

**Submission**  
**To the United Nation High Commissioner for Human Rights**  
**(HE. Navanethem Pillay)**  
**In her visit to Jakarta, Indonesia on 12 November 2012**

**On behalf of the Commission for the Disappeared and Victims of Violence**  
**(KontraS)**

---

**1. Impunity on the case of enforced disappearances of activists in 1997-1998 & other past abuses**

We should really question the commitment of President Yudhoyono administration to seriously deal with human rights issues since, as his administration will soon be completed, the House of Representatives' (DPR) recommendation on the case of enforced disappearance activists in 1997-1998 has not progress significantly especially for those whose family members has been disappeared. The Special Committee of the House of Representatives in September 2009 released four recommendations to the President, which are: (i) establishing ad hoc human rights tribunal, (ii) looking for the 13 missing activists, (iii) recovering the rights of the victims and (iv)ratifying the convention against enforced disappearance. Three years after, no concrete actions have been done by the President. Recently, efforts to ratify the convention against enforced disappearance have been followed up, since the discussions on the convention have been stalled within the military. While, the Special Team for past abuses within the Office of Advisors to the President and Coordinating Ministry of Politics, Law and Human Rights established by President to seek the design of settlement for past abuse, has not yet seen significant progress. Lastly, on the case of kidnapping activists 1997-1998, civil society has pressure to the government to establish the special team to locate the 13 missing activists; no concrete actions have been completed.

Other human rights violations cases occurred in the past are shooting of student in Trisakti and Semanggi incident in 1998, May riot in 1998, Talangsari incident with Moslem community as victims in 1989, Tanjung Priok incident in 1984, Wasior Wamena, mysterious shooting in 1982-1985, 1965 tragedy. All these cases have been stuck at the Attorney General office (AGO). The AGO has shown little commitment to do investigation as a follow-up of the report submitted by the National Commission on Human Rights (NHRi) as stipulated in the Law No. 26/2000 on Human Rights Tribunal. Political reason often mentioned by the AGO is the absence of ad hoc human rights tribunal. This reason is particularly conflicting with Article 43 verse 2 Law No.26/2000 and the final verdict of Constitutional Court (MK) No. 18/PUU-V/2007 on the request to undertake review on Article 43 verse 2 Law No.26/2000 along with its explanations. According to the verdict, ad hoc human rights tribunal is established under the result of investigation by NHRi, then followed inquiry by the AGO. Afterwards, the House of Representative will be requested to submit recommendation to the President to establish ad hoc human rights tribunal.

**2. Assassination of Munir (human rights activist)**

The assassination of Munir case, often echoed by President Yudhoyono himself as "a test of our history", the authorities have not yet found the mastermind of the assassination, while the year 2012 will be end. The process is halted since the appeal on the release sentence of Muchdi Pr has been rejected by the Supreme Court. Afterwards, request to the Attorney General to submit a review file on the case has been constantly turned down due to negligible reason such as the copy of Supreme Court document on the appeal has not been received by the Attorney General office. Other

obstacle is lack of strong commitment of President Yudhoyono to reveal findings obtained by the Fact-Finding Team.

### **3. Human rights violence in Papua**

The Government of Indonesia also does not undertake comprehensive actions in handling conflicts in Papua. In that eastern part of Indonesia, violence is still ongoing and KontraS has identified a number of violence incidents suitably qualified as gross violations of human rights. As many as 52 violence incidents resulted in 52 persons died and 59 wounded, are recorded. The record was submitted by the representative of civil society to the National Police in the presence of the Deputy of National Police Chief, Mr. Nanan Sukarna, Mr. Saud Usman and some other high level police officials. However, no significant efforts are seen to reduce violence incidents in Papua.

In 2012, gross violations of human rights again take place in Papua. Among others, Mako Tabuni was shot on his legs and head by the police officer during his arrest. He passed away immediately. Also, the police shot to death one person, two persons have been tortured and some forty three have been forcibly arrested as the police broke down the protests held by KNPB. Human rights violations also took place as members of Battalion Infantry 756 Wimane Sili/WMS attacked the residents of Wamena village.

Aside of the violence incidents, Papua is also the region where treason articles have been applied to whoever undertake political activities. As many as 30 people have been charged doing treason activities and prosecuted before the court. Unfortunately, the Government paid little attention to the health condition of those people in prison as seen in the case of Filep Karma and Kymanus Wenda. The discussion on granting amnesty to political detainees in Papua has been important as part of peace dialog process. The amnesty agenda has been attached to the assignment of UP4B team (the unit set up to accelerate development in Papua) which is established by President Yudhoyono. However, the discussion on that is discontinued while violence incidents are ongoing in Papua.

