



THE STATE OF HUMAN RIGHTS IN INDONESIA - 2008

TORTURE, KILLINGS AND ATTACKS ON HUMAN RIGHTS DEFENDERS CONTINUE AFTER 10 YEARS OF REFORMS

INTRODUCTION

In 2008, Indonesia continued on the path to reform, but continued to stumble over issues such as religious freedom and indigenous people's rights. This year marks the tenth anniversary since the downfall of Suharto, and is accompanied by a degree of optimism and progress concerning human rights. However, cases of torture and extra-judicial killings continue to be reported. The Special Rapporteur on torture and other cruel and inhuman treatment recently visited Indonesia and published his report, which confirmed the ongoing use of torture in institutions of justice such as the police and prisons, despite the country's ratification of international law prohibiting the use of torture.

The end of Suharto's authoritarian rule saw the implementation of a series of human rights laws enshrining fundamental freedoms such as the freedom of thought, the freedom of expression,¹ and many other such freedoms that were non-existent during his thirty-year rule. Successive Indonesian governments have since made certain efforts to address the country's human rights situation, through the formal initiation of an ongoing reform period (known as *reformasi*). Amendments to the constitution,² the implementation of human rights-related domestic laws and the signing and ratification of a number of major international agreements on human rights,³ are all commendable attempts by the Indonesian authorities to address the country's human rights challenges.

Upon closer analysis, the government still has a long way to go, in terms of achieving concrete improvements in the country's human rights situation. Ten years after the beginning of *reformasi*, Indonesia continues to suffer from serious human rights violations, including torture, extra-judicial killings, with the grave violations perpetrated typically being accompanied by impunity for those responsible. Restrictions on religious freedoms have increased, despite the fact that Indonesia is a secular and democratic country, and most victims of these human rights abuses await justice. Although the Indonesian government continues to demonstrate willingness to move forward by making changes on paper, the actual implementation in reality of these rights remain elusive for the most part. Progress continues at a less-than satisfactory pace and most human rights defenders are, as a result, only cautiously

¹ Law 9/1998 on freedom of expression in public places containing regulations for implementing rights (art. 5) and obligations (art. 6) of persons individually and in association with others as well as obligations on public authorities (art. 7); Law 29/1999 on human rights setting out the fundamental rights and duties of citizens of Indonesia, including a section on women's rights, and stipulating the Government has a responsibility to protect, promote and implement all human rights and freedoms.

² In 2002, Indonesia's 1945 Constitution was amended to include a chapter on human rights. It now contains basic human rights such as the right to life, the right to freedom of expression, the right to freedom of thought, assembly or association, the right to freedom of thought, conscience and religion, and the right to be free from torture or inhuman, degrading treatment.

³ See section on Status of Ratifications: Indonesia, (Signed)



optimistic, if at all, about the future of human rights in Indonesia. The fact that AHRC has continued to document the gravest forms of human rights violations, including cases of extra-judicial killings and torture, shows that much remains to be done.

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1. CIVIL AND POLITICAL RIGHTS

1.1 TORTURE

It is apparent that the problem of torture by the police and brutality in Indonesia persists, despite numerous and repeated recommendations from various international institutions to the government to take immediate action in order to put an end to this. Most recently, the Special Rapporteur on torture has made a series of important recommendations.⁴ The fact that no obvious progress has been made in this matter is underlined by continuing reports concerning cases of torture that are being committed by police officers in different parts of Indonesia. For example, as recently as the 22nd of July 2008, police officers allegedly tortured villagers in Pai Village in the West Nusa Tenggara Province of Indonesia. (See AHRC-UAC-174-2008 below for more details.) The AHRC has documented cases of torture in Indonesia for several years and has continued to receive such cases in 2008. (See for example AHRC-UAC-107-2008 or UA-317-2007⁵). These cases represent only a fraction of those actually taking place.

INDONESIA: Police allegedly torture villagers; one of whom is in intensive care

August 1, 2008, AHRC-UAC-174-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2957/>

On 22 July 2008, the torture of villagers by the Wera Sector Police and the Bima Resort Police in West Nusa Tenggara Province took place.

A protest against the construction of a mine in the area, in which approximately 700 villagers of Pai Village in West Nusa Tenggara took part, escalated and eventually turned violent.

After the villagers destroyed a base camp in an iron sand mining area nearby, local police forces arrived the following day in riot gear. Upon arriving, the police began shooting at villagers. Fortunately, no one was injured. Police officers then arrested 18 people, including one woman and her child.

Those arrested were taken to the Wera Sector Police and Bima Resort Police stations where they were detained and tortured. One man was so severely injured, that he fell into a coma and required intensive care.

The woman and her child were released from prison that same night, and the others were released the next day.

Despite the ratification of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, ten years ago in 1998, it remains an integral part of the Indonesian police force's practices; it is used as a common method of interrogation. It is used mainly as a method for extracting confessions from suspected criminals. Torture is predominantly used against the poor and those from socially marginalized sections of society. It is possible for people who have the money to pay their way out of situations in which they may be subjected to torture. The threat of torture is used to extract money by the police. The general public in Indonesia perceives torture by the police as being a normal occurrence. Being taken into police custody will likely lead to torture depending on your social class background. A lack of complaints by victims of torture is accentuated when the victim in question has actually committed a crime, due to feelings of guilt and the sense that they "deserved" the violent treatment. All told, it

⁴ A/HRC/7/3/Add.7 para 73,76, *Special Rapporteur on Torture*

⁵ INDONESIA: Policeman arbitrarily shoots and injures man in Yogyakarta, November 6, 2007, UA-317-2007, URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2650/>



is appropriate to say that torture is part of the culture of policing in Indonesia.. Accordingly, fear and mistrust towards the police is widespread amongst the country's citizens.⁶

In the periodic review of Indonesia's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) the Committee Against Torture (the Committee) noted several procedural shortcomings in its concluding observations⁷ in July 2008. Prolonged detention in police custody for up to 61 days, the absence of systematic registration of detainees as well as restricted access to lawyers and independent doctors, allows for torture to take place not only occasionally, but as reports show, in a widespread and systematised fashion. The Committee (re-emphasized⁸ the Special Rapporteur's earlier recommendations that "officials at the highest level should condemn torture and announce a zero-tolerance policy vis-à-vis any ill-treatment by State officials. The Government should adopt an anti-torture action plan which foresees awareness-raising programmes and training for all stakeholders, including the National Human Rights Commission and civil society representatives, in order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture."⁹

Since no significant progress has been made with regard to police brutality, the authorities need to prioritise the following recommendations. Firstly, torture must be criminalized under the Indonesian Penal Code. Currently there is no adequate definition of torture, and cases of torture that appear before a court therefore do not receive adequate treatment or result in appropriate punishment and reparation for the perpetrators and victims respectively. The Special Rapporteur on torture noted that "all allegations of torture and ill-treatment should be promptly and thoroughly investigated ex-officio by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim."¹⁰ However, due to the lack of such investigations, many officers remain immune to criminal procedures.

Secondly, the impunity enjoyed by police officers, especially with regard to the practice of torture, must be combated as a priority. Everyone, including government officials and law enforcers, must be equal before the law – the criminal justice system needs to be non-discriminatory. This is still not the case in Indonesia, where in fact no state official that is alleged to have used torture has been found guilty of related offences as a result.¹¹ Thirdly, the Indonesian police force needs to fully incorporate a culture of respect for human rights into their everyday work ethics. This

INDONESIA: Police burned a man alive over private matter in Semarang, Central Java

May 19, 2008, AHRC-UAC-107-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2864/>

On 14 May 2008, a police officer tortured a man after the man's illegal arrest, and burned him alive in Semarang, Central Java.

34-year-old Syamsul Hadi was arbitrarily arrested by police inspector Sugeng. After abducting Syamsul, Sugeng brought him into a minivan and drove around the city for several hours. Later, Sugeng blindfolded Syamsul and tied up his hands and feet. He then severely beat Syamsul. Afterward Sugeng dragged Syamsul from the van onto a road, and poured gasoline all over Syamsul's body. Syamsul was burned alive.

Fortunately, Syamsul managed to survive the incident, having been found by local villagers in the bushes.

An initial police investigation into the incident reported that the motive of the crime was personal.

⁶ A/HRC/7/3/Add.7 para 20. March 10 2008; *Alternative Report to SG's Special Rapporteur on Torture, ALRC, October 2007*

⁷ CAT/C/IDN/CO/2, July 2008

⁸ CAT/C/IDN/CO/2 para 10., July 2008

⁹ A/HRC/7/3/Add.7, art.76, March 2008, *Special Rapporteur on Torture*

¹⁰ A/HRC/7/3/Add.7, art.77, March 2008, *Special Rapporteur on Torture*

¹¹ CAT/C/IDN/CO/2



transition will naturally take time, and the legal framework, as discussed above, is essential in steering this transition in the right direction.

The maximum detention period of 61 days protects the perpetrators of torture from having medical evidence obtained against them by independent doctors. This period also increases the risk that a person in custody will actually be subject to torture and police brutality. As recommended by the Special Rapporteur on torture, the maximum detention period should be radically shortened, preferably to 48 hours, in conformity with international standards.¹²

1.2 KILLINGS

In 2008, the killing of civilians by the security forces continued. In such incidents, the civilians are usually unarmed, while the police or the military apply excessive force without limiting the use of firearms. Such officers or soldiers do not adhere to international standards of interrogation, arrest and do not apply professional practices when encountering civilians. Extra-judicial killings through the open use of firearms continue and bringing the perpetrators to justice is difficult, in particular, in cases involving the military.

Indonesia is party to the ICCPR, which guarantees the right to life. Many of the reported cases of killings by the security forces, such as the police or the army, are related to disputes over land. With the economic development of Indonesia, private enterprises need increasing resources. State security forces while protecting such companies' interests encounter resistance from local villagers who try to protect their land and livelihood. In May 2008, a man in North Sumatra died with severe burns on his body after the police arrested him on charges of theft. He was accused of having stolen an oil palm nut. (See case AHRC-UAC-118-2008 for more information.)

INDONESIA: A man dies in police custody following arrest

May 30, 2008, AHRC-UAC-118-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2881/>

On 26 March 2008, Adi Sahrianto was arrested by Police Officer Anjarmara Siregar from the Regional Police Station in North Sumatra on a false allegation that he had stolen palm nut oil. He was blindfolded and taken in a car to the Regional Police Station.

At 10:05pm that evening, Sahrianto's brother, Adi Syahputra, was informed by the police that his brother had been taken to the hospital in Medan. Syahputra and Sahrianto's family immediately went to Medan to see him. When they arrived at the hospital, they discovered Sahrianto had already died.

