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**International Lawyers for West Papua  
UPR Submission  
Indonesia – November 2022**

International Lawyers for West Papua (ILWP)

ILWP is a network of legal professionals who work towards the realisation of West Papua's right to self-determination, as well as the strengthening and preservation of other human rights. We help the indigenous people of West Papua exercise their rights.

Launched in 2009, we provide legal advice to the United Liberation Movement for West Papua (ULMWP), the independence organisation leading the movement. ILWP directly assists bilateral and multilateral efforts by the ULMWP, particularly with country delegations in Geneva and New York.

Summary

This submission outlines why respect for human rights in West Papua requires that attention be given to the human right to self-determination. The submission points to 3rd cycle UPR recommendations to which Indonesia has agreed that relate directly to self-determination, and outlines why self-determination remains the most critical unfulfilled human right in West Papua.

Followup from Indonesia's 2017 UPR

In the last UPR round in 2017, Indonesia supported the following recommendations<sup>1</sup>

- 141.63 Finalize the investigation of all human rights cases in Papua (Australia)

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review - Indonesia - Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/7/Add.1, 19 September 2017



- 139.67 Ensure human rights obligations in Papua are upheld, respected and promoted, including freedom of assembly, freedom of the press and the rights of women and minorities (New Zealand)
- 139.51 Improve training and administrative instructions for police and local authorities to ensure that the right to peaceful assembly is universally respected, including in the provinces of Papua and West Papua (Germany)

Recommendations to join the vast majority of States as a member of the Convention on the Prevention and Punishment of the Crime of Genocide, to ratify the Rome Statute of the International Criminal Court, to extend an open invite to Special Procedure mandate holders and to end prosecutions under articles 106 and 110 of the Criminal Code for exercising freedom of expression and peaceful assembly were all simply 'noted'.

Also during the 3rd cycle UPR in 2017, Indonesia's National Human Rights Commission (Komnas HAM) stated that existing policies had not addressed underlying problems. They stated that various forms of injustice in the field of civil and political rights, as well as economic, social and cultural imbalances require the immediate restoration of the rights of the Papuan people. They recommended that the Government open a dialogue with the populations of West Papua and recommended the formation of a Truth and Reconciliation Commission as mandated in Act No. 21 of the 2001 law on Special Autonomy.<sup>2</sup>

In March 2022, Komnas HAM called again for dialogue between the Indonesian government and Papuan leaders, including those who are pro-independence.<sup>3</sup>

Respect for the principle of self-determination is a precondition for the enjoyment of other human rights, including those mentioned above and supported by Indonesia. No other right can be fully enjoyed without it. All human rights are universal, indivisible and interdependent and interrelated. The denial of the right of self-determination is a violation of human rights.<sup>4</sup>

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<sup>2</sup> Summary of stakeholders' submissions on Indonesia - Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/27/IDN/3

<sup>3</sup> CNN Indonesia "Komnas HAM: Jokowi Setuju Dialog Damai dengan OPM" <https://www.cnnindonesia.com/nasional/20220309195028-12-769058/komnas-ham-jokowi-setuju-dialog-damai-dengan-opm> [accessed 18 March 2022].

<sup>4</sup> UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <https://www.refworld.org/docid/3ae6b39ec.html> [accessed 31 March 2022]



Critically, respect for all human rights, including self-determination, is necessary for productive dialogue.

### **Self Determination under International Law**

The right to self-determination is the right of “all peoples” to freely determine their political status and freely pursue their economic, social and cultural development. Arising from customary international law and recognised as a general principle of law, it is also enshrined in a number of international treaties. This right is protected in the United Nations Charter, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>5</sup>

Following its explicit mandate to guide the progressive development of international law, the UN General Assembly confirmed the right to self-determination in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, stating that *“The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.”*<sup>6</sup>

### **Self Determination in West Papua**

West Papua is referred to by the Indonesian government as two separate provinces, Papua and West Papua. For many indigenous West Papuans, the division into two was seen as a colonial attempt to divide and rule, confusing the international community about the status of the territory. West Papuans refer to the territory as West Papua (constituting the same territory as the UN listed ‘Non-Self-Governing Territory’). Current plans to further divide the administrative provinces have led to significant protests, citing the human right to self-determination.<sup>7</sup>

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<sup>5</sup> Indonesia acceded to both ICCPR and ICESCR in 2006.

