



The state of human rights in Indonesia in 2009

*Violence by security forces in Papua and silencing of activists in the
election year*

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1. Introduction

The 2009 parliamentary and presidential elections raised many hopes and worries from human rights groups. The elections were dominated by persons with a strong military background and several of the presidential and vice-presidential candidates face serious allegations of human rights violations committed by the military. Indonesia also saw increasing demands for the islamisation of the state and public life with the introduction of the Sharia law bill in Aceh, which aims to legalize punishments identified internationally as torture. Now re-elected President Yudhoyono, the comparatively more moderate candidate, faces demands to fulfil promises he did not fulfill in his last presidential term, such as bringing the murder of human rights defender Munir to justice. The main suspect in this case, retired Maj. Gen. Muchdi PR, was acquitted of all charges with the verdict of the judges facing criticisms for lacking fair trial standards.

The ongoing power play of military elites in government parallels the expanding activities of the military in the crisis province of Papua. 2009 saw an increase of political arrests and prison sentences for peaceful political activists. While mining in, and transmigration to, the Papuan provinces continued, no substantive improvement of the living conditions for indigenous Papuans was visible. Since arrests, torture and killings are reported to have continued, and access to the well-funded health care and education systems for indigenous people remained poor, the Special Autonomy Law in Papua was declared by many local groups as a failure.

The police underwent a reform of its internal guidelines and regulations with a substantive human rights element brought into police practice. However, the cases received by the AHRC show that torture, and even death as a result of torture, continues to be used as a viable means to obtain information or cover up cases of abuse in the police force. Attempts by the country's applauded Anti-Corruption Commission (KPK), to investigate allegations of corruption in the police and the office of the attorney general (AGO) were countered with a power play from the police. The stand-off between the KPK and the National Police became known as the "Gecko vs. Crocodile" case in which Commissioners of the KPK had to face charges of abuse of power. The public widely supported the struggle of the KPK.

Allegations of criminal defamation against human rights activists, police violence against protesters and criminal charges of "disobedience" are examples for increasing threats, in 2009, to freedom of expression, opinion, and assembly. The recent ban of a movie by the state censure which depicts past military activities in Timor and the ongoing impunity related to gross violations of human rights, committed by the military, is evidence of the power that military interests still hold in the otherwise reformed and opened up Indonesia.

2. Torture and Killings continue

Over the last 12 months the Asian Human Rights Commission (AHRC) has received 4 cases of killings of which 3 were committed by the police as the result of torture. The

cases reported continue to be of a severe nature despite campaigns for police reform and calls for the criminalization of torture by local groups. The UN Special Rapporteur on Torture Dr. Manfred Nowak visited Indonesia in 2007 and issued a series of recommendations following his visit. The UN Committee Against Torture, in its 40th session in May 2008, also issued several important recommendations, in particular the criminalisation of torture. In 2009, Indonesia has still not included the act of torture, as defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), in its Penal Code as a crime. Indonesia has been under this obligation since it ratified the Convention in October 1998.

Police conduct in Indonesia is governed by police regulations as well as the criminal procedure code and the criminal code (penal code). The enactment of Indonesia's new police regulations in 2009 is an important development. The 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 Police¹ entered into force in summer 2009. The document refers extensively to the prohibition of torture and sets high standards for police conduct. The AHRC welcomes this reform. An implementation of these regulations would signify a major improvement.

However, the document lacks provisions for enforcement in particular by failing to provide disciplinary measures in cases of violations of the code. *(photo: Indonesia's new police regulations)*

Torture in Indonesia is not only a phenomenon confined to rural police branches but also extends to Jakarta, the capital, whose infrastructural development stands in stark contrast to most other regions. In Indonesia torture is not so much a problem of resources as it is a lack of proper police practice based on law. An amendment to the Criminal Code is immediately required.

Extra-judicial killings by the police were reported in 2009 as well as several reports of military killings in remote provinces such as the conflict-stricken West Papuan region. This confirms the presence of on-going military violence, most of which is conducted to intimidate suspected independence activists.

Killings by the police are often the result of severe torture and serve to stop the victim from making a complaint. Such killings are then covered up by falsifying the post-mortem report to clear the perpetrators of wrong doing. Meanwhile the military continues to enjoy immunity from civil courts and their members are only subject to military trials, which are reported to be flawed and do not hold up to international human rights norms. As a result the military remains largely immune while de-facto



REGARDING

IMPLEMENTATION OF HUMAN RIGHTS PRINCIPLES AND STANDARDS IN THE DISCHARGE OF DUTIES OF THE INDOONESIAN NATIONAL POLICE UPON THE GRACE OF GOD THE ALMIGHTY CHIEF OF THE INDOONESIAN NATIONAL POLICE.

- Taking into consideration :
- a. whereas, the Indonesian National Police constitute a state apparatus charged with the function of maintaining security and public order, enforce the law, and provide protection, guidance, and service to the public;
 - b. as a state apparatus, the Indonesian National Police also has the obligation to respect, protect and uphold human rights in the discharge of its duties and functions;
 - c. whereas, in order to allow all tiers of the Indonesian National Police to respect, protect and uphold human rights in the discharge of its duties and functions, there is a need for a manual on the implementation of the principles and standards of human rights during the discharge of the duties and functions of the Indonesian National Police;
 - d. whereas, in line with the considerations set out in paragraphs a, b, and c above, there exists a need to enact a Decree of the Chief of the Indonesian National Police on the Implementation of Human Rights Principles and Standards in the Discharge of the Duties of the Indonesian National Police.

controlling several areas of remote provinces in Indonesia. This is especially the case in respect to incidents involving the lethal use of excessive military force in relation to protecting mining or other forms of natural resource activities.

Case: A theft suspect is tortured to death by police in Aceh

August 26, 2009 AHRC-UAC-105-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3241/>

It is reported that Krueng Raya police arrested a man without a warrant and tortured him in custody. He died in hospital on the day of his arrest. No legal action was initiated against the officers responsible.

Case: Police officers torture a man to death and falsify his autopsy report

September 03, 2009 AHRC-UAC-111-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3248/>

The AHRC was disturbed to learn that police from Slawi police station, in Central Java, tortured a man to death shortly after his arrest and previous torture by Tegal station police. The victim was reportedly forced to confess to a crime that he did not commit. The post-mortem report was fabricated by officials to clear the killers of blame.

Case: Police officers severely torture a man and shoot him, making impossible claims that he had been trying to escape

June 26, 2009 AHRC-UAC-066-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3189/>

The AHRC received information from local sources that a man who was shot dead by police while in custody was not 'trying to escape' at the time, as the police had claimed. The victim, who was arrested on 2 April 2009 by police officers in North Jakarta and was pronounced dead on April 4, reportedly had at least ten stab wounds to his legs when he was shot, along with other injuries. The case suggests a half-hearted cover up of torture and execution at various levels within the station. This has not yet been legally addressed.

Case: Police torture a man after illegally arresting and detaining him on two occasions

June 26, 2009 AHRC-UAC-065-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3188/>

The Asian Human Rights Commission reported the case of a man who was falsely accused of being a drug dealer by police, and was arrested and detained twice to force him to confess. The policemen burned his hand with a lit cigarette and repeatedly assaulted him inside the police station in Cilegon City.

Case: No investigations have been started into the torture of an indigenous Papuan, detained in a case of mistaken identity

December 7, 2009 AHRC-UAC-168-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3332/>

An indigenous Papuan was illegally arrested, detained and tortured in July after he was taken into custody by the airport security unit of the police in Wamena town. During his assault he was ordered to confess to the killing of five Javanese Indonesians, however the arrest was later acknowledged to be a mistake and he was released after three days. The victim was hospitalised for his injuries, yet no investigation has been carried out and no compensation offered.

3. Papua

3.a Failure of the Autonomy Law

The Indonesian law on autonomy rights for the provinces of Papua remains not fully implemented, years after the autonomy law in Aceh was implemented under the close monitoring of the international community, in the aftermath of the 2006 Tsunami.

The Special Autonomy Law for Papua (Law No. 21/2001²) was enacted in 2001 after political bargaining between the national government and indigenous people in West Papua³ to respond to calls for increased self-determination. The law was expected to solve many of the issues of concern, based on peace and dialogue. However, since its enactment the situation has deteriorated in many ways thus contributing to tensions and suffering.

While the contributions from indigenous Papuans to local political processes are used by the central and local government as indicators of success, the picture needs to be contrasted with the silencing of protesters and political activists by means of arrest, killings, torture and intimidation. Speaking out against the failed implementation of the autonomy law and the law itself stigmatizes peaceful activists as sympathizers to alleged armed independence movements and thus blocks necessary dialogue and a review of the implementation status.