Sahrianto's body had traces of burns all over it. The person who cleaned his body told his brother that he had also noticed several visible injuries on his brother's body while cleaning it – there were bruises on his neck and back, and cuts on his head. No autopsy report was provided to the victim's families to explain the injuries.

When Syahputra reported his brother's death in police custody to the Regional Police Station of North Sumatra, the police refused to take action, and claimed to have no jurisdiction over the case. Syahputra had to make a complaint to the other police station at the Deli Serdang Local Police Station.

The police who arrested and detained Sahrianto claimed that the victim had been severely injured before they had even arrested him. Vice Director of the Criminal Department of the North Sumatra Regional Police Station,

12 A/HRC/7/3/Add.7, art 59



Darmawan Sutawijaya, claimed that Sahrianto had been beaten by hundreds people after he was caught stealing the palm oil nut. No such incident however, had taken place.

INDONESIA: Autopsy revealed that four deceased were shot and several were injured

April 25, 2008, AHRC-UAU-026-2008 - Update to case [UA-175-2007](#)
URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2829/>

Four people died of gunshot wounds, and several others were injured by shootings by naval officers. During the trial of the case, which was held in the military court of Surabaya, no translator was provided for the victims, relatives and witnesses, who did not understand the language in which the trial was conducted.

During the trial, it was revealed in an autopsy report that three of the four victims who died were shot in the back of the head. The other died from bullet wounds to his chest.

The other eleven injured persons were hit by projectile fragments. The commander of the naval unit has not taken any responsibility for this incident.

In addition, no compensation has been provided to the victims, except for the medical expenses for the injured by way of a National Insurance Programme for the Poor.

Questions have been raised about the fairness of the trial, as well as the possibility of effective remedy.

In May 2007, navy forces shot unarmed villagers who tried to interrupt a cultivation process by a company on disputed land in Pasuruan (East Java). In March 2008, an autopsy during the trial in a military court confirmed that the three villagers that had been killed, had died from shots to the back of their heads. The navy forces were allegedly instructed to use "any means necessary" to protect the activities of that Rajawali Nusantara Corporation (RNC). While the military court convicted thirteen navy personnel for murder, their punishment ranged from only one and a half to three years imprisonment. Only three were dismissed from the military and no compensation was paid to the victims.

In another case of military involvement in agricultural activities on disputed land, a military centre hired local staff who were ordered to attack protesting villagers. The order was given by a local village chief. One person died in the attack and several others were injured. The police investigation into the case has not taken the involvement of the military into account, leading to impunity for the members of the military.

The use of firearms by the police often threatens the lives of civilians in Indonesia. Procedural safeguards to limit the use of weapons are not put in place or not applied. This leaves many police officers with the possibility of abusing power without fear. Regulations for identification, arrest and

INDONESIA: One person killed and two seriously injured by a group allegedly contracted by the military

November 8, 2007, UA-320-2007

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2655/>

On 1 October 2007, Charles Limbong was beat to death by a group of men. Two others were seriously injured during the attack.

The police have failed to investigate the responsibility of the Army Cooperative Center of Bukit Barisan Regional Military Command for the death and injuries of the villagers. It is alleged that the army had contracted the group to secure the land that the villagers had been cultivating for years, leading to one's death and the serious injury of two others.

Although the Deli Serdang Police Resort conducted an investigation into the murder of Charles Limbong on 30 October 2007, it was reported that the Army Cooperative Center was exonerated from any responsibility in the incident.



investigation are not practiced as a common norm. The AHRC has, for example, received a case where a police officer in civilian clothes did not identify himself as being a police officer or show his identity card, but proceeded to search through the bag of a suspect on a motorbike he had stopped. When the motorbike driver tried to escape from the scene that he interpreted as being a robbery by a civilian, the officer shot at him. The victim was brought to a police hospital and then changed to a public hospital, eventually surviving the attack.

INDONESIA: Policeman arbitrarily shoots and injures man in Yogyakarta

November 6, 2007, UA-317-2007

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2650/>

On 9 October 2007, Martholomeus Suryadi was arbitrarily shot and injured by a policeman. Using a motorcycle borrowed from a friend, Suryadi was on his way to pick up another friend when he was stopped by a man in civilian clothing claiming to be a police officer. He asked Martholomeus to produce his identity card, driving license, as well as the registration and ownership book of the motorcycle.

Martholomeus showed the registration and his identity card. After checking the registration book, the policeman called a colleague to report a stolen motorcycle, and said that he had caught the thief.

When Martholomeus asked the policeman to show his police identity card, he failed to, and did not state his name or the unit to which he belonged to. Instead, he became extremely agitated. He demanded to see inside Martholomeus' bag, and upon finding a knife inside, which Martholomeus had used for fishing earlier that day, he accused Martholomeus of killing someone. The two men got caught up in a scuffle.

Martholomeus was convinced that the man was not a real policeman, but a robber. When Martholomeus escaped the policeman's grip and tried to run away, the policeman threatened to shoot. A few seconds later, the policeman shot Martholomeus in the buttocks at a distance of approximately 3 or 4 meters.

The policeman then summoned a colleague, and it then became known that the policeman who shot Martholomeus was Police Brigadier Agus Sunanto.

The arbitrary use of arms by law enforcement officials is of great concern. This case indicates how easily law enforcement officials can use arms even when the situation does not warrant it.

1.3 HUMAN RIGHTS DEFENDERS

After a visit by Hina Jilani, the then-UN Secretary General's Special Representative for human rights defenders, to his offices in Papua, Albert Rumbekwan, a prominent activist as well as a staff-member of the National Human Rights Commission were intimidated by members of the Indonesian military.¹³ This event revealed the hostile environment for human rights defenders in Indonesia, in particular the sensitive region of Papua, where activists have even been subjected to torture, according to local sources. When Indonesia was reviewed by the Committee against Torture, the latter recommended in July 2008 that, "The State party should take all necessary steps to ensure that all persons, including those monitoring human

¹³ INDONESIA: Human rights activists from West Papua targeted following meetings with UN Human Rights Defenders Special Representative, June 28, 2007, UA-209-2007, URL:<http://www.ahrchk.net/ua/mainfile.php/2007/2465/>



rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts."¹⁴

In the eastern-most region of Indonesia, the human rights situation continues to be hostile, and arrests and killings have increased over recent years. As the military presence in Papua has increased, so have the hostile actions against human rights defenders, including lawyers, civil society activists and NGO workers. One of the most commonly used means against human rights defenders is branding them with being linked to independence movements in Papua. Such a claim opens the door for arrest, fabrication of charges and often results in detention. A climate of fear and avoiding public discussion on many human rights issues has been engendered as a result.

After her visit, Ms. Jilani recommended "that legislation and procedures be instituted to prevent the prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights. For this purpose, it is important also to sensitize judicial and prosecutorial officials as well as the police so that human rights activities are not criminalized."¹⁵

Since then, no institutional improvements to provide safeguards for human rights activists have been put in place. Also in 2008, the AHRC continued to receive cases of obstruction of the work of human rights defenders in other regions of Indonesia. Not only were no protective mechanisms set in place, the existing, flawed justice mechanisms were even used against human rights defenders.

INDONESIA: Eight people in Aceh convicted of disseminating pamphlets
September 1, 2008, AHRC-UAC-197-2008

On 2 July, 2007, eight members of staff from the Aceh Legal Aid Institute (LBH-Aceh) went to villages in Aceh and distributed informational pamphlets about alleged land expropriations involving PT Bumi Flora Company and the local government. While distributing the pamphlets, they were stopped and detained by the Aceh police.

The LBH-Aceh staff members were taken to the Resort Police Station of East Aceh where they were interrogated. The police charged them with Articles 160 (orally or in writing committing a violent act against the government) and 161 (disseminating hate against the government) of the Indonesian Criminal Code. The case was brought to the District Court of Langsa in December 2007 and they were convicted and sentenced on 14 August, 2008 to three months imprisonment with six months probation.

It is yet another case of restricting freedom of expression by criminalizing the actions of human rights defenders. Repression of human rights work continues today, through intimidation and selective prosecution. These practices drain important human resources, distract organizations from vital projects, and threaten those who would speak out against injustice.

On August 14, 2008, eight staff members of the Legal Aid Institute in Aceh (LBH Aceh) were convicted and sentenced with imprisonment for distributing pamphlets about the activities of PT Bumi Flora, a plantation company operating in East Aceh. For many years, locals suffered from the companies' expansion, including being pressured to sell of their land for unreasonably low prices. The eight staff of LBH Aceh were convicted for disseminating hate material against the government and for committing a violent act in writing against it. Such vague laws continue to leave wide room for abuse of judicial and prosecutorial powers. (See AHRC-UAC-197-2008 for more details on the case.)

In this environment, the creation of a vibrant civil society remains difficult to achieve, in particular in rural areas and against the economic interests of military-owned or supported companies.

¹⁴ CAT/C/IDN/CO/2 para 25., July 2008

¹⁵ A/HRC/7/28/Add.2 art. 90, January 2008



1.4 THE CASE OF MUNIR

The murder of prominent human rights activist, Munir Said Thalib, is a recent example of a politically motivated killing in Indonesia. The investigation into the case, which is ongoing, is struggling to progress through the country's flawed justice system. The lack of progress in this high-profile case, is causing pessimism about any major and imminent change in the overall human rights situation in Indonesia. Since the beginning of its investigation in 2004, the proceedings have thus far exposed a number of institutional flaws, including deep-set politicisation of the judicial process.

Overview of Munir's case

Munir died of arsenic poisoning on a Garuda Indonesian Airways flight en-route to Amsterdam on 7 September 2004. Four years on, the alleged involvement of high-ranking government officials in the conspiracy has yet to be clarified for reasons related to ongoing and widespread government impunity in the country. Over the years, the course of the investigation has brought with it a mixture of hope and disappointment, making it difficult to predict its final outcome and the subsequent nature of its undoubted impact.

One example of the erratic developments in the case can be seen in the changing fate of Pollycarpus Priyanto. In December 2005, Pollycarpus was indicted for the murder of Munir and was sentenced to fourteen years in prison by the Central Jakarta District Court. In October 2006, the Supreme Court acquitted him of the murder charge, and charged him for faking documents instead. In January 2008, the Supreme Court then found him guilty for the murder of Munir, just as the District Court had two years earlier, and sentenced him to twenty years in prison. Although ultimately, justice has been served to an extent (Pollycarpus is only one piece in a much bigger puzzle), the inconsistencies during the investigation into his role in Munir's murder have diminished the confidence of human rights activists and supporters alike, in achieving swift justice. Instead, progress in the case has been slow and stunted. It is therefore understandable when more recent developments such as the arrest of former National Intelligence Agency (BIN) deputy director, Muchdi Purwopranjono, in June 2008, though comparatively more significant, is only met with muted enthusiasm.

