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

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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 1961

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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/go/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 Sluiter\(^2\) and Andrew Ianuzzi\(^3\) 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 Papua\(^4\) (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’.\(^8\)

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\(^3\) 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’—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’. 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.’

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.

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 that the Papuan people themselves, who—in the words of Filip Karma—are treated as if they

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10 Ibid.
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.
15 MacLeod, MERDEKA AND THE MORNING STAR, p 118.
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.
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 ‘Papuans’. 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.\textsuperscript{22}

\begin{itemize}
\item \textsuperscript{21} Ibid, p 20.
\item \textsuperscript{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.’)
\end{itemize}
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{26} Dutch interest in the territory was first registered in 1602,\textsuperscript{27}
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. Claims to the eastern half of the island were staked by Great Britain, Germany, and eventually Australia. A formal agreement on partition was reached in 1848, and West Papua, ‘originally 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’.

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, 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.
13. Responding to widespread rebellion against colonial rule in 1926, the Dutch instituted a policy of internal exile. 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.

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. 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. 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. 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

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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.


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. 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.

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, 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.

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 inhabitants and that the larger ethnic groups of any federation would dominate the Papuan minority. Supported in this position by the Australian government, Kaisiepo cited the differences in language and

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42 *Ibid*.
ethnic background as the major factors separating the people of West Papua from the rest of the archipelago.\textsuperscript{44} He was joined in his predictions by Johan Ariks, a Papuan nationalist who advocated armed resistance to any foreign control of the area.\textsuperscript{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,\textsuperscript{46} and no West Papuan representatives were present.\textsuperscript{47} A tentative agreement was reached, which, among other things, acknowledged republican rule over Java, Madura, and Sumatra.\textsuperscript{48} Crucially, in official public statements and commentary to the agreement, the Dutch government clearly expressed its wish to grant independence to West Papua.\textsuperscript{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 Papua\textsuperscript{50}—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

\textsuperscript{44} Ibid, p 123.
\textsuperscript{45} Ibid, p 111.
\textsuperscript{46} Ibid, p 128.
\textsuperscript{47} Ibid, p 123.
\textsuperscript{48} Ibid, pp 111, 113.
\textsuperscript{49} Ibid, p 130.
\textsuperscript{50} Ibid, p 113.
independence’. 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’). Its job was to assist the negotiating parties in achieving a just and lasting settlement.

**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. 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. Ultimately, the parties agreed that West Papua would provisionally remain a ‘residence’ under the residual Dutch government, pending further determination. 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.

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

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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.
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, Sukarno bought 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.

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. 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’, 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 VRDE KEUZE, p 128.

61 Drooglever, EEN DAAD VAN VRDE 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

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\(^{62}\) 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’. Among other things, the new president vowed to ‘destroy the Dutch created Puppet State of West Papua’. 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 [...].

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

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’). 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. 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. 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
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’

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.

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.
78 Osborne, INDONESIA’S SECRET WAR, p 2.
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.
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’. 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’. This putative exercise in self-determination was cynically dubbed the ‘Act of Free Choice’ by Jakarta.

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’. In February 1969, President Suharto announced ‘that Papuans who voted against integration would be guilty of

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84 New York Agreement, Article XVIII(d).
86 United Nations Yearbook 1957 (I), pp 77–78.
“treason”.

And, in an April 1969 address, Suharto assured the military of the impending ‘return of West Irian into the fold of the motherland’. 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. However, this modality was unilaterally changed by Jakarta into a process known as musyijwarah (roughly, ‘consultation’). And, rather than the ‘international practice’ envisaged by the New York Agreement, such consultations would be undertaken in accordance with Indonesian practice, 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. 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. Various insurgencies sprouted up in Wagheete 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

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89 Osborne, INDONESIA’S SECRET WAR, p 41.
91 Ibid.
92 Drooglever, EEN DAAD VAN VRIJE KEUZE, p 482.
94 Ibid, p 186.
protesters at Enarotali. In response to one of the uprisings in Paniai, 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. 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.

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.

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. Eyewitnesses and journalist reported that the process was held in the presence of a large military force and the vote was taken under threat.
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’. Despite strong statements from the delegations from Ghana, Sierra Leone, Togo, and Zambia, among others, 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. His proposal was rejected by a vote of 60 to 15 (with 39 abstentions). And on 19 November 1969, the General Assembly noted West Papua’s ‘integration into the territory of Indonesia and removed [the province] from the list of non-self-governing territories awaiting decolonization’.

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’. In reality, of

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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.
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’, or Penentuan Pendapat Rakyat (PEPERA), as it has come to be known.

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.

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.

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.’ Indeed.

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

I. Increasing Brutality in the 1970s

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. This was the beginning of what was to become a destructive, decades-long
process known as ‘Transmigration’. 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. The soldiers then informed the gathered crowd that their military colleagues had recently massacred 500 West Papuans in the Lereh district.

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. 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.

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. On the same day, the OPM also announced (from its jungle headquarters) a sovereign republic of West Papua, including an interim

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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.
117 Ibid.
118 Osborne, INDONESIA’S SECRET WAR, p 56; Budiardjo & Liong, WEST PAPUA, pp 64–65.
government and cabinet. 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. As one commentator put it: ‘KOPKAMTIB intimidated elements of the Papuan population: academics, bureaucrats with suspect loyalties, village heads, the unemployed’.

49. According to OPM leaders, many key figures were killed during this time. Poisoning was a popular method. The fate of Martin Luther Waring—an OPM activist—was a typical case. 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.

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. 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’).

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

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\(^{127}\) 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.
\(^{132}\) 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’.

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. 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) 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.

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.

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. 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. 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

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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.
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

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141 Osborne, INDONESIA’S SECRET WAR, p 71.
142 Budiardjo & Liang, 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

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147 Budiardjo & Liong, WEST PAPUA, P 32.
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. 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.

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. ‘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’. An Indonesian environmental group warned that the Asmat people were ‘on the brink of cultural starvation after a decade of enforced ironwood logging’. In 1988, a Jakarta weekly newspaper warned that the Asmat area, rapidly succumbing to soil erosion, might soon be submerged by nearby rivers.

