

# **Ecumenical Council of Churches in Papua**

**(Persekutuan Gereja-gereja di Papua)**

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**RE : executive summary of the Abepura report**

## **Executive Summary of the Preliminary Report of the Abepura Case 16 March 2006**

The following report summarizes the most important findings of the report "***Preliminary Report of the Abepura Case 16 March 2006: Uprising conflict of the Papuan people against PT Freeport Indonesia***". This report was already officially submitted to the Governor of Papua, Barnabas Suebu S.H. on 28 September. The Governor promised to discuss the findings of the report with other important government officials of Papua, in particular with the Head of Police, and take serious steps to solve the problems which are based on the conflict between the Papuan people and PT Freeport.

This report is part of the church's responsibility towards the people of Papua in our effort to make Papua a land of peace. Therefore truth and justice need to be upheld in order to achieve true peace.

The following report summarizes the most important findings, conclusions and recommendations of the 159 page report, in order to be followed-up by the responsible governmental institutions. We clearly call this report "**preliminary**" as we are convinced that state institutions will take further steps exposing the questions, fear, violence and anger surrounding the clashes in Abepura on 16 March 2006.

Based on our research, we identify three main elements of the incident on 16 March 2006, namely: (1) Roots of the problem: Human Rights Violations and the Impunity of PT Freeport Indonesia, (2) Crimes Against Humanity and (3) Violations Against the Principles of a Fair Trial.

## **1. Roots of the conflict: Human Rights Violations and Impunity of Freeport (PTFI)**

Since the report of Bishop Herman Münninghoff OFM (1995) and the Human Rights Commission *Komnas HAM* (1995) there have been no legal or political efforts for a thorough investigation into the human rights violations in the concession area of PT Freeport and the conflict between the people of Papua and PT Freeport. Since 1995 various pieces of research, from state institutions such as Komnas HAM, independent institutions as well as NGOs, have identified elements of gross human rights violations carried out by the military and police forces in the protection of the mining area of PT Freeport. Another important factor related to these circumstances are the payments from PT Freeport to the military and police which have been acknowledged by PT Freeport since 2001. The last striking factor is the environmental destruction which endangers the existence of local society in the area around PT Freeport<sup>1</sup>.

PT Freeport has tried to take steps to improve conditions and has applied several internal policies to respect human rights and to preserve the environment. However, any steps taken by PT Freeport are unilateral (one-sided)<sup>2</sup> and are not open to any investigations by a third, neutral and independent party. Any expressions against human rights violations in the operation area of Freeport, any possibility of an audit of the “security and other payments” of PT Freeport to the military and police, or any possibility of mine closure are continuously avoided by PT Freeport<sup>3</sup>. Therefore it is difficult not to draw the conclusion that PT Freeport continues to protect wrong-doing and legal impunity.

It is therefore not surprising that the pressure to find out what is behind the almost 40 year-old mining operation has become strong and uncompromising.

### **1.1 Blocked political channels**

Within three months (January – March 2006) this pressure turned into a broad and strong anger by the Papuan people towards PT Freeport and the related military and police involvement. This anger was voiced loudly and firmly by students, NGO's, and local people and unfortunately some of these responses resulted in the damage of Plaza 89 in Jakarta, the Sheraton Hotel in Timika, and the Liberation Monument of West Irian in Makassar. When we examined the background of the problems which have already been addressed

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<sup>1</sup> Laporan WALHI, 2006. „Walhi on Freeport-Rio Tinto“ in <http://www.eng.walhi.or.id/kampanye/tambang/frpt-report-may-06/>

<sup>2</sup> See Oxfam Community Aid Abroad, 2002. *Mining Ombudsman, Annual Report 2001-2002*, Melbourne: Oxfam Community Aid Abroad, pages 9-10 analyzing critically the fundamental weaknesses in *the Voluntary Principles for Human Rights and Security*.

