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SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR  
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF  
RESOLUTION 5/1 OF THE HUMAN RIGHTS COUNCIL

Indonesia

This report is a summary of 17 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgment or determination in relation to specific claims. Information included therein has been systematically referenced in endnotes and, to the extent possible, original text submitted has not been altered. Lack of information or focus on specific issues is due to the absence of submissions by stakeholders regarding these particular issues. All submissions received are available on OHCHR website. The periodicity of the review for the first cycle being of four years, information reflected in this report mostly relates to events occurred after 1 January 2004.

## I. BACKGROUND AND FRAMEWORK

### A. Institutional and human rights structure

1. The Indonesian National Human Rights Commission (Komnas-HAM)<sup>2</sup> underlined that it has been granted “A” accreditation status by the International Coordinating Committee (ICC). Nevertheless, with regard to Law No. 39/1999 on Human Rights which regulates it, Komnas-HAM also identified many fundamental weaknesses that deter its independence and function, and thus recommended the amendment of Law No. 39/1999. Komnas-HAM reported that these fundamental weaknesses were reflected in the notes of the ICC.<sup>3</sup>

2. According to the Unrepresented Nations and Peoples Organization (UNPO), the creation in 2000 of a Human Rights Court in Indonesia was welcomed by many observers as a major step forward in the protection of human rights and the redress of wrongs committed in the past. However, the court’s definition of what constitutes a human rights violation is so narrow and so focused on genocide that most cases of torture and other human rights violations committed by State-agents are not deemed worthy of being examined.<sup>4</sup>

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### B. Implementation of international human rights obligations

#### 1. Equality and non-discrimination

3. The International NGO Forum on Indonesian Development (INGOFID) noted that the legal framework on protection of women against discrimination is still very weak. Some of the weaknesses are that the Optional Protocol to CEDAW has not been ratified. Existing laws and regulations do not support CEDAW’s views, such as the Health Law and various other provincial regulations/by laws. Specifically, the Law on Citizenship makes circumstances more difficult for female migrant workers and there are no special measures by the State to protect Indonesian women who work overseas.<sup>5</sup>

#### 2. Right to life, liberty and security of the person

4. Komnas-HAM noted that the death penalty has not yet been abolished from the Indonesian legal system. Until September 2006, 134 prisoners in Indonesia were waiting for the execution of the death penalty, 37 of which were foreign citizens and 97 Indonesian. The majority of the prisoners were found guilty of crimes related to drugs (narcotics).<sup>6</sup> To the knowledge of Amnesty International (AI), at least 99 people are believed to be under sentence of death in Indonesia. Thirteen of these were convicted and sentenced to death in 2006. At least one person was executed in 2007.<sup>7</sup>

5. AI was concerned that the death penalty is provided for in Indonesian law for a very large number of criminal offences. In this respect the organization was deeply concerned that two recently adopted laws, the Law on Human Rights Courts (Law 26/2000) and the Law on Combating Criminal Acts of Terrorism (Law 15/2003) both contain provisions for the death penalty and fall short of international standards for fair trials. AI had previously expressed concerns that Indonesia’s “anti-terrorism” legislation risks undermining human rights. In

particular, the legislation includes an offence of "terror" or "acts of terrorism" which are identified as a criminal act, but not defined. A related law, the Law on Combating Criminal Acts of Terrorism related to the Explosion of Bombs in Bali (Law 16/2003) applies to those involved in the bombings in Bali retroactively with the possibility of being sentenced to death contrary to international human rights law, which prohibits retroactive application of criminal law. This trend to greater use of the death penalty has also been confirmed by a recent ruling by the Indonesian Constitutional Court to uphold the death penalty for drug offences.<sup>8</sup> AI urged the Government to remove from domestic legislation all provisions allowing for the death penalty and immediately declare a moratorium on all executions and review the Law on Combating Criminal Acts of Terrorism to ensure that it conforms to international human rights standards.<sup>9</sup>

