

# Compilation of the UN Universal Periodic Review “2nd Cycle” for Indonesia Report



In Collaboration With:





## I. KontraS with International Center for Transitional Justice (ICTJ)

- **Implementation of UPR Recommendations on Impunity**

### **National Human Rights Plan Silent on Impunity**

Since the last UPR review, Indonesia has put into place a new National Action Plan on Human Rights (signed into force on April 2011) that falls short in a number of ways. Unlike the previous plan (National Human Rights Plan 2004-2009) that included goals to improve the performance of the human rights court on crimes against humanity and genocide, as well as to establish a truth commission, the new plan is silent on Indonesia's obligation to redress serious crimes. An entire section on accountability for gross human rights violations in the 2004-2009 Plan no longer exists in the current one.<sup>1</sup> This reflects a critical flaw in the process of drafting the new plan because it is not based on an evaluation of the achievements or failures of the previous one. Instead of renewing efforts to achieve targets that were not achieved in the previous plan, these important goals have been erased. This omission reflects a step backward in Indonesia's political commitment to combat impunity.

### **Treaties and Protocols Delayed**

The 2004-2009 Plan targeted the ratification of 12 human rights treaties and protocols by 2009.<sup>2</sup> However, since the UPR process of 2008, Indonesia has only signed the Convention for the Protection of All Persons from Enforced Disappearances. Full ratification is not scheduled until 2014, according to the new human rights action plan. Similarly, the Rome Statute is now scheduled for ratification in 2014, six years later than stated in the previous national plan.

### **Serious Crimes Trials Derailed**

During this UPR review period, little progress was made in mediating an impasse between the National Human Rights Commission and the Indonesian attorney general's office (AGO). The commission found that crimes against humanity were committed in five major cases that were then referred to the AGO. These included recommendations to try the following cases in the ad hoc human rights court: the killings of student dem-

1 In Section E ("Implementation of Human Rights Standards and Norms, Point 7"), the 2004-2009 Plan stated its aim to "remedy gross human rights violations" through the following activities: "strengthening efforts to remedy cases of gross human rights violations through the human rights court; developing operational standards of proof for gross human rights violations; developing a Truth and Reconciliation Commission (TRC) to deal with cases of gross human rights violations."

2 Indonesia has ratified six of the nine core human rights treaties: International Covenant on Civil and Political Rights (ratified February 23, 2006); International Covenant on Social, Economic and Cultural Rights (ratified February 23, 2006); International Convention on the Elimination of All Forms of Racial Discrimination (ratified June 25, 1999); Convention on the Elimination of All Forms of Discrimination Against Women (ratified September 13, 1984); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified October 28, 1998); and Convention on the Rights of the Child (ratified September 5, 1990). Indonesia has signed but not ratified the three remaining ones: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (signed September 22, 2004); Convention on the Rights of Persons with Disabilities (signed March 30, 2007); and International Convention for the Protection of All Persons from Enforced Disappearance (signed September 27, 2010). See <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

onstrators in 1998 (Trisakti and Semanggi I and II), the killings and rapes around the May 1998 upheavals, the attack of villagers in Sumatra in 1984, and the disappearance of 13 pro-democracy activists in 1997-1998; and to try another case that took place in Papua in 2000 (Wasior and Wamena) in the permanent human rights court. However, there has been little progress in these cases; the AGO claims that the dossiers are incomplete, they cannot investigate retroactive cases without the establishment of an ad hoc court (which requires a parliamentary recommendation and a presidential decree), and double jeopardy exists for cases in which low-level perpetrators were already tried in military courts despite the fact that these processes have produced highly questionable results.<sup>3</sup> Upon scrutiny, these excuses lack integrity and reflect a systemic lack of political will for justice.

Of the 34 people who were indicted and tried in the ad hoc and permanent human rights courts, 18 were convicted during their first trials, but all were later acquitted on appeal.<sup>4</sup> The last of those convicted at trial, Timorese militia leader Eurico Guterres was acquitted following appeals in 2008.

In the case of the 1997-1998 forced disappearances, the Indonesian government has continued to ignore a recommendation that Parliament made in September 2009. The Parliament urged the government to establish an ad hoc court to try those responsible, commence an immediate search for the whereabouts of the disappeared, provide compensation for their family members, and ratify the Convention for the Protection of All Persons from Enforced Disappearances. To date, the government has only partially implemented the last recommendation.

Lastly, human rights courts (i.e. courts with jurisdiction to try crimes against humanity and genocide, according to Law 26/2000) were to be established in Papua and Aceh, by their respective the special autonomy laws (Papua, 2001, and Aceh, 2006). However, to date these courts have yet to be established.

## Truth Commissions Indefinitely Postponed

After the Constitutional Court struck down Law 27/2004 on establishing a national truth and reconciliation commission because it required victims to forgive perpetrators in order to qualify for reparations, the human rights action plan of 2004-2009 targeted the drafting of a new law and establishment of a truth commission by 2009. Although a draft law is now registered for discussion in Parliament, there is little political support for it. The failure to establish a national truth commission has resulted in indefinite delays in establishing truth commissions for Papua and Aceh that were legally mandated by their respective special autonomy laws.

The Commission for Truth and Friendship (CTF) recommended forming a commission for the disappeared at the end of its mandate in 2008. The CTF was a bilateral commission established by the governments of Indonesia and Timor-Leste. It found that crimes against humanity took place during the ballot in East Timor in 1999. Unfortunately, to date there

<sup>3</sup> ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 37-42.

<sup>4</sup> The East Timor) ad hoc court on crimes committed in 1999 tried 18 people and convicted six. All but six were later on acquitted on appeal. Similarly, the Tanjung Priok (North Jakarta, 1984) ad hoc court tried 14 officers, found that 12 were guilty, but they were later acquitted. The human rights court for the Abepura incident, which took place in Papua in 2000, tried two police officers who were both found not guilty. ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 45-51.

has been little progress in establishing this follow-up mechanism dedicated to find the whereabouts of those disappeared during the conflict.

### **Military Tribunals Prosecuting Torture as a Disciplinary Act**

Indonesia continues to try serious crimes, such as torture, committed by military personnel in the military courts. Because torture is not recognized in the military code, acts of torture are often charged as disciplinary offenses. Often those who appear to be most responsible have not been tried and those relatively low-level personnel found guilty receive consistently lenient sentences. In 2000 Parliament passed a resolution that military personnel should be tried in civilian courts for violations of the civilian criminal code. This requirement was included in article 65(2) of Law 34 of 2004 on the Indonesian Armed Forces ("the TNI Law"). However, for the legislation to be implemented, Law 31 of 1997 on Military Courts also needs to be amended. To date, this change has not taken place, blocking the intended result. This pattern was repeated during the 2010 trials of four soldiers in Jayapura charged with torturing civilian detainees in Papua. The trial was held in response to international attention brought about by a shocking video of the torture that was released to the public. However, the defendants received light sentences of five months for "insubordination."

### **The Lack of Vetting**

There continues to be little progress in removing people implicated in human rights violations from public office, including those who have senior positions of authority in the military, police, and government. Even in the few cases in which security sector personnel have been officially implicated in violent human rights abuses, they have not been removed from security sector institutions; instead they were transferred within security institutions.<sup>5</sup> In late 2009, President Susilo Bambang Yudhoyono appointed Lt. Gen. Sjafrie Sjamsoeddin as Deputy Minister of Defense. This decision sparked controversy as Sjamsoeddin has been implicated in several cases of gross human rights violations, including abducting activists in 1997-1998, killing student demonstrators in May 1998, and other violations surrounding the 1999 referendum in East Timor. In April 2010, victims and families of victims filed a lawsuit challenging his appointment, citing the findings of the National Human Rights Commission's investigations in the three cases. However, the suit was rejected. Late in 2010, the president appointed Gen. Timur Pradopo as Chief of the National Police, despite concerns raised by the National Human Rights Commission about his role in the May 1998 violence and the Trisakti and Semanggi shootings.

### **Munir Case**

Human rights defender Munir Said Thalib was killed on September 7, 2004, aboard a Garuda flight to Amsterdam. During an autopsy, Dutch authorities found a lethal dose of arsenic in his system. Munir played a critical role in discovering the role of the military in the disappearances of students in 1998 and in investigations into the violence that occurred in East Timor the following year. Munir's murderer, Pollycarpus Priyanto was convicted at first, but later acquitted by the Supreme Court. That decision was reversed after a case review, and he is serving a 20-year sentence.

<sup>5</sup> ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 22, 28, 77-78.

Pollycarpus made more than 40 calls to a senior intelligence official, Muchdi Purwopranjono, near the time of Munir's murder and the release of the autopsy. After sustained pressure by human rights groups on police and prosecutors, Muchdi was tried on the basis of the phone records and witness statements. The prosecutor alleged that Muchdi had ordered Pollycarpus to carry out the murder. However, some witnesses failed to appear in court, and others who had provided incriminating statements to police withdrew them at trial. Muchdi was acquitted on December 31, 2008. The following June, the Supreme Court rejected the prosecutor's appeal. No inquiry has been made into the circumstances that undermined the prosecution's case at trial when the major material witnesses failed to testify as planned.

