



## **Human Rights in Indonesia**

**Before the:**

**Tom Lantos Human Rights Commission  
U.S. House of Representatives**

**Testimony by:**

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Thank you Mr. Chairman and members of the Tom Lantos Human Rights Commission; Amnesty International is pleased to testify at this important hearing.

This hearing is important because of the continuing human rights abuses in Indonesia and lack of attention paid by the international community to address these abuses.

The human rights situation in Indonesia is disturbing. There are several political prisoners still languishing in prisons. Human rights defenders face obstacles and there has been no progress in the investigation into the killing of a prominent human rights defender Munir Said Thalib. Indonesian Security forces continue to commit abuses with impunity, including the recent execution of four prisoners inside a prison. The situation in Papua is not improving and religious minorities face increasing abuses. A U.S.-trained police unit, Detachment – 88, has been implicated in serious human rights abuses.

### **Our main concerns are as follows:**

#### **Human rights defenders:**

Amnesty International continues to receive credible reports of attacks, threats and intimidation of human rights defenders in Indonesia. Most past human rights violations against human rights defenders, including torture and other ill-treatment, possible unlawful killings and enforced disappearances, remain unsolved and those responsible have not been brought to justice. There are ongoing reports of intimidation and attacks

against human rights defenders, and some have subjected to criminal defamation proceedings due to their work in recent years.

According to Articles 311(1) of Indonesia's Criminal Code: "Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted, shall, if he does not produce said proof and the charges has been made against his better judgment, being guilty of calumny, be punished by a maximum imprisonment of four years", and Article 316: "The punishments laid down in the foregoing articles of this chapter may be enhanced with one third, if the defamation is committed against an official, during or on the subject of the legal exercise of his office".

That means criminal defamation carries formally the possibly of up to five years and a few months' imprisonment under Indonesian law.

Failure to investigate attack against human rights defender:

On 6 May 2012 Tantowi Anwari, an activist from the Association of Journalists for Diversity (Sejuk) was beaten and kicked by members of the Islamic Defenders Front (FPI) in Bekasi while he was covering the disruption of the HKBP Filadelfia church service. Despite filing a police report a year ago, Tantowi Anwari has not been informed of any progress on his case.

Criminal defamation case against community activist:

On 13 July 2012 the Maluku provincial police charged Oyang Orlando Petrus, a community activist from southwest Maluku, with criminal defamation. He had been a vocal critic of mining in the area and its impact on the environment and was previously attacked and stabbed by unknown persons in April 2012. No one has been brought to justice for the attacks.

#### Recommendations:

- Take effective steps to ensure that human rights violations committed against human rights defenders are promptly, effectively and impartially investigated and that those responsible are brought to justice in fair trial proceedings;
- Ensure an environment in which it is possible to defend human rights without fear of reprisal or intimidation;
- Ensure that provisions in the Criminal Code, which allow for terms of imprisonment for acts of defamation, are repealed, and that the newly revised Criminal Code does not contain provisions punishing with terms of imprisonment individuals who publicly criticize public officials; and
- Support the creation of special mechanisms to ensure the protection of human rights defenders in Indonesia.

## **Case of Human Rights Defender Munir Said Thalib**

Prominent human rights activist Munir Said Thalib, was found dead on a Garuda Airlines flight from Jakarta to the Netherlands on 7 September 2004. An autopsy carried out by the Dutch authorities showed that he had been poisoned with arsenic.

Although three persons have now been convicted of involvement in Munir's death, credible allegations have been made that those responsible for the murder at the highest levels are still at large. Former deputy of the state intelligence agency, Muchdi Purwoprandjono (known as 'Muchdi'), was acquitted of charges of soliciting and assisting in the murder of Munir on 31 December 2008. His trial was criticized by local and international human rights groups as violating international standards of fairness and due process, as it was marked by the systematic retraction of prior sworn statements by key witnesses, and by the presence of organized groups seeking to influence the trial.

In response to the domestic and international outcry over Munir's death, President Susilo Bambang Yudhoyono ordered an independent fact-finding team to work in parallel to the police investigation. This team gave him its report in June 2005. The report has yet to be made public, although though this had been recommended by the presidential decree that created the fact-finding team.

### **Recommendations:**

- Initiate a new, independent investigation into the murder of Munir and bring perpetrators at all levels to justice in accordance with international human rights standards;
- Conduct a review of past criminal proceedings into Munir's killing, including alleged violations of international human rights standards; in particular, investigate reports of witness intimidation and bring those suspected of committing them to justice;
- Call for the 2005 report of the fact-finding team into Munir's killing to be made public, as a key step towards establishing the truth.

## **ACCOUNTABILITY AND HUMAN RIGHTS VIOLATIONS BY THE SECURITY FORCES**

### **Police**

Amnesty International continues to receive credible reports of human rights violations committed by the police in Indonesia, including unlawful killings, torture and other ill-treatment, unnecessary and excessive use of force and firearms when carrying out arrests and during demonstrations, and failure to protect victims of human rights abuses.

Investigations into reports of police abuses are rare, and police often subject complainants to further intimidation and harassment. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences amounting to human rights violations and are often not known to the public. Furthermore, external police oversight bodies do not have the adequate powers to bring to justice those responsible for human rights abuses.

