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In Search of a Solution: An Independent Human Rights Team and Its Legitimacy in (West) Papua, Indonesia

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ABSTRACT

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This article discusses findings the of thesis research into potential challenges to the legitimacy of an independent human rights team among Papuan civil society in Indonesia. It aims to provide an answer to the question whether it is conceivable that a team of local civil society actors, appointed by the State to work independently on human rights cases, gains legitimacy among Papuan civil society. In the past, justice mechanisms to address human rights abuses in Papua have been without effect, and the current relationship between Indonesia and its Papuan community has been shaped by a history of political debate and continuous outbreaks of violence. This status quo could threaten the legitimacy of a State-appointed human rights team and compromise its stable existence. The research was based on a grounded theory approach, and identified and analysed the key indicators of legitimacy among a sample group of informed Papuan indigenous civilians. Qualitative field research was performed in May-June 2017, by conducting interviews among indigenous Papuan people and local civil society experts, substantiated with extensive documentary research.

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Introduction

This article provides an overview of the key findings and implications of research on the potential challenges among (West) Papuan civil society to the legitimacy of an Indonesian State-appointed justice mechanism aimed at resolving alleged cases of human rights violations against Papuan civilians. As a case study, it scrutinizes the legitimacy of a human rights team entitled *Tim Terpadu Penyelesaian Pelanggaran HAM di Papua*² (hereafter: “the Team”), which was assigned to resolve some of (West) Papua’s most notorious human rights cases. The Team was established around May 2016 by the Coordinating Ministry of Political, Legal and Security Affairs (“Ministry”) of the Government of Indonesia (“GOI”). Its unique characteristics consist of its representation of civil society actors from Papua and its presumed independent authority.

There is not much detailed information available about the perceptions of individual Papuan people towards State-appointed justice mechanisms. Does the community acknowledge the authority of such justice mechanisms, and under what conditions might these mechanisms gain legitimacy among the affected Papuan community? Presumably, an initiative aimed at resolving human rights issues can only function effectively if it is supported by stakeholders, which is the affected Papuan community. The Team’s local representation and independent functioning could be beneficial to its legitimacy among Papuan civil society. However, a State that is both the (indirect) perpetrator of human rights violations and creator of a justice mechanism to resolve those same human rights violations may appear, in first instance, to have a conflict of interest. Also, the political history between Indonesia and its easternmost province is a long and complicated one, which may affect public opinion about State initiatives in particular with regard to alleged human rights abuses of Papuan civilians. The troubled relationship between Indonesia and its Papuan citizens could threaten the legitimacy of such initiatives and thus compromise their stable existence, because a national justice mechanism without legitimacy may not be able to effectively address those human

² Translated: Integrated Team for the Resolution of Human Rights Violations in Papua.

rights cases. This underscores the great significance of a legitimate justice mechanism within the framework of human rights protection and the relevance of this case study.

This paper is written in four parts. The first part provides background information on the relationship between Indonesia and Papuan civil society. Part two provides a brief overview of the literature of the research, and introduces the Team. Part three identifies four main indicators of legitimacy that, according to the sample group, have not been (sufficiently) taken into account and thus constitute a lack of legitimacy. Finally, part four a conclusion about the legitimacy of a State-appointed justice mechanism for the resolution of alleged cases of human rights abuse against Papuan civilians.

(West) Papua, the easternmost province of Indonesia, has been the site of a deep-rooted conflict for over 50 years. In 1969, the region fell under control of the Indonesian Republic under controversial circumstances by international agreement ('The Act of Free Choice'). Instantly, the absorption of Papua into the Indonesian Republic caused outrage among Papuan civil society. Ever since, indigenous Papuan people have been subject to severe and large-scale human rights violations, committed by Indonesian security forces (Capriati, 2016, p. 15). Many of them, either outspoken opponents of Indonesian authority over the region or ordinary Papuan civilians, have been sent to prison, killed under dubious circumstances or sought refuge in other countries. After the fall of the military regime in 1998, the Indonesian government established several accountability mechanisms for the victims of, at times gross, human rights abuses in the whole of Indonesia, *inter alia* a Human Rights Court in 2000. However, violations of indigenous Papuan civilians continued to take place under the newly installed, supposedly democratic regime. Initiatives of the Indonesian State to address the many unresolved human rights cases of Papua have largely failed and thus did not lead to a shift towards stability and peace in the region. Even today, human rights abuses against innocent Papuan civilians continue to be reported by various international human rights organizations (Amnesty International, 2018; The Alliance of Independent Journalists et al., 2014, p. 1). Consequently, the state of impunity of suspected perpetrators remains and

insurgency continues to be commonplace in this remote region of Indonesia.

The objective of this research is to identify the potential challenges to the legitimacy of a State-appointed justice mechanism, aimed at resolving alleged cases of human rights abuses by Indonesian security personnel against Papuan civilians. For this purpose, the article discusses the key indicators that constitute legitimacy in respect of the Team, according to a sample group of informed indigenous Papuan people. Based on these indicators, the article discusses whether the Team's representation by local civil society actors leads to support for this mechanism; that is, whether this particular element positively impacts the Team's legitimacy. To do so it is necessary to elaborate on the question whether the position of the State as initiator of this justice mechanism affects the Team's legitimacy and to explain how a lack of legitimacy can influence the effectiveness of a justice mechanism. By achieving this the research can provide a preliminary answer to the question whether it is conceivable that this Team of local civil society actors appointed by the State can work independently on human rights violations cases, and whether they gain legitimacy among Papuan civil society.

