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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الممثلة الخاصة للأمين العام المعنية بحالة المدافعين عن
حقوق الإنسان، السيدة هينا جيلاني

إضافة

البعثة التي قامت بها إلى إندونيسيا*

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيعمم باللغة التي قُدم بها فقط.

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موجز

قامت الممثلة الخاصة للأمين العام المعنية بحالة المدافعين عن حقوق الإنسان بزيارة قطرية إلى إندونيسيا في الفترة من ٥ إلى ١٢ حزيران/يونيه ٢٠٠٧ اجتمعت أثناءها بمسؤولين حكوميين كبار وبطائفة واسعة من المدافعين عن حقوق الإنسان. وكان الغرض من هذه الزيارة هو تقييم حالة المدافعين عن حقوق الإنسان في إندونيسيا في ضوء المبادئ المنصوص عليها في الإعلان المتعلق بحق ومسؤولية الأفراد والجماعات وهيئات المجتمع في تعزيز وحماية حقوق الإنسان والحريات الأساسية المعترف بها عالمياً^(١) (الإعلان المتعلق بالمدافعين عن حقوق الإنسان).

وبعد الفصل الأول الافتتاحي، تشرح الممثلة الخاصة في الفصل الثاني الخطوات الإيجابية التي اتخذتها الحكومة منذ عام ١٩٩٨ بغية تعزيز الإطار القانوني والمؤسسي للنهوض بحقوق الإنسان وحمايتها. وتنوّه باعتماد مجموعة من القوانين وإقامة مؤسسات حكومية قد تساهم في إذكاء الوعي بدور المدافعين عن حقوق الإنسان وفي تسهيل عملهم.

وفي الفصل الثالث، تبحث الممثلة الخاصة بعض الثغرات وأوجه القصور التي تعترض الإطار المشار إليه أعلاه، على المستويين القانوني والمؤسسي معاً، والتي أدت إلى الإقلال من المنافع التي يمكن أن يجنيها المدافعون عن حقوق الإنسان من التطورات الإيجابية التي حصلت. ويكمن الخلل الأكبر في عدم وجود تدابير ملموسة تعالج بصفة مباشرة مسألة حماية المدافعين عن حقوق الإنسان وذلك بالاعتراف بشرعية العمل الذي يقومون به أو بضمان مساءلة المسؤولين عن الانتهاكات أو الأعمال التعسفية التي يتعرضون لها.

وفي الفصل الرابع، تعرض الممثلة الخاصة الوضع المتغير الذي يشهده المدافعون عن حقوق الإنسان في إندونيسيا. فتقدم أولاً تقييماً عاماً للوضع. وتخلص إلى أنه رغم التقدم الواضح الذي أحرزه البلد في مجال التقدم الديمقراطي، لا يزال المدافعون عن حقوق الإنسان يتعرضون لعقبات كأداء تعترض اضطلاعهم بأنشطتهم في سبيل حماية حقوق الإنسان. وتعزى هذه العقبات إلى استمرار أنشطة الشرطة والجيش وغيرهما من أجهزة الأمن والاستخبارات، فضلاً عن الجماعات الدينية المتطرفة، التي ترمي إلى مضايقة المدافعين عن حقوق الإنسان وتخويفهم أو تضيق فرص اتصالهم بالضحايا ووصولهم إلى المواقع التي تحدث فيها انتهاكات حقوق الإنسان. ثم سلطت الممثلة الخاصة الضوء على معاناة الجماعات المستضعفة من المدافعين عن حقوق الإنسان، أي الذين يدافعون عن حقوق المرأة والسحاقيات والمثليين جنسياً وثنائيي الجنس والمحولين جنسياً وحاملي صفات الجنسين والمصابين بفيروس نقص المناعة البشري/الإيدز والشعوب الأصلية، فضلاً عن عمال الكنائس. وفي الأخير، تقيّم حالة المدافعين عن حقوق الإنسان في مقاطعتي غرب بابوا وآتشي. وتخلص إلى أن جواً من الخوف يسود قطعاً في غرب بابوا، لا سيما بالنسبة للمدافعين عن حقوق الإنسان الذين يُعنون بحقوق المجتمعات المحلية في بابوا في المشاركة في الحكم، والسيطرة على الموارد الطبيعية، وتحديد المقاطعة من السلاح. ولا يبدو أن حالة هؤلاء المدافعين عن حقوق الإنسان قد خفت وطأها، إذ لا تزال أنشطتهم المشروعة في مجال حماية حقوق الإنسان مستهدفة بالرغم من اعتماد قانون الحكم الذاتي الخاص في عام ٢٠٠١. ومجموعة الشواغل التي أعربت عنها الممثلة الخاصة في هذا التقرير فيما يتعلق بحالة المدافعين عن حقوق الإنسان في غرب بابوا لا تزال قائمة رغم الضمانات التي قدمتها لها سلطات