<sup>6</sup> UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, A/RES/1514(XV), available at: <https://www.refworld.org/docid/3b00f06e2f.html> [accessed 31 March 2022]

<sup>7</sup> UCA News “Protests grow over Indonesia’s plan to carve up Papua” <https://www.ucanews.com/news/protests-grow-over-indonesias-plan-to-carve-up-papua/96464> [accessed 18 March 2022]



When Indonesia achieved independence, the Netherlands retained the territory of West Papua (then West New Guinea), arguing that West Papua should have its own independence separate from Indonesia. West Papua had only been administered as a part of the former colony, the Dutch East Indies, because the small Dutch presence had not warranted a separate colonial administration. Furthermore, West Papuans are distinct from Indonesians in ethnicity, culture, history and religion. Accordingly, the Netherlands began assisting the West Papuan leadership to prepare for independence. West New Guinea was added to the UN list of 'Non-Self Governing Territories', the list of colonies pending self-determination, with the supervision and assistance of the UN, in accordance with the UN Charter. On 1 December 1961, West Papua claimed independence from the Netherlands.<sup>8</sup>

However, Indonesia claimed that West Papua belonged to Indonesia since it had been part of the former colony, the Dutch East Indies. Between 1949 and 1961 the Indonesian government made representations to the UN to 'recover' West Papua, threatening to invade and annex the territory. The United States, fearing the spread of communism to Indonesia, sponsored negotiations between Indonesia and the Netherlands regarding the status of the territory. Facing American pressure and continued Indonesian military incursions into West Papua, the Netherlands agreed to a UN and United States brokered settlement in 1962, the New York Agreement.<sup>9</sup> West Papuans were not consulted.<sup>10</sup>

Under the terms of the Agreement, administration of West Papua was transferred by the Netherlands to a UN Temporary Executive Authority (UNTEA), the first in UN history. Between 1962 and 1963 UNTEA had full authority to administer the territory, to maintain law and order and to protect the rights of West Papuans. The territory was transferred to Indonesian administration in 1963 and was unceremoniously left off the UN list of 'Non-Self Governing

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<sup>8</sup> Robinson, Jennifer. 2010. 'Self-Determination and the Limits of Justice: West Papua and East Timor, Future Justice.' [https://www.futureleaders.com.au/book\\_chapters/pdf/Future\\_Justice/Jennifer\\_Robinson.pdf](https://www.futureleaders.com.au/book_chapters/pdf/Future_Justice/Jennifer_Robinson.pdf) [Accessed 18 March 2022]

<sup>9</sup> United Nations General Assembly, 17th Session, Annexes Agenda item 89, Doc A/5170, Annex of 20 August 1962, Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), [https://www.un.org/sites/un2.un.org/files/a17-special\\_sess-4\\_0\\_1.pdf](https://www.un.org/sites/un2.un.org/files/a17-special_sess-4_0_1.pdf) [accessed 31 March 2022]

<sup>10</sup> UN General Assembly, Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), 19 December 1969, A/RES/2504, available at: <https://www.refworld.org/docid/3b00f1cc4c.html> [accessed 31 March 2022]



Territories' in that same year. The UN continued in a supervisory role until the planned vote for self-determination in 1969.

In the period between 1963 and 1969, the Indonesian military embarked on a sustained campaign of violence, conditioning and intimidating the Papuans into voting to join Indonesia. In 1969, and under UN supervision, a handpicked group of 1,022 West Papuans (of an estimated population of 800,000) voted for integration with Indonesia, amid allegations of coercion, military violence and intimidation.<sup>11</sup>

In November 1969, the UN took note of the outcome of the vote and West Papua became a province of Indonesia. Former UN Under-Secretary General Chakravarthy Narasimhan, who handled the Indonesian takeover of West Papua, has admitted that the process was a 'whitewash'.<sup>12</sup>

The people of West Papua claim the right to self-determination on the basis of applicable rules of customary international law regarding decolonisation. This law is reinforced by State practice, pursuant to which countries around the world have gained independence from their former colonial powers.

The practice of the international community with respect to West New Guinea recognised the independent right of West Papuans to self-determination, separate from Indonesia. Successive General Assembly resolutions noted the creation of the independent state of Indonesia and its admission to the UN, but specifically note that the new territory of Indonesia excluded West New Guinea, which would continue under control of the Netherlands and ultimately gain independence. The UN and the Netherlands recognised that West New Guinea was a 'Non-Self-Governing Territory', which meant the territory had the right to self-determination and the international community had an obligation to assist them to achieve it.

