

**Alternative Report submitted to the
UN Committee on the Economic, Social and Cultural Rights for the
consideration of the Second Report of Indonesia
during the 52th session.**



Unrepresented Nations and Peoples Organization

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Contact Information

Unrepresented Nations and Peoples Organization

International Secretariat
Laan van Meerdervoort 70
2517AN The Hague
The Netherlands
www.unpo.org

Section A: Introduction to the Report

This alternative report was submitted by the Unrepresented Nations and Peoples Organization (UNPO) on the occasion of the 52th Session of the Committee on Economic, Social and Cultural Rights (henceforth, “the Committee”). UNPO is an international organization devoted to the promotion of democracy, non-violence, human rights, tolerance and environmental protection among indigenous peoples, oppressed communities and minority groups worldwide.

This report will comment upon relevant articles of the International Covenant on Economic, Social and Cultural Rights sequentially. The final section of the report will introduce recommendations intended to inform the discussions taking place within the International Covenant on Economic, Social and Cultural Rights (henceforth, “ICESCR” or “the Covenant”) and between the Committee and the Indonesian delegation at the 52th Session.

Indonesia’s high cultural diversity is in danger, as members of minority and indigenous communities continue to be subject to discrimination, violence, and displacement. Due to lack of reporting and lack of governments’ interest, violations regarding minorities and indigenous peoples often go unseen. In the name of insecurity, foreign journalists and researchers are often restricted access to some of the areas that are most subject to human rights violations. Therefore, in geographically remote indigenous regions, discrimination and violence often come with impunity. In order to properly address the violations suffered by these minority communities and indigenous peoples in Indonesia, it is thus necessary to compile a report that particularly focuses on their issues.

In accordance with UNPO’s goal to raise the voice of the unrepresented and marginalized communities worldwide, this alternative report will focus on the situation of minority communities and indigenous peoples in Indonesia. In particular, the report will focus on three Indonesian regions: West Papua, South Moluccas, and Aceh. The report will comment on the Indonesian government’s compliance to the implementation of the provisions in the International Covenant as it affects these particular groups. Despite the Indonesian government stated commitment to respect human rights and the develop legislations related to the promotion of economic, social, and cultural rights; this report will show the country’s failure to comply with several articles of the Covenant in relation to the selected indigenous and minority communities.

This report will be organized in three main sessions. Firstly, it will introduce the situation of minority groups and indigenous peoples in Indonesia, briefly describing the main issues they are confronting as a consequence of policies adopted by the Indonesian government. Secondly, the report will outline the articles of the ICESCR that the Indonesian government is found to have violated, and will address them with a brief description focused on the selected minority and indigenous groups. Finally, the report will present a series of recommendations to be discussed during the 52th Session.

Section B: Introduction to Indonesia

This report will focus on the situation of three groups located in Indonesia: West Papua, South Moluccas, and Aceh. These minority and indigenous groups share a history of denial of the right of self-determination, political repression, and violation of economic, social, and cultural rights. In order to better understand the context in which this report should be read, this section briefly introduces each of them.

Aceh

The Aceh province is located at the Northern end of the island of Sumatra. After strenuously resisting Dutch colonial domination, the region was incorporated into the Dutch East Indies and it subsequently became part of Indonesia when the country became independent in 1949. After alternating waves of conflict between local forces demanding independence and the central government, a peace agreement was signed in 2005, resulting in the establishment of a regional government. In addition to the numerous human rights abuses perpetrated during the conflict, which are still to be addressed, Aceh faces issues related to land exploitation and internal displacement caused by the Indonesian government's transmigration policies. Additionally, Aceh was hit by a deadly Tsunami in 2004 and, despite positive a post-tsunami reconstruction effort, economic life in Aceh has not yet completely recovered.

South Moluccas

South Moluccas, corresponding to the Indonesian province called "Maluku", consist of an archipelago of approximately 150 islands in the Banda Sea originally inhabited by peoples of Melanesian origins. After being part of the Dutch East Indies, South Moluccas were made part of the newly established federal system when Indonesia became an independent federal republic. As a consequence of the Indonesian government's aim to shift from a federal to a unitary State, South Moluccas declared their independence, but they were forcefully incorporated into Indonesia under President Sukarno. Similarly to other minority areas, Indonesian transmigration policies are transforming South Moluccans into a minority in their own homeland. Additionally, being a Christian minority in a prevalently Muslim country, South Moluccas are facing serious issues of religious intolerance.

West Papua

The region of West Papua, currently split into the two Indonesian provinces of Papua and Papua Barat¹, consists of the Western half of the Island whose Eastern part constitutes the Independent State of Papua New Guinea. West Papua was originally inhabited by a diverse group of indigenous communities of Melanesian origin which currently amount to more than 200 tribes and respective languages. In 1962, after Dutch colonial rule, West Papua became part of Indonesia as a consequence of a UN-ratified agreement between Indonesia and The Netherlands. As a province of Indonesia, West Papua saw the implementation of a number of policies that led to the discrimination and relocation of a great part of the West Papua's indigenous population. The main issues of concern for indigenous West Papuan derive from the exploitation of ancestral lands for industrial purposes, the implementation of transmigration programs that are transforming the ethnic composition of the region, and excessive violence perpetrated by the numerous security personnel stationed in the area.

¹ In this report, the term "West Papua" will be used to indicate the region as a whole, while "Papua" and "Papua Barat" will be used to indicate the respective provinces created by the Indonesian Government.

