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SESSION ON STATE AND ENVIRONMENTAL VIOLENCE IN WEST PAPUA

London, 27th-29th June 2024

JUDGEMENT

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1. Procedures and framework

The Permanent Peoples' Tribunal (PPT) is an international organization established in 1979 to examine and pronounce independent judgements on the severe violations of human and peoples' rights which do not find a space of visibility and qualification in the established courts of international law (see www.permanentpeopletribunal.org for its Statutes, which respond to the rigorous juridical terms of reference of international law, and for documentation on its activities in more than 50 deliberations).

The request which led to the public hearings held at Queen Mary University of London, from 27th to 29th June 2024, was put forward by the Centre for Climate Crime and Climate Justice (CCCCJ) and a network of international and Indonesian human and environmental rights' organizations and associations. The whole process of the preparation and realisation of the Session has been made possible through the commitment of the CCCCJ; its research tradition and networks are even more important and needed now to guarantee the follow up, which is so critical to help translating into effectiveness this first step of a long term and challenging research project.¹

Following the procedures outlined in the PPT Statutes, the indictment went through a careful instruction phase, considered consistent with the competences and the well-established doctrine of the PPT, and was assumed as a priority and inserted into the formal program. Impressive written and audiovisual documentation was made available in advance to the members of the international panel of judges.

The Government of Indonesia was duly informed of the indictment and of its right to a defense with a certified notification on 22nd May 2024, confirmed with a hand delivery to the Embassy in Rome on 17th June 2024.

The testimonies and reports have been presented and discussed, in person and remotely, over two and half days of public hearings, to a panel of judges composed of, in alphabetical order: Teresa Almeida Cravo (Portugal), Donna Andrews (South Africa), Daniel Feierstein (Argentina), Marina Forti (Italy), Larry Lohmann (UK), Nello Rossi (Italy) and Solomon Yeo (Solomon Islands).

The role of prosecutors has been assumed by Silvia Csevár (The Netherlands), Leonard Ijie (Indonesia), Yohanis Mambrasar (Indonesia), Fadjar Schouten-Korwa (The Netherlands) and David Whyte (UK).

In line with the PPT Statutes, in the absence of any response from the Indonesian Government, an *ex officio* defense has been presented at the conclusion of the hearings through a careful review of specific official statements of the Indonesian Government on the matters considered in the indictment.

In addition to its specific importance in making more visible a tragic situation which has been substantially marginalized in official public discourse and political action, the case

¹ Homerang-Saunders, S., Sherwood, A. and Whyte, D. (2024) Independence, Anti-Capitalism and the Struggle for Our Future: Seeking an End to State-Corporate Violence in West Papua, SSRN Queen Mary Law Research Paper No. 425/2024. April 4th 2024. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4784225

considered in this session of the PPT must be seen as a distillation of some of the most critical challenges which over the last decades have increasingly confronted the international order of States, revealing its incapacity and unwillingness to recognise and respond to the fundamental right of peoples to existence and self-determination. West Papua² represents an exemplary case of the prolongation, against all the evidence of non-legitimacy, of a colonial world where the very existence of historically and culturally independent peoples is denied, and their identities, values, cultures structurally ignored and violated with impunity. Without any form of consent, peoples are being transformed under current forms of colonialism from subjects into nobodies, deprived of autonomy in scenarios in which an increasingly tight alliance between State and national and international corporate interests is an absolute protagonist. The contractual and strategic needs of development are becoming exempt from any considerations of legitimacy and human values. The most fundamental and comprehensive components of the life of peoples and the land with all its resources is becoming the first target of policies that are furthering, with the silent complicity of the international community, the forced obliteration of peoples and their subjecthood.

2. Acknowledgment of the contribution of testimonies and communities

The materials provided to this Tribunal, and most especially the testimonies heard in the public hearings' last days, paint a picture of human and environmental catastrophe to which no one should be indifferent. The information provided to the Tribunal traces what can be characterised as a devastating attack on West Papuan lives and livelihoods.

The Tribunal would like first to express our gratitude for the impressive work and bravery of the West Papuan peoples, communities and organizations who have historically and continuously been documenting their situation and attempting to make known to the world the predatory occupation and exploitation of West Papua. The PPT is aware of the extreme risk the witnesses have exposed themselves to in all phases of the preparation and realisation of this session. The judges are immensely thankful for the trust placed in the Tribunal.

In the days which have followed the public hearings of the PPT in London, on 17 July, the dramatic, life threatening attack of Yan Christian Warinussy – director of the Legal Aid, Research, Investigation and Development Institute, who was one of the key witnesses in the hearings – has added to the pattern of violent repression which has been so clearly and comprehensively presented to the Tribunal. The PPT's judgement aims at providing further visibility and recognition to the known and unknown Papuans who over the decades have similarly become victims of the international silences about the West Papuan situation.

3. General structure of the deliberation

The articulation of the judgment is presented in the following sections:

- the context (par. 4)

² West Papua refers to the former Dutch colony "Western New Guinea", which now consists of six Indonesian Papua provinces, situated on the western part of the island of New Guinea.

- the responses to the charges against the charges levied in the indictment against the Indonesian government, as well as foreign actors, which include the factual evidence which has been submitted to the Tribunal (par. 5);
- a comment on the role of international institutions (par.6);
- the judgment on the responsibilities for the violations of the fundamental rights of the peoples of West Papua, which include the systematic repression of their individual and collective human and cultural rights and the systemic crimes of land grabbing and environmental devastation, in close collusion between State and private actors (par. 7);
- the recommendations, which are a substantial and specifically relevant component of the deliberation; although the role of the PPT does not include, by definition, the power of giving legal effectiveness to its decisions as an expression of the inviolable legitimacy of the peoples as subjects of their lives in dignity and sustainability, the judgments of the Tribunal are first of all an act of propositive resistance against an impunity which reflects the present powerlessness of international law and its dependence on existing neocolonial strategies; they must contribute, in coherence with the struggles of the peoples, to the urgent restitution of the violated rights to their legitimate subjects in positive alliance with other actors involved (par. 7);
- a concluding call to the people of West Papua (par. 8).

4. Contextual framework

The historical, political and cultural contexts which have characterised the evolution of the present conditions of coloniality, denial of autonomous identity, intense and permanent repression, and environmental devastation of West Papua are very extensively documented in the materials which have been submitted to the judges and integrated with the already detailed evidence proposed in the indictment. The points which follow are a summary of the background that the Tribunal considers relevant to the understanding of its judgment.

The accusations directed at the Indonesian State are essential, but it is extremely important to acknowledge also other actors who have been complicit with it or who have themselves been the perpetrators.

What has been clearly documented for decades is the consistent and continuous obliteration of a people, intimately connected to the consistent and continuous obliteration of their environments. The evidence produced here needs to be read within this overall framing.

In the 1960s, the then colonial power, the Netherlands, struck a deal with Indonesia regarding the future of West Papua. Mediated by the UN, the agreement placed the world organisation as a Temporary Executive Authority in charge of the exercise of self-determination of West Papuans, through a vote, eventually held in 1969. What Papuans call “The Act of No Choice” was the first of many instances of severe disregard for the Indigenous people’s legitimate aspirations.

The “Act of Free Choice,” to give it its official name, was controlled by an interested party – Indonesia – and involved less than 1 per cent of West Papuans unanimously voting “yes” in a climate of intimidation and military presence. Freeport, an extractive company that would cement its presence even further in the decades to follow, was already in the territory, thus providing an extra incentive for the control of the results of the supposed referendum. Although uncomfortable, the UN

failed West Papuans by not resisting this move on the part of Indonesia, and ultimately let the Indigenous people's legitimate right to self-determination be neglected. The colonial mindset was striking on this occasion, with the epithet of "backward" - meaning "unable to decide their own destiny" - applied to West Papuans as the consequences of the so-called act drastically constrained West Papua's political status.

The forcible form of settler colonialism that ensued, via, among other measures, a policy of transmigration by the Indonesian government, further eroded West Papuans' rights and chances for self-determination. By relocating tens of thousands of hectares of land to non-West Papuans arriving to the territory, the government dispossessed natives from the lands to which they held a spiritual-cum-material bond, created masses of displaced peoples at risk of food, health and housing insecurity.

The special autonomy law created in 2001 (and revised in 2021), although in response to demands and protests from West Papuans, did not resolve the main threats to this Indigenous community's protection. In fact, the law appears to be created to further pursue the government's neoliberal development agenda - in contrast to the aspirations and needs of West Papuans.

5. Responses to the charges of the indictment

The Tribunal was asked to deliberate on four charges levied against the Indonesian government, as well as foreign actors, and lastly to comment on the role of the international community, in particular the United Nations (UN). At this point, the Tribunal would like to make the following remarks:

Charge 1: Land grabbing

After hearing the evidence, does the Tribunal consider that the Indonesian State has taken the ancestral land of the Indigenous Papuan People against their will using racial discrimination and leading to the loss of culture, traditions and Indigenous knowledge?

In the first charge of the indictment the Indonesian State is accused of "taking the ancestral land of the Indigenous Papua against their will".

The Indonesian State defends itself against this accusation by claiming that it has introduced customary land laws into its legal system, but at the same time claims unlimited sovereignty, neither substantive nor procedural, over its entire territory, including West Papua.

In reality, in its forcible land acquisitions for both public settlements and private initiatives, the State of Indonesia is violently altering West Papuans' ancestral relationship with their land and rainforest.

This relationship is governed by customary laws that cannot be violated with impunity without causing serious harm to the people and the environment and without risking that land-use initiatives will do more harm than good. The relationship of West Papuans with the land and environment is in fact a form of collective and undivided ownership of the local communities who enjoy the resources according to their needs and in a sustainable manner.

As solemnly recognized and reaffirmed by the United Nations General Assembly in Plenary Session No. 107 on September 13, 2007, “Indigenous people possess collective rights which are indispensable for their existence, well-being and integral development as people”.

In the case of the West Papua peoples, these rights – which derive from their political, economic and social structures as well as their history and spiritual culture and traditions – have been in various ways violated by colonisation and dispossession of the lands first by The Dutch and then by the Indonesian Government.

Disrespected in particular has been the principle – enshrined in Article 19 of the aforementioned United Nations Declaration No. 107 – that States shall consult and cooperate “in good faith” with the Indigenous people concerned through their own representative institutions “in order to obtain their prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”.

After all, at the very origin of the annexation of the territory of Western New Guinea to the State of Indonesia is a highly controversial and relentlessly contested Act: the plebiscite that took place from 14 July to 2 August 1969, in which about 1025 people³ selected by Army General Sarwo Edhi Wibowo out of an estimated population of 800,000 voted “unanimously” in favour of the establishment of Indonesian control by raising their hands in public or reading from prepared scripts for the benefit of UN observers. The referendum had been authorised by the New York Agreement of 15 August 1962 which stipulated the right to vote in the Act to belong to *all* men and women in Papua.

As is well known, due to the blatant irregularities in the manner of the vote and the deviation from the provisions of the New York Agreement – described in many writings by independent scholars and observers – the referendum, named Act of Free Choice, turned into a plebiscite totally manipulated from Indonesian authorities.

The annexation of West Papua to Indonesia accordingly turned into a neocolonial operation in violation of the rights of the Indigenous people to self-determination under which Indigenous people can freely determine their political status and freely pursue their economic, social and cultural development and enjoy autonomy and self-government in matters concerning their local affairs.

In fact, their right of West Papuans not to be subjected to measures of forced relocation dispossession has been systematically ignored – as amply documented in the part of the judgement devoted to environmental degradation and the unbridled exploitation of natural resources.

Since the annexation referendum, violations of the rights of West Papuan natives have multiplied at the hands of the Indonesian government, which has only pursued objectives of exploiting the territory's natural resources without establishing a proper relationship with the Indigenous peoples.

In particular, the rule that Indigenous individuals may not be forcibly displaced from their territories and that no form of relocation may take place without the free, prior and informed consent of the peoples involved (and only after agreement on fair and equitable compensation and,

³ See J.F. Meijer, John Saltford, “The United Nations and the Indonesian takeover of West Papua, 1962-1969. The anatomy of betrayal”, *BMGN - Low Countries Historical Review*, 2005.

where possible, with the option of return) has been continually flouted.

The significant demographic changes taking place in West Papua over the last five decades have also played an extremely important role in the processes of economic and political marginalisation of Indigenous peoples and dispossession of land, especially land rich in natural resources. On these issues, Dr. Jim Elmslie, of the University of Wollongong, NSW, Australia, filed significant written testimony with the Tribunal. Elmslie states that while the proportion of Papuan people as a percentage of the entire population of the Papuan provinces continues to decline, this process varies widely between different regencies. While some have a strong majority of non-Papuan people other regencies are still overwhelmingly Papuan. This dichotomy is closely linked with topography – the mountainous interior outside of urban areas having a Papuan majority and the accessible lowlands a non-Papuan majority. The consequences of this dichotomy – a large chunk of West Papua about the size of Great Britain is peopled almost exclusively by Melanesian people, even as some of the coastal regions become non-Papuan majority – is profound. West Papuans of the interior have not only survived Indonesian occupation but have kept their lands and cultures largely intact, as a foundation for calls for an independent West Papua and conflict with the Indonesian government and its security forces. While coastal regions continue to receive large numbers of non-Papuan migrants resulting in the increasing minoritisation of the Papuan people and their concomitant subjection to military rule, marginalization and dispossession. This process is also occurring in the highlands in connection with expansion of the oil/gas and mining sectors as well as the proliferation of new regencies (with new bureaucracies) and the continuing development of new roads, all of which alienate traditional land and draw in migrants.

In the paper filed with the Tribunal, Elmslie points out that “the territory of West Papua [...] makes up about 24% of Indonesia’s total landmass but contains only 1.7% of the nation’s population” and “is also Indonesia’s richest region in terms of natural resources with the largest extant tracts of rainforest in south-east Asia; vast oil and gas reserves, and possibly the world’s largest deposits of copper and gold. Indeed Papua’s giant Freeport Mine is the largest economic entity in Indonesia and the country’s largest taxpayer”⁴. Elmslie adds that “the economic exploitation of these resources, especially in the establishment of massive oil palm plantations (millions of hectares are underway or planned), and the economic opportunities that arise from a fast growing local economy has drawn in hundreds of thousands of migrants from other regions of Indonesia motivated by self-interest and previously by government sponsored transmigration programs”. These migrants “differ starkly from the Indigenous (mainly Christian) Melanesian inhabitants of West Papua, being light skinned Asians predominantly of the Muslim faith”⁵.

Ultimately, census data and the researcher's statistical analysis showed that “the population of West Papua continues to grow and the percentage of the population which is non-Papuan also continues to rise. This is a driver of conflict: newcomers take resources such as land, forests and minerals from traditional land owners; the Indonesian security apparatus continues to grow to maintain control over the territory and resource extraction in particular; Papuan people are further marginalized and lose even their basic freedoms of speech and association, and so Papuan discontent at the Indonesian occupation also grows and with it the desire for independence. Therefore, understanding the demographic transition that is underway is central to comprehending the nature of the conflict in West Papua”.

⁴ Jim Elmslie, *West Papua Project, University of Wollongong, NSW, Australia, on the demographic transition underway in West Papua*.

⁵ Ibid.

In this context, unilateral and authoritarian State interventions cannot but provoke vibrant protests and reactions, even violent ones, from populations that see their relationship with the land of their ancestors denied and destroyed.

