



ASIAN LEGAL RESOURCE CENTRE



**Komisi untuk Orang Hilang
dan Korban Tindak Kekerasan
Commission for The Disappeared
and Victims of Violence**

Stakeholders Submission concerning the Universal Periodic Review of Indonesia

Submitted by the Asian Legal Resource Centre and KontraS

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INTRODUCTION

1. The following report is being submitted jointly by the Asian Legal Resource Centre, a Hong Kong-based regional human rights non-governmental organisation with United Nations General Consultative ECOSOC status, and KontraS, a Jakarta-based Indonesian human rights non-governmental organisation, which has branches in Aceh, North Sumatra, Nusa Tenggara, Papua and Sulawesi. The information contained in this report is based on human rights documentation and analysis performed by these organisations.

PART I

Implementation of UPR recommendations made during the first cycle

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

I. A. Recommendations and comments accepted by the GoI:¹

i. International Norms

3. *The GoI accepted recommendation 77.2² to accede to a number of international instruments, in line with its National Plan of Action.*

4. The signing of the International Convention on the Protection of All Persons from Enforced Disappearance in September 2010 is welcomed, however, none of the other recommended instruments have been signed or ratified as announced. The GoI has deferred the ratification of these treaties to the 2011-2014 NPA. Concerning Indonesia's 2005 - 2009 National Plan of Action (NPA), key components such as the ratification of international instruments, the review of the Penal Code and other pressing legislative measures were not implemented by late-2011. No credible successor plan or implementation strategy has been devised since the end of 2009 to ensure that such reforms are carried out. Given the previous

¹ All recommendations are cited using paragraph references from the Report of the Working Group on the Universal Periodic Review: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/8/23&Lang=E>

² Recommendation 77.2: "Indonesia, in line with its National Plan of Action, is encouraged to follow through on its intention to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment. Indonesia is further encouraged to consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.

NPA's failure to deliver in many key areas, serious doubts remain concerning the credibility of the current NPA and the likelihood of it delivering expected outcomes. As will be seen below, many human rights violations related to these instruments continue to be perpetrated in Indonesia.

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

ii. Civil society and human rights defenders

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

7. Since 2008, attacks against human rights defenders have continued, including the killing of journalists working on human rights-related themes. Between 2008-2010, at least five journalists died: Anak Agung Prabangsa, from Radar Bali; Alfrets Mirulewan, from Mingguan Pelangi; Ridwan Salamun, from Sun TV; Ardiansyah Matra'is, from Merauke TV; and Muhammad Syaifullah, from Kompas's Kalimantan bureau. Mr. Prabangsa, Mr. Mirulewan, Mr. Salamun, and Mr. Matra'is were all killed due to their work concerning human rights-related issues. Muhammad Syaifullah's death is suspicious and is believed to be connected with his work denouncing deforestation and environmental destruction in Kalimantan.³

8. In 2010 alone, at least four human rights defenders working as journalists exposing corruption were killed, including Ardiansyah Matra'is, who reported on corruption in development projects in Papua.⁴ The climate for human rights defenders remains hostile, in particular in remote regions such as Papua or the Malukus, where they are arbitrarily branded as separatists, and then face arrest and torture. Indigenous civil society groups are subjected to tight controls and surveillance by the intelligence authorities, the military and police in Papua, including raids on their offices, staff members being intimidated or even arrested, notably after public protests. In particular, peacefully-expressed indigenous political demands for greater self-determination or the displaying of Papuan identity symbols such as flags frequently result in arrest and detention that can range up to life imprisonment, based on charges of sedition "makar" under the criminal code. The UN Working Group on Arbitrary Detention issued opinion 48/2011 to the GoI in May 2011, stating that detention for the

³ See the Killing of Journalists section in the annex

⁴ See Ardiansyah Matra'is case in the annex for more details

peaceful raising of the Papuan flag, as recognised in the Special Autonomy Law, violates ICCPR provisions. The continuing detention of around 40 such persons in the West Papua region, which the ALRC and KontraS consider to be political prisoners, remains a key concern.