6. According to UNPO, torture still does not exist as a concept in Indonesian penal law. The Indonesian Penal Code (KUHP) and the Law of Criminal Procedure (KUHAP) do not explicitly employ the term "torture" but the term "maltreatment".<sup>10</sup> Asian Legal Resource Centre (ALRC) stated that although the Convention against Torture was ratified nine years ago, torture is a widespread phenomenon that is being perpetrated with impunity and recommended that it be criminalized. None of the steps taken by the Government have so far resulted in a visible reduction of the use of torture by the police or the military. Torture is still one of the most accepted means of investigation to force confessions. While in the past, torture was used in Indonesia for political purposes, it has now become a tolerated part of police practice.<sup>11</sup> Franciscans International, in a joint submission with Justitia et Pax Netherlands, the Office for Justice and Peace of the Catholic Diocese of Jayapura, the Evangelical Christian Church of Papua, CMC, Commission of the Churches on International Affairs of the World Council of Churches, Cordaid, ICCO and Pax Romana (FI) noted that despite CAT's concerns in 2002, in relation to conflict areas, torture is regarded by Indonesian security services as one of the most effective methods to obtain forced confessions and instill a climate of fear, and is conducted repeatedly and systematically. Torture is accompanied by ill-treatment in custody, as well as unnecessary and disproportionate use of force resulting in prisoners' deaths, incommunicado detention, forced confessions, and the constant threat of being killed if orders are not obeyed or confessions are not extracted.<sup>12</sup>

7. According to FI, the Office for Justice and Peace (SKP) of the Catholic Diocese of Jayapura, together with Komnas-HAM, civil society and community organizations, recorded approximately two hundred and forty two cases of torture in the last nine years in Papua. One of these cases involves the Abepura incident of 16th March 2006, demanding the closure of mining operations by Freeport McMoran in Timika, where, as an aftermath of the protest, 24 indictees were tortured during police custody. Women and children, including girls, were amongst those who suffered from brutal torture, rape and sexual violence while in custody and as part of general reprisals against the indigenous population.<sup>13</sup> FI urged the Government to ensure that all judicial procedures adhere to due process standards, by excluding any statement made under torture from consideration in any legal proceedings, except against the torturer.<sup>14</sup>

8. Human Rights First (HRF) was concerned that the situation of human rights defenders in Indonesia remains precarious, noting that at least fifteen human rights defenders have been killed since 2000, most of them in circumstances that implicate military or intelligence officers. Many of these activists worked in Aceh, where conflict has subsided following the 2004 tsunami and subsequent peace agreement. However, defenders continue to be subject to

frequent threats and intimidation, particularly in conflict areas such as Papua and Poso, and where activists confront local corruption or defend vulnerable religious and social groups. While many such threats are anonymous, some intimidation can be traced directly to the statements and actions of police, military, and intelligence officers, and occasionally prosecutors.<sup>15</sup> Human Rights Watch (HRW) added that in Papua and West Papua, human rights defenders face increasing intimidation including death threats, arbitrary detention and surveillance by Indonesian security forces. In 2007, the head of the Papua branch of Indonesia's national human rights commission was subjected to continued surveillance, death threats and phone intimidation throughout the second half of 2007.<sup>16</sup> In this context, FI noted that after the visit of the Special Representative of the Secretary General on Human Rights Defenders, Ms Hina Jilani, in June 2007, many human rights defenders with whom she spoke were intimidated and received threats.<sup>17</sup>

9. AI urged the Government to ensure that all members of the police and military are made aware of the legitimate role of human rights defenders and their responsibility to protect them.<sup>18</sup> ALRC recommended the Government to ensure that all attacks, threats and acts of intimidation against human rights defenders are prevented and that all barriers to their work, particularly in conflict areas like Poso and Papua, are immediately rescinded.<sup>19</sup>

10. The International Gay and Lesbian Human Rights Commission, in a joint submission with Arus Pelangi, GAYa NUSANTARA, Srikandi Sejati Foundation, and the Asian Pacific Network of Sex Workers (IGLHRC), indicated that when individuals in Indonesia express and communicate their gender in ways that deviate from cultural norms, they face an increased risk of police harassment. Police regularly harass *waria* (male to female transgender people) as well as people presumed to engage in same-sex relations. Arbitrary harassment, summary arrest and detention of *waria* and gay men by the police are commonplace occurrences. IGLHRC noted, given the prevailing legal structure of Indonesia, *waria* confront discrimination. For instance, the Department of Social Affairs classifies *waria* as mentally handicapped under the federal '*cacat law*' (*Mentally Disabled Law*). This effectively denies *waria* the right to work, or reduces them to working in low-paid jobs in the hidden economy.<sup>20</sup>