The significance of Munir's case

Whilst many are reluctant to celebrate the developments in the investigation in the past year,¹⁶ for fear that any celebration may be premature, it is by no means a reflection on the real significance of the case.

The case's significance firstly lies in its attempt to achieve justice for an individual who has been subjected to a serious human rights violation: a politically motivated killing. Munir was killed for reasons related to his work as a human rights defender, which included calling for the cessation of the dominance of the military, and speaking out for victims who had been tortured, killed, or who had disappeared in Indonesia.

From a broader perspective, the case is significant for a number of reasons. It is significant in the fight against Indonesia's long tradition of government impunity. The process, and more importantly, the outcome of the investigation into Munir's death, will have an impact on determining the course of human rights development in Indonesia. It will be a telling indicator of any real commitment the government may have to promote and protect human rights in the country, as the removal of impunity is a key prerequisite

¹⁶ See *Brief Chronology of Events, 2008: the sentencing of Pollycarpus and the commencement of Muchdi's trial are the most significant.*



for progress. This will be relevant for achieving justice in countless other cases of widespread killings, torture in Indonesia.

Previous Recommendations

The significance of the case, coupled with the state of human rights in Indonesia, has provoked major international organisations to voice their observations and concerns. In March 2007, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, expressed his concern over the handling of the case to the government. In July 2007, the United Nations High Commissioner on Human Rights, Louis Arbour, urged President Yudhoyono, the police, and the Foreign Affairs Ministry to take action and to move towards resolving the case after several new developments had been revealed.¹⁷

Following that, the January 2008 Report of the Special Representative of the Secretary-General on the situation of human rights defenders, following its mission to Indonesia, recommended that guidelines and standards be laid down by the Supreme Court for more effective investigation into cases.¹⁸ The report also specifically recommended the public release of an investigation prepared by the Presidential fact-finding team (TPF) on Munir's murder.¹⁹

Criticisms and Commendations

There is, however, no real evidence demonstrating that the government has acted upon these recommendations. No guidelines or standards have been created at the time of writing, and no institutional process has been introduced to establish a permanent, legal procedure for investigations that are both swift and just. The fact is that government impunity continues to persist, despite the key arrest of Muchdi, who is no longer in any position of formal influence. Whether or not his arrest and the ongoing trial will lead to the questioning of even more senior officials, such as the former head of the intelligence agency, Abdullah Mahmud Hendropriyono, is unknown. Close observers remain sceptical.

The absence of the TPF report is important: at this time, it has not been made freely available to the public. The fact that the contents of the report have not been made public runs counter to the main purpose and existence of the fact-finding team. The team was disbanded in June 2005.

It is crucial to recognise the progress made in the case since the beginning of its investigation in 2004, most notably over the past year, with the sentencing of Polycarpus and the arrest and ongoing trial of Muchdi. However, the glaring absence of crucial elements to the process of the trial, such as an independent judiciary, far outweigh the significance any of the investigation's positive developments thus far. The power and influence of old institutions and high-ranking officials continues to exist, and effective investigation is being hindered.

It is unfortunate that more positive observations could not be made on the developments of Munir's case. Although the arrest of Muchdi is a remarkable step forward for the fight against impunity, its significance is

¹⁷ See *Brief Chronology of Events, 2007: on 14 April 2007, Indra Setiawan and Rohainil Aini were arrested in connection to Munir's murder. On 15 April 2007, the police presented new evidence implicating Polycarpus.*

¹⁸ Hina Jilani, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Representative of the Secretary-General on the situation of human rights defenders: Mission to Indonesia (United Nations: General Assembly, 28 January 2008), p.25, Part V, Section B, art. 91.*

¹⁹ Hina Jilani, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Representative of the Secretary-General on the situation of human rights defenders: Mission to Indonesia (United Nations: General Assembly, 28 January 2008), p.25, Part V, Section B, art. 101.*



largely diminished when taken in the broader context of ongoing problems with the judicial system, as well as serious human rights problems persisting throughout the country. The government would do well to continue in the progressive vein it has demonstrated with the continuation of *reformasi*, but it urgently needs to take more concrete action in working towards a just resolution of Munir's case.

Brief Chronology of Events in the case of Munir	
2004	
7 September 2004	<i>Munir dies on Garuda flight GA-974 from Jakarta to Amsterdam.</i>
23 December 2004	<i>President Yudhoyono forms a fact-finding team. The team's purpose is to support the police in the investigation into Munir's murder case.</i>
2005	
3 March 2005	<i>The fact-finding team finds evidence of conspiracy.</i>
18 March 2005	<i>Pollycarpus is officially named a suspect.</i>
9 August 2005	<i>Trial for Pollycarpus begins in Central Jakarta District Court. He is charged with planning the murder of Munir.</i>
20 December 2005	<i>Pollycarpus is indicted for murder and sentenced to 14 years imprisonment.</i>
2006	
3 October 2006	<i>The Supreme Court acquits Pollycarpus of murder charges, citing insufficient evidence. He is found guilty of faking documents and is sentenced to two years imprisonment.</i>
30 November 2006	<i>Indonesia Police Chief General Sutanto rejects UN intervention into the case.</i>
25 December 2006	<i>Pollycarpus is released after being granted amnesty.</i>
2007	
28 March 2007	<i>UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, expresses his concern over the handling of the case to the government.</i>
14 April 2007	<i>Former Director of Garuda Airways, Indra Setiawan, and former Secretary to the Chief Pilot Airbus, Rohainil Aini, are arrested for the murder of Munir.</i>



15 April 2007	<i>Police present new evidence implicating Pollycarpus.</i>
13 July 2007	<i>The UN High Commissioner on Human Rights, Louis Arbour, urges President Yudhoyono, the police, and the Foreign Affairs Ministry to take action in light of new developments in the case.</i>
<i>2008</i>	
25 January 2008	<i>The Supreme Court sentences Pollycarpus to 20 years in prison for murder.</i>
19 June 2008	<i>Former National Intelligence Agency (BIN) deputy director, Muchdi Purwopranjono, is arrested by Indonesian National Police.</i>
13 March 2008	<i>The European Union Parliament issues a written declaration urging the Indonesian government to resolve Munir's murder case.</i>
21 August 2008	<i>Muchdi's trial begins at the South Jakarta District Court. He is charged with premeditated murder.</i>

1.5 IMPUNITY

As the murder of one prominent human rights activist has shown, impunity for State-actors continues to persist in Indonesia. To date, no top-ranking government official has been convicted for any human rights violations that have taken place, and continue to take place, in the country. Far from being demonstrative of the government's lack of involvement in the vast number of gross human rights violations that have occurred, it is on the contrary indicative of a system that is failing to deliver justice when State-actors are involved. The exemption of government officials from any semblance of accountability, even at present in Indonesia's supposedly democratic environment, comes as no surprise.

The origins of the country's extensive impunity can perhaps be traced to the 1965 massacre that preceded Suharto's presidency. Although the authoritarian dictatorship of the former president has long since fallen, the military coup that led to Suharto's thirty-year rule remains among the many gross human rights violations that have by-passed thorough investigation precisely because of government involvement. The tradition continues to this day, where no justice or redress has been achieved for the estimated half a million to one million people that were detained, tortured and/or killed by the former military dictatorship, during the coup in which it took power, on grounds that they were suspected communists.

Gross violations of human rights in Indonesia's past involving government officials – which are not limited to the 1965 massacre, but also include the events in East Timor in 1999 and many others – hinder the present government's ability to introduce a system of genuine checks and balances that are a cornerstone of any democratic governmental system. The lingering burden of unresolved cases from the past detracts from attempts to investigate officials today. Furthermore, Suharto is still revered in certain quarters for Indonesia's rapid economic growth and development during his thirty-year rule, despite the level of human rights violations and corruption that frequently occurred under his reign. Any investigation involving the government under Suharto's rule would immediately put into question his former role, and ultimately open further inquiries into the legitimacy of his presidency. This has only served to exacerbate the difficulties



encountered when unravelling the knots of governmental impunity that have long existed since the 1965 massacre. Is it possible for the present government to move forward and combat the country's widespread problem of impunity without first addressing past violations?

In order to address this question, it would be useful to first recount the major problems in the country's institutional framework that cause impunity, which have plagued Indonesia in recent years. Efforts made toward combating these problems over the past year will be examined, as will the question of whether or not they have had any real impact in reducing impunity in the long run.

Human rights court law

One notable problem sustaining impunity in Indonesia is the limited jurisdiction of existing mechanisms put in place to address human rights issues. The jurisdiction of ad hoc human rights courts in the country is limited to gross violations, such as genocide and crimes against humanity. Even then, thorough investigations and due process in cases of gross violations such as the May 98 riots, or Trisakti & Semanggi, have been rejected by the office of the Attorney-General in the past, and no justice has been achieved. The ineffective power of Komnas HAM, the national human rights institution, to conduct investigations beyond their initial inquiries, and the generally bureaucratic nature of the system, has meant that many cases are left unresolved. Although findings made by Komnas HAM are transmitted to the office of the Attorney-General, it is the office of the Attorney-General that has the authority to reject or initiate criminal proceedings, no matter how significant the findings may be.

Several such cases have in fact been rejected without reasonable justification. As the Prosecutor General is still subject to appointment by the President, and many alleged perpetrators of justice continue to hold positions of power, the failure to launch investigations into gross violations of human rights has been seen as a political act rather than an outcome of a rule of law process. A Constitutional Court ruling in 2008 clarified that the AGO department has to prepare a judicially acceptable investigation before the parliament would be in a position to then set up an ad-hoc human rights court.

These limitations allow impunity to persist in the country. Past gross violations of human rights reported so far to Komnas HAM do not yet cover the full extent of past abuses in Indonesia. Other cases such as the 11 Tribes Massacre have not even been reported to Komnas HAM yet. Faltering progress in prominent cases and the continuing fear of reprisals for reporting politically sensitive cases is sufficient to force victims into remaining silent.

Another problem that has served to exacerbate Indonesia's problem of impunity is the lack of accountability of military and law enforcement officers. According to a United Nations mission to Indonesia in January 2008, on the situation of human rights defenders, the accountability of military courts when the military is involved remains a major concern. There exists little chance for a fair trial in such cases, since military officers who are involved in criminal activities have been immune from civil proceedings. A report made by the Special Rapporteur on torture in July 2008 confirms that no state official alleged to have perpetrated torture has been found guilty (arts. 2 and 12).²⁰

Also in the Mission to Indonesia report from January 2008, the Special Representative on the situation of human rights defenders noted the willingness of many from within the government to acknowledge the gaps that clearly exist in Indonesia's institutional framework. At first glance, this may appear encouraging: simple acknowledgment of the country's institutional shortcomings from within the government is no

20 CAT/C/IDN/CO/2 para 12., July 2008, referring to Rapporteur on Torture



doubt a significant step towards initiating a process of resolution. However, in a universal periodic review (UPR) of Indonesia conducted by the Human Rights Council three months later in April 2008, the government only reaffirmed “its commitment to combat impunity”.²¹ No real effort has been made at this time to address the problem of impunity. It remains glaringly ever-present, given the number of unresolved cases that have accumulated in the past, as well as the countless number of cases that are currently disregarded because they do not qualify as being ‘gross violations’.

