

MARQ WIJNGAARDEN
MICHEL PESTMAN
FLIP SCHÜLLER
PROF. LIESBETH ZEGVELD
MARIEKE VAN EIK
PROF. GÖRAN SLUITER
PROF. BRITTA BÖHLER
WIL EIKELBOOM
DR. CHANNA SAMKALDEN
TAMARA BURUMA
EDWARD VAN KEMPEN
BRECHTJE VOSSENBERG
TOMASZ KODRZYCKI
DR. HANA VAN OOIJEN
TOM DE BOER
NYNKE BAKKENES

ADVISEURS

PROF. HANS ULRICH JESSURUN D'OLIVEIRA
PROF. TIES PRAKKEN

**PER 1 JANUARI 2016 IS ONS NIEUWE ADRES:
LINNAEUSSTRAAT 2-A | 1092 CK AMSTERDAM**

**AS OF 1 JANUARY 2016 OUR NEW ADDRESS IS:
LINNAEUSSTRAAT 2-A | 1092 CK AMSTERDAM**

**COMMUNICATION TO THE UNITED NATIONS HUMAN RIGHTS
COUNCIL REGARDING VIOLATIONS OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN WEST PAPUA, INDONESIA FROM 1963
TO THE PRESENT**

8 June 2016

* * *

I give this command positively and clearly. Defeat this 'state of Papua'! Unfurl the Red and White Flag in West Irian! Defeat it! Unfurl our flag! Be prepared, general mobilization is coming! General mobilization which will involve the whole of the people of Indonesia in order to liberate West Irian completely from the stranglehold of Dutch imperialism. Friends, this is my command. Execute this command of mine!

-- President Sukarno, Jogjakarta, 19 December 1961¹

* * *

¹ See People's Command for the Liberation of West Irian, President and Supreme Commander of the Armed Forces of the Republic of Indonesia, speech given at a mass meeting in Jogjakarta on 19 December 1961, Department of Information, Republic of Indonesia, Special Issue No 82, available at <http://papuaweb.org/goi/pidato/1961-12-jogjakarta.html>.

I. INTRODUCTION

1. This communication is hereby submitted to the United Nations Human Rights Council (the 'Council' or the 'HRC') pursuant to HRC Resolution 5/1 by Professor Göran Sluiter² and Andrew Ianuzzi³ on behalf of the Federal State Republic of West Papua (*Negara Republik Federal Papua Barat*) (the 'NRFPB') and its president Forkorus Yaboisembut, as well as on behalf of nineteen unnamed citizens of West Papua⁴ (collectively, the 'Complainants').
2. Situated at the eastern end of the Indonesian archipelago, West Papua occupies the western half of the island of New Guinea.⁵ The land of West Papua is currently comprised of two provinces, Papua and West Papua. *Tanah Papua*, as it is known in Indonesian, has been forcibly occupied by the Indonesian government since 1963. While the territory 'may only be a swim and walk away from Australia, [...] it may as well be the dark side of the moon. [It] is [largely] a secret story, hidden from the world by the vagaries of geopolitics and a policy that keeps foreign journalists, human rights workers, and even diplomats out'.⁶ Papua's diverse population, 'with more than 200 distinct indigenous ethnic groups and a large population of migrants from elsewhere in Indonesia, struggles with some of the lowest development indicators in the country'.⁷ And the ongoing dispute over who should rightly control the land and resources of West Papua is 'the Pacific's longest-running political conflict'.⁸

² Professor Sluiter holds a chair in international criminal law at the Faculty of Law at the University of Amsterdam and is a partner at the Amsterdam law firm of Prakken d'Oliveira Human Rights Lawyers.

³ Mr Ianuzzi is an independent legal consultant and human-rights investigator.

⁴ The victims' accounts are set out in detail below. *See* para 322 *infra*. *N.b.* In order to ensure their safety and protect their privacy, the identities of the unnamed victims—who have each specifically expressed security concerns—will not be disclosed at this stage. Their identities could be made available to the Council subject to satisfactory conditions of confidentiality and approval of the victims.

⁵ The eastern half is the independent state of Papua New Guinea (hereinafter, 'PNG').

⁶ Jason MacLeod, *MERDEKA AND THE MORNING STAR: CIVIL RESISTANCE IN WEST PAPUA* (University of Queensland Press 2015), pp 17–18. *N.b.* West Papua 'is [...] much closer to Australia than you'd think. From Boigu Island in the Torres Strait, Australia's northernmost islands, you can wade across to Papua New Guinea. From there you can trek to the West Papuan border.' *Ibid*, p 17.

⁷ Cillian Nolan & Sidney Jones, 'Jokowi's Turn to Solve the Papua Question', *East Asia Forum*, 19 May 2015.

⁸ MacLeod, *MERDEKA AND THE MORNING STAR*, p 27.

3. West Papua—a former Dutch colony and ‘a Melanesian nation-in-waiting’⁹—has long suffered from two major and interlinked injustices. The first, the denial of Papuans right to self-determination in 1969, was unjustly orchestrated by the Republic of Indonesia with the complicity of Western powers and the United Nations. The transfer of sovereignty from the Netherlands to Indonesia ‘occurred under highly contested circumstances that included widespread allegations of manipulation, intimidation, and human rights violations’.¹⁰ And—the second—since that time, Papuans have been brutally dispossessed of their land, natural resources, and cultural heritage while simultaneously enduring a systematic government-sanctioned campaign of unspeakable depravity and brutality. ‘Conflict and violence continues to the present day in varying degrees of intensity. [...] It is a conflict that many Papuans argue is threatening their very survival as a people.’¹¹

4. In spite of this, Papuans have continued to demand political independence and recognition of their basic rights. While their struggle has faced both external and internal difficulties, Papuans are well aware that they face a fierce and determined common enemy:

The good is that there is a great deal of clarity and agreement among Papuans about the root causes of conflict in West Papua: historical grievances and lack of political recognition, state violence and impunity, discrimination and racism, and economic marginalization and neglect [...]. The Indonesian government has compounded irresolution of the conflict through blocking open access to West Papua from media, international agencies and diplomats, although there are signs that the Indonesian government is succumbing to pressure to open up West Papua to foreign press. But limited media access is not the only obstruction to a just peace. The Indonesian government continues to pursue a policy of large-scale industrialized development that disadvantages traditional landowners. It encourages unfettered migration of non-Papuans and refuses to recognize customary land rights. Then when there is resistance, or to pre-empt insurgency, the police and military are used as tools to repress and divide Papuan dissent. Papuans understand these strategies of rule. [...] Papuans want political self-determination and respect for their basic rights as indigenous peoples. They want to be masters of their own destiny, to live freely in the land of their ancestors.¹²

Sadly, over fifty years of occupation and marginalization demonstrate that the land and resources of West Papua are far more important to the Indonesian government than the Papuan people themselves, who—in the words of Filip Karma—are treated as if they

⁹ *Ibid*, p 107.

¹⁰ *Ibid*.

¹¹ MacLeod, MERDEKA AND THE MORNING STAR, pp 107–108.

¹² *Ibid*, pp 54–55.

are 'half animals'.¹³ 'In many ways, West Papua is a worst-case scenario: internationally isolated and internally divided indigenous peoples facing a genocidal occupying army.'¹⁴

5. West Papua's curse, as it were, is its riches. Ongoing military operations and state violence are at the service of economic exploitation on a vast scale and characterized primarily by massive resource-extraction projects. Not only does such institutional theft deprive Papuans of their natural wealth, unchecked extraction has 'also resulted in ecological destruction, expropriation of land, and socio-cultural dislocation; displacement and marginalization created by Jakarta's promotion of migration to West Papua; and institutional racism contributing to what Papuans call a "crisis of identity"'.¹⁵

6. West Papua is a land where foreign companies make nearly \$20 million per day, while the indigenous population suffers from chronic hunger and a lack of education, medical care, and basic services. Caring little to nothing about Papuan wellbeing, the Indonesian government treats the territory as a resource to be exploited to the fullest extent possible. And in order to achieve this goal, Papuans are subjected to the abuses typical of occupation:

lack of political recognition and participation, state violence, discrimination, racism, economic marginalization, large-scale industrial development at the expense of traditional landowners, denial of access to health, welfare, education and other human rights, unfettered migration of Indonesians to displace/dilute the indigenous population, as well as police, paramilitary and military violence, including torture, to repress Papuan dissent.¹⁶

The Papuan resistance movement has never stood a chance in the face of Jakarta's approach 'to crush it, repress it, persuade it, co-opt it, divide it, dilute it, or smother it in a process called development'.¹⁷ Successive Indonesian governments have combined a 'security approach' and a 'prosperity approach' in different proportions. But all of them

¹³ *Ibid*, p 60.

¹⁴ *Ibid*, p 61.

¹⁵ MacLeod, MERDEKA AND THE MORNING STAR, p 118.

¹⁶ Robert J Burrowes, 'The Struggle for Merdeka in West Papua', *Pacific Scoop*, 13 January 2016.

¹⁷ 'The Current Status of the Papuan Pro-Independence Movement', Institute for Policy Analysis of Conflict, Report No 21, 24 August 2015, p 1.

have confronted the movement 'with force and cracked down on non-violent pro-independence groups'.¹⁸

7. While willing at times to provide lip service regarding the concept of 'special autonomy', the Indonesian government refuses to negotiate with anything even resembling a separate party. This is especially the case after the country's 'experience with two other separatist areas: East Timor, which voted to break away in 1999, and Aceh, where a negotiated peace in 2005 led to the former guerrillas dominating local politics'.¹⁹
8. After more than fifty years of death and destruction in West Papua, the Complainants now submit that it is time for international legal action. There is every reason to believe that the Indonesian government has brutally denied the people of West Papua their right to self-determination, while at the same time—and in the specific service of such denial—has violated every Papuan human right and fundamental freedom acknowledged by international law. In support of this communication, which is admissible to the Council, the Complainants have relied upon a selected number of publicly available reports from various media, human-rights, academic, and government sources.
9. As the term West Papua is generally used to describe all of the territory comprising the two Indonesian provinces of Papua and West Papua, the issue of nomenclature can be a confusing one. For purposes of this filing, the following disambiguation will be useful:

West Papua is the name used by most Papuans (*Papua Barat* in *Bahasa Indonesia*, the lingua franca in West Papua) and by those in the international community who support self-determination. West New Guinea and Netherlands New Guinea refer to the Dutch names for West Papua during the period of Dutch colonialism. At the time of the dispute between Indonesia and the Netherlands the territory was also known as West Irian (*Irian Barat*). From 1969 until the 1998 fall of Suharto in Indonesia the province was called *Irian Jaya*. The territory was then briefly called Papua before being divided into two provinces. The eastern province retained the name Papua while the western province was initially called *Irian Jaya Barat* before the name was changed to *Papua Barat*.²⁰

In response to West Papuan demands for greater recognition of their distinct cultural identity the name of the territory was officially changed to Papua by the Indonesian

¹⁸ Cillian Nolan & Sidney Jones, 'Jokowi's Turn to Solve the Papua Question', *East Asia Forum*, 19 May 2015.

¹⁹ *Ibid.*

²⁰ MacLeod, MERDEKA AND THE MORNING STAR, p 18.

president Abdurrahman Wahid and later endorsed by president Megawati [Sukarnoputri]'s administration in January 2002.²¹

Herein, 'West Papua' will be used to refer to the entire territory, while the western province will be referred to as 'Papua Barat' and the eastern province as 'Papua'. The indigenous Melanesian inhabitants of West Papua will be referred to simply as 'Papuan'. And Indonesians from other parts of the country will be called 'migrants'. When referring to specific periods in history, the name associated with the time and the particular political perspective of the relevant party will be used.²²

²¹ *Ibid*, p 20.

²² See MacLeod, MERDEKA AND THE MORNING STAR, pp 25–26 ('For instance, in the period up to the 1969 transfer of sovereignty from the Netherlands to Indonesia, West Irian is used to describe the Indonesian, US, and UN perspectives and West New Guinea to describe the colonial Dutch perspective.')

II. RELEVANT FACTS

A. West Papuan History

1. Pre-Colonial West Papua

10. The original inhabitants of West Papua—primarily Melanesians and other ethnic groups—arrived on the island nearly 50,000 years ago.²³ From early on, the population was divided along clan and linguistic lines. Separate communities often came together in loose political confederations and according to common ecological conditions, but relationships were typically colored by competition for control over the land. West Papuans' first contact with neighboring Malay cultures occurred as early as the 7th century AD, when traders from the Malay Archipelago began taking spices and slaves from the island. While Indonesia maintains that the Java-based emperor Majapahit included West Papua within his kingdom circa 1293, many historians dispute the view that his domain extended so far to the east.²⁴ In any case, 'after the fall of Majapahit and the rise of Islamic kingdoms', West Papua was ruled for centuries by the Sultanate of Tidore.²⁵ The riches of the region would eventually attract conquerors from further afield.

2. Colonial Period

11. Portuguese explorers discovered West Papua along the Spice Route in the 16th Century. And Spanish traders made territorial claims soon thereafter, but without establishing any formal settlements.²⁶ Dutch interest in the territory was first registered in 1602,²⁷

²³ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014. *N.b.* West Papua was originally inhabited by a diverse group of indigenous communities of Melanesian origin which currently amount to more than 200 tribes and respective languages.

²⁴ See Robin Osborne, *INDONESIA'S SECRET WAR: THE GUERRILLA STRUGGLE IN IRIAN JAYA* (Allen & Unwin 1985), p 6; see also Muhammad Yusran Halmin, *The Implementation of Special Autonomy in West Papua, Indonesia: Problems and Recommendations*, Naval Postgraduate School Thesis (Monterey, California), December 2006, p 12 ('During this period, West Papua, then called Djanggi, was under the protectorate of Majapahit.') (citing Makarim Wibisono, *The Restoration of Irian Jaya into the Republic of Indonesia* (New York 2001), p 5).

²⁵ See, e.g., Peter King, *West Papua and Indonesia Since Suharto: Independence, Autonomy, or Chaos* (Sidney: University of New South Wales Press, 2004), p19.

²⁶ See Halmin, *The Implementation of Special Autonomy in West Papua*, pp 12–13 ('West Papua existed in relative calm until the early 1500s, when the Portuguese began their colonial expeditions, eventually landing in Moluccas and Malacca. In addition to trading, the Portuguese also tried to annex some of the

and four years later, the Dutch East India Company commenced commercial operations. Portions of the island became home to a short-lived British settlement in 1793, but these temporary settlers were driven out by disease and the inhospitable landscape two years later. In 1824, Great Britain and the Netherlands agreed that the western half of New Guinea would become part of the Dutch East Indies, and a Dutch governor formally established colonial rule in West Papua in 1828.²⁸ Claims to the eastern half of the island were staked by Great Britain, Germany, and eventually Australia.²⁹ A formal agreement on partition was reached in 1848,³⁰ and West Papua, '[o]riginally established as a buffer zone to protect the Dutch East India Company's lucrative spice trade [, ...] became the eastern extent of official Dutch rule in the archipelago'.³¹

12. The Dutch were slow in setting up administrative institutions and utilized West Papua mostly for its natural resources. However, in 1907, the Royal Dutch Shell Group, a recently formed Anglo-Dutch extractive concern,³² began to tap into the region's oil reserves. Over the next few decades, available resources were actively exploited by Dutch, British, and American commercial interests.

territories in the region. This effort, which was quite successful, was marked by the fall of Malacca and Moluccas. As for West Papua, either the Portuguese Jorge de Meneses or the Spaniard Alvaro de S Ceron is believed to be the first European to visit West Papua, in 1527. On June 13, 1545, a Spaniard, Ynigo Ortiz de Retez, named the island "Nueva Guinea," because he found that its people were similar to the people of Guinea, a Spanish possession on the west coast of Africa. However, a Portuguese sailor had earlier referred to this big island as "Ilha de Papoia," and it was well known as West Papua.'

²⁷ A Haga, *Nederlandsch Nieuw Guinea en de Papoesche Eilanden: Historische Bijdrage, ±1500–1883* (Nijhoff 1884); United Nations, 'West New Guinea: A Historical Background'.

²⁸ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 13 ('The Dutch officially proclaimed the west part of New Guinea as their territory on August 24, 1828, and continued by settling their representatives in Merkusoor, Fakfak, and Manokwari. They also furthered their authority in West New Guinea, in response to British and German activities in the east part of the island, by significantly increasing their administration. Manokwari, Fakfak, and Merauke were the first three regions developed by the Dutch to function as administrative cities.')

²⁹ PBR De Geus, *De Nieuw-Guinea Kwestie, Aspecten van Buitenlands Beleid en Militaire Macht* (Martinus Nijhoff Leiden 1984), p 18.

³⁰ See MacLeod, *MERDEKA AND THE MORNING STAR*, p 108 ('In 1848 the Netherlands, in agreement with the Germans and the British, arbitrarily partitioned the island of New Guinea in two, along the 141st meridian east of Greenwich [...].')

³¹ *Ibid.*

³² Royal Dutch Shell was created in February 1907 through the amalgamation of two rival companies: the Royal Dutch Petroleum Company of the Netherlands and the Shell Transport and Trading Company Ltd of the United Kingdom.

13. Responding to widespread rebellion against colonial rule in 1926, the Dutch instituted a policy of internal exile.³³ A new settlement in West Papua, known as *Tanah Merah* (red earth), was created to house exiled Indonesians. Among other things, this served to establish—for the first time in West Papua’s history—an Indonesian (*i.e.* non-Papuan) ethnic presence on the island.³⁴

14. World War II saw the Dutch temporarily supplanted by Imperial Japan, which established its own colonial administration in the East Indies in March 1942.³⁵ Although the Japanese perceived themselves as regional liberators from Western imperialism, they nevertheless sought to impose their own brutal brand of sovereignty in West Papua. Indonesian nationalist movements were harshly suppressed under the new regime.³⁶ Faced with voices of West Papuan dissent, Japanese officials arrested, tortured, and killed suspected members of resistance movements and ordered entire villages to be relocated.³⁷ A bloody cycle of West Papuan resistance and Japanese retaliation continued until the liberation of the region by American-led forces in August 1944.

3. Towards Indonesian Independence

a. Panitia Persiapan Kemerdekaan Indonesia

15. In July 1945, the Preparatory Committee for Indonesian Independence (*Panitia Persiapan Kemerdekaan Indonesia*) (hereinafter, the ‘PPKI’)—an organization created under Japanese occupation that later included many of independent Indonesia’s most prominent leaders (including Sukarno and Mohammad Hatta)—met to consider the

³³ *N.b.* ‘Indigenous Papuan nations have been resisting incursions from outsiders for centuries. From the 1850s to 1939, the Dutch colonialists, seeking to protect the spice trade, faced no fewer than 42 rebellions—both violent and nonviolent.’ MacLeod, *MERDEKA AND THE MORNING STAR*, p 224.

³⁴ Because of its frequent malaria outbreaks and its isolated location in the midst of a jungle peopled by headhunting tribes, Indonesian nationalists dreaded Tanah Merah and grew increasingly hostile toward the West Papuan people. When the Netherlands surrendered its colonies to Japan in 1942, the Dutch forced Indonesians from Tanah Merah onto steamers headed to Australia, where they were imprisoned by the Australian government.

³⁵ CLM Penders, *The West New Guinea Debacle: Dutch Decolonisation and Indonesia, 1945–1962* (University of Hawaii Press 2002), pp 12–13.

³⁶ *Ibid*, p 18.

³⁷ See, e.g., MacLeod, *MERDEKA AND THE MORNING STAR*, p 227 (‘The Japanese responded ruthlessly to the call for armed resistance, eliminating resistance groups and killing leaders [...]. On 10 October 1943, the Japanese massacred between 600 and 2000 Biak islanders.’)

possibility and implications of Indonesian independence, including the crucial question of which territories would become part of any new state. The majority of the delegates supported an independent Indonesia that would include *all* of the Dutch East Indies. However, West Papua was not represented on the PPKI.³⁸ And when the Indonesian nationalists nominally proclaimed independence on 17 August 1945, their territorial vision—as set out in the PPKI's constitution—included West Papua, which was to be subsumed by Maluku Province.³⁹

16. However, despite the nationalists' claims and aspirations, the victorious Allied Powers soon asserted a measure of control over the nascent independence movement. By early 1946, Indonesia was governed jointly by Sukarno's 'Republicans' and the recently-returned Dutch, who were striving (in vain) for a federation of their soon-to-be former Southeast Asian colonies—in contrast to the wholly independent and unified state envisaged by Sukarno and Hatta. West Papua again found itself subject to a Dutch administration,⁴⁰ albeit one that—in the face of the unlikely prospect of a regional federation—appeared to be grooming the island territory for eventual independence of its own.⁴¹

b. The Malino Conference

17. In July 1946, the head of the Netherlands administration organized a conference in Malino made up of representatives from the eastern archipelago. Franz Kaisiepo, the West Papuan delegate to the conference, expressed the prescient view that if his land were to become a part of Indonesia, it would be swallowed up without any attention paid to the economic situation of the indigenous inhabitants⁴² and that the larger ethnic groups of any federation would dominate the Papuan minority.⁴³ Supported in this position by the Australian government, Kaisiepo cited the differences in language and

³⁸ Robert Cribb, *Historical Atlas of Indonesia* (Curzon 2000), p 118.

³⁹ *Ibid*, p 153; see also PJ Drooglever, EEN DAAD VAN VRIJE KEUZE, DE PAPOEA'S VAN WESTELIJK NIEUW GUINEA EN DE GRENZEN VAN HET ZELFBESCHIKKINGSRECHT (Boom 2005), p 103. *N.b.* The envisaged new republic would consist of eight provinces: West, Middle, and East Java, Sumatra, Borneo, Sulawesi, Maluku, and the Sunda Islands.

⁴⁰ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 108.

⁴¹ Gemima Harvey, 'The Human Tragedy of West Papua', *The Diplomat*, 15 January 2014; Jennifer Robinson, 'The UN's Chequered Record in West Papua', *Aljazeera*, 21 March 2012.

⁴² Drooglever, EEN DAAD VAN VRIJE KEUZE, p 122.

⁴³ *Ibid*.

ethnic background as the major factors separating the people of West Papua from the rest of the archipelago.⁴⁴ He was joined in his predictions by Johan Ariks, a Papuan nationalist who advocated armed resistance to any foreign control of the area.⁴⁵ The upshot of the Malino Conference was consensus as to the concept of a federation, but the precise contours of the various constituent provinces was to be tabled for further discussion.

c. The Linggadjatti Conference and Agreement

18. In November 1946, a subsequent conference was held in Linggadjati in order to determine how best to proceed toward independence. Yet the issue of West Papua was not discussed,⁴⁶ and no West Papuan representatives were present.⁴⁷ A tentative agreement was reached, which, among other things, acknowledged republican rule over Java, Madura, and Sumatra.⁴⁸ Crucially, in official public statements and commentary to the agreement, the Dutch government clearly expressed its wish to grant independence to West Papua.⁴⁹ Pursuant to the Linggadjati Agreement, the new Indonesian republic was to become part of a regional Dutch-Indonesian federation. However, disagreements regarding implementation—including Indonesia's failure to comply with the Dutch demand to dissolve its military presence in West Papua⁵⁰—led to a prolonged period of diplomatic dispute, Dutch military intervention, and open conflict for much of the following year.

d. Initial UN Involvement

19. This colonial clash received much international condemnation and eventually led to the establishment of the UN Committee of Good Offices on the Indonesian Question (hereinafter, the 'CGO') on 25 August 1947 in order 'to assist in the pacific settlement of the dispute between the Netherlands and Indonesia regarding Indonesian

⁴⁴ *Ibid*, p 123.

⁴⁵ *Ibid*, p 111.

⁴⁶ *Ibid*, p 128.

⁴⁷ *Ibid*, p 123.

⁴⁸ *Ibid*, pp 111, 113.

⁴⁹ *Ibid*, p 130.

⁵⁰ *Ibid*, p 113.

independence'.⁵¹ Nevertheless, hostilities and further Security Council attempts at reconciliation continued. On 28 January 1949, the General Assembly appointed a more powerful body to replace the CGO, the UN Commission for Indonesia (hereinafter, the 'UNCI').⁵² Its job was to assist the negotiating parties in achieving a just and lasting settlement.⁵³

e. The 1949 Hague Round Table Conference

20. Under the auspices of the UNCI, negotiations among the Netherlands, the Republicans, and additional federalist movements were restarted at The Hague in late-1949. The Republicans were of the opinion that West Papua should form a part of the new nation, while the Netherlands argued that the people of New Guinea should chart their own course pursuant to the right to self-determination.⁵⁴ In this regard, the Dutch government expressed its view that the territory fell within the scope of Article 73 of the UN Charter, which placed a responsibility on UN member states to grant independence to non-self-governing territories.⁵⁵ Ultimately, the parties agreed that West Papua would provisionally remain a 'residence' under the residual Dutch government, pending further determination.⁵⁶ At the conclusion of the conference, the so-called Charter of Transfer of Sovereignty Over Indonesia was agreed, and the Netherlands ceded dominion over most of its former colonies on 27 December 1949. With regard to the fate of West Papua, it was formally decided:

That the status quo of the residency of New Guinea shall be maintained with the stipulation that within a year from the date of the transfer of sovereignty to the Republic of the United States of Indonesia the question of the political status of New Guinea be determined through negotiations between the Republic of the United States of Indonesia and the Kingdom of the Netherlands.⁵⁷

Thus, when Indonesia finally gained its independence in 1949, the new republic did not include West Papua. A state of limbo prevailed.

⁵¹ United Nations, 'Subsidiary Organs of the Security Council, Case 3', p 5.

⁵² United Nations, 'Subsidiary Organs of the Security Council, Case 5', p 7.

⁵³ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 114.

⁵⁴ United Nations Yearbook 1957 (I), pp 77–78.

⁵⁵ See para 335, *infra*.

⁵⁶ Drooglever, EEN DAAD VAN VRIJE KEUZE, pp 159–161.

⁵⁷ Charter of the Transfer of Sovereignty Over Indonesia (adopted 2 November 1949, entered into force 27 December 1949), 69 UNTS 206, (the 'Charter of Transfer of Sovereignty'), Article 2.

4. Sukarno's Attempts to Thwart West Papuan Nation Building

21. Following Indonesian independence, and amid rising fears of a communist threat among the Western powers,⁵⁸ the Dutch began the process of West Papuan nation building in earnest:

They argued that West Papua [...] was a distinct political entity from Indonesia with no significant administrative, historical, or cultural connection with rest of the Indonesian archipelago [...]. This claim was vehemently rejected by Indonesian representatives, who insisted to the United Nations that West Irian (as it was then called by the Indonesians) was part and parcel of a united Indonesia that included all the former Dutch East Indies [...]. Few Papuans, however, advocated integration with Indonesia, and during the 1950s the Dutch slowly started to prepare Papuans for self-government. At this time self-rule was also supported by the Australian government, and Papuan delegates actively participated in regional forums.⁵⁹

By 1957, the Netherlands had created numerous positions for West Papuans in government services, and the goal of handing over a majority of government posts appeared to be within reach.⁶⁰ However, the Dutch development plan was significantly hindered by the young republic's escalating diplomatic and military pressure on its former colonial master to cede control of the territory.

22. President Sukarno cynically utilized the plan as an opportunity to play on Indonesian nationalism and distract his own constituency from its declining economic situation. The Indonesian government undertook a massive campaign, including rallies and an official war cry, to drive home the country's need to take control of West Papua. Additionally, Indonesia amassed weapons from the Soviet Union in a military buildup intended to intimidate the Dutch. The US, the UK, and Australia—hoping to avoid a Cold War confrontation—sought to placate the Indonesians. For its part, the General Assembly, in three separate debates on the question of 'West Irian',⁶¹ failed to pass a resolution either backing Sukarno's claim to the territory or affording the West Papuans the right to self-determination.

⁵⁸ See Halmin, *The Implementation of Special Autonomy in West Papua*, pp 15–16 ('Equally important was the Cold War situation, which triggered fear in Washington regarding the future of Indonesia, especially considering the existence of the Indonesian Communist Party (PKI), the largest communist party outside the USSR and China. During this period, Indonesia had very close relations with the USSR, something the United States tried to disrupt. Therefore it was important for the United States to approach West Papua's problem diplomatically, instead of causing a military confrontation between the Dutch and Indonesia, which had the Soviet Union as its back-up.')

⁵⁹ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 109–110.

⁶⁰ Drooglever, *EEN DAAD VAN VRIJE KEUZE*, p 128.

⁶¹ Drooglever, *EEN DAAD VAN VRIJE KEUZE*, p 113.

23. Nevertheless, in February 1961, the Netherlands managed to organize elections for the West New Guinea Council, a representative body intended to encourage the establishment of a Papuan political elite that would eventually govern the region following the inevitable Dutch withdrawal.⁶² When the council was officially installed on 5 April 1961, ‘representatives of the governments of England, France, Australia, and the Netherlands, as well as the governor of Australian New Guinea, were in attendance’.⁶³ With this self-governing body in place, the Dutch government formally proposed the so-called Luns Plan to the General Assembly. The plan called for the termination of Dutch sovereignty followed by an interim UN administration that would, among other things, organize a plebiscite to determine the territory’s final status.⁶⁴
24. On 19 October 1961, ‘a date that would resonate 50 years later, an emergency meeting of 72 members of the Papuan legislature was called and a national committee elected’.⁶⁵ Later that month, ‘the committee selected national symbols—a flag, coat of arms, national anthem, name, and motto’.⁶⁶
25. On 1 December 1961:

the Dutch government acknowledged Papuan demands for an independent state and the Papuan symbols of nationalism were formally unveiled. [...] The name Papua Barat (West Papua) was agreed upon and the Morning Star was adopted as the national flag. Although there was never an official declaration of independence, many Papuans believe this date marks the beginning of West Papua as an independent sovereign state.⁶⁷

In response, the Indonesian government launched a military assault on West Papua, and the Indonesian and Dutch navies engaged each other off West Papuan shores.⁶⁸ Sukarno, ‘in a bid to strengthen Indonesian unity, [...] issued the Trikora commands for

⁶² *Ibid.*, p 130.

⁶³ MacLeod, *MERDEKA AND THE MORNING STAR*, p 228.

⁶⁴ Drooglever, *EEN DAAD VAN VRIJE KEUZE*, p 113.

⁶⁵ MacLeod, *MERDEKA AND THE MORNING STAR*, p 110.

⁶⁶ *Ibid.*

⁶⁷ MacLeod, *MERDEKA AND THE MORNING STAR*, p 111.

⁶⁸ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 20 (‘[I]n 1962, Suharto was commander in chief of an Indonesian military operation, known as Operation Mandala, to liberate West Papua from Dutch colonization. Suharto was responsible directly to the President regarding all aspects of the operation which explicitly gave zero tolerance to failure. Militarily, the operation was quite successful, marked by a Dutch decision to accept negotiations and their eventual recognition of Indonesian authority over West Papua. Unfortunately, some of the side effects of that operation created another problem which then transformed into resistance from West Papuans.’)

the liberation of West Irian'.⁶⁹ Among other things, the new president vowed to 'destroy the Dutch created Puppet State of West Papua'.⁷⁰ He would make good on that promise in short order.

5. *The New York Agreement and Interim UN Administration*

26. With outright war an imminent threat, US President John Kennedy took on the role of negotiating a peace accord between the Dutch and the Indonesians:

The impasse was broken when the determination of the Indonesian government, the weariness of the Dutch, and the self-interest of international onlookers—notably the United States and Australia—led to what became known as the New York Agreement. The agreement was brokered by the Kennedy administration and signed on 15 August 1962 by Indonesia and the Netherlands under the auspices of the United Nations, pursuant to the aims of the United Nations Charter. Under the New York Agreement, all parties—the United Nations, the Netherlands, and Indonesia—agreed to guarantee Papuan rights to free speech, freedom of assembly, and freedom of movement in order to resolve West Papua's political status [...].⁷¹

However, despite the existence of the West New Guinea Council, Papuans themselves were completely shut out of this international political process.⁷²

27. On 15 August 1962, the parties signed the Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian) (the 'New York Agreement').⁷³ Not a single West Papuan participated in the agreement. By its terms, the Netherlands was to transfer its authority to an interim administration, the United Nations Temporary Executive Authority (the 'UNTEA') on 1 October 1962, which would then hand over the territory to Indonesia on or after 1 May 1963.⁷⁴ The agreement further provided for a UN-supervised election—to take place sometime after the official hand-over—in order to allow Papuans to decide whether to remain a part of Indonesia.⁷⁵ UNTEA took control of West Papua in October 1962. And, as scheduled, the transfer of authority took place on 1 May 1963. The former West New Guinea was now officially a province of Indonesia known as *Irian*

⁶⁹ MacLeod, MERDEKA AND THE MORNING STAR, pp 111–112.

⁷⁰ *Ibid.*, p 111.

⁷¹ *Ibid.*, p 112.

⁷² *Ibid.*

⁷³ Agreement Concerning West New Guinea (West Irian) (adopted 15 August 1962, entered into force 21 September 1962), 437 UNTS 274, (the 'New York Agreement'), Article II.

⁷⁴ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 478; New York Agreement, Article II; United Nations, 'West New Guinea: A Historical Background'.

⁷⁵ New York Agreement, Article XVIII; Drooglever, EEN DAAD VAN VRIJE KEUZE, pp 481–482.

Barat (West Irian). 'From this date—1 May 1963—Indonesian nationalists felt that their mission to liberate West Irian was finally complete.'⁷⁶

28. Prior to the arrival of UNTEA security forces, various Indonesian commanders—who claimed to have liberated West Papua—asserted their rule through military force. And even after UNTEA forces arrived, approximately 1500 Indonesian commandos remained in West Irian, ostensibly to assist the local police. In reality, they engaged in harsh tactics aimed at curbing Papuan nationalist sentiment, including mass arrests and torture. At the same time, the Indonesians began to exploit the local economy, mandated the use of the Indonesian language as the mode of instruction in schools, and formulated plans for the migration and settlement of 400,000 Javanese.⁷⁷

6. Indonesia's 'New Order'

29. UNTEA pulled out in May 1963 pursuant to the strict terms of the New York Agreement, despite repeated Papuan requests for the international peacekeepers to stay behind and protect their rights. At this point in time, the population included some 500,000 Papuans (out of a total estimated population of 700,000), and some 200 different languages were spoken.⁷⁸ But this demographic and cultural landscape was soon to change.
30. Unsurprisingly, an armed struggle almost immediately ensued between the Indonesian military and a newly-formed Papuan resistance movement known as the Free Papua Organization (*Organisasi Papua Merdeka*) (the 'OPM').⁷⁹ The OPM was founded in July 1964 by Ferry Permenas Awom in an attempt to challenge Indonesian authority, and Papuans from all over the region joined its ranks.⁸⁰ Jakarta responded by targeting OPM fighters as well as civilians. Killing, disappearance, torture, and rape of West Papuans by security forces soon became commonplace. Additionally, the central

⁷⁶ MacLeod, *MERDEKA AND THE MORNING STAR*, p 113.

⁷⁷ United Nations, 'Subsidiary Organs of the Security Council, Case 3', p 5.

⁷⁸ Osborne, *INDONESIA'S SECRET WAR*, p 2.

⁷⁹ UNSC Res 67 (28 January 1949) UN Doc S/RES/67.

⁸⁰ See 'The Current Status of the Papuan Pro-Independence Movement', Institute for Policy Analysis of Conflict, Report No 21, 24 August 2015, p 2 (The OPM 'is an umbrella term for the pro-independence movement' and 'is best understood as a highly decentralized movement, composed of factions working as much in competition with one another as in coordination. There is no single armed front that reports to a political wing nor any shared strategy.')

government began to facilitate a mass migration from Java to West Papua, resettling hundreds of Indonesian families among the indigenous population. In the lead up to the mandated referendum, ‘the Indonesian military—in full knowledge of the United States, Australia, and the United Kingdom—bombed Papuan villages from the air, strafed Papuans with machine-gun fire, detained dissidents without trial, and tortured, disappeared, and executed those who dissented against Indonesian control’.⁸¹

31. Among other things, the so-called ‘New Order’ era was marked by the rise of Suharto, Indonesia’s second president, who came to power in the wake of the political turmoil caused by an abortive communist coup in 1963. After his official assumption of power in late-1968, Suharto quickly sought to neutralize all potential challenges to his authority, including the thorny issue of West Papua. During the authoritarian regime that ensued (and was to last until 1997), a security-based approach dominated the government’s policies in West Papua.
32. It was under the Suharto regime that West Papua emerged as one of the richest regions in the country, especially after Freeport McMoRan Inc—a US-based multinational extractive company—began its copper- and gold-mining operations in Timika. In April 1967, Freeport Indonesia, signed its first concession agreement with the New Order government.⁸² This was reportedly the first contract entered into by the military-led administration, and it gave Freeport ‘broad powers over the local population and resources, including the right to take land and other property and to resettle indigenous inhabitants while providing “reasonable compensation” only for dwellings and other permanent improvements’.⁸³ Another natural resource in West Papua which significantly changed the political and economic landscape were its forests, which, like

⁸¹ MacLeod, *MERDEKA AND THE MORNING STAR*, p 114.

⁸² Abigail Abrash, *Development Aggression: Observations on Human Rights Conditions in the PT Freeport Indonesia Contract of Work Areas With Recommendations*, Robert F Kennedy Memorial Center for Human Rights, July 2002.

⁸³ United Nations, ‘Subsidiary organs of the Security Council, case 5’, p 7. *N.b.* ‘Freeport obtained a Contract of Work from the Indonesian government in 1967, before the territory had even been formally integrated into Indonesia, but production at the mine did not begin until 1973. A preliminary agreement on compensation for the Amungme, acknowledged as the holders of customary rights to the mine, was reached in 1974 (usually called the January Agreement). The mine is operated by PT Freeport Indonesia, a company owned by Freeport McMoran (90.64 per cent) and the Indonesian government (9.36 per cent).’ ‘The Current Status of the Papuan Pro-Independence Movement’, Institute for Policy Analysis of Conflict, Report No 21, 24 August 2015, n 11 (p 6).

copper and gold, emerged as one of West Papua's most important industries. And large-scale commercial cultivation was soon to follow.

33. With Suharto's economic agenda well under way, the roots of one of the 20th century's most lucrative kleptocracies had firmly taken hold. And, despite indisputable indigenous desires and what remained of international good will, West Papuan self-determination was now all but destined to die on the vine.

7. The Act of Free Choice

34. In August 1968, Fernando Ortiz-Sanz, the Bolivian ambassador to the UN, arrived in Indonesia to 'advise, assist, and participate' in a referendum to determine the future status of West Papua. According to the New York Agreement, all West Papuan adults were to be eligible to participate in an act of self-determination, which was 'to be carried out in accordance with international practice'.⁸⁴ However, in the event, the 'elections of representatives who would vote for integration were carefully stage managed, with the Indonesian security and intelligence agencies maintaining tight control over proceedings'.⁸⁵ This putative exercise in self-determination was cynically dubbed the 'Act of Free Choice' by Jakarta.⁸⁶
35. From the outset, Ortiz-Sanz found his mission under-funded, under-staffed, and constantly struggling to ensure adherence to the terms of the New York Agreement. For its part, the Indonesian government made its intentions clear: An army telegram issued in February 1967 had instructed units to 'increase all activities in each field by using all material and personal means [...] from the Army as well as from other forces [...] have to win repeat win 1969 referendum in West Irian'.⁸⁷ In February 1969, President Suharto announced 'that Papuans who voted against integration would be guilty of

⁸⁴ New York Agreement, Article XVIII(d).

⁸⁵ John Wing & Peter King, 'Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People', *Centre for Peace and Conflict Studies*, University of Sydney and ELSHAM, August 2005, p 1 (citing 'Suharto Warns Irian on Poll', *Sydney Morning Herald*, 4 February 1969).

⁸⁶ United Nations Yearbook 1957 (I), pp 77–78.

⁸⁷ Telegram Army Command of Military XVII Tjenderawasih, 20 February 1967, UN Archives S-0100-0001, File 6.

“treason”.⁸⁸ And, in an April 1969 address, Suharto assured the military of the impending ‘return of West Irian into the fold of the motherland’.⁸⁹ Clearly, Suharto and his New Order were not looking back.

36. According to the New York Agreement, the referendum was to be conducted pursuant to a ‘one man, one vote’ system.⁹⁰ However, this modality was unilaterally changed by Jakarta into a process known as *musyjawarah* (roughly, ‘consultation’).⁹¹ And, rather than the ‘international practice’ envisaged by the New York Agreement, such consultations would be undertaken in accordance with Indonesian practice,⁹² which is to say: methods designed to assure victory for the New Order. Under significant pressure from the central government, the Papuan Provincial Legislative Assembly (*Dewan Perwakilan Rakyat Papua*) (the ‘DPRP’) sanctioned the creation of eight assemblies to determine the individual representatives who would participate in the Act of Free Choice. These representatives would be selected either by: election; choice of social, cultural, or religious organizations; or the assemblies themselves. In the end, each member of the eight assemblies represented approximately 750 West Papuans, and the assemblies in turn selected 1026 delegates, 1024 of whom eventually voted.⁹³ Ortiz-Sanz, understanding the extent to which the Indonesian government was controlling the process from behind the scenes, campaigned for more direct representation but was rebuffed by Jakarta.
37. The resistance movement, the activities of which had largely ceased toward the end of 1968, suddenly came back to life in April 1969.⁹⁴ Various insurgencies sprouted up in Waghete and in Enarotali, where locals dug holes in runways at a nearby airstrip to prevent Indonesian planes from landing. The April uprisings were characterized by an undertone of nationalism, with the Morning Star flag becoming a rallying symbol for

⁸⁸ John Wing & Peter King, ‘Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People’, *Centre for Peace and Conflict Studies*, University of Sydney and ELSHAM, August 2005, p 1 (citing ‘Suharto Warns Irian on Poll’, *Sydney Morning Herald*, 4 February 1969).

⁸⁹ Osborne, *INDONESIA’S SECRET WAR*, p 41.

⁹⁰ Esther Heibuchel, *THE WEST PAPUA CONFLICT IN INDONESIA, ACTORS, ISSUES AND APPROACHES* (Wettenberg 2007), p 39.

⁹¹ *Ibid.*

⁹² Drooglever, *EEN DAAD VAN VRIJE KEUZE*, p 482.

⁹³ *Ibid.*, pp 159–161.

⁹⁴ *Ibid.*, p 186.

protesters at Enarotali. In response to one of the uprisings in Paniai,⁹⁵ the Indonesian military conducted machine-gun strafing runs from the air on protestors, killing dozens and forcing thousands into the wilderness, where heavily armed Indonesian paratroopers followed.⁹⁶ Neither of the April uprisings lasted long, but they sparked a flurry of OPM activity throughout West Papua, a flurry that was met with a fierce response by the Indonesian military, which overpowered and captured a number of resistance fighters and imprisoned them in military camps in what have been described as 'barbaric' conditions.⁹⁷

38. A number of OPM members attempted to flee to Australian-controlled Papua New Guinea ('PNG'), only to be turned back just over the border. In camps on the West Papuan side of the border, members of the Indonesian military retaliated against the refugees, killing 28 in two separate incidents. As Papuans staged a number of minor uprisings throughout the countryside, the Indonesian government sought to convince the foreign press and the UN team that commerce in West Papua's commercial centers was booming. These efforts were less than convincing, with inflation perilously high, few employment opportunities, and the local economy in a state of near chaos.⁹⁸
39. In response to a surge in anti-government sentiment, Indonesian military leaders began making public threats against Papuan leaders who voted (or advocated voting) for West Papuan independence, vowing to shoot them on the spot if they did not vote for Indonesian control. Consequently, when the voting finally got underway at the beginning of May, there was little doubt as to the outcome. Ortiz-Sanz and his staff attempted to oversee all of the local proceedings, but, in the end, the UN team was able to observe the selection of only 195 of the 1026 chosen to participate. Of those 195, it was obvious to the UN observers that many—if not all—had been coerced by the Indonesian government.⁹⁹ Eyewitnesses and journalist reported that the process was held in the presence of a large military force and the vote was taken under threat.¹⁰⁰

⁹⁵ Charter of Transfer of Sovereignty.

⁹⁶ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 476.

⁹⁷ New York Agreement, Article II.

⁹⁸ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 478.

⁹⁹ New York Agreement, Article II; United Nations, 'West New Guinea: A Historical Background'.

¹⁰⁰ Heidbuchel, THE WEST PAPUA CONFLICT, p 39; John Saltford, THE UNITED NATIONS AND THE INDONESIAN TAKEOVER OF WEST PAPUA, 1962–1969, THE ANATOMY OF BETRAYAL (New York 2003), pp 161–162.

40. With the representatives selected, the eight regional assemblies began meeting in July 1969. The first vote came in Merauke, where the 175 delegates were kept under close guard by the government before eventually voting unanimously for Indonesian control. The scene was repeated throughout West Papua at the next six assembly meetings and at the final assembly vote at Jayapura on 2 August. With no dissenting votes, the 1024 delegates opted for Indonesian control, and Jakarta had its territory.
41. In November 1969, Ortiz-Sanz filed his official report with the United Nations, expressing disappointment with the process and dissatisfaction with the Indonesian government and the overall mission. The report, while generally affirming the legitimacy of the result, concluded that ‘with the limitations imposed by the geographical character of the territory and the general political situation in the area, an act of free choice has taken place in accordance with *Indonesian practice*’, pointedly omitting any reference to the referendum’s accordance with ‘international practice’.¹⁰¹ Despite strong statements from the delegations from Ghana, Sierra Leone, Togo, and Zambia, among others,¹⁰² the General Assembly officially took note of the results. Ghana’s then-representative to the General Assembly, the former Secretary-General Kofi Annan, denounced the referendum and proposed a second round.¹⁰³ His proposal was rejected by a vote of 60 to 15 (with 39 abstentions).¹⁰⁴ And on 19 November 1969, the General Assembly noted West Papua’s ‘integrat[ion] into the territory of Indonesia and removed [the province] from the list of non-self-governing territories awaiting decolonization’.¹⁰⁵
42. Suharto’s victory was now complete. According to Jakarta, ‘self-determination [had] already [been] granted to West Papuans when the territory was finally handed over to the Indonesian government to administer on 1 May 1963, following a protracted campaign against the Netherlands [..., and] any remaining question of legitimacy was settled when the United Nations accepted the results of the 1969 Act of Free Choice’.¹⁰⁶ In reality, of

¹⁰¹ United Nations, ‘West New Guinea: A Historical Background’; *see also* New York Agreement, Article XVIII; Drooglever, EEN DAAD VAN VRIJE KEUZE, pp 481–482.

¹⁰² United Nations, ‘West New Guinea: A Historical Background’.

¹⁰³ UNGA Official Records, 1812th Plenary Meeting of UNGA, 24th Session, Doc No A/L574.

¹⁰⁴ Saltford, THE ANATOMY OF BETRAYAL, p 175.

¹⁰⁵ MacLeod, MERDEKA AND THE MORNING STAR, p 116.

¹⁰⁶ *Ibid*, p 73.

course, rather than an Act of Free Choice, Papuans had been presented with an 'Act of No Choice',¹⁰⁷ or *Penentuan Pendapat Rakyat* (PEPERA), as it has come to be known.¹⁰⁸

43. Indonesia's triumph was nothing if not a bloody one. Between 1963 and 1969, it is estimated that around 30,000 West Papuans were killed by the Indonesia military in an attempt to silence dissent and suppress ideas of liberation.¹⁰⁹

To ensure a successful outcome in the referendum, from 1963 onwards Indonesia worked assiduously to remove any sense of Papuan identity from the community, banning the singing of the Papuan national anthem, the raising of the Morning Star flag and all political assembly or activity, using 'anti-subversion' measures legislated in Presidential Decrees No 8 and 11 of 1963. Widespread military operations were conducted from 1965–69, and an *AFP* correspondent in Papua during 1969 noted: 'Indonesian troops and officials were waging a widespread campaign of intimidation to force the Act of Free Choice in favor of the Republic.' During 1968–69 operations were conducted against the civilian population in the Arfak mountains area and Enarotali involving aerial bombardment and the dropping of 500 paratroopers.¹¹⁰

The acquiescence (if not outright complicity) of those foreign powers with a stake in the outcome was cynically justified. In the words of a British diplomat: 'I cannot imagine the US, Japanese, Dutch, or Australian governments putting at risk their economic and political relations with Indonesia over a matter of principle involving a relatively small number of very primitive people.'¹¹¹ Indeed.

B. Continued Denial of Self-Determination and Additional Human-Rights Violations

1. Increasing Brutality in the 1970s

44. In the aftermath of the Act of Free Choice, Jakarta stepped up its efforts to populate West Papua with migrants from other parts of the country. The military evicted many native Papuans from their land by trickery or at gunpoint in order to allow settlers from other parts of Indonesia, often ex-military men and their families, to move onto the land.¹¹² This was the beginning of what was to become a destructive, decades-long

¹⁰⁷ Halmin, *The Implementation of Special Autonomy in West Papua*, p 16.

¹⁰⁸ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 113–114.

¹⁰⁹ Saltford, *THE ANATOMY OF BETRAYAL*, p 175.

¹¹⁰ John Wing & Peter King, 'Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People', Centre for Peace and Conflict Studies, University of Sydney and ELSHAM, August 2005, p 1.

¹¹¹ MacLeod, *MERDEKA AND THE MORNING STAR*, p 115.

¹¹² Osborne, *INDONESIA'S SECRET WAR*, p 58.

process known as ‘Transmigration’.¹¹³ Additional government efforts—specifically aimed at suppressing West Papuan nationalism—became increasingly brutal.

45. In May 1970, a unit of the Republic of Indonesian Armed Forces (*Angkatan Bersenjata Republik Indonesia*) (the ‘ABRI’), Udayana Division, shot dead Maria Bonsapia, a pregnant villager, before a crowd of 80 women and children. The soldiers cut the fetus out of Bonsapia’s corpse and dissected the unborn child. A group of soldiers also raped and killed her sister.¹¹⁴ The soldiers then informed the gathered crowd that their military colleagues had recently massacred 500 West Papuans in the Lereh district.¹¹⁵
46. In June 1970, a patrol of fifty red-berets and green-berets assembled on the west coast of the island of Biak after an alleged OPM attack on Indonesian soldiers. The special forces encircled two villages on the shore, Wusdori and Kridori, forced all inhabitants into an open space between the two villages, and proceeded to murder all of the men—55 in total—in front of the women and children.¹¹⁶ The next day, the same soldiers captured 30 Papuan men from neighboring villages. They forced the captives into the boats of those killed the day before, tied stones around their necks, and threw them overboard. These men all drowned.¹¹⁷
47. Such brutality naturally resulted in further protest to Indonesian rule, especially in the jungle areas along the West Papua-PNG border, where a new movement known as the National Liberation Army (*Tentara Pembebasan Nasional*) (the ‘TPN’) was slowly gaining strength. On 1 July 1971, the TPN, in a move more symbolic than practical, formally declared the independence of West Papua, signifying for posterity the refusal to accept the Act of Free Choice.¹¹⁸ On the same day, the OPM also announced (from its jungle headquarters) a sovereign republic of West Papua, including an interim

¹¹³ *N.b.* Transmigration is dealt with in much greater detail below. *See* paras 74 *et seq.*, *infra*.

¹¹⁴ Osborne, *INDONESIA’S SECRET WAR*, p 50.

¹¹⁵ Seth Rumkorem, a former OPM leader, described this massacre to *Tahanan Politik* (‘TAPOL’) in 1984. TAPOL is the name of a London (UK)-based organization campaigning for human rights in Indonesia. The acronym is the name for ‘political prisoner’ in Indonesian. *See* www.tapol.org.

¹¹⁶ Carmel Budiardjo & Liem Soei Liong, *WEST PAPUA: THE OBLITERATION OF A PEOPLE* (TAPOL 1988), pp 79–80.

¹¹⁷ *Ibid.*

¹¹⁸ Osborne, *INDONESIA’S SECRET WAR*, p 56; Budiardjo & Liong, *WEST PAPUA*, pp 64–65.

government and cabinet.¹¹⁹ For its part, the Indonesian government set out to crush these organizations.

48. However, in the 1970s, the central government became increasingly concerned that the ferocity of its military engagement of the OPM and the TPN was motivating more and more West Papuans to join the resistance. Accordingly, Jakarta began moving away from large-scale troop deployments toward a more active role for the security agencies, most notably the Operational Command for the Restoration of Security and Order (*Komando Operasi Pemulihan Keamanan dan Ketertiban*) (the 'KOPKAMTIB'), Indonesia's top military intelligence body.¹²⁰ As one commentator put it: 'KOPKAMTIB intimidated elements of the Papuan population: academics, bureaucrats with suspect loyalties, village heads, the unemployed'.¹²¹
49. According to OPM leaders, many key figures were killed during this time. Poisoning was a popular method.¹²² The fate of Martin Luther Waring—an OPM activist—was a typical case.¹²³ In August 1972, Waring disappeared following his discharge from prison. After signing a release document, Waring was seen by his friends being driven away by an Indonesian intelligence officer in a non-military vehicle; he was never seen again.¹²⁴
50. By 1973, the sentiment of many West Papuans had swayed firmly in favor of the OPM, especially as the 'Indonesianization' of the education system and of West Papuan society as a whole began to take root.¹²⁵ The government, which had publicly attempted to step back its opposition to the West Papuan independence movement, did not help its cause when, in the summer of that year, it formally changed the name of West Papua from West Irian to Irian Jaya ('victorious Irian') in order to complement the Indonesian name for West Papua's capital city, Jayapura ('victory city').¹²⁶

¹¹⁹ See Jane's World Insurgency and Terrorism, *Organisasi Papua Merdeka*, 2005, 1–8.

¹²⁰ KOPKAMTIB was Indonesia's foremost military intelligence agency well into the 1980s.

¹²¹ Osborne, *INDONESIA'S SECRET WAR*, p 59.

¹²² Budiardjo & Liong, *WEST PAPUA*, pp 59, 83.

¹²³ *Ibid*, p 59.

¹²⁴ *Ibid*.

¹²⁵ Budiardjo & Liong, *WEST PAPUA*, p 60.

¹²⁶ There is debate about what 'Irian' means. The Indonesian government officially maintains that it is an acronym, *Ikut Republik Indonesia Anti Nederland*, loosely translating as 'follow the Republic of Indonesia

51. Indonesian military forces also committed extrajudicial killings during the same period. In 1976, government soldiers—on the orders of the chief of intelligence of the military command in Abepura (Korem 172)—beat two prisoners, Pilomen Wenda and Oscar, to death with iron bars.¹²⁷ Another victim was Mimi Fatahan, who had fled to PNG in April 1977. After the authorities there forcibly deported him to West Papua, he was detained by the military command in Jayapura. In May 1977, a group of officers from the regional military command took Fatahan to the jungle. He never returned.¹²⁸ One informant reported that villagers later discovered Fatahan's body, chopped to pieces, in a drum floating on Lake Sentani.¹²⁹
52. In 1977, the military conducted major anti-OPM/TPN operations in the Jayawijaya highlands. Strafing and bombing missions killed numerous West Papuan villagers and caused thousands to flee their homes into the jungles. In May 1977, OV-10 Broncos Bombers dropped anti-personnel 'Daisy Cluster' bombs near the village of Ilaga, located on side of the Puncak Jaya mountain chain opposite Freeport's mine.¹³⁰ Military report of incidents in the District of Jayawijaya in 1977 noted that repeated strafing from helicopters resulted in 'many casualties'.¹³¹ Eliezer Bonay, a former governor of West Papua, placed the death toll around 3,000 when he testified before the Tribunal on Human Rights in West Papua.¹³² The Jakarta daily, *Kompas*, reported that during the time of military attacks, there were 'a very large number of victims [...]. [T]he Baliem River was so full of corpses that for a month and a half, [...] people could not bring themselves to eat fish'.¹³³ The high death toll was due to the indiscriminate aerial

against the Netherlands'. Many West Papuans claim that Irian is actually an old Biak term, though there is disagreement as to the meaning. See <http://www.irja.org/eypij.htm>.

¹²⁷ Budiardjo & Liong, WEST PAPUA, p 85.

¹²⁸ *Ibid.*, at 85.

¹²⁹ *Ibid.*

¹³⁰ Budiardjo & Liong, WEST PAPUA, pp 34–35. *N.b.* 'Daisy Cluster' or 'Cluster Bombing' is a high-altitude delivery of a 15,000-pound conventional bomb designed to kill everyone present within a huge area. Originally it was designed to create an instant clearing in the jungle.

¹³¹ Budiardjo & Liong, WEST PAPUA, Appendix I: Military Report of Incidents in the District of Jayawijaya in 1977, at 119–124.

¹³² West Papuan émigrés in Papua New Guinea set up the South Pacific Human Rights Tribunal to investigate the human rights violations in West Papua. The OPM estimated that several thousand people had lost their lives in the highlands uprisings. Osborne, INDONESIA'S SECRET WAR, p 72. Indonesia claimed that the death toll was much lower; one officer told visiting Australian journalist Denis Reinhardt that around 900 people lost their lives in the uprisings. *Ibid.*

¹³³ Budiardjo & Liong, WEST PAPUA, p 68.

bombardment and shelling 'where there were villages or [wherever] there were people'.¹³⁴

53. On 22 July 1977, the army strafed a group of villages, including Akimuga, about 40 kilometers from Timika. Each of the villages targeted had an estimated population of more than one thousand.¹³⁵ Soon after, a group of West Papuans cut Freeport's copper slurry pipeline. The army responded with massive indiscriminate actions, including a sweeping ground assault code-named Operation Annihilation (*Operasi Tumpas*)¹³⁶ around the region of Akimuga. The military arrested and detained local Papuans, many for months. According to Amnesty International, the army used steel containers to incarcerate thirty men in total darkness for three months in the Freeport mining site, where night temperatures approached the freezing point.¹³⁷
54. At the end of August 1977, two OV-10 Bronco Bombers again shelled the region of Akimuga. Soldiers also destroyed vast amounts of agricultural land in the region; as a result, many Papuan children suffered severe malnutrition.¹³⁸
55. According to the OPM, in all of the villages through which the Indonesian army passed, houses and churches were burned, livestock shot, and men, women, and children murdered.¹³⁹ In the village of Kuyuwagi, Indonesian soldiers disemboweled local Papuans whom they had killed, twisting their entrails around sticks and inserting stones, cabbages and leaves into their bodies. The soldiers also used bayonets to pierce pregnant women through their vaginas, tearing them open to the chest. Unborn babies were cut to pieces.¹⁴⁰ In one incident, an Indonesian soldier killed Nalogolan Kibak, the tribal leader of Kampong Dila, and filled a bucket with his blood. The soldiers then

¹³⁴ Osborne, *INDONESIA'S SECRET WAR*, p 72.

¹³⁵ Osborne, *INDONESIA'S SECRET WAR*, p 69. This account was given by Terry Doyle, a civilian Australian pilot who for eight years flew from Darwin to a small airport that served the Freeport copper mine, south of the Baliem Valley. Upon taking a routine flight into Timika airport that day, he learned from an American employee of Freeport that the attack was to take place. He got airborne right after the attack and saw smoke and dust rising and huts burning. He also heard the Indonesian pilots discussing the attack over the radio. Similar events were described by two RAAF air force officers who were on a team engaged in the mapping operation that formed part of Australia's military aid program to Indonesia. *Ibid*, p 68.

¹³⁶ *Ibid*, p 71.

¹³⁷ Budiardjo & Liong, *WEST PAPUA*, p 34.

¹³⁸ Osborne, *INDONESIA'S SECRET WAR*, p 70.

¹³⁹ *Ibid*, p 71.

¹⁴⁰ *Ibid*.

forced the tribal leaders, teachers, and pastors of the area, at gunpoint, to drink the blood.¹⁴¹

56. In May 1978, the OPM kidnapped seven high-ranking Indonesian army officers and civilian officials in order to draw international attention to its demand for negotiations with Jakarta.¹⁴² The military responded with bombing sorties by OV-10 Bronco aircraft and the burning of villages on both sides of the West Papua-PNG border. The operation led to the death of several hundred people and drove at least one thousand Papuans across the border to PNG.¹⁴³
57. In 1979, the death of Baldus Mofu, an elected member of the New Guinea Council (set up by the Dutch in 1961), drew much attention. Mofu had been under close surveillance by the government. Whenever the OPM went into action or unrest broke out in West Papua, military officials arrested, beat, and tortured him.¹⁴⁴ Released from prison in October 1979, Mofu was taken away from his house several weeks later by two unknown men. Early the next morning, he returned home, seriously bruised and swollen, and died within hours.¹⁴⁵ While Mofu and Fatahan were particularly prominent victims of Indonesian repression, many shared their fate as Indonesia sought to consolidate its control over West Papua in the 1970s.