### • Recommendations

The international community should:

- *Urge the Indonesian government to implement existing legislation on prosecuting serious crimes, and ensure the establishment of truth commissions and human rights courts in Papua and Aceh as mandated by the special autonomy laws.*
- *Restrict donor support to institutions involved in human rights violations and deny visas to individuals implicated in serious human rights violations.*
- *Increase funding to programs designed to promote transparency and accountability within the government, judiciary, and security sector.*

The government of Indonesia should:

- Immediately resolve the impasse between the Human Rights Commission and the AGO by establishing an effective mechanism for cooperation between the two institutions.
- Revise the current human rights action plan to include redress for serious crimes that ensure victim's rights to truth, justice and reparations, as well as measures to strengthen the independence and professionalism of the judiciary.
- Establish ad hoc human rights courts for enforced disappearances in 1997-1998 and all cases of violations committed prior to the passage of Law 26 of 2000 in which Komnas HAM has found crimes against humanity or genocide have been committed.
- Accede to the Rome Statute of the International Criminal Court, in accordance with the commitment made in the National Human Rights Action Plan. Ratify the recently signed Convention for the Protection of All Persons from Enforced Disappearances.
- Immediately establish truth commissions and human rights courts for Aceh and Papua, as mandated under existing laws, and a bilateral commission on disappeared people as recommended by the CTF.

## II. KontraS with Asian Legal Resource Centre (ALRC)

### Implementation of UPR recommendations made during the first cycle

Important key recommendations made to the government of Indonesia (Gol) during the first UPR cycle have not been satisfactorily implemented to date. This has allowed a range of human rights violations to continue to be perpetrated with impunity, including torture and attacks against religious minorities.

#### I. A. Recommendations and comments accepted by the Gol:<sup>6</sup>

##### i. International Norms

The Gol accepted recommendation 77.2<sup>7</sup> to accede to a number of international instruments, in line with its National Plan of Action.

The signing of the International Convention on the Protection of All Persons from Enforced Disappearance in September 2010 is welcomed, however, none of the other recommended instruments have been signed or ratified as announced. The Gol has deferred the ratification of these treaties to the 2011-2014 NPA. Concerning Indonesia's 2005 - 2009 National Plan of Action (NPA), key components such as the ratification of international instruments, the review of the Penal Code and other pressing legislative measures were not implemented by late-2011. No credible successor plan or implementation strategy has been devised since the end of 2009 to ensure that such reforms are carried out. Given the previous NPA's failure to deliver in many key areas, serious doubts remain concerning the credibility of the current NPA and the likelihood of it delivering expected outcomes. As will be seen below, many human rights violations related to these instruments continue to be perpetrated in Indonesia.

**Recommendation:** *The Gol should ratify without delay the remaining international human rights instruments included in accepted recommendations from the first UPR cycle.*

##### ii. Civil society and human rights defenders

Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy (recommendation 77.3)

Since 2008, attacks against human rights defenders have continued, including the killing of journalists working on human rights-related themes. Between 2008-2010, at least five journalists died: Anak Agung Prabangsa, from Radar Bali; Alfrets Mirulewan, from

<sup>6</sup> All recommendations are cited using paragraph references from the Report of the Working Group on the Universal Periodic Review: <http://daccess-ods.un.org/access.nsf/Get?Oxpen&DS=AHRC/8/23&Lang=E>

<sup>7</sup> Recommendation 77.2: "Indonesia, in line with its National Plan of Action, is encouraged to follow through on its intention to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment. Indonesia is further encouraged to consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.

Mingguan Pelangi; Ridwan Salamun, from Sun TV; Ardiansyah Matra'is, from Merauke TV; and Muhammad Syaifullah, from Kompas's Kalimantan bureau. Mr. Prabangsa, Mr. Mirulewan, Mr. Salamun, and Mr. Matra'is were all killed due to their work concerning human rights-related issues. Muhammad Syaifullah's death is suspicious and is believed to be connected with his work denouncing deforestation and environmental destruction in Kalimantan.<sup>8</sup>

In 2010 alone, at least four human rights defenders working as journalists exposing corruption were killed, including Ardiansyah Matra'is, who reported on corruption in development projects in Papua.<sup>9</sup> The climate for human rights defenders remains hostile, in particular in remote regions such as Papua or the Maluku, where they are arbitrarily branded as separatists, and then face arrest and torture. Indigenous civil society groups are subjected to tight controls and surveillance by the intelligence authorities, the military and police in Papua, including raids on their offices, staff members being intimidated or even arrested, notably after public protests. In particular, peacefully-expressed indigenous political demands for greater self-determination or the displaying of Papuan identity symbols such as flags frequently result in arrest and detention that can range up to life imprisonment, based on charges of sedition "makar" under the criminal code. The UN Working Group on Arbitrary Detention issued opinion 48/2011 to the Gol in May 2011, stating that detention for the peaceful raising of the Papuan flag, as recognised in the Special Autonomy Law, violates ICCPR provisions. The continuing detention of around 40 such persons in the West Papua region, which the ALRC and KontraS consider to be political prisoners, remains a key concern.

The Gol is also limiting and even blocking the access of journalists, human rights and humanitarian organisations from outside Papua to the region, which greatly hampers transparency and the protection of human rights there.

Ongoing impunity for the murder of human rights defender Munir: Munir Said Thalib was killed on September 7, 2004, aboard a Garuda flight to Amsterdam. An autopsy by the Dutch authorities found a lethal dose of arsenic in his system. After extensive judicial proceedings, which included a conviction in the first trial, an acquittal by the Supreme Court and a reversal of this decision through a 'case review,' the person who committed the murder, Polycarpus Priyanto, has been serving a 20-year sentence since January 2008. Among those thought to be involved, however, only civilian actors such as those from the Garuda airlines management have been brought to trial. Muchdi Purwoprandjono (known as Muchdi PR), the former deputy of state intelligence (BIN), who is considered to be responsible for soliciting and assisting in the killing of Munir, was acquitted by the South Jakarta Court on December 31, 2008. The trial failed to bring some witnesses to appear in court, and others who had provided incriminating statements to the police withdrew them. The Supreme Court later rejected the prosecutor's appeal. The examination trial which was established in April 2009, after the decision of South Jakarta Court concerning the Muchdi PR case, stated in its conclusions that there were discrepancies in the judge's decision. For example, the judge failed to take into account important evidence when issuing the verdict and failed to ensure that key witnesses appeared in the trial. However, no effective action has since been taken concerning these irregularities, which the ALRC and Kontras believe resulted from political influence that has perverted the course of justice in this landmark case.

<sup>8</sup> See the Killing of Journalists section in the annex

<sup>9</sup> See Ardiansyah Matra'is case in the annex for more details



In 2011, Polycarpus, submitted a request for reconsideration (peninjauan kembali). Despite a lack of new evidence, the Ministry of Law and Human Rights reduced the sentence length by 9 months and 5 days without giving clear reasons for its decision.

The justice system's failure to hold responsible all the perpetrators in this high-profile murder case, notably its instigators, shows the extent of politicisation of the judicial, prosecution and policing systems, as well as the immunity that high ranking military and intelligence officials enjoy.

**Recommendations:**

- The Government of Indonesia must put a halt to all harassment, threats, raids and attacks on civil society groups and their offices, notably those formed by minority and indigenous groups. All allegations of violations against human rights defenders, including journalists working on human rights issues, must be fully and independently investigated and prosecuted;
- In order to ensure transparency and effective protection of human rights, all restrictions must be lifted and full access must be granted to journalists, human rights and humanitarian organisations, notably concerning the Papuan provinces.

**iii. Torture and the need for criminalisation of this practice**

Human rights documentation carried out by the ALRC and KontraS shows that torture remains widespread in Indonesia. While only a few officers have been held accountable for what Indonesia's domestic law calls maltreatment, a consistent and systematic response to the problem of widespread torture is lacking. The crime of maltreatment allows for imprisonment sentences of up to five years. In cases of torture, in practice, perpetrators have only typically received sentences of a few months imprisonment when charged with maltreatment. Hundreds of cases are reported every year, mostly concerning torture by the police in order to obtain information or confession. Forms of torture encountered include severe beatings, electrocution, the burning of parts of the body, detainees being forced to have sex with each other or urinate on each other. These are typically accompanied by a range of inhuman and degrading treatments, such as being stripped naked. The use of torture is widespread during interrogation. While police regulations prohibit torture, they are not being enforced effectively. The lack of criminalisation and effective punishment results in impunity for most perpetrators. The lenient punishments applied in some cases do not correspond to the severity of the act of torture and have little deterrent effect on its use in policing.