Importantly, the Autonomy Law is also criticised for failing to address the core problem of military raiding for economic activities such as illegal logging and

The continuing calls for autonomy by indigenous groups are based on:

1. The questionable and flawed process of UN consent to Indonesian domination of the territory after the former Dutch colonial power tried to give West Papua (West New Guinea) its own independence as a nation state without success. Indigenous Papuans excoriate their exclusion as key stakeholders in the drafting of the New York Agreement (1962) that administered the handover process to Indonesia. The *Act of Free Choice* (1969) in which 1025 Papuan representatives, selected by Indonesian General Sarwo Edhi Wibowo, consented to the earlier Indonesian integration was proved to be manipulated and violating of the rights of indigenous Papuans.^{4 5}
2. Past human rights atrocities: While under Indonesian military control, in particular during Suharto's *New Order* regime human rights atrocities occurred including massacres, killings, torture, arrests with thousands of victims left dead. Many of these events were based on remote military operations without any judicial investigations, compensation or other remedies for the victims. The scars left on the indigenous Papuan society are deep.
3. Present day human rights violations: Killings, torture, unlawful arrests, intimidation and various forms of discrimination against indigenous Papuans continue, along with the violent silencing of activists.
4. Indonesian and international exploitation of Papuan natural resources without any development such as access to public services negatively impact on the living conditions of indigenous Papuans.
5. Efforts for the preservation of indigenous Papuan traditional culture and languages to end violations of these and other cultural right.

exploiting of natural resources. At present military raids into Papua to protect or partake in illegal commercial activity is a significant problem for the indigenous people that has not been stopped by local government. This is one of the main concerns of indigenous Papuans for which the Autonomy Law has not provided protection.

Case: The killing of Yustinus Murib and 9 other civilians on November 5, 2003

As part of a joint sweeping operation the military and its Special Command Forces together with the police surrounded a local village house in Yalenga, Bolakme district, where they suspected an alleged leader of the Free Papua Movement (OPM). After the villagers came out of the house and tried to escape, the security forces killed 9 of them and arrested Mr. Yustinus Murib without any charges. Mr. Murib and the bodies of the 9 other villagers were put into a vehicle and taken to the Wamena General Hospital. On arrival Mr. Murib was dead. His body and that of the other 9 villagers were covered with stab wounds. Further investigations by local human rights organizations into the killing were blocked by the local Police and Military.

Transmigration and Economic exploitation

The government's transmigration programme, which provides incentives for poor and often landless Indonesians from densely populated areas, such as Java, to resettle West Papua, continues. Thousands of economically disadvantaged transmigrants arrive in Papua each month seeking to improve their economic status and living conditions. They are



supported by the government who subsidises their food production for the first few months and provides them with money, housing and land. The government claims that this is a program based on the right of freedom of movement and is aimed at improving the quality of life for many poor people that live in densely populated areas, as well as providing a workforce to better utilise the natural resources of Papua. However, this constructed, incentivised re-location program has significantly changed the demographic of Papua. *(photo: logging in Papua, source: Fokker)*

The demographic imbalance created by this process aggravates the situation for indigenous people and has not resulted in an improvement of their living conditions. In fact, this program has been seen to increase the economic gap between transmigrants and indigenous Papuans. Moreover, a significant consequence of transmigration has been the continued exploitation of natural resources through activities such as deforestation, which has a serious impact on traditional living conditions. In some towns and cities⁶ the demographic proportions are reported to be approximately 30% indigenous Papuans to 70% transmigrants compared to a formerly predominantly indigenous Papuan population. However, a clear and regulated census is lacking.

The increasing economic activity in West Papua remains strongly in the hands of transmigrants and is in practice mostly non-inclusive to indigenous people. Many Papuans feel that their traditional culture and language is threatened by transmigration. Despite provisions in the Autonomy Law to respect, foster and develop indigenous culture and customs,⁷ no substantive programs or activities for the protection or promotion of indigenous culture and languages have been successfully initiated until 2009.

Right to health and education

Along with increasing economic and cultural separation and disadvantage, in recent years the education system in West Papua has also continued to suffer. In 2009, this is largely due to the loss of teachers who are often recruited into higher administrative and political offices-becoming heads of districts or regional offices- under the creation of new administrative regencies. Teachers often leave their office for prolonged periods for personal reasons without replacements being provided by the education department. This absence of a functioning and inclusive education system for indigenous Papuans is a considerable obstacle for development and widens the social gap between transmigrants and indigenous people. Under the Autonomy Law the responsibility for all areas of education in Papua is given to the Provincial Government. However, by not providing teachers that are willing to work in Papua and by not instilling work discipline and respect for indigenous culture, the Provincial Government has reneged on it's duty to provide "high quality education and teaching" (article 56 (3) of the Special Autonomy Law) to which every inhabitant of Papua is entitled up to high school level.

However, while some local political offices such as that of the Mayor and the Governor are filled by indigenous Papuans, no efforts are made to professionally prepare indigenous Papuans for strategic positions in government departments and other institutions including industry. After 44 years of Indonesian control over West Papua access to such jobs is far from being equal for native Papuans.

According to the Autonomy Law the abundance of natural resources in West Papua is supposed to benefit the citizens of West Papua, through a Special Autonomy Fund which gives access to free medication in public hospitals, among other things. For 2009 the Indonesian central government has allocated an equivalent of USD390million to both administrative provinces in West Papua. However, patients are often refused medication and are instead referred to commercial pharmacies. Corruption in the healthcare system and at local government level are also reported. In addition, many health workers refuse to work in remote villages where most indigenous Papuans are living, leaving them without access to the required healthcare. This is in light of the fact that in the last decade HIV/AIDS has increased sharply in West Papua, with migrant prostitution workers from other provinces in Indonesia reported to be a significant factor. This should be recognised by the health ministry and combated with the necessary facilities.

The Special Autonomy Law for the two West Papuan provinces has provided the Papuan local government and local parliament with many privileges and an increased budget. However, local corruption, continuing military dominance and the lack of effective implementation of many of the Autonomy Law's provisions remain after eight years. A majority of indigenous Papuans see this as a clear failure of the Autonomy Law to address one of their key concerns and thus reject it as a failed attempt to settle the demand for the right to self-determination. Meaningful dialogue between West Papua and the central government is required to address these significant and on-going problems.

3.b Police and Military in Papua

The heavy military presence in West Papua is reminiscent of the pre-1998 era under President Suharto, when the military de-facto ruled and controlled public life. While Police and Military are now separated, both still play a leading role in West Papua and both bodies are involved in economic activities such as logging. In addition the military is frequently reported to be involved in taking bribes for protecting commercial mining activities in different parts of the two West Papuan provinces. While trying to maintain its supportive role for international mining companies the military has a strong self-interest in maintaining and extending its presence in Papua.

An exaggerated armed independence conflict would support the military's argument for the importance of their presence in the region. The Free Papua Movement (OPM) is one of the main threats according to the security forces. Lieutenant-General George Toisutta was appointed Army Chief of Staff in 2009 and requested to establish a new military command in West Papua thus extending military presence and control of the region. It has to be noted that such additional inland military command is in contradiction to the defence mandate of the army.

While the existence of some poorly armed independence movement groups cannot be denied, their actual capability is in no proportion to the military presence. Military bases are located in transmigration areas as well as along access roads to them. Intimidation tactics applied by the police and the military include arbitrary arrests, torture and sweeping operations with the destruction of property. While almost all of the related victims were alleged to have links with separatist movements, almost none of them were based on any evidence. This makes the intimidation and pressure tactics by the security forces an untargeted, arbitrary operation against indigenous Papuans. As a result, large parts of the indigenous population are routinely terrorized, as the cases received by the AHRC show.

After international pressure, such as the visit of the United Nations Special Representative of the Secretary-General on Human Rights Defenders Ms. Hina Jilani (at that time) in June 2007, the security forces started to apply more caution. However, the reported increased security maintained by the military and police is not a natural security situation. Human rights activists are silenced and most of the atrocities are not being documented and reported, in particular events in the remote highland regions. Indonesia's past was marked by victories through violence -the government's

Key Case:



Papua's most prominent human rights victim Theys Hiyo Eluay was heading the highest indigenous political body at that time - the Papuan Tribal Presidium (PDP), which after the fall of Suharto, was able to be more outspoken about the concerns of indigenous Papuans. Theys Eluay was seen by many as a symbol of Papuan indigenous emancipation. After Theys Eluay attended the Indonesian "Hero Day" at the invitation of the Special Force Command (Kopassus) of the military, he was killed by members of the military on his way back home on November 10, 2001.

After substantive pressure, President Megawati set-up a special national investigation team in February 2002. The central office of the military police and the national police also prepared special investigation teams and finally Kopassus members from Tribuana of the Hamadi district of Jayapura, Papua were convicted and sentenced to 2-5 years imprisonment and dismissal by the High Military Court III in Surabaya. However, Commander in Chief of the Indonesian army at that time, General Endriartono Sutarto disagreed with the judgement and called for the soldiers to be seen as "heroes who fought in the name of national unity".