Seven men were reportedly tortured in Papua province in February 2013 while they were interrogated by police about the whereabouts of two pro-independence activists. According to credible sources, plainclothes police officers arbitrarily arrested Daniel Gobay and two other men on the morning of 15 February 2013 in Depapre, Papua province. The three men were first forced to crawl on their stomachs to the Depapre sub-district police station approximately 30 metres away and then moved to the Jayapura district police station an hour later. There they were then forced to strip, were kicked in the face, head and back, and beaten with rattan sticks. Police officers allegedly pressed the barrels of their guns to their heads, mouth and ears. They were interrogated until late at night and in the morning of the following day.

Matan Klembiap and three other men were arbitrarily arrested separately by plainclothes police officers on the morning of 15 February in Depapre and taken to the Jayapura district police station. The four men were also forced to strip and were kicked and beaten with rattan sticks and wooden blocks by police officers. One of the men has testified on video that police gave him electric shocks.

On 16 February, five of the men were released without charge but Daniel Gobay and Matan Klembiap were kept in police custody. They have since been charged with "possession of a sharp weapon" under the Emergency Regulation 12/1951 and are currently awaiting trial

Excessive use of force by police against demonstrators in Papua:

On 23 October 2012, around 300 people gathered for a pro-independence demonstration organized by the West Papua National Committee (KNPB) in front of the State University of Papua in Manokwari, West Papua province. Manokwari sub-district police and military personnel prevented them from proceeding along the road. In response to stones thrown by a few protesters, police opened fire indiscriminately, firing shots into the air and at the crowd. Some demonstrators alleged that they were beaten by police.

At least eleven demonstrators were reportedly injured, four of them suffering gunshot wounds. A journalist, Oktovianus Pogau, who was covering the demonstration, stated that he was attacked by the police. One of them held him around his throat while another punched him in the face as he tried to retrieve his press card to show them. At least five police officers also reportedly suffered injuries. Indonesia has yet to fully incorporate a definition of torture in its Criminal Code, thus failing to meet its obligations as a state party to the UN Convention against Torture (UNCAT). The lack of sufficient legal provisions on "acts of torture" creates a loophole which has devastating

consequences. It does not provide a sufficient legal basis on which state agents can be brought to court. Further it fails to provide a legal deterrent to prevent state agents from committing these acts.

#### Recommendations:

- Review the internal system for submitting and processing complaints of police abuse to ensure that investigations into police misconduct are prompt, impartial and independent. Furthermore, an independent police complaints mechanism to receive and deal with complaints from the public should be established. This mechanism should have the power to submit its findings to the Public Prosecutor; and
- Incorporate provisions on the crime of torture in the Criminal Code as a matter of priority. The definition of torture should be consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

### **Military**

Credible reports of human rights violations committed by the military continue to emerge including unlawful killings, torture and other ill-treatment, and unnecessary and excessive use of force.

Despite a public commitment made by President Susilo Bambang Yudhoyono in February 2012 that cases of human rights violations would be “legally processed and perpetrators penalized”, investigations into reports of human rights violations by security forces are rare and only a few perpetrators have been brought to justice.

This lack of accountability is exacerbated by the failure to revise the Law on Military Tribunals (Law No. 31/1997). Military personnel charged with human right offences are tried in military courts. Amnesty International has expressed concerns about the lack of independence and impartiality of these trials.

In the afternoon of 6 June 2012, two soldiers on motorcycles reportedly ran over and injured a three year old child playing by the side of the road in the village of Honelama in Wamena. Villagers who witnessed the incident chased the soldiers and stabbed one to death and injured the other.

In retaliation, two trucks of soldiers from army battalion Yonif 756/Wamena arrived at Honelama village not long after and reportedly opened fire arbitrarily on the villagers killing one person, Elinus Yoman. According to reliable local sources, soldiers also stabbed around a dozen people with their bayonets. In addition, soldiers reportedly burned down dozens of homes, buildings and vehicles during the attack. Many of the villagers fled the area and were afraid to return to their homes. No one has been brought to justice for the attacks.

### Recommendations:

- Take the necessary steps to ensure that all military personnel who have been involved in human rights violations, including those with command responsibility, are held accountable. Those individuals suspected of involvement in extrajudicial killings, torture and other serious human rights violations including deliberate acts of cruel, inhuman or degrading treatment should be prosecuted in civilian courts in proceedings which meet international standards of fairness, without the imposition of the death penalty, and victims should receive reparations; and
- Immediately revise the Law on Military Tribunals so that military personnel suspected of offences involving human rights violations can be investigated and tried in an independent civilian judicial system and victims and witnesses provided with adequate protection.

### **IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS:**

The Indonesian government has made little progress in delivering justice, truth and reparation for past human rights violations which occurred under the rule of Suharto and during the *reformasi* period (from 1998) including during the events of 1965-66,<sup>1</sup> the 1998 May riots,<sup>2</sup> and the conflicts in Aceh, Papua and Timor-Leste. These crimes included unlawful killings, rape and other crimes of sexual violence, enforced disappearance, and torture and other ill-treatment.