11. AI expressed concern about the situation of the approximately 2.6 million domestic workers in Indonesia, the majority of whom are women and girls. They regularly experience economic exploitation, and physical, psychological and sexual violence. Some have been killed at the hands of their employer. AI has documented many cases in which domestic workers are victims of acts of violence including sexual harassment or rape by their employer. Many domestic workers also report being subjected to physical violence, such as being beaten with a stick, a broom, or an iron bar. The conditions in which many domestic workers live are of concern; many do not have their own bedroom, or their room does not have a lock, or sometimes even a door. In 2004, a Law Regarding the Elimination of Violence in the Household (Law 23/2004) was passed by the Indonesian Parliament. Domestic workers were specifically included in the law as potential victims of violence. AI welcomed this development. However, the law has yet to be fully implemented, especially with regard to violence against domestic workers. Reporting of incidents of abuse or violence is also very low. AI also expressed concern that domestic workers are denied basic workers' rights.<sup>21</sup>

12. Additionally, Komnas-HAM expressed concern about migrant workers experiencing acts of enforced payment, ill-treatment, fraud, and sexual harassment occurred at Terminal III at the Soekarno-Hatta Airport.<sup>22</sup>

13. The Global Initiative to End All Corporal Punishment of Children (GIECP) notes that corporal punishment is lawful in the home. Children have limited protection from violence and ill-treatment under the Penal Code, the Law on Child Protection (2002), the Law on Human Rights (1999), the Law on Elimination of Domestic Violence (2004) and the Constitution (1945, amended 2000). There is no explicit prohibition of corporal punishment in schools. In the penal system, corporal punishment is unlawful as a sentence for crime under article 66 of the Law on Human Rights, concerning protection during the legal process, which states: “Every child has the right not to be subjected to acts of oppression, ill treatment or inhuman penalty....”<sup>23</sup>

### 3. Administration of justice and the rule of law

14. AI noted concerns in relation to the ongoing review of Indonesia’s Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) which determines the procedures and rights of individuals at the different stages of investigation and trial. While the existing KUHAP provides many safeguards for the protection of the rights of suspects and defendants, there are a number of areas where it does not meet international standards for fair trials such as the right to legal counsel and the right to challenge one’s detention. AI welcomed the Government’s initiative to review and reform the Code with a view to strengthening human rights protection and the rule of law. However, on the basis of a draft of the revised KUHAP obtained on 15 September 2005, the organization is concerned that in certain respects the draft revised KUHAP remains inconsistent with international fair trial standards and leaves suspects and defendants, particularly those in detention, vulnerable to human rights violations. The draft revised KUHAP lacks several fundamental safeguards to ensure that an individual is not unjustly punished, arbitrarily detained or subject to torture or ill-treatment. The draft revised KUHAP also lacks provisions which require the authorities to inform suspects and defendants of their rights, in a timely way, and in language they can understand, as well as sufficient provisions to ensure that everyone detained or accused of a criminal offence has the right to legal counsel during detention, at trial and on appeal. Furthermore, the draft revised KUHAP fails to explicitly acknowledge and safeguard the right of every person suspected of, or charged with, a criminal offence to be presumed innocent until and unless proven guilty according to law and after a fair trial. Finally, the draft revised KUHAP does not contain sufficient provisions to deter the use of torture and other ill-treatment in all circumstances.<sup>24</sup> AI urged the Government to ensure that the revised KUHAP is consistent with international standards for fair trial.<sup>25</sup>

15. FI noted that in West Papua, the human rights situation on the ground shows that it still requires much improvement on the rule of law. For example, the trials of those indicted for the violence in the Abepura incident of March 2006 not only violated the principles of a fair trial, but also Indonesia’s Criminal Procedure Code. FI reminded that in 2003, the Special Rapporteur on the Independence of Judges and Lawyers noted in his report that Papuans “*have no confidence in the administration of justice at a time when strong and courageous judges, prosecutors and lawyers are more needed than ever.*”<sup>26</sup> FI urged the Government to establish an active monitoring process of its judiciary in West Papua, ensuring that the principles of fair trial apply in all cases, in order to prevent arbitrary arrests; guarantee full access of lawyers during the whole trial; prohibit incommunicado detentions; and guarantee the independence and impartiality of the judiciary.<sup>27</sup>

16. AI was gravely concerned about the persistent climate of impunity for human rights violations in Indonesia. Indonesia has consistently failed to bring to justice those responsible for gross human rights violations committed in Aceh, Papua, Timor-Leste and elsewhere. The violations include extra-judicial executions, torture and other ill-treatment, enforced disappearances and arbitrary detention.<sup>28</sup> HRF indicated that not a single major human rights case from the Soeharto years has been effectively prosecuted, and perpetrators of those crimes continue to be promoted and to hold positions of influence.<sup>29</sup>

