

Introduction

Franciscans International, a non-governmental organization in General Consultative Status with the Economic and Social Council (ECOSOC), together with other NGOs in Special Consultative Status with ECOSOC, including Catholic Institute for International Relations, Diakonie, Dominicans for Justice and Peace, Forum Asia, Pax Christi International, Pax Romana, and the World Council of Churches, in cooperation with the Central Missionary Board Netherlands, Cordaid, Geneva for Human Rights, ICCO, Justitia et Pax Netherlands, Kerkinactie, Office for Justice and Peace Jayapura, Office for Justice and Peace Merauke, Office for Justice and Peace Sorong, and United Evangelical Mission submit this written communication to the Commission on Human Rights with regard to the human rights situation – in the areas of both civil and political rights and economic, social and cultural rights – in the Province of Papua, Indonesia. The content refers in particular to the last 12 months (January 2004-January 2005).

Civil and political rights

We acknowledge the progress made by the government in facilitating the Papuan people's right to participate in government and in free elections. Three consecutive elections, one round of parliamentary and two rounds of presidential elections have been successfully held in free, fair and secure conditions.

We acknowledge also the fact that more Papuans have become legislators both at the district and provincial levels. Nonetheless, we noted in Mimika, Jayawijaya, Manokwari and Nabire, the tendency on the part of some candidates and political parties to use any means at their disposal to push the Regional Election Commission (*Komisi Pemilihan Umum Daerah/ KPUD*) to secure their seats in the district parliaments. Their lack of success does not exonerate their behaviour. This situation has not only led to continuing political conflict in several districts but has also prevented the district and provincial parliaments serving the people's interests.

In other areas, we are deeply concerned at reports from our partners of the on-going practice of torture, arbitrary arrest and detention and displacement reportedly committed by the security apparatus in spite of the adoption by Indonesia during the 60th session of the UN Commission on Human Rights of Resolutions no. 39¹, 41², 55³. The cases of extra-judicial killings reported in the villages of Mariedi, Bintuni District where BP Tangguh Gas project is located, and in Mulia, District of Puncak Jaya also cause us deep concern. In Mariedi, five people were shot dead by the police and two were injured and charged with treason and membership of the Free Papua Movement (OPM). These people were in fact asking for fair compensation for their land rights from the Djayanti timber company⁴. In Mulia, the situation remains unclear following the killing of a local priest, Elisa Tabuni,⁵ by the security forces that caused displacement, fear and terror. The religious leaders have repeatedly urged the Provincial Parliament (DPRD) to request the Indonesian National Commission on Human Rights (KOMNAS HAM)⁶ to conduct a thorough investigation but to date, no action has been taken.

Puncak Jaya exemplifies the gravity of the general situation. We must also emphasise that the human rights situation in Western Wamena has not improved since the large-scale military operation conducted two years ago.

In the last twelve months, the stigma of separatism is regularly imposed on individuals or institutions that the security forces consider to be suspicious. The judicial system has proved its inability to convene fair trials owing to the pervasive influence of the security apparatus. This

was illustrated by the trials of the suspects of the Wamena case and the Bolakme case where the court tried and sentenced the suspects to the fullest extent possible, despite weak evidence and irregularities during the trial.

Human rights defenders in Papua are also under threat. The Institute for Human Rights and Advocacy (ELSHAM), *Aliansi Demokrasi Papua* (ALDP)⁷, TRITON Foundation and the Office for Justice and Peace Sorong⁸ are among those who have been criminalised or arbitrarily arrested and detained due to their work to protect and promote human rights in different parts of Papua.

From the many reported human rights cases, to date it is only the Abepura case of 2000⁹ which has been brought to the Permanent Human Rights Court in Makassar, having been pending for more than three years in the Attorney General's office. Whilst this is progress, it should be noted that the Attorney General brought only two suspects to trial, whereas KOMNAS HAM had listed 25 suspects in its investigation. Moreover, during the legal proceedings, the panel of judges dismissed the victims' claim¹⁰ for compensation arguing that such a claim is not regulated by Law 26/2000 of the Human Rights Court¹¹. Therefore, despite Indonesian support to CHR Resolution 2004/33¹², we are worried that this court runs the risk of perpetuating what appears to be an unbreakable cycle of impunity in Indonesia. We base our concerns upon the fact that *ad hoc* human rights tribunals (Tanjung Priok and Timor Leste) eventually acquitted the key perpetrators. Without strong political will on the part of the new government, the dossiers of Wasior ¹³(13 June 2001) and Wamena¹⁴ (4 April 2003) as the result of KOMNAS HAM investigation which have been submitted to the Attorney General for prosecution seem likely to meet a similar fate.