A recent move in October 2008 to revive the Special Committee on the 1997/1998 Abduction of Activists seems to indicate some effort towards addressing impunity in this case. The Committee’s plan to summon President Yudhoyono, as well as retired General Wiranto, retired Lieutenant General Prabowo Subianto, and retired Lieutenant General Sutiyo for questioning, is prima facie, a serious demonstration of the State’s desire to eradicate impunity. However, given approaching general elections in 2009, the genuine nature of these recent developments is put into question. One is likely to wonder why the committee for investigation into the Abduction of Activists has only been revived at this time, ten years down the road, with general elections just around the corner.

It is clear that much more is needed to be done if the deeply entrenched problem is to be successfully addressed in the near future. The government should consider extending the courts’ jurisdiction over investigative proceedings. The Attorney General should make full use of his mandate as restated in the recent Constitutional Court judgment instead of hiding behind dubious interpretations of the law. Finally the Institution of the Attorney-General as a whole is still too open to being influenced by political interests.

Military impunity

At the end of 2008, the government and the parliament were discussing a review bill of the law on military tribunals (Law No. 31/1997). The government has agreed to the parliamentary proposal that any ordinary criminal offences committed by the members of the military have to be brought to ordinary civil criminal courts. However, the government proposed that the investigations for such cases are to be conducted by the military police. Until such a bill is passed, crimes committed by members of the military will continue to be investigated and tried by the military, even though this presents a conflict of interest.

²¹ A/HRC/WG.6/1/IDN/4 art. 76.4, April 2008, UPR Review Indonesia



The following table lists major human rights violations such as so-called gross violations of human rights together with their status in the justice process.

Time	Event	Komnas HAM status	Status with the AGO	Human Rights Court status
1965	65 Massacre After Suharto's coup millions of communist suspects, such as party members, were killed or detained for decades.	Inquiry started in 2008		
1983-1985	Mysterious Shooting Cases	Inquiry started in 2008		
1984	Tanjung Priok Not covered by Law 26 on Human Rights.	Inquiry finished in 2000	Prosecution finished after political decision by parliament to establish ad-hoc court	Finished at the Supreme Court level. All perpetrators were acquitted
1997/98	Student disappearance 97/98	Inquiry finished in 2006	Rejected, Parliament still considering the case	
1998	Trisakti & Semanggi	Inquiry finished in 2003	Rejected, parliament of 1999-2004 declared it not to be a gross violation of human rights according to Law 26.	Could only start if current parliament to revoke earlier decision
1998	May 98 riots	Inquiry finished in 2003	Earlier rejected on the basis that inquiries did not include names of alleged perpetrators. AGO requested amendments to the inquiries with names. After Constitutional Court ruling, AGO should conduct investigation	
1989, Feb. 7	Talangsari Soldiers from Garuda Htam Military Resort Command attack village	Inquiry finished in October 2008	Earlier rejected, after Constitutional Court ruling, AGO should conduct investigation	



	Talangsari in Lampung with rifles. 246 people killed			
1999	East Timor 99	Inquiry finished in 2000	Prosecution finished after political decision by parliament to establish ad-hoc court	Finished at the Supreme Court level. All perpetrators were acquitted
2001	Abepura	Inquiry finished	Prosecution finished after political decision by parliament to establish permanent court	Finished at the Supreme Court level. All perpetrators were acquitted. No reparation for victims
2003	Wasior	Inquiry finished in 2005	Rejected in April 2008	
2003	Wamena	Inquiry finished in 2005	Rejected in April 2008	

1.6 THE DEATH PENALTY

Indonesia has ratified the ICCPR, and thus has to guarantee the right to life for all citizens. A speedy abolishment of the death penalty is not likely according to the government's international position, in which it referred to its sovereignty during the discussion of the UPR outcome in 2008. In the process, Indonesia stated categorically that "the death penalty remains part of Indonesia's positive law, namely the Indonesian Penal Code. The provision related to capital punishment was retained by decisions democratically taken through a parliamentary process. The issue has also been the subject of various public debates, and only last year was brought to the Constitutional Court for review, which decided that the application of the death penalty remains fully compatible with the Constitution."²²

The constitutionality of its application in cases of illicit drug trafficking has been challenged, as referred to by the government during the UPR process, at the Constitutional Court level. The AHRC reported about these decision in 2007.²³ The Constitutional Court's judges voted six to three that the Law on Narcotics does not infringe upon the right to life, and in so doing, delivered a deplorable verdict.

Dr. Nowak, the Special Rapporteur on Torture concluded in a report following his visit to Indonesia that the "death penalty should be abolished. While it is still applied, the secrecy surrounding the death penalty and

²² A/HRC/8/233/Add.1 art. 9, June 2008

²³ AS-256-2007 AHRC Statement, INDONESIA: Constitutional Court failed to make history in Indonesian human rights movement, URL: <http://www.ahrchk.net/statements/mainfile.php/2007statements/1253/>



executions should stop immediately."²⁴ The death penalty in Indonesia is currently carried out by a firing squad. This process was applied in several instances in 2008.

In 2007, the UN General Assembly passed a resolution urging all States still practicing death penalty to put in place a moratorium on executions. Despite being a member of UN Human Rights Council, Indonesia instead headed in the opposite direction, and carried out executions in numerous criminal cases, ranging from murder to charges under the Narcotics Law. In the draft of the Corruption Eradication Law as well as in the draft of the Narcotics Law, Indonesia declared the death penalty as a maximum punishment. In the review-draft of the Criminal Code, the death penalty is still provided for.

The justice process that can lead to the application of the penalty is facing problems. As part of the reform process and civil society engagement, it is apparent that there are serious flaws in the Indonesian justice system. The justice rendered by the justice system in Indonesia is often partial, susceptible to bribery, corruption and grave errors. This makes the sentencing to death highly questionable and fraught with risks of grave, irreversible travesties of justice.

Ultimately, it is not the severity of the punishment that will deter crimes and bring justice for the victim, but it is the certainty that perpetrators will be convicted after a just and transparent trial in court, under a legal process that finds persons guilty based on evidence. Indonesia, as a State Party to the ICCPR is expected to take progressive measures to abolish the death penalty, not to retain it.

See also AHRC-STM-186-2008 on recent cases of executions in 2008.²⁵

1.7 FAIR TRIAL AND CRIMINAL PROCEDURE

The obligations contained in the ICCPR with regard to fair trials and, as a result, to criminal procedure, are fully applicable to Indonesia. However, the implementation of some of the laws including the Criminal Procedure Code, shows serious shortcomings in that regard. The weakness of the Indonesian Criminal Procedure Code and its implementation has ensured that the country remains far from being able to guarantee a fair trial. This is evident in the following example.

In 2008, David Eko Priyanto, Imam Hambali (alias Kemat), and Maman Sugiyanto were accused of the murder of a person called Asrori, a name connected by the police with a body found in a sugar cane field. The Jombang District Court sentenced Mr. Priyanto to 12 years imprisonment and Kemat to 17 years, while Mr. Sugiyanto is still under trial. In a second concurrent case, Very Idham Henyansyah (alias Ryan), a person accused of serial killing, admitted that Asrori was in fact one of his victims and was buried near his house.

Initially, the police refused to accept the notion that they had committed a serious error in their investigation. Later the dead body found at the sugar cane field was re-identified as being Fauzin Suyanto. The police then arrested Rudi Hartono who was alleged to have murdered Mr. Suyanto. However, Mr. Priyanto and Mr. Kemat remain imprisoned and a judge continues with the trial of Maman Sugiyanto. No

²⁴ A/HRC/7/3/Add.7, art.89, March 2008, *Special Rapporteur on Torture*

²⁵ Joint Statement: Indonesian Community Legal Aid Institute & AHRC, INDONESIA: Failure to acknowledge the essence of right to life resulting in more people being executed, URL:

<http://www.ahrchk.net/statements/mainfile.php/2008statements/1614/>



action has so far been taken by the Indonesian Government, the Attorney General's Office or the Supreme Court to correct this flagrant miscarriage of justice.

1.8 FREEDOM OF RELIGION

While the majority of Indonesians are Muslims, the Indonesian Constitution does not refer to Islam at any point. As a secular democratic republic, the country proclaimed the aim of religious freedom and harmony. International human rights law such as the ICCPR and the ICESCR requires the State to protect the religious activities of any group. In Indonesia, only six major religions are recognized by the State and enjoy some protection. Often the government and the police take a reluctant role in protecting religious assemblies. The AHRC has received cases where religious communities were attacked, and insufficient protection was given. In other cases demonstrations based on religious perspectives ended in public violence.

Pancasila - Five Principles

the foundation of the Indonesian Republic

1. Belief in the one and only God,
2. Just and civilised humanity,
3. The unity of Indonesia,
4. Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and
5. Social justice for the whole of the people of Indonesia

In June 2008, the National Alliance for Freedom of Religion (AKKBB)²⁶ marked the anniversary of the Pancasila,²⁷ the principles underlying the foundation of the Indonesian State, with a rally. AKKBB is known for the promotion of religious freedoms, while other Islamic groups in the country are trying to gain public support and to promote Islamic values. The Indonesian Islamic Organization Hizbut Tahrir Indonesia (HTI), and the Islamic Defenders Front - Front Pembela Islam (FPI) belong to the latter ones. HTI-FPI met the rally of AKKBB and the encounters became violent. See AHRC-UAC-127-2008 for more details.

The Committee against Torture in its concluding observations in July 2008 explained:

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by prosecuting and punishing all acts of violence and abuses against those individuals and ensuring implementation of positive measures of prevention and protection.

The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts. The State party should also publicly condemn hate speech and crimes and other violent acts of racial discrimination and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such

²⁶ Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan - AKKBB

²⁷ Pancasila, is the official philosophical foundation of the Indonesian state. Pancasila consists of two Sanskrit words, "panca" meaning five, and "sila" meaning principles.



*violence. It should ensure that officials are held accountable for action or inaction that breaches the Convention.*²⁸

In 2008, protests in relation to religious issues erupted. After threats of a governmental decree against the Ahmadiyyas, which is a religious group that consider itself as being part of Islam, protests took place. (See AHRC-UAC-127-2008²⁹ for more information.) There the Ahmadiyya protesters clashed with a conservative Muslim political group.³⁰

The Ahmadiyya is an Islamic group that has practiced its beliefs for about 100 years under various regimes without any incidents in the past. Their beliefs differ from those of traditional Islam believers, who mostly do not recognize the Ahmadiyya's Muslim identity.