الشرطة والجيش في بابوا بعدم وجود أي سياسة مؤسسية لاستهداف المدافعين عن حقوق الإنسان. أما فيما يتعلق بمقاطعة آتشي، فترحب الممثلة الخاصة بتحسين الوضع هناك، رغم الشواغل التي لا تزال قائمة بشأن أنشطة الرقابة التي تقوم بها السلطات المعنية بإنفاذ القوانين، ووصم المدافعين عن حقوق الإنسان بالعار، والقيود التي تؤثر في عمل المدافعات عن حقوق المرأة، والعدد الكبير من القضايا التي لم تسو بعد.

وأخيراً، تعرض الممثلة الخاصة، في الفصل الخامس، ما توصلت إليه من استنتاجات وتوصيات لتنظر فيها الحكومة.

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE
SECRETARY-GENERAL ON THE SITUATION OF HUMAN
RIGHTS DEFENDERS ON HER VISIT TO INDONESIA
(5-12 JUNE 2007)**

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I. INTRODUCTION

1. Pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64 and Human Right Council decision 1/102, the Special Representative of the Secretary-General on the situation of human rights defenders conducted an official visit to Indonesia from 5 to 12 June 2007 at the invitation of the Government.

2. The purpose of the visit was to assess the situation of human rights defenders in the light of the principles set forth in the Declaration on Human Rights Defenders adopted by the United Nations General Assembly in 1998.² An examination of the legal framework in the country, the institutional policies and the mechanisms for promotion and protection of human rights were of particular importance to this assessment. The Special Representative also sought further information on cases brought to her attention of human rights defenders who were, reportedly, targeted for carrying out activities in the defence of human rights.

3. The Special Representative would like to thank the Government of Indonesia for the good cooperation extended to her in preparation of and during her mission. She wishes in particular to acknowledge the support she received from the staff of the Ministry of Foreign Affairs (DEPLU). During her visit, she was able to meet with the Minister for Foreign Affairs, the Minister for Law and Human Rights, the Director-General for Human Rights, the Director-General for Corrections, the Director-General for Kesbangpol and the Director-General from the Ministry of Home Affairs, the Chief Justice of the Constitutional Court, the Deputy Chief Justice on Judiciary Matters, the Attorney-General on General Crimes, the Chief of Military Armed Forces, the Chief of the National Police, the Chairman of the National Commission on Human Rights, the Chairperson of the National Commission on Women, and members of the People's Legislative Assembly (Parliament). She regrets that she did not have an opportunity to meet with President Susilo Bambang Yudhoyono.

4. In addition to Jakarta, the Special Representative visited the Aceh and West Papua provinces, where she had an opportunity to meet with local authorities, members of provincial legislatures and the judiciary, and law enforcement agencies. She also met with a broad cross-section of civil society and with human rights defenders engaged with a wide range of human rights issues. She thanks all organizations and individuals who worked hard to coordinate her meetings with the defender community. She is also grateful to the Office of the United Nations Resident Coordinator for its valuable assistance with the logistics and the programme of the visit.

² General Assembly resolution 53/144.

II. STRENGTHENING OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

5. The situation the Special Representative has observed indicates that the prospects for the promotion of human rights had been considerably improved in the recent past. Since the downfall of President Suharto in 1998, several positive steps have been taken to strengthen the legal and institutional framework for the promotion and protection of human rights.

A. Legal framework

6. The Special Representative was briefed by the Ministry of Home Affairs on the normative framework conducive to the promotion and protection of human rights. She was informed that in 2002, major changes to the 1945 Indonesian Constitution were carried out. A whole chapter on human rights was introduced, enshrining basic human rights and fundamental freedoms such as the right to life (art. 28A), the right to be free from torture or inhuman, degrading treatment (art. 28G (2)), the right to be free from discriminatory treatment based upon any grounds whatsoever (art. 28I (2)), the right to freedom of expression, assembly and association (art. 28E (3)), the right to freedom of thought, conscience and religion (art. 28E (2)), the right to recognition as a person and right to equal treatment before the law (art. 28D (1)), the right to respect cultural identities and traditional communities (art. 28I (3)), the right to work (art. 28D (2)), and the right to education (art. 28C (1)).