17. Similarly, ALRC noted that impunity has been a significant barrier in Indonesia. It has become firmly entrenched since the 1965 Massacre, in which it is thought that hundreds of thousands were killed and as many as several million were affected, including through lengthy detention, torture and other rights abuses. Thousands of survivors continue to be stigmatised and discriminated against and are not deemed worthy of any form of redress. ALRC also explained that families of the victims of '65 massacre and those that survived torture and imprisonment in '65 continue to be harassed and many of their basic rights are being denied.<sup>30</sup> According to UNPO, Indonesia's laws do not adequately safeguard the right to effective remedy and the right to redress/compensation in cases of human rights violations perpetrated by the army or the police. Members of the military personnel charged with a criminal offence can indeed demand to be tried *in camera* before a military court and, pursuant to the Law of Criminal Procedure (KUHAP), the police can block, delay or discontinue legal proceedings against its employees.<sup>31</sup> Military courts' proceedings are typically lacking in transparency and do not guarantee justice to civilians.<sup>32</sup> According to HRW, police, particularly BRIMOB officers (Mobile Brigade police, the elite paramilitary corps used for emergencies), are responsible for some of the most serious rights violations in Papua and West Papua, although some reports of brutal treatment by Indonesian soldiers continue to emerge. A lack of internal accountability and a poorly functioning justice system mean impunity for perpetrators of abuses is the norm.<sup>33</sup> The Asian Indigenous and Tribal People Network (AITPN) further noted that impunity to the security forces continues to encourage widespread human rights violations. The judiciary failed to establish accountability with regard to the gross human rights violations in East Timor and the murder of prominent human rights defender Munir Said Thalib on 7 September 2004.<sup>34</sup>

18. TAPOL noted that a number of substantive and procedural problems have arisen from the implementation of a key piece of legislation, Law 26/2000 on Human Rights Courts, many of which were identified at the drafting stage. The law was passed in 2000 in response to international pressure for accountability for serious crimes committed in Timor-Leste. It establishes *ad hoc* and permanent human rights courts with jurisdiction over gross violations of human rights amounting to genocide or crimes against humanity. It provides that initial inquiries (*penyelidikan*) into cases of gross violations should be conducted by Komnas-HAM. If there is sufficient preliminary evidence of a gross violation, the case is referred to the Attorney General, whose office is required to conduct an investigation (*penyidikan*). Violations occurring after the law came into force are then heard by a permanent human rights court. Violations occurring before the law are heard by an *ad hoc* human rights court.<sup>35</sup>

19. AI explained that the creation in 2000 of a human rights court mechanism to deal with gross human rights violations has failed to deliver justice and reparations for the victims and their families.<sup>36</sup> According to HRF, the implementation of ad hoc tribunals has been largely blocked due to disagreement over the law's interpretation by the Attorney General's office,

parliament, and the National Human Rights Commission, combined with the refusal of military officials to appear for hearings.<sup>37</sup>

20. TAPOL also highlighted concerns about the limited substantive jurisdiction of Law 26/2000 in that it extends only to gross violations amounting to genocide and crimes against humanity. ‘Lesser’ human rights crimes are not included. The current right of military and police personnel to be tried before a military tribunal for ‘lesser’ crimes even if they are of a non-military nature is a further source of impunity. The Human Rights Council (HRC) should encourage Indonesia to review law 26/2000 and related legislation to ensure that the human rights courts have comprehensive jurisdiction over serious human rights crimes that do not amount to crimes against humanity or genocide. The court’s jurisdiction should in particular include the crime of torture, which is not currently an offence in Indonesia despite a recommendation in November 2001 by the CAT that it should be prohibited under criminal law.<sup>38</sup>

21. TAPOL furthermore described the understandable lack of expertise of judges, prosecutors and investigators in such cases as an obstacle to the delivery of fair and credible justice. Judges, for example, who have been brought up in a corrupt system with little or no training in international human rights law are expected to handle complicated crimes against humanity cases which are beyond their competence. TAPOL suggested that the HRC and OHCHR should consider ways of enhancing technical co-operation for the training of judges and other judicial personnel.<sup>39</sup>