Methodology

The research adopts a grounded theory approach towards the concept of legitimacy. The understanding of legitimacy is not guided and directed by literature but instead it takes the analysis of data as a starting point from which a theory can be constructed (Creswell, 2014, p. 62). Based on this approach, the concept of legitimacy is not understood as objective and measurable, but as a subjective phenomenon that is fluid and contingent to context, such as viewpoint, history and cultural aspects. Applied to the research topic, the term 'legitimacy' and its indicators are defined as understood by informed indigenous Papuan people and as deemed most relevant by them in relation to the Team.

The research scrutinizes perceptions of an informed sample group of 9 Papuan indigenous individuals who were born and raised in different parts of Papua.³ They are male

³ Sorong, Tembagapura, Mapenduma, Megapura, Wamena and Jayapura.

(56%) and female (44%) and are an average age of 26.5 years old. All interviews were done in confidence and their identities will remain anonymous due to the sensitivity of this issue. For that reason there will be no identifying features attributed to their quotes in this research. The research aims to obtain an understanding of legitimacy from a moderate viewpoint. Extreme views are predictable and likely to be found within activists or pro-independence groups on the one hand and military or police personnel on the other hand. For this reason, a precondition for the selection of individual respondents has been made. The respondents were screened on the basis of their 'objectified' neutral position in Papuan society which means, in short, that they are not members of an activist group or civil servants. All interviews have been conducted in a confidential and safe space, respecting full anonymity of the respondents. Respondents have been selected based on convenience sampling, which is a suitable method for in-depth interviews, analysing the experiences of people and providing an insight about a phenomenon in general (Bernhard 2011, p.147).

Open questions focused on exploring whether the authority of this Team is acknowledged as rightful by the respondents, which components are the most valued, and examining perceptions on different components of this mechanism such as an assessment of the presumed objectives of solving human rights issues and moving towards peace in Papua. The obtained data is triangulated with expert opinions from 5 local Papuan civil society organizations ("CSO experts") that are working in the field of socio-economic development and/or human rights violations against Papuan civilians. These CSO experts play a significant role in the research, as they represent a formal source of information, with insider's knowledge on the problems Papuan civil society is facing in the pursuit of justice for past human rights violations. Also, the findings are scrutinized by way of online documentary research, among others into renowned newspapers from around the date of the Team's foundation until one year after.⁴ These sources altogether provide a comprehensive reflection of the state of legitimacy of this State-appointed justice mechanism.

⁴ Approximately from April 2016 until April 2017.

Literature review

On legitimacy

Scholars usually differentiate between two concepts of legitimacy: normative and empirical legitimacy. A researcher assesses normative legitimacy when she/he defines under which conditions an authority can be considered 'legitimate'. However, the starting point of this research is not a set of standards for assessing legitimate power. The starting point is whether power is legitimate from the point of view of the people governed. This corresponds with the empirical concept of legitimacy which, following Weber's approach, makes research as independent as possible from the researcher's own views and values (Beetham, 2016; Weigand, 2015, p. 9). This concept views power as legitimate if it is acknowledged as rightful by those involved in a given power relation, even if it does not meet standards which the researcher would personally endorse (Beetham, 2013; Weigand 2015, p. 9) and thus avoids making personal assumptions about what legitimacy entails. Legitimacy is considered a subjective concept, which is drawn and shaped by the governed people themselves: Power is, or is not, legitimate for the reasons they say it is. This perspective fits within the grounded theory approach, which is the starting point of the research and it introduces a new method of assessing the legitimacy of a State-appointed justice mechanism among Papuan civil society, since no similar study into the empirical legitimacy of an Indonesian justice mechanism has previously been done.

On Indonesia's governance

The roots of the troubled relationship between Indonesia and its Papuan community date about 50 years back to a controversy about the absorption of Papua by Indonesia. Only after political reforms in 1998, the State made some tangible political moves towards easing the conflict and bridging the gap between the Papuan people and State institutions. Although a democratization process took place on a local level (Pratikno & Kurniawan, 2010, p. 119), critics say that the transition to democracy has stagnated and that corruption and cronyism persist in Indonesian politics (Savirani & Tornquist, 2015, p. 5). In effect, the transition to

democracy would be merely a shift from dictatorial to opportunist rule (Savirani & Tornquist, 2015, p. 8). Particularly on a local level, political space and opportunities would be increasingly dominated by elites and oligarchic groups while, at the same time, under-represented groups are left politically marginalized (Pratikno & Kurniawan, 2010, p. 127-128). It has been stated that the military still has political powers on a local level in Papua (MacLeod, 2010), and the 2001-established Special Autonomy Law for Papua (Law No. 21/2001, or “*Otsus*”), that would grant more autonomy and funds to the Papuan local governments and to create special political bodies for indigenous Papuans, involved a low degree of Papuan leaders in the drafting process. The implementation of *Otsus* appeared problematic (Widjojo, 2010, p. 22) and provisions in *Otsus*, i.e. the instalment of a local Human Rights Court and a Commission for Truth and Reconciliation in Papua, have not been executed. Furthermore, Indonesia changed the name and divided the territory of Papua several times without prior consultation between 2002 and 2007, despite strong resistance of Papuan civilians. The Papuan people perceived the division of the province to be serving the objective of undermining Papuan efforts to unite behind a common goal of self-determination (Human Rights Watch, 2007, p. 14).