While some henchmen in the Special Force Command of the army were convicted, the main instigators of the murder of Papuan leader Theys Eluay have not been found. The murder of Theys Eluay remains one of the biggest scars in the history of the Papuan struggle against human rights violations. (photo: Papuan Leader Theys Eluay was killed in 2001)

approach to mitigate in indigenous West Papuan issues has not fundamentally changed this and there is a lack of serious engagement and dialogue between West Papuans and the Jakarta administration.

The National Intelligence Agency (BIN) and the intelligence service of the army play an important role in public life. Often operating as bicycle riders, street traders, sales persons, mobile phone traders, waiters in hotels and restaurants, hotel drivers, airport taxi drivers, students and civil servants, these intelligence staff support a heavy

surveillance machinery in West Papua, creating an environment of fear among the indigenous population and exacerbating distrust and ethnic division.

Case: Police and soldiers burn houses and destroy resources in Papua's Bolakme district

October 27, 2009 AHRC-UAC-143-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3299/>
In October the AHRC received reports of violence being wrought by soldiers and police against civilians in remote West Papuan villages. In a recent case a joint operation responded to an illegal flag-raising by the banned Free Papua Movement with indiscriminate violence against civilians. Soldiers reportedly burned down 30 houses, killed livestock and fired live rounds threateningly around local residents, many of whom took refuge in the forest for several weeks out of fear. Also a man was shot in the stomach and died before reaching the hospital. Complaints to the local and central offices of the national human rights commission were not taken up.

Case: Police allegedly kill villagers and destroy their property in Papua

January 21, 2009 AHRC-UAC-006-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3098/>
At the start of this year we received information that a man was shot dead by police constables, thought to be under the influence of liquor, in Teminabuan, south Sorong Regency of West Papua Province, at midnight of 31 December 2008. Angry villagers protested against the killing and in the ensuing violence a police officer was left dead. However, it was reported that the police- unable to control the situation- destroyed houses; more villagers were injured and an 8-year-old boy was killed.

Case: Investigation needed into the two week detainment and ill-treatment of a Papuan man

September 17, 2009 AHRC-UAC-121-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3263/>
A Papuan man was ill-treated during a two-week detention, where he was interrogated about a fire that destroyed property owned by former Indonesian President Suharto. The incident is similar to past cases of abduction by army personnel. The AHRC is concerned that the matter will not be thoroughly investigated by local officials.

3.c Political Prisoners and the Freedom of Expression

2009 has seen an influx in political arrests based on charges of subversion or treason. While decades ago, activists talking about the question of self-determination of the indigenous Papuan people, were invited to discussions with political decision-makers, such voices are now silenced with criminal charges, political trials and years of imprisonment. Buchtar Tabuni, Sebby Sambom, Musa Mako Tabuni, Yance Amoye



Motte and Seravin Diaz are just some of the victims who had to face trial in 2009 while many were already sentenced to up to 20 years imprisonment. *(photo: Abepura Prison, detention centre for most political prisoners in Papua; source: AHRC)*

Some activists were arrested following peaceful protests. Arrests are often carried out arbitrarily without formal charges or a warrant. If issued, such arrest warrants are put



out days after the actual arrest. Following the arrest, abuse and torture, including beating, punching, kicking and slapping are common. Most of the victims are detained or imprisoned in the Abepura Prison. Several of the detainees were reported to have unsuccessfully tried making complaints regarding their illegal treatment in prison. (photo: trial against political prisoner Sebby

Sambom in Jayapura, Papua; source: local human rights group)

While the treason law has in the past been applied more rarely, its current use exposes its incompatible character with international norms such as the right to freedom of expression, including political expression.

Case: Torture and maltreatment of political prisoners in Papua

February 16, 2009 AHRC-UAC-014-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3111/>

The AHRC received information of detainees being tortured and ill-treated by prison officials in Abepura Prison, Papua province. It was reported that seven persons were tortured from 1-5 February 2009. They were reportedly beaten and put into solitary confinement where they were deprived of food and water for four days.

Case: Rights activist Buktar Tabuni arrested after peaceful protests

December 10, 2008 AHRC-UAC-262-2008 <http://www.ahrchk.net/ua/mainfile.php/2008/3082/>

The subversion charges laid against rights activist Buchtar Tabuni were not dropped, and he is currently facing trial at Jayapura District Court. The main charge against him is under article no. 106 of the Indonesian Penal Code, which in effect, criminalizes the expression of certain political opinions.

-Update: Another activist arrested for holding a peaceful protest

December 20, 2008 AHRC-UAC-071-2009 <http://www.ahrchk.net/ua/mainfile.php/2008/3088/>

-Update: Rights activist Buchtar Tabuni in trial on charges of subversion

February 24, 2009 AHRC-UAC-004-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3117/>

Case: Killing of an activist

December 5, 2008, AHRC-UAC-261-2009 <http://www.ahrchk.net/ua/mainfile.php/2008/3081/>

Yosias Syet was found dead in his home on 17 October 2008. The autopsy confirmed that he had been murdered. It is alleged that the murder was designed to threaten the Head of the Papuan Customary Council, Fokorus Yaboisembut, since Yosias Syet was in charge of his security.

3.d Election Violence

While the parliamentary and presidential elections were seen as an important step in the further democratization of Indonesia, the events were marked with violence and killings in the West Papuan provinces. At least 14 incidents, related to the legislative and presidential election from April to July 2009, were reported.

Many of the incidents appeared to be set up by unknown interest groups to create an image of violent resistance against the election by indigenous Papuans and a security situation that would call for increased presence and activities of the armed forces. An office burning at the University of Cendrawasih, clashes between the police and indigenous Papuans in Abepura (April 9, 2009), the mysterious killing of Pdt. Zeth Kiryoma, S.Th, and false reports of bomb attacks and are just some examples that seemed more likely to be set up by the security forces themselves than by resistance groups. Searches, arbitrary arrests and violence during the legislative and presidential election were common in various cities in West Papua. On another occasion the military allowed a poorly armed group of protesters to allegedly take hostage of a local airport for days.

Most of these incidents stigmatize indigenous Papuans as violent resistance fighters, while indigenous Papuans are often themselves victimized by arbitrary arrests, detentions and violent abuse. Cases of electoral counting fraud in areas with strong military dominance support the view that the military, who benefits most from the alleged indigenous violence, might be behind the incidents. A police investigation of alleged OPM bombs showed that their composition and sophistication makes the military are more likely perpetrator.

Case: Indigenous Papuans are shot by police and denied proper medical treatment

May 13, 2009 AHRC-UAC-047-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3154/>
On 13 May 2009 two indigenous Papuans died and three others were injured after the unrestrained use of lethal fire arms by the Mobile Brigadier (Brimob) Unit of Papua Regional Police on 9 April 2009 in Abepura, Papua, Indonesia. The wounded were arrested and taken to a hospital, but reports allege that they did not receive proper medical treatment, resulting in the death of one of the arrested persons.

3.e Right to Food

No improvement on food security for past four years in Papua province

In 2005, 55 villagers died of starvation and others suffered from lack of food in Yahukimo district, Papua province. In September 2009, the casualties went up to 113 in same area, Yahukimo.⁹ The cause for both cases was reportedly harvest failure. In this region however, it was disclosed that the government had neither properly invested to increase the food produce nor constructed basic infrastructure for accessibility to the area. As a result there was food insecurity in 2005 and there was still food insecurity in 2009.

The constant reports on starvation deaths in Yahukimo demonstrates that the government continues to fail to respect the right to food. Indonesia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2006 and the right to food is a fundamental right enshrined in the Act of the Republic of Indonesia Number 7 of 1996 on Food.¹⁰

When the deaths were reported by the AHRC as well as the media, the relevant government authorities initially stated that the villagers died not of starvation but of

diseases and failure of harvest¹¹. The government did not allow anyone, including local human rights groups in affected areas, to report the details of the deaths. Subsequently, the Chief of Papua Regency, Ones Pahabol, admitted that the villagers suffered from starvation. The failure of harvest can never be a cause of death nor a justification for deaths.

In 2006, after the starvation deaths of 2005, the government constructed food storage units in several areas around the town of Yahukimo aimed at storing food and grain for longer terms as well as for emergency situations. The affected areas, this year, were excluded from the provision of food storage and the villagers who are supposed to use the storage units were not taught how to use them- the government merely set up the facilities but did not train the villagers to make use of them.

Three hundred tons of rice were distributed to villagers starting from Walma district on September 18 2009, when the government gave temporary food aid of rice, sweet potato and fruits, however lack of roads and infrastructure continues to aggravate food insecurity in villages. The affected areas are remote and there is no road or transportation accessibility but for helicopter or plane. However, only 16 tons of rice were reportedly distributed to 11 districts and others have not yet received the food aid.