The Law on Human Rights Courts (No. 26/2000), established to try cases of gross human rights violations, has very limited scope and has yet to be properly implemented. It has jurisdiction only over acts of genocide and crimes against humanity, and thus war crimes and the vast majority of human rights violations perpetrated in Indonesia fall outside its remit.

In 2006 the Indonesian Constitutional Court ruled that the Law on the Truth and Reconciliation Commission (No. 27/2004) was unconstitutional, as it gave powers to recommend amnesties for perpetrators of serious crimes. A new law has been drafted and is scheduled for discussion in Parliament in 2011-2014; however, to date there has been no progress on this. Further, there has been no progress to establish local truth commissions in the provinces of Aceh and Papua as provided for in autonomy laws governing those areas.

### **Enforced disappearances of 13 political activists in 1997-98:**

The fate and whereabouts of 13 political activists who disappeared in 1997-1998 during the last months of President Suharto's rule remain unknown. In 2007, a Special Committee (*Pansus*) was set up by the Indonesian Parliament in response to a 2006 report by the Indonesian Human Rights Commission (Komnas HAM), as well as ongoing pressure from human rights organizations and the families of the disappeared. On 30 September 2009, the Indonesian Parliament recommended that the Indonesian President create an *ad hoc* human rights court to try those responsible for enforced



disappearances in 1997-1998. Other recommendations included an immediate search for the 13 disappeared activists by the Indonesian authorities; the provision of “rehabilitation and compensation” to the victims’ families; and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

While the Indonesian government has expressed its intention to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and signed the treaty in September 2010, none of the other recommendations have been acted on. Those responsible have not been brought to justice and the victims’ families continue to be denied their right to truth, justice and reparation.

#### Recommendations:

- Ensure that all past human rights violations can be effectively investigated and prosecuted. To this end the Indonesian authorities should:
  1. Revise the Law on Human Rights Courts to expand its remit to include war crimes and other crimes under international law such as extra-judicial killing, enforced disappearance and torture; and
  2. Ratify the Rome Statute of the International Criminal Court at the earliest opportunity, incorporate its provisions into domestic law and implement it in policy and practice;
  3. Ratify promptly the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or from other states parties.
- Debate, enact and implement at the earliest opportunity a new law on truth commissions in line with international law and standards;
- Establish a national program to provide reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights abuses. The programme should be devised in consultation with victims and should take in to account the different experiences of women and men, girls and boys, who experience conflict differently; and
- Provide full and effective reparation to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility. In particular, support through donation the establishment of a trust fund to provide a comprehensive reparation programme for victims of past crimes.

## **Prison killings - Recent example: Indonesia Special Forces Command (Kopassus).**

Amnesty International is concerned about the extrajudicial killings of four detainees in Cebongan prison, Jogjakarta on 23 March by members of the Indonesia Special Forces Command (Kopassus).

The killings are a stark reminder that failure to comprehensively reform institutions and combat impunity can lead to new abuses.

Amnesty International is also concerned that the soldiers would be tried in a military court rather than in a civilian court. Human rights organizations have highlighted the lack of independence and impartiality of trials in military courts, the lack of protection for victims and witnesses and that military officers suspected of such offences are often charged with disciplinary rather than criminal offences

### **Recommendation:**

- Undertake an independent, effective investigation into the killings at Cebongan prison and ensure that the perpetrators are brought to justice in independent, civilian courts.

## **Freedom of Expression:**

Indonesian authorities continue to use legislation to criminalize peaceful political activities – violations of the right to freedom of expression are particularly severe in areas where there has been a history of pro-independence movements such as Maluku and Papua. Indonesian authorities have reacted strongly towards individuals who have called for independence. Amnesty International has documented dozens of arrests in past years of peaceful political activists there. Over 70 people are currently imprisoned for peaceful political activities, protests or possessing, raising or waving the prohibited pro-independence flags of Maluku and Papua.

Amnesty International takes no position whatsoever on the political status of any province of Indonesia, including calls for independence. However the organization believes that the right to freedom of expression includes the right to peacefully advocate referendum, independence or other political solutions that do not involve incitement to discrimination, hostility or violence.

### **Papua:**

Papuan activist Filep Karma is currently serving 15 years in prison for taking part in a peaceful demonstration during which the “Morning Star” flag (a banned symbol of Papuan independence) was raised. Filep Karma was arrested at the site of the ceremony. Police reportedly beat him on the way to the police station. He was subsequently charged with “rebellion” under Articles 106 and 110 of the Indonesian



Criminal Code. On 26 May 2005, Filep Karma was sentenced to 15 years' imprisonment. His sentence was upheld by the Supreme Court on 27 October 2005.

In November 2011 the UN Working Group on Arbitrary Detention issued an opinion stating his detention was arbitrary on the grounds that it violated his right to freedom of expression and assembly, and because he was subjected to an unfair trial (Opinion No. 48/2011 (Indonesia)).