Section C: Compliance with ICESCR

Article 1 - Right of self-determination and free disposal of natural wealth and resources

Article 1.1 states that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

The Indonesian report submitted to the Committee regards the right of self-determination as ultimately implemented by the Proclamation of Independence of 1945 with “the consensus of all Indonesian people”². Historically, however, consensus was not what led to the incorporation of West Papua, South Moluccas, and Aceh into the Indonesian Republic. Indeed, all these three regions declared their independence and developed movements opposing the Indonesian central authority and unitary ideology. Aceh was forcefully incorporated through military conflict first by the Netherlands into the Dutch East Indies, and then by Indonesia. South Moluccas, initially part of a federal system, was made part of a unitary State without any form of consultation of the local population. West Papua was prepared for its own independence by the Dutch rulers, but it was later handed over to Indonesia through an international agreement in which West Papuans had no say. A referendum on the status of the region was held in 1969 (the “Act of Free Choice”), but it was far from representative: only a limited number of communities leaders (around 1000) were selected to vote by the Indonesian authority, and the vote took place under conditions of psychological and physical intimidation³.

The indigenous people of Aceh, South Moluccas, and West Papua, in different degrees, are also denied the right of internal self-determination. The Indonesian government points at the existence of regional autonomy (art.18, 18a, and 18b of the 1945 Constitution) and of special autonomy for the provinces of Papua Barat, Papua, and Aceh as ensuring internal self-determination for local communities.⁴ However, regional autonomy is given by default to all Indonesian provinces, so that South Moluccas does not enjoy any special recognition. At the same time, special autonomy in Papua and Papua Barat (and to some extent in Aceh) is largely ineffective in giving local communities the possibility to determine their political, cultural, social and economic status, in practice. For example, regional provisions are often abolished by opposing governmental regulations: while Indonesian autonomy law allows the use of regional flags to symbolize a local group’s identity, government regulations specifically prohibit the use of the flags that historically represented West Papua, South Moluccas, and Aceh.⁵ Six men are currently facing 15-years imprisonment for taking part in a flag-

² EC.12/IDN/1, January 2012.

³ Several historical accounts report on the conditions to which the voters of the Act of Free Choice were subjected. See for example: Brundige, E. et al. (2004). *Indonesian Human Rights Abuses in West Papua: Application fo the law of genocide to the history of Indonesian control*. Yale Law School; King, P. (2004). *West Papua and Indonesia since Suharto: Independence, autonomy, or chaos?* Sidney: UNSW; Tebay, N. (2005). *West Papua: The struggle of peace with Justice*. London: Catholic Institute for International Relations.

⁴ EC.12/IDN/1, January 2012. pp. 13-18.

⁵ U.S. Department of State (2012). *Indonesia 2012 Human Rights Report*. Retrived from: <http://www.state.gov/documents/organization/204415.pdf>

raising ceremony in West Papua on 1 May 2013⁶; and more than 60 were arrested between June and September 2012 for similar peaceful acts⁷. Similarly, Filep Karma has been in jail since 2005 for raising the West Papuan Morning Star flag, and his case has been declared “arbitrary detention” by the UN Working Group on Arbitrary Detention.⁸ This shows that not only indigenous people cannot fully determine their political status, but they are also denied the possibility to express their political views. Any attempt at asserting self-determination, even when completely peaceful, is regarded by the Indonesian government as an act of “separatism”, which is heavily criminalized by law as “treason”.⁹

Inhabitants of Aceh, South Moluccas, and West Papua are also not recognized a special status as indigenous peoples. Legally, art.18b(2) of the Indonesian Constitution states that “the State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia”. This implicit and partial recognition of indigenous peoples is also present in a few legislations on agrarian matters (e.g. Decree No X/2001 on Agrarian Reform) and Indonesia is a signatory of the UN Declaration of the Rights of Indigenous Peoples. Nevertheless, the concept of indigenous peoples and “traditional communities” remain broadly defined, so that the indigenous peoples of Indonesia are not entitled to any special rights in practice.

Article 1.2 states that, *“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”*

Indigenous peoples’ ancestral lands are often appropriated by multinational and national enterprises for the industrial exploitation of natural resources through mining, logging, and agrarian activities. As a consequence, indigenous people, who traditionally use forests and the surrounding natural environment to sustain themselves, continue to be deprived of their means of subsistence through land-grabbing practices.

Between 2004 and 2009, 1.2 million hectares of forests have been allocated by the Indonesian government only for mining activities, and this number is estimated to reach 3.4million hectares by 2020. Along with mining, much forest conversation is due to the production of vegetable oil, whose global market is controlled for the 14,3% by Indonesia.¹⁰ In West Papua, many of these industrial activities are carried out within the framework of the Merauke Integrated Food and Energy Estate (MIFEE), an agro-industrial mega project launched by the Indonesian government in 2010 and implemented by different corporate entities currently covering more than 2.5 million hectares.¹¹ According to the Presidential Regulation No.32 of 2011, the MIFEE project is considered a “priority” in the Master Plan for the Acceleration and Expansion of the Indonesian Economy 2011-2025, which

⁶ Cordell, M. (23 January 2014). West Papuans Face Long Jail Term for Raising Mornign Star Flag. *The Guardian*.

⁷ U.S. Department of State (2012). *Indonesia 2012 Human Rights Report*. Retrived from: <http://www.state.gov/documents/organization/204415.pdf>

⁸ OHCHR (May 2013). *Pillay concerned about persistent violence and abuses in Papua*. Retrieved from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13287&LangID=E>

⁹ U.S. Department of State (2012). *Indonesia 2012 Human Rights Report*. Retrived from: <http://www.state.gov/documents/organization/204415.pdf>

¹⁰ UN Human Rights Council (December 2013). *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Addendum: Mission to Indonesia, A/HRC/25/54/Add.1. Retrieved from:

<http://www.refworld.org/docid/52e0f5e7a.html>

¹¹ Ibid

further facilitates land-grabbing.¹² In South Moluccas, 77,2% of Aru Island has been allocated to a conglomerate of 28 companies - Pt. Menara Group- for the production of biofuels through sugarcane plantations, and similar projects are planned for the Masela area by the Japanese company Inpex in collaboration with the Dutch multinational Shell.¹³ As 75% of the daily needs of the indigenous inhabitants of Aru Island directly depends from the island's forests, massive land transformation is depriving Aru natives of their traditional means of subsistence.¹⁴