In conflict regions such as Papua or the Maluku, which are characterised by large scale military deployments, military torture, notably of alleged separatists, is an additional problem. Video evidence of a case of torture by the military in the Papuan highlands surfaced in the international media in October 2010. In the video, alleged separatist supporters who were being held at a military post, were seen being interrogated and tortured, including the burning of their genitals and the use of suffocation. Despite clear evidence being available and considerable international attention concerning this case, the perpetrators were not held accountable for torture. They were tried by an opaque military tribunal and received sentences of only a few months, not concerning the use of torture, but for disobeying release orders made by their superiors. This clearly shows both the problem of the use of military tribunals for offences committed against civilians, which should be tried

by a civilian court, and the problems arising out of the lack of a specific crime outlawing torture in Indonesia's domestic legal system. The victims concerned in this case had still not received any reparation as of November 2011.<sup>10</sup> On March 5, 2011 Charles Mali was tortured to death by members of the Indonesian Military Forces (TNI) Infantry Battalion 744/SYB, in Atambua in the border area of East Nusa Tenggara. The 23 members of the military found responsible are being held under special detention conditions that reportedly allow them to leave prison as they see fit.<sup>11</sup>

In Aceh, public caning is practiced as a form of corporal punishment under Sharia law. The ALRC and KontraS consider that such punishments in many cases amount to torture and therefore represent a violation of Indonesia's obligations under international law. Furthermore, the provisions on corporal punishment in Aceh's Sharia law, which is imposed through a provincial law and district regulations, violate Indonesia's constitution, notably article 28G (2)<sup>12</sup> and article 28I (1).<sup>13</sup> By allowing these unconstitutional provisions to remain effective in practice, the Indonesian government is acquiescing to the acts of torture and other human rights abuses being carried out under Sharia law in Aceh.

The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders (recommendation 77.6): While Indonesia had announced the inclusion of the crime in its draft criminal code (KUHP), this draft has been pending for adoption for many years. Discussions first began on a new criminal code in the 1980s and continue within the Ministry of Law and Human Rights, delaying its adoption, which is unlikely to occur in the near future, as it is reportedly not being treated as a high priority.

Given delays concerning the criminal code, the Indonesian authorities should also consider passing a stand-alone criminal law that punishes torture in line with the provisions of the CAT.<sup>14</sup> Passing such a law could circumvent the delays to the criminalisation of torture arising from the process of adoption of the criminal code. It could also encompass comprehensive provisions such as for reparations and non-refoulement.

Widespread torture in Papua and the Human Rights Court Law: Torture is used in a widespread way by the police and military against indigenous Papuans, notably on persons suspected of supporting independence movements. Such suspicions are often levelled arbitrarily against members of the indigenous community and result in stigmatisation. The Human Rights Court Law (Law no. 26/2000) includes torture as a gross violation of human rights under article 9.6., which requires an investigation and trial in a Human Rights Court if it is part of a broad or systematic direct attack on civilians. The ALRC and KontraS believe that torture is being used in such a systematic manner and therefore call on the National Human Rights Commission (Komnas HAM) to ensure that inquiries are launched

10 See Tuanliwor Kiwo case in the annex

11 See Charles Mali case in the annex

12 Article 28G (2) Indonesian Constitution (UUD 1945) states that "Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country"

13 Article 28I (1) Indonesian Constitution (UUD 1945) states that "the rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstance"

14 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

into the use of torture in Papua, without delay.

**Recommendations concerning torture:**

- *Given that cases of torture allegedly committed by the police and military continue to be perpetrated, the Indonesian authorities must take all necessary steps to ensure the criminalisation of torture, including provisions for punishment of perpetrators and reparations for victims that are in line with international standards, in the shortest possible time-frame, through updated provisions in the criminal code and a stand-alone law criminalising torture.*
- *Komnas HAM should ensure that inquiries are launched into all allegations of the use of torture in Papua, notably against alleged separatists, and where required, bring the situation to a Human Rights Court.*

**iv. Impunity**

Welcomes Indonesia’s reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard (recommendation 77.4): Impunity remains a serious problem concerning a wide range of past and current human rights violations in Indonesia. Impunity accompanies ongoing problems including torture, violence and discrimination against women and religious or ethnic minorities, as well as attacks on human rights defenders. Past violations continue to leave victims without remedies and perpetrators continue their work in politics and State institutions. While the President of Indonesia in March 2008 expressed his commitment to support victims’ struggles for justice and ensure the punishment of all perpetrators<sup>15</sup> of serious human rights violations under the Suharto regime, no judicial progress is being made in providing effective remedies to victims or bringing those responsible to justice. Under the Human Rights Court Law (No. 26/2000), bringing past human rights abuses to such a court involves the following actors: Komnas HAM (conducts inquiry), the Attorney General’s Office (AGO - investigates), the Parliament (makes recommendations based on investigations), and the President (passes a decree to set up a court based on recommendations made by Parliament). A major impediment to the implementation of this law is the AGO’s refusal to take action to investigate cases until specifically mandated to do so by the Parliament or the President. This is despite the fact that the law does not put any such requirements on the AGO and that a related Constitutional Court judgement (18/PUU-V/2007) clearly stated that a judicial investigation by the AGO has to be conducted before the Parliament can take other steps. The ALRC and KontraS are of the opinion that the Parliament and President do not have competence as judicial bodies and that the process should be one based in the first instance on inquiry by Komnas HAM and investigation by the AGO, before the Parliament and President are called upon to play a role. The AGO is ignoring the Constitutional Court judgement and is therefore obstructing the process due to an erroneous interpretation of the law and process, and is therefore directly responsible for the continuing problem of impunity in Indonesia.

Recommendation: The President must take appropriate action to uphold the Constitutional Court’s judgement and the Attorney General’s Office must abandon politically motivated and erroneous interpretations of the Human Right Court Law that are stalling its implementation and ensuring continuing impunity. They must ensure the investigation and prosecution of all admissible cases, according to the law, and give full support to all

<sup>15</sup> The President made this statement in a meeting on March 26, 2008 with KontraS and victims of human rights violations.

efforts being made to bring cases of gross human rights violations before a human rights court.

## v. Protection of minorities

While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people (recommendation 77.5): In the provinces of Papua and West Papua, indigenous Papuans are being discriminated against and subjected to grave human rights abuses by the security forces. While the Papuan provinces are the richest in natural resources in Indonesia, and the 2001 Special Autonomy Law for Papua had been expected to provide a high level of self-determination and more effective poverty alleviation, the Papuan people have not seen a noticeable improvement to their living conditions. Corruption in public institutions, a high level of military deployment, a repressive climate for activists, and discrimination against ethnic Papuans, all contribute to creating a situation marked by insecurity and widespread human rights abuses.

Concerning freedom of religion and the protection of religious minorities, Law no. 01/pnps/1965 recognises only six main religions<sup>16</sup> in Indonesia, and thus deprives other religions of legal protection. Youth unemployment and poverty have allowed Islamist leaders to gain support and spread fundamentalist views that violate Indonesian constitutional values of diversity and religious freedom.<sup>17</sup>

In recent years, the authorities, including the justice system, have been shown to be ineffective at protecting the human rights of the Ahmadiyah and Christian communities in Indonesia. The justice system has granted impunity to perpetrators of attacks and other abuses, and the courts lack independence and integrity. The resulting lack of an institutional response has encouraged further abuses. While attempts to provide increased police protection in some cases are welcomed, violations of the freedom of religion, the right to life, and the right to remedy of members of religious minorities, have increased in recent years in Muslim-dominated areas of Indonesia, such as West Java, Banten and DKI Jakarta, as statistics from the Setara institute in Indonesia show.<sup>18</sup>

Mob violence by Islamists against Ahmadiyah communities has resulted in deaths and property being destroyed. Christian churches have been bombed and burned, while local administrations have banned religious communities from worshiping on their land in many cities and towns, allegedly to avoid conflict with mainstream Muslim groups. The 2008 joint ministerial decree<sup>19</sup> that remains in force prohibits the Ahmadiyah community from promulgating their religion. Attacks on religious minorities in Java and other parts of Indonesia in recent years have also shown that the police and courts are unwilling to protect minorities from attacks and other abuses by the religious majority. In several cases the police have failed to conduct investigations and perpetrators are not being brought to justice. Attempts by hard-line religious groups to obstruct religious minorities from worshipping have taken place with the acquiescence of the police. In the few cases that

16 Six main religions including Islam, Christianity, Catholicism, Buddhism, Hinduism and Confucianism

17 Under Article 29, paragraph 2, of the constitution, "The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief."

18 <http://setara-institute.org/en/content/grafik-laporan-pelanggaran-kebebasan-beragamaberkeyakinan-2007-2010>

19 <http://www.humanrights.asia/countries/indonesia/laws/ministerial-decree-against-jai-2008>

were brought to court, the perpetrators received only lenient punishments. The police tend to give in to the requests of hard-line members of the religious majority rather than to provide protection to members of religious minorities.

