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ILWP Statement regarding ULMWP's announcement of a provisional government

The United Liberation Movement for West Papua (ULMWP) have announced the formation of a provisional government, outlining a provisional Constitution and several institutions. This announcement complies with international law and should be recognised by the international community.

The new state-in-waiting comprises an interim executive, a legislative body and a judicial branch. The provisional Constitution highlights environmental protections, includes a focus on social justice, gender equality and religious freedom, and protects the rights of Indonesian migrants living in the territory. The Indonesian occupation currently makes the holding of elections impossible. As soon as possible, the provisional government must be permitted to institute representative democracy in West Papua.

The announcement of a provisional government is a common step towards independence. Provisional institutions of self-government and transitional administrations were set up by the United Nations in both East Timor and Kosovo in 1999. A transitional government was formed in South Sudan in 2019. In all three instances, independence followed and was recognised.

This announcement by the ULMWP is clear and unequivocal, it is witnessed and recorded and includes commitments on behalf of the provisional government. In order to respect international law, international pressure must now be applied to push for a negotiated path to independence via a referendum or alternatively for states to support a unilateral declaration of independence by this provisional government on behalf of the people of West Papua if they so choose.

"In declaring a provisional government, the people of West Papua are resisting Indonesia's unlawful occupation, reclaiming their sovereignty and asserting their right to self-determination. Consistent with the legal principles set down by the International Court of Justice, the international community of states have a duty to assist the people of West Papua to give effect to their right to self-determination," said Jennifer Robinson of International Lawyers for West Papua and a barrister at Doughty Street Chambers in London who advises the ULMWP.

The Act of Free Choice in 1969 which handed control of West Papua to Indonesia was a violation of international law. West Papuans have not been accorded their right to self-determination under international law. Self-determination is a fundamental human right and a rule of international law, further enshrined in multiple international treaties which Indonesia has recognised.



A negotiated path back to independence

West Papua is unlawfully occupied by Indonesia. Indonesia should immediately bring an end to this unlawful occupation and the international community has an obligation to give effect to the West Papuan right to self-determination.

West Papua was listed as a non-self-governing territory and was being prepared for independence by the Dutch. On 1 December 1961, the West Papuan parliament was officially opened and their national flag, the Morning Star, was flown while the national anthem played. In 1962, Indonesia threatened to invade. A US brokered peace deal, the New York Agreement, created West Papua as a UN administered territory, which would later be administered by Indonesia on condition there would be a referendum on whether the territory would become independent or part of Indonesia. No referendum was ever held. In 1969, Indonesia forced 1,022 Papuan representatives to vote in favour of integration with Indonesia under threat of violence. This violated the terms of the New York Agreement and the requirements of customary international law (as recently confirmed by the International Court of Justice in the Chagos Islands Advisory Opinion).

The failure to accord the people of West Papua a free and fair vote, based on universal suffrage, renders Indonesia's occupation of West Papua unlawful. As the International Court of Justice has stated, occupying states have an obligation to bring about the end of unlawful occupation "*as rapidly as possible*" and other states have a duty to assist West Papuans seeking to give effect to their right to self-determination, given the *erga omnes* obligation to respect the right to self-determination.

As recalled in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

"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" (General Assembly resolution 2625 (XXV)).

The international community has an obligation to facilitate West Papuans right to self-determination and to support calls for a referendum on independence and a peaceful transition.

The human rights situation in West Papua underlines the need for a referendum on independence. West Papuans and the international community continue to document instances of extrajudicial killing, discrimination and restrictions on freedom of expression,



assembly and association. 82 countries, including the UK, have now publicly called for Indonesia to accept a visit of the United Nations representatives to West Papua.

A future declaration of independence

Declarations of independence have a history from the United States and Ireland to Bangladesh and Palestine. Indonesia itself declared independence from the colonial rule of the Dutch East Indies in 1945. The international community has recently recognised South Sudan, Kosovo, Montenegro, Serbia and East Timor.

In 2010 the International Court of Justice confirmed that declarations of independence are permitted under international law. It also made clear that a country like Indonesia cannot rely on 'territorial integrity' to prevent a declaration of independence. People have a right to secede when they are victims of colonisation and oppression or exploitation. Most declarations of independence violate the constitution of the country within which they are made. This has no bearing on the international legality of the declaration.

West Papua has a defined population, a defined territory, a provisional government and the capacity to enter into relations with other states. Although the Indonesian occupation currently prevents effective control by the provisional government, these are the building blocks of state integrity. If the provisional government chooses to make a unilateral declaration of independence, the international community must support such an expression of the will of the people of West Papua.

Further Comment

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