In fact, all of the witnesses heard by the Tribunal complained that – as a result of the land-use policies pursued by the Indonesian State and transnational corporations and the accompanying massive deployment of military and police forces – their communities have suffered painful dispossession and that they themselves, as members of the community, have been deprived of elementary freedoms, such as that of movement, and deprived as well of economic rights, first and foremost that to their homes.

In place of counterproductive and harmful State violence, effective respect for customary laws must be instituted, and must accompany every new economic initiative, extractive or industrial.

As suggested by field studies and confirmed in testimonies before the Tribunal, the system of prior consultation of the populations concerned, acquisition and verification of their informed consent is currently manipulated by the State of Indonesia to achieve its own purposes and fails to guarantee any respect for the special relationship, economic but also spiritual, between West Papuan populations and their environments.

Emphasising the Indonesian State's systematic violation of customary land laws – which it hypocritically claims to want to respect – is particularly important because the Tribunal does not want to, and cannot, limit itself to reviewing violations of international law in West Papua from the exclusive perspective of international law. It must be clear that these violations continue, are serious and must be strongly denounced. It is enough to think of the mechanisms of discrimination against the inhabitants of West Papua, the multiple manifestations of racism, the attempts to deny and erase their culture, and more generally the cruel repressive behaviour that is the subject of the second charge. In this regard, it should be mentioned that the International Criminal Court is also committed against land grabbing. In a document dated 15 September 2016, entitled “Policy Paper on Case Selection and Prioritisation”, the Court's Office of the Prosecutor stated that cases involving land misuse, illegal expropriation and environmental destruction can be legally qualified as crimes against humanity.

This assertion is motivated by the fact that actions carried out in the name of and under the pretext of “economic development” can be the cause of displacement and forced relocation, which the Rome Statute considers crimes against humanity.

However, there is no shortage of difficulties on this terrain because if the prospect of being accused of crimes against humanity can induce a State to behave more attentively, correctly and respectfully towards the rights of Indigenous peoples, the same prospect can incentivise manoeuvres aimed at disguising illicit conduct by artificially presenting them as economic development programmes.

Whether violations of international law are relevant it is equally important to pay attention to the fact that – in carrying out the process of exploitation of the region's great resources – the Indonesian government and transnational corporations constantly violate the customary norms that for centuries have regulated the relationship of the native peoples with nature, the environment

and the use of resources, systematically ignoring and erasing the interests and aspirations of the original inhabitants of the area.

This situation emerged from the many testimonies of scholars heard by the Tribunal and from the documents and studies acquired at the trial, but also from the living voice of the people.

In the public hearings, the inhabitants of various areas of West Papua vividly represented their difficult and often dramatic plight and lifted the veil that, in the eyes of international public opinion and the Indonesian people themselves, covers the multiple violations of customary laws and norms of international law that are daily perpetrated against the people of West Papua.

Ultimately, the task of the Tribunal is to establish the truth about the criminal events in West Papua and the repression taking place there, but also to clarify and to reaffirm their inalienable rights regarding land and the environment.

In conclusion, one must recognize that the Indonesian State has violently affected the Indigenous peoples' relationship with their land, both by expropriating and displacing them from their territories in order to allow their exploitation – mining, industrial, agricultural – and by disrupting the natural environment in which they were born and live, in the name of ecologically unsustainable economic development.

The issue of adequate compensation for the people of West Papua for the wrongful conduct of the Indonesian government therefore arises strongly. In this regard, an important precedent should be recalled. In the second half of the 1980s, the American Association of Jurists, a non-governmental organisation with consultative status at the Economic and Social Council of the United Nations with headquarters in Buenos Aires and New York, requested the intervention of the PPT to assess the possible violations of human rights produced by the investment policies of the International Monetary Fund and the World Bank in underdeveloped countries as a consequence of the oil crisis and the surge in inflation, with particular reference to the right to self-determination of peoples.

The Tribunal met in West Berlin on 26-29 September 1988 and issued its ruling on the policies of the International Monetary Fund (IMF) and the World Bank, in which it stated, among other things, that “the structural adjustment policy of the World Bank/IMF has caused an increasing net transfer of resources from debtor countries to creditor countries. As a result, life and standards in debtor countries have deteriorated. The environment has been irreversibly damaged and territories of Indigenous peoples have been destroyed. The payment of compensation should therefore be considered”⁶.

Charge 2: The shadow of fear

After hearing the evidence, does the Tribunal consider that the Indonesian State is accused of violent repression, including unlawful detention, extra-judicial killing, and population displacement in West Papua as a means of furthering industrial development?

The report prepared by the *ex-officio* defense states, on the one hand, that Indonesia “deals with all allegations of human rights violations and criminal actions by State personnel

⁶ Permanent Peoples' Tribunal, *The policies of the International Monetary Fund and the World Bank I* (West Berlin, 26-29 September 1988), <https://permanentpeopletribunal.org/wp-content/uploads/1988/09/IMF-e-WB-1988-English.pdf>

appropriately”⁷. On the other hand, it states (e.g.) that it has been “forced to deal with terrorist groups in Kiwirok” and that “military operations, including any searches of villages or air raids, are proportionate and are part of expanded operations to eradicate the OPM and protect the civilian population”⁸. However, when operations claimed to “protect civilian populations” only produce more victims, this argument becomes nonsense. The different reports, testimonies and documentation received by this Tribunal do not support the defense’s allegation.

A better summary of the current situation in West Papua regarding human rights violations is a phrase of a testimony presented during the second day of the proceedings by one of the witnesses: “We live in the shadow of fear”. That is a situation created by the Indonesian Government in West Papua over the last decades. That “shadow of fear” has been constructed via State crimes (killings, torture, ill-treatment, unlawful detention, forced displacement and the suppression of political rights) as well as grants of impunity for the perpetrators of those crimes. The report of Human Rights Monitor presented before this Tribunal on 18th June 2024 demonstrates that “Impunity is rampant in West Papua [...]. Perpetrators are not held accountable in public trials. Accordingly, the court processes, particularly police internal disciplinary procedures, lack transparency and independence. Moreover, neither military tribunals nor police internal procedures meet the victim’s right to compensation, restitution and rehabilitation”⁹. The same conclusions are part of the report presented by TAPOL before this Tribunal in its paragraph about “Impunity and lack of effective human rights accountability”¹⁰.

More generally, the judicial system of the Indonesian State, which appears both inefficient and repressive, deserves critical consideration. On the one hand, in fact, the judicial system is not able to guarantee incisive and independent investigations into most of the serious crimes committed against the people of West Papua. On the other hand, as was presented in several testimonies and documents, that same judicial system brings serious treason charges against participants in peaceful protest demonstrations.

Regarding only the last few years, most of the reports presented in this PPT session give a clear picture of continued and systematic attacks on the West Papuan population. The report of Amnesty International (produced in May 2024) documented at least 131 victims of unlawful killings only between January 2018 and March 2024. Human Rights Monitor documented that, as of 16th June 2024, a total of 79,319 individuals, mostly Indigenous Papuans, remain internally displaced across the region. Many of those internally displaced persons (IDPs) have been living in a state of limbo without access to proper health services since early 2019 and the Papuan Human Rights Groups documented the deaths of 196 IDPs due to conditions during displacement. Human Rights Monitor concludes that the “use of torture and other cruel, inhuman or degrading treatment or punishment remain widespread practices among the police and military in West Papua”¹¹.

Various massacres were mentioned in the proceedings and the documentation received, including those that occurred in Biak (6 July 1998), Abepura (7 December 2000) and Wamena (February 2023), among others.

⁷ See *Statement in response to the Permanent Peoples’ Tribunal session on state and environmental violence in West Papua, 27-29 June 2024*

⁸ *Ibid.*

⁹ Human Rights Monitor, *Submission of information to the Permanent Peoples’ Tribunal on West Papua*, 18 June 2024.

¹⁰ TAPOL, *Submission to the Permanent Peoples’ Tribunal on West Papua, 27-29 June 2024*.

¹¹ Human Rights Monitor, *Submission of information to the Permanent Peoples’ Tribunal on West Papua*, *cit.*

Amnesty International also notes the ongoing suppression of peaceful political expression, including the blanket prohibition of peaceful protests and the threat of arrest and persecution under the treason (*makar*) provisions of the law (mainly articles 106 and 110 of the Criminal Code, KUHP). The report presented by TAPOL documented 245 new political prisoners only from the beginning of 2019 until September 2020. Some 109 of those prisoners were charged with “treason” offenses. In the same report it is mentioned that 72% of these arrests occurred merely because of the raising or displaying of the Morning Star flag. Different testimonies during the proceedings produced further evidence of this kind of persecution: not only imprisonment but also abuse and torture of prisoners. Amnesty International documented at least 96 people arrested for exercising their rights to freedom expression or peaceful assembly.

The Report by Human Rights Monitor of June 2024 documented that crimes against humanity were committed by the Indonesian security forces as part of April 2023 raids in Intan Jaya, in which at least 60 Indigenous Papuans suffered extrajudicial killings.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has received reports of allegations of unlawful killings, enforced disappearances, torture and inhuman treatment and forced displacement of at least 5.000 Indigenous Papuans by the Indonesian security forces merely between April and November 2021, amid a heavy security presence and ongoing armed clashes.

Other witnesses and reports have analyzed the different types of stigmatization suffered by West Papuans, from the racist dehumanization as “primitive” or “monkeys” to their current categorizations as “separatists” or “terrorists”. All these different stigmas have been used not only as a form of dehumanization that acts to further the commission of various crimes by the State, but also as a way to create an atmosphere of alienation between Papuan and non-Papuan populations.

These are the clear contours of the “shadow of fear” which is darkening the life of West Papuans. It is evident that the different reports and testimonies presented before this Tribunal constitute only the visible tip of the iceberg of State crimes committed in the region as a means for furthering industrial development. This state of affairs clearly deserves further investigation by different national and international bodies and urgent interventions in order to stop the suffering of the people and bring justice to the region.

Charge 3: A system of ecological degradation as a people’s obliteration

After hearing the evidence, does the Tribunal consider that the Indonesian State has organised environmental degradation, including the destruction of eco-systems, contamination of land, the poisoning of rivers and their tributaries and of providing the permits, concessions and legal structure of non-compliance for national and foreign companies to invest in West Papua in a way that encourages environmental degradation?

The judges consider that the Indonesian State, aided by several non-Indonesian States such as those of the US, Australia, the UK, the Netherlands and Denmark, has indeed organised what is called “environmental degradation”. This organisation proceeds through a regime of terror; militarization; land, forest and water seizures; legal impunity; surveillance; and other restrictions

on the conduct of human life and livelihood as well as on exchanges of thought and information¹². It occurs predominantly through three mechanisms: (1) profit-driven mining of gold and copper and the extraction and liquification of natural gas, (2) deliberate deforestation for palm-oil plantations and other agribusiness operations; and (3) recent food estates projects.

As testimony to this Tribunal has revealed, the effects on land, water and forest use have been severe. Mining, timber and agribusiness projects and the infrastructure associated with them, largely oriented toward export, have resulted in, among other things, deforestation, loss of drinkable water, loss of subsistence crops, loss of mountains, loss of fisheries, and the poisoning of watersheds and human bodies. Such effects have been experienced in, among others, Mimika, Merauke, Intan Jaya, Maybrat, Jayapura, Sorong and Paniai Regencies.

Mining operations were cited as the cause of large-scale water contamination and the accumulation of toxic tailings and other wastes, affecting fisheries, agriculture and human health. Oil-palm plantations are associated with loss of forests – which still cover some 78 per cent of the total land area of West Papua, despite rapidly increasing rates of clearance since 2002 – as well as water pollution, loss of mixed agriculture and biodiversity. Nor have the effects only been local. For example, one company was revealed as releasing 4.7 m tonnes of carbon dioxide directly into the earth’s atmosphere every year, exacerbating global warming, while deforestation traceable to plantation, logging and mining schemes further destabilizes world climate. In addition, the Freeport Grasberg gold-copper mine, at an altitude of around 4000 metres, was shown be burdening rivers and lowlands downstream with acidic sediment, decimating fisheries, and as having deleterious effects on water quality exceeding Indonesian legal limits as much as 200 km downstream in the Arafura Sea¹³.

The Tribunal also considers that the evolving inter-State regime behind this despoliation does indeed create an environment of noncompliance that supports the interest of foreign and national companies that invest in West Papua in order to profit from cheap extraction of oil, gas, gold and copper from its mountains and coastal regions, and of palm oil, sugar and other plantation crops from its soils as well as timber from its forests. Attempting to minimize restrictions on the plunder carried out by these corporations, this inter-State regime is profoundly opposed to efforts to preserve and sustain West Papuan lands.

However, the Tribunal finds that Charge 3’s term “environmental degradation” needs to be clarified and expanded in order to avoid any misunderstanding that environmental degradation in West Papua is in any way detachable from an assault on the humanity, rights, welfare and identity of West Papuans. In particular, it is crucial to emphasize that the two issues cannot be addressed separately if any realistic effort is ever to be undertaken to address the ongoing conflict in West Papua. That is the burden of the testimony of nearly all of the Papuan witnesses to this Tribunal. Their words reveal that there is no sense in which “environmental degradation” can be disaggregated from State and corporate projects which are tending toward the obliteration of a

¹² On the links between the Indonesian and other States in this regard, see, for example, the testimony of Jacob Smith to this Tribunal; Eben Kirksey, *Freedom in Entangled Worlds: West Papua and the Architecture of Global Power*, Durham: Duke University Press, 2012; Rights and Security International, *Exporting Prevent: The UK Government’s Complicity in Rights-Violating Counter-Extremism Programmes in Indonesia*, London: RSI, 2024; Eileen Hanrahan, *West Papuan Decolonisation: Contesting Histories*, Singapore: Palgrave Macmillan, 2021; and Greg Poulgrain, *JFK vs. Allen Dulles: Battleground Indonesia*, New York: Skyhorse, 2020.

¹³ See testimony 25 and London Mining Network; also, for example, Jane Perlez and Raymond Bonner, “Below a Mountain of Wealth, a River of Waste”, *New York Times*, 27 December 2005.

people¹⁴, or what was called by more than one witness a “slow genocide”¹⁵. The organisation of ecological degradation to which Charge 3 refers is indistinguishable from the organisation of a racist project that everywhere seeks to exclude West Papuans as a group from ownership of their territories on their own terms; from beneficial relations with those territories’ plants and animals; from redress for wrongs committed by a military which is itself enriched by environmental destruction¹⁶, including systematic and widespread intimidation, torture, rape, mutilation¹⁷, mass shootings and other forms of murder¹⁸; from political power or even participation; from the exercise of rights to education and health care accorded to other Indonesian citizens¹⁹; and from opportunities to share and exchange information and analysis both with their peers and with the public outside West Papua and outside Indonesia²⁰.

In other words, it is not the case that the poisoning of lands, waters, plant life and human bodies testified to by the witnesses is “accompanied by” racism, nor that the racism experienced every day by Papuans is a mere “instrument of control and manipulation of nature”, nor that industrial extraction of the type currently being experienced by Papuans could conceivably be made nonracist and consented to by them as such. Rather, the deforestation and extraction is *itself* racism. It is itself, despite the protestations of the Indonesian State, the very apotheosis of a colonial project that has been hundreds of years in the making. As Stephen Eichorn notes, resource exploitation in West Papua is a “form of racism itself,” and while racism is a tool for it, it is also a tool of racism²¹. The everyday acts of publicly or officially characterizing Papuans as “primitive”, “monkeys”, “dogs” or “pigs”²² cannot be separated from equally widespread acts of denigrating their agriculture and common lands in formally similar terms. Virtually all the features of the extractive system in place in West Papua – including forced displacement, loss of land and community, undermining of food systems and food sovereignty, deleterious changes in livelihood and social relations embedded in forests, creation of a cheap, degraded and disrespected labor force, increases in the vulnerability and precarity of the status of Papuan women attached to the land through farming and forest harvesting practices – constitute and are constituted by racism.

