

Submission for the UN 3rd Cycle of Universal
Periodic Review Indonesia

PAPUA

Contributors:



Komisi untuk Orang Hilang dan Korban Tindak Kekerasan
The Commission for The Disappeared and Victims of Violence

**Papua Resource
Center**



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Papua Issues

The Commission for the Disappeared and Victims of Violence (KontraS)
Papua Resource Center

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I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS) and Papua Resource Center submit this report for the Universal Periodic Review (UPR) of Indonesia that will take place in May 2017.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. Papua Resource Center is an organization that specifically working in the situation of human rights in Papua. Papua Resource Center also conducted several cooperation between the other non-governmental organization in Indonesia in making research, human rights reports and advocacy for the Papuan people.

II. Overview

4. Aftermath the 2nd cycle of UPR recommendations for Indonesia related with issues in Papua in 2012, the Indonesian government tent to not completely implementing the recommendations that already given in the 2nd cycle of UPR. However, actually Indonesia already accepted and supported several recommendations given in the 2nd cycle of UPR. This condition clearly seen while in term of 2012-2016 the number of human rights violations cases still increasing in Papua, particularly related with the cases of freedom of expression and opinion for Papuan people inside or outside Papua, the high rate of criminalisation against the civilians related with assault cases, and various cases of shooting perpetrated by security apparatus against civilians in Papua.

- Contextually, KontraS assessed that there are no political commitment initiated by the government to establish human rights mechanism related with the violations perpetrated by security apparatus in Papua, even after the 2nd cycle UPR in 2012 within the regime of Susilo Bambang Yudhoyono presidency or in the beginning of Joko Widodo presidency in 2015-2016. This condition could be seen from the postponed follow up on the Report on Projusticia Investigation Result of the National Commission on Human Rights (Komnas HAM) on Wasior-Wamena case¹ *“Chief of National Police, General Badrodin Haiti recently stated that there are two cases of human rights violations occurred in Papua – which is Wamena and Wasior cases – will be resolve with political approach. The political settlement conducted because both cases occurred after the establishment of Law on Human Rights Court in 2000”*. Even, the human rights violations occurred in Entroli, Paniai in 2014 with 5 students died because of shooting by the joint forces of National Police (Polri) and National Military Forces (TNI).

III. Implementation of 2nd Cycle of Universal Periodic Review in Papua Issues

II.1 Government commitments to establish human rights mechanisms regarding security apparatus in Papua

Efforts

- Regarding with the measures taken by the Indonesian government to mainstreaming the protection on human rights whether from the state institutions or the parliament are not significant. Instead of making several protection measures, it were appeared the efforts on arresting against the freedom of expression with the Chief of Papua Police District Decree² *“According to Chief of Papua, demonstation conducted by the separatism groups such as KNPB (National Committee of West Papua), OPM (Free Papua Movement) and ULMWP (United Liberation Movement for West Papua) are unlawful because already disturbing the citizen activities flow that located in the demonstration areas.... Therefore, Papua Police District will immediately issued a decree related with the right to speech in front of public”*.
- On the other hand, Indonesia’s parliament after granted the Special Autonomy to Papua, which along with Aceh – devolved to provincial and local authorities all government functions outside five national competencies such as defense, foreign affairs, religious affairs, justice and monetary/fiscal policy. The Special Autonomy has not been fully implemented in Papua. Implementation has been delayed due to lack of implementing regulations.³ If the Special Autonomy implemented well by the government, there will be no parties that would demand to seperate from Indonesia, however this regulation actually become one of the core problem that made the government failed to maintain peace and integration in Papua.