The majority of villagers in Yahukimo eat sweet potato as their main food. The villagers also cultivate coffee, pineapple, banana, peanut, bean, mango and red fruit. However, it is difficult to cultivate rice in highland areas and villagers have not learned how to harvest rice or other crops to meet a nutritious diet and obtain micro-nutrients. The villagers in affected areas cannot afford to buy rice from the market located in town. As of 2009, the price of rice per kilograms in those areas is 20.000 IDR (10.000 Indonesian Rupiah = 1 US Dollar) whereas the transportation fee is 30.000 IDR and takes approximately 90 minutes. However, the villagers find it difficult to manage cash to buy rice and to organise transportation. Furthermore, the quality of rice is not good. Of particular concern are the children who are easily exposed to malnutrition as well as lack of micro-nutrients. This is the hidden hunger.¹²

The government should take substantial and sustainable measures to ensure the right to food through providing long-term food security structures. At present they are failing to prevent hunger deaths and even failing to provide food aid to the affected villages. Next year, more villagers will suffer from lack of food and die of hunger associated with other relevant diseases.

Case: 113 villagers' hunger deaths caused by government neglect as well as harvest failure in Yahukimo, Papua [Hunger Alert]

September 16, 2009 AHRC-HAC-006-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3260/>
The number of people that have died of starvation in Yahukimo regency has reached 113 since January 2009; more than 31 people had died in Langda, 34 in Bomela, nearly 20 in Seredala and 10 in Suntamon. According to Yuliat Iksomon, the head of the Yahukimo disaster response team, deaths caused by starvation also happened in another three districts of Yahukimo;

Walma, Pronggoli, and Heryakpini. In Walma district itself, it is reported that as many as 60 people have died of starvation associated with diseases.

4. Religion and Human Rights

4.a Sharia Law in Aceh

The Aceh Autonomy Law entitles the Aceh Legislative Council, a local parliament, to make its own legislation. This provision was used 14 September 2009 when the Aceh parliament passed a local sharia penal law that would provide for penalties including flogging and stoning to death for crimes against islamic traditional law such as adultery.¹³ The legislation has at the time of writing not yet been signed by the governor of Aceh, Yusuf Irwandi, which would make the law active and fully adopted. In the meantime the law should be completely reviewed since its provisions- including the application of torture- violate human rights norms and in particular Indonesia's international obligations and applicable international law such as the International Covenant on Civil and Political Rights and the Convention against Torture.

The proposed provincial legislation (Law No. 11/2006) dictates that a raped women find four witnesses to her attack or face death by stoning for adultery. Its provisions for the protection of women are very weak and ignore issues such as domestic violence. The law makes children from the age of 12 subject to harsh punishments, thus violating the Convention on the Rights of the Child which Indonesia ratified, with reservations, in 1990. The right to health, as supported by sex education, is threatened by the document since such education is prohibited. *(photo: Aceh Governer Yusuf Irwandi, source: Aceh.Net)*



The law would apply to all Indonesian's in Aceh, including non-Acehnese residents and non-muslims. Journalists and rights activists who criticize the law are easily stigmatized as anti-islamic. Since this law is not a national law but a provincial law, it cannot be challenged in the Constitutional Court. Such a piece of legislation can only be reviewed by the Supreme Court which is reported to have made political decisions in the past. While local groups are preparing a challenge to this law, worries remain that this attempt will not succeed. This law would replace existing local islamic regulations that already provides for islamic vice squads and other sharia related practices.

The fact that the constitutionality of such local legislation cannot be challenged in the Constitutional Court remains a loophole through which the protection of the constitutional and human rights in Indonesia can spiral.

4.b Pornography Law

After demands, particularly from non-representative Islamic groups, to ban pornographic material in Indonesia, an Anti-Pornography law was prepared. Opponents pointed at the incompatibility with traditional culture. The draft bill of this law was submitted by the government to the House of Representatives in 1999, after that there was no progress until the new government followed up this bill in 2004. The plenary session of the House of Representatives on September 27, 2007 established a special committee for the bill of anti-pornography and pornographic actions. Finally, on October 30, 2008 Law No 44 of 2008 regarding pornography became law to divided public opinion.

The law is vague in its definition and violates several constitutional rights as well as national laws. These include Law No 39 of 1999 regarding Human Rights, Law No 9 of 1998 regarding freedom of expression and opinion and also the Indonesian government has obligations under international human rights instruments which should be respected¹⁴.

While supporters point to the moral protection this law would provide against western influences and the degrading of women, opponents of the law argue that it will criminalize acts that any citizen might arbitrarily deem inappropriate and pornographic. This law does not only open up the possibility of arbitrary denunciation of "pornographic actions" but also restricts the cultural freedoms of some of the ethnic groups in Indonesia.

On April 6, 2009 several civil society groups such as human rights NGOs, community, religious organizations and community leaders submitted a judicial review of this law to the Constitutional Court (MK) requesting the Court to repeal all content of the Law. The decision of the court is still pending.

4.c Freedom of Religion - Pluralism and Secularism

Eleven years after political reform (*reformasi*) that occurred in 1998, freedom of religion in Indonesia faces serious obstacles because of increasing fundamentalism in several sections of Indonesian society. This presents a serious challenge to Indonesia's acclaimed principles of ethnic and cultural pluralism. At present the government only formally recognizes six religions in Indonesia: Islam, Roman Catholicism, Protestant Christianity, Buddhism, Hinduism and Confucianism (Khong Hu Cu).¹⁵ Each person's religion is registered on his/her identity documents which s/he is required to carry with them.

Religious groups outside the six state-recognised religions such as the Ahmadiyah do not enjoy state protection.¹⁶ As a consequence of discrimination and alleged crimes committed against the Ahmadiyah the National Commission for Human Rights (Komnas HAM) established a monitoring team based on Law No 39 of 1999 regarding human rights. This law was aimed at monitoring and inquiring in to several alleged violations of human rights against members of the Ahmadiyah. To date there is no significant progress.¹⁷

The current situation for members of the Ahmadiyah is that they are under pressure and monitoring and intimidation from several Muslim fundamentalist organizations who try to prohibit them from praying and promulgating their religion.

The AHRC has in the past received cases of attacks against religious communities; further, a person identified as belonging to one religion cannot marry a person from another religion and religion can also be a barrier to work due to discriminatory employers. In such cases insufficient protection was given by the Indonesian government.

On June 5, 2008 when the National Alliance for Freedom of Religion (AKKBB) marked the anniversary of Pancasila in Square of the National Monument of Jakarta they were attacked by Muslim fundamentalist organizations such the Islamic Defender Front (FPI) and The Hizbut Tahrir Indonesia (HTI)¹⁸. Two leaders of those Islamic organizations, namely Mr. Habib Rizik and Mr.



Munarman, were prosecuted by the public prosecutor under article 170 and article 55 of the Indonesian penal code in the Central Jakarta district court and on October 30, 2008 the judges convicted each of them to one year and six months imprisonment. (photo: AKKBB, a coalition of civil society groups supporting freedom of religion in Indonesia demonstrates in front of the Attorney General's Office, source: KontraS)

Currently several civilian organisations (human Rights NGOs, organizations of religious and human rights lawyers) have submitted a judicial review to the Constitutional Court against law No. 1/PNPS/ 1965 regarding the prevention of abuse and discrimination of religion claiming that the content of this law is contrary to the Indonesian Constitution and other national human rights laws. This process is ongoing and at the time of writing there have been two appearances before the court.¹⁹

5. Human Rights Defenders

5.a The Trial of Munir's case

After Indonesia's leading human rights defender, Munir Said Thalib, was poisoned onboard a Garuda Airlines flight in September 2004, his family and supporters have been fighting to bring his murderers to justice, but the process is long and politicised. While some henchmen have been imprisoned, no instigators have been successfully convicted. See the brief chronology of events in the table.²⁰

In 2009, trials were held in the South Jakarta District Court against the former National Intelligence Agency (BIN) deputy director and retired Major General, Muchdi Purwopranjono, also known as Muchdi PR. During the process twenty trials took place and more than 25 witnesses were called in during the 5 months from August 2008 until the District court verdict in December 2008. The trials were marked by the presence of numerous support groups for Munir including NGOs and victims groups. Maj. Gen. Muchdi PR also had proclaimed 'supporters' mobilized in his support.²¹ The Court acquitted Maj. Gen. Muchdi PR amid strong criticism for having ignored crucial evidence submitted by the prosecution. The prosecution was also criticised by court monitors for their poor job in preparing the case and the lack of commitment their work.



(photo: ret. Maj. Gen. Muchdi PR in court for the murder of human rights defender Munir. He was acquitted of all charges, source: KontraS)

The prosecution filed an appeal to the Supreme Court- it being the court of last instance for this case. On June 15, 2009 this appeal was rejected and Maj. Gen. Muchdi PR was acquitted of all charges. The outcome of this trial only serves to foster the record of impunity in Indonesia with many questions unanswered.



