

# West-Papua and the Right to Self-determination - A Challenge to Human Rights <sup>1</sup>

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In June 2000, about 20,000 participants and 501 lawfully chosen representatives of West-Papuan society, representing all corners of the Papuan land, attended the Second Congress of West-Papua (also: Papua). The then government of Indonesia did not articulate any objections to this Congress. It even contributed financial support. The participants of the Congress strongly supported the resolutions which urged, among other points - the United Nations to withdraw Resolution 2504 (XXIV, General Assembly) of the 19th of November 1969. This UN resolution justified the betrayal of the political rights of the West-Papuans to decide upon their own future.

The resolution of the Second Congress of West-Papua also declared the strong desire of the Papuan people "to separate from the Republic of Indonesia", in the knowledge that this was obviously a sensitive issue in the relations between Papua and Indonesia.

The resolution was truthfully and earnestly drawn up in a peaceful and democratic way. The request for the withdrawal was backed not only by the desire to review history, which would have been fair enough. The denial of the right to self-determination led to a genuine human tragedy, with thousands of victims who have been killed, tortured or have suffered cruel treatment merely because of their demand to be allowed to exercise their right of free choice. Relatives and friends of the victims, and even some of the victims themselves, are still alive and urge that a reliable process of revelation and healing take place.

Though stressing the free decision concerning our own future, we have to consider that we are not talking about political status alone, but also about the people's every-day aspiration to be free from fear, injustice, oppression, and the denial of their identity as well. Up to and including the present, the terms and state policies on wealth and development, particularly in relation to the rural areas in West-Papua, remain a dead letter for the large majority of Papuans. Therefore, the desire among many Papuans for statehood of their own prevails<sup>3</sup>, although it has become obvious that for the near future there is no way the Papuans will be able to achieve this goal. It is a matter of fact that talking about self-determination will occur merely at the level of a political dialogue, while there is little chance of the aspirations being transferred into political terms which would be able to involve all parties. In this context it is worthwhile to mention the ongoing peaceful attitude of the Papuans, who wish to make their country a 'Land of Peace'. The following considerations should be understood as a contribution to facilitate this political dialogue between Indonesia and Papua. To make this operable, this entire study itself - addressing human rights, justice, peace and development - might be used as a platform for this kind of dialogue.

## Historical Background

Historically, Papuans have always been ethnically different from the Asian-based population of Indonesia. Their ethnic roots and cultures - there are actually about 250 different languages in West-Papua alone - are closely linked to their neighbours in Papua New Guinea and to the inhabitants of other Melanesian islands. The arbitrary colonial decisions of European countries drew a border right down the middle of New Guinea

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<sup>3</sup> Outcome of a survey conducted by the *International Foundation for Election Systems*, 28 February 2003

in 1895 and officially separated the two parts in 1910. The Dutch retained the western part, which, - as the then West New Guinea - they had, following simple colonial considerations, claimed since 1828. In February 1855, the first missionaries from Germany arrived (Ottow and Geisler). The historical accident, that for mere administrative reasons the Dutch had long ruled West-Papua from the capital of the Sultan of Tidore (Ternate, Moluccas), led Indonesia, upon its independence, to argue that West-Papua had been an integral part of the region of the then 'Dutch East Indies', which were later to become the Republic of Indonesia.

In 1949, the Dutch East Indies were handed over to the emerging Republic of Indonesia, with the exception of the then Netherlands New Guinea. The then Resident<sup>4</sup> of Netherlands New Guinea, J.P.K. van Eechoud, publicly stated that, because of its different culture and history, this country did not belong to Indonesia.

Even the first Vice-President of Indonesia, Mohammad Hatta, considered the Papuans to be people belonging to the Melanesian culture, albeit he meant this in a derogatory sense. Thus, for a while, the Papuans remained the inhabitants of a district of the Kingdom of the Netherlands. The refusal to hand Papua over to Indonesia led to growing tensions between The Netherlands and Indonesia. It was at that point, in the late fifties, that Indonesia interrupted its diplomatic relationships with The Netherlands. Under threat of an Indonesian attack and under pressure from the United Nations, The Netherlands agreed, in October 1962, to hand West-Papua over to a temporary UN-administration.