In light of this situation, the ALRC and KontraS recall the question in advance made to the Gol by the government of the United Kingdom in the first UPR review, which stated that: "We are concerned about the alleged attacks and threats on Ahmadiyah families following a fatwa banning the Ahmadiyah." <sup>20</sup> In Cikeusik, Banten on February 6, 2011, three members of the Ahmadiyah community were killed by a mob and five more injured. Attacks against Christian groups such as the bombing or burning of churches <sup>21</sup> were not prevented despite the planned attacks having been publicly announced. Furthermore, the perpetrators were not sufficiently punished for their actions, if at all. Instead members of religious minority groups have been further victimised following the incidents. For example, in the Cikeusik case, the perpetrators received very lenient punishments - between 3 and 6 months imprisonment for the 12 perpetrators. However, one of the Ahmadiyah victims, Deden Sudjana, was sentenced thereafter for disobeying an order to leave the premises and for having wounded one of the attackers while defending himself from the mob (under articles 212 & 351 of the Criminal Code). Courts are producing judgements that lack impartiality and undermine minority rights.

#### **Recommendations:**

- *The Judicial Commission should investigate the judgement in the Cikeusik case, concerning the mob attack and killing of members of the Ahmadiyah faith, and all other cases where allegations of religious discrimination are made concerning verdicts, in order to ensure that such verdicts are in line with domestic law, constitutional rights and Indonesia's obligations under international law. Investigations must be launched systematically when such allegations are made and appropriate sanctions must be applied to any judges found to have acted contrary to the above.*
- *Police officers that fail to protect the rights of persons according to the law must be held accountable for their actions or lack thereof.*
- *More efforts to provide an effective justice system, uphold constitutional integrity and anti-corruption measures have to be made, in order to ensure a more just social order, which upholds human rights, and therefore addresses the root causes of the current increased radicalisation and religious violence.*
- *To ensure equality, prosperity, non-discrimination and the enjoyment of fundamental human rights for members of the indigenous Papuan community, the President is urged to set up a special task force under the national Anti-corruption Commission (KPK) to address widespread corruption in the public and justice sectors in Papua*

#### **I.B. Recommendations that did not enjoy the support of the Gol:**

The following section includes some key recommendations that were made by States during Indonesia's first UPR review, but which the government did not explicitly accept. The issues remain relevant to date and it is hoped that the Gol will change its position in the coming UPR review.

The Netherlands recommended that Indonesia's efforts would be rounded off by a stand-

20 <http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ID/QUESTIONSINDONESIA-ADD1.pdf>  
 21 see Cikeusik case in the annex

ing invitation to all Special Procedures. Indonesia, as a member of the Human Rights Council, should exhibit exemplary cooperation with the Council's mechanisms, notably by issuing a standing invitation to its Special Procedures. The lack of access granted by the Gol to these mandates is contributing to the continuation of human rights violations, in particular in crisis regions such as Papua. Since mid-2008, no relevant Special Procedures mandates have been able to visit Indonesia, despite pending requests from the mandates concerning important and relevant themes, such as human rights defenders, freedom of expression, torture, freedom of religion, indigenous peoples, extra-judicial killings, minority issues, freedom of association and assembly, and forced disappearances.

**Recommendations:**

- *The Gol should issue a standing invitation to all special procedures and ensure that these are given access to all regions of the country, notably Papua.*
- *The Gol should prioritise country visits by the UN Special Procedures covering the following themes: human rights defenders, indigenous peoples, freedom of expression and torture.*

The United Kingdom recommended that the Gol abolish the death penalty: 11 national laws and regulations, including the penal code and subversion and corruption laws, include the death penalty. 10 convicts have been executed since 2008 and 109 are estimated to be awaiting execution.<sup>22</sup> The ALRC and KontraS consider the death penalty to be ineffective as a crime deterrent, and that death row and the application of the death penalty are inhumane practices and constitute human rights violations.

Recommendation: The Gol should immediately issue a moratorium on the application of the death penalty, and abolish the death penalty without further delay.

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<sup>22</sup> Data from KontraS' monitoring on the death penalty. No official statistics were available from the Ministry of Law and Human Rights.

## PART II

### Further issues that require the Working Group on the UPR's attention

There remain key human rights themes that were not sufficiently addressed during the first UPR cycle and which continue to require attention:

#### vi. Sharia law and discrimination against women

Sharia law applied in Aceh through local regulations remains in contradiction to Indonesia's constitution and international standards. National Law no.11 Year 2006 regarding the Governance of Aceh provides the province with autonomy status and the ability to pass its own legislation. Sharia law is comprised of a provincial law passed by the Acehese autonomy parliament and district regulations that implement the provincial law at the local level. The judiciary, including the Supreme Court, has failed to review this situation, and these laws and regulations cannot be brought to the constitutional court for review under the current system.

In several cases of degrading treatment of women and girls in public following alleged violations of Sharia law, punishments were arbitrarily carried out by members of the public without the involvement of any state authority. Punishments include caning and having sewage water poured on victims. According to the National Commission on Violence against Women, there were 207 local regulations in effect in 2010 that discriminated against women.

The police and courts have failed to ensure protection of civil liberties. As a result, NGOs are not able to criticise Sharia practices such as corporal punishment without being stigmatised as anti-Islamic and facing social exclusion.

#### Recommendations:

- *The mandate of the Constitutional Court should be extended to allow for a review of local regulations (peraturan daerah / PerDa) regarding their constitutionality.*
- *The application of any Sharia law articles that violate human rights norms, including the right to a fair trial and the freedom from torture and degrading treatment, must be halted until the law and district regulations have been reviewed.*
- *The proportion of women in the police should be noticeably increased and gender mainstreaming conducted.*

#### vii. Reforms to the policing system

Despite the enactment of new police internal regulations<sup>23</sup> in 2009, human rights abuses by members of the police, including torture, continued unabated. A lack of professionalism, command responsibility and enforcement of human rights principles, allows for various violations by the police to continue with impunity. While the new internal regulations specifically prohibit the use of torture, members of the police have not been sufficiently educated concerning the regulations, and these are not being effectively enforced.

The police enjoy impunity in many cases of human rights violations, as prosecutors often refrain from initiating criminal procedures against police personnel in cases where the

<sup>23</sup> Regulation of the Chief of the Indonesian National Police no.8/2009 regarding Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police

police's division for profession and security (PROPAM) has started to look into complaints. However, PROPAM does not enable judicial remedies and is failing to fulfil its mandate. PROPAM is the only system mandated to hold members of the police accountable for violating police regulations. The mechanism lacks transparency and adequate disciplinary responses, and victims have no rights beyond making a complaint. PROPAM should be reformed to ensure a transparent process, adequate punishments and access by victims and their representatives to PROPAM trials. To ensure human rights-compliant police operations and to end torture, the police require resourced capacity building programmes concerning investigation and interrogation techniques.

The Chief of the Indonesian National Police Regulations No.16 Year 2010 regarding Procedures for Public Information Services in the Indonesian National Police (Peraturan Kapolri tentang Tata Cara Pelayanan Informasi Publik di Lingkungan Polri) which implements Law No.14 Year 2008 concerning the Disclosure of Public Information (UU Keterbukaan Informasi Publik), could be an effective tool to monitor the status of criminal proceedings and police investigations and could assist in addressing impunity. However, in order for it to have any impact, it needs to be clearly and effectively implemented within the police force.

#### **Recommendations:**

- *Effective training and information dissemination, including for the new police regulations, must be funded and implemented.*
- *PROPAM must be reformed to ensure its transparency, effectiveness and respect for victims' right to remedy.*
- *The National Police Commission (KOMPOLNAS) should be mandated to investigate, monitor and supervise PROPAM.*
- *Criminal investigation technology and procedures must be modernised, notably to eliminate torture.*
- *A vetting mechanism should ensure that violations of police regulations such as the use of torture feature in personnel promotion or transferal decisions.*
- *The new standard operating procedures regarding crowd control allow for the use of firearms by police against unarmed civilians and should be reviewed to ensure the prevention of human rights abuses.*
- *The police regulations regarding Freedom of Access to Public Information need to be implemented by assigning officers responsible for implementation to all police stations.*
- *The Criminal Procedure Code (KUHP) must be reviewed to ensure that procedural rights are protected and that torture is prevented.*

#### **viii. The need to strengthen victims and witness protection**

The Witnesses and Victims Agency (Lembaga Perlindungan Saksi dan Korban/LPSK) was established by Law No.13/2006, but, due to a lack of resources, has been unable to provide protection to victims, witnesses and whistle blowers. Furthermore, there is no specific article in the Criminal Procedure Code (KUHP) that provides for the protection of victims and witnesses. As the KUHP is the core code that underpins the criminal justice system, this absence means that the LPSK and the protection it provides is not considered as "essential" by the authorities, even though evidence suggests that the lack of effective witness protection is a key factor in allowing for the continuing system of impunity in Indonesia.