<sup>3</sup> Anthropology experts are convinced that Human Rights instruments are acknowledged as the very latest control instruments for multinational mining companies such as PTFI. See Ballhard, C., and G. Banks, 2003. “Resource wars: The Anthropology of Mining”, in: *Annual Review of Anthropology*, Vol. 32 (2003).

above it can be seen that the demands were not without reasons. In the beginning, the DPRP and the MRP tried to accommodate local demands through legal and political mechanisms, but this process was blocked as the involvement of the other actors (namely the police, military, and PT Freeport), in accordance with the protestor's demands, was not possible.

Given to the giant existence and influence of PT Freeport, the Central government and the National House of Representatives should address the demand and the anger of the Papuan people. The roots of the conflict and the existing demands did not develop this year, but have existed since 1995. However no steps have been taken by governmental institutions to respond to these problems. Because of this, the mass action in the form of a peaceful demonstration on 15-16 Maret 2006 in Abepura, did not have access to any legitimate political channels, so that the community finally engaged in violent action which took the form of violence toward the police apparatus in the mass demonstration in Abepura on the 16th March 2006. During the clashes between the demonstrators and the police forces on 16 March, members of the police, the air force and the local society were killed and wounded.

### **1.2 Visit of high state officials**

After the clashes, the central government sent high-level governmental officials from the defense and security sections: Menkopolhukam, Kapolri, Panglima TNI and the Head of BIN. This decision of the central government showed that the riots of 16 March were not only a clash between students/demonstrators with police, but the visit indicated that the problem was a national problem, which needed to be handled by high-level state officials. The question however is why there were no high-level governmental officials meeting with the demonstrators when they were expressing their demands in Timika, Makassar, Jayapura and Abepura? Another question is why no representatives of the Mining or the Environmental Ministry attended, even though the closure of PT Freeport was demanded?

During the very short visit however, no proper negotiations took place with the people of Papua. This omission resulted in the decision by religious leaders and the DPR to write a protest letter to the central government. The question, then is, what was the actual intention of the visits?

### **1.3 Distortion of the problem**

With the incidents of 16 March 2006, the original problems were shifted into another direction. The conflict between the local communities and PT Freeport which also involved the military and the police turned into a problem which was only about the killing of security forces by Papuan students. The students were already judged by a media which showed only the brutality of the masses killing four police officers and one air force officer. The Papuan students were identified with anarchic mass actions and this stigmatization legitimized the mistreatment, sweepings, torture, and arbitrary arrest carried out by police forces.

For the moment, the demands for closing Freeport--which were the original roots of the conflict--receive no further attention from state institutions or the public. It is as if these demands have been buried with the trial of the 23

accused and its political content. The following findings, which we have classified as crimes against humanity, strongly verify this conclusion.

#### **1.4 Who is the trigger behind the clashes of 16 March?**

Looking at the chronology of the clashes, there are several factors indicating that the riots were triggered by the following actions:

1. Provocation was carried out by a group throwing stones from the Uncen Museum towards the crowd while forces from Dalmas Polresta Jayapura and Brimob Polda Papua were already present and on alert at the location.
2. Before the time, agreed upon as 30 minutes (this limit was given by Kombes Pol Simson R) for negotiations to be carried out by Selpius Bobii and others to open the road, had been finished, Dalmas Polresta Jayapura had already started attacking the crowd with tear gas, causing the demonstrators to run away in an attempt to rescue themselves.
3. Obeth Epa, a member of Polsek Abepura, shot his pistol twice at a woman who was hit in her chest and screamed for help, this made the crowd very angry.
4. When Selpius Bobii was arrested and removed by truck by Dalmas Polresta, the mass became angry and demanded his release. Eventually the police used tear gas to forcefully break up the demonstration that triggered the clash between the crowd and the security forces, including Intel members in civilian clothing who joined to fight the students.

These triggering points are almost not revealed in the efforts of the police investigation, resulting in public blame of students as the ones responsible for the riots of 16 March. Also during the trials against the 23 accused, the judges only considered the results of the police interrogation statements and did not consider the factors behind the violence.