Economic, social and cultural rights

While we acknowledge the progress made by the new democratically elected government in establishing the branch office of Komnas HAM in Papua on 10 January 2005 and the Majelis Rakyat Papua in fulfilment of the provisions of the Special Autonomy Law for Papua (Government Regulation 54/2004), the following needs also to be borne in mind.

Despite the Constitutional Court Decision No. 018/PUU-I/2003 of 11 November 2004, the conflict of the division of the province continues to exist since the Court annulled the legal basis of Western Irian Jaya but at the same time recognised the existence of this particular province along with the Province of Papua. This confusion around the implementation of the Special Autonomy Law remains unresolved since the government regulation 54/2004 on the Papuan People's Council (Majelis Rakyat Papua/MRP) stipulates that the MRP, the provincial government and the provincial parliament have to solve the problem in conjunction with the central government.¹⁵ It does not appear that the central government wants to deal with the problem.

In spite of the existence of the Special Autonomy Law, Papua remains ranked the second lowest in the Indonesian Human Development Index of 2004. This is despite its Gross Regional Domestic Product (GRDP) being ranked the third highest in Indonesia based upon income from the trading of our rich natural resources¹⁶. This situation is no different to the one Papua faced in 1999 *prior* to the implementation of the Special Autonomy Law. Among 26 districts and 2 municipalities in Papua, Jayawijaya ranks the lowest of all in terms of HDI index in Papua as well as in the whole of Indonesia. Our partners report that the public service sector in Jayawijaya is collapsing: specialist doctors have left the city; public servants, teachers, and local parliamentarians have been on strike in protest at unpaid wages; and even the business community held a protest to draw attention to the unpaid debt of the district government. In

spite of mass protests in Wamena calling for justice¹⁷ and appropriate action to remedy the declining situation, the government's neglect has persisted.

Given the low rank of HDI, the 2004 UNDP report clearly identifies that available income is not adequately invested in public services¹⁸. Our partners are asking for explanations for this severe neglect. The government admits that corruption is a major problem in Indonesia and it is part of the new government's commitment to combat corruption. However, action undertaken to investigate such allegations (for example, corruption at the provincial level of Papua, in the Provincial Parliament of Papua and in the District office of Jayawijaya) is slow in coming.

In relation to the revenues generated from natural resources, we note that the rights of indigenous peoples to benefit from the income secured are often violated. Conflict between the indigenous peoples and the business sector is perpetuated by the non-existence of a legal framework to protect the indigenous people's entitlements. In practice, while the business sector appeals to state law, the indigenous peoples rely on customary law. This mismatch frequently leads to human rights violations. Examples are cases in Mariedi-Bintuni (2004) and Assue-Mappi (2004)¹⁹.

It is also common that the business development of these regions lead to the encouragement of prostitution and growing cases of trafficking in human beings, especially women and children. This in turn feeds the rapid spread of the HIV/AIDS pandemic in Papua. A related social problem is the growth of alcoholism that in turn significantly impacts on the number of cases of violence against women and children, as well as declining standards of health in general. This situation remains neglected by the government.

We believe this to be a corrosive and degenerative process that is gradually but systematically destroying an entire people. There is an urgent need for the government to put in place locally legal mechanisms, which can guarantee the economic, social and cultural rights of Papuans. Signing and ratifying without delay the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights, would be a welcome development in remedying this egregious situation. This would go some way to beginning the implementation of the *Special Autonomy Law 21 of 2001*.

Promoting Peace

Our partners in Papua remain passionately committed to building Papua as 'a land of peace - free from violence, oppression and grief²⁰'. They acknowledge statements made by the government and security apparatus stating their willingness to participate in peace activities such as the commemoration day of 5 February²¹. They are calling upon State bodies systematically to address the social injustices and human rights violations of both civil and political as well as economic, social and cultural rights.