On 16 March 2012, political activists Forkorus Yaboisembut, Edison Waromi, August Sananay Kraar, Dominikus Sorabut, and Selpius Bobii were each sentenced to three years' imprisonment by the Jayapura District Court. They were arrested on 19 October 2011 for participating in the Third Papuan People's Congress, a peaceful gathering held in Abepura, Papua from 17-19 October 2011, and charged with "rebellion" under Article 106 of the Indonesian Criminal Code. On 16 March 2012 they were each sentenced to three years' imprisonment. Amnesty International considers all five men to be prisoners of conscience and calls for their immediate and unconditional release.

Amnesty International is also concerned about credible reports about threats and intimidation against the five and one of their lawyers during their trial. These reports raise serious concerns about the wider process of justice in Indonesia, and specifically in the Papua region.

Amnesty International has documented torture or other ill-treatment of some of these peaceful political activists during arrest, detention and interrogation by the police, including the counter-terrorism unit Detachment-88 (*Densus-88*). However, there are rarely independent investigations into such allegations, and the perpetrators are not held to account.

### **South Maluku**

Teacher Johan Teterissa is serving a 15-year prison sentence for leading a peaceful public protest in front of President Susilo Bambang Yudhoyono, during which a flag symbolizing South Maluku independence was raised. The 21 other protestors arrested with him in June 2007 have all been sentenced to between four and 20 years' imprisonment. A twenty-third activist was arrested in June 2008 and sentenced to four years' imprisonment.

The 22 men, who are mainly teachers or farmers, were escorted from the site of the peaceful protest by about 20 police and presidential guards, who punched them and beat them with rifle butts. In custody, many of them were repeatedly beaten, forced to crawl on their stomachs over hot asphalt, whipped with electric cables and had billiard balls forced into their mouths. The police – including officers from the anti-terrorism unit Detachment-88 – also beat them round the head with rifle butts until their ears bled, and fired shots close to their ears, causing long-term damage to the victims' hearing. So far, there has been no independent and impartial investigation into these complaints.

On 4 April 2008, Johan Teterissa was sentenced to life imprisonment for leading the flag-raising incident. Three months later this was reduced on appeal to 15 years. In November 2008 the UN Working Group on Arbitrary Detention (WGAD) declared Johan Teterissa's detention to be arbitrary on the grounds that he was imprisoned for the exercise of his rights to freedom of expression and peaceful assembly – Opinion No. 41/2008 (Indonesia). The WGAD also found Johan Teterissa's detention to be arbitrary because he had been subjected to an unfair trial.

He is currently serving his sentence in Batu prison, Nusakambangan Island, Java, hundreds of kilometres away from his friends and family. Amnesty International considers Johan Teterissa a prisoner of conscience, jailed merely for peacefully exercising his right to freedom of expression. The organization calls for his immediate and unconditional release.

#### Recommendations:

- Immediately and unconditionally release all prisoners of conscience in Indonesia;
- Repeal or else amend regulations which impose on the right to freedom of expression restrictions beyond those allowed under international human rights law. In particular:
  1. Repeal or else amend Articles 106 and 110 of the Indonesian Criminal Code so that these articles are no longer used to criminalize freedom of expression; and
  2. Revoke immediately Article 6 of Government Regulation No. 77/2007 which prohibits the display of separatist logo or flags, or else bring it into compliance with international human rights standards and the provisions of the Indonesian Constitution.
- Conduct effective and independent investigations into all allegations of human rights violations, including torture and other ill-treatment by the security forces, and ensure that all those responsible are brought to justice in fair trials without the imposition of the death penalty, and that victims receive reparations; and
- Ensure that all prisoners in Indonesia have access to any medical treatment they require and that prison conditions, conditions in detention facilities, and the treatment of prisoners meet standards provided for in Indonesian law as well as under the UN Standard Minimum Rules on the Treatment of Prisoners.

#### Freedom of Religion:

There have been increasing levels of harassment, intimidation and attacks against the Ahmadiyya, Shi'a, Christians and other religious minority groups in Indonesia. These include attacks and burning of places of worship and homes, at times leading to the displacement of these groups. Those who commit acts of violence against religious minorities are rarely punished.

## **The Ahmadiyya:**

In March 2008 a Joint Ministerial Decree was issued to restrict activities by members of the Ahmadiyya community. The decree prescribes that among other things Ahmadiyya members should cease the propagation of their beliefs.

While there had been sporadic attacks and harassment against the Ahmadiyya community prior to the issuing of the Decree, the levels of harassment, intimidation and attacks have increased since then. Further there has been an increase in the number of local regulations restricting the activities of the Ahmadiyya. The regulations include prohibiting the Ahmadiyya from distributing pamphlets, putting signs in front of their offices and places of worship, as well as forbidding them from wearing anything to indicate that they are Ahmadiyya members. These local regulations have been directly linked to the arbitrary closure of Ahmadiyya places of worship in recent years. In particular some hardline Islamist groups have used the local regulations as a justification to protest, at times violently, against the Ahmadiyya community and force the closure of their places of worship.

The Ahmadiyya are a religious group, who consider themselves to be a part of Islam. Many mainstream Muslim groups say they do not adhere to the accepted belief system. There is a tendency by the authorities to blame the group for “deviant views” when attacks against them occur.