## **2. Crimes Against Humanity**

Article 9 of Regulation Number 26/2000 on the subject of Human Rights Courts defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) arbitrary imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity; (h) mistreatment against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law; (i) enforced disappearance of persons; or (j) the crime of apartheid”.

The following findings fall under the above definition.

### **2.1 Attacks against civil society**

After the clashes, the police forces acted indiscriminately in pursuing and attacking civil society living between Kotaraja and Waena or passing through these areas. The main targets were student dormitories and other student

locations. In addition, the police forces fully expressed their anger towards members of civil society who passed their barracks in Kotaraja through acts of destruction and mistreatment which caused trauma towards civil society and in particular, students.

## **2.2 Killings**

Despite information of the finding of several corpses, the Advocacy Team can only confirm the death of one civilian after the clashes, namely Jeni Hisage. The victim died as a result of the violence by Brimob members during their sweepings around Kotaraja and Abepura.

## **2.3 Arbitrary arrest and imprisonment**

Several testimonies and some evidence proves arbitrary arrests and imprisonment by the police towards dozens of innocent people. During their arrest these people experienced torture. From the tens of people detained, legal action was taken against 24 of them, while the majority were released who therefore cannot be identified with certainty. The actions by the police are presumed to be a violation of Article 34 of Human Rights Law Number 39/1999. In addition, Selpius Bobii and Elyas Tamaka were isolated from their families and other detainees (*incommunicado*).

## **2.4 Torture**

During interrogation and detention, the 24 accused and other detainees who were released shortly afterwards were tortured by members of the police force in order to force confessions. The 24 accused stated that they were not accompanied by their lawyers during interrogation. At court they later refused these interrogation statements as they were obtained under intimidation and terror. Acts of torture occurred at the police stations of Polsekta Abepura, Polresta Jayapura, Markas Brimob Papua and Polda Papua.

It is suspected that these aforementioned acts violate Article 33 (1) and Article 34 of Human Rights Law Number 39/1999, Article 9 of Law Number 26/2000 regarding the Human Rights Court and the Ratification of the Convention Against Torture, Law Number 5/1998.

## **2.5 Mistreatment**

During their sweepings, members of the police force reportedly carried out mistreatment against civil society when indiscriminately shooting, beating and committing other forms of violence. The perpetrators must be held accountable for their actions.

## **2.6 Destruction of property**

During the sweepings by members of Brimob Papua and Polda Papua, seven student dormitories in the area of Abepura were destroyed. These acts were acknowledged by Kapolda Papua, Tommy Jakobus through the reparations of the dormitories, but no prosecution of the perpetrators followed.

Not only dormitories were targeted, but also facilities of Cenderawasih University, hampering academic activities and leading to material loss.

Based on the destruction of student dormitories and other selected locations, the conclusion can be drawn that the destruction was carried out on purpose and under clear orders although further investigation is needed to identify the motives and persons responsible for ordering the destruction.

### **2.7 Refugees**

Sweepings and shootings caused dozens of students to flee Jayapura. The students leaving Jayapura fled to the districts of Keerom, Merauke and other places of origin, and some students also crossed the border to Papua New Guinea. Their number is not exactly known but it is estimated that several hundred people, particularly students, fled. The Advocacy Team identified 34 people, mainly students who fled across the border with PNG.

### **2.8 Repression of the freedom of expression**

The attacks against civil society, the violent dispersals of a legal student demonstration and the mistreatment of journalists represent a repression against the freedom of expression. Civil society has been silenced through the violence of the police force and as a result, fears to express their disagreement or to protest against police actions.

In addition, the media--which is already under police pressure--continuously reported on the slain police and army officers, but did not address the vengeance carried out by police forces against civil society.

Repression towards the press is only targeted against journalists trying to collect information about the true events in the field. The mistreatment of journalists resulted in the wider community only receiving news which covered events which were in the interests of the police forces, stigmatizing the students and their opposition Freeport, portraying them as separatists.

## **3. Violations Against the Principles of a Fair Trial**

In the court process against the 24 indictees, several violations against the Indonesian Criminal Procedure Code (KUHAP) and the Basic Principles of an Independent Trial (stipulated in Resolution 40/32 from 29 November 1985 and Resolution 40/146 from 13 December 1985) can be identified.