Two factors have been of vital importance for the further development. With respect to the discussion in Papua, in 1961, the Dutch proposed and established a New Guinea Council, consisting of 28 people. The 1<sup>st</sup> Papuan Congress was held in 1961. The Congress adopted "West-Papua" (Papua Barat) as the name of the country, "O, Papua My Land" (Oh Tanahku Papua) as the anthem and the Morning Star as the national flag. A Constitution of 129 articles was adopted as well and the Congress promulgated "Togetherness" as the guiding principle of the new state. Even before the Council had been established, 12 political parties had been founded, among them the National Party (PARNA), led by its chairman, Herman Wayoi, and the Papua Party led by Johan Ariks.

At the international level, The Netherlands and Indonesia agreed on August 1962 in New York, that the UN would subsequently transfer the administration of the then West New Guinea to Indonesia. The interim administration by the United Nations Temporary Executive Authority (UNTEA) administered West Papua from October 1962 to May 1963, when Indonesia assumed total control and responsibility, although the Indonesian sovereignty over West-Papua was to be tentative. Under Article XVIII of the agreement, Indonesia undertook to ascertain the wishes of the people of West Papua through a consultation process and to hold a referendum on Papua's political status, which has been named the *Act of Free Choice*. Within five years, the United Nations was to return to assist the Indonesian government in organising this referendum. In due respect to their right to self-determination, the Papuans were to determine whether they would prefer to be independent or formally to become a part of Indonesia.

Contrary to this provision, Papuans have not been involved in any of the debates dealing with the political status of Papua after Indonesia declared its independence on 17 August 1945. The right to participation was denied both at the level of bilateral and international negotiations as well as with regard to the New York Agreement. Furthermore, in order better to win the referendum, the Indonesian government began to do away with all institutions and symbols connected with the Papuan identity. The government even prohibited the most fundamental rights to freedom of expression, movement and assembly<sup>5</sup>. The Anti-Subversion legislation (Presidential Decree No. 11/1963) worsened the situation, now defining political activities by

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<sup>4</sup> The Resident was the highest colonial official below the Governor.

<sup>5</sup> The Presidential Decree No. 8/1963 said: „In the region of West Irian, it shall for the time being, be prohibited to undertake political activity in the form of rallies, meetings, demonstrations or the printing, publication, announcement, issuance, dissemination, trading or public display of articles, pictures or photographs without permission of the Governor or an official appointed by him." quoted in Neles Tebay (2003), *Human Rights in Papua: An Overview*. In: Friedrich-Ebert-Foundation et al. (ed.); *Autonomy for Papua - Opportunity or Illusion?* Berlin

Papuans as being subversive and thus relevant for military operations; e.g. Operation Sadar 1965-67, Operation Brathayudha 1967-69, Operation Wibawa 1969.

With respect to the referendum, the decision-making process at that time can hardly be identified as an action which was based on any participation by any legitimised Papuans. Right from the outset, considerable sections of the Papuan people opposed the incorporation. Unilaterally, the Indonesian government selected 1,026 people (out of more than 815,000), in order to make them vote in favour of Papua's integration into the Republic of Indonesia. According to the New York Agreement, a traditional form of consultation was to be used to determine the appropriate methods to be followed for the Act of Free Choice, involving the participation of all adults (male and female) of West-Papua. When the time came for a decision on the method to be used, the representative of the UN Secretary General in West-Papua proposed a normal adult suffrage for the urban areas, and a form of tribal consultation for the rural areas. Indonesia rejected the suggestion and adopted instead the tribal *musyawarah* (tribal council representatives) system throughout the territory. In addition, Indonesia permitted merely a token UN supervision in only 195 of the 1,000 consultative assemblies.