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. All men, with the exception of teachers, were required to work around the guard post every

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153 Budiardjo & Liong, WEST PAPUA, p 55.
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.
157 Ibid.
158 Ibid, p 41. Oil, copper, and timber were not the only West Papuan resources exploited by outsiders. In 1987, Transspeche, 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 Transspeche. Ibid, pp 41–42.
Wednesday, performing night patrol, and the youth were forced to deliver rations to the guard post without compensation.\textsuperscript{160} If one man from the village was absent for any of these duties, the whole village was punished.\textsuperscript{161} These punishments included monetary fines as well as physical punishment or torture.\textsuperscript{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’.\textsuperscript{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.\textsuperscript{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.’\textsuperscript{165} Lands emptied by Operation Clean Sweep were converted into transmigration areas and soon populated by settlers from Java or elsewhere in Indonesia.\textsuperscript{166}

\textsuperscript{160} Ibid, p 17.
\textsuperscript{161} Ibid, pp 17–18.
\textsuperscript{162} Ibid, p 18.
\textsuperscript{164} Osborne, \textit{INDONESIA’S SECRET WAR}, p 87; Budiardjo & Liong, \textit{WEST PAPUA}, p 80.
\textsuperscript{165} Osborne, \textit{INDONESIA’S SECRET WAR}, p 87.
\textsuperscript{166} Budiardjo & Liong, \textit{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.
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

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. 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.

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’. Such restrictions by the Indonesian government served to block international scrutiny.

178 Budiardjo & Liong, WEST PAPUA, p 86.
179 Ibid, p 81.
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

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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.
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. The newcomers dominated the government bureaucracy, the business sector, and upper levels of education. 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.

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. While the number of ‘transmigrants’ who were settled in West Papua is uncertain—one estimate indicates as many as 800,000—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. 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.

189 Budiardjo & Liong, WEST PAPUA, p 44.
190 PLUNDER IN PARADISE, pp 42–43.
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’. For several months, the PNG government allowed conditions in the refugee camps to deteriorate, in the hope that the refugees would return home. 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.

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. 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. Nonetheless, in December, eight refugees, members of the OPM, were deported to Jayapura, where they were immediately detained. Deportations continued through 1985, but when twelve refugees were beaten and later secretly tried for subversion upon their return in November 1985, the international outcry led the PNG government to shift toward a policy of relocation, resettlement, and voluntary repatriation.

84. By late 1987, UNHCR reported that only 1500 refugees had returned to West Papua. Those returning under the auspices of UNHCR’s repatriation scheme were formally

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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.
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.’)
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.’

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

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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. 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. 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. 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. 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. 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. The women never saw the men again.

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.
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. The two women were held in the water closet for one month.

89. Christmas Day 1994 brought more demonstrations and more military violence in Waa village, near Freeport’s mining center in Tembagapura. 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 Angaibak’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 Angaibak was. The military reportedly disposed of Mr Angaibak’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.

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

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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.

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.\footnote{Munninghoff Report, p 11.}

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.\footnote{Amnesty International, ‘Indonesia: Irian Jaya: National Commission on Human Rights Confirms Violations’, p 5.} On 31 May 1995, an army patrol near Hoea 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).\footnote{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 Hoea, 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.}

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.\footnote{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.} 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,
torture, rape, intimidation, destruction of goods and property, and restricted access to foodstuffs and other vital supplies’. 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. 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’.

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. On 15 May, after two Indonesian hostages had been killed, the remaining hostages ran for safety.

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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.


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


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-raisings 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 Ibid.
235 Indonesian Evangelical Church, Human Rights Violations & Disaster.
236 Ibid.
sea on Indonesian navy ships, where they were raped, sexually mutilated, and thrown overboard. \textsuperscript{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. \textsuperscript{238}

Over the next two years, the military responded to flag-raising demonstrations—whether peaceful or not—with armed violence. \textsuperscript{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’. \textsuperscript{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. \textsuperscript{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

\textsuperscript{237} \textit{Ibid}.

\textsuperscript{238} MacLeod, \textit{MERDEKA AND THE MORNING STAR}, p 214.

\textsuperscript{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).

\textsuperscript{240} MacLeod, \textit{MERDEKA AND THE MORNING STAR}, p 235.

\textsuperscript{241} \textit{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.


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 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.
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’. The Congress was attended by ‘West Papuan leaders living in exile and representatives from every sector of society and region in West Papua’. 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’. 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. 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.

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.’

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’.

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245 MacLeod, MERDEKA AND THE MORNING STAR, p 239.
247 Heidbuchel, THE WEST PAPUA CONFLICT, p 47; see also MacLeod, MERDEKA AND THE MORNING STAR, pp 239–240.
249 MacLeod, MERDEKA AND THE MORNING STAR, p 44.
‘The plan included the formation of militias, targeting human rights defenders, and “black operations” against independence leaders.’

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. [...] All 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-rasings 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.

107. A bloody government reprisal unfolded in Wamena on 6 October 2000. Early that morning, a joint security force composed of special crowd-control police, Brimob, and Strategic Reserve troops raided at least seven community centers in Wamena. 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. 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. At least seven Papuans were

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251 Ibid.
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. 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. 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.

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. Approximately one month later, on 1 December 2000, police ‘killed two Papuans during a clash in Fak Fak’. 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’. 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 […].

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’.

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,
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.\textsuperscript{265} Within 24 hours, three highland students were killed and one
hundred individuals had been detained in police headquarters.\textsuperscript{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.\textsuperscript{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.\textsuperscript{268} The detainees were
constantly insulted with racist, derogatory language.\textsuperscript{269} Approximately 24 hours later,
the prisoners were released.

111. After the events at Abepura, Indonesia’s National Human Rights Commission (\textit{Komisi
Nasional Hak Asai Manusia}) (‘KomNasHAM’) recommended prosecution of the
perpetrators in the newly created National Human Rights Courts.\textsuperscript{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.\textsuperscript{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’,\textsuperscript{272}
many other politically-motivated arrests and prosecutions were carried out in 2000:

\begin{quote}
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;
\end{quote}

\textsuperscript{265} \textit{Ibid.}
\textsuperscript{267} A Swiss journalist detained in the same prison described the beatings meted out there that night, including
\textsuperscript{268} Komnas HAM Report, pp 32–37.
\textsuperscript{269} For a list of phrases spoken to the detainees, see \textit{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!’).
\textsuperscript{271} \textit{Ibid}, p 21.
\textsuperscript{272} US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human
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’. 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’. 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.’

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.’)
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


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

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280 See paras 301 et seq, infra.
282 Ibid.
driver reported that he had been kidnapped’. The brutal assassination—which appeared to have been achieved through torture—occurred just two weeks prior to the formal adoption of Otsus. ‘By the end of 2001, the independence movement inside Papua was in disarray, without a clear leader or strategy.’

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 […]

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.

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

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.

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

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’.

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.’)


287 Ibid.

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

293 Ibid.
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


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.
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 […] had 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


\(^{305}\) Ibid.

\(^{306}\) Ibid.


\(^{309}\) Ibid.