22. Komnas-HAM and TAPOL also noted that in December 2006, Indonesia’s Constitutional Court ruled that a 2004 law establishing the Indonesian Truth and Reconciliation Commission (TRC) was unconstitutional because it empowered the President to grant amnesties to perpetrators of gross human rights violations and made compensation and rehabilitation for victims dependent on the granting of amnesties. The TRC now has no legal basis and cannot be set up until new legislation is passed. The Court’s decision to annul the law in its entirety, rather than just the offending amnesty provisions, has left the victims without an important means of restitution and redress.<sup>40</sup>

23. Regarding the justice process set up in Timor-Leste and Indonesia to investigate and prosecute the crimes which occurred in 1999 in Timor-Leste (then East Timor), AI noted that so far it has failed to deliver justice to the victims leaving the perpetrators of crimes against humanity at large. The latest initiative was the setting up by Indonesia and Timor-Leste of a joint Truth and Friendship Commission (CTF) to document the 1999 crimes and to promote reconciliation. AI condemned the terms of reference of this Commission as it allows amnesties for perpetrators of serious human rights violations; and indicated that in 2007 the UN Secretary-General refused to allow UN staff to testify before it.<sup>41</sup> HRF further explained that the CTF, able to recommend amnesty, but not prosecution, for even the most egregious of crimes, appears to be a mechanism for impunity and a means to rewrite history.

24. Regarding proceedings of the *ad hoc* human rights court for Timor-Leste, TAPOL indicated that these have been examined at length by numerous observers and experts and widely regarded by them as a failure. In particular, according to TAPOL, a UN Commission of Experts concluded in May 2005 that the prosecutions were ‘manifestly inadequate’ and showed ‘scant respect for relevant international standards’.<sup>42</sup> According to TAPOL, the report of Timor-Leste’s UN-established Commission for Reception, Truth and Reconciliation

(CAVR), completed in October 2005, provides the most detailed and comprehensive documentation of human rights abuses committed by the Indonesian military, police and their militia proxies in Timor-Leste. To date, the Government has publicly ignored the report and President Yudhoyono has dismissed it as a domestic matter for Timor-Leste.<sup>43</sup> TAPOL urged the Government to co-operate with Timorese and international efforts to secure accountability for serious crimes committed in Timor-Leste.<sup>44</sup>

25. AI was deeply concerned that perpetrators of serious human rights violations continue to enjoy impunity, which also fuels a lack of trust by the local population in state institutions. This is particularly problematic in areas of past or current open conflict like Aceh and Papua. Up to now, no progress has occurred to deliver justice or compensation to the victims.<sup>45</sup> ALRC recommended the Government to take immediate and effective steps to ensure that all human rights abuses are subject to proper investigations and prosecutions and that acceptable reparation is provided to the victims and their families, including compensation and rehabilitation.<sup>46</sup> Furthermore, HRW urged the Government and parliament to suspend from active service all police officers being investigated for human rights violations, pending the final determination of any legal proceeding.<sup>47</sup>

#### 6. Freedom of religion and belief, expression, association and peaceful assembly

26. AITPN stated that religious freedom remains a critical issue not only because of the increased fundamentalism but also because of the preferential treatment given to the six officially recognized religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. "Other non-recognised religions" face discrimination and restrictions.<sup>48</sup> INGOFID explained that there are several regulations related to freedom of religion or belief that contradict each other. The Constitution provides that "every person is free to observe and practice his religion...(article 28 E point 1 UUD 1945). Meanwhile, Article 29 of the 1945 Constitution explicitly guarantees the freedom of every citizen to observe each of their own religions and to practice in accordance to those religions and beliefs. However, this guarantee is governed by Presidential Regulation No. 1/PNPS/1965 which decides which religion or belief is acknowledged or not. This Presidential Regulation is then adopted in KUHAP article 156 A on Blasphemies that gives the State the authority to criminalize any religions or beliefs that are declared to deviate.. Presidential Regulation No. 1/PNPS/1965 is clearly in contradiction with the 1945 Constitution, as well as with the ICCPR, article 18 of which has been ratified into Law No. 12/2005.<sup>49</sup>

27. According to ALRC, reports indicate the continuity of attacks on the minority Ahmadiyahs sect and the National Liberations Unity Party, PAPERNAS. Prevailing laws require that any religious community desirous of having a place of worship need to have at least 60 per cent approval from the people who are living in the local area in question. This in reality makes it impossible for small communities to have a place of worship as it is impossible for them to secure the required percentage from the members of other religions.<sup>50</sup>

28. Reporters without Borders (RSF) noted that pluralism of news and information continued to develop in Indonesia.<sup>51</sup> RSF added that the constitution and the press law guarantee freedom of expression, and in December 2006, a constitutional court edict decriminalized "insulting the head of state". Unfortunately, the criminal code continues to allow prison sentences for press offences.<sup>52</sup>