2. Exploitation of Land, Resources, and Labor

58. Since Indonesian independence, government and military officials had been heavily involved in resource extraction throughout the country. By 1980, the oil industry in West Papua had gone into decline, prompting the dismissal of local employees in favor of imported Javanese labor, which was viewed as more skilled and reliable.¹⁴⁶ An American professor who visited West Papua in 1980 drew attention to the planned influx of Indonesian workers, including more than 2,000 families scheduled to be

¹⁴¹ Osborne, *INDONESIA'S SECRET WAR*, p 71.

¹⁴² Budiardjo & Liong, *WEST PAPUA*, p 69.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, pp 85–86.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*, p 32.

'dropped' near two major oilfields in order to implement a 'policy of non-employment of Melanesians in the oil industry'.¹⁴⁷

59. For the government and its foreign investors, the success of gold and copper mining in West Papua more than made up for the decline in oil production. In the 1980s, Freeport continued to exploit the rich mineral resources of West Papua.¹⁴⁸ In 1982, the company employed 452 expatriates, 1,859 Indonesians, and only 200 West Papuans. The latter were hired as unskilled laborers and forced to live on the outskirts of the site in illegal squatter settlements.¹⁴⁹ Eventually, the mining town of Tembagapura would become an enclave of expatriates and Indonesians, segregated from the local population in a way described as 'reminiscent of South Africa's apartheid system'.¹⁵⁰
60. Freeport's mining operations also led to the relocation of the Amungme tribe from the region around Tembagapura to a hot, malarial area near the coast. In June 1980, the Amungme were devastated by an epidemic that swept through the settlement, killing 216 children. Freeport did nothing to provide food or medicine to the Papuans to fight the epidemic, although the company itself attributed the high death toll to undernourishment.¹⁵¹ The Amungme leaders sent numerous unsuccessful petitions to the Indonesian government, asking for government services; access to schools and jobs; land rights, recognized by law; and the negotiation of a new contract between Freeport, the Indonesian government, and the West Papuans.¹⁵² These petitions were uniformly unsuccessful, suggesting an Indonesian policy of deliberate indifference toward the West Papuan people.
61. Jakarta's desire to promote the growth of the plantation economy in West Papua led to the further confiscation of indigenous land and resulting cultural marginalization. An investigation in the early 1980s of two plantations managed by a state-owned company called PTP-2 revealed that land had been seized with minimal, *if any*, compensation. Villagers were relocated and left with insufficient land to practice their traditional shifting cultivation, as large areas were transformed from self-supporting localized

¹⁴⁷ Budiardjo & Liong, WEST PAPUA, p 32.

¹⁴⁸ Australia West Papua Association, 'West Papua Information Kit, with Focus on Freeport', 1998.

¹⁴⁹ Budiardjo & Liong, WEST PAPUA, p 34.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid*, p 36.

¹⁵² *Ibid*, p 37.

production centers to single-crop cultivation behemoths, designed for mass sale on the global market.¹⁵³ In 1988, the US company Scott Paper and the Indonesian company Astra entered into a joint venture and established a eucalyptus plantation and pulp mill in the Merauke region, threatening to further displace indigenous West Papuan sustenance production and to cause desertification in the region.¹⁵⁴

62. Indonesian authorities also continued to exploit West Papua's rich timber resources. In 1982, three articles published in a Jakarta daily described the exploitation of the Asmat tribe, which lived near the south coast of West Papua, by Jakarta-based timber companies. The companies relocated the Asmat people and subjected them to a regime of compulsory labor, by which local officials forced villagers to cut down their own forests at below-subsistence wages. Officials warned that those who refused to accept the logging jobs and conditions could be arrested.¹⁵⁵ 'The compulsory log-felling scheme exploited forests that were the property of the tribespeople. It threatened their sago supplies, the staple food of the Asmat people [...]. It disrupted village life, forcing villagers to stay in the forest for as long as six weeks'.¹⁵⁶ An Indonesian environmental group warned that the Asmat people were 'on the brink of cultural starvation after a decade of enforced ironwood logging'.¹⁵⁷ In 1988, a Jakarta weekly newspaper warned that the Asmat area, rapidly succumbing to soil erosion, might soon be submerged by nearby rivers.¹⁵⁸
63. A similar instance of forced labor occurred in the Paniai region of West Papua from 1982 onward. There, the Indonesian military, having established a post around Tiga Danau, imposed a system of forced labor on the indigenous population.¹⁵⁹ All men, with the exception of teachers, were required to work around the guard post every

¹⁵³ Budiardjo & Liong, WEST PAPUA, p 55.

¹⁵⁴ WEST PAPUA: PLUNDER IN PARADISE (Anti-Slavery Society Indigenous Peoples and Development Series ed 1990).

¹⁵⁵ Budiardjo & Liong, WEST PAPUA, pp 38–40. The authorities also extracted other forms of labor from the Papuans, arresting people on petty charges and keeping them in detention to work on road and building construction. *Ibid*, p 40.

¹⁵⁶ *Ibid*, p 39.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Ibid*, p 41. Oil, copper, and timber were not the only West Papuan resources exploited by outsiders. In 1987, Transpeche, a French company, began to operate West Papua's first canning business with an on-stream canning facility. Local West Papuan fishermen, who still relied on poles and lines, had no hope of surviving against the deep nets and modern equipment of Transpeche. *Ibid*, pp 41–42.

¹⁵⁹ *Office for Justice and Peace*, 'Memoria Passionis: The Historical Sketch of the Paniai's Resistance and Suffering at Tiga Danau Besar in Paniai Regency', November 2000, pp 17–18.

Wednesday, performing night patrol, and the youth were forced to deliver rations to the guard post without compensation.¹⁶⁰ If one man from the village was absent for any of these duties, the whole village was punished.¹⁶¹ These punishments included monetary fines as well as physical punishment or torture.¹⁶²

64. John Rumbiak—a West Papuan human-rights and environmental activist—has observed that ‘all abuses in West Papua [have been] caused by military and police presence aimed at protecting mining firms, forest concessions, and timber estates exploiting natural resources’.¹⁶³

3. Renewed Military Campaigns: Rape, Torture, and Extrajudicial Killings Continue

65. During the same period, the Indonesian military waged a series of brutal campaigns against the West Papuans, targeting civilians as well as members of the OPM. In 1981, the military launched Operation Clean Sweep, which sought to undermine support for the Papuan resistance by persecuting relatives of OPM members. Soldiers raped, assaulted, and killed the wives of known rebels and sacked villages suspected of lending support to the OPM. Survivors reported brutal murders in the Jayapura district, claiming that whole families had been bayoneted to death and their bodies left to rot.¹⁶⁴
66. Operation Clean Sweep apparently aimed both to intimidate those suspected of supporting the OPM and to cleanse the border regions of Papuans to make room for Javanese migrants. This objective was suggested by the army’s slogan: ‘Let the rats run into the jungle so that the chickens can breed in the coop.’¹⁶⁵ Lands emptied by Operation Clean Sweep were converted into transmigration areas and soon populated by settlers from Java or elsewhere in Indonesia.¹⁶⁶

¹⁶⁰ *Ibid*, p 17.

¹⁶¹ *Ibid*, pp 17–18.

¹⁶² *Ibid*, p 18.

¹⁶³ John Wing & Peter King, ‘Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People’, *Centre for Peace and Conflict Studies*, University of Sydney and ELSHAM, August 2005, p 2 (citing John Rumbiak, ‘Human Rights in Papua: Some Remarks’ in *Autonomy for Papua – Opportunity or Illusion?* Conference papers published by the Friedrich Ebert Foundation, the West-Papua-Network and Watch Indonesia, Jakarta, 2004, p 142).

¹⁶⁴ Osborne, *INDONESIA’S SECRET WAR*, p 87; Budiardjo & Liong, *WEST PAPUA*, p 80.

¹⁶⁵ Osborne, *INDONESIA’S SECRET WAR*, p 87.

¹⁶⁶ Budiardjo & Liong, *WEST PAPUA*, p 81.

67. By the summer of 1981, the campaign had extended into the Central Highlands. In August, the military responded to apparent OPM activity by bombing the village of Madi, in the Paniai basin in the Central Highlands, where a Dutch television team had filmed hundreds of OPM supporters training for the resistance. Government troops used napalm and chemical weapons against the villagers and killed at least 2500 civilians; some estimates put the death toll as high as 13,000.¹⁶⁷
68. A 1984 report by Amnesty International noted that the Indonesian army and police often arrested and detained anyone suspected of OPM involvement, especially after nationalist incidents such as the raising of the West Papuan flag.¹⁶⁸ Military personnel arrested and detained people without warrant and for indefinite periods of time.¹⁶⁹ While most detained West Papuans were never formally charged or tried, those who were brought to court were unlikely to receive a fair trial. *Tapol*, a British-based organization campaigning for peace and human rights in Indonesia,¹⁷⁰ reported that police, the army, prosecutors, and judges in West Papua regularly disregarded the procedural safeguards codified in the Criminal Procedure Code. In 1983, Mulya Lubis, then chairman of the Foundation of Legal Aid Institutes, declared that '[t]he new Criminal Procedure Code might just as well not exist, for it has no reverberations in Irian Jaya'.¹⁷¹
69. Indonesian officials commonly subjected political prisoners to torture, including electric shocks, beating, pistol-whipping, deprivation of toilet facilities, and water torture, in which the prisoner was placed in a bunker nearly filled with water. Many former prisoners also claimed that detainees died after being poisoned by prison guards. Amnesty International documented the experiences of eight West Papuans who were detained in the late 1980s after returning to West Papua from Papua New Guinea, where they had been living as refugees. The eight men were subjected to repeated

¹⁶⁷ The Papua New Guinea government estimated that at least 2,500 West Papuans were killed in Madi, while Dutch TV reporters suggested the much higher figure. Osborne, *INDONESIA'S SECRET WAR*, pp 87–88.

¹⁶⁸ Budiardjo & Liong, *WEST PAPUA*, p 84 (citing *Amnesty International*, 'Irian Jaya: Patterns of Arrest and Detention', Document No ASA 21/06/86, March 1986).

¹⁶⁹ *Ibid*, pp 81, 83. The few trials that received attention outside of West Papua involved individuals accused of raising the West Papuan flag or other peaceful political protests. *PLUNDER IN PARADISE*, p 46.

¹⁷⁰ See n 115, *supra*.

¹⁷¹ Budiardjo & Liong, *WEST PAPUA*, p 83.

beatings during their detention; during one session, an Indonesian soldier ordered one of the men, weak from the beating, to climb a tree and recite the five articles of the state ideology.¹⁷²

70. According to John Etheridge, a Catholic Bishop who worked with West Papuan refugees in a refugee camp in Papua New Guinea:

I've heard stories about people being put in 44-gallon drums of water and just left there for eight hours, and after that, taken out and put in the sun for eight hours. I've heard lots of stories about people being cut to pieces. I've seen photographs, a photograph of a hole in the ground, full of water, and you can just see two heads—two or three heads—just above the water [...]. I saw a photograph of a Melanesian in a room of some sort. It looked like a morgue slab and he was naked. It was obvious that he was dead and it looked to me that strips of skin had been taken off his legs and his feet.¹⁷³

Sadly, such accounts are not unique.

71. In the 1980s, several West Papuans were killed while in detention or were disappeared and presumed killed after being released from custody. In 1983, the Indonesian authorities arrested and detained anthropologist Arnold Ap and his colleague Eduard Mofu, who was the son of Baldus Mofu (whose death was described above).¹⁷⁴ Ap had promoted Papuan cultural expression, championed the revival of traditional Papuan music, and, closer to the time of his arrest, criticized Indonesian policies on the radio program that he hosted.¹⁷⁵ Ap's arrest resulted in immediate protests and calls for his release. Neither Ap nor Mofu were released, however. In April 1984, para-commandos killed the two men after tricking them into leaving their place of detention on the premise that they would be taken to PNG. The Indonesian government claimed that the pair had been killed while trying to escape.¹⁷⁶
72. Despite popular outrage at Ap's death, extrajudicial killings continued. In early 1984, Indonesian forces responded to a pro-independence uprising in Jayapura by launching a major retaliatory campaign called Operation Clean-up.¹⁷⁷ Elite para-commandos flown in to direct the operation arrested and shot to death several West Papuans suspected of

¹⁷² *Ibid* (citing *Amnesty International*, 'Indonesia/East Timor: Allegations of Torture', Doc No ASDA 21/01/88, March 1988).

¹⁷³ *Ibid*, p 84.

¹⁷⁴ Baldus Mofu was disappeared and killed in 1971. *See* para 57, *supra*.

¹⁷⁵ Osborne, *INDONESIA'S SECRET WAR*, p 149.

¹⁷⁶ Budiardjo & Liong, *WEST PAPUA*, pp 86–87.

¹⁷⁷ Osborne, *INDONESIA'S SECRET WAR*, p 89.

OPM involvement.¹⁷⁸ And in May 1985, Indonesian troops burned down 200 village houses in the Enarotali region of the Central Highlands in retaliation for the killing of two migrants from Indonesia killed in an OPM operation. In June and July of that year, the military killed 517 villagers in several highland villages in reprisal for a confrontation between OPM and Indonesian troops that resulted in the death of more than thirty Indonesian soldiers.¹⁷⁹

73. In a 1987 report, Amnesty International identified five West Papuans believed to have been killed by security forces in 1986. Amnesty noted, however, that information about extrajudicial killings 'is often scanty and difficult to verify, given the limited access to Irian Jaya by independent observers and the restrictions on press freedom in Indonesia more generally'.¹⁸⁰ Such restrictions by the Indonesian government served to block international scrutiny.

¹⁷⁸ Budiardjo & Liong, WEST PAPUA, p 86.

¹⁷⁹ *Ibid*, p 81.

¹⁸⁰ *Ibid*, p 87 (citing *Amnesty International*, 'Indonesia: Update on Amnesty International's Concerns in Irian Jaya', ASA 21/01/87, January 1987).

4. Transmigration, Displacement, Disease, and Death

74. As noted above, beginning in the early-1970s, Jakarta officially encouraged large-scale migration of settlers to West Papua from other parts of the Indonesian Archipelago. As part of the ‘Transmigration’, as it came to be known, West Papua experienced the implementation of a number of government policies that led to the discrimination and relocation of a great part of the island’s indigenous population.¹⁸¹
75. In the Suharto era, especially in the 1970s and 1980s, economic development was the national government’s primary focus. The president believed that a prosperous Indonesia would not be achievable without it. Accordingly, the government sought to create as many opportunities for investment as possible in every part of Indonesia, including West Papua. A simultaneous altering of the demographic situation in certain parts of the country was seen as a necessary corollary to achieving Jakarta’s economic goals. This was due, in part, to the Java’s already high population density: while some areas, such as West Papua, were less densely inhabited. Thus, Transmigration seemed a viable solution. However, as noted, the program—like many other government policies—had devastating implications. Transmigration quickly deviated from its putative purpose—to spread and boost development—into a deliberate process of indigenous West Papuan marginalization. According to one commentator, the true intention of Transmigration was to bolster national security by stabilizing a restive region threatened by aspirations of secession.¹⁸²
76. As a practical matter, transmigration schemes dispossessed West Papuans of their land and required them to move into special transmigration sites, along with the ‘transmigrants’—those from elsewhere in the country who had been settled on the compounds. At the commencement of its fourth Five Year Plan in 1984, the Suharto government announced that West Papua would remain a primary target area.¹⁸³ By the

¹⁸¹ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

¹⁸² Jim Elmslie, *IRIAN JAYA UNDER THE GUN: INDONESIA ECONOMIC DEVELOPMENT VERSUS WEST PAPUA NATIONALISM* (University of Hawaii Press 2002), pp 73–74.

¹⁸³ Budiardjo & Liong, *WEST PAPUA*, p 87 (citing *Amnesty International*, ‘Indonesia: Update on Amnesty International’s Concerns in Irian Jaya’, ASA 21/01/87, January 1987); *see also* ‘Indonesian Transmigration: Hit the Road, Java’, *The Economist*, 4 August 1984, p 61 (noting that ‘in the next five years the [Indonesian] government wants to import 1m people to add to the province’s population of 1.2 m, a

end of the year, Jakarta had established 24 major transmigration sites or compounds, appropriating 700,000 hectares of land from its traditional owners. By the middle of 1986, nearly 30,000 families had been moved into West Papua, a total of nearly 140,000 people since the end of the 1970s.¹⁸⁴

77. The loss of land and disruption of traditional lifestyle placed the West Papuans at severe risk of malnutrition and disease by the mid-1980s. In 1984, an Indonesian doctor suggested that transmigration had already led to a high incidence of disease among the indigenous population. A Dutch doctor described the situation as ‘alarming’, noting high rates of yaws, measles, whooping cough, small- and large-scale epidemics, and sexually transmitted diseases that impaired the fertility of the Dani people who resided in the fertile Baliem Valley, a major transmigration site.¹⁸⁵ A Dutch missionary working in the mountain regions told journalists that infant mortality among the West Papuans in that region was above 60 percent, and the average life expectancy only 30 or 31 years.¹⁸⁶
78. According to a team of senior Indonesian officials, writing in 1986, the taking of land for transmigration did not require compensation, but only a certificate of recognition, perhaps accompanied by the construction of a church or school or something as little as a traditional ceremony.¹⁸⁷ Within the transmigration compounds, the government required that West Papuans be dispersed, with one indigenous family to every nine Javanese families, thus ensuring that the West Papuans would become a minority in each area. Moreover, West Papuans neither shared in the economic benefits of the new settlements nor held significant posts in the administrative staff of the program.¹⁸⁸
79. In the towns, West Papuans become marginalized, essentially living as second-class citizens in a newly created foreign culture. According to the *Far Eastern Economic Review*, non-Melanesians accounted for about a quarter of the population of West

prospect which has alarmed neighboring Papua New Guinea and stirred a small Irianese separatist movement back to life’).

¹⁸⁴ Budiardjo & Liong, WEST PAPUA, p 51. *The Jakarta Post* offered a lower figure of 23,000 families (115,000 people) for 1979–1989. PLUNDER IN PARADISE, p 63 (citing article in the *Jakarta Post*).

¹⁸⁵ Budiardjo & Liong, WEST PAPUA, p 58.

¹⁸⁶ *Ibid*, pp 46, 58.

¹⁸⁷ *Ibid*, p 51.

¹⁸⁸ *West Papua in Revolt: Many Flee from Indonesian Reprisals*, TAPOL Bulletin No 5 (March 1984).

Papua in the mid-1980s; they included spontaneous migrants as well as settlers brought over as part of the transmigration program.¹⁸⁹ The newcomers dominated the government bureaucracy, the business sector, and upper levels of education.¹⁹⁰ Television programs and magazines addressed a Javanese audience, while propaganda posters sponsored by the ‘Project for the Guidance of Alien Societies’ urged the Papuans to relinquish their inefficient and primitive ways for the superior lifestyle of the Indonesians.¹⁹¹

80. Until 1988, the World Bank funded about ten percent of Indonesia’s transmigration program with a total of USD 650 million in loans. In that year, it offered an additional USD 150 million to help the government improve existing sites. A French study conducted in 1989 found that 80 percent of the transmigration sites had failed to improve living standards of the settlers, *let alone those of the West Papuans*.¹⁹² While the number of ‘transmigrants’ who were settled in West Papua is uncertain—one estimate indicates as many as 800,000¹⁹³—the effect on the indigenous population is clear: economic, social, cultural, and political marginalization.

5. Flight of West Papuan Refugees to Papua New Guinea

81. While the Indonesian government was busy transplanting Javanese settlers into the region, the continued violence in West Papua was forcing many native residents to flee the country. In February 1984, the army launched a violent campaign in response to a failed OPM uprising in Jayapura. The military operation led to the flight of 300 West Papuans across the border to PNG.¹⁹⁴ The refugees were primarily from Jayapura and included West Papuan intellectuals and government officials. By April of that year, more than 6000 Papuan refugees had escaped to PNG, fleeing from military reprisals and dislocation caused by transmigration and resource exploitation. By June, approximately 10,000 refugees—one percent of West Papua’s indigenous population—occupied makeshift camps hastily erected by PNG.¹⁹⁵

¹⁸⁹ Budiardjo & Liong, WEST PAPUA, p 44.

¹⁹⁰ PLUNDER IN PARADISE, pp 42–43.

¹⁹¹ *Ibid*, p 42; Budiardjo & Liong, WEST PAPUA, pp 48, 56–57.

¹⁹² PLUNDER IN PARADISE, p 71.

¹⁹³ Elmslie, IRIAN JAYA UNDER THE GUN, p 75.

¹⁹⁴ *West Papua in Revolt: Many Flee from Indonesian Reprisals*, TAPOL Bulletin No 5 (March 1984).

¹⁹⁵ Budiardjo & Liong, WEST PAPUA, p 93; PLUNDER IN PARADISE, p 56.

82. Under pressure from its large and powerful neighbor, the PNG government maintained that the thousands of West Papuans fleeing over the border were not ‘refugees’ but illegal ‘border crossers’.¹⁹⁶ For several months, the PNG government allowed conditions in the refugee camps to deteriorate, in the hope that the refugees would return home.¹⁹⁷ However, after the deaths in August 1984 of several dozen refugees in two PNG camps, the PNG government allowed the United Nations High Commissioner for Refugees (‘UNHCR’) full access to the camps.¹⁹⁸
83. In November 1984, when a team of Indonesian and PNG officials visited the camps to convince the refugees to return, they were met with angry demonstrations. At the Blackwater camp, refugees threw stones at the visitors, prompting local police to use tear gas to curb the demonstration.¹⁹⁹ In December, the Australian section of the International Commission of Jurists published a report that described the conditions that had forced the West Papuans to flee and urged the PNG government not to engage in the *refoulement*, or forced repatriation, of the refugees.²⁰⁰ Nonetheless, in December, eight refugees, members of the OPM, were deported to Jayapura, where they were immediately detained.²⁰¹ Deportations continued through 1985, but when twelve refugees were beaten and later secretly tried for subversion upon their return in November 1985,²⁰² the international outcry led the PNG government to shift toward a policy of relocation, resettlement, and voluntary repatriation.²⁰³
84. By late 1987, UNHCR reported that only 1500 refugees had returned to West Papua.²⁰⁴ Those returning under the auspices of UNHCR’s repatriation scheme were formally

¹⁹⁶ PLUNDER IN PARADISE, p 56; *West Papua in Revolt: Many Flee from Indonesian Reprisals*, TAPOL Bulletin No 5 (March 1984).

¹⁹⁷ Budiardjo & Liong, WEST PAPUA, p 98.

¹⁹⁸ PLUNDER IN PARADISE, p 57.

¹⁹⁹ Robin Osborne, ‘Refugee Protection Ends in Violence: Indonesians in Papua New Guinea Protest and Repatriation Plans’, *The Guardian*, 6 November 1984.

²⁰⁰ Budiardjo & Liong, WEST PAPUA, p 99.

²⁰¹ See Budiardjo & Liong, WEST PAPUA, p 99; PLUNDER IN PARADISE, p 57.

²⁰² *The 3 November Incident in Vanimo*, TAPOL Bulletin No 69, p 16 (May 1985).

²⁰³ In May 1987, Papua New Guinea acceded to the 1951 UN Convention Relating to the Status of Refugees and to the 1967 Protocol Relating to the Status of Refugees, thus strengthening the role of UNHCR. However, in October of that year, the PNG government signed a Treaty of Mutual Respect, Friendship, and Cooperation with Indonesia, affirming a mutual policy of border control and noninterference in each other’s internal affairs. PLUNDER IN PARADISE, p 58. See also ‘Indonesia: Cover-up Job’, *The Economist*, 15 November 1986; ‘Papua New Guinea, Indonesia Confer’, *Facts on File World News Digest*, 13 June 1986.

²⁰⁴ Budiardjo & Liong, WEST PAPUA, p109. Indonesian officials claimed that 6,904 had been returned.

handed over to Indonesian officials. They were not allowed to return to their villages, but were instead relocated to sites designated by the authorities, often areas under military control.²⁰⁵ Returnees complained that they were subjected to security checks and harassment.²⁰⁶ The government also implemented a campaign of pacification amongst returnees in the border regions, which aimed to undermine support for the OPM. Local officials sought to organize young West Papuan returnees to prevent recalcitrant members of their community from joining the resistance or leaving for PNG.²⁰⁷

85. Decades later, many of those Papuans who fled remain in a state of limbo in PNG.²⁰⁸ Only very recently has the PNG government indicated that it might begin to process asylum claims.²⁰⁹ But initial efforts in this regard have been far from humane, with many West Papuans living in substandard conditions:

Now those people—who have waited up to 30 years for recognition—have said they are getting a raw deal compared to asylum seekers from the Middle East. West Papuan Simon Auri has spent the past 20 years sleeping in his car in PNG. ‘I am a man, not an animal, but I have to live in a car’, he said. Martha Horota, another West Papuan, lives in a house in Port Moresby with about 50 other people. ‘It’s filthy around here, it’s not healthy to have 50 people living in a place like this’, she said. Two of the people living in the house have jobs, while the others support their families by selling vegetables and fish in street markets.

The PNG Government estimates about 10,000 West Papuans live in Papua New Guinea. More than 1,000 of them have applied for PNG citizenship. Most of those are living in camps on the PNG-Indonesia border, but some are in the capital Port Moresby. The PNG

²⁰⁵ PLUNDER IN PARADISE, p 44; *Repatriated Refugees are Being Sent to Government Relocation Sites*, TAPOL Bulletin No 74, pp 10–11 (March 1986).

²⁰⁶ PLUNDER IN PARADISE, p 58; *Australia West Papua Association*, ‘West Papua Information Kit’, p 30.

²⁰⁷ Budiardjo & Liong, *WEST PAPUA*, p 110.

²⁰⁸ See ‘Calls for PNG Govt to Determine West Papuan Refugee Claims’, *Radio New Zealand*, 4 February 2016 (‘A West Papuan who has lived in Papua New Guinea for almost three decades has urged PNG’s Foreign Minister to help give him and others living in limbo some certainty on refugee status. Last week, the minister, Rimbink Pato, announced that the Citizen Advisory Committee would meet to consider refugee claims of 1000 West Papuans registered in Western Province after fleeing Indonesia. As an advocate of West Papuan independence, Fred Mambrasar fled from Indonesian military aggression in PNG’s neighbouring territory in the mid-1980s. He is among around 1500 West Papuans now living in Port Moresby without citizenship, who he says successive PNG governments have ignored the plight of. Mr Mambrasar said there were an estimated 10,000 West Papuans in PNG whose refugee claims should all be determined. “Rimbink Pato speak but must action. Not just speak but em must action. Because sometime the government tok yes we grantem citizenship but only for some people but like me and other West Papua, not yet.”’)

²⁰⁹ See ‘West Papua: Over 1000 Asylum Claims Will Be Reviewed by PNG Government’, *UNPO*, 9 February 2016 (‘For decades, many West Papuans have been living in the Western territory of Papua New Guinea without any official legal recognition of their status, neither as refugees nor as citizens. They arrived there fleeing from Indonesian occupation and, as of February 2016, they are considered to be approximately eight thousand. Some of the inhabitants of the Western province have been granted a Permissive Residency Permit, but they constitute a minority. The Government, which has repeatedly ignored asylum claims by these individuals until now, has recently indicated that it will review the status of these people in the framework of the formulation of a refugee and resettlement policy.’)

Prakken d'Oliveira

Government said it would issue those who have applied with citizenship certificates by the middle of the year. West Papuans who have applied for citizenship do not expect their lives to change significantly, but they think the Australian Government could help with some basic services. One of the asylum seekers, Matthew Akari, said West Papuans in PNG were not getting the same treatment as those at the Manus Island detention centre. 'They treat asylum seekers in Manus better than asylum seekers from West Papua', he said, adding that the West Papuans needed help with the basics: 'Land, housing, water, light, education, health.'²¹⁰

Such treatment is not surprising, as PNG's putative resettlement of West Papuan asylum seekers has been motivated by political, rather than humanitarian, concerns.²¹¹

²¹⁰ Eric Tlozek, 'Papua New Guinea Resettling Hundreds of West Papuan Asylum Seekers', *ABC News*, 18 March 2016.

²¹¹ *See ibid* ('[A]s part of its deal with Australia to host the Manus Island detention center [...], the PNG Government was required to resolve the plight of West Papuan asylum seekers [...].') *N.b.* The Manus Island detention center is an immigration detention and offshore asylum processing center located on Los Negros Island in Manus Province, PNG. It is operated by a private company on behalf of the Australian government as part of the latter's controversial policy of outsourcing its asylum caseload to third countries in the region.

*6. Protests Against Foreign Resource
Exploitation and the Government Response*

86. In 1991, Freeport renegotiated the terms of its concession with the Indonesian government. This new contract granted the company an additional 2.5 million hectares of land for mining operations—land that was occupied at the time by five indigenous peoples.²¹² This new contract included increased benefits for the employees of the mine as well as their families, and also for the military to serve as security forces for the mine, but did not extend the benefits of schools, hospitals, and job training to the local indigenous people.²¹³ This expanded control and exploitation led to opposition and clashes between Freeport (protected by the Indonesian military, to which Freeport pays millions a year for its services) and the local people.
87. In 1994, Kelly Kwalik, a leader of the OPM, and others began to protest Freeport's, and hence the military's, expansion near the town of Timika. Protests involved peaceful as well as armed demonstrations.²¹⁴ The military's response was swift and brutal. On 6 October 1994, Indonesian soldiers arrested four brothers, all civilians—Sebastianus, Romulus, Marios, and Hosea Kwalik—and detained them in a shipping container at a military post in Koperapoka, near Timika, accusing them of being involved with Kelly Kwalik and the OPM.²¹⁵ Testimony from the first and second wives of Sebastianus Kwalik indicates that all four were kept in the container and tortured from 6 October until approximately 15 November 1994.²¹⁶ On that day, both wives went to visit the men, but were told that their husband and his brothers had gone on a military operation and were no longer in the container.²¹⁷ The women never saw the men again.²¹⁸

²¹² *Amnesty International*, 'Indonesia: Irian Jaya: National Commission on Human Rights Confirms Violations', September 1995.

²¹³ Abigail Abrash, *Development Aggression: Observations on Human Rights Conditions in the PT Freeport Indonesia Contract of Work Areas, With Recommendations* (Robert F Kennedy Memorial Center for Human Rights, July 2002), p 10.

²¹⁴ Msgr HFM Munninghoff, Catholic Diocese of Jayapura, *A Report on the Human Rights Violations Against the Local People in the Area Around Timika, Region of Fak-Fak, Irian Jaya: Year 1994–1995*, 1 August 1995 (the 'Munninghoff Report'). Cf Indonesian Human Rights Commission (Komnas HAM), 'Report of the Investigation Committee of Human Rights Violation in Papua or Irian Jaya', Jakarta, 8 May 2001, No 020/KOMNASHAM/II/2001 (the 'Komnas HAM Report') (stating that the OPM and Kelly Kwalik had only conducted peaceful demonstrations).

²¹⁵ See *ibid.* N.b. The container where the brothers were held was a shipping container provided by PT Freeport. Abrash, *Development Aggression*, Appendix 3.

²¹⁶ Report of the Investigation Committee, *supra* note 144, at 23.

²¹⁷ Munninghoff Report, p 9.

²¹⁸ *Ibid.*

88. Three days after the Kwalik brothers were arrested, five other individuals were arrested and detained by the military. The two women in the group, Yuliana Magal (age 50), the adoptive mother of Kelly Kwalik, and Yosepha Alomang (age 37), were kept in a flooded water closet, separate from the men. The closet was filled up to their knees with water and human feces. Yuliana Magal was interrogated and tortured for many hours, despite the fact that she did not understand Indonesian and the interrogators did not speak her language.²¹⁹ The two women were held in the water closet for one month.²²⁰
89. Christmas Day 1994 brought more demonstrations and more military violence in Waa village, near Freeport's mining center in Tembagapura.²²¹ That morning, Indonesian troops fired on members of the Amungme community and other highland Papuans, who had gathered peacefully to raise the Morning Star flag. When community member Naranebalan Anggaibak was injured in the attack, Indonesian military placed a noose around his neck and dragged him from the back of a car to the army checkpoint near Tembagapura. Soldiers then suspended Mr Anggaibak's dead body from the ankles on a post across from the checkpoint and harassed Papuan villagers by asking them whose pig or dog Mr Anggaibak was. The military reportedly disposed of Mr Anggaibak's body by throwing it into a ravine along the road between Tembagapura and Timika, as they previously had disposed of other indigenous Papuans killed by the Indonesian military.²²²
90. Another incident occurred after Easter mass in April 1995. After a scuffle between a civilian, Piet Tebay, and a soldier who had ordered him to report to the security station in Timika, the soldier stabbed Tebay with Tebay's own arrow. Although Tebay eventually recovered, the stabbing incited the crowd to protest the military presence in

²¹⁹ *Amnesty International*, 'Indonesia: Irian Jaya: National Commission on Human Rights Confirms Violations' ('So to make Yuliana talk they prodded her with the muzzles of their weapons which they pointed at her forehead and put a heavy iron weight on her head for an hour until she was exhausted. Then they took the weight and put it on her shoulder for another hour. Then she had to kneel and cradle the weight for another hour.').

²²⁰ Munninghoff Report, p17; see also Robert F Kennedy Center (RFK) & Institute for Human Rights Study and Advocacy in Irian Jaya (IHRSTAD), *Incidents of Military Violence Against Indigenous Women in Irian Jaya (West Papua)*, May 1999 (the 'RFK & IHRSTAD Report'), at 3.

²²¹ Komnas HAM Report, p 23; see also Munninghoff Report, p 18.

²²² Chris Ballard, *The Signature of Terror: Violence, Memory, and Landscape at Freeport*, in *INSCRIBED LANDSCAPES: MAKING AND MAKING PLACE* (Bruno David & Meredith Wilson eds, 2001).

the community. During the protest, another scuffle between a soldier and a civilian occurred. This time, the soldier shot the civilian two times, killing him.²²³

91. Indonesian soldiers conducted another attack upon civilians in May 1995. Fighting had broken out between the military and the OPM in early 1994, forcing many native residents to flee their homes and run into the forest for protection.²²⁴ On 31 May 1995, an army patrol near Hoesa was out looking for the OPM leader and came across a group of such refugees, who were gathered together for a prayer meeting. When they saw the soldiers, the people began to run. The military opened fire, killing eleven people, including the pastor and four children (ages five, six, fourteen, and fifteen).²²⁵
92. Between late 1995 and early 1996, various groups of researchers—including one known as the ‘Lorentz Team’ and a group from the World Wildlife Fund—visited the Mapnduma area of West Papua, within Freeport’s concession area. After a community meeting in which local residents clashed with the researchers over the way in which their research would be carried out and the effects such research would have on the residents’ lives, a group of 200 Papuans took the researchers hostage.²²⁶ The OPM later took credit for the action, and the military responded.
93. During the four months the hostages were held, Indonesian forces set up camp in nearby communities, taking over many of the residents’ homes for their own use and forcing residents to flee in fear. Reports of abuses in one village included ‘killings,

²²³ Munninghoff Report, p 11.

²²⁴ *Amnesty International*, ‘Indonesia: Irian Jaya: National Commission on Human Rights Confirms Violations’, p 5.

²²⁵ *See ibid.* (‘We came from behind them. They saw us and were obviously afraid and began to run away. Three soldiers immediately began to shoot towards them.’); Munninghoff Report, pp 4–5 (‘While they were praying, suddenly one patrol from the 572[nd] under command of master sergeant Marjaka who was patrolling the area of Kampung Hoesa, surrounded the people and without warning started shooting at the congregation involved in prayer. The Rev Martinus Kibak raised his hands to surrender, but commandant Marjaka didn’t care. He ordered the soldier closest to him ... to shoot the minister. The bullet fatally wounded the minister in the left part of his abdomen.’) In September 1995, Komnas HAM found that the violations committed against Papuans in and around Freeport mining centers was ‘directly connected to [the Indonesian army] ... acting as protection for the mining business of PT Freeport Indonesia.’ Abrash, *Development Aggression*, p 13.

²²⁶ RFK & IHRSTAD Report, p 8. Of the twenty-four original hostages, eleven were released within the first two weeks and two more in the following two months, leaving four English citizens, two Dutch, and five Indonesians. *See* Institute for Human Rights Study and Advocacy in Irian Jaya (IHRSTAD) et al, *Military Operation for the Release of Hostages and Human Rights Violations in the Central Highlands of Irian Jaya: Unveiling the Mystery of the Bloody ICRC Mission, the Involvement of Foreign Soldiers, and the Indonesian Army* (press release), 25 August 1999.

torture, rape, intimidation, destruction of goods and property, and restricted access to foodstuffs and other vital supplies'.²²⁷ The military also deemed the Central Highlands Region, previously untouched by the government, a 'Red Zone', which meant that outsiders could not enter it and residents needed to obtain permission from government or army officials to travel within it.²²⁸ One lieutenant commander of the Indonesian Special Forces Command (*Komando Pasukan Khusus*) ('*Kopassus*') told a human rights investigator that the role of the military in the Highlands was to clear the area of indigenous communities 'to make sure that investors can come in'.²²⁹

94. Throughout these months, the International Committee of the Red Cross (the 'ICRC') attempted to negotiate with the OPM for the release of the hostages, and by the beginning of May appeared to have reached an agreement. On 8 May 1996, the ICRC organized a feast in the village of Nggeselema to celebrate International Cross Day and the planned release of the hostages. However, at the last minute, OPM leaders cancelled the release of the hostages, believing that the ICRC had broken its agreement to bring official representatives of the British, Dutch, German, and Indonesian government to Nggeselema. The Indonesian military responded by launching a military operation under *Kopassus* Commander Brigadier General Probawo Subianto. On 9 May, four or five soldiers, reportedly British SAS members and foreign mercenaries from the South African mercenary company Executive Outcomes, commandeered an ICRC helicopter and attacked Nggeselema, shooting at the villagers who had come to greet the aircraft believing that it carried ICRC staff members. As the villagers scattered, helicopters from the Indonesian air force arrived and began shooting at and dropping bombs on the villagers, destroying many homes and a local medical clinic. At least eight Papuan civilians died in the attacks, and many more were injured.²³⁰ On 15 May, after two Indonesian hostages had been killed, the remaining hostages ran for safety.²³¹

²²⁷ RFK & IHRSTAD Report, p 9 (referring to the village of Kenyam I). For an extensive account of rape in the region between 1996 and 1999, see *ibid*, p 4; see also Report of the Special Rapporteur on Violence Against Women, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, 21 January 1998, UN Doc E/CN.4/1999/68/Add.3, p 14 ('According to reports in February 1996 troops from all over Indonesia came to the Mapnduma area. It was alleged that the soldiers raped women there indiscriminately: girls as young as 12 were victims, as were mute, mentally retarded and pregnant women.')

²²⁸ RFK & IHRSTAD Report.

²²⁹ *Ibid*.

²³⁰ 'Blood on the Cross', Four Corners, *Australia Broadcasting Company*, 7 December 1999.

²³¹ RFK & IHRSTAD Report.

95. The end of the hostage crisis did not mark the end of the military activity in that area. Between December 1996 and October 1997, the Indonesian military shot and killed eleven civilians as they attempted to return from the forest to their villages to gather food; two others were ‘disappeared’; and three were injured. Military forces also burned 13 church buildings, 166 homes, and 29 traditional ‘men’s houses’.²³²

C. West Papua in the Post-Suharto Era: Continued Brutality

1. The Habibie Administration: 1998–1999

96. In May 1998, Suharto—who had ruled Indonesia for over 30 years—was overthrown in an uprising organized and led by unarmed students. The New Order Regime gave way to the so-called Reform Era (*Reformasi*). The initial reform government was led by Suharto’s former Vice-President BJ Habibie, creating what many saw as a potential opening for discussion on the situation in West Papua.²³³
97. The area around Timika was no longer classified as a ‘Red Zone’, and demonstrations at which West Papuans raised the Morning Star flag took place all over the country. From 1–7 July 1998, such flag-raising occurred in Jayapura, Biak, Wamena, Manokwari, and Sorong.²³⁴ However, despite the desperate hope that military violence in West Papua would end with Suharto’s regime, it was business as usual as government forces cracked down on the demonstrations.
98. On 6 July 1998, local police and Indonesian military opened fire on a group of West Papuans at a flag-raising in Biak. The soldiers forced dozens of men and women to lie on their backs and then proceeded to march on their stomachs.²³⁵ Eight people were killed immediately, three were disappeared, and thirty-seven injured.²³⁶ Later, women’s mutilated bodies washed up on the coast of Biak. Allegedly, ‘women were taken out to

²³² Indonesian Evangelical Church et al., *Human Rights Violations & Disaster in Bela, Alama, Jila and Mapnduma, Irian Jaya*, 1, 4–33 (May 1998) (including an in-depth description and witness testimony about the violations).

²³³ *Ibid.*

²³⁴ Indonesian Evangelical Church, *Human Rights Violations & Disaster*.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

sea on Indonesian navy ships, where they were raped, sexually mutilated, and thrown overboard'.²³⁷

It is not known how many died that day and in the days that followed. Some estimate over 100. Many Biak islanders who witnessed it say in excess of 150 people were killed. No independent investigation has ever taken place. None of the mass graves dotted around Biak have been exhumed so the missing have not been accounted for and the dead have not been given a proper burial. Like other human rights atrocities, [...] the Indonesian government refuses to even acknowledge what happened. The truth—just like the truth of what happened in so many other places in West Papua [...]—has been buried.²³⁸

Over the next two years, the military responded to flag-raising demonstrations—whether peaceful or not—with armed violence.²³⁹ For their part, the would-be secessionists were undeterred.

99. On 26 February 1999, 'a team of 100 people was invited to Jakarta for a special meeting' with president Habibie 'to discuss West Papuan grievances and a process of resolution'.²⁴⁰ At the meeting:

a number of West Papuans launched into an impassioned plea for independence. Stunned and clearly misinformed about the depth and extent of discontent in West Papua, Habibie put aside his prepared response and in an emotional appeal urged the delegation to reconsider its desire for the territory to separate from Indonesia. Although there was no clear outcome from the meeting, the West Papuan struggle had exploded onto centre stage. The long-suppressed desire for independence was now on the table and [the team] returned home to a hero's welcome.²⁴¹

Unfortunately, Papuan aspirations of independence would not materialize.

100. In May 1999, Habibie's Government passed the Regional Autonomy Law, a first step toward decentralization, which—in theory—gave all of Indonesia's provinces a measure of autonomy. It was under the Habibie government that a referendum on the question of East Timor was organized in August 1999, which eventually led to independence in 2002. However, opening the door to that territorial concession

²³⁷ *Ibid.*

²³⁸ MacLeod, MERDEKA AND THE MORNING STAR, p 214.

²³⁹ Komnas HAM Report, pp 13–16 (describing the arrest of twenty-two and torture of two at Sorong on 5 July 1999; the shooting and injury of thirty-eight at Timika on 2 December 1999; the shooting death of one and injury of two in Merauke on 16 February 2000; the shooting death of three and the arrest and torture of one in Nabire between 28 February and 4 March 2000; the shooting and injury of thirteen and arrest and beating of one in Sorong on 27 July 2000; and the shooting deaths of three, the disappearance of fifteen, the shooting and injury of twelve, the arrest of thirty-six, and the detention of twenty-eight in Sorong on 22 August 2000).

²⁴⁰ MacLeod, MERDEKA AND THE MORNING STAR, p 235.

²⁴¹ *Ibid.*, p 236.

seriously harmed Habibie's popularity and political alliances. The writing was on the wall: the same mistake would not be repeated in Aceh or West Papua.

2. *The Wahid Administration: 1999–2001*

101. In 1999, Abdurrahman Wahid became president and continued with the reform agenda started by Habibie.

Wahid, affectionately known as Gus Dur, was deeply influenced by an [page break] inclusive vision of Islam, one that emphasized social justice, democracy, human rights, and peace. While not supported by mainstream nationalist politicians or the army, Gus Dur took advantage of a weakened central government in the aftermath of Suharto's demise to extend the hand of détente to the Papuans. He unbanned the Morning Star flag—it would be banned again when he later lost power—and even went as far as funding a national gathering of Papuan independence activists [...]. A few months later, as the army began to reassert its hold on power, security forces would again use lethal force to prevent flag raisings.²⁴²

Among other measures, he oversaw a referendum on the question of Aceh. However, unlike the case of East Timor, the indigenous people of Aceh were presented with various modes of autonomy—but pointedly not independence.

102. Regarding West Papua, Wahid visited Jayapura on 30 December 1999. During his visit, he was successful in convincing West Papuan leaders that he was a force for change and even encouraged the use of the name West Papua over the official Irian Jaya:

The Government initially responded to Papuan initiatives by welcoming the call for dialog and offering special autonomy within the context of a united Indonesia. Then-President Wahid met several times with Papuan leaders and visited Papua on December 31, 1999 and January 1, 2000, when he announced that the name of the province would be changed to Papua. Then-Vice President Megawati Sukarnoputri visited the province in May and September 2000, and then-President Wahid provided \$110,000 (Rp 1 billion) for the holding of the Papuan congress. After the congress, he met with Presidium Council leaders and reemphasized the Government's firm stance against Papuan independence, but said it was permissible to fly Papuan independence flags as long as they were smaller and flown below the Indonesian flag. However, during the August 2000 MPR session, legislators attacked Wahid's stance toward Papuans and demanded a tougher approach that rejected the flying of the independence flag, the use of the name Papua, and other perceived manifestations of pro-independence sentiment. In late September 2000, new National Police Chief Suryo Bimantoro ordered all Papuan independence flags to be taken down.²⁴³

²⁴² *Ibid.*, pp 44–45.

²⁴³ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2001', 4 March 2002.

The episode demonstrates the long-standing balance of power in Indonesia, pursuant to which even presidents are in many ways at the mercy of an entrenched military-security establishment.

103. Between 29 May and 4 June 2000, ‘with some funding provided by President Wahid, thousands of Papuans gathered in Jayapura for the Second Papuan Congress’.²⁴⁴ The Congress was attended by ‘West Papuan leaders living in exile and representatives from every sector of society and region in West Papua’.²⁴⁵ The Congress elected a 32-member Papua Presidium Council (*Presidium Dewan Papua*) (the ‘PDP’) ‘headed by Theys Eluay, a leader who once had been close to the Indonesian military’.²⁴⁶ The PDP adopted a resolution: (i) reaffirming the independence of West Papua; (ii) rejecting the New York Agreement as being ‘legally and morally flawed’ as no representatives of West Papua had been involved in its negotiation; and (iii) disavowing the results of the Act of Free Choice.²⁴⁷ The resolution called for the establishment of an independent committee to prepare a referendum on the question of West Papuan independence and urged Jakarta—as well as the Netherlands, the United States, and the United Nations—to enter into negotiations with representatives of the Papuan Nation to settle the political status of West Papua.²⁴⁸
104. ‘The day of 4 June 2000 was one of those times. Then, for the first time since 1 May 1963 when the Indonesian government forcibly took control of West Papua, permission was granted for the Morning Star flag to be displayed.’²⁴⁹
105. At the same time, despite Wahid’s tepid support, a ‘plan was [...] drawn up to crack down on the separatist movement, in a “top secret” document issued on 8 June 2000’.²⁵⁰

²⁴⁴ ‘The Current Status of the Papuan Pro-Independence Movement’, *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 18.

²⁴⁵ MacLeod, *MERDEKA AND THE MORNING STAR*, p 239.

²⁴⁶ ‘The Current Status of the Papuan Pro-Independence Movement’, *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 18.

²⁴⁷ Heidebuechel, *THE WEST PAPUA CONFLICT*, p 47; see also MacLeod, *MERDEKA AND THE MORNING STAR*, pp 239–240.

²⁴⁸ See *Free West Papua*, ‘Resolution of the Second Papuan Congress’ (<http://freewestpapua.org>).

²⁴⁹ MacLeod, *MERDEKA AND THE MORNING STAR*, p 44.

²⁵⁰ John Wing & Peter King, ‘Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People’, *Centre for Peace and Conflict Studies, University of Sydney and ELSHAM*, August 2005, p 2 (citing Neles Tebay, ‘Human Rights in Papua: an Overview’ in *Autonomy for Papua – Opportunity or Illusion?* Conference papers published by the Friedrich Ebert Foundation, the West-Papua-Network and Watch Indonesia, Jakarta, 2004, pp 123–132; Peter King, *West*

‘The plan included the formation of militias, targeting human rights defenders, and “black operations” against independence leaders.’²⁵¹

106. On the morning of 22 August 2000:

Police Mobile Brigade (Brimob) troops opened fire on a group of Papuans who were raising a Papuan Independence Flag in Sorong, Papua [...]. Three Papuans were killed and at least 12 others were injured; one policeman was injured. After the police failed to persuade the crowd to disperse peacefully heated arguments broke out between the Papuans and the police. [...] [A]ll sources agree that the police overreacted and began firing indiscriminately into the crowd. The incident was similar to a series of police reactions to flag-raising over the past two years, although the number of victims was significantly higher in this case.

Earlier in the year, Wahid had agreed to the display of the Morning Star flag provided it was smaller, and flown lower, than Indonesia’s official red and white banner. However, on 26 October 2000, the president declared that the Morning Star flag was a separatist symbol and urged Papuans to find another form of cultural representation.²⁵²

107. A bloody government reprisal unfolded in Wamena on 6 October 2000. Early that morning,²⁵³ a joint security force composed of special crowd-control police, Brimob, and Strategic Reserve troops raided at least seven community centers in Wamena.²⁵⁴ These forces fired warning shots, chain-sawed flagpoles, and tore up or confiscated Morning Star flags. By 8h00, more than 50 people had been rounded up, beaten, and taken to police headquarters. At least one man had been killed by gunfire, and ten had been wounded.²⁵⁵ Within hours, a large crowd had gathered across the river in Wouma. The crowd began to protest, burning and looting shops as they went. Troops arrived and began to open fire from a nearby migrant residential community. The crowd then attacked the migrants’ homes, killing 24 non-Papuans.²⁵⁶ At least seven Papuans were

Papua and Indonesia since Suharto: Independence, Autonomy or Chaos? University of New South Wales Press (Sydney 2004), pp 129–32).

²⁵¹ *Ibid.*

²⁵² See *Human Rights Watch*, ‘Indonesia: Violence and Political Impasse in Papua’, July 2001, p 22.

²⁵³ On October 3, Papuan community leaders reported that they had secured a delay in a ban of the Morning Star flag, which had been threatened by the police and provincial authorities. This delay was to last until October 19, when these leaders were to meet with President Wahid. *Human Rights Watch*, ‘Indonesia: Violence and Political Impasse in Papua’, July 2001.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ See MacLeod, *MERDEKA AND THE MORNING STAR*, pp 250–251 (‘The response from the community was impassioned and instant. In the village of Wouma two migrants were murdered in unexplained circumstances. By the afternoon independence supporters from around the valley had streamed into Wamena, protesting and “burning and looting shops as they went”. The police and army responded with

also killed by gunfire.²⁵⁷ In the aftermath, 22 Papuans were arrested for the killings, although almost all were political leaders who were not connected to the violence in Wouma.²⁵⁸ Some were threatened with torture if they did not confess. In the end, arrested youth group (*Satgas Papua*) members were sentenced to between six and ten months of imprisonment; the remaining political leaders received several years.²⁵⁹

108. On 3 and 4 November 2000, police and Papuans clashed in Merauke. 'Reports indicate that five Papuans died of gunshot wounds and another Papuan died of stab wounds; police injured at least 17 other Papuans.'²⁶⁰ Approximately one month later, on 1 December 2000, police 'killed two Papuans during a clash in Fak Fak'.²⁶¹ And, on the morning of the following day in Merauke, 'police fired into a crowd, shooting and killing seven Papuans and injuring at least eight others'.²⁶² After a bloody start, December 2000 did not improve:

After a December 7 attack on a police station in Jayapura, police killed three persons, and detained and beat over 100 others [...]. On December 18, troops shot and killed four Papuans near Tiom, Papua, after the Papuans shot arrows at the soldiers, killing one soldier. In the Jayapura case, police detained and beat, often severely, over 100 persons following an attack on a police station, including 19 persons between the ages of seven and 18. Two Papuan students died of injuries inflicted by the police, and a third student was shot and killed [...].²⁶³

In the same month, the police station in Abepura was attacked and two police officers were killed. The police immediately sent out teams to round up suspects. What followed, however, was 'a methodical revenge attack in which all highlanders were targets'.²⁶⁴

109. The police and the Brimob first swept through the Ninmin Dormitory in Abepura, near the capital of Jayapura, which housed students from the highlands of West Papua,

live fire, taking up positions from inside migrant houses. In the ensuing melee "at least seven Papuans were shot and killed and twenty-four non-Papuans were killed".')

²⁵⁷ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 12; see also US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2000', 23 February 2001 ('On October 6, police killed six persons in Wamena, Papua, who resisted police efforts to take down Papuan flags. At least 20 other persons were injured [...].')

²⁵⁸ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 12.

²⁵⁹ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 14.

²⁶⁰ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2000', 23 February 2001.

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 15.

forcing the occupants outside and beating them. Twenty-three people from that dormitory—14 boys and nine girls, including one girl who was only seven years old—were taken into police custody and severely beaten. Next, a group of police swept through four residential neighborhoods where Papuans, mostly from the Wamena area of the highlands, lived.²⁶⁵ Within 24 hours, three highland students were killed and one hundred individuals had been detained in police headquarters.²⁶⁶

110. The violence did not end there. En route to the police headquarters and once there, all of those detained were beaten with rifle butts, wooden blocks, or iron bars.²⁶⁷ Some were burned with cigarettes, forced to lick the blood off the floor, and whipped with electric cables; one man was ordered to cut and eat his own hair.²⁶⁸ The detainees were constantly insulted with racist, derogatory language.²⁶⁹ Approximately 24 hours later, the prisoners were released.
111. After the events at Abepura, Indonesia's National Human Rights Commission (*Komisi Nasional Hak Asai Manusia*) ('KomNasHAM') recommended prosecution of the perpetrators in the newly created National Human Rights Courts.²⁷⁰ The local police and government administration, however, encouraged all members of the police forces involved to refrain from cooperating with the human rights investigators.²⁷¹
112. In addition to detaining numerous persons following the 'violent clashes [described above] in Wamena in October, Merauke in November, and Jayapura in December',²⁷² many other politically-motivated arrests and prosecutions were carried out in 2000:

In March the regional police command for Irian Jaya investigated criminal charges against 16 leading members of the Papuan Presidium Council for crimes against the security of the state and public order, based on claims that they had organized a gathering of Papuan community leaders in February and a peaceful Papuan independence flag-raising on December 1, 1999. The investigation against some of the 16 persons later was dropped;

²⁶⁵ *Ibid.*

²⁶⁶ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 15.

²⁶⁷ A Swiss journalist detained in the same prison described the beatings meted out there that night, including one that resulted in the death of a detainee. *Ibid.*, p 19.

²⁶⁸ Komnas HAM Report, pp 32–37.

²⁶⁹ For a list of phrases spoken to the detainees, see *ibid.*, pp 42–43 (quoting statements such as: 'Women with curly hair and ugly dare to attack the Police?'; 'The curly hair is just animal and must be extinguished!'; and 'Your God is shit. Call your God Lord Jesus to help you!').

²⁷⁰ *Human Rights Watch*, 'Indonesia: Violence and Political Impasse in Papua', July 2001, p 20.

²⁷¹ *Ibid.*, p 21.

²⁷² US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2000', 23 February 2001.

however, in November, police arrested the chairman, secretary general, and three other Papuan Presidium Council members on the same charges [...].

On December 1, police arrested seven persons during a demonstration in front of a foreign embassy to draw attention to human rights violations in West Papua (Irian Jaya) and to press for an international dialog to resolve the Papuan issue. Four of the detainees remained in police custody at year's end.

In mid-December, 17 Papuan activists went on trial in Wamena on charges of endangering state security by promoting separatism.

On December 15, police summoned the director of Papua's best-known human rights organization, the Institute for Human Rights Study and Advocacy in Papua (ELS-HAM), for questioning; police released him on December 16 after nearly 22 hours of questioning. The director [had been] ordered to the station after ELS-HAM held a press conference in which it accused the police of the extrajudicial killing of three persons on December 7 [...].

And throughout the year, the police 'encourage[d] [...] the formation of migrant "solidarity" organizations, and the arming of some of those organizations by security forces'.²⁷³ Moreover, the Army's 'creation of an armed "Red and White Task Force" (*Satgas Merah Putih*) [...] raised concerns that certain elements of the national security forces [were] seeking to create an armed Papuan paramilitary force, modeled on East Timorese militias, to oppose Papuan independence efforts'.²⁷⁴

113. In March 2001, the '[p]olice detained 22 persons returning from a traditional ceremony [...] and killed six of them in connection with the same incident'.²⁷⁵ In June 2001, 'Papuan Hubertus Wresman [...] was kidnapped from his parents' home by Kopassus troops [...] according to Amnesty International (AI) and [his] relatives. The Institute for Human Rights Study and Advocacy (ELS HAM) reported that Wresman participated in an attack on a military post that killed four soldiers several months before he disappeared.'²⁷⁶

²⁷³ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2000', 23 February 2001.

²⁷⁴ *Ibid*; see also MacLeod, MERDEKA AND THE MORNING STAR, p 125 ('In addition to targeted assassinations and military operations, the army is also forming, arming and training nationalist militia groups. They are replicating the same strategy of low-intensity conflict interspersed with military operations that was used in East Timor, while trying to avoid the negative publicity and backlash associated with mass killings. Members of state-supported militias are mainly drawn from the large pool of non-Papuan migrants with the objective of inciting and waging a proxy war on the state's behalf. Indonesian militias, like BMP [Barisan Merah Putih] (Red and White Garrison), have been established in Wamena, Sorong, Timika, and Jayapura. As well as creating nationalist militias, it has become an 'open secret' that the TNI has a symbiotic relationship with elements of the TPN, which it uses to ferment conflict, justify counter-insurgency operations, and play off factions of the armed struggle against one another.')

²⁷⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2001', 4 March 2002.

²⁷⁶ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2002', 31 March 2003.

114. As Wahid's brief yet bloody administration came to a close, one report estimated that between 1998 and 2000, there were 80 cases of summary execution and 500 cases of arbitrary detention and torture committed by the authorities in West Papua.²⁷⁷

3. The Sukarnoputri Administration: 2001–2004

115. As the parties were intensely debating the proposed law on special autonomy, 'President Wahid was impeached in July 2001 and a new administration headed by Megawati Sukarnoputri saw hard-line nationalists and military figures in power once more in Jakarta'.²⁷⁸ As part of her new government's attempt to address mounting domestic and international demands for reform in West Papua, a 'special autonomy' bill—drafted mostly by indigenous West Papuans—was finally put to the national legislature in late-2001. It passed the Indonesian parliament as Law No 21/2001 on Special Autonomy for the Province of Papua in November of the same year.²⁷⁹ Known as *Otsus*, the law contained many promising reforms; yet many of these were poorly implemented or ignored altogether. Ultimately, the effort was seen as a great failure,²⁸⁰ and the bloodshed continued.

116. In September 2001, 'security forces [likely] killed Willem Onde, the leader of the Papua Liberation Front Army (TPNP), and his friend, Johanes Tumeng'.²⁸¹ Two bodies, 'believed to be theirs, bearing evidence of gunshot wounds, were found floating in the Kumundu River on September 12 with their hands bound and heads shaved'.²⁸²

117. Later in the same year, 'on November 11, Papuan pro-independence leader Theys Hiyo Eluay was found dead in his car outside of the provincial capital Jayapura after his

²⁷⁷ John Rumbiak, *The On-Going Human Rights Violations in West Papua: Impunity or Accountability?*, April 2001.

²⁷⁸ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 19.

²⁷⁹ Law No 21 of 2001, On Special Autonomy for the Papua Province, 22 October 2001.