\(^{311}\) 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’.\footnote{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.} At a 19 July 2008 ‘demonstration in the western Papuan city of Fakfak’, ‘police allegedly beat and kicked detainees’.\footnote{US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2008’, 25 February 2009.} 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’.\footnote{Ibid.} A Komnas HAM ‘investigation team and forensic evidence linked the killing to the TNI’.\footnote{Ibid.} 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’.\footnote{Ibid.} And security forces ‘were alleged to have killed another Papuan demonstrator, Martinus Grewas, in Sorong’, for participating in the same rally.\footnote{Ibid.}

129. On 6 April 2009, ‘police clashed with several thousand pro-independence supporters in Nabire, Papua, and shot and injured nine persons’.\footnote{US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices for 2009’, 11 March 2010.} 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’.\footnote{Ibid.} Fifteen members of the West Papua National Committee (Komite Nasional Papua Barat) (the ‘KNPB’) were also arrested in Nabire and charged with treason.\footnote{Ibid.} 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’.\footnote{Ibid.}

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
his left calf.\textsuperscript{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.\textsuperscript{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.’\textsuperscript{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’.\textsuperscript{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.\textsuperscript{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.\textsuperscript{327}

\textsuperscript{322} Ibid.
\textsuperscript{323} West Papua Advocacy Team (WPAT): West Papua Report, September 2010.
\textsuperscript{326} Report by Piron Moribnak, 24 March 2010, Mulia, Puncak Jaya.
\textsuperscript{327} Testimony of Pitinus Kogoya, Jayapura 13 January 11; Report by Piron Moribnak, 24 March 2010, Mulia, Puncak Jaya.
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

332 Ibid.
Kiwo’. The incident ‘was believed to have taken place on May 30 during a military operation in the Puncak Jaya region of Papua’. 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’. In both cases, the military personnel were court-martialed; however, their sentences were extremely light.

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.

j. On 14 November, civilian Adam Marandof was tortured by members of the Indonesian Air Force in Sisingamangaraja Street, Biak City, Papua Province.

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

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.

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 Batallion (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.
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.\textsuperscript{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.’\textsuperscript{346}

134. ‘It was in this context that Forkorus Yaboisembut, the leader of the Customary Papuan Council, declared independence on 19 October 2011.\textsuperscript{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 (\textit{Negara Republik Federal Papua Barat}) (the ‘NRFPB’) and proclaimed its independence and sovereignty. On the final day of the conference, the Indonesian military staged a brutal raid:

\begin{quote}
[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.\textsuperscript{348}
\end{quote}

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

\begin{flushright}
\textsuperscript{346} \textit{Ibid}.
\textsuperscript{347} MacLeod, \textit{MERDEKA AND THE MORNING STAR}, p 284.
\textsuperscript{351} \textit{Ibid}.
\textsuperscript{352} MacLeod, \textit{MERDEKA AND THE MORNING STAR}, p 284.
\end{flushright}
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.’)
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’)

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360 Ibid.  
361 Ibid.  
362 Ibid.  
363 Ibid.  
365 Ibid.  
366 Ibid.  
367 Ibid.  
368 Ibid.  

Communication to the HRC Regarding Violations in West Papua
between the 1960s and the post-1998 reform period in Biak, Manokwari, Paniai, and Sorong.  

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’, 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’. The authorities ‘charged seven people with “rebellion” for their roles in planning the demonstration’. 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’. 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.’

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’. Two officers ‘died at the scene from gunshot wounds, and the six other officers were injured’. In retaliation, ‘the army and police launched a joint sweep of the area, during which

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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.’)
372 Ibid.
376 Ibid.
they reportedly burned down several buildings in Wamena. On 1 August, ‘the TNI announced it had killed five members of [the Lanny Jaya] group during a clash in Pirime District’.

b. Throughout the year, indigenous Papuans ‘remained subject to discrimination, and there was little improvement in respect for their traditional land rights’.

Commercial mining and logging activity, much of it illegal, ‘posed significant social, economic, and logistical problems to indigenous communities’. 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’.

And ‘Melanesians in Papua cited endemic racism and discrimination as drivers of violence and economic inequality in the region’.

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’.

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.

377 Ibid.
378 Ibid.
379 Ibid.
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 ‘WPNCL’), 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 WPNCL’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

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\(^{385}\) 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 NRFPB (here a proxy for the WPNA); Rex Rumakiek, on behalf of the WPNCL; 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 (WPNCL) 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 Sopétook 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. In response to calls for an investigation by Amnesty International, Jakarta appeared to capitulate. 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.’

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.

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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.’)


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. 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.

143. As of July 2015, it was believed that at least 47 political prisoners were detained in the prisons of West Papua. 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.

144. In August 2015, two West Papuans—members of a Catholic youth group—were killed by special forces in Timika. 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’. 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
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

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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.’)
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 Waterpauw, 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 [...]’)
Indonesian Military Intelligence, have identified KNPB as the prime target for counter insurgency operations. 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.’

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’. 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’.

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.

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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.\footnote{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.’)}

148. Most of Indonesia’s political prisoners have been convicted of makar, rebellion or treason.\footnote{Phelim Kine, ‘Dispatches: Indonesia Frees Papuan Political Prisoner’, Human Rights Watch, 23 November 2015.} 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.’\footnote{Ibid.} The Morning Star flat continues to be banned, ‘along with other symbols, flags, and logos that have the same features as separatist movements’.\footnote{Ibid.} Jakarta continues to justify such actions ‘as part of its ongoing armed conflict with the [OPM]’.\footnote{Ibid.}

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’.\footnote{Ken Setiawan, “‘Old Guard’ Blocking Human Rights Reform in Indonesia”, East Asia Forum, 4 February 2016.}

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...
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.
independence movement. On [9 May 2015], Jokowi visited the Auepura 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

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.’)
421 Ibid.
is not clear whether this amounts to actual progress or simply more lip service. 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.’

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.

The Jayapura police ‘said the raids were a follow-up to case of illegal firearms possession by a college student’ on 2 February 2016.

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

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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.’)
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.’ […]

430 Ibid.
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.  

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.  

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 […].

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’.  

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

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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

437 Ibid, p 166.
438 MacLeod, MERDEKA AND THE MORNING STAR, p 166.
outlines a strategy to “suppress” the independence movement. 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’. 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’, the Badan Intel Nasional, which has denied issuing ‘such a document’.

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.’

For each Papuan named, the dossier lists a ‘minimal’ and ‘maximal’ goal, ‘which authorities [had] hoped to achieve between April and October 2014’. 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’. 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”’.

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

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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 Ibid.
444 Ibid.
445 Ibid.
446 Ibid.
Papuans were under intense surveillance. 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’. 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’.