7. Following the end of President Suharto's regime, a series of laws on human rights and fundamental freedoms were adopted: Law 9/1998 on freedom of expression in public places containing regulations for implementing rights (art. 5) and obligations (art. 6) of persons, individually and in association with others as well as obligations on public authorities (art. 7); Law 39/1999 on human rights setting out the fundamental rights and duties of citizens of Indonesia, including a section on women's rights, and stipulating that the Government has a responsibility to protect, promote and implement all human rights and freedoms; Law 26/2000 on human rights courts establishing courts for judging gross human rights violations; Law 32/2004 on local government affairs stipulating that authorities of provincial governments and regencies/municipalities have the obligation to promote and protect human rights in the course of decentralization (arts. 13 and 14); Law 12/2006 on citizenship; Law 13/2006 on witness protection providing protection for witnesses and victims and establishing a witness and victim protection agency; Law 23/2006 on population administration; and Law 21/2007 on the elimination of human trafficking and the Circular Letter of the Ministry of Home Affairs in 2006, which serve as guidance for the implementation of Law 32/2004. The Ministry of Home Affairs further indicated that it issued instruction 4/2005 on the institution of national unity and politics in provinces and regencies defining the promotion of human rights as one of its priorities. The Special Representative was finally informed that Law 8/1985 on non-governmental organizations (NGOs) affairs setting rights (art. 6) of and obligations (art. 7) on such organizations was still in place.

8. In 2004, the National Plan of Action on Human Rights Promotion (hereinafter the Plan) was adopted by Presidential Decree 40/2004. It is implemented by the Ministry for Law and Human Rights, and is designed to improve people's awareness and protection of human rights across the country over the next five years. It includes the ratification of international human rights instruments,³ the dissemination of and education on human rights, the harmonization of human rights regulations, the implementation of human rights norms and standards, and the monitoring, evaluation and reporting concerning the respect of human rights. Special attention is reportedly given to women, children, elderly, disabled persons, culture-based communities, minorities, poor communities, peasants and fisheries. Under the Plan, local governments coordinate local institutions in delivering services related to human rights promotion and protection, and may facilitate the revision of local regulations that may hinder efforts related to the promotion of human rights. Furthermore, 426 local human rights committees comprised of local leaders have reportedly been set up to disseminate information and educate bureaucrats and professional groups on human rights as well as to compile information on the human rights situation in the provinces and to report to the Ministry for Law and Human Rights. Thirty more committees are reportedly to be established.

9. Several ministerial regulations were adopted in order to guide local governments in their tasks: the joint regulation of the Minister of Home Affairs 8/2006 and the Minister of Religious Affairs 9/2006 on guidance in promoting interfaith harmony at local level; the regulation of the Minister of Home Affairs 34/2006 on guidance in promoting intercultural harmony at local level; and the regulation of the Minister of Home Affairs 7A/2007 on procedures for proposition on information and response or recommendation of community to reports of local governments.

B. Institutional framework

1. Komnas HAM

10. The Special Representative met with the Chairman of the National Human Rights Commission (Komisi Nasional Hak Asasi Manusia - hereinafter Komnas HAM), who presented the work of the Commission. Komnas HAM was established under Presidential Decree 50/1993 and renewed as an independent institution upon the adoption of Law 39/1999, which defines its

³ As of July 2007, Indonesia had ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child. Indonesia has signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the first and second Optional Protocols of the Convention on the Rights of the Child, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities. In June 2006, Indonesia was elected to the United Nations Human Rights Council and it pledged to ratify the Rome Statute of the International Criminal Court by 2008.

mandate, objectives, functions, organs and membership. There are currently 20 Commissioners whose terms of office will expire on 30 August 2007. Conditions of eligibility for appointment as members of Komnas HAM are Indonesian citizenship; experience in promoting and protecting individuals or groups whose human rights have been violated; experience in the-judiciary, legislative, or executive; or activities as a religious figure, a member of non-governmental organizations or a higher education establishment.