- a. The 24 indictees had already been stigmatized as perpetrators of crimes before their case was brought to court. The presumption of innocence which is guaranteed in Article 1(1) of the Indonesian Penal Code (KUHP) was not upheld by the panel of judges.
- b. The 24 indictees were interrogated without their lawyers present during the police investigation, even though the interrogation statements had been signed by their lawyers. This clearly indicates a violation of Article 54 and 55 of the Indonesian Criminal Procedure Code (KUHAP).
- c. The trial failed to prove who was responsible for the killings, as the witnesses submitted by the prosecution were unable to recognize with certainty the faces of the accused or their involvement in the riots on 16 March.

- d. The fact that the court room was always filled with armed police officers proves that the court was under threats and intimidation by the police to court processes. Such action violates Article 219 (1) KUHAP.
- e. The material evidence submitted to the hearings was not found at the location of the incident, but had been brought from other locations which had no connection to the case.
- f. The right to a complete defense, the right to examinations which are simple and easy, as well as the presumption of innocence – all of these rights were violated during the hearings.
- g. Even though the trial could not prove the involvement of the indictees in the killings of police and air force members, the judges passed sentences which were even higher than those requested by the prosecution.
- h. The judges also took actions which endangered the safety of the indictees when they ordered through decree No: 196-233/Pen.Pid/2006/PN JPR the transfer of the seven accused from prison to Jayapura police detention POLDA even though it was clear that the accused had already experienced torture during police interrogation. These actions violate Article 22 (1), (2) and (3) KUHAP.
- i. State Prosecutor Novianto, SH filed a complaint to POLDA Papua against the defence lawyer team, accusing them of insulting the state. This action is in violation of sections 311 and 335 of the Indonesian Penal Code.

These facts lead to the conclusion that the outcome of the hearings was planned beforehand, meaning to target a certain group instead of attempting to discover the truth about 16 March.

Looking at the above findings, the riots of 16 March 2006 culminated in acts of revenge by the police force which resemble the pattern of incidents from 7 December 2000 in Abepura which were classified as Crimes against Humanity by Komnas HAM<sup>4</sup>. Acts of killing, torture, mistreatment, destruction leading to displacement, repression of opinion, the stigmatization of students – all these factors strongly point to the category of gross human rights violations classified as Crimes Against Humanity.

#### **4. Recommendations**

Based on the above findings, the Federation of Papuan Churches (*Persekutuan Gereja-Gereja di Papua*) recommends the following steps to be taken:

##### **4.1 Formation of an Investigation Commission for Human Rights Violations (Komisi Penyelidik Pelanggaran HAM / KPP HAM)**

In order to follow-up on these preliminary findings, Komnas HAM needs to establish an Investigation Commission (KPP HAM) which in particular needs to focus on the Impunity of PTFI and the assumptions of gross human rights

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<sup>4</sup> *Ringkasan Eksekutif Komisi Penyelidik Pelanggaran HAM di Papua/ Irian Jaya*, Jakarta: Komnas HAM, Jakarta 8 Mei 2001.

violations by the police. As a non-governmental actor, the Advocacy Team for 16 March 2006, has limited resources and authority, as it does not have access or legal authority (pro justitia) to request information from state institutions, in particular from POLDA Papua and other institutions which are linked in particular to PTFI. Once established, the KPP HAM needs to consist of people with expertise and the ability to reveal the roots of the problem related to PTFI and all the connected demonstrations against PTFI which reached its peak in the clashes in Abepura on 16 March 2006. The final results of this investigation need to be published widely to the national public so that the public in general will know with certainty what actually occurred in all of the events discussed above.

#### **4.2 Political communication between society and state institutions**

State institutions in Jakarta and Papua, in particular the Central Government and DPR RI, DPR Papua, Majelis Rakyat Papua and the Local Government of Papua, need to take legal and political steps regarding the demand for the closure of PTFI in order to solve the conflict between the community, PTFI and the involved parties. The process of negotiations which had already been started by DPR Papua in Jayapura on 28 February 2006 needs to be continued more intensively, with the involvement of neutral and competent experts and through a democratic process in order to prevent local demands from turning into mass anarchic actions.