The legal framework for land and forest use is legally regulated by a 1999 Forestry law, which states that "all forests in territory of the Republic of Indonesia including natural resources contained therein shall be controlled by State for the maximum prosperity of the people".¹⁵ A court ruling on 16 May 2013 seemed to improve the situation by restoring the concept of customary forests as belonging to indigenous peoples, who need to give free, prior and informed consent for the use of their lands.¹⁶ This, however, is undermined by other legislations that enable an accelerated seizure of indigenous lands, such as the prioritization of MIFEE in the government's economic planning. For example, in 2012, the Indonesian government issued a decree (No SK.458/Menhut II/2012) that changed the designation from forest-zones to non-forest zones or 'other usage areas' of West Papuan lands that have consequently been allocated to palm oil, sugar cane, logging and mining companies.¹⁷

In practice, land are often allocated through land-grabbing practices, as the free, prior and informed consent of indigenous people to the use of customary land by corporations is often obtained through coercion or misinformation. Meeting between representatives of local communities and industrial enterprises are often held in the presence of Indonesia's security personnel, who is paid by companies in exchange for security.¹⁸ Given the security forces' fame for their use of excessive violence in minority areas, their presence is sufficient to put pressure on local leaders to agree to the companies' terms. Alarmingly, there have been reported cases of use of force in the eviction of members of local communities involved in land disputes.¹⁹ Furthermore, clan leaders from Salor village and Onggari village in West Papua reported that they had been invited to sign land agreements after being provided with alcohol and prostitute services.²⁰ In other cases, companies exploited indigenous peoples' lack of knowledge on legal and economic matters by verbally

¹² Forest Peoples Programme (July 2013). *Request for Further Consideration of the Situation of the Indigenous Peoples of Merauke, Papua Province, Indonesia, under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures*. Retrieved from: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/cerduamifeejuly2013english.pdf>

¹³ Republic of the South Moluccas (2014). *Human Rights Violations in the South Moluccas committed by the Republic of Indonesia*. Background information for the side event of UNPO at the 25th Session of the United Nations Human Rights Commission, Palais de Nations Geneva, March 14th 2014.

¹⁴ Ibid

¹⁵ Law of the Republic of Indonesia n. 41 of 1999. Art. 4(1). Retrieved from: http://theredddesk.org/sites/default/files/uu41_99_en.pdf

¹⁶ Decision n. 35/PUU-X/2012. Retrieved from http://www.aman.or.id/wp-content/plugins/downloads-manager/upload/Constitutional_Court_Ruling_16_May_2013.pdf

¹⁷ Forest Peoples Programme (July 2013). *Request for Further Consideration of the Situation of the Indigenous Peoples of Merauke, Papua Province, Indonesia, under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures* Retrieved from: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/cerduamifeejuly2013english.pdf>

¹⁸ Ibid

¹⁹ U.S. Department of State (2012). *Indonesia 2012 Human Rights Report*. Retrived from: <http://www.state.gov/documents/organization/204415.pdf>

²⁰ Forest Peoples Programme (July 2013). *Request for Further Consideration of the Situation of the Indigenous Peoples of Merauke, Papua Province, Indonesia, under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures*. Retrieved from: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/cerduamifeejuly2013english.pdf>

explaining agreement terms that did not match the written documents to be signed by community leaders.²¹

On 29 January 2013, AwasMIFEE reported that the Indonesian government is planning to launch a plantation plan similar to the MIFEE project in the Fakfak area in Papua Barat province. This is likely to lead to more land-grabbing and more deprivation of indigenous peoples' means of subsistence, thus showing lack of improvement on the issue of indigenous peoples' right to land and resources.²²

Article 2 – Non-discrimination

Article 2.2 requires the States Parties to the Covenant to undertake steps to “guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Indigenous populations in Indonesia are systematically excluded from many benefits of investment and development related to natural resource wealth. While areas inhabited by indigenous peoples are the richest in terms of natural resources, they tend to remain the ones most suffering from poverty and underdevelopment. Growth in the economy based on mining, forestry, and fishery does not correspond to a reduction in poverty of the indigenous inhabitants of the regions where such industrial activities are carried out, as they tend to be excluded from the economic benefits related to natural resources exploitation. This exclusion derives from the fact that indigenous peoples are not employed in resource exploitation activities which are dominated by a non-indigenous workforce specifically moved by transmigration programs to minority areas to be employed.

South Moluccas suffer from structural poverty and unemployment of the local population. Indeed, South Moluccas have one of the lowest Gross Regional Product (GRP) per capita of the country, amounting to 525USD (2011).²³ While the industrial projects planned in the Masela area, in the south-east of the Moluccan archipelago, are estimated to lead to a profit of 30 billion dollars; local inhabitants will not benefit from these activities.²⁴ Indeed, initial plans to allocate 10% of the profit to the local provincial government were soon withdrawn.²⁵ Looking at statistical data for Papua and Papua Barat, it appears that the regions fall among the ten provinces with the highest Gross Regional Product (GRP) in Indonesia.²⁶ At the same time, Papua and Papua Barat have the highest percentage of poor people in Indonesia amounting to 37% and 40% respectively (with a national average of 11.5%).²⁷ This is because 52% of the GRP derives from the mining sector, in which indigenous people are not employed. Excluding the contribution of the mining sector to the regional economy, the GRP of Papua and Papua Barat fall among the lowest in Indonesia.²⁸ The establishment of the “Papua and

²¹ Ibid

²² Awas MIFEE (29 January 2013). Plan Similar to MIFEE in Fakfak. Retrieved from: <https://awasmiffee.potager.org/?p=745%204> (Accessed on 14 February 2014).