**Recommendation:**

- *The Criminal Procedure Code must be revised to include provisions for the protection of victims and witnesses*
- *The Victims and Witness Protection Agency must have sufficient resources to fulfil its mandate effectively*

**x. Reforms to the military**

According to the Law on Military Courts, members of the military that commit crimes against civilians, such as extrajudicial killings or torture, can only be held accountable by military justice. Military courts are not open to the public, are notorious for only giving lenient punishments, and show a clear lack of impartiality. The military criminal code does not include torture as defined in the Convention Against Torture. A video recording of military torture<sup>24</sup> in 2010 was subsequently published and caused widespread condemnation. Those responsibly have however not been held accountable for torture - they only received sentences ranging from 5 to 7 months for violating their superiors' orders.

The Military Court Law should be reviewed to ensure that in cases of human rights abuses against civilians by members of the military, the alleged perpetrators are brought exclusively before a competent, objective and impartial civilian court that is compliant with the internationally-accepted standards of fair trial, including public access. Law no 34/2004 concerning the Indonesian National Army already requires such a review through legislation to ensure that military personnel can be brought before a civilian court where relevant. Such a legislative review has been pending since 2004. The introduction of a vetting mechanism would allow the formal consideration of the track record of members of the military concerning human rights in decisions regarding promotion.<sup>25</sup>

**Recommendations:**

- *The Military Court Law must be reviewed to ensure that members of the military that commit human rights violations against civilians, including grave violations such as torture and extra-judicial killings, are exclusively brought before civilian courts that can guarantee impartial and fair trials. The law must also be reviewed to remove any provisions that grant immunity and impunity to military personnel.*
- *A vetting mechanism should be introduced to monitor and promote human rights compliance by military personnel, which should be taken into consideration when deciding on promotions within the military.*

**xi. The Intelligence Law**

Indonesia's State intelligence agency has frequently been involved in human rights violations. According to civil society reports, key perpetrators of the 2004 murder of human rights defender Munir were members of this agency. It is criticised for its politicisation, lack of civilian oversight and the impunity that its members enjoy for human rights abuses and criminal acts.

On October 11, 2011, all political factions in Commission I of House of Representatives (DPR RI) ratified the draft Intelligence Bill. The Bill was adopted despite strong public criticism, including by human rights groups. This new intelligence law contravenes earlier

24 see Tuanliwor Kiwo case in the annex

25 see Syafrie Sjamsoeddin case in the annex

efforts to establish internal accountability measures within the state intelligence agency (Badan Intelijen Negara/BIN).

The law allows the intelligence agency to intervene in cases where State secrets have been published, without providing any definition of the terms of the process used to classify information as such. This provides the agency with wide powers of discretion and is expected to result in arbitrary arrests and violations of the freedom of expression. The law furthermore places the responsibility for leaks of State secrets on civilian actors, such as the press, instead of the State institutions themselves. Without providing limitations or restrictions on this power, the law generally allows for surveillance measures in very broad terms and is expected to result in abuses. As the head of the intelligence agency is to be appointed by the parliament instead of by an independent commission, ongoing heavy politicisation of the agency is expected. The law does not provide for effective supervision of the body, which has been one of its key shortcomings to date.

A coalition of domestic NGOs and human rights victims of violence had planned to launch a judicial review of the Bill in late December 2011. The articles that will be included in the judicial review are those that threaten civil liberties and human rights.

Recommendation: The state intelligence law should be reviewed and parliament should ensure that an amended law is passed that guarantees the respect for human rights and provides for effective civilian oversight and depoliticisation of Indonesia's State intelligence agency.

## **PART III - Annex: List of Cases**

### **Tuanliwor Kiwo**

On May 9, 2010, an indigenous Papuan man, Mr. Anggen Pugu Kiwo, also known as Tuanliwor Kiwo, reached the Kwanggok Nalime military post at around 9am while riding a motorbike taxi from Tingginambut towards Mulia in Papua. Mr. Kiwo was asked to enter the military post where he was handcuffed and tortured. During the torture, Mr. Kiwo repeatedly pleaded for the perpetrators to stop and release him, without success. He endured severe panic attacks, cramps and extreme pain during the torture, and also lost consciousness. Mr. Kiwo was interrogated regarding separatist activities in the area and about possible weapons held by community members.

In the late afternoon of the second day of his detention, Mr. Kiwo received basic treatment for his injuries and he was then given some clothes. During the second night of detention, Mr. Kiwo heard the soldiers planning his execution. Mr. Kiwo then managed to escape in the morning of the third day from the military post to seek medical help and shelter, with great pain and difficulty due to the swelling of his legs. The perpetrators have been undergoing trials since 5 November, 2010. On November 11, 2011, the military court judges of III-19 Kodam XVII / Cendrawasih located in Cenderawasih, Jayapura pronounced a sentence of five months imprisonment for three members of the Unity of Pam Rawan Infantry Battalion 753 Arga Vira Tama/Nabire Kodam XVII Cendrawasih, namely Prada Syahmin Lubis, Prada Joko Sulistyono and Prada Dwi Purwanto. They were found guilty according to article 103 of the Military Criminal Code (KUHPM) junto and article 56 of the Criminal Code (KUHP), regarding acts against the order of superiors or disobeying official orders to treat the community well. Another officer, second lieutenant Infantry Cosmos (Letnan Dua/Letda), was also sentenced for the same charges to seven months imprisonment.

Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2010>

### **Kurulu case**

On November 2, 2011, between 11pm-3am, seven members of the Kurulu military sub-district command (danramil Kurulu) arrested and ill-treated three local activists and nine Umpagalo villagers without any command letter of authorization, at Umpagalo village, 176/Kurulu military headquarters of Wim Anesili's branch, Kurulu sub-district, Jayawijaya, Papua. The arrest followed a false report filed by a reportedly drunk Kurulu villager, that these persons were holding a separatist meeting. While taking the victims to military headquarters, the officers beat them, cut them with bayonets for two hours, forced them to crawl and doused them with water for one hour. The officers also humiliated the victims, beat them with big wooden sticks, kicked and stepped on them with boots, pointed guns at them, threatened to cut their heads, stabbed them with bayonets and shot them four times. After that, the military brought the victims to Kurulu military headquarters and allegedly arrested them for two hours.

In response to this, Ibnu Tri Widodo, the head of district command (Korem) 172/PWY acknowledged the violence. He stated that the seven soldiers mistreated the civilians now held in the custody of the Wamena Military Police. Following the mistreatment, all soldiers

on duty in the Kurulu sub-district had been posted elsewhere. He also promised that the military would no longer act "arrogantly" towards civilians.

### **Charles Mali (Torture in East Nusa Tenggara)**

On March 5, 2011, there was a misunderstanding between six drunk Futubenao young men and an officer of the TNI Infantry Battalion 744/SYB. In the afternoon, several TNI officers came to Raimundus Mali's home (father of Charles and Heri Mali), asking for the whereabouts of Charles and his friends, but failed to find Charles. On March 8 at around 9am two members of the military forcibly took Charles Mali's parents, Raymundus Mali and Modesta Dau to report at the Tobir Post, where the Provost requested them to bring their sons for coaching.

Following this request, Charles and Heri were handed over to the Provost by their parents on March 13. Rather than any coaching, Charles and Heri Mali were tortured then, together with their four friends, all of whom were involved in the March 5 incident. The six youth were beaten, kicked with boots and physically pitted against each other by some members of the TNI Battalion 744 in Tobir Post. The torture lasted about four hours. At around 10pm, Heri Mali found his brother Charles had died, with bruises on his back, face and chest, allegedly caused by being kicked with boots. Heri meanwhile, is currently undergoing intensive treatment at the Sitohusada Hospital, Atamabua, due to back, chest and head injuries from punches and kicks, as well as vomiting supposedly caused by a hard blow to the head. In relation to this incident, the Sub- military police detachment (Sub Denpom) Atambua has examined 23 members of Battalion 744/SYB who were allegedly directly involved in the torture and murder of Charles Mali and his friends. Although some 23 suspects were detained, there has been no significant progress in the case; instead, there are rumors that the detainees can freely go out to meet their families.

For more information on this case please visit:

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-096-2011>

### **Killing of journalists**

Anak Agung Prabangsa was found dead on February 17, 2009 after being missing for five days. His body was found floating on the Padangbai beach, Ubud, Bali. Mr. Prabangsa was killed for his work in uncovering the corruption involved in the construction of schools in Bangli, Bali.

On July 26, 2010, Syaifullah Muhammad, a journalist who covered deforestation and environmental destruction issues was found dead at his company house in Balikpapan, East Kalimantan. His colleagues found him frothing at the mouth. Local journalists believe he was poisoned, casting doubt on an autopsy report stating he died from a brain hemorrhage caused by diabetes and hypertension.