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’, 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.’

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’, 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’.

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’. 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

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449 Ibid.
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.
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.
457 Ibid.
458 Ibid.
459 Ibid.
460 Ibid.
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’.\textsuperscript{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’),\textsuperscript{463} Special Autonomy never had a chance:

\begin{quote}
\[M\]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.\textsuperscript{464}
\end{quote}

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”.\textsuperscript{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’.\textsuperscript{466} There are ‘114 posts

\begin{footnotes}
\item[461] MacLeod, MERDEKA AND THE MORNING STAR, p 48.
\item[463] \textit{Ibid}.
\item[464] \textit{Ibid}.
\item[465] \textit{Ibid}.
\item[466] \textit{Ibid}.
\end{footnotes}
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’.\textsuperscript{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.’\textsuperscript{468} And according to Neles Tebay,
troops ‘are trained to see Papuans as the enemy’.\textsuperscript{469}

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

\begin{quote}
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.’\textsuperscript{470}
\end{quote}

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:

\begin{quote}
All Papuan political representatives are required to give oaths of loyalty to the Indonesian
state.
\end{quote}

\textsuperscript{467} Ibid.
\textsuperscript{469} Ibid.
\textsuperscript{470} ‘Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC’,
\textit{Democracy Now}, 27 October 2015 (interview with Allan Nairn).
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.

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 Negri (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, Semuel 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.
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. 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’. On the same day, similar demonstrations were held in Sorong, Manokwari, Wamena, and Serui under strict police surveillance.

180. During 2012, there were over 200 political arrests in the territory and dozens of KNPB members were targeted. In June 2012, the Indonesian government denied it was holding any political prisoners yet offered prison reductions to those detained. Some prisoners accepted but many, including Filep Karma, rejected the offer as it acceptance would have signified an implicit admission of wrongdoing. Of the 20 people charged under Article 106 of the Indonesian Criminal Code 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

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479 WPN, E-Informationsbrief, 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’.
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’. In August 2012, police in Manokwari ‘arrested ten Papuans for raising a banned separatist flag and calling for Papuan independence’.

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.

183. On 1 May 2013, ‘police in Sorong and Timika reportedly arrested 21 Papuans for raising banned separatist flags and calling for Papuan independence’. On 13 May 2013, police ‘arrested independence activist Victor Yeimo for organizing an unauthorized demonstration […] calling for an investigation into the April 30 killing of three would-be demonstrators by police in Sorong’, as mentioned above. 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’. The men’s lawyers ‘alleged significant flaws in the judicial process, including witness intimidation, manufacturing of evidence, and prejudicial trial procedures’.

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’.

486 Ibid.
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.


\(^{493}\) Ibid.

\(^{494}\) Ibid.

\(^{495}\) Ibid.

\(^{496}\) Ibid.

\(^{497}\) Ibid.

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 ‘NRFPB’), 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

500 Ibid.
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’.  

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.  

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.’  

   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.’  

   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

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505 Ibid.
is faced with a military approach, [...]. How can it be? 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. 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 Fuliani 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.
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. 

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 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).’

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. 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.’ Afterwards, Djonga ‘was summoned to appear at the police station in Wamena […] but [initially] refused’. Days later, he appeared for questioning, which lasted four hours. According to the police, Djonga is currently a witness to an act of treason but...
he may yet become a suspect. 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’. And in 2012, he was ‘charged with colluding and supporting pro-independence leaders in hiding in the forests and abroad’.

194. On 5 April of this year, fifteen KNPB activists were arrested in Papua’s Mimika District while attending a prayer service. 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. 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 protesters’ lack of effective complaint mechanisms.

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.

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.’)


Ibid.

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.


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’. 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’. 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’. 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”’.

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’. 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’.

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. On the same
day, similar arrests were made in Merauke, Yahukimo, and Kaimana Regencies. All told, 44 activists were detained. 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.

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’. 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.’

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.

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, Yakuhimo, 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.’)

Ibid.

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.’)

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.’)

‘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’.  

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.  

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

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.  
536 Ibid.
KNPB activist Arim Tabuni, who was arrested at Lingkaran 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 Lingkaran 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 Lingkaran 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

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

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542 See ‘Dozens Arrested in Papua Ahead of Fresh Demos’, \textit{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.’)


544 See ‘More Mass Demos in West Papua’, \textit{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 Aepura 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.\footnote{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.’)} Ominously, it was reported on 2 June that ‘more than 45,000 Indonesian soldiers have been moved to Wamena’.\footnote{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.’}

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.\footnote{Phelim Kine, ‘Indonesia’s Papua Censorship Obsession’, The Diplomat, 19 August 2014.} Naturally, this system—known as Surat Jalan, which is ‘administered by multiple government agencies in Jakarta and security forces in West Papua’\footnote{MacLeod, MERDEKA AND THE MORNING STAR, p 167.}—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.’\footnote{Human Rights Watch, ‘Indonesia: End Media Restrictions on Papua, Mark World Press Freedom Day by Opening Papua to Journalists’, 1 May 2015.} 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’.\footnote{Reporters Without Borders, ‘Press Freedom Index 2014 Asia-Pacific’.} 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:

\textit{spokesman indicated that security forces would not tolerate freedom of expression in public where it involved promoting the idea of independence for Papua.”}
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, \textit{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


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

\(^{554}\) ‘Calls to Probe Aussie Death in Papua’, \textit{Sydney Morning Herald}, 26 February 10.


\(^{557}\) \textit{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 Independent) (the ‘AJI’) also confirmed that Matra’is had been subjected to physical abuse before his death. 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.

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.’ 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.

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. 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.)


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


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

210. In August 2011, the publicly disclosed internal documents discussed above—mainly from \textit{Kopassus}—revealed how the military monitors peaceful activists, politicians, and clergy in West Papua: among other methods, \textit{Kopassus} employs journalists, taxi drivers, hotel staff, and many other civilians to gather intelligence.\textsuperscript{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.\textsuperscript{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.\textsuperscript{567}

212. Those international journalists who manage to obtain access are invariably shadowed by official minders (\textit{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.\textsuperscript{568} The Alliance of Independent Journalists (\textit{Alliansi Journalis Independen}) (the ‘AJI’) routinely criticizes this virtual ban placed on foreign media operations in West Papua.\textsuperscript{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

\textsuperscript{566} ‘Papua: Indonesia’s Forbidden Island’, \textit{Jakarta Globe}, 7 October 2013.
\textsuperscript{568} Human Rights Watch, ‘Lift Restrictions on Reporting, Access to Papua’, 13 June 2012.
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 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

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\(^{570}\) ‘Jokowi to Open Access to Papua for Foreign Journalists, Int’l Organizations’, Jakarta Post, 5 June 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.’)

with the Papuan people in order to build mutual trust’. 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.