However, the State only recognizes six religions, and decided to intervene in the difference of opinion, thus requiring the Ahmadiyya group either to denounce their Islamic nature or to stop exercising religious freedoms. In June 2008, the Minister of the Interior and the Minister of Religious Affairs, together with Attorney General Hendarman Supandji, signed and issued a Joint Ministerial decree to that effect.

²⁸ CAT/C/IDN/CO/2 para 19., July 2008

²⁹ INDONESIA: Yet another attack on a group advocating religious freedom, June 5, 2008. AHRC-UAC-127-2008 URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2893/>

³⁰ Indonesian Islamic Organization Hizbut Tahir Indonesia (HTI) and the Islamic Defenders Front - Front Pembela Islam (FPI)



Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of the Interior of The Republic of Indonesia

NUMBER : 3 YEAR 2008
NUMBER : KEP033/A/JA/6/2008
NUMBER : 199 YEAR 2008

HEREBY RESOLVE AND MAKE

A Joint Decree of the Minister of Religious Affairs, the Attorney General, and the Minister of the Interior of the Republic of Indonesia to Warn and Order the followers, members, and/or leading members of the Indonesian Ahmadiyya Jama'at (JAI) and the General Public

- FIRST: Members of the public are warned and ordered not to declare, suggest, or attempt to gain public support for an interpretation of a religion that is held in Indonesia, or to conduct religious activities that resemble the religious activities of that religion which are deviant from the principal teachings of that religion.
- SECOND: The followers, members, and/or leading members of the Indonesian Ahmadiyya Jama'at (JAI) are warned and ordered, as long as they consider themselves to hold to Islam, to discontinue the promulgation of interpretations and activities that are deviant from the principal teachings of Islam, that is to say the promulgation of beliefs that recognise a prophet with all his teachings who comes after the Prophet Muhammad SAW.
- THIRD: Any follower, member, or leading member of the Indonesian Ahmadiyya Jama'at (JAI) who does not comply with this warning and order as specified in the first and second articles shall be liable to penalties as prescribed in regulatory laws and such penalties shall extent to the organisation and legal body.
- FOURTH: All members of the public are warned and ordered to protect and maintain harmonious religious life as well as peaceful and orderly community life by not conducting unlawful activities and/or actions against the followers, members, and leading members of the Indonesian Ahmadiyya Jama'at (JAI).
- FIFTH: Any member of the public who does not comply with this warning and order as specified in the first and fourth articles shall be liable to penalties as prescribed in regulatory laws.
- SIXTH: Government and district government officials are ordered to take steps to guide, secure and monitor the implementation of this Joint Decree.
- SEVENTH: This Joint Decree comes into effect on the date that it is made.

Made at Jakarta, June 9, 2008

MINISTER OF RELIGIOUS AFFAIRS
Muhammad M. Basyuni

ATTORNEY GENERAL
Hendarman Supandji

MINISTER OF THE INTERIOR
H. Mardiyanto

Source: The Persecution, URL: <http://www.thepersecution.org/world/indonesia/docs/skb.html>



The government of Indonesia commented as part of the United Nations Universal Periodic Review process, that this Ministerial Decree "does not outlaw the belief, but orders its followers to halt their proselytization (Syi'ar) activities and to fully respect the existing laws and regulations; it appeals to the Ahmadiyah followers to return to the Islamic mainstream and at the same time appeals to the others to refrain from violent acts against them."³¹

AHRC Cases on Religious Freedom in Indonesia in 2008

UPDATE (Indonesia): Decree banning religious group must be revoked July 12, 2008, AHRC-UAU-036-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2902/>

INDONESIA: Yet another attack on a group advocating religious freedom June 5, 2008, AHRC-UAC-127-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2893/>

INDONESIA: Failure to provide protection for religious group May 21, 2008, AHRC-UAC-108-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2866/>

1.9 THE CRISIS IN PAPUA

The Indonesian provinces of Papua and West Papua are more than most other parts of the country being subjected to rule by security forces rather than by civil administrations. Mining and plantation activities by multinational corporations are supported by the local government and are run under the armed protection of the army and the police. The transmigration programme that brings Muslim traders from other parts of the country to indigenous areas of Papua is creating worrying social and ethnographic changes. For decades, the region has been troubled by conflict between indigenous people's independence movements and heavily armed responses by the government.

This environment makes the work of human rights defenders difficult, as they are frequently falsely suspected and accused of working with independence movements. Such branding of members of civil society often then leads to arbitrary arrest, torture and even forced disappearances.

After his visit to Indonesia, the Special Rapporteur on Torture denounced the "routine and disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the security and police forces, including by members of the armed forces, mobile police units ("Brimob") and paramilitary groups during military and "sweep" operations, especially in Papua, Aceh, and in other provinces where there have been armed conflicts."³² On another occasion he recalled that, "excessive violence during military and police actions can amount to cruel, inhuman or degrading treatment. The Government of Indonesia should take all steps necessary to stop the use of

³¹ A/HRC/8/233/Add.1 art. 8, June 2008

³² CAT/C/IDN/CO/2 para 10., July 2008, arts. 2, 10 and 11, see also Rapporteur on Torture



excessive violence during police and military operations, above all in conflict areas such as Papua and Central Sulawesi.”³³

INDONESIA: Army Special Forces threaten social workers to find out Father Johannes Djonga's whereabouts in Papua
November 21, 2007, UP-156-200

Threats against social workers by the Army Special Forces in Papua continue since September 2007 in order to obtain information about the location of Father Johannes Djonga working for human rights. The AHRC has earlier raised the alarm about the army's threats against the Father Djonga but threats are still made to his friends and social workers who are known as the leaders of villages. The AHRC is concerned about the government's inaction against these repeated threats by the army.

more information at

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2670/>

The AHRC continues to receive cases of killings and unresolved disappearances. Past killings are often unresolved and the prosecutor's office in Jayapura, the capital of the province, is as much subject to pressure as is the Criminal Investigation Department (RESKRIM) in the Police.

The agreement that handed Papua over to Indonesia allowed for the self-determination of the indigenous people. It then took decades until the special autonomy law came into force. In reality, life has not improved with regard to the enjoyment of civil and political rights or economic, social and cultural rights. In fact, recent years have shown an increase in killings and violence by the security forces and the repression of civil society.

³³ A/HRC/7/3/Add.7, art.86, March 2008, Special Rapporteur on Torture



2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

2.1 RIGHT TO HEALTH

While the access to health care systems for the wider public across the country has been a longstanding concern, 2008 was marked by a cholera epidemic in Papua. Since April 2008, hundreds of cases of cholera were reported over a period of months. The reluctant and insufficient response by the local and national health authorities prolonged the spread of the epidemic. Only after several civil society organisations raised the issue, was the epidemic contained after about half a year. The distrust between the indigenous population and the authorities, as well as negligence by the health institutions, created this serious situation.

INDONESIA: Hundreds die due to government's failure to control Cholera outbreak

September 26 2008, AHRC-UAG-012-2008

URL: <http://www.ahrchk.net/ua/mainfile.php/2008/3014/>

In April 2008, several cases of cholera related symptoms such as severe diarrhea started occurring in villages in the Dogiyai District of Papua, Indonesia. It was soon confirmed that the cholera bacterium was the causing agent. Cholera is an easily treatable disease which need not result in any deaths, given that instant and appropriate action is taken. However, in Papua the cholera bacterium has been allowed to spread since April, and by mid September some 239 people have lost their lives due to it. This is an utterly disturbing state of affairs, given that the outbreak could have been easily contained had there been a sufficient response by the Government. Instead, the situation has been left largely up to local NGO to resolve.

It is important to note that the government neglect of the cholera epidemic in Papua is a breach of domestic Indonesian Law no 23/1992, which requires that the government provides sufficient health facilities throughout the nation and that it takes action to combat both infectious and non-infectious diseases. Additionally, as a signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Indonesia also recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health, and should accordingly maximize available resources to achieve full realization of this right.

2.2 RIGHT TO LAND AND FOOD

As a signatory to the International Covenant on Social, Economic and Cultural rights (ICESCR), Indonesia is required to: "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing and to the continuous improvement of living conditions (Article 11 ICESCR)."

The Human Development Index (HDI) of Indonesia is slowly, but continuously rising as a stable middle class emerges in the country. However, the distribution of this living standard is worrying. For example, the Papua region ought to be one of the country's richest, given its abundance of natural resources, however, an estimated 45 per cent of the Papuan population live below the poverty line.

The UPR review of Indonesia concluded: "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."³⁴ This recommendation stands in stark contrast with the public reality in Papua.

Extraction of Papua's natural resources has been ongoing for centuries, but has intensified since the middle of the 1960, when Indonesia gained sovereignty over the region. The extraction of resources such as gold and other minerals has been problematic, since the companies involved in the extraction are not subjected to restrictions of their activities with the view to protect the living environment of indigenous Papuans. The World Bank noted in its 2003 report on Papua that the region was suffering from: "unfriendly and excessive natural resources management and exploitation."³⁵ For decades the Indonesian government has approved the exploitation of the region's vast natural resources.

Companies that are granted contracts there often come into conflict with indigenous Papuans over land right issues, as well as environmental issues. The indigenous people are dependent on their environment and have been occupying the same land for generations. However, since they have usually inherited the land through traditional customs, and these have not been adequately translated into a modern legal framework, there is no legal precedent establishing their ownership rights, which facilitates their eviction from the land.

In 2002, when the Representative of the Secretary-General on internally displaced persons submitted his report after a visit to Indonesia, he recommended that "It is critical for national military and police forces to provide protection for all civilians, and in an even-handed manner. In addition, adherence to strict discipline in the security forces and decisive and firm and sustained action against impunity should be high priorities."³⁶

However, when it comes to clashes between mining or plantation companies and indigenous people, the security forces usually take the side of multinational corporations and use force and firearms. Peasants and indigenous people suffer from injuries and killings without hope of justice or redress.

This practice is prevalent in Papua, but cases have been reported from other provinces in Indonesia. For example, in December 2007, 300 indigenous families were threatened with forcible evictions from their land in West Sumatra by the municipal government. (See UA-341-2007 for more information.) No consideration was given to the fact that the land is an integral part of their way of life, and hence also an essential part in ensuring these families benefit from an adequate standard of living.

The government of Indonesia must incorporate and enforce the respect for the inviolable economic, social, and cultural rights of all its citizens, including the indigenous population who traditionally subsist on land for which they may or may not have a formal ownership contract. In cases where displacement takes place, the victims should be provided with sufficient remedies as well as alternative means to sustain an "adequate standard of living", in compliance with the ICESCR. In any development decisions, removal of inhabitants needs to be the least favoured option and the decision-making processes in this regard needs to conform with international standards. International human rights law requires such processes to be participatory, transparent and subject to review when required.