In the same month, Adriansyah Matra'is also died. He had reportedly received threatening SMSs (short text messages) before he disappeared for two days. His body was found floating in Gudang Arang river, Merauke on July 30, 2010. Although there are allegations that he was murdered due to his investigation into the Merauke regional head election, the cause of his death remains a mystery.

The AHRC published an urgent appeal on this case at:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-128-2010>

Journalist Ridwan Salamun died on August 21, 2010 when he was covering the communal clashes in Tual, Southeast Maluku as a camera man for SUN TV. A group of villagers had not welcomed his attempt to cover the event and attacked him. Police officers witnessed the assault against Mr. Salamun but did nothing to prevent it, effectively consenting to the violence.

The AHRC published an urgent appeal on this case at:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-142-2011>

On December 17, 2010, Alfrets Mirulewan's body was found floating near Wonreli port, Kisar island, Southwest Maluku after he had disappeared for three days. He is believed to have been killed due to his investigation of fuel smuggling.

Of all the cases above, only the perpetrators of Mr. Prabangsa's death have been uncovered and punished, with the main perpetrator, I Nyoman Susrama, sentenced to life imprisonment. The perpetrators of the other cases have either not been found or were acquitted. In Mirulewan's case for instance, witnesses have questioned whether the suspect detained by the police is in fact the real culprit. Furthermore, in Salamun's case, Tual District Court acquitted the accused on March 11, 2011.

### **Cikeusik case**

On February 6, 2011, three Ahmadiyah followers were killed and five injured after an angry mob attacked them in Cikeusik, Pandeglang – Banten. At that time, the Ahmadiyah followers were trying to protect themselves and the assets of the Ahmadiyah from the mob that was forcing them to leave the village. The mob attempted to besiege the victims with machetes and stones. The police and military who were present, were unable to do much to prevent the mob violence as they were considerably outnumbered. As a result, Roni Pasaroni, Tubagus Candra Mubarak Syafai and Warsono, three Ahmadiyah followers, eventually died.

On April 28, 2011, the Serang District Court in West Java convicted 12 perpetrators for maltreatment, joint assault and incitement with a minimum prison sentence of 3-6 months. In the meantime, another Ahmadiyah victim, Deden Sudjana, who was also injured by the mob attack, was taken to court and sentenced to six months in prison for refusing to leave the house when asked by the police officers, and for wounding one of the attackers.

The AHRC published a statement on the case at:

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-106-2011>

### **Syafrie Sjamsoeddin**

On January 6, 2011, President Susilo Bambang Yudhoyono appointed Letnan General Syafrie Sjamsoeddin as Deputy Defense Minister through Presidential Decree (Keppres) No. 3/P 2010. This is completely inappropriate since Syafrie Sjamsoeddin is one of the perpetrators responsible for the 1998 May Riots, while serving as the Military area command

C-in C (Pangdam Jaya) in Jakarta at that time. Furthermore, no vetting mechanisms were applied by the President before promoting Syafrie as Deputy Defense Minister.

Although victims of past human rights violations and their family members, together with several human rights NGOs in Jakarta filed a lawsuit to cancel the Presidential Decree at the state administrative court on April 5, 2010, it was rejected by the judge on September 6.

### III. KontraS with Protection International (PI)

#### Legal and institutional framework

The use of criminal defamation charges is one of the most frequently used legal means to silence the voices of HRDs. Especially journalists defending human rights and defenders working on anti-corruption and labour rights have fallen victims to accusations of defamation. Defamation charges are mostly made based on Articles 310, 311 and 315 as well as Articles 154, 155, 160, 161 and 207 (Haatzaai Artikelen) of the Indonesian Penal code (KUHP) and Article 27, paragraph (3) of the 2008 Law on Information and Electronic Transactions (UU No. 11), which constitutes a criminal offence and carries a maximum sentence of six years imprisonment or a fine of six billion Indonesian Rupiah. Defamation as a criminal offence restricts the right to freedom of expression and opinion which is a necessary condition for the realization of transparency and accountability, which are, in turn, essential for the promotion and protection of human rights.

Several aspects of the Intelligence Law, passed in October 2011, threaten the work of HRDs, in particular articles related to wire-tapping (Art. 32 and 33) and "deepening" (Art. 35), which refers to the deepening of investigations on a person, including the ability to follow them, use wire tapping and other means of intense surveillance. Other articles that potentially unduly reduce the freedom of expression and information gathering are articles 26 and 44 on leaking of state secrets. Overall, the 2011 Intelligence law lacks parliamentary and judicial oversight and accountability mechanisms, thereby contradicting principles of good democratic governance. In addition, the law lacks clear definitions which opens the door to its disproportionately wide use, including towards those critical of government policies and conduct, such as HRDs, whose right to criticize the functioning of government is spelled out in Article 8 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Protect and Promote Universally Recognized Human Rights and Fundamental Freedoms. A general sense of concern exists among civil society that the law presents a step back to the years of the repressive Suharto regime when HRDs were under intense scrutiny of the State Intelligence agencies.

Other laws unduly restricting the space to defend human rights are the law on Pornography (UU No. 44, 2008), Law on General Elections (UU No. 10, 2008), and the Law on General Presidential Elections (UU No. 42, 2008). The law on Minerals and Coal Mining (UU No. 4, 2009) and the new Housing and Settlement Law (UU No. 1, 2011), moreover, particularly threaten HRDs working for environmental and land rights. In addition, a Draft revision of the Penal Code includes a number of elements which facilitate the criminalization of journalists while provisions in the Draft State Secrecy Bill restrict freedom of access to public information.

#### Silencing and eviction of defenders of environmental and land rights

Threats towards HRDs defending environmental and land rights continue to occur, mostly in the form of arrest and arbitrary detention, breaking up of peaceful assembly or criminal defamation charges. Perpetrators are both state and non-state actors, usually paid to defend the interests of companies. Law enforcement officers have a record of defending the interests of corporations rather than civilians and those defending their economic, social and cultural rights. HRDs defending environmental and land rights often work side by side with rural communities that see their human rights and fundamental freedoms violated

through land grabbing and pollution of their natural environments for the development of large scale plantations and other projects exploiting natural resources. Remoteness of the locations often limits these defenders' access to protection and justice mechanisms.

On 9 May 2009, Berry Nahdian Forqon and Erwin Usman, director and deputy director of Walhi (Friends of the Earth Indonesia) were arrested and detained by police at a peaceful action at the Malalayang beach during the World Oceans Conference- Coral Triangle Initiative (WCO- CTI) Summit in Manado (North Sulawesi) for "failing to obey state officials". A parallel event to the Summit, held by the International Forum for Oceans and Justice (FKKP), consisting of a variety of civil society organisations from the Asia-Pacific region, including Walhi, was violently disrupted and dispersed by police resulting in the deportation of more than 20 civil society representatives from the Philippines, India, Malaysia, Thailand and other countries. The reason for dispersal and deportation remained unclear but was in any case disproportionate and violated the freedom of movement and peaceful assembly. Allegedly the permit for the event had been withdrawn and the activists were not allowed to be in the area where the WOC-CTI Summit was being held.

In 2010, a number of activists were arbitrarily arrested. In January, Pastor Ratinus Manalu and an activist of the Community Land Defence Front (FBTR) were arbitrarily arrested for their activities protesting illegal land grabbing by the local administration and a palm oil company in Tapanuli Tengah district (North Sumatra) which started in 2001.<sup>26</sup> In May, 13 activists and community members of Talaga Buton in Central Sulawesi were arrested and detained for ten months using the Law on Minerals and Coal Mining, after protesting a company's mining activities in their area. That same year, another 12 anti-coal activists were arrested in Cirebon (West Java) when they took part in a peaceful meeting organised by Greenpeace Southeast Asia-Indonesia to oppose the expansion of coal fired power plants in Cirebon and Indonesia, again violating the right to peaceful assembly and association as well the right to freedom of expression and opinion.

In November 2010 WHRD Eva Bande had been accompanying farmers in Central Sulawesi who were demanding the return of their communal land which had been forcibly taken by a private company with the assistance of police and military officers. On 15 November 2010, Eva Bande was arrested and the state court sentenced her to four years in prison. Many other farmers and community based defenders have experienced intimidation and criminal charges for their resistance to companies involved in plantations, mining and other types of natural resource exploitation.<sup>27</sup>

During the year 2011, religious organisations, including the state funded Indonesian Ulama Council (MUI) have stigmatized Greenpeace Southeast Asia- Indonesia as a "haram" (forbidden) organisation when they were alleged to receive funding from the Dutch lottery. Instead of supporting Greenpeace and their right to freedom of expression and peaceful assembly and association, the Jakarta provincial administration accused them of not being registered according to regulations and threatened the organisation with expulsion from Indonesia. Non-Indonesian Greenpeace staff were denied entry into Indonesia and Sumatra respectively despite holding valid business visas issued by the Indonesian authorities abroad. One of them was deported in violation of his right to liberty of movement, freedom of expression, and information gathering. Allegations against the organi-

26 Monitoring by KontraS

27 Joint Press Statement, 24 January 2011, KontraS, KPKPST, Komnas Perempuan, Solidaritas Perempuan, Walhi



zation increased with their success in campaigning against the companies Sinar Mas and Asian Pulp and Paper.