Documents recently released by the Australian Department of Foreign Affairs and Trade indicate that Australia and the United States actively assisted Indonesia at the UN to secure its control over West-Papua, even though it was clear that there were serious defects with the procedure. Australia also helped discourage petitions and debate on the merits of the integration at the UN<sup>6</sup>. Therefore, it is no wonder that the key element of the 1962 agreement, self-determination, was cancelled. The fraudulent manoeuvre impeded the Papuan people's chance to make their voice heard. Even Indonesia's part of the report to the Secretary-General of United Nations in relation to that Act also reveals this situation. The 'home grown' Indonesian Act of Free Choice was not a free choice at all. Even worse, there is enough evidence to conclude without any further need of explanation, that the results were achieved by using threats, intimidation, murder, military force and amoral acts<sup>7</sup>. There are serious doubts about the legitimacy of this "Act of No Choice".

As a kind of direct response to the unfair treatment of Papua's interests, which were already perceivable in the early 1960s, the people began to organise their political articulation. In 1963, Aser Demotekay, from the region of Jayapura, founded an organisation for the liberation of West-Papua, later given the name "Organisation Free Papua" (OPM) by the Indonesian security forces. A similar organisation emerged at Manokwari in 1964. The formal founding of the OPM as *Organisasi Papua Merdeka* is dated at 1970. The movement aimed at gaining independence for West Papua through armed struggle, but did not receive any real political support even in the South Pacific.

In 1964, a resolution had already been adopted for monitoring the agreement of New York and for defending the independent institutions of Papua which had been established in 1961. Terianus Aronggear, the appointed Coordinator for Foreign Affairs of West-Papua, was seized on 5 July 1965 in Biak and jailed. On 28 July 1965, OPM attacked the barracks of the Indonesian Army in Arfai (Yonif 641Cenderawasih). After that, the OPM attacked a military station in Warmare, and further attacks continued, leading to counterattacks and resulting in a considerable number of casualties, predominantly on the side of the Papuans.

Within the civilian society, too, people like the citizens of Wagete protested against the office of the Head of District (*Bupati*), which had been established by Indonesia. In 1969, in several cities of West-Papua, the people organised rallies against the referendum to voice their resistance against the fraudulent incorporation of West-Papua into Indonesia: 14 July at Merauke, 16 July at Jayawijaya, 19 July at Paniai, 23 July at Fak-

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<sup>6</sup> See Sam Blay (2000); *Why West Papua deserves another chance. The UN ballot in 1969 broke every rule for genuine self-determination*. In: Inside Indonesia no.61, January-March 2000.

<sup>7</sup> See e.g. John Saltford (2003), *The United Nations and the Indonesian Takeover of West-Papua, 1962-1969. The Anatomy of Betrayal*. London-NewYork. In May 2000, an UN official in New York stated that West-Papua had been shameful case in the history of the United Nations; see also the Report of Robert F. Kennedy Memorial (2004); *The Papua Report*. March 2004.

Fak, 26 July at Sorong, 29 July at Manokwari, 31 July at Cenderawasih Bay, 2 August at Jayapura. In July 1972, the OPM enacted a provisional constitution, proclaimed an independent state and declared West-Papua a republic. What might have been able to develop into a strong civil movement was violently suppressed the following years by Soeharto's regime, including the killing of what could have become an autonomous leadership. As could be expected, the resolution of the afore-mentioned Second Congress of West-Papua rejected both the 1962 agreement between the Kingdom of the Netherlands and the Republic of Indonesia, which had been reached in New York, as well as the results of the "Act of No Choice" in 1969. Again: The denial of the right to self-determination ended as a human tragedy for the Papuan people.

### **Human Rights in West-Papua under Indonesian Dominance**

The Constitution, and afterwards the Provisional Constitution of Indonesia, both dating from 1950, are both long and detailed papers with 197, respective 146 Articles, of which 37 Articles (No. 7 to 43, Provisional Constitution) dealt with human rights and fundamental freedoms. The articles have been formulated after the model of the relevant articles of the Universal Declaration of Human Rights of 1948<sup>8</sup>. The Provisional Constitution of 1950 ceased to apply on 5 July 1959 and was replaced by the former Constitution of 1945. Although the latter included provisions for most of the relevant rights and freedoms, it obviously contained no reference to the later universal declaration. The "*Guided Democracy*" between 1959 and 1965 and, even more, the „*New Order*" policy between 1966 and 1998, paid no attention to human rights, instead created rules establishing an unitary state. The subsequent authoritarian and repressive regime as of 1965 / 1966 committed all manner of the most serious violations of human rights in order to establish this new order of the unitary state. The victim to suffer most from this policy was the people of Papua.

