



## **Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review on human rights in the Republic of Indonesia**

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### **1. Introduction**

The hostile environment for defenders of human rights belongs amongst the priority issues in Indonesia. The house of Mr. Albert Rumbekwan, the head of the National Human Rights Commission's (Komnas HAM) office in Papua was broken into by unidentified persons on September 23<sup>rd</sup>, 2007, after a series of threats. Similarly, a Catholic priest, Father Johannes Djonga from West Papua has been receiving death threats from soldiers for his defence of human rights.

It is important to note that these persons are under threat or attack allegedly by the members of the armed forces subsequent to their meeting with Ms. Hina Jilani, Special Representative of UN Secretary General on the situation of human rights defenders. It is understood that these complaints have so far not been effectively investigated. The commitment of Indonesia to human rights is dramatically portrayed by the refusal of President Susilo Bambang Yudhoyono to meet Ms. Hina Jilani. This raises a number of questions regarding the commitment of the Indonesian government to the promotion and the protection of human rights.

Despite the fact that the Indonesian government has indicated its commitment to the upholding of human rights through the ratification of a number of conventions and covenants, the people in the country find themselves not only denied of their rights, but also without mechanisms for redress. If civil society actors are threatened and their complaints to UN rapporteurs and the police are simply dismissed as "mental illusions" by members of the police, then what avenues for lodging complaints about violations can the public expect? This is the main concern that is being raised in this report. The refusal by the Indonesian government to pass appropriate legislation corresponding to international standards with regard to civil, political, economic, social and cultural rights, notably protection from torture and the right to redress for victims will be discussed. Additionally, the related culture of impunity that is still prevalent will be covered, without which the present climate of hypocrisy with regard to rights in Indonesia cannot be understood.

### **2. Are human rights a taboo in West Papua**

West Papua is under the strict supervision of the Indonesian army which, while suppressing any dissent, is keen on exploiting its vast natural resources in collusion with multinational corporations. This has led to a plethora of human rights violations, which are shielded from the eyes of the members of the international community. While the residents of the region are denied the right to participation in decision making processes or governance, they are also being robbed of their vast natural resources. The high handed manner in which these rights are stifled by the military has in a number of cases led to the death of persons, like Theys Eluay,

concerning which there is still no form of justice. While it is impossible to document the exact number of victims of disappearances or killings since journalists or fact-finders themselves are being targeted, a large number of persons are estimated to have either disappeared or been killed in addition to significant civilian displacement due to military campaigns.

Additionally a large number of cases of starvation have been reported. The distances involved in communications and the restrictions imposed on the island do not allow any flow of information. The government-sponsored transmigration program and spontaneous migrants in search of better economic benefits have created serious tensions. Most of the economic benefits are being enjoyed by immigrants.

In this context it is imperative that Indonesia come up with measurable strategies to address all the rights that the state has promised to its citizens, and put a halt to serious human rights violations. The control exercised by the military must be replaced by a civilian administration where locals can play a greater role in governance.

### **3. A pervasive culture of impunity**

Impunity has been a significant barrier in Indonesia. It has become firmly entrenched since the 1965 Massacre, in which it is thought that hundreds of thousands were killed and as many as several million were affected, including through lengthy detention, torture and other rights abuses. Thousands of survivors continue to be stigmatised and discriminated against and are not deemed worthy of any form of redress. The events in '65 still have a persistent effect on Indonesia society, fomenting ongoing disharmony, distrust, acrimony and prejudices. The perpetrators remain untouched and enjoy power, wealth and the apparent esteem of the members of the upper echelons of society.

There was a glimmer of hope when a Reformation Era was announced in 1998, that the long tradition of impunity was to be replaced by one of justice for victims and punishment for perpetrators. However, this change has not yet come about, as is demonstrated by many ongoing violations accompanied by impunity, such as in the case of Pasuruan<sup>1</sup> in East Java where the marines went on a rampage killing four civilians and injuring several others in 2007.

The police and the Attorney General have not pursued the initial investigation. The suspicion is that the military institution may conduct internal hearings and hand out punishment that will not reflect the gravity of the violations in question. The members of the families of the victims are yet to be interviewed by the police. The police are generally reluctant to investigate crimes committed by the members of the armed forces, paving the way for the continuation of the culture of impunity.

Recent attempts by the public and some members of the House of Representatives to have a bill passed that would require the crimes committed by the military on civilians be investigated by the Prosecutor General instead of by the military courts, are yet to bear fruit. Military courts' proceedings are typically lacking in transparency and do not guarantee justice to civilians. Besides, during the hearings, the interests of the aggrieved party cannot be represented by

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<sup>1</sup> UA-175-2007: INDONESIA: At least 5 villagers allegedly shot dead by Navy force in Pasuruan, East Java

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2412/>

UP-135-2007: INDONESIA: Fair trial not guaranteed in the prosecution of killers of four villagers under military court

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2611/>

lawyers. It is on these grounds that this bill has been mooted, in the hope that this will allow the impunity enjoyed by the armed forces to be eliminated. However, further campaigning is required in order to have the bill passed.