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 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.

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”’. 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’. 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
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.
583 Ibid.
584 Ibid.
585 See ‘RSF Condemns Indonesian President’s ‘Failure’ to Keep Media Freedom Pledges’, Pacific Scoop, 21 October 2015.
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

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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.’); ‘The State of the World’s Human Rights’, Amnesty International, 2015/16, p 188 (‘In early October [2015], three Papuan male activists who had accompanied a French journalist to Pegunungan Bintang District in Papua to cover the activities of the KNPB were arrested and interrogated by the local immigration officer about the activities of the journalist. They were held for 10 hours before being released without charge.’)


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.\textsuperscript{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’.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{594} However, he noted that ‘with regard to Papua, the “New Order paradigm” is still in place’.\textsuperscript{595}

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\textsuperscript{591} Ibid.
\textsuperscript{592} Ibid.
\textsuperscript{593} See \textit{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.’)
\textsuperscript{594} Ibid.
\textsuperscript{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. 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.

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.

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.

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.’)


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.’)

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’.

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’. 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.’ RSF equally called on President Widodo to keep his promise.

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

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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 Papuas” 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.’)


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’. 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.

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’. 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.

Restrictions on foreigners ‘have extended to United Nations officials and academics Indonesian authorities perceive as hostile’.

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.

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.’

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.

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. 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. While the Foreign Ministry maintains that international organizations are free to work in West Papua, they are forbidden from supporting ‘political’ projects. 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

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611 Ibid.
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’. The ban resulted in the loss of Indonesia’s only remaining humanitarian relief group at that time.

In 2009, Günther Nooke, then German Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, was denied access to West Papua. Diplomats are usually ‘recommended’ by the Indonesian authorities not to visit the country’s easternmost provinces.

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.’)


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

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620 Ibid.

621 Ibid.

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.
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.
observers indicating that ‘he was singled out for arrest for his human rights activities’.  

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.

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. 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. 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

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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?’
I. 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

643 Ibid.
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.
649 Ibid.
650 Ibid.
651 Wing & King, ‘Genocide in West Papua?’.
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.  \footnote{Ibid, p 158.}

\section*{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)\footnote{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.}—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, 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 \textit{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 (\textit{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’.\footnote{MacLeod, \textit{MERDEKA AND THE MORNING STAR}, pp 129–130; \textit{see also} Freeport McMoRan Copper & Gold, Inc, \textit{Security Matters}, Internal Draft, Exhibit A of Douglas N Curraull 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. \textit{Ibid}.}

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’.\footnote{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.’ \textit{Ibid}.} 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.\footnote{MacLeod, \textit{MERDEKA AND THE MORNING STAR}, p 127.}
251. In 2004 alone, Freeport had revenues of approximately USD 1.7 billion from the production of copper and gold. Paradoxically, in 2005, almost 30 percent of West Papua’s population lived beneath the poverty level. 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.

252. In late-2015, despite a law in place specifically limiting early discussion of contract extensions, 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.

Unsurprisingly, Freeport’s ‘Indonesian unit […] is the country’s biggest taxpayer’.

253. According to observers, the giant mining company and Jakarta ‘continue to do business as they’ve always done it—without consulting Papuans’. 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.
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.
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.

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. 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’. 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.

254. The Grasberg mine in Mimika ‘has been a lightning rod for attacks by the pro-independence movement since [Freeport] began operations in 1973’. 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’. ‘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.’ It ‘provides an object lesson in how development can fuel pro-independence

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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.’); see also ‘Papuans Not Consulted in Freeport Negotiations’, Radio New Zealand, 22 December 2015.
672 ‘Indonesia’s Speaker Quits Over Freeport Fix’, Radio New Zealand, 18 December 2015.
673 ‘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 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

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678 MacLeod, MERDEKA AND THE MORNING STAR, p 130.
680 ‘Indonesia’s Speaker Quits Over Freeport Fix’, Radio New Zealand, 18 December 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; intisia 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


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

692 ‘Despite Military Crackdown in Papua & Other Rights Abuses, Obama Hosts Indonesian President in DC’, Democracy Now, 27 October 2015 (interview with Allan Nairn).
who dominate its economy'. 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. 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

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. The Papuan provinces have become a preferred locale for the development of palm oil plantations. 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.

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

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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.\footnote{ICESCR 2014 Alternative Report Joint Submission.}

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.\footnote{Asian Human Rights Commission, ‘Human Rights in Papua’, 2010–2011.} 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.\footnote{ICESCR 2014 Alternative Report Joint Submission.} 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.\footnote{Ibid.} MIFEE has had a particularly devastating effect on sago, a traditional staple of many Papuan indigenous communities,\footnote{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} the importance of which cannot be underestimated.\footnote{ICESCR 2014 Alternative Report Joint Submission.}
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{708}

265. Following a recent trip to Papua, the US Ambassador to Indonesia expressed his concern over deforestation and human rights in general:

\begin{quote}
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.\textsuperscript{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 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.’\textsuperscript{706}
\end{quote}

\textsuperscript{706} ICESCR 2014 Alternative Report Joint Submission.
\textsuperscript{707} Ibid.
\textsuperscript{708} Ibid.
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.  

Of course, such diplomatic comments must be taken with a grain of salt when read in light of larger US geopolitical interests in Indonesia.

266. By virtue of such wholesale land confiscation, indigenous natural resources have been wholly exploited by non-Papuans. Villages have been destroyed and entire communities have been forced to resettle with practical impunity. Many indigenous communities have been forcibly removed from their ancestral lands or made to leave through intimidation and bribery. So evicted, those who traditionally relied on the forests and surrounding environments were deprived of their means of subsistence. 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 […]’.

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.’

268. A recent report has highlighted the complicity of businesses in human-rights abuses in West Papua:

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711 See para 172, supra.
713 Ibid.
716 MacLeod, MERDEKA AND THE MORNING STAR, p 130.
717 Ibid, p 151.
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

720 Ibid.
721 Ibid.
(compared to a national average of 6.8%).\footnote{Ibid.} 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.\footnote{Ibid.}

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.\footnote{Ibid.} 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.\footnote{Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.} 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.\footnote{See CIA World Factbook, 25 February 2016.} By contrast, the majority of indigenous West Papuans are practicing Christians.\footnote{ICESCR 2014 Alternative Report Joint Submission.}

274. According to the Communion of Churches in Indonesia, there were 430 attacks against churches in the six years prior to 2011.\footnote{Asian Human Rights Commission, ‘Human Rights in Papua’, 2010–2011.} And the Setara Institute counted 264 cases of
religious intolerance against Christians in 2012. 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.