11. The goal of Komnas HAM is to promote the implementation and protection of human rights mechanisms based on the 1945 Constitution, the United Nations Charter and the Universal Declaration of Human Rights. It holds the functions of carrying out research and study, education, monitoring and mediation of human rights. Komnas HAM has branch offices in Aceh, West Papua, Maluku, West Kalimantan and West Sumatra provinces.

12. Komnas HAM is also mandated to bring cases of human rights abuse to the Government, but has no legal enforcement power of its own. In order to deal with gross violations of human rights, Law 26/2000 on human rights courts was promulgated. Under this law, Komnas HAM is conferred with a mandate as a *pro justitia* inquirer.

2. Komnas Perempuan

13. The Special Representative met with the Chairwoman of the National Commission on Violence Against Women (Komisi Nasional Anti Kekerasan Terhadap Perempuan - hereinafter Komnas Perempuan), and eight commissioners. Komnas Perempuan was established under Presidential Decree 181/1998. It is partly funded by the Government and partly by national and international organizations, and is composed of 13 commissioners who are members of civil society, judiciary and religious groups, and former law enforcement officials.

14. The first task of Komnas Perempuan was to investigate the sexual violence, mainly suffered by ethnic Chinese women, during the 1998 riots. Today, Komnas Perempuan focuses on the protection of women suffering domestic violence, women migrant workers, women victims of sexual violence undertaking court proceedings, women in armed conflict areas, and women heads of families living in poverty in rural areas.

15. It conducts annual reporting and monitoring of gender-based human rights violations, and has appointed three experts (called "Special Rapporteurs") respectively on sexual violence on the events of May 1998, on Aceh regarding displacement caused by conflict and tsunami, and on Poso. Komnas HAM also advocates for the enactment of legislation and Government policies that support the prevention of violence against women. Komnas Perempuan was one of the key stakeholders behind Law 23/2004 regarding the abolition of domestic violence and the Draft Law for the protection of witnesses. In addition, the organization provides support to nine women's crisis centres throughout Indonesia. Results of fact-finding missions and other inquiries by Komnas HAM are in the public domain.

3. Constitutional Court

16. The Special Representative met with the Chief Justice of the Constitutional Court and was apprised on the core functions of the Court, namely to test the constitutionality of

laws; to decide disputes between State organs; to decide disputes regarding general elections; to decide upon the dissolution of political parties; and to take a decision regarding the People's Legislative Assembly's opinion on alleged violations committed by the President and/or the Vice President.

17. The Special Representative was pleased to hear that the Constitutional Court supports fundamental rights, especially the right to freedom of expression. She welcomes the repeal on 6 December 2006 of articles 134, 136 bis and 137 of the Indonesian Criminal Code (Kitab Undang-undang Hukum Pidana, KUHP), which punished "insulting the President or Vice-President" with up to six years' imprisonment. In its landmark judgement, the Court had held that these three articles negated the principle of equality before the law and diminished freedom for expressing thought and opinion, freedom of information, and the principle of legal certainty.⁴

18. At the time of the drafting of the report, the Special Representative was informed that on 17 July 2007, the Constitutional Court had rendered a judgement against the constitutionality of articles 154 and 155 of the Criminal Code (KUHP), which criminalized "public expression of feelings of hostility, hatred or contempt toward the government" and prohibited "the expression of such feelings or views through the public media". The Special Representative was told that those provisions had been used to silence human rights defenders, notably in West Papua. The Special Representative welcomes that positive development and expects that the decision will preclude any adverse action of the kind reported to her to penalize human rights defenders (HRDs) for exposing or criticizing human rights violations by the Government, in conformity with the Declaration on Human Rights Defenders.⁵

4. Human rights courts

19. Law 26/2000 established four permanent human rights courts, in Jakarta, Surabaya, Makasar and Medan. Ad hoc human rights courts were set up to judge gross human rights violations before Law 26/2000 was passed, namely crimes against humanity, war crimes and genocide. Ad hoc human rights courts are composed of members of the judiciary and of

⁴ In its comments on the report, the Government of Indonesia asserted that "the removal of several articles from the [Criminal] Code on the defamation of the State by the Constitutional Court has in fact strengthened the legal basis of the democratization process in Indonesia, particularly in assuring the free movement of human rights defenders at all levels, ranging from Government to non-Government areas, in order to allow for the voicing of their concerns without any legal misapprehension or consequences".