The afore-mentioned attack on the village of Pasuruan is the most recent in a long line of attacks on innocent civilians. Annex I of this submission provides a list of other attacks and killings that have taken place and the status of legal actions concerning these. In all these cases, justice has eluded the victims and their families until now.

The atrocities committed in a number of cities on the members of the Chinese community in May 1998 also remain without effective investigation or remedy. The identities of those behind this well-orchestrated attack on the Chinese remains unclear. Following reports submitted to the UN's CEDAW and CERD committees, visits were made by the Rapporteur of the CEDAW Committee and a number of recommendations were made to the Indonesian government and the NGO community. During the May riots, more than 400 ethnically Chinese women were raped, humiliated in public or burned to death.

Also in 1998, students and civilians protesting against the National Security Bill were shot at either by the police or the military. At least 22 students were killed and hundreds were injured at Trisakti and Semanggi. The families of these victims still continue to press for investigations with regular demonstrations, in order both to have the names of the victims cleared and to put an end to the prevailing culture of impunity in the country.

The national human rights commission, Komnas HAM, is not doing enough, claiming that the inquiries into Trisakti and Semanggi have been completed and its findings been submitted to the Attorney General (AG) for further investigations and the potential recommendation to the President that the appointment of the Ad Hoc Human Rights Court should be conducted. The Attorney General however is blaming Komnas HAM for not completing proper investigations. The House of Representatives and the President are also not taking appropriate action and are simply accusing the AG and Komnas HAM of failings, without setting a time-frame for the investigations to be carried out and recommendations to be made. This has been going on for over four years at the expense of the victims and their families. Given its past performance, people are not convinced by promises made by the new members of Komnas HAM concerning inquiries into the gross human rights violations at Talang Sari where attacks on 7 February 1989 allegedly by the members of the military led to torture, disappearance and killing of more than a hundred civilians.

**The perpetrators of these crimes still enjoy impunity, without fear of being brought to justice. No senior officers of the military involved in gross human rights violations have so far been prosecuted and convicted. This deeply ingrained impunity leaves the door open for future massacres.**

#### **4. A violent society, notably for members of minorities**

The mosque and some members from the minority Ahmadiyah Islamic community in Tasikmalaya were attacked by mobs from two Islamic groups on June 25, 2007. The attackers were allegedly connected to the Islamic Defenders Front (Front Pembela Islam/FPI) and GERAK (an anti-communist movement). When a complaint was made to the police, they intervened to prevent continuing attacks but did nothing to investigate the complaint or prosecute the perpetrators.

The Asian Legal resource Centre has been informed of three separate cases of alleged attacks and intimidation on religious meetings in Surakarta, Central Java. The first case reported involves a seminar conducted by the Interaction of Solidarity between Elements of Society (INSAN-EMAS) working along with the Indonesian Foundation for Legal Service (LPH YAPHI) to promote non-violence in society and to prevent attacks on places of worship. A seminar on “Strengthening the Foundation of Civil Society without Violence” was organized on June 21, 2007. The event planners received a phone call ordering the event to be cancelled on the grounds that one speaker is a sinner and another is a Marxist. The following day the head of the sector police for Colomadu, Kridho Baskara, came to the Taman Sari restaurant and asked the owner to cancel the seminar and barred any food from being served. Later the arrival of the police disrupted the proceedings and the meeting had to be cancelled. A formal complaint made to the Karanganyar Police Department was never inquired into.

On March 28, 2007, the National Liberation Unity Party (PAPERNAS) was scheduled to hold a demonstration against the Foreign Investment Bill in front of the Shangri-La Hotel, where President Susilo Bambang Yudhoyono was having a meeting about the Millennium Development Goals. However, since the morning, a group of about 100 persons from Front Pembela Islam/FPI (Islam Defender Front), Forum Betawi Rembug/FBR and Front Anti Komunis Indonesia/FAKI (Indonesian Anti-Communist Front) tried to disturb demonstrations by PAPERNAS. This resulted in both sides attacking each other, resulting in some persons being injured and a number of buses being damaged. The police were present but took no action to prevent the violence. When PAPERNAS complained to the police, investigations were promised and so far no inquires have been conducted.

Reports indicate the continuity of attacks on the minority Ahmadiyahs sect and the National Liberations Unity Party, PAPERNAS. Besides, the prevailing laws require that any religious community desirous of having a place of worship need to have at least 60 per cent approval from the people who are living in the local area in question. This in reality makes it impossible for small communities to have a place of worship as it is impossible for them to secure the required percentage from the members of other religions.