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

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

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

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

13. Recommendations:

- *The Government of Indonesia must put a halt to all harassment, threats, raids and attacks on civil society groups and their offices, notably those formed by minority and*

indigenous groups. All allegations of violations against human rights defenders, including journalists working on human rights issues, must be fully and independently investigated and prosecuted;

- *In order to ensure transparency and effective protection of human rights, all restrictions must be lifted and full access must be granted to journalists, human rights and humanitarian organisations, notably concerning the Papuan provinces.*

iii. Torture and the need for criminalisation of this practice

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

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

reparation as of November 2011.⁵ On March 5, 2011 Charles Mali was tortured to death by members of the Indonesian Military Forces (TNI) Infantry Battalion 744/SYB, in Atambua in the border area of East Nusa Tenggara. The 23 members of the military found responsible are being held under special detention conditions that reportedly allow them to leave prison as they see fit.⁶

16. In Aceh, public caning is practiced as a form of corporal punishment under Sharia law. The ALRC and Kontras consider that such punishments in many cases amount to torture and therefore represent a violation of Indonesia's obligations under international law. Furthermore, the provisions on corporal punishment in Aceh's Sharia law, which is imposed through a provincial law and district regulations, violate Indonesia's constitution, notably article 28G (2)⁷ and article 28I (1).⁸ By allowing these unconstitutional provisions to remain effective in practice, the Indonesian government is acquiescing to the acts of torture and other human rights abuses being carried out under Sharia law in Aceh.

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

18. Given delays concerning the criminal code, the Indonesian authorities should also consider passing a stand-alone criminal law that punishes torture in line with the provisions of the CAT.⁹ Passing such a law could circumvent the delays to the criminalisation of torture arising from the process of adoption of the criminal code. It could also encompass comprehensive provisions such as for reparations and non-refoulement.

19. *Widespread torture in Papua and the Human Rights Court Law:* Torture is used in a widespread way by the police and military against indigenous Papuans, notably on persons suspected of supporting independence movements. Such suspicions are often levelled

⁵ See Tuanliwor Kiwo case in the annex

⁶ See Charles Mali case in the annex

⁷ Article 28G (2) Indonesian Constitution (UUD 1945) states that "Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country"

⁸ Article 28I (1) Indonesian Constitution (UUD 1945) states that "the rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstance"

⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

arbitrarily against members of the indigenous community and result in stigmatisation. The Human Rights Court Law (Law no. 26/2000) includes torture as a gross violation of human rights under article 9.6., which requires an investigation and trial in a Human Rights Court if it is *part of a broad or systematic direct attack on civilians*. The ALRC and KontraS believe that torture is being used in such a systematic manner and therefore call on the National Human Rights Commission (Komnas HAM) to ensure that inquiries are launched into the use of torture in Papua, without delay.

20. **Recommendations concerning torture:**

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

iv. Impunity

21. ***Welcomes Indonesia's reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard (recommendation 77.4):*** Impunity remains a serious problem concerning a wide range of past and current human rights violations in Indonesia. Impunity accompanies ongoing problems including torture, violence and discrimination against women and religious or ethnic minorities, as well as attacks on human rights defenders. Past violations continue to leave victims without remedies and perpetrators continue their work in politics and State institutions. While the President of Indonesia in March 2008 expressed his commitment to support victims' struggles for justice and ensure the punishment of all perpetrators¹⁰ of serious human rights violations under the Suharto regime, no judicial progress is being made in providing effective remedies to victims or bringing those responsible to justice. Under the Human Rights Court Law (No. 26/2000), bringing past human rights abuses to such a court involves the following actors: Komnas HAM (conducts inquiry), the Attorney General's Office (AGO - investigates), the Parliament (makes recommendations based on investigations), and the President (passes a decree to set up a court based on recommendations made by Parliament). A major impediment to the implementation of this law is the AGO's refusal to take action to investigate cases until specifically mandated to do so by the Parliament or the President. This is despite the fact that

¹⁰ The President made this statement in a meeting on March 26, 2008 with KontraS and victims of human rights violations.

the law does not put any such requirements on the AGO and that a related Constitutional Court judgement (18/PUU-V/2007) clearly stated that a judicial investigation by the AGO has to be conducted before the Parliament can take other steps. The ALRC and KontraS are of the opinion that the Parliament and President do not have competence as judicial bodies and that the process should be one based in the first instance on inquiry by Komnas HAM and investigation by the AGO, before the Parliament and President are called upon to play a role. The AGO is ignoring the Constitutional Court judgement and is therefore obstructing the process due to an erroneous interpretation of the law and process, and is therefore directly responsible for the continuing problem of impunity in Indonesia.