²³ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

²⁴ Republic of the South Moluccas (2014). *Human Rights Violations in the South Moluccas committed by the Republic of Indonesia*. Background information for the side event of UNPO at the 25th Session of the United Nations Human Rights Commission, Palais de Nations Geneva, March 14th 2014.

²⁵ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

²⁶ Ibid

²⁷ Ibid

²⁸ Mollet, J.A. (2013). *Special Autonomy and Poverty Reduction Programs in Papua: Does it Work?* Cenderawasih University. Retrieved from: <http://www.academia.edu/4577848/>

West Papua Development Acceleration Unit (UP4B)” at the hand of the Indonesian government did not reverse discriminatory tendencies. For example, as recent as January 2014, native Papuans proposed by the Papua Indigenous Entrepreneurs Chamber (KAPP) to become contractors for a road-building project in West Papua managed by UP4B were denied involvement in the project, which was assigned to non-native military contractors.²⁹ This structural discrimination of indigenous populations in benefitting from the exploitation of their land’s natural resources also takes the form of an urban/rural divide. Poverty, lack of access to education (see p.13-14 of this report) and to other public services such as health (see p.12-13 of this report) and clean water concentrates in Indonesia’s rural areas, where most indigenous people live.

Discrimination also occurs on the basis of religion, and episodes of discrimination and violence against members of religious minorities or their sacred places are recurrent. South Moluccas and West Papua, constituting Christian minorities within a country with Muslim majority, are particularly at risk. While art.29(2) of the Indonesian Constitution states that “the State guarantees all persons the freedom of worship, each according to his/her own religion or belief”³⁰; art.156(A) of the Indonesian criminal code regards misusing or disgracing one of the six officially recognized religions as a criminal offense.³¹ Commonly referred to as “blasphemy law”, this provision is increasingly being used against religious minorities in the name of their disrespect for Islam. In practice religious discrimination seems to be steadily increasing: the Setara Institute counted 264 cases of religious intolerance against Christians in 2012, a record that amounted to 135 in 2007.³² This is facilitated by the fact that religion is stated on Indonesian ID cards, despite of religious minorities’ demands to abolish this category because of its potential for discrimination in public services and in competition for jobs.³³ The denial of building permits for Christian communities for the construction of churches in South Moluccas is only one example of such religious discrimination. Religious intolerance in South Moluccas and West Papua also takes the form of churches demolition and physical assault of civilians by security forces. One of the latest instances was the reported beating of the leaders of a church congregation in Dondobaga in January 2014.³⁴

Overall, while the Indonesian State report submitted to the Committee points at the establishment of the “National Commission on Violence against Women”, the “Indonesian Child Protection Commission”, and the “National Committee for Elderlies” as positive signs towards protecting vulnerable groups from discrimination³⁵, a similar framework is still missing with regard to religious minorities and indigenous peoples.

²⁹ West Papua Report (January 2014). *ETAN*. Retrieved from: <http://etan.org/issues/wpapua/2014/1401wpap>.

³⁰ The 1945 Constitution of the Republic of Indonesia. Retrieved from: <http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>

³¹ Crouch, M. (2012). *Indonesia’s Blasphemy Law: Bleak outlook for minority rights*. Asia Pacific Bulletin, East-West Center. Retrieved from: http://www.eastwestcenter.org/sites/default/files/private/apb146_0.pdf

³² *Charisma News* (19 March 2013). Decade After Maluku Massacre, Indonesia Still Dangerous for Christians. Retrieved from: <http://www.charismanews.com/world/38729-decade-after-maluku-massacre-indonesia-still-dangerous-for-christians>

³³ Palupi, M. (1 January 2014). Remove Religion Listings from Indonesian ID Cards. *Khabar Southeast Asia*. Retrieved from: http://khabarsoutheastasia.com/en_GB/articles/apwi/articles/features/2014/01/01

³⁴ *West Papua Daily* (28 January 2014). Police/army stop persecuting ordinary people. Retrieved from: <http://tabloidjubi.com/en/?p=627%20that%20Indonesian> (Accessed on 14/02/2014)

³⁵ EC.12/IDN/1, January 2012. p. 39.

Articles 6, 7 – Right to work

Article 6.1 requests States Parties to “recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

Article 7 requests State Parties to “recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular... (a)(i) Fair wages and equal remuneration for work of equal value without distinction of any kind [...] (ii) A decent living for themselves and their families [...] (d) rest, leisure and reasonable limitation of working hours”.

Indonesia’s national transmigration programs aimed at moving workers to resource-rich regions traditionally inhabited by indigenous peoples have resulted in a lack of work opportunities for members of indigenous and minority communities. Unemployment rates in provinces inhabited by minority groups are among the highest in the country: 8.28% in Papua Barat, 8.27% in Aceh, and 7.8% in Maluku, with a national average of 6.8%.³⁶ Although the Indonesian National Statistics Bureau registered a 3.7% unemployment rate in the province of Papua, in 2013, only 17% of the labor force in Papua had steady full-time income, 38% was classified as unpaid “domestic help”, and 45% as self-employed or in part-time work.³⁷ Since indigenous inhabitants’ employment opportunities are given to (skilled) migrants from other parts of Indonesia, it is the indigenous peoples who suffer from unemployment and underemployment in their regions of origin.