¹ See more: VOA Indonesia. 2016. Komnas HAM Tolak Pendekatan Politik dalam Selesaikan Kasus Wasior-Wamena. The source can be accessed at: <http://www.voaindonesia.com/a/komnas-ham-tolak-pendekatan-politik-kasus-wasior-wamena-/3305241.html>

² See more: Harian Papua. 2016. Kapolda: Kelompok Separatis Tidak Diiijinkan di Papua. The source can be accessed at: <http://www.harianpapua.com/20160626/7467-kapolda-kelompok-separatis-tidak-diiijinkan-di-papua.html>

³ See more: United States Department of State: Diplomacy in Action. 2015. The Status of Papua, Indonesia. The source can be accessed at: <http://www.state.gov/p/eap/rls/rm/2010/09/147551.htm>

Policy making

8. Regarding the policy, after the 2nd cycle of UPR the government policy whether in the era of Susilo Bambang Yudhoyono presidency or in the era of Joko Widodo presidency related with Papua, the measures taken through the policy making to build peace and protecting human rights in Papua still the same. However there are several differences, such as President Joko Widodo have had a plan to build a comprehensive dialogue with the Papuan people as one of the approach and for Papuan people welfare, yet President Joko Widodo still use the security policy approach in Papua, even widening the military command district in Papua. Thus, the intensity of violent acts perpetrated by the security apparatus more epidemic against the Papuan people. This is actually occurred because there are no accountability, supervision and transparency in the implementation of the security policy in Papua. From the security policy and the development approach with the commitment by Joko Widodo in the beginning of his administration, it is actually contradictive in the implementation, the lack of transparent investigations continued to hamper accountability in a number of past cases involving security forces. Therefore, the constructive and comprehensive dialogue still not yet implemented properly in Papua.
9. Since the 2nd cycle of UPR Indonesian government already supported the presence of the International Committee of the Red Cross (ICRC) in the country, including in performing its mandates. Indonesian armed forces in carrying out dissemination of humanitarian law in many parts of the country, including in Papua and West Papua Provinces. Currently Indonesia and ICRC are finalizing a new Host Country Agreement to replace the old one that has expired which will provide legal basis for ICRC's activities throughout Indonesia. However, until now there are no significant development in this measures by the Indonesian government and follow up after this recommendation accepted.
10. According to the law, state apparatus have a mandate to protect the citizen with creating the security to protect the state from the outside threat according to Law No. 34/2004 regarding National Military Forces (TNI) article 7 clause (1), the main mandate of TNI is to maintain the state sovereignty and the integrity of Republic Indonesia according to Pancasila and 1945 Constitution. The law above become the basis by the government to create various area of military district or security post in Papua. To maintain the integrity, protecting the state from the armed civilians groups and to advancing the economic development in Papua. The policy that recently implemented, according the member of House of Representative in 2012 in the meeting of Supervisors Team of Papua-Aceh Special Autonomy with the Coordinator Minister of Security, Law and Security in 2012, the existence of non-organic and organic TNI are too numerous and make the sense of fear amongst the Papuan people. The sweeping of Papuan students in several parts in Indonesia also become a threat of the freedom of Papuan people. The Commander of TNI mentioned there were more than 4.000 non-organic members placed across the boundary of Papua-Papua New Guinea. Approximately 3.600 personnel placed in the conflict area under the command of Cendrawasih XVII Military Command. This measure also become the main threat and problems for the civilians in Papua and source of conflict among Papuan people

and government. If the government would like to build welfare in Papua, then the President should give command to all the security apparatus from TNI, Polri and National Intelligence Agency to pull out the excess of forces in Papua according the recommendations from Komnas HAM.⁴

11. The difficulty to define the political crime by the regulation on assault action in the Penal Code (article 104-110) in Indonesia also made the discriminative actions by the government to several groups. Up until now, the Penal Code remain being used by the security apparatus to justified the mass act prohibition conducted by Papuan people that actually limiting the freedom of expression and opinion and freedom of peaceful association and assembly.
12. Hence, the government also established the President Instruction No. 5/2007 regarding the Papua and West Papua Development Acceleration (UP4B), which recently implemented by the local government and related ministries. Several supporting regulations also implemented, however there are a weakness in the implementation such as the audit of the use of Special Autonomy funds with a trillion rupiah numbers in the recent decade. The legal foundation of Special Auntonomy made to support the development approach in Papua since as we may know Papua is a very rich with the natural resources such as gold, copper, natural gas and timber, Papua lags behind the other parts of Indonesia in some key development indicators. Poverly widespread in Papua that has the lowest level of adult literacy in Indonesia at 74 percent, and also suffering the threat and highest number of HIV/AIDS cases compared with the other parts of Indonesia.⁵