³⁴ A/HRC/WG.6/1/IDN/4 art. 76.5, April 2008

³⁵ NGO Foker LSMPapua

³⁶ E/CN.4/2002/95/Add.2 art. 54, February 2002



INDONESIA: About 300 families of indigenous villagers threatened to be forcibly evicted by the government in West Sumatera

December 14, 2007, UA-341-2007

Around 300 families of indigenous villagers occupying land since 1918 in Lima Puluh Kota Municipality, West Sumatera, have been threatened with forcible eviction by the government. The villagers had been evicted twice before but were forced to return having no other means of livelihood after moving elsewhere. The municipal government and the Government Agency for Top Breeding Cow (BPTU) forcibly evicted them in the past in absence of a lawful court for the latter to occupy the land.

The Government Agency for Top Breeding Cow (BPTU) is a unit under the Farming Department which claims that the Ulayat land of Nagari Mungo is government land according to the Erfach Deed No. 207. In 1997, the Ministry of Agriculture had issued a Certificate of Right to Use to the BPTU effectively allowing them to claim the land. Ulayat Land refers to rights to collective ownership of land by an traditional Adat community.

For more information see

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2697/>

Palm oil plantations are another example where illegal logging increases economic activities, but destroys environments that serve as sources for food and water. Development projects need to be made environmentally sustainable in order to preserve the surroundings for indigenous people. This is partially an end in itself, but it is also important in order to safeguard the economic, social, and cultural rights of the people who subsist based on their environment.

The central government's settlement policies (also called transmigration), that are overturning the ethnographic balance in the provinces Papua and West Papua, have resulted in an influx of non-indigenous Papuans. Commercial activities, rural development, and expansion of settlements are driven in this way. However, this type of development has not benefited the population that pays the price of the environmental degradation and de-facto military rule in the region.

Access to secondary education is provided in theory, but is not affordable for most indigenous Papuans. Access to loans and licenses for businesses is practically unavailable for the indigenous people. Development efforts, various programs and funds

granted from Jakarta to the provincial government to address this situation have not yet been able to change this situation. While funding is increased year by year, there have been insufficient programs to monitor the use of funds. As a result, the resources end up in corrupt hands at the district level.

The gaps in the two-layered society in Papua with indigenous Papuans on the one hand, and the increasing numbers of migrants on the other hand is creating social tensions. Discrimination and de-facto apartheid provokes anger and a perception of a cultural invasion among the indigenous population. Addressing these social problems is key to the stabilization of the region. Because of the politicisation of the institutions of justice in Papua, their capacity to address issues of corruption and the rule of law is in doubt. Due to the lack of effective government institutions that could provide social services and ensure equal opportunities, attempts to address these issues by increasing the budget of the region have so far failed to engender positive results.



3. PROTECTION OF HUMAN RIGHTS

3.1 LEGISLATION

Indonesia has undergone several legislative reforms since the beginning of the *reformasi* era. New legislation such as the Human Rights Court Law, or the Law on Witness and Victims protection has equipped the country with new institutions. To conform with international human rights standards and fulfil obligations under the ICCPR, it is necessary to also review the existing body of legislation.

Sharia Law

In addition to legislation enacted on the national level, at the regional level within Indonesia, Sharia Law continues to be applied, for example in Aceh. Such law is applied for Muslims and is seen as not conforming with Constitutional Standards. The UN Committee against Torture advised that Indonesia "should review, through its relevant institutions, including governmental and judicial mechanisms at all levels, all local regulations in order to ensure they are in conformity with the Constitution and with ratified legal international instruments, in particular the Convention."³⁷

A newly elected judge in the Constitutional Court has already raised doubts about the legality of the ongoing application of Sharia Law at the regional level. Such laws, the judge explained, are unconstitutional. However, there has not yet been a review of the law.

The Aceh Criminal Code from 2005 introduced corporal punishment, which stands in contrast with the human rights reform ongoing in the rest of the country. This legislation needs to be reviewed as it contravenes constitutional rights as well as the ICCPR and the Convention against Torture. The Special Rapporteur on Torture has stated that "the Government should ensure that corporal punishment, independently of the physical suffering it causes, is explicitly criminalized in all parts of the country."³⁸

The Penal Code

The Indonesian Penal Code (KUHP) has been criticised for years for lacking a proper definition of torture. The current version makes reference to "maltreatment" in art. 351 - 358, which differs from the definition of torture as provided in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The UN Special Rapporteur on Torture, Professor Manfred Nowak, recommended that "torture should be defined and criminalized as a matter of priority and as a concrete demonstration of Indonesia's commitment to combat the problem, in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture."³⁹

³⁷ CAT/C/IDN/CO/2 para 15., July 2008

³⁸ A/HRC/7/3/Add.7 art. 75, March 2008, Special Rapporteur on Torture

³⁹ A/HRC/7/3/Add.7 art. 73, March 2008, Special Rapporteur on Torture



Torture cases are usually labelled as "maltreatment," and court cases against perpetrators of torture systematically end in dismissals or acquittals. Minor sentences or acquittals cannot be reconciled with the grave nature of the crime of torture, as was suggested by the UN Special Rapporteur on Torture.⁴⁰

The Committee against Torture suggested that Indonesia either amend the existing Penal Code or adopt a stand-alone bill specifically on torture. Legislation on crimes of torture should "take into account their grave nature, as set out in paragraph 2, article 4, of the Convention."⁴¹ In that regard, the government announced during this year's Universal Periodic Review, that it "is currently considering the amendment of article 351 of the Code on ill-treatment. In particular, this amendment will bring the formulation of the Code to cover the crime of torture as defined in the Convention against Torture, an instrument to which Indonesia is a party."⁴² Several drafts of a reviewed law have been discussed for a long time, but when an actual reviewed bill would be passed remains difficult to predict.

Article 160 in the Penal Code prohibits oral or written incitement in public to actions against the authorities or disobedience to statutory provisions or official orders under such provisions.

Article 161 further criminalizes publicizing such material and allows professional licenses, such as the license to work as a lawyer, to be revoked. In 2008, cases were reported in which human rights defenders were charged under these vague laws and sentenced to imprisonment, for example, for distributing pamphlets regarding mining activities. (See AHRC-UAC-197-2008 for more information.)⁴³

Article 160 is often used to charge human rights defenders with offences when they question decisions and actions by local authorities. Such forms of public protest should instead be protected, in particular in the case of human rights defenders.

Article 106 and Article 110 have in the past been used to charge people with "incitement to separatist movements". In crisis regions like Papua, rights activists are frequently charged under these articles and have suffered years of imprisonment as a result.

Criminal responsibility in Indonesia begins at the age of eight years old and thus contravenes the Conventions on the Rights of the Child.

Criminal Procedure Code

The problems of Law No. 8 of 1981 on Criminal Procedure (KUHAP) occur in both its substance and in its application. The first problem is the limited number of explicit and clear provisions that are provided for under the Code. A second problem is the implementation of the law in practice.

The code has loopholes with regard to safeguarding a fair trial, for example. The length of the period of detention, the lack of guarantees of the rights of the accused, the absence of protection from torture, no adequate monitoring, and lacking provisions to challenge the trial mechanism, present serious obstacles when trying to uphold a justice process that conforms with international standards. These problems have led to numerous miscarriages of justice.

⁴⁰ A/HRC/7/3/Add.7 art. 73

⁴¹ CAT/C/IDN/CO/2 para 13., July 2008

⁴² A/HRC/8/233/Add.1 art. 20, June 2008

⁴³ INDONESIA: Eight people in Aceh convicted of disseminating pamphlets, AHRC-UAC-197-2008, September 1, 2008, URL: <http://www.ahrchk.net/ua/mainfile.php/2008/2992>



Inadequate protection is given under the existing Indonesian Criminal Procedure Code. At this time, the Indonesian Government is preparing a new draft of the Criminal Procedure Code. A new draft Code would have to repair the imperfections of the existing Code and give emphasis to the protection on human rights and fair trial, if it is to be considered an improvement.

3.2 THE POLICE

The Indonesian Police is the main perpetrator of various forms of human rights violations, notably torture. The torture of detainees is commonly practiced in order to extract information from them; or force the signature of false testimonies. Torture has become a standard method of interrogation and evidence fabrication. Cases received by the AHRC in 2008 suggest widespread police brutality, which is mirrored in the mistrust with which the general public views the police. It is obvious then, that no real progress in human rights can be achieved without significant reforms to the Indonesian police. Starting in the 1998 *reformasi*-era, the Indonesian police force was to be radically reformed. However, 10 years after the reform period started, police brutality, corruption and a lack of accountability are still prevalent. What are the reasons for this?

Police Culture

The Indonesian police is still struggling with the problems of a violent, militaristic history and the lack of a professional civilian approach to policing, despite an expressed aspiration for "cultural change". The general public still perceives the police as being brutal and they are generally distrusted and often even feared. Despite continued reforms since 1998, the Indonesian police are still seen as discriminatory, unprofessional, unresponsive and discourteous. It is apparent then that the police culture needs to be changed. The ideal is a civilian police force: a professional, proportional, and democratic police force that has a high regard for human rights, transparency, accountability, and the supremacy of the rule of law.⁴⁴ Cultural change must happen through interplay between institutional arrangements and educational avenues. For example, educational programmes in the Police Academy are a welcome initiative, but institutional arrangements, such as the criminalization of torture must accompany the training. The National Police Commission receives hundreds of complaints every year and has developed an expertise on needed reforms and suggests disciplinary actions based on its findings. However, none of the valuable recommendations by the commission have a binding affect and reform attempts do not result in change.

Investigations

The Committee against Torture noted that Indonesia "should take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee, and ensure that statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention. The State party is requested to review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment, to take appropriate remedial measures and to inform the Committee of its findings."⁴⁵ However, to date, the Indonesian Police is still functioning according to a confession-based logic. This means that more focus is put on extracting a confession from a suspected criminal, than on collecting evidence in order to prove that the person in

⁴⁴ ALMANAC ON INDONESIAN SECURITY SECTOR REFORM 2007, Sukadis, 2007: 64-72

⁴⁵ CAT/C/IDN/CO/2 art. 14., July 2008



question is guilty. Such logic is highly susceptible to torture as a method for producing fast, though not necessarily true, confessions.

The AHRC recommends that the Indonesian government take measures to introduce an evidence-based investigation system. This will reduce the incentives for the police to use torture as a method of interrogation. Additionally, the allocation of resources to the police would help in combating torture, to the extent that it is used as a cost effective method for achieving results under resource deprived circumstances. Anti-corruption measures must accompany greater resource allocation. Additionally, in order to facilitate this transition, courts have to stop considering confessions produced through torture as being valid evidence. Such evidence should, according to Indonesian law, not be considered as being valid, but in practice it is frequently used.