Immediately after the New York agreement had been made (August 1962), the Papua Parliament, which had been elected through a general election in 1961, was dismissed. In May 1963, the Jakarta Government re-established an imposed assembly without including any of the former elected parliamentarians. The above-mentioned Presidential Decree No. 8/1963 and Anti-Subversion legislation provided the legal basis for an enormous amount of military operations with an also enormous amount of casualties, particularly on the part of the Papuans<sup>9</sup>. For West-Papuans, who have experienced the loss of thousands of lives and have been left in misery, this case of the denial of their rights since the 1960s is still a matter of great concern and needs to be addressed.

After 1971, Papuans became Indonesian citizens, but without any further change in their civil rights which would have allowed them to strive for the fulfilment of their political interests. Even worse, Papua was declared a Military Operational Zone (DOM) by the Indonesian Government. This DOM granted the Indonesian military forces full control over the territory of Papua and was upheld until 1998. Some regions of Papua were even closed to public access. A special permit was necessary, to be issued by the police or the security forces. Thus, a priest who wanted to attend to his congregations for, e.g., Easter celebrations, was forced to explain in detail the schedule of his visits. He was obliged to tell each local police station upon his arrival, for how long he intended to stay and when he would leave the village.

Any cultural expression by Papuans has been considered to be a manifestation of independence. They were strictly forbidden to call themselves Papuans or Melanesians. The province was named *Irian Jaya*, and the people were told to identify themselves as "Indonesians from the Province of Irian Jaya". Singing in a local language could be punished with beatings, torture, jail or even death. One of the most bitter atrocities was committed against Arnold Ap, a Papuan musician and curator of the Cendrawasih University Museum who was killed. He had started to collect Papuan artefacts and cultural symbols in order to display them in public

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<sup>8</sup> For further details see Enny Soeprapto (2005); *The development of Indonesia's policy on human rights and fundamental freedoms since 1945*. Paper presented to the panel discussion on *Indonesia and its Human Rights Policy*, Geneva, United Nations Commission on Human Rights, 5 April 2005.

<sup>9</sup> For an overview see ELSHAM (Institute for Human Rights Study and Advocacy) (2000); *Report on the Human Rights Situation*, Abepura. or Neles Tebay (2003), *op. cit.*

rooms. This relatively simple initiative made the people aware of the value of their culture and helped them to regain their self-esteem - the same people whom the Indonesian authorities have always called uncivilised and without any values in their traditional culture.

In addition to the violations of their civil and political rights, Papuans were denied the right to manage their communities according to their *adat* (customary law). Historically, most of the Papuans owned the forest as a community, as a collective body. The forest has not only an economic but a religious meaning as well. Indonesian rule has rendered the owners without ownership, since ancestral land, forest and natural resources had been considered as national property at the disposition of the Jakarta Government. The Jakarta Government has used these resources to develop the country - except for West-Papua. Even today, national development means: expropriation, exploitation, destruction via logging, mining, fishing, oil and gas exploration - to name only the worst. Not only was the environment damaged or destroyed, but the spirit and mood of the people as well. When Papuans insisted on their customary law and traditional ownership, they were frequently denounced as supporters of the liberation movement and treated as such: extra judicial killings, torture, inhumane treatment, arbitrary detention, rape and other forms of denying their dignity and identity.

Human rights groups estimate that about 100,000 Papuans have been killed since 1963. The perpetrators have never been taken to court<sup>10</sup>. Only slowly, via the National Human Rights Commission (KOMNAS HAM) there is at least a kind of independent investigation of some of the atrocities committed in the past<sup>11</sup>.

