



# Unrepresented Nations and Peoples Organization (UNPO) Communication Universal Periodic Review: Indonesia

## *Papua* The Soeharto Legacy

The western part of the Island of New Guinea is now divided into the provinces of Papua (Irian Jaya) and West Papua (Irian Jaya Barat). Indigenous peoples of Melanesian origin constitute the majority on the island's inhabitants. From the incorporation of these territories to Indonesia in 1969 to the fall of President Soeharto in October 1998, the area was designated a "*Daerah Operasi Militer*" (DOM - Military Operations Area). The DOM status gave military forces great leeway to combat all forms of resistance to Indonesian rule. Although they were not the first targets, civilians were often the first victims of the numerous counterinsurgency operations organised by the authorities during that period. Much of the current concerns of Papuans are rooted in these thirty years of military abuse and the loss of ancestral land to development projects. The large numbers of migrants coming from other parts of Indonesia also caused tensions, leading Papuans to feel marginalised in their land.

### The Special Autonomy Law

A special autonomy law for Papua was passed in 2001 but has not been fully enforced. Its very existence is a form of recognition of Papua's unique situation. At the time Papua and West Papua were one same province called Papua. While preserving Indonesia's territorial integrity, the special autonomy law was meant to allow Papuans to exercise full democratic rights, enjoy extended autonomy and benefit from a significant share of the province's natural resource wealth. Yet the autonomy law has not yet been fully implemented.

Freedom of expression: Pursuant to Article 2 (2) of the law 21/2001 on special autonomy, "*(t)he Papua Province may have Regional Symbols [...] in the form of the regional flag and regional hymn*" yet this very article provides that while these symbols can be used to express the greatness of Papua, they cannot be used as sovereignty symbols. The numerous arrests of demonstrators for raising or waving the Papuan flag (on the grounds that such manifestations fuelled the separatist sentiment) shows how the phrasing of the article intrinsically limits the right it is meant to grant. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides that "*(e)veryone shall have the right to hold opinions without interference*" and that "*(e)veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds*". Having recently ratified this covenant, Indonesia should ensure the consistency of its national law with this instrument.

Rights of indigenous peoples: Pursuant to the law 45/1999, Papua was supposed to be divided into three provinces: Irian Jaya Barat (West Papua), Irian Jaya Tengah (Central Papua) and Irian Jaya Timur (East Papua). Due to mass protests, the division was suspended and only implemented in the area which became known as the West Papua province. The special autonomy law passed in 2001 therefore only applies to the current province of Papua. The special autonomy law provided for the constitution of a Papua People's Assembly (MRP) in charge of representing the interests of Papuan natives. While this body was statutorily supposed to be consulted if a partition of the province were ever to occur, the presidential decree necessary to its formation was only issued in 2003 after President Megawati signed an order to enforce the division of Papua into three provinces as planned in the aforementioned law 45/1999. Once again mass protests prevented this partition from taking place. The following year, an Indonesian Constitutional Court ruling found law 45/1999 unconstitutional but recognized the existence of West Papua since it had been working *de facto* as a province since 1999.

As a consequence, the special autonomy law currently applies only to the province of Papua. Natives living in West Papua do not enjoy the same rights and the same level of political representation as the Natives living in Papua.

If there are indigenous peoples on the western part of the island of New Guinea and if because of their condition of indigenous peoples they are entitled to special rights, then all indigenous peoples of the area should be granted equivalent rights. Having voted in favour of the Declaration on the Rights of Indigenous Peoples, Indonesia should bear in mind the content of its Article 4 which provides that indigenous peoples "*have the right to autonomy or self-government in matters relating to their internal and local affairs*" and the content of its Article 5 according to which "*Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions*".



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## *Aceh*

Deforestation and land degradation as a result of oil and natural resource extraction remain a problem in Aceh. Natural disasters also plague the area, due primarily to its geographical location. Aceh's designation as "*Daerah Operasi Militer*" between 1989 and 1998 and its rule under martial law between 2003 and 2004 gave great leeway to military personnel to combat resistance to the regime. Many complaints of military abuses have reportedly not been considered by courts. In 2004, Aceh was ravaged by a massive tsunami that claimed 120,000 lives in Aceh alone and severely damaged infrastructure, property and the natural habitat. Many survivors have been internally displaced as a result of the tsunami.

### **Lack of Commitment to Human Rights**

Human Rights Court: The creation in 2000 of a Human Rights Court in Indonesia was welcomed by many observers as a major step forward in the protection of human rights and the redress of wrongs committed in the past. However, the court's definition of what constitutes a human rights violation is so narrow and so focused on genocide that most cases of torture and other human rights violations committed by State-agents are not deemed worthy of being examined. An effective Human Rights Court should examine human rights violations related to all human rights, including the ones enshrined in the international human rights instruments ratified by Indonesia.

Torture: Torture still does not exist as a concept in Indonesian penal law. The absence of this concept leaves one perplex on the implementation of the Convention Against Torture to which Indonesia is a party. In 2001 already, the Committee Against Torture (CAT) asked Indonesia to strictly prohibit torture. The Indonesian Penal Code (KUHP) and the Law of Criminal Procedure (KUHAP) do not explicitly employ the term "torture" but the term "maltreatment". The latter concept does not equate to torture before a court of law. Moreover, according to the CAT "*(t)he special nature of torture would be masked by classing torture together with traditional terms such as mistreatment or abuse of authority. And while torture is certainly covered, to a large extent, by national terms, there is one important difference. A substantial characteristic of torture is that the actions are performed by the State. Bringing torture under the traditional national and provisions would damage an important qualitative and distinguishing aspect of torture*". For Indonesia to fulfill its obligations under the Convention Against Torture and Article 7 ICCPR, the concept of torture needs to be incorporated to Indonesian penal law.

Effective remedy: Pursuant to Article 2 of the ICCPR, states should ensure that "*any person whose rights or freedoms as herein recognized are violated shall have an effective remedy*". Pursuant to Article 14 of the Convention Against Torture, each signatory state should "*ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation*". Indonesia is a party to both of these treaties, yet its laws do not adequately safeguard the right to effective remedy and the right to redress/compensation in cases of human rights violations perpetrated by the army or the police. Members of the military personnel charged with a criminal offence can indeed demand to be tried *in camera* before a military court and pursuant to the KUHAP, the police can block, delay or discontinue legal proceedings against its employees.

As a member of the United Nations Human Rights Council, and as a State-party to the CAT, ICCPR and ICESCR, the Indonesian government is bound to protect, maintain and enforce the fundamental human rights enshrined in these instruments. This can only be achieved by developing domestic legislation consistent with these instruments.