275. In Papua, the simple and sad reality is that Muslims have access to better educational programs than Christians. Men and women of Christian faiths face difficulties in registering their marriages, and their children are not provided with birth certificates. The government has taken Christian community leaders into custody under the pretext of protection and then charged them with blasphemy. Several cases of Christian Papuan children abducted and sent to Islamic schools have been reported. 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.

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.

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According to a recent report by an Australian Catholic group, police routinely break up prayer meetings for no reason, with the organization claiming that ‘Indonesians want to replace the Christian religion with Islam’ in Papua. The report documents, among other things, ‘Muslim militias that burn down Papuan houses’.

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. 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.

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. Environmental degradation has led to diseases related to the lack of clean drinking water and the dispersion of noxious substances. And 31% of the population in Papua

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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.
741 Ibid.
exists under the poverty line, compared to a national average of only 12%. Malnutrition and elevated child mortality are equally troubling. A 2005 report indicated a 30% prevalence rate of malnutrition in the general population of Jayawijaya. And the infant mortality rates in both Papua (41/1000) and Papua Barat (36/1000) are higher than the national average (34/1000).

279. Sexual and reproductive health services indicate serious shortcomings in the Papuan highlands and have only worsened in recent years. 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%. HIV prevalence for non-Papuans in the region is significantly lower (1.5%). 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. 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.

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
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

753 Ibid.
754 Ibid.
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.
Indonesian migrants because ‘the Dani are dirty and women won’t want to use the same examining table as a Dani’. 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.

**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) that 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%. 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.

**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. 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.

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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.*


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.\footnote{ICESCR 2014 Alternative Report Joint Submission.} Such systemic discrimination is masked by official government health statistics—in particular, by failing to disaggregate data according to ethnicity.\footnote{Ibid.}

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’.\footnote{MacLeod, \textit{MERDEKA AND THE MORNING STAR}, pp 134–135.}

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.\footnote{Ibid.} Nearly 80% of indigenous people now live in poverty without access to medical care, safe drinking water, or education.\footnote{VIVAT International & Franciscans International, Press Release: ‘Human Rights Abuses in Papua and West Papua’.

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’.\footnote{‘Development in Indonesia Must Not Threaten Adequate Housing for the Poor – UN Expert’, \textit{UN News Centre}, 11 June 2003.} Existing facilities often lack electricity, clean drinking water, and/or access to transportation networks. The percentage of households with access to clean drinking
water in Papua, 26%, is significantly inferior to the national average of 43% and appears to have deteriorated since 2009.\textsuperscript{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.

\section*{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.\textsuperscript{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\%.\textsuperscript{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.\textsuperscript{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

\begin{flushright}
\textsuperscript{770} Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.
\textsuperscript{772} Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.
\end{flushright}
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.  

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. The national government imposes its language and culture on everyone, and schools do not teach an accurate history of West Papua and its peoples.

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. 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. Other aspects of indigenous culture are limited by national regulations rooted in the Muslim majority’s cultural and societal norms. 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
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.\textsuperscript{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:

\begin{quote}
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.\textsuperscript{781}
\end{quote}

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:

\begin{quote}
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.\textsuperscript{782}
\end{quote}

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.

\textsuperscript{780} Ibid.
\textsuperscript{781} MacLeod, MERDEKA AND THE MORNING STAR, pp 131–132.
\textsuperscript{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

784 ‘West Papuans fear for survival as a people’, Radio New Zealand, 6 November 2015.
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, 12\(^{th}\) 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.


\(^789\) MacLeod, MERDEKA AND THE MORNING STAR, p 244.

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. Negotiations were heavily influenced by events in Aceh and East Timor, and took place amid suspicions regarding the central government’s true intentions. 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. Facing much protest, Gus Dur’s new administration halted the implementation of the partition. 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’. Early in the process, there was strong debate among the participants whether the word ‘independence’ should appear in the draft. 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

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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.
800  Ibid.
801  MacLeod, MERDEKA AND THE MORNING STAR, p 247.
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 resources\(^ {805}\) 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


\(^{804}\) 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.)
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’.  

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’ and the latter seeing it as giving ‘too much leverage to independence activists’. As McGibbon concluded: ‘While the laws appeared to offer a breakthrough in recasting center/periphery relations, this advance ultimately turned out to be illusory.’ 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. 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. While such divisions had been put on hold by Wahid:

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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.
814 See, e.g., Halmin, The Implementation of Special Autonomy in West Papua, p 7. 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

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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.
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. 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. 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. And pro-independence candidates were effectively barred from obtaining MPR positions, as those charged with subversion were prohibited by law from becoming candidates. 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.’ 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.

**c. The Controversy Over the Symbols of West Papua**

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.

**d. Economic Issues**

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824 Ibid.
825 Ibid., p 64.
827 Ibid.
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

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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.\footnote{Ibid, pp 54–55.}

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.\footnote{Cillian Nolan & Sidney Jones, ‘Jokowi’s Turn to Solve the Papua Question’, \textit{East Asia Forum}, 19 May 2015.}

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.\footnote{See ‘Coordination, Dialogue Needed in Papua, Says LIPI’, \textit{Jakarta Post}, 31 October 2015.} 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”.’\footnote{‘The Current Status of the Papuan Pro-Independence Movement’, \textit{Institute for Policy Analysis of Conflict}, Report No 21, 24 August 2015, p 18.} This decision was seen at the time as ‘a...
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:

Ibid.
Ibid.
Ibid.
Ibid.
Ibid.
Ibid.
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.\textsuperscript{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?’\textsuperscript{845}

As he reasonably queried, if the Indonesians are ‘not coming to the table, then why are they in the MSG?’\textsuperscript{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.\textsuperscript{847} The latter issue is to be discussed at an upcoming MSG summit in Port Vila, Vanuatu.\textsuperscript{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’.\textsuperscript{849}

\textsuperscript{844} Ibid.
\textsuperscript{846} Ibid.
\textsuperscript{847} See ‘MSG Chair Urges UN Intervention in West Papua’, \textit{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.’); see also ‘Sogavare Declares Full West Papuan Membership in MSG “Justifiable”’, \textit{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.’)
\textsuperscript{848} See ‘MSG Chair Urges UN Intervention in West Papua’, \textit{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.’)
\textsuperscript{849} ‘Sogavare Declares Full West Papuan Membership in MSG “Justifiable”’, \textit{Asia Pacific Report}, 18 May 2016.
321. Unsurprisingly, Jakarta has rejected such accusations of self-interest 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.

