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COMMISSION ON HUMAN RIGHTS  
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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD**

**Written statement\* submitted by the International NGO Forum on Indonesian  
Development (INFID), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 March 2005]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

In the eyes of the Papuan people and international community, the Permanent Human Rights Court on the Abepura case in Makassar has become a test case for the responsibility of Indonesia. For all human rights violations after the passing of the Law No. 26/2000 will be handled by the Permanent Human Rights Tribunal. However, Permanent Human Rights Courts were only set up in Jakarta, Surabaya, Medan and Makassar; all far away from Papua where human rights victims have lost property, dignity and even their life. This limited number of courts have resulted in high costs, long and uncertain duration of sessions, no mechanism for victim protection, while those victims suffering from illnesses, disability and post-traumatic stress syndrome are left alone.

### **Permanent Human Rights Tribunal Process for the Case of Gross Human Rights Violations in Papua**

#### **ABEPURA CASE OF 7 DECEMBER 2000**

The human rights trial opened on 24 April 2004 at the Makassar Human Rights Tribunal in Makassar, South Sulawesi, with the reading of the charges against Brigadier-General Johny Wainal Usman and *Kombes* Daud Sihombing, without mentioning compensation, restitution and rehabilitation. The victims and their next of kin submitted a joint claim for compensation based on articles 98-101 of the Criminal Code (KUHP) regarding mechanisms for the submission of Class Actions (Supreme Court Regulation No. 1 Year 2002). The claim was rejected on 7 June 2004. Nevertheless, regulations concerning compensation, restitution and rehabilitation are determined under article 35 of Human Rights Tribunal Bill No. 26/2000 as implemented under Government Decree No. 3 Year 2003. However, there are as yet no implementation regulations that determine and standardize the sum payable for compensation, restitution and rehabilitation for the victims and their families.

The 3 career judges and the 2 ad-hoc judges failed to understand the socio-cultural aspects of the Papuan people, moreover they have no knowledge whatsoever about the locus delicti of the Abepura case. Field visits as suggested by the public prosecutor's office were refused due to lack of funds. All the public prosecutors and the two military auditors are from Makassar; none was chosen from Papua. The questions posed by the judges, defense lawyers and even public prosecutors showed a tendency to stigmatize all Papuans from the Central Mountain Range (most of the Abepura victims) as separatists. Protection of the witnesses and victims who made the journey from Jayapura to Makassar was insufficient. The victims rejected offers from local police because of the lack in trust in the police force and the deep and extended trauma. The victims were only accompanied by legal representatives from the "Civil Society Coalition for the Abepura Case", without the involvement of the Attorney-General's office in Papua. The time of the court's decision is still uncertain.

#### **OTHER CASES**

On 24 July 2003, based on the decision of the Head of the National Human Rights Commission No. 22/KomnasHAM/VII/2003, an Ad-hoc Team for Serious Human Rights Crimes in Papua was established. The role of human rights workers in Papua is instrumental in order to assist the work of the KomnasHAM, particularly at the crime scene. Without the pressure from NGOs, students and victims, the KomnasHAM would not have been likely to take the initiative. The following are two cases that have been taken up the Ad-hoc Team and submitted to the Attorney-General. It is, however, unclear whether the Attorney-General will carry out its investigation within the prescribed 240 days period.

**Wasior Case of 13 June 2001**

The Ad-hoc Team identified this as a case of gross human rights violations including various elements of crimes against humanity. It was sparked by a dispute over the illegal logging - protected by members of the Police Mobile Brigade (Brimob) - of forest falling under customary rights. This incident triggered a massive search for suspected separatists in the neighboring communities, resulting in the above-mentioned violations. When the Ad-hoc Team carried out its pro-justicia inquiry, the team did not visit the locus delicti; they only obtained data from the district capital Manokwari, rendering the data incomplete. Nor was the inquiry to the background of the initial incident satisfactory. The Attorney-General examined the Wasior case prior to submitting it for further investigation. The NGO Coalition for the Protection and Upholding of Human Rights in Papua did visit the victims in Wasior and submitted a letter to the Attorney-General on behalf of the victims and their families, calling for the prosecution of the perpetrators and masterminds and compensation in accordance to the principles of justice and customary law.