Government of Indonesia resistancy to the international supports for Papua freedom

13. The Melanesian Spearhead Group a sub-regional coalition composed of Fiji, Solomon Islands, Vanuatu, Papua New Guinea and New Caledonia's Front de Liberation Nationale Kanak et Socialiste (FLNKS) voted at the 20th MSG Leaders summit in Honiara, Solomon Islands to support the self-determination for the West Papuans. Since 2011, United Liberation Movement for West Papua already became the observer at this regional group. As the member of the MSG with observer status ULMWP sits on the inside of organization alongside with Indonesia, and is seen as an historic step toward addressing the human rights atrocities committed against West Papuans by the Indonesian army.
14. Meanwhile, to supervise all the steps taken by Papua and also supports that gained by the international forum in the Asia Pacific countries, Indonesia also took an effort to become the full membership to MSG. After being an observer along with West Papua, Indonesia became the associate member of MSG. Indonesia stepped up its lobbying to the Melanesian states to prevent the ULMWP proposal as the full membership this year. However, ULMWP already granted 150.000 signatures of West Papuans to become the full-member of MSG. In 2015, 82 West

⁴ See more: Dewan Perwakilan Rakyat (DPR). 2012. Kebijakan Pemulihan Keamanan di Papua. The source can be accessed at: http://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-IV-11-l-P3DI-Juni-2012-13.pdf

⁵ Ibid.

Papuans were tortured and arbitrary imprisoned and killed for their supports of MSG membership and the victims were increasing to another 84 people after a week ahead.⁶

15. The constitution of the MSG states to defend the right to self-determination of all Melanesian peoples which have not yet receive full independence. MSG leaders have a moral obligation to defend the right to self-determination of West Papuan. Although, with a full support in the MSG, lead by Vanuatu to the West Papua for full membership, yet with a tense relations and disputes with Indonesia. Therefore, the decision of the MSG leaders for West Papua status in MSG was suspended until this September.⁷

The implementation of securitization policy in Papua violated the fundamental rights of Papuan people

Arbitrary Acts

16. **Case of Areki Wanimbow, Wamena, 2014** On August 6, 2014, Areki Wanimbow was arrested by the member of Jayawijaya Police Resort with 6 other Papuan people and 2 French journalist in Wamena, Papua province. The arresting against Areki Wanimbow related with the allegation on assault article⁸ by the investigation member of Jayawijaya Police Resort, with the allegation on publishing of leaflets for donation of meeting that will conducted in Vanuatu, also SMS related with the amunition and letter of amunition pricelist along with the French journalist. However, in the court process of Areki Wanimbow he was released by the Wamena District Court and pronounced to be not guilty of criminal act (assault act) as suspected by the investigator and prosecutors.
17. **Case of Assault Allegation against the Team of Independent Papua Committee Delegation, Jayapura, 2015.** On April 14, 2015, 5 persons of the Team of Independent Papua Committee delegation members arrested by the member of Jayapura Police Resort, after the meeting with the Minister of Defence in Jakarta on April 8, 2015. The arresting of these delegates conducted while 5 persons of the delegation members will conduct press conference and deliver related with the result of the meeting. The allegation of assault against the 5 members of the delegation related with the suspicion of the information that the delegation team currently brought the Minister of Melanesian Spearhead Group.
18. **Shooting and murder case in Entroli, Paniai, 2014.** The shooting incident began while on December 9, 2014, the citizen were gathered in Karel Gobay field and wanted to demand responsibility of the thrashing act perpetrated by the National Military Forces (TNI) members against a child a day before (December 8, 2014). Nevertheless, the mass act was responded by the