By the same token, it would be simplistic to characterize the denigration of West Papuans as mired in poverty as merely a matter of “blaming the victim”; the blanket demonisation of environmental protest with the “separatism” or “terrorism” labels as a matter of conceptual confusion or overgeneralization²³; or the common characterization of West Papuans as “monkeys” a matter of naive racial prejudice indulged in by small-minded individuals and thus distinct from matters of land and economic benefit. All of these discursive moves are on a wider structural level a defence of long-established private property regimes²⁴ and business practices of corporations and the State, under which transnational and national mining, oil, timber and agribusiness sectors are

¹⁴ TAPOL, *West Papua: The Obliteration of a People*, London: TAPOL, 1983.

¹⁵ See, for instance, the testimony of Raki Ap.

¹⁶ See testimony of Eben Kirksey.

¹⁷ See testimony 18 and an anonymous witness, and accompanying photographs.

¹⁸ Kirksey, cit., and witnesses heard by the PPT..

¹⁹ See testimony of Human Rights Monitor and others.

²⁰ See testimony of, among others, testimonies 15 and 16.

²¹ Stephen Eichorn, “Resource Extraction as a Tool of Racism in West Papua”, *The International Journal of Human Rights* 27 (6), 994-1016, <https://doi.org/10.1080/13642987.2022.2036722>. See also testimony of Stephen Eichorn to this Tribunal.

²² See testimony of Amnesty International Indonesia.

²³ See testimony of Samuel Ruiz-Nimitz.

²⁴ Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106 (8), 1993, 1708-1791.

given rights and powers to devastate West Papuan communities, including their nonhuman participants. This pattern of structural, institutional prejudice, which West Papuans must endure on a daily basis²⁵, is inseparable from a historic, colonial pattern of ecological exploitation and appropriation. It was evident throughout the testimonies presented to this Tribunal that the ways Papuans are being excluded from their communal territories, while those territories are in turn being excluded from them, itself amounts to the obliteration of the Papuan people²⁶ as they define themselves together with land, plants, fish, livestock and other living things.

The unity of ecological degradation and the assault by corporations and the State on West Papuans as a people needs to be understood against the background of West Papuans' distinctive, historic relations with the land. Although figures cannot be precise, witnesses suggested that some 70 to 80 per cent of Papuans still live in, and depend in varying degrees on, customary forms of unity with the land, water, forests and so forth.

These integral links with the territory have two political implications for the extractive corporations that are bent on profiting from West Papua, together with the Indonesian State that supports their interests. First, it means that corporations and the State have no choice but to separate West Papuans from their land if they are to pursue their current mining, logging and plantation projects. Customary communal West Papuan land practices²⁷ are incompatible with those of extractive corporations, with their requirements for deforestation, large-scale clearing and burning of land, reduction of biodiversity, soil impoverishment and the use of rivers, land and air as toxic waste dumps. One simple example revolves around West Papuan relationships with the subsistence cultivar sago. Papuan inhabitants of Merauke and other regions targeted by agribusiness are clear that "oil palm kills the sago" (*sawit bunuh sago*)²⁸. Sago and industrial oil palm cultivation are both possible on this territory, but not both together. Unlike other introduced species, oil palm has not been allowed to learn to live with other plants "like friends and family." Instead, it grows alone in industrial monocrops, destroys forest ecologies, contaminates water, and does not help out local inhabitants with food and other needs²⁹.

Rural West Papuan peoples are also clear on the parallels between the horrors of oil palm invasion in the lowlands and the ecological depredations associated with the Freeport McMoRan gold and copper mine in the highlands mentioned above. Freeport, West Papuans explain, operates through the same business-State-military nexus that characterizes the lowland oil palm plantation industry. The largest and historically one of the most profitable mines of its kind in the world, Freeport has been majority-owned since 2017 by the Indonesian government, which in that year extended Freeport's concession until 2041 in negotiations that summarily excluded land rightsholders of the Indigenous Kamoro and Amungme groups³⁰. The environmental point is that Freeport pollutes waterways and undermines the livelihoods and rights of Indigenous Papuans in ways similar to those associated with industrial oil palm plantations, with riverine disposal of tailings, waste rock and iron and manganese oxides contaminating and destroying the sago stands of downstream West Papuan communities, as well as damaging customary fisheries, *matoa* fruit

²⁵ Sophie Chao, "West Papua and Black Lives Matter," *Inside Indonesia*, 17 June 2020.

²⁶ Carmel Budiardjo and Liem Soei Liong, *West Papua: The Obliteration of a People*, London: TAPOL, 1983

²⁷ See, for example, Sophie Chao, *In the Shadow of the Palms: More-than-Human Becomings in West Papua*, Durham: Duke University Press, 2022.

²⁸ Chao, cit., p. 145.

²⁹ Ibid., p. 151.

³⁰ See testimony of Human Rights Monitor.

trees and sacred places³¹ (the Indonesian Financial Audit Agency estimated in 2017 that the potential loss from environmental damage associated with the toxic tailings, expressed even in conventional economic terms, amounted to US\$13 billion³²). “Freeport kills the sago”³³ is thus another saying of West Papuans, expressing essentially the same logic as “oil palm kills the sago”. Examples could be multiplied: “sugar cane is not our way” is another West Papuan statement from the evidence submitted to this Tribunal, referencing the recent expansion of another lowland industrial crop in the southern region of West Papua.

In fact, the logic of virtually the entirety of the current commercial extractive economy, whether mining, plantation or logging, runs counter to the systems that maintain the livelihoods of the majority of Indigenous West Papuans, insofar as it treats the territory itself completely differently. For instance, as several witnesses to this Tribunal put it, a community’s mountain or forest can be a mother³⁴, complete with eyes, ears and other living parts, and its streams can be understood as mother’s milk, all sustaining the humans who live with it, and reciprocally. For the Marind people whose land oil palm plantations have invaded in Merauke, forest plants and animals are respected kin, descendants of common ancestral spirits, or *demna* in the local language, and share the wetness and skin of their bodies with humans³⁵. Anyone who plants a tree must think beforehand about the local soils, waters and companion species that will nourish it throughout its life so that it grows properly straight and strong³⁶. Events and stories in both past and future are inscribed in the landscape’s trees, organisms, rivers and hills. Monoculture plantation developers or mining or logging corporations, however, cannot, as a matter of economics, take on this type of reciprocal care and mutual preparation for decades of a territory’s future. They are committed to the obliteration of the multi-species world of peoples such as the Marind³⁷. The degradation and destruction of West Papua forests are seen as a piercing of the lungs, hearts, and spirit of numerous local Indigenous communities.

The second implication of West Papuan land relations for the extractive corporations that are bent on profiting from the territory, as well as the Indonesian State that supports their interests, is this. Because these relations are part of West Papuan sustenance, autonomy, identity and collective power, it can be exceptionally difficult or complicated to undertake the necessary operation of breaking them up in order to transfer control and use of the land to industrial hands. Hence the process of dispossessing Papuans from their land, and dispossessing the land from its Papuans, tends to require extreme, systematic, multilayered, racism-infused violence. For example, in Merauke, it proved impossible for an officer of the agribusiness conglomerate Korindo to use peaceful means to persuade local residents that they didn’t need sago (which he said was a “poor man’s food”) and should switch to rice, instant noodles, and other commercial foods instead as part of the forced conversion of their land to oil palm plantations. Outraged, one local Marind leader responded, “Don’t you dare tell us not to eat sago. You know nothing about sago. Marind are strong because they eat sago”. Children who eat instant noodles and palm oil, he added, have “small and weak” bodies. “Nobody wants oil palm”³⁸. In general, attempts of the Indonesian State to take over or despoil West Papuan land through either legal or illegal means can quickly become

³¹ See testimonies 26 and Stephen Eichorn.

³² See testimony of Amnesty International Indonesia.

³³ Chao, cit., pp. 147-148.

³⁴ See testimonies of 5 and 26.

³⁵ Chao, loc. cit.

³⁶ See testimony of Sophie Chao.

³⁷ Chao, cit.

³⁸ Ibid., pp. 144-145.

a fighting matter. As one witness to this Tribunal put it, land provides “forest products, livestock, marine products, garden produce”. It is what “sends our children to school [...] nature is what guarantees us our life”. Such unities of ecology and identity make it only too predictable that an extractionist Indonesian State would need to continue to build on the concept of what one testimony to this Tribunal called “guilt by race”, according to which to be born Papuan is itself virtually a political crime. Far from being a manifestation of irrationality, that is, the Indonesian State’s conspicuous, violent reinforcement of racism³⁹ and demonisation of Papuans becomes a normal, pragmatic response to the challenge that Papuan livelihood and identity poses to an extractive economy reliant on corporate private property. It is a strategic matter, if nothing else, for the State to try to draw a clear line running from sago to separatism⁴⁰ just as it tries to draw another fictitious line running from oil palm plantations and plasma schemes to general prosperity. Not only West Papuan peoples, but their distinctive webs of plants and animals as well, have been made “other” to Indonesia.

These West Papuan ecological realities help account for the extraordinary brutality and crudity of the State and corporate assault on the West Papuan people of the past decades, which involves and demands the exercise of racial victimisation, militarisation, slander, censorship, intimidation and crimes against humanity of a degree and extent that stand out in the contemporary Asia-Pacific context. A number of implications were elucidated by witnesses to this Tribunal:

- Massacres of West Papuans conducted by Indonesian State functionaries, such as those that took place at Biak⁴¹ in 1998, Abepura in 2006⁴² and Wamena⁴³ in 2000 and 2023, become economically efficient means of ensuring that West Papuans will be fearful to speak out against environmental abuses as well as abuses classified in other terms, or to resist seizures of their territory⁴⁴. That fear clearly both boosts the profits of extractive industries and sustains their market and political security in Indonesia, while underwriting continued ecological destruction.
- Military repression and brutality against West Papuans, often involving “slower” massacres or the threat thereof, are frequently connected to what are conventionally classified as “environmental” conflicts. One exemplary hot spot is situated around the development of a gold mine in a forested, mountainous area of Intan Jaya about 35 kilometres north of Freeport’s longstanding mine at Grasberg. The deposit to be exploited (referred to as Wabu Block), was discovered by Freeport and is coveted by the State-owned holding company Mining Industry Indonesia. The proposed mine is widely opposed locally because of the pollution that would result and the deleterious effects it would have on local land practices including agriculture, hunting and timber collection, such as has occurred around the older Freeport mine⁴⁵. Local people are also

³⁹ Testimony heard by the PPT.

⁴⁰ See testimony 4.

⁴¹ See testimony 1; Kirksey, op. cit.; and *Biak Massacre: Citizens’ Tribunal Verdict*, biak-tribunal.org, 16 December 2013; Christopher Knaus, “Killed Like Animals: Documents Reveal How Australia Turned a Blind Eye to a West Papuan Massacre,” *The Guardian*, 18 September 2021, <https://www.theguardian.com/australia-news/2021/sep/19/killed-like-animals-documents-reveal-how-australia-turned-a-blind-eye-to-a-west-papuan-massacre>.

⁴² See testimony 2.

⁴³ See the testimonies heard by the Tribunal and an anonymous witness; Jack Brooks, “‘Killing Us as if We Were Animals’: 12 Dead After Police Open Fire on Civilians,” *Vice*, 27 February 2023, <https://www.vice.com/en/article/mass-killing-civilians-indonesia-papua/>.

⁴⁴ See testimony 12 and others.

⁴⁵ See testimonies 26, 24, Stephen Eichorn, and Amnesty International Indonesia.

concerned that neither local consultations nor any environmental impact assessment have been carried out, contrary to Indonesian law. While the Wabu Block area has seen violent clashes between the Indonesian military (TNI) and Papuan liberation forces for many years, with security forces suspected of at least 12 unlawful murders since 2019, official interest in gold profits and in deforesting and despoiling the territory that supports local people has intensified State repression significantly. When an Indonesian infantryman was killed in 2023 by a unit of the West Papua National Liberation Army (TPNPB), the State's reprisals against local people were staggering. Military personnel raided several villages, burned around 30 houses to the ground and destroyed many others. As is usual in the area, war weapons were used against unarmed small farmers. Four villagers were killed, others beaten and tortured, and around 3000 were forced to flee to neighbouring forests or villages or further afield, where they continue to endure heavy hardships⁴⁶. One student from the area testified to the Tribunal that "we can't go to the forest [...] we can be killed at any time [...] we are considered to be animals although we are God's creation [...] we've been raped, murdered, tortured [...] youth are being killed [...] many refugees have died in the forests due to the bombing [...] they [the State] couldn't grab the land, so they had to create a conflict to get the people out of the area [...] our cattle, our fish have been taken away [...] when people stay they are targeted blindly [...] the company has come into the area 12 times under different names [...] the truth has been silenced [...] the media are intimidated and can't report anything [...] we can't report anything to the media or make calls outside the region [...] if [military officers] see you trying to communicate with the outside, they arrest and interrogate you [...] many children in Intan Jaya over kindergarten age are not in school [...] only the children of priests and church workers can go to school"⁴⁷. Meanwhile, in Paniai Regency immediately to the south, the military arrived well before gold mining got under way in 2016. Local people were frightened and intimidated by the presence of uniformed officers as their land was taken away without adequate compensation. One witness to this Tribunal predicted that the result of occupation by miners and the military will be that many residents will die in poverty in the middle of their own "rich country"⁴⁸. She said dozens of karaoke bars had sprung up in the area offering sexual services, resulting in disease and social decay.

- The State's environmental-cum-military strategy of using force to separate West Papuans from their land and the land from West Papuans takes an especially stark, violent form in the phenomenon of "internally-displaced persons" (IDPs) testified to by many witnesses to this Tribunal. Several mutually-consistent estimates of the numbers of IDPs throughout West Papua were presented to the Tribunal, one of the most precise being the June 2024 figure calculated by Human Rights Monitor of over 79,319 people having been displaced by armed conflict since 2018 alone⁴⁹. Most of those forced out of their homes have not returned. Most, in addition, have extremely limited access to health and education services, and suffer a high death rate due to exposure, lack of housing, malnutrition, lack of medical attention, lack of clean water, and the aftereffects of injuries inflicted by State personnel. Human Rights Monitor has

⁴⁶ Human Rights Monitor, "The Human Cost of Conflict: An Investigation into the April 2023 Raids in Intan Jaya: Documenting Extrajudicial Executions, Displacement, and Destruction in Papua Tengah Province, Indonesia," June 2024, submitted to the Tribunal.

⁴⁷ Anonymous testimony to the Tribunal.

⁴⁸ See testimony heard by the PPT.

⁴⁹ Human Rights Monitor, "The Human Cost of Conflict".

documented hundreds of deaths of IDPs due to some combination of these causes⁵⁰. In general, women and children feel the worst effects of being displaced. These effects include not only physical but also psychological trauma. As Human Rights Monitor testified, “many Indigenous children in West Papua are afraid of the military. They have been traumatized over generations by the history of human rights violations for more than 50 years”⁵¹. In no way is this crisis of internal displacement separable from the ecological crisis that has seen lands that had supported sago palm, forests, chickens, pigs and fish transformed into mines, tailing deposits, and short-lived industrial plantations of palm oil or sugar cane. As an integral part of their seizure of resources, corporations and the State, as one witness observed, often “create a conflict”, either between Papuans and non-Papuans, or among Papuans themselves, that can only exacerbate internal displacement.