### **Closure of Ahmadiyya places of worship in West Java:**

On 29 April 2013 an Ahmadiyya congregation in Sukabumi, West Java received a letter from the Sukabumi Mayor’s office informing them that due to “security reasons” they would have to handover the building to the Indonesian Ulema Council (MUI) and the Ministry of Religious Affairs or action would be taken against them. One month earlier hundreds of members of the Islamic Defenders Front (FPI), a radical Islamist group in Indonesia, had gathered outside the building calling for it to be shut down. Should the Sukabumi Ahmadiyya place of worship be closed, it would become the fifth Ahmadiyya place of worship closed in West Java since early April.

On 12 April 2013 three Ahmadiyya places of worship in Cianjur, West Java were shut down by the local office of the Co-ordinating Board for the Monitoring of Mystical Beliefs (*Bakorpakem*), which is under the Attorney General’s Office. *Bakorpakem* officials were accompanied by members of the FPI. Police reportedly stood by watching.

On 4 April 2013, dozens of members of the Bekasi Administrative Police (Satpol PP) sealed the Al- Misbah place of worship belonging to the Ahmadiyya. The local authorities had threatened to close the place of worship in Bekasi, West Java in February 2013 reportedly after facing pressure from the local branch of the FPI. At least 20 Ahmadiyya followers refused to leave and remained at the site three weeks after it was sealed in protest against the closure and also to protect their belongings.

### Ahmadiyya community displaced and forgotten in West Lombok:

An Ahmadiyya community from West Lombok have been in temporary accommodation since they were displaced following an attack on their homes in February 2006.

The displaced families are unable to return to their homes because the local authorities and police say they cannot guarantee their safety if they return to their hamlet. Conditions in their temporary shelter have been inadequate for years - they live in three 20-by- 8-metre dormitories, where rooms for each family are only three metres square each and are divided by banners and sarongs tied up with plastic string. The facilities lack essential services. Tap water is frequently cut off by the authorities and there is no electricity supply. Dozens of adults in the shelter do not have identity cards and have faced various obstacles in obtaining them from the local authorities. Because they lack identity cards, they are unable to access essential services, including free healthcare available to the poor.

Those responsible for the 2006 attack have not been brought to justice. Recent reports indicate that around 130 people – including children – are still living in the temporary shelter in West Nusa Tenggara, over seven years since they were first displaced.

### **The Shi'a:**

There have also been recent attacks on other religious minority groups, such as the Shi'a. Amnesty International is concerned that the police have failed to provide adequate protection to the Shi'a communities when they have been attacked, intimidated and harassed.

### Shi'a community attacked and homes burnt:

On the morning of 26 August 2012 an anti-Shi'a mob of around 500 people armed with sharp weapons and stones attacked a Shi'a community in Nangkrenang village in Sampang, Madura island. One person was slashed to death while another victim, Muhammad Thohir, was stabbed. Stones thrown by the mob injured dozens of others. Thirty-five houses belonging to the Shi'a community were set on fire by the mob. Many from the community fled the village into hiding. Others were evacuated to a temporary shelter at a sports complex in Sampang. Five people were sentenced to between eight months and four years' imprisonment in connection with the attack. A sixth person charged was acquitted.

Over eight months later, some members of the Shi'a community remain in the Sampang temporary shelter and are now at risk of being forcibly evicted by the local authorities. According to a credible local source, the East Java and Sampang district authorities told the Shi'a community in January 2013 that they would have to convert to Sunni Islam if they wanted to return to their homes, otherwise, they would be forcibly relocated either to another part of the province or to somewhere outside Java island. The displaced community rejected being relocated, preferring to return to their homes and livelihoods

in safety. The local authorities have failed to provide adequate assistance to the community and in early May 2013, halted clean drinking water and food supplies to the displaced community.

The Shi'a community on Madura island has been intimidated and attacked before. On 29 December 2011, a mob set fire to a place of worship, boarding school and various homes in the vicinity. Police did not take adequate measures to protect the community and instead of intervening to stop the attack, recorded it on their phones. Only one person was eventually charged and sentenced to three months' imprisonment for the attack.

### **Christians - attacks on churches**

Amnesty International continues to receive reports of attacks against Christian churches and property. In many cases the police fail to adequately protect these groups from harassment.

The congregations of the Taman Yasmin Indonesian Christian Church, in Bogor, East Java, and the Filadelfia Batak Christian Protestant Church, in Bekasi, Greater Jakarta area face ongoing disputes with the local authorities over their buildings permits, leading to the church buildings being sealed. The cases were brought before the courts and in both cases the Supreme Court ruled in favour of the churches. However the authorities have refused to enforce the court decisions. Both congregations have continued to worship outside their sealed-off buildings, leading to protests against them, including from radical Islamist groups. Police have failed to take adequate measures to protect the congregations.

### **Blasphemy provisions and misuse of incitement laws:**

Amnesty International is concerned about provisions in the Indonesian Criminal Code which criminalize blasphemy. Article 156(a) of the Indonesian Criminal Code created by the Presidential Decision Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation imposes a prison sentence "for whosoever in public intentionally expresses their views or engages in actions that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia". The blasphemy laws have been used to imprison people for as long as five years, simply because they have peacefully exercised their rights to freedom of expression and/ or freedom of religion. At least six prisoners of conscience are behind bars on blasphemy charges. These laws are often used to target individuals who belong to minority religions, faiths and opinions. They are fundamentally incompatible with Indonesia's international human rights obligations to protect and respect the rights to freedom of expression, and freedom of thought, conscience, religion and equality.