An effect of Indonesia’s flawed governance initiatives is that these ‘provoke’ Papuans to stand up and object to their negative consequences, which misleadingly stigmatizes Papuan people. There is a strong desire for young Papuan voices to be heard and to be taken serious on a global level. In the words of a young Papuan individual interviewed for this research:

“If you go back, tell them we are changing now. We’re still learning, but we are trying to develop ourselves. We are not anymore what they think: always in a conflict and underdeveloped.”

The research may thus not only contribute to a discussion about perceptions towards recent State initiatives to combat human rights abuses against Papuans, but also, due to its empirical, bottom-up perspective, about perceptions towards indigenous Papuan civilians themselves.

On the Team

The Team was established around April 2016 by the then Coordinating Minister of Political, Legal and Security Affairs⁵ of the Indonesian government and was given a mandate for only 7 months, from 25 March 2016 until 25 October 2016. Its objective was to resolve, by the end of 2016, a dozen alleged cases of human rights violations which occurred between 1996 and 2014 (The Jakarta Post, 2016; Utama, 2016). The Team would consist of local community representatives and operate independent from State institutions (UPR Indonesia, 2017). Initially, a group of 8 civil society actors of Papua, including the National Human Rights Commission (“NHRC Papua”), was appointed to work independently on investigating alleged violations and collect data for the Attorney General in order to advance legal proceedings before a national Human Rights Court (UPR Indonesia, 2017; The Jakarta Post, 2016; personal communication CSO, 2017). The Team aims to provide a tool for establishing accountability of suspected perpetrators of human rights abuses against Papuan civilians. In creating this justice mechanism, the GOI appears to make a positive move towards serving the need of Papuan civil society for justice, which bridges the gap between the State and Papuan civil society. However, the Team has not been able to bring about any progress in these cases until date. The following Section discusses and analyses the key indicators of legitimacy of this justice mechanism based on findings from the thesis research.

Key indicators of legitimacy

The research identified four main indicators of legitimacy related to this justice mechanism. The findings revealed that (1) transparency, (2) the (lawful) scope and classification of cases, (3) sound representation and (4) the acknowledgement of victims’ needs define the Team’s legitimacy among the sample group of indigenous Papuan civilians. The perceived flaws in these areas each constituted separate legitimacy problems of the Team. However, these findings appeared to not entirely stand alone. The research exposed the impact of an

⁵ Former military General Mr. Luhut Binsar Panjaitan.

overarching legitimacy problem, which is that this justice mechanism is controlled and used by the GOI as a political instrument. This will become clear in the following sections.

Transparency

The research showed that all respondents were familiar with the Team due to its public appearance in the media and/or the involvement of certain well-known local Papuan representatives. However, the majority of respondents claimed that the Team, after its launch, gradually disappeared from the media. Nobody knew exactly who and how many members are involved. Consequently, the Team's presence and activities were perceived by all respondents as vague, and its visibility is largely deemed insufficient. Respondents experienced poor access to information with regard to the identity of Team members, its activities and progress (in particular after its mandate ended on 25 October 2016) and accessibility (the Team does not have a physical office, nor phone number). The perceived lack of activities and/or results led to less support, and aroused suspicions with the respondents that the Team may not be truly dedicated to resolving past human rights abuses.

The Team's perceived non-transparency takes away from respondents the opportunity to gain knowledge about the Team, or to measure the Team's performance. A respondent for this research notes:

"We, the Papuans, don't know. It was so closed, not everyone knows about the Team. If they would be more open, everyone could have access to see this Team, reports about what they have done, then maybe it could get support from the Papuan society. But I doubt the support of the Papuan community."

Ironically, this left them unable to hold the Team accountable for its efforts to establish accountability for human rights abuses. Moreover, respondents had been unable to engage with the Team, because they had no access to it. This appeared important to a majority of respondents, particularly those who have been victimized themselves. A respondent notes:

"I am a student. If something happens to people in my village and my people are not able to speak loudly, I do have a chance to speak. So, I really feel that, as a

Papuan, I am also important to be included in this Team or in any way to help solving cases.”

Another respondent adds:

“If or when it is an independent team, victims should also be part of this team.

Because we as victims can give recommendations about what victims need.”