- Even those relatively few IDPs who attempt or are allowed to return to their homes, meanwhile, continue to suffer abuses that are often clearly intended to overcome remaining resistance to invasions of their land. One example comes from Maybrat, an area that has seen illegal logging, coal extraction, mining exploration, and palm oil development, as well as clashes between independence fighters and the military. A local witness testified that she was forced to leave her village following a 2021 attack on a military post in Kisor, together with 300 others most of whom took refuge in the town of Sorong, a coastal city and a hub for Indonesia’s oil and gas frontier, often crowding together 10 to 20 per house. With some fellow villagers, she was later pressured to return to her home, under official threats of nondisbursal of village funds, in what she interprets as a State attempt to normalize or whitewash the devastation connected with dispossession. People return, she testified, “because they are forced to, not because the situation in Maybrat has improved”. She has found the process crushing to her and her family’s well-being, the stress of unending intimidation being, in her words, a threat to well-being comparable to bullets. For one thing, her house has become a military post, while other family members’ homes have been burned down. Even former schools, she testified, are now occupied by security officers. “When I had to return home to the village, I felt like a foreigner. I cannot go anywhere, even pass by my own house. They [the military] ask me, ‘Who are you? Where are you from? Where are you going?’ And they think that is OK and normal [...]. When I want to go to the garden or to the river to bathe, I have to ask permission. There are soldiers everywhere, fully armed”. It was evident that, for the witness, these restrictions on freedom of movement across an ancestral environment are a threat to the territory itself as well as to the spirit of its inhabitants. In addition, healthcare and education are virtually nonexistent, and there is a lack of clean water and sanitation, while migrants from outside West Papua hold the levers of economic, social and political power. No reparations have been made to the original residents of local villages. What little assistance exists comes not from the State, but from, for example, a community women’s group in Sorong. Even transport has to be self-organized. “We have lost the right to live”, the witness concluded. She explicitly linked militarization in Maybrat to coming attempts to extract more mineral resources. The legacy of local conflict, she said, “opens the space for the military to be deployed in every village. So when the

⁵⁰ Ibid.

⁵¹ See testimony of Human Rights Monitor.

companies come, the people cannot do anything about it”⁵². Shortly following the Tribunal, whose hearings were heard throughout Indonesia despite evident attempts of the Indonesian State apparatus to jam transmissions, military officers were reported to have visited the relatives of this witness in her home village, asking about her whereabouts.

- Numerous witnesses to this Tribunal testified that the State commonly slanders attempts to defend ecosystems, to combat racism, or indeed to carry out protests against injustice of any form, as “separatism”, or treats them as insurrection or “terrorism”⁵³. These slanders, which in the Papuan context have undertones of lawlessness and primitivity, constitute additional economically-efficient methods of suppressing environmental protest and subsidizing national and international extractive industries. In pursuit of this objective, the State simply ignores the rejoinder of many West Papuans that their resistance is not separatism, but rather a response to illegal occupation by colonists with military backing⁵⁴. These colonists notably include what some West Papuans call the “settler [oil] palm” that has taken over hundreds of thousands of hectares – a plant that, although pitiable due to its abuse by human beings, is also selfish and voracious by disposition and “kills the sago, murders their kin, chokes their rivers, and bleeds their land”⁵⁵. The State also regularly ignores the consensus among many in the international law community that West Papuan resistance to Indonesian invasion is a reasoned response to settler colonialism⁵⁶. In the eyes of the Indonesian State, mere unsupported accusations of separatism, terrorism⁵⁷, or treason, or of attacks on mining or logging company employees, are in themselves sufficient grounds for beatings, incarceration and sometimes extrajudicial killings. The police and military generally act with impunity and the legal system, several witnesses testified, is effectively an arm of the security apparatus. Charges of “separatism” are also used to justify the use of torture as what Budi Hernawan calls a “mode of governance”⁵⁸ – one that often disregards State law itself. The “separatism” discourse, in short, serves to sustain both ecological destruction and the racism which that destruction represents. In the West Papuan context, what has been called “exclusionary nationalism”⁵⁹ thus has a crucial environmental function. It is, among other things, a uniquely extreme form of criminalization of legitimate environmental protest.
- The case of the ongoing seizure or robbery of hundreds of thousands of hectares of West Papuan land for oil palm plantations, notably in Merauke’s Integrated Food and Energy Estate in southeastern West Papua but also in Sorong Regency in the western part of the territory⁶⁰, together with the multiple ecological harms that that seizure

⁵² Testimony heard by the PPT.

⁵³ See, for instance, the testimonies of Jim Elmslie, Samuel Rua-Nimitz and Jacob Smith.

⁵⁴ See testimony of Samuel Ruiz-Nimitz; Lambert, G. E., *West Papua: Realpolitik v International Law*, Mansfield Unpublished paper, 2001, <https://dfait.federalre.publicofwestpapua.org>.

⁵⁵ Chao, cit., pp. 11, 151. See also the testimony 4 regarding oil palm and sago in Sorong Regency.

⁵⁶ Hanrahan, cit.

⁵⁷ See testimony of Jacob Smith.

⁵⁸ Budi Hernawan, “Torture as a Mode of Governance: Reflections on the Phenomenon of Torture in Papua, Indonesia,” in Martin Slama and Jenny Munro (eds.) *From ‘Stone-Age’ to ‘Real-Time’: Exploring Papuan Temporalities, Mobilities and Religiosities*, Australian National University Press, 2015.

⁵⁹ See testimony of Herlambang P. Wiratraman; also Wiratraman and Eileen Hanrahan, “Exclusionary Nationalism as Institutionalised Racism: Inconsistencies within the Indonesian Justice System,” *Australian Journal of Asian Law* 24 (2), 2023, 81-99.

⁶⁰ Anonymous testimony to the Tribunal.

entails⁶¹, are good examples not only of an ingrained strategy of State political violence, but also of the State's encouragement of migration and settlement of ethnic Asians predominantly of the Muslim faith into the traditional territories of the mainly Christian Melanesian inhabitants of West Papua. This encouragement has come in the form both of State-sponsored transmigration programmes and of State support for economic structures that attract hundreds of thousands of migrants from other regions of Indonesia. Between 1971 and 2010, it is credibly estimated, the Indigenous Papuan proportion of the population of West Papua declined from 96 per cent to only 48 per cent, and today certainly stands even lower⁶². Migrant small-scale farmers from Java and Sulawesi, as well as other parts of Papua, now make up well over 50 per cent of the population of Merauke⁶³. In West Papua, it is impossible to disaggregate the State pro-migration policies that these figures represent – and the environmental politics with which they are associated – from longstanding anti-Papuan racism in Indonesia. This racism is well-documented to be standard issue throughout Indonesian officialdom, including the highest levels of government. In 2022, for example, former Indonesian president Megawati Soekarnoputri went on record to state that black West Papuans could become “more Indonesian” by intermarrying with migrants and thus “improving their genes”⁶⁴. One result of Indonesia's racist migration policy, several witnesses testified, has been to weaken the political power of West Papuans who are attempting to conserve local land, water and forests, while increasing that of the Indonesian State, which structurally has far less interest in defence of the nonhuman environment. Moreover, the situation is rapidly worsening, with millions of hectares of industrial monocrop plantations in the planning stages, all likely to be on land taken from traditional owners under coercion or with little or no compensation. Ethnic and religious tensions in Merauke, as elsewhere in West Papua, are high, and minor events, such as traffic accidents, can easily escalate into violent standoffs in which mainly non-Papuan police tend to side with migrants. Police are also reportedly arming migrants, who have been subjected to relentless propaganda about Papuan “primitiveness” and “dangerousness”. As elsewhere in West Papua, in addition, Papuans, not migrants, continue overwhelmingly to be the victims of extrajudicial killings and maimings carried out by State security forces, despite the growing non-Papuan population. This only adds to the sense of occupation by a foreign power.

- Unilateral changes to the Papuan Special Autonomy Law of 2001 adopted in 2022 excluded the Papuan People's Assembly from the discussions about forming new provinces in West Papua, although this exclusion was illegal, and made it impossible to form local political parties⁶⁵. Amendments to the Law were of wide public concern. Some 714,066 West Papuan signatures had been collected against it by 112 Papuan Indigenous groups. It is widely understood that the new provincial divisions facilitate “accelerated exploitation of natural resources” as well as increased militarization and

⁶¹ See testimonies 4, anonymous witness, and Sophie Chao; also Chao, op. cit.

⁶² Testimony of Jim Elmslie.

⁶³ Longgena Ginting and Oliver Pye, “Resisting agribusiness development: The Merauke Integrated Food and Energy Estate in West Papua, Indonesia,” *Austrian Journal of South-East Asian Studies* 6 (1), 2013, 160-182.

⁶⁴ Tamara Soukotta, “Megawati's ‘Joke’ Exposes the Classist and Racist Views of the Political Elite,” *Indonesia at Melbourne*, 28 June 2022, <https://indonesiaatmelbourne.unimelb.edu.au/megawatis-joke-exposes-the-racist-and-classist-views-of-the-political-elite/>.

⁶⁵ See testimony of Amnesty International Indonesia.

the “opening up of remote areas for economic purposes”⁶⁶. It will become increasingly difficult to contest, for example, the extension of mining licenses as a result. Functionally speaking, therefore, the amended Special Autonomy Law is an anti-ecological statute, and the anti-democratic process through which it was enacted serves to weaken the power of West Papuans who are concerned to protect their land, water, forests and ecosystems.

- *Pancasila*, the constitutional doctrine of the Indonesian State, promotes, among other things, “national unity” and “religious moderation”. In practice, however, it singles out only six religions as legitimate, and is used to marshal public support for policies that ostracise and exclude from public life people outside what the State deems the “moderate mainstream,” in particular limiting the freedoms of Indigenous rights activists⁶⁷. Unsurprisingly, many West Papuans fall into the category of people that the *pancasila* philosophy tends to classify as extremist or divisive. Traditional law and customs in West Papua tend to become markers not only of backwardness but also of criminality. That adds to the burden borne by Papuan environmental activists, among others.
- A further component of the Indonesian State’s efforts to open West Papua to low-cost exploitation of natural resources is the policy of preventing West Papuans from sharing their ecological plight and their analyses with journalists, academics, international human rights monitors and other outside observers. Although various restrictions on free speech are in effect throughout Indonesia, the evidence presented to this Tribunal is clear that the measures undertaken in West Papua are exceptional in their severity. A *de facto* ban on foreign media and international monitors is in place, and journalists who do manage to overcome the many bureaucratic obstacles that block their travel to West Papua are subject to interrogation if they attempt to cover issues such as massacres by security personnel or environmental abuses connected with logging, mining or industrial plantations⁶⁸. There are few spaces, as one witness put it, to “name this terror as we experience it” so that outsiders can hear.

In sum, the highest-return investments in what various States are prone to call West Papua’s “raw materials” are not separable from the damage caused to a child’s spirit when she sees her mother raped or tortured by a military officer on the payroll of a transnational company and trained and armed by a foreign State. When Papuan witnesses to this Tribunal say that “we have no space to speak or live”, that “every day we are trapped in a cage of racial discrimination”, or that “we have no future as Indonesians”, it is no accident that their metaphors are geographical, physical and ecological, because there can be no separating the conjoined acts of exclusion, dispossession, censorship, demonisation and brutality being imposed on them and their nonhuman peers by the Indonesian State and its foreign supporters. As one witness testified, “when ecocide happens, genocide will happen”. There is no “land grab” in Papua that is not also a grab of people and their ancestors and descendants, and of their knowledge, language, opportunities for dignified work, freedom, identity and spirit. An increasingly divisive racialisation is one form that industrial development has taken in West Papua.

The Indonesian government declined to offer this Tribunal a response to Charge 3.

⁶⁶ See testimony of Human Rights Monitor.

⁶⁷ See testimony of Jacob Smith.

⁶⁸ See, among others, testimonies 15 and 16.

However, it has gone on record elsewhere to defend its actions with respect to West Papua's territories and peoples⁶⁹. These statements have been noted but the judges find them inadequate when faced with the evidence that the Tribunal has considered.

With respect to the environment, as traditionally conceptualized by States, the Indonesian government has called attention to its regulatory system, noting that laws controlling industrial pollution are on the books and claiming that breaches of emission quality will result in administrative or criminal sanctions against businesses responsible. Defending its stance on deforestation, the government cites Government Regulation No. 23/2021, which recognizes customary law societies as one of the key actors in achieving an environmental balance, improved welfare and sociocultural dynamics in managing Customary Forests. By the end of 2021, it says, 75 Customary Forest units have been established exceeding a total area of 50,000 hectares, providing benefits for almost 40,000 families, while an area exceeding 1m hectares was allocated to over 100 different customary law societies. The government also states that it has taken steps to ensure that palm oil is sourced sustainably in accordance with both international (RSPO) and domestic (ISPO) standards.

However, it is obvious from the evidence submitted to this Tribunal that enforcement of the pollution laws referred to is inadequate. In addition, the government has given no reasons for expecting that these laws will be strictly enforced in the future, given the record at Freeport and elsewhere (see above). The citation of the law relating to customary forests, moreover, does nothing to suggest why it should have any effect on the overall dynamic of land grabs that evidence submitted to this Tribunal has shown to be associated with, for example, palm oil development in Merauke or Sorong, or mining developments such as that taking place in the Wabu Block, or indeed whether it could provide any substantial additional benefit for communities already striving to protect their communities' forests across the territory of West Papua. The reference to RSPO and ISPO is derisory, given the established record of these organizations in whitewashing the damage to land, water and communities that has occurred as a result of industrial oil palm plantations across the world⁷⁰.

The government further asserts that the rights of all communities living and depending on their land, streams and forests are guaranteed by Basic Agrarian Law No. 5/1960, the MPR Decree on Agrarian Reform No. X/2000, the Act on Management of the Coastal Zone and Small Islands No. 27/2007, the Act on the Environment No. 32/2010 and Government Regulation No. 23/2021, as well as Articles 28A-28J of the Constitution, while rights to practice and develop cultures including local languages are guaranteed by Article 32. The government also notes that Indonesia has also adopted Law No. 39/1999 on Human Rights, which includes reference to customary law societies, and Law No. 26/2000 on the Human Rights Court, which is intended to protect nations, races, ethnicities and religious groups from gross human rights violations, including genocide and crimes against humanity.

Again, however, to note the existence of these laws is not by itself an answer to the questions raised by the many severe violations of the human and community rights of West Papuans that evidence presented to the Tribunal has proved are taking place on the ground today across West Papua in the service of the State's extractive policies. Nor does the existence of these

⁶⁹ See "Statement in Response to the Permanent People's Tribunal Session on State and Environmental Violence in West Papua, 27-29 June 2024," prepared for the Tribunal.

⁷⁰ See, for example, the documentation assembled by the World Rainforest Movement on RSPO at www.wrm.org.uy.

laws on paper even touch the question of the ongoing threats to inter-species relations to which so many Tribunal witnesses testified. The lack of recognition of these relations in practice gives the lie to Indonesian claims of respect for *masyarakat hukum adat* or “customary law societies” in the particular forms that they take in West Papua. Indeed, the Tribunal evidence raises a separate question: what should be done given that the laws mentioned by the Indonesian government are so obviously ineffective in protecting relations among the territory and its peoples? In addition, to state, as Indonesia’s government does, that Indonesia’s overall demographic composition has remained relatively unchanged before, during, and after its independence from colonial powers is not grounds for claiming, as the government also does, that the United Nations Declaration on the Rights of Indigenous Peoples and other norms mandating respect for the particular visions and lifeways of Indigenous Peoples are inapplicable to the country.