22. Recommendation: *The President must take appropriate action to uphold the Constitutional Court's judgement and the Attorney General's Office must abandon politically motivated and erroneous interpretations of the Human Right Court Law that are stalling its implementation and ensuring continuing impunity. They must ensure the investigation and prosecution of all admissible cases, according to the law, and give full support to all efforts being made to bring cases of gross human rights violations before a human rights court.*

v. Protection of minorities

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

24. Concerning freedom of religion and the protection of religious minorities, Law no. 01/pnps/1965 recognises only six main religions¹¹ in Indonesia, and thus deprives other religions of legal protection. Youth unemployment and poverty have allowed Islamist leaders to gain support and spread fundamentalist views that violate Indonesian constitutional values of diversity and religious freedom.¹²

¹¹ Six main religions including Islam, Christianity, Catholicism, Buddhism, Hinduism and Confucianism

¹² Under Article 29, paragraph 2, of the constitution, "The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief."

25. In recent years, the authorities, including the justice system, have been shown to be ineffective at protecting the human rights of the Ahmadiyah and Christian communities in Indonesia. The justice system has granted impunity to perpetrators of attacks and other abuses, and the courts lack independence and integrity. The resulting lack of an institutional response has encouraged further abuses. While attempts to provide increased police protection in some cases are welcomed, violations of the freedom of religion, the right to life, and the right to remedy of members of religious minorities, have increased in recent years in Muslim-dominated areas of Indonesia, such as West Java, Banten and DKI Jakarta, as statistics from the Setara institute in Indonesia show.¹³

26. Mob violence by Islamists against Ahmadiyah communities has resulted in deaths and property being destroyed. Christian churches have been bombed and burned, while local administrations have banned religious communities from worshipping on their land in many cities and towns, allegedly to avoid conflict with mainstream Muslim groups. The 2008 joint ministerial decree¹⁴ that remains in force prohibits the Ahmadiyah community from promulgating their religion. Attacks on religious minorities in Java and other parts of Indonesia in recent years have also shown that the police and courts are unwilling to protect minorities from attacks and other abuses by the religious majority. In several cases the police have failed to conduct investigations and perpetrators are not being brought to justice. Attempts by hard-line religious groups to obstruct religious minorities from worshipping have taken place with the acquiescence of the police. In the few cases that were brought to court, the perpetrators received only lenient punishments. The police tend to give in to the requests of hard-line members of the religious majority rather than to provide protection to members of religious minorities.

27. In light of this situation, the ALRC and KontraS recall the question in advance made to the GoI by the government of the United Kingdom in the first UPR review, which stated that: *“We are concerned about the alleged attacks and threats on Ahmadiyah families following a fatwa banning the Ahmadiyah.”*¹⁵ In Cikeusik, Banten on February 6, 2011, three members of the Ahmadiyah community were killed by a mob and five more injured. Attacks against Christian groups such as the bombing or burning of churches¹⁶ were not prevented despite the planned attacks having been publicly announced. Furthermore, the perpetrators were not sufficiently punished for their actions, if at all. Instead members of religious minority groups have been further victimised following the incidents. For example, in the Cikeusik case, the perpetrators received very lenient punishments - between 3 and 6 months imprisonment for the 12 perpetrators. However, one of the Ahmadiyah victims, Deden Sudjana, was sentenced

¹³ <http://setara-institute.org/en/content/grafik-laporan-pelanggaran-kebebasan-beragamaberkeyakinan-2007-2010>

¹⁴ <http://www.humanrights.asia/countries/indonesia/laws/ministerial-decree-against-jai-2008>

¹⁵ <http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ID/QUESTIONSINDONESIA-ADD1.pdf>

¹⁶ see Cikeusik case in the annex

thereafter for disobeying an order to leave the premises and for having wounded one of the attackers while defending himself from the mob (under articles 212 & 351 of the Criminal Code). Courts are producing judgements that lack impartiality and undermine minority rights.

28. Recommendations:

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

I.B. Recommendations that did not enjoy the support of the GoI:

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

30. *The Netherlands recommended that Indonesia's efforts would be rounded off by a standing invitation to all Special Procedures.* Indonesia, as a member of the Human Rights Council, should exhibit exemplary cooperation with the Council's mechanisms, notably by issuing a standing invitation to its Special Procedures. The lack of access granted by the GoI to these mandates is contributing to the continuation of human rights violations, in particular in crisis regions such as Papua. Since mid-2008, no relevant Special Procedures mandates have been able to visit Indonesia, despite pending requests from the mandates concerning important and relevant themes, such as human rights defenders, freedom of expression,

torture, freedom of religion, indigenous peoples, extra-judicial killings, minority issues, freedom of association and assembly, and forced disappearances.