The perceived non-transparency thus also led to lesser inclusiveness, whilst respondents generally exposed a desire to contribute to the resolution of human rights cases. The above-mentioned information gap raised scepticism among respondents towards the Team. It reduced their belief in the rightful authority of this justice mechanism, which is a clear legitimacy problem. Another harmful consequence of non-transparency is that it literally creates distance between respondents and the Team, hence between Papuan individuals and their own civil society actors, who are Team members.

CSO experts corroborated the perception of respondents. CSO experts even indicated that a lack of transparency had already existed in the early stage of the Team’s formation, when the intention to create a justice initiative was presented to local Papuan CSOs, which included a pre-selection of the to-be-resolved cases, by the Regional Papuan Police in the presence of military officers (that is, the alleged perpetrators of human rights abuses). Consequently, several key CSOs refrained from collaborating with this initiative. Reliable Indonesian news sources from the date of the Team’s establishment show uncertainties and contradictory information about the number of cases the Team will deal with, alongside a lack of clarity on its activities and the extension of its mandate after 25 October 2016. Evidently, the above data corresponds with the information gap as experienced by the respondents of this research.

In conclusion, transparency (and in line with this, inclusiveness) is a key indicator for legitimacy among respondents in respect of the Team, and the perceived lack thereof is substantiated by CSO experts and documentary research. This constitutes a legitimacy problem, as it raised scepticism among respondents towards the Team, and literally creates a gap between respondents and their own civil society actors. An explanation that could be

deduced from the above findings is that for the legitimacy of this State-appointed human rights team of civil society actors, it is important to make this initiative participatory by, at the very least, being accessible and providing sufficient detailed information to ordinary Papuan civilians.

Scope and classification of cases

The Team's 12 selected cases were those cases that generated international attention among numerous States and human rights organizations. These cases predominantly involve land rights of Papuan civilians, Papuans' expressions of the right to self-determination or independence, and the freedom of opinion and assembly in general. A majority of respondents have experienced violence by Indonesian security personnel,⁶ yet these cases are not included in the Team's selection and the reason why was unknown to them. The respondents did not agree with this limited selection of cases, since it implies that these have priority over other cases of human rights abuses against Papuan civilians. They argued that this does not do justice to those victims. The selected cases would be "the media cases" and thus their relevance would be based merely on their public exposure. Moreover, respondents indicated that out of the 12 selected cases, the Team classified several cases as "no human rights violation" within one month after their selection.

The Team's selection and classification of cases significantly affects the overall perception of respondents towards the Team. Without further explanation or consultation, the Team's limited scope of cases raised a high sense of injustice among respondents, which has negative consequences for the Team's legitimacy. The fact that the selected cases gained much publicity, further aroused their suspicion that State institutions have influenced the Team's selection of cases and reduces their belief in the rightful authority of this justice mechanism. As a respondent notes "the selection is not right. The government just pointed out the big 'main' human rights cases. I don't agree with this method." All CSO experts

⁶ Either as a victim, unintentional witness, or via direct family members or friends who were maltreated, disappeared or arbitrarily detained.

exposed a similar sense of injustice regarding the selection and classification of cases. As described above, local Papuan CSOs had not been consulted in advance about the pre-selection of cases, and suggestions for alternative or more cases had been rejected. Moreover, they added that there is no legal basis for the Team's authority to select and classify cases of State violence against Papuans as (gross or non-gross) human rights violations. A respondent adds:

“As an activist, we do not have the right to indicate a gross human rights violations case. We cannot make the distinction between ‘gross’ and normal human rights violations. *Komnas HAM* has the authority to decide on this.”

Allegedly, this had been an argument for some Team members to resign from the Team. It appears that the scope of activities of the Team indeed undermines Law No. 26/2000 on Human Rights Courts. Article 18 specifically attributes exclusive authority to *ad hoc* teams appointed by the National Human Rights Commission (“NHRC”) for conducting inquiries into alleged (gross) human rights violations. Consequently, this initiative also seems to be in violation of the rule-of-law-principle which prescribes that law should govern a nation, as opposed to being governed by decisions of individual government officials,⁷ and derogates to the legal certainty of the Indonesian people.

Further documentary research exposed that, within a month after the Team's foundation, four suspected cases of human rights abuse were simply discarded as “no human rights violation” in an early stage, and one failed case before the Human Rights Court was closed, because it supposedly provided sufficient remedy to claims of large-scale human rights violations committed by Indonesian security officials. Out of the remaining seven cases, two have been considered to be “no gross human rights violation” and two cases would have to be resolved through a “political decision” because they occurred in the nineties, before the Law on Human Rights Courts was adopted. It appeared that the 12 cases of alleged human rights violations by Indonesian security personnel have been brought down to three cases

⁷ In this case: A Decree of the Coordinating Minister of Political, Legal and Security Affairs, *Surat Keputusan Menkopolhukam RI Nomor 40 Tahun 2016*.

