



## Asian Federation Against Involuntary Disappearances

Rms. 310-311 Philippine Social Science Center Building

Commonwealth Avenue, Diliman, 1103 Quezon City Philippines

Telefax: 00-632-4546759 Telephone Number 00-632-9274594 Mobile 00-63-9177924058

Email [afad@surfshop.net.ph](mailto:afad@surfshop.net.ph) website [www.afad-online.org](http://www.afad-online.org)

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Re: Muchdi's Release, Impunity Prevails in Indonesia  
From: Asian Federation Against Involuntary Disappearances  
(AFAD)  
To: UN Working Group on Enforced or Involuntary  
Disappearance (UNWGEID)  
Cc: Special Rapporteur on Human Rights Defenders  
Date: January 2009

Munir Said Thalib (or simply Munir), former Chairperson of the Asian Federation Against Involuntary Disappearances, was poisoned with arsenic and was pronounced dead aboard Garuda Airlines 974 on 7 September 2004. Charged of plotting and ordering the killing of Munir, Retired Major General Muchdi Purwopranjono, popularly known as Muchdi in Indonesia, was arrested on 19 June 2008. The proceedings at the District Court in South Jakarta started in August 2008 and the verdict was handed down on 31 December 2008. The domestic and international human rights community applauded the Indonesian government for Muchdi's arrest. Before him, no Indonesian general has been successfully prosecuted for a human rights violation. Muchdi's case could have been a breakthrough in the fight against impunity in Indonesia.

Munir was an internationally-known human rights defender and to reiterate, the current AFAD Chairperson at the time of his death. He applied and won a scholarship from the Utrecht University in the Netherlands in an effort to pursue a master's degree in international relations and human rights. He was to leave behind in Indonesia his wife Suciwati, and two young children, Alif Allende, then five and Diva Suukyi then one year old. On 6 September 2004, Munir took Garuda Airlines Flight 974 from Jakarta to Amsterdam with a brief stopover in Singapore. He never reached his destination. He was poisoned with arsenic and was pronounced dead approximately two hours before the plane landed in Schipol airport on 7 September 2004.

Muchdi is a former deputy of the State Intelligence Agency, the *Badan Intelijen Negara* or *BIN* and the former head of *Kopassus*, the army's Special Forces. He

was implicated of human rights violations, including the disappearance of students calling for the ouster of Suharto in 1998. Muchdi's military career ended in 1998 after a military court found *Kopassus* soldiers guilty of abducting students, 13 of whom have never been found. Munir had led an investigation into the abductions when he was chairperson of the Commission on Missing Persons and Victims of Violence (*KontraS*). The prosecution looked into the possibility that Munir may have been murdered by Muchdi in revenge for his role in presenting evidence that led to the latter's dismissal. Many believe though that the "revenge issue" is an effort to cover up the probable involvement of higher-ranking former and present leaders in the military particularly the intelligence units.

Prior to Muchdi's arrest, two men, Pollycarpus Budihari Priyanto, an off-duty Garuda pilot, and Indra Setiawan, a Garuda official, were convicted. As per Supreme Court decision on 25 January 2008, Pollycarpus was convicted of premeditated murder of Munir and was sentenced to 20 years imprisonment while Setiawan was sentenced to one year imprisonment for assisting Pollycarpus in the crime. Setiawan was released on 14 April 2008. During the prosecution of Pollycarpus' case, evidences linked him to the *BIN* particularly to Retired Major General Muchdi Purwopranjono. The primary evidence was at least 35 phone calls made through Pollycarpus' cellphone and landline to an office and the cellphone owned by Muchdi. The calls were made prior to and right after the murder of Munir.

### **The 31 December 2008 Verdict Warrants Protests**

Muchdi was freed from all charges and was released based on the verdict of the District Court in South Jakarta on 31 December 2008. Presiding Judge Suharto said that "the defendant is not legally nor certainly proven to have been involved in the killing of Munir..." The panel of judges argued that the State Prosecutor failed to substantiate its primary and secondary allegations that Muchdi had assisted Pollycarpus in the murder of Munir. At this point, AFAD believes that the main hindering factors are as follows:

1. **The judges deliberately ignored important documents.** On the virtue of Presidential Decision No.111/2004, the TPF or *Tim Pencari Fakta*, an independent investigation team, was formed for the case of Munir in December 2004. The TPF submitted its report to the President of the

Republic, Mr. Susilo Bambang Yudhoyono, in June 2005. According to *KontraS* and other human rights organizations which were present during the court proceedings, the TPF report strongly suggests the involvement of senior executives of the Garuda airlines and *BIN* high-level officials in the death of Munir. However, this report was not used during the court proceedings. The Solidarity Action Committee for *Munir* (KASUM), in its 1 January 2009 statement, cited "the judges had intentionally taken a side and only considered certain facts for the verdict."

2. **Lack of impartiality and independence on the part of Indonesia's judicial system.** The judges did not even probe into the changes of attitude and back-tracking of the witnesses. Muchdi's supporters appeared at each of the 22 hearings. Human Rights First cited in its 29 December 2008 press statement: "The Indonesian government has been under strong domestic and international pressure to successfully prosecute Munir's killers. In response, dozens of Muchdi's supporters appeared at each trial session in shirts marked with the slogan "Fight Foreign Intervention." These supporters, from a group called the Red and White Brigade (*Brigade Merah Putih*), were often joined by another group called Betawi Brotherhood Forum (*Forum Betawi Rempug*, or FBR), which was responsible for past violence against human rights defenders, including Munir himself. At some sessions of the trial, the groups yelled at prosecution witnesses and applauded defense witnesses. Such groups are often invited or hired to attend trials and demonstrations in an effort to influence the proceedings."
3. **The Yudhoyono government lacks the political will on the speedy and successful resolution of Munir's case by failing to provide an effective witness protection program.** With an effective witness protection program, the witnesses could have most probably stood by their statements up to the end. Some witnesses who previously gave detailed information retracted their sworn statements to the police while others claimed to have forgotten basic facts or simply did not appear in court. Most of these witnesses were former or current intelligence personnel and retired members of the military.