Tajul Muluk, a Shi'a Muslim religious leader from East Java is currently on trial facing charges of blasphemy under Article 156(a) of the Indonesian Criminal Code, and "offensive actions" under Article 335 of the Code. His arrest followed reports that, on 1

January 2012, a religious decree (*fatwa*) was issued by the Sampang branch of the Indonesia Ulema Council (MUI) about what was described as Tajul Muluk's "deviant teachings", and two days later a police report was filed against him. His lawyers are concerned that intimidation by anti-Shi'a groups means that he will not receive a fair trial. The East Java High Court increased his sentence to four years in September 2012 upon appeal. Amnesty International considers Tajul Muluk a prisoner of conscience and calls for his unconditional and immediate release.

Amnesty International is also concerned about the misuse of incitement provisions in the Electronic Information and Transaction (ITE) Law, which have been used to criminalize freedom of expression. Amnesty International is aware of at least one prisoner of conscience behind bars for incitement.

On 14 June Alexander Aan, an atheist, was imprisoned for incitement after he allegedly posted statements and pictures which some people construed as insulting Islam and the prophet Mohammad. He was arrested in January 2012 and charged with "disseminating information aimed at inciting religious hatred or hostility" under Article 28 (2) of the Electronic Information and Transaction (ITE) Law, and for religious blasphemy under Article 156 (a-b) of the Indonesian Criminal Code. Alexander Aan was sentenced to two and a half years' imprisonment and a fine of 100 million rupiah (US\$10,600) for violating the Electronic Information and Transaction (ITE) Law. The decision was reportedly upheld by the West Sumatra High Court and the Supreme Court. Amnesty International considers Alexander Aan a prisoner of conscience and calls for his immediate and unconditional release.

#### Recommendations:

- Conduct prompt, effective, independent and impartial investigations into all reports of intimidation, harassment and attacks against the Ahmadiyya, Shi'a, Christian groups and other religious minorities and bring the perpetrators to justice in accordance with international fair trial standards, and without recourse to the death penalty;
- Ensure the police protect the rights of all citizens regardless of their religious or other beliefs and put in place a proactive strategy for preventing and addressing incidents of religiously based violence. The police should also ensure they register and investigate all cases of religious-based violence, threats and intimidation, regardless of the religious background of the victim
- Repeal Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation (the Presidential Decision), and Article 156(a) of the Criminal Code created by the Presidential Decision;
- Immediately revoke the 2008 Joint Ministerial Decree and all other regulations that restrict the activities of the Ahmadiyya community in Indonesia or otherwise violate their right to freedom of thought, conscience and religion; and
- Ensure that the Electronic Information and Transaction (ITE) Law is not misused by the authorities to criminalize freedom of expression.



## **SHARI'A LAW AND ACEH**

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education, and family affairs. Some of these laws and regulations do not conform to international human rights law and standards, nor do they respect provisions in Indonesia's Constitution and the Human Rights Act (No. 39/1999).

In Aceh a bylaw on *khalwat*, which was passed in 2003 (No. 14/2003), prohibits being alone with someone of the opposite sex who is not a marriage partner or relative, with caning as punishment. In April 2012 a woman and man were each caned nine times in Langsa, East Aceh district, after being found guilty of *khalwat* by the local Shari'a Court. Caning constitutes cruel, inhuman and degrading treatment and may amount to torture.

In September 2009, the Aceh regional parliament passed the Aceh Criminal Code (*Qanun Hukum Jinayat*), which criminalized a number of acts, including *khalwat*, consensual sexual relationships involving a married person (adultery, known as *zina*); intimate relationships between unmarried people such as kissing (known as *ikhtilath*), and homosexuality (including lesbianism). Amnesty International and other non-governmental organizations have expressed serious concerns about the Code, in particular about provisions which provide for stoning to death for adultery and caning of up to 100 lashes for homosexuality. To date, the Code has yet to be implemented, and is currently being revised by the Aceh regional parliament.

There has been an increase in the use of caning as a form of punishment which is provided under Shari'a law in Aceh. At least 72 men and women were caned in Aceh in 2011. At least 45 people were caned in 2012 for gambling, and *khalwat*.

### **Recommendations:**

- End the use of caning as a form of punishment and repeal the laws that allow it in Aceh province; and
- Undertake a review of all local regulations that have been put in place in the last decade in Indonesia, including Aceh, to ensure that they are in full conformity with international human rights law and standards, and other human rights provisions set out in the Indonesian Constitution and in the 1999 Law on Human Rights.

## **Justice, truth and reparation – The case study of Aceh**

Almost eight years after the end to the devastating Aceh conflict, victims and family members are still waiting for the Indonesian authorities to provide them with truth, justice and full reparation for past human rights abuses. These included violations committed by members of the security forces and their auxiliaries, including unlawful



killings, enforced disappearances, torture, forcible displacement of civilians, arbitrary arrest and detention of those suspected of supporting GAM. They also included human rights abuses committed by the armed pro-independence movement GAM, such as hostage-taking and the targeted killing of suspected informers, government officials and civil servants.