The Indonesian government argues that the economic development that it supports in the region through mining, agribusiness and forestry projects will increase West Papuan quality of life. In particular, it claims that large-scale development is necessary for livelihood in the form of job creation. However, what the witnesses to this Tribunal have almost unanimously testified to is a widespread *loss* of livelihood as a result of these projects, not a gain. The supports of their well-being, they showed, are being cut from under them as a result of the severing of their collective relations with the land, water and forests of which they have been custodians since time immemorial, including via land grabs and dispossession. Rather than being benefited, many Papuans are being massacred, evicted and excluded from State services and protection, while the life of their land is being poisoned. This reality is systematically obscured by a stubbornly racist State rhetoric that depicts this process of impoverishment and brutality as one of developing putatively “backward, primitive and forest dependent peoples into civilized, modern and progressive citizens and subjects of the Indonesian nation State”.

Meanwhile, the “jobs” brought about by mines, industrial plantations and logging cannot compare in either quantity⁷¹ or quality with the livelihoods, security and prosperity that are being lost in this way. Moreover, Papuans who have actually been able to find jobs with the extractive sector have had to face repression, racial denigration, and consignment to the lowest positions, as many witnesses testified. The inhumane treatment of workers during the ongoing strike at Freeport detailed by witnesses to this Tribunal is only one example. Some 8300 workers lost their social security during the strike, and around 200 have died because hospital care was unavailable. Freeport and the Indonesian State are “sacrificing” us, one worker testified. “They are killing us slowly by classifying our strike as illegal.” At the same time, as many witnesses also testified, West Papuan communities in zones of corporate mineral, timber or land exploitation tend to lack reliable, decent, free or adequate health care, education or social services. In short, the evidence submitted to the Tribunal has made clear that, for Indigenous Papuans, the mining, plantation and logging booms, far from improving livelihoods, are an instrument not only of impoverishment but also of insult and death.

Denying charges that it aims to dominate or eradicate Papuan peoples and Papuan cultures, the Indonesian government traditionally cites the “Act of Free Choice” of 1969, which it claims produced an overwhelming vote in favor of integrating former Dutch New Guinea into the territory of Indonesia. However, as much historical documentation submitted to this Tribunal shows, the vote of a mere thousand or so people selected by the Indonesian military in 1969 was never

⁷¹ See, e.g., Ginting and Pye, cit.

intended to represent the will of West Papuans in general; quite the contrary. At the same time, as testimony to this Tribunal has also demonstrated, it is a general view among Papuans in West Papua today that “the State does not care about us; they only want our land and forests ... we are discriminated against because of our dark skin and curly hair ... we don’t feel like our land belongs to us any more”.

Charge 4: Collusion

After hearing the evidence, does the Tribunal consider that the Indonesian State is colluding with national and foreign companies to cause environmental degradation, population displacement and sustain violent repression in West Papua?

Based on the testimonies submitted before the Tribunal, it can be concluded that the State of Indonesia and national and foreign companies – including, among others, Unilever, British Petroleum (BP), Niche Jungle, Jardine, Freeport McMoRan, Mitsubishi Corporation and CNOOC – share with the Indonesian military a strong interest in the natural resources and agricultural potential of West Papuan ancestral lands.

The Tribunal learned that the TNI in particular has a strong economic interest in extractive and agricultural businesses. Partly in order to protect the economic benefits it receives, witnesses testified, the TNI has become instrumental in the protection of State and corporate interests in a way that involves repression against those who stand in the way of business as usual.

According to the Indonesian State, corporate extraction of resources and use of land in West Papua is conducted with the intention of achieving the progressive economic development and improvement of the overall standard of life for Indonesian citizens, especially those living in West Papua.

In addition, according to testimony, the State has enacted several laws and regulations for the purpose of maintaining environmental balance, preventing discrimination, and safeguarding the traditional rights of societies governed by customary law. These include, among others, the Basic Agrarian Law No. 5/1960, the MPR Decree on Agrarian Reform No. X/2000, the Act on Management of the Coastal Zone and Small Islands No. 27/2007, the Act on the Environment No. 32/2010 and Government Regulation No. 23/2021. The State also endorses the Universal Declaration on the Rights of Indigenous Peoples, while Indonesia’s Constitutional Court has made three landmark rulings recognizing customary law communities’ collective rights to customary or *adat* lands and forests.

However, the Tribunal learned that the actions and activities of private corporations and the State in pursuit of their interests are failing to adequately meet their legal and ethical obligations to West Papuans and their environment as set out by the State’s national laws and regulations as well as international treaty obligation.

On the contrary, according to accusations heard by the Tribunal, the State and the corporations that it protects are cognizant that their actions and operations are resulting in environmental degradation, population displacement, and sustained violent repression in West Papua.

The Tribunal finds that State and corporate powers repeatedly follow a highly-controversial pattern of actions in numerous places in West Papua to achieve their goals. This pattern appears to consist of three phases:

Phase one: False promises

The State and the corporations with which it is allied promote their operations in West Papua as a way of alleviating poverty and raising overall living standards. Corporations have also made promises to provide infrastructure development to West Papuan land rights holders.

However, instead of delivering on their promises, corporations and the State have fundamentally eroded the traditional Melanesian way of life of the West Papuans by irreparably destroying their environment and cultures. In many cases, logging permits appear to be the first step allowing corporations access to West Papuan lands. Numerous witnesses have testified that corporations do not act in compliance with the permits or otherwise act illegally.

According to a report delivered by one resource witness, BP (the company formerly known as British Petroleum) knowingly provided misleading information to its stakeholders about its liquid natural gas operations in Tangguh, Bintuni Bay. BP attempted to secure shareholders' confidence by assuring them that its operations there were carried out equitably. But, as detailed below, this was very far from the truth.

Despite State and corporate promises, moreover, the Tribunal finds that the free prior informed consent of West Papuans over extractive and agricultural activities on their lands has as a rule not been obtained. Decisions appear to have been taken by the State and corporations in the absence of the voice of West Papuan traditional land-rights holders. In the words of one witness, 'the decisions are made in Jakarta, not in West Papua.'

Women and children have often failed to take part in the decision-making of, for example, logging concessions, yet are the ones who are facing the brunt of the consequences, present and future.

Phase two: Entry and control

The Tribunal was made aware of growing militarization in the provinces of West Papua. Testimonies have described a nexus linking corporations and the government that improves access and attempts to secure total control over resource-rich West Papuan territories.

The intervention and continued presence of the TNI and other state apparatuses has resulted in mass displacements of West Papuan populations. The Tribunal has learned of West Papuans who have had to live in embarrassing and degrading conditions in forests outside their communities, or pursue discounted lives in nearby villages or provinces. Under these circumstances, the Tribunal finds, West Papuans, especially women and children, are significantly at risk of being arbitrarily deprived of the right to life, the rights to be free from sexual violence and malnutrition, and other basic human rights.

The testimonies that the Tribunal has heard indicate that these acts of violence are

purposely carried out by the State and the TNI to create a climate of fear, to control and subjugate local populations, and to prevent them from questioning corporate operations or organizing to defend their rights.

The Tribunal has learned that in this inhumane environment, corporations have been able to operate in immunity and beyond safe ecological thresholds in a way that ultimately compromises the ecological and social well-being not only of the region but of the planet at large.

In addition, to enable corporate access to more territories, and to divide peoples from one another, the State has recently multiplied the number of provinces in the region.

Phase three: Monitoring and repression

It has come to the attention of the Tribunal that once corporations are established on West Papuan territory and their operations underway, the TNI personnel and other state apparatuses on site continue to monitor the situation to ensure there are no disturbances. If resistance emerges, it tends to be met with sustained repression until such time as it is neutralized.

For instance, in Wasior, the military operation known as Sweep and Crush resulted in the murder and mutilation of numerous innocent West Papuans, notably Wellem Korwam. This followed the murder, allegedly arranged by State provocateurs themselves, of five police officers associated with the BP Tangguh LNG in Bintuni Bay.

6. Considerations regarding the role of the international community

After reading the materials and hearing all the testimonies, the Tribunal finds it incontestable that the situation is very urgent. For six decades, the mindset of settler neocolonialism together with its concrete practices have led to a severe deterioration of the lives of West Papuans that has become overwhelming in recent years. The international community is therefore called upon to heed to their long-standing pleas.

The United Nations, in particular, has been involved in the fate of West Papuans from the beginning. In past decades, it has emphasised gross human rights violations in its reports, and its experts have borne witness to appalling violence and abuses of power in the form of unlawful arrests, torture, disappearances and extrajudicial killings as well as militarisation, land grabbing, mass displacement, and the destruction of eco-systems and cultural heritage. The calls for rigorous, impartial and independent investigations into the violent repression of West Papuans, its causes and consequences, at the hands of the Indonesian State and the multinational corporations it enables, need to be heard widely and to produce concrete results. The Tribunal considers it imperative that a sizable UN investigation, with a broad mandate, is carried out as soon as possible and that the UN Human Rights Council discusses past and current violations committed against West Papuan Indigenous communities, as well as possible forms of accountability and reparation.

Immediate and unimpeded humanitarian access also needs to be granted in order to address the current situation of food insecurity of West Papuans, in particular those displaced by violence from their homes and lands.

The UN High Commission for Refugees needs to investigate allegations of forced return of internally displaced people to areas where they do not feel safe, and where the conditions to carry out a decent living – from access to food and health to education and jobs – have not been assured.

Furthermore, the risk of exploitation of child labour in palm oil plantations, which is known to be a problem for the whole of Indonesia, cannot be underestimated. UNICEF has, therefore, a very necessary role to play, in both investigating the situation and preventing further harm to the younger generation of West Papuans, who are particularly vulnerable to these predatory practices.

The extractivist industry has been linked to many human rights abuses, being directly implicated in violence perpetrated against Indigenous communities. Its specific responsibility over the harm caused to people, lands and resources needs to be investigated.

Many of the corporations involved in the abuses accounts of which this Tribunal has heard have their headquarters in Western countries. The Tribunal has also read and heard testimonies which connect Western states' training of Indonesian security forces, many of which are deployed to West Papua and are responsible for human rights violations there. These trainings often come under the misleading label of "counter-terrorism." The Tribunal therefore finds that not only the Indonesian State, but also the States where these companies are based, need to be brought under increased international scrutiny, and their roles uncovered in enabling the abuses to which the witnesses to this Tribunal have testified. Every country that has been shown to be complicit with the devastation suffered by West Papuans, through the activities of their companies or through their connections to the Indonesian state, should be named and engaged in a process of inquiry that ultimately determines their degree of involvement and the level of reparations called for. This includes the US, but also the UK, where this Tribunal was held.

7. Deliberation and Recommendations

The State of Indonesia is convicted of all the charges in the indictment, namely:

- of taking by various means the ancestral land of the Indigenous Papuan people against their will, employing racial discrimination which leads to the loss of culture, traditions and Indigenous knowledge, erases their history and subsumes them into the Indonesian national narrative;
- of violent repression, including unlawful detention, extra-judicial killing, and population displacement in West Papua as a means of furthering industrial development;
- of organised environmental degradation, including the destruction of eco-systems, contamination of land, the poisoning of rivers and their tributaries and of providing the permits, concessions and legal structure of non-compliance for national and foreign companies to invest in West Papua in a way that encourages environmental degradation;
- of colluding with national and foreign companies to cause environmental degradation, population displacement and sustain violent repression in West Papua.

To put an end to, and in any case to mitigate, the unlawful and harmful effects of the conduct condemned, the Tribunal recommends that:

A) The government of Indonesia

Ancestral land, environment and Indigenous Papuans

The government of Indonesia should honour its obligations as an UN member State and ensure a valid act to freely exercise the right of self-determination in accordance with the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

The government of Indonesia should ensure that any framework of development in Indigenous lands must properly introduce real self-determination for Papuans to ensure they have autonomy and meaningful collective bargaining.

The government of Indonesia must prioritize the interests of Indigenous Papuans in relation to industrial developments in West Papua.

The government of Indonesia must take measures to ensure adequate environmental protection in order to safeguard Indigenous Papuan peoples' identities – which are culturally and spiritually entwined with their ancestral lands, and properly monitor and enforce these measures.

The government of Indonesia must recognise rights over traditional territories, Indigenous land tenure systems and traditional occupation, to guarantee their respect and protection and ensure that they are not supplanted by simplified private ownership.

The government of Indonesia must take measures in appropriate cases to safeguard the right of Indigenous Papuans to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities such as shifting cultivation or hunting and fishing grounds.

The government of Indonesia and the private sector must properly secure the free, prior, and informed consent of Papuans for all matters affecting them, in order to achieve social peace, and protect Indigenous and ecological systems in West Papua.

The government of Indonesia must refrain from coercing or forcing Indigenous Papuans to conform to Indonesian frameworks for self-determination and self-governance over their land and resources. Indigenous Papuans have the right and resources to engineer their own frameworks for their self-governance and development.

The government of Indonesian must secure the autonomy of Indigenous Papuans and secure their autonomy and actively involve Indigenous Papuans in the measures, programmes, and activities that exist or will be initiated to shape their development and overall wellbeing.

The government of Indonesia and concerned authorities must ensure that education frameworks in West Papua are contextualized to fully recognize Indigenous Papuans' cultural identities, languages, and religious and spiritual beliefs in their own cultural spheres.

The government of Indonesia have to enhance their efforts in reversing deforestation by 2030 to limit global warming to 1.5°C above pre-industrial levels regarding the deep concerns of the Tribunal with the rate of deforestation – notably from oil palm - in West Papua.

Internally displaced peoples

The government of Indonesia must not organize, facilitate or allow for violence, environmental degradation, or the utilization of the law and State mechanisms to arbitrarily and unethically displace Papuans from their land.

The government of Indonesia must ensure adequate protection and assistance is given for Papuans who are forcibly uprooted from their traditional lands due to violent conflicts, gross violations of human rights and other traumatic events.

The government of Indonesia must endeavour to provide safe pathways for internally displaced Papuans to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in other parts of the country.

The government of Indonesia should assign the relevant authorities to ensure that displaced persons who have returned to their homes or places of habitual residence or have resettled in another part of the country should not be discriminated against as a result of them having been displaced.

The government of Indonesia should assign the relevant authorities to, assist in the return and/or resettlement of internally displaced Papuans, including the recovery of their property and possessions left behind or dispossessed upon their displacement. When the recovery of such property is not possible, the relevant authorities must provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

The government of Indonesia should ensure that authorities, under all circumstances, should neither conduct nor fail to prevent direct or indiscriminate attacks or other acts of violence against internally displaced Papuans, including Papuan belligerents who do not or no longer participate in hostilities.

Justice and the rule of law

The government of Indonesia must refrain from oppressive use of the State's power structures to criminalize peaceful West Papuan activities, and justify the entry and exclusion of access to land for the purposes of appropriating and exploiting resources.

The government of Indonesia repeal or substantially amend Articles 106 and 110 of Indonesia's Criminal Code (KUHP) for the purpose of realigning them with the limitations specified by the International Covenant on Civil and Political Rights, to which Indonesia is a State party.

The government of Indonesia must ensure that the judiciary and the rule of law are impartial and accessible to Papuans, and that adequate penalties and remedies for any violations of their rights are administered justly, as they would be for any other citizen.