⁵ Article 6 (b) and (c) of the Declaration on Human Rights Defenders states that "[e]veryone has the right, individually and in association with others: (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters".

academia. In order for an ad hoc court to sit, a case must first be investigated by Komnas HAM upon authorization of the People's Legislative Assembly; then the findings of the initial investigation are passed to the Attorney-General, who decides whether the case is deemed relevant to be judged by an ad hoc human rights court.

5. Ministry for Law and Human Rights

20. The Special Representative was apprised by the Minister for Law and Human Rights, the Director-General for Human Rights and the Director-General for Corrections on initiatives aimed at promoting and protecting human rights. She was briefed on the National Plan of Action on Human Rights Promotion, for which leadership has been entrusted to the Minister, and on the empowerment of local human rights committees set up under the Plan. She was further informed of human rights training conducted for the State apparatus, i.e. the police, military and executive, reportedly with the assistance of several NGOs, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), to increase human rights understanding. Finally, she was told that a coordination team for human rights issues in the Aceh region undertaking restorative justice was deployed. She takes note of the conclusion of the Minister that "human rights are part of the Indonesian culture", and hopes that this statement will find resonance in the practices of the Government and in its cooperation with efforts of human rights defenders to eliminate violations of human rights in the country.

6. Law enforcement authorities

21. The Special Representative was informed by heads of police and military in the capital and in the provinces she had visited of initiatives and programmes on human rights to sensitize police and military officials at both academy and field levels. Her attention was, in particular, drawn to the issuance of a book on human rights to each soldier, a curriculum on local cultures, and a workshop on respect of human rights by the police organized reportedly by the IOM.

22. The Special Representative was informed that a National Police Commission holds a mandate to monitor the activities and performance of police officers on the ground. It is composed of nine members: three from the Ministry for Law and Human Rights and six independent experts. These members are selected by an independent body which includes the President of the country. The Commission reports directly to the President.

III. GAPS AND SHORTCOMINGS IN THE LEGAL AND INSTITUTIONAL FRAMEWORK

23. While the legal and institutional framework for the protection of human rights has been progressively strengthened since 1998, it is however marred by several gaps and shortcomings that result in diluting any benefits that human rights defenders could draw from the positive developments. By far the greatest flaw is the absence, at both legal and institutional levels, of concrete measures dealing directly with the protection of human rights defenders. Many of the measures that relate to human rights in general may create awareness on the role of human rights defenders and facilitate their work, but they do not address the crucial issue of their protection. The Special Representative acknowledges the relevance of some of the laws introduced after 1998 and mentioned in this report to this aspect of protection. However, there is neither legislation nor procedures and mechanisms that are dedicated to the protection of human rights

defenders by giving recognition to the legitimacy of their work or by ensuring accountability for violations or arbitrary action against them. During her meeting with the Director-General for Human Rights, the Special Representative raised the issue; she notes that he acknowledged this shortcoming and remarked that this was a flaw that should be addressed.

A. Gaps in the legal framework

1. Law 8/1985 on NGOs

24. NGOs acknowledged that the State institutions linked with human rights initiatives are improving on their engagement with NGOs, and their involvement in the planning and execution of governmental human rights programmes has increased. At the same time, there are serious concerns regarding the freedom of association of NGOs. The attention of the Special Representative was drawn to Law 8/1985 on registration of NGOs, which contains several provisions that run contrary to the objective of creating an enabling environment for the work of NGOs.

25. According to this law, registration of NGOs is compulsory, and criteria for registration contain ideological elements and adherence to a subjective code of morality that appear to be unjustified and intrusive. Further, it was alleged that the Government uses the registration regime to allow the creation of organizations that are more compliant and can be used for countering NGO criticism of any aspects of Government performance on human rights. The law also places undue restrictions on international funding to NGOs. The Special Representative has raised these issues with concerned authorities during her visit.

26. The Special Representative was informed that the Ministry of Home Affairs has asked the People's Legislative Assembly (PLA) to reform Law 8/1985; however, according to PLA Commission No. 3 on Human Rights, the reform of the law is not in its agenda for the moment. Members of the Commission told the Special Representative that it will meet the Government in January 2008 to discuss priority laws, and Law 8/1985 will reportedly be deemed a priority.