## **Truth**

Victims' groups and local Acehnese NGOs have long called for the Indonesian authorities to establish the truth about crimes committed during the conflict, in particular to find out what happened to disappeared and missing persons. There are currently two initiatives to establish truth commissions that would cover crimes committed in the Aceh conflict. However they have been stalled for many years. At the national level, a law establishing a truth and Reconciliation Commission was struck down by the Constitutional Court in 2006 on the basis that the provision requiring that amnesty be granted to perpetrators of gross human rights abuses before victims can receive compensation and rehabilitation was unconstitutional. A new draft truth and reconciliation law which does not provide for amnesties has been submitted to Parliament; however, it is unclear whether there is sufficient political will to pass the draft law.

Efforts to establish a truth commission for Aceh, as provided in the 2005 Peace Agreement and the 2006 Law on Governing Aceh have also stalled. Although the Aceh Parliament is now pushing for the passage of a law establishing a truth commission for Aceh, a lack of political will at the central government level may pose a barrier to the establishment of a truth commission in Aceh, prolonging the suffering of victims and their families and denying them their right to truth.

## **Justice**

Although rarely labelled as such, many of the human rights abuses committed during the Aceh conflict constitute crimes under international law. Many of the violations and abuses committed by both sides in the context of the non-international armed conflict that existed between 1989 and 2005 may amount to war crimes. Most perpetrators of crimes under international law have never been brought before an independent civilian court of law in Indonesia. Criminal justice is a vital part of victims' right to an effective remedy. Where crimes were committed in Aceh or elsewhere in Indonesia, national authorities must ensure that they are investigated and, if sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in proceedings which meet international fair trial standards.

## **Reparation**

Although some measures to compensate people for their loss or to assist children whose parents were killed during the conflict were taken during and shortly after the Aceh conflict, most survivors do not trust the justice system as an avenue to seek

reparation, and there has yet to be a comprehensive reparation programme specifically aimed at victims of crimes under international law in Aceh and their families. Laws and regulations in Indonesia related to reparation for victims of human rights abuses remain inadequate and inconsistent with international law and standards. Victims face serious obstacles in seeking reparation before national courts both in law and practice.

### **Recommendations to the US government**

Considering some of the crimes which occurred during the Aceh conflict constitute crimes under international law, the US should:

- Exercise jurisdiction, including, where necessary and where there is sufficient admissible evidence, universal jurisdiction, over persons suspected of crimes under international law, including possible war crimes and crimes against humanity, committed during the Aceh conflict.
- Provide necessary funding and support to NGOs, including women's groups and other civil society actors working on truth, justice and reparation for victims of the Aceh conflict; and
- Provide technical assistance to support reforms of the security sector and the criminal justice system in Indonesia.

### **Recommendations to the Indonesian authorities:**

- Acknowledge that serious human rights violations and abuses, including crimes under international law, were committed during the Aceh conflict;
- Set up immediately a truth commission in line with international standards to ensure that victims, their families and affected communities are provided with full disclosure about what happened during the Aceh conflict and ensure that specific measures are taken to reveal the fate and whereabouts of victims of enforced disappearances;
- Take effective measures (including law reform) to investigate and, where there is sufficient admissible evidence, prosecute those responsible for crimes under international law, including possible war crimes and crimes against humanity, torture, extrajudicial executions and enforced disappearances committed during the conflict; and
- Establish a program to provide full and effective reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to all victims of human rights violations and abuses in Aceh. The program should be devised in consultation with victims and should take into account the different experiences and needs of women and men, girls and boys, who experience conflict differently, as well as any other relevant groups.

## **THE DEATH PENALTY**

Indonesia resumed executions in March 2013 after a four year hiatus, when Adami Wilson, a Malawian national was executed by firing squad. On 16 May 2013, three men convicted of murder were also executed by firing squad. Around half of those on death row, many of whom are foreign nationals, have been convicted of drug-related offences. So far in 2013 at least six people have been sentenced to death. At least 12 people were sentenced to death in 2012.

Death sentences in Indonesia are carried out by firing squad. The prisoner has the choice of standing or sitting and whether to have their eyes covered, by a blindfold or hood. Firing squads are made up of 12 people, three of whose rifles are loaded with live ammunition, while the other nine are loaded with blanks. The squad fires from a distance of between five and 10 metres.

Amnesty International believes there at least 130 prisoners convicted to death sentences in Indonesia. The death penalty is usually imposed for the crimes of murder with deliberate intent and premeditation; producing, processing, extracting, converting or making available narcotics; and “terrorism”. In the past Amnesty International has expressed concern about trials which, in some cases, failed to uphold international standards of fairness. Among the violations reported to Amnesty International are the lack of access to lawyers, lack of access to interpreters and use of torture to extract confessions.

Concerns about the continued application of the death penalty in such circumstances are heightened by the amendment of the clemency law (Law No. 22/2002) in August 2010 restricting those sentenced to death to the submission of only one plea for clemency to the President within a year of the verdict.

