonesian military. [↑](#footnote-ref-5)
6. United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295). [↑](#footnote-ref-6)
7. Robin Soborne *Indonesia’s Secret War: The Guerilla Struggle in Irian Jaya* (Allen & Unwin Australia Pty, New South Wales, 1985) at 116. [↑](#footnote-ref-7)
8. **Article 7.1** - Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of a person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group; **Article 10** - Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return; **Article 30.1** - Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. **2.** States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities; and **Article 36.1** - Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. **2.** States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right. [↑](#footnote-ref-8)
9. **Article 30.2 -** States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities; and **Article 36.2** - States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right. [↑](#footnote-ref-9)
10. Increased Militarisation and State Terrorism in West Papua. The Statement of Interim President Benny Wenda. (April 1, 2022) <<https://www.ulmwp.org/interim-president-wenda-increased-militarisation-and-state-terrorism-in-west-papua>>. [↑](#footnote-ref-10)
11. Camellia Webb-Gannon, Michael Westaway and Others “What can Australia do to Prevent Human Rights in West Papua” (2021) 26 APJF 354 at 354. [↑](#footnote-ref-11)
12. ELSHAM PAPUA - Operasi Militer Papua <<https://elshampapua.com/>>. [↑](#footnote-ref-12)
13. L.E. *Avoiding Another East-Timor Atrocity: The Fight for Indigenous Sovereignty and Self-Determination in West Papua* (Springer International Publishing, New York, 2019) at ch 213. [↑](#footnote-ref-13)
14. Camellia Webb-Gannon, Michael Westaway and Others “What can Australia do to Prevent Human Rights in West Papua” (2021) 26 APJF 354 at 354. [↑](#footnote-ref-14)
15. Egret and others “West Papua: Silent Genocide as Corporations Profit” (2017) at 14. (September 12. Greenleft) [↑](#footnote-ref-15)
16. [Unequal Christians of Asian Churches](https://www.ucanews.com/series/unequal-christians-of-asian-churches/50) “Indonesia asked to explain use of mortars in Papua attacks” <<https://www.ucanews.com/news/indonesia-asked-to-explain-use-of-mortars-in-papua-attacks/97541?fbclid=IwAR1t8iZkmDRXaLW63r6M_pQdm-ciYH3IurN9dnaEOzaVNd3tsOXpcz5rBaQ>>. [↑](#footnote-ref-16)
17. #  Asia Pacific Report “Traumatised Papuan Villagers Flee Indonesian military in Nduga” <www.asiapacificreport.nz>.

 [↑](#footnote-ref-17)
18. Hipolitus R Wangge and Camellia Webb-Gannon “Civilian Resistance and the Failure of Indonesia Counterinsurgency Campaign in Nduga, West Papua” (2020) 42 CSA at 276. [↑](#footnote-ref-18)
19. Radio New Zealand International: Pacific/ West Papua. “Thousands Displaced in Latest West Papua Violence: Priest. Reported on the 8th September 2021. [↑](#footnote-ref-19)
20. Budi Hernawan “Papua” (2019) 31 CP 536 at 537. [↑](#footnote-ref-20)
21. Asia Pacific Report “Killing of four West Papuans ‘brutal reminder of reality’ under Jakarta rule, says Wenda” <<https://asiapacificreport.nz/2022/08/31/killing-of-four-west-papuans-brutal-reminder-of-reality-under-jakarta-rule-says-wenda/>> [↑](#footnote-ref-21)
22. Special Autonomy Law for Papua Province 2001 (21). [↑](#footnote-ref-22)
23. Gerry Van Klinken. “Three Books on Papua.” Bijdragen tot de taal-, land- en volkenkunde (2010) 166 RNISACS 529 at 530. [↑](#footnote-ref-23)
24. Asia Pacific Report “714,000 Papuans, 112 organisations oppose ‘failed’ special autonomy law” (19 July 2021) Asia Pacific Report <<https://asiapacificreport.nz/2021/07/19/714000-papuans-112-organisations-oppose-failed-special-autonomy-law/>>. [↑](#footnote-ref-24)
25. International Coalition for Papua *Human Rights in West Papua 2017: The Fifth Report of the International Coalition for Papua (ICP) Covering Event from January 2015 to December 2016*, (2017) at 130. [↑](#footnote-ref-25)
26. John Saltford *The United Nations and the Indonesian Takeover of West Papua, 1962-1969: The Anatomy of Betrayal* (2nd ed, Taylor & Francis Group, London, 2003) at 164. [↑](#footnote-ref-26)
27. Special Autonomy Law for Papua Province 2021 (2) Concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua. (Undang-Undang Republik Indonesia Nomor 2 Tahun 2021 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua). <<https://jdih.setkab.go.id>>. [↑](#footnote-ref-27)
28. Undang-Undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua <[https://peraturan.bpk.go.id>.](https://peraturan.bpk.go.id/Home/Download/165578/UU%20Nomor%202%20Tahun%202021.pdf) [↑](#footnote-ref-28)
29. Special Autonomy Law for Papua Province 2001 (21) article 77. Proposals for amendments to this Law may be submitted by the people of Papua Province through the Papuan People’s Assembly (MRP) and Papuan People's Representative Council (DPRP) to the DPR or the Government in accordance with statutory regulations. [↑](#footnote-ref-29)
30. Presidium Dewan Papua <<https://profilbaru.com/Presidium_Dewan_Papua>>. [↑](#footnote-ref-30)
31. The Campaign of Papua Peace Network for Papua Peace Land

 <<https://jurnal.ugm.ac.id/jsp/article/view/30440>>. [↑](#footnote-ref-31)
32. ULMWP is an Unifying Umbrella of various pro-independence parties established in December 2014 in Saralana, Vanuatu, where the Headquarter of ULMWP is located. <<https://www.ulmwp.org/ulmwp>> [↑](#footnote-ref-32)