Nevertheless, even the National Human Rights Commission seems to be powerless when high-ranking officials of the army and the police are involved in human-rights abuses. It is not by accident that those who have been involved in human-rights atrocities in East Timor have been moved to West-Papua. Of the many cases of reported human-rights violations, only the Abepura case of 2000<sup>12</sup> has been brought to the Permanent Human Rights Court in Makassar, after being pending for more than three years in the Attorney General's office. Human-rights defenders in Papua are still threatened with the possibility of being called criminals or being arrested arbitrarily because of their work. It is this kind of history, the unresolved massive human-rights violations and the ongoing excessive use of force by the Indonesian military forces<sup>13</sup> that makes the Papuans strive for the chance to rule their country on their own.

### **The Time of Reformasi**

It may be worthwhile to start this section with the statement that it was predominantly the financial crisis and the following economic collapse (in 1997 / 1998) which, in turn, catalysed the Popular Reform Movement *Reformasi* and brought President Soeharto's New Order regime to an end. It was, therefore, rather an economic than a political implosion which determined the following political process. Even today, Soeharto's concept of an unitary state is still influential in parts of the government and the security forces. Consequently, it is latently at the basis of the - oppressive - handling of conflicts such as those in Papua, Aceh, Maluku or other regions suspected of indigenous, ethnic or religious deviancies felt to weaken the composition and political approach of the government in this time of transition.

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<sup>10</sup> This unfinished history of oppression during the Soeharto regime is not singular to Papua, but can also be observed in other parts of Indonesia, as well as being related to other massacres, e.g., those occurring in 1965 and 1966, when half a million people were killed by military forces and militias for ostensibly being members of left-wing organisations.

<sup>11</sup> In January 2005, a regional office of Komnas Ham was established in Jayapura.

<sup>12</sup> On 7 December 2000 in the city of Abepura, the police indiscriminately shot at civilians and students, arbitrarily arresting and detaining people, torturing and causing mass displacement.

<sup>13</sup> The latest in a series of attacks happened in the Mulia area (Puncak Jaya regency) where a military operation purportedly against the OPM has resulted in up to thousands of highlanders being forced from their villages, as well as the destruction of homes, food gardens and livestock; see UN Economic and Social Council document *No. E/CN.4/2005/NGO/225*, p.2f. and further reference made there. Another case refers to Western Wamena.

After Soeharto had to relinquish the presidency, on 13 November 1998 the People's Consultative Assembly issued Decree No. XVII/MPR/1998 on human rights, including a so-called Human Rights Charter. This charter consists of 44 articles related to the Universal Declaration of Human Rights. The decree stipulates the implementation of a national commission for human rights (Art. 4). Both instruments were included in Act No. 39 in 1999, in order to transform the declaratory nature of the two provisions into higher-ranking legal norms. Finally, the provisions related to human rights of Act No. 39 have been included in the Second Amendment (2000) and Fourth Amendment (2002) to the Constitution of 1945. Therefore, a large number of human-rights norms exists at the constitutional level as well as at the level of national law. Further institutions, such as the Human Rights Courts (Act No. 26/2000), the Truth and Reconciliation Commission (Act No. 27/2004), the National Plans of Action on Human Rights, the ratification of international instruments and additional national legislation has generated a genuine structure - which takes Indonesia's recent history into consideration, enabling the protection and promotion of human rights. Obviously, there are weaknesses and shortcomings in these provisions. That which is most interesting for Papua, i.e. the Truth and Reconciliation Commission, can hardly undertake any open research on the history of Papua<sup>14</sup>. As mentioned at the beginning, this remains a matter of severe concern, considering the enormous extent of the atrocities committed. Furthermore, while the judicial structure has been developed to guide government and society into a distinct future, as far as Papua is concerned, the gap between claim and reality could not be wider.