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<sup>11</sup> Allard K Lowenstein International Human Rights Clinic, Yale Law School, "Indonesian human rights abuses in West Papua: Application of the law of genocide to the history of Indonesian control", 2004, [https://law.yale.edu/sites/default/files/documents/pdf/Intellectual\\_Life/West\\_Papua\\_final\\_report.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/West_Papua_final_report.pdf) [accessed 18 March 2022]

<sup>12</sup> ABC Radio National, "West Papua: The Forgotten Conflict", 2003 <https://www.abc.net.au/radionational/programs/archived/perspective/joe-collins/3551560> [accessed 10 March 2022]



Therefore, in 1963 West Papua was a colony over which Indonesia had administrative power, responsibilities inherited from the UN transitional authority (UNTEA), which in turn had taken over administration from the Netherlands, the original colonial power.

The vote in 1969 is cited by Indonesia as justifying Indonesia's integration of West Papua. Indonesia was required by its obligations under the UN Charter, the New York Agreement and general international law to hold an act of self-determination in West Papua in accordance with international practice. International law required that West Papua's integration with Indonesia 'should be the result of the freely expressed wishes of the [Papuan] peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage'.<sup>13</sup> These conditions were clearly not met in the 1969 vote.

The right to self-determination remained unfulfilled.

### **Self-determination in West Papua since 3rd UPR Cycle (2017)**

In 2014, the leading factions of the political movement for self-determination in West Papua came together as the United Liberation Movement for West Papua (ULMWP). In 2015 the ULMWP became an official observer at the Melanesian Spearhead Group (MSG), and it has made a bid for full membership. In January 2019 the ULMWP delivered a petition to the UN Human Rights Commissioner containing 1.8 million signatures of West Papuans (70 percent of the population) calling for an independence referendum, demonstrating widespread support.<sup>14</sup> To date, their diplomatic efforts have convinced over 84 countries to vocally support a call for a visit to West Papua by the UN High Commissioner for Human Rights, including a call from the Organisation of African, Caribbean and Pacific States (OACPS).<sup>15</sup>

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<sup>13</sup> UN General Assembly, Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, 15 December 1960, A/RES/1541, available at: <https://www.refworld.org/docid/3b00f0654c.html> [accessed 27 March 2022]

<sup>14</sup> Timothy Fernandez, "Outlawed West Papua independence petition presented to the United Nations", ABC News, 28 September 2017, <https://www.abc.net.au/news/2017-09-27/west-papua-independence-petition-handed-to-un/8994400> [accessed 10 March 2022]

<sup>15</sup> RNZ, "African, Caribbean and Pacific seek UN Rights access to Papua", <https://www.rnz.co.nz/international/pacific-news/450980/african-caribbean-and-pacific-seek-un-rights-access-to-papua> [accessed 10 March 2022]



Protests calling for self-determination are routinely met with violent reprisals by the Indonesian security forces, including extra-judicial killings, arbitrary arrest and disproportionate use of violence.<sup>16</sup> West Papuans are routinely faced with violence and threat of arrest for expressing their opinion about political affairs in Indonesia, particularly about the movement for self-determination.<sup>17</sup>

The Special Autonomy Law of 2001 was supposed to provide greater fiscal and administrative autonomy, provide greater West Papuan control over natural resources revenue and mechanisms for dealing with past human rights abuse. Yet, as has since been noted by many observers, West Papua's 'special autonomy' status has been methodically undermined.<sup>18</sup>

The ULMWP and other West Papuan self-determination groups rejected the 2001 law and its 'renewal' in 2021.<sup>19</sup> The approach taken to 'special autonomy' does not provide internal or external self-determination under international law.

In the 2019 International Court of Justice Advisory Opinion in respect of the Chagos Islands, the legal principles set down support the existence of an unfilled right to self-determination in West Papua.<sup>20</sup> The court noted that "*A Non-Self-Governing Territory can be said to have*

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<sup>16</sup> UN News, "Indonesia: Shocking abuses against indigenous Papuans, rights experts report" <https://news.un.org/en/story/2022/03/1113062> [accessed 10 March 2022]

<sup>17</sup> "Unrest throughout August and September 2019 results in 59 fatalities", International Coalition for Papua, 25 February 2020, <https://www.humanrightspapua.org/news/32-2020/545-unrests-throughout-august-and-september-2019-result-in-59-fatalities> [accessed 10 March 2022] "Human rights abuses in Papua ongoing, churches say", RNZ, 27 February 2019, <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018684376/human-rights-abuses-in-papua-ongoing-churches-say> [accessed 18 March 2022].