2. Witness Protection Act

27. The Special Representative welcomes the adoption of the Witness Protection Act. However, she questions the adequacy of the scope of protection of the Act because of an incomplete definition of "witnesses". Indeed, the Act oddly denies protection to individuals who provide information on non-criminal cases (such as corruption cases) or who are consulted as experts. Both categories can fear reprisals following their interventions.

28. The Special Representative has further concerns regarding the independence of the witness protection agency, which reportedly functions under the supervision of the police. She is mindful of the many cases brought to her attention in which the involvement of the police in human rights violations is strongly indicated. This lack of independence reduces the confidence that such an agency must enjoy for encouraging witnesses to come forward and for giving them effective protection.

3. Truth and Reconciliation Law

29. The Special Representative notes that the Constitutional Court annulled Law 27/2004 which established the Indonesian Commission of Truth and Reconciliation, holding provisions of the Law to be unconstitutional. Some provisions of the Law were severely criticized by human rights activists since they permitted amnesty for perpetrators of gross human rights violations and impeded the ability of victims to obtain compensation. The Special Representative observes that a large section of the defenders' community is engaged with advocacy on accountability for past abuses. It is in this context that she recommends the review of the previous law to bring it in conformity with the judgement of the Constitutional Court and urges PLA Commission No. 3 to undertake this task on a priority basis.

B. Gaps in the institutional framework

1. Judiciary

30. The Special Representative is of the opinion that judicial reform is crucial for the protection of human rights defenders, notably the orientation of judges towards the issue of defenders. She is disturbed at the large number of prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights. Therefore, it is important to sensitize the judicial and prosecutorial officials at local level on the role and activities of human rights defenders so that judges and prosecutors can clearly distinguish between activities of human rights defenders and security-related or public order offences that are generally used to repress human rights activities through judicial procedures. For this purpose, the Special Representative wants to stress the leading role that the Constitutional Court may play. The Court has a central role in accompanying the transition of Indonesia. It has a responsibility towards the 1945 Constitution, but also towards the core international human rights instruments the country has ratified. To this end, she welcomes the statement of the Chief of the Constitutional Court that the Court wants to set an example.

31. Concerns were conveyed to the Special Representative that the office of the Attorney-General impedes and fails to accommodate cases of human rights violations. The Special Representative was told that for the last three years in West Papua, no case of gross human rights violations has been transmitted by the Attorney-General to the Prosecutor. According to a judge of an ad hoc human rights court, not everybody in the judiciary knows exactly what a case of gross human rights violations is. Furthermore, it was reported that cases of disappearances are categorized as past abuses by the office of the Attorney-General. The Special Representative stresses that disappearances are ongoing violations until resolved and should be dealt with accordingly.

32. The establishment of ad hoc human rights courts is a positive development, but the jurisdiction of these courts is limited to gross violations amounting to genocide, war crimes and crimes against humanity. There is no mechanism to deal with other serious violations. The

existing system, therefore, does not effectively eliminate impunity for human rights violations. There are also concerns that lack of credible and effective procedures for witness protection as well as gathering of evidence has marred the functioning of these courts. A lack of political will may also impede the work of the courts. For instance, if the People's Legislative Assembly determines that a case does not deal with a gross human rights violation, then the Court is not competent to judge the case.

2. Komnas HAM

33. The Special Representative is of the opinion that the work of Komnas HAM is crucial. However, serious reservations have been expressed before her regarding the composition and mandate of the national institution. It has been said that the number of Commissioners (20 at the time of drafting this report) is too large and that the Commission is burdened by an unwieldy bureaucracy. These two factors impede rather than promote effective and expeditious resolution of cases.

34. She further wishes to echo concerns expressed by other international human rights mechanisms about the insufficient levels of impartiality and independence of Komnas HAM. In this regard, she would like to refer to the concluding observations of the Committee on the Rights of the Child⁶ and the Committee against Torture.⁷

35. Another problematic aspect of the mandate of Komnas HAM on past abuses is the ineffectiveness of its power of enquiry. In order to conduct an initial investigation on past abuses, the People's Legislative Assembly must have declared that the crime concerned is a gross human rights violation.

36. Another area of concern is that once the initial investigation on a case is completed by Komnas HAM, the findings are transmitted to the Office of the Attorney-General, who can reject them on substantive grounds and has sole authority to initiate criminal proceedings. This last point creates difficulties since the findings of Komnas HAM are not published. There is, therefore, no public knowledge of why a case did not proceed after the initial enquiry. Since 2000, Komnas HAM has carried out its inquiry function in nine cases of alleged gross violations of human rights. Three have been or are being examined by a human rights court. The six other cases where inquiries have been completed are still with the Attorney-General at present.