An effective framework for positive action to promote employment of indigenous peoples in the formal economy is not yet available. For example, In Papua, Art.62 of the special autonomy legislations states that “Indigenous Papuans are entitled to be given priority in employment in all areas of work in Papua province based on their skills and expertise”. Yet, lack of education and skills (see p. 13 of this report) and the migration of skilled workers from other islands result in structural discrimination: indigenous Papuans are not hired by the companies that exploit their ancestral lands.³⁸ The same happens in other minority and indigenous areas, where large as well as small businesses in any sector of the economy tend to be owned and run by non-indigenous arrived through transmigration programs.³⁹

When they happen to be employed, indigenous inhabitants are given temporary minor jobs such as porters, drivers, or plantation workers, often without a contract. Additionally, their wage is often reported to be significantly lower than the regional minimum wage standards, even those set by the Indonesia government. For example, a 29-year-old native Papuan with a secondary school degree reported to earn approximately 75USD per month from employment in various construction projects, while the province’s minimum wage amounts to more than double (166USD/per month).⁴⁰ Access to employment opportunities and working conditions are even more difficult for refugees returned to

³⁶ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Table 2.25. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

³⁷ IRIN (December 2013). Tackling Indigenous Unemployment in Indonesia’s Papua. Retrieved from: <http://www.irinnews.org/fr/report/99267/tackling-indigenous-unemployment-in-indonesia-s-papua>

³⁸ ICG (2012). *Dynamics of violence in Papua*. <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/232-indonesia-dynamics-of-violence-in-papua.aspx>

³⁹ Mollet, J.A. (2013). *Special Autonomy and Poverty Reduction Programs in Papua: Does it Work?* Cenderawasih University. Retrieved from: <http://www.academia.edu/4577848/>

⁴⁰ IRIN (December 2013). Tackling Indigenous Unemployment in Indonesia’s Papua. Retrieved from: <http://www.irinnews.org/fr/report/99267/tackling-indigenous-unemployment-in-indonesia-s-papua>

their homeland, even when they return after being promised job opportunities.⁴¹ Furthermore, it can be questioned whether indigenous peoples working in companies exploiting their resource-rich ancestral lands can be considered as “freely choosing” their type of employment, as they are expropriated of their traditional means of subsistence and left with no other choice than work for such companies or relocate.⁴² Because of this lack of choice in becoming part of corporations’ informal workforce, some activists have been looking at the applicability of the concept of “forced labor” to the case of indigenous workers in West Papua.⁴³

Article 8 - Right to strike

Article 8.1 (d) ensures “the right to strike, provided that it is exercised in conformity with the laws of the particular country”

According to art.137 of Act 13 of 2003 on labor, “strike, which results from failed negotiation, is a fundamental right of workers/ laborers and trade/ labor unions that shall be staged legally, orderly and peacefully”.⁴⁴ While this article recognizes the right to strike, it also strictly regulates it as legal strikes can only take place after the failure of a long process of negotiations with the employer. In practice, strikes are often met by Indonesian police with excessive use of force. This is particularly the case in strikes involving indigenous peoples or minorities voicing issues of inadequate conditions of work. In the last few years, alarming episodes of police violence against strikers have taken place in West Papua, Aceh, and South Moluccas. For example, in June 2011, two indigenous West Papuans were shot by the police while taking part into a strike against the US-owned Freeport McMoran’s Grasb mining company, one of the first corporations to exploit West Papua’s lands.⁴⁵ In March of the same year eight midwives were arrested for striking in a hospital in Jayapura on charges of defamation and incitement to illegal action (art. 335 and 160 of the Indonesian Criminal Code, respectively).⁴⁶ Similarly, a trade union chairman was arrested in Aceh after leading a local struggle for workers’ rights.⁴⁷

Article 11 – Right to adequate standard of living

Article 11.1 states that “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The

⁴¹ *IRIN* (December 2013). Papua returnee lives with broken promises in Indonesia. Retrieved from: <http://www.irinnews.org/report/99270/papuan-returnees-live-with-broken-promises-in-indonesia%C2%A0%20papuan%20returnees%20live%20with%20broken%20promises%20in%20indonesia>

⁴² Forest Peoples Programme (July 2013). *Request for Further Consideration of the Situation of the Indigenous Peoples of Merauke, Papua Province, Indonesia, under the Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures*. Retrieved from: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/cerduamifeejuly2013english.pdf>

⁴³ *Ibid.*

⁴⁴ Act of the Republic of Indonesia number 13 year 2003. Retrieved from:

<http://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>

⁴⁵ International Trade Union Confederation (June 2012). *2012 Annual Survey of Violations of Trade Union Rights/Indonesia*. Retrieved from: <http://www.refworld.org/docid/4fd8894730.html>

⁴⁶ *Ibid*

⁴⁷ *Ibid*

States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

Indigenous and minority communities in Indonesia are among the poorest inhabitants of the country, and often do not enjoy adequate standards of living. Papua, Papua Barat, Aceh, and South Moluccas are the Indonesian provinces with the highest percentage of people living under poverty line, ranging from 19% in Aceh to 31% in Papua with a national average of 12%.⁴⁸ While the Indonesian government’s National Medium Term Development Plan 2010-2014 sets the development of Papua, Papua Barat, and South Moluccas as regional priorities, it does not include any specific provision for the protection of the indigenous inhabitants of the regions.⁴⁹ Consequently, while the plan might lead to economic growth of the regions as a whole in terms of their GRP, it is unlikely to improve the living conditions of indigenous people as long as they remain marginalized and unemployed. In Aceh, the post-tsunami reconstruction efforts have led to improvements in economic conditions in general, but poverty and unemployment remain relatively high.⁵⁰

One of the main issues facing minorities and indigenous populations is the right to adequate housing. When indigenous peoples’ lands are taken over by corporations to be industrially exploited, the indigenous people who traditionally lived on those territories are forced to relocate. Such forced relocation is worsened by transmigration programs which bring non-natives to indigenous areas. In 2013, the issue of eviction in Indonesia attracted the concern of the UN Special Rapporteur on Adequate Housing, who pointed at the fact that “in some cases development is having a retrogressive impact on the right to adequate housing”.⁵¹ The situation is particularly critical for refugees returning to West Papua, as they are promised housing and job opportunities that are not available. For example, a Papuan returnee reported to have lived with his family in a temporary shelter for more than three years.⁵²

Additionally, indigenous peoples’ housing facilities generally present low quality services, lack electricity, drinking water, and accessibility by road. In Aceh, despite a generally effective post-tsunami reconstruction, some houses remain inhabitable because of lack of water and sanitation facilities.⁵³ The percentage of households with access to clean drinking water in Papua (26%) and Aceh (28%) is significantly inferior to the national average (43%) and the situation in 2011 appears to be deteriorated in comparison with 2009.⁵⁴ The alarming decrease in access to clean water is certainly worsened by the general environmental degradation caused by the massive exploitation of resource-rich indigenous lands at the hand of corporate entities.