²⁸⁰ See paras 301 *et seq.* *infra*.

²⁸¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2001', 4 March 2002.

²⁸² *Ibid.*

driver reported that he had been kidnapped'.²⁸³ The brutal assassination—which appeared to have been achieved through torture—occurred just two weeks prior to²⁸⁴ the formal adoption of *Otsus*.²⁸⁵ 'By the end of 2001, the independence movement inside Papua was in disarray, without a clear leader or strategy.'²⁸⁶

118. Violence continued throughout 2002, Sukarnoputri's first full year in office:

On January 22, in Bonggo, Papua, Kopassus troops shot and killed Leisina Yaneiba, a clerk at a logging company. She had intervened in an altercation between Kopassus guards and a former employee, Martinus Maware, whom the [Indonesian Armed Forces (*Tentara Nasional Indonesia*) (the 'TNI')] alleged was an OPM rebel [...].²⁸⁷

On February 21, Martinus Maware, a former logging company employee and suspected OPM member, disappeared while under heavy guard at a military hospital, where he was being treated after soldiers guarding the company shot him in the leg during a dispute.²⁸⁸

On March 2, in the Central Java city of Salatiga, two men on a motorcycle kidnapped Mathius Rumbapuk, one of four [Papuan] students convicted of subversion for a December 2000 demonstration in front of a foreign embassy. Rumbapuk's friends alleged that the kidnapers were plainclothes policemen.²⁸⁹

On June 21, in the Papuan city of Wamena, Dani tribal chief Yafet Yelemaken died following a trip to Bali, where he had met a police acquaintance; friends concluded that the policeman poisoned Yelemaken during a visit to his hotel room.²⁹⁰

On July 31, according to ELS HAM, Yanuarius Usi died in police custody as a result of torture.²⁹¹

And in Jayapura, 'human rights activists said at least 82 documented crimes against women and children were committed during [2002], including eight rapes by soldiers or police'.²⁹²

²⁸³ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2001', 4 March 2002; *see also* MacLeod, MERDEKA AND THE MORNING STAR, pp 251–252 ('On 10 November 2001, the flamboyant Chair of the PDP, Theys Eluay, was strangled to death by soldiers from Komando Pasukan Khusus (Kopassus or Indonesian Special Forces Command) after attending a dinner party as the military's guest of honor.')

²⁸⁴ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 19 ('The 10 November 2001 killing of Theys Eluay by *Kopassus* special forces overshadowed the passage of the special autonomy law twelve days later.')

²⁸⁵ *See, e.g.*, Siegfried Zollner, *Conference: Autonomy for Papua. Opportunity or Illusion?* 11 Europe Pacific Solidarity Bulletin 3 (June-July 2003); Abigail Abrash, 'Indonesia Assassinate Indigenous Leader in Quest to Keep Papua', *Cultural Survival Quarterly*, March 2002.

²⁸⁶ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 19.

²⁸⁷ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2002', 31 March 2003.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

119. The government continued attempts to portray the OPM as a terrorist organization:

On August 31 [2002], unidentified assailants killed three persons, including two foreigners, and wounded 12 others in an attack close to [Freeport's] gold and copper mine near Timika, in Papua. The victims were teachers on a recreational outing. Several people dressed in military fatigues reportedly stopped the teachers' convoy in a heavy fog on the Tembagapura-Timika road and fired at the vehicles at close range. The Government quickly alleged that OPM had carried out the attack; the group denied responsibility. During the course of the initial police investigation, senior police officials were quoted in the press about indications that soldiers were involved in the attack.²⁹³

According to US officials, evidence indicates that members of the Indonesian army were responsible for the murders and may have sought to frame members of the Free Papua Movement in order to convince the US State Department to add the group to the department's terrorist list or, alternatively, to induce Freeport to increase its payments to the military.²⁹⁴

120. A highlands military operation conducted in April 2003 achieved typically gruesome results:

In the remote highlands area of Kuyowage, where the military launched an operation following an April 4 break-in at the Wamena armory, as many as nine other Papuans reportedly were killed. The National Human Rights Commission (KOMNAS HAM) launched an investigation in December, stating it had come across evidence that suggested that on April 17, unknown parties shot and killed at least four Kuyowage men: Alius Murib, Yinggen Tabuni, the Rev Enggelek Tabuni, and Yesaya Telenggen. [...] [And] dozens of residents [...] were tortured by unknown parties during [the same] military operation [...]. NGO activists reported that the victims were burned with cigarettes and struck in the face or legs with wooden planks.²⁹⁵

As part of the operation, on 15 April 2003:

TNI members killed Yapenas Murib in the Central Highlands city of Wamena. Dozens of witnesses saw TNI troops march Yapenas through the streets to military headquarters. Shortly thereafter, TNI officials announced that Yapenas had died in custody. A human rights activist and a doctor who viewed the corpse stated it bore clear marks of torture. Murib's body reportedly had been punched and cut until 'multi-colored' and dead.²⁹⁶

²⁹² US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2002', 31 March 2003.

²⁹³ *Ibid.*

²⁹⁴ See Dana Priest, 'A Nightmare, and a Mystery, in the Jungle: Ambush of School Outing Left 3 Dead, 8 Wounded, And Suspicion of Involvement by Indonesian Army', *Washington Post*, 22 June 2003, p A1.

²⁹⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2003', 25 February 2004.

²⁹⁶ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2003', 25 February 2004.

A few weeks later ‘an OPM member who was detained and interrogated at Wamena military headquarters on May 3 and 4 reported that, while there, he saw another ethnic Papuan whom he recognized from the town of Tium “whose fingernails and toenails had all been ripped out”.’²⁹⁷

121. On 7 July 2003, ‘police in Wamena shot and killed an unidentified Papuan separatist [...], reportedly one of as many as 20 persons who tried to raise the Papuan “Morning Star” flag in front of the district parliamentary office’.²⁹⁸ And according to Kontras, ‘at least 124 men were tortured in Papua during’ 2003.²⁹⁹

4. The Yudhoyono Administration: 2004–2014

122. Susilo Bambang Yudhoyono (commonly referred to as ‘SBY’) assumed power in October 2004. ‘[S]tate violence and neglect towards Papuans by the Indonesian security forces and an inability to stem a tide of migration that marginalizes indigenous Papuans and their concerns’ continued.³⁰⁰ And the state maintained its ‘unwilling[ness] to expend their political capital by investing in a peace process, including dialogue, with Papuans’.³⁰¹ This approach, according to MacLeod ‘was the dominant narrative of [SBY’s] presidency: positive rhetoric about his commitment to supporting resolution of the conflict coupled with a complete lack of follow-through’.³⁰²
123. Despite provisions in *Otsus* indicating that partition of West Papua ‘is possible only with approval of the [Papuan People’s Assembly (*Majelis Rakyat Papua*) (the ‘MRP’)] and the Papuan legislature’, ‘the Government established the West Irian Jaya Province, although it delayed creation of Central Irian Jaya. On November 11 [2004], the Constitutional Court annulled the 1999 law partitioning Papua into three provinces but ruled that West Irian Jaya could continue to exist, since it was functioning in accordance with constitutional principles.’³⁰³

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ MacLeod, *MERDEKA AND THE MORNING STAR*, p 60.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2004’, 28 February 2005.

124. On 17 January 2005, 'TNI personnel allegedly beat local Papuan residents in Nabire, leaving seven seriously injured and one, Miron Wonda, dead'.³⁰⁴ On 10 April 2005, 'in pursuit of a group of 11 OPM rebels, police carried out a raid in Mulia City, capital of Puncak Jaya Regency'.³⁰⁵ The 'police shot and killed Tolino Iban Giri and arrested eight other persons', however local 'church leaders told the press that [none] were [...] members of [the] OPM'.³⁰⁶
125. By mid-2005, it was estimated that '[m]ore than 100,000 Papuans [...] ha[d] died since Indonesia took control of West Papua from the Dutch Government in 1963' in what has been described as a 'campaign of ethnic cleansing'.³⁰⁷
126. In September 2005, in its first verdict, Indonesia's 'first permanent human rights court in Makassar, South Sulawesi, found that the police attacks in 2000 against almost 100 victims in Abepura, Papua, were not "crimes against humanity"'.³⁰⁸ The court 'dismissed all charges against Brimob Brigadier General Johny Wainal Usman and South Sulawesi Police High Commissioner Daud Sihombing' and 'denied the victims' request for rehabilitation and compensation'.³⁰⁹
127. On 20 January 2006, 'soldiers opened fire on a crowd in Paniai, Papua, killing one Papuan and wounding two others'.³¹⁰ A 2007 UN report documented several cases of torture and other mistreatment in the prisons of Wamena and Abepura.³¹¹
128. The UN Special Rapporteur on torture reported in March 2008 that Brimob 'have routinely been engaging in largely indiscriminate village "sweeping" operations in search of alleged independence activists and their supporters, or raids on university boarding

³⁰⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2005', 8 March 2006.

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.*

³⁰⁷ Virginia Gawler, 'Report Claims Secret Genocide in Indonesia', *University of Sydney News*, 19 August 2005.

³⁰⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2006', 6 March 2007.

³⁰⁹ *Ibid.*

³¹⁰ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2006', 6 March 2007.

³¹¹ See Report of UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Mission to Indonesia, 10–23 November 2007, para 19.

houses, using excessive force'.³¹² At a 19 July 2008 'demonstration in the western Papuan city of Fakfak', '[p]olice allegedly beat and kicked detainees'.³¹³ On 9 August 2008, at a rally in Wamena to mark the International Day of the World's Indigenous People, where 'the Morning Star flag was raised, along with the UN and Indonesian flags', 'Opinus Tabuni was shot and killed'.³¹⁴ A Komnas HAM 'investigation team and forensic evidence linked the killing to the TNI'.³¹⁵ On or about 17 October 2008, 'one of the organizers of a demonstration in Jayapura, Yosia Syet of Sentani, was killed', with the hospital autopsy concluding that 'he had died as a result of torture'.³¹⁶ And security forces 'were alleged to have killed another Papuan demonstrator, Martinus Grewas, in Sorong', for participating in the same rally.³¹⁷

129. On 6 April 2009, 'police clashed with several thousand pro-independence supporters in Nabire, Papua, and shot and injured nine persons'.³¹⁸ Monika Zonggonau was arrested and charged with treason 'after she allegedly displayed an outlawed separatist symbol' and 'suffered head injuries when police allegedly beat her with a rifle butt during her arrest and detention'.³¹⁹ Fifteen members of the West Papua National Committee (*Komite Nasional Papua Barat*) (the 'KNPB') were also arrested in Nabire and charged with treason.³²⁰ In the same month, 'Musa Tabuni, Serafin Diaz, and Yance Mote were arrested and charged with subversion and separatism following a [KNPB] Customary Council meeting in Jayapura'.³²¹

130. On 3 August 2009, Brimob members raided the house of tribal leader and former political prisoner Yawan Wayeni in Matembu Village, Papua Province and shot him in

³¹² Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak', Addendum Mission to Indonesia, A/HRC/7/3/Add.7, 10 March 2008 (hereinafter, the 'Nowak Report 2008'), para 39.

³¹³ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2008', 25 February 2009.

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

³¹⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2009', 11 March 2010.

³¹⁹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2009', 11 March 2010.

³²⁰ *Ibid.*

³²¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011.

his left calf.³²² Outside the house, Brimob officers tied Wayeni's arms and legs to a log then plunged a bayonet into his stomach, spilling out his bowels. Wayeni was then forced to walk around the village. In the evening, Wayeni's family was informed that his body was at Serui hospital.³²³ 'In May [2010,] video footage of Wayeni's death appeared on the Internet. The video showed the police taunting and providing no assistance to Wayeni as he was dying, but does not show events leading up to his death. Police sources claimed Wayeni was armed with a home-made weapon, while Papuan activists claimed that he was unarmed.'³²⁴ And on 26 November 2009, 'detained Papuan activist Buchtar Tabuni was beaten at Abepura Class II Penitentiary sparking riots [...] inside and outside the prison the next day'.³²⁵

131. Public records indicate that 2010 was a particularly gruesome year, with the following episodes of extrajudicial executions and torture perpetrated by the Indonesian security forces in West Papua:

- a. On 8 March, members of the army reportedly attacked a traditional hut on the way from Kalome village, Tingginambut District, to Mulia, the capital city of Puncak Jaya Regency. The 13 inhabitants of the hut were reportedly mistreated by the soldiers.³²⁶
- b. On 17 March, the Reverend Kindeman Gire and Pitinus Kogoya of the Evangelical Church in Indonesia (*Gereja Injili di Indonesia*) were severely tortured by members of Infantry Battalion (*Yonif*) 756 in Kalome, Tingginambut District, Puncak Jaya Regency. Soldiers reportedly tortured Gire for one-and-a-half hours before shooting him to death. A video appeared on the Internet in October and received international attention.³²⁷

³²² *Ibid.*

³²³ West Papua Advocacy Team (WPAT): West Papua Report, September 2010.

³²⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011.

³²⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2009', 11 March 2010.

³²⁶ Report by Piron Moribnak, 24 March 2010, Mulia, Puncak Jaya.

³²⁷ Testimony of Pitinius Kogoya, Jayapura 13 January 11; Report by Piron Moribnak, 24 March 2010, Mulia, Puncak Jaya.

Prakken d'Oliveira

- c. On 18 March, Tives Tabuni and Wotoran Wenda were tortured by members of Infantry Battalion (*Yonif*) 753 in Tingginambut District, Puncak Jaya Regency, Papua Province. The perpetrators were brought to the Military Court (*Kodam XVII Cenderawasih*) in Jayapura and on 11 November sentenced under article 103 of the Military Panel Code (*Kitab Undang-Undang Hukum Pidana Militer*) (the 'KUHPM') for disobeying orders. The soldiers Syahmin Lubis, Joko Sulistyono, and Dwi Purwanto were sentenced to five months of imprisonment and Second Lieutenant Cosmos to seven months of imprisonment. The soldiers confessed that they had tortured the victims through beatings.³²⁸
- d. On 19 March, evangelist Perianus Tabuni was reportedly killed by members of the Indonesian Military in Kalome, Tingginambut District, Puncak Jaya Regency.³²⁹
- e. On 25 March, while in police custody at Pasar Jibama, Wamena City, Jayawijaya Regency, Papua Province, Ikimo Kosay was tortured with scalding water by officer Daniel Tapilatu.³³⁰
- f. On 17 May, 'security forces shot and killed OPM leader Werius Telenggen and OPM member Yarton Enumbi in Yambi village, Puncak Jaya, Papua'.³³¹
- g. On 14 September, 'members of Brimob in Manokwari, West Papua, shot and killed Naftali Kwan and Septinus Kwan during a riot sparked by a traffic accident'.³³²
- h. On 16 October, 'a graphic video was posted on YouTube that showed several TNI personnel threatening one detainee, Telangga Gire, with a knife to the throat and applying a smoldering stick to the genitals of another detainee, Tunaliwor

³²⁸ Jubi, 5 November 10: Empat TNI Akui Lakukan Penganiyaan dan Kekerasan di Tingginambut.

³²⁹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011.

³³⁰ Letter from the Human Rights Organization *Jaringan Advokasi Penegakan Hukum dan HAM Pengunungan Tengah Papua* to the chief of police in Jayawijaya Regency (Doc No 065/SRT-LKP/JAPH-HAM/Kab.Jayawijaya/2010).

³³¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011.

³³² *Ibid.*

Kiwo'.³³³ The incident 'was believed to have taken place on May 30 during a military operation in the Puncak Jaya region of Papua'.³³⁴ Later, the video 'was conflated with another incident in March, also captured on video, in which four TNI personnel beat and kicked several Papuan detainees'.³³⁵ In both cases, the military personnel were court-martialed; however, their sentences were extremely light.³³⁶

- i. On 4 October, three civilians—Amos Wetipo, Franz Lokobal, and Alex Wetapo—were severely beaten and injured by members of the Indonesian Police in Wamena. The case was linked to a conflict between the police and members of Guards of Papua (*Penjaga Tanah Papua*) ('Petapa') at the Wamena airport, where Ismael Lokobal was shot dead.³³⁷
- j. On 14 November, civilian Adam Marandof was tortured by members of the Indonesian Air Force in Sisingamangaraja Street, Biak City, Papua Province.³³⁸
- k. On 17 November, Rifky Tuti was reportedly shot with three bullets by two Indonesian policemen in plain clothes. The incident occurred in the transmigration settlement Arso 2, Keerom Regency, Papua province. It is reported that the police

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ With respect to the former incident: 'In January 2011, after a military trial, Second Sergeant Irwan Rizkianto received a 10-month prison sentence, Private Yakson Agu received a nine-month prison sentence, and Private Thamrin Mahagiri received an eight-month sentence [in the detainee torture case of Telangga Gire and Tunaliwor Kiwo from 2010]. All [soldiers] received the charged of disobeying orders but not the more severe charge of abuse. The military discharged all three during the year.' US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2012'. The TNI personnel implicated in the latter incident 'were court-martialed and sentenced to five to seven months' imprisonment for disobeying orders, exceeding orders, and encouraging others to do so'. US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011. According to Human Rights Watch, the proceedings were marred by severe miscarriages of justice: no witnesses or victims were heard; the charges were limited to the minor offence of violating military discipline and disobedience, rather than the actual crime of torture; sentences ranged from eight to ten months' imprisonment, despite a maximum penalty of thirty months; and none of the convicted soldiers were discharged from military service. *See Human Rights Watch, World Report 2012.*

³³⁷ West Papua Netzwerk (WPN): Rundbrief No 51, Wuppertal, December 2010, p 5.

³³⁸ Justice, Peace and Integrity of Creation (JPIC) Desk, Evangelical Christian Church in the Land of Papua GKI-TP (Gereja Kristen Injili di Tanah Papua): Routine Report about the situation in Papua between October 2010 and January 2011 Papua Pos, 16 November 10.

brought Tuti to the police hospital in Jayapura the same evening, but he has been missing since that time.³³⁹

1. On 1 December, civilians Atil Wenda and Melius Tabuni were shot by members of Infantry Battalion (*Yonif*) 355 in Yugum Village, Bolakme District, Jayawijaya Regency, Papua Province. A delegation of the National Human Rights Commission (Komnas HAM) visited the site and confirmed the case.³⁴⁰

A 2011 study on the prevalence of torture in Papua, evaluating the previous year, found that ‘61 percent of survey respondents suffered physical abuse while being arrested and 47 percent of respondents suffered physical abuse during questioning’.³⁴¹

132. In January 2011, it was reported that President Yudhoyono had described ‘a vicious torture incident in Papua’ as a ‘a minor incident’ at a joint meeting of TNI and National Police leaders.³⁴²

The President was referring to a videotaped incident in which three soldiers from the Cendrawasih Military Command in Jayapura, Papua, tortured two Papuans accused of being members of the [OPM]. The defendants have been court-martialed, where they face charges not of torture, but of failing to obey orders, and face only nine months to a year in a military prison [...]. Prosecutors are seeking a one-year sentence for Second Sgt Irwan Riskyanto minus time served prior to the hearing. They are also seeking sentences of 10 months and nine months for First Pvt Yakson Agu and First Pvt Thamrin Mahagiri, respectively. Yudhoyono called for the incident to be resolved so it would not damage the already tainted image of the TNI, which has struggled to distance itself from a dark past.³⁴³

Human Rights Watch had previously condemned the episode, noting that the trials were taking place before ‘a military court notorious for its lenient sentences and lack of independence’.³⁴⁴

133. In February 2011, a series of newspaper articles implicated Papuan police in multiple sexual assault cases:

³³⁹ Informasi Awal Kondisi Keamanan di tapal batas RI-PNG per September–November 2010. Teror dan Pembunuhan Terjadi lagi di daerah Perbatasan RI-PNG.

³⁴⁰ Perwakilan Komis Nasional Hak Asasi Manusia Provinsi Papua: Laporan Peristiwa Penyerangan Aparat TNI-Polri di Yugum, Bolakme, Kabupaten Jayawijaya, Papua Pada Hari Rabu, Tanggal, 1 Desember 2010.

³⁴¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2011’.

³⁴² ‘SBY Describes Papua Torture as “Minor”’, Jakarta Post, 22 January 2011.

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

In one case, four policemen and three civilians allegedly raped and tortured a fifteen-year-old girl in Biak, Papua, in February. In a second case, a female detainee at the Jayapura police detention center claimed she was forced to perform sexual acts with three police officers between November 2010 and January 2011.³⁴⁵

The officers involved received a minimal punishment of 21-days' administrative detention. 'The district police chief of Jayapura City offered his resignation, but the regional police chief did not accept it.'³⁴⁶

134. 'It was in this context that Forkorus Yaboisembut, the leader of the Customary Papuan Council, declared independence on 19 October 2011.'³⁴⁷ From 16–19 October 2011, a third West Papuan Conference was held in Jayapura. Forkorus Yaboisembut from Sentani, head of the West Papua National Authority (the 'WPNA'), was named as president of the National Federal Republic of West Papua (*Negara Republik Federal Papua Barat*) (the 'NRFPPB') and proclaimed its independence and sovereignty. On the final day of the conference, the Indonesian military staged a brutal raid:

[O]n October 19, police and military units violently dispersed participants in the Third Papua People's Congress [...]. Activists displayed banned separatist symbols and read out a Declaration of Independence for the 'Republic of West Papua' on the final day of the gathering. Police fired into the air and detained hundreds of persons, all but six of whom were released the following day. Three persons were found shot and killed in the area. Police spokesmen claimed that the police were equipped only with rubber bullets and other non-lethal ammunition. Police beat many of those detained, and dozens were injured.³⁴⁸

Human Rights Watch reported that three people were killed and approximately 300 arrested.³⁴⁹ Video footage showed police 'kicking and bashing participants'.³⁵⁰ Forkorus Yaboisembut 'and four others were arrested and sentenced to three years' imprisonment for rebellion'.³⁵¹ 'The police—who shot, stabbed, beat, and tortured people—received warning letters.'³⁵²

³⁴⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2011'.

³⁴⁶ *Ibid.*

³⁴⁷ MacLeod, MERDEKA AND THE MORNING STAR, p 284.

³⁴⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2011'.

³⁴⁹ *Human Rights Watch*, 'Independent Investigation needed into Papua Violence', 28 October 2011.

³⁵⁰ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, pp 19–20.

³⁵¹ *Ibid.*

³⁵² MacLeod, MERDEKA AND THE MORNING STAR, p 284.

135. In November 2011, the UN declared the continued imprisonment of iconic West Papuan political prisoner Filep Karma—who was sentenced to 15 years’ imprisonment after he held a flag-raising ceremony in Abepura on 4 December 2001—to be in violation of international law and called on the Indonesian government to ‘immediately’ and ‘unconditionally’ release him.³⁵³
136. There were no improvements in 2012:
- a. On 16 March, the ‘Jayapura District Court convicted five Papuan independence activists, including Forkorus Yaboisembut and Edison Waromi, and sentenced them to three years in prison for their statements declaring the independence of the “Republic of West Papua”, display of banned separatist symbols, and leadership roles at the October 2011 Third Papuan People’s Congress’.³⁵⁴ According to defense attorneys, ‘police interrogated the accused without advice of counsel and beat those held while in pretrial detention’.³⁵⁵
 - b. On 1 May, ‘[u]nknown actors shot [student activist Tejoli] Weya during a demonstration’ in Abepura.³⁵⁶ At the time of the shooting, ‘Weya was reportedly standing with [Mako Tabuni, a KNPB leader] in the back of a truck as it passed the Abepura military compound’.³⁵⁷ Witnesses ‘claimed that Weya was shot from the compound, and an autopsy revealed that he was struck by fragments from a .22 caliber round’.³⁵⁸ The police ‘did not investigate the case’.³⁵⁹
 - c. On 6 June, ‘following an incident in Wamena in which a child was injured in a traffic accident involving two 756 Infantry Battalion soldiers [...], local residents

³⁵³ *Freedom Now*, ‘United Nations Finds Filep Karma’s Imprisonment in Violation of International Law’; see also Phelim Kine, ‘Dispatches: Indonesia Frees Papuan Political Prisoner’, *Human Rights Watch*, 23 November 2015 (‘Karma was originally sentenced to 15 years in prison, and his release is the result of a sentence remission. In November 2011, the United Nations Working Group on Arbitrary Detention called him a political prisoner and asked the Indonesian government to release him “immediately and unconditionally”. Indonesia rejected the recommendation.’)

³⁵⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2012’.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.*

beat the two soldiers, killing [one] and severely injuring [the other]'.³⁶⁰ In response, some '50–100 members of the battalion descended on that neighborhood of Wamena, killing Elinus Yoman, injuring a number of residents, and reportedly burning 87 houses'.³⁶¹ At the end of 2012, the 'authorities had not arrested or disciplined any members of the 756 Infantry Battalion for their roles in the incident'.³⁶²

- d. On 13 June, 'in response to reports that OPM members had hidden a weapons cache in the area, police and military personnel reportedly searched a number of dwellings on the outskirts of Mulia in Papua'.³⁶³ Although no weapons were found, 'the security forces detained Wiron Kogoya, a craftsman from another village who was passing through the area, [...] for several days'.³⁶⁴
- e. On 14 June, 'unidentified members of the security forces in Jayapura [...] shot and killed Mako Tabuni'.³⁶⁵ The Indonesian National Police (*Polisi Republik Indonesia*) (the 'PRI') claimed 'that Tabuni was shot while resisting arrest', while 'human-rights advocates stated that he was shot in the back while attempting to run away'.³⁶⁶ At the time of his death, Tabuni believed that he had been the target of a previous 'government assassination attempt that claimed the life of [...] Tejoli Weya'.³⁶⁷

According to the Commission on the Disappeared and Victims of Violence (KontraS), there were 98 victims of torture in Papua between July 2011 and June 2012.³⁶⁸ As of 2012, 97 incidents of torture and mistreatment and 234 incidents of arbitrary arrest and detention were documented by researchers for the International Center for Transitional Justice ('ICTJ') and the Institute for Human Rights Study and Advocacy in West Papua (*Lembaga Studi dan Advokasi Hak Asasi Manusia di Papua Barat*) ('ELSHAM')

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2012'.

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*

between the 1960s and the post-1998 reform period in Biak, Manokwari, Paniai, and Sorong.³⁶⁹

137. For yet another year, 2013 saw a continuation of the status quo. On 30 April, ‘security forces shot and killed two and injured three alleged members of a pro-independence group in Sorong’,³⁷⁰ where members ‘had gathered to plan a prayer service that was to include raising the outlawed Morning Star Flag to mark the May 1 anniversary’.³⁷¹ The authorities ‘charged seven people with “rebellion” for their roles in planning the demonstration’.³⁷² In its concluding observations on the initial report of Indonesia for 2013, the UN Human Rights Committee stated its concern ‘at increased reports of excessive use of force and extrajudicial killings by the police and the military during protests, particularly in West Papua’.³⁷³ According to NGOs, ‘between June and September [2013], authorities arrested more than 40 people in Papua for flag-related offenses. Police held most of them for one to three days before releasing them.’³⁷⁴
138. The final year of the SBY administration, 2014, was only marginally better than previous ones:
- a. On 28 July, ‘the Lanny Jaya faction of the [TPNPB] [...] attacked eight police officers traveling from Lanny Jaya to Maki village’.³⁷⁵ Two officers ‘died at the scene from gunshot wounds, and the six other officers were injured’.³⁷⁶ In retaliation, ‘the army and police launched a joint sweep of the area, during which

³⁶⁹ ICTJ/ELSHAM Report, p 12.

³⁷⁰ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2013’; *see also Amnesty International*, ‘Indonesia: Drop charges against “Freedom Flotilla” supporters in West Papua province’, 3 September 2013 (‘On 30 April 2013, police fired on a group of West Papuans who had peacefully gathered in Aimas district, near Sorong, to commemorate the 50th anniversary of the 1963 handover. Two men, Abner Malagawak and Thomas Blesia, were killed on the spot. A third victim, Salomina Kalaibin, died six days later from gunshot wounds. Police detained at least 22 individuals and charged seven of them with treason: Klemens Kodimko, Obeth Kamesrar, Antonius Saruf, Obaja Kamesrar, Yordan Magablo, Hengky Mangamis, and Isak Klabin.’)

³⁷¹ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2013’.

³⁷² *Ibid.*

³⁷³ UN Human Rights Committee, ‘Concluding Observations on the Initial Report of Indonesia’, Doc No CCPR/C/IDN/CO/1, 21 August 2013.

³⁷⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2013’.

³⁷⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2014’.

³⁷⁶ *Ibid.*

they reportedly burned down several buildings in Wamena'.³⁷⁷ On 1 August, 'the TNI announced it had killed five members of [the Lanny Jaya] group during a clash in Pirime District'.³⁷⁸

- b. Throughout the year, indigenous Papuans 'remained subject to discrimination, and there was little improvement in respect for their traditional land rights'.³⁷⁹ Commercial mining and logging activity, much of it illegal, 'posed significant social, economic, and logistical problems to indigenous communities'.³⁸⁰ Companies, 'often in collusion with the local military and police', continued to encroach on indigenous peoples' land; and 'tensions continued between indigenous Papuans and migrants from other provinces'.³⁸¹ And 'Melanesians in Papua cited endemic racism and discrimination as drivers of violence and economic inequality in the region'.³⁸²

One notable improvement came on 21 July 2014, when 'authorities released political prisoners Forkorus Yaboisembut, Edison Waromi, Domonikus Sorabut, August Kraar, and Selpius Bobii from prison for time served'.³⁸³

5. The Widodo Administration: 2014–Present

139. Joko Widodo (popularly known as Jokowi in Indonesia)—the country's first non-military president—took office in October 2014. Ironically:

Indonesia's shift away from authoritarian rule under Suharto towards democracy under President Joko Widodo has probably, according to theorists like John Foran at least, made the Papuans' task of persuading international third parties to support their struggle more challenging. The Indonesian government's portrayal as a democratic success story, which in many ways it is, and the Indonesian government's position as a valuable Western ally, makes it harder to draw attention to its authoritarian rule in West Papua.³⁸⁴

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*

³⁸⁰ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2014'.

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid.*

³⁸⁴ MacLeod, MERDEKA AND THE MORNING STAR, pp 350–351.

Nevertheless, the early days of the Widodo administration saw some interesting political developments.

140. From 30 November to 6 December 2014, pro-independence groups came together in Vanuatu to forge the United Liberation Movement for West Papua (the 'ULMWP').³⁸⁵ The reconciliation of the three groups—the West Papua National Authority (the 'WPNA'), the West Papua National Coalition for Liberation (the 'WPNCCL'), and the *Komite Nasional Papua Barat* (the 'KNPB')³⁸⁶—was immediately motivated 'by the potential for a second bid for [Melanesian Spearhead Group] membership following the 2013 deferral of the WPNCCL's application'.³⁸⁷ Shortly after the successful meeting in Vanuatu, however, bloodshed resumed in West Papua.
141. On 8 December 2014, in the highlands region of Paniai, four Papuan youth were killed by Indonesian troops and police, around twenty Papuans were wounded, and a fifth person died a few days after the authorities opened fire on a peaceful protest in the town of Enarotali. The protest was aimed at a group of Indonesian soldiers, who had beaten a 12-year old boy the night before. The police and the troops fired into the crowd after the crowd had attacked a military vehicle. However, later, the authorities sought to distance

³⁸⁵ See 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 23; see also Saralana Declaration, 6 December 2014, Port Vila, Vanuatu. *N.b.* The Declaration was signed by Edison Waromi, on behalf of the NRPFB (here a proxy for the WPNA); Rex Rumakiek, on behalf of the WPNCCL; and Buchtar Tabuni, on behalf of the West Papua National Parliament (a proxy for the KNPB).

³⁸⁶ See 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 17. *N.b.* '[E]ach [are] comprised of different generational, class and ethnic strands of Papuan society. While the first two believed they had more legitimacy because of their roots in older movements, including the armed OPM, the KNPB since 2008 has shown a far greater ability to mobilize protests in Papua.' *Ibid.*, pp 17–18. See also 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 2 ('The establishment in December 2014 of the ULMWP has brought an unprecedented and probably temporary degree of unity to the movement, but there is still no evidence that its leaders are inclined or have the capacity to direct the strategy of the armed factions.'). *N.b.* 'The distinction between armed and political groups is not a perfect one. Some leading members of the armed OPM fled in the 1980s and now run political groups abroad; some of the political activists have used violence. Each of the three leading pro-independence coalitions—the West Papua National Authority (WPNA), the West Papua National Coalition for Liberation (WPNCCL) and the *Komite Nasional Papua Barat* (KNPB)—has tried and failed to unify the armed OPM and place it under political leadership.' *Ibid.*

³⁸⁷ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 23; see also *ibid.* ('The Vanuatu political leadership, which has taken an active interest in the Papuan separatist movement since the 1990s, also expended considerable political effort. Former Vanuatu PM Barak Sopé took a personal interest along with the Vanuatu Council of Chiefs, which communicated to the Papuan side that only if the three groups came together would MSG membership be considered.') See paras 315 *et seq.*, *infra*, regarding the Melanesian Spearhead Group.

themselves from the act, attempting to pin the violence on the OPM.³⁸⁸ In response to calls for an investigation by Amnesty International, Jakarta appeared to capitulate.³⁸⁹ However, '[h]ardliners in the military, police, and political elite are said to be unhappy that the new Indonesian president, Joko Widodo, has said he wants to make welfare in Papua his priority, and to take a more pro-Papua stance. They fear it may encourage separatist sentiment in the region.'³⁹⁰ One year after the killings in Paniai, the investigation was stalled and no findings had been made public; international and domestic rights groups called for the perpetrators to be brought to justice.³⁹¹

³⁸⁸ See Michael Bachelard, 'We Didn't Shoot West Papuans, Say Indonesian Police, Military', *Sydney Morning Herald*, 10 December 2014 ('Police and military brass in Indonesia have begun distancing themselves from blame for the shooting deaths of five young West Papuan civilians in the highlands region of Paniai. Four died when a hail of bullets was fired into a crowd during a confrontation between Papuan protesters and police and military officers in the town of Enarotali on Monday morning. The fifth man died later in hospital. Two days later, though, Jakarta-based leaders of both the army and police began denying responsibility. "Not the police", national police chief Sutarman said blankly on Wednesday. A Jakarta-based military counterpart, army chief of staff Gatot Nurmantyo, speculated that, instead of being fired by the armed soldiers and police officers in front of the protesting crowd, the fatal shots came from the top of a hill behind them. "I heard that from the TNI [military] commander and national police chief and also from the Papuan police and military that ... shots were coming from the top of the hill", Mr Gatot said on Wednesday. He was certain there were no members of the military or the police on the hill. "If there were shootings from up the hill while there was no military and no police, who was it?" he asked. The comments appear to be an attempt to suggest the Free Papua Movement, OPM, which has been agitating for a separate Papuan state, is to blame for the deaths. Local people say the protest had nothing to do with separatism, but was a response to the beating of a child the previous night by soldiers.');

see also 'AWPA's Letter to Forum Leaders', *Solomon Star*, 29 July 2015 ('On Monday 8th December 2014, the security forces fired into a crowd of approximately 800 peaceful demonstrators (which included women and children) in Enarotali in the Panai regency, killing four. Up to 17 others were reported injured. The demonstrators had gathered to demand an explanation for the beating of a number of children by soldiers the previous evening. We point out that at this stage none of the perpetrators have been brought to justice. This incident shows that the security forces can act with impunity in West Papua.')

³⁸⁹ Michael Bachelard, 'We Didn't Shoot West Papuans, Say Indonesian Police, Military', *Sydney Morning Herald*, 10 December 2014 ('Amnesty International called for a "prompt, independent and impartial investigation" into the incident and for Indonesia to "put an end to the climate of impunity for perpetrators of such abuses" by prosecuting those responsible. It was revealed on Tuesday that the investigation will be run by a team headed by the Detective Head of the Papuan police, senior commissioner Dwi Iriyanto.')

³⁹⁰ Michael Bachelard, 'We Didn't Shoot West Papuans, Say Indonesian Police, Military', *Sydney Morning Herald*, 10 December 2014.

³⁹¹ See 'Jakarta Urged to Ensure Paniai Deaths Are Probed', *Radio New Zealand*, 8 December 2015 ('On the first anniversary of the violent deaths of four West Papuans in Paniai, Indonesia's government has been urged to ensure the perpetrators are brought to justice. The incident in Enarotali of Papua Province's Paniai Regency left four teenagers dead and 17 others injured after Indonesian police and military forces opened fire on a peaceful protest. The crowd had gathered to protest about soldiers assaulting a child the previous day. Following the incident, Indonesia's President Joko Widodo publicly committed to solving the case. The National Human Rights Commission established a team to investigate which after four-month's work found evidence of gross rights violations and recommended a more detailed investigation. However, the investigation has stalled, and internal probes by police and military are yet to be made public. Amnesty International and Indonesia's Commission for the Disappeared and Victims of Violence have urged the government to ensure that the perpetrators of the deaths are brought to justice. They say the government must take steps to ensure that the rights commission is provided with necessary funds to complete its investigations and ensure all findings are made public.')

142. In December 2014, 116 Papuans (68 men, 48 women, and 3 children) were tortured and arrested by Indonesian military and police.³⁹² In the same month, in Utikini village, dozens of traditional houses were burned down. The ID cards that support self-determination, carried by many villagers of Utikini, were according to the Indonesian police a reason to warrant arrests. An Indonesian police chief stated that ‘they have ID cards, they carry a card that supports self-determination, in my opinion it is an illegal card, there is no West Papua, no. We will cut the cards’. The situation in the area remains dangerous for West Papuans. After the burnings of the houses, many have been forced to flee. The arrests were a response to the killing of two Indonesian police officers. Although most of the arrested Papuans were released, some of them were still being detained in January 2015.³⁹³
143. As of July 2015, it was believed that at least 47 political prisoners were detained in the prisons of West Papua.³⁹⁴ And most human-rights violations by Indonesian security forces in the region had not been investigated; the few that were, had been led by the Indonesian military and police.³⁹⁵
144. In August 2015, two West Papuans—members of a Catholic youth group—were killed by special forces in Timika.³⁹⁶ According to reports, at the time of the killing, ‘the Kamoro people were performing traditional rituals’, and ‘the soldiers, who were refused entry to the area, went to their barracks, returned with weapons and fired on the group’.³⁹⁷ Shortly after the incident, ‘an Indonesian Military Spokesman said the soldiers had been attacked by a mob and fired in self-defense’; however, the Regional

³⁹² UNPO, ‘The Human Rights Situation in West Papua’ (UNPO submission to the Human Rights Council’s Expert Mechanism on the Rights of Indigenous Peoples).

³⁹³ UNPO, ‘The Human Rights Situation in West Papua’.

³⁹⁴ See www.papuansbehindbars.org.

³⁹⁵ UNPO, ‘The Human Rights Situation in West Papua’.

³⁹⁶ See ‘Pacific Church Leader Condemns West Papua Killings’, *Radio New Zealand*, 31 August 2015 (‘Pacific churches have condemned the killing of two West Papuans in a shooting involving Indonesian soldiers last week. They have called on regional leaders to speak out against summary killings, torture and human rights abuse in the Indonesian region. The church says reports from Timika in Mimika Regency say a group of Special Forces troops shot dead two members of the Catholic Youth Group at the Cathedral Parish of the Three Kings in Timika.’); see also ‘The State of the World’s Human Rights’, *Amnesty International*, 2015/16, p 186.

³⁹⁷ ‘Pacific Church Leader Condemns West Papua Killings’, *Radio New Zealand*, 31 August 2015; see also Press Release, ‘Political Assassination of West Papuan High School Student by Indonesian Police’, Institute for Papuan Advocacy And Human Rights, 30 September 2015 (‘KNPB (Committee National West Papua) activist Reverend Obed Bogau from Kingme Church [...] asked the police to properly investigate [...] the recent killing of Kamoro students by military at a traditional ceremony in the Catholic Church in Timika last month.’)

commander, Brigadier General Supartidi, later 'told the Jakarta Post that two officers were drunk when they fired into the crowd and had been arrested'.³⁹⁸

145. The following month, again in Timika, two high school students were shot by the police, one of them fatally.³⁹⁹

An Australia-based West Papuan campaigner, Paula Makabory, says the 17-year-olds were shot, one of them fatally, near a market in Timika on [28 September 2015] when they were pursued by Indonesian police. She says the police were pursuing them because their fathers are said to be members of [...] the OPM. Ms Makabory says the Papua police chief, General Paulus Waterpauw, has reportedly apologized to the victim's family, but that's been rejected because similar incidents have gone without prosecution. She says crowds gathered in the town last night to protest the killing.⁴⁰⁰

The shooting was the latest in a string of violent incidents involving the Indonesian security forces and West Papuan youths.⁴⁰¹ And a Papuan human rights group called the killing of Kaleb Bogau, one of the students, a 'political assassination' given that his father is KNPB (Committee National West Papua) activist Reverend Obed Bogau from Kingme Church.⁴⁰² The same group described the KNPB as 'a non-violent movement seeking Independence from Indonesia', comprised of 'mostly youth and students';⁴⁰³ it also noted that '[u]nder the administration of President Jokowi, KOREM, the

³⁹⁸ Neal Conan, 'Pacific News Minute: Unrest in West Papua After Police Shooting', *Hawaii Public Radio*, 1 October 2015.

³⁹⁹ See 'The State of the World's Human Rights', *Amnesty International*, 2015/16, p 186 ('Also in Timika, police shot two unarmed high school students during a 'security operation' in September [2015], killing one.')

⁴⁰⁰ 'Crowds Gather in Papua to Protest Alleged Police Shooting', *Radio New Zealand*, 30 September 2015; see also 'Reports Two Students Shot in West Papua', *Radio New Zealand*, 30 September 2015 ('Ms Makabory says a major hunt involving dozens of security personnel was mounted to find the students, who were traced to a house. "The boys got scared. They ran out. That is when one of the boys got shot by the police and the other one also got shot. The one, named Caleb Bagau, 17 years old, died in the crime scene. The other one, named Efrando, 17 years old, in critical condition." Paula Makabory says a similar incident occurred a month ago in Timika when two West Papuans were shot dead by Indonesian soldiers. She says this comes after similar killings of two West Papuan men in the same area a month ago.')

⁴⁰¹ See 'Crowds Gather in Papua to Protest Alleged Police Shooting', *Radio New Zealand*, 30 September 2015.

⁴⁰² See Press Release, 'Political Assassination of West Papuan High School Student by Indonesian Police', Institute for Papuan Advocacy And Human Rights, 30 September 2015 ('Monday evening, September 28, Indonesian Police shot two Senior High School Students in Gorong-Gorong, Timika, West Papua. Around 7pm (Papua local time) Kaleb Bogau (17 years old) was shot in the chest and died on the scene. Efrando Sabarofek (also 17 years old) was shot in the chest and leg and is in a critical condition in the Timika hospital. The family of Kaleb Bogau has treated this case as a political assassination. Kaleb Bogau was the son of KNPB (Committee National West Papua) activist Reverend Obed Bogau from Kingme Church. Kaleb Bogau body was taken from Timika hospital by his family to the KNPB office. Obed Bogau is also reported to have received a text message apology from Paulus Waterpau, the Regional Chief of Police (Kapolda), based in Jayapura, Papua. It is reported that Obed Bogau refused the apology message from Waterpau saying that Indonesia had killed so many Papuans and was treating them like animals. He asked the Police to properly investigate this case [...].')

⁴⁰³ Press Release, 'Political Assassination of West Papuan High School Student by Indonesian Police', Institute for Papuan Advocacy And Human Rights, 30 September 2015.

Indonesian Military Intelligence, have identified KNPB as the prime target for counter insurgency operations'.⁴⁰⁴ The incident marked 'the fifth time [in 2015] that civilians have been fired on by soldiers or police in the restive province, with now eight reported killed'.⁴⁰⁵

146. In September 2015, 'West Papuan activists appealed to the Pacific Islands Forum to send a team into West Papua to investigate human rights abuses'.⁴⁰⁶ However, the 'Indonesian representative bluntly told the Forum to "stay out of our business, and not to meddle in the internal affairs of a sovereign state"'; '[t]here [has been] no move to establish a fact-finding mission'.⁴⁰⁷

147. After spending more than a decade in prison for raising the banned West Papuan flag, prominent political prisoner Filep Karma was released on 19 November 2015:

Karma, 56, was arrested in 2004 after leading a peaceful demonstration in West Papua, calling for independence from Indonesia and raising the Morning Star flag. He was sentenced to 15 years in prison for treason, but was named by Amnesty International as a prisoner of conscience. His detention was condemned as 'arbitrary' by the United Nations. Filep Karma could have been released in August this year when he was offered a pardon in exchange for admission of guilt. However, he refused, saying, 'If president Widodo wants to free me unconditionally, then yes thank you'. The government eventually reduced his sentence for 'good behavior' so that he could be released. However, raising the Morning Star flag remains an imprisonable offence in West Papua and responding to the news of Karma's release, Indonesia's chief of National Police, Gen Badrodin Hait said, 'If you say he's a political prisoner, I say [Filep was] a criminal'. The move came as Indonesian President Joko Widodo once again pledged to improve livelihoods in the region. But there is little evidence that the security force's brutal repression of Papuans is over. At the end of September there were at least 45 Papuan political prisoners behind bars and political assassinations, fatal shootings, arbitrary arrests, and torture, at the hands of the security services, remain rife.⁴⁰⁸

⁴⁰⁴ Press Release, 'Political Assassination of West Papuan High School Student by Indonesian Police', Institute for Papuan Advocacy And Human Rights, 30 September 2015.

⁴⁰⁵ Neal Conan, 'Pacific News Minute: Unrest in West Papua After Police Shooting', *Hawaii Public Radio*, 1 October 2015.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

⁴⁰⁸ 'Prominent Papuan Prisoner Released', *Survival International*, 24 November 2015; *see also* 'Indonesia Releases Papuan Nationalist Leader', *AFP*, 21 November 2015 ('A high-profile Papuan separatist leader was released from prison Thursday after more than a decade behind bars, a fresh sign that Indonesia may be easing its tight grip on the restive eastern region. Filep Karma, the most prominent of Papua's political prisoners and convicted of raising a pro-independence flag, walked free from jail to an emotional welcome by hundreds of cheering supporters. His release had been held up for months after he refused to admit guilt in line with demands from the government. In the end, authorities agreed to grant him a sentence remission for good behavior, according to Human Rights Watch. [...] Karma, 56, was the most high-profile of the separatist detainees. He was found guilty of treason and jailed in 2004 after raising the banned flag at a rally. The United Nations had condemned his detention as "arbitrary", while Amnesty International had designated him a prisoner of conscience.')

Human Rights Watch applauded the release but emphasized the plight of the many other Papuan political prisoners, putting the number as high as 100.⁴⁰⁹

148. Most of Indonesia's political prisoners have been convicted of *makar*, rebellion or treason.⁴¹⁰ Many 'have been sentenced to ten years or more in prison', and '[i]n many cases the activists were tortured by police while in pretrial detention. Some have faced mistreatment and were denied medical treatment.'⁴¹¹ The Morning Star flat continues to be banned, 'along with other symbols, flags, and logos that have the same features as separatist movements'.⁴¹² Jakarta continues to justify such actions 'as part of its ongoing armed conflict with the [OPM]'.⁴¹³
149. Notably, however, Karma's release 'was the result of a sentence reduction rather than an amnesty', and '[o]ther largely unaddressed human rights violations in West Papua, including the Paniai killings in December 2014 when security forces opened fire on peaceful demonstrators, raise further questions about the Jokowi administration's commitment to peace in the province'.⁴¹⁴
150. On 21 December 2015, Indonesia's current defence minister (and previous TNI Chief of Staff and Commander of the Strategic Army Command (*Kostrad*)), Ryamizard Ryacudu, made the country's official position plain:

[He] said Indonesia had 'never disrupted or caused disruptions in other countries' and it expected the same of other nations regarding Papua and its long-running independence

⁴⁰⁹ 'Indonesia Should Free All Political Prisoners – NGO', *Radio New Zealand*, 21 November 2015 ('Human Rights Watch says the release of Filep Karma after 11 years in prison is good but says there are about 100 other West Papua political prisoners who should be released too. Filep Karma was freed from prison on Thursday on the outskirts of Jayapura, the capital of Indonesia's Papua province. The 56-year-old was jailed for raising a pro-independence flag at a political ceremony in 2004. The Human Rights Watch's Indonesia spokesperson, Andreas Harsono, says regulations established under the previous regime means that people can still be jailed for the same so-called offence. He says the government should release all political prisoners. "After May when President Joko Widodo released five prisoners, 14 more were arrested in Papua. In fact I just had a chat this morning with a top official in Jakarta, I told them that 'look again there are still many others in jail because of their peaceful political activities and they should be released'."'); see also 'Indonesia Releases Papuan Nationalist Leader', *AFP*, 21 November 2015 ('Dozens of separatists are in jail for committing treason for acts such as raising the pro- independence "Morning Star" flag and taking part in anti-government protests.')

⁴¹⁰ Phelim Kine, 'Dispatches: Indonesia Frees Papuan Political Prisoner', *Human Rights Watch*, 23 November 2015.

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ *Ibid.*

⁴¹⁴ Ken Setiawan, "'Old Guard' Blocking Human Rights Reform in Indonesia', *East Asia Forum*, 4 February 2016.

movement. 'There are countries that are getting involved in the issue of Papua. For us, Papua is [part] of the united Republic of Indonesia. The united Republic of Indonesia extends from Sabang (in Sumatra) to Papua. There is no other solution, that's it, that's the way it is', Mr Ryacudu said in Sydney.⁴¹⁵

Ryacudu's comments followed 'reports that all international NGOs ha[d] been ordered to close offices in Papua'.⁴¹⁶

151. The year came to a bloody close, with at least five Papuans shot and killed by the police in December:

Protestant and Catholic leaders in Indonesia's easternmost province of Papua have denounced a series of killings that occurred last month and have urged an end to the violence in the troubled region. The first incident occurred [1 December 2015] when four separatists were allegedly tortured and shot to death by Indonesian security officers on Yapen Island. In another killing, a Papuan was allegedly shot dead by a soldier [20 December 2015] in Keerom district, which borders Papua New Guinea.⁴¹⁷

To those in West Papua, life under the Widodo administration carried on much as before.

152. According to Human Rights Watch, Jokowi had yet to make good on a number of promises:

President Joko Widodo's [...] administration signaled it would more actively defend the rights of Indonesia's beleaguered religious minorities, victimized by both Islamist militants and discriminatory laws, but made few concrete policy changes. He granted clemency in May [2015] to five of Papua's political prisoners and released another one in October, but at time of writing had not freed the approximately 70 Papuans and 29 Ambonese still imprisoned for peaceful advocacy of independence.

In May [2015], the president—commonly referred to as Jokowi—announced the lifting of decades-old restrictions on foreign media access to Papua but then did not follow through, allowing senior government officials to effectively defy the new policy without consequences. In August [2015], Jokowi announced that the government would form a 'reconciliation commission' to address gross human rights abuses of the past 50 years, but left out the details.

The Jokowi government has sought to take a new approach to the provinces of Papua and West Papua ('Papua'), home to a low-level insurgency and a larger peaceful pro-

⁴¹⁵ 'Stay Out of Papua Issue, Indonesia Warns', *SBS News*, 21 December 2015; *see ibid* ('Mr Ryacudu was in Sydney with Indonesian Foreign Minister Retno Marsudi for a 2+2 meeting with Australia's Foreign Minister Julie Bishop and Defence Minister Marise Payne. Ms Bishop confirmed Papua was discussed during the talks and reiterated that Australia respected Indonesia's sovereignty over Papua. "On the issue of Papua, yes, that was part of our discussions. We had a general discussion about regional issues, about Pacific issues and Australia restated as we have done on many occasions, publicly and privately, our unconditional support and respect for Indonesia's sovereignty in this regard", Ms Bishop said.')

⁴¹⁶ *Ibid*.

⁴¹⁷ Benny Mawel, 'Church Leaders Denounce Killings in Papua: Circle of Violence in the Troubled Region Continues', *UCA News*, 4 January 2016.

independence movement. On [9 May 2015], Jokowi visited the Abepura prison and released five political prisoners, promising to release other Papuans imprisoned for political crimes in consultation with the parliament. There were at least 45 political prisoners in Papua at the end of September, according to the monitoring group 'Papuans Behind Bars'. Papua's most famous political prisoner, Filep Karma, was released in October [2015].

New incidents of security force violence also continue to be reported. Two allegedly drunken soldiers opened fire on a crowd in Koperapoka, Mimika regency, on [27 August 2015], killing two people and wounding two others. In December 2014, security forces allegedly shot and killed five peaceful protesters in the town of Enarotali; a year later, the government had still not released the results of official investigations into the shootings or arrested any suspects.

In August [2015], Brig Gen Hartomo was promoted to become governor of the Military Academy in Magelang. In 2003, Hartomo, then Special Forces commander in Papua, was tried and convicted by a military tribunal for his involvement in the killing of Papuan leader Theys Eluay.⁴¹⁸

As with previous administrations, these shortcomings may have less to do with presidential intentions and far more to do with entrenched military-security interests. In many ways, chief executives in Indonesia serve at the pleasure of certain undemocratic 'constituencies'.

153. In early January 2016, additional police were deployed to the Puncak Jaya Regency, where three officers had been killed in late-December 2015 in an attack on the Sinak police headquarters by unknown assailants.⁴¹⁹ According to local residents:

[I]n their sweep operation, police have burnt [a number of houses in up to six villages in the area. Meanwhile, a large number of frightened villagers in the area have fled from security forces into the bush, according to the United Liberation Movement for West Papua. The ULMWP claims at least two people have been killed in the police response which has also involved killing of livestock and harassment of innocent villagers.⁴²⁰

The ULMWP has 'urged Indonesia's government to stop sending troops' to Puncak Jaya.⁴²¹

154. In early February, the government announced that it would 'consider a request for amnesty from ten former members of the West Papuan separatist group, the OPM'.⁴²² It

⁴¹⁸ *Human Rights Watch*, World Report 2016, Indonesia (events of 2015).

⁴¹⁹ See 'Extra police sent to Papua', *Radio New Zealand*, 11 January 2016 ('Reports from Indonesia's Papua province say extra police have been deployed to a part of Puncak Jaya regency where three officers were killed in an attack late last month. Tabloid Jubi reports that about 150 police personnel were deployed to hunt for the perpetrators of the attack on the Sinak Police Headquarters. The Papua Police Chief, General Paulus Waterpauw has indicated that police believe they know who the suspects are and have homed in on their communities, searching also for stolen ammunition. It's not clear whether the suspects have been found yet.')

⁴²⁰ 'Extra police sent to Papua', *Radio New Zealand*, 11 January 2016.

⁴²¹ *Ibid.*

is not clear whether this amounts to actual progress or simply more lip service.⁴²³ In any case, in January 2016, ‘president Joko Widodo said a soft approach and dialogue was needed to move away from a militaristic approach in West Papua, and he granted clemency to five Papuan prisoners’.⁴²⁴

155. According to the OPM, the police staged a weapons find as part of a raid on two houses in Jayapura regency on 3 February 2016:

The [OPM] has denied that hundreds of rounds of ammunition, firearms, and explosives confiscated by police during a raid on Wednesday night belonged to the organization, and have accused the authorities of staging the arms find. OPM spokesman Saul J Bomay said the OPM did not have the funds to purchase such an amount of weaponry. ‘The raid was set up by the security forces to increase tension in Papua’, [Bomay told reporters]. In the raids police seized 241 rounds of ammunition, two firearms and a replica gun, four pipe-bombs, a flag of the West Papua National Committee, a laptop, and a mobile phone [...]. OPM secretary general Anthon Tabuni claimed that the Indonesian Military (TNI) had staged many incidents purportedly involving the OPM, citing ten Puncak Jaya residents described as OPM members who were reported to have surrendered to authorities last week. Local media reported earlier this month that ten former members of the OPM/National Liberation Army surrendered to the authorities and had requested amnesty from the government because they had grown weary of fighting.⁴²⁵

The Jayapura police ‘said the raids were a follow-up to case of illegal firearms possession by a college student’ on 2 February 2016.⁴²⁶

156. In any case, it is clear that despite President Widodo’s stated aims of improving the human-rights situation in West Papua—whether sincere or not—the army and police continue to call the shots on the ground:

Successive presidents from Habibie to Susilo Bambang Yudhoyono (SBY) have proven unable to address human rights abuses dating back to the Suharto regime. [...] But the last year has revealed that Jokowi is not the ‘magic bullet’ for resolving human rights abuses in Indonesia. Instead, he has cultivated strong links with former and current military figures and has maintained the status quo with regards to [...] human rights issues in Papua. The question of Papua also highlights Jokowi’s quandary. He is aware of the serious problems that exist in Papua and shows a level of sympathy with indigenous Papuans. Jokowi has visited Papua more than once, including during the election campaign, and has pledged to stop transmigration to Papua. In May 2015, he released five Papuan political prisoners under an amnesty program and has declared Papua open for international journalists to

⁴²² ‘Indonesian Govt Considers Amnesty for Former OPM Members’, *Radio New Zealand*, 6 February 2016.

⁴²³ See ‘Indonesian Govt Considers Amnesty for Former OPM Members’, *Radio New Zealand*, 6 February 2016 (‘The Jakarta Post reports the members met with the National Intelligence Agency chief, Sutiyoso, to ask for amnesty, and the Papua administration has reportedly already made plans for the request. The Political, Legal, and Security Affairs Minister, Luhut Panjaitan, says the request will be considered if it’s deemed a persuasive step towards resolving the decades-long separatist conflict in West Papua.’)

⁴²⁴ ‘Indonesian Govt Considers Amnesty for Former OPM Members’, *Radio New Zealand*, 6 February 2016.

⁴²⁵ ‘OPM Accuses Police of Staging Arms Find’, *Jakarta Post*, 4 February 2016.

⁴²⁶ ‘OPM Accuses Police of Staging Arms Find’, *Jakarta Post*, 4 February 2016.

cover news there. He has, however, stopped short of discussing the drawdown of troops from the two provinces. [...] In effect, Jokowi is caught in a bind as he cannot be seen to be giving too much green light to those questioning Indonesia's repressive Papua policies.⁴²⁷

Unfortunately, President Widodo, 'is unable to order bureaucrats in the area to implement his policies'.⁴²⁸ Of course, in the official narrative, Indonesia is presented 'as a "normal" country—that is, democratizing, not subject to military excesses, and accountable to the rule of law' and the 'government frequently asserts that these apparent attributes also extend to its rule in West Papua'.⁴²⁹ Yet, as the forgoing makes clear, 'they appear to be observed more in the breach than otherwise'.⁴³⁰

157. A recent report has highlighted the 'military and police intimidation, beatings and torture, kidnapping, and murder in West Papua' under the current administration:⁴³¹

The report author Josephite Sister Susan Connelly [...], a respected human rights advocate, likened her visit to West Papua to 'stepping back twenty years when I first went to East Timor. The same oppressive security presence everywhere, the same suspicion, bewilderment, frustration, and sadness [...]. The same fear. The same seemingly groundless hope. A man took my hands in his and said, "We are in danger". That simple statement sums up for me the experience of the whole visit. The Papuan people have lost so much, and are facing erasure as a people, merely preserved as oddities of the past or artifacts to be photographed for tourist brochures. They realize that their land is considered more valuable than they are.'

The fact-finding team heard many accounts of alleged military and police brutality and murder. 'There is clear evidence of ongoing violence, intimidation, and harassment by the Indonesian security forces,' [Brisbane archdiocese's Catholic Justice and Peace Commission executive officer Peter Arndt] said on his return to Brisbane. 'That is especially the case for Papuans expressing their support for particular political points of view. Authorities want to close down any Papuan efforts to promote discussion about self-determination, and they have applied a military response to deal with the irrepressible desire of a large number of Papuans to promote their cause for freedom.' [...] 'Even demonstrations about social issues such as access to education get broken up by authorities', he said.

The fact-finding team heard many examples of how the Indonesian Government pushed economic development, but ignored human rights. 'The Government has carved up the land and given it for exploitation to some 50 multinational companies', the report said. 'The procedure is that the local government invites companies to come and gives permits. People are usually shocked when the companies come to sign a MoU (memorandum of understanding) with them, showing them the permit and the map. If the villagers don't agree to the proposal, the company goes back to the local government and returns with the police.' [...]