The MSG summit is currently scheduled for late-June 2016.

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:

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].’)


‘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 ‘NRFPB’). 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 NRFPB 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.

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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 witnessed 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...
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 crown. 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.
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 COUNCIL

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’. 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. The procedure is ‘confidential […] with a view to enhancing cooperation with the State concerned’. Moreover, it is designed ‘to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented, and conducted in a timely manner’. A communication—along with any and all supporting material—is properly addressed to the HRC’s Complaint Procedure Unit.

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’).
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 […].’
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.’

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.’ These are dealt with in turn.

1. The Working Group on Communications

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 Situations868

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.\textsuperscript{872} The concerned state shall cooperate with the HRC in good faith,\textsuperscript{873} and the HRC itself shall consider the matter at least once a year.\textsuperscript{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.\textsuperscript{875}

In principle, the HRC should dispose of the matter within two years of the transmission of the communication to the concerned state.\textsuperscript{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.\textsuperscript{877} ‘Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the state concerned.’\textsuperscript{878}

F. Potential Measures Available to the Council

\textsuperscript{872} See \textit{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.’)

\textsuperscript{873} See \textit{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.’)

\textsuperscript{874} See \textit{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.’)

\textsuperscript{875} Ibid, para 104.

\textsuperscript{876} 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.’)

\textsuperscript{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.’); \textit{ibid}, para 107 (‘In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.’)

\textsuperscript{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’:  

(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.  

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.  

333. It 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

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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]

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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; […]

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.’ 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 day—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’. 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’. With respect to integration, it was emphasized that such processes should be ‘impartially conducted and based on universal adult suffrage’.

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. The resolution suggested that a government that denies the right to self-determination of a people should not be deemed
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].


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 \textit{jus cogens} and \textit{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

896 ICCPR, Article 1(2); ICESCR, Article 1(2).
897 ICCPR, Article 1(3); ICESCR, Article 1(3).
898 \textit{N.b.} Indonesia acceded to both covenants on 23 February 2006.
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 \textit{Ibid.}, para 1.
noted that the ‘corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law’. 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’—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.

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.

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902 Ibid, para 2.
903 Ibid, para 5.
905 Ibid (emphasis added).
On 24 October 1995, the UN General Assembly’s Declaration on the Occasion of the Fiftieth Anniversary of the United Nations 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.

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’.  

3. The International Court of Justice

The International Court of Justice (hereinafter, the ‘ICJ’ or the ‘Court’) first addressed the issue of self-determination in 1971. 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, praising the achievement of ‘self-
determination and independence of the peoples concerned’. 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”’—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; 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.

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.

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, the ICJ

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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,*922 (ii) the ‘principle of self-determination of peoples […] is irreproachable’;*923 (ii) the ‘principle of self-determination of peoples […] is one of

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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’).
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’. Recalling the UN Charter, Resolution 2625, the International Covenants, and its own prior jurisprudence, the Court reaffirmed the right to self-determination, its erga omnes character, and the duty of all states to promote the realization of the right. 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. 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).\footnote{\textit{Accordingance 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’).}} 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.\footnote{\textit{Ibid}, Para 79 (citing Namibia Advisory Opinion, East Timor Judgment, and Wall Advisory Opinion).}

The ICJ held that international law, in general, contains no prohibition on unilateral declarations of independence.\footnote{\textit{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.’)} 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.\footnote{\textit{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.’); \textit{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 \textit{lex specialis} created by Security Council resolution 1244 (1999).’)} However, it did not specifically exclude the possibility.\footnote{\textit{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.’)} 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.

\section*{4. The Supreme Court of Canada}
351. As noted in the Kosovo Advisory Opinion, 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. 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?

In ultimately holding that no such right existed in the specific case of Quebec, the court made a number of important and instructive findings regarding the contemporary 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’, such a right may arise exceptionally in the context of an oppressed or colonial people.

(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

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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 markedley 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 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 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.'

(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.’

(d) The right must be balanced against the principle of territorial integrity.

(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.’

(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 colonialis Power and the occupant Power and that their ‘territorial integrity’, all

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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 [...].'

(g) Three groups exist for whom the right to self-determination may be exercised externally: (i) those under colonial rule; (ii) those under some type of foreign occupation; and (iii) exceptionally (i.e. as a last resort), those denied the meaningful exercise of the right to self-determination internally. As to the latter category, there was at the time of the decision a certain lack of clarity. But the issue has since been clarified.

(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.’

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

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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.’)
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’.

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. 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.’ Notably, the claim made ‘no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination’. 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’. 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’. 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.

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959 Quebec Secession Decision, para 136.
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, 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’. 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’.

356. Regarding the definition of ‘people’, the Commission noted that, ‘[t]o date, the concept has not been defined under international law’. 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.

Ultimately, it was determined that the inhabitants of Southern Cameroon could ‘legitimately claim to be a “people”, 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’.

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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 Ibid, para 6.
968 Ibid, para 18.
969 Ibid, para 169.
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’.

(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.’

(c) ‘[T]he right to self-determination cannot be exercised, in the absence of proof of massive violation of human rights under the Charter.’

(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.’

(e) ‘[S]ecession is not recognized as a variant of the right to self-determination within the context of the African Charter.’

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’.

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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

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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. Moreover, according to the UNESCO experts:

\[ \text{The group must be of a certain number which need not be large (e.g., the peoples of micro States) but which must be more than a mere association of individuals within a State ... as a whole have the will to be identified as a people or the consciousness of being a people—allowing that groups or some members of such groups ... may not have that will or consciousness.} \]

Finally, ‘the group must have institutions or other means of expressing its common characteristics and will for identity’. The UNESCO formulation was cited favorably by the African Commission in the Cameroon Case.

### 7. Lex Specialis

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. 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

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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

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

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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).


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-
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. 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.

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, subject to certain internationally-accepted restrictions, ‘as are provided by law and are necessary’—i.e. ‘for the respect of the rights or reputations of others’ or ‘for the protection of national security or of public order, or of public

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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’. The Human Rights Committee has commented that Article 19(1) is ‘a right to which the Covenant permits no exception or restriction’. 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. The declaration acknowledges the right and responsibility of individuals, groups, and organs of society
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.’

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 […]’.

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) ‘recognizes the fundamental right of everyone to be free from hunger.’

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 mortality.’

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1020 *N.b.* ‘In 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 […]’.
389. The UN Declaration on the Right to Development 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’), 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,

b. freedom from discrimination based on indigenous origin or identity,

c. self-determination and self-government.