31. Recommendations:

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

32. The United Kingdom recommended that the GoI abolish the death penalty: 11 national laws and regulations, including the penal code and subversion and corruption laws, include the death penalty. 10 convicts have been executed since 2008 and 109 are estimated to be awaiting execution.¹⁷ The ALRC and KontraS consider the death penalty to be ineffective as a crime deterrent, and that death row and the application of the death penalty are inhumane practices and constitute human rights violations.

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

PART II

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

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

vi. Sharia law and discrimination against women

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

¹⁷ Data from KontraS' monitoring on the death penalty. No official statistics were available from the Ministry of Law and Human Rights.

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

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

38. Recommendations:

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

vii. Reforms to the policing system

39. Despite the enactment of new police internal regulations¹⁸ in 2009, human rights abuses by members of the police, including torture, continued unabated. A lack of professionalism, command responsibility and enforcement of human rights principles, allows for various violations by the police to continue with impunity. While the new internal regulations specifically prohibit the use of torture, members of the police have not been sufficiently educated concerning the regulations, and these are not being effectively enforced.

40. The police enjoy impunity in many cases of human rights violations, as prosecutors often refrain from initiating criminal procedures against police personnel in cases where the police's division for profession and security (PROPAM) has started to look into complaints. However, PROPAM does not enable judicial remedies and is failing to fulfil its mandate.

41. PROPAM is the only system mandated to hold members of the police accountable for violating police regulations. The mechanism lacks transparency and adequate disciplinary responses, and victims have no rights beyond making a complaint. PROPAM should be reformed to ensure a transparent process, adequate punishments and access by victims and their representatives to PROPAM trials. To ensure human rights-compliant police operations

¹⁸ Regulation of the Chief of the Indonesian National Police no.8/2009 regarding Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police

and to end torture, the police require resourced capacity building programmes concerning investigation and interrogation techniques.

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

43. Recommendations:

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

viii. The need to strengthen victims and witness protection

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

45. Recommendation:

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

ix. Judicial Corruption and the nexus between the police and the judiciary

46. Corruption in the judiciary is a major cause of impunity for perpetrators of religious violence, arbitrary detention, torture, or land and mining disputes. Despite the work of the Anti-Corruption Commission (KPK), judicial corruption remains rampant in Indonesia. The Judicial Mafia Task Force that the President set up by decree in 2009 has acted in several cases of bribery, but continues to face resistance from the police, prosecution and judiciary, which it has been set up to oversee. In addition, the KPK has faced repeated stand-offs with the National Police and the Parliament concerning cases of corruption in these institutions.¹⁹

47. **Recommendation:** *The GoI should ensure that all anti-corruption measures, including the work performed by the KPK, are given full support and sufficient resources to allow for tangible results in efforts to reduce widespread corruption in the justice sector.*

x. Reforms to the military

48. According to the Law on Military Courts, members of the military that commit crimes against civilians, such as extrajudicial killings or torture, can only be held accountable by military justice. Military courts are not open to the public, are notorious for only giving lenient punishments, and show a clear lack of impartiality. The military criminal code does not include torture as defined in the Convention Against Torture. A video recording of military torture²⁰ in 2010 was subsequently published and caused widespread condemnation. Those responsibly have however not been held accountable for torture - they only received sentences ranging from 5 to 7 months for violating their superiors' orders.

49. The Military Court Law should be reviewed to ensure that in cases of human rights abuses against civilians by members of the military, the alleged perpetrators are brought exclusively before a competent, objective and impartial civilian court that is compliant with the internationally-accepted standards of fair trial, including public access. Law no 34/2004 concerning the Indonesian National Army already requires such a review through legislation to ensure that military personnel can be brought before a civilian court where relevant. Such

¹⁹ see KPK case in the annex

²⁰ see Tuanliwor Kiwo case in the annex

a legislative review has been pending since 2004. The introduction of a vetting mechanism would allow the formal consideration of the track record of members of the military concerning human rights in decisions regarding promotion.²¹

50. Recommendations:

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

xi. The Intelligence Law

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

52. On October 11, 2011, all political factions in Commission I of House of Representatives (DPR RI) ratified the draft Intelligence Bill. The Bill was adopted despite strong public criticism, including by human rights groups. This new intelligence law contravenes earlier efforts to establish internal accountability measures within the state intelligence agency (Badan Intelijen Negara/BIN).