within nearly one month, and only those three cases were classified as gross human rights violation and as such dealt with by the Team. Two of the remaining cases covered by the Team were already identified in 2004 by the NHRC as ‘gross’ human rights violations, eligible for legal proceedings before the Human Rights Court (International Center for Transitional Justice [ICTJ] & KontraS, 2011, p. 40). However, those cases⁸ had been in a deadlock between the NHRC and the Attorney General for over a decade, because of alleged insufficient evidence (Capriati, 2016, p. 23). The Team was supposed to ‘fill the gap’ by inquiring and collecting the missing data for the Attorney General in order to push forward the proceedings at the Human Rights Court (personal communication, 2017). The third remaining case⁹ was already in the process of investigation by the NHRC Papua before the Team was installed. The *ad hoc* team that was appointed by NHRC Papua was still working on this case in June 2017. Thus, the Team seems to have operated next to the NHRC’s *ad hoc* team on the same case. Until now, the Team’s interference in all three cases, which were already identified and investigated by the NHRC, has failed to bring about any progress. However, it is undeniable that the Team (or arguably, other actors) has successfully discarded at least 7 out of *its own* selection of 12 alleged cases of human rights violations. A former Team member explained in confidence that:

“The reason why the GOI commits to solve these 11 cases is to stop the Papuans who are living outside of Indonesia to ask for freedom. These are the cases that are used by the Papuan freedom movement as the main issues which they can use to get international attention for what happens in Papua.” (personal communication, June 2017).

⁸ These cases concern the use of excessive violence by military and *Brimob* officials against Papuan civilians over land rights conflicts in Wasior in 2001 and in Wamena (Jayawijaya) in 2003. Military and *Brimob* officials retaliated the attacks of groups of individuals on 2 logging companies in Wasior and a military base in Wamena by exercising large scale arbitrary killings and torture of civilians, arrests, burning down houses and displacing thousands from their villages (Capriati, 2016, p. 17; Amnesty International, 2011, p. 5).

⁹ This case involved the shooting of security forces after the severe beating up of a 12-year old boy in Paniai in 2014, which caused outrage among his community, and resulted in the death of 4 more children. Allegedly, the identity of these officers is widely known, but none of them have been prosecuted until today (personal communication CSO, June 2017).

This statement reveals that the selection of human rights cases is indeed illegitimate, because these were selected from a political perspective instead of a human rights/ community oriented perspective.

In conclusion, not only does the Team lack legitimacy because of its perceived unjust scope of cases of human rights abuses, but the Team also lacks proper legal authority to take such decisions. Respondents' sense of injustice is thus corroborated by expert views. Accordingly, for the Team's credibility, and consequent legitimacy it is important that its working methods are transparent and in accordance with the applicable laws. However, documentary research substantiates the presence of a more fundamental legitimacy problem, which is the State influence on the Team's scope of cases. Among others, the international exposure of the 12 cases and the quick dismissal of three quarters of these cases only appears to aid in upholding the state of impunity of suspected perpetrators of human rights abuses against Papuans. These findings strongly suggest an interest contrary to the Team's objective of resolving human rights violations, and as a former Team member revealed, the selection of cases indeed did stem from a political interest of the GOI in curbing Papuan independence sentiments. The scope of this State influence becomes more visible in the next Chapter about the Team's flawed representation.

Flawed representation

Originally, the Team consisted of eight civil society actors from Papua, including the NHRC Papua. The Team was formally announced at the Ministry's office in Jakarta on 18 May 2016 (personal communication CSOs, 2017; Utama, 2016). Respondents valued the Team's (known) individual Papuan civil society actors, yet in general they did not believe that the Team has independent powers from State institutions.¹⁰ Several respondents argued that Papuan police and military officials are in some way involved in its activities, and therefore this Team is biased by the interests of the actual perpetrators of human rights violations against Papuan civilians.

¹⁰ Quote respondent: "The head of the Team is Papuan ... (but) ... because he works for the government, he has to contradict with the opinion of people from Papua, so that he will not lose his job."

A respondent states:

“They will not hold perpetrators accountable. If I kill someone and I ask someone else to investigate the crime scene, I do not want that investigator to tell that I committed the crime. The people should think it wasn’t me.”

Similarly, another respondent adds “The perpetrators behind this will never adjudicate themselves; so they will never succeed.” Evidently, their interest would be to prevent being identified and convicted for human rights abuses. Respondents feared that the Team’s local representatives do not have sufficient authority to merely pursue the objective of human rights protection, but are subject to political interests that may deviate from this purported objective. A majority of respondents stated that the creation of the Team was a staged reaction to increasing international pressure, which suggests it has a conflict of interest.

This finding shows a need for a justice mechanism with clear representation, which operates strictly independent from State institutions, in order to gain legitimacy. The suspicion that political objectives may play a role in the pursuit of justice, is detrimental to the belief in the Team’s rightful authority to resolve Papuan cases of human rights violations. This perception may be well understood against a background of fear and suspicion towards the State, the large presence of the Indonesian army in Papua, and continuous reports of violations by security officials in Papua.¹¹ The perceived flawed representation also bears a risk of damaging the trusted relationship between Papuan civilians and their local civil society actors who are also Team members.