On 11 February 2011, two Walhi activists, Firmansyah and Dwi Nanto, who were accompanying 18 farmers were convicted by the Seulama State court in Bengkulu (West Sumatra) for having allegedly seized land from a company. They were stigmatized as 'communists' accused of defamation and members of the police forced six women belonging to the affected community to undress in front of their children and husbands and tens of police officers. None of the officers were punished or even disciplined for their behaviour despite complaints filed with the local police station. On 18 November, three Walhi activists along with four activists from the Philippines were arrested and interrogated for 11 hours at the provincial police station in Bali. They continue to be held at the station at the time of writing this report. The activists were holding a peaceful assembly in front of the US Consulate on the occasion of the 2011 ASEAN Summit in Bali which was also attended by US President Obama.

Threats to criminalize and silence those defending human rights and fundamental freedoms affected by corruption

Those defending human rights and fundamental freedoms affected by corruption constitute a considerable group within Indonesian civil society. Corruption remains rampant in Indonesia, even though in 2005 the national police ordered their Criminal Investigation Unit (Bareskrim) to prioritize the unravelling of corruption and eradicating corruption was one of President Bambang Susilo Yudhoyono's main campaign promises for his first term in 2004. Anti-corruption activists in Indonesia face a great number of risks related to their work.

Indonesia Corruption Watch (ICW) notes that since 1998 more than 40 anti-corruption activists have been threatened in several ways. Most often they are faced with criminal defamation and other criminal charges, brought against them by those who have much to lose from the fight against corruption. Nine staff members of ICW have been reported to the police on charges of criminal defamation. None of the cases has been closed or brought to court.

HRDs working against corruption have also been intimidated and harassed by having their belongings destroyed or burned or by physical abuse. On 2 March 2007, the house of Agus Sugandhi, head of Garut Corruption Watch was burnt down by unknown persons when he exposed a case involving the local district head, for which nobody has been brought to justice as yet. On 8 July 2010, Tama S Langkun, researcher at ICW was beaten up and stabbed by four unknown persons in South Jakarta, after the publication of results of an investigation into corruption in the high echelons of the national police. This happened only two days after Molotov cocktails were thrown at the office of Tempo magazine that published the results.

None of the cases of violence towards anti-corruption activists have been properly investigated and brought to trial, even though President Yudhoyono pledged that the perpetrators of the stabbing of Tama S Langkun would be brought to justice.

## Stigmatization as 'separatists', intimidation and threats towards HRDs in Papua

In the past five years (2006-2011) the situation of HRDs in Papua has seen no improvement. HRDs continue to be harassed and threatened, mostly by security forces, particularly by the Indonesian military (TNI).

There has been an increase in the use of subversion/treason (makar) clauses in the Penal code (Art. 106, 110 and 160) to silence the voices of Papuan activists peacefully seeking justice for past and present human rights violations and the right to self-determination. As of the writing of this report, KontraS counts 29 political prisoners, serving sentences ranging from 11 months to life imprisonment. Three persons are still on trial, while 17 people have been released on probation.<sup>28</sup> Political prisoners are generally treated badly and denied access to health services, such as in the case of Filep Karma and Kimanus Wenda, who have been suffering from serious illnesses. The majority of the 29 convicted prisoners were involved in flag raising events. Others were involved in peaceful rallies against the violence and human rights violations which have been committed in Papua <sup>29</sup>.

In October 2011, two HRDs and members of the labour union SPSI (All Indonesia Labour Federation), working at the Freeport McMoran gold and coppermine, Petrus Ayamiseba and Leo Wangdagau, were shot dead by police officer when taking part in a strike and rally calling for improved labour conditions at the mine.<sup>30</sup> The head of the Union, Sudiro, leader of the strike since it started on 15 September 2011, was publicly threatened to be killed by the District Police Head of Timika during a meeting to discuss the workers' demands. Before the strike, Sudiro was once shot at by an unknown person. Other defenders of labour rights and members of the union have also been threatened. Juli Parongon, spokesperson during the strike, was followed closely by Intelligence officers every time he visited Jakarta to coordinate with the head office of the SPSI.

After the violent dispersal by the military and police of the Third Papuan People's Congress in Jayapura on 19 October 2011, threats towards Papuan HRDs have increased not only in the region itself but also in Jakarta. A Papuan student dormitory in South Jakarta, which houses many students who are also political activists, was raided by police and military officers on 10 November 2011.<sup>31</sup> Officers combed the entire premises of the dormitory and took down the identities of the students. At a discussion about corporate and environmental crimes committed by the Freeport mining company at the office of the Legal Aid Foundation (YLBHI) in Central Jakarta that same day, the police, in what can only be explained as a show of force, sent troops armed with automatic rifles to monitor the discussion.<sup>32</sup> This disproportionate measure unduly restricted the freedom of expression and assembly.

Access of foreign human rights defenders to the troubled provinces of Papua and West Papua has become increasingly difficult, through unclear and complicated regulations and direct refusal of permits to enter. As a result, three international organisations, ICRC, Peace Brigades International and Cordaid, were forced to close their offices in Papua in the past two years.

28 See <http://www.kontras.org/buku/laporan%20tahun%202010.pdf>

29 Compilation of reports by KontraS from 2006-2011, see [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1144](http://www.kontras.org/index.php?hal=siaran_pers&id=1144)

30 See [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1385](http://www.kontras.org/index.php?hal=siaran_pers&id=1385)

31 See [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1407](http://www.kontras.org/index.php?hal=siaran_pers&id=1407)

32 See [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1406](http://www.kontras.org/index.php?hal=siaran_pers&id=1406)

## Recommendations

- *Promptly and effectively investigate all violations of human rights and fundamental freedoms of human rights defenders and hold all perpetrators accountable.*
- *Take effective measures to ensure the safety of human rights defenders by establishing a protection unit for human rights defenders under the National Human Rights Commission Komnas HAM.*
- *Adopt and implement pending legislation for the legal recognition and protection of human rights defenders.*
- *Repeal and amend all legislation which disproportionately restricts the right to defend and promote universally recognized human rights and fundamental freedoms.*
- *Strengthen police efforts to respect and uphold human rights in line with National Police Chief Regulation (Perkap) No. 8 2009, on the "Implementation of Human Rights Principles and Standards in the Police Force", and act firmly and in accordance with the law against arbitrary behaviour and violence committed against human rights defenders by religious organisations and other non-state actors.*
- *Extend standing invitations to all UN Special Rapporteurs, including the Rapporteur on the Situation of Human Rights Defenders, the Rapporteur on the Right to Freedom of Religion or Belief, the Special Rapporteur on the Right to Freedom of Expression and Opinion and the Special Rapporteur on the Use of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.*
- *Make explicit recognition for human rights defenders by publicly supporting their work, recognising the contributions they make to the Rule of Law in Indonesia and denouncing any intimidation, threats or attacks which hamper their work.*



## IV. KontraS with Human Rights Working Group (HRWG)

### Settlement of Past Human Rights Violations Cases<sup>33</sup>

There has been little progress in the effort to settle past human rights violations cases. Komnas HAM had conducted investigations into 5 (five) human rights cases which had been submitted to the Attorney General's Office, namely Trisakti Case (1998), Semanggi I (1998) and Semanggi II (1999) Cases, May 1998 Case, Talangsari Case (1989), and Wasior and Wamena (2000).<sup>34</sup> All of these cases constituted gross violations of human rights. To this end, Komnas HAM recommended immediate establishment of an ad hoc human rights court in accordance with Law No. 26 Year 2000 on Human Rights Court.

The impediments of the settlement of the aforementioned cases lie within the unwillingness of the Attorney General's Office that kept returning the dossiers of the cases to Komnas HAM without any explanation. The Attorney General's Office is supposed to conduct investigations to follow up on Komnas HAM's reports.

Eighteen out of 34 people who were indicted and tried before the Ad Hoc and Permanent Human Rights Courts were convicted at the first instance court but then acquitted by the appeals court.<sup>35</sup> The pro-Indonesian militia leader, Eurico Guterres, the last person sentenced to jail for his involvement in crimes against humanity, was also acquitted in 2008. In some cases, this condition was worsened by the use of military justice system to try low-ranking field perpetrators.<sup>36</sup>

In the 1997/1998 abduction and enforced disappearance cases, the Government of Indonesia has yet to implement 4 (four) recommendations adopted by the DPR Plenary Session in September 2009, which urge the President and all relevant state institutions to establish an ad hoc human rights court; to immediately locate the whereabouts of 13 people cited as still missing by Komnas HAM; to immediately rehabilitate and provide compensation to the families of the disappeared; and to immediately ratify the Convention for the Protection of All Persons from Enforced Disappearance as a form of Indonesia's commitment and support to end the practice of enforced disappearance in Indonesia.