(photo: defendanst Muchdi organized allegedly hired supporters to influence public opinion in the court room, source: KontraS)

The Solidarity Action Committee for Munir (KASUM) subsequently urged the Attorney General (AG) to submit a case review to the Supreme Court as the last option to resolve Munir's case. According to a meeting between members of KASUM and Mr. Jasman Pandjaitan, spokesperson of the Attorney General's Office on September 7, 2009, the AG plans to submit a case review only based on *the negligence of the judges*. KASUM commented that the AG's strategy shows a lack of commitment since such a submission to the AG can be expected to be rejected unless it is accompanied with new evidence. Instead, the AG should request the submission of missing evidence from the police. According to the National Human Rights Commission (Komnas HAM) retired

Maj. Gen. Muchdi PR should have been sentenced by the court to a maximum penalty based on the sufficient evidence against him.

Commitment of the new government

The re-election of President Susilo Bambang Yudhoyono through the Presidential election on June 8, 2009 heightened expectations, but also doubts, about his commitment to resolve Indonesia's most important human rights case. While he ranked Munir's case at the top of his agenda during his first election in 2004, his failure to bring about a fair and successful trial against all perpetrators of Munir's murder raises concerns about his commitment to human rights in his coming presidential term.²²

For example, President Yudhoyono refused to publish the report by the fact finding team he had set up to start inquiries into Munir's murder during his first presidential term. He also refused requests to strengthen the fact-finding team by extending its mandate. The team was thus not in a position to support the police investigations. President Yudhoyono is now under pressure to take action. The AHRC welcomes President Yudhoyono's decision to replace the head of the National Intelligence Agency (BIN) with Mr. Sutanto (retired General) as the new chief of BIN. Mr. Sutanto's record and past stance on Munir's case gives hope for an opening up of BIN files that could support the case.

5.b Freedom of Expression

Freedom of expression and opinion in Indonesia is increasingly being restricted due to the use of several articles of the Penal Code which prescribe for criminal defamation against civilians. Contrary to the spirit of the political reform that occurred in 1998 and the ratification of international human rights instruments, such as the ICCPR, protesters in Papua and activists in Jakarta and Aceh have faced criminal defamation proceedings. The extensive use of the criminal defamation law against critical discussion and opponents of established political elites and impunity activists is a new phenomenon. The Indonesian government must review the law on criminal defamation and ensure that it cannot be applied to limit the activities of civilians and human rights defenders.

The government is still implementing some of the articles in the Indonesian Penal Code regarding criminal defamation in particular articles 311, 316, 314. The defamation law is a colonial hangover, and the government's reluctance to revise it has allowed its continual abuse by officials who wish to restrict freedom of expression. Over the last two years, civil society groups have made several attempts to submit a judicial review regarding the law based on their potential threat to human rights workers.

Case: A human rights defender is accused of criminal defamation for seeking to investigate Munir's murder

September 11, 2009 AHRC-UAC-118-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3258/>
The Asian Human Rights Commission received information that a leading rights activist and partner of the AHRC has been accused of criminal defamation by the former deputy chief of

Indonesia's State Intelligence Agency, after he testified against the latter for his involvement in the murder of Munir Said Thalib. Mr. Usman Hamid, a coordinator of the Commission for disappeared and victims of violence. Mr. Hamid was a witness in the trial of Mr. Muchdi Purwopranjono- an alleged perpetrator in the murder of Munir Said Thalib. On 3 September 2009 Mr. Hamid received a summons letter from the police headquarters stating that Mr. Muchdi's lawyer has filed a complaint that accused Mr. Hamid of committing criminal defamation during the process of Muchdi's trial. Mr. Hamid is charged under article 310 and 314 of the Indonesian penal code. This incident once again emphasises the unresolved status of the case and reveals the persecution facing the few still trying to get justice five years on. The AHRC is alarmed by the increasing frequency with which the laws of the country are being manipulated to obstruct the work of human rights defenders.

Case: Two activists are accused of criminal defamation by the Attorney General after questioning gaps in his annual budget

November 4, 2009 AHRC-UAC-148-2009

<http://www.ahrchk.net/ua/mainfile.php/2009/3305/>

In early November we received information that two anti-corruption activists had been accused of defamation by the Attorney General's Office, after their group publicly pointed out a multi-trillion rupiah gap in the AGO's annual budget and called for



an investigation. The case raises questions about the use of the defamation law to stop public criticism of institutions and calling for reforms. Since the suspect data was taken from the State Audit Board report, the responsibility for bringing the information to light belonged to that institution. However it failed to do its job. Governmental support and protection must be given to those willing to expose corruption.



(photos: Emerson Yuntho and Illian Deta Arta Sari were summoned to the police on charges of criminal defamation after questioning the annual budget of the Attorney General's Office.)

5.c Arrests and Violence against Protesters

2009 saw continuing police violence committed against protesters and demonstrators in Indonesia. People that seek to protest about issues such as land rights, corruption or human rights issues are required to inform the police of their intention to hold a peaceful demonstration. The police are then obliged to attend the protest to maintain public order and to ensure the people's right to freedom of expression through peaceful protest under national Law No. 9 of 1998.

However, the Indonesian police often use excessive force and police brutality against peaceful protesters is a frequent occurrence; with kicking, punching and beating with batons, by armed police being commonplace in such instances. This is often followed by arbitrary arrests and detention, with cases of protesters being further beaten in the police vehicle while being taken to the police station. The abuse often continues once

the protesters are detained. Such egregious treatment, in the face of peaceful protests, further violates the individual's right to freedom of expression under national and international law.

Such police violence are contrary to the Law of national police No. 2 of 2002 governing the conduct of police, as well as the new Regulation of the Chief of Indonesian National Police Number 8 of 2009 which details the Implementation of Human Rights Principles and Standards in the Discharge of Duties of The Indonesian National Police.

Article 10 of the Regulation states that: *Every Indonesian National Police personnel must [...] refrain from instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment.*

Case: Tortured student activists who protested against a hotel's fictitious facilities convicted for nine months

October 13, 2009 AHRC-UAC-135-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3287/>
The AHRC was informed that three protestors, whom the police had brutally assaulted, arbitrarily arrested and tortured while in custody in May 2009, had been convicted for nine months on false charges of attacks and violence. The protestors were, together with several villagers, holding a peaceful demonstration to protest against the fictitious facilities a local hotel had advertised it was offering.

Case: Police violence and arrest of protesters and denial of their legal representatives

February 16, 2009 AHRC-UAC-013-2009 <http://www.ahrchk.net/ua/mainfile.php/2009/3110/>
The Mobile Brigadier Unit (Brimob) of Central Java Regional Police attacked Sukolilo villagers in Kedomulyo, Pati, Central Java with disproportional and indiscriminate use of force in order to disperse a protest demonstration on January 22, 2009. The attacks injured several villagers and damaged their houses. The attacks were followed by arrests and the victims were denied legal representation.

6. Impunity and the Human Rights Court System

6.a The willful dereliction of responsibility by the Attorney General

As with previous years the most serious obstacle to bringing gross violations of human rights to the human rights court is the unwillingness of the Attorney General (AG) to conduct investigations on the recommendation of the National Commission for Human Rights (Komnas HAM). Although several efforts have been made to initiate an investigation this problem still continues and all of the cases concluded by Komnas HAM were rejected by the AG.²³

Between 2003 and 2007 several cases were concluded by Komnas HAM and have been sent to the Attorney General.²⁴ However, these cases were not followed up by the AG. Nevertheless, there is a precedent for such investigations which can be seen in the cases concerning violations in East Timor and Tanjung Priok where ad hoc Human Rights Courts were established after the AG had conducted investigations. An evaluation of these cases acts as evidence that the AG is inconsistent in interpreting

Law No 26 of 2000 regarding the responsibility for initiating the process to establish an ad hoc Human Rights Court.

After an investigation is carried out by the AG he is charged with delivering the case into the political process by presenting his investigation to the House of Representatives (known as the DPR) which is then responsible for resolving the case by determining whether a human rights court should be established, and then making an appropriate recommendation to the President to establish such a court.

However, in relation to a case concerning disappeared students during 1997/8, rather than making a recommendation to the President the DPR established a Special Committee to determine its response. The Special Committee of 2008 has since held meetings with victims and their family members, human rights NGOs and the Attorney General in order to determine what recommendations are to be made to the President. However, neither a member of the government nor the former Commander of the Special Armed Forces, Mr. Prabowo Subianto, accepted the invitation to take part in the hearings.

On 15 September 2009, the Special Committee issued recommendations to the plenary session of the House of Representatives. The Committee recommended that; the President establish an ad hoc Human Rights Court in relation to the disappeared students; the President and all government institutions and other relevant parties take appropriate steps to immediately locate the whereabouts of the 13 people cited as still missing by Komnas HAM; the President facilitate the rehabilitation and satisfactory compensation to victims and/or the families of the disappeared; and that the Government immediately ratify the International Convention for the Protection of All Person from Enforced Disappearances.