The government of Indonesia and its apparatuses must not authorize, support, or acquiesce to any enforced disappearance. The government of Indonesia must take all necessary and reasonable measures to investigate, prevent, and/or repress the commission of an enforced disappearance, or to submit the matter to the competent authorities for investigation and prosecution.

The government of Indonesia and its apparatuses must ensure that those implicated in enforced disappearance receive appropriate sentences and penalties under its legal systems, and that the victims have the right to obtain reparations as well as prompt, fair, and adequate compensation.

The government of Indonesia must adequately assist victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

The government of Indonesia should establish an inquiry to assess damage and compensation and restitution to the families of those killed and compensation to those who suffered injuries in past events including, but not limited to, the Biak massacre, Abepura massacre, Manokwari massacre, and Wamena massacre.

The government of Indonesia should ensure that any state decision to suspend telecommunications in the region of West Papua will have a clear legal basis outlining the purpose and objectives of such decision with reasonable notice.

Access to UN organisations and humanitarian assistance

The government of Indonesia must grant access to the Office of the United Nations High Commissioner for Human Rights, UN Special Rapporteur, and other UN human rights bodies to visit West Papua for the purposes of fully investigating human rights violations and promoting and protecting such rights. This demand is now supported by over 100 UN member States.

The Tribunal encourages the relevant UN organizations to consider the recommendations under S.9 III to VI of the 22nd Leaders' Summit of the Melanesian Spearhead Group.

All authorities concerned must grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to internally displaced persons. Furthermore, authorities shall not divert humanitarian aid and relief for political or military purposes.

B) Private Sector

The Tribunal cautions industrial mining companies against promoting the narrative that their activities are essential for global decarbonisation efforts and that they benefit local communities, especially when there is evidence linking these activities to widespread environmental degradation, the loss of Indigenous livelihood and lives, and conflict and disharmony.

Past and present industrial companies must be accountable for the environmental degradation and human rights violations linked to their activities.

C) Countries in the region

The Tribunal welcomes the decision of the Pacific Island Forum and the Melanesian Spearhead group on appointing special envoys to engage in talks with Indonesia on the issue of West Papua. The Tribunal encourages the envoys to accentuate human rights concerns and the recommendations by this Tribunal to the government of Indonesia in their engagement(s).

The Tribunal encourages the leaders of the Melanesian Spearhead group to continuously support West Papuan representation within the different national, regional and international fora, as well continuously advocate for transparency and accountability to the human rights situation in West Papua.

D) International community and private actors

The Tribunal recommends that the critical collusion with the government of Indonesia of the States and companies listed below must be urgently assessed and appropriately addressed in ad hoc and competent forums to assure policies coherent with a democratic evolution of the West Papua peoples.

Palm Oil

Wilmar International Ltd, Singapore
Golden Agri-Resources Ltd, Singapore
Astra Agro Lestari, Indonesia
Bumitama Agri Ltd, Indonesia
Carson Cumberbatch PLC, Sri Lanka
Grupo Bimbo, Mexico
Noble Group, Hong Kong
Salim Ivomas Pratama, Indonesia
Jardine Matheson, Great Britain
Permata Nudri Madiri, Indonesia
Niche Jungle, Great Britain

Oil and Gas

BP, Great Britain is the lead Tangguh LNG facility partner. Other partners are:
Mitsubishi Corporation, Japan
CNOOC, China
Nippon Oil Exploration, Japan
Kanematsu Corporation, Japan
Indonesia Natural Gas Resources Muturi Inc., Indonesia

Mining

Freeport McMoRan Inc, US (Grasberg mine)

E) National and international civil society organisation

The Tribunal acknowledges the tireless contributions of civil society organisations in promoting and protecting human rights in West Papua. The Tribunal encourages their continued vigilance, reporting, and assistance in mitigating human rights violations and facilitating access to justice and remedy for victims.

The Tribunal calls on States: to empower grassroots Papuan organisations to conduct their work without fear of harassment, intimidation, and stigmatisation for their activities, and to halt arms sales and cooperation/data sharing with Indonesian security forces.

8. To the people of West Papua

National and international public opinion must be won over to the cause of the West Papuan people. The Peoples' Permanent Tribunal has a role to play here, as an instrument of resistance to oppression and affirmation of rights and justice. It is a space for people to speak out and join together to weave and strengthen solidarity. The judges are convinced that the joint effort put into the realisation of this session will offer new visibility and, we hope, more opportunities to connect with other organisations and peoples.

We would like to thank the witnesses and the prosecution very much for their commitment and dedication, but also for their strength and hope for the future. As judges, we come away from this session appalled by the level of destruction that West Papua and West Papuans have endured. Yet, despite all the pain and devastation, we leave strengthened by the dignified and determined way West Papuans have conducted themselves at the forefront of opposition to those who want to destroy their lives and livelihoods. For this, everyone, not only from the West Papuan community, but also from the international community, should be forever grateful and feel a duty to support. As judges, we have listened to this testimony in awareness of the urgency with which it deserves to be treated, and also with enormous admiration for what West Papuans have done and are doing to protect their sacred land and culture.

Annex 1

Panel of judges: brief biographical details

In alphabetical order:

Teresa Almeida Cravo (Portugal)

She is an Associate Professor in International Relations at the Faculty of Economics and a Researcher at the Centre for Social Studies, both at the University of Coimbra, in Portugal. She's currently the coordinator of its PhD Programme in International Relations - International Politics and Conflict Resolution. She holds a PhD in Politics and International Studies from the University of Cambridge. In the last years, Teresa was an Academic Visitor at the African Studies Centre of the University of Oxford, at the University of Westminster, in London, at Monash University in Melbourne, and an Associate of the Belfer Center for Science and International Affairs, at the Harvard Kennedy School of Government. Her research interests include critical perspectives on peace and violence, security, development, global interventionism and foreign policy, particularly within the context of Portuguese-speaking countries.

Donna Andrews (South Africa)

She is scholar-activist and feminist theorist with longstanding history of solidarity work. Her recent work examines the political economy of food in the context of social subjects' relations to nature, planetary solidarities, feminist agency, just transitions and the commons. She is a Senior Researcher at the Ethics Lab, Neuroscience Institute, University of Cape Town. Trained in political economy and political theory, she holds an MA in International Political Economy and Development (ISS, Institute of Social Studies, The Hague) and a PhD in Political Theory - Capitalism and nature in South Africa: racial dispossession, liberation ideology and ecological crisis - from the University of Cape Town.

Daniel Feierstein (Argentina)

He is a researcher at CONICET (National Council for Scientific and Technical Research) based at the Universidad Nacional de Tres de Febrero (Third of February National University), Argentina, where he founded and runs the Centre for Genocide Studies. He holds a chair in the School of Social Sciences at the Buenos Aires University, where he runs the "Analysis of Genocidal Social Practices" seminar and the Observatory of State Crimes. He is the former President of the International Association of Genocide Scholars (IAGS, 2013-2015).

Marina Forti (Italy)

She is a journalist and writer based in Rome. For three decades she has been with the daily newspaper "*il manifesto*", serving as Foreign Editor and Foreign Correspondent; she reported mainly from Iran, South Asia and Southeast Asia. Her column "TerraTerra" on environmental justice was awarded the prize known as *Premiolino* (1999). She is the author of *La signora di Narmada* (Feltrinelli 2004, Elsa Morante Prize for Communication 2004) and *Il cuore di tenebra dell'India* (Bruno Mondadori 2012) on the social conflicts in rural India. Her latest book

is *Malaterra. Come hanno avvelenato l'Italia* (Laterza, 2018). She contributes to *Internazionale*, *Altreconomia* and other.

Larry Lohmann (UK)

He is an activist and writer who works with the Corner House, a research and solidarity NGO in the UK that supports democratic and community movements for environmental and social justice. Lohmann has contributed to numerous scholarly books and journals on land and forest conflicts, globalization, artificial intelligence, energy politics, labour, Southeast Asian environmental movements, racism, commons, climate change, ecosystem service markets, literary criticism and the discourses of development, population and economics. He is a founding member of the Durban Group for Climate Justice and chair of the advisory board of the World Rainforest Movement.

Nello Rossi (Italy)

Nello Rossi is currently the editorial director of the legal journal "Questione Giustizia" under the auspices of Magistratura Democratica. He was Solicitor General at the Supreme Court of Cassation, Italy, from 2015 to 2017. From 2007 until 2015 he was the Chief Public Prosecutor's Deputy in Rome, coordinator of the departments specialised in economic and financial crimes and computer crimes. From 2002 to 2007 he was a Justice at the Court of Cassation, in the criminal division of the Court. Until 2016 he was also the Ministry of Justice delegate to the Financial Action Task Force on money laundering (FATF) set up by the OECD. He is also the author of books, essays and legal articles on issues of constitutional and criminal law. He was a member of the steering committee of the Superior School of the Judiciary from 2017 to 2020. He is vice-president of the Permanent Peoples' Tribunal.

Solomon Yeo (Solomon Islands)

He is a human rights lawyer born and raised on the island of Guadalcanal, Solomon Islands. He is dedicating his life to addressing the numerous issues that persist within the Pacific, notably climate injustice, decolonization, and the politics of development. He works with Pacific communities, civil society organizations, and governments, mainly in the areas of climate change, decolonization, conservation, and community development. He has graduated from the University of the South Pacific and University of Hawai'i at Manoa with a BA/LLB and LLM.

Annex 2

Indictment

Permanent Peoples' Tribunal Session on Environmental Destruction and State Repression in West Papua

CHARGES

The Indonesian state is accused of taking the ancestral land of the Indigenous Papuan people against their will, employing racial discrimination which leads to the loss of culture, traditions and Indigenous knowledge, erases their history and subsumes them into the Indonesian national narrative.

AND

The Indonesian state is accused of violent repression, including unlawful detention, extra-judicial killing, and population displacement in West Papua as a means of furthering industrial development.

AND

The Indonesian state is accused of organised environmental degradation, including the destruction of eco-systems, contamination of land, the poisoning of rivers and their tributaries and of providing the permits, concessions and legal structure of non-compliance for national and foreign companies to invest in West Papua in a way that encourages environmental degradation.

AND

The Indonesian state is accused of colluding with national and foreign companies to cause environmental degradation, population displacement and sustain violent repression in West Papua.

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I. PREAMBLE

The Indonesian-ruled territory of West Papua is home to some of the richest biodiversity in the world. The New Guinea rainforest which spans the Indonesian and Papua New Guinean part of the island territory - is the largest in the Asia-Pacific region and is the third largest in the world after the Amazon and Congo.

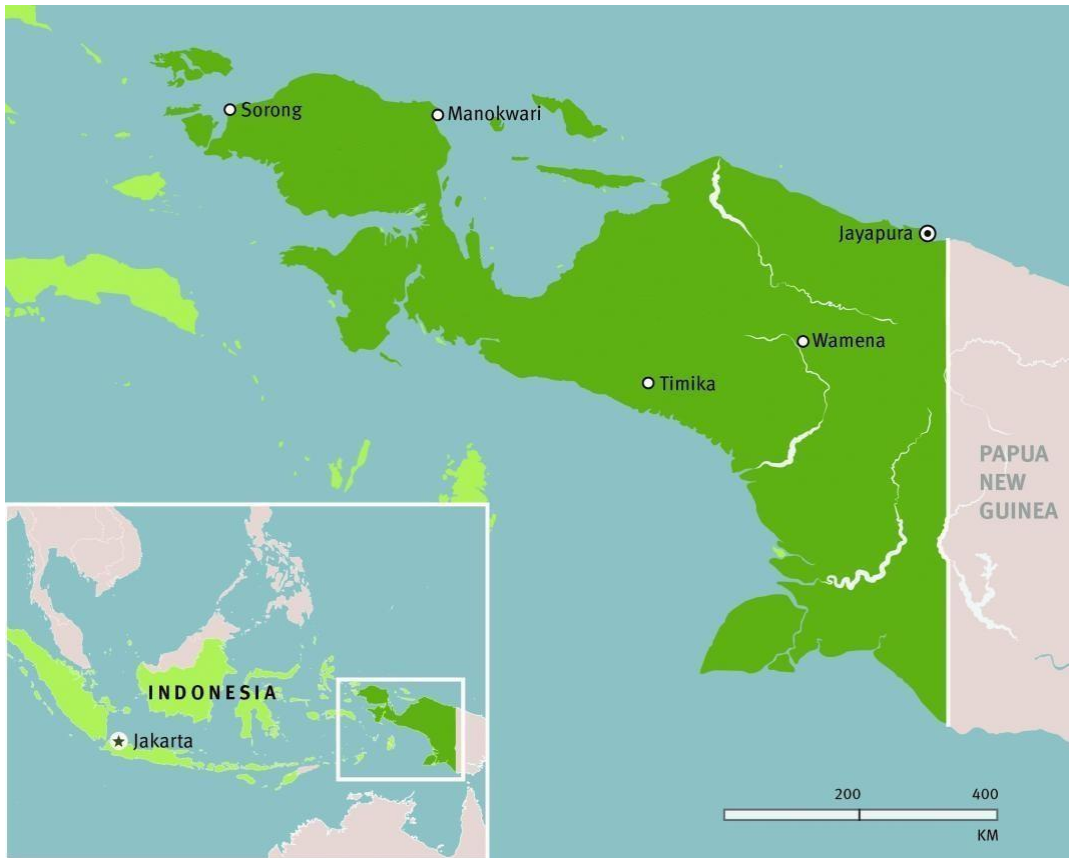


Figure 1: The territory of West Papua

The territory of West Papua refers to the Western half of the island of New Guinea, partitioned as a result of European colonial settlement. West Papuans, an Indigenous Melanesian people, have been engaged in a struggle for their right to self-determination since colonisation by the Netherlands in 1898. Just like the Amazon, this area of critical value to the sustainability of the planet is now under threat from extractive industries and the many Indigenous tribes find their ways of life increasingly violently disrupted.

In 1962, the basis for a new constitutional government of West Papua was provided for by the New York Agreement, a pact signed by the Netherlands and Indonesia at the headquarters of the United Nations. This document transferred administrative control of West Papua to a UN Temporary Executive Authority and subsequently to Indonesia with the provision that a vote for self-determination would follow soon afterwards. This vote eventually took place in 1969, and was called the Act of Free Choice, though to West Papuans it is commonly referred to as the Act of No Choice. In this process, the Indonesian government presided over a delegate system in which delegations amounting to 1,024 individuals – less than 1 per cent of the population were actually included in the vote. The unanimous “yes” vote was noted – though not accepted - by the UN. There were widespread accounts of bribery and intimidation with the threat of physical violence and some still refer to it as the “gunpoint referendum”.

Since the 1980s, Indonesia has embraced a neoliberal economic agenda, opening up some sectors to foreign investors and retaining control over key industries. More recently, and especially under the leadership of President Joko ‘Jokowi’ Widodo, the nation’s development approach has been defined by a “normative commitment to an activist state”, in which state interventionism in the economy seeks to “engineer fast economic growth” and “direct industrial upgrading”. The Indonesian government has subdivided West Papua into six provinces - with four of the six introduced in 2023. According to the government, the splitting of provinces was introduced in order to provide equitable development across the region.

Until 2000, West Papuans faced an intentional and systematic form of settler colonialism under a policy known as transmigration. The first transmigration programs were introduced by the Dutch and after gaining independence, the program was continued by the Indonesian government. It is now likely that Indonesians outnumber West Papuans. As part of the transmigration program, hundreds of thousands of people were aided by the Indonesian government in relocating from other parts of Indonesia to a wide range of areas in West Papua. Between 1969 and 1989, the government helped approximately 730,000 families from other parts of Indonesia relocate to “less inhabited” parts of their territory, in an effort that was seen as a way of diluting the ethnic concentration of West Papua and undermining peoples’ claim to their land. Families that relocated were also given land on which to build and farm, leading to the reallocation of tens of thousands of hectares of land.