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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;\textsuperscript{1028}
e. life, liberty, and security;\textsuperscript{1029}
f. freedom from forced assimilation or cultural destruction;\textsuperscript{1030}
g. belong to their community in accord with its traditions and customs;\textsuperscript{1031}
h. freedom from forcible removal from their land or territories;\textsuperscript{1032}
i. fair and equal conditions of employment;\textsuperscript{1033}
j. participate in decision-making processes that may affect their rights;\textsuperscript{1034}
k. freely develop political, economic, and social systems\textsuperscript{1035} and determine development priorities;\textsuperscript{1036}
l. traditionally-owned and/or utilized land and resources\textsuperscript{1037} and the use and development of same.\textsuperscript{1038}

\textsuperscript{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.’)

\textsuperscript{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.’)

\textsuperscript{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.’)

\textsuperscript{1030} DRIP, Article 8(1) (‘Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.’)

\textsuperscript{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.’)

\textsuperscript{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.’)

\textsuperscript{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.’)

\textsuperscript{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.’)

\textsuperscript{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. […]’)

\textsuperscript{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.\textsuperscript{1039}

Additionally, the ILO has promulgated a convention very much in line with the rights and protections asserted by the DRIP.\textsuperscript{1040}

E. Minorities and Discrimination

391. The protection of the rights of minorities is provided for under Articles 26\textsuperscript{1041} and 27\textsuperscript{1042} of the ICCPR. However, the UN Declaration on the Rights of Persons Belonging

\textsuperscript{1037} DRIP, Article 26 (‘1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or other-wise 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.’)

\textsuperscript{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.’)

\textsuperscript{1039} DRIP, Article 8.

\textsuperscript{1040} See Indigenous and Tribal Peoples Convention of 1989 (No 169), Articles 4–8, 13–14. \textit{N.b.} Indonesia has not ratified this convention.

\textsuperscript{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 Minorities\textsuperscript{1043} 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’\textsuperscript{1044} and ‘States shall adopt appropriate legislative and other measures to achieve those ends’.\textsuperscript{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’.\textsuperscript{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.

\textsuperscript{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.’

\textsuperscript{1043} GA Resolution 47/135, 18 December 1992.

\textsuperscript{1044} Ibid, Article 1(1).

\textsuperscript{1045} Ibid, Article 1(2).

\textsuperscript{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.  

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’. 

Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination (the ‘CERD’), 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’. 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. Moreover, they are expected to develop and protect the

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1047 Ibid, Article 4.
1048 Ibid, Article 5(1) and (2).
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. 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.

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. Moreover, the Victims—as demonstrated by their integrated statements—have direct and reliable knowledge of the violations described herein. As required, the instant communication and its supporting material have been properly addressed to the HRC’s Complaint Procedure Unit.

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’. Additionally, it: (i) provides ‘a factual description of the alleged violations, including the rights which are alleged to [have been] violated’;

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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 325, supra.

1058 See para 324, 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.

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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.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{1064} See para 18, supra.
\textsuperscript{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, 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,\textsuperscript{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;\textsuperscript{1069} torture;\textsuperscript{1070} cruel, inhuman, degrading treatment and punishment;\textsuperscript{1071} rape;\textsuperscript{1072} arbitrary arrest and detention;\textsuperscript{1073} enforced disappearances;\textsuperscript{1074} forced labor;\textsuperscript{1075} deprivations of freedom of expression, association, and assembly;\textsuperscript{1076} targeting of human rights defenders;\textsuperscript{1077} and discrimination against minorities.\textsuperscript{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.

\textsuperscript{1068} See Section II.A –E, supra.
\textsuperscript{1069} See para 364, supra.
\textsuperscript{1070} See para 365, supra.
\textsuperscript{1071} See paras 365–369, supra.
\textsuperscript{1072} See paras 365–369, supra.
\textsuperscript{1073} See para 374, supra.
\textsuperscript{1074} See paras 370–371, supra.
\textsuperscript{1075} See para 372, supra.
\textsuperscript{1076} See para 375, supra.
\textsuperscript{1077} See paras 376–378, supra.
\textsuperscript{1078} See para 379, supra.
\textsuperscript{1079} 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, 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; denied Papuans the many benefits of their natural wealth and resources; and discriminated against them at every opportunity. More specifically, through the direct and indirect efforts of the Indonesian government, Papuans have been denied equal enjoyment of a number of important second-generation rights, including the rights to: work under favorable conditions, an adequate standard of living, health, education, cultural life, scientific progress, property, and housing.

415. All of this has been achieved through a number of national policies—transmigration, modernization, Indonesianization, economic exploitation, land grabbing, and forcible

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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 form 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 polices 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. Indigenous leaders are often tricked, defrauded, or coerced into releasing their lands, robbing entire indigenous communities of their cultural heritage and means of subsistence. Such large-scale land acquisition is a threat to the lives of indigenous peoples.

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 ‘[l]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.’ Various indigenous communities are denied access to sacred grounds and thus enable to practice their traditions because of companies’ operations in West Papua.

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.\textsuperscript{1097} The national government does not recognize the definition of indigenous peoples as stipulated in the DRIP.\textsuperscript{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.\textsuperscript{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 \textit{jus cogens} and \textit{erga omnes} principle. As this has obviously and egregiously not been the case since 1963, the \textit{practical} question presented herein is one of remediation, namely: in light of their terrible history, \textit{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.\textsuperscript{1100} While much

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\textsuperscript{1097} Alternative Report to the UN Committee on Economic, Social, and Cultural Rights, 52nd Session, Unrepresented Nations and Peoples Organization, March 2014.

\textsuperscript{1098} ICESCR 2014 Alternative Report Joint Submission.

\textsuperscript{1099} \textit{Ibid.}

\textsuperscript{1100} \textit{See} para 351, \textit{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’\textsuperscript{1101}—such deference has its limits. Ultimately, the right of succession must be carefully balanced against the principle of territorial integrity.\textsuperscript{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’?\textsuperscript{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.\textsuperscript{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’.\textsuperscript{1105}

426. As to the question of what options are available to Papuans \textit{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’.\textsuperscript{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’.\textsuperscript{1107}

\textsuperscript{1101} Quebec Secession Decision, para 122.
\textsuperscript{1102} See para 351, \textit{supra}.
\textsuperscript{1103} Quebec Secession Decision, para 130.
\textsuperscript{1104} See para 351, \textit{supra}.
\textsuperscript{1105} Cameroon Decision, 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)
\textsuperscript{1106} Mancini, p 557.
\textsuperscript{1107} Mancini, p 557.
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’. 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.

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. And persons charged with ‘subversion’ are prohibited from running for office, again, making it impossible for pro-independence leaders from even becoming candidates. 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

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.
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

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