On 3 July 1998, about 1,000 students of the Cenderawasih University at Abepura gathered and demanded the demilitarisation of West-Papua, a new referendum and the review of the New York agreement<sup>15</sup>. That same day, the student Steven Suripatty was shot dead as the military forces indiscriminately opened fire on the people. In February 1999, 100 Papuan leaders met the then President of Indonesia, B. J. Habibie, and told him frankly that the Papuan people wish to secede from Indonesia. Obviously, Habibie was not amused. In June 2000, about 20,000 people gathered to participate in the above-mentioned Papua Congress. They elected a council which should be engaged fighting for the basic rights of Papuans. The guiding principles of that commitment had already been drafted in February 2000 by the Grand Council of Papua People (*Musyawahar Besar Rakyat Papua*). The Congress in June 2000 confirmed the symbols of a free Papua as established in 1961, with the 1<sup>st</sup> of December as National Day.

These guiding principles refer to the traditional structure of administration and policy-making processes of the Papuans. They request a re-orientation to the *Papua-Adat*, its re-organisation and consolidation. In February 2002, a conference elected the Adat-Council of Papua which was commissioned to seek the following main goals:

- to protect land, sea, and other natural resources, as well as the environment, as an entity which is owned by the Adat-Community of Papuans;
- land, sea and environment are inalienable;
- all those dealing with development - such as the government, business and nongovernmental organisations - should recognise and guarantee the Adat-Rights, particularly the right to life, owner's rights and the right to social security;
- all projects on development and reconstruction require the agreement of the affected Adat-Community;
- all Papuan tribes and the entire Adat-Community must acknowledge the territorial rights of their neighbours;
- the Adat-Community is obligated to make use of its natural resources in support of the political aspirations of the Papuan people;
- the Adat-Community is prepared to co-operate with people from outside in exploring natural resources;
- the Adat-Community is also prepared to co-operate with people from the outside in order to generate a country free of violence and repression - to make Papua a country of peace;

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<sup>14</sup> For further details see Enny Soeprapto (2005), op. cit.; for a critical approach see Theo van den Broek (2003), op. cit.

<sup>15</sup> As the Irish Parliament did in March 2004 as well; see Robert F. Kennedy Memorial (2004), op. cit..

- the Adat-Community welcomes and hosts people from the outside. No difference shall be made on the base of tribe, religion or ethnicity;
- the Adat-Councils recognises the self-determination and autonomy of each tribe in West-Papua.

Despite this enormous will and civil commitment of the Papuan people to achieve their political aspirations in a peaceful manner, it has, up to and including the present, not been possible to convince the Indonesian government of the urgent need for an open political dialogue. Rather, the opposite has happened: after the Hundred of Papuan leaders pronounced their on-going desire for the Papuans' own statehood, in the aftermath of that meeting with President Habibie, the participants were harassed, jailed and even killed, as happened in the case of the Chairman of the Papuan Presidium, Theys Hiyo Eluay. He was abducted and brutally killed by the special force of the Indonesian military, Kopassus, after he had attended an invitation to dinner. This was revealed by the Military Court of Surabaya, although even today there is no official knowledge concerning either the motives behind the deed or who the intellectual perpetrators were. Even worse, the ordinary soldiers involved were given only short sentences and were later described by the Army Chief of Staff as 'heroes' <sup>16</sup>.

### **A Legal Perspective**

The Law on the Special Autonomy of Papua (Law No. 21/2001 of 23 October 2001) raised many expectations because it responded to certain aspirations of the Papuan People, although not to the requested open-ended political dialogue <sup>17</sup>. A commission consisting of Papuan intellectuals elaborated a draft version which has in part been considered in the autonomy law, thus leaving room for a new role for the Papuans in future. On the condition, of course, that the Special Autonomy Law will be properly implemented. Reality causes some doubts. Instead of implementing procedures and provisions actually to transfer political power to the Papuans, the government in Jakarta introduced its Presidential Decree No. 1/2003, which is going to split West-Papua up into several provinces and regencies. Apart from the question of how useful such a split might be in technical terms given a total population of about 2.4 million people, the decree and the following measures have been conducted in the well-known colonial attitude: without any prior and appropriate consultation with Papuan institutions as is stipulated in the Special Autonomy Law.