Police Detention and Custody

A further area of concern with regard to the Indonesian police force is the lengthy duration of police custody – 61 days. The UN Special Rapporteur on Torture pointed out that "As a matter of urgent priority, the period of police custody should be reduced to a time limit in line with international standards (maximum of 48 hours)."⁴⁶ Although the Indonesian Criminal Procedure Code authorizes this lengthy detention only under special circumstances, this has become the standard period of detention.⁴⁷ This stands in direct opposition to international standards, and it is problematic for a number of reasons: it makes police abuse more likely, and the visible traces of torture are likely to have disappeared after such a long period of time. The Special Rapporteur further requested, "The maintenance of custody registers should be scrupulously ensured."⁴⁸ This had not been implemented at the time of writing.

Police Impunity

As discussed above, in relation to torture, lower state officials are rarely convicted, and if they are, the punishment is lenient. The UN Special Rapporteur on Torture suggested "accessible and effective complaints mechanisms should be established. ... The agencies in charge of conducting investigations, inter alia Prodam, should receive targeted training."⁴⁹ Other than the quasi complaint mechanism PROPAM in the police, no other specific complaint mechanism is available. It has become obvious that the police internal complaints mechanism, PROPAM, is not functioning satisfactorily, as it is neither preventive nor remedial, nor is it specific to each case of torture. PROPAM also lacks transparency when it comes to the procedure and outcome of a complaint. Furthermore, the punishments meted out by PROPAM in torture cases are not severe enough, and therefore do not reflecting the gravity of the crime of torture. An alternative (or complimentary) approach would be the expansion of the mandate of the National Human Rights Commission (Komnas HAM) to enable it to further investigate individual cases of torture as human rights violations.

Another monitoring body concerning the police is the National Police Commission, which is mandated to recommend reforms to the police. The lack of any other effective complaint procedures has made them a target for hundreds of complaints every year and they now effectively act as a complaint receiving body without being specifically mandated or funded to do so. While its establishment was an important step

⁴⁶ A/HRC/7/3/Add.7, art.78, March 2008, *Special Rapporteur on Torture*

⁴⁷ A/HRC/7/3/Add.7

⁴⁸ A/HRC/7/3/Add.7, art.81, March 2008, *Special Rapporteur on Torture*

⁴⁹ A/HRC/7/3/Add.7, art.83, March 2008, *Special Rapporteur on Torture*



forward, its lack of authority over the police makes it unable to perform adequately in ensuring human rights.

Police Progress

Despite all the explained problems, some positive steps towards a more accountable and generally more humane Indonesian police force can be identified. Police officers are increasingly being trained in human rights and international standards; demilitarising training forms part of the Police Academy; a number of national mechanisms have been established to monitor ill-treatment by the police, including the National Police Commission – a new oversight commission; all police members who are charged with a criminal offence are now tried in civil courts, rather than in military ones. In addition the government has established a complaints mechanism with regard to maltreatment on the part of public officers, and a telephone hotline has also been set up which is directly connected to the local police. These are all important initiatives which deserve praise. However, the impact of these initiatives may, at least partially, depend on an amended Indonesian Penal Code which has not yet materialized. The urgent need for an amended Penal Code, especially concerning the criminalization of torture and appropriate punishment therefore, can not be stressed enough.

3.3 THE PROSECUTION

In the last two years there have been many prosecutors convicted by the Corruption Eradication Commission (KPK) on charges of corruption beyond IDR 500 000 000 (about US\$ 50 000). Among them, prosecutor Gunawan and prosecutor Urip were amongst the most prominent cases in 2008. These cases indicate the extent of the problem of corruption in the country's prosecution system. The Committee on Torture pointed out the "collusion and nepotism in the public prosecution service."⁵⁰ The Committee furthermore recommended that:

"The State party should reform the Attorney-General's office to ensure that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality. In addition, the State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment. The State party should also publish, without delay, the reports of Komnas HAM investigations."⁵¹

The problem of corruption was also recognized by President Bambang Yudhoyono who announced that the two biggest problems Indonesia faces are endemic corruption and gross violations of human rights. In the last few years the government has put unprecedented efforts into the fight against corruption. However, many Indonesian-based groups point out the neglect of gross violations of human rights in the President's working agenda.

Besides ordinary crimes, the Attorney General's office (AGO) also initiates judicial investigations and prosecutes cases of gross violations of human rights, such as past massacres, the May riots and other large-scale incidents of human rights violations. Before, Komnas HAM typically prepares an inquiry report on the case and passes it to the AGO. Since findings made by Komnas HAM remain undisclosed to the public, there is no telling whether or not the reasons for rejection of cases by the office of the Attorney General are

⁵⁰ CAT/C/IDN/CO/2 para 22., July 2008

⁵¹ CAT/C/IDN/CO/2 para 25., July 2008



justifiable. The AGO has attempted to justify its rejection of cases on the basis of an alleged lack of clarity concerning the law with regard to whether the AGO should wait for a parliamentary decision before starting investigations. In one case, the AGO refused to launch an investigation on the basis that the inquiry report from Komnas HAM did not mention names of alleged perpetrators. In another case the AGO refused to launch an investigation when names were provided but then on the basis that he did not acknowledge his role to act upon KomnasHAM inquiries but that the parliament would have to act first. This shows that the main barrier to the launching of investigations appears to be one of willingness on the part of the AGO.

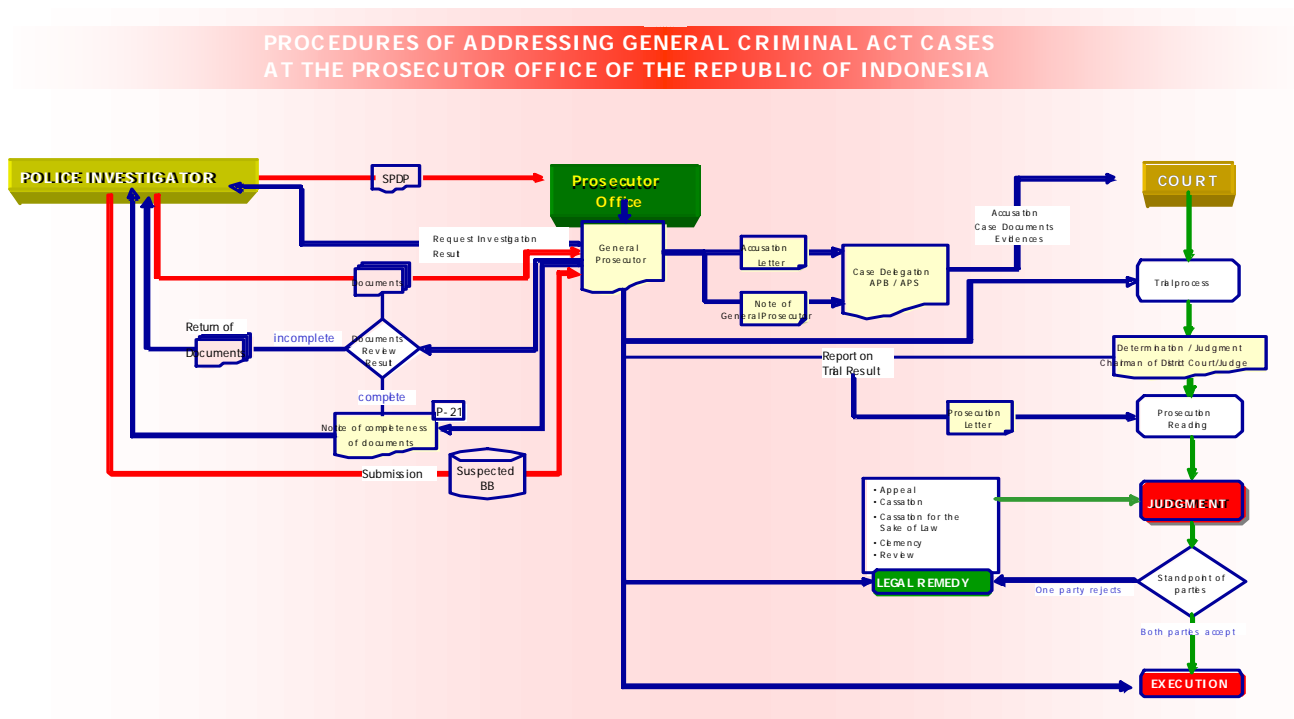
Article 43.2 of the Human Rights Court Law requires the parliament to recommend the setting up of an ad hoc court based on allegations (*dugaan* in Indonesian) of a violation, which is then made effective by a presidential decree. Such allegations are to be made by Komnas HAM, but in 2008, Komnas HAM's authority to make such allegations was challenged in the Constitutional Court. The Court ruled that for the investigation to be judicial, it has to be conducted by the Attorney General's office, which should therefore not wait for a parliamentary recommendation but conduct its investigation upon the submission of the inquiry report by Komnas HAM. Only this would bring the parliament in a position to act upon an allegation.

Political interference is suspected by civil society groups in both gross violation and individual human rights cases. Two recent cases exemplify this. An investigation recently produced enough evidence against former justice minister Yusril Ihza Mahendra concerning corruption scandal. At the time of writing, the AGO had still not acted upon this evidence and launched a prosecution. Legal expert Romli Atmasasmita, who took part in drafting the Indonesian Corruption Court bill and is recognized as having criticised institutions such as the AGO department on several occasions, had, however, been arrested without delay on similar charges by the AGO.

The Prosecutorial Commission, a monitoring body set up by a presidential decree, has received numerous complaints of misconduct concerning the offices of several prosecutors around the country. The commission I question does not have the mandate to direct reforms, however. Strengthening the role of this commission with regard to disciplinary measures against prosecutors and reforms within the institution is a required to reduce political interference and to establish an effective, impartial AGO. The direct selection of the Prosecutor General by the President is a second contributing factor that limits the independence of this institution, notably when dealing with politically sensitive cases.



The following graph shows the central role of the Prosecutors office in handling cases:





3.4 THE JUDICIARY

In Indonesia's court system, the Constitutional Court is widely seen as one of the most independent and competent courts in the country. District and provincial courts are often reported as giving poor judgments or delaying judicial processes. In a recent case, Hartoyo was harassed, tortured and seriously humiliated by police personnel due to his sexual orientation. The court sentenced the policemen to a fine of 10 US cents and imprisonment for a few weeks, which was not even applied. An appropriate punishment for degrading treatment and torture would include at least several years of imprisonment. Instead, Justice Sugeng Budiyo, who was hearing the criminal case, justified the light punishment with the argument that "the perpetrators are police officers who are needed by their country, the perpetrators confessed their acts, both parties forgave each other, and the perpetrators committed a minor offence." In addition, the judge ordered the victim to review his moral standing concerning sexual orientation. (For more information see AHRC urgent appeal AHRC-UAU-060-2008.)⁵² This is just one example of the lack of education, training, and familiarity with the concept of the rule of law among members of the judiciary.