On September 28 2009, the plenary session of the House of Representatives agreed with the Special Committee's recommendation and decided to recommend that the President establish an ad hoc Human Rights Court concerning the case of the student disappearances. To help ensure the recommendation will be implemented by the President, the AHRC sent an open letter to the United Nation Working Group on Enforced Disappeared.²⁵

See Annex 1 for a complete list of the gross violations of human rights and their current status in the justice process.

6.b Political Blockade and Shadows of the New Order Regime

Various efforts to resolve gross violations of human rights in Indonesia still face serious obstacles. More than 11 years after the reformation in 1998 none of the perpetrators have been prosecuted and there is also no fulfillment of victim's rights to compensation, restitution and rehabilitation which is the responsibility of the state.

The Indonesian government wants to be seen to be protecting and respecting human rights as is evidenced by its ratification of various international human right

instruments. However, these cases demonstrate otherwise and suggest a stark failure on the part of the government to live up to its international commitments.

Remnants of the new order regime are still dominant in national politics. Players from the previous Suharto regime in particular military office holders continue to play a role in the House of Representatives through political parties that still issue political recommendations to reject past human right abuses being brought before an ad hoc human rights court.²⁶

Furthermore, the rejection by the Attorney General to follow up recommendations from Komnas HAM has shown that there is no reformation in this institution and as a result perpetrators of the gross violations of human rights are protected by impunity. Some of them ran as candidates for the President's and Vice President's office in the general election of 2009 such as retired General Prabowo Subianto and Wiranto.

6.c Transitional Justice and the Truth and Reconciliation Draft Bill

In 2009 the Minister of Law and Human Rights issued a new draft bill on the truth and reconciliation commission to replace Law No. 27 of 2004 which was repealed by the Constitutional Court in a judicial review process initiated by civil society groups in 2006.

However, the repealing of Law No 27 of 2004 has delayed the truth and reconciliation process that will be implemented in Aceh and Papua. Law No. 21 of 2001 regarding the special autonomy status of Papua establishes provisions for reconciliation and truth-seeking. Furthermore, in Aceh, Law No 11 of 2006 also allows for reconciliation and truth-seeking after a peace process. Both these laws were linked to Law No. 27 of 2004. However, because the Constitutional Court repealed all of the content of Law No. 27 this will have a negative impact on the process of reconciliation in those areas as people will have to wait for the new national law to be issued by the government.

As is usual in the process of debating a new bill public hearings and discussions were held. However, victims and their families were only involved at the end of the drafting process and as a result there was not enough time for victims to analyse and provide input for this bill.

The new bill has been published by the Law and Human Rights Department in consultation with several civilians such as academics, a human rights activists and a commissioner from the National Commission for Human Rights and law experts. However on the final draft there are still many substantive problems that may potentially reduce the victim's rights under the previous act.

Problems with the draft bill of the truth and reconciliation commission

1) The purpose of the commission is to disclose the truth for reconciliation purposes only. There is no provision for prosecution (article 3 and article 4). The TRC threatens the justice process of the Human Rights Court Law by appearing as a replacement.

Truth and reconciliation measures should follow after an effective remedy for the victims has been ensured.

- 2) The Commission is not mandated to deal with cases that occurred before November 25, 2000 (Article 1 paragraph 4).
- 3) There is no article regarding victim's rights for the cases that occurred after November 25, 2000.
- 4) The content of this bill only mentions crimes against humanity and genocide. There is no article on violations of economic, social and cultural rights.
- 5) There is no article regarding the definition of perpetrators.²⁷
- 6) There is no guarantee that the recommendations of the commission will be used for the disclosure of information or to achieve justice as it is not certain that the commission report will be made public and the possibility of perpetrators being given immunity, in exchange for testimony before the commission, has not been ruled out (Article 7 (d)).
- 7) There is no article on restitution for the fulfillment of victims rights. Article 7 (d) only prescribes compensation and rehabilitation as forms of relief despite restitution being a fundamental right for victims.

7. Human Rights Protection - Challenges for Reforms

7.a The Corruption Court System

2009 has been a hard year for the anti-corruption movement in Indonesia generally, and more specifically for the Corruption Eradication Commission (KPK). The police and the attorney general's office responded to KPK investigations in their institutions with criminal charges against KPK Commissioners.

The first issue was the unreasonable delay on drafting the Corruption Court Law. The existence of the Corruption Court was regulated by article 53 of KPK Law but later deemed unconstitutional by the Constitutional Court on 19 December 2006. It was said that article 53 of the old law caused legal uncertainty as corruption cases could be brought before two different institutions - the Corruption Court and the District Court. The Constitutional Court then mandated the President and the House of Representatives (DPR) to create a specific law on the Corruption Court which exclusively gives authority for such a court to adjudicate corruption cases. Unfortunately, the ruling was intentionally ignored and discussions began only 30 days before the expiration of the imposed deadline. As a result, the law that was finally enacted lacks crucial elements to ensure the effective functioning of the Corruption Court.

After the KPK had issued a travel ban for two corruption suspects in the police, Djoko Tjandra and Anggoro Widjojo, the national police responded with criminal charges

against KPK members. Chandra M. Hamzah and Bibit Samad Riyanto, two of the KPK commissioners were detained under charges of abuse of authority by the police. Because of the weak evidence, many understand the detention as an intimidation tactic by the police. In the trial against the Commissioners, telephone recordings exposed the staged attempt by the police to stop investigative activities by the KPK. This evidence allegedly also involved officers in the Attorney General's Office (AGO), National Police of Indonesia (Polri), and the Witness and Victim Protection Institution (LPSK).

The campaign against the KPK was met with a wide public outcry in support of the commission and its fight against corruption. Following the urge by the public, the President established a fact-finding team, which in its final recommendation, concluded that there was not enough evidence to continue the legal process against Chandra and Bibit, and that the national police and the AGO should discontinue any legal actions against them.

Before Chandra Hamzah and Bibit Samad Riyanto were named suspects, Chairman of the KPK, Antasari Azhar, was earlier named also as a suspect in a premeditated murder case. This has created three vacant commissioner positions on KPK and left two active commissioners in charge. As a result the President decided to issue the government regulation (in-lieu-of-law) No. 4, 2009 enabling him to select interim commissioners of the KPK.

The issuance of this regulation has sparked wide criticism from lawyers and corruption watchdogs as it is deemed an intervention from the President to the KPK as an independent body, sidelining the role of the parliament. Despite all the controversy and discourse, on October 6 the President inaugurated three persons recommended by the fact-finding team earlier.

Criminal charges were also filed against two anti-corruption activists from the civil society organisation Indonesia Corruption Watch (ICW), Emerson Yuntho and Illian Deta Sari. The case against them is also seen as part of the systematic effort to weaken the anti-corruption movement in Indonesia (see AHRC-UAC-148-2009). Emerson and Illian were charged with defamation for questioning the attorney general's annual budget.

7.b The Witness Protection Agency

Under the mandate of Law No. 13 of 2006 the Indonesian government established the Commission for Witness and Victim Protection (LPSK). Commission III of the House of Representatives then selected seven commissioners who were eventually inaugurated by the President on August 8, 2008.²⁸

The commission is charged with providing: protection to witnesses and victims; providing assistance to victims with medical and psychological treatment; facilitating victims and witnesses by way of compensation or restitution through the courts, and coordinating with other law enforcement officials and institutions²⁹.

In 2009, after three years, the Commission for Witness and Victim Protection is struggling with operational costs due the government's woefully late allocation of it's budget. As a result the LPSK is still pre-occupied with providing provisions for the secretariat and staff recruitment.³⁰ Currently the LPSK is completing several consultations with interested parties to determine it's operational procedure with regard to protection and assistance programs.

Significantly, the ability to provide assistance to victims or witnesses of a specific human rights violation is dependent on a guilty verdict being given by the human rights court. This is an incredibly arduous requirement³¹ that does not provide immediate assistance to those most in need. Furthermore, public awareness of the existence of the LPSK is low due it's lack of outreach³².

7.c Military Court System

The Military Tribunal in Indonesia

The military tribunal was established under Law No. 31 of 1997 and so far has proved unable to bring justice to victims of military violence. There are several problems that plague this court and allow it to perpetuate impunity.

The military court has the authority to prosecute anyone deemed to have committed a crime within a military area or an area hosting military operations, including civilians.³³ This is deeply concerning and is against established norms of criminal justice relating to fair trial.