29. Article 19 (A19) explained that both civil and criminal defamation laws are still being used as a tool for silencing dissenting voices. Between 2003 and April 2007, 41 defamation cases were filed against the country's media, threatening potential sentences of imprisonment, heavy fines and sometimes hugely disproportionate damage awards. In only six of these was the Press Law applied. Envelope journalism, whereby journalists are bribed to report in a certain way or not to report on something of public interest, is common in Indonesia, causing serious damage to the integrity of the profession.<sup>53</sup>

30. A19 further noted that, despite an active civil society campaign since at least 1999 and the presentation to the House of Representatives of a draft law as long ago as 2004, Indonesia still does not have legislation guaranteeing the right to information.<sup>54</sup>

31. According to A19, violence against journalists in Indonesia has declined in recent years, probably in part due to the signing of the Aceh peace accord in 2005, following which the media in Aceh have suffered fewer attacks at the hands of both the security forces and the separatists. Nevertheless, the level of violence against journalists remains unacceptably high. Between August 2006 and August 2007, the Alliance of Independent Journalists recorded 58 cases of violence against journalists, an increase from 43 cases the year before. The assaults vary from verbal attacks and intimidation to physical harassment and, in some cases, murder.<sup>55</sup>

32. In regard to West Papua, FI noted that journalists trying to collect information to reveal the truth behind the 2006 Abepura incident were harassed by police officers trying to impede their work. Journalists were amongst those hospitalized after the demonstration. According to FI, local NGOs observe that the media in general produce tainted reports due to authority control. Foreign journalists, human rights researchers and human rights organizations are not granted access to West Papua or are very restricted in their movements. Peaceful political expressions are often stigmatized as being 'separatist', which is the most common justification for indiscriminate operations against 'suspected militants'. A flag raising ceremony can spark army and police hostility, including arbitrary detention and use of force on the spot.<sup>56</sup>

33. RSF reported that the 2005 peace accord between the Government and rebels in Aceh has had very beneficial effects for press freedom. The Aceh media are now much less likely to be attacked by security forces or separatists. Peace has also allowed the independent media, which had been victims of the war for a long time, to consolidate. Nonetheless, the authorities do not readily accept criticism, and the entity that regulates radio broadcasting shut down two independent radio stations in July 2006. The Indonesian Army, often criticised for its conduct in separatist regions, refuses to punish wrongdoing by its troops. The authorities have never carried out serious investigations into the murders of foreign reporters in East Timor.<sup>57</sup> In this context, HRF noted that in an increasingly common pattern throughout the region, defenders are facing legal action for the non-violent expression of their beliefs in the course of their work. This tactic takes the form of civil and criminal complaints brought by individuals and arrest under overly broad provisions in the criminal code.<sup>58</sup>

34. A19 recommended that defamation laws should be amended to bring them into line with international standards and, in particular, to limit the size of damage awards and to bolster the defences available to defendants.<sup>59</sup> AI also urged the Government to support the recent ruling of the Constitutional Court by removing all articles in the Criminal Code which

impinge on the right to freedom of expression and association.<sup>60</sup> FI urged the Government to guarantee access to Papua for journalists and human rights organizations, both foreign and Indonesian, and make sure that they are able to carry out their job without restrictions and harassment.<sup>61</sup>

#### 8. Right to social security and to an adequate standard of living

35. Komnas-HAM noted that the state budget is mostly allocated to pay foreign debts and interest, leading to the lack of budget allocation for health and education which decisively hinders the fulfillment of economic, social and cultural rights of the people. Komnas-HAM was concerned that some problems still occurred in the implementation and fulfillment of economic, social and cultural rights.<sup>62</sup> Furthermore, Komnas-HAM reported that cases in several regions illustrated the inability of the State to comply with its obligation to fulfil the right to adequate food which is closely related to the right to life.<sup>63</sup>

#### 10. Minorities and indigenous peoples

36. AITPN noted that Articles 18 and 28 of the Constitution of Indonesia of 1945 recognize “traditional communities” and their cultural identities and traditional rights, and the same were affirmed by Act No. 39 of 1999 on Human Rights. Yet a number of Acts failed to recognize the *ulayat*, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian law No. 5 of 1960.<sup>64</sup> INGOFID added that in Indonesia, there is a conflict of laws (contradiction among articles) within the constitution, which in turn resulted in discriminative measures towards indigenous people. This leads to several laws that threaten the indigenous people’s ownership over land such as Plantations Law and Oil Palm Mega-Projects policy in West Kalimantan.<sup>65</sup>