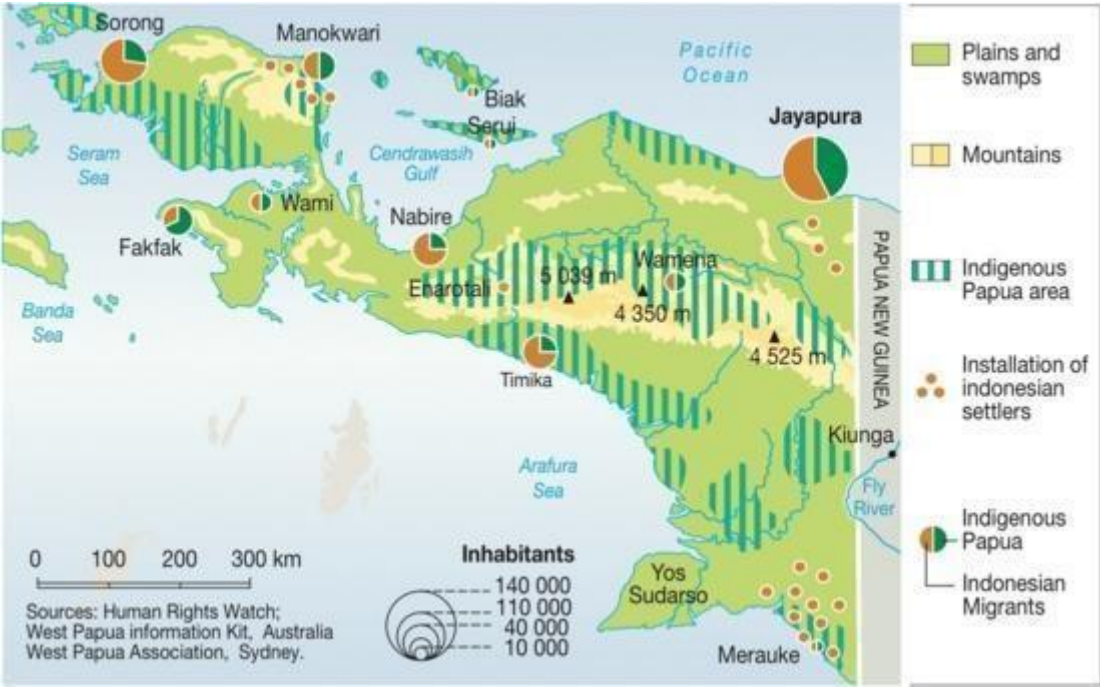


Figure 2: Transmigration in West Papua

Today, the urban centres and coastal towns of West Papua are dominated by Indonesians who moved there with the promise of economic opportunities through tourism, mining and logging. In stark contrast, some of the highest poverty levels in Indonesia are in the highlands

and rural areas of West Papua where the increasingly disenfranchised and internally displaced peoples have been forcibly concentrated.

The policy of transmigration has facilitated an increase in the numbers of Internally Displaced Persons (IDP). This has been facilitated by the creation of new provinces and districts that have enabled the extension of centralised state control. The cultural ramifications of land loss have deep implications for the spiritual ancestry of West Papuan people, with the purging of ancestral land seen to evict not only those who live on it but the spiritual ancestors as well, severing a vital connection. Whilst transmigration, as an official policy, ended in 2000, unofficial transmigration continues. Internal displacement continues as a result of a combination of poverty forcing people to leave their homes and military and police brutality, particularly in regions where the extractivist and plantation economies are being expanded.

While the Indonesian government argues that economic growth in the region will produce jobs and increase quality of life, the Melanesian communities in West Papua have disputed such claims, and have testified to the deleterious impact that industrial development is having on vital life systems, biodiversity, as well as attacking their customs and ways of life. In the current context, the diverse tribes of West Papua are facing what has been referred to as a ‘cold genocide’ with the loss of culture, traditions, Indigenous knowledge as well as the ‘rewriting’ of history that subsumes them into the Indonesian national narrative.

There is, as this indictment shows, extensive evidence that ‘industrial upgrading’ has created huge amounts of toxic waste, poisoned food and water sources, devastated some of the world’s richest coral reefs, destroyed biodiversity and further displaced and oppressed the West Papuan people.

Industrial development has therefore been met with sustained resistance from local communities and this has led to a recent upsurge of state violence and dispossession. Some techniques of repression, such as arbitrary detention and torture of Papuan dissenters, have been employed by military actors to defend corporate land-grabbing and highly contentious industrial projects. The displacement of local populations is a major consequence of industrial development. The UN Office for the High Commissioner for Human Rights estimates that between December 2018 and March 2022, 60,000 – 100,000 Papuans have been displaced.

The situation shows no signs of improvement. In October 2023, there were reported massacres of elders and teenagers in two different villages by the Indonesian military. Indeed, displacement and extrajudicial killing is directly related to the form of development currently facilitated by the Indonesian military. In September 2023, 650 people were displaced after military raids.

In July 2023, the Under-Secretary-General - Special Adviser to the Secretary-General on the Prevention of Genocide noted alleged harassment, arbitrary arrests, and detention of Papuans and non-recognition of the rights of Indigenous Papuans that has enabled the alleged appropriation of Indigenous lands and stated that these “risk factors cannot be mitigated without addressing the role of extractive industries and exploitation of natural resources”.

In spite of reports such as this, the international community has thus far failed to take any meaningful action to intervene.

Notably, Indonesia has denied both the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples and the UN Special Rapporteur on the Rights to Food entry into West Papua, despite impassioned pleas from civil society for an independent report examining Indonesia's development strategy and its detrimental impacts on the rights and well-being of West Papuans.

Mass displacement from ancestral and communal lands disrupts Indigenous livelihoods, exacerbates food insecurity, undermines tenure security, and dramatically reduces access to land. Reduced land access also affects the enjoyment of cultural rights, including a customary relationship to land. In this respect, we recognise that whilst many of the charges set out here relate to offences that are unambiguously counter to the fundamental rights of people, customary rights, including the relationship between industrial development and the customary relationship with the land and with nature is not set out well in international legal standards.

A growing body of evidence attests to the devastating environmental impacts of development in the region, and to persecution, human rights violations and extra-judicial killings linked to those development practices. This body of evidence links state repression to the mass displacement of Indigenous people, the depletion and poisoning of water supplies and the destruction of local ecosystems related to logging, palm oil plantations and mineral extraction. We map out this evidence in section III below.

II. SUBJECT OF THE CHARGES

Whereas the Permanent Peoples' Tribunal (PPT) is a public opinion tribunal based on the Universal Declaration of the Rights of Peoples (Algiers, 1976) and on all the instruments of international law;

Whereas the various chapters of the PPT have sought to struggle against impunity and to promote respect for human rights, access to justice and the re-appropriation of the human rights instruments;

Whereas the PPT is able to **adjudicate** flagrant, systemic and systematic violations of the rights of peoples;

Whereas the PPT is able to adjudicate international crimes of an economic, social or ecological nature;

Whereas several previous sessions of the PPT have focused on the judicial void regarding the role of states and transnational corporations in the destruction of the lives and livelihoods of local and Indigenous populations, including: tribunal 49. 'In defense of the Cerrado territories' (2021-2022); Tribunal 40. 'Canadian mining transnational corporations'

(2014); Tribunal 35. 'Transnational corporations and the rights of peoples in Colombia' (2006-2008) and 33. 'The European Union and transnational corporations in Latin America: policies, instruments and actors complicity in the violation of peoples' rights' (May 2010).

Whereas the mission of the Permanent Peoples' Tribunal is to promote universal and effective respect for the fundamental rights of peoples by determining if these rights have been violated, and in examining the causes of these violations as well as denouncing their authors before world public opinion;

AND

Whereas the Indonesian-ruled territory of West Papua is home to some of the richest biodiversity in the world, is host to a large part of the most important rainforest in the Asia-Pacific region and the third largest in the world after the Amazon and Congo;

Whereas industrial development in many parts of the world has compromised the customary ways of life, the ability to promote democratic social, political and economic forms of organisation and involves violations of the human, social, cultural and economic rights of peoples that have important impacts on communities, territories and the environment;

Whereas industrial development in West Papua has had precisely those consequences for local populations who have suffered a violent conflagration of state violence and the destruction of their ability to live and to survive in their ancestral land;

Whereas Indonesia establishes the regulatory and military infrastructures that deliver this form of industrial development;

Whereas repression by the Indonesian state specifically targets West Papuan culture and political aspirations, and promotes racist tropes;

Whereas repression and environmental destruction proceeds with the direct involvement of numerous Indonesian corporations and transnational corporations, including companies headquartered in the US, China, Malaysia, Singapore, Britain and other European states;

Whereas major obstacles exist in Indonesian West Papua for affected communities to seek justice at regional, national and international levels, which promotes the impunity of the parties cited in the charges above;

The subject of the charges is the form of industrial development that is organised by the Indonesian government and supported by national and transnational profit-making corporations. The subject of this indictment is therefore rooted in fundamentally unequal social and economic relationships that enable Indonesian industrial policy to be imposed on the people of West Papua against their will. The militarised techniques of social control that accompany it ensure the continuation of those unequal social and economic relationships.

Those issues are unlikely to be resolved by law. Indeed, colonial legal paradigms – whether Indonesian or European in their origin, cannot restore the relationship between the rights of the people and the rights of the earth. The subject of those charges therefore relate to, but at the same time extend far beyond a self-contained set of breaches to fundamental rights in international law.

Having said this, we recognise at the same time that the subject of this indictment cuts across a large number of breaches of fundamental rights in international law. The relevant sources of those rights are, in particular, the Universal Declaration of Human Rights (1948), the Freedom of Association and Protection of the Right to Organise Convention (Convention 87) of the International Labour Organization (1948), the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966), the Stockholm Declaration on the Environment (1972), the Universal Declaration of the Rights of Peoples (Algiers, 1976), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Indigenous and Tribal Peoples' Convention (Convention 169) of the International Labour Organization (1989), The Universal Declaration of the Collective Rights of Peoples (Barcelona, 1990), the Rio Declaration on the Environment and Development (1992), the UN Guiding Principles on Internal Displacement (1998), the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), and the Declaration of the United Nations on the Rights of Indigenous Peoples (2007) (UNDRIP).

Despite the breach of fundamental rights across numerous different international declarations and conventions, justice has been repeatedly denied to the people of West Papua. We note that the origins of the problem lie in a breach of the inalienable right to self-determination as framed by the Declaration on the Granting of Independence to Colonial Countries and Peoples. We also note that Indonesia is signatory to many of those instruments including UNDRIP. The Special Autonomy Law that governs Indonesian Papua, along with other forms of regulation lack a Free, Prior, and Informed Consent (FPIC), a specific right granted to Indigenous Peoples and recognised in UNDRIP.

Therefore we have initiated these proceedings in light of the Permanent Peoples Tribunal function as an “institution devoted to listening to peoples forced to deal with the absence of law and impunity.”

III. SUBSTANCE OF THE CHARGES

III (i) Evidence of Indonesian state repression

Violence in West Papua has escalated since 2018. It has resulted mainly from militarisation which causes armed conflict. On the other hand, militarisation follows industrial development which in turn has exacerbated armed conflict. Between 2019 and 2021, several UN

Special Procedures' mandate holders sent communications raising concerns regarding the alleged targeting of human rights defenders in West Papua, including alleged violations of freedom of opinion and expression, and freedom of assembly and association.

The criminalisation of protestors is also used as a tool to suppress protests. Indonesian state responses to protests in 2019 led to the deployment of several thousand additional police and military personnel to West Papua, who in turn, levied charges of treason and other offenses carrying lengthy prison sentences against protestors and activists. Between the period of October 2020 and September 2021, the Papuans Behind Bars project recorded 418 new political prisoners being held in Indonesian jails, and 118 new incidents of arbitrary arrest and detention related to uprisings against ongoing injustices. Many of those arrested and detained were charged with treason offenses under Indonesia's penal code.

Beyond facing charges of treason, activists who have spoken out against corporate crimes and state abuse have been charged with defamation and 'hate speech' under Indonesia's Electronic Information and Transaction Law and Penal Code. Additionally, Papuan activists and leaders have been apprehended and charged with engaging in criminal conduct based on their pro-independence social media posts and activity. Amendments to Indonesia's counter terrorism law have also been used to sanction arbitrary detention of dissenters and restrict rights of freedom of expression, association, and peaceful assembly.

In 2022, three UN Special Rapporteurs (Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous peoples, Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, Cecilia Jimenez-Damary, Special Rapporteur on the Human Rights of Internally Displaced Persons) expressed grave concern about the rise in extra-judicial killings. They also noted that the Indonesian government had consistently denied access to UN organisations and to international relief organisations.

New forms of racist colonial tropes, portraying Papuans as primitive 'warmongers' and morally inferior, are generally deployed to justify Indonesian control and the containment of communities actively resisting these dynamics. These stereotypes connect with those used during Dutch colonialism, and today serve to legitimise state violence and repression against those challenging the status quo. Indonesian and military forces have consistently labelled Papuan bodies as "polluted, dangerous, and uncontrolled," providing a pretext for ongoing repression and state intervention.

The violence in West Papua continues, and there are indications that it may be intensifying. In September 2023, Indonesian soldiers killed five young West Papuans between the ages of 15-18 in the midst of an escalation in violence and the forced displacement of a reported 674 West Papuans, their homes burned and livestock slaughtered.

III (ii) *Evidence of the links between industrial development and state repression*

Indonesian security forces are routinely deployed to suppress local community gatherings intent on discussing and mobilising action against 'development' initiatives that extract profit from West Papua's natural resources, while leaving communities more marginalised and

impoverished. These violent and repressive acts are further supported by an elaborate system of state surveillance, with activists, clergy, students, local politicians, and customary leaders often targets of intense military intelligence gathering and reporting.

The Grasberg Mine, one of the world's largest open air gold and copper mines, has been the site of major struggles between Indonesian security forces and local people; this conflict has led to the mass displacement of the Amungme and Komoro people. Struggles over the development of a new major gold ore mine, Wabu Block have led to the militarisation of the area, with West Papuans routinely being subjected to extrajudicial killings, beatings and control by the violent state security apparatus. Since 2019, Amnesty International has documented up to 12 suspected cases of unlawful killing at the hands of security forces as well as incidents of routine arrests and beatings related to Wabu Bloc. Mining corporations are asked to directly compensate the Indonesian military for safeguarding their operations and assets. A prominent example in this regard is the payment made by a local subsidiary of Freeport-McMoRan to Indonesia's security forces for guarding the Grasberg mine, linked to subsequent human rights violations.