### **ISSUES RELATING TO THE RESPECT AND FULL IMPLEMENTATION OF THE 1992 DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

The whole procedure regarding Muchdi's indictment, in particular as concerns the hearing of witnesses and the consideration and evaluation of evidences, as well as the December 2008 verdict ordering Muchdi's release,

raise certain issues relating to the respect and full implementation by Indonesia of the 1992 Declaration.

As already mentioned, Munir was a prominent and internationally recognized human rights defender and his activity in the struggle against enforced disappearance was publicly known. His brutal murder represented a blow to the Indonesian civil society and to all people involved in human rights activities. The attack on Munir's life, apart from being a flagrant violation of his rights and those of his relatives, has been committed as a general threat against all those struggling against enforced disappearance, individually or as an association.

It is therefore, of the utmost importance that the circumstances surrounding Munir's death are thoroughly and impartially elucidated without any further delay and that all those responsible are judged by an impartial, independent and competent tribunal, and receive sanctions which take into consideration the gravity of their crimes. Impunity of this crime must be avoided by all means.

In particular, Art. 13, para. 3 of the 1992 Declaration establishes that "Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal". Further, Art. 13, para. 5 provides that: "Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished".

#### **FURTHER CONSIDERATIONS:**

The reported facts also violate certain provisions of other human rights instruments. In particular:

- Articles 2 (obligation to respect rights and to undertake positive measures and to an effective remedy), 6 (right to life, as concerns the procedural obligations of the State, namely its duty to investigate, judge and sanction those responsible for a deprivation of life) and 7 (prohibition of inhumane treatment as concerns the relatives of Munir); 14 (right to a fair trial) of the International Covenant on Civil and Political Rights (acceded by Indonesia on 23 February 2006);
- Articles 1 (right to strive for human rights); 5 (right to conduct human rights work and to form associations and NGOs); 9 (right to an effective remedy)

and to an impartial investigation); 12 (obligation to undertake all measures to protect from violence, threats and retaliation human rights defenders) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as "Declaration on Human Rights Defenders", approved on 9 December 1998 by General Assembly Resolution No. 53/144);

- Principles 1 (general obligations of States to take effective actions to combat impunity); 2 (the inalienable right to truth); 10 (guarantees for victims and witnesses testifying on their behalf); 19 (duties of States with regard to the administration of justice) of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity (doc. E/CN.4/2005/102/Add.1, 8 February 2005, recommended by the Commission on Human Rights Resolution 2005/81 of 21 April 2005).

Even if some of the above-mentioned instruments do not have a binding character, several of the principles that they affirm reproduce generally recognized customary international rules and, as such, acquire a binding nature.

In conclusion, we consider that the release of Gen. Muchdi amounts to a violation of the Indonesian government of its obligation to investigate the murder; take the appropriate measures in respect of all the perpetrators, ensuring that they are all prosecuted, tried and duly punished.

In the light of the above, we would kindly request the Working Group to:

1. Request information and clarification on these facts to the Indonesian government;
2. Exercise good offices to kindly call the attention of the Indonesian authorities to launch a full and impartial investigation into Munir's murder and bring all those responsible to justice;
3. Insist in the request to undertake a mission to Indonesia (formulated for the first time on 12 December 2006) and take such opportunity to further clarify the matter with Indonesian authorities, ensuring that all those

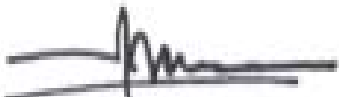
responsible for Munir's murder are tried by a competent, impartial and independent tribunal that respects all the guarantees of a fair trial;

4. Request to the Indonesian government to undertake all necessary measures to ensure that all involved in the investigation and judgment of those responsible for Munir's murder are duly protected against ill-treatment, intimidation or reprisal and that any form of interference during the procedures is appropriately punished;
5. Request to the Indonesian government that the final report of the TPF is made public in full and disseminated as widely as possible; and
6. Request to the Indonesian government to guarantee that all documents and archives which may contain useful information as to the elucidation of Munir's murder and the implication of Gen. Muchdi are duly preserved and access to them is facilitated in order to enable victims and their relatives to know the truth, to claim their rights and to obtain justice.

Meanwhile, the Solidarity Action Committee for Munir (*KASUM*) vows to use all legal means possible to put Muchdi back to trial. Among *KASUM*'s immediate action points are a series of meetings with President Susilo Bambang Yudhoyono, the Atty. General, the judicial commission, national police; briefing with the diplomatic community in Jakarta; reporting on the update of Munir's case to the special rapporteur for human rights defenders, and other UN bodies, including the United Nations Working Group on Enforced or Involuntary Disappearance.

Certainly, the verdict on Muchdi's release does not end the campaign for justice for Munir. On the contrary, this has fueled stronger protests and demands on the part of the domestic and international human rights community to re-open the case. To prove its efficiency, credibility, independence and impartiality, the Indonesian judicial system must ensure that no one is above the law. When this happens, the world can say that the Indonesia today has become different from the Indonesia under the Suharto dictatorship.

SIGNED BY:

A handwritten signature in black ink, appearing to be 'MugiYanto', written over two horizontal lines.

**MUGIYANTO**  
Chairperson

A handwritten signature in black ink, appearing to be 'Mary Aileen D. Bacalso', written in a cursive style.

**MARY AILEEN D. BACALSO**  
Secretary-General