<sup>18</sup> Assessment Report on the Conflict in the West Papua region of Indonesia, published in April 2016 by the Politics of Papua Project, Department of Politics and International Studies, Social Sciences Building, University of Warwick, available at [https://warwick.ac.uk/fac/soc/pais/research/ierg/specialisms/internationaldevelopment/westpapua/papua/assessment\\_report\\_final\\_uk.pdf](https://warwick.ac.uk/fac/soc/pais/research/ierg/specialisms/internationaldevelopment/westpapua/papua/assessment_report_final_uk.pdf) [accessed 10 March 2022]

<sup>19</sup> Interim President: Indonesia imposing second Act of No Choice with 'Special Autonomy' bill July 14, 2021, available at: <https://www.ulmwp.org/interim-president-indonesia-imposing-second-act-of-no-choice-with-special-autonomy-bill> [accessed 10 March 2022]

<sup>20</sup> Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 Advisory Opinion, International Court of Justice (ICJ), 25 February 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> [accessed 10 March 2022]



*reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State”.*<sup>21</sup>

The Court also recalled that, while the exercise of self-determination may be achieved through one of the options outlined above, it must be the *“freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.”*<sup>22</sup> A coerced, intimidated and hand-picked group of 1,022 individuals is not sufficient.

International law is clear. West Papua has been recognised as a ‘Non Self-Governing Territory’ and has a right to self-determination. The people of West Papua have not experienced such an exercise of self-determination. The right to self-determination therefore remains unfulfilled and pending.

### **The Path Ahead under International Law**

States should engage with the ULMWP as representatives of the people of West Papua. In December 2020, the ULMWP announced the formation of the Provisional Government of West Papua, with a draft Constitution. A cabinet covering 12 departments on the ground in West Papua was announced in May 2021.<sup>23</sup>

States should also call on Indonesia to uphold the right to self-determination in West Papua through a valid self-determination exercise. If that is not forthcoming, recognising that historic decolonisation of West Papua is incomplete, West Papua should be a matter for the United Nations Decolonisation Committee.<sup>24</sup> There are precedents for territories to be re-inscribed on

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<sup>21</sup> UN General Assembly, Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, 15 December 1960, A/RES/1541, available at: <https://www.refworld.org/docid/3b00f0654c.html> [accessed 31 March 2022]

<sup>22</sup> *ibid*

<sup>23</sup> ULMWP, “Interim President: New cabinet committed to human rights and climate justice”, <https://www.ulmwp.org/interim-president-new-cabinet-committed-to-human-rights-and-climate-justice> [accessed 10 March 2022]

<sup>24</sup> The Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples is also known as the Special Committee on Decolonization, or C-24.





the list of 'Non-Self-Governing Territories', as shown by the cases of New Caledonia and French Polynesia.<sup>25</sup> West Papua remains a 'Non-Self-Governing Territory' until a valid self-determination exercise takes place.

Indonesia should start reporting under Article 73e of the UN Charter or the UN General Assembly should recognise that West Papua remains a 'Non-Self-Governing Territory' and request the UN Decolonisation Committee to consider the question of West Papua. Alternatively or simultaneously, the UN General Assembly should ask the International Court of Justice for an Advisory Opinion on the situation in West Papua.

### **Possible UPR Recommendations**

States should make recommendations to Indonesia that highlight the right to self-determination and provide assistance to the people of West Papua to exercise this right.

- Carry out the recommendations related to West Papua that were supported in 2017
- Agree to an internationally supervised self-determination exercise in West Papua
- Engage with the ULMWP to find a peaceful resolution to the situation in West Papua
- Allow the UN High Commissioner for Human Rights to visit West Papua, following calls from the EU Commission, the Pacific Islands Forum (PIF) and the Organisation of African, Caribbean and Pacific States (OACPS)
- Ensure the visit of the UN High Commissioner for Human Rights is open and transparent, following the Revised Terms of Reference for country visits, including unsupervised discussions with West Papuan representatives and human rights defenders
- Allow all international journalists and human rights, humanitarian and monitoring groups into West Papua to visit and assist internally-displaced people
- Withdraw all troops from West Papua
- Release all political prisoners
- Extend a standing invitation to UN Special Procedures mandate holders, respond positively to all requests to visit the country and cooperate fully, promptly and substantively with the Human Rights Council special procedures

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<sup>25</sup> UN General Assembly, Self-determination of French Polynesia : resolution / adopted by the General Assembly, 23 August 2013, A/RES/67/265, available at: <https://www.refworld.org/docid/52400cd74.html> [accessed 31 March 2022]



- Become a party to the international human rights treaties which allow for individuals to make complaints to treaty supervisory bodies, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee Against Torture, which can rule on complaints in respect of human rights violations.

### **International Lawyers for West Papua (ILWP)**

**March 2022**