There are recognised experts whose legal opinion is that the decree is unconstitutional in relation to the provisions of the Special Autonomy Law. The Constitutional Court at least annulled the legal basis <sup>18</sup> for the province Western Irian Jaya, while nevertheless recognising the de-facto existence of the province as such along with the Province of Papua <sup>19</sup>.

The confusion is completed by the government regulation No. 54/2004 on the Papuan People's Council (*Majelis Rakyat Papua; MRP*). According to that regulation, the MRP, the provincial government and provincial parliament have to solve the problem in conjunction with the government in Jakarta, but there is little evidence that the government in Jakarta really wants to deal with Papuan autonomy.

Additionally, there are serious indications that foreign funds, namely of the European Union for implementing the autonomy, might already have been used to fund the bureaucracy of the challenged provinces.

Nevertheless, the Special Autonomy Law provides a legal platform for the Papuan communities to develop their own institutions and rulings. In addition to the decentralisation of state administration, today the

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<sup>16</sup> see Robert F. Kennedy Memorial (2004), op. cit..

<sup>17</sup> For details, see Theo van den Broek (2003); *Key elements of the Law on Special Autonomy for the Province of Papua*. In: Friedrich-Ebert-Foundation et al. (ed.); *Autonomy for Papua. Opportunity or Illusion?* Berlin.

<sup>18</sup> Law No. 45/1999 on the Establishment of the Province Central Irian Jaya, the Province West Irian Jaya, the Regency Paniai, the Regency Mimika, the Regency Puncak Jaya and the Municipality Sorong.

<sup>19</sup> Constitutional Court *Decision No. 018/PUU-I/2003* of 11 November 2004. See also the comments made by Petra Stockmann (2004); *Constitutional Court's ruling on the partition of Papua*. German version published in West Papua RundbriefNo. 33, p. 29-32

Papuans can rely on a significant number of indigenous administrators and of Papuan parliamentarians. The civil society is asked to develop further institutions in order to have its own system of political checks and balances. Also, fiscal decentralisation has enabled a number of communities at least to think about programs for the local economy which allow the inclusion of Papuan social and cultural patterns into the market economy in order to assure minimal survival standards for the Papuans. Although a further in-depth study on the implementation of the Special Autonomy Law is needed, there is sufficient evidence to state that Papuan society would be able to develop a structure which would allow it to rule its own affairs according to its values and patterns. This requires - among other things - a better socialisation of the law at various levels and a corresponding capacity-building. Obviously, not all Papuans agreed on all points, but that seems to be quite normal in any society.

Stressing the legal perspective, the illegality of the "Act of No Choice" has to be included into the discussion as well. It is beyond doubt that the people of West-Papua were denied their right to self-determination. Legally, there is no barrier to a re-examination of the issues. The challenge will be twofold. The ongoing and unresolved problem deals with the criteria that - according to international law - the territory to be integrated should have attained an advanced stage of self-government with free political institutions. Papuan people did not have the real capacity to make a responsible choice through informed and democratic processes, and West-Papua still needs accordingly to develop the appropriate social and cultural institutions. Which, secondly, would enable the people to fully know the change in their political status. This kind of development and awareness-raising should not be dealt with as solely internal affairs, as there are continuous gross human-rights violations by Indonesian security forces. Indeed, not only the Papuans are interested in the future of the country. Nobel Peace Prize Laureate Desmond Tutu, Members of the US-Congress and of the European Parliament, the South Pacific Island Forum and others are interested and rather fostering all the civil activities and initiatives which shall lead the Papuans to regain their identity and dignity after a long time of suffering a true human tragedy. In addition to the political discourse and in relation to what the presented study addresses, the daily steps will bring the Papuans along the way to slowly attaining an advanced stage of self-government with free political institutions. As far as the Indonesian government complies with its announcements to ratify the International Covenants on Civil and Political Rights, as well as those on Economic, Social and Cultural Rights in a near future, we will have a legal platform for dealing even with term and scope of 'self-determination', enshrined in Article I of both covenants. This approach, based on rights, fundamentally helps to build Papua as a land of peace – free from violence, oppression and grief.