37. Another weakness of Komnas HAM is that it only takes up cases of gross human rights violations. The Commission is not mandated to investigate common human rights violations, and must instead recommend the police to investigate such violations.

⁶ CRC/C/15/Add.223, para. 20.

⁷ A/57/144, para. 43 (c).

38. The Special Representative finally noted that the institutional relationship between Komnas HAM, the office of the Attorney-General and the human rights courts still lacks clarity. The parameters of the jurisdiction of each of the institutions and the linkages that create the chain of procedures for the completion of a case are not sufficiently defined to ensure systematic coordination of work.⁸

3. Komnas Perempuan

39. The Special Representative expresses great satisfaction at the work performed by Komnas Perempuan since its establishment. Even though it has a limited mandate, this body has built its legitimacy. Its work has had an impact on the situation of women's human rights defenders in particular. However, lack of priority with the Government has left many of its findings unimplemented. The Special Representative understands that the report of Komnas Perempuan on women human rights defenders was sent to President Yudhoyono but that no response to this report had been received by the time of the visit of the Special Representative.

4. Local human rights committees

40. The Special Representative welcomes the establishment of local human rights committees under the National Plan of Action but regrets that she was not given an opportunity to meet some of these bodies during her trips to Aceh and West Papua. Furthermore, she raises concern regarding the visibility of such committees among civil society since she was not apprised of their existence during her meetings with human rights organizations.

5. Law enforcement authorities

41. The Special Representative was troubled at the apparent resistance from both the police and the military to changing attitudes and institutional culture, as evidenced by the large number of complaints she received concerning ongoing acts of harassment and intimidation committed by both police and military forces, notably intrusive activities of intelligence agencies which clearly obstruct the work of human rights defenders. This constitutes the main hurdle to the enjoyment of a satisfactory environment for the promotion and protection of human rights.

42. The Special Representative has a strong reservation on the accountability of military courts when the military is involved in abuses committed against human rights defenders.

⁸ In its comments on the report, the Government of Indonesia informed the Special Representative that “[w]ith regard to the status of [Komnas HAM], efforts have been undertaken to upgrade the status of the Commission at the regional level into that of a ‘representative’s office’. This has become part of the Commission’s agenda for the period of 2007-2012 ...”. The Special Representative hopes that the promised enhancement of status will resolve the coordination issue and allow the Commission more authority to bring cases it has investigated to fruitful conclusion.

Military justice does not meet international standards, namely the principles of due process and fair trial. A number of military officers who have been involved in criminal activities reportedly enjoy immunity. Military officers who violate civil law should be tried before a non-military criminal court. The principles of civilian courts should be fully upheld.

43. Concerns were expressed to the Special Representative regarding the accountability of police officers for violations against human rights defenders because of an alleged lack of impartiality of the National Police Commission, its members being close to the Head of the Police. She requested statistics on cases dealt by the Commission on handling cases of violations and/or misconduct by police officers, and hopes she will receive these figures in the near future.

44. The Special Representative is nevertheless encouraged by the willingness of many within the Government to acknowledge the gaps and to continue efforts to remove the obstacles in implementing human rights as well as the systemic problems that have prevented a faster pace of progress in achieving the objectives of the reforms.

IV. THE CHANGING SITUATION OF HUMAN RIGHTS DEFENDERS IN INDONESIA

A. General appraisal

45. Until 1998, human rights defenders in Indonesia faced severe restrictions on fundamental freedoms - namely freedoms of opinion and expression, assembly and association - that jeopardized their legitimate activities throughout the country. The downfall of President Suharto in May 1998 opened up a new space for human rights defenders. Several human rights organizations emerged, and have since been instrumental in addressing civil and political rights as well as economic, social and cultural rights.

46. In the course of her visit, the Special Representative held meetings with a broad cross-section of civil society and human rights defenders engaged with a wide range of human rights issues. She was particularly struck by the vibrancy and the growing capacity of this community to address issues of human rights, particularly those arising from Indonesia's transition to democracy and those resulting from current economic and social policies.