### **Recommendations:**

- Halt executions immediately and commute without delay all outstanding death sentences and ensure rigorous compliance in all death penalty cases with international standards for fair trials;
- Immediately establish an official moratorium on executions, with a view to abolishing the death penalty; and
- Release information on the number of prisoners under sentence of death in Indonesia and disclose their names and other relevant information to their families.

## **DOMESTIC WORKERS:**

An estimated 2.4 million domestic workers in Indonesia, the vast majority of whom are women and girls, are not legally recognized as workers. As a result, they are often exploited economically and many live and work in abusive conditions. A draft law on

domestic workers has been on the legislative agenda since 2010; however, the debate and passage of the draft legislation has faced continued delays. At the time of writing there has been no progress on its enactment by Parliament.

#### Recommendations:

- Enact specific legislation regulating the labour rights of domestic workers which recognizes their status as workers and guarantees their rights in accordance with international law and standards. In particular there should be reasonable limitation on working hours; guarantees of remuneration for an adequate standard of living; clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave); standards on termination of employment; and access to dispute resolution mechanisms, including courts. The law should also explicitly include legal provisions pertaining to the specific needs of women, in particular during and after pregnancy; and
- Ratify the ILO Domestic Workers Convention (No. 189) and ILO Maternity Protection Convention (No.183), incorporate its provisions into domestic law and implement it in policy and practice.

#### **MATERNAL HEALTH AND SEXUAL AND REPRODUCTIVE RIGHTS:**

Indonesia has one of the highest maternal mortality ratios in the East Asia and Pacific region with an estimated 220 maternal deaths per 100,000 live births. Women and girls are disproportionately affected by Indonesia's restrictions on sexual and reproductive rights. Laws and policies discriminate on the grounds of marital status and exclude unmarried women and girls from full access to reproductive health services. They further require the husband's consent for married women and girls to access certain reproductive health services.

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion, or a health worker providing one, may be sentenced to up to four or 10 years' imprisonment respectively. As a result, abortions in Indonesia are often performed clandestinely in unsafe conditions. Under the new Health Law passed in 2009, there are only two exceptions under Indonesian Law in which a woman may legally seek and health workers perform an abortion: if the health of the mother or foetus is endangered or in the case of pregnancy resulting from rape.

According to women's groups, there is a lack of awareness among women and girls from poor and marginalized communities of the provisions pertaining to rape in the Health Law, and of legal exceptions to the criminalization of abortion generally. Further the authorities have yet to issue an implementing regulation on abortion, as provided for by the Health Law, almost four years after the law was passed leaving many doctors and health workers uncertain if they can provide these services.

The government has also failed to eliminate practices which are discriminatory or cruel, inhuman and degrading to women and girls, such as female genital mutilation and early

marriage. In November 2010 the Indonesian Health Ministry issued a regulation (No. 36/MENKES/PER/XI/2010) which legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it.

#### Recommendations:

- Repeal all laws and regulations, at both the central and local levels, that violate sexual and reproductive rights, and ensure women and girls can realize their sexual and reproductive rights free from coercion, discrimination and the threat of criminalization;
- Remove legal and policy provisions on matters related to sexual and reproductive health that discriminate on the grounds of marital status;
- Repeal legal provisions criminalizing abortion in both the Criminal Code and the Health Law. In cases of unwanted pregnancy as a result of rape or where the pregnancy poses a threat to their life or health, ensure that women and girls have access to safe abortion services as currently provided in law; and
- Repeal the Regulation of the Minister of Health No. 1636/MENKES/ PER/XI/2010 concerning female circumcision and enactment of specific legislation prohibiting female genital mutilation, providing appropriate penalties for those who perform female genital mutilation.

#### **Female Genital Mutilation (FGM)**

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning “female circumcision” (*sunat perempuan*). The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as “the act of scratching the skin covering the front of the clitoris, without hurting the clitoris”. The procedure includes “a scratch on the skin covering the front of clitoris (frenulum clitoris) using the head of a single use sterile needle” (Article 4.2 (g)). According to this regulation, the act of “female circumcision” can only be conducted with the request and consent of the person circumcised, parents, and/or guardians (Article 3.1).

The regulation violates a number of Indonesian laws –for example Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Presidential Decree No. 36/1990 concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 39/1999 on Human Rights; Law No. 23/2002 on Child Protection; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health – and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women.

In its July 2012 Concluding Observations the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) expressed deep concern about what it described as Indonesia's "serious regression" with regard to the practice of female genital mutilation. It recommended that the Indonesian authorities take immediate steps to withdraw the 2010 regulation authorizing certain medical practitioners to conduct "female circumcision" and to adopt legislation which criminalizes female genital mutilation. It requested the government to provide written information on steps taken to implement this recommendation within two years.

During research carried out in March 2010, Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl's "cleanliness" (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls' urge towards "sexual activity" during adulthood. Some women described the procedure as being merely a "symbolic scratch", while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that there would be some bleeding as a result.

#### Recommendations:

- Immediately repeal the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 concerning female circumcision; and
- Put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include:
  1. The enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation;
  2. The publicizing and dissemination of the 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women; and
  3. The implementation of public awareness-raising campaigns at community levels and within health institutions to change the cultural perceptions associated with female genital mutilation.

Thank you for inviting Amnesty International to testify.

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