Remarkably, all CSO experts confirmed that perpetrators of human rights violations (army and police) are involved in the Team’s activities, and thus CSO experts substantiated its perceived political conflict of interest. Overall, CSO experts lacked trust in the neutral position of Indonesian institutions and their determination to solve human rights violations cases. They argued that the creation of the Team was a staged reaction to increasing international pressure. The Team’s actual objective would be to ‘campaign’ before the

¹¹ Undoubtedly, the above described transparency problem and unlawful selection of cases (Paragraph 3.1 and 3.2) also adds to the respondents’ critical viewpoint towards the Team’s representation.

international community; that is, promote that the Indonesian government is addressing human rights violations in Papua in order to reduce international attention, rather than to actually *solve* those cases. They pointed out two main reasons: (1) The fear of involvement of external parties as a consequence of the UNHRC Universal Periodic Review (“UPR”) of the human rights situation in Indonesia in 2017 and (2) the fear of international support for independence of Papua, after the United Liberation Movement for West-Papua (“ULMWP”) applied for membership of the Melanesian Spearhead Group (“MSG”) in February 2015.¹² Curbing international support for independence of Papua and excluding involvement of external parties would thus be the concealed political objective of this international campaign, embodied by a State-appointed justice mechanism that claims to establish accountability for human rights violations against Papuan civilians.

The above hypotheses are substantiated by documentary research, which revealed that the abovementioned events coincided in time with Indonesia’s propaganda on the establishment of this Team. An overview of several parallel events indicating that the Team has concealed political objectives is provided here. The ULMWP applied for membership of the MSG in February 2015, emphasizing the need for international support in respect of continuous human rights violations in Papua. Shortly after, Indonesian Ministers started lobbying with other MSG member countries against the ULMWP’s potential membership of the MSG (Jakarta Globe, 2015a).¹³ Nevertheless, in July 2015, the ULMWP was granted observer status as a representative of Melanesians living abroad. The State campaign continued on the very first official day of the Team’s installation on 18 May 2016, in the presence of three ambassadors of Pacific countries. The Coordinating Minister publicly stated that the reason they were invited was that “This is for them to tell the people outside that Indonesia is resolving the human rights cases in Papua honestly and comprehensively” (Utama, 2016). At

¹² The MSG is an international coalition that promotes economic growth in Melanesian countries. It forms a regional block with its own Trade Agreement. Until recent years, its members were Papua New Guinea (“PNG”), Solomon Islands, Vanuatu, the Kanak Socialist National Liberation Front and Fiji. Indonesia was granted observer status to the MSG in 2011.¹²

¹³ Allegedly, the GOI offered PNG \$20 million in financial assistance to support capacity building of MSG nations (*Jakarta Globe*, 2 March 2015).

the same time, public statements of Indonesian officials about the reason for creating this Team are inconsistent, varying from “to handle the shove of Papua independence” to “not having to do anything with the Papuan independence demand” (Affan, 2016; Utama, 2016). These statements raise serious concerns about the purported objective of the Team to resolve cases of human rights abuses against Papuan civilians. In the weeks that followed, several public events were organized by the GOI in the Pacific region to promote the Team’s resolution of alleged cases of human rights abuses against Papuans (Mambor, 2016; Sapiie, 2016; Tempo.co, 2016). Statements made by the Ministry of Foreign Affairs even directly links the creation of the Team to efforts to prevent ULMWP’s membership to the MSG, and thus confirms the political motive for establishing this justice mechanism (Antara News, 2016). On 14 July 2016, the MSG postponed ULMWP’s request due to uncertainty about membership criteria and guidelines (MSG Special Leaders’ Summit, 2016, Paragraph IV)¹⁴: the Team may have lost its relevance there. The above confirms a strong interest in preventing international recognition for the Papuan community, which is done by strategically creating goodwill among the MSG countries through the creation of a justice mechanism, represented by Papuans and aimed at resolving human rights abuses against Papuans.

In February 2017, Indonesia was due to report on its alleged cases of human rights abuses at the UPR. In its country report, the GOI mentions that a team was established in 2016 to work independently to address alleged human rights violations and that it consists of different community representatives, including members of NHRI, human rights activists, legal experts, and representatives of Papua (UPR Indonesia, 2017). Yet, at the time, the Team was barely functional: at least 3 Team members (including the NHRC Papua) had resigned from the Team within a few months of its creation, and the new Coordinating Minister, former General Mr. Wiranto, who is potentially one suspect of gross human rights violations, had been unwilling to extend the Team’s mandate after 25 October 2016. It appears that the GOI used the existence of the Team as a shield during the UPR to combat criticism towards impunity of

¹⁴ No further decision has been taken since, and the ULMWP seems to have given up its strive for full membership of the MSG.

crimes in Papua, even though the Team's actual existence, independence and effectiveness were highly questionable: (1) the Team had fallen apart because several members withdrew within weeks, (2) the Team had ceased to exist when its mandate ended in October 2016, and was renewed or established again only in late January 2017, with a different composition of members, and (3) the Team's activities had not led to any positive outcome in the selected human rights cases within the given timeframe, thus its effectiveness had been zero. To summarize: The findings strongly indicate that this justice mechanism indeed has been used as a tool for window-dressing on an international stage, in order to avoid interference of the international community in Indonesia's human rights affairs and out of fear of international recognition of the Papuan people. This is more or less confirmed by a former Team member, who stated that "These cases should be solved to help reduce the internationalization of Papuan issues" and: "The reason why the GOI commits to solve these cases, is to stop the Papuans who are living outside of Indonesia to ask for freedom." Under these circumstances, it is not surprising that the findings reveal a significant lack of trust in this Team among respondents.