⁴²⁷ Vannessa Hearman, 'No Magic Bullet', *Inside Indonesia*, 27 January 2016.

⁴²⁸ 'Coordination, Dialogue Needed in Papua, Says LIPI', *Jakarta Post*, 31 October 2015 (quoting Indonesian Institute of Sciences analyst Adriana Elisabeth).

⁴²⁹ Camellia Webb-Gannon, 'Salvaging Democracy for West Papuans in the Face of Australia-Indonesia Obstruction', *Asia-Pacific Journal*, 23 November 2015.

⁴³⁰ *Ibid.*

⁴³¹ 'New Catholic Report Tells Stories of Murder, Kidnapping, and Torture in West Papua', *Catholic Leader*, 9 March 2016.

In every sector of government the system is composed of Indonesian tactics to destroy the Papuans. Beatings and torture are used, but also the economic aspects of lack of opportunity, the sidelining of the indigenous peoples, the taking over of land by companies ... are part of the plan.⁴³²

Nearly 47 years have passed since the Act of Free Choice, and yet the stories in West Papua remain largely the same.

D. Jakarta's Grip on Power and the Indonesian Surveillance State

158. As clearly outlined above, since Indonesia took control of West Papua, the indigenous population has been subjected to ongoing acts of brutality perpetrated by military, paramilitary, and police forces:

While no one knows exactly how many Papuans have died, killings by the Indonesian military and related deaths have been on such a scale that all Papuan families know relatives or friends who have been detained, disappeared, or killed. More than 30 military operations have been carried out between 1963 and 2014, all of which have resulted in the deaths of Papuan civilians. A death toll of 100,000 is routinely quoted in both academic and activist literature and often attributed to Amnesty International [...]. Papuan leaders like Benny Wenda and Jacob Rumbiak claim the figure is much higher, up to 500,000.⁴³³

Aminruddin Al Rahab [...], an Indonesian scholar with the Indonesian Institute of Sciences, concurs. 'The total numbers of Papuans murdered by the security forces is not clear,' he says. Given the challenges of undertaking research in the midst of the occupation any figure on the death toll will be contestable and, to a certain extent, unprovable. However, it is clear 'that there have been serious human rights abuses in Papua' [...], that these have overwhelmingly been committed by the military and police, and that they continue to take place largely in the context of impunity [...].⁴³⁴

In any event, actual knowledge of the precise numbers 'may be less important than understanding the effect of terror and state violence on the population'.⁴³⁵

159. For example, some have argued that torture is used by the state not to extract any potentially useful information, but rather as a means of terrorizing the population and thus controlling it to a certain extent:

[Yohanas Hernawan], whose doctoral study documented 431 cases of torture by police and military since Indonesia took control, illustrates that acts of torture, sexual violence, and brutalization are often carried out in public view—in fields, on the street, in villages and in

⁴³² 'New Catholic Report Tells Stories of Murder, Kidnapping, and Torture in West Papua', *Catholic Leader*, 9 March 2016.

⁴³³ MacLeod, MERDEKA AND THE MORNING STAR, p 122.

⁴³⁴ *Ibid*, p 123.

⁴³⁵ *Ibid*.

the open grounds of military and police compounds—in contrast to being secret, ‘hidden’ acts of torture [...]. The purpose of the Indonesian state’s use of torture, says Hernawan, does not aim at extracting real information on the TPN. Instead, torture represents a large machinery that aims to control the whole community by conjuring and maintaining the specter of terror.⁴³⁶

Chillingly, the use of torture as a tactic of terror is but one aspect of Jakarta’s much more comprehensive and systematic apparatus of control.

160. As Jason MacLeod sees it, the central government employs three key strategies in order to maintain its grip on power in West Papua: (i) “‘modernization”, an interlinked [...] process promoting large-scale development projects’; (ii) ‘in-migration to service developments that primarily benefit migrants’; and (iii) ‘repression, including the widespread use of torture and acts of “random” violence, which is both targeted and indiscriminate’.⁴³⁷

161. Yet another strategy—one that, in a sense, operates at a meta level in order to hide the others from the outside world—is Jakarta’s attempts to keep events in West Papua from reaching beyond international (and, to a much lesser extent, internal) borders:

Since the Act of Free Choice in 1969 until Suharto’s fall in May 1998, West Papua was a military operations area and closed off from outside scrutiny. The region still remains off limits to international journalists, diplomats, and international human rights organizations. The police and military continue to apply a security-based approach, criminalizing dissent and covering up or denying human rights violations. While Indonesia moves towards greater democratization elsewhere, West Papua remains a semi-authoritarian enclave. Foreign journalists, humanitarian organizations, and even international diplomats are routinely denied permission to visit the territory, particularly areas where there are military operations.⁴³⁸

Of course, a key corollary to keeping people out is keeping a very close eye on anyone who happens to get in or, in the case of indigenous ‘troublemakers’, has the misfortune of being there in the first place.

162. Recently discovered intelligence documents have revealed the nature and extent of Jakarta’s surveillance of the West Papuan independence movement. According to a 4 February 2016 press report, ‘Indonesian authorities compiled a secret dossier of prominent Papuans that details their “weaknesses”—such as women and alcohol—and

⁴³⁶ *Ibid*, pp 123–124.

⁴³⁷ *Ibid*, p 166.

⁴³⁸ MacLeod, MERDEKA AND THE MORNING STAR, p 166.

outlines a strategy to “suppress” the independence movement’.⁴³⁹ The leaked documents ‘target religious leaders, political activists, and even Papuan university students who live outside the troubled province’, and they ‘highlight the [...] government’s paranoia about the pro-independence movement [...] and its sensitivity towards claims of human rights violations’.⁴⁴⁰ The program—the so-called ‘Papuan Action Plan’—is dated March 2014 and ‘is branded with the logo of the Indonesian State intelligence Agency or BIN’,⁴⁴¹ the *Badan Intel Nasional*, which has denied issuing ‘such a document’.⁴⁴²

163. For example, Markus Haluk, the former chairman of the Central Highlands Papuan Student Association, is named as a person of interest:

It is reported that he attends seminars demanding a ‘liberated Papua’ and always criticizes government policies. His strengths are his ability to motivate Central Highland people who are not university educated and create ‘propaganda via media’. His weaknesses? ‘Money and women.’ ‘I think it’s harassment of my pride, my character’, Mr Haluk told Fairfax Media. ‘I have a wife, I am not a playboy. I know there are many ways Indonesia (achieves its goals). It’s intelligence strategy, Jakarta’s strategy to kill a fighter.’⁴⁴³

For each Papuan named, the dossier lists a ‘minimal’ and ‘maximal’ goal, ‘which authorities [had] hoped to achieve between April and October 2014’.⁴⁴⁴ The minimal goal ‘tended to be that the person would not contend there were severe human rights violations in Papua or would reject Papuan independence’, while the maximal one ‘was usually that the person would support the Republic of Indonesia or support a draft law on enhancing special autonomy’.⁴⁴⁵ Another named target is Beny Dimara, a prominent religious figure who works with Papuan university students in Yogyakarta; he is identified simply ‘as someone who “follows separatist politics”’.⁴⁴⁶

164. Jakarta has a long history of spying on West Papuans. Material from *Kopassus*, ‘leaked [...] in 2011, revealed members of the small armed resistance as well as ordinary

⁴³⁹ Jewel Topsfield, ‘Indonesia’s Secret Dossier to Suppress Papuan Independence Movement’, *Sydney Morning Herald*, 4 February 2016; see *ibid* (‘The dossier lists the strengths and weaknesses of numerous Papuans and describes tactics to “suppress the movement” and “divide and fragment” opinion within the movement.’)

⁴⁴⁰ *Ibid.*

⁴⁴¹ *Ibid.*

⁴⁴² *Ibid.*

⁴⁴³ Jewel Topsfield, ‘Indonesia’s Secret Dossier to Suppress Papuan Independence Movement’, *Sydney Morning Herald*, 4 February 2016.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

Papuans were under intense surveillance'.⁴⁴⁷ Those documents—2006–2009 intelligence briefs—revealed that 'informants infiltrated every aspect of daily life, including American tourists being watched while they attended a traditional dance outside the capital Jayapura in case they met with pro-independence groups'.⁴⁴⁸ According to Agus Sumule, a lecturer at the University of Papua, 'Papuans are the only ethnic group in Indonesia spied on by their own government'.⁴⁴⁹

165. Theologian and activist Benny Giay, described in the recently-discovered BIN documents as a 'prominent clergyman who can influence and can generate separatist enthusiasm',⁴⁵⁰ highlighted the disconnect between deeply entrenched military policy and superficial populist political programs:

'This is paranoid, this is crazy', he said, when told about the documents. 'They are often following us or sending journalists to interview us on certain topics. They will attend press conferences, attend our church meetings.' Dr Giay said [President Widodo] [...] had told the world he was addressing Papua but had done little except announce new road construction. 'I told Jokowi it will take generations to build trust because the problem is a lack of trust from Papuans towards the military.'⁴⁵¹

While President Widodo 'has indicated that he would like to pull back on a lot of this army and police and intel repression in Papua',⁴⁵² he has been unable to alter the entrenched system: 'the security forces have [...] resisted him, and he has not been brave enough to overrule them'.⁴⁵³

166. As reported in 2011, when the 2006–2009 *Kopassus* cache was discovered, 'the Indonesian government runs a network of spies and informants in Papua that is staggering in its scope and range of targets'; and 'infecting all the reporting and analysis is a deep paranoia that is both astonishing and disturbing'.⁴⁵⁴ Those documents made clear that surveillance went far beyond known OPM-TPN members to include 'many ordinary Papuans and civic leaders who do not advocate independence but are

⁴⁴⁷ *Ibid*; see also Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011.

⁴⁴⁸ Jewel Topsfield, 'Indonesia's Secret Dossier to Suppress Papuan Independence Movement', *Sydney Morning Herald*, 4 February 2016.

⁴⁴⁹ *Ibid*.

⁴⁵⁰ Jewel Topsfield, 'Indonesia's Secret Dossier to Suppress Papuan Independence Movement', *Sydney Morning Herald*, 4 February 2016.

⁴⁵¹ *Ibid*.

⁴⁵² 'Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC', *Democracy Now*, 27 October 2015 (interview with Allan Nairn).

⁴⁵³ *Ibid*.

⁴⁵⁴ Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011.

concerned about the advancement of their people or are influential in the community'.⁴⁵⁵

'Everyone is a separatist until they can prove they are not', says Neles Tebay, a pastor and convener of the Papua Peace Network that is promoting dialogue with Jakarta. Around the capital, Jayapura, there are ten *Kopassus* spy networks infiltrating 'all levels of society', including the university, government agencies, the local parliament, hotels, and the Papuan Customary Council.

A worker at a car rental agency tips off his *Kopassus* handler whenever a suspicious customer visits the establishment or talks about 'M', shorthand for '*merdeka*' or freedom. A phone shop employee 'often provides information on the phone numbers of people purchasing phone credits'.

Journalists, university students, bureaucrats, church leaders, teachers, motorcycle taxi drivers, clan leaders, village chiefs, farmers, and forest workers are all on the books of *Kopassus*. One leader of the OPM-TPN has eight *Kopassus* informants within his network, including a 14-year-old family member.⁴⁵⁶

At the time, those documents were considered to be 'just a snapshot of the total campaign under way in Papua'.⁴⁵⁷ It was an open secret that '[o]ther units of the Indonesian military, known as the TNI, run similar operations, as do the police', along with 'scores of [BIN] agents in Papua'.⁴⁵⁸

167. According to Markus Halak (the activist mentioned above), then with the Central Highlands Papuan Student Association: 'I've lost count of the attempts to kill or threaten me [...]. I've had guns pointed at my head, I've been thrown from a motorcycle. There are always SMS threats'.⁴⁵⁹ Most of his organization's meetings, it seems, had been 'attended by a *Kopassus* spy'.⁴⁶⁰

168. As Jason MacLeod sees it, the military is simply reacting to a known and potentially formidable threat:

Ironically, the security forces are often more cognizant of the power of nonviolent resistance than many Papuans. For example, the top fifteen 'enemies of the state', writes the journalist Alan Nairn, who cites leaked Indonesian army documents, are all civilian leaders: church leaders, students, members of parliament, and leaders of the Papuan Customary Council. The Indonesian military considers nonviolent resistance 'much more dangerous' because they have 'reached the outside world' with their 'obsession' with *merdeka*

⁴⁵⁵ *Ibid.*

⁴⁵⁶ Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid.*

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

(‘independence/freedom’) and persist in ‘propagating the issue of severe human rights violations in Papua [...] murders and abductions that are done by the security forces’.⁴⁶¹

It should come as no surprise that the Indonesian military-security establishment, rather than the executive, sets the agenda in this regard.

169. Perversely (or perhaps not from the military’s point of view), ‘the objective [of the surveillance] is to discredit the institutions and arrangements introduced [...] under [Special Autonomy] in 2001, the very policy supposed to give Papuans economic and cultural rights, dampen independence sentiment, and secure national unity’.⁴⁶² According to Agus Sumule (the academic mentioned above), then an advisor to Papua’s Governor, Barnabas Suebu and ‘a key player in drafting the special autonomy laws which created a new legislative body to represent indigenous Papuans known as the *Majelis Rakyat Papua* (the ‘MRP’),⁴⁶³ Special Autonomy never had a chance:

[M]uch of that blame lies with Jakarta’s refusal to implement it properly. Papua was divided into two provinces against the wishes of the MRP, Dr Sumule says. Moreover, the home affairs ministry interferes in the election of MRP candidates, and has banned people from taking their seats. Despite provisions in the special autonomy law for symbols of Papuan identity to be displayed, the cherished Morning Star flag has been outlawed. Those caught displaying it can be sentenced to 15 years in prison. Some \$3 billion in aid has flowed from the central government to the region in the past decade, but it is handed out haphazardly and most of it has been siphoned off by corrupt officials or wasted on bureaucracies to support the new province and dozens of new regencies in Papua.⁴⁶⁴

As many feared, Special Autonomy was little more than lip service.

170. One *Kopassus* report proffered a ‘plainly racist rationale’ for the economic disparity: ‘Indigenous Papuans “lack the willingness to work and the willingness to make a better life, so their lives seem to be making no substantial progress”, it said. Migrants, in contrast, had a “high spirit and work ethic”’.⁴⁶⁵
171. Regarding the government’s military presence in the region, precise deployment figures remain a closely held state secret. However, ‘since special autonomy was introduced in 2001, it has doubled the number of battalions from three to six’.⁴⁶⁶ There are ‘114 posts

⁴⁶¹ MacLeod, MERDEKA AND THE MORNING STAR, p 48.

⁴⁶² Tom Allard, ‘Independence at Threat From Enemy Within’, *Sydney Morning Herald*, 13 August 2011.

⁴⁶³ *Ibid.*

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*

along the border with Papua New Guinea alone' and best estimates 'put the military numbers at about 15,000, roughly 13 soldiers for every armed separatist'.⁴⁶⁷ As revealed in WikiLeaks cables, an Indonesian official told a US Embassy staffer: 'The TNI has far more troops in Papua than it is willing to admit, chiefly to protect and facilitate TNI interests in illegal logging operations.'⁴⁶⁸ And according to Neles Tebay, troops 'are trained to see Papuans as the enemy'.⁴⁶⁹

172. Some see the longstanding (and, as ever, far-reaching) influence of American foreign policy at work:

The US has always maintained a separate channel to the army, from the days of the Suharto dictatorship, and even before, when the US was trying to overthrow the founding president, Sukarno. And that strengthens the hand of the army—and the CIA works with the police—against an elected civilian president like Jokowi. It previously happened with Gus Dur, who was a Muslim cleric, a reformist president, who was undermined and, in effect, ousted by the army. And one of the key sources of army power is the fact that they had their separate channel to Washington. In fact, as Jokowi was meeting with Obama [in October 2015], Ash Carter, the secretary of defense, was welcoming General Ryamizard, the defense minister of Indonesia, who is the chief ideologist in favor of killing civilians. He said, previously, that anyone who dislikes the army is a legitimate target for killing. Reacting to a massacre of civilians, of children, in Aceh a number of years ago, he joked about it and said, 'Well, children can be dangerous, too.'⁴⁷⁰

While it comes as no surprise that US officials would engage with unsavory interlocutors such as General Ryamizard while simultaneously trumpeting the promotion of democracy and human rights, it is equally unremarkable—though no less unfortunate for those bearing the brunt of US policies—that such outwardly mixed signals are often seen as green lights for the status quo.

173. Naturally, none of the military's preferred measures of control would be possible without a certain degree of complicity from West Papuans themselves—namely, those elites unconnected to the pro-independence movement who themselves benefit (in some manner) from the continued subjugation of their less fortunate compatriots. Again according to MacLeod, such cooption is orchestrated by Jakarta in several ways:

All Papuan political representatives are required to give oaths of loyalty to the Indonesian state.

⁴⁶⁷ *Ibid.*

⁴⁶⁸ Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ 'Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC', *Democracy Now*, 27 October 2015 (interview with Allan Naim).

A range of financial incentives and offers of political influence are employed to stimulate personal ambition and elevate local clan and tribal loyalties over loyalty to a broader Papuan cause, thereby keeping disunity firmly in place. This is a major driver of *pemekaran*, the Indonesian government policy of dividing West Papua up into smaller administrative units. *Pemekaran* functions to divide the Papuan political elite into those who derive benefits from the creation of new districts and sub-districts, and those who do not. It also facilitates increased migration as Indonesians arrive to build new government facilities and work as civil servants.

Jakarta has banned local Papuan political parties. By ensuring that all political representatives are members of national (Indonesian) parties, the state is able to constrain Papuan aspirations and exert greater control over local candidates.

If all else fails, the Indonesian government uses repression. And just to make sure that Papuan political representatives do not get out of line, military officers have been inserted into all levels of the local political structure to induce and, if necessary, enforce obedience.⁴⁷¹

As to the last point—as clearly demonstrated throughout this document—it sadly takes little imagination to perceive how such obedience is enforced: ‘sanctions include military operations, arrest and torture, imprisonment, threatening and harming family members, and the strategic use of targeted and random terror’.⁴⁷²

174. At the end of the day, ‘[d]espite the pretence of democracy in West Papua, Jakarta is the final and decisive arbitrator of policy’.⁴⁷³ It is beyond obvious that one aspect of Indonesia’s policy is the brutal repression of even the slightest hint of Papuan nationalism.

E. Limitations on Freedom of Expression

175. As noted, Jakarta relies on the severe and systematic suppression of any and all forms of expression in West Papua that may reveal the reality of the government’s policies on the ground. In practical terms, this includes four main approaches, each of which will be dealt with in turn.

⁴⁷¹ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 153–154.

⁴⁷² *Ibid*, p 158.

⁴⁷³ *Ibid*, p 151; *see also ibid* (‘Although local governments in West Papua at the *kecamatan*, *kabupaten*, and provincial levels are headed up by Papuans, which gives the appearance of political legitimacy, final policy decisions are made in Jakarta. Decision-makers include key ministers, cabinet, senior members of the security forces and the various committees of national parliament (based in Jakarta), and also the *Badan Intel Nasional* (State Intelligence Agency), the *Departemen Dalam Negeri* (State Department) and the National Resilience Institute (Lemhannas), who all advise on matters related to security.’)

1. Suppression of Peaceful Demonstrations

176. Although Otsus specifically permits the use of West Papuan identity symbols, the Morning Star Flag is viewed by Jakarta as a threatening separatist icon:

Even as Special Autonomy was instituted, Jakarta's iron fist came down hard. Efforts to keep the Morning Star flag flying in Wamena were brutally repressed in October 2000. In the early morning of 6 October, police, BRIMOB (Indonesian Mobile Brigade Police Force), and the army launched a series of coordinated raids on at least seven community centers or communication posts [...], which had become loci of pro-independence activity, in the Baliem Valley. Morning Star flags were forcibly removed and scores of Papuans were arrested.⁴⁷⁴

West Papuans peacefully displaying the Morning Star Flag at demonstrations risk arrest and harsh sentences—if they are spared outright assassination. Numerous indigenous West Papuans have been arrested and tried for that very reason. While the vast majority of pro-Papuan demonstrations are peaceful affairs including prayer and song, they are always tightly monitored by the police and military forces; protestors are routinely subject to intimidation and other forms of ill-treatment.

177. In December 2007, despite the clear provisions of Otsus, then-President SBY signed into law Government Regulation 77/2007, which regulates regional symbols. Article 6 of the regulation prohibits the display of flags or logos that have the same features as those of a 'banned organization, association, institution, or separatist movement'.⁴⁷⁵ This was explicitly directed at the Morning Star flag (among other separatist symbols).⁴⁷⁶ In line with its motivations for passing the law in the first place, the Indonesian authorities treat the raising of the flag as treasonous—that is to say criminal.

178. On 12 August 2009, Samuel Yaru and Luther Wrait—who had 'raised a [Morning Star flag] in front of the Papua People's Council' in November 2009—'were sentenced to one year in prison, less time already served'.⁴⁷⁷

⁴⁷⁴ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 250–251.

⁴⁷⁵ Government Regulation 77/2007, Article 6(A) ('The design of a provincial logo and a flag may not be similar in essence with that of a banned organization, association, institution, or separatist movement in the Unitary State of the Republic of Indonesia. Punishments for violations shall be determined by ministerial decision.').

⁴⁷⁶ *N.b.* An explanation in the Government Regulation explicitly notes that Article 6(A) refers to the logo and flag of the Free Aceh Movement, the Free Papua Organization, and the Republic of the South Moluccas.

⁴⁷⁷ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human

179. On 18 March 2010, several hundred West Papuan students took part in demonstrations on the Cenderawasih University campus and in front of the Papua legislative assembly in Jayapura under tight police surveillance.⁴⁷⁸ The protestors were calling for US President Barack Obama's support in advance of his visit to Indonesia. A few days later, on 22 March, police forcibly broke up another peaceful demonstration in Jayapura, this one organized by the KNPB and also calling for President Obama's support. Despite the organizers' permit, police fired shots to disperse the crowd and arrested 15 West Papuans. Mara Koyoga and Linus Pagawe were charged with alleged possession of 'sharp implements'.⁴⁷⁹ On the same day, similar demonstrations were held in Sorong, Manokwari, Wamena, and Serui under strict police surveillance.⁴⁸⁰
180. During 2012, there were over 200 political arrests in the territory and dozens of KNPB members were targeted.⁴⁸¹ In June 2012, the Indonesian government denied it was holding any political prisoners yet offered prison reductions to those detained.⁴⁸² Some prisoners accepted but many, including Filep Karma, rejected the offer as its acceptance would have signified an implicit admission of wrongdoing.⁴⁸³ Of the 20 people charged under Article 106 of the Indonesian Criminal Code⁴⁸⁴ during 2012, the alleged activities and context of arrest varied widely, from reportedly carrying KNPB and OPM documents, to organizing a celebration of the UN Day of the World's Indigenous Peoples, to raising the Morning Star flag, to suspected involvement in a TPN training camp.
181. On 1 May 2012, 'police arrested 13 demonstrators who attempted to raise a banned separatist flag near the tomb of a Papuan independence movement leader in the town of

Rights Practices for 2010', 8 April 2011.

⁴⁷⁸ 'Mahasiswa Uncen Demonstrasi, Kuliah Ditiadakan', *Tabloid Jubi*, 19 March 2010.

⁴⁷⁹ WPN, E-Information brief, 29 March 2010; WPAT, West Papua Report, April 2010; Bintang Papua, 23 March 2010 (abridged in translation by TAPOL).

⁴⁸⁰ *Ibid.*

⁴⁸¹ TAPOL Report, 'Suppression of Political Protest in West Papua'.

⁴⁸² 'Menkumham: Tidak Ada Tahanan Politik di Papua', *Tribune Nasional*, 14 June 2012; *Human Rights Watch*, World Report 2013.

⁴⁸³ *Human Rights Watch*, 'Letter to the Chair and Members of the European Parliament's Subcommittee on Human Rights ahead of the Hearing on the Human Rights situation in West Papua and Papua Provinces', 19 January 2014.

⁴⁸⁴ Article 106 of the Indonesian Criminal Code reads: 'The attempt undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof, shall be punished by life imprisonment or a maximum imprisonment of twenty years.'

Sentani'.⁴⁸⁵ In August 2012, police in Manokwari 'arrested ten Papuans for raising a banned separatist flag and calling for Papuan independence'.⁴⁸⁶

182. On 30 April 2013, police fired on a group of West Papuans who had peacefully gathered in Aimas district, near Sorong, to commemorate the 50th anniversary of the 1963 handover. In addition to the deaths mentioned above, the police detained at least 22 individuals and charged seven of them with treason: Klemens Kodimko, Obeth Kamesrar, Antonius Saruf, Obaja Kamesrar, Yordan Magablo, Hengky Mangamis, and Isak Klabin.⁴⁸⁷
183. On 1 May 2013, 'police in Sorong and Timika reportedly arrested 21 Papuans for raising banned separatist flags and calling for Papuan independence'.⁴⁸⁸ On 13 May 2013, police 'arrested independence activist Victor Yeimo for organizing an unauthorized demonstration [...] call[ing] for an investigation into the April 30 killing of three would-be demonstrators by police in Sorong', as mentioned above.⁴⁸⁹ On 24 July 2013, 'a court on Serui Island in Yapen Islands Regency, Papua Province, sentenced Edison Kendi and Yan Piet Maniamboi to two years and 18 months in prison, respectively, for their roles in the Yapen Indigenous People's Day observances'.⁴⁹⁰ The men's lawyers 'alleged significant flaws in the judicial process, including witness intimidation, manufacturing of evidence, and prejudicial trial procedures'.⁴⁹¹
184. In its 2013 concluding observations on the initial report of Indonesia, the UN Human Rights Committee remained 'concerned at undue restrictions of the freedom of assembly and expression by protesters in West Papua' and requested Indonesia 'to take the necessary steps to ensure that any restrictions to the freedom of expression fully comply with the strict requirements of [...] the Covenant [on Civil and Political Rights]'.⁴⁹¹

⁴⁸⁵ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2012'.

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Amnesty International*, 'Indonesia: Drop Charges Against "Freedom Flotilla" Supporters in West Papua Province', 3 September 2013.

⁴⁸⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2013'.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

185. After the KNPB ‘called for a boycott of the 2014 elections, NGOs reported as many as 36 persons were arrested [...] for distributing pro-boycott materials or otherwise advocating for a boycott’.⁴⁹² And in August 2014, ‘11 KNPB members were arrested in Asmat for attempting to establish a branch office of their organization’.⁴⁹³
186. On 10 December 2014, ‘the head of the Indonesian military, Moeldoko, announced plans to expand the military presence in Papua by opening a second command area, probably in the westernmost of the two Papuan provinces’.⁴⁹⁴ Claiming such expansion would be ‘purely for defense purposes’, Moeldoko denied any need ‘to maintain political control over the region’.⁴⁹⁵ However, ‘in places such as the [Papuan] highlands [...] there is little danger of foreign incursion’.⁴⁹⁶ Despite the fact that the Indonesian army ‘lost its mandate for internal security in 1999 when the police force was separated from the military’, under the law, ‘the police can still call on the army to help if it needs reinforcements to ensure security’.⁴⁹⁷
187. In 2015, political activists from the KNPB and People’s Regional Parliament (*Parlemen Rakyat Daerah*) (the ‘PRD’) had planned peaceful protests around the 52nd anniversary of the handover of Papua to the Indonesian government by UNTEA on 1 May 1963. At least 264 political activists there were arbitrarily arrested and detained by the Indonesian police over the first week of May 2015 in a systematic clampdown on freedom of expression and peaceful assembly.⁴⁹⁸ To wit:
- a. On 30 April, the Manokwari District police arrested 12 KNPB activists for distributing flyers about a planned demonstration in Manokwari City.
 - b. On 1 May, the police arrested more than 200 protesters who were on their way to a demonstration near the office of the Manokwari Papua Customary Council.

⁴⁹² US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2014’.

⁴⁹³ *Ibid.*

⁴⁹⁴ Michael Bachelard, ‘We Didn’t Shoot West Papuans, Say Indonesian Police, Military’, *Sydney Morning Herald*, 10 December 2014.

⁴⁹⁵ *Ibid.*

⁴⁹⁶ *Ibid.*

⁴⁹⁷ *Ibid.*

⁴⁹⁸ *Amnesty International*, ‘Indonesia: End Attacks on Freedom of Expression in Papua’, 8 May 2015.

- c. Security forces, both police and military, used excessive force to disperse a peaceful demonstration in Kaimana city and arrested two KNPB activists.
- d. Police arrested at least 15 KNPB and one PRD activist in Merauke to prevent them organizing a demonstration.
- e. In Jayapura, the local district police arrested 30 KNPB activists on the same day as they were walking to the Papua Parliament's office, the site of a planned demonstration. According to the police the arrests took place as these groups did not have permission to undertake the protests.
- f. Charges were brought against five members of the Federal Republic of West Papua (*Negara Republik Federal Papua Barat*) (the 'NRFPPB'), a Papuan pro-independence group. The five—Don Flassy, Lawrence Mehue, Mas Jhon Ebied Suebu, Onesimus Banundi, and Elias Ayakeding—were arrested on their return to West Papua after meeting Indonesia's Minister of Defence Ryamizard Ryacudu on 10 April 2015 and have been charged with 'rebellion' (*makar*) under Article 106 of Indonesia's Criminal Code. The Indonesian authorities have used this article, along with Article 110 of the Criminal Code, to criminalize dozens of peaceful pro-independence political activists over the last decade.⁴⁹⁹

Many of these individuals are still detained and Amnesty International continues to call for their immediate and unconditional release.⁵⁰⁰

188. According to Human Rights Watch:

Meanwhile, suppression of the rights to freedom of expression and association in Papua continued. On [20–22 May 2015], police detained dozens of activists of the West Papua National Committee, a pro-independence group, during peaceful rallies in the cities of Jayapura, Manokwari, and Merauke. Police subsequently arrested four of those activists—Alexander Nekenem, Yoram Magai, Mikael Aso, dan Narko Murib—on charges of 'public incitement'. In November, they were sentenced to one-and-a-half year jail terms.⁵⁰¹

⁴⁹⁹ *Amnesty International*, 'Indonesia: End Attacks on Freedom of Expression in Papua', 8 May 2015.

⁵⁰⁰ *Ibid.*

⁵⁰¹ *Human Rights Watch*, World Report 2016, Indonesia (events of 2015).

It was also reported that on 1, 20, and 28 May 2015 ‘the security forces cracked down on rallies called by civil society organizations with over 400 peaceful demonstrators arrested’.⁵⁰²

189. In May [2015], authorities arrested 264 peaceful activists who had planned peaceful protests marking the 52nd anniversary of the handover of Papua to the Indonesian government by the UN. A further 216 members of the West Papua National Committee (KNPB) were arbitrarily detained for participating in peaceful demonstrations in support of Papua’s application to join the Melanesian Spearhead Group—a sub-Pacific intergovernmental organization. While most were later released, 12 were charged for participating in the protest, including under the ‘rebellion’ laws.⁵⁰³

190. On 8 October 2015, police detained six seminarians taking part in a peaceful rally in Jayapura:

Six Franciscan and Augustinian seminarians had joined other rights activists in the [...] rally [...]. The demonstrators were calling on Indonesian President Joko Widodo to investigate the unresolved December 2014 killings of four student protesters, when armed police broke up the demonstration and hauled away several people, including the seminarians. ‘They, carrying weapons, got off their truck and seized all [belongings] such as posters that we brought’, Yulianus Freddy Pawika, a Franciscan seminarian, [said]. ‘We were then taken into the truck.’ Pawika said police interrogated the protesters for 90 minutes before releasing them. ‘We just wanted to hold a peaceful protest’, said Pawika, who is also a member of the Franciscan-run Secretariat of Justice, Peace and Integrity of Creation in Papua. ‘We are called to defend Papuans who easily become victims of violence and the police’s brutality.’⁵⁰⁴

While the police appeared to consider the case ‘resolved’ after ‘deliver[ing] an apology’, the protestors took a different view of the situation: “‘It shows that those fighting for human rights have become targets of violence committed by the police”, said Peneas Lokbere, coordinator of the advocacy group Solidarity for the Victims of Human Rights Violations in Papua, which organized the [...] protest.’⁵⁰⁵ Father Neles Tebay, a priest who coordinates the Papuan Peace Network (*Jaringan Damai Papua*) (the ‘JPD’) advocacy group, also questioned the police actions: ‘Every peaceful protest

⁵⁰² ‘AWPA’s Letter to Forum Leaders’, *Solomon Star*, 29 July 2015.

⁵⁰³ ‘The State of the World’s Human Rights’, *Amnesty International*, 2015/16, pp 187–188.

⁵⁰⁴ Ryan Dagur, ‘Church Activists Slam Heavy-Handed Police Actions in Papua: Authorities in Restive Indonesian Province Target Seminarians at Protest’, *UCA News*, 13 October 2015.

⁵⁰⁵ *Ibid.*

is faced with a military approach, [...]. How can it be?’⁵⁰⁶ To date, no one has been charged in the December 2014 killings.

191. In the lead up to annual Flag Day ceremonies on 1 December 2015, security forces made their usual show of force in West Papua. For example, ‘some five hundred members of the military forces descended on Aimas district’ on 30 November; ‘heavily-equipped military personnel surrounded and intimidated local residents, giving an effective warning against raising the Morning Star Flag’, according to the West Papua National Committee.⁵⁰⁷ And events turned bloody in the capital on 1 December, as police clashed with members of the Papua Students Alliance (‘AMP’) at a pro-independence rally:

Hundreds of AMP members and 400 police officers were involved in the clashes after the police tried to disperse the crowd using tear gas. The students claimed they had planned a ‘peace rally’. ‘We had to disperse the crowd because they held the event without prior notification, which we required to plan the security measures for them and other road users’, said Jakarta Police spokesman Sr Comr Mohammad Iqbal. Iqbal added that before the tear gas was fired, the police had given three warnings to the protestors to disperse. The students, however, ignored the warnings and insisted on marching to the National Monument (Monas). [...]

According to AMP spokesman Abby Douw, the rally members called for the government to hold a referendum on independence for Papua. They also demanded the government shut down all multinational corporations that cause environmental damage to Papuan land. In addition, they wanted the government to recall all military forces from Papua, as well as disbanding all ‘politicized’ government institutions such as the Special Unit for the Acceleration of Development in Papua and West Papua (UP4B). [...]

Muhamad Isnur, a lawyer from the Jakarta Legal Aid Institute (LBH Jakarta) who gave legal counsel to the AMP during the rally [...] disputed Iqbal’s statement, saying that the demonstrators had faxed a written notification to the police. He said such procedures were used for rallies such as Kamisan (a weekly silent protest in front of the Presidential Palace). He also said the police did not give any warnings before they fired the tear gas. Isnur insisted that the Papuan students did not need any permission from the police to hold Tuesday’s event as they had planned to conduct a peaceful rally. He said their intentions were proven when the students voluntarily dispersed and got into the police trucks after the police’s warnings. [...]

Iqbal said the police had arrested 306 rally participants who were released on Tuesday evening.⁵⁰⁸

Additionally, two foreign journalists covering the rally were assaulted by the police:

The Australian Broadcasting Corporation’s Archicco Fuilianno and Al Jazeera’s Step Vaessen were covering the demonstration on Tuesday when police reportedly asked Mr Archicco to erase his footage. The Jakarta Globe reports that he was beaten by an officer

⁵⁰⁶ *Ibid.*

⁵⁰⁷ ‘Security Forces Mobilize for West Papua Flag Day’, *Radio New Zealand*, 1 December 2015.

⁵⁰⁸ ‘Violence Erupts at Papua Rally’, *Jakarta Post*, 2 December 2015.

when he didn't comply. Ms Vaessen recorded the incident, but police reportedly erased the footage. The chief of the Indonesian Alliance of Independent Journalists, Surwarjono, has urged national police to investigate, saying it's clear that officers violated the law.⁵⁰⁹

The flag day 'incident was reminiscent of [1 May 2015] when 264 Papuan students were arrested by the Papua Police in Manokwari, Jayapura, Kaimana, and Merauke'⁵¹⁰ for expressing support for the United Liberation Movement for West Papua (the 'ULMWP').

192. At the end of 2015, 'at least 27 prisoners in Papua also [...] remained imprisoned for peaceful demonstrations under articles of the Indonesian Criminal Code relating to *makar* (rebellion)'.⁵¹¹
193. More recently, the police 'are reportedly considering charging a Catholic priest with treason after he led a prayer service attended by members of an alleged Papuan separatist group' on 15 February 2016.⁵¹² Father John Djonga presided over the service 'to inaugurate the office building of the Papuan Customary Council, where a banner of the separatist United Liberation Movement for West Papua was unveiled'.⁵¹³ Afterwards, Djonga 'was summoned to appear at the police station in Wamena [...] but [initially] refused'.⁵¹⁴ Days later, he appeared for questioning, which lasted four hours.⁵¹⁵ According to the police, Djonga is currently a witness to an act of treason but

⁵⁰⁹ 'Foreign Journos Assaulted During Papua Rally', *Radio New Zealand*, 3 December 2015; *see also* 'Violence Erupts at Papua Rally', *Jakarta Post*, 2 December 2015 ('Tuesday's clash prompted a strong protest from the Alliance of Independent Journalists (AJI) after the organization received a report that the police had assaulted and intimidated two foreign journalists from Australia's ABC and Al-Jazeera. According to a press release from the AJI, the police beat the ABC's Archicco Guiliano and grabbed a mobile phone belonging to Al Jazeera's Stephanie Vaessen because they were recording the authorities dispersing the rally. The AJI said the police had ordered the journalists to delete the recordings. AJI head Suwarjono said the police had yet to fully understand the role of journalists. He called on Jakarta Police chief Insp. Gen. Tito Karnavian to investigate the alleged violation of press freedom. The Jakarta Police did not comment on the AJI's statement.')

⁵¹⁰ Budi Hernawan, 'Punishing Conscience in Papua', *Jakarta Post*, Op-Ed, 8 December 2015.

⁵¹¹ 'The State of the World's Human Rights', *Amnesty International*, 2015/16, p 187.

⁵¹² 'Indonesian Police to Question Priest on Papua Treason Charge', *Radio New Zealand*, 24 February 2016.

⁵¹³ *Ibid.*

⁵¹⁴ *Ibid.*; *see also* Press Release, 'Harassment of Activists in Wamena West Papua', *West Papua Action Auckland*, 26 February 2016 ('On 15 February 2016, 5000 people attended a ceremony inaugurating a new office for the ULMWP. In clear breach of the right to free expression, this peaceful event was met with a severe response from the Indonesian security forces, who removed the ULMWP sign from the building. We understand that two organizers of the event were detained and that others have been questioned. [...] A Catholic priest Father John Djonga has been issued with a summons to present himself to the police because he led a prayer service on 15 February before the inauguration of the new office and the unveiling of the banner of the ULMWP. It is reported that he may face treason charges.')

⁵¹⁵ *See* Benny Mawel, 'Papuan Catholic groups protest harassment of priest', UCA News, 4 March 2016 ('Father Djonga appeared at the police station in the district's capital on Feb 26 after consulting with

he may yet become a suspect.⁵¹⁶ The priest and human-rights defender ‘has continually found himself in trouble with security forces in West Papua’. Once, after ‘criticized the involvement of security forces in illegal logging’, Kopassus ‘urged him to keep quiet or he would be buried alive’.⁵¹⁷ And in 2012, he was ‘charged with colluding and supporting pro-independence leaders in hiding in the forests and abroad’.⁵¹⁸

194. On 5 April of this year, fifteen KNPB activists were arrested in Papua’s Mimika District while attending a prayer service.⁵¹⁹ A coalition of human-rights groups placed the blame on the current administration:

President Joko Widodo and Vice President Jusuf Kalla have only been in office for 18 months during which time more than 1,000 arrests have been made in Papua’, said the groups that included Papua Itu Kita (Papua Is for Us), in a joint statement issued on April 6. ‘The arrests target pro-independence activists, indigenous people fighting for their rights, as well as ordinary people who are simply victims of the whims of security personnel’, the statement said.

Of those arrested, thirteen were released the following day. But two KNPB members remain in custody, threatened with treason charges.⁵²⁰ Reacting quickly to the arrests, the Asian Human Rights Commission (the ‘AHRC’) condemned the excessive use of force by the police as well as the protestors’ lack of effective complaint mechanisms.⁵²¹

Franciscan Bishop Leo Laba Ladjar of Jayapura. Accompanied by a lawyer, he answered 55 questions from two police officers during the four-hour meeting. Police have said they may call on Father Djonga for further questioning.’)

⁵¹⁶ See Benny Mawel, ‘Papuan Catholic groups protest harassment of priest’, *UCA News*, 4 March 2016 (‘Papuan police spokesman Patridge Renwarin told ucanews.com that Father Djonga is currently considered a “witness” to a violation of Indonesia’s criminal code pertaining to treason. The spokesman said the priest would become a “suspect” should further evidence be uncovered that implicates him.’)

⁵¹⁷ Cypri Jehan Paju Dale, ‘In Restive Province, Papuans Wonder Whose Side Church Is On’, *UCA News*, 11 March 2016.

⁵¹⁸ *Ibid.*

⁵¹⁹ See Ryan Dagur, ‘Rights Group Condemn Arrest of 15 Papuan Activists’, *UCA News*, 7 April 2016 (‘A coalition of rights groups have condemned the recent arrests of 15 members of the pro-independence West Papua National Committee (KNPB), calling the detentions yet another example of state oppression of the Papuan people.’); see also ‘Independence Activists Detained in Papua’, *Jakarta Globe*, 6 April 2016.

⁵²⁰ See Ryan Dagur, ‘Rights Group Condemn Arrest of 15 Papuan Activists’, *UCA News*, 7 April 2016.

⁵²¹ See ‘Indonesia: End Excessive Force and Criminalization Against Indigenous Papuans’, *Asia Human Rights Commission*, 8 April 2016 (‘The Asian Human Rights Commission (AHRC) condemns the forced dispersal of peaceful protesters and their illegal arrest in Kampung Bhintuka-SP13 field in Mimika, Timika district, Papua on Tuesday, 5 April 2016. [...] Prior to the protest, the indigenous Papuans had informed the police of their intention to call for an end to rampant human rights violations in Papua. Despite this, the police suddenly forcibly dispersed the demonstration, with the claim that one of the protesters called for a referendum in his speech for indigenous Papuans who suffer from rampant violations conducted by the Indonesian security forces. The AHRC has also learnt that the police have warned and intimidated local religious leaders to avoid political activities and speaking about human rights violations and referendums in churches. Over the last year, countless cases of forced dissolution of protesters in Papua and West Papua province have been observed. In all of these cases, the police have not taken the responsibility to examine whether or not the use of excessive force was lawful. At the same time, civilians do not have effective

195. As part of its reaction, the AHRC noted that ‘a National Commission on Human Rights report states that the highest number of human rights violations in Indonesia, including Papua, are conducted by the police’.⁵²² The sentiment was echoed by Feri Kusuma, the impunity monitoring division head of the Commission for Missing Persons and Victims of Violence (‘Kontras’): ‘It has been a major problem for us, because the state—especially the police and the military—is [allegedly] involved in those cases’.⁵²³ According to a report released by Komnas HAM in March 2016, the first year of President Widodo’s administration (2014) saw ‘the arrest, torture, and murder of at least 700 civilians’.⁵²⁴ While Political, Legal, and Security Affairs Minister Luhut Pandjaitan ‘recently said that the government would resolve 12 human rights cases in Papua by the end of this year’, Feri Kusuma noted that ‘the government is likely to face serious problems, internally, because many people from the police and the military now serve as government officials. “People [from those institutions] have considerable authority”’.⁵²⁵
196. Two days after the arrests in Mimika, at the opening of a ULMWP office in Wamena attended by thousands of supporters, police ‘dismantled the Liberation Movement signage as well as detained [...] [two] ULMWP member[s] for questioning over their involvement in establishing the office’.⁵²⁶ While Indonesian government officials ‘have said that movements which harbor independence aspirations must be crushed’, Papuans ‘have repeatedly identified brutal treatment of their people by the security forces as a main driver of dissatisfaction with Indonesian rule’.⁵²⁷
197. Approximately one week later, additional arrests took place on 13 April in Jayapura, as a peaceful rally in support of the ULMWP was stymied by the police.⁵²⁸ On the same

complaint mechanisms to challenge the police’s use of excessive force and abuse of power.’)

⁵²² *Ibid.*

⁵²³ ‘West Papua: Police and Military Responsible for Human Rights Violations’, *Jakarta Post*, 24 May 2016.

⁵²⁴ *Ibid.*

⁵²⁵ *Ibid.*

⁵²⁶ ‘West Papua a Regional Issue, Says Liberation Movement’, *Radio New Zealand*, 7 April 2016.

⁵²⁷ *Ibid.*

⁵²⁸ See ‘11 Independence Activists Detained During Rally in Papua’, *Jakarta Globe*, 14 April 2016 (‘Eleven activists were arrested when a peaceful rally in support of full membership for the Papua independence movement in the Melanesian Spearhead Group was interrupted by police in Jayapura on Wednesday (13/04). Hundreds of protesters marching under the banner of the United Liberation Movement for West Papua (ULMWP) were prevented by police from staging a rally at Yos Sudarso Park in the heart of the

day, similar arrests were made in Merauke, Yahukimo, and Kaimana Regencies.⁵²⁹ All told, 44 activists were detained.⁵³⁰ This latest round of arrests prompted an Indonesian researcher at Amnesty International to raise concerns over the fate of 27 prisoners of conscience in Papua.⁵³¹

198. Later that month, on 29 April, 41 KNPB activists were arrested in Jayapura for distributing leaflets publicizing an upcoming rally to be held in commemoration of the UNTEA handover of West Papua on 1 May 1963—a key event, according to Papuans, in the history of their ‘tragic betrayal’.⁵³² On 2 May 2016, the day of the rally, hundreds were detained by the police:

Indonesian police on Monday detained hundreds of pro-independence demonstrators in the eastern province of Papua on the anniversary of Dutch New Guinea’s 1963 integration into Indonesia. Around 500 people were detained in the provincial capital, Jayapura, police said, and dozens in other cities of the resource province of around 3.5 million. There were no reports of violence. ‘In spirit they support Papua’s separation from Indonesia’, said Papua police spokesman Patridge Renwarin. ‘We are trying to explain to them that this goes against the spirit of the unitary state of Indonesia.’⁵³³

Papua provincial capital. The protesters, who demanded that the MSG grants permanent membership to the Papua independence movement, were forced to move the rally to the Cendrawasih University in Waena. The 11 activists were detained for allegedly trying to occupy the Papua Provincial Council office on Jalan Sam Ratulangi. During the rally, the protesters also objected against Indonesia’s membership of the MSG, since the association was only intended for Melanesian countries, according to ULMWP leader Markus Haluk.’)

⁵²⁹ See ‘Arrests as Thousands Demonstrate in West Papua’, *Radio New Zealand*, 14 April 2016 (‘44 West Papuans were arrested by Indonesian police during demonstrations across Papua region yesterday. The demonstrations in the main cities of Papua and West Papua provinces were voicing support for the United Liberation Movement for West Papua and its bid for full membership in the Melanesian Spearhead Group. Thousands of West Papuans marched in the peaceful demonstrations in cities including Jayapura, Yahukimo, Manokwari, Merauke and Sorong. 13 demonstrators were arrested in Merauke, 11 in Jayapura, 5 in Yahukimo and 15 in Kaimana regency. In Jayapura, the 11 demonstrators were arrested by police for allegedly trying to occupy the Papua Provincial Council office in Jayapura, as the demonstration was forced to move to the Cendrawasih University in Waena.’)

⁵³⁰ *Ibid.*

⁵³¹ See ‘Papua Rights Among Concerns Around Jokowi’s UK Stay’, *Radio New Zealand*, 20 April 2016 (‘An Indonesia Researcher at Amnesty International, Papang Hidayat said the NGO’s was concerned about the country’s prisoners of conscience, including 27 in Papua. He mentioned a Papuan political activist, Steven Itlay who was this month charged with having committed “rebellion” and faces life imprisonment.’)

⁵³² See ‘AWPA Condemns Arrest of 41 West Papua Activists in Jayapura’, *Asia Pacific Report*, 30 April 2016 (‘The Australia West Papua Association today condemned the arrest of 41 KNPB (National Committee of West Papua) activists in Jayapura yesterday. “The activists were arrested simply because they were handing out leaflets informing people of a rally to be held on May 2”, said AWPA in a statement. The purpose of the rally was to commemorate and protest the “tragic betrayal” of West Papua by the international community when West Papua was handed over by United Nations Temporary Executive Authority (UNTEA) to Indonesian administration on May 1, 1963, 53 years ago. The KNPB also called on people to show support for the meeting of the International Parliamentarians for West Papua in London. The arrests followed an earlier incident on April 13 when 44 protesters were arrested.’)

⁵³³ ‘Hundreds Promoting Independence Detained in Indonesia’s Papua’, *Reuters*, 2 May 2016; see also ‘Mass Arrests in West Papua Ahead of Demos’, *Radio New Zealand*, 2 May 2016 (‘Indonesian police have made widespread arrests in Papua region as West Papuans prepare to hold demonstrations. Protests were planned for today in most of the region’s urban centers as West Papuans mark the anniversary of transfer of

Activist Markus Haluk noted that ‘demonstrators had voiced support for calls for an internationally monitored referendum for independence’.⁵³⁴

199. Reacting to the mass arrests in April and May, the Jakarta Legal Aid Institute (‘LBH Jakarta’) urged President Widodo to hold the national police chief accountable:

Veronica Koman, a lawyer with LBH Jakarta, also criticized the police’s move to detain two activists in Merauke who were delivering a notification letter on a rally plan on Tuesday. The rally was aimed to show their support for the International Parliamentarians for West Papua (IPWP) event in London. ‘What was the basis for detaining people delivering a notification letter on a rally plan? Forty-one activists were held in Jayapura just for distributing rally invitation pamphlets. These are indiscriminate, unconstitutional measures’, she said [...]. Thousands of the activists on Monday held simultaneous rallies in seven cities in four provinces, namely Papua (Merauke, Jayapura, Wamena), West Papua (Fakfak, Sorong), Central Java (Semarang), and South Sulawesi (Makassar). The rally was aimed to show support for the United Liberation Movement for West Papua’s (ULMWP) full membership in the Melanesian Spearhead Group (MSG). [...] According to LBH Jakarta data, 1,449 activists were detained in Jayapura, 118 in Merauke, 45 in Semarang, 42 in Makassar, 29 in Fakfak, 27 in Sorong, and 14 others in Wamena [...]. Taking previous arrests in Merauke (April 25), Jayapura (April 30), Wamena and Merauke (May 1) into account, 1,839 Papua activists have been detained since April.⁵³⁵

While most have been released, ‘dozens are still detained in Merauke, Fakfak and Wamena’.⁵³⁶

200. Worse yet, several of the KNPB activists who were held in custody have alleged torture and beatings by the police:

Protest coordinator at Expo Rally point, Warpo Wetipo, said the torture of seven activists took place in a special detention room named Karel Satsuitubun in the police headquarters. ‘The seven of us were treated inhumanly. They treated us like animals’, Wetipo told Jubi in Abepura in the capital of Jayapura. He said during the interrogation, officers stamped on the activists’ chests or backs, some repeatedly beating them on the head with rifle butts. ‘An officer came and hit me on my ear. For a minute, I lost consciousness. I regained consciousness when I felt something warm out of my ear. I touched it and it was blood’, he said. When other officers came, they kicked him on the chest and back. [...]

administration in the former Dutch New Guinea to Indonesia in 1963. Dozens of West Papuans were arrested in Papuan cities such as Jayapura and Merauke for organizing the demonstrations expected to take place later today. West Papua Media Alerts reported that 178 arrests had been made in Jayapura alone. The arrests follow a series of marches on 13 April, when thousands of West Papuans demonstrated in support of the United Liberation Movement for West Papua. Forty-four demonstrators were arrested during those peaceful protests. One of the movement’s key groups, the West Papua National Committee (KNPB), said it would persevere with its plans to hold public events despite them being disallowed by security forces. However, Papua Police Chief Paulus Waterpauw said the KNPB’s request for permission to march was rejected because it did not complete requirements under the law.’)

⁵³⁴ ‘Hundreds Promoting Independence Detained in Indonesia’s Papua’, *Reuters*, 2 May 2016.

⁵³⁵ ‘Police Chief Should Be Punished Over Arrest of Papuan Activists: LBH Jakarta’, *Jakarta Post*, 4 May 2016.

⁵³⁶ *Ibid.*

KNPB activist Arim Tabuni, who was arrested at Lingkar Abepura, also said the police had acted brutally. They scattered the rally participants and arrested some activists. The activists were loaded into a police armored truck which brought them to the Mobile Brigade Command headquarters. 'They tortured and arrested us at 9am in Lingkar Abepura. They took us into the armored truck and told us to raise our hands. They beat us on the chest and head, mostly on the chest. So we looked not hurt', he said. In the special detention cell, he said, the temperature was extremely hot. They were told to remove their pants. Some activists refused to do it, but some officers did it. 'Some activists refused to do so', he said. During the interrogation, he said the police terrorized the activists, threatening to kill them and throw their bodies into the sea. 'These four, just kill them. Put their bodies in the sack and throw it into the sea for the fish', said Tabuni, imitating the officers when being interrogating in the detention cell.

Besides the seven activists, said Wetipo, there were four activists being beaten during the detention, including a female activist who was arrested at Lingkar Abepura. When interviewed by Jubi, she told the news service that the police removed her clothes. 'They pulled off my clothes. My bra was untied showing my chest—I was topless. They dragged me to the police car injuring my right knee and elbow', she pointed out her wounds to Jubi. She said she and her friends were topless when brought to the Mobile Brigade Command Headquarters. The police offered her a cloth to cover her chest but she refused it. 'I told them I was born from a bare-chested mother. So I told them here I am. I never did something wrong', she repeated her words to the police.⁵³⁷

A spokesman for the Papua police denied the accusations, saying the officers 'only secured the situation'.⁵³⁸ But Inspector-General Paulus Waterpauw acknowledged that 'some activists had been injured'.⁵³⁹ Those who claimed to have been tortured and beaten were named as: Warpo Wetipo (31), Doli Ubruangge (27), Arim Tabuni (21), Matias Suu (21), Goty Gobay (23), Kombawe Wanimbo (25), Elias Mujijau (19), Agust Pahabol (23), and Izon Kobak (23).⁵⁴⁰

201. On 20 May, Amnesty International called for the release of Steven Itlay, a ULMWP activist charged with rebellion (*makar*) and detained in connection with the prayer even in Mimika on 5 April 2016.⁵⁴¹

⁵³⁷ Benny Mawel, "'Police Tortured Us', Say KNPB Activists Among Papua Mass Arrests', *Asia Pacific Report*, 8 May 2016.

⁵³⁸ *Ibid* ('Asked for comment, Papua police spokesperson Adjunct Senior Commissioner Patrige Renwarin denied any police violence, saying they "only secured the situation". The activists were released in the afternoon. "No torture," said Renwarin through short message to Jubi on last Wednesday afternoon.')

⁵³⁹ *Ibid* ('Papua police chief Inspector-General Paulus Waterpauw, who negotiated with parliamentarians of the Papua Legislative Council and Reverend Benny Giay about releasing the activists at Mobile Brigade Command headquarters, confirmed some activists had been injured. "I was informed that there are four activists. Please report it if there are some who are wounded. If afraid, they could make a report through the National Human Rights Commissioner, Frits Ramandey. We will facilitate it", said the chief in his speech before the release of protesters on Monday (May 2). He said he appreciated that the protesters had been cooperating though some were wounded. "We don't want any fatalities," he said.')

⁵⁴⁰ *Ibid*.

⁵⁴¹ See 'Amnesty Presses Indonesia for Release of Papuan Activist', *Radio New Zealand*, 20 May 2016 ('Amnesty International is pressing Indonesia to release a West Papuan political prisoner detained six weeks ago. Steven Itlay has been charged with rebellion, or *makar*, after participating in a prayer event in Mimika, Papua province, in support of the United Liberation Movement for West Papua. Mr Itlay is a

202. Most recently, on 28 May 2016, dozens of KNPB members were arrested by the Indonesian police in Jayapura and Sentani for organizing fresh demonstrations.⁵⁴² And additional mass arrests—this time numbering in the hundreds—took place across the region on 31 May, with the police announcing that further rallies would be prohibited:

‘Their aspiration is for Papua independence. [W]e told them that we will never accommodate that kind of aspiration’, Jeremias Rontini, the superintendent of police in the Papuan capital Jayapura, [said], adding that his officers would block locals from holding future rallies for independence from Indonesia.⁵⁴³

More than 300 demonstrators were detained in Sentani and Wamena—two towns in Papua—as well as in Manado, in North Sulawesi province.⁵⁴⁴ According to the KNPB’s general secretary, Ones Suhuniap, some of the demonstrators from his organization were arrested for planning peaceful demonstrations to support the ULMWP:

‘Police blocked us in a housing complex in Wamena. There were five military trucks and three military patrol cars. Also, there were 15 police trucks and five police cars. Around 100 police and mobile brigade blocked our way to demonstrate’, Ones [said]. Police arrested 33 KNPB members in Sentani, a town near Jayapura, before the rally began, he said. ‘Around 61 people were arrested in Wamena. Some of them were arrested yesterday, when they distributed fliers informing about the rally’, Ones said.

Reports from Wamena indicated that two demonstrators had been shot by police and that access to medical facilities had been blocked by security forces.⁵⁴⁵ Subsequent

member of the West Papua National Committee, which is a part of the Liberation Movement. Indonesian officials have vowed to “wipe out” what they describe as separatist elements in Papua.’)

⁵⁴² See ‘Dozens Arrested in Papua Ahead of Fresh Demos’, *Radio New Zealand*, 29 May 2016 (‘Dozens of members of the West Papua National Committee, or KNPB, have been arrested by Indonesian police in Papua province. Up to 51 KNPB members were reportedly taken into custody by police in Jayapura and Sentani yesterday for organizing new demonstrations in the region. In the past month and a half there’s been a series of large, peaceful demonstrations in most Papuan urban centers in support of the United Liberation Movement for West Papua and its bid to become a full member in the Melanesian Spearhead Group. [...] The KNPB is one of the main representative groups which formed the Liberation Movement, and is seen as a prime domestic target by Indonesian authorities opposed to the Movement.’)

⁵⁴³ Victor Mambor, ‘Indonesia: Police Block Pro-Papuan Independence Rallies, Detain Protesters’, *BenarNews*, 31 May 2016.

⁵⁴⁴ See *ibid.*

⁵⁴⁵ See ‘More Mass Demos in West Papua’, *Radio New Zealand*, 31 May 2016 (‘Over a thousand demonstrators gathered in the Papua provincial capital Jayapura to express their support for the Liberation Movement and its bid for full membership in the Melanesian Spearhead Group. [...] Today’s demonstrations also included large gatherings in Manokwari, Fakfak, and Wamena, one of Papua’s major Highlands towns. Initial reports from Wamena indicate a large police and military forces presence, with police shooting two demonstrators. Local people have reported that they had no access to Wamena hospital as the security forces have blocked it off. [...] Back in Jayapura, police stopped the demonstration moving from Wamena to Abepura while in nearby Sentani they detained 33 members of the West Papua National Committee. Earlier, BBC Indonesia reported that a hundred West Papuans had been arrested in Jayapura and Wamena in the past few days for handing out flyers calling for people to join today’s demonstrations. As well as showing support for the Liberation Movement’s MSG membership, the demonstrations have been another clear expression of independence aspirations among West Papuans. However, a police

estimates put the total number of arrests for the day at approximately 600.⁵⁴⁶ Ominously, it was reported on 2 June that ‘[m]ore than 45,000 Indonesian soldiers have been moved to Wamena’.⁵⁴⁷

2. *Restrictions on Freedom of the Press*

203. A decades-long official restriction on foreign media access to West Papua and associated controls on journalists operating (or attempting to operate) in the region have fostered impunity for serious abuses by the Indonesian security forces.⁵⁴⁸ Naturally, this system—known as *Surat Jalan*, which is ‘administered by multiple government agencies in Jakarta and security forces in West Papua’⁵⁴⁹—has fueled resentment among the indigenous population. According to Human Rights Watch: ‘The broad restrictions on reporting from West Papua encourage security force abuses and profoundly undermine the public’s right to know what’s happening there.’⁵⁵⁰ The province remains Indonesia’s ‘forbidden area’ as news is subject to blackouts and other forms of censorship; essentially, ‘the work of journalists is handicapped by draconian news control policies’.⁵⁵¹ Those who express their criticism are the target of threats, intimidation, harassment, and killings. In particular, journalists reporting on corruption, environmental destruction, or human rights violations are at risk.

