

No. 283/SK-KontraS/IX/2009

Jakarta, 11 September 2009

The Honourable

Ms. Gabriela Carina Knaul de ALBUQUERQUE E SILVA

UN Special Rapporteur of the Human Rights Council on the Independence of Judges and Lawyers

c/o Office of the United Nations High Commissioner for Human Rights

United Nations Office at Geneva

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Fax: +41 22 917 9006

e-mail: SRindependenceJL@ohchr.org

cc: mfernandez@ohchr.org, hrwg@hrwg.org

Your Excellency,

Warm greetings from the Commission for the “Disappeared” and Victims of Violence (KontraS) in Jakarta, Indonesia.

With this letter, we would like to request special attention from UN Special Rapporteur Ms. Gabriela Carina Knaul de Albuquerque e Silva, with regard to Indonesia’s human rights court proceedings that have led to lack of justice for victims of human rights violations in Indonesia.

We represent the 14 victims of serious human rights violations that took place in September 1984 in Tanjung Priok, Jakarta. The 14 victims are Abdul Basir (male/ 55 years old), Aminatun Najariah (female/ 51years old), Husain Syafe (male/60 years old), Hasan Tantowi (male/50 years old), Irti Sumirta (male/42 years old), Ishaka Bola (male/47 years old), Ma’mur Ansori (male/65 years old), Marullah (male/41 years old), Lila Biky (female/31 years old), Raharja (male/49 years old), Ratono M. (male/56 years old), Saiful Hadi (male/51years old), Wanma Yetty S (female/40 years old), Yudi Wahyudi (male/46 years old). These victims consist of direct victims and immediate family members of victims of Tanjung Priok 1984 incident.

Tanjung Priok incident itself led to gross human rights violations: extrajudicial execution against 15 people, arbitrary arrest and detention against 96 people, torture against 98 people, enforced disappearances and unfair and unjust trial against 58 people. These victims are currently still waiting for justice and reparation from the State after almost all legal efforts failed and impunity prevailed.

Tanjung Priok incident has been processed through the mechanism of a special court, the same as ad hoc human rights court for East Timor incident in 1999 based on Law No. 26/2000 regarding Human Rights Court. Both cases have the same endings: none of the perpetrators was punished

by the court and none of the victims received reparation. Furthermore, after the trial the Indonesian government stopped all investigations on other past human rights violations by stating various formal legal reasons. We suspect that political obstacle is the main reason why impunity prevails in this country.

In this commemoration of Tanjung Priok 25th anniversary, the victims requested attention and support from the UN Special Rapporteur on the Independence of Judiciary and Lawyers, Ms. Gabriela Carina Knaul de Albuquerque e Silva to highlight the weaknesses occurred in Indonesia's human rights court, especially those occurring during the trial of Tanjung Priok case from 2000 to 2006.

In 2000, the National Commission for Human Rights (Komnas HAM) issued its statement regarding the establishment of *Komisi Penyelidikan dan Pemeriksaan Pelanggaran HAM Tanjung Priok* (KP3T, Commission for the Investigation of Human Rights Violations in Tanjung Priok case). KP3T was assigned to conduct investigations on human rights violations occurring in Tanjung Priok between August and September 1984. Komnas HAM confirmed that human rights violations have indeed taken place in a systematic way and concluded them to be grave violations of human rights as defined in the stipulations within Law No. 26/2000. Their final investigation report stated 23 names to be examined as suspects, including military high officials at national and city (Jakarta) level.

In 2001, the House of Representatives and President Abdurahman Wahid agreed to established an ad hoc human rights court, the same as that in East Timor 1999 case. The ad hoc court for Tanjung Priok had only started in September 2003, held in Central Jakarta District Court to try 14 defendants in 4 lawsuits. The process ended with a verdict from the Supreme Court in January–February 2006, in which all defendants were released.