The conclusion which can be drawn from the above are, firstly, the Team's flawed representation leads to an incompatible conflict of interest that also affects its effectiveness. Respondents do share positive views towards certain Papuan representatives, thus there appears to be some sort of leeway for a justice mechanism that makes use of local civil society actors to gain legitimacy, but it seems essential that its actors need to be clearly operating independent from State institutions, which is evidently not the case with regard to this particular justice mechanism. This has been largely validated by CSO expert opinions and documentary research that demonstrates that State actors brings along interests and objectives that deviate from the Team's purported objective to resolve alleged human rights violations against Papuans. This legitimacy problem may also damage the relationship between Papuan civilians and their own civil society actors.

Acknowledgement of the victims' needs

This Section discusses a legitimacy problem that may seem redundant after establishing that the Team has a political conflict of interest. However, the Team's perceived insufficient victim-orientated approach is an important independent legitimacy problem that deserves attention in the light of the question about legitimacy of a justice mechanism in general, and the circumstances that can influence the effectiveness of a justice mechanism.

According to the respondents, the Team's method for the collection of data does not acknowledge the victims' needs, and fails to acknowledge the importance of present-day safety threats in public life in Papua. This forms a potential challenge to the Team's legitimacy and could also be of significance for its absence of effectiveness in resolving human rights cases. Several respondents believed that the Team did not approach the victims, and argued that the Team's mechanisms are flawed, because these do not include the victims. A respondent says "the target is the victims. But they are going to the CSOs. Not focusing on the victims. ... they just went to the CSOs and asked for data." Other respondents expressed that the victims would be unwilling to cooperate or speak openly about the human rights abuses out of suspicion and fear of repercussions. A respondent notes:

"Wiranto is involved in those cases. So there is no trust, and then they will not give a proper answer to the Team. ... Going to them one by one separately makes them scared. The fear being killed, most of victims are still scared because they have had trauma. ... Testimonies may not be reliable."

The sense of safety was thus a big concern. This viewpoint reiterates the mistrust towards the Team as a State influenced mechanism, but also a fear of State officials in general. Also, a large majority of respondents believed that it is pivotal that perpetrators publicly acknowledge their human rights violations in order for Papuan society to be able to move forward.

Attention for the victims' positions has shown to be an important condition for the belief in the Team's rightful authority, and the perceived lack thereof constitutes another potential challenge to the Team's legitimacy among Papuan civil society. The perception that the Team does not centralize the victims' need to be heard, and to be heard in a safe

environment, can cause a serious legitimacy problem for any justice mechanism. Disregarding victims' positions may hinder the Team's effectiveness, since victims are either unable (because they were not approached), or do not dare to share their complete testimonies with the Team members (out of fear for retaliation).¹⁵

CSO experts stated that the victims have been approached by the Team members for the purpose of data collection; that is, to prepare evidence for the proceedings before the Human Rights Court. They suggested that the rejection by the Papuan community of the Team's data collection approach instead of a victim-orientated approach also appears driven by the fact that suspected perpetrators are known, but have not been caught yet, regardless of whether they are involved in the Team. Therefore, even without State influence, the selected approach still insufficiently caters to the victims' needs. Obviously, the fact that the suspected perpetrators are still present in public life makes the position of the victims extremely vulnerable, taken into account that human rights violations by security officials continue to take place in Papua.

An important aspect of this legitimacy problem is the general suspicion and fear of repercussions among the Papuan community in the reality of daily life. The large presence of security officials and continuous reports of human rights violations have already been briefly addressed in the first part of this paper. The perceptions of respondents about present-day safety circumstances are substantiated by the researcher's own observation during her stay in Jayapura, in 2017. Violence, provocations and intimidation by Indonesian security officials were closely observed in nearly two months' time. On Ascension Day, military officials burned religious Christian books in a public space in front of a military base. This caused outrage among Papuan people, who are predominantly Christian, resulting in a mass protest. Prior to the above incident, a disturbing series of killings took place which shook up daily life. Seven people were killed in the streets by unknown perpetrators within approximately 5 days. Their mutilated bodies were left out in the open, in the streets, and for several days, the Papuan police force did not release any statement on these killings, which resulted in a noticeable

¹⁵ This would also be the case if there would be no State involvement with the Team.

increase of fear and vigilance in the Papuan community. Papuans civilians who dared to share their thoughts, suspected that the killings were staged by the GOI in an attempt to create chaos among Papuan civil society. This suspicion was confirmed by participants of a meeting of local CSO network. Unidentified persons, presumably intelligence agents, monitored the meeting and followed the researcher afterwards. Shortly after, a police official rang the telephone of one of the civil society actors present at the meeting, without having any message to convey (personal communication, 2017). Two CSO experts confirmed that this type of intimidation towards civil society actors who are engaged in human rights in Papua is not unusual (personal communication CSO, 2017). This chronology of destabilizing events that followed-up on each other in a very short period of time reveal that security officials in and around Jayapura more or less fuel a fearful and suspicious atmosphere among Papuan civil society. Under such conditions, even in the absence of State influence within a justice mechanism, it is understandable that victims refuse to speak openly about human rights abuses. Their safety is not guaranteed.