⁴⁸ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Table 3.14. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

⁴⁹ Ministry of National Development Planning (2010). *Regulation of the president of the republic of Indonesia number 5 of 2010 regarding the national medium term development plan 2010-2014*. Retrieved from: http://indonesia.unfpa.org/application/assets/files/3/RPJMN_2010-2014_English.pdf

⁵⁰ International Recovery Platform (2012) *Indian Ocean Tsunami 2004: Recovery in Banda Aceh*. http://www.recoveryplatform.org/assets/recoverycases_reports/RECOVERY%20STATUS%20REPORT%20ACEH%20JAN15.pdf

⁵¹ *UN News Service* (June 2013). Development in Indonesia must not threaten adequate housing for the poor – UN expert. Retrieved from: <http://www.refworld.org/docid/51baf9d84.html>

⁵² *IRIN* (December 2013). Papua returnee lives with broken promises in Indonesia. Retrieved from: <http://www.irinnews.org/report/99270/papuan-returnees-live-with-broken-promises-in-indonesia%C2%A0%20papuan%20returnees%20live%20with%20broken%20promises%20in%20indonesia>

⁵³ International Recovery Platform (2012) *Indian Ocean Tsunami 2004: Recovery in Banda Aceh*. http://www.recoveryplatform.org/assets/recoverycases_reports/RECOVERY%20STATUS%20REPORT%20ACEH%20JAN15.pdf

⁵⁴ ⁵⁴ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Table 3.10. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

The exploitation of indigenous lands once used for subsistence agriculture and farming has also led to major food insecurity for indigenous peoples in Indonesia. Unable to derive food from their forests and to earn enough money to feed their families, indigenous peoples are increasingly becoming victims of malnutrition. For example, industrial activities on Aru island, South Moluccas, resulted in widespread water and soil contamination, making small-scale agriculture and farming extremely difficult. The situation is particularly critical in the regions of West Papua that have become part of the MIFEE project and similar large-scale agro-industrial activities. The alarm was launched in 2012 by the Special Rapporteurs on Indigenous Peoples and the Right to Food: “the project to migrate from 1 to 2 million hectares of rainforest and small agricultural plots in a large plantation for export to the market of agro fuels, in the region of Merauke, Indonesia, could have an impact on food security of 500,000 people”.⁵⁵ This lack of access to food is particularly impacting children living in villages in the proximity of industrial plantations, such as Zanegi and Baad villages in West Papua, where acute hunger and child malnutrition has been recently documented.⁵⁶

Article 12 – Right to health

Article 12 requires State Parties to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the improvement of all aspects of environmental and industrial hygiene”.

Indigenous peoples and minorities in Indonesia have faced serious challenges in maintaining an adequate standard of health. While art.28H of the Indonesian Constitution recognizes the right to a “healthy environment” and “medical care”; industrial projects promoted by the Indonesian government have generally ignored the health and environmental consequences faced by the people living in neighboring areas. Industrial activities have resulted in intense environmental degradation, which can lead to diseases related to lack of clean drinking water and the dispersion of noxious substances. To give only one example of such environmental degradation, in January 2014, a court ruling estimated that the environmental reparation costs for the environmental degradation caused by a palm oil company in Aceh amounted to 20million USD.⁵⁷ Unfortunately, most environmental damage in other regions goes unrecorded and unpunished.

The food insecurity derived from indigenous peoples’ poverty and lack of access to the forests has led to serious malnutrition and related diseases. Children are the most affected by malnutrition and other diseases, which often lead to elevated child mortality in minority and indigenous areas. South Moluccas is the fourth worse off province of Indonesia, with an infant mortality rate of 60/1000 births, which appears disproportionately high in comparison with a national average of 34/1000.⁵⁸ In Papua, infant mortality amounts to 41/1000 and in Papua Barat to 36/1000. Yet, when data is broken down for indigenous and non-indigenous inhabitants of the regions, rates go up to 139/1000 for

⁵⁵ Camoin, C. (May 2012). Land-grabbing in Asia, UN experts raise tones. *Atlas*. Retrieved from: <http://atlasweb.it/2012/05/24/land-grabbing-in-asia-esperti-onu-alzano-i-toni-579.html>

⁵⁶ Forest Peoples Programme, et al. (September 2013). *Starvation and poverty in Indonesia: civil society organisations appeal for suspension of MIFEE project in Papua pending redress for local communities*. Retrieved from: http://www.forestpeoples.org/sites/fpp/files/news/2013/08/CERD%20MIFEE%20press%20release_Aug2013_Final.pdf

⁵⁷ Hasan, N. (January 2014). Aceh court orders palm oil firm to pay for environmental damage. *The Jakarta Globe*. Retrieved from: <http://www.thejakartaglobe.com/news/aceh-court-orders-palm-oil-firm-to-pay-for-environmental-damage/>

⁵⁸ UNICEF (October 2012). *MDGs, Equity, and Children: the way forward for Indonesia*. Issue Brief. Retrieved from: http://www.unicef.org/indonesia/A1-_E_Issue_Brief_MDG_REV.pdf

indigenous children in urban areas and to 189/1000 for those in rural areas.⁵⁹ A similar disproportion exists with regard to maternal mortality.⁶⁰ This is connected to the fact that most health care facilities are located in urban areas, where most non-natives live.⁶¹ This trend does not seem to be improving: between January and April 2013, five children have been reported to die because of malnutrition only in one Papua village (Zanegi Village).⁶²