204. According to Human Rights Watch:

spokesman indicated that security forces would not tolerate freedom of expression in public where it involved promoting the idea of independence for Papua.’)

⁵⁴⁶ See ‘Hundreds Said to Be Arrested at Latest Papua Protests’, *Radio New Zealand*, 2 June 2016 (‘As many as 600 West Papuans are reported to have been arrested for participating in demonstrations on Tuesday in Indonesia’s Papua region. The demonstrations, in several Papuan cities or towns, were showing support for the United Liberation Movement for West Papua, and its bid to be a full member of the Melanesian Spearhead Group. The Liberation Movement said there were unconfirmed reports that 469 people were arrested in the Jayapura area, 112 people arrested in Wamena, plus a few dozen arrests in other towns, related to Tuesday’s demonstrations. In the past month and a half there has been a series of large, peaceful demonstrations in most Papuan urban centers in support of the Liberation Movement. The largest and most widespread demonstrations occurred on May 2nd when police arrested about 2,000 people in Jayapura alone.’)

⁵⁴⁷ Freddy Mou, ‘Indonesian Troop Build-Up in West Papua Troubles PNG MPs’, *Asia Pacific Report*, 2 June 2016; see *ibid* (Wamena is ‘in the Highlands of West Papua region of Indonesia, which shares a common border with [PNG] [...]. The movement of soldiers have raised concerns from PNG parliamentarians about why soldiers have been moved there. [...] [PNG Defense Minister Fabian Pok] said it was Indonesia’s “internal problems” that moved the military personnel closer to the border.’)

⁵⁴⁸ Phelim Kine, ‘Indonesia’s Papua Censorship Obsession’, *The Diplomat*, 19 August 2014.

⁵⁴⁹ MacLeod, *MERDEKA AND THE MORNING STAR*, p 167.

⁵⁵⁰ *Human Rights Watch*, ‘Indonesia: End Media Restrictions on Papua, Mark World Press Freedom Day by Opening Papua to Journalists’, 1 May 2015.

⁵⁵¹ *Reporters Without Borders*, ‘Press Freedom Index 2014 Asia-Pacific’.

The bureaucratic impediments range from demands for details of itineraries and focus of news coverage to the need to supply multiple “recommendation letters” from prospective interviewees/sources in order to get official permission to visit Papua. These obstacles reflect Indonesia’s deep ambivalence to allowing greater foreign media access to Papua. In some cases, officials and members of the police and the military are outright hostile to the idea. That hostility is rooted in more than 25 years of government suspicion of foreign nationals' motivations in the troubled region.⁵⁵²

These well-known and long-standing restrictions are an integral part of the military-security establishment’s system of control in West Papua.⁵⁵³

205. In February 2010, relatives and colleagues of Australian journalist Mark Worth called for the re-opening of the investigation into his death in West Papua. Worth had been found dead in a hotel room in Sentani City, Papua Province, on 15 January 2004; the cause of death was officially reported to be pneumonia. Worth had reported for more than 15 years on the West Papuan independence struggle and his documentaries have been widely published in the Australian media. He died two days after the Australian Broadcasting Corporation announced the premiere of his documentary ‘Land of the Morning Star’.⁵⁵⁴ And in April 2010, *Al Jazeera* was pressured not to air its documentary film ‘Pride of Warriors’, which voiced West Papuan perspectives of the Indonesian military presence and human rights abuses.⁵⁵⁵

206. In May 2010, French journalist Baudouin Koenig was arrested, interrogated, and deported after filming a peaceful demonstration in Jayapura.⁵⁵⁶ At the time, he was in possession of an official journalist visa, which—in theory—should have given him unfettered access to West Papua. Previously, he had been able to report on sensitive issues in other parts of the country.⁵⁵⁷

207. On 30 July 2010, journalist Ardiansyah Matra’is’s corpse was found in Maro River, Merauke Regency, Papua Province. Matra’is had reported on illegal resource extraction (logging carried out by military officers), the upcoming controversial local elections in Merauke Regency, the controversial investment project Merauke Integrated Food and

⁵⁵² Phelim Kine, ‘Indonesia’s “Opening” of Papua Still Needs to Bridge the Gap Between Reality and Rhetoric’, *Antara News Agency*, 18 November 2015.

⁵⁵³ See Section II.D (‘Jakarta’s Grip on Power & the Indonesian Surveillance State’), *supra*.

⁵⁵⁴ ‘Calls to Probe Aussie Death in Papua’, *Sydney Morning Herald*, 26 February 10.

⁵⁵⁵ See ‘Al Jazeera Pulls West Papua Film’, *Engage Media*, 30 April 2010.

⁵⁵⁶ See Baudouin Koenig, ‘Why Does Indonesian Democracy Stop at Papua?’, *The Guardian*, 9 June 2010.

⁵⁵⁷ *Ibid.*

Energy Estate ('MIFEE'), and unresolved cases of past human rights violations and corruption. According to his family and colleagues, Matra'is received threatening telephone messages and had been followed by unidentified persons in the weeks prior to his death. Matra'is worked for the national television station ANTV, the Papuan magazine *Jubi*, and the local TV station Merauke TV. He had been kidnapped in 2009, apparently due to an investigation leading to the disclosure of military involvement in illegal logging in Keerom Regency. While the police in Merauke reported his death as an accident or suicide, it is suspected that Matra'is was killed by state actors due to his work. Police headquarters in Jakarta confirmed that an autopsy had revealed signs of a violent death. The investigation carried out by the Indonesian Alliance of Independent Journalists (*Aliansi Jurnalis Independen*) (the 'AJI') also confirmed that Matra'is had been subjected to physical abuse before his death.⁵⁵⁸ While Indonesian NGOs have sought further inquiries into the case and, ultimately, prosecution of the perpetrators, the official police investigation has come to a halt.⁵⁵⁹

208. Before and after Matra'is death, other local journalists reported receipt of threatening messages, such as: 'To cowardly journalists, never play with fire if you do not want to be burned. If you still want to make a living on this land, do not do weird things.'⁵⁶⁰ The messages threatened that West Papuan journalists critical of the government would be killed and 'no action will be taken by the police or military'. A letter apparently written in blood was placed outside the house of another journalist in Merauke.⁵⁶¹
209. Although the government ostensibly permits domestic media to report from West Papua, there are serious questions about the reliability and objectivity of the reporting, given the government's clear efforts to control the flow of information from the island.⁵⁶² Official documents leaked in 2011 indicate that the military employs roughly two dozen West Papua-based local journalists as informants. The military has also financed and trained journalists and bloggers, warning them about alleged foreign

⁵⁵⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011 (On July 30, police in Merauke, Papua, found the body of freelance journalist Ardiansyah Matra'is. Matra'is reportedly received threatening messages in the preceding days from unknown individuals.)

⁵⁵⁹ *Asian Human Rights Commission*, 'The State of Human Rights in Indonesia in 2010', pp 6–9.

⁵⁶⁰ *Asian Forum for Human Rights and Development*, Joint Press Statement, 26 August 2010.

⁵⁶¹ *Reporters Without Borders*, 'Harassment and Threats: How was Investigative Reporter Pushed to Kill Himself?', 6 August 2010.

⁵⁶² 'Papua: Indonesia's Forbidden Island', *Jakarta Globe*, 7 October 2013.

interference in West Papua.⁵⁶³ The government justifies its restrictions on media access as a necessary security precaution due to the ongoing conflict with the OPM.⁵⁶⁴

210. In August 2011, the publicly disclosed internal documents discussed above—mainly from *Kopassus*—revealed how the military monitors peaceful activists, politicians, and clergy in West Papua: among other methods, *Kopassus* employs journalists, taxi drivers, hotel staff, and many other civilians to gather intelligence.⁵⁶⁵
211. Tight limitations are imposed on international journalists, who are usually simply denied permission to visit West Papua (despite the fact that the rest of the country is easily and freely accessible). Only those who obtain permission in advance are officially free to visit the island.⁵⁶⁶ However, the government rarely approves such applications or delays processing them to the extent that efforts to report on breaking news is severely hampered—if not curtailed altogether.⁵⁶⁷
212. Those international journalists who manage to obtain access are invariably shadowed by official minders (*pendampingan*) who strictly control their movements and access to interview subjects. Although the Ministry of Foreign Affairs permitted at least three international news organizations to undertake reporting trips to West Papua in 2012 and 2013, they were all required to be accompanied by minders. In practice, foreign media are required to pay their minders' airfare, hotel, and out-of-pocket allowances.⁵⁶⁸ The Alliance of Independent Journalists (*Alliansi Journalis Independen*) (the 'AJI') routinely criticizes this virtual ban placed on foreign media operations in West Papua.⁵⁶⁹
213. In June 2014, then presidential candidate Joko Widodo pledged that, if elected, he would remove obstacles facing international journalists attempting to cover West

⁵⁶³ *Human Rights Watch*, 'Indonesia: End Media Restrictions on Papua, Mark World Press Freedom Day by Opening Papua to Journalists', 1 May 2015.

⁵⁶⁴ 'Papua: Indonesia's Forbidden Island', *Jakarta Globe*, 7 October 2013.

⁵⁶⁵ *Human Rights Watch*, 'Indonesia: Military Documents Reveal Unlawful Spying in Papua', 14 August 2011.

⁵⁶⁶ 'Papua: Indonesia's Forbidden Island', *Jakarta Globe*, 7 October 2013.

⁵⁶⁷ *Human Rights Watch*, 'Letter to the Chair and Members of the European Parliament's Subcommittee on Human Rights ahead of the Hearing on the Human Rights situation in West Papua and Papua Provinces', 19 January 2014.

⁵⁶⁸ *Human Rights Watch*, 'Lift Restrictions on Reporting, Access to Papua', 13 June 2012.

⁵⁶⁹ 'Pembatasanpersasing di Papua', *Word Press*, 14 September 2006.

Papua. During a campaign visit to Jayapura, Widodo announced that the government 'has nothing to hide' on the island.⁵⁷⁰ However, as president, he has not tackled the issue of media freedom in West Papua, and the government's restrictive access policy remains in place. Individuals continue to be detained and imprisoned solely for the peaceful exercise of their right to freedom of opinion, belief, expression and association.

214. In August 2014, French journalists Thomas Dandois and Valentine Bourrat were detained in West Papua for what the police described as promoting instability in the region.⁵⁷¹ In fact, they were producing a documentary.⁵⁷² They were threatened with 'subversion' charges for allegedly filming OPM members. On 6 October, a court in of Jayapura convicted them of 'abusive use of entry visas', sentenced them to time served (more than two months), and released them the same day.⁵⁷³ Their fixer, Areki Wanimbo, was held for eight months.⁵⁷⁴
215. In May 2015, apparently making good on his campaign promise, 'Jokowi announced a long overdue lifting of the 25-year de facto ban on foreign media access to Papua. That policy change was supposed to put an end to placing foreign journalists in legal limbo through the denial of Papua reporting applications outright or a failure to approve them'.⁵⁷⁵ During the May visit to Papua, 'Jokowi ordered former Indonesian Military (TNI) chief Gen (ret) Moeldoko and National Police chief Gen Badrodin Haiti to stop using repressive measures in Papua, calling on security personnel to promote dialogue

⁵⁷⁰ 'Jokowi to Open Access to Papua for Foreign Journalists, Int'l Organizations', *Jakarta Post*, 5 June 2014.

⁵⁷¹ 'French Journalists to Be Freed After Getting Two-and-a-Half Months Sentences', *Reporters Without Borders*, 24 October 2014.

⁵⁷² 'Two French Journalists Arrested in Indonesia's Papua', *France 24*, 12 August 2014.

⁵⁷³ See Cunding Levi, 'Ministry Denies Ban Towards Foreign Journalists in West Papua', *Tempo*, 13 January 2016 ('Last year, two French journalists, Thomas Dandois and Valentine Bourrat, were sentenced to prison after they were caught trying to make a documentary about separatist movement in West Papua.');

'RSF Urges Indonesia to Lift Ban on French Reporter Cyril Payen', *Reporters Without Borders*, 11 January 2016 ('Two French journalists, Thomas Dandois and Valentine Bourrat, were arrested while preparing a report there in August 2014. After being held for more than two months, they were sentenced on 24 October 2014 to two and a half months in prison for violating Indonesia's immigration law.')

⁵⁷⁴ See 'RSF Condemns Indonesian President's 'Failure' to Keep Media Freedom Pledges', *Pacific Scoop*, 21 October 2015 ('Bourrat and Dandois had fallen victim to Indonesia's restrictive practices in West Papua (the western half of the island of New Guinea) and were sentenced to two and a half months in prison for violating Indonesia's draconian immigration laws by doing a report there after entering the country on tourist visas. Their fixer, Areki Wanimbo, was only released after being held for eight months.')

⁵⁷⁵ Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016.

with the Papuan people in order to build mutual trust'.⁵⁷⁶ 'But this announcement was quickly rescinded by Jakarta—including by the head of the armed forces General Moeldoko—who reiterated the requirement of permits for reporters.'⁵⁷⁷

216. According to MacLeod:

Then on 10 May 2015 Indonesian President Widodo issued a surprise announcement: foreign journalists would be free to visit West Papua. However, less than 24 hours later, Minister for Security and Political Affairs Tedjo Edhy Purdijatno, told the Indonesian media that nothing had changed: journalists would still need permission from various government [page break] agencies. Indonesian military commander General Moeldoko confirmed Purdijatno's statement separately, saying that the previous rules remained. Papuan police also announced that foreign journalists would still be required to report to them and that their activities would be monitored. As long as the Indonesian government values propaganda over a free press, the battle for open access to West Papua will be ongoing. The Surat Jalan system, the architecture through which the police and intelligence services try to monitor foreign visitors, remains in place.⁵⁷⁸

So much for progress.

217. And yet 'so far this appears to [have been] little more than diplomatic lip service. Foreign journalists still require screening; they are not allowed to report on anything that "discredits" Indonesia, and are excluded from "forbidden areas".'⁵⁷⁹ As has been well documented by Human Rights Watch and others, there is a serious 'disconnect [...] between Jokowi's policy objectives and the fierce opposition of some elements of the Indonesian government and security forces to opening Papua to foreign media'.⁵⁸⁰ Since the president's announcement, senior government officials have publicly made their own views on the matter clear:

On May 12 [2015], [National Police spokesman and Senior Commander Agus Rianto] asserted that the government would continue to restrict foreign correspondents' Papua access through an entry permit system. Rianto justified the need to maintain foreign media access restrictions to Papua to prevent foreign media from talking to 'people who opposed the

⁵⁷⁶ Ina Parlina, 'Jokowi presses ahead with Papua tour despite violence', *Jakarta Post*, 30 December 2015; see also *ibid* ('In May, during his second visit to Papua, Jokowi opened up access for foreign journalists and international organizations to Papua and West Papua, a move that was welcomed by journalism associations at home. At the time, Jokowi also granted clemency to five political prisoners incarcerated in Jayapura, in an effort to foster peace in the restive province. The move, however, prompted mixed responses from activists, with some expressing doubt over how his administration would follow up.')

⁵⁷⁷ Ken Setiawan, "'Old Guard' Blocking Human Rights Reform in Indonesia', *East Asia Forum*, 4 February 2016.

⁵⁷⁸ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 286–287.

⁵⁷⁹ Rochelle Jones, 'West Papuan Women Left Isolated and Beset by Violence Under Indonesian Rule', *The Guardian*, 22 October 2015.

⁵⁸⁰ Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016.

government' as well as to block the access of 'terrorists' who might pretend to be journalists as a means to travel to Papua.

On May 26 [2015], Minister of Defense Ryamizard Ryacudu warned that foreign media access to Papua was conditional on an obligation to produce 'good reports'. Ryacudu did not precisely define 'good reports', but he explicitly equated foreign journalists' negative reporting on Papua with 'sedition' and threatened expulsion for any foreign journalist whose reporting displeased the government.⁵⁸¹

Such statements 'reflect a deeply rooted perception among many Indonesian government and security agency officials that foreign media access to Papua is a recipe for instability in a region already troubled by widespread public dissatisfaction with Jakarta'.⁵⁸²

218. Behind the de facto policy lurks, among other things, the ghost of East Timor:

Conversations with Indonesian bureaucrats and government officials about the tenacity of official obstacles to foreign media access to Papua routinely reference East Timor and a persistent suspicion that the presence of foreign media and human rights activists in East Timor helped pave the way to that former Indonesian province's independence in 2002.⁵⁸³

While international journalists are denied entry, ejected from the country, and/or faced with trumped-up charges, '[l]ocal journalists who report on sensitive political topics and human rights abuses are often subject to harassment, intimidation, and violence by officials, members of the public, and pro-independence forces'.⁵⁸⁴

219. On 8 October 2015, local journalist Abeth You—a reporter for the online news outlet *TabloidJubi.com*—was attacked by police while covering a demonstration in Jayapura organized by Solidarity for Victims of Human Rights Violations in Papua. After the police bundled You into a truck, an officer seized his camera and deleted all his photos, all the while threatening him with his gun.⁵⁸⁵

220. One week after Marie Dhumieres, a Jakarta-based French correspondent, returned from a 1 October 2015 reporting trip to Pegunungan Bintang in order to interview independence activists, 'police detained a Papuan activist who had travelled with her

⁵⁸¹ *Ibid.*

⁵⁸² Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016.

⁵⁸³ *Ibid.*

⁵⁸⁴ *Ibid.*

⁵⁸⁵ See 'RSF Condemns Indonesian President's 'Failure' to Keep Media Freedom Pledges', *Pacific Scoop*, 21 October 2015.

along with two of his friends. Police interrogated the trio [...], demanding details of Dhumieres' reporting trip.⁵⁸⁶

West Papua National Committee (KNPB) chairman Agus Kossay and two other Papuans, Bano Kalaka and Nodi Hilka, were interrogated [in Jayapura] on Friday in connection with the arrival of French journalist Marie Dhumieres in Papua on Oct 1. [...] He said that they were interrogated by officials from the Papua Immigration Office and an unidentified security institution. According to Agus, they were questioned for 30 minutes about Dhumieres' activities while covering the inauguration of the executive board of the KNPB's Bintang chapter in Okhika, Papua, on Oct 1. He said that the French journalist had come to Papua after she had been informed that President Joko 'Jokowi' Widodo had allowed foreign journalists to enter to carry out their work. 'The journalist came to Papua on her own initiative. We did not invite her. The journalist left Okhika on Oct 2 and went home,' Agus added. Dhumieres arrived in Okhika on Oct 1 on board the same [...] plane as the KNPB's leader, Victor Yeimo, and Agus Kossay. The pair were traveling to Okhika to inaugurate the executive board of the Bintang chapter of the KNPB, an organization considered by many to be a supporter of the Papuan separatist movement.⁵⁸⁷

A KNPB spokesman 'suspected that AMA's management was under scrutiny for allowing the French journalist and the KNPB leaders to fly to Papua'.⁵⁸⁸

221. Later in November, Human Rights Watch called attention to the fact that '[s]ix months after President Joko Widodo announced that foreign media would have unimpeded access to Papua, Indonesian authorities continue to hamper reporting from the region in various ways'.⁵⁸⁹ According to Phelim Kine, 'there are three elements to the "enforced

⁵⁸⁶ Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016; see also Phelim Kine, 'Indonesia's "Opening" of Papua Still Needs to Bridge the Gap Between Reality and Rhetoric', *Antara News Agency*, 18 November 2015 ('Her travelling companion, a Papuan activist, was not as fortunate. A week after Dhumieres had returned, police detained him and two of his friends. The police interrogated them for ten hours.');

⁵⁸⁷ 'National Scene: Three Questioned on French Journalist's Visit', *Jakarta Post*, 7 November 2015.

⁵⁸⁸ *Ibid.*

⁵⁸⁹ 'HRW: Indonesia Restricts Access to Papua Despite Presidential Promise', *Jakarta Globe*, 11 November 2015 (citing Human Rights Watch, 'Something to Hide? Indonesia's Restrictions on Media Freedom and Rights Monitoring in Papua'); see also Katharina Lestari, 'Indonesia Still Obstructs Foreign Media in Papua: Catholic Activists, Rights Groups Say Harassment of Journalists is Common in Restive Provinces', *UCA News*, 12 November 2015 ('Indonesian authorities continue to restrict foreign media access to the restive Christian-majority provinces of Papua and West Papua, despite assurances from President Joko Widodo that reporters would have unimpeded access to the region, a rights group says. Phelim Kine, Asia deputy director for Human Rights Watch, said "elements of the Indonesian government" have failed to deliver on Widodo's promise to open Papua to foreign reporters. The New York-based rights group released on Nov 11 a report interviewing 107 journalists, editors, publishers and representatives of domestic and international nongovernmental organizations. Kine suggested a conspiracy was in place between the Indonesian government and security forces to keep foreign journalists out of resource-rich West Papua, where a low-level insurgency has clashed with military forces for several decades. "There are elements within the Indonesian government and security forces that are intrinsically hostile to the concept of free

isolation” of Papua and West Papua: the lack of a transparent process due to a vast bureaucracy, active resistance from elements within the government and intimidation of local journalists there by the authorities, which often leads to self-censorship’.⁵⁹⁰ The report calls on the president ‘to issue a decree that formally lifts restrictions on foreign media access to Papua and West Papua and that directs all relevant government stakeholders to comply with such a Presidential Instruction’.⁵⁹¹ Additionally, it calls for investigations into any ‘incidents in which police officers, military personnel and agents refuse to honor the lifting of restrictions on foreign media and international nongovernmental organizations access to Papua’ and to end harassment of local journalists in the region.⁵⁹²

222. Reacting to the HRW report, Atmakusumah Astraatmadja, an Indonesian media activist who founded the country’s first independent press council, said he was particularly worried about the lack of in-depth reporting from the region by major Indonesian news organizations.⁵⁹³ Citing the example of Aceh—which for decades was the scene of a bloody struggle for independence led by the Free Aceh Movement (GAM)—Atmakusumah noted that ‘[i]t was only after the press gained greater access to the province following the fall of the Suharto regime that policy makers in Jakarta started to understand what was going on there, [...] creating room for dialogue and ultimately resulting in [a 2005] peace agreement’.⁵⁹⁴ However, he noted that ‘with regard to Papua, the “New Order paradigm” is still in place’.⁵⁹⁵

media access to Papua,” he said, adding that a number of senior government and military officials intensely opposed opening the region to foreign media. “This is an ongoing problem. There is no clear process,” he added. He said that President Widodo has prioritized development in Papua as a way to provide stability and to appease local citizens’ dissatisfaction with the government. Kine said that government officials have acknowledged that open access to information is key to Papua’s development. “But what’s clear is that they are unwilling or hesitate or suspicious about what opening [the region] to the media might bring in terms of having some influence on the separatist movement in Papua,” he said. In addition, Indonesian journalists were “extremely vulnerable to intimidation, harassment and violence” by the government, security forces, and pro-independence groups, he said.’)

⁵⁹⁰ ‘HRW: Indonesia Restricts Access to Papua Despite Presidential Promise’, *Jakarta Globe*, 11 November 2015.

⁵⁹¹ *Ibid.*

⁵⁹² *Ibid.*

⁵⁹³ *See ibid* (“I wish the big media in Jakarta would be more concerned about Papua”, he told Wednesday’s press conference, arguing that the problems can only be solved if there is independent reporting from the region.’)

⁵⁹⁴ *Ibid.*

⁵⁹⁵ *Ibid.*

223. In fact, statistics compiled by Reporters Without Borders demonstrate a situation in decline: in 2002 Indonesia was ranked 57th in the World Press Freedom Index (out of 180 countries surveyed); in 2015 it sank to 138th place.⁵⁹⁶ The reasons for the drop are clear: outdated yet still enforced anti-press laws result in the continued detention and intimidation of journalists.

224. According to Human Rights Watch:

On [10 May 2015], President Jokowi announced the lifting of restrictions on foreign media access to Papua. A month later, the Foreign Ministry announced the abolition of the 'Clearing House' that had screened Papua access applications of foreigners for decades. But numerous senior government and security forces officials balked and openly resisted the change. In August, the Ministry of Home Affairs unveiled a new regulation that would have imposed onerous new reporting restrictions on foreign media nationwide. Jokowi ordered its cancellation the next day. However, the National Police still require accredited foreign journalists to apply for a travel permit to visit Papua, and the Ministry of Foreign Affairs also still requires such journalists 'to notify' the ministry of their schedules and activities in Papua.⁵⁹⁷

This is yet another example of the significant disconnect between presidential policies and military-security 'facts on the ground'.

225. On 8 January 2016, Thailand-based French television journalist Cyril Payen's application for a journalist's visa for a planned reporting trip to Papua was denied by the Indonesian Embassy in Bangkok.⁵⁹⁸

The Indonesian government's decision follows the broadcast of Payen's documentary, "The forgotten war in Papua". The film, broadcast by France 24 on October 18, 2015, examined allegations of state-sponsored human rights abuses and conflict-related casualties over the past 25 years in the country's eastern Papuan provinces.⁵⁹⁹

⁵⁹⁶ See 'RSF Urges Indonesia to Lift Ban on French Reporter Cyril Payen', *Reporters Without Borders*, 11 January 2016 ('Indonesia is ranked 138th out of 180 countries in the 2015 Reporters Without Borders press freedom index.')

⁵⁹⁷ Human Rights Watch, *World Report 2016, Indonesia* (events of 2015).

⁵⁹⁸ See Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016; see also 'Indonesia denies media visa for France 24 reporter', *IFEX*, 12 January 2016 ('The Committee to Protect Journalists condemns Indonesia's refusal to issue a media visa to French journalist Cyril Payen. The Bangkok-based senior reporter for France 24 television received notice of the denial from Indonesia's Ministry of Foreign Affairs without explanation on Friday [8 January 2016], he told CPJ. [...] President Joko Widodo announced last May that his government would allow foreign journalists to report unrestricted from Papua, breaking a decades-long virtual blackout on international news coverage of the restive region. Payen applied for and received the required media permits to report from Papua, and reported freely from the region for about a week last July, he told CPJ.')

⁵⁹⁹ 'Indonesia denies media visa for France 24 reporter', *IFEX*, 12 January 2016.

Previously, on 8 November 2015, the Indonesian Ministry of Foreign Affairs had notified the French Embassy in Jakarta that the government ‘considered Payen’s previous reporting, which focused on pro-independence sentiment in the region, “biased and unbalanced”’ and ‘took the punitive and disproportionate step of a threatened visa ban for an unspecified period of time for any France 24 journalists seeking to report from the country’.⁶⁰⁰

226. The Committee to Protect Journalists reacted strongly: ‘Indonesia's move to deny France 24 reporter Cyril Payen a journalistic visa smacks of retaliation for his critical reporting’, noting that ‘President Widodo should make good on his previous pledge to improve access to Indonesia for foreign journalists by reversing this arbitrary and ill-conceived decision’.⁶⁰¹ As did Reporters Without Borders (‘RSF’): ‘We firmly condemn this flagrant violation of media freedom and this discrimination against an independent journalist who has committed no crime.’⁶⁰² RSF equally called on President Widodo to keep his promise.⁶⁰³
227. According to Phelim Kine of Human Rights Watch, ‘Payen’s predicament highlights the glaring gap between the rhetoric of [President Joko Widodo’s] announced “opening” of Papua and West Papua [...] to foreign media and the far grimmer reality

⁶⁰⁰ Phelim Kine, ‘Indonesia’s Papua Reporting Paranoia: Despite Widodo’s Promise of an “opening,” Journalists Are Still Being Kept out of Papua’, *The Diplomat*, 22 January 2016; see also Cunding Levi, ‘Ministry Denies Ban Towards Foreign Journalists in West Papua’, *Tempo*, 13 January 2016 (‘Previously, French journalists Cyril Payen was barred from entering Papua after his documentary titled ‘Forgotten War of the Papua’ was broadcasted on October 18, 2015. Later on November 2015, Payen was declared as a persona non grata and was forbidden to enter West Papua although President Joko Widodo had already revoked the ban on May 2015.’)

⁶⁰¹ ‘Indonesia denies media visa for France 24 reporter’, *IFEX*, 12 January 2016.

⁶⁰² ‘RSF Urges Indonesia to Lift Ban on French Reporter Cyril Payen’, *Reporters Without Borders*, 11 January 2016 (‘Reporters Without Borders (RSF) condemns the Indonesian government’s refusal to let French journalist Cyril Payen visit Indonesia following the documentary he made about West Papua, the Indonesian half of the island of New Guinea, that France 24 broadcast last October. RSF points out that Indonesian President Joko Widodo promised to allow foreign reporters to visit West Papua. A Bangkok-based reporter specializing in Southeast Asia, Payen was able to visit West Papua in mid-2015 after obtaining all the necessary authorizations before setting off. But the French ambassador in Jakarta was summoned to the Indonesian foreign ministry after Payen’s documentary, entitled “Forgotten war of the Papuas,” was broadcast on 18 October. Indonesian officials in Bangkok then told Payen in November that he was now persona non grata in Indonesia. And finally, he was notified last week that his request for a visa to make another documentary had been turned down.’)

⁶⁰³ ‘RSF Urges Indonesia to Lift Ban on French Reporter Cyril Payen’, *Reporters Without Borders*, 11 January 2016 (‘President Joko Widodo has hereby demonstrated that his election promise to open up West Papua to foreign journalists was pure deception. We urge him to keep this promise and to let foreign journalists do their job without having to fear surveillance, censorship or reprisals by the authorities.’)

for journalists still blocked from reporting there'.⁶⁰⁴ This gap appears, in large part, to be the result of the military's continued grip on power:

Papua observers in Indonesia, such as Andreas Harsono of Human Rights Watch, also doubt the President's power to carry out a dramatic reversal to the longstanding international media blackout on West Papua kept in place by 18 central government agencies whose permission is required to visit the territory and who profit from their visa vetting role. Scholar of Papua, Budi Hernawan, observes that Widodo is rapidly losing credibility within his own government. The military is agitating for a presidential decree to mandate control of public order by the army and for an amendment to the law that requires such a decree in the first place. In other words, according to Hernawan, the army is working towards bypassing Presidential checks and balances in order to once more practice, unfettered, the fomentation of conflict that justifies its existence in the far reaches of Indonesia—particularly West Papua.⁶⁰⁵

Unfortunately, this 'glaring gap' is unlikely ever to close.

3. Restrictions on International Organizations, Diplomats, and Academics

228. According to Human Rights Watch, 'the government's obstacles to Papua access extend beyond journalists'.⁶⁰⁶

The security forces closely monitor the activities of international groups that the government permits to operate in Papua—those that seek to address human rights concerns get particular scrutiny. International NGOs such as the Dutch development group Cordaid that the government asserts are involved in 'political activities' have been forced to cease operations, their representatives banned from travel to the region.⁶⁰⁷

Restrictions on foreigners 'have extended to United Nations officials and academics Indonesian authorities perceive as hostile'.⁶⁰⁸

In 2013 the government rejected the proposed visit of Frank La Rue, then the UN special rapporteur on freedom of expression, because he insisted on including Papua on his itinerary. Foreign academics who do get permission to visit the region have been subjected to surveillance by the security forces. Those perceived to have pro-independence sympathies have been placed on visa blacklists.⁶⁰⁹

⁶⁰⁴ Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016.

⁶⁰⁵ Camellia Webb-Gannon, 'Salvaging Democracy for West Papuans in the Face of Australia-Indonesia Obstruction', *Asia-Pacific Journal*, 23 November 2015.

⁶⁰⁶ Phelim Kine, 'Indonesia's Papua Reporting Paranoia: Despite Widodo's Promise of an "opening," Journalists Are Still Being Kept out of Papua', *The Diplomat*, 22 January 2016.

⁶⁰⁷ *Ibid.*

⁶⁰⁸ *Ibid.*

⁶⁰⁹ *Ibid.*

Regarding banned academics: 'In at least two cases documented by Human Rights Watch, the government has imposed visa bans on Australian academics for their contact in Australia with Papuan independence groups.'⁶¹⁰

Anthropologist Eben Kirksey of Princeton University noted: 'I have been working [on Papua] since 1998, negotiating access in a legal situation where all basic science is viewed as being an inherently suspicious activity. In effect, almost all official applications to conduct research [there] are rejected by Jakarta.'

Damien Kingsbury, a professor at Deakin University in Australia, also came under surveillance by security forces in Papua during a research trip to the region in 2003. He said: 'When you check into the hotel [in Papua], the guest list is checked [by Indonesian security forces], as it was in Aceh. You are monitored and you have to be very careful.'

Scott Burchill, also from Deakin University, has never visited Papua nor applied for an official Papua access permit. But the Indonesian government placed him on a visa blacklist. In 2006, Burchill had given public talks to Papuan independence groups.⁶¹¹

Luckily, committed organizations and academics—like the many diligent and fearless journalists described above—continue with their work, despite the many obstacles placed in their paths by the government.

229. Humanitarian organizations and other international bodies face many more hurdles implementing their programs in West Papua compared to other areas in Indonesia. Such groups experience severe difficulties in carrying out their work and have been pressured to close their programs.⁶¹² The government utilizes a variety of means in order to discredit, delay, and disrupt operations—in some cases, to the extent that certain international organizations are either asked to leave or decide to withdraw in the face of onerous restrictions.⁶¹³ While the Foreign Ministry maintains that international organizations are free to work in West Papua, they are forbidden from supporting 'political' projects.⁶¹⁴ Naturally, in such context, that definition is determined and manipulated by the state. Accusations of pro-separatism are a common strategy used to criminalize and discredit disfavored organizations and unwanted programs.

230. For example, in April 2009, the International Committee of the Red Cross (the 'ICRC') was ordered by the Foreign Ministry to close its offices in West Papua because the

⁶¹⁰ Phelim Kine, 'Indonesia's "Opening" of Papua Still Needs to Bridge the Gap Between Reality and Rhetoric', *Antara News Agency*, 18 November 2015.

⁶¹¹ *Ibid.*

⁶¹² *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

⁶¹³ *Ibid.*

⁶¹⁴ Abdul Khalik, 'RI Still Open to Foreign NGOs in Papua', *Jakarta Post*, 7 August 2010.

'organization had been operating [...] without proper legal documentation and had failed to comply with new official operational procedure'.⁶¹⁵ The ban resulted in the loss of Indonesia's only remaining humanitarian relief group at that time.⁶¹⁶

231. In 2009, Günther Nooke, then German Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, was denied access to West Papua.⁶¹⁷ Diplomats are usually 'recommended' by the Indonesian authorities not to visit the country's easternmost provinces.

232. In January 2011, Peace Brigades International ('PBI') was forced out of Indonesia, where it had operated for six years in Jayapura and Wamena. PBI provided protective services to at-risk human rights defenders and held workshops in the field of peace education. All of PBI's local partners were legally registered and strongly committed to non-violence and human rights. PBI frequently met with government representatives and the security personnel and reported regularly on its meetings and activities in accordance with its principles of transparency and non-partisanship. However, allegations (never proven) arose that PBI was favoring separatists and its partner organizations were part of the secessionist movement. A remark by a police officer in the presence of PBI volunteers stating that the EU, together with PBI, adheres to a hidden agenda of supporting the independence movement in West Papua typifies the general mistrust that foreign organizations face. Such distrust likely contributed to the refusal in January 2010 to issue necessary travel permits (*surat jalan*) for PBI volunteers. (In no other provinces in Indonesia are such travel permits required.) Without the permits, the volunteers' work in West Papua became impossible, and the Wamena office was closed in early 2010. Furthermore, under new legislation enacted following the tsunami in 2004, foreign workers must be supervised by two Indonesian nationals at all times. These measures severely restricted PBI's work and were a leading factor in the project's decision to withdraw from Indonesia.

⁶¹⁵ Lilian Budianto, 'ICRC Closing its Offices in Papua and Aceh', *Jakarta Post*, 25 April 2009; see also Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011 ('Foreigners in Papua are viewed suspiciously, especially non-government groups. Indonesia has expelled several foreign NGOs from the territory in recent years. The International Committee of the Red Cross is banned from visiting more than 100 political prisoners. By contrast, the ICRC is allowed into Guantanamo Bay and could visit prisons in apartheid-era South Africa.')

⁶¹⁶ 'International Committee of the Red Cross Thrown Out of West Papua', *Free West Papua-Papua Merdeka*, 24 April 2009.

⁶¹⁷ *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

4. *Harassment and Intimidation of Human-Rights Defenders*

233. The former UN Special Representative of the Secretary General on Human Rights Defenders ('HRD's), Ms Hina Jilani, visited Indonesia in that capacity from 5–12 June 2007 in order to, among other things, assess 'the situation of human rights defenders in [...] West Papua'. In general, Ms Jilani:

conclude[d] that a climate of fear undeniably prevails in West Papua, especially for defenders engaged with the rights of the Papuan communities to participation in governance, control over natural resources and demilitarization of the province. The situation of these defenders does not seem to have eased and, despite the adoption of the Special Autonomy Law in 2001, their legitimate activities for the protection of human rights continue to be targeted. The series of concerns of the Special Representative regarding the situation of human rights defenders in West Papua [...] persist despite the assurances given to her by the police and military authorities in Papua that there was no institutional policy to target defenders.⁶¹⁸

The Special Representative was informed of a number of incidents 'involving arbitrary detention, torture, and harassment through surveillance'⁶¹⁹ as well as 'cases where human rights defenders had been threatened with prosecution by members of the police and the military'.⁶²⁰ Moreover, several episodes 'of excessive and disproportionate use of force when policing peaceful demonstrations were also brought to her attention'.⁶²¹ Notably, a typical tactic utilized by the government in an attempt to undermine the credibility of human rights defenders is to label them as separatists 'when[ever] defenders expose abuse of authority or other forms of human rights violations committed by the security apparatus', thus placing them 'at greater risk'.⁶²²

234. In one case, on 9 June 2007, Mr Yan Christian Warinussy, Director of LP3BH (*Lembaga Penelitian, Pengkajian, dan Pengembangan Bantuan Hukum*) (Institute of Research, Analysis, and Development of Legal Aid) of Manokwari, was subjected to surveillance, and on 29 July he received threatening text messages on his mobile phone linking his human rights work to the separatist movement. In response to an alert by the

⁶¹⁸ UNHRC, United Nations General Assembly, Human Rights Council, Seventh Session, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Rights to Development, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Ms Hina Jilani, Addendum, Mission to Indonesia, 28 January 2008 (hereinafter, the 'Jilani Report 2008'), pp 2–3 (from 'Summary'); *see also ibid*, paras 18, 31, 48, 61, 62, 65 *et seq*.

⁶¹⁹ Jilani Report 2008, para 65.

⁶²⁰ *Ibid*.

⁶²¹ *Ibid*.

⁶²² Jilani Report 2008, para 66.

Special Representative, the Government replied that ‘nothing malefic came of this incident and investigations thereafter have not thus far been able to establish either a clear description or the whereabouts of the alleged perpetrators’.⁶²³

235. Additionally, ‘defenders from West Papua working for the preservation of the environment and the right over land and natural resources (deforestation and illegal logging) frequently receive threats from private actors with powerful economic interests but are granted no protection by the police’.⁶²⁴ In fact, some of these cases ‘concern direct involvement of the police and military’.⁶²⁵

236. It appears that the climate of fear in which many defenders operate has worsened since the incident of Abepura in March 2006. In that case:

five members of the security forces were killed after clashes with protesters demanding the closure of the gold and copper mine [operated by] PT Freeport. Lawyers and human rights defenders involved with the trial received death threats. The harassment of these lawyers and defenders around the trial was interpreted as a warning to the community of human rights defenders, who have decreased their activities out of fear of harsh treatment.⁶²⁶

For example, it was reported that Mr Albert Rumbekwan, Director of the branch of Komnas HAM in West Papua, ‘was intimidated and threatened on several occasions by the police and unidentified persons in the course of his fact-finding activities’ regarding the Abepura incident.⁶²⁷ According to reports, the local chief of police ‘warned Mr Rumbekwan and his colleagues that “if they continue the investigation, the police will kill them”’.⁶²⁸ Mr Rumbekwan reported the incident to Komnas HAM in Jakarta, ‘but according to him, no assistance was provided’.⁶²⁹

237. The following year, on 11 June 2007, Mr Rumbekwan received death threats on his mobile reportedly stating: ‘You who are reporting about the human rights situation in Papua are trying to destroy the people. You want evidence of people being killed, I will kill your tribe, your family and your children will become only bones to show that there

⁶²³ *Ibid.*, para 73.

⁶²⁴ *Ibid.*, para 67.

⁶²⁵ *Ibid.*

⁶²⁶ *Ibid.*, para 68.

⁶²⁷ *Ibid.*, para 69.

⁶²⁸ Jilani Report 2008, para 69.

⁶²⁹ *Ibid.*

is only a zone of peace in Papua.’⁶³⁰ Despite government claims that he had been provided with police protection, ‘threats against Mr Rumbekwan and his family persist[ed]’.⁶³¹

238. It was also reported that ‘international human rights monitors [...] entering West Papua are subject to tight restrictions and only a few are permitted to operate, resulting in a scarcity of information on the human rights situation in West Papua’.⁶³² In some cases, despite assurances from Jakarta, ‘local authorities often deny access’.⁶³³ And yet ‘the Military Commander and the Chief of Police in Papua [maintain] there was no institutional policy to target defenders’.⁶³⁴

239. According to the UN Special Rapporteur on torture:

Sabar Olif Iwanggin, aged 34, from Asal, human rights lawyer by profession, was arrested on 18 October 2007 on charges of distributing a text message via his cell phone defaming the President of the Republic. During a meeting with Aloysius Renwarin, some 30 officers of the anti-terrorism unit Detachment 88, the criminal investigation police of POLDA, and the Anti-Terror Special Force Unit of the National Police surrounded the building and arrested Sabar Olif. He was taken to Polda where he was interrogated from 3.30 p.m. until 5 a.m. the next morning by Polda officers. During the interrogation water was served; however, he felt extremely tired and depressed. On 20 October, at 10 a.m., the interrogation continued, this time conducted by officers of Detachment 88 who questioned him on his relation with the Free Papua Movement, OPM, and his involvement in the Abepura case as a human rights lawyer. Mr Olif had no complaints about any ill-treatment; however, he was not allowed to meet with his lawyer and too tired to sign his own statement. On 26 October, Sabar Olif was transferred to Jakarta on a commercial flight during which he was not handcuffed. The transfer to Jakarta had not been announced, neither he nor his lawyer were informed in advance. He was in detention in Jakarta police headquarters from 27 October to 11 November, where he was interrogated two times. Sabar Olif’s main concern was that he had no idea of how long he would remain in detention. His case had not yet been forwarded to the prosecutor and his detention had been prolonged repeatedly. Sabar Olif perceived his treatment as discriminatory and related to his engagement as a human rights lawyer.⁶³⁵

On 18 October 2007, ‘the authorities arrested Papuan human rights activist Iwanggin Sabar Olif on suspicion of incitement of hatred and defamation for forwarding text messages’.⁶³⁶ On 13 December, he ‘was charged with incitement to hatred’ with

⁶³⁰ *Ibid.*, para 74.

⁶³¹ *Ibid.*

⁶³² *Ibid.*, para 70.

⁶³³ *Ibid.*

⁶³⁴ *Ibid.*, para 71.

⁶³⁵ Nowak Report 2008, para 75.

⁶³⁶ US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2007’, 11 March 2008.

observers indicating that 'he was singled out for arrest for his human rights activities'.⁶³⁷

240. In 2010, human-rights defenders in West Papua faced a number of challenges, including: surveillance of their homes and offices conducted by security forces and unidentified persons, intimidating phone calls and text messages, dissemination of inaccurate or discrediting information, criminal defamation charges, death threats, and a lack of regular income.⁶³⁸
241. In September 2010, members of LP3BH in Manokwari were threatened by unknown persons while investigating the killing of civilians by Brimob suspects. On 17 September, LP3BH reported receiving threatening text messages from unknown numbers demanding LP3BH to stop its investigation of the incident.⁶³⁹ On 14 December, lawyer Simon Banundi from LP3BH was arrested while monitoring a peaceful march commemorating the 22nd anniversary of the Proclamation of the Independence of West Melanesia. While Banundi was eventually released without charge, five other students associated with the march were charged with subversion (*makar*) and incitement.
242. Members of the victims' organization United For Truth (*Bersatu untuk Kebenaran*) ('BUK') in Jayapura have been continually harassed, intimidated, and even forced to change residence. This is thought to be the result of their campaign to demand access to proper healthcare for two political prisoners, Filep Karma and Ferdinand Pakage.
243. Activists engaged in defending the rights of indigenous peoples are constantly at risk.⁶⁴⁰ And restrictive and discriminative legislation, such as the subversion (*makar*) article contained in Article 106 of the Indonesian Penal Code, is particularly detrimental to the work and safety of HRDs in West Papua.

F. Economic Exploitation

⁶³⁷ *Ibid.*

⁶³⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices for 2010', 8 April 2011.

⁶³⁹ The content of the text messages was as follows: 'You think you are brave? You think you are cool and you want to play with us?' When LP3BH inquired who the sender was, the sender replied 'Aren't you afraid?'

⁶⁴⁰ See, e.g., Jilani Report 2008.

1. A Policy of Pillage

244. As noted above, well before West Papua's annexation in 1969, Indonesia engaged in negotiations with multinational corporations, giving them access to large tracts of land on which to carry out mining, logging, drilling, exploration, and industrial-scale cultivation.⁶⁴¹ During the last 50 years, vast areas of West Papua have been granted as concessions to multinational, transnational, and Indonesian extractive, logging, and agricultural companies.⁶⁴² The government simply took control of the land and handed it over to international firms without consultation with, approval of, or compensation to the indigenous populations who occupied, utilized, and relied on such territory for hundreds, if not thousands, of years.⁶⁴³ As of 2012, the land area reserved for companies (foreign and domestic) operating in Papua, had reached 15,661,796 hectares, amounting to 23% of Papuan land.⁶⁴⁴

245. Such large-scale expropriation has been part and parcel of the Indonesian government's policy to 'modernize' West Papua:

To achieve this objective it has promoted large-scale projects in the mining, oil and gas, timber, and fishery sectors to exploit West Papua's abundant natural resources. Developed and implemented by US-trained economists, this policy produced 'phenomenal growth rates' in the early years of Indonesian rule in West Papua. Economic growth was facilitated by migration from Java, Sumatra, and Sulawesi to West Papua to provide a surplus of cheap, skilled (non-Papuan) labor. The Indonesian military protected investment and the Indonesian government, advised by neo-liberal economists, created attractive investment conditions and tax breaks for multinational corporations.⁶⁴⁵

Naturally, such projects have 'enriched a small percentage of elites and lifted up the managerial class of migrants recruited to work on' them,⁶⁴⁶ while at the same time

⁶⁴¹ VIVAT International & Franciscans International, Press Release: 'Human Rights Abuses in Papua and West Papua'.

⁶⁴² UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁶⁴³ *Ibid.*

⁶⁴⁴ ICESCR, Alternative Report on Indonesia, 52nd Session, Committee on the Economic, Social, and Cultural Rights, April–May 2014, Joint Submission of Franciscans International, International Coalition for Papua, VIVAT International, Justice Peace and Integrity of Creation (hereinafter, the 'ICESCR 2014 Alternative Report Joint Submission').

⁶⁴⁵ MacLeod, MERDEKA AND THE MORNING STAR, p 126.

⁶⁴⁶ *Ibid.*

producing ‘little or no benefit for Papuans and wreak[ing] socio-cultural and environmental havoc’.⁶⁴⁷

246. For example, on 17 February 2005, ‘a major report based on a three year investigation into the trade in illegally sourced logs in Papua was released’.⁶⁴⁸ The report—prepared by Indonesian-based environmental organization Telapak and the UK- and US-based Environmental Investigation Agency—‘accused Indonesian military and government officials of running a massive illegal operation’.⁶⁴⁹

Described as the most egregious case of timber smuggling ever discovered, valued at more than US\$1 billion, the two non-governmental organizations said the case involved the smuggling of 300,000 cubic meters of timber per month from Papua to China. Their report found that the operation was supported and managed by high-ranking Indonesian military (TNI) officers in collusion with other government officials and law enforcers. Syndicates pay around \$US 200,000 per shipment in bribes to ensure the contraband logs are not intercepted in Indonesian waters. They are reportedly part of a group of international criminal syndicates involved in the massive looting of *merbau* wood to supply increasing demands on China’s timber processing industry.⁶⁵⁰

While *merbau* is one of the most valuable timber species in Southeast Asia, commanding a price of approximately 270 USD per cubic meter on the Chinese market, Papuan communities receive approximately 10 USD per cubic meter for harvesting the wood.⁶⁵¹

247. On 27 May 2011, the Yudhoyono’ administration introduced the Master Plan for Indonesia’s Acceleration of Economic Development (known as the ‘MP3EI’) for the period 2011–2025, in which Papua was set to become a strategic corridor for commercial extraction, forestry, agriculture, and fisheries.⁶⁵² The plan included the oil and gas industry in West Papua, specifically: UK-based multinational British Petroleum’s operation of the Tangguh gas installation on the southern shore of Bintuni Bay; German industrial giant Ferrostaal’s construction of a USD 2 billion petrochemical processing plant in Bintuni Bar, using Tangguh gas as feedstock; an

⁶⁴⁷ *Ibid.*

⁶⁴⁸ John Wing & Peter King, ‘Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People’, *Centre for Peace and Conflict Studies, University of Sydney and ELSHAM*, August 2005, p 4 (citing *The Last Frontier: Illegal Logging in Papua and China’s Massive Timber Theft*, Environmental Investigation Agency (EIA) and Telapak, London and Jakarta, February 2005).

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *Ibid.*

⁶⁵¹ Wing & King, ‘Genocide in West Papua?’.

⁶⁵² ICESCR 2014 Alternative Report Joint Submission.

initial agreement for a petrochemical plant to be operated by Korean-based LG. Local communities, whose customary lands and resources are being used for such schemes, are struggling to comprehend what is happening to their region and to make their voices heard.⁶⁵³

248. In November 2012, the Indonesian and UK governments signed a USD 1.2 billion deal to significantly expand production/increase capacity at BP's facility at Tangguh.⁶⁵⁴ Prior to commencement of the project, local communities had voiced their desire for some improvement in living conditions as part of the deal. Despite promises made by BP to provide education, electricity, and other services, none of the pledged benefits materialized. Adding insult to injury, along with limiting access to traditional fishing grounds, local community members were offered only menial work on the project, while well-paid positions were reserved for transmigrants.
249. Economic exploitation in West Papua is inextricably linked to the Indonesian military's 'predatory role in the conflict economy'.⁶⁵⁵ Postings to the region are seen as plum assignments, and with good reason:

The territorial command structure and the TNI's involvement in politics is the military's 'dual function'. Its network of extensive legal and illegal business interests is its unstated but vital third function. The TNI receives 25 to 30 per cent of its budget from the state. Consequently, 70 to 75 per cent of its [page break] operating budget is obtained from legal and illegal business activity supported by a network of military/business foundations and organizations. Although the Indonesian parliament ordered the TNI to divest itself of its businesses by 2010, it has simply shifted ownership to a network of proxies. This allows the TNI to maintain control of its business interests.⁶⁵⁶

Tanah Papua remains an extremely lucrative frontier posting for TNI soldiers. The TNI's extensive business interests include legal and illegal resource extraction, the provision of security for mining companies, brothels, and a range of other enterprises. Central to this network of legal and illegal businesses is the TNI's territorial structure that enables the Indonesian military to maintain a presence at every level of politics, from cabinet to the smallest hamlet. The TNI's territorial structure provides local officers and soldiers with opportunities to develop businesses and illicit income streams. Consequently, the TNI has a vested interest in maintaining enough conflict to justify its presence and protect its economic interests.⁶⁵⁷

It is very much a part of West Papua's curse that it happens to be 'a leading contributor to Indonesia's national economy, generating massive amounts of revenue from its

⁶⁵³ *Ibid.*

⁶⁵⁴ *Ibid.*

⁶⁵⁵ MacLeod, MERDEKA AND THE MORNING STAR, pp 127–128.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ *Ibid.*, p 128.

extensive gold, copper, oil, natural gas, nickel, fisheries, and timber reserves for the state and for the military'.⁶⁵⁸

2. Extraction: Freeport's Free Hand

250. The military's major civilian partner in this enormous cash cow is Freeport Indonesia—the emblematic/iconic US multinational extractive company (along with its junior partner, the Anglo-Australian Rio Tinto)⁶⁵⁹—which operates the Grasberg site in West Papua, the world's largest gold and third largest copper mine. The economic symbiotic relationship is quite simple, even if the numbers are quite staggering:

According to academic Lesley McCulloch, Freeport payments to the TNI included a one-off payment of US\$35 million and annual 'contributions' of US\$11 million. This practice continues. In early 2003, as a result of shareholder activists asking persistent and searching questions in the wake of the murder of two US citizens and an Indonesian citizen allegedly by the TNI, Freeport admitted that they had paid \$4.7 million in 2001 and \$5.6 million in 2002 to the TNI to 'support costs for government-provided security'. A 2005 report by Global Witness alleged that the former military chief in Papua, General Mahidin Simbolon, who had been linked with militia operations when he was a commander in East Timor in 1999, [page break] received US\$247,705 between 2001 and 2003 in payments for unspecified humanitarian projects, military celebrations, and for 'security services'. Perlez and Bonner, writing in *The New York Times*, claimed that between 1998 and 2004 Freeport paid the TNI a staggering US\$20 million. When responsibility for protection of the mine shifted to the police the practice continued. In a letter written on 19 April 2011 and addressed to Kontras Papua (*Komisi untuk Orang Hilang dan Korban Kekerasan*—The Commission for Disappearances and Victims of Violence), Dr Rudolf Rodja, the chief commissioner of police in Jayapura, acknowledged that the police and military received money from Freeport to provide security. In 2010 that amount was US\$14 million. The local Mimika police chief called the assistance 'lunch money'.⁶⁶⁰

While the military and the police enjoy their free lunches, the benefit to the national government amounts to a far more lavish meal. Freeport 'provides 1.59 per cent of Indonesia's gross domestic product'.⁶⁶¹ And, as the nation's largest taxpayer, 'the company made direct payments to the Indonesian government totaling US\$12.1 billion' between 1992 and March 2011.⁶⁶²

⁶⁵⁸ *Ibid.*, p 158.

⁶⁵⁹ *N.b.* Freeport owns '90.64 percent of PT-FI, including 9.36 percent owned through our wholly owned subsidiary, PT Indocopper Investama'. See 'Value at Our Core', Freeport-McMoRan, 2014 Annual Report.

⁶⁶⁰ MacLeod, MERDEKA AND THE MORNING STAR, pp 129–130; see also Freeport McMoRan Copper & Gold, Inc, *Security Matters*, Internal Draft, Exhibit A of Douglas N Currault II to Securities and Exchange Commission, 3 March 2003 (Re Freeport McMoRan Copper & Gold, Inc, Response to Request Pursuant to Rule 14a-8i(10)) *N.b.* In 2001, Freeport paid USD 4.7 million for security services provided by more than 2300 Indonesian military personnel. *Ibid.*

⁶⁶¹ MacLeod, MERDEKA AND THE MORNING STAR, p 127.

⁶⁶² *Ibid.* *N.b.* 'This is made up of \$7.3 billion in corporate income tax; \$2.3 billion in employee income tax, regional tax, and other levies; \$1.2 billion in royalties; and \$1.2 billion in dividends.' *Ibid.*

251. In 2004 alone, Freeport had revenues of approximately USD 1.7 billion from the production of copper and gold.⁶⁶³ Paradoxically, in 2005, almost 30 percent of West Papua's population lived beneath the poverty level.⁶⁶⁴ In light of these facts, the biggest question that emerges is: Where did all that money go? The answer is, obviously: not to the West Papuans. Freeport, however, did contribute to the 'development' in the region. According to the company, it has spent USD 180 million since 1990 on social programs, including infrastructure development such as roads, health facilities, housing, and clean water suppliers.⁶⁶⁵

252. In late-2015, despite a law in place specifically limiting early discussion of contract extensions,⁶⁶⁶ the terms of Freeport's highly lucrative West Papua concession with the Indonesian government were again up for renegotiation:

Normally under Indonesian law, negotiations over contract renewal don't start until two years before contract expiry. But in a sign of the importance of the revenues from the Papua mine to its state coffers, Indonesia has gone to early negotiations with the American-based miner. Freeport's Grasberg mine complex has the world's largest gold mine and third-largest copper mine.⁶⁶⁷

Unsurprisingly, Freeport's 'Indonesian unit [...] is the country's biggest taxpayer'.⁶⁶⁸

253. According to observers, the giant mining company and Jakarta 'continue to do business as they've always done it—without consulting Papuans'.⁶⁶⁹ Nevertheless, Benny Giay, chairman of the Kingmi Church says:

seven tribes in the Mimika area where the Freeport mining complex is located are trying to have their voices heard in the negotiations. However he says historically, the indigenous people, who are customary landowner of the land Freeport operates on, do not figure in

⁶⁶³ See *Laporan Keuangan Freeport*.

⁶⁶⁴ Fadjroel Racman, *Luka Papua, Luka Indonesia*, March 2006.

⁶⁶⁵ International Crisis Group, 'Indonesia: Resources and Conflict in Papua', ICG Asia Report No 39, September 2002, pp 17–18.

⁶⁶⁶ See 'Indonesia Could Change Law on Papua Mine Contract', *Radio New Zealand*, 12 October 2015 ('Indonesia's government is planning to amend its rules on mining contracts to allow the United States company, Freeport-McMoRan, to extend its contract at the Grasberg mine in West Papua. Freeport's contract for the world's largest copper and gold mine ends in 2021, but present rules only allow talks on an extension to end two years before a contract is due to expire. Reuters reports a mines ministry official, Bambang Gatot, saying a revision to the government's regulations is being processed by the economics ministry, and should be released by the end of the year. The new rules may allow companies to propose an extension ten years before their contracts expire.')

⁶⁶⁷ 'Indonesia's Speaker Quits Over Freeport Fix', *Radio New Zealand*, 18 December 2015.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ 'Papuans Not Consulted in Freeport Negotiations', *Radio New Zealand*, 22 December 2015.

discussions. 'I think what we have seen is that Jakarta and Freeport are ignoring the Papuans as they have done in the past, in their discussion, their talks over Freeport in Papua.' Reverend Giay says Indonesian lawmakers enriching themselves at the cost of Papua resources is not new.⁶⁷⁰

Giay's comments follow the resignation of Indonesia's parliamentary speaker, Setya Novanto, who resigned after exposure of a recording of secret talks related to the ongoing negotiations in which he allegedly sought to extort a stake in the new deal.⁶⁷¹ Novanto admitted that his was the recorded voice that had spoken of 'his closeness to Indonesian President Joko Widodo and another top minister with regards to approving [the] new mine contract'.⁶⁷² As Giay sees it, the scandal 'merely echoes what President Suharto used to do' regarding the Papuan's customary ownership of the resources extracted by Freeport.⁶⁷³

254. The Grasberg mine in Mimika 'has been a lightning rod for attacks by the pro-independence movement since [Freeport] began operations in 1973'.⁶⁷⁴ This is due to several factors, 'including its status as a foreign multinational operating on indigenous land, the huge revenues it generates, and the support it has provided to state security forces'.⁶⁷⁵ 'The inequities created by Freeport operations; the influx of migrants, both from outside Papua and from non-local Papuan ethnic groups; and the availability of new sources of revenue have combined to make the Mimika area particularly prone to attack.'⁶⁷⁶ It 'provides an object lesson in how development can fuel pro-independence

⁶⁷⁰ *Ibid.*

⁶⁷¹ See 'Indonesia's Speaker Quits Over Freeport Fix', *Radio New Zealand*, 18 December 2015 ('The speaker of Indonesia's Parliament has resigned after allegedly seeking to extort a US\$4 billion stake in the operations of mining company Freeport McMoran in Papua Province. Setya Novanto quit as a parliamentary ethics committee was investigating his case which centered on a recording of secret talks related to ongoing negotiations over the extension of Freeport's current contract. In the audio recording Novanto appears to be attempting to extort a 20 per cent stake from the gold and copper miner's Papua operations. [...] He resigned his post hours before the committee recommended his removal. [...] The scandal comes as negotiations over the extension of the lucrative mine contract intensify.');

⁶⁷² 'Papuans Not Consulted in Freeport Negotiations', *Radio New Zealand*, 22 December 2015.