Moreover, the existence of a commander, who has authority to punish (*Atasan yang berhak menghukum / Ankum*), as well as the officer, who delivers the case (*perwira penyerah perkara / pepera*), opens the gap for a high degree of subjectivity and discretion, as both of them have the authority to determine whether to proceed the case to court. They can also decide whether to stop an inquiry or investigation, instead favoring non-legal mechanisms.³⁴

The military tribunal, under the previous law, could also prosecute officers involved in cases of gross violations of human rights, such as cases of Trisakti and Semanggi II in 1998 - 1999 and the kidnapping of activists from 1997 to 1998 (see section 5). The tribunal acts to do this as part of a strategic measure to prosecute it's military officers before another court can indict them. This prevents the accused being tried again at a later time by any other court or being investigated by the Attorney General (which would violate the fundamental law of *ne bis in idem* preventing a person being tried twice for the same crime) In addition, the punishments given to defendants, by the tribunal, are often not proportionate to the crime (see Theys Eluay case above).

The military tribunal lacks transparency and independence and it is difficult for civil society to access information about the military tribunal.

New Bill of the Military Tribunal

At present there is a draft bill on reform of the military tribunal being debated by parliament, after it agreed to amend Law No. 31/1997, which is no longer considered able to fulfill the demands of security sector reform. It was recognised that reform of the military justice system must be done through the civilian process, giving supremacy to those given power through democratic elections.

This challenge was answered by the House of Representatives through the establishment of a special committee on June 28, 2005. The main debates centre around jurisdiction of the military tribunal toward members of the military who commit general crimes. The government has rejected suggestions of some factions in the House that recommended involving the police as investigators of general crimes committed by the TNI. However, the government insists that the military police (PM) should conduct such investigations. As the previous administration failed to successfully carry through the reform bill, the current administration has the duty to conclude this, taking seriously its obligations under international law and the Indonesian constitution.

8. Recommendations

1. Torture has to be criminalised according to the definition in the Convention against Torture by amending the Indonesian Penal Code.
2. President Soesilo Bambang Yudhoyono should honor his promise to resolve the murder of human rights defender Munir within the first 100 days of his second presidential period. Munir's case need to be reviewed under consideration of all available evidence and with the full commitment of the Attorney General's Office to its role in the criminal investigation and prosecution.
3. Any obstructions of the work of the Anti-corruption Commission especially from the Police has to stop. The KPK needs the full support and compliance from all government institutions and should be strengthened in its work to fight corruption within the institutions of justice.
4. The Sharia Law in Aceh has to be repealed since its provisions include the application of the death penalty and torture as a form of punishment and violate fundamental freedoms.
5. The military presence in Papua needs to be reduced and not extended as currently planned to avoid an escalation of the conflict and to strengthen civil rule. The autonomy law needs to be given full implementation. A special investigation team of the National Anti-corruption Commission should be mandated to address local corruption in the civil administration.
6. All economic activities by the Indonesian military forces (TNI) and the police need to be inhibited strictly and special investigations for corruption in these bodies under control of the Indonesian National Commission against Corruption (KPK) need to be ensured.

7. The trans-migration has to stop until sustainable ways are found to protect the rights of indigenous people in trans-migration target areas.
8. All prisoners in Papua who have been convicted for the expression of their political opinion in a peaceful manner need to be released.
9. The Attorney General's Office needs to be reformed without delay to ensure thorough investigations and independent prosecutions to end the ongoing impunity.
10. The House of Representative (DPR) should amend the military law (National Law 31/1997) regarding military courts in particular to ensure that members of the Indonesian military who committed crimes against civilians will be brought to a civil court jurisdiction
11. To end impunity and acknowledge the suffering of numerous victims under the Suharto Regime and thereafter, all government institutions and in particular President Yudhoyono should support the struggle of victims for justice and redress. In this regard the Human Rights Court law has to be fully applied.
12. The government should start the truth seeking and reconciliation process in particular in Aceh referring to law no 11 of 2006 regarding the Aceh government and Papua referring to law no 21 of 2001 regarding special autonomy.
13. The government should give full support including a large operational budget to support the work of the Commission for Witness and Victim Protection.
14. The government should ratify the International covenant against involuntary disappeared to strengthen national law of human right
15. Military Courts: Members of the Indonesian military who conduct general crimes should be under the jurisdiction of the civil courts based on an investigation conducted by the police using the Penal Code. Civilians should not be prosecuted by the military tribunal. The Military tribunal should only prosecute members of TNI who commit military crimes such as desertion, insubordination or leaking of the military secrets. The military tribunal should not be able to investigate and prosecute cases of human rights violations and gross human rights violations- this is the mandate of Komnas HAM and the jurisdiction of the human rights court (for offences after 2000) and an ad hoc human rights court (for offences prior to 2000).
16. The government should establish a national commission for legal institutional reform to ensure that human rights principles such as the right to remedy will be made effective.
17. The police needs further training and has to stop the extensive use of firearms during civilian protests.

9. Annex 1 - Cases of gross violations of human rights and their development in the judicial process

65 Massacre (1965)

After Soeharto's coup millions of communist suspects and party members were killed or detained for decades. Many continue to be stigmatized and suffer from discrimination.

1. Komnas HAM: Inquiry started in 2008 and is still waiting for budget allocation from the Ministry of Finance.
2. AGO investigations have not started, Human Rights Court was not set-up due to lack of investigation by the AGO
3. Other developments: In 2006 The Supreme Court has issued a recommendation to the President to issue a presidential decree for rehabilitating political prisoners of 1965 massacre but until now the president has still not acted.

Mysterious Shooting cases (1981 -1984)

Between 1981-1984 the New Order regime of President Soeharto conducted military operations to increase security and public order. Mysterious shootings occurred in some provinces of Indonesia and, based on a monitoring report by Komnas HAM, around 5000 people were killed during this military operation.

1. Komnas HAM: Inquiry started in 2008 and is not yet finished.
2. AGO investigations have not started, Human Rights Court was not set-up due to lack of investigation by the AGO

Tanjung Priok (1984, September 12)

The Armed forces raided and shot Muslims who moved to the District Military command 0502 of North Jakarta. In the fallout several human rights violations occurred including Summary Killings (14), Extrajudicial killing (1), Enforced Disappearances (15), torture (15), unfair trial (58) and arbitrary arrest and detention (96).³⁵

1. Komnas HAM: Inquiry finished in 2000.
2. The prosecution by the AGO was finished after a decision by parliament to establish an ad hoc court. The Human Rights Court trials finished at the last instance (Supreme Court level) with all perpetrators acquitted. This case requires a review.

3. Other developments: In 2007 a lawsuit was submitted to the Central Jakarta District Court to demand victim's right but was rejected by the judges.

Talangsari case (February 7, 1989)

Soldiers from Garuda Hitam Military Resort Command in Lampung Province of Indonesia attacked village Talangsari in Lampung Province. 246 people were killed.

1. Komnas HAM: Inquiry finished in October 2008 and submitted to the AGO
2. The AGO rejected and did not conduct an investigation, a Human Rights Court was not set-up due to lack of investigation by the AGO

Abduction and Enforced Disappeared students activist between 1997 / 1998

Between 1997 and 1998, 24 students and other activists were been abducted by the Army Special Forces Command because of their activism in the struggle for change and democracy in the New Order government.

1. Komnas HAM: Inquiry finished in 2006.
2. The AGO rejected and did not conduct an investigation, a Human Rights Court was not set-up due to lack of investigation by the AGO

Trisakti and Semanggi I+II incidents (1998)

On 12 May 1998, four students were shot dead by armed forces at the University of Trisakti in Jakarta during a demonstration to urge political reform. On November 8 – 14, 1998 the armed forces committed violence against students and civilians during a demonstration to reject the Special Session of the House of Representatives (DPR). The armed forces opened fire and as a result more than 14 students died and 109 people were injured. On September 1999, the armed forces shot students who voiced their rejection of the National Security and Safety Bill.

1. Komnas HAM: Inquiry finished in 2003 and submitted to the AGO.
2. AGO: still rejects to conduct investigation. The plenary session of the House of Representatives rejected a recommendation to establish an ad hoc human right court.

May Riots (13 - 15 May 1998)

These riots occurred in several places in Indonesia. Armed forces were not deployed to keep the peace and maintain order. Widespread looting took place and the mall and shopping center where set on fire. Several of local NGOs note that large-scale rape occurred as well as attacks on ethnic Tionghoa (Indonesian-Chinese) in several cities.

1. Komnas HAM: Inquiry finished in 2003.

2. AGO action: The Attorney General still rejects to conduct an investigation. The plenary session of the House of Representative refused to establish an ad hoc human right court.

East Timor (1999)

Before and after the referendum, various human rights violations in East Timor were committed by Indonesian armed forces and militias supported by the military. It is reported that abuses such as enforced disappearances, torture, summary killing, detention and arbitrary arrests, burning and rapes occurred.

1. Komnas HAM: Inquiry finished in 2000.
2. AGO action: Prosecution finished after a political decision by parliament to establish an ad-hoc court. Human Right Court trials finished at the Supreme Court level. All perpetrators were acquitted.
3. Other developments: Held Truth and Friendship Commission (CTF) between Indonesia and East Timor and as a result impunity for all of pe6trator (2006).