Another major health issue for indigenous people is the spreading of AIDS/HIV. According to the Indonesian National AIDS Commission, in 2012 Papua and Papua Barat were subject to a “generalized HIV epidemic” which interested 2.4% of the local population in comparison with a national average of 0.3%.⁶³ Along with the lack of health care facilities, this high HIV rates may be due to indigenous peoples’ lack of access to education related to health and diseases. While statistics broken down for indigenous and non-indigenous people are not available, people living in urban areas have been found to be 20% more aware of risks related to HIV than rural inhabitants.⁶⁴

In January 2014, the Indonesian government launched the Social Security Organizing Body (BPJS), which, according to a law on the National Social Security System passed in 2004, will provide universal access to healthcare. However, external observers estimated that the 1.7millionUSD allocated for the plan will only cover 40% of what would be necessary to provide adequate health to all Indonesians.⁶⁵ Consequently, while the establishment of the BPJS is a step forward, it is unlikely to ensure the right to health for all Indonesians in the short-term, particularly for indigenous peoples living in remote areas, where building health care facilities results more costly.

Article 13 – Right to education

Article 13 states that State Parties “recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms” and that “(e) the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”

⁵⁹ Franciscan International, et al. (October 2013). *NGO Submission for the List of issues Submitted for the consideration of the 52nd Session of the UN Committee on the Economic Social and Cultural Rights*. INT-CESCR-NGO-IDN-15354.

⁶⁰ Ibid.

⁶¹ ICG (2012). *Dynamics of violence in Papua*. <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/232-indonesia-dynamics-of-violence-in-papua.aspx>

⁶² Forest Peoples Programme, et al. (September 2013). *Starvation and poverty in Indonesia: civil society organisations appeal for suspension of MIFEE project in Papua pending redress for local communities*. Retrieved from: http://www.forestpeoples.org/sites/fpp/files/news/2013/08/CERD%20MIFEE%20press%20release_Aug2013_Final.pdf

⁶³ Indonesian National AIDS Commission (2012). *Country report on the follow up to the declaration of commitment on HIV/AIDS*. Retrieved from: http://www.unaids.org/en/dataanalysis/knowyourresponse/vcountryprogressreports/2012countries/ce_ID_Narrative_Report.pdf

⁶⁴ MeasureDHS (2012). *Indonesia Demographic and Health Survey 2012*. Retrieved from: <http://www.measuredhs.com/pubs/pdf/PR25/PR25.pdf>

⁶⁵ Hewson, J. (2014). Indonesia’s innovative health care system. *Aljazeera*. Retrieved from: <http://www.aljazeera.com/indepth/features/2014/01/indonesia-innovative-healthcare-scheme-201411485331598453.html>

Art.31.1 of the 1945 Indonesian Constitution recognizes the right of every citizen to receive education.⁶⁶ Overall, Indonesia has a positive history with regard to improvements in education and literacy: on average 93% of the population can read and write, and elementary school enrolment rates exceed 90%.⁶⁷ Nevertheless, great disparities exist between different regions in Indonesia, and minority and indigenous populations are often denied the same opportunities to education as other inhabitants of the country.

The province of Papua is the worst off with regard to literacy and education: with 36% illiteracy⁶⁸ and only 68% school participation for children between 13 and 15 years of age Papua scores remarkably lower than the national average as well as than any other Indonesian region (the second lowest school participation rate of children between 13 and 15 years of age is 81%, with a national average of 89%).⁶⁹ One of the main reasons for West Papua's lack of education is teacher absenteeism: on average, one out of three teachers is not present in school when he/she should teach, thus leading to a teacher absenteeism rate of 37%.⁷⁰ This is caused by a lack of infrastructure to reach remote rural regions where most indigenous West Papuans live and by a lack of monitoring by the government. In order to solve these provincial discrepancies, regional governments created regional school grants (BOSDA). However, funding criteria do not take into consideration differences in operating costs (e.g. buying a book in Papua is more expensive than in other regions), thus ultimately allocating more funds to bigger school in urban areas that already adequately operate.⁷¹

Furthermore, schools operate on the basis of a national curriculum which is not adapted to minority and indigenous peoples' issues and needs, thus not always being relevant for students belonging to regional minorities. For example, curricula do not include regional history and the teaching of local languages.⁷² According to art.33 of the 2003 education system law, Bahasa Indonesian is the official language of education, and local languages can only be used in early stage of education if necessary for communication.⁷³

⁶⁶ The 1945 Constitution of the Republic of Indonesia. Retrieved from:

<http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>

⁶⁷ BPS (2012). *Trends of Selected Socio-Economic Indicators*. Retrieved from: http://www.bps.go.id/booklet/Booklet_Agustus_2012.pdf

⁶⁸ Ministry of Education and Culture (2012). *Literacy: Empowerment, Development, and Peace*.

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Indonesia.pdf>

⁶⁹ BPS. *School Participation Rate by Province, 2003-2012*. Retrieved from:

http://www.bps.go.id/eng/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=28¬ab=3

⁷⁰ UNCEN, UNIPA, SMERU, BPS, UNICEF (April 2012). *We Like Being Taught: a study on teacher absenteeism in Papua and West Papua*. Retrieved from: http://www.unicef.org/indonesia/Teacher_Absenteeism_Study_Papua_ENGLISH.pdf

⁷¹ The World Bank (2012). *The BOSDA Improvement Program: Enhancing Equity and Performance through Local School Grants, Human Development Sector*. World Bank Office Jakarta, Policy Brief. Retrieved from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/13/000333037_20120613013418/Rendered/PDF/698700BRI00PUB0ngle0page0small0file.pdf

⁷² UNCEN, UNIPA, SMERU, BPS, UNICEF (April 2012). *We Like Being Taught: a study on teacher absenteeism in Papua and West Papua*. Retrieved from: http://www.unicef.org/indonesia/Teacher_Absenteeism_Study_Papua_ENGLISH.pdf

⁷³ Act of the Republic of Indonesia n.20, year 2003. Retrieved from:

http://planipolis.iiep.unesco.org/upload/Indonesia/Indonesia_Education_Act.pdf

Article 15- Cultural rights

Article 15 states that state parties “recognize the right of everyone:(a) to take part in cultural life;(b) to enjoy the benefits of scientific progress and its applications;(c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture”.