⁶⁷³ 'Indonesia's Speaker Quits Over Freeport Fix', *Radio New Zealand*, 18 December 2015.

⁶⁷⁴ 'Papuans Not Consulted in Freeport Negotiations', *Radio New Zealand*, 22 December 2015 ('Jakarta has not changed much: the officials, their mentality, their culture, their orientations. It's very sad that we Papuans will go through our history, in the future, with these kinds of authorities in power.')

⁶⁷⁵ 'The Current Status of the Papuan Pro-Independence Movement', Institute for Policy Analysis of Conflict, Report No 21, 24 August 2015, p 6.

⁶⁷⁶ *Ibid.*

⁶⁷⁶ *Ibid.*

sentiment rather than eliminate it'.⁶⁷⁷ According to Benny Giay, 'Indonesia's development policy is simply "killing in the name of development"'.⁶⁷⁸

255. West Papuan government leaders and activists 'said talks on extending the contract [...] ignored input from the local community'.⁶⁷⁹ In spite of this, West Papuans continue to press their customary claims and calls for involvement:

The Governor of Papua province, Lukas Enembe, recently demanded that Freeport release some control of the mine area, grant Papua a share of the operations, and commit to meaningful development contributions. He said that despite the valuable Grasberg mine being gifted to the US company by Indonesia without Papuan consent and even before Papua was formally part of Indonesia, the company has done very little for the benefit of Papuans.⁶⁸⁰

Lamadi de Lamato, spokesman for [Governor] Enembe, told [journalists] that the provincial government was also kept out of mine discussions. 'We're so confused. Freeport actually is in Papua, but we were not invited to speak on this renewal plan. Our voice barely received attention', he said.⁶⁸¹

Father Neles Tebay, coordinator of the Papuan Peace Network, called for the contract to be suspended, due to the fact that local residents were not involved in the negotiations. [...] Father Tebay said Papuans might support the mine if Freeport would reinvest in the local community. 'Papuans are still poor and PT Freeport seeks economic gain. They need a plan that provides economic benefits to Papua', he said.⁶⁸²

Meanwhile, Victor Yeimo of the West Papua National Committee says there should be no contract extension. 'The people of Papua have long swallowed the bitter pill of this company's presence', he said. 'Trillions in money has been taken out, however the people of the area are destitute. Residents who scavenge for gold waste are shot', he said.⁶⁸³

Father John Djonga, an activist priest, called on Widodo to stand up to the mining company and protect the rights of the indigenous communities. 'Do not let Freeport govern the country', he said.⁶⁸⁴

According to President Widodo's chief of staff, in a report aired by CNN Indonesia, the extension would be approved for the simplest of reasons: 'the Indonesian national budget depended on revenues from the Freeport deal'.⁶⁸⁵ And, for its part, 'Freeport

⁶⁷⁷ *Ibid.*, p 8.

⁶⁷⁸ MacLeod, MERDEKA AND THE MORNING STAR, p 130.

⁶⁷⁹ Ryan Dagur, 'Papuans Upset Over Lack of Input on Indonesian Mining Deal: Indigenous Groups Kept Out of Discussions on Controversial Contract Extension', *UCA News*, 26 October 2015.

⁶⁸⁰ 'Indonesia's Speaker Quits Over Freeport Fix', *Radio New Zealand*, 18 December 2015.

⁶⁸¹ Ryan Dagur, 'Papuans Upset Over Lack of Input on Indonesian Mining Deal: Indigenous Groups Kept Out of Discussions on Controversial Contract Extension', *UCA News*, 26 October 2015.

⁶⁸² *Ibid.*

⁶⁸³ *Ibid.*

⁶⁸⁴ *Ibid.*

⁶⁸⁵ *Ibid.*

says it has been assured by the Indonesian government that its Grasberg contract would be extended beyond 2021'.⁶⁸⁶

256. According to most objective commentators, the relationship between the government and Freeport (among other transnational firms in the region) is one of extreme coziness:

A key feature of this occupation, which is worth emphasizing, is the Indonesian government's facilitation of resource extraction by large transnational corporations such as Freeport-McMoRan/Rio Tinto and BP among a host of others, including a dense network of Chinese, Malaysian and Korean timber and mining companies. In this context, it is also worth noting the corrupt involvement of the Indonesian police and military in the occupation by securing financial kickbacks for providing 'security' to these corporations. This highly profitable corruption ensures the enthusiastic complicity and brutality of the police and military in support of the occupation.⁶⁸⁷

Military and police violence has also been a mainstay around Freeport's mines in Timika since the company began operations in the 1970s as security forces vied with each other for lucrative 'protection' contracts for the company. There is strong evidence suggesting that security forces also orchestrate violent conflict around the mine (for example, ambushes along the road leading to the mine) and then blame such violence on the guerilla-led Free West Papua movement, legitimating their own presence in the process.⁶⁸⁸

Based on investigations into illegal logging conducted in Sorong, Manokwari and Jayapura in 2003–2005, it is clear a pattern of military-sponsored or protected illegal operations has emerged in these areas as well as in the Bintuni and Fak Fak areas. This has much to do with the laissez-faire attitude towards law of Indonesian police and judicial authorities. The main role of the security forces is that of paid protector acting on behalf of the mainly Malaysian, Korean and Chinese companies involved in logging. They include most notably Kayu Lapis Plywood and Rimbunan Hijau, both logging rare and protected *merbau* (*kwila*; *intsia bejuga*) timber. When grievances are directed at the companies then security force intervention frequently follows and invariably involves repressive measures against protesting tribesmen and women.⁶⁸⁹

In this context, words like 'security' and 'protection' can only be understood in the most perverse sense. Moreover, beyond the overt brutality, the environmental impact has been devastating: 'They spoil the rivers. Many of the rivers there turn colors never seen in nature. They cut off the mountains. And the local Papuan population surrounding the mines often live with hunger and lack of clean water.'⁶⁹⁰

⁶⁸⁶ 'Indonesia Could Change Law on Papua Mine Contract', *Radio New Zealand*, 12 October 2015. *N.b.* 'The company plans to invest 18 billion dollars to transition the mine from an open pit to underground mining in late 2017.' *Ibid.*

⁶⁸⁷ Robert J Burrowes, 'The Struggle for Merdeka in West Papua', *Pacific Scoop*, 13 January 2016.

⁶⁸⁸ Camellia Webb-Gannon, 'Salvaging Democracy for West Papuans in the Face of Australia-Indonesia Obstruction', *Asia-Pacific Journal*, 23 November 2015.

⁶⁸⁹ John Wing & Peter King, 'Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the Papuan People', Centre for Peace and Conflict Studies, University of Sydney and ELSHAM, August 2005, p 3.

⁶⁹⁰ 'Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC', *Democracy Now*, 27 October 2015 (interview with Allan Naim).

257. Large amounts of toxic liquid waste produced by the Grasberg Mine are dumped into rivers, causing irreparable damage to the water supply, which in turn affects local food crops and causes sickness and death.⁶⁹¹

258. The economic and geopolitical interests are plain:

[T]here are other major issues on the table between Jokowi and Obama, Indonesia and the US. One is Freeport-McMoRan, the massive mining corporation, based largely in West Papua, which extracts huge amounts of gold and copper. They pay bribes to the Indonesian army and officials to be able to do that. [...] The Freeport contract is up for renewal. There's a big battle going on within the Indonesian government as to whether it will be renewed or whether Indonesia will take over the mine itself, as it has the technical capacity to do. But the US and Obama have been pushing Indonesia to, yes, extend this contract. The US has for years backed the repression in Papua in large part because of Freeport. The previous leader of Freeport, Jim Bob Moffett, used to be a golfing partner of the dictator, Suharto. Accounting records leaked would show that Freeport was paying massive bribes to the Kopassus special forces to repress the local population. Last year, I interviewed a former senior Indonesian official who told me that he had received two personal checks from Freeport worth hundreds of thousands of US dollars as bribes, although he said to me he didn't cash the checks. This is a violation of local Indonesian law and also the US Foreign Corrupt Practices Act, but neither the Indonesian or US governments have dared to move against Freeport to try to stop this type of corruption. But this contract is on the table, and Indonesia could change things drastically by not renewing it, but Obama and the US is twisting their arm to continue to give Freeport free rein in West Papua.⁶⁹²

Between 2004 and 2009, 1.2 million hectares of forests were allocated by the government for mining activities; this number is estimated to reach 3.4 million hectares by 2020.⁶⁹³ In Utikini village, close to Timika and the world's largest goldmine, dozens of traditional houses have been burned down and many former residents forced to flee.⁶⁹⁴

259. Freeport's mining and 'security' activities have greatly exacerbated the tensions and violence between the Indonesian government and the native Papuans. For example, a major purpose of the transmigration plan has been to provide a non-native workforce for Freeport's operations. Thanks to the policy—which, unlike Otsus, has been hugely successful—the province 'has been swamped by migrants from other parts of Indonesia

⁶⁹¹ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁶⁹² 'Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC', *Democracy Now*, 27 October 2015 (interview with Allan Naim).

⁶⁹³ UNPO, 'Alternative Report Submitted to the UN Committee on Economic, Social, and Cultural Rights for the Consideration of the Second Report of Indonesia during the 52nd Session', March 2014 (hereinafter, the 'UNPO Alternative Report to CESCR'), p 6.

⁶⁹⁴ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

who dominate its economy'.⁶⁹⁵ Moreover, and even more disturbing, some of the killings, unlawful detentions, and cases of torture described above have taken place on Freeport property or in shipping containers provided by the corporation.⁶⁹⁶ In spite of, or perhaps because of, all of this, Freeport remains unmolested by the government and its profits continue to soar.

3. *The Plantation Economy and Deforestation*

260. Apart from mining, the production of palm oil—of which Indonesia controls 14.3% of the global market—is a driving force of the national economy.⁶⁹⁷ The Papuan provinces have become a preferred locale for the development of palm oil plantations.⁶⁹⁸ The land grabbing necessary for such expansion is achieved by way of official government policies and licensing schemes, as well as through the complicity of various security forces.⁶⁹⁹
261. For example, the Medco Group—an Indonesian company investing in palm oil production in Papua—started work in the Manokwari region of West Papua in 2008. A plantation permit had been given to Medco's subsidiary PT Medco Selaras Inti Semesta for an industrial forestry plantation producing woodchips and wood pellets. The

⁶⁹⁵ Tom Allard, 'Independence at Threat From Enemy Within', *Sydney Morning Herald*, 13 August 2011.

⁶⁹⁶ See National Human Rights Commission of Indonesia, *Results of Monitoring and Investigating of Five Incidents at Timika and One Incident at Hoesa, Irian Jaya During October 1994–June 1995* (Jakarta: September 1995); Australian Council for Overseas Aid, *Trouble at Freeport*, (Melbourne: Australian Council for Overseas Aid, April 1995); Catholic Church of Jayapura, *Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia* (August 1995); LEMASA, *Amungme People's Response to National Commission on Human Rights Findings Announced on 22 September 1995*, September 1995; Jacob Pattipi, *Conclusion on Investigation on Land Title Issues in Timika Believed to have Ignited Human Rights Violations* (Jayapura: 6 October 1995); *The Opinion of LEMASA Concerning the Human Rights Situation and Prolonged Conflict in the Area of Operation of PT Freeport Indonesia, Mimika, Irian Jaya* (Timika: September 1997); Indonesian Evangelical Church (Mimika, Irian Jaya), the Catholic Church Three Kings Parish (Timika, Irian Jaya) & the Christian Evangelical Church of Mimika, *Human Rights Violations and Disaster in Bela, Alama, Jila and Mapnduma* (1998); Survival International, *Rio Tinto Critic Gagged* (London: Survival International, May 1998); RFK Memorial Center for Human Rights and the Institute for Human Rights Studies and Advocacy, *Incidents of Military Violence Against Indigenous Women in Irian Jaya (West Papua), Indonesia* (Washington/Jayapura: May 1999); Amungme community members, *The Victims Residing in the Area of the PT Freeport Mining Concession in the Villages of Banti, Arwanop, Tsinga, Hoeya, Waa, and Timika*, Statement sent to Komnas HAM, Freeport management, and the RFK Center, 7 February 2000; Chris Ballard, *The Signature of Terror: Violence, Memory and Landscape at Freeport*, in *INSCRIBED LANDSCAPES: MARKING AND MAKING PLACE* (Bruno David & Meredith Wilson eds 2001).

⁶⁹⁷ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁶⁹⁸ ICESCR 2014 Alternative Report Joint Submission.

⁶⁹⁹ *Ibid.*

company cleared vast tracts including important sites of the Malind indigenous peoples—sites of historical, social, cultural, and economic value—without Malind consent and in contravention of the governor's duty to protect important sites and areas of high conservation value.⁷⁰⁰

262. In August 2010, under the Yudhoyono administration, the Indonesian Minister of Agriculture officially launched the Merauke Integrated Food and Energy Estate ('MIFEE'), a mega project covering 1.28 million hectares in Merauke Regency, southern Papua. MIFEE, an extensive collection of commercial plantations, was conceived as part of the government's vision to feed the nation and the world. Unsurprisingly, the proposed development did not take into account its social implications and environmental impacts.⁷⁰¹ Under the program, indigenous land was reserved for 32 government-sanctioned companies, each of which received an official permit allowing it to take part in the national food sustainability program. As of filing, at least 11 companies were fully operational and had already acquired land from the local communities with minimal to no engagement with customary rights-holders. Research conducted in 2012 showed that land ownership transition from indigenous communities to investors has destroyed food sustainability, threatened sources of livelihood of local communities (especially among the Malind community), and placed the ecology and environment at risk.⁷⁰² Provisional data collected by Awas MIFEE suggests that local governments across the region have issued location permits for palm oil plantations covering around 2.3 million hectares of land under the program.⁷⁰³ MIFEE has had a particularly devastating effect on sago, a traditional staple of many Papuan indigenous communities,⁷⁰⁴ the importance of which cannot be underestimated.⁷⁰⁵

⁷⁰⁰ ICESCR 2014 Alternative Report Joint Submission.

⁷⁰¹ *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

⁷⁰² ICESCR 2014 Alternative Report Joint Submission.

⁷⁰³ *Ibid.*

⁷⁰⁴ ICESCR 2014 Alternative Report Joint Submission.

⁷⁰⁵ See 'Sago Forest in Papua Needs Preservation', *Tempo*, 31 January 2016 ('Sago forest in Papua needs to be preserved in a sustainable manner because it is a food reserve for the local community, according to West Papua environmentalist Benny Yesnat. "Sago is the staple food of the indigenous people of Papua since time immemorial. Even without rice, the Papuan people can consume sago for survival", said Benny Yesnat in Sorong on Sunday. Therefore, he called on the people of Papua to preserve sago forest, and do not destroy it for agriculture and other development interests. "Sago forests should not be burned to clear land for plantations, especially oil palm plantations which can only damage the humus, the substance made from dead leaves and plants for soil fertility", Yesnat noted. According to him, sago plants not only serve as food reserve, but also protect the water source for the life of Papuan community in general. Therefore, he added

263. Companies consistently fail to engage with indigenous communities, let alone obtain their informed consent. In many cases, communities are promised some measure of development benefit as a result of company operations, but these rarely if ever materialize.⁷⁰⁶ For example, PT Karya Bumi Papua and PT Cendrawasih Jaya Mandiri, two sugarcane subsidiaries of the Rajawali Group, cleared customary forest and sacred indigenous sites in a community-owned marsh area. The deforestation is estimated to have begun in 2012. Although the village community is the traditional landowner, it was not consulted; nor did it agree in any way to PT Rajawali's business scheme. In fact, when Rajawali disseminated information about the planned project at the Malind District (Merauke Regency) office, the Ongarri community leaders who attended the meeting expressed their refusal to let the company operate in the area.⁷⁰⁷
264. Between 2010 and 2012, approximately 300,000 hectares of forest per year were directly affected by deforestation and forest degradation in both Papuan provinces. Over the last 10 years, more than 4.7 million hectares of forest have been cleared for a variety of commercial activity, including illegal logging.⁷⁰⁸
265. Following a recent trip to Papua, the US Ambassador to Indonesia expressed his concern over deforestation and human rights in general:

The United States government has indicated it wants to help protect the endangered forests of West Papua. This follows a trip to the Indonesian provinces of Papua and West Papua this week by the US Ambassador to Indonesia, Robert Blake. Among a range of consultations he had while in the remote region, Mr Blake met with Papuan activists in Jayapura on Tuesday 19/1/16 to discuss issues such as human rights. Mr Blake also discussed ongoing, rampant clearance of forest and peatlands in Papua which has some of the world's last remaining substantial tracts of rainforest.⁷⁰⁹

Fresh from a trip to West Papua, the United States Ambassador to Indonesia reportedly expressed concern about human rights abuses in the country's remote, eastern region. As part of his trip, Robert Blake visited Manokwari in West Papua province where he met with the Executive Director of the Institute for Research, Investigation and the Development of Legal Aid, Yan Christian Warinussy. Mr Warinussy says the ambassador asked him about recent developments and the human rights situation in West Papua and Papua provinces. He

that the indigenous people of Papua and West Papua must maintain this local wisdom for generations in the future. He affirmed that sago [brings] many benefits to peoples' lives. Besides serving as food reserve, sago leaves can be used as the roof of traditional houses. Further, he expressed hope that the indigenous people of Papua can unite to reject irresponsible parties who want to turn sago forests into oil palm plantation.')⁷⁰⁶

⁷⁰⁶ ICESCR 2014 Alternative Report Joint Submission.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ *Ibid.*

⁷⁰⁹ 'US Signals Concern About West Papua Forests', *Radio New Zealand*, 21 January 2016.

says he told Mr Blake that the situation continued to be highly unsatisfactory in view of many cases of human rights violations which had not been dealt with in a court of law. Ambassador Blake was reportedly very concerned about such incidents and said that his government would push for those who had been responsible for these violations to be excluded from any US-linked local programs related to education and human rights.⁷¹⁰

Of course, such diplomatic comments must be taken with a grain of salt when read in light of larger US geopolitical interests in Indonesia.⁷¹¹

266. By virtue of such wholesale land confiscation, indigenous natural resources have been wholly exploited by non-Papuans.⁷¹² Villages have been destroyed and entire communities have been forced to resettle with practical impunity.⁷¹³ Many indigenous communities have been forcibly removed from their ancestral lands or made to leave through intimidation and bribery.⁷¹⁴ So evicted, those who traditionally relied on the forests and surrounding environments were deprived of their means of subsistence.⁷¹⁵ Indigenous populations are all too familiar with the 'nexus between Indonesia's development policy in West Papua, the failure to alleviate poverty, the denial of indigenous rights, militarism, and human rights violations [...]'.⁷¹⁶

267. 'Even Papuan politicians are routinely not consulted about policy decisions that affect West Papua. Examples include the Merauke Integrated Food and Energy Estate, the creation of the UP4B in West Papua, and the announcement of Special Autonomy Plus.'⁷¹⁷

268. A recent report has highlighted the complicity of businesses in human-rights abuses in West Papua:⁷¹⁸

⁷¹⁰ 'US Ambassador Concerned About West Papua Abuses', *Radio New Zealand*, 20 January 2016.

⁷¹¹ See para 172, *supra*.

⁷¹² VIVAT International & Franciscans International, Press Release: 'Human Rights Abuses in Papua and West Papua'.

⁷¹³ *Ibid.*

⁷¹⁴ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁷¹⁵ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷¹⁶ MacLeod, MERDEKA AND THE MORNING STAR, p 130.

⁷¹⁷ *Ibid.*, p 151.

⁷¹⁸ See Richard Welford, 'Land disputes: Lessons from West Papua', *CSR Asia Weekly*, 16 March 2016 ('A new report compiled by the Brisbane Catholic Justice and Peace Commission's Shadow Human Rights Fact Finding Mission to West Papua, has documented human rights abuses and the complicity of businesses in West Papua.')

The report documents religious, social, and economic discrimination, including how the use of land for major developments has benefited multinationals has excluded Papuans from ownership and jobs. The government is accused of carving up land and giving it to some 50 multinational companies.

The report accuses local government of inviting companies to come to the area and gives them permits for operations. Local villagers are often shocked when the companies arrive, showing them the permit and the map. If the villagers don't agree to the proposal, the company goes back to the local government and returns with the police. There is clear evidence of ongoing violence, intimidation, and harassment by the Indonesian security forces, according to the report. [...]

Weak land governance systems, powerful elites, corruption, inequality, and power imbalances feed into practices where communities are evicted from land, customary land use rights are ignored, community land is sold, and compensation is inadequate. Poor, marginalized, and vulnerable people and communities often lack the power to advance their interests and have little recourse to grievance mechanisms. Moreover, it is not only large scale land deals that impact on poor people but also smaller scale 'land grabs' that have disregarded smallholders when their land is taken away.

None of this is surprising; to the contrary, it is the natural and expected outcome of the Indonesian government's stated policies.

G. Discrimination

1. Economic Discrimination

269. As noted in the previous section, the indigenous population of West Papua has been systematically excluded from the economic benefits related to natural resource exploitation.⁷¹⁹ While the region is one of the richest in terms of natural resources, West Papuans continue to suffer from poverty and underdevelopment. Spectacular growth in the economy based on the mining, forestry, fishery, and other sectors has not resulted in a corresponding increase in the standard of living of the local population.⁷²⁰ Such exclusion derives from the fact that West Papuans are significantly under-employed in resource exploitation activities, which are dominated by a non-indigenous workforce— one of the intended results of the federal government's transmigration program.⁷²¹

270. As already noted, the transmigration program has resulted in a significant lack of job opportunities for members of indigenous communities in West Papua, where unemployment rates are among the highest in the country: 8.28% in Papua Barat

⁷¹⁹ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷²⁰ *Ibid.*

⁷²¹ *Ibid.*

(compared to a national average of 6.8%).⁷²² An effective framework for positive action to promote employment of indigenous peoples in the formal economy is not part of the government's agenda; there remains a dire lack of education and vocational programs aimed at developing native skills. Naturally, the situation is compounded by the systematic influx of more educated and skilled workers from elsewhere in the country.⁷²³

271. West Papuans are marginalized in other areas of the economy as well. For example, in January 2014, the Papua Indigenous Entrepreneurs Chamber proposed native Papuans as contractors for a road construction project managed by the Papua and West Papua Development Acceleration Unit; however, they were denied involvement in the project, which was assigned to non-native military contractors.⁷²⁴ The military has been closely linked to almost every major construction project in West Papua's history.
272. It is a sad fact that, despite the vast and varied riches of the region, Papua and Papua Barat are the poorest provinces in Indonesia.⁷²⁵ And, more unfortunate still, the indigenous people are the poorest of the poor. No accident of history, this stark reality is the result of discriminatory government policies relentlessly implemented over several decades—and still in place today.

2. Religious Discrimination

273. Indonesia is the world's most populous Muslim-majority nation, with close to 90% of the population nominally adhering to some form of Islam.⁷²⁶ By contrast, the majority of indigenous West Papuans are practicing Christians.⁷²⁷
274. According to the Communion of Churches in Indonesia, there were 430 attacks against churches in the six years prior to 2011.⁷²⁸ And the Setara Institute counted 264 cases of

⁷²² *Ibid.*

⁷²³ *Ibid.*

⁷²⁴ *Ibid.*

⁷²⁵ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷²⁶ See CIA World Factbook, 25 February 2016.

⁷²⁷ ICESCR 2014 Alternative Report Joint Submission.

⁷²⁸ *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

religious intolerance against Christians in 2012.⁷²⁹ Episodes of discrimination and violence against members of religious minorities or their sacred places are recurrent, and Christian minorities in West Papua are particularly at risk. For example, it was reported that leaders of a church congregation in Dondobaga were severely beaten in January 2014.⁷³⁰

275. In Papua, the simple and sad reality is that Muslims have access to better education programs than Christians.⁷³¹ Men and women of Christian faiths face difficulties in registering their marriages, and their children are not provided with birth certificates.⁷³² The government has taken Christian community leaders into custody under the pretext of protection and then charged them with blasphemy.⁷³³ Several cases of Christian Papuan children abducted and sent to Islamic schools have been reported.⁷³⁴ On 4 May 2013, the *Sydney Morning Herald* reported that thousands of Papuan children, mostly Christians, have been tricked into leaving Papua to attend Islamic schools in Java for religious 're-education' over the last decade. The program has resulted in large numbers of Papuan children fleeing the Islamic schools and living on the streets of major cities such as Jakarta.⁷³⁵

276. In 2015, according to Human Rights Watch:

There were 194 incidents of violent attacks on religious minorities in the first 11 months of 2015, according to the Setara Institute, a nongovernmental organization that tracks religious intolerance. That number equals the total for all of 2014, demonstrating that religious violence remains a serious problem.

On July 17, ethnic Papuan Christian militants demanded that a mosque in Tolikara district, Papua, not use a loudspeaker to broadcast its Idul Fitri prayer, burning down the mosque and dozens of nearby food stalls when mosque authorities refused to heed their demand. Security officers fired at the protesters, killing one and wounding 11 others.⁷³⁶

⁷²⁹ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷³⁰ UNPO Alternative Report to CESCR, p 9.

⁷³¹ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁷³² *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

⁷³³ *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

⁷³⁴ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁷³⁵ Michael Bachellard, 'They're Taking Our Children', *Sydney Morning Herald*, 4 May 2013.

⁷³⁶ *Human Rights Watch*, World Report 2016, Indonesia (events of 2015).

According to a recent report by an Australian Catholic group, police routinely break up prayer meetings for no reason,⁷³⁷ with the organization claiming that ‘Indonesians want to replace the Christian religion with Islam’ in Papua.⁷³⁸ The report documents, among other things, ‘Muslim militias that burn down Papuan houses’.⁷³⁹

3. Discrimination Against Women

277. The militarization of West Papua has, among other things, created a situation in which acts of violence against women are not only tolerated but encouraged. One report documented 138 cases of state violence against women, including 58 cases of abuse between 1999 and 2009 carried out by members of Brimob, the Indonesian Police, and the Indonesian Army. These included killings, disappearances, illegal detention, torture, sexual slavery, assault, forced abortion, and displacement.⁷⁴⁰ Indigenous women in Papua experience high levels of domestic violence with little protection from the police. Female subordination finds support within indigenous culture, exacerbated by the marginalization of the Papuans in their own land and the culture of violence that has accompanied militarization and ongoing conflict.⁷⁴¹

4. Discrimination Regarding Health and Healthcare

a. General

278. General life expectancy in Indonesia is 68 years. Rough estimates suggest that that number is ten years lower for the indigenous population of West Papua.⁷⁴² Environmental degradation has led to diseases related to the lack of clean drinking water and the dispersion of noxious substances.⁷⁴³ And 31% of the population in Papua

⁷³⁷ See Andy Walton, ‘The Persecuted Christians You Don’t See on the News’, *Christian Today*, 11 March 2016 (‘A new report by an Australian Catholic organization seeks to throw light on [...] disruption of Christians’ lives and their freedom of worship—such as police dispersing believers at prayer meetings.’)

⁷³⁸ *Ibid.*

⁷³⁹ ‘New Catholic Report Tells Stories of Murder, Kidnapping, and Torture in West Papua’, *Catholic Leader*, 9 March 2016.

⁷⁴⁰ ICESCR 2014 Alternative Report Joint Submission.

⁷⁴¹ *Ibid.*

⁷⁴² *Asian Human Rights Commission*, ‘Human Rights in Papua’, 2010–2011.

⁷⁴³ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

exists under the poverty line, compared to a national average of only 12%.⁷⁴⁴ Malnutrition and elevated child mortality are equally troubling. A 2005 report indicated a 30% prevalence rate of malnutrition in the general population of Jayawijaya.⁷⁴⁵ And the infant mortality rates in both Papua (41/1000) and Papua Barat (36/1000) are higher than the national average (34/1000).⁷⁴⁶

b. Sexually Transmitted Diseases

279. Sexual and reproductive health services indicate serious shortcomings in the Papuan highlands and have only worsened in recent years.⁷⁴⁷ According to the Indonesian National AIDS Commission in 2012, Papua and Papua Barat were subject to a 'generalized HIV epidemic', which affected 2.4% of the local population in comparison with a national average of only 0.3%.⁷⁴⁸ HIV prevalence for non-Papuans in the region is significantly lower (1.5%).⁷⁴⁹ In 2008, a program was initiated by the Ministry of Health, in which health teams were sent to villages in order to provide testing, counseling, and referrals to hospitals for ARV treatment. However, the program was discontinued by the government and has not been evaluated.⁷⁵⁰ Church-based clinics are overrun and the government hospitals require payment for additional medication (other than ARV treatment and hospitalization of HIV patients in severe cases). Trust of migrant staff by indigenous population is low, and uptake of ARV treatment is limited: only 2091 out of 13,726 registered HIV infected patients in Papua are taking the ARV medication.⁷⁵¹

280. Mortality and morbidity rates among West Papuans escalated in the late-1990s as rates of HIV infection rose dramatically. In 2002, 20.4 people per 100,000 were infected by HIV in West Papua, compared to only 0.42 cases per 100,000 in the rest of the

⁷⁴⁴ *Ibid.*

⁷⁴⁵ SKP Jayapura, *Memoria Pasionis*, No 17, November 2008.

⁷⁴⁶ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷⁴⁷ ICESCR 2014 Alternative Report Joint Submission.

⁷⁴⁸ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷⁴⁹ *Asian Human Rights Commission*, 'Human Rights in Papua', 2010–2011.

⁷⁵⁰ ICESCR 2014 Alternative Report Joint Submission.

⁷⁵¹ *Ibid.*

country.⁷⁵² Approximately 40 percent of Indonesia's HIV and AIDS cases were located in Papua, a province that is home to less than one percent of the national population.⁷⁵³ West Papuans also appear to contract HIV at rates significantly higher than those of the Indonesian migrant community residing in Papua.⁷⁵⁴

281. Several recent studies suggest that this stark discrepancy in infection rates is due to government-sponsored AIDS educational interventions that systematically discriminate against ethnic Papuans. AIDS prevention efforts by the Papuan Department of Health, which is staffed almost exclusively by ethnic Indonesians, have targeted the professional brothel and bar worker industries that employ Indonesian migrants. Papuan sex workers, who generally work for low pay in unregulated and high-risk environments outside of formal brothels and bars, are rarely provided with any information about HIV/AIDS prevention or condom use.⁷⁵⁵ General AIDS awareness and safe-sex campaigns in Papua are sporadic and have focused on urban areas, where they do not reach the majority of Papuans, who live in rural and semi-urban regions.⁷⁵⁶ Indonesian officials often point to Papuan culture and sexually deviant behavior as reasons for the spread of HIV and other STDs, a view that has exacerbated inequalities in AIDS prevention and education programs in the region.⁷⁵⁷

c. Family Planning

282. The Papuan provincial health profile indicates that the uptake of active family planning (49%) and skilled birth attendance (53%) falls far behind the rest of the country. And percentage of contraception use dropped from 38.3 in 2007 to 21.8 in 2012.⁷⁵⁸ Local health care systems are inadequate and frequently discriminate against Papuans. For example, in the Baliem Valley, administrators at family planning and maternal and child health clinics hold separate sessions for Papuan members of the Dani tribe and

⁷⁵² Leslie Butt et al, *The Smokescreen of Culture: AIDS and the Indigenous in Papua, Indonesia*, in PACIFIC HEALTH DIALOG (September 2002), p 1.

⁷⁵³ *Ibid.*

⁷⁵⁴ *Ibid.*

⁷⁵⁵ Butt et al, *Smokescreen of Culture*, pp 5–6; Leslie Butt et al, *Preventing AIDS in Papua: Revised Research Report* (December 2002), pp 35–45.

⁷⁵⁶ Butt et al, *Smokescreen of Culture*, p 7. In a survey of 196 Papuans, only 29 percent of respondents were able to recognize a condom when shown one and asked to identify it. Butt et al, *Preventing AIDS in Papua*, p 47.

⁷⁵⁷ Butt et al, *Smokescreen of Culture*, p 2.

⁷⁵⁸ ICESCR 2014 Alternative Report Joint Submission.

Indonesian migrants because 'the Dani are dirty and women won't want to use the same examining table as a Dani'.⁷⁵⁹ The same clinics have refused to provide oral contraceptives to Dani women, on the grounds that they will misuse them or feed the pills to their pigs.⁷⁶⁰

d. Maternal Health

283. The Indonesian demographic health survey of 2012 indicates that for the two Papuan provinces maternal mortality is three times higher (112 v 43/100000 births) than in the rest of the country, while skilled attendance during pregnancy and birth is about 30% lower than in the rest of the country. In Papua, 40% of babies were delivered by a skilled provider; in Jakarta the rate was 99%. In Papua, 27% of babies were delivered in a health facility; in Jakarta the rate was 96%.⁷⁶¹ The national maternal mortality rate is 240 deaths per 100000 live births, while in Papua the provincial health authority has indicated the maternal mortality to be 362/100000.⁷⁶²

e. Decentralization

284. In the wake of Otsus, many new districts have been created, especially in the Papuan highlands, in furtherance of the government's policy of decentralization. This has been destructive to health services in remote areas, as new health authorities need to be created and existing staff realigned.⁷⁶³ In January 2014, the government launched the Social Security Organizing Body, which is meant to provide universal access to healthcare. But external observers estimated that the USD 1.7 million allocated for the plan will not even cover half of the costs necessary to provide adequate health to all Indonesians.

⁷⁵⁹ Leslie Butt, *KB Kills: Political Violence, Birth Control, and the Baliem Valley Dani*, 2 ASIA PACIFIC JOURNAL OF ANTHROPOLOGY 63, 70 (2001). The clinics turn away Dani women who come to the clinic on the wrong day. *Ibid.*

⁷⁶⁰ Butt, *KB Kills*, pp 70–71. Dani women are instead given a choice between Norplant implantations or injections of Depo-Provera (which causes temporary sterilization), which are presented to the women without full disclosure of their risks and side effects. *Ibid.*

⁷⁶¹ ICESCR 2014 Alternative Report Joint Submission.

⁷⁶² Asian Human Rights Commission, 'Human Rights in Papua', 2010–2011.

⁷⁶³ ICESCR 2014 Alternative Report Joint Submission.

285. The indigenous population has little trust in migrant health workers because it associates them with Jakarta's general policy of domination in the region. Adding to the problem is the fact that all formal health policies and consultations are stated and conducted in the Indonesian language, a language that many West Papuan highlanders cannot understand at all.⁷⁶⁴ Such systemic discrimination is masked by official government health statistics—in particular, by failing to disaggregate data according to ethnicity.⁷⁶⁵
286. In the interior, where schools are non-existent or the teachers absent and health clinics are out of stock of life-saving medicines, alienation from the state is deeply felt. Researchers working with the United States Agency for International Development observed while undertaking fieldwork in the highlands of West Papua that in the remote villages the only interaction Papuans have with the Indonesian state 'comes in the form of men wearing camouflage'.⁷⁶⁶

5. *Standard of Living*

287. Many indigenous people in Papua and Papua Barat provinces live in undignified conditions. Papua province has the lowest rate of access to sanitation in the nation. Less than 15% of the rural population has access to decent sanitation and only 45% in West Papua as a whole.⁷⁶⁷ Nearly 80% of indigenous people now live in poverty without access to medical care, safe drinking water, or education.⁷⁶⁸
288. Additionally, many native Papuans have been (and continue to be) forced to relocate because of land-grabbing, a situation only worsened by the transmigration program. The UN Special Rapporteur on Adequate Housing has pointed out that 'in some cases, development is having a retrogressive impact on the right to adequate housing'.⁷⁶⁹ Existing facilities often lack electricity, clean drinking water, and/or access to transportation networks. The percentage of households with access to clean drinking

⁷⁶⁴ ICESCR 2014 Alternative Report Joint Submission.

⁷⁶⁵ *Ibid.*

⁷⁶⁶ MacLeod, MERDEKA AND THE MORNING STAR, pp 134–135.

⁷⁶⁷ *Ibid.*

⁷⁶⁸ VIVAT International & Franciscans International, Press Release: 'Human Rights Abuses in Papua and West Papua'.

⁷⁶⁹ 'Development in Indonesia Must Not Threaten Adequate Housing for the Poor – UN Expert', *UN News Centre*, 11 June 2003.

water in Papua, 26%, is significantly inferior to the national average of 43% and appears to have deteriorated since 2009.⁷⁷⁰

289. In Merauke, many indigenous communities have lost access to hunting grounds and others are affected by the rapid decrease of local animal populations, all caused by the implementation of MIFEE. While the project was launched to maintain national food security, it perversely has had the opposite effect—violating Papuans’ rights to food and full enjoyment and utilization of their natural resources.
290. Industrial-scale palm oil companies have cleared much primary rain forest, including local sago stocks, which are the main food source of indigenous Papuans. Furthermore, it is common practice that companies hire military and police personnel to prevent local indigenous population from entering plantations for the purpose of hunting or collecting food. Apart from such loss of access to traditionally-utilized land, constantly rising food prices is of serious concern: in parts of the interior, prices for such staples as rice and cooking oil can be ten times higher than in urban areas.

6. Education

291. The school participation rate, literacy, and enrolment ratio in Papua remain well below the Indonesian national standard, despite the allocation of funds for education under Special Autonomy.⁷⁷¹ Papua Province is the worst off with regard to literacy and education, with 36% illiteracy and only 68% school participation for children between 13 and 15 years of age; the national average is 89%.⁷⁷² A third of teachers are absent when they should be teaching due to lack of infrastructure, and regional school grants do not take into consideration differences in operating costs.⁷⁷³
292. For example, in Koromboi Village, Rainbawi District, Yapen Islands Regency, facilities for both students and teachers are not comparable with more advanced schools in the district or provincial capital cities. Supplies such as notebooks, uniforms, and even

⁷⁷⁰ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷⁷¹ ICESCR 2014 Alternative Report Joint Submission.

⁷⁷² Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷⁷³ ICESCR 2014 Alternative Report Joint Submission.

shoes are not available due to lack of funds. Most of the teachers live six hours away by ferry, and there is no supervision of teacher attendance by the District Education Office. Most of the time, classes are not running.⁷⁷⁴

293. The development of local curricula—which could present subjects adjusted to indigenous culture—is not considered an acceptable teaching style. Article 33 of the Education System Law stipulates that *Bahasa Indonesia* is the official language of education, and local languages can only be used in the early stages of education if necessary for communication.⁷⁷⁵ The national government imposes its language and culture on everyone, and schools do not teach an accurate history of West Papua and its peoples.⁷⁷⁶

H. Cultural Rights

294. As all of the foregoing paragraphs demonstrate, the history of West Papua has been one long march towards the eradication—both deliberate and contingent—of indigenous cultural rights. As early as 1930, then Governor-General of the territory of Papua, Sir Murray Hubbert, warned of impending destruction of traditional ways of life due to the arrival of foreign culture and industry in the Marind-anim area; he even feared their extinction.⁷⁷⁷ Sadly, that warning was prophetic.
295. The loss of access to customary lands—in the form of ejection or outright destruction—threatens cultural survival, as many social practices are intimately linked to life in the forest, not least its flora and fauna.⁷⁷⁸ Other aspects of indigenous culture are limited by national regulations rooted in the Muslim majority's cultural and societal norms.⁷⁷⁹ Linguistic heritage is also at risk: under the current language policy, which dates back to 1986, terminology from local languages is to be used to translate foreign languages only when no Bahasa Indonesia equivalent exists. Indonesia lacks a clear policy

⁷⁷⁴ ICESCR 2014 Alternative Report Joint Submission.

⁷⁷⁵ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

⁷⁷⁶ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

⁷⁷⁷ ICESCR 2014 Alternative Report Joint Submission.

⁷⁷⁸ *Ibid.*

⁷⁷⁹ ICESCR 2014 Alternative Report Joint Submission.

framework for the protection of local languages. In the last few years, several minority languages have become extinct, and more face disappearance in the near future.⁷⁸⁰

296. As noted in a previous section, the threat to West Papua's traditional ways of life are inextricably linked to the manner in which national 'development' policies impact the land:

At the heart of cultural and environmental degradation has been the denial of the Papuan people's spiritual, economic, cultural, and material attachment to land. Military-backed land and resource theft in West Papua is facilitated by Article 33 of the Indonesian constitution, which does not recognize the existence of indigenous people, let alone indigenous land rights. In theory, indigenous landowners have the right to legal recourse through the Basic Agrarian Law 1960 but can only attempt to claim land when the court deems such a claim would not impede national interest. The result is little to no legal protection for indigenous communities. [...] [page break] [...] So, in practice, Papuan communities are either forced to accept exploitative arrangements with resource-extractive companies or resist. If they resist—either through violent or nonviolent action—opposition is routinely framed by the Indonesian state as an act of subversion, justifying repressive military and police action.⁷⁸¹

To be presented with such a false choice deepens feelings of exclusion.

297. In Jakarta's 'development' narrative, West Papuans are persistently characterized as backward and unsophisticated people resistant to change and the modern world. This is not the case:

Papuan opposition to resource extraction is not a widespread rejection of development. In many cases Papuans argue for respect to their right to development. What they ask is what kind of development, for whom, and on whose terms? Papuans' experience of modernity has left them estranged. It has eroded traditional institutions and values. Papuans have repeatedly said that they want to be able to participate in the design and implementation of development policies in ways that result in tangible improvements in their daily lives. They have also said they want to be supported to re-empower local communities to manage their lives according to their own traditions and 'life projects' in contrast to 'development projects' that are perceived to be solely in the interests of capital. Indigenous-led, culturally and ecologically sustainable development also includes the rights of local communities to say no to projects proposed by governments and corporations.⁷⁸²

Having lived with cruel realities for generations, Papuans are not naïve. They simply want a share of the very large pie on which the government and its business partners have been feasting for decades.

⁷⁸⁰ *Ibid.*

⁷⁸¹ MacLeod, MERDEKA AND THE MORNING STAR, pp 131–132.

⁷⁸² MacLeod, MERDEKA AND THE MORNING STAR, p 133.

298. Despite Jakarta's assiduous attempts to keep a lid on the situation in West Papua, the occasional outsider manages to breach the security wall. According to a rare foreign visitor, who described the situation in late-2015:

As we entered Jayapura, the capital of Papua province, Indonesian cultural and religious influence was everywhere. Melanesian culture on the other hand was barely visible. Like the West Papuans, it simply seemed overpowered, outnumbered. A main reason: the Indonesian state program called transmigration, whereby people from over-populated parts of the republic are resettled in less crowded regions like West Papua. Transmigration has been changing the face of West Papuan society over the last two decades.

One evening in a house in suburban Kota Raja, the secretary general of the Papua Customary Council, Leo Imbiri, told us that every week up to four ships arrived in Papua with migrants. 'One big ship can bring about one to three thousand people. So if one week, there are four big ships coming to Papua, it means in one week we have up to twelve thousand people come to Papua', he said. Mr Imbiri paused, and the sound of the call to prayer at a nearby mosque filled the silence. 'It is alarming for us', he went on, 'not only for the culture, but for the future life of the Papuan people, because if there is demographic change in Papua, you will (have) loss in political control, economic, social, everything you will lose'. The Melanesian lifestyle and customs are struggling to adapt to a teeming Asian society with an expansive economy. Papua's Governor Lukas Enembe warned that West Papuans may vanish as a people within twenty years if transmigration and other forms of marginalization continued at their current pace.⁷⁸³

The reality on the ground is that 'West Papuans are now a minority in their homeland'.⁷⁸⁴

299. As a result of the constant influx of migrants, West Papuans are threatened to be outnumbered by the Indonesian population and to lose their economic and social sectors, as well as their culture life. At least half of West Papua's population is already from elsewhere in Indonesia, making it harder for indigenous people to keep their customs and identity, including their faith.⁷⁸⁵ And such forcible demographic transformations have left West Papuans with little means of subsistence, and they have been consistently denied employment opportunities and exposed to diseases for which they have no immunity.

300. According to Jim Elmslie, co-founder of the West Papua Project at the Center for Peace and Conflict Studies at the University of Sydney:

the Papuan population (for both Papua and Papua Barat provinces) is 1,760,557 (48.73 per cent) out of a total population of 3,612,854. The indigenous population consists of some

⁷⁸³ Johnny Blades, 'Jakarta Cautiously Lifts the Veil in West Papua', *Radio New Zealand*, 25 November 2015.

⁷⁸⁴ 'West Papuans fear for survival as a people', *Radio New Zealand*, 6 November 2015.

⁷⁸⁵ UNPO, 'The Human Rights Situation in West Papua' (UNPO submission to the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples).

312 distinct groups, with the seven largest groups making up 80 per cent of the Papuan population. The migrant population is 1,852,297 (51.27 per cent). In the urban areas, particularly the oil, gas, mining and timber town of Sorong, where migrants are drawn to increased employment opportunities, anecdotal observations suggest that the migrant population could be as high as 70 per cent. These figures are reversed in rural villages.⁷⁸⁶

These changing demographics, from Papuans comprising 96.09 per cent of the population of West Papua in 1971 to 48.73 per cent of the population in 2010 and predicted to make up just 29 per cent of the population by 2020, have coalesced in the popularization of a powerful master frame: a 'slow-motion genocide' has taken hold.⁷⁸⁷

While it is far beyond the scope of this communication to address the commission of any international crimes, it is not unsurprising that the term 'genocide'—in its colloquial (that is to say, non-legal) sense—would be used to describe what has taken place in West Papua over the course of nearly half a century. It is, after all, difficult to argue with certain facts.

I. Special Autonomy: In Theory and Practice

1. Introduction

301. As noted above, *Otsus* was passed in late-2001 under the newly installed Sukarnoputri administration 'as part of a plan to transfer political, economic, and cultural authority to the Papuan people'.⁷⁸⁸ Ostensibly, 'a far-reaching proposal that sincerely attempted to address core West Papuan grievances within the framework of a united Indonesian state', Special Autonomy's 'promise has not been realized'.⁷⁸⁹ Despite many cosmetic reforms, the majority of West Papuans and objective observers 'regard Otsus as a way of pouring an abundance of cash into the province that that will end up in the hands of corrupt local politicians, and as a mechanism to silence calls for independence.'⁷⁹⁰

⁷⁸⁶ MacLeod, MERDEKA AND THE MORNING STAR, pp 134–135.

⁷⁸⁷ *Ibid.*, pp 135–136; *see also* 'West Papuans fear for survival as a people', *Radio New Zealand*, 6 November 2015 ('A University of Sydney study predicts they will make up less than 30 percent of the population within five years.');

United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 12th Session, 20-31 May 2012, Study on decolonization of the Pacific region, referencing Marni Cordell, "Does West Papua have a publicity problem?" 3 March 2011. *N.b.* According to Akihisa Matsuno, a professor at the Osaka School of International Public Policy who specializes in Indonesia, what is happening in West Papua amounts to genocide, both physical and cultural. At the very least, it amounts to a crime against humanity in terms of a systematic annihilation of the civilian population that is intentional, widespread, and ongoing. *Ibid.*

⁷⁸⁸ Rochelle Jones, 'West Papuan Women Left Isolated and Beset by Violence Under Indonesian Rule', *The Guardian*, 22 October 2015.

⁷⁸⁹ MacLeod, MERDEKA AND THE MORNING STAR, p 244.

⁷⁹⁰ Rochelle Jones, 'West Papuan Women Left Isolated and Beset by Violence Under Indonesian Rule', *The Guardian*, 22 October 2015.

2. *The Drafting Process*

302. The drafting process began in November 2000, when Jaap Salossa became governor of West Papua and convinced the People's Consultative Assembly (the 'MPR') that West Papua, like Aceh, needed an official policy to deal with demands for, at the very least, a degree of autonomy.⁷⁹¹ Negotiations were heavily influenced by events in Aceh and East Timor, and took place amid suspicions regarding the central government's true intentions.⁷⁹² An already fraught situation had been significantly exacerbated in 1999, at the end of the Habibie administration, by the enactment of Law No 45, which mandated the division of West Papua into three separate provinces (Irian Jaya, Central Irian Jaya, and West Irian Jaya)—something the West Papuans rightly perceived as an attempt to divide-and-rule the region.⁷⁹³ Facing much protest, Gus Dur's new administration halted the implementation of the partition.⁷⁹⁴ In limbo for the time being, the issue would be revisited to much controversy.

303. In pushing for the proposed law in early-2001, the separatist movement attempted to take advantage of what appeared to be 'a political opportunity afforded by the reformist presidency of Abdurrahman Wahid, a man who was more sensitive to Papuan concerns than his predecessors'.⁷⁹⁵ Early in the process, there was strong debate among the participants whether the word 'independence' should appear in the draft.⁷⁹⁶ The initial bill:

was drafted by a team of Papuans comprising the Papuan [page break] governor at the time, Jaap Salosa; Agus Sumule, an Indonesian migrant from Sulawesi and lecturer at the State University of Papua (UNIPA) in Manokwari; Frans Wosparik, the rector of the University of Cendrawasih in Jayapura; and staff from local development and human rights NGOs. The team began an extensive consultation process. Their purpose was to break the deadlock that had emerged after the Team 100 visit to President Habibie in Jakarta. This was an either/or choice between two mutually exclusive positions: 'M' for *merdeka*, conceived narrowly as 'independence' in this instance, and 'O' for *otonomi* (autonomy), which for many Papuans was simply code for the 'repressive status quo'. For Sumule, who coordinated the Special Autonomy (Otsus) drafting team, a man who had lived most of his

⁷⁹¹ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 34.

⁷⁹² *Ibid.*

⁷⁹³ *Ibid.*

⁷⁹⁴ See Petra Stockmann, 'Constitutional Court's Ruling on the Partition of Papua', *Watch Indonesia*, 24 November 2004 (As the International Crisis Group put it, 'by mid-2000, Law 45 was in legal limbo, rejected but not repealed, with the creation of new provinces on hold, but the creation of the four new districts well on their way to implementation'.) The partition was later annulled, to a certain extent, by the Constitutional Court. *Ibid.*

⁷⁹⁵ MacLeod, MERDEKA AND THE MORNING STAR, p 244.

⁷⁹⁶ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 34.

life in Papua and was well regarded by many Papuans, Otsus was a win-win situation containing the aspirations of 'M' and 'O', which in Sumule's words were 'both the rights of the people'. However, this point was hard to sell. Under time pressure, more work went into lobbying Jakarta and Papuan elites than negotiating with activists and the PDP.⁷⁹⁷

For its part, 'Jakarta was never in favor of the Papuan Bill and only accepted it in order to placate growing political mobilization led by the PDP'.⁷⁹⁸

304. The final version to come out of Jayapura 'was a far-reaching proposal giving Papuans control over virtually all matters of self-government with the exception of external defense'—effectively 'independence in all but name only'.⁷⁹⁹ However, 'as the bill passed from the periphery (Jayapura) to the center (Jakarta), it underwent significant changes'.⁸⁰⁰

Members of the TNI, who in 2001 were still guaranteed non-elected seats in the national parliament, and a group of Indonesian nationalists led by Megawati Sukarnoputri's [party] [...] opposed key sections of the bill. The military and civilian nationalists argued that Special Autonomy would concede too much to the Papuans, further encouraging separatism. Nonetheless, the bill was eventually passed by parliament but with substantial amendments. Gone was the provision to control migration. So too was the referendum on independence to be held after five years. The proposed Majelis Rakyat Papua (Papuan People's Assembly) was stripped of its veto powers. The TNI's combat troops would remain. The legislation did allow Papuans to display the Morning Star flag and sing the anthem 'Hai Tanahku Papua', but they were permitted to do so only as cultural expressions. What this meant, however, was not clearly defined. This would later have disastrous consequences when the military and police sought to prevent flag raisings.⁸⁰¹

Nevertheless:

The 'Red and White' version of Otsus (named after the colors of the Indonesian flag), as opposed to the Papuan version, still secured a number of Papuan demands. The [page break] centerpiece was the provision for a kind of Papuan senate, the Majelis Rakyat Papua (Papuan People's Assembly or MRP), and an increased return in revenue raised from mining (80 per cent return of revenue) and oil and gas projects (70 per cent return of revenue) back to the territory to help fund the necessary changes in governance and to provide a much-needed boost to development. The MRP was to be made up of 36 Papuans elected for terms of five years, comprising twelve equal members drawn from three major consistencies: religious communities, women, and customary leaders, three of the most embattled groups in Papuan society. The purpose of the MRP was to help safeguard Papuan traditional and religious values and advise the provincial parliament.⁸⁰²

⁷⁹⁷ MacLeod, MERDEKA AND THE MORNING STAR, pp 244–245. *N.b.* 'The division in society was along distinct class lines: pragmatic and often cautious support from a narrow band of the Papuan elite and urban intellectuals, and vehement opposition from farmers, students, people in the villages and all independence groups.' *Ibid.*, p 246.

⁷⁹⁸ MacLeod, MERDEKA AND THE MORNING STAR, p 244.

⁷⁹⁹ *Ibid.*, p 246.

⁸⁰⁰ *Ibid.*

⁸⁰¹ MacLeod, MERDEKA AND THE MORNING STAR, p 247.

⁸⁰² *Ibid.*, pp 247–248.

For better or for worse—the latter, in the event—Law No 21/2001 was passed by the DPR in November 2001 and went into effect in January 2002.⁸⁰³

305. Otsus, as passed, dealt with a variety of issues. Politically, it created the MRP.⁸⁰⁴ Economically, it called for significant revenue sharing with respect to the province's valuable natural resources⁸⁰⁵ and imposed strict rules on the allocation of tax revenue.⁸⁰⁶ A number of justice issues were addressed, including the creation of a special human-rights court.⁸⁰⁷ Moreover, the law touched upon customary rights, freedom of religion, education, and culture as well as social matters.⁸⁰⁸ The law was equally notable for the issues it did not address; the following major areas were left squarely under the control of the central government in Jakarta: national defense; the banking and financial sectors (including the currency); the national police; and foreign policy.

306. Naturally, the international community (read: foreign capital) was pleased:

The passing of the legislation by the national parliament in Jakarta allowed Western governments like the United States, the Netherlands and Australia to sidestep the vexed question of West Papua's political status and their own complicity in obstructing genuine self-determination in the 1960s. With Special Autonomy passed and the illusion of a deflated freedom movement, business could continue as usual. Western powers kept

⁸⁰³ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 35.

⁸⁰⁴ See *ibid*, p 36 (The law includes specific provisions governing the executive, the legislature, political parties, and the overall identity of the region. Significantly, Article 19 governs the existence of the West Papuan People's Assembly (the 'MRP') which consists of elected native West Papuan customary and religious representatives who serve for five years. The MRP is authorized to consider and approve candidates for governor, candidates for the national People's Consultative Assembly, and any additions or changes to the Bill of Regional Laws.)

⁸⁰⁵ See *ibid*, pp 36–37 (Ten articles govern financial matters such as taxes, revenue, trade, and industry. Of these, the most important and the one most often debated deals with the division of revenue from the region's natural resources. The law stipulates that one third of such revenue should be given to the region. More specifically, it requires that eighty percent of the forestry, fishery, and general mining revenue be so allocated and that seventy percent of oil and natural gas revenues should be given to the region.)

⁸⁰⁶ See *ibid* (Equally important is the law's specifications about the sharing of taxes with the West Papuan authorities: ninety percent of the land and building taxes, twenty percent of the individual income taxes, and eighty percent of the taxes from the exercise of land- and building-acquisition are to be allocated to the region.)

⁸⁰⁷ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 37 (The law provides for a regional police force and the existence of a customary legal system. Article 51 addresses the conduct of the customary court, which dominates the life of West Papuans, especially in customary and religious matters. Human rights are covered by Articles 45–47, each of which specify the government's obligation to protect, respect, improve, and enforce human rights in the entire region and for the benefit of the entire population. Article 45 also notes the need to establish a representative for a Commission on Human Rights, a Human Rights Court, and a Commission on Righteousness and Reconciliation.)

⁸⁰⁸ See *ibid* (The protection of customary rights is addressed in Articles 43 and 44; freedom of religion is acknowledged in Articles 53–55; education and culture in Articles 56–58; and social matters in Articles 65 and 66.)

training and arming the Indonesian military and transnational corporations continued their economic exploitation of workers.⁸⁰⁹

However, the reception within West Papua was far from rosy. Rather than ‘build a new political consensus between Jakarta and Jayapura’, Otsus ultimately ‘reinforced the sense that Jakarta was unable or unwilling to listen to and understand core Papuan grievances’.⁸¹⁰

307. In the end, ironically (or inevitably perhaps), both the PDP and Jakarta rejected Special Autonomy, with the former declaring that it ‘had no mandate to [accept] anything less than independence’⁸¹¹ and the latter seeing it as giving ‘too much leverage to independence activists’.⁸¹² As McGibbons concluded: ‘While the laws appeared to offer a breakthrough in recasting center/periphery relations, this advance ultimately turned out to be illusory.’⁸¹³ A number of problems arose with respect to implementation. Notably, the allocation of revenue as stated in the law did not come to pass, and the central government did not abandon its security approach.⁸¹⁴ Essentially, ‘implementation’ amounted to a continuation of the status quo—without even the briefest of honeymoons.

3. The Problems of Implementation

a. The Division of West Papua

308. As noted above, this controversy began well before Otsus was passed. On 16 September 1999, the Indonesian parliament passed Law No 45 mandating the division of Irian Jaya into three provinces: West Irian Jaya, Central Irian Jaya, and Irian Jaya (the remainder). It also required the creation of four new districts: Paniai, Puncak Jaya, Mimika, and the city of Sorong.⁸¹⁵ While such divisions had been put on hold by Wahid:

⁸⁰⁹ MacLeod, *MERDEKA AND THE MORNING STAR*, pp 248–249.

⁸¹⁰ *Ibid.*

⁸¹¹ *Ibid.*, p 245; *see also ibid.*, p 283.

⁸¹² *Ibid.*, p 283.

⁸¹³ Rodd McGibbons, *Secessionist Challenges in Aceh and Papua: Is Special Autonomy the Solution?*, East-West Center Policy Studies (Washington 2004); International Coalition for Papua (ICP) et al, ‘Human Rights in West Papua 2013’ (2013), pp 81–83.

⁸¹⁴ *See, e.g.*, Halmin, *The Implementation of Special Autonomy in West Papua*, p 7.

⁸¹⁵ *See ibid.*, p 40.

In January 2003, President Megawati gave developments a new twist when she issued a Presidential Instruction on the Acceleration of the Implementation of Law No 45/1999. With this Instruction, implementing the division of Papua was back on the agenda. Protest against the move was voiced from different sides, with also prominent legal experts underlining that the Presidential Instruction was against the Special Autonomy Law.

The Central Government pressed ahead with the establishment of the two new provinces nevertheless. The Province of West Irian Jaya was officially established in February 2003 [...]. As concerns the Province of Central Irian Jaya, after violent clashes which left several people dead, the Central Government announced in August 2003, that it put on hold plans to go ahead with the establishment.⁸¹⁶

Most controversially, the division occurred without the approval of the MRP or the DPRD—a clear violation of Article 76 of Otsus.⁸¹⁷ According to the International Crisis Group, these contradictory laws ‘infuriated many [West] Papuans, pro-independence and pro-autonomy alike, who have deep attachment to [West] Papua as a single political unit with a distinct history and who see the decree as a divide-and-rule tactic by the [central government]’.⁸¹⁸ Meanwhile, proponents of division pleaded administrative efficiency, which takes into consideration the fact that West Papua is three and a half times the size of Java, which consists of six provinces.⁸¹⁹

b. The Emasculation of the West Papuan People’s Assembly

309. Because the MRP was seen by certain ultra-nationalist elements in Jakarta as an entry point for West Papuan independence,⁸²⁰ the Indonesian government assigned the Ministry of Internal Affairs to oversee its formation, which took more than four years.⁸²¹ Moreover, the central government’s involvement in the process of the MRP’s membership formulation (mean to reflect the various elements of indigenous, nonpartisan West Papuan society) created considerable skepticism among the West Papuans, who eventually perceived the MRP—which was abruptly formed following the governor’s election in 2005—as nothing more than window dressing from the central government in order to ease demands for independence.⁸²² While Otsus clearly

⁸¹⁶ Petra Stockmann, ‘Constitutional Court’s ruling on the partition of Papua’, *Watch Indonesia*, 24 November 2004.