37. AITPN explained that serious conflicts following the fall of Soeharto regime in 1998 in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan, among others displaced 1.3 million persons across the archipelago. These conflicts were often described as “civil unrest”, “separatist” and “inter-communal violence”. In reality, these conflicts took place between the transmigrasis - an estimated 3.6 million Javanese, Madurese and Balinese – who were planted on the lands of indigenous peoples across the islands.<sup>66</sup>

38. The Commission of the Churches on International Affairs of the World Council of Churches (CCIAWCC) noted that genuine indigenous rights are denied – i.e. self determination in terms of political representation, ownership and management of natural resources, participation in development matters stressing an indigenous-suited approach. Indigenous Papuans have been made to suffer enforced poverty, economic subjugation, poor educational attainment and healthcare, social and demographic changes imposed from the outside, and the destruction of their special identity and culture.<sup>67</sup>

39. The Society for Threatened Peoples (STP) stated that the denial of traditional land rights is still persisting, because despite the recognition of customary land rights of communities by laws, there are no procedures for titling these lands. State policies clearly favour large-scale plantations. Traditional indigenous land is often considered by the authorities as state land and allocated to companies on a basis of 90-year leases. STP further noted that there are serious legal abuses and violations of human rights in most conflicts between indigenous peoples and plantation companies over land.<sup>68</sup> According to STP, newly

established large-scale oil palm plantations deny and ultimately destroy indigenous peoples' relation with their forests and their customary tenure and resource management systems and institutions. The extensive plantations are leading to possible food shortages because the indigenous peoples' traditional food sources are destroyed.<sup>69</sup>

### III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

40. INGOFID acknowledged that in the last two years, the Indonesian Government through the Foreign Affairs Department has shown initiatives on reports and human rights promotion, performing the duty as the chairman of Human Rights Commission in 2005, and as a member of United Nation's Human Rights Council. The relationship between the government and citizens has developed into a strategically positive one, which also exists between the Foreign Affairs Department, National Commission on Human Rights, and National Commission on Violence against Women. The Indonesian government has been more responsive and collaborative with United Nations' Special Rapporteurs during the past 3 years. The formulation of the report has also involved NGOs and the National Commission on Human Rights.<sup>70</sup>

### IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

41. [n/a]

### V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

42. [n/a]

*Notes*

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<sup>1</sup> The following stakeholders have made a submission (all original submissions are available in full text on: [www.ohchr.org](http://www.ohchr.org)):

Civil Society

AI	Amnesty International*
A19	Article 19*
AITPN	Asian Indigenous and Tribal People Network*
ALRC	Asian Legal Resource Centre*
AWPA	Australia West Papua Association
CCIAWCC Churches*	Commission of the Churches on International Affairs of the World Council of Churches*
FI	Franciscans International*, in a joint submission with Justitia et Pax Netherlands*, the Office for Justice and Peace (SKP) of the Catholic Diocese of Jayapura, the Evangelical Christian Church of Papua, CMC, Commission of the Churches on International Affairs of the World Council of Churches*, Cordaid*, ICCO*, and Pax Romana*
GIECP	Global Initiative to End All Corporal Punishment of Children
HRF	Human Rights First*
HRW	Human Rights Watch*
IGLHRC	International Gay and Lesbian Human Rights Commission, in a joint submission with Arus Pelangi, GAYa NUSANTARA, Srikandi Sejati Foundation, and the Asian Pacific Network of Sex Workers
INGOFID	International NGO Forum on Indonesian Development*
RSF	Reporters Without Borders*
STP	Society for Threatened Peoples*
TAPOL	
UNPO	Unrepresented Nations and Peoples Organization

*Organisations with \* have consultative status at ECOSOC.*

National Human Rights Institution(s)

Komnas-HAM Indonesian National Human Rights Commission

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<sup>2</sup> *Komisi Nasional Hak Asasi Manusia (KOMNAS HAM).*