53. The law allows the intelligence agency to intervene in cases where State secrets have been published, without providing any definition of the terms of the process used to classify information as such. This provides the agency with wide powers of discretion and is expected to result in arbitrary arrests and violations of the freedom of expression. The law furthermore places the responsibility for leaks of State secrets on civilian actors, such as the press, instead of the State institutions themselves. Without providing limitations or restrictions on this power, the law generally allows for surveillance measures in very broad terms and is expected to result in abuses. As the head of the intelligence agency is to be appointed by the parliament instead of by an independent commission, ongoing heavy politicisation of the

²¹ see Syafrie Sjamsoeddin case in the annex

agency is expected. The law does not provide for effective supervision of the body, which has been one of its key shortcomings to date.

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

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

PART III - Annex: List of Cases

Tuanliwor Kiwo

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

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

Kurulu case

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

In response to this, Ibnu Tri Widodo, the head of district command (*Korem*) 172/PWY acknowledged the violence. He stated that the seven soldiers mistreated the civilians now held in the custody of the Wamena Military Police. Following the mistreatment, all soldiers on duty in the Kurulu sub-district had been posted elsewhere. He also promised that the military would no longer act "arrogantly" towards civilians.

Charles Mali (Torture in East Nusa Tenggara)

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

Following this request, Charles and Heri were handed over to the Provost by their parents on March 13. Rather than any coaching, Charles and Heri Mali were tortured then, together with their four friends, all of whom were involved in the March 5 incident. The six youth were beaten, kicked with boots and physically pitted against each other by some members of the TNI Battalion 744 in Tobir Post. The torture lasted about four hours. At around 10pm, Heri Mali found his brother Charles had died, with bruises on his back, face and chest, allegedly caused by being kicked with boots. Heri meanwhile, is currently undergoing intensive

treatment at the Sitohusada Hospital, Atambua, due to back, chest and head injuries from punches and kicks, as well as vomiting supposedly caused by a hard blow to the head. In relation to this incident, the **Sub- military police detachment** (*Sub Denpom*) Atambua has examined 23 members of Battalion 744/SYB who were allegedly directly involved in the torture and murder of Charles Mali and his friends. Although some 23 suspects were detained, there has been no significant progress in the case; instead, there are rumors that the detainees can freely go out to meet their families.

For more information on this case please visit: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-096-2011>

Killing of journalists

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

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

In the same month, Adriansyah Matra's also died. He had reportedly received threatening SMSs (short text messages) before he disappeared for two days. His body was found floating in Gudang Arang river, Merauke on July 30, 2010. Although there are allegations that he was murdered due to his investigation into the Merauke regional head election, the cause of his death remains a mystery. The AHRC published an urgent appeal on this case at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-128-2010>

Journalist Ridwan Salamun died on August 21, 2010 when he was covering the communal clashes in Tual, Southeast Maluku as a camera man for SUN TV. A group of villagers had not welcomed his attempt to cover the event and attacked him. Police officers witnessed the assault against Mr. Salamun but did nothing to prevent it, effectively consenting to the violence. The AHRC published an urgent appeal on this case at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-142-2011>

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

Of all the cases above, only the perpetrators of Mr. Prabangsa's death have been uncovered and punished, with the main perpetrator, I Nyoman Susrama, sentenced to life imprisonment.

The perpetrators of the other cases have either not been found or were acquitted. In Mirulewan's case for instance, witnesses have questioned whether the suspect detained by the police is in fact the real culprit. Furthermore, in Salamun's case, Tual District Court acquitted the accused on March 11, 2011.

Cikeusik case

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

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

The AHRC published a statement on the case at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-106-2011>

KPK case

The challenge of eradicating corruption is far from easy. Ever since Indonesia's anti-corruption body, KPK opened several corruption cases involving the police and parliament, these institutions have wanted to disband it. In 2009, the National Police charged two KPK commissioners, Chandra M. Hamzah and Bibit Samad Riyanto with accepting bribes.

In 2010, the Democratic Party Politician and Parliament Speaker, Marzuki Ali proposed to disband KPK, after KPK had initiated some corruption cases involving parliament members. While some parliamentarians suggested revising the KPK, the President rejected this idea.

Syafrie Sjamsoeddin

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

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

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