The nascent democracy in the country is constantly being threatened by all these above described anti-democratic movements. The democratic freedoms enshrined in the constitution are being denied to Indonesia’s citizens, particularly to its vulnerable groups, as is demonstrated by State inaction to intervene and protect such persons. The failure to investigate complaints adds to the feeling that State agents are far from being committed to democratic values and institutions or human rights. The families of the victims of ’65 massacre and those that survived torture and imprisonment in ’65 continue to be harassed and many of their basic rights are being denied.

Religious or ethnic conflicts, such as in Sulawesi in the past or in West Papua at present are being used to suppress the rights of minorities and justify heavy militarisation, which leads to serious human rights violations. It is time for Indonesia to realise that the massive presence of the army in various parts of the country is a major barrier to the nurturing of democracy that it claims it wants to establish. It is only through the establishment of the rule of law, justice and human rights that the realization of democratic ideals can be guaranteed.

## **5. Problems of implementation of laws protecting human rights**

Indonesia has certain laws that should assist it in the protection of human rights, but these are not being effectively implemented. The Witness and Victims Protection Law passed in 2006 appeared to be a step in the right direction but it has not been implemented as yet. The law required the appointment of commissioners to the Protection Agency within a period of one year. So far the selection committee, which is expected to propose 21 names to the President, has so far failed to do so. The President would then be required to propose 14 candidates to the House of Representatives, for them to select seven persons. Besides, there is no effort on the part of the state to induce persons to apply for membership. There is insufficient progress concerning the drafting of the penal code and the criminal procedure code, despite the government's claims that progress is being made.

## **6. Ratification of the Covenants without corresponding domestic laws**

While Indonesia's ratification of key international human rights instruments is welcome, ratification alone is not enough. The implementation of these instruments, notably through the creation and implementation of corresponding domestic laws should be the yard-stick by which Indonesia's human rights record should be measured. Otherwise ratification can only be seen as a measure taken to placate the international community, with no relevance for the Indonesian people. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified nine years ago; however, torture is a widespread phenomenon that is being perpetrated with impunity. None of the steps taken by the government of Indonesia have so far resulted in a visible reduction of the use of torture by the police or the military. Torture is still one of the most accepted means of investigation to force confessions. In particular, the poor are typically being subjected to torture and other grave human rights violations.

The Asian Legal Resource Centre and its sister organization, the Asian Human Rights Commission, have been working on many cases of police torture in Indonesia in recent years (please see annex I for a list of summaries of the cases). The consistent pattern emerging from these cases shows that the police still enjoy a very high degree of de facto immunity from prosecution.

While in the past, torture was used in Indonesia for political purposes, it has now become a tolerated part of police practice. It would be most effectively addressed through a law criminalizing torture, an effective mechanism for making complaints, together with police reforms that provide for methodologies and practices other than torture in criminal investigations and other activities.

The Human Rights Court Law (Law 26/2000) addresses torture to an extent, where it can be shown to amount to a gross violation of human rights as defined in Article 4 jo. Article 9 of the law. The National Commission of Human Rights is not supporting the view that torture is a widespread and systematic problem, making it impossible for torture to be addressed in a Human Rights Court as provided by the law.

The Human Rights Law (Law 39/1999) prohibits torture without making any reference to possible penalties or punishments in the Penal Code. As a result, the inclusion of the term torture in Law 39/1999 has no legal implication when it comes to punishments or disciplinary measures. Long delayed police reforms that could ensure better practices in dealing with suspects and innocent civilians are being discussed mainly within the police and the Ministry of Interior. Public discourse that invites major stakeholders from civil society to discuss possible

solutions in terms of police reforms to prevent torture is not being held. Torture is at times shown in television and is deemed acceptable.

The case of torture exemplifies how difficult it is to address many human rights violations, including illegal arrest and the denial of minority rights, because of the absence of proper legislation. A review and amendment of the Penal Code and Criminal Procedure Code is of significant importance if Indonesia is going to overcome the current culture of denial of rights in the country. Delays in producing the Penal Code and the Criminal Procedure Code must be addressed on an urgent basis.

## **7. Concluding recommendations:**

The government of Indonesia must take all necessary measures, as a member of the Human Rights Council and under its international obligations and duties to its people to:

1. Ensure that all attacks, threats and acts of intimidation against human rights defenders are prevented and that all barriers to their work, particularly in conflict areas like, Poso and Papua, are immediately rescinded;
2. Take immediate and effective steps to ensure that all human rights abuses are subject to proper investigations and prosecutions and that acceptable reparation is provided to the victims and their families, including compensation and rehabilitation;
3. Take all necessary measures to ensure that all citizens are able to exercise their basic fundamental democratic rights to freedoms of association, expression and belief, without being attacked, threatened and disrupted by undemocratic forces;
4. Ensure the provision of effective mechanisms under the Victim and Witness Protection law and its agency, in order to assist in the fight against the prevailing culture of impunity;
5. Criminalize torture, defining it in line with international standards, and pass appropriate laws to punish perpetrators and provide redress to victims;
6. Complete the revision of the Penal Code and the Criminal Procedure Code without delay.

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***About ALRC:** The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.*