

On behalf of the people and organisations of West New Guinea
Endorsed by signatories on subsequent pages
XX August 2012

OPEN LETTER – CONFIDENTIAL SIGNATORIES

To the President and members of the
United Nations Trusteeship Council and for the information of the **Security Council**

Dear Mr President and members,

This is a petition⁽¹⁾ in regards to the *United Nations Charter articles 76 and 77* asking you as the **United Nations Trusteeship Council**⁽²⁾ to undertake the mission of *United Nations charter articles 87 and 88*, and to give effect to *United Nations General Assembly resolution 171 (II)* by now asking the **International Court of Justice (ICJ)** for an Advisory Opinion to fairly adjudicate the status of West New Guinea. We believe the legal reality is that ours is a Trust territory.

In 1962 the Netherlands and Indonesia knowingly signed an American drafted *agreement*⁽³⁾ which entrusted the administration of our Non-Self-Governing territory of West New Guinea to the United Nations. As required by *United Nations charter article 79* it was agreed to by the States concerned, and as required by *United Nations charter article 85* it was authorised by the General Assembly in *United Nations General Assembly resolution 1752 (XVII)*.

The *agreement* in accord with *United Nations charter article 81* detailed terms under which our territory is being administrated and designated the two authorities which were and have been administering our affairs, those authorities being the United Nations Temporary Executive Authority (UNTEA) and the Republic of Indonesia.

It is manifest that the *agreement* between the Netherlands, the United Nations, and the Republic of Indonesia is trusteeship agreement as intended in *United Nations charter articles 85, 81, 79, 77 (part 1 clause c), and 75* for a non-strategic area. Consistent with this, the agreement details obligations towards a fourth but involuntary party, the people of West New Guinea.

When the United Nations chose to exercise article 12⁽⁴⁾ of the *agreement*, only the authority of the United Nations ceased; unlike article 22 part 4, neither the guarantee in the *agreement* article 22 part 1 by the United Nations and Indonesia, nor article 77 part 1 of the *United Nations charter* were extinguished. The trusteeship system lost authority under *United Nations charter article 77 part 2* but remains obligated under the *agreement* and *United Nations charter articles 77 part 1, 76, and 73* to ensure the administration respects our human rights of self-determination and free speech.

Article 78 of the *United Nations charter* states the grounds on which the Trusteeship System ceases to apply to a territory. We note that successful implementation of the self-determination protocol detailed in *United Nations General Assembly resolution 1541 (XV)* should also satisfy the requirement of article 78. West New Guinea has not yet enjoyed either of these considerations.

Article 79 of the *United Nations charter* does provide for a territory to be removed from authority of the Trusteeship System as was done with West New Guinea, but article 79 does not extinguish the applicability of the other functions of the Trusteeship System under which we request the United Nations Trusteeship Council to assist the United Nations by implementing *United Nations charter articles 87 and 88*.

It appears that the Republic of Indonesia is administering the Non-Self-Governing⁽⁵⁾ territory of West New Guinea on behalf of the United Nations until such time as the United Nations is able to fulfil the self-determination term, article 21, of the *agreement*⁽³⁾ which the United Nations in 1969 was unable to do in *United Nations General Assembly resolution 2504 (XXIV)*.

We note that the ICJ was able to assist the world community in 1995 with advice regarding the Portuguese colony in East Timor⁽⁶⁾. We note that the General Assembly has recommended⁽⁷⁾ that the Trusteeship Council “review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled”. We are confident that an ICJ advisory opinion regarding West New Guinea would assist the Trusteeship Council and the fulfilment of *United Nations General Assembly resolutions 1514 (XV)* and *1541 (XV)* in support of *United Nations charter article 76*.

Ours is a beautiful and rich land which is being plundered by foreign corporations. We fear the gaoling and often shooting of our citizens who speak of self-determination or raise our nation's flag, is political. We fear for our and our children's lives, cultures, and homelands.

Sincerely and in earnest hope that the United Nations Trusteeship Council without delay shall request an International Court of Justice Advisory Opinion on this matter ,

Notes for the Media:

Trusteeship is addressed in chapters 12 and 13 of the United Nations charter. Trusteeship agreements are introduced in article 75 and the term “trusteeship agreement” is used in articles 76, 77, 80, 81, and 87. In addition, “trusteeship agreements” which identify areas as strategic are addressed in articles 82, 83, and 85; West New Guinea was not identified as having strategic areas.

An on-line resource kit has been prepared at <http://colonywestpapua.info>

End notes :

⁽¹⁾ Petitions may be considered by the Trusteeship Council under article 87 b of the *UN charter*. Petitions have been accepted from NGOs (*Trusteeship Council resolution 365 (IX)*), groups of residents (*Trusteeship Council resolution 360 (IX)*), and individuals (*Trusteeship Council resolution 369 (IX)*).

⁽²⁾ Under chapter 13 of the United Nations charter the “Trusteeship Council” is to assist where suitable the operation of the Trusteeship System as defined in chapter 12 of the charter. The Trusteeship Council has been conducting pro forma meetings since 1994 when it completed the work it was aware of. The current President and Deputy President are the French and United Kingdom representatives. Each of the Security Council members has a seat on the Trusteeship Council.

⁽³⁾ “Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian)”

⁽⁴⁾ Article XII “The United Nations Administrator will have discretion to transfer all or part of the administration to Indonesia at any time after the first phase of the UNTEA administration. The UNTEA's authority will cease at the moment of transfer of full administrative control to Indonesia.”

⁽⁵⁾ “Non-Self-Governing territory” are referred to in *United Nations charter* articles , and *United Nations General Assembly resolutions 1514 (XV)* and *1541 (XV)*.

⁽⁶⁾ Opinion of the International Court of Justice rendered in the case of *Portugal v Australia*, a case in which Portugal asserted argument that East Timor was a Non-self-governing territory.

⁽⁷⁾ *United Nations General Assembly resolution 171 (II)*.