The Committee against Torture in its review of Indonesia's legal system explained that "as the State party continues its process of transition to a democratic regime committed to upholding the rule of law and human rights, it should strengthen the independence of the judiciary, prevent and combat corruption, collusion and nepotism in the administration of justice, and regulate the legal profession."⁵³ Little implementation of this and other similar recommendation is noticeable.

The courts' responsibility when it comes to the oversight of criminal procedures, such as treatment of persons in custody, is not being carried out in conformity with international norms. The Special Rapporteur on Torture, for example, requested that "judges and prosecutors should routinely ask persons arriving from police custody how they have been treated, and if they suspect that they have been subjected to ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant."⁵⁴

Of serious concern is the continued use of testimonies obtained by means of torture in courts. The Committee explained that "the State party is requested to review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment, to take appropriate remedial measures and to inform the Committee of its findings."⁵⁵

The Judicial Commission, a monitoring body established by the constitution has conducted investigations upon received complaints about cases of misconduct. In many such cases the Judicial Commission has recommended disciplinary action against the concerned judges to the Supreme Court – the authority responsible for issuing such actions. However none of the hundreds of recommendations have been taken up by the Supreme Court and the implicated judges continue to serve in their offices. The Supreme Court has only used such information when reviewing a judge's record when considering promotions, notably into the Supreme Court.

⁵² INDONESIA: Court treats torture case as minor offence; police responsible are freed, October 15, 2008, AHRC-UAU-060-2008, URL: <http://www.ahrchk.net/ua/mainfile.php/2008/3034/>

⁵³ CAT/C/IDN/CO/2 para 22., July 2008

⁵⁴ A/HRC/7/3/Add.7, art.80, March 2008, Special Rapporteur on Torture

⁵⁵ CAT/C/IDN/CO/2 para 12, July 2008



Other examples are encouraging. In 2008, Mahfud Md. was elected into the Constitutional Court and was immediately appointed as the Court's Chairperson. Judge Mahfud Md. soon took a firm stand on Sharia Law. He explained that the Sharia as currently widely practiced in Indonesia at the district level contravenes the Constitution of Indonesia. The Constitution requires the same laws to be applied to all citizens irrespective of their religion.

3.5 THE INSTITUTION FOR WITNESS PROTECTION

An effective witness protection program is a necessary requirement for a country suffering from serious human rights violations. The delays in bringing Indonesia's Witness and Victims Protection Agency into effect are of concern. The law defining the institution was enacted more than two years ago, however the President selected its commissioners only in 2008.

The Committee against torture in July 2008 denounced the "absence of implementing regulations, the mistreatment of witnesses and victims, and the insufficient training of law enforcement officials and allocation of Government funds to support the new system."⁵⁶ The Committee requested Indonesia to "without delay, establish a witness and victim protection body, with all relevant measures required to implement Law No. 13/2006, including the allocation of necessary funding for the functioning of such a new system, the adequate training of law enforcement officials, especially in cooperation with civil society organizations, and an appropriate gender-balanced composition."⁵⁷

While commissioners have been elected, the institution has not resolved where it will physically locate its offices, or selected the staff to form its secretariat. In the climate of impunity that continues to prevail in Indonesia, and with the political influence that many of the alleged perpetrators of past human rights violation continue to have, many cases have not yet come to the fore, and this can be significantly attributed to the lack of effective witness protection, as witnesses are not confident enough to come forwards at present.

3.6 NATIONAL HUMAN RIGHTS INSTITUTIONS

Among the Commissions involved in human rights issues, the most recognized is the National Commission for Human Rights (Komisi Nasional Hak Asasi Manusia), also known as Komnas HAM. As a national human rights institution, it is unlike many others in the Asian region. While its strength lies in its credible work, independence and the commissioners' civil society backgrounds, its weakness can be attributed to limitations to its mandate and its weak link with the Attorney General's Office. Komnas HAM is currently headed by Ifdal Kasim, who headed a human rights non-governmental organisation before becoming Commissioner.

The Committee against Torture requested in 2008 that "the State party should ensure the effective functioning of Komnas HAM by adopting adequate measures, inter alia, by strengthening its independence,

⁵⁶ CAT/C/IDN/CO/2 para 31., July 2008

⁵⁷ CAT/C/IDN/CO/2 para 31., July 2008



mandate, resources and procedures, and reinforcing the independence and security of its members. Members of the government and other high-ranking officials should fully cooperate with Komnas HAM."⁵⁸

However Indonesia's review under the UPR process in 2008 pointed out that in many cases, Komnas HAM relies on the Prosecutor General's willingness to launch prosecutions. The recommendations of Komnas HAM to prosecute cases are being ignored by the Prosecutor General. There is also no institutional requirement for the prosecutor to follow the recommendations of Komnas HAM.

Komnas HAM does not receive full support for its work from the government. The Committee against Torture noted concern "at the fact that members of the Government have stated that military officials should ignore the summons from Komnas HAM in connection with its investigations of gross violations of human rights, such as in the Talangsari, Lampung killing case (arts. 2 and 12)."⁵⁹

3.7 INTERNATIONAL LAW

Indonesia has ratified most of the major international human rights instruments, including the ICCPR and the ICESCR. A review of the ICCPR's implementation by the Human Rights Committee has not yet taken place. With regard to ratifications that are still missing, Indonesia frequently refers to its National Plan of Action, according to which, for example, the Optional Protocol to the Convention against Torture is to be signed and ratified. The Special Rapporteur on Torture has stated that the "government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention."⁶⁰

Other missing ratifications include 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, and the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography. The illustration of the situation in Papua earlier in this report has also shown the need for Indonesia to sign the International Convention on the Protection of All Persons from Enforced Disappearance. Similar requests were also voiced during indonesia's UPR review in 2008.⁶¹

⁵⁸ CAT/C/IDN/CO/2 para 24., July 2008

⁵⁹ CAT/C/IDN/CO/2 para 24., July 2008

⁶⁰ A/HRC/7/3/Add.7, art.84, March 2008, Special Rapporteur on Torture

⁶¹ A/HRC/WG.6/1/IDN/4 art. 76.2, April 2008



Following is a table of ratified conventions and treaties as well as some of the missing ratifications.

Status of Ratifications: Indonesia	
Relevant Conventions, Protocols (Signed)	Status
2. International Convention on the Elimination of all Forms of Racial Discrimination	1999 (accession)
3. International Covenant on Economic, Social and Cultural Rights	2006 (accession)
4. International Covenant on Civil and Political Rights	2006 (accession)
8. Convention on the Elimination of All Forms of Discrimination against Women)	1980 (signature) 1984 (ratification)
8.b. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	2000 (signature)
9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1985 (signature) 1998 (ratification)
11. Convention on the Rights of the Child	1990 (signature) 1990 (ratification)
11.b. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2001 (signature)
11.c. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2001 (signature)
13. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	2004 (signature)
15. Convention on the Rights of Persons with Disabilities	2007 (signature)

Status of Ratifications: Indonesia	
Relevant Conventions, Protocols (Unsigned)	Status
5. Optional Protocol to the International Covenant on Civil and Political Rights	Unsigned
9.b. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Signature intended according to National Plan of Action and Human Rights



	Council membership pledges.
12. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Unsigned
16. International Convention for the Protection of All Persons from Enforced Disappearance	Unsigned

4. CONCLUSION AND RECOMMENDATIONS

The Universal Periodic Review commended Indonesia "for its efforts in the field of human rights training and education and is encouraged to continue in this regard, and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces."⁶² A human rights attitude in daily police practices, prosecutorial practices, and other aspects of public administration and justice delivery are required. However, none of these efforts will have a sustainable impact unless institutional and legislative reforms are also implemented.

The Special Rapporteur on Torture has pointed out that, "The Government of Indonesia should ensure that the criminal justice system is non-discriminatory at every stage, combat corruption, which disproportionately affects the poor, the vulnerable and minorities, and take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel."⁶³

That means making institutions such as the prosecution and the judiciary subject to disciplinary action in cases of misconduct. The various institutions set up often only have the mandate to make recommendations, including the National Police Commission or the Prosecutorial Commission, and these are frequently ignored. These institutions receive complaints and through them have gained considerable experience that could guide policy-making concerning efficiency, misconduct, corruption and, as a result, conformity with human rights standards in these institutions. While such commissions can make recommendations, these recommendations are not binding. No punishment or disciplinary action can be initiated by these complaint processing bodies at present.

Having set up such bodies in the justice system, the government has shown an effort in the right direction. However, real impact is being hindered by the lack of implementation of reforms beyond these initial institutional measures. The constitutionally established Judicial Commission faces a similar problem. While hard work is done in these institutions, their work has no impact unless their recommendations have a binding character.

⁶² A/HRC/WG.6/1/IDN/4 art. 76.1, April 2008

⁶³ A/HRC/7/3/Add.7, art.88, March 2008, Special Rapporteur on Torture



Recommendations:

1. Monitoring institutions, such as the National Police Commission, the Prosecutorial Commission or the Judicial Commission, must be provided with the authority to issue disciplinary actions against personnel in the criminal justice system and the authority to oversee the implementation of institutional reforms that they engender.
2. The abolishment of torture in Indonesia requires the long-delayed criminalization of torture, including a definition of torture in the Penal Code that is in line with that found in the Convention. Appropriate punishments and reparations concerning acts of torture, which are in line with international standards, must also be provided. The range of international recommendations concerning this, including the need to keep registrations of detainees, should also be implemented without delay.
3. The Attorney General's Office should take a proactive role in investigating and prosecuting cases of gross human rights violations, as victims continue to suffer and the ongoing culture of impunity is continuing to create an atmosphere where similar atrocities remain possible in future.
4. The parliament and the government of Indonesia should consider enacting legislation that protects the work of human rights defenders. The application of article 160 and 161 of the Penal Code should be halted, in order to avoid further attacks against such defenders.
5. The region of Papua should be demilitarized, and military personnel should be subject to the civilian justice process when they have committed human rights violations such as intimidations, killings or torture against civilians. The transmigration process into the region should be immediately halted until a sustainable way is found that allows such migrations streams without harming the human rights of indigenous Papuans including the right to food, water, land and the preservation of culture. The financial efforts made by the central government are welcomed but not effective due to corruption at the local level. A major anti-corruption programme needs to be implemented to tackle the issue as the Corruption Eradication Commission's (KPK) mandate only covers cases of corruption above IDR 500 000 000.
6. The murder of internationally recognized human rights activist Munir Said Thalib needs to be fully resolved, with all the perpetrators involved in planning and supporting the implementation of the assassination having been brought to justice.