**Wamena Case of 6 April 2003**

The Wamena case is a typical case of the persecution of the people of the Central Mountains. On 6 April 2003, the arsenal room of the military resort was raided by unidentified persons and 29 rifles and 3,500 bullets were stolen. In the ensuing shootout two soldiers and one attacker died. Following that, the regional military commander ordered a sweeping operation over a large area in Jayawijaya district, including Wamena town and Kwiyawage village. The local troops were assisted by KOPASSUS and KOSTRAD troops flown in from the provincial capital.

The Ad-hoc Team of KomnasHAM reported that warrant less arrests, beatings, torture, summary executions and burning of houses, churches and clinics took place in those raids. The raids caused a forced displacement of the population. But the Ad-hoc Team fell short in: (1) providing protection for the victims and their families, (2) covering the whole area raided by the military so the data was far from comprehensive and (3) detailing the chain of responsibility of the perpetrators.

Meanwhile, there is also the case of nine detainees suspected of being involved in a break-in of the arsenal, and against six political detainees arrested during the stop-and-search operation by the security forces. Yapenas Murib died in custody on 15 April. The others were held without arrest warrants for 10 days and tortured at the Wamena Regional Military Command. They were moved to the Wamena police station and then transferred to Makassar without notifying their families or lawyers.

A number of violations of the Criminal Code occurred throughout the detention and interrogation of the detainees with a heavier charge from the public prosecutor's office. On 4 October 2004 the subversion trial that took place in Bolakma District resulted in heavy sentences for the suspects.

**THE NATIONAL COMMISSION ON HUMAN RIGHTS**

Overall, the performance of the KomnasHAM in upholding and protecting Human Rights in Papua has been meager:

1. The inquiry of the Wamena and Wasior cases took only three months, from the establishment of the KPP HAM Papua to the end of the pro-justicia investigation. The KomnasHAM stated that they could only allot three months because they had to finish it prior to the April 2004 general elections. Obviously, 3 months is not sufficient because there are a number of substantial matters arising from these cases that have yet to be fully investigated.

2. KomnasHAM report did discuss a number of other human rights violations that occurred in Papua: the “Military Operational Zone” prior to 1998 in Papua; the disappearance of Theys Hiyo Eluay’s driver, Aristoteles Masoka; the shootings in Wutung; conflict arising from the declaration of Central Irian Jaya Province in Timika; Conflict over water resources in Kimaam, Merauke. However, it failed to take any preventive or persuasive steps to address those cases.
3. KomnasHAM was not responsive to cases of human rights violations in Papua as based on the facts: the case of killings in Babo, Bintuni Bay (2004); Mulia case, Puncak Jaya case of 14 September 2004 (the shooting at a priest, stop-and-search carried out by the military), the Assue-Mappi case (illegal logging, HIV/AIDS and sex trade which implicates the military and the police). Local NGOs, student organizations, customary organizations and religious groups did report to KomnasHAM, but they have yet to receive a response from KomnasHAM regarding the need to send an ad-hoc team to the field.

### **RECOMMENDATIONS**

1. Urge the government to immediately establish a Permanent Human Rights Court in Papua in order to resolve the cases of past human rights abuses because the victims, witnesses, evidence and perpetrators are available.
3. Urge the government to appoint ad-hoc Human Rights judges and public prosecutors from Papua, who have experience of and understand Papuan politics and culture.
4. Urge the government to stop the stigmatization of the Papuan people as separatists that increasingly colors the government’s approach in conflict resolution in Papua.
5. Allow the civil society to oversee military and police policies and operations in Papua.

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