



Solidarity for Indigenous Papuans response to the call for submission by the Expert Mechanism on the Rights of Indigenous People on the study on Treaties, agreements, and other constructive arrangements between Indigenous people and states

Introduction

1. Solidarity for Indigenous Papuans (SIP) is a network of NGOs and activists within West Papua that aspires to address among other issues human rights and climate change within the indigenous West Papuan communities and advocate through its existing national, regional, and international NGO networks for solidarity and support.
2. This submission highlights four constructive arrangements that occurred between the Indigenous people of West Papua and the governments of Indonesia and the Netherlands between 1960 and 2021. The narratives contained in this submission are West Papuan versions of the narratives supported by current research on the subject.
3. The constructive arrangement that transpired between the Indigenous people of West Papua and the Netherlands is the 1961 establishment of an embryo state of West Papua pursuant to the UN resolution 1514 (XV) of December 1960. The other three constructive arrangements include; (1) the 1962 New York Agreement between Indonesia and the Netherlands – a treaty signed to transfer West New Guinea to Indonesia via the United Nations and subsequent Act of Free Choice under Indonesia, (2) the 1967 Freeport Mining Contract of Work Agreement between Indonesia and Freeport McMoRan Inc., and (3) the 2001 Special Autonomy for Papua between Indonesia and the indigenous people of West Papua, and its subsequent extension for another 20 years in 2021. All these constructive arrangements in one way or another were perceived to have violated the fundamental human rights of the indigenous people of West Papua as they were partly or wholly excluded from participating in the meetings to discuss the subjects pertaining to their future.
4. The Solidarity for Indigenous Papuans through this submission is appealing to the United Nations to ensure justice is done to the people of West Papua. The people of West Papua have been victims of colonialism, exploitation, and deprivation of their basic right to have a free and independent nation as per UN resolution 1514 of 14th December 1960.



Types of Agreements/Arrangements

5. The arrangement between the indigenous people of West Papua and the Netherlands government to establish the embryo state of West Papua on 1st December 1961 was a trusteeship arrangement pursuant to the UN Charter Chapter XI and subsequent UNGA resolution 1514 of 14th December 1960. It was a “sacred trust” Article 73 that was entrusted to the administering authorities that were not meant to be broken.
6. The New York Agreement¹ was signed between the Republic of Indonesia and the Kingdom of the Netherlands then colonial power colonizing the Western part of the Island of New Guinea known as Netherlands New Guinea brokered by the United States of America signed on August 15th, 1962 in New York. The agreement was a treaty signed to transfer the Netherlands New Guinea now West Papua from the Netherlands to Indonesia via the United Nations.
7. The contract of work signed between the Republic of Indonesia and Freeport McMoRan Inc. in 1967 was a business agreement. It was signed without the participation of the indigenous people of West Papua before the 1969 act of free choice. West Papua indigenous people consider this as a violation of their human rights. The natural resources found in the territory of West Papua belong to the people of West Papua. The Indonesian government should have consulted with the people of West Papua to fulfill the obligation of ‘free prior and informed consent’, but that did not happen (*see full report attached*).
8. The Special Autonomy for Papua was an Indonesian government’s policy initiative granted to West Papua on the basis of Law Number 21 of 2001 on Special Autonomy for Papua province. It was intended to develop West Papua through improving health, education, and infrastructure development. It is an Indonesian government initiative without binding agreement between the state and the indigenous people of West Papua.

Barriers to promote the Agreements/Arrangements

9. The barrier that prevented the Netherlands to pursue fulfilling its duty of decolonizing the indigenous people of West Papua was its sudden decision in 1962 to transfer West New Guinea to Indonesia via the United Nations. The Netherlands government failed to keep its part as a colonial power and a civilizing agent to the people of West Papua abandoning the Indigenous people of West Papua at the beginning of the journey which was violently suppressed by Indonesia.
10. The indigenous people of West Papua’s disagreement with the 1962 New York Agreement were that they were never consulted on the idea of the New York Agreement and were not represented during the signing of the agreement even though there was a

¹https://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20NL_620815_AgreementConcerningWestNewGuinea.pdf



functioning political body at the time known as New Guinea Raad (New Guinea Parliament) which has 24 local Papuans out of the 28 members most of them were voted by the people democratically through universal suffrage. The exclusion of West Papuans in itself was not in line with Article 73(a) and (b) of the UN Charter, a clear violation of the rights of the people of West Papua who at the time had a functioning Parliament to politically participate in such matters.

11. The next part of the problem was the breach of the New York Agreement by Indonesia in particular Article XVIII (e) on the 'act of free choice'². The very act of handpicking 1025 people selectively chosen under strict military intimidation clearly violated the rights of the people of West Papua yet the international community through the UN did not do anything to defend and protect the rights of the people of West Papua. The West Papuans were denied their basic right to vote freely without fear or favor one of the pillars of democracy that should have been respected at the time.
12. The major barrier in the Freeport Mine saga was that West Papuans were excluded from participation because of the lack of proper social mapping done to identify the landowners at the beginning. Even today, the indigenous people are excluded from the mine's royalties and social services. The Operations of the Freeport Mine in West Papua continue to remain controversial over the years up to the present. The problem of environmental pollution in the surrounding ecosystem is still being questioned by the people of West Papua that also are due to Mining activities.
13. The major barrier to promoting the Special Autonomy is within the Indonesian government itself – the controversy exists between civilian and military control of the territory. This is due to (1) the long-running secession movement in the region, (2) structural racism, and (3) distrust towards Indigenous West Papuans by Jakarta. Indigenous West Papuans believe that their right to participate in the affairs concerning their future was violated by the Indonesian government through the one-sided handling of the granting of Special Autonomy. There was never an agreement signed between West Papuans and the Indonesian state like that of Aceh's Gerakan Aceh Merdeka and Indonesia, the special autonomy was, therefore, not binding like that of Aceh.