⁸¹⁷ See, e.g., Halmin, *The Implementation of Special Autonomy in West Papua*, p 41.

⁸¹⁸ Halmin, *The Implementation of Special Autonomy in West Papua*, p 40 (citing International Crisis Group, ‘Dividing Papua: How Not To Do It’, Indonesia Briefing, 9 April 2003, p 1).

⁸¹⁹ See *ibid.*, pp 40–41.

⁸²⁰ *Ibid.*, p 42 (Hari Sabarno, the minister of internal affairs in President Megawati’s government argued, for example, that the MRP had such extensive powers that it could be a danger for the administration and stabilization of West Papua.)

⁸²¹ See *ibid.*, p 42.

⁸²² *Ibid.*

gave the MPR the power to review and veto candidates for governor, create a truth and reconciliation commission, and veto legislation that affected indigenous Papuan rights,⁸²³ the Indonesian government claimed that the MPR was only a ‘cultural representation’ and not an actual political body, with its decisions amounting only to recommendations and not in any way binding upon the central government.⁸²⁴ The process in which members of the MPR were elected was changed from the use of ‘democratic means’ to the use of ‘community consultation’ (musyawarah), which is the process often used by Indonesia in order to exercise strict political control.⁸²⁵ And pro-independence candidates were effectively barred from obtaining MPR positions, as those charged with subversion were prohibited by law from becoming candidates.⁸²⁶ These changes ‘not only undermined the fundamental precept of special autonomy, based on recognizing cultural and ethnic rights at the provincial level, but weakened the centerpiece of special autonomy: the establishment of an indigenous assembly that had both popular legitimacy and defined powers to guarantee the rights of Papuans.’⁸²⁷ The establishment of local political parties was prevented by a mandatory rule that required parties to have a national base in order to compete in elections.⁸²⁸

c. The Controversy Over the Symbols of West Papua

310. Despite Otsus’s endorsement of the legality of West Papuan symbols, including the Morning Star flag, in practice, the national government, police, and military associate all activity involving those who brandish these symbols—most notably the flag—with the independence movement and therefore attempt to ban them. Indonesian authorities deal harshly with events where the West Papuan flag is raised. And the allegation of treason may then be made against persons involved in such events, with the attendant risk of spending years in prison.⁸²⁹

d. Economic Issues

⁸²³ See McGibbons, *Secessionist Challenges in Aceh and Papua*, pp 21, 55, 62.

⁸²⁴ *Ibid.*

⁸²⁵ *Ibid.*, p 64.

⁸²⁶ McGibbons, *Secessionist Challenges in Aceh and Papua*, p 65; ICP, ‘Human Rights in West Papua 2013’, pp 81–83.

⁸²⁷ *Ibid.*

⁸²⁸ McGibbons, *Secessionist Challenges in Aceh and Papua*, p 26.

⁸²⁹ See Halmin, *The Implementation of Special Autonomy in West Papua*, p 43.

311. As noted elsewhere in this communication, the lack of economic development is one of the most significant factors triggering West Papuans' grievances, especially considering that a number of multinational companies with assets worth billions of dollars are operating with impunity and tremendous profitability. Despite four decades of integration, the economy of West Papua is still overwhelmingly backward and far behind Indonesia's other provinces. According to Elmslie: 'The Papuan population has gained little economically from [Indonesia's] rapid economic growth [...]. The main beneficiary from the harvesting of Irian Jaya's resources was the rest of Indonesian and especially Jakarta.'⁸³⁰ The specific provisions of Otsus meant to address these concerns—namely those dealing with revenue sharing—have either not been effectively implemented or manipulated to the advantage of local elites.⁸³¹

e. Socio-Cultural Issues

312. Implementation of the provisions related to such issues, as with political and economic issues, is far from what was expected. Problems exist in every sector and at every level of West Papuan society. Indicators—such as the level of education, poverty, and so forth—demonstrate just how far the implementation of Otsus has failed to achieve its goals.

f. Human-Rights and Justice Issues

313. This is the area in which Otsus' failure to improve conditions for indigenous West Papuans has been most apparent. Since the law was passed, the region has continued to be devastated by cases of human rights violations and abuses. As described in detail above, these were committed mostly by the Indonesian military, especially during the New Order era. Many scholars argue that the continuation of a security approach by the Indonesian government is the main cause of these violations. Therefore, even though Otsus respects human rights, in practice, human rights are put aside in the name of

⁸³⁰ Halmin, *The Implementation of Special Autonomy in West Papua*, p 44 (citing Elmslie, *IRIAN JAYA UNDER THE GUN*, p 113).

⁸³¹ *Ibid.*

security and stability. Moreover, contrary to its stated requirements and years after its promulgation, not a single human rights court has been established in West Papua.⁸³²

4. Special Autonomy Plus

314. In an effort to enhance the existing law, a proposal known as Otsus Plus was introduced in 2014. The draft law, written by advisers to the two provincial governors, focused on increases in the value of central government transfers to Papua and also included provisions on affirmative action and protection for customary land and natural resource rights. Proposals such as reserving smallholder plots in plantations, requiring resource investors to obtain the consent of indigenous communities and provide shares in compensation, and allowing communities to limit the in-migration of outsiders might all have restored a sense of meaningful local political autonomy absent from the 2001 law. But in the end, Otsus Plus also failed through a combination of disputes, delays and public anger over the lack of any consultation with civil society.⁸³³

J. The Melanesian Spearhead Group

315. The Melanesian Spearhead Group (the 'MSG') is a sub-regional grouping of Pacific island nations whose aims include the peaceful resolution of the situation in West Papua. Its full members are PNG, the Solomon Islands, Vanuatu, Fiji, and New Caledonia, with the Solomon Islands currently holding the chair.

316. In February 2015, the ULMWP—formed in December 2014 in order to coordinate various OPM activities and represent the resistance movement in collaboration with external parties—officially joined the MSG.⁸³⁴ On 26 June 2015, 'the MSG heads of state announced that they had accepted Indonesia as an associate member "representing the five Melanesian provinces in Indonesia" and the ULMWP as an observer, "representing Melanesians living abroad".'⁸³⁵ This decision was seen at the time as 'a

⁸³² *Ibid*, pp 54–55.

⁸³³ Cillian Nolan & Sidney Jones, 'Jokowi's Turn to Solve the Papua Question', *East Asia Forum*, 19 May 2015.

⁸³⁴ See 'Coordination, Dialogue Needed in Papua, Says LIPI', *Jakarta Post*, 31 October 2015.

⁸³⁵ 'The Current Status of the Papuan Pro-Independence Movement', *Institute for Policy Analysis of Conflict*, Report No 21, 24 August 2015, p 18.

diplomatic victory for Indonesia' because it 'prevented recognition of the ULMWP as a representative of Papuans living in Indonesia'.⁸³⁶

317. President Widodo has recently rebuffed attempts by the MSG to broker talks between Jakarta and the ULMWP. The MSG's current chairperson—Manasseh Sogavare, prime minister of the Solomon Islands—'indicated [that Widodo] is not interested in discussing West Papua'.⁸³⁷ This is despite the fact that in January 2016, the president 'instructed his cabinet to prioritize a soft approach in handling separatism, over the hard approach that involves force and firearms'.⁸³⁸
318. In March of this year, the Solomon Islands 'raised concern about human rights violations in [...] West Papua at the United Nations Human Rights Council in Geneva'.⁸³⁹ The country's diplomatic representative in Geneva 'told the Council that human rights violations need urgent attention by the world community':⁸⁴⁰

[Barrett] Salato said Solomon Islands remains concerned by arbitrary arrests, summary executions, tortures, ill treatment, and limitations of freedom of expression committed by Indonesian security forces. He encouraged Indonesia to establish a dialogue with West Papuan representatives and to cooperate with the Council by allowing UN special procedures planning to visit Indonesia. Mr Salato highlighted the request made by the Pacific Island Forum to allow for a human rights fact-finding mission to be sent to West Papua.⁸⁴¹

He also noted that 'access to education and health services for the Papuans has deteriorated, adding to a decline of the indigenous West Papuan population'.⁸⁴²

319. Likewise, Ralph Regenvanu, a government minister of Vanuatu—an MSG member state—recently characterized the situation in West Papua as 'an unresolved decolonization issue'.⁸⁴³ Addressing an international conference in London, Mr Regenvanu took the following position:

⁸³⁶ *Ibid.*

⁸³⁷ 'Indonesia Not Willing to Discuss Papua With MSG Leader', *Radio New Zealand*, 22 February 2016.

⁸³⁸ Tama Salim, 'House Wants More Action on Papua Separatism Issue', *Jakarta Post*, 11 February 2016.

⁸³⁹ 'Solomons Concerned About Abuses in West Papua', *Radio New Zealand*, 16 March 2016.

⁸⁴⁰ *Ibid.*

⁸⁴¹ *Ibid.*

⁸⁴² *Ibid.*

⁸⁴³ 'International Surge on West Papua Amid Mass Demos', *Radio New Zealand*, 9 May 2016.

According to international law, that self-determination issue has never been addressed by a proper vote in West Papua, and that's been recognized at a number of forums. Decolonization never happened, and in fact this colony was simply passed from one colonial power, being the Dutch, to another colonial power which is Indonesia which continues to colonize the territory to this day.⁸⁴⁴

He also highlighted Jakarta's lack of support for the MSG's efforts with respect to West Papua:

[Mr] Regenvanu said Indonesian inclusion in the MSG was supposed to have opened the way for dialogue about West Papua. But he said that unfortunately the MSG's call for Jakarta to dialogue had been ignored. 'And in fact they rebuffed the prime minister of the Solomons [...]. There's been no response to the letter from the prime minister of PNG as the chair of the Pacific Islands Forum to them, asking for some sort of human rights assessment to be done', said Mr Regenvanu. 'The question is: do they really want to engage or not?'⁸⁴⁵

As he reasonably queried, if the Indonesians are 'not coming to the table, then why are they in the MSG?'⁸⁴⁶

320. Shortly after Mr Regenvanu's remarks, MSG Chairman Sogavare reiterated his call for urgent UN intervention on the matter and his country's support for full membership in the MSG for the ULMWP.⁸⁴⁷ The latter issue is to be discussed at an upcoming MSG summit in Port Vila, Vanuatu.⁸⁴⁸ According to Mr Sogavare, in light of Widodo's snub as well as the ongoing abuses in West Papua, 'Indonesia leaves the MSG no alternatives on bringing the [...] issues on the table for discussion, except to elevate the status of West Papua from observer status to full membership'.⁸⁴⁹

⁸⁴⁴ *Ibid.*

⁸⁴⁵ 'International Surge on West Papua Amid Mass Demos', *Radio New Zealand*, 9 May 2016.

⁸⁴⁶ *Ibid.*

⁸⁴⁷ See 'MSG Chair Urges UN Intervention in West Papua', *Radio New Zealand*, 13 May 2016 ('The chairman of the Melanesian Spearhead Group, Manasseh Sogavare, says the regional body is pushing for an urgent intervention by the United Nations in West Papua. Mr Sogavare, who is the prime minister of Solomon Islands, has also declared his country's support for the United Liberation Movement for West Papua's bid to be a full member of the MSG.');

⁸⁴⁸ See 'Sogavare Declares Full West Papuan Membership in MSG "Justifiable"', *Asia Pacific Report*, 18 May 2016 ('Granting of full membership status to the [ULMWP] in the [MSG] is justifiable as Indonesia had sought membership of the regional bloc to only protect its own interest, says Prime Minister Manasseh Sogavare of the Solomon Islands. Indonesia has no desire to engage in dialogue about the serious human rights issues in West Papua.')

⁸⁴⁸ See 'MSG Chair Urges UN Intervention in West Papua', *Radio New Zealand*, 13 May 2016 ('Mr Sogavare has just been in Port Vila where he met with his Vanuatu counterpart Charlot Salwai whose proposal to give the Liberation Movement full membership at the MSG is to be discussed at an upcoming MSG leaders summit in Papua New Guinea.')

⁸⁴⁹ 'Sogavare Declares Full West Papuan Membership in MSG "Justifiable"', *Asia Pacific Report*, 18 May 2016.

321. Unsurprisingly, Jakarta has rejected such accusations of self-interest⁸⁵⁰ but is nevertheless seeking to shore up its own position within the MSG:

A recent surge in Indonesian diplomatic overtures to Pacific Islands countries is increasingly seen as being about countering the growing regional support for West Papuan self-determination aspirations. However Melanesian leaders are frustrated at Jakarta's apparent aversion to meaningful dialog about West Papua. The Indonesian President Joko Widodo's refusal to meet with Mr Sogavare in his capacity as the MSG chair has been proffered as grounds for the Melanesian states to 'take the matter up to the next notch which is the United Nations'. Mr Sogavare said as well as the membership bid, the MSG summit would address the group's pursuit of UN action on what he called 'genocides committed against humanity in West Papua by Indonesia'. While Solomon Islands, Vanuatu and New Caledonia's Kanaks have signaled support for West Papua's membership bid, it remains uncertain where the other two full MSG members—Fiji and PNG—stand. Governments of both countries have closer ties with Indonesia than the others, and Jakarta has recently said that it has support of the Fiji and PNG for its own bid for full MSG membership.⁸⁵¹

The MSG summit is currently scheduled for late-June 2016.⁸⁵²

K. Individual Victim Accounts

322. As noted above, this communication has been filed on behalf of Forkorus Yaboisembut as well as nineteen unnamed Victims from West Papua:⁸⁵³

⁸⁵⁰ See 'Indonesia Rejects Statement of Solomon Islands' PM on MSG', *Antara News*, 21 May 2016 ('The Indonesian government has refuted the statement of Solomon Islands prime minister that the country has joined the Melanesian Spearhead Group merely to protect its own interests.');

'Jakarta Denies Claims by MSG Chair', *Radio New Zealand*, 23 May 2016 ('The Indonesian government has denied suggestions that it's not open to communication regarding West Papua. [...] "The problem of West Papua is our own problem. We don't want to compromise our sovereignty on Papua. This was clearly stated during our visit to respective countries in the South Pacific", said [Atmadji] Sumarkidjo [the special assistant to Indonesia's Coordinating Minister of Politics, Legal, and Security, Luhut Pandjaitan].')

⁸⁵¹ 'Sogavare Declares Full West Papuan Membership in MSG "Justifiable"', *Asia Pacific Report*, 18 May 2016.

⁸⁵² See Neal Conan, 'Pacific News Minute: Drive for West Papuan Independence Picks Up International Support', *Hawaii Public Radio*, 25 May 2016 ('With longstanding support from Vanuatu and the Kanaks of New Caledonia, West Papua should have a majority in the MSG, but Fiji and Papua New Guinea are much the largest countries in the group. And, of course, Indonesia dwarfs all five MSG countries put together. The MSG summit is now set for June, in Port Moresby.');

see also 'PNG Restates West Papua Concerns', *Radio New Zealand*, 26 May 2016 ('[PNG]'s prime minister says his government is concerned about what is happening in West Papua and has expressed this directly to Indonesia's President Joko Widodo. [...] The prime minister [Peter O'Neill] has previously spoken of the need for PNG to speak out about ongoing human rights abuses in his country's neighboring territory. On talkback yesterday, Mr O'Neill indicated West Papuans were welcome in PNG. "We are equally concerned about what is happening in West Papua", he said. "We have expressed that directly to the highest authority including the President this year particularly the human rights issue and for autonomy." The prime minister said that as chair of the Pacific Islands Forum, PNG had written to President Widodo, requesting to send a fact-finding team of Pacific Island leaders to West Papua to talk directly with the people themselves. "The response we received from Indonesia is they welcome such a dialogue and appreciative of our desire for West Papua to have some more autonomy, whether that will be self-determination or not is something that can be worked on towards", he said.')

Forkorus Yaboisembut

- a. **Victim No 1**, Forkorus Yaboisembut, is the head of the West Papua National Authority (the 'WPNA') and president of the National Federal Republic of West Papua (*Negara Republik Federal Papua Barat*) (the 'NRFPPB'). Born on 5 February 1955 in Sentani, West Papua, Forkorus Yaboisembut began his career as a teacher in 1978, rising to the rank of headmaster and ultimately supervisor before retiring from the education sector.
- b. At first a relatively passive activist, Forkorus Yaboisembut was introduced to the Papuan struggle in earnest by a brother-in-law in 1969. Following Suharto's death in 1998, he began to actively support Theys Eluay, then head of the Papua Presidium Council (*Presidium Dewan Papua*).⁸⁵⁴ As a traditional chief in Papua's mountain regions, Forkorus Yaboisembut led pro-independence campaigns and was eventually named the chairman of the Customary Papuan Council at the Second Papuan Congress in June 2000.
- c. On 19 October 2011, at the Third Papuan Congress in Jayapura, Forkorus Yaboisembut publicly declared the independence of the NRFPPB and was named its president. Following the announcement, Forkorus Yaboisembut was arrested along with four others and sentenced to three years' imprisonment for rebellion. He was released on 21 July 2014.
- d. To this day, Forkorus Yaboisembut continues to receive threats from the government—via telephone and directly at his premises. His freedom of movement is severely limited, and he fears for safety as well as that of his family. Approximately three months ago, security forces surrounded his home and issued threats. He routinely invites journalists to conduct interviews, but they are prevented from doing so by government authorities.

⁸⁵³ *N.b.* As previously noted, in order to ensure their safety and protect their privacy, the identities of the unnamed victims—who have each specifically expressed security concerns—will not be disclosed at this stage. Their identities could be made available to the Council subject to satisfactory conditions of confidentiality and approval of the victims.

⁸⁵⁴ *N.b.* Eluay was eventually murdered. See para 117, *supra*.

- e. In his presidential capacity, Forkorus Yaboisembut considers himself authorized to speak on behalf of the people of West Papua and to press for their rights, including self-determination and freedom from Indonesian oppression. He has personally witnesses the killing, harassment, and arrest of many Papuans; and he is well aware of the crippling effects of Jakarta's transmigration program, institutionalized discrimination, and economic exploitation of his people and their traditional lands and resources. Forkorus Yaboisembut has personally lobbied the Indonesian government for a share of the profits earned by companies operating in West Papua and for compensation to be paid to victims of past abuses; however, this formal request has been ignored.

The Unnamed Victims

- f. **Victim No 2**, a father of nine, was born in West Papua in 1959. His parents and three brothers were politically active, and one of his brothers was a rebel commander. As a small boy, Victim No 2 was politically active. He left his village at the age of twelve and attended high school and university in Jayapura, after which he enrolled at the Institute of Public Administration. In February 1984, Victim No 2 took part in a pro-Papuan student protest and was pursued by the police. He managed to flee to Papua New Guinea ('PNG') along with many other refugees. He remained in PNG for 23 years, 12 of them in a refugee camp before finding work as a schoolteacher. In 2005, he moved to the Netherlands at the invitation of the government. He is currently unemployed.
- g. **Victim No 3**, a brother of Victim No 2, was born in West Papua. One day in 2009, Victim No 3 was collecting fruit in the fields adjacent to his home along with his wife. His wife returned home to prepare dinner at approximately 16h00. Later the same day, Victim No 3's dead body, which appeared uninjured, was found in the middle of the road by some villagers. The police were called, but no suspects were found. Victim No 3 was a known pro-Papuan activist and opponent of the central government. The people of his district are convinced that Victim No 3 was poisoned by the Indonesian military. And Victim No 2 believes that Victim No 3 was killed because of their relationship and mutual anti-government activities.

- h. **Victim No 4**, is the 12-year-old nephew of Victim No 2 (by a brother other than Victim No 3). One day in 2014, he was riding his bicycle in his home district in West Papua while his parents were at work. Later that day, his parents found his dead body, which appeared uninjured. The people of the district are convinced that Victim No 4 was poisoned by the Indonesian military. Victim No 2 believes that the killing had to do with his own anti-government activity.
- i. **Victim No 5** was born in West Papua in 1963. One night in 2015, while she was asleep in her room, her mother and sister heard her scream; they assumed she was having a nightmare. However, the next morning, they found her dead in her room with a swollen neck. The people of her village, as well as Victim No 5's mother and sister, believe that she was killed by the Indonesian military because the victim's brother is a pro-Papuan activist in the USA.
- j. **Victim No 6** was born in West Papua in 1959. One day in 2010, he received a call to attend an important meeting. The next morning, in front of a hotel where he was living at the time, Victim No 6's dead body was found—naked, badly injured, and covered in blood. The body was taken to a hospital, but no information regarding the cause of death was provided to the victim's family. Villagers and family members are convinced that Victim No 6 was killed by the Indonesian military because of his association with Victim No 2 and his pro-Papuan activism in the Netherlands. Victim Nos 2 and 6 would often communicate by telephone to discuss West Papuan politics.
- k. **Victim No 7** was forced at gunpoint by Indonesian soldiers to strip naked and lay atop her husband for approximately one hour. The event took place publicly in a West Papuan village in 1986. The soldiers then photographed Victim No 7 and her husband naked and forced them to parade, still naked, across the village multiple times. The couple was next taken to a military camp where their clothes were returned and they were instructed to go home. Following the incident, Victim No 7 was too afraid to report the matter to the police. Her reputation and that of her husband have been ruined by the public humiliation. To this day, Victim No 7 is afraid and ashamed.

- l. **Victim No 8** is a 62-year-old widowed housewife with two children. From 1981 to 1983, her husband was arrested and detained multiple times by the Indonesian military. After her husband escaped from the military camp, the Indonesian military came to her house inquiring about his whereabouts. When she was unable to provide information, she and her seven-month-old child were abducted, pushed down a landslide, thrown into a river, and made to spend the night in the jungle. When none of this produced information regarding her husband, she was raped by five soldiers. The injuries she suffered required surgery and have impaired her ability to work and walk.

- m. **Victim No 9** is a 45-year-old male farmer who has supported the West Papuan movement since he was 20 years old. His activism has included writing and campaigning among villagers to fight for their independence. He was arrested twice in 1986: the first time, he was detained for one month; and the second time, he was detained for one day. During his detention, he was beaten and interrogated by the Indonesian military. He was not provided with a lawyer nor ever brought before a judge. Upon release, he was warned to discontinue his revolutionary activities upon pain of death.

- n. **Victim No 10** is a 48-year-old farmer, husband, and father of three. He was arrested twice in 2003. After his first arrest, he was detained for one month. During his detention, Indonesian soldiers handcuffed him behind his back, kicked him with their military boots, poked him with bayonets, and choked him with ropes. Following his second arrest, he was detained for one week. During his second detention, the military employed tactics similar to those of his first detention; they also pointed guns at his head and poured scalding water over his body until he was numb. To this day, Victim No 10 bears the scars of this abuse and has trouble walking.

- o. **Victim No 11** is a 46-year-old housewife with five children. She volunteered to provide security for politicians at the Third West Papua Congress in 2011. The three-day event hosted approximately 1000 West Papuans, along with members of the Indonesian military and police. On the last day, when the people declared

independence, the military responded by shooting and kicking the attendees. The assault lasted from the afternoon until late in the evening. Some 350 people were injured and three killed. Victim No 11 was shot in the hip. She was too afraid to report the incident to the police and still suffers pain from her injury.

- p. **Victim No 12** is a 56-year-old farmer, husband, and father of four. In 1986, his mother went to the farm to gather crops and never returned. When searching for her, Victim No 12 noticed military boot-prints on the footpath leading towards the farm. After a week of searching, his mother was found floating in the river near the farm. Although Victim No 12 saw no marks on her body, he suspects that the Indonesian military was responsible because his mother was able to swim, making it unlikely that she drowned. According to the victim, the military suspected his mother of supplying food to West Papuan rebels, giving them a motive to harm her. Victim No 12 also recalled instances in his village where political opponents were arrested, tortured, and imprisoned by the Indonesian military.
- q. **Victim No 13** is a 68-year-old retired widower with three children and ten grandchildren. In 1982, when West Papua was dangerous and citizens feared for their lives, he transported villagers to PNG in his motorboat. In October of that year, he was arrested and detained for four months. During his detention, he was never given a lawyer, brought before a judge, or allowed visitors. The military questioned his risking his life to transport villagers given his satisfactory economic status. In prison, Indonesian soldiers beat him, kicked him, and fed him rotten food. He suffered foot injuries from their abuse and to this day needs a cane in order to walk. He was not able to work again after the assault.
- r. **Victim No 14** was born in 1928. He has three sons and four daughters. In 1969, he was threatened by an Indonesian minister, who told the witness that if West Papuans did not choose to be a part of Indonesia, they would suffer the consequences. He met with the minister in Jayapura but cannot remember his name or his particular position. Victim No 14 has not personally suffered any human rights violations.

- s. **Victim No 15**, an office worker, was born in 1934. He is married with three sons and four daughters. He was a political activist and was once arrested by the Indonesian military in the middle of the night at his house. He cannot recall the precise date, but the incident occurred some time in 1965. He was imprisoned for one year. While in prison, the police transported Victim No 15 by car to another police office where he was told to run away in the night; no explanation was given by the police. In 1987, he was arrested again and detained for five years and four months because he had been found with many documents supporting West Papuan independence. (These documents were confiscated by the police.) In this instance, Victim No 15 was assisted by a lawyer and convicted by a judge. He was not tortured, and he was eventually released. He has not been arrested since.
- t. **Victim No 16** was born in 1950. He is married with seven sons. In 1985, one of his sons was killed near the village in which Victim No 16 currently lives. Some people witnessed the attack but ran away and were too afraid to discuss the matter. Victim No 16 believes that his son was targeted by the Indonesian military because they suspected that his house was a location where political activities took place. Victim No 16 was not present at the death of his son, but he claims to have heard the shots. He was accompanied by his family to identify the body and observed that his son had been shot once in the stomach and once in the back. In 1986, the Indonesian military came to his village and burned down all of the houses. The victim did not see this personally because he was hiding; however, he was informed of the details by others. Victim No 16 is afraid to complain about the military.
- u. **Victim No 17**, a West Papuan independence activist, was born in 1940. He was arrested by the police in his village in 1986 and held for one month. The police told him that he had been arrested for political activities and supplying food to the rebels, both of which he readily admits. In prison, he was beaten in the head by the police. They hit him with guns and pointed a gun at him. He was then sent by boat to a prison in another province where he was held for three months.
- v. **Victim No 18**, born in 1947, is a widower with seven children. He works as a civil servant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- w. **Victim No 19**, a student, was born in 1995. He is unmarried and has no children. In 2011, he and a friend organized a pro-Papuan demonstration, which the police dispersed by shooting at the crowd. One of Victim No 19's friends was killed; he was approximately 20 years old. In 2015, hundreds of university students held a peaceful demonstration on campus in Jayapura calling for the release of West Papuan political prisoners. The police arrived in force, accused the students of failing to obtain a permit, and began to beat the demonstrators. Victim No 19 was struck with guns all over his body, especially on his head, ears, and back. He saw other students being beaten and some who were able to escape. The police fired their guns using live ammunition, but Victim No 19 does not think anyone was hit. He was arrested and brought to the station along with another student. Both were tortured by electric shock, and the police called them derogatory names and said that West Papua would never gain independence. Victim No 19 was held and tortured for 24 hours. As a result of the torture, it is difficult for him to hear and walk. And he currently feels afraid and unsafe. He believes the police are still after him, so he tries his best to avoid them.
- x. **Victim No 20**, a student, was born in 1990. He is unmarried and has no children. He attended the Third West Papuan Congress in 2011 and was arrested, along with others, on the last day. The police told him that he should not waste his time with such things and instead defer to Indonesia. While in custody at police headquarters, Victim No 20 was kicked and beaten with boots, guns, and sticks all over his body and face. He was seriously injured, and one of his teeth was broken. The police interrogated him, asking him about the continuation and future activities of the congress. They held him for one night and set him free in the

⁸⁵⁵ *N.b.* This information has been redacted in order to ensure the safety of Victim No 18. It could be made available to the Council subject to satisfactory conditions of confidentiality.

Prakken d'Oliveira

morning. Victim No 20 was arrested again in 2013 during a demonstration calling for the release of Papuan political prisoners. He managed to escape but was placed on a blacklist by the police, who continue to search for him.

None of the family members or friends of the unnamed victims have contacted the authorities due to their fear of the Indonesian military's response.

323. These accounts are merely representative of the countless others who have suffered—directly and indirectly—as a result of the Federal Republic of Indonesia's policies in West Papua.

III. COMPLAINT PROCEDURE OF THE UN HUMAN RIGHTS COUNCIL⁸⁵⁶

A. Competence, Standing, and Confidentiality

324. The HRC's current complaint procedure was established on 18 June 2007, pursuant to Resolution 5/1, in order 'to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances'.⁸⁵⁷ The procedure is designed to review communications submitted by *any* individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations.⁸⁵⁸ The procedure is 'confidential [...] with a view to enhancing cooperation with the State concerned'.⁸⁵⁹ Moreover, it is designed 'to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented, and conducted in a timely manner'.⁸⁶⁰ A communication—along with any and all supporting material—is properly addressed to the HRC's Complaint Procedure Unit.⁸⁶¹

B. Admissibility

325. According to paragraph 87 of Resolution 5/1, '[a] communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that':

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights, and other applicable instruments in the field of human rights law;

(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;

⁸⁵⁶ See website of the United Nations Office of the High Commissioner for Human Rights (the 'OHCHR Website').

⁸⁵⁷ Resolution 5/1, 'Institution-Building of the United Nations Human Rights Council', Annex, para 85.

⁸⁵⁸ See OHCHR Website.

⁸⁵⁹ Resolution 5/1, Annex, para 86.

⁸⁶⁰ *Ibid.* N.b. 'Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis [for the new procedure] and was improved where necessary [...]' *Ibid.*

⁸⁶¹ See OHCHR Website. Communications should be addressed to the Complaint Procedure Unit, Human Rights Council Branch, Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland, by fax: (41 22) 917 90 11 or email: cp@ohchr.org.

(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;

(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;

(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

Regarding the exhaustion of domestic remedies: 'National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.'⁸⁶²

C. Assessment

326. 'Two distinct working groups shall be established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.'⁸⁶³ These are dealt with in turn.

*1. The Working Group on Communications*⁸⁶⁴

327. A preliminary assessment as to the communication's admissibility is conducted by the Working Group on Communications (the 'WGC'):

⁸⁶² Resolution 5/1, Annex, para 88.

⁸⁶³ *Ibid*, para 89; *see also ibid*, para 90 ('Both working groups shall, to the greatest possible extent, work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. They may establish their own rules of procedure.')

⁸⁶⁴ *See* Resolution 5/1, Annex, paras 91–93 (setting out the composition of this working group).

The Chairperson of the [WGC] is requested, together with the secretariat, to undertake an initial screening of communications received, based on the admissibility criteria, before transmitting them to the States concerned. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. [...] All other communications, which have not been screened out, shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.⁸⁶⁵

The members of the [WGC] shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. [...] When the [WGC] requires further consideration or additional information, it may keep a case under review until its next session and request such information from the State concerned. The [WGC] may decide to dismiss a case. All decisions of the [WGC] shall be based on a rigorous application of the admissibility criteria and duly justified.⁸⁶⁶

Should the WGC decide the communication is admissible, it 'shall provide the Working Group on Situations with a file containing all admissible communications as well as recommendations thereon'.⁸⁶⁷

2. *The Working Group on Situations*⁸⁶⁸

328. The main task of the Working Group on Situations (the 'WGS') is to advise the Council how to proceed:

The [WGS] is requested, on the basis of the information and recommendations provided by the [WGC], to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it.⁸⁶⁹

The WGS 'may also decide to dismiss a case'.⁸⁷⁰ In either event, its decisions 'shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon'.⁸⁷¹

D. Working Modalities

⁸⁶⁵ Resolution 5/1, Annex, para 94.

⁸⁶⁶ *Ibid.*, para 95.

⁸⁶⁷ *Ibid.*

⁸⁶⁸ *See ibid.*, paras 96–97 (setting out the composition of this working group).

⁸⁶⁹ *Ibid.*, para 98. *N.b.* 'When the Working Group on Situations requires further consideration or additional information, its members may keep a case under review until its next session.' *Ibid.*

⁸⁷⁰ Resolution 5/1, Annex, para 98.

⁸⁷¹ *Ibid.*, para 99. *N.b.* 'Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.' *Ibid.*

329. Both working groups shall meet biannually with a view to a prompt resolution of the matter.⁸⁷² The concerned state shall cooperate with the HRC in good faith,⁸⁷³ and the HRC itself shall consider the matter at least once a year.⁸⁷⁴ Confidentiality is the norm, however exceptions may apply:

The reports of the [WGS] referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise. When the [WGS] recommends to the Council that it consider a situation in a public meeting, in particular in the case of manifest and unequivocal lack of cooperation, the Council shall consider such recommendation on a priority basis at its next session.⁸⁷⁵

In principle, the HRC should dispose of the matter within two years of the transmission of the communication to the concerned state.⁸⁷⁶

E. Involvement of the Complainant and the Concerned State

330. Both the complainant and the concerned state shall be notified when a communication is either: (i) registered; (ii) deemed inadmissible by the WGC; (iii) taken up for consideration by the WGS; (iv) kept pending by either working group or the HRC; and/or (v) finally disposed of.⁸⁷⁷ 'Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the state concerned.'⁸⁷⁸

F. Potential Measures Available to the Council

⁸⁷² See *ibid*, para 100 ('Since the complaint procedure is to be, inter alia, victims-oriented and conducted in a confidential and timely manner, both Working Groups shall meet at least twice a year for five working days each session, in order to promptly examine the communications received, including replies of States thereon, and the situations of which the Council is already seized under the complaint procedure.')

⁸⁷³ See *ibid*, para 101 ('The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the United Nations official languages to any of the requests of the Working Groups or the Council. The State concerned shall also make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.')

⁸⁷⁴ See *ibid*, para 103 ('The Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.')

⁸⁷⁵ *Ibid*, para 104.

⁸⁷⁶ See *ibid*, para 105 ('So as to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.')

⁸⁷⁷ See Resolution 5/1, Annex, para 106 ('The complaint procedure shall ensure that both the author of a communication and the State concerned are informed of the proceedings at the following key stages: (a) When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council; (b) At the final outcome.');

ibid, para 107 ('In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.')

⁸⁷⁸ *Ibid*, para 108.

331. According to Resolution 5/1, ‘the action taken in respect of a particular situation *should* be one of the following options’:⁸⁷⁹

- (a) To discontinue considering the situation when further consideration or action is not warranted;
- (b) To keep the situation under review and request the state concerned to provide further information within a reasonable period of time;
- (c) To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;
- (d) To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
- (e) To recommend to OHCHR to provide technical cooperation, capacity-building assistance, or advisory services to the state concerned.⁸⁸⁰

The use of the word ‘should’ in paragraph 109, rather than ‘shall’, suggests that the Council may take other measures it deems appropriate—provided they are reasonably in line with the possibilities specifically listed. Therefore, in theory, it appears that nothing in Resolution 5/1 would prohibit the HRC from adopting a resolution: (i) urging one of the authorized UN organs to trigger the ICJ’s advisory jurisdiction on the question(s) presented by the communication or (ii) urging the country in question to take certain steps (e.g. organizing a referendum on autonomy or independence).

332. Since its inception in 2007, the HRC has considered situations in the following states as a result of communications filed pursuant to the current complaint procedure: Maldives, Democratic Republic of Congo, Guinea (Conakry), Tajikistan, Turkmenistan, Iraq, Eritrea, and Cameroon.⁸⁸¹

333. In the situation of Eritrea, which included allegations of widespread and systematic human-rights violations, including cases of arbitrary arrest and detention, torture, summary executions, violence against women, forced labor, forced conscription, and restrictions on the liberty of movement and the rights to freedom of expression, peaceful assembly and of thought, conscience, and religion, the Council issued a resolution in which it, among other things: (i) discontinued its confidential review in

⁸⁷⁹ *Ibid.*, para 109 (emphasis added).

⁸⁸⁰ *Ibid.*, para 109.

⁸⁸¹ See List of Situations Referred to the Human Rights Council Under the Complaint Procedure Since 2006, OHCHR Website. *N.b.* The Council considered the following situations pursuant to the 1503 confidential procedure, which was subsequently replaced by the current regime in 2007: Kyrgyzstan, Iran, Uzbekistan, and Turkmenistan.

order to take up public consideration of the matter per the mandate of newly established Special Rapporteur on the situation of human rights in Eritrea (per a companion resolution); (ii) lifted confidentiality with respect to documentation which was to be transmitted to the Special Rapporteur; (iii) invited the Special Rapporteur to investigate the allegations further; (iv) urged the government of Eritrea to cooperate fully with the Special Rapporteur per the terms of his mandate; and (v) decided to remain seized of the matter.⁸⁸²

334. In no other cases initiated under the current communication regime has the Council taken such *public* steps.

IV. RELEVANT SUBSTANTIVE LAW

A. The Right to Self-Determination

1. *The Charter of the United Nations*

335. The right to self-determination was prominently mentioned in Article 1 of the 1945 *Charter of the United Nations* as one of the four founding purposes of the organization, namely: ‘To develop friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*, and to take other appropriate measures to strengthen universal peace.’⁸⁸³ The spirit of the right is also found in Article 73 of the UN Charter. Among other things, that provision requires states responsible for non-self-governing territories:

to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;⁸⁸⁴ [and]

⁸⁸² See HRC Resolution 21/1, Situation of Human Rights in Eritrea, 9 October 2012, A/HRC/RES/21/1.

⁸⁸³ UN Charter, Article 1(2) (emphasis added). *N.b.* The right is also mentioned preliminarily in Article 55 with respect to the goal of international economic and social cooperation. See UN Charter, Article 55 (‘With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on *respect for the principle of equal rights and self-determination of peoples*, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.’) (emphasis added).

⁸⁸⁴ UN Charter, Article 73(a).

to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; [...]⁸⁸⁵

Since the adoption of the UN Charter, the right to self-determination has been addressed in a number of resolutions, international covenants, and international and domestic jurisprudence.

2. UN Resolutions, Covenants, Comments & Declarations

336. In 1960, the UN General Assembly adopted the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (hereinafter, 'Resolution 1514'), which stated (among other things): 'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.'⁸⁸⁶ The Annex to a subsequent resolution—*Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (hereinafter, 'Resolution 1541'), adopted the following day⁸⁸⁷—suggested three ways in which a 'Non-Self-Governing Territory can be said to have reached a full measure of self-government: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State'.⁸⁸⁸ The resolution stressed that any decision to associate or integrate with another state must be made *freely and voluntarily* by way of 'informed and democratic processes'.⁸⁸⁹ With respect to integration, it was emphasized that such processes should be 'impartially conducted and based on universal adult suffrage'.⁸⁹⁰

337. In January 1970, UN Security Council Resolution 276, called on states 'to refrain from any dealings with the government of South Africa' that would imply recognition of the legality of the South African presence in Namibia.⁸⁹¹ The resolution suggested that a government that denies the right to self-determination of a people should not be deemed

⁸⁸⁵ *Ibid.*, Article 73(b).

⁸⁸⁶ UNGA Resolution 1514 (XV), 14 December 1960, Article 2.

⁸⁸⁷ See UNGA Resolution 1541 (XV), 15 December 1960.

⁸⁸⁸ Resolution 1541, Annex, Principle VI.

⁸⁸⁹ *Ibid.*, Principles VII(a), IX(b).

⁸⁹⁰ *Ibid.*, Principle IX(b).

⁸⁹¹ UNSC Res 276 (30 January 1970) UN Doc S/RES/276.

to have the capacity to enter into treaties on behalf of such people; and other states should refrain from entering into economic relations with the offending government regarding the territory in question and from sending diplomatic and consular agents to the disputed territory.⁸⁹²

338. Later in 1970, the General Assembly adopted the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (hereinafter, 'Resolution 2625'), which states (among other things): 'By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.'⁸⁹³ Moreover, Resolution 2625 stated that: 'Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter [...].'⁸⁹⁴

339. In 1976, the rights previously codified in 1966 in the International Covenant on Civil and Political Rights (the 'ICCPR') and the International Covenant on Economic, Social, and Cultural Rights (the 'ICESCR') (jointly, the 'International Covenants') went into effect. Both International Covenants state in their respective first articles:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation,

⁸⁹² Stefan Talmon, 'The Duty Not to "Recognize as Lawful" a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance?', in Christian Tomuschat and Jean-Marc Touvenin (eds) *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Martinus Nijhoff 2005), p 119. *N.b.* The International Law Commission attached to a *jus cogens* obligation a 'duty of abstention', which encompasses two different obligations: first, the duty not to recognize the unlawful situation; and second, not to render aid or assistance in maintaining the unlawful situation. *See* Report of the International Law Commission on the work of its fifty-third session: Commentaries to the draft articles on responsibility of states for internationally wrongful acts', 23 April–1 June and 2 July–10 August 2001, UN Doc A/56/10, commentary to Article 41, [1]. This may require formal non-recognition and the abstention from any acts that may imply recognition. *Ibid.*, commentary to Article 41, [5].

⁸⁹³ UNGA Resolution 2625 (XXV), 24 October 1970, Annex, Principle 5.

⁸⁹⁴ *Ibid.*, Articles 5, 8, 9.

based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.⁸⁹⁵

A notable addition here is the right to freely dispose of natural wealth and resources.⁸⁹⁶

The International Covenants also reaffirm that the right to self-determination includes the obligation of other states to respect and promote that right.⁸⁹⁷

340. While Indonesia is a party to both the ICCPR and ICESCR,⁸⁹⁸ it has made the following reservations with respect to Article 1 of both International Covenants:

[...] the Government of the Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words 'the right of self-determination' appearing in this article do not apply to a section of people within a sovereign independent state and can not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.⁸⁹⁹

However, given the *jus cogens* and *erga omnes* nature of the right to self-determination, these reservations must be read in light of the subsequent jurisprudence on the issue.

341. On 13 March 1984, the UN Human Rights Committee described the right to self-determination as 'an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights',⁹⁰⁰ noting the prominence of the right in the International Covenants: 'It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.'⁹⁰¹ The Committee described the right as 'inalienable' and

⁸⁹⁵ ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 1; ICESCR (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 1.

⁸⁹⁶ ICCPR, Article 1(2); ICESCR, Article 1(2).

⁸⁹⁷ ICCPR, Article 1(3); ICESCR, Article 1(3).

⁸⁹⁸ *N.b.* Indonesia acceded to both covenants on 23 February 2006.

⁸⁹⁹ UN Treaty Collection (<https://treaties.un.org>).

⁹⁰⁰ UN Human Rights Committee, Twenty-first Session, General Comment No 12: Article 1 (Right to Self-Determination), HRI/GEN/1/Rev.9 (Volume I), 13 March 1984, para 1.

⁹⁰¹ *Ibid.*, para 1.

noted that the ‘corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law’.⁹⁰² With respect to paragraph 2 of Article 1, which affirms the specific economic content of the right, the Committee called on states to ‘indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant’.⁹⁰³

342. On 25 June 1993, the UN World Conference on Human Rights—in reaffirming the right to self-determination and attendant rights to freely determine political status and freely pursue economic, social, and cultural development in ‘the particular situation of peoples under colonial or other forms of alien domination or foreign occupation’⁹⁰⁴—set out the proper balance to be struck between the effective achievement of self-determination and existing territorial integrity:

The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States *conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind*.⁹⁰⁵

This balancing act reflected the political realities of the post-colonial world order. While the right to self-determination was still considered to be unassailable (in theory), the manner in which it was expected to be exercised (in practice) had shifted away from the rhetoric of colonial struggle and toward the stabilizing expectations of democratic institutions.

⁹⁰² *Ibid*, para 2.

⁹⁰³ *Ibid*, para 5.

⁹⁰⁴ Vienna Declaration and Programme of Action, A/CONF.157/24, 25 June 1993, part 1, para 2.

⁹⁰⁵ *Ibid* (emphasis added).

343. On 24 October 1995, the UN General Assembly's *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*⁹⁰⁶ also emphasized the new political calculus, noting that the UN's member states will:

Continue to reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination. This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind [...].

Stability was the name of the game. Oppressed minorities were now encouraged—directed, in fact—to work out their grievances within existing national boundaries. The world, it seemed, had enough countries.

344. Most recently, on 25 March 2015, the UN Human Rights Council—in the context of reaffirming the right of the Palestinian people to self-determination—emphasized that the right is a '*jus cogens* norm of international law'.⁹⁰⁷

3. *The International Court of Justice*

345. The International Court of Justice (hereinafter, the 'ICJ' or the 'Court') first addressed the issue of self-determination in 1971.⁹⁰⁸ In determining the legal consequences of the continued presence of South Africa in Namibia (a former League of Nations mandate), the Court emphasized the significance of the right to self-determination in the context of post-colonialism and made specific reference to Resolution 1514 and the subsequent birth of many new states on the world stage,⁹⁰⁹ praising the achievement of 'self-

⁹⁰⁶ A/RES/50/6, 24 October 1995, para 1 (under the heading 'Peace').

⁹⁰⁷ UN Human Rights Council, 28th Session, Agenda Item 7, Human rights situation in Palestine and other occupied Arab territories, A/HRC/28/L.32, 25 March 2015.

⁹⁰⁸ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 21 June 1971, ICJ Reports 1971, p 16 (hereinafter, the 'Namibia Advisory Opinion').

⁹⁰⁹ See Namibia Advisory Opinion, para 52 ('A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which 'have not yet attained independence'. Nor is it possible to leave out of account the political history of mandated territories in general. All those which did not acquire independence, excluding Namibia, were placed under trusteeship. Today, only two out of fifteen, excluding Namibia, remain under United Nations tutelage. This is but a manifestation of the general development which has led to the birth of so many new States.')

determination and independence of the peoples concerned'.⁹¹⁰ Given Namibia's former mandatory status—under which 'two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples form "a sacred trust of civilization"'⁹¹¹—the Court ultimately held that: (i) continued South African presence in Namibia was illegal and, as such, South Africa was obliged to put an end to its occupation immediately;⁹¹² and (ii) UN member states were obliged to recognize the illegality of the occupation and the invalidity of any acts made on behalf of Namibia by South Africa and to refrain from any acts or dealings with South Africa implying recognition of the legality of the occupation.⁹¹³

346. Unsurprisingly, given the political realities of 1971—the year the Namibia Advisory Opinion was issued—the ICJ had this to say regarding interpretation:

That is why, viewing the institutions of 1919, the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.⁹¹⁴

Although Namibia would not gain its independence until 1990, the Court's decision made clear that South Africa's stubborn refusal to relinquish its colonial holdings was well out of step with the progressive designs of contemporary international law in the post-colonial era.

347. The ICJ returned to the question of self-determination four years later. In 1975, in determining the legal ties between Western Sahara (at the time of its colonization by Spain) and the Kingdom of Morocco and the so-called Mauritanian entity,⁹¹⁵ the ICJ

⁹¹⁰ Namibia Advisory Opinion, para 53.

⁹¹¹ *Ibid.*, para 45 (citing the 1950 Advisory Opinion on the International Status of South-West Africa, ICJ Reports 1950, p 131). *N.b.* In this regard, the Court noted that: 'It is self-evident that the "trust" had to be exercised for the benefit of the peoples concerned, who were admitted to have interests of their own and to possess a potentiality for independent existence on the attainment of a certain stage of development: the mandates system was designed to provide peoples "not yet" able to manage their own affairs with the help and guidance necessary to enable them to arrive at the stage where they would be "able to stand by themselves".' *Ibid.*, para 46.

⁹¹² See Namibia Advisory Opinion, para 133.

⁹¹³ See *ibid.*, para 133.

⁹¹⁴ *Ibid.*, para 53.

⁹¹⁵ See *Western Sahara*, Advisory Opinion, 16 October 1975, ICJ Reports 1975, p 12 (hereinafter, the 'Western Sahara Advisory Opinion').

noted: (i) the particular relevance of the right to self-determination for non-self-governing territories;⁹¹⁶ (ii) the right's 'application for the purpose of bringing all colonial situations to a speedy end [...] thus confirm[ing] and emphasiz[ing] that the application of the right of self-determination *requires a free and genuine expression of the will of the peoples concerned*';⁹¹⁷ and (iii) the fact that, in dealing with the case of Western Sahara, the UN had in fact proceeded along these lines.⁹¹⁸ It was held that, despite some ties of allegiance between Western Sahara and both Morocco and Mauritania, these did not rise to the level of sovereignty and the self-determination claim prevailed.⁹¹⁹ Notably, in arriving at this decision, the ICJ considered racial, linguistic, religious, cultural, and economic links in addition to formal legal ties.⁹²⁰ Nevertheless, beginning in November of 1975, Morocco proceeded to flood Western Sahara with settlers and heavily armed troops, and essentially annexed the territory, which remains disputed to this day.

348. Another twenty years would pass before the ICJ revisited the issue of self-determination in 1995, this time in connection with a dispute between Portugal and Australia over the delimitation of a portion of the continental shelf adjacent to East Timor (for purposes of natural-resource exploration and exploitation).⁹²¹ In addressing the issue, the court found that: (i) the 'assertion that the right of peoples to self-determination, as it evolved from the [UN] Charter and from United Nations practice, has an *erga omnes* character, is irreproachable';⁹²² (ii) the 'principle of self-determination of peoples [...] is one of

⁹¹⁶ Western Sahara Advisory Opinion, para 54 (citing Namibia Advisory Opinion).

⁹¹⁷ *Ibid.*, para 55 (citing Resolution 1514) (emphasis added); *see also ibid.*, para 58 (noting that Resolution 2625 'reiterates the basic need to take account of the wishes of the people concerned').

⁹¹⁸ *See ibid.*, paras 60 *et seq.*

⁹¹⁹ *See* Western Sahara Advisory Opinion, para 162 ('The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1541 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory [...].')

⁹²⁰ *Ibid.*, paras 149, 152.

⁹²¹ *East Timor (Portugal v Australia)*, Judgment, 30 June 1995, ICJ Reports 1995, p 90 (hereinafter, the 'East Timor Judgment').

⁹²² *East Timor Judgment*, para 29. *N.b.* Obligations *erga omnes* are obligations a state owes to the international community as a whole. *Barcelona Traction, Light and Power Company, Limited*, Judgment, 5 February 1970, ICJ Reports 1970, p 3 (hereinafter, the 'Barcelona Traction Judgment'), para 33. By their very nature

the essential principles of contemporary international law’;⁹²³ and (iii) in the context of the dispute, ‘East Timor remains a non-self-governing territory and its people has the right to self-determination’.⁹²⁴ However, the court ultimately found that it did not have jurisdiction to adjudicate the underlying territorial dispute.⁹²⁵

349. In 2004, the ICJ was required to determine ‘the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory’.⁹²⁶ Recalling the UN Charter, Resolution 2625, the International Covenants, and its own prior jurisprudence, the Court reaffirmed the right to self-determination,⁹²⁷ its *erga omnes* character,⁹²⁸ and the duty of all states to promote the realization of the right.⁹²⁹ The ICJ ultimately held that the wall was contrary to international law as it amounted to a violation of the Palestinian people’s right to self-determination.⁹³⁰ It remains in place today, some twelve years later.

350. In its latest case to deal with the issue of self-determination, the ICJ was confronted in 2010 with the issue of whether ‘the unilateral declaration of independence by the

and importance, such obligations are the concern of all states and all states have a legal interest in their protection. *Ibid.*

⁹²³ East Timor Judgment, para 29 (citing Namibia and Western Sahara Advisory Opinions).

⁹²⁴ *Ibid.*, paras 31, 37.

⁹²⁵ See *ibid.*, para 38.

⁹²⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports 2004, p 136 (hereinafter, the ‘Wall Advisory Opinion’).

⁹²⁷ See Wall Advisory Opinion, para 88 (noting the principle of self-determination ‘enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625’); *ibid.* (‘Article 1 common to the [ICESCR] and the [ICPPR] reaffirms the right of all peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter.’); *ibid.* (citing Namibia Advisory Opinion, Western Sahara Advisory Opinion, and East Timor Judgment).

⁹²⁸ See *ibid.*, para 155 (‘The Court would observe that the obligations violated by Israel include certain obligations *erga omnes*. As the Court indicated in the *Barcelona Traction* case, such obligations are by their very nature “the concern of all States” and, “in view of the importance of the rights involved, all States can be held to have a legal interest in their protection” [...]. The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law.’); *ibid.*, para 156 (‘As regards the first of these, the Court has already observed (paragraph 88 above) that in the *East Timor* case, it described as “irreproachable” the assertion that “the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character” [...].’)

⁹²⁹ See *ibid.*, para 156 (‘The Court would also recall that under the terms of General Assembly resolution 2625 (XXV), already mentioned above (see paragraph 88), “Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle [...]”.’)

⁹³⁰ See *ibid.*, para 163 (‘The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law.’)

Provisional Institutions of Self-Government of Kosovo [was] in accordance with international law' and the Constitutional Framework of Kosovo created by Security Council Resolution 1244 (1999).⁹³¹ Echoing its previous decisions, the Court recalled the important role international law had played in post-colonial self-determination struggles:

During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation. A great many new states have come into existence as a result of the exercise of this right.⁹³²

The ICJ held that international law, in general, contains no prohibition on unilateral declarations of independence.⁹³³ Notably, however, as the question of a right to remedial succession under international law was not presented by the General Assembly, the Court did not take it up.⁹³⁴ However, it did not specifically exclude the possibility.⁹³⁵ In the event, Kosovo's 2008 declaration was upheld by the Court. And while the political status of the country remains disputed, Kosovo operates in many ways today as an independent state.

4. The Supreme Court of Canada

⁹³¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403 (hereinafter, the 'Kosovo Advisory Opinion').

⁹³² Kosovo Advisory Opinion, para 79 (citing Namibia Advisory Opinion, East Timor Judgment, and Wall Advisory Opinion).

⁹³³ *Ibid*, Para 84 ('For the reasons already given, the Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law.')

⁹³⁴ *Ibid*, para 82 ('Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances.');

ibid, para 83 ('The Court considers that it is not necessary to resolve these questions in the present case. The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession", however, concern the right to separate from a state. As the Court has already noted (see paragraphs 49 to 56 above), and as almost all participants agreed, that issue is beyond the scope of the question posed by the General Assembly. To answer that question, the Court need only determine whether the declaration of independence violated either general international law or the *lex specialis* created by Security Council resolution 1244 (1999).')

⁹³⁵ See, e.g., Ralph Wilde, 'Self-Determination, Secession, and Dispute Settlement after the Kosovo Advisory Opinion', (2011), *Leiden Journal of International Law*, 24, pp 149–154 ('All sub-state groups in the world are now on notice that, according to this view, there would not appear to be a general international law rule barring them from declaring independence.')

351. As noted in the Kosovo Advisory Opinion,⁹³⁶ the Supreme Court of Canada—in what remains the most comprehensive judicial discussion on the issue of self-determination—addressed the circumstances under which remedial secession could take place in the context of the Canadian province of Quebec.⁹³⁷ For purposes of the instant submission, the relevant question in that case was:

Does international law give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?⁹³⁸

In ultimately holding that no such right existed *in the specific case of Quebec*,⁹³⁹ the court made a number of important and instructive findings regarding the contemporary⁹⁴⁰ right to self-determination, as a general proposition:

- (a) While ‘international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their “parent” state’,⁹⁴¹ such a right may arise exceptionally in the context of an oppressed or colonial people.⁹⁴²
- (b) ‘[I]nternational law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states. Where this is not

⁹³⁶ Kosovo Advisory Opinion, para 55 (‘While many of those participating in the present proceedings made reference to the opinion of the Supreme Court of Canada [in a case regarding the question of succession of Quebec], the Court observes that the question in the present case is markedly different from that posed to the Supreme Court of Canada.’)

⁹³⁷ *Reference by the Governor in Council concerning Certain Questions relating to the Secession of Quebec from Canada*, 20 August 1998, 2 *Supreme Court Reporter (SCR)* 217; 161 *Dominion Law Reports (DLR)* (4th) 385; 115 *International Law Reports (ILR)* 536 (hereinafter, the ‘Quebec Secession Decision’).

⁹³⁸ Quebec Secession Decision, para 2.

⁹³⁹ See *ibid*, paras 136–138.

⁹⁴⁰ *N.b.* Needless to say, the current formulation has been more than somewhat muted since the days of post-colonial exuberance on the topic.

⁹⁴¹ Quebec Secession Decision, para 111.

⁹⁴² See *ibid*, para 112 (‘International law contains neither a right of unilateral secession nor the explicit denial of such a right, although such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right of a people to self-determination, *e.g.*, the right of secession that arises in the exceptional situation of an oppressed or colonial people, discussed below. As will be seen, international law places great [page break] importance on the territorial integrity of nation states and, by and large, leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part (R. Y. Jennings, *The Acquisition of Territory in International Law* (1963), at pp 8–9). Where, as here, unilateral secession would be incompatible with the domestic Constitution, international law is likely to accept that conclusion subject to the right of peoples to self-determination, a topic to which we now turn.’)

possible, in the exceptional circumstances discussed below, a right of secession may arise.’⁹⁴³

- (c) ‘The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination—a people’s pursuit of its political, economic, social, and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.’⁹⁴⁴
- (d) The right must be balanced against the principle of territorial integrity.⁹⁴⁵
- (e) ‘There is no necessary incompatibility between the maintenance of the territorial integrity of existing states [...] and the right of a “people” to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.’⁹⁴⁶
- (f) ‘[T]he right to external self-determination, which entails the possibility of choosing (or restoring) independence, has only been bestowed upon two classes of peoples (those under colonial rule or foreign occupation), based upon the assumption that both classes make up entities that are inherently distinct from the colonialist Power and the occupant Power and that their ‘territorial integrity’, all

⁹⁴³ Quebec Secession Decision, para 122.

⁹⁴⁴ *Ibid*, para 126; *see ibid* (‘External self-determination can be defined as in the following statement from the *Declaration on Friendly Relations* as “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.’)

⁹⁴⁵ *See ibid*, para 127 (‘The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The various international documents that support the existence of a people’s right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state’s territorial integrity or the stability of relations between sovereign states.’); *see ibid*, paras 128–129 (citing *Declaration on Friendly Relations*, *Vienna Declaration*, *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*, and *Helsinki Final Act*).

⁹⁴⁶ *Ibid*, para 130.

but destroyed by the colonialist or occupying Power, should be fully restored [...].⁹⁴⁷

- (g) Three groups exist for whom the right to self-determination may be exercised externally: (i) those under colonial rule;⁹⁴⁸ (ii) those under some type of foreign occupation;⁹⁴⁹ and (iii) exceptionally (i.e. as a last resort), those denied the meaningful exercise of the right to self-determination internally.⁹⁵⁰ As to the latter category, there was at the time of the decision a certain lack of clarity.⁹⁵¹ But the issue has since been clarified.⁹⁵²
- (h) '[T]he international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social, and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination.'⁹⁵³

Notably, the court found that '[t]he existence of the right of a people to self-determination is now so widely recognized in international conventions that the

⁹⁴⁷ Quebec Secession Decision, para 131 (citing A Cassese, *Self-determination of peoples: A legal reappraisal* (1995), p 334).

⁹⁴⁸ See *ibid*, para 132 ('The right of colonial peoples to exercise their right to self-determination by breaking away from the "imperial" power is now undisputed [...].')

⁹⁴⁹ See *ibid*, para 133 ('The other clear case where a right to external self-determination accrues is where a people is subject to alien subjugation, domination, or exploitation outside a colonial context.')

⁹⁵⁰ See *ibid*, para 134 ('A number of commentators have further asserted that the right to self-determination may ground a right to unilateral secession in a third circumstance. Although this third circumstance has been described in several ways, the underlying proposition is that, when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession. The *Vienna Declaration* requirement that governments represent "the whole people belonging to the territory without distinction of any kind" adds credence to the assertion that such a complete blockage may potentially give rise to a right of secession.')

⁹⁵¹ See *ibid*, para 135 ('Clearly, such a circumstance parallels the other two recognized situations in that the ability of a people to exercise its right to self-determination internally is somehow being totally frustrated. While it remains unclear whether this third proposition actually reflects an established international law standard, it is unnecessary for present purposes to make that determination.')