Abepura case (December 7, 2000)

The police conducted an operation against local residents and university students in the Abepura regency of the Papua province to find the perpetrators of an attack the Abepura police station earlier. This reportedly lead to torture, police violence, extra-judicial killing, forced eviction, arbitrary arrests and detentions and unfair trials.

1. Komnas HAM: Inquiry Finished 2003.
2. AGO: Investigation finished and conducted prosecution in 2004. Since the case occured after 2000, no parliamentary decision was required to initiate Human Right Court trials. The permanent Human Rights Courts finished at the Supreme Court level. All perpetrators were acquitted and no reparation for victims and families of victims was provided.

Wasior (June 13, 2001)

This case occurred in Wondiboi village of Wasior district, Papua. Five members of Mobil Brigade of the Police (Brimob) and one civilian were killed in base camp of the commercial company *CV Vatika Papuana Perkasa*. Subsequently a police operation was conducted by Manokwari district police during which human rights violations were committed against local residents.

1. Komnas HAM: Inquiry finished in 2005.
2. AGO action: The Attorney General rejects to conduct investigation. As a result no trials of the permanent Human Rights Court were initiated.

Wamena (April 4, 2003)

This incident was triggered by the stealing of armory of the Military District Command 1702 (Kodim) of Jaya Wijaya Regency in Papua. The thieves got away with 29 guns and 3500 bullets. After this incident, the Kodim conducted a military operation during which torture, shooting, persecution, summary killing and the burning of the school and clinic took place.

1. Komnas HAM: Inquiry finished in 2005.
2. AGO action: The Attorney General refused to conduct investigation. As a result no trials of the permanent Human Rights Court were initiated.

10. Annex 2 - Abbreviations

AGO - Attorney General Office

Brimob - Mobile Brigades of the Police

CTF - Truth and Friendship Commission

DPR - House of Representatives

ICW - Indonesian Corruption Watch

IDR - Indonesian Rupiah

KASUM - Solidarity Action Committee for Munir

Kodim - District Military Command

Komnas HAM - National Commission for Human Rights

Kopassus - Special Force Command

KPK - Commission against Corruption / Corruption Eradication Commission

LPSK - Commission for witness and victim protection

OPM - Free Papua Movement

PDP - Papuan Tribal Presidium

POLRI - National Police of Indonesia

TNI - National Army of Indonesia

TRC - Truth and Reconciliation Commission

notes

¹ An english translation of the document can be downloaded at http://indonesia.ahrchk.net/docs/PoliceRegulationNo.8-2009_PERKAP_HAM_english.pdf

² <http://www.papuaweb.org/goi/otsus/files/otsus-en.html>

³ The term West Papua used in this report applies to the entire western half of the New Guinea island, which is part of Indonesia and consists of two administrative provinces: *Papua* and *West Papua*.

⁴ Drooglever, Pieter J.: *Een Daad van Vrije Keuze: De Papoea's van Westelijke Nieuw-Guinea en de grenzen van het zelfbeschikkingsrecht*. Verlag Boom, Amsterdam, 2005. ISBN 90-8506-178-4

⁵ *The United Nations and the Indonesian Takeover of West Papua, 1962-1969: Anatomy of a Betrayal* by John Saltford (2002) ISBN 0-415-40625-0

⁶ such as Jayapura, Sorong, Timika, Kerom, Biak, Serui, Wamena, Merauke and Puncak Jaya district

⁷ art. 5, 23, 57 of the Autonomy Law put obligations on the local government and local parliament to protect and respect traditional culture.

⁸ Indonesian Penal Code, p.32, <http://indonesia.ahrchk.net/docs/IndonesianPenalCode.pdf>

⁹ See HA-28-2008 and AHRC-HAC-006-2009

¹⁰ To see the contents of the Act, visit www.foodjustice.org

¹¹ This denial of the government was also seen in 2005

¹² According to the report by FAO 2009, the proportion of undernourished in total population is 16%. However, given that the exact data does not provide by the government, and in particular, food security and malnutrition in Papua is not clearly disclosed, the proportion is estimated more than 16%.

¹³ See some articles of the Aceh Syaria Law such as article 13 and 17 (whip punishment), article 24 (regarding whip punishment and stoning)

¹⁴ Content of law No 44 of 2008 regarding Anti Pornographic and porno action has serious problem such as terminology of pornography (article 1 paragraph 1), terminology of produce (article 4 paragraph 1) and the explanation, requirement of the production (article 13, article 14, article 17, article 18, article 19 (a, b, c) and article 20. And also terminology of naked (article 4 .p 1 of d and the explanation) and paragraph 2 (a) neglect pluralism of Indonesia, prohibition and limitation (article 4 to article 14) and also protection of pornography (article 17 until article 21). Those articles if

implement will increase human right violation that have been guaranteed by several of the national law regarding human right.

¹⁵ The Majority of Indonesians are Muslims but the Indonesian Constitution does not refer to Islam as a state religion. Indonesia 's five founding principles are supposed to act as the state ideology called 'Pancasila' to accommodate differences. The five principles are first, belief in the one and only God, *second*, Just and civilized humanity, *third*, the unity of Indonesia, *Fourth*, Democracy guided by the inner wisdom in the unanimity arising out of deliberation amongst representatives, and *five*, Social justice for the whole of the people of Indonesia.

¹⁶ The Ahmadiyah is an Islamic group that has practiced its beliefs for about 100 years under various regimes without any incidents in the past.

¹⁷ Two of places that occurred violence against members of Ahmadiyah such Manislor in Kuningan of West Java Province and Lombok of the NTB Province. Hundreds members of Ahmadiyah still become refugees in Lombok without enough sufficient protection

¹⁸ Dozens of members of the AKKBB got seriously injured after being attacked by bamboo, stones and sticks.

¹⁹ The Law No 1 /PNPS/ 1965 was issued when Indonesia in the emergency situation

²⁰ See Brief Chronology of Events. On 14 April, 2007 former Director of Garuda Airways, Indra Setiawan and former Secretary to the Chief Pilot Airbus, Rohainil Aini, were arrested for the murder of Munir. On January 25, 2008, The Supreme Court sentenced Pollycarpus to 20 years imprisonment for murder.

²¹ Supporters of both parties attended every trial of this process and marked their presence with campaign T-shirts. While victims groups and NGOs supporting Munir's case wore the slogan "Killed because of Truth", the bogus supporters of Maj. Gen. Muchdi PR used T-Shirts with the slogan "*Reject foreign intervention*" and "*free Muchdi PR*"

²² In his inauguration speech, President Yudhoyono said "we also want to build a civilized democratic system, a democracy that provides room for freedom and political rights for the people but without dismissing stability and political order. We also want to create justice which is marked by a respect for non-discrimination and equal opportunities while continuing to maintain social solidarity and protection for the weak"

²³ According to the Commission for Disappeared and Victims of Violence several such efforts to initiate investigations by the AG were made in 2009 where a public hearing was held by Commission III of House Representatives and the Attorney General and also a limited meeting between special committee of the house representative regarding enforced disappeared of students activist 1997 – 1998.

²⁴ Cases which have been finished by Komnas HAM are Talangsari (1989); Trisakti and Semanggi (1998 – 1999); Wasior Wamena (2001 – 2003); Abduction and Enforced Disappeared students activist (1997 – 1998); May riot (1998)

²⁵ AHRC-OLT-030-2009, INDONESIA: UN Working Group urged to intervene into disappearances from 1997-98, as impunity continues. <http://www.ahrchk.net/statements/mainfile.php/2009statements/2274/>

²⁶ In 2001, the plenary session of the House of Representatives (DPR) issued political recommendations that rejected the Trisakti and Semanggi's cases being brought to an ad hoc human right court.

²⁷ It should also be noted that the old TRC law No. 27 of 2004 also does not contain a definition of perpetrators.

²⁸ The commissioners of the LPSK are Mr. Abdul Haris Semendawai (chairperson), Mr. H Teguh Soedarsono (members of commissioner), Mrs. Myra Diarsi (members of commissioner), Mrs. Lies Sulistiani (members of commissioner), Mrs. Lili Pintauli (members of commissioner), Mr. I Ketut Sudiharsa (members of commissioner), and Mr. RM Sindhu Krishno (members of commissioner).

²⁹ Under Law No. 13 of 2006

³⁰ Office of the LPSK is in the Jalan Proklamasi No. 56 Gedung Perintis Kemerdekaan No. 56 Jakarta of Indonesia

³¹ It specifies that the person must exhaust all national legal processes before proceeding to the human rights court and then it depends on a guilty verdict being given

³² See the government regulation No 44 of 2008 regarding compensation, restitution and victim assistance .

³³ This is as mentioned in the provisions of article 9, paragraph 1 letter d, which mentions that a person outside of the military who committed acts within the military crime by permit of the minister of justice can be brought to the military tribunal.

³⁴ As mentioned on the article 122 and article 78 of Law No 31/ 1997

³⁵ Monitoring report of the KontraS