⁶ See more: Jakarta Globe. 2016. MSG to Determine Status for West Papua Free Movement. The source can be accessed at: <http://jakartaglobe.beritasatu.com/news/msg-determine-status-west-papua-free-movement/>

⁷ See more: ABC News. 2016. Decision on West Papua MSG membership pushed back to September. The source can be accessed at: <http://www.abc.net.au/news/2016-07-15/decision-on-west-papua-msg-membership-pushed-back/7631774>

⁸ Assault article on Penal Code: article 104-129

collaboration forces between TNI and National Police (Polri) directly with perpetrated shooting towards the citizen assembly. This extrajudicial killing by TNI and Polri affected to 5 students died because of shootings, 17 others with serious injuries of shootings.

19. ***Shooting case of 6 civilians in Timika, 2015.*** This incident began while on August 28, 2015, several citizen conducted religious ecent with conducted tribe ceremony on Catholic Church yard. At the same time, the members of TNI passed, and several of the citizen warned the security members to ride their vehicles carefully because there were a tribe ceremony. After a while, those members came back with two other persons, and perpetrated shootings against 6 civilians, where two of them died in the location, and 4 others with serious injuries of shootings.

Limitation of fundamental freedoms

20. ***Blockade of Papuan Dormitory in Yogyakarta 2016.*** On July 15, 2016, the police apparatus conducted a prohibition related with the long march action that will be held by Peoples for West Papua Freedom that will conducted from the dormitory of Papuan student in Jalan Kusumanegara, Yogyakarta towards the 0 KM of Yogyakarta province. The rejection was because the mass action considered as assault act and very dangerous. Beside conducted prohibition on mass action, the police apparatus also conducted blockade towards the enter access of the dormitory. The blockade of Papuan dormitory conducted by the police apparatus and other intolerant mass organisations since early morning, that causing the Papuan students in the dormitory could not do the activities outside the dormitory. On that incident at least 8 Papuan people were arrested by the police apparatus.
21. ***The Dismissal of December 1st Commemoration Mass Act in Jakarta, 2015.*** On December 1, 2015, the police apparatus conducted prohobition and arresting againt the Papuan students in the Jabodetabek (Jakarta, Bogor, Depok, Bekasi, Cikampek) area, the prohibition and arresting against these Papuan students related with the commemoration on peaceful expression of Papua identity, however the police apparatus keep considering December 1st as Papua Independence Day. In the mass act there was a clash between the police and the mass. It was impacted on at least 306 students from Papua arrested and brought to Metro Jaya Police District. Police also conducted violence act and intimidation against foreign journalists, at least there were 3 foreign journalists reporting the mass act.
22. In the Jokowi presidency, the freedom of expression and opinion, freedom of assembly and association limitation for Papuan people become wider, where the limitation on the freedom od expression and freedom of assembly not only conducted in the Papua territory but also in several parts in Indonesia while the Papuan people wants to conducted peaceful act outside Papua territory.
23. ***Tolikara incidents as a proof of state negligence of the social situation in Papua.*** Aftermath the July 17, 2015 incident in Tolikara, there were many provocative sentiments through comments or messages in media conducted by several religious figures and public officials that actually triggered this situations worse and spreading to another areas of Indonesia.