⁹⁵² See, e.g., Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?', *Human Rights Law Review* 11:4 (2011, Oxford) ('It is now accepted that the legal right to self-determination also applies beyond the colonial context.')

(citing Gareau, 'Shouting at the Wall: Self-Determination and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' (2005) 18 *Leiden Journal of International Law* 489 at 505).

⁹⁵³ Quebec Secession Decision, para 138.

principle has acquired a status beyond “convention” and is considered a general principle of international law’.⁹⁵⁴

352. As to the issue of what constitutes a ‘people’ for purposes of self-determination, the court was not required to decide the question in the context of Quebec.⁹⁵⁵ Nevertheless, in *obiter dictum* on the topic, it noted:

[A]ccess to the right requires the threshold step of characterizing as a people the group seeking self-determination. However, as the right to self-determination has developed by virtue of a combination of international agreements and conventions, coupled with state practice, with little formal elaboration of the definition of ‘peoples’, the result has been that the precise meaning of the term ‘people’ remains somewhat uncertain.⁹⁵⁶

It is clear that ‘a people’ may include only a portion of the population of an existing state. The right to self-determination has developed largely as a human right, and is generally used in documents that simultaneously contain references to ‘nation’ and ‘state’. The juxtaposition of these terms is indicative that the reference to ‘people’ does not necessarily mean the entirety of a state’s population.⁹⁵⁷

This issue has been clarified to a certain extent by subsequent jurisprudence.⁹⁵⁸

353. Ultimately, in the case of Quebec, it could not plausibly be said that the population had been denied access to government such that secession would be warranted under international law:

Quebecers occupy prominent positions within the government of Canada. Residents of the province freely make political choices and pursue economic, social, and cultural development within Quebec, across Canada, and throughout the world. The population of Quebec is equitably represented in legislative, executive, and judicial institutions. In short, to reflect the phraseology of the international documents that address the right to self-

⁹⁵⁴ See *ibid*, para 114 (citing A Cassese, *Self-determination of peoples: A legal reappraisal* (1995), at pp 171–72; K Doehring, ‘Self-Determination’, in B Simma, ed, *The Charter of the United Nations: A Commentary* (1994), at p 70); *id*, p 279 (‘This basic principle of self-determination has been carried forward and addressed in so many UN conventions and resolutions that, as noted by Doehring, *supra*, at p 60: “The sheer number of resolutions concerning the right of self-determination makes their enumeration impossible.”’)

⁹⁵⁵ See Quebec Secession Decision, para 125 (‘While much of the Quebec population certainly shares many of the characteristics (such as a common language and culture) that would be considered in determining whether a specific group is a “people”, as do other groups within Quebec and/or Canada, it is not necessary to explore this legal characterization to resolve Question 2 appropriately. Similarly, it is not necessary for the Court to determine whether, should a Quebec people exist within the definition of public international law, such a people encompasses the entirety of the provincial population or just a portion thereof. Nor is it necessary to examine the position of the aboriginal population within Quebec. As the following discussion of the scope of the right to self-determination will make clear, whatever be the correct application of the definition of people(s) in this context, their right of self-determination cannot in the present circumstances be said to ground a right to unilateral secession.’)

⁹⁵⁶ Quebec Secession Decision, para 123.

⁹⁵⁷ *Ibid*, para 124.

⁹⁵⁸ See para 356, *infra*.

determination of peoples, Canada is a 'sovereign and independent state conducting itself in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction'.⁹⁵⁹

An implicit corollary of this analysis is that, where states fail to conduct themselves in compliance with the right to self-determination—as currently formulated—then remedial succession must be considered as an option available to the aggrieved population.

5. The African Commission on Human and Peoples' Rights

354. In 1995, the African Commission took up the question of the independence of Katanga (from then Zaire) as advocated by the Katangese Peoples' Congress, a liberation movement with such aim.⁹⁶⁰ The claim was brought pursuant to Article 20(1) of the African Charter on Human and Peoples' Rights which provides that: 'All peoples [...] shall have the unquestionable and inalienable right to self-determination.'⁹⁶¹ Notably, the claim made 'no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination'.⁹⁶² The Commission determined that self-determination may be exercised via 'independence, self-government, local government, federalism, con-federalism, unitarism, or any other form of relations that accords with the wishes of the people but fully cognizant of other recognized principles such as sovereignty and territorial integrity'.⁹⁶³ It further noted its obligation 'to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU and a party to the African Charter on Human and Peoples' Rights'.⁹⁶⁴ It was held:

In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.⁹⁶⁵

⁹⁵⁹ Quebec Secession Decision, para 136.

⁹⁶⁰ Katangese Peoples' Congress v Zaire, African Commission on Human and Peoples' Rights, Communication No 75/92 (1995) (hereinafter, the 'Katanga Decision').

⁹⁶¹ And, further, that: 'They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.' Article 20(1).

⁹⁶² Katanga Decision, para 2.

⁹⁶³ *Ibid*, para 4.

⁹⁶⁴ Katanga Decision, para 5.

⁹⁶⁵ *Ibid*, para 6.

This succinct formulation is essentially in line with the subsequent holdings of the Supreme Court of Canada in the Quebec Secession Decision and the ICJ in the Kosovo Advisory Opinion.

355. In a 2009 decision regarding the alleged ‘forceful annexation’ of Southern Cameroon by *La Republique du Cameroun* in October 1961,⁹⁶⁶ the Commission was faced with the question of whether ‘the failure to exercise the third alternative [independence for Southern Cameroon following UN trusteeship], impacted negatively on the right of the people of Southern Cameroon to self-determination’.⁹⁶⁷ In addition to claiming statehood, the claimants alleged systematic human-rights abuses by the state including ‘arbitrary arrests, detentions, torture, punishment, maiming, and killings of persons who have advocated for the self determination of Southern Cameroon’.⁹⁶⁸
356. Regarding the definition of ‘people’, the Commission noted that, ‘[t]o date, the concept has not been defined under international law’.⁹⁶⁹ It then looked to:

A group of international law experts commissioned by UNESCO to reflect on the concept of ‘people’ concluded that where a group of people manifest some of the following characteristics: a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered to be a ‘people’. Such a group may also identify itself as a people, by virtue of their consciousness that they are a people.⁹⁷⁰

Ultimately, it was determined that the inhabitants of Southern Cameroon could ‘legitimately claim to be a “people”,’⁹⁷¹ as ‘they manifest numerous characteristics and affinities, which include a common history, linguistic tradition, territorial connection, and political outlook. More importantly they identify themselves as a people with a separate and distinct identity’.⁹⁷²

⁹⁶⁶ *Kevin Mgwanga Gunme et al v Cameroon*, African Commission on Human and Peoples’ Rights, Communication No 266/03 (2009) (hereinafter, the ‘Cameroon Decision’).

⁹⁶⁷ Cameroon Decision, para 6.

⁹⁶⁸ *Ibid*, para 18.

⁹⁶⁹ *Ibid*, para 169.

⁹⁷⁰ *Ibid*, para 170 (citing UNESCO, Final Report and Recommendations of the Meeting of Experts on extending of the debate on the concept of “peoples’ rights” held in Paris, France, from 27 to 30 November 1989, (SHS-89/CONF.602/COL.1) § 22).

⁹⁷¹ Cameroon Decision, para 178.

⁹⁷² *Ibid*, para 179.

357. On the substance of the claim, the Commission—relying heavily on the Katanga Decision—made the following legal findings:

- (a) ‘[T]he Commission cannot envisage, condone, or encourage secession, as a form of self-determination for the Southern Cameroons’, as to do so would ‘jeopardize the territorial integrity of the Republic of Cameroon’.⁹⁷³
- (b) But, ‘secession is not the sole avenue open to Southern Cameroonians to exercise the right to self-determination. [...] [A]utonomy within a sovereign state, in the context of self-government, confederacy, or federation, while preserving territorial integrity of a State party, can be exercised under the Charter.’⁹⁷⁴
- (c) ‘[T]he right to self-determination cannot be exercised, in the absence of proof of massive violation of human rights under the Charter.’⁹⁷⁵
- (d) ‘[T]he various forms of governance or self-determination such as federalism, local government, unitarism, confederacy, and self-government can be exercised only subject to conformity with state sovereignty and territorial integrity of a State party.’⁹⁷⁶
- (e) ‘[S]ecession is not recognized as a variant of the right to self-determination within the context of the African Charter.’⁹⁷⁷

The Commission ultimately acknowledged violations of ‘various rights protected by the African Charter in respect of Southern Cameroonians’ and urged ‘the Respondent State to address the grievances expressed by the Southern Cameroonians through its democratic institutions’, noting that ‘[t]he demand for [such] rights [had] lead to civil unrest, demonstrations, arrests, detention, and the deaths of various people, which culminated in the demand for secession’.⁹⁷⁸

⁹⁷³ *Ibid*, para 190.

⁹⁷⁴ *Ibid*, para 191.

⁹⁷⁵ *Ibid*, para 199.

⁹⁷⁶ *Ibid*, para 199.

⁹⁷⁷ Cameroon Decision, para 200.

⁹⁷⁸ *Ibid*, para 201.

6. Defining a 'People'

358. The current debate has moved from what was once a more 'nationalistic' dimension toward what is clearly today a far more 'democratic' idea of what constitutes a people. While '[p]eoples under colonial rule were considered as a unity together with the territories that the colonial powers had defined as pertaining to them',⁹⁷⁹ in today's post-colonial context:

the right of 'all peoples' to self-determination has been conceived of in 'domestic' terms, emphasizing its 'democratic' rather than its 'nationalistic' dimension. Other principles have prevailed over the right to secede: for example, those barring intervention in the internal affairs of states, with its obvious corollary, the inviolability of frontiers; or the threat or use of force against a state's territorial integrity and political independence. Existing states with established borders, thus, are supposed to meet the obligations associated with the right to self-determination of *all* peoples, of whatever size or nature, by safeguarding their linguistic, ethnic, and cultural heritage and by guaranteeing both their enjoyment of fundamental rights and the possibility of access to government on an equal footing with the rest of the population. Such access to government is not shaped as a group right to political participation. The right to self-determination, rather, protects the individuals that compose the minority groups, which should not be excluded from political participation, for example, by being denied the (obviously individual) right to vote.⁹⁸⁰

In line with the Supreme Court's reasoning in the Quebec Secession Case, 'peoples' are to be considered in terms of the rights denied to them:

Only where such guarantees are absent or gravely limited can the right to self-determination be specified as the right to secede; in other words, where a people is subjugated in violation of international law, it must be able to regain freedom by constituting itself as an independent and sovereign state. The right of secession is, in the last analysis, attributable to peoples who are suffering from discrimination, from the denial of a government that is representative, and only where the discriminatory behavior is so penetrating, ramified, and systematic as to threaten, concretely, their very existence and where there is no strong likelihood of the discrimination coming to an end.⁹⁸¹

This approach also appears to have been implicit in the Katanga Decision.⁹⁸²

359. A meeting of experts on 'the concept of the rights of peoples', held in Paris in 1989, under the auspices of the UN Educational, Social, and Cultural Organization (UNESCO), described 'peoples' as groups of individuals who enjoy some or all of the

⁹⁷⁹ Susanna Mancini, Symposium, Rethinking the boundaries of democratic secession: Liberalism, nationalism, and the right of minorities to self-determination, Oxford University Press and New York University School of Law, I•CON, Volume 6, Number 3 & 4, 2008, pp. 553–584, Advance Access publication 11 September 2008, at 556.

⁹⁸⁰ Mancini, at 556–557.

⁹⁸¹ Mancini, at 557.

⁹⁸² See para 354, *supra*.

following common features: (a) common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; and (g) common economic life.⁹⁸³ Moreover, according to the UNESCO experts:

[T]he group must be of a certain number which need not be large (e.g., the peoples of micro States) but which must be more than a mere association of individuals within a State ... [and] ... as a whole have the will to be identified as a people or the consciousness of being a people—allowing that groups or some members of such groups ... may not have that will or consciousness.⁹⁸⁴

Finally, ‘the group must have institutions or other means of expressing its common characteristics and will for identity’.⁹⁸⁵ The UNESCO formulation was cited favorably by the African Commission in the Cameroon Case.⁹⁸⁶

7. *Lex Specialis*

360. As noted in the Kosovo Advisory Opinion, in answering the question presented, the ICJ was required, among other things, to determine ‘whether the declaration of independence violated either general international law or the *lex specialis* created by’ an applicable Security Council resolution.⁹⁸⁷ This resonates with the instant case, as the following specific laws are highly relevant to the situation in West Papua over the course of its long history: (i) the 1949 Charter of Transfer of Sovereignty (in particular Article 2); (ii) the 1962 New York Agreement; and (iii) Special Autonomy Law No 21/2001. While these are described in great detail above, each is briefly summarized below for the sake of clarity and completeness.

a. Charter of Transfer of Sovereignty of 1949

⁹⁸³ UN Educational, Scientific, and Cultural Organization (UNESCO), International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Paris, 27–30 November 1989, ‘Final Report and Recommendations’, Document No SHS-89/CONF.602/7 (hereinafter, the ‘UNESCO Report’), 22 February 1990.

⁹⁸⁴ UNESCO Report.

⁹⁸⁵ *Ibid.*

⁹⁸⁶ See para 356, *supra*.

⁹⁸⁷ Kosovo Advisory Opinion, para 83; see also *ibid*, paras 57 *et seq* (In Kosovo, UNMIK—like UNTEA in Indonesia—was responsible for facilitating a final-stage political solution involving the ‘the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement [...]’ Resolution 1244(4)(f).)

361. At the conclusion of the 1949 Hague Roundtable Conference, the Charter of Transfer of Sovereignty Over Indonesia was agreed, pursuant to which the Netherlands would relinquish control over nearly all of its colonial holdings in the East Indies by the end of the year—with one crucial exception. As to the question of West Papua, it was decided:

That the status quo of the residency of New Guinea shall be maintained with the stipulation that within a year from the date of the transfer of sovereignty to the Republic of the United States of Indonesia the question of the political status of New Guinea be determined through negotiations between the Republic of the United States of Indonesia and the Kingdom of the Netherlands.⁹⁸⁸

Thus, when Indonesia gained independence in 1949, the parties were legally bound to continue negotiating the political future of West Papua in good faith.

b. New York Agreement of 1962

362. On 15 August 1962, the Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian) (the ‘New York Agreement’) was signed under the auspices of the UN.⁹⁸⁹ By its terms, the Netherlands was to transfer its authority to an interim UN administration, the United Nations Temporary Executive Authority (the ‘UNTEA’) on 1 October 1962, and the UN administration would then hand over the territory to Indonesia on or after 1 May 1963.⁹⁹⁰ The agreement further provided for a UN-supervised election—to take place sometime after Indonesia’s take-over—in order to allow the Papuans to decide their own fate: whether or not to remain a part of Indonesia.⁹⁹¹

c. Special Autonomy Law of 2001

363. *Otsus*, as the law is known in Indonesia, was passed in 2001 under the Sukarnoputri administration as part of a putative plan to transfer political, economic, and cultural authority to the Papuan people. Ostensibly a comprehensive attempt at addressing longstanding Papuan grievances, a host of political considerations prevented any real

⁹⁸⁸ Charter of the Transfer of Sovereignty Over Indonesia (adopted 2 November 1949, entered into force 27 December 1949) 69 UNTS 206(Charter of Transfer of Sovereignty), Article 2.

⁹⁸⁹ New York Agreement, Article II.

⁹⁹⁰ Drooglever, EEN DAAD VAN VRIJE KEUZE, p 478; New York Agreement, Article II; United Nations, ‘West New Guinea: A Historical Background’.

⁹⁹¹ New York Agreement, Article XVIII; Drooglever, EEN DAAD VAN VRIJE KEUZE, pp 481–482.

reform from taking place. Ultimately, and perversely, the law was utilized as a means of funneling cash into the hands of corrupt local politicians and as a mechanism to silence calls for independence.⁹⁹²

B. Civil and Political Rights

1. The Right to Life

364. Pursuant to Article 3 of the Universal Declaration of Human Rights: ‘Everyone has the right to life [...]’. Article 6 of the ICCPR states that: ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’ The Human Rights Committee has noted that Article 6 enunciates ‘a right which should not be interpreted narrowly’.⁹⁹³ With regard to the protection against arbitrary deprivation of life, the Committee ‘considers that states parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces’.⁹⁹⁴ Article 4 of the ICCPR provides that the right to be free from arbitrary killing is non-derogable; that is, it cannot be suspended even in times of emergency. An arbitrary execution is the killing of a person perpetrated by an agent of the state or any other person acting under government authority or with its complicity, tolerance, or acquiescence, without due process of law.

2. The Right to Personal Integrity

365. A violation of the right to personal integrity occurs when the state, through its agents or any other person acting in an official capacity, on its instigation, or with its consent or acquiescence, applies torture or cruel, inhuman, or degrading treatment or punishment, thus causing physical, psychological, or moral suffering. The greater the extent to

⁹⁹² See paras 301 *et seq.*, *supra*.

⁹⁹³ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev1 at 6 (1994).

⁹⁹⁴ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev1 at 6 (1994).

which the pain and suffering are serious and intentionally inflicted, the greater the likelihood that the treatment involves an attack to the integrity of the person.

366. Pursuant to Article 5 of the Universal Declaration of Human Rights: ‘No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment’. Article 7 of the ICCPR also guarantees the right to be free from torture. According to the Human Rights Committee, this provision is non-derogable—even in situations of public emergency.⁹⁹⁵ And Article 10(1) of the ICCPR provides that: ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’. According to the Human Rights Committee, Article 10(1) applies to ‘anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals, [...] detention camps, or correctional institutions or elsewhere’.⁹⁹⁶
367. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter, the ‘CAT’) defines torture as:

[...] any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁹⁹⁷

The CAT was ratified by Indonesia on 28 October 1998.

368. Torture may be understood as an aggravated form of cruel, inhuman or degrading treatment. Among other things, rape amounts to a form of torture.⁹⁹⁸
369. Pursuant to Article 16 of the CAT, the obligations contained in Articles 10, 11, 12, and 13 apply to both torture and other forms of cruel, inhuman, or degrading treatment or punishment. Hence, Articles 12 and 13 require states to ensure that complaints of acts

⁹⁹⁵ Human Rights Committee, General Comment 7, Article 7 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev1 at 7 (1994).

⁹⁹⁶ Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 33 (1994).

⁹⁹⁷ CAT, Article 1(1).

⁹⁹⁸ See, e.g., ICRC, Customary IHL, Rule 93 (‘Rape and other forms of sexual violence are prohibited’).

of both torture and cruel, inhuman, or degrading treatment or punishment are investigated.

3. The Right to Liberty and Security of Person

370. According to Article 3 of the Universal Declaration of Human Rights: 'Everyone has the right to [...] liberty and security of person'. In addition, Article 9 of the Universal Declaration states that: 'No one shall be subjected to arbitrary arrest, detention, or exile'. Article 9(1) of the ICCPR guarantees that '[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.' The Human Rights Committee has pointed out that this provision 'is applicable to all deprivations of liberty, whether in criminal cases or in other cases [...]'.⁹⁹⁹

371. The prohibition against 'arbitrary' arrest goes beyond the question of legality. It is not enough that a deprivation of liberty be provided for by law; in addition, the law itself must not be arbitrary, and the enforcement of the law must not take place arbitrarily. The concept of arbitrariness should be interpreted broadly, as containing elements of injustice, unreasonableness, discrimination, unpredictability, and/or disproportionality.

372. According to the Human Rights Committee, states should take specific and effective measures to prevent the disappearance of individuals. The International Convention for the Protection of All Persons from Enforced Disappearance (the 'CED')¹⁰⁰⁰ defines an enforced disappearance as:

[...] the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.¹⁰⁰¹

⁹⁹⁹ Human Rights Committee, General Comment 8, Article 9 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 8 (1994).

¹⁰⁰⁰ *N.b.* Indonesia has not ratified this convention. *See also* Declaration on the Protection of All Persons from Enforced Disappearance. Adopted by General Assembly resolution 47/133 of 18 December 18 1992, UN Doc A/RES/47/133, 32 I.L.M. 903 (1993).

¹⁰⁰¹ CED, Article 2.

The CED contains detailed guidance as to states' obligations on this matter.¹⁰⁰²

373. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets out a number of detailed principles, which are meant to 'apply for the protection of all persons under any form of detention or imprisonment'.¹⁰⁰³ The Body of Principles provides, in pertinent part:

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.¹⁰⁰⁴

Arrest, detention, or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.¹⁰⁰⁵

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.¹⁰⁰⁶

These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, color, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth, or other status.¹⁰⁰⁷

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment, or punishment.¹⁰⁰⁸

4. Rape and Other Violence Against Women

374. As noted above, rape amounts to a form of torture. Moreover, 'discrimination against women', as defined by Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (the 'CEDAW'),¹⁰⁰⁹ has been interpreted to include gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or human rights conventions.¹⁰¹⁰ And gender-based violence is itself a manifestation of the human-

¹⁰⁰² See CED, Articles 3 *et seq.*

¹⁰⁰³ A/RES/43/173, 9 December 1988.

¹⁰⁰⁴ *Ibid.*, Principle 1.

¹⁰⁰⁵ A/RES/43/173, 9 December 1988, Principle 2.

¹⁰⁰⁶ *Ibid.*, Principle 3.

¹⁰⁰⁷ *Ibid.*, Principle 5(1).

¹⁰⁰⁸ *Ibid.*, Principle 6.

¹⁰⁰⁹ See GA Resolution 34/180 of 18 December 1979. *N.b.* Indonesia ratified the convention on 13 September 1984.

¹⁰¹⁰ See Committee on the Elimination of Discrimination Against Women, General Recommendation No 19 (11th Session 1992).

rights violation of discrimination based on sex. Furthermore, the pervasiveness of sexual violence may impede or deprive women of the ability to exercise their civil, political, economic, social, and/or cultural rights.

5. Forced Labor

375. While Article 4 of the Universal Declaration of Human Rights does not specifically refer to the issue, it is clear from its drafting history that forced labor was regarded as a form of servitude.¹⁰¹¹ The ICCPR specifically provides in Article 8(3)(a) that '[n]o one shall be required to perform forced or compulsory labor', subject to certain specified exceptions concerning prisoners, military service, emergencies, and normal civil obligations. And, of course, the International Labor Organization (the 'ILO') has adopted countless instruments defining and condemning the practice of forced labor.¹⁰¹²

6. Freedom of Expression, Association, and Assembly

376. According to Article 19 of the Universal Declaration of Human Rights: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through the media and regardless of frontiers'. And the ICCPR provides a near identical guarantee,¹⁰¹³ subject to certain internationally-accepted restrictions, 'as are provided by law and are necessary'¹⁰¹⁴—i.e. 'for the respect of the rights or reputations of others'¹⁰¹⁵ or 'for the protection of national security or of public order, or of public

¹⁰¹¹ See United Nations document E/CN.4/SR.53 (1948).

¹⁰¹² See, e.g., Forced Labor Convention of 1930 (No 29) (which prohibits the use of forced and compulsory labor); Discrimination (Employment and Occupation) Convention of 1958 (No 111) (which establishes the principle of equal opportunity and treatment in employment and occupation and prohibits discrimination on a number of grounds, including race, color, sex, religion, political opinion, national extraction, and social origin); Rural Workers' Organizations Convention of 1975 (No 141) (which establishes the right of rural workers to establish and join organizations of their own choosing); Human Resources Development Convention of 1975 (No 142) (which promotes vocational guidance and training); Plantations Convention of 1958 (No 110) (which regulates the employment of plantation workers and covers issues such as wages, medical care, housing, and maternity protection); Minimum Age Convention of 1973 (No 138) (which establishes a minimum age for entry into the work force); Worst Forms of Child Labor Convention of 1999 (No 182) (which prohibits absolutely particularly abusive forms of child labor).

¹⁰¹³ ICCPR, Article 19(2) ('Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.')

¹⁰¹⁴ ICCPR, Article 19(3).

¹⁰¹⁵ ICCPR, Article 19(3)(a).

health and morals'.¹⁰¹⁶ The Human Rights Committee has commented that Article 19(1) is 'a right to which the Covenant permits no exception or restriction'.¹⁰¹⁷ The right to freedom of opinion and expression is a basic right that acts as a cornerstone for many other rights, including many—if not all—political rights.

377. Article 20 of the Universal Declaration of Human Rights states: 'Everyone has the right to freedom of peaceful assembly and association'. The ICCPR guarantees in Article 22(1) that, 'Everyone shall have the right to freedom of association with others [...]'. Pursuant to Article 22(2), 'No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms of others.' Freedom of association includes forming, joining, and participating in—among other things—political parties, NGOs, regional associations, religious groups, and student organizations. The violation of these rights interferes with the proper working of a democratic society.

378. The right to peaceful assembly should be considered in tandem with the right to freedom of association. Article 21 of the ICCPR guarantees that 'The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.'

7. Human Rights Defenders

379. In 1998, the United Nations General Assembly adopted Resolution 53/144, now widely known as the Declaration on Human Rights Defenders.¹⁰¹⁸ The declaration acknowledges the right and responsibility of individuals, groups, and organs of society

¹⁰¹⁶ ICCPR, Article 19(3)(b).

¹⁰¹⁷ Human Rights Committee, General Comment 10, Article 19 (Nineteenth session, 1983), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 11 (1994).

¹⁰¹⁸ A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 8 March 1999.

to promote and protect universally recognized human rights and fundamental freedoms. According to Article 1: 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.' Furthermore, among other things, it stipulates the need and the means to protect human rights defenders ('HRDs'), their work, and the legitimacy of their activities.¹⁰¹⁹

C. Economic, Social, and Cultural Rights

1. The Pursuit of Economic, Social, and Cultural Development

380. According to ICESCR Article 1(1), by virtue of the right of self-determination, all peoples 'freely pursue their economic, social, and cultural development'.

2. The Benefit of Natural Wealth and Resources

381. According to ICESCR Article 1(2): 'All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.'

3. Non-Discrimination and Equal Rights

382. According to ICESCR Article 2(2): 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status'. Article 3: 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.'

¹⁰¹⁹ A/RES/53/144, Articles 2–20.

4. The Right to Work Under Favorable Conditions

383. According to ICESCR Article 6(1): ‘The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.’ Additionally, according to Article 7(1): ‘The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work [...]’.¹⁰²⁰

5. The Right to an Adequate Standard of Living

384. According to ICESCR Article 11(1): ‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]’ Additionally, Article 11(2) ‘recogniz[es] the fundamental right of everyone to be free from hunger’.¹⁰²¹

6. The Right to Health

385. According to ICESCR Article 12(1): ‘The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ In this regard, States Parties are required to take steps ‘necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant

¹⁰²⁰ *N.b.* ‘[I]n particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.’ ICESCR Article 7(1).

¹⁰²¹ In this regard, States Parties ‘shall take, individually and through international co-operation, the measures, including specific programs, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need’. ICESCR, Article 11(2).

mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

7. The Right to Education

386. According to ICESCR Article 13(1): ‘The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace.’

8. The Right to Cultural Life and Progress

387. According to ICESCR Article 15(1): ‘The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; [...]’ Additionally, according to Article 15(2): ‘The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.’

9. The Right to Property and Housing

388. The Universal Declaration of Human Rights provides in Article 17, ‘Everyone has the right to own property alone as well as in association with others [...]. No one shall be arbitrarily deprived of his property.’ The right to property is closely associated with the right to housing. As noted above, Article 11(1) of the ICESCR provides for, among other things, ‘the right of everyone to [...] adequate [...] housing [...]’.

10. The Right to Development

389. The UN Declaration on the Right to Development¹⁰²² provides, in pertinent part:

Article 1(1): The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 1(2): The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 8(1): States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. [...]

These protections bolster many of those already set out in the ICESCR.

D. Indigenous Rights

390. The UN Declaration on the Rights of Indigenous Peoples (the 'DRIP'),¹⁰²³ for which Indonesia voted in favor, lists a number of rights unique to indigenous peoples, chief among them the right to:

- a. individual and collective enjoyment of all internationally recognized human rights;¹⁰²⁴
- b. freedom from discrimination based on indigenous origin or identity;¹⁰²⁵
- c. self-determination¹⁰²⁶ and self-government;¹⁰²⁷

¹⁰²² UN General Assembly, Declaration on the Right to Development, A/RES/41/128, 4 December 1986.

¹⁰²³ A/RES/61/295, 13 September 2007.

¹⁰²⁴ DRIP, Article 1 ('Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.')

¹⁰²⁵ DRIP, Article 2 ('Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.')

¹⁰²⁶ DRIP, Article 3 ('Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.');

Article 46 ('1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.')

- d. distinctive political, legal, economic, social, and cultural institutions;¹⁰²⁸
- e. life, liberty, and security;¹⁰²⁹
- f. freedom from forced assimilation or cultural destruction;¹⁰³⁰
- g. belong to their community in accord with its traditions and customs;¹⁰³¹
- h. freedom from forcible removal from their land or territories;¹⁰³²
- i. fair and equal conditions of employment;¹⁰³³
- j. participate in decision-making processes that may affect their rights;¹⁰³⁴
- k. freely develop political, economic, and social systems¹⁰³⁵ and determine development priorities;¹⁰³⁶
- l. traditionally-owned and/or utilized land and resources¹⁰³⁷ and the use and development of same.¹⁰³⁸

¹⁰²⁷ DRIP, Article 4 ('Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.')

¹⁰²⁸ DRIP, Article 5 ('Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.')

¹⁰²⁹ DRIP, Article 7 ('1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of 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.')

¹⁰³⁰ DRIP, Article 8(1) ('Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.')

¹⁰³¹ DRIP, Article 9 ('Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.')

¹⁰³² DRIP, 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.')

¹⁰³³ DRIP, Article 17 ('1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labor law. [...] 3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labor and, *inter alia*, employment or salary.')

¹⁰³⁴ DRIP, Article 18 ('Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.');

Article 19 ('States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.')

¹⁰³⁵ DRIP, Article 20 ('1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.');

Article 21 ('1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. 2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. [...].')

¹⁰³⁶ DRIP, Article 23 ('Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.')

Pursuant to the DRIP, states are obliged to provide effective mechanisms for the prevention of, and redress for violations, of these rights—in particular:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.¹⁰³⁹

Additionally, the ILO has promulgated a convention very much in line with the rights and protections asserted by the DRIP.¹⁰⁴⁰

E. Minorities and Discrimination

391. The protection of the rights of minorities is provided for under Articles 26¹⁰⁴¹ and 27¹⁰⁴² of the ICCPR. However, the UN Declaration on the Rights of Persons Belonging

¹⁰³⁷ DRIP, Article 26 ('1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.'). 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.')

¹⁰³⁸ DRIP, Article 32 ('1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.')

¹⁰³⁹ DRIP, Article 8.

¹⁰⁴⁰ See Indigenous and Tribal Peoples Convention of 1989 (No 169), Articles 4–8, 13–14. *N.b.* Indonesia has not ratified this convention.

¹⁰⁴¹ ICCPR, Article 26 provides: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.'

to National or Ethnic, Religious, and Linguistic Minorities¹⁰⁴³ is the document which sets essential standards and offers guidance to states in adopting appropriate legislative and other measures to secure the rights of persons belonging to minorities.

392. According to Article 1 of the declaration, 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity'¹⁰⁴⁴ and 'States shall adopt appropriate legislative and other measures to achieve those ends'.¹⁰⁴⁵ Importantly, according to Article 2:

1. Persons belonging to national or ethnic, religious, and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Minorities should be free to 'exercise their rights [...] individually as well as in community with other members of their group, without any discrimination'.¹⁰⁴⁶

393. With respect to such rights, all manner of positive obligation is placed on the state to ensure effective enjoyment by minorities:

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

¹⁰⁴² ICCPR, Article 27 provides: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

¹⁰⁴³ GA Resolution 47/135, 18 December 1992.

¹⁰⁴⁴ *Ibid.*, Article 1(1).

¹⁰⁴⁵ *Ibid.*, Article 1(2).

¹⁰⁴⁶ GA Resolution 47/135, 18 December 1992, Article 3(1).

2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.¹⁰⁴⁷

National policies and programs, as well as intra-state cooperation programs, should all be planned and implemented 'with due regard for the legitimate interests of persons belonging to minorities'.¹⁰⁴⁸

394. Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination (the 'CERD'),¹⁰⁴⁹ obliges states to 'condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'.¹⁰⁵⁰ For purposes of its application, CERD defines the term 'racial discrimination' as follows:

any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.¹⁰⁵¹

States are required to both refrain from such behavior and to take positive measures to prevent it from occurring.¹⁰⁵² Moreover, they are expected to develop and protect the

¹⁰⁴⁷ *Ibid*, Article 4.

¹⁰⁴⁸ *Ibid*, Article 5(1) and (2).

¹⁰⁴⁹ See GA Resolution 2106 (XX) of 21 December 1965. *N.b.* Indonesia acceded to the convention on 25 June 1999.

¹⁰⁵⁰ CERD, Article 2(1).

¹⁰⁵¹ CERD, Article 1(1).

¹⁰⁵² See CERD, Article 2(1) ('(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national, and local policies, and to amend, rescind, or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate

rights of those groups particularly at risk of discrimination.¹⁰⁵³ In complying with their obligations under Article 2, states are expected to guarantee the equal exercise of a number of important political, civil, economic, social, and cultural rights, including: access to justice; security of person; freedom of religion, opinion, expression, assembly, and association; just and favorable working conditions; public health, social services, and education.¹⁰⁵⁴

V. ARGUMENT

A. The Communication is Admissible to the Human Rights Council

395. As noted above, this communication has been submitted on behalf of Forkorus Yaboisembut and nineteen unnamed individuals, who—along with the much larger group they represent—have been, and continue to be, the victims of gross violations of human rights and fundamental freedoms of a staggering number and variety in the Federal Republic of Indonesia from its inception to the present.¹⁰⁵⁵ Moreover, the Victims—as demonstrated by their integrated statements—have direct and reliable knowledge of the violations described herein.¹⁰⁵⁶ As required, the instant communication and its supporting material have been properly addressed to the HRC's Complaint Procedure Unit.¹⁰⁵⁷

396. As to the specific provisions of Resolution 5/1, this communication is not politically motivated, and its object—self-determination, justice, peace, and prosperity for the indigenous people of West Papua—is clearly consistent with all 'applicable instruments in the field of human rights law'.¹⁰⁵⁸ Additionally, it: (i) provides 'a factual description of the alleged violations, including the rights which are alleged to [have been] violated';

means, including legislation as required by circumstances, racial discrimination by any persons, group, or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.')

¹⁰⁵³ See CERD, Article 2(2) ('States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural, and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.')

¹⁰⁵⁴ See CERD, Article 5.

¹⁰⁵⁵ See para 324, *supra*.

¹⁰⁵⁶ See para 324, *supra*.

¹⁰⁵⁷ See para 324, *supra*.

¹⁰⁵⁸ See para 325, *supra*.

(ii) is not couched in 'abusive' language; (iii) is submitted by bona fide 'victims of violations of human rights and fundamental freedoms [...] acting in good faith in accordance with the principles of human rights'; (iv) 'is not exclusively based on [media] reports'; and (v) 'does not refer to a case that [...] [is] already being dealt with by a special procedure, a treaty body, or other United Nations or similar regional complaints procedure'.¹⁰⁵⁹ Finally, while many attempts have been made by the Complainants and others seek domestic remedies for many of the violations alleged herein, 'it appears that such remedies would be ineffective or unreasonably prolonged'.¹⁰⁶⁰

397. For all of these reasons, the communication is both properly filed with, and admissible to, the Council. Accordingly, a timely determination as to the substantive merits of the following arguments is warranted.

**B. Indonesia Has Violated, and Continues to Violate,
the West Papuan People's Right to Self-Determination**

***1. The 1969 Act of Free Choice Was Manipulated by the Indonesia
Government in Order to Subvert West Papuan Independence***

398. The idea of West Papua as a place apart is an extremely old one.¹⁰⁶¹ In the context of the negotiations leading to Indonesia's eventual emergence as an independent nation state, West Papua's political future was always viewed as an exceptional case. While the territory was unquestionably a pawn on the geopolitical chessboard of the storied Dutch-Indonesian match, there is equally no doubt about indigenous aspirations, which were never linked to those of the budding nationalists in Jakarta.¹⁰⁶² At the Malino Conference of 1946, the West Papuan delegate Franz Kaisiepo presciently voiced his people's concerns: should their territory become part of a greater Indonesia, its natural resources would be swallowed whole with no attention paid to the economic situation of the inhabitants, who would be dominated by larger and more powerful ethnic groups from elsewhere on the archipelago.¹⁰⁶³ Then as now, this was the rub.

¹⁰⁵⁹ See para 324, *supra*.

¹⁰⁶⁰ See para 324, *supra*.

¹⁰⁶¹ See paras 10–14, *supra*.

¹⁰⁶² See paras 15–18, *supra*.

¹⁰⁶³ See para 17, *supra*.

399. Perhaps because of such sentiments and anxieties, the West Papuans were excluded from the subsequent Linggadjati Conference. The Netherlands, however, made its own wishes clear: independence for West Papua.¹⁰⁶⁴ Three years later, the Indonesian, Papuan, and Dutch positions were unchanged. At the 1949 Hague Roundtable Conference, the Netherlands strongly argued that West Papua should benefit from Article 73 of the UN Charter. And the upshot of the conference—the Charter of Transfer of Sovereignty Over Indonesia—specifically reflected that view.¹⁰⁶⁵ Accordingly, when Indonesia finally gained its independence in 1949, it looked as though West Papua were on a path to self-determination.
400. West Papuan intentions remained unambiguous throughout the 1950s. With Dutch support, the West New Guinea Council was formed in 1961, and national symbols—a flag, coat of arms, national anthem, name, and motto—were adopted. Sukarno reacted militarily and threatened to ‘destroy the Dutch created Puppet State of West Papua’. Unfortunately for the Papuans, the matter had moved beyond domestic politics and become a bona fide Cold-War conundrum. The political landscape that emerged from the US-brokered settlement—the New York Agreement, the UNTEA interregnum, and the notorious Act of Free Choice—was to provide the Indonesians much room for opportunistic maneuvers, with the complicity of Western powers and the UN.
401. In retrospect, it seems obvious that effectuating the transfer of sovereignty over West Papua from the Netherlands to Indonesia prior to the planned referendum on the question of Papuan independence would lead to nothing but an increased stranglehold on the disputed territory. Yet those were precisely the terms agreed, and—having been dealt an extremely strong hand—Jakarta essentially ran the table. Naturally, from the moment the transfer took place on 1 May 1963, Indonesia began to consolidate its position. By the time UN peacekeeping forces arrived, Indonesian commandos were positioned in ‘West Irian’, ostensibly to assist the local police but in fact to curb Papuan nationalist sentiment—by way of mass arrests and torture. At the same time, Jakarta exploited the local economy, mandated the use of the Indonesian language, and formulated plans for massive transmigration.

¹⁰⁶⁴ See para 18, *supra*.

¹⁰⁶⁵ See para 20, *supra*.

402. Unsurprisingly, a cycle of resistance and reprisal ensued, and the years between the handover and the Act of Free Choice were incredibly bloody. Notably, it was during this period that Freeport signed its first contract with the federal government. And when the UN's envoy, Fernando Ortiz-Sanz, arrived in 1968 to facilitate the referendum, there was no question as to the outcome of the sham process to follow. Jakarta's intentions were as obvious as they were immovable.
403. As set out in much greater detail above, the manner in which the Indonesian government was able to hijack the Act of Free Choice must be one of the most cynically effective land grabs of the 20th century. While the New York Agreement clearly envisaged an actual referendum with the participation of all adults from West Papua 'in accordance with international practice', Jakarta skillfully imposed a representative system that would ensure its preferred outcome,¹⁰⁶⁶ with military, security, and intelligence services maintaining tight control over the proceedings. Ortiz-Sanz and his team—well aware of what was happening but powerless to stop it—were permitted to observe the selection of only 195 of the 1026 individuals hand-picked by Jakarta (rather than the roughly 800,000 West Papuan inhabitants) to participate in the referendum. Such 'participation', as it were, resulted in a unanimous vote for Indonesian control. Half-hearted UN opposition met hard-nosed Western realpolitik, and the General Assembly endorsed the bogus result and sealed West Papua's fate.
404. Ultimately, what was meant to have been a genuine expression by the people of West Papua regarding their political future, amounted to a *fait accompli* for the Indonesian government and its allies. The cost of this farce was staggeringly high: between 1963 and 1969—from the handover to the Act of Free Choice—it is estimated that some 30,000 West Papuans lost their lives.

2. Between 1969 and 2001, the Indonesian Government Actively Marginalized West Papuan Society and Culture and Violently Suppressed All West Papua Efforts at Self-Determination

¹⁰⁶⁶ See paras 29–43, *supra*.

405. With the question of West Papua settled as a political matter, both domestically and internationally, and with the machinery of its economic exploitation firmly in place, Jakarta could now embark in earnest on the long-awaited program that would consume its newly acquired territory—so-called ‘modernization’. While this meant rapid economic expansion and its concomitant benefits for the central government, the military and intelligence services, private industry, transmigrants, and complicit Papuan elites, for the vast majority of indigenous Papuans it amounted to nothing less than wholesale civil, political, economic, social, and cultural subjugation.
406. It was during this roughly thirty-year period that Jakarta’s most destructive policies in the territory were introduced and allowed to flourish—transmigration, forcible eviction, industrialized natural resource exploitation, confiscation of land, and the ‘Indonesianization’ of West Papuan society—all of which relegated the indigenous population to the category of second-class citizens. Denied the benefits of modernization and pushed to the margins of their own society, this naturally led to greater resistance by the OPM, the TPN, and individual Papuans. And such organized resistance led, in turn, to what can only be described as the normalization of the central government’s programs of suppression: military and police actions of various sizes and levels of intensity; overt and covert security and intelligence operations—all of which resulted in the brutal suppression of the pro-independence movements at every turn, with the Indonesian government determined to crush separatist activists and organizations by any means necessary.
407. Despite the brutality, or perhaps because of it, the pro-Papuan movement only seemed to grow in strength. And it was toward the end of this period that the Second Papuan Congress was held at which the PDP adopted a resolution: (i) reaffirming the independence of West Papua; (ii) rejecting the New York Agreement as being ‘legally and morally flawed’; and (iii) disavowing the results of the Act of Free Choice. The resolution called for the establishment of an independent committee to prepare a referendum on the question of West Papuan independence and urged Jakarta—as well as the Netherlands, the US, and the UN—to bring about a negotiated settlement on the territory’s status. While the congress received tepid support from then-President Wahid, a ‘plan was [...] drawn up to crack down on the separatist movement’, one that included ‘the formation of militias, targeting human rights defenders, and “black operations”

against independence leaders.’ As detailed above, government efforts aimed specifically at suppressing West Papuan nationalism never wavered in their brutality throughout this period. Many thousands more were killed, tortured, and otherwise brutalized.

***3. ‘Special Autonomy’ Failed to Remediate the Situation
and Violent Suppression of Self-Determination Efforts
Has Continued Unabated From 1991 to the Present***

408. As noted above, Special Autonomy—or *Otsus*, as it is known in Indonesia—was a law aimed at transferring political, economic, and cultural authority to the Papuan people. Despite certain good intentions, the law failed for a variety of obvious and foreseeable political considerations.¹⁰⁶⁷
409. Contrary to the stated ambitions of Special Autonomy, West Papua continues to be governed by racist, discriminatory, and destructive central-government policies, policies that continue to be brutally enforced by—and, perversely, to benefit—the military-security establishment. The great hope of *Otsus*—a share of what rightly belongs to West Papuans and a measure of equality in their ancestral homeland—has sadly failed to materialize.
410. West Papuans simply wish to be recognized as equal human beings with the right to develop their culture and traditions without being subject to oppression. They desire a new system of governance based on their indigenous culture and practices. However, the government of Indonesia does not recognize the right to self-determination of the West Papuan people and, to the contrary, regards their struggle as criminal, regardless of the means deployed.

**C. Indonesia Has Violated, and Continues to Violate, the
West Papuan’s Human Rights and Fundamental Freedoms**

1. Civil and Political Rights

¹⁰⁶⁷ See paras 301 *et seq.*, *supra*.

411. Given the innumerable facts set out above,¹⁰⁶⁸ there is no doubt that the Indonesian government—through its military, security, and intelligence services—has committed untold violations of West Papuan’s civil and political rights, namely: arbitrary killings and extrajudicial executions;¹⁰⁶⁹ torture;¹⁰⁷⁰ cruel, inhuman, degrading treatment and punishment;¹⁰⁷¹ rape;¹⁰⁷² arbitrary arrest and detention;¹⁰⁷³ enforced disappearances;¹⁰⁷⁴ forced labor;¹⁰⁷⁵ deprivations of freedom of expression, association, and assembly;¹⁰⁷⁶ targeting of human rights defenders;¹⁰⁷⁷ and discrimination against minorities.¹⁰⁷⁸ Moreover, the government has accomplished such staggering feats of unmitigated depravity with domestic impunity and relatively little international condemnation.
412. The systematic repression of Papuan civil and political rights has been ongoing since the moment of Indonesia’s independence. A major facilitating force behind Jakarta’s regime of physical and psychological terror is the wholesale suppression of expression, association, and assembly in West Papua. Peaceful demonstrations are routinely dispersed by force, and participants are consistently arrested, detained, and punished for advocating independence or other political change. Activists demanding justice for past human rights abuses or criticizing government mismanagement are accused of working for a hidden secessionist agenda and thus stigmatized, criminalized, and delegitimized. In the process, many are killed, tortured, kidnapped, and otherwise brutalized. As noted, the various tactics employed by the army, police, and intelligence services range from the overt and wholesale destruction of entire villages to clandestine surveillance of homes, offices, and places of worship. Those unfortunate enough to be taken into custody face electric shocks, cigarette burns, water torture, flaying, detention in darkened steel containers for months, captivity for extended periods in closets filled with filthy water, and beatings with bricks, wooden blocks, iron bars, pistols, and electric cables.

¹⁰⁶⁸ See Section II.A –E, *supra*.

¹⁰⁶⁹ See para 364, *supra*.

¹⁰⁷⁰ See paras 365–369, *supra*.

¹⁰⁷¹ See paras 365–369, *supra*.

¹⁰⁷² See para 374, *supra*.

¹⁰⁷³ See paras 370–371, *supra*.

¹⁰⁷⁴ See para 372, *supra*.

¹⁰⁷⁵ See para 375, *supra*.

¹⁰⁷⁶ See paras 376–378, *supra*.

¹⁰⁷⁷ See para 379, *supra*.

¹⁰⁷⁸ See paras 391 *et seq.*, *supra*.

413. Despite the gravity of the abuses committed, military and security personnel are essentially granted immunity from any serious sanction. Military courts—the mandated forum in most cases—are notoriously corrupt and generally consist of poorly trained military judges whose decisions cannot be challenged before civilian tribunals. Extremely lenient punishments have been imposed on some of the most serious human rights abuses, and applicable laws have not been reformed in accordance with the international human-rights instruments ratified by Indonesia. The lack of proper investigation and adequate judgments feeds a culture of impunity that only encourages the commission of further abuses.

2. Economic, Social, and Cultural Rights

414. Equally, given the facts set out above,¹⁰⁷⁹ the Indonesian government has engaged in a similarly shocking number of violations of Papuan's economic, social, and cultural rights. Through various and systematic state-sanctioned programs and efforts, Jakarta—with the complicity of local government and private actors—has actively stymied West Papua's economic, social, and cultural development;¹⁰⁸⁰ denied Papuans the many benefits of their natural wealth and resources;¹⁰⁸¹ and discriminated against them at every opportunity.¹⁰⁸² More specifically, through the direct and indirect efforts of the Indonesian government, Papuans have been denied equal enjoyment¹⁰⁸³ of a number of important second-generation rights, including the rights to: work under favorable conditions,¹⁰⁸⁴ an adequate standard of living,¹⁰⁸⁵ health,¹⁰⁸⁶ education,¹⁰⁸⁷ cultural life,¹⁰⁸⁸ scientific progress,¹⁰⁸⁹ property,¹⁰⁹⁰ and housing.¹⁰⁹¹

415. All of this has been achieved through a number of national policies—transmigration, modernization, Indonesianization, economic exploitation, land grabbing, and forcible

¹⁰⁷⁹ See Section II.F–H, *supra*.

¹⁰⁸⁰ See ICESCR, Article 1(1); UN Declaration on the Right to Development, Article 1(1).

¹⁰⁸¹ See ICESCR, Article 1(2); UN Declaration on the Right to Development, Article 1(2).

¹⁰⁸² See ICESCR, Article 2(2).

¹⁰⁸³ See ICESCR, Article 3.

¹⁰⁸⁴ See ICESCR, Articles 6(1) and 7(1).

¹⁰⁸⁵ See ICESCR, Articles 11(1) and 11(2).

¹⁰⁸⁶ See ICESCR, Article 12(1).

¹⁰⁸⁷ See ICESCR, Article 13(1).

¹⁰⁸⁸ See ICESCR, Article 15(1).

¹⁰⁸⁹ See ICESCR, Article 15(2).

¹⁰⁹⁰ See Universal Declaration of Human Rights, Article 17.

¹⁰⁹¹ See ICESCR, Article 11(1).

eviction—systematically and ruthlessly implemented by the central government with the assistance of the military-security establishment and private actors. As Papuans are denied control of their natural wealth and resources, the many economic, social, and cultural rights that would naturally flow from such control are significantly curtailed.

416. While companies such as Freeport claim to provide compensation for ravaging West Papua's land and people, such contributions—to the extent they ever materialize—are essentially nil in comparison to the vast fortunes extracted from the territory. And very few of the billions of dollars in tax revenue generated by foreign businesses operating in West Papua ever make it back to Papuans themselves. For their part, government institutions provide no effective remedies for the economic, social, and cultural destruction that has taken place since 1963.

3. Indigenous Rights

417. Again, on the same facts presented, the Indonesian government has violated nearly every provision of the UN Declaration on the Rights of Indigenous Peoples (the 'DRIP'): individual and collective enjoyment of all internationally recognized human rights; freedom from discrimination based on indigenous origin or identity; self-determination and self-government; assert their distinctive political, legal, economic, social, and cultural institutions; life, liberty, and security; freedom from forced assimilation or cultural destruction; belong to their community in accord with its traditions and customs; not be forcibly removed from their land or territories; fair and equal conditions of employment; participate in decision-making processes that may affect their rights; freely develop political, economic, and social systems and determine development priorities; traditionally-owned and/or utilized land and resources and the use and development of same. In particular, as with violations of the ICESCR, West Papuan indigenous rights have been compromised by Indonesian government policies of land grabbing, the granting of concessions to industrialized extractive and agricultural concerns, deforestation, and the transmigration program.
418. Far from providing effective mechanisms for the prevention or redress of these violations, the Indonesian state is the major culprit. West Papuans have been: (i) deprived of their integrity as distinct peoples, their cultural values, and their ethnic

identities; (ii) dispossessed of their lands, territories, and resources; (iii) forcibly transferred with the aim or effect of violating or undermining their rights; and (iv) subject to a certain amount of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

419. Composed of well over 200 different tribes living in forests, mountains, and sacred places, Papuans depend in many ways on their intimate connection to the land. Indigenous leadership and control of natural resource is essential to maintaining the right to participate in cultural life. The exploitation of ancestral areas for industrial purposes, the implementation of transmigration programs that transform the ethnic composition of the region, and excessive violence perpetrated by the numerous security personnel stationed in Papuan territory prevents the indigenous inhabitants from maintaining and perpetuating their culture. Simply put, use of the land is vital to Papuans self-determination and central to their physical and cultural survival.
420. However, rather than promoting indigenous rights, land acquisitions are often supported by national and local government through policies and licensing.¹⁰⁹² Indigenous leaders are often tricked, defrauded, or coerced into releasing their lands, robbing entire indigenous communities of their cultural heritage and means of subsistence.¹⁰⁹³ Such large-scale land acquisition is a threat to the lives of indigenous peoples.¹⁰⁹⁴
421. Loss of land not only affects the Papuan people's resource rights but also their cultural rights. For example, the Asian Human Rights Commission reports that '[I]and rights violations are one of the most serious problems indigenous communities have to face as their way of life, their livelihood, and their cultural and ancestral heritage are closely linked to their land and natural environment.'¹⁰⁹⁵ Various indigenous communities are denied access to sacred grounds and thus unable to practice their traditions because of companies' operations in West Papua.¹⁰⁹⁶

¹⁰⁹² ICP, 'Human Rights in West Papua 2013' (n 117), p 53.

¹⁰⁹³ Asian Human Rights Commission (n 116), p 41.

¹⁰⁹⁴ *Ibid* (citing UN Special Rapporteur on the Right to Food, Olivier de Schutter).

¹⁰⁹⁵ Asian Human Rights Commission (n 116), p 47.

¹⁰⁹⁶ *Ibid*, p 49.

422. The concepts of indigenous peoples and traditional communities remain broadly defined in national legislation, to the extent that West Papuans are not entitled to any special rights in practice.¹⁰⁹⁷ The national government does not recognize the definition of indigenous peoples as stipulated in the DRIP.¹⁰⁹⁸ A draft Bill on Recognition and Protection on the Rights of Indigenous Peoples, currently under consideration by parliament, stubbornly fails to accept the definition of indigenous peoples set out in the ILO's Indigenous and Tribal Peoples Convention of 1989.¹⁰⁹⁹

D. Because it Has Been Denied the Meaningful Exercise of its Right to Self-Determination Internally, West Papua is Entitled to Remedial Succession

423. It is beyond argument that the right to self-determination is an established fixture of international law and that, accordingly, Papuans should be entitled to reap the many benefits intended to flow from this *jus cogens* and *erga omnes* principle. As this has obviously and egregiously not been the case since 1963, the *practical* question presented herein is one of remediation, namely: in light of their terrible history, *how* can Papuans be empowered to achieve a measure of justice going forward. For purposes of this filing, the answer lies in the evolution of the relevant jurisprudence. Given the failures of Special Autonomy and the deeply entrenched position of the Indonesian government and its accomplices, an internationally-sanctioned chance at remedial succession—in the form of a bona fide referendum in line with international standards—would appear to be the only viable option.

424. Of the various cases surveyed above, the most instructive on the matter at hand is the Quebec Secession Decision. While the Supreme Court of Canada ultimately found that remedial succession was not warranted for the province of Quebec on the facts presented, the decision nevertheless acknowledged the circumstances under which the exercise of such a right may arise. The court was of the opinion that a component part of a sovereign state could legally secede unilaterally from its parent state, but only as an exceptional matter in the context of an oppressed or colonial people.¹¹⁰⁰ While much

¹⁰⁹⁷ Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

¹⁰⁹⁸ ICESCR 2014 Alternative Report Joint Submission.

¹⁰⁹⁹ *Ibid.*

¹¹⁰⁰ See para 351, *supra*.

deference is to be paid to the international-law expectation that self-determination should be exercised internally—that is to say ‘within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states’¹¹⁰¹—such deference has its limits. Ultimately, the right of succession must be carefully balanced against the principle of territorial integrity.¹¹⁰² On this point, the essential determination is a qualitative one: Does the government of the state in question represent ‘the whole of the people [...] resident within its territory, on a basis of equality and without discrimination’.¹¹⁰³ If not, then those people who are internally denied meaningful access to government to pursue their political, economic, social, and cultural development should be free to exercise their right to self-determination externally.¹¹⁰⁴

425. Clearly, regarding the threshold step of characterizing as a ‘people’ the group seeking self-determination, Papuans pass the test. Not only do they share ‘a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life’, they ‘identify [themselves] as a people, by virtue of their consciousness that they are a people’.¹¹⁰⁵
426. As to the question of what options are available to Papuans *internally*, the facts above make abundantly clear that their choices are gravely limited, if not non-existent. For far too long, the indigenous people of West Papua have been subjugated to the point of debasement, discriminated against at every turn, and denied so many rights to such an extent that, collectively, the violations are ‘so penetrating, ramified, and systematic as to threaten, concretely, their very existence’.¹¹⁰⁶ As amply demonstrated, Special Autonomy has done nothing to improve the Papuan’s lot. Clearly, ‘there is no strong likelihood of the discrimination [in West Papua] coming to an end’.¹¹⁰⁷

¹¹⁰¹ Quebec Secession Decision, para 122.

¹¹⁰² See para 351, *supra*.

¹¹⁰³ Quebec Secession Decision, para 130.

¹¹⁰⁴ See para 351, *supra*.

¹¹⁰⁵ Cameroon Decision, para 170 (citing UNESCO, Final Report and Recommendations of the Meeting of Experts on extending the debate on the concept of “peoples’ rights” held in Paris, France, from 27 to 30 November 1989, (SHS-89/CONF.602/COL.1) § 22)

¹¹⁰⁶ Mancini, p 557.

¹¹⁰⁷ Mancini, p 557.

427. Unlike the people of Quebec—of whom it could not be said that access to government was denied to the point where secession was warranted—the people of West Papua decidedly do not ‘occupy prominent positions within the government’; do not ‘freely make political choices and pursue economic, social, and cultural development within [West Papua], across [Indonesia], and throughout the world’; and are not ‘equitably represented in legislative, executive, and judicial institutions’. And, unlike Canada, Indonesia—is decidedly not a ‘state conducting itself in compliance with the principle of equal rights and self-determination of peoples’ nor is it in any sense ‘possessed of a government representing the whole people belonging to the territory without distinction’.¹¹⁰⁸ The manner in which the federal government of Canada behaves vis-à-vis Quebec could not be further from the way in which Indonesia governs West Papua. Whereas Quebec is treated as a semi-autonomous province with multiple and varied concessions paid to its unique character, West Papua and its indigenous population are administered as little more than objects of the most egregious exploitation.
428. In Indonesia, political parties are required to have a national base before they can be involved in national elections, making it virtually impossible for any Papuan political party to emerge.¹¹⁰⁹ And persons charged with ‘subversion’ are prohibited from running for office, again, making it impossible for pro-independence leaders from even becoming candidates.¹¹¹⁰ Thus, the chances of Papuans, or those who actively support Papuan rights, holding any important position in the federal government—from where they may exercise some influence—are non-existent. To say that the people of West Papua are denied meaningful access to government is an understatement of the highest order.

E. The Human Rights Council Should Take All Available Measures to Ensure the Effective Exercise of the Right to Self-Determination in West Papua and to End Indonesia’s Persecution of the Papuan People

429. In light of the above, the Council should take any and all measures within its power to assist the people of West Papua in achieving the meaningful exercise of their right to self-determination and bringing about an end to Indonesian persecution. While the

¹¹⁰⁸ Quebec Secession Decision, para 136.

¹¹⁰⁹ Asian Human Rights Commission (n 116), p 26.

¹¹¹⁰ McGibbons, *Secessionist Challenges in Aceh and Papua*, p 65.

Council will be in the best position to determine the effectiveness of the various means at its disposal, the Complainants propose—at a minimum—the appointment of ‘an independent and highly qualified expert to monitor the situation and report back to the Council’ (a Special Rapporteur) pursuant to Resolution 5/1.

430. Additionally, as noted, it appears that nothing in Resolution 5/1 would prohibit the HRC from adopting a resolution urging Indonesia to: (i) refrain from its continued violations and (ii) permit the people of West Papua to organize a referendum on remedial succession in line with the relevant international jurisprudence. In order to prevent the mistakes of the past, any referendum should be facilitated by the UN with the assistance of international monitors.
431. Given Indonesia’s likely resistance to any such measures, the Council should also consider urging one of the authorized UN organs to trigger the ICJ’s advisory jurisdiction on the questions presented by this communication.

VI. CONCLUSION

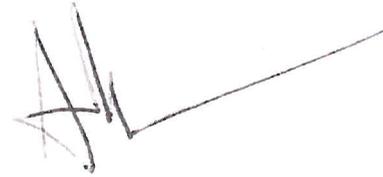
432. For all of the foregoing reasons, the Complainants hereby urge the Council to admit this communication and take the measures suggested herein.

**Prakken
d'Oliveira**

Done at Amsterdam, Netherlands on 8 June 2016 and respectfully submitted to the
Human Rights Council at Geneva, Switzerland:



Prof dr Göran SLUITER



Andrew IANUZZI

* * *