The exploitation of indigenous peoples’ forests for industrial purposes does not only represent a threat to indigenous peoples’ means of subsistence, environment, and health. The loss of access to their customary forests or the very destruction of forest-areas threatens their cultural survival. Indeed, Indigenous peoples’ cultural and social practices are closely related to the life in the forest, to its plants, and its animals. For example, West Papuan indigenous tribes have different “totem animals” which they are committed to protect as symbols of their tribes. When these animals relocate to other areas or die as a consequence of industrial practices, tribes lose their cultural “mission” and their symbol.⁷⁴ Similarly, a private tourist company has denied inhabitants of Paperu village in South Moluccas access to the village’s sea area, where sacred sites for ritual ceremonies are located.⁷⁵

Furthermore, some aspects of traditional indigenous culture run the risk to be limited by national regulations that are based on the Muslim majority’s cultural and societal norms. For example, Act n.44 of 2008 on pornography may be used to restrict the use of indigenous traditional clothing on the basis of its potential to violate a widely defined “morality of society”.⁷⁶

The linguistic cultural heritage of minorities and indigenous peoples in Indonesia is also at risk. Under the current language policy, which dates back to 1986, terminology from local languages is to be used to translate foreign languages when no Bahasa Indonesian equivalent exists.⁷⁷ Yet, Indonesia lacks a clear policy framework for the protection of local languages. Indeed, in the last few years several minority languages have become extinct and more are facing disappearance in the near future.⁷⁸

⁷⁴ *Awasmiffee* (October 2013). First Villages Feel the Impact as the Plantation Menace Spreads. Retrieved from: <http://westpauamedia.info/2013/10/27/three-years-of-miffee-part-2-first-villages-feel-the-impact-as-the-plantation-menace-spreads/>

⁷⁵ Human Rights Working Groups, et al. (October 2013). Alternative Report to the Indonesia State Report on the Implementation of ICESCR. CESCR_NGO_IDN_15360

⁷⁶ International Commission of Jurists ((October 2013). *Submission for the preparation by the Committee of Economic, Social and Cultural Rights of a list of issues for the examination of the initial report of Indonesia*. CESCR_NGO_IDN_15646

⁷⁷ Sugiharto, S. (October 2013). Indigenous Language Policy as a National Cultural Strategy. *The Jakarta Post*. Retrieved from: <http://www.thejakartapost.com/news/2013/10/28/indigenous-language-policy-a-national-cultural-strategy.html>

⁷⁸ Riza, H. (2008). Resource report on languages of Indonesia. BPPT. Retrieved from: <http://www.aclweb.org/anthology/I/I08/I08-7014.pdf>

Section D: Recommendations

The Unrepresented Nations and Peoples Organization urges the Republic of Indonesia to consider the following recommendations:

- 1. Formally recognize the Acehnese, South Moluccans, and West Papuans as indigenous peoples, and respect the distinct rights to self-governance afforded to them by the United Nations Declaration on the Rights of Indigenous Peoples;*
- 2. Respect the freedom of expression of indigenous peoples and release political prisoners arbitrarily arrested for acts of peaceful political activism, including raising flags;*
- 3. Stop land-grabbing practices which deprive indigenous peoples of their means of subsistence and engage regional ethnic communities affected by resource extraction under the principles of free, prior and informed consent;*
- 4. Ensure that the development of industrial projects in indigenous areas brings long-term and sustainable benefits for indigenous inhabitants, and that profits from natural resources are reinvested in their respective communities;*
- 5. Take action against the discrimination of religious minorities, by, for example, punishing acts of intolerance and clarifying the use of the “blasphemy law” in a way that it cannot function as a tool to restrict the rights of religious minorities;*
- 6. Stop the use of practices that deny equal employment opportunities to members of indigenous and minority communities, such as transmigration programs;*
- 7. Develop an effective framework for affirmative actions aimed at indigenous people’s employment in their regions;*
- 7. Improve the condition of work of minorities and indigenous peoples, including ensuring minimum wages and promoting employment in the formal economy;*
- 8. Immediately release labor and independent trade union activists imprisoned for taking part in peaceful strikes;*
- 9. Develop poverty-alleviation programs specifically targeting regions and communities where regional ethnicities reside, focusing on the needs of indigenous peoples;*
- 11. Take immediate action to monitor and stop corporate industrial activities that are harmful for the environment and its inhabitants, and develop an adequate legal framework for environmental protection;*
- 12. Address the significant disparity in health and living standards between regions populated by minorities and majorities, including providing remote geographical areas with adequate health care facilities, fighting child malnutrition, and developing HIV/AIDS related programs to tackle the spreading of HIV in West Papua;*

- 13. Ensure equal educational opportunities for minority and indigenous peoples, by addressing the lack or poor quality of schools in regions where minorities reside, by allowing flexibility in the national curriculum to adapt it to indigenous peoples' needs, and by tackling the problem of teacher absenteeism in remote geographical areas;*
- 14. Guarantee the conservation of indigenous peoples' cultural sites and their access to it;*
- 15. Develop a clear framework for the protection of indigenous languages that are gradually becoming extinct.*



The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organization founded in 1991. Its Members are indigenous peoples, minorities, and unrecognized or occupied territories who have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them.