There are 4 (four) other factors which also affect the settlement of past human rights violations cases.

First, the inexistence of human rights courts in Aceh and Papua.<sup>37</sup> Second, the revocation of Law No. 27 Year 2004 on Truth and Reconciliation Commission. The absence of a Truth

33 Detailed developments of the issue after the fall of the New Orde regime can be found in a joint publication of KontraS and the International Center for Transitional Justice (ICTJ), "Derailed (Transitional Justice in Indonesia Since the Fall of Soeharto, Maret 2001, <http://kontras.org/buku/Indonesia%20report-derailed-Eng.pdf>.

34 Ibid., p. 40.

35 Ad Hoc Human Rights Court for East Timor (1999) managed to prosecute 18 defendants. Six were convicted but later acquitted by the appeals courts. In a similar vein, Ad Hoc Human Rights Court for Tanjung Priok (1984) prosecuted 14 defendants. Twelve people were convicted but later acquitted. Human Rights Court for Abepura (Papua, 2000) prosecuted two defendants. Both were found not guilty on the first level. "Derailed", pp. 45-51.

36 Ibid., pp. 37-42.

37 The establishment of such courts is based on the mandate provided under Law No. 26 Year 2000 on Human Rights Court and Law No. 11 Year 2006 on Aceh Government and Law No. 21 Year 2001 on Special Autonomy for Papua Province.

and Reconciliation Commission (TRC) at the national level has become the reason of the delay in establishing truth and reconciliation commissions at the local level, namely in Papua and Aceh. The Ministry of Law and Human Rights has initiated the re-drafting of a Truth and Reconciliation Commission Bill. The enactment of the Bill has been included in the 2011 National Legislation Program Plan.

Third, the lack of a vetting mechanism in the military (TNI). This is related to the conferral of strategic positions to the Indonesian military personnel who were allegedly involved in the cases of past human rights violations such as Lieutenant General (TNI) Sjafrie Syamsuddin.<sup>38</sup>

Fourth, the application of the unrevised Law No. 31 Year 1997 on Military Court. The Law has been widely used to protect the perpetrators with military background in many cases of past human rights violations; for example, military proceeding of the Rose Team (Tim Mawar) in the 1997/1998 abduction and enforced disappearance cases.

#### **Recommendations:**

1. *Urge the Government to follow-up on the establishment of the human rights courts in Aceh and Papua in accordance with the mandate of Law No. 26 Year 2000 on Human Rights Court.*
2. *Urge the Government to immediately discuss the Bill on Truth and Reconciliation Commission.*
3. *Urge the Attorney General to follow-up on Komnas HAM's investigation reports.*

#### **Impunity for the Settlement of May 1998 Riots**

In regard to the CERD Committee's recommendations,<sup>39</sup> to date, no legal measures have been taken by the Government of Indonesia to resolve May 1998 riots case. Whereas, the investigation report of the Joint Fact Finding Team (Tim Gabungan Pencari Fakta, TGPF), which was established by the Government in 1998 and that of the Ad Hoc Investigation Team for May 1998 Riots, which was established by Komnas HAM in 2003, concluded that 13-15 May 1998 riots constituted gross human rights violations, including racial-based violence. Such violations were carried out in a systematic and widespread manner.

There is no initiative from the Government, notably Attorney General's Office, to process the case. It was recorded the Attorney General's Office has twice returned the dossiers of the case to Komnas HAM. The DPR has also contributed to the stagnation in the settlement of the case by not taking any initiative to recommend the establishment of an ad hoc human rights court for May 1998 Case.

Recommendation: Urge the Government to implement the recommendations of the CERD Committee to follow-up on the legal proceedings against the perpetrators of violence in the May 1998 riots.

38 Lieutenant General (TNI) Sjafrie Syamsuddin was conferred the position of Vice Minister of Defence of Indonesia. He was allegedly involved in May 1998 Case and Semanggi I and Semanggi II Cases.

39 CaERD/C/IDN/CO/3, 15 August 2007, para. 24.

## V. Additional Information

Conflicts over natural resources has increased dramatically during 2011. From KontraS records, categories of conflicts over natural resources is also included in the agrarian conflict, conflict mines, plantations conflict, conflict forestry, conflict of marine resources. Particularly, on the agrarian conflict issues, at least there were 57 cases of violent conflict, which involves security forces (police and military), company employees, company security officers, up to persons unknown. Emerging pattern of violence such as shootings, persecution, arbitrary arrests, torture, intimidation up to murder happened. Those six types of violence, was carrying 49 police officers, 19 military officers, 11 persons unknown, and also a person resident that has been involved in the clash with company's employees.

Trends of violence in this business sector has resulted with 29 people died, 63 gunshot wounds, 240 people get injured due to persecution and torture, 233 civilians were detained and bullied. Conflicts over natural resources happened in Indonesia from the West to East region.

Several cases got public attention, mostly like occur in Sodong-Mesuji; Lampung and South Sumatra (agrarian conflict), Sape-Bima-East Nusa Tenggara (mining conflict), Tiaka Morowali Central Sulawesi (conflict of marine resources). Those three cases involved the role of a very large corporate groups. Moreover, from KontraS' fact finding mission, we can obtain information that there are police officers at the time and also in the field, that couldn't able to reduce the potential violence.

KontraS also put heavy attentions for land disputes with the element of human rights violations, and involve elements of the TNI in it, that can be found in the case of Alas Tlogo (East Java), Kebumen (Central Java), assets of the state house, Bojong and Rumpin (West Java). In cases of land disputes between citizens and the military, there have been violations of law and abuse of authority by the military seriously. As a background, military did some action to urge forced evictions without emptying through mechanisms of justice and also ignores the role of police as law enforcers. TNI also convicted of violence in the case of Kebumen, Alas Tlogo and several other cases without adequate punishment process later.

Some of the things that cause the occurrence of land conflicts between citizens and the military among others, on the history of land claims TNI, TNI's internal regulations, lack of sharpness and lack of National Land Agency (Badan Pertanahan Nasional/BPN) breakthrough for efforts of the government. We are also known that Indonesia Government just released a plan to establish a Procurement of Land for Development Bill. This bill could bring some potential condition, easpecially to sharpen the conflict of land in Indonesia. Another thing that is important is the re-implementation evaluation of military business policing as mandated by Law 34/2004 on the TNI and the Presidential Decree 43/2009 regarding the takeover of TNI Businesses Activities.

So far, no progress at all of the verification team from the government and the TNI business. This is urgent, given the extensive lands that have not reached of certificate 2,829,822,892, 50 m<sup>2</sup>, it means the zone of conflict and potential conflict reaches 88.41% of the total land in dispute and so far, the vast land that has become a matter of 258,379,752 m<sup>2</sup> ( approximately 8.07%).

In addition, the violence in Aceh and Papua are also experiencing rising as a new trend. Mysterious shooting of a trend of violence and its intensity increased in recent years, both in Aceh and Papua. The rise of the mysterious shooting that occurred in Aceh succession adjacent to the local political agenda (Local Election/Pemilukada) Province of Nangroe Aceh Darussalam, which was originally scheduled to be held on February 16, 2012, but now postponed up until 29 April 2012.

The same pattern and intensity (read: the mysterious shooting) in Papua occur even in the area of PT Freeport Indonesia. Targeted attacks are real bright and addressed to the workers of PT Freeport Indonesia and its assets. All cases of mysterious shootings occurred at a point between Mile 35-61 (happened between 2009-2012). Whereas the combined military and police forces in particular on a routine (daily) patrols in the Mile 32, 34, 50, 54, 64 and Mile 66.

But the existence of extra tight guarding of a joint military and police forces and security apparatus of PT Freeport Indonesia does not necessarily able to guarantee the safety of the workers of PT Freeport Indonesia and civilians who settled around the scene to move. Whereas a regular basis, the combined military and police officers have received funding to maintain the security of the region of PT Freeport Indonesia is Rp. 1.250.000/month of 635 TNI and Police personnels. So, why these additional funds couldn't be use to improve the performance of security forces in those locations? Not only securing vital national assets in the area of PT Freeport Indonesia, but at the same time, providing extra security to civilians who move around in the area of PT Freeport Indonesia.

Pattern of mysterious shooting spreader is often used as instruments of terror in the community. Especially people living in conflict areas such as Papua. It is then reinforce the notion that cases of a mysterious shooting that occurred was not purely criminal. There are shades of locality conflicts which are then used as a tool to threaten the safety of civilians. As the mysterious shooting of the latter model is rife in Aceh, the moment of succession ahead of the elections. Sociologically, the violence that is used as an instrument of terror can be managed to control other people/communities, or even extinguish the resistance effort to give legitimacy to those who have the authority the power to control the true sense of security that the public can be obtained immediately.