Barriers to Implement the Agreements/Arrangements

14. The denial of self-determination for the indigenous people of West Papua resulted in the loss of lives, freedom, and other opportunities that comes with being independent. The view that West Papua was a nation was already established among the Papuans and that the Indonesian takeover was an invasion was affixed in the minds of West Papuans since

²http://resources.huygens.knaw.nl/indonesischebetrekkingen1945-1969/DekolonisatieVanIndonesieEnHetZelfbeschikkingsrechtVanDePapoea/papers_pdf/saltford



1961. The UNESCO study on the decolonization of the Pacific region of 20th February 2013 (E/C.19/2013/12) confirms this view. The report stated that (par. 46);

46. The indigenous peoples of West Papua are struggling to acquire their right to self-determination and independence. The urgent need to tackle their issue is heightened by reports of violence, as noted in the report of the Working Group on the Universal Periodic Review in July 2012 (A/HRC/21/7).

15. According to King and Johnson³ the agreement between the Netherlands and Indonesia was a “trusteeship agreement”⁴ that shifted West New Guinea’s legal status from a Non-Self-Governing Territory of the Netherlands to the Trust Territory of the United Nations in which the United Nations via the Trusteeship Council should have applied Article 76 (b) of the UN Charter to grant *self-government or independence* to the people of West Papua instead of passing the territory to Indonesia. The confirmation of West New Guinea as a Non-Self-Governing Territory was the reports submitted to the United Nations in 1961 by the Netherlands. The wordings in the New York Agreement Articles I, II, and III confirmed this view – the United Nations even took complete administrative control of the territory, the first of its kind in the history of the UN as per John Salford, (2000).
16. The United Nations committed an error in not exercising the powers vested to the organization itself under Article 76 (b). This legally means that West Papua still remains to this day what King and Johnson termed as a “hidden trust territory of the United Nations” being administered by Indonesia. It was understandable that due to pressure caused by the Cuban Missile Crisis and the spread of Communism the nations were soaked in those conflicts at the time. Less importance was placed on the West Papua problem that gave Indonesia the opportunity to speed up the process of integration through military and diplomatic maneuvers.
17. West Papua indigenous people as a group satisfied all the requirements of UN resolution 1514 (XV) yet, were denied by the responsible power. West Papuans believe that their basic human rights to be free from all forms of subjugation and establish an independent nation of their own was violated by the colonizer at the time that needs to be revisited. The embryo of the likely nation of West Papua was officially established on December 1st, 1961 witnessed by the people of West Papua and the international community present in Port Numbai now Jayapura at the time⁵.

³http://wpik.org/Src/WestPapuaExposed_A_trust_NonSelfGoverningTerritory.pdf

⁴ King and Johnson’s (2018, p. 70) conclusion was due to the revelation of declassified information from the era which revealed that the transfer was a Trusteeship arrangement.

⁵ See submission by OPM attached with this submission for the position of OPM and the people of West Papua.



National Mechanism to Resolve

18. The Special Autonomy promotes Peace and Reconciliation in one section in particular the establishment of the Peace and Reconciliation Committee but has never been implemented since 2021.
19. Indonesian government continues to ignore the calls for peaceful dialogue by the churches, CSOs, and regional organizations maintaining their position on the West Papua problem as a development problem. They continue to build up their military presence in West Papua under the new Special Autonomy package. The West Papua conflict is likely to continue into the future due to ineffective national mechanisms to resolve the West Papua conflict.

New Approaches to Resolving the West Papua Conflict

20. The Solidarity for Indigenous people of West Papua through this submission is appealing to the UN Expert Mechanism on the Rights of Indigenous People;
 - (a) to write to the Office of Internal Oversight Services (OIOS) instructing them to investigate the conduct of the United Nations officials in the 1960s including the UNTEA administration in West New Guinea identified by the Academics in their publications (in particular the work of King and Johnson, 2018 and Salford, 2000) in order to seek redress for the people of West Papua⁶
 - (b) to write to the International Court of Justice (ICJ) on behalf of the people of West Papua through the UN Mechanisms internally to seek its opinion and interpretation of the 1962 New York Agreement to confirm the allegation by King and Johnson (2018) on whether it was a trusteeship arrangement
 - (c) to write to the government of Indonesia informing them to resolve the West Papua conflict through peaceful means including the involvement of the international community through the United Nations Good Offices
 - (d) to write to Freeport McMoRan Inc. to ensure that they pay full compensation to the indigenous people of West Papua for the destruction of their environment and the exploitation of their natural resources without their consent since 1967
 - (e) to write to the United Nations Security Council (UNSC) requesting them to reinstate West Papua back to the United Nations Trusteeship in order to complete the process of decolonization that was started under the Netherlands in the 1960s as per UN res. 1514 of 14th December 1960.

⁶ This is in support of the Papua Customary Council application to the EMRIP and Special Rapporteur on the Rights of Indigenous People in 2020 (see attached).