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- <sup>3</sup> Komnas-HAM, para. 11.
- <sup>4</sup> UNPO, p.2. See also Komnas-HAM, paras. 6-9.
- <sup>5</sup> INGOFID, p.1.
- <sup>6</sup> Komnas-HAM, para.16.
- <sup>7</sup> AI, p.2.
- <sup>8</sup> AI, p.2, see also for information on individual cases. See also INGOFID, p.2.
- <sup>9</sup> AI, p.5.
- <sup>10</sup> UNPO, p.2. See also ALRC, p.5; INGOFID, p.3.
- <sup>11</sup> ALRC, p.5.
- <sup>12</sup> FI, p.1-2. See also for information on individual cases.
- <sup>13</sup> FI, p.1.
- <sup>14</sup> FI, p.4.
- <sup>15</sup> HRF, p.1 ; see also for information on individual cases, as well as AITPN, p.4-5.
- <sup>16</sup> HRW, p.2-3. See also STP, p.3-4. For information on individual cases see also HRF, p.1-3; HRW, p.1-3.
- <sup>17</sup> FI, p.2.
- <sup>18</sup> AI, p.5.
- <sup>19</sup> ALRC, p.6.
- <sup>20</sup> IGLHRC, p.3-4.
- <sup>21</sup> AI, p.4. See also Komnas-HAM, p.3.
- <sup>22</sup> Komnas-HAM, p.3.
- <sup>23</sup> GIECPC, p.2.
- <sup>24</sup> AI, p.1-2.
- <sup>25</sup> AI, p.5.
- <sup>26</sup> FI, p.4.
- <sup>27</sup> FI, p.4.
- <sup>28</sup> AI, p.3. See also Komnas-HAM, para. 10; ALRC, p.2-3; STP, p.3-4, including for information on individual cases. See also AWPA, p.1-7.
- <sup>29</sup> HRF, p.4.
- <sup>30</sup> ALRC, p.2, 4.
- <sup>31</sup> UNPO, p.2.
- <sup>32</sup> ALRC, p.2.
- <sup>33</sup> HRW, p.2. See also FI, p.5. For information on individual cases see AWPA, p.1-7.
- <sup>34</sup> AITPN, p.1.
- <sup>35</sup> TAPOL, para. 14, see also for information on individual cases.
- <sup>36</sup> AI, p.3-4.
- <sup>37</sup> HRF, p.4. See also ALRC, pp.2-3; INGOFID, p.3-4; TAPOL, para. 14-16.
- <sup>38</sup> TAPOL, para. 19, see also for information on individual cases.
- <sup>39</sup> TAPOL, para. 21.
- <sup>40</sup> TAPOL, para. 26. See also Komnas-HAM, para. 8-10.
- <sup>41</sup> AI, p.3-4.
- <sup>42</sup> TAPOL, para. 16.
- <sup>43</sup> TAPOL, para. 22-23.
- <sup>44</sup> TAPOL, para. 25.
- <sup>45</sup> AI, p.3-4. See also TAPOL, para. 12.
- <sup>46</sup> ALRC, p.6.
- <sup>47</sup> HRW, p.3-4.
- <sup>48</sup> AITPN, p.4.
- <sup>49</sup> INGOFID, p.2. See also Komnas-HAM, para. 15.
- <sup>50</sup> ALRC, p.4.
- <sup>51</sup> RSF, p.1.
- <sup>52</sup> RSF, p.1. See also A19, p.1-2; HRW, p.1-2; AITPN, p.5; and see also HRF, p.3 for information on individual cases.
- <sup>53</sup> A19, p.1-2. For information on individual cases, see AI, p.3.
- <sup>54</sup> A19, p.3.
- <sup>55</sup> A19, p.2, see also for information on individual cases. See also RSF, p.1-2, including for information on individual cases.
- <sup>56</sup> FI, p.3, see also for information on individual cases. See also STP, p.3-4.
- <sup>57</sup> RSF, p.2, see also for information on individual cases.

<sup>58</sup> HRF, p.3; see also for information on individual cases.

<sup>59</sup> A19, p.3.

<sup>60</sup> AI, p.5.

<sup>61</sup> FI, p.4.

<sup>62</sup> Komnas-HAM, para.12. See also INGOFID, p.3.

<sup>63</sup> Komnas-HAM, para. 14(b).

<sup>64</sup> AITPN, p.5.

<sup>65</sup> INGOFID, p.1.

<sup>66</sup> AITPN, p.2. See also ALRC, p.1-2; UNPO, p.1.

<sup>67</sup> CCIAWCC, p.1. See also STP, p. 1-2.

<sup>68</sup> STP, 1-2.

<sup>69</sup> STP, p.2-3. See also AITPN, p.4.

<sup>70</sup> INGOFID, p.4.