### **4. Cases of torture in Indonesia (2010 – 2012)**

The practice of torture has been significantly increasing for years. According to KontraS data, from July 2010 to June 2011, allegedly 28 torture incidents with 49 victims occurred. For July 2011-July 2012, some 86 incidents with 243 victims occurred involving perpetrators with the following composition: (i) police officers (70%), (ii) military officers (16%) and (iii) prison guard (14%). The practices are still ongoing despite internal mechanism within the National Police and Military Office has been applied for their members who committed torture. However, these efforts did not stop the practice, and even tends to be a pattern/model of the systemic in both institutions. The reason is because torturing is not categorized as a crime but only offence. Similar problem is also identified in the current law in Indonesia since torturing is not classified as a crime despite CAT (Convention Against Torture) has been ratified. Currently, efforts to revise the Indonesian Penal Code to accommodate this issue have shown little progress. While, to issue a law specifically to deal with the use of torture is also going nowhere.

In addition, vetting mechanism is available as an option to reduce the use of torture, despite the mechanism is less popular in Indonesia. The mechanism works by preventing one public servant allegedly committed the use of torture through direct involvement, ordering or allowing the torture. State agencies such as Ombudsman, the National Commission to the Police, and the National Commission of Human Rights, all are capable to undertake independent investigation. Although

these agencies are not part of law enforcers, their active support to encourage vetting mechanism is highly recommended.

### **5. The future of the ASEAN Human Rights Declaration (AHRD)**

ASEAN through the ASEAN Charter has given the mandate to the ASEAN Intergovernmental Commission on Human Rights (AICHR) to draft an ASEAN Human Rights Declaration (AHRD). Since early 2011 the AICHR has begun to draft the AHRD. Most of the process has been done in discreet manner, whereas many international, regional and national human rights organizations have gave critiques upon the situation.

It is only at the end of the drafting process (June 2012 in Kuala Lumpur, and September 2012 in Manila) that the AICHR conducted regional consultations. The consultations had been conducted with selectivity in participations therefore many human rights organizations which have concerned on development of human rights in ASEAN have been left behind. There is also a major lacking of consultations at national level.

As a consequence, we find several principal problems in the final draft of the AHRD that we have received unofficially.

In the latest draft of the AHRD there are provisions in the general principles that allow limitation of rights, which recognizably can hamper the full enjoyment of human rights. In the general principle there are provisions to subject the full range of rights provided in the Declaration to restrictions not permitted under international law on several basis that the enjoyment of the rights provided in the Declaration:

- to be “balanced with the performance of duties” (General Principle 6)
- subjected to “national and regional contexts”
- to considerations of “different cultural, religious and historical backgrounds” (GP 7)
- may also be restricted on a wide array of grounds including “national security” and “public morality” (GP 8)

### **Recommendations:**

Based on the aforementioned descriptions, we call for the support of the High Commissioner on Human Rights:

1. In the case of Impunity on the case of enforced disappearances of activists in 1997-1998 & other past abuse:

- to urge President Susilo Bambang Yudhoyono to issue Presidential Regulation to establish a Special Team to locate the 13 missing persons
- to urge the Attorney General to follow up the National Commission on Human Rights report by undertaking investigation

2. In the case of the assassination of Munir:

- to urge the Attorney General to file a review on the release sentence of Mr. Muchdi Purwaprano, formerly a Deputy at BIN

3. In the case of human rights violence in Papua:

- to urge the Government of Indonesia to immediately open access for international journalists to enter Papua
- to urge military Officers in Papua to discontinue the use of violence in order to create a stable and peaceful situation
- to urge the Government of Indonesia to restart peace dialog and to posit political detainees as important element in Papua

4. In the cases of torture in Indonesia:

- to urge the Government of Indonesia to immediately revise the Indonesian Penal Code or to create one special Law to deal with the use of torture
- to urge the relevant agencies such as the Military, the National Police and the Ministry of Law and Human Rights to implement vetting mechanism
- to urge the state agencies such as the National Commission on Human Rights, the National Commission to the Police, Ombudsman, basically with their relevant mandates to undertake investigation and perform independent monitoring, to establish vetting mechanism in order to limit the movement of torturer.

5. In the future of the ASEAN Human Rights Declaration:

- to urge the government of Indonesia to postpone the adoption of the AHRD until it can meet the international human rights standards

**For further inquiry please contact:**

Name : Sri Suparyati  
Organization : KONTRAS  
Position : 1<sup>st</sup> Deputy Coordinator  
Phone : 062-21-392-6983  
Fax : 062-21-392-6821  
Email : [kontras\\_98@kontras.org](mailto:kontras_98@kontras.org), [spryt04@kontras.org](mailto:spryt04@kontras.org)