In summary, the discrepancy between the identified needs of victims and the perceived approach of the Team reveals that an insufficient victim-orientated method reduces the belief in the Team's rightful authority. This results in a legitimacy problem that could have large consequences for the functioning of this, and perhaps any type of, justice mechanism. Moreover, disregarding the importance of present-day safety threats in public life in Papua form a risk for the effective resolution of cases of human rights violations. Therefore, a plausible theory could be that in order for a State-appointed justice mechanism to gain legitimacy among Papuan civil society, it is necessary that it centralizes the victims' needs, implying that it at the least addresses the fundamental need for a safe space for victims to share their testimonies. With regard to Indonesia, it is questionable whether it is possible to create a safe space for victims when Papuans live in a daily reality of control, intimidation, provocations and continuous human rights violations by State security officials.

Lessons Learnt

The research aimed to establish the potential challenges to the legitimacy of the Team among Papuan civil society. The four main indicators of legitimacy that comprise separate potential challenges to the Team's legitimacy are its perceived lack of transparency (and consequent lack of inclusion), its unjust selection and classification of cases, its flawed representation and insufficient attention for the victims' needs. These separate legitimacy problems together contribute to the overall perception of concealed influence of State actors, who are perceived to have a political interest and objectives that deviate from the Team's purported objective of human rights protection. Based on the above findings, this justice mechanism evidently is not acknowledged as rightful authority by the respondents and consequently, does not have legitimacy.

The research shows that the position of the State as initiator of this justice mechanism significantly influences the Team's legitimacy, as the respondents believe that the Team was established because of a political agenda. This suspicion is noticeable in all the separate indicators of legitimacy. The legitimacy problem of the Team's representation revealed that the presence of Papuan civil society actors as Team members does not lead to increasing support for the Team among respondents. Respondents do not believe that the Papuan Team members can operate independent from State actors, and respondents presume that these actors do not genuinely or not exclusively aim to resolve human rights abuses in Papua. Therefore, the local Papuan representation has little positive impact on the legitimacy of this justice mechanism, in spite of the fact that the known Papuan Team members *are* positively valued and supported by respondents on an individual level.

The consequence of the lack of legitimacy is that the result of the Team's activities is counter-effective: In essence, this initiative is purportedly created to serve the Papuan civil society in dealing with past human rights violations and creating a more peaceful environment, which would enable the GOI and Papuan civil society to move forward together in harmony. However, the lack of legitimacy creates increasing distrust among respondents towards the GOI, causing the opposite effect; instead there is further alienation . All four identified potential

challenges to the legitimacy of the Team bear a risk of (further) division between the GOI and the Papuan civil society. This negatively influences the effectiveness of a justice mechanism, resulting in an outcome contrary to the purported objective of bridging a gap between State and victims or Papuan civil society. An alarming further consequence may also be a division between the Papuan community's own civil society actors. Also, this justice mechanism will not be able to achieve its purported objectives of data collection if victims are reluctant to cooperate with the Team due to safety reasons. Consequently, the lack of legitimacy is detrimental to the Team's effectiveness.

Is it conceivable that if a State-appointed team of civil society actors ever gains legitimacy among Papuan society, would it genuinely work independently on alleged human rights violations cases? Although in theory, a State-appointed justice mechanism could be legitimate if certain conditions are met, the challenge of this particular mechanism is that it appears intrinsically counter-effective as it is influenced by political interests that deviate from the purported objective of solving human rights cases. However, the findings of this research provide some indications as a starting point for the legitimacy of a State-appointed justice mechanism.

Inclusion plays a crucial role for legitimacy. Respondents showed great willingness to participate in the resolution of human rights abuses, and also pointed out the need for a victim-orientated approach. The need for inclusion indicates that there *is* leeway for acknowledgement of the rightful authority of a State-appointed team, and the phenomenon of a State-appointed human rights team is not completely rejected. Such justice mechanism may have legitimacy, provided that it has reliable representatives and operates independent from State institutions, while taking the inclusion of the Papuan community and needs of victims as a leading principle of its policy. However, one of these needs is a safe environment, which is problematic in the daily reality of intimidation, provocations and human rights violations by security officials.

The reality is that the GOI maintains this controlled situation in Papua out of fear for Papuan independence sentiments, and that suspected perpetrators of human rights violations

have high-ranked positions in the State institutions. Presumably, the political dynamics and actual safety circumstances in public life need to change, before any State-appointed justice mechanism could be considered legitimate among Papuan civil society. The present-day poor safety conditions in Papua and the current representation in Indonesian politics are likely to render this justice mechanism intrinsically ineffective, unless political changes are made and the safety of Papuan indigenous people is guaranteed. Until then, the path towards justice for the victims of human rights violations in Papua through State-appointed justice mechanisms is blocked.

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