As non-governmental organizations with partners in Papua, we call upon the Commission on Human Rights:

- To urge the Indonesian government to apply a rights-based approach to development in implementing the Special Autonomy Law;
- To urge the Indonesian government to protect and respect the rights of indigenous peoples in Papua;
- To grant necessary support to the Indonesian government to promote peace and solve the conflict with recourse to the mechanisms provided by the Special Autonomy Law;

- To grant the necessary support to the Indonesian government to uphold the rule of law, so as to combat both impunity and rampant corruption;
- To urge the new democratically elected government to sign and ratify all key international human rights treaties, especially the two international covenants on Economic, Social and Cultural rights and Civil and Political rights;
- To urge the Indonesian government to fully cooperate in the implementation of the Special Procedures, by inviting and providing unrestricted access to places, individuals and communities in Papua and all other parts of Indonesia to the thematic mechanisms, in particular to those that have repeatedly requested invitations, but have so far not received permission to visit, including the Special Rapporteur on torture, Special Representative of the Secretary-General on human rights defenders, and Special Rapporteur on violence against women, its causes and consequences²².

¹Resolution 2004/39: Arbitrary Detention

²Resolution 2004/41: Torture and other cruel, inhuman or degrading treatment or punishment

³Resolution 2004/55: Internally Displaced persons

⁴ Report of the Office of Justice and Peace of the Catholic Diocese of Sorong, 6 April 2004.

⁵ As reported by Amnesty International, December 2004

⁶ Letter of the Churches Leaders to the Provincial Parliament, 3 November 2004

(www.hampapua.org/skp/skp04/app-36i.pdf) and the letter of the religious leaders of Papua, 14 December 2004.

⁷ In a written report, the Office for Justice and Peace of the Catholic Diocese of Jayapura (SKP Jayapura) and ALDP have brought this case to the attention of the Special Representative of the UN Secretary General on Human Rights Defenders.

⁸ Letter of Bishop of Sorong, Most Rev. Hilarion Datus Lega, to the Chief of Police of Papua, 14 July 2004 (www.hampapua.org/skp/skp04/app-31i.pdf).

⁹ The Abepura case is the case of torture, extrajudicial killings and arbitrary arrest and detention committed by the police of Papua in 7 December 2000 to the civilians and students living in Abepura that caused mass displacement.

¹⁰ Indonesia supported the CHR Resolution 2004/34: The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms

¹¹ SKP Jayapura in conjunction with Franciscans International have brought this case to the attention of the UN Special Rapporteur on the independence of judges and lawyers (www.hampapua.org/skp/skp04/app-29e.pdf).

¹²Resolution 2004/33: Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

¹³ 18 policemen are alleged to have committed abuses in Wasior sub-district in which 4 civilians were killed, one was raped, five disappeared and many more were tortured - see report to the Indonesian attorney general by Komnas Ham, September 2004.

¹⁴ Komnas Ham in the same September 2004 report name 168 members of the military as responsible for raids on villages in Wamena sub-district during which 9 civilians were killed, 38 tortured, 15 arbitrarily arrested and thousands displaced into refugee camps in which a further 42 people died from exhaustion and hunger.

¹⁵ Government Regulation 54/2004 Articles 73,74,75.

¹⁶ UNDP et al., 2004, *National Human Development 2004: the Economics Democracy, Financing human development in Indonesia*, Jakarta: BPS, Bappenas, UNDP.

¹⁷ Indonesia adopts the CHR Resolution 2004/27: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Resolution 2004/7: Right to development

¹⁸ UNDP et al., 2004, pp. 11-12.

¹⁹ Office of Justice and Peace of the Archdiocese of Merauke, 2004. *Bisnis Gaharu dan Dampaknya Terhadap Kehidupan Orang Awyu dan Wiyagar di Distrik Assue, Kabupaten Mappi, Papua Selatan* (Sandlewood business and its impact on the livelihood of the Awyu and Wiyagar

tribes in Sub-District of Assue, District of Mappi, Southern Papua), Merauke: Office of Justice and Peace of Merauke (www.hampapua.org/skp/skp06/var-05i.pdf).

²⁰ Tom Beanal, deputy chairperson of the Papuan Presidium Council and tribal leader of the Amungme, December 1st 2002

²¹*Cenderawasih Pos* daily, 6 February 2004.

²² Document E/CN.4/2004/56 par 5: Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.