24. The non-existence of anticipation conducted by the state, with the continuously of sentiments and provocative comments lead to Ethnicity, Religion, Race, and Social Groups harrasments (SARA) in several areas in Indonesia, pointing that state oftenly absent in every efforts to give guarantee of protection to their citizens in freedom of religion, particularly on right to worships.
25. The reasons of protection itself actually triggering the ommission impression and discriminative act that reflecting the government is not firm. However, freedom to worship actually guaranteed in the 1945 Constitution, as regulated in article 28 E point (1) and article 29 point (2) which stated “Everyone shall free to have a religion and worship as their belief; Everyone have a right to belief, thoughts and attitude as their consience; State guarantee freedom to their citizens to have a religion and worship as their belief.
26. Reffering to those regulations above and Tolikara incident aftermath the incident, we may stated that state already failed to give a guarantee to those protections of freedom of religion. State already perpetrated crimes against humanity in form of ommission while state is so permissive to incident of religion.⁹

Security accountability in Papua

27. **The involvement of National Military Forces (TNI) and the Indonesian National Police (Polri) in the business sector in Papua is not a new problems in Papua.** This is one of the impunity that already neglected by the government to be evaluated. The interest of PT. ACP that involving security apparatus to open the right to land and land grabbing in Muting, Papua followed with intimidation, violence threat until raising the sense of fear amongst the people in Papua. This was shown several times by the letter delivered by the public of their complaining to the government, TNI and Polri as well as Komnas HAM since January 2015 without any responds by the government up until now. The tribal land of Marga Mahuze, a tribe community in Papua will be open for palm plantation and rejected by the community. However, the involvement of security apparatus in maintaining the business interest of PT. ACP including taking a role in the efforts to the other land aquisition for the corporations that still have legal disputes with the citizen according to the law with violence approach never been calculated in the accountability spaces. Although it is actually contradict with the mandate of the security apparatus.
28. **The perpetrators that not being punished, instead become promoted.** TNI members that already proved to become the perpetrators of human rights violations in Papua and being punished or the mandate has been revoked, instead several of them had promoted. The former Commander of Tribuana X Unite Officer, Lieutenant Colonel Inf. Hartomo, promoted to become the Major General and as the Governor of Military Academy in Central Java.¹⁰ This phenomenon actually become preserved by the internal mechanism of the security forces itself. They become

⁹ See more: KontraS. 2015. KontraS’ respond in the Mosque Firing in Tolikara. The source can be accessed at: <http://www.kontras.org/home/index.php?module=pers&id=298>

¹⁰ See more: DW. 2016. Tidak Ada Jalan Lain Papua Harus Dibuka. The source can be accessed at: <http://www.dw.com/id/tidak-ada-jalan-lain-papua-harus-dibuka/a-19203419>

the important figures in the academy and teaching several influence that could threatening the continuation of human rights protection in the conflict area such as Papua.

IV. Recommendations

- The government should implement and consider the recommendations by the international community regarding the freedom in Papua and to immediately conduct investigations of torture, extrajudicial killings and other human rights violations perpetrated by the security apparatus in Papua and take it to justice system according to the criminal law.
- The government should immediately halt the security approach to maintaining peace in Papua, which is actually the core problems conflict in Papua and conduct comprehensive and constructive dialogue between the government and Papuan people.
- The government should revoke the intimidating law and regulations such as the articles of assault in the Penal Code 104-129 that could violating the fundamental freedom of Papuan people.
- The government should monitor the mandate implementation of the security apparatus in Papua that could limiting the freedom Papuan people also to open thoroughly the access for foreign journalists to Papua and guarantee their safety.
- The government should release the 60 more political prisoners in Papua as a form of state responsibility in protecting the freedom of their citizen including in Papua.
- The government should invite the Special Rapporteur on extrajudicial killing, summary and arbitrary executions to take an investigation and report related with the situation of human rights in Papua.
- The government should take out the excess of security apparatus in Papua that already made sense of fear to the civilians in Papua and potentially violating human rights and freedom in Papua.
- The government should established Presidential Independent team to conduct investigation and report regarding the situation of human rights in Papua.
- Komnas HAM, LPSK and other related insitution in protecting human rights and victims should collaborate together to take a firm act to the government to immediately conduct peaceful approach for the conflict in Papua according to their fact findings.