The environmental audit which has already been planned by the Ministry for Environment needs to be continued with an audit of the social impacts of PTFI towards the political, legal and social systems, specifically as they relate to human rights in Timika particularly, and in Papua generally. Competent national institutions need to request this from PTFI in order to explain to the wider community the scenario of closing the mine and the required steps.

#### **4.3 Investigation of the judges by the Supreme Court**

Based on the violations of Indonesian Criminal Procedure Code (KUHAP) and Article 17 of the Universal Principles of the Judicature, the Supreme Court needs to examine violations by the judges, namely Morris Ginting SH, A. Lakoni SH and Denny D. Sumadi. The Supreme Court needs to pass sanctions against the mentioned judges if proven guilty.

#### **4.4 Investigations against the judges by the Judicial Commission**

The Judicial Commission needs to carry out a complete investigation of the judges in charge of the hearings related to 16 March 2006 as several violations against the Law of Procedure and the Universal Guidelines of the Judicature can be identified.

#### **4.5 Investigations of the prosecution**

The office of the Supreme Attorney needs to undertake a complete investigation of the prosecutors of the Attorney Office in Jayapura who violated the ethical code, the Law of Procedure and Law Number 18/2003 regarding attorneys. The mentioned prosecutors allowed mistreatment towards the inditees to happen before the hearings on 17 and 24 May 2006

and also let the accused experience pressure and terror from the police forces during the court process.

The Supreme Attorney needs to examine and take explicit action against the coordination attorney, Novianto, SH who filed a complaint against the defence lawyer team to POLDA Papua, accusing them of insulting the state, in violation of sections 311 and 335 of the Indonesian Penal Code. The above mentioned action by the attorney does not only violate Article 16 of Attorney Regulation No. 18/2003 but it also undermines the independence and authority of the court which eventually damages the national law enforcement process.

#### **4.6 Investigations against the lawyers**

The Indonesian Bar Association (IKADIN) and the Indonesian Advocate Association (PERADI) need to examine completely and take explicit actions against the lawyers who violated the attorney's ethical code, who did not question the serious violations of the rights of the accused both outside (torture) and inside the court room and who revoked the appeal of Selpius Bobii and others leading to further disadvantages of their situation.

#### **4.7 Rehabilitation of the victims**

The central and local government of Papua needs to immediately rehabilitate the rights of the victims who experienced mistreatment and destruction of property, in particular the students and their families.

#### **4.8 Search for missing people**

The police forces as the upholders of the law, need to search for missing people and for people who have fled Jayapura or fled to Papua New Guinea. Together with the local government, the Head of Police (Kapolda) needs to immediately guarantee their security so they can return and carry out their studies and everyday lives

#### **4.9 Audit of foreign donations to the police**

Foreign donor states need to carry out an audit by a third independent party regarding financial aid for the police to uphold human rights, when considering the practices of mistreatment and torture which have occurred since 7 December 2000, and possibly earlier. With the patterns of revenge and the repeated practices of mistreatment and torture, the provided donations by foreign countries for the maintenance of human rights and the independence of the police apparently do not have an impact on police actions.

#### **4.10 Fulfill international obligations**

With the ratification of two International Conventions, the Covenant on Civil and Political Rights and the Covenant on Economical, Social and Cultural Rights as well as other Conventions of the United Nations, there are no more reasons for the government not to fulfill international obligations in reporting the human rights situation in Indonesia. In addition, the government needs to invite the UN Special Rapporteur against Torture, Prof. Manfred Nowak who has already submitted visiting requests over the past 13 years (dok.

E/CN.4/2006/6). Such a visit needs to be open and unrestricted with regards to any groups, institutions and people.

Issued in Jayapura by,  
The Ecumenical Council of Churches in Papua,  
*signed*

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