The Indonesian military has routinely used force to clear areas for industrial development. A report published recently by the PNG Integral Human Development Trust has documented sustained military attacks on the Ngalum Kupel people, a distinct linguistic ethnic group who are customary owners of the highland mountain valleys, on tributaries of the Sepik River, adjacent to Kiwirok in the Pegunungan Bintang region of West Papua. The attacks started in October 2021 and included airborne rockets and bombing attacks on villages around Kiwirok conducted by drones and helicopters. Due to the severity of the initial attack and continued military activity, including sniper fire targeting individuals, shootings and torture of community members, the Ngalum Kapel people have fled their villages and have been unable to return to their homes, subsistence gardens and land. They are now living in exile in the mountains with limited access to food. The report recorded the names of 284 community members reported to have died of starvation since fleeing their village in October 2021. The motivation appears to be the opportunity to develop gold and copper mines. Thus:

“The region is considered prospective for gold and copper mining, with the Ok Tedi mine adjacent across the border in PNG. Indonesian rights advocates describe linkages between the operation of Indonesian military forces, retired Police and ex-Military leadership, who are now Government Ministers, seeking to expand mining interests, which is the driver of conflict with traditional landowners in highland areas of Papua.”

It is also the context for local opposition to the Tangguh liquefied natural gas (LNG) facility at Bintuni Bay in the far west of West Papua, another major asset in Indonesia's extractive drive. The facility is owned by a consortium led by BP which also includes, CNOOC and Mitsubishi Corporation. According to BP, Tangguh currently produces around 20 per cent of Indonesia's natural gas. An ongoing expansion of the facility – which includes two offshore platforms and 13 new production wells – will increase the total LNG production by approximately 50 per cent. Once it is complete, it is expected to supply 35 per cent of Indonesia's gas. The field has gas reserves estimated at 800 billion cubic meters. Since the early days of production BP has been accused of “siding with the Indonesian authorities against native

Papuans who are engaged in a long struggle for independence.” Certainly, the company works closely with the same security forces that are committing human right violations and extra-judicial killings and are displacing local populations. BP relies on locally-employed Papuan security guards at the plant, however, it does at times need to call in the police and the military. BP makes payments to both for this protection. In one famous incident, John O’Reilly, then senior vice president of BP, visited the plant around the time of an attack on the Indonesian police that killed several officers. Operation ‘Sweep and Crush’, the response to the killings resulted in a situation where ‘over 140 people were detained, tortured or otherwise ill-treated’, and seven people were killed in extrajudicial killings. The Indonesian government established a new military base near Tangguh in 2006. One investigation in 2018 revealed that the private company which manages BP’s local security force is “run by retired Indonesian army and police” and that this led to “targeting peaceful social movements in Bintuni Bay.”

III (iii) Evidence of the links between industrial development and environmental devastation

The cultural identity and well-being of the community in West Papua is shaped by particular values of the indivisibility of the relationship between human communities and nature. Those values are rooted in the long-term care and stewardship of the forests, in relationships between human and non-human beings and is mediated by particular (sacred) places. The management and use of natural resources depends on the trust in neighbours, empathy, mindfulness, and purpose, rather than on the accumulation of things. The form of development pursued in West Papua has failed to respect the land and resource rights of Indigenous people, and in cases where they have taken land, compensation has not been made transparently to the rightful owners.

For West Papuans, Indonesian control and exploitation represents a systematic attempt to erase West Papuan lives and culture. Indeed, the ongoing forced separation of people from their land has been closely intertwined with influxes of non-Papuan migrants to the region, and subsequent ethnic subjugation, as well as cultural assimilation, growing poverty and food insecurity, intergenerational displacement, and the loss of livelihoods. Papuan civil society commonly refers to a ‘structural and systemic genocide’ being perpetrated through these dynamics of land alienation and the loss of food sovereignty, as well as the marginalisation of Papuans by influxes of migrant labourers. As such, popular struggles against these injustices are deeply rooted in a longstanding quest for freedom and self-preservation. They are further tied to the profound relationship that Papuans have with their natural environment, reflecting Papuan cultural dependencies and harmonious co-existence with nature that is being disrupted by the large-scale destruction of forests and assaults on Papua’s rich biodiversity.

The environmental impact of commercial extractivism - particularly mining for metals and the extraction of oil and gas – has had very similar impacts on West Papua. Perhaps most prominent in the extractive industries is the Grasberg mine, one of the world’s largest open air gold and copper mines, which was, until recently, 90 per cent owned by the US mining giant Freeport-McMoRan. It is currently owned by PT Freeport Indonesia, a joint venture between Freeport and the Indonesian government. Grasberg is Indonesia’s biggest source of tax revenue.

The operation and securing of the mine has led to destruction of the local ecosystem, as well as mass displacement of the Amungme, Sempan and Komoro people, the traditional custodians of the land. The Amungme tribe considers the mountain to be a sacred place, where the spirits of their ancestors live. They describe the mountain (now entirely destroyed) as “the sacred head of their mother”, and the rivers as their milk. Thus the people of West Papua have a connection to the land that cannot be ontologically separate from their existence, or from their own being. And yet, over half a century, the mountains and land have been cleared, dredged and hollowed out by Freeport without the permission of the traditional landowners.

Toxic tailings are deposited daily from the Grasberg mine into the local river systems – estimated at 300,000 tons per day. The tailings are not captured for storage and disposal but are pumped straight into the Ajkwa river. Once in the water system, those deposits have affected a large and complex network of rivers and their estuaries. Based on an analysis of satellite images, it is thought that at least 130 square kilometres of water and land have been affected. Samples taken in three different river locations contained concentrations of Phosphate, Cyanide, Iron, Copper, and Zinc. Local people have been poisoned after contact with the toxic river; fish stocks have been devastated by suspended particulate matter (SPM) and copper toxicity, and because of the poisoning of water and land, people have to travel for large distances to hunt for animals and harvest sago. Transportation on the river using traditional boats has been stopped due to toxic sediment deposits building up on the river.

Already, Indonesia’s lack of rigorous environmental assessments for new development projects has resulted in alarming rates of forest loss, placing the nation among the highest globally. Estimates indicate a staggering loss of approximately 10.2 million hectares of primary forests in Indonesia between 2002 and 2022.

Central to this process of development is the construction of the massive Trans-Papuan highway. Penetrating remote areas, this network of roads is planned to be 2,700 miles in length with the aim of increasing access to the minerals, timber, palm oil plantations and other exploitable natural resources. The construction of the highway is strongly opposed in many communities and this opposition has resulted in an intensification of state violence.

Another major source of environmental destruction are the palm oil plantations. Indonesia is the largest exporter of palm oil in the world. In 2021, according to the OEC (Observatory of Economic Complexity), Indonesia exported \$27.3 billion worth of palm oil. Under the EU Deforestation Regulations (EUDR), palm oil products that enter the EU market must not come from deforested land. One report by the Indonesian-based Center for International Forestry Research has found that around 83 per cent of palm oil expansion has occurred at the expense of forests. The same report concluded that the Indonesian government has encouraged oil palm plantations in West Papua to become twice the size of those in other parts of the country.

The devastating effects of oil palm have been well documented by researchers and local communities including soil erosion, the depletion and poisoning of local water supplies and the destruction of biodiversity. Palm oil plantations also lead to loss of forest cover providing a major carbon sink and loss of habitat for endangered species.

IV. THE TRIBUNAL

The Tribunal is asked to hear evidence and deliberate on the following:

- After hearing the evidence, does the Tribunal consider that the Indonesian state has taken the ancestral land of the Indigenous Papuan People against their will using racial discrimination and leading to the loss of culture, traditions and Indigenous knowledge?
- After hearing the evidence, does the Tribunal consider that the Indonesian state is accused of violent repression, including unlawful detention, extra-judicial killing, and population displacement in West Papua as a means of furthering industrial development?
- After hearing the evidence, does the Tribunal consider that the Indonesian state has organised environmental degradation, including the destruction of eco-systems, contamination of land, the poisoning of rivers and their tributaries and of providing the permits, concessions and legal structure of non-compliance for national and foreign companies to invest in West Papua in a way that encourages environmental degradation.
- After hearing the evidence, does the Tribunal consider that the Indonesian state is colluding with national and foreign companies to cause environmental degradation, population displacement and sustain violent repression in West Papua?
- After hearing the evidence, does the Tribunal consider that the international community and specifically the UN and its agencies must respond urgently to the situation in West Papua. How does the Tribunal consider that this response should provide relief to the people of West Papua?

V. SIGNATORIES

Prepared and submitted by the Center for Climate Crime and Climate Justice, Queen Mary University of London <https://ccccjustice.org>, on behalf of the following signatories:

Indigenous Peoples Movement for Self-Determination and Liberation, Quezon City, Philippines <https://www.ipmsdl.org/>

International Association of Democratic Lawyers, Paris, France <https://iadllaw.org>

INTERPRT, Norway <https://www.interprt.org/>

Pacific Conference of Churches, Suva, Fiji
<https://www.pacificconferenceofchurches.org/>

Sinchi Foundation, Amsterdam, Netherlands <https://sinchi-foundation.com/>

TAPOL, London <https://www.tapol.org/>

London Mining Network, London <https://londonminingnetwork.org/>

And 7 other local and international civil society organisations, names withheld.

Permanent Peoples' Tribunal on State and Environmental Violence in West Papua

June 27-29th, 2024
London



	Day 1 / Thursday 27th June 2024
9:15 - 9:50	Registration
10:00 - 10:30 (18:00-18:30 Jayapura)	Opening Remarks Live from West Papua via zoom
10:30 - 10:45 (18:30- 18:45 Jayapura)	Introduction of the judges
10:45 - 11:00 (18:45- 19:00 Jayapura)	Opening statement: Secretary General of the Permanent Peoples Tribunal, Gianni Tognoni
11:00 - 11:30 (19:00- 19:30 Jayapura)	Prosecution opening statements Fadjar Schouten-Korwa and Papuan prosecutors
11:30 - 11:50 (19:30 - 19:50 Jayapura)	Testimony 1 Evidence of the Biak massacre. Live from West Papua via zoom
11:50 -12:10 (19:50 - 20:10 Jayapura)	Coffee break

12:10 - 12:30 (20:10-20:30 Jayapura)	Testimony 2 Evidence of the Abepura massacre. Live from West Papua via zoom
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12:30 - 1:30 (20:30-21:30 Jayapura)	Lunch Break
1:30 - 2:00 (21:30-22:00 Jayapura)	Testimony 3 Evidence of the Wamena massacre. Live from West Papua via zoom
2:00 - 2:20 (22:00- 22:20 Jayapura)	Testimony 4 Evidence of exclusionary nationalism as institutionalized racism. Live via zoom
2:20 - 2:40 (22:20- 22:40 Jayapura)	Testimony 5 Evidence of palm oil plantation and land grabbing. Live from West Papua via zoom
2:40 - 3:00 (22:40- 23:00 Jayapura)	Coffee break
3:00 - 3:20 (23:00-23:20 Jayapura)	Testimony 6 Evidence of palm oil plantation and land grabbing.. Live from West Papua via zoom
3:20 - 3:35 (23:20- 23:35 Jayapura)	Testimony 7 Evidence of land grabbing Recorded video testimony
3:35 -3:55 (23:35- 23:55 Jayapura)	Testimony 8 (Resource witness) The West Papua Project (Jim Elmslie, Cammi-Webb Gannon, Ronny Kareni , University of Wollongong, Australia) Written submission to be read out
3:55 - 4:10 (23:55- 00:10 Jayapura)	Testimony 9 (Resource witness) Sophie Chao , University of Sydney Voice recording
4:10-4:30 (00:10 - 00:30 Jayapura)	Testimony 10 (Resource witness) Amnesty International Indonesia Written submission to be read out
4:30 - 5:00 (00:30 - 01:00)	Testimony 11 Raki Ap In-person oral testimony

Jayapura)	
5:00 - 5:10 (01:00 - 01:10 Jayapura)	Summary remarks by prosecution and close

	Day 2 / Friday 28th June, 2024
9:00 - 9:20	Registration
9:20 - 9:30 (17:20 - 17:30 Jayapura)	Opening statements

9:30 - 10:00 (17:30 - 18:00 Jayapura)	Testimony 12 Introduction of the testimonies that follow – providing context - to show the impact of state repression, forced displacement, extrajudicial killings and unlawful detention in relation to the land and cultural wellbeing of the Indigenous Papuan people. Live from West Papua via zoom
10:00 - 10:30 (18:00 - 18:30 Jayapura)	Testimony 13 Evidence on state violence in Maybrat. Recorded video testimony
10:30 - 10:50 (18:30 - 18:50 Jayapura)	Testimony 14 (Resource witness) Eben Kirksey , University of Oxford In-person oral testimony
10:50 - 11:10 (18:50 - 19:10 Jayapura)	Coffee Break
11:10 - 11:30 (19:10 - 19:30 Jayapura)	Testimony 15 Evidence of restriction of freedom of speech and racism. Live from West Papua via zoom
11:30 - 11:50 (19:30 - 19:50 Jayapura)	Testimony 16 Evidence of restriction of freedom of speech and racism. Live from West Papua via zoom

11:50 - 12:20 (19:50 - 20:20 Jayapura)	Testimony 17 (Resource witness) Anonymous Private testimony delivered only to judges.
12:20 - 12:40 (20:20 - 20:40 Jayapura)	Testimony 18 Evidence of the mutilation case in Mimika. Live from West Papua via zoom
12:40 - 1:40 (20:40 - 21:40 Jayapura)	Lunch Break
1:40 - 1:50 (21:40 - 21:50 Jayapura)	Testimony 19 Evidence of racism and targeting of human rights defenders in Intan Jaya. Recorded video testimony
1:50 - 2:00 (21:50 - 22:00 Jayapura)	Testimony 20 Anonymous Written submission to be read out
2:00 - 2:20 (22:00 - 22:20 Jayapura)	Testimony 21 (Resource witness) Samuel Rua-Nimetz , Brighton University In-person oral testimony
2:20 - 2:50 (22:20 - 22:50 Jayapura)	Testimony 22 (Resource witness) Human Rights Watch - Indonesia Researcher Live from West Papua via zoom

2:50- 3:10 (22:50 - 23:10 Jayapura)	Coffee break
3:10 - 3:40 (23:10 - 23:40 Jayapura)	Testimony 23 (Resource witness) Jacob Smith , Rights and Security International In-person oral testimony
3:40 - 4:10 (23:40 - 00:10 Jayapura)	Testimony 24 (Resource witness) Stephen Eichorn , University of Bristol Written submission to be read out
5:00	Close

	Day 3 / Saturday 29th June, 2024
9:30 - 10:00	Registration
10:00 - 10:20 (18:00 - 18:20 Jayapura)	Testimony 25 (Resource witness) INTERPRT x London Mining Network In-person oral and video testimony
10:20 - 10:30 (18:20 - 18:30 Jayapura)	Testimony 26 Introduction of the testimonies – providing context – to show the impact of environmental destruction, deforestation, poisoning of water sources caused by extractive industries with support of the Indonesian State. Live from West Papua via zoom
10:30 - 10:40 (18:30 - 18:40 Jayapura)	Testimony 27 Evidence of Freeport worker who was fired for going on strike. Live from West Papua via zoom
10:40 - 11:00 (18:40 - 19:00 Jayapura)	Testimony 28 Evidence detailing PT Freeport-Indonesia's operations, lack of permits and the widespread destruction to the ecosystem as a result of toxic mine tailings and acid mine drainage. Live from West Papua via zoom
11:00- 11:20 (19:00 - 19:20 Jayapura)	Testimony 29 Evidence of illegal mining in Degeuwo. Live from West Papua via zoom
11:20- 11:40 (19:20 - 19:40 Jayapura)	Coffee break

11:40 -12:10 (19:40 - 20:10 Jayapura)	Defence closing statement
12:10 - 12:40 (20:10 - 20:40 Jayapura)	Prosecutor closing statement

12:40 -1:40	Lunch break
1:40 - 4:30	Judges meet to discuss interim statement
4:30 (00:30 Jayapura)	Judges final statement
5:00	Closing