During the trial there were many issues that left the Court to lose its independence, namely:

First, some of the witnesses/victims gave different testimonies in court from the ones they gave during Komnas HAM investigation. This was because those witnesses/victims have committed themselves to non-legal reconciliation with the perpetrators by accepting certain amount of money. Unfortunately, the ad hoc Human Rights Court accepted the change in testimonies without first checking the truth behind them. The false testimonies clearly changed the construction of truth during trial. On the other hand, there were no legal efforts made against the false testimonies despite being an offense under the Indonesian criminal law.

Second, during the trial, especially with the defendant Major General Sriyanto (who at that time was the Commander of Special Army Force (Kopassus), the court room was filled with TNI troops wearing complete military attributes. These troops threatened the victims and other people who were monitoring the trial. Based on the information we received, they also put some sort of pressure against the judges working on the case.

Third, at the beginning, the ad hoc Human Rights Court of first instance decided in favor of granting compensation to a small number of victims because they determined that the 12 defendants were guilty. However, the final verdict of the Supreme Court released the 12 defendants and therefore cancelled the compensation. The Supreme Court also stated that there were no serious human rights violations because the elements of being systematic and widespread were not met in the case of Tanjung Priok 1984. This is in direct contrast to Law No. 26/2000 on Human Rights Court, in which it is stipulated that Komnas HAM is the one who can prove

whether or not serious human rights violations take place by conducting independent investigations. The Court is only to decide whether or not a defendant is guilty.

Fourth, Human Rights Court decided to compensate 15 victims who submitted a request for compensation through the Public Prosecutor. However, since the Supreme Court decided to release the defendants, the previous verdict on compensation could not be implemented. The victims have also filed a civil suit to Jakarta District Court in order to obtain compensation. However, the lawsuit was rejected on the grounds that the perpetrators have been released and the release verdict is final and binding. This is clearly impunity: the State acknowledged serious human rights violations and recognized the victims' existence, but failed to punish any of the defendants and provide reparation for victims.

The trial proceedings gave no sense of justice whatsoever for the victims, especially when referring to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which guarantee the truth to be revealed, justice to be brought and compensation, restitution and rehabilitation to be fulfilled.

On the 25th anniversary of Tanjung Priok 1984 case, we request Special Rapporteur Ms. Gabriela Carina Knaul de Albuquerque e Silva to:

1. Urge the Indonesian Government to examine the trial proceedings, including examining the false testimonies that disrupted the process.
2. Urge the Attorney General to prosecute suspected perpetrators in Tanjung Priok case based on the types of crimes recommended by Komnas HAM, those that have not been tried in the previous trial.
3. Urge Komnas HAM to review Tanjung Priok trial, examine the witnesses/victims that have not been examined before and bring the perpetrators back to court.
4. Urge the Institution of Witness and Victim Protection to find a breakthrough in fulfilling the rights of the victims in Tanjung Priok case.
5. Urge the House of Representatives to carry out a breakthrough move in creating a policy for compensation, restitution and rehabilitation for victims of human rights violations.
6. Urge the Indonesian Government to correct all policies and legal system that violate human rights and those that hinder human rights court proceedings, especially legal process on past human rights violations.
7. Urge the Indonesian Government to invite UN Special Rapporteur of the Human Rights Council on the Independence of Judges and Lawyers to visit Indonesia and conduct direct monitoring on past cases of gross human rights violations.

We shall truly appreciate the Honorable Ms Carina Knaul de Albuquerque E Silva's favorable action on this request.

Thank you,
Very truly yours,

Usman Hamid, SH
Executive Director of KontraS

If you have any clarification, please contact :

The Commission for Disappeared and Victims of Violence (KontraS)

Jl. Borobudur No. 14 Menteng Jakarta Pusat

INDONESIA

www.kontras.org

Phone : 62-21-392.6983

Fax : 62-21-392.6821

Email : kontras_98@kontras.org, indriafernida@gmail.com