47. It is, however, regrettable that despite visible progress in the country's democratic development, human rights defenders continue to experience serious constraints in conducting their activities for the protection of human rights. The Special Representative is deeply concerned by the testimonies she has heard in the capital and the Aceh and West Papua provinces indicating the continuing activities of the police, the military and other security and intelligence agencies as well as religious fundamentalist groups that are aimed at harassing and intimidating defenders or restricting their access to victims and to sites of human rights violations. She participated in a public hearing in Jakarta on 7 June 2007 entitled "Violence against Human Rights Defenders in Indonesia" which brought together defenders from all parts of the country. They delivered testimonies on abuses they have suffered, drawing a general picture of the situation of human rights defenders in the country.

48. Violations suffered by human rights defenders range from extrajudicial, summary and arbitrary execution, enforced disappearance, torture and ill-treatment, to arbitrary detention and restrictions on freedoms of expression, assembly, association and movement. The Special Representative voices special concern at the trend of stigmatization of human rights defenders, and takes note of alleged comments made by the Head of State Intelligence Agency who labelled as radical the following NGOs: Imparsial, KontraS and Elsham. These organizations were reportedly accused of receiving foreign aid and assisting separatist movements. Such statements must be strictly discouraged. This trend is exacerbated in the West Papua province.

49. Human rights defenders promoting or protecting civil and political rights are the prime victims of intimidations and harassment. However, defenders working on economic, social and cultural rights are also targeted. The Special Representative gathered a number of cases of abuses pertaining to corruption within the State apparatus, rights of national and migrant workers, rights of indigenous peoples over natural resources, and land rights of farmers.

50. For instance, in September 2005, the local police of Lombok reportedly fired into a crowd of more than 700 unarmed peasants who had come peacefully together to commemorate Indonesia's National Peasants' Day and discuss land issues. In all, 33 peasants were reportedly injured, 27 of them by gunshot - including one child - and the others from police beatings. According to reports, more than 10 peasants were either arrested at the scene of the incident or from their beds at the local hospital later in the day. The peasants were opposing the planned construction of a new international airport on 850 hectares of fertile land in Lombok on which the peasants were living and cultivating the land to sustain their livelihoods.

51. The Special Representative has taken particular interest in the progress regarding the killing of Munir Said Thalib, a prominent human rights defender who died on 7 September 2004 on the second leg of a Jakarta-Singapore-Amsterdam Garuda flight. During her visit, she met with Suciwati, Munir's widow, and a member of the Solidarity Action Committee for Munir as well as other members of the Committee.

52. The Special Representative notes that there are recent developments indicating the Government's efforts to bring perpetrators to justice, in particular the charging of two senior Garuda suspects following another investigation into this crime by the police as well as the announcement by the office of the Attorney-General requesting the Supreme Court to review its decision in the Pollycarpus case through a process called case review (*peninjauan kembali*).

53. However, she is deeply concerned at apprehensions expressed by defenders that the course of justice may be influenced to protect the perpetrators of this crime. She notes the absence of police investigation of the high-ranking intelligence officials implicated by evidence (such as phone records), as concluded by the presidential fact-finding team (*Tim Pencari Fakta*, TPF) in its report. TPF was established in December 2004 and ended its six-month mandate on 23 June 2005, producing a lengthy report with detailed findings and recommendations. Similarly to Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,⁹ she

⁹ In March 2007, Philip Alston issued a statement, noting that "[i]t is encouraging that the President has reaffirmed that the government continues to work to find those who are guilty of Munir's murder. But it is disturbing that it has still not taken the obvious step of releasing the fact-

calls on the Government to release the report of TPF and to act on the recommendations laid down in the report.

54. The Special Representative reminds the Government that this case is generally seen as a test of the Government's will to protect defenders in the country. She advises the Government to ensure that justice is done to the satisfaction of all concerned, and fears that any lapses in the conclusion of this case would make all human rights defenders throughout the country insecure.

B. Vulnerable groups of human rights defenders

1. Defending the rights of women

55. In the course of her visit, the Special Representative had an opportunity to meet with several women human rights defenders, in the capital and in the provinces of Aceh and West Papua. She was impressed by their courage and tireless commitment in promoting and defending human rights. These women are human rights activists, humanitarian workers, counsellors of women victims of violence, social workers, and community organizers.

56. The Special Representative appreciates the initiative of Komnas Perempuan, which instigated a specific programme on women human rights defenders. In 2005 and 2006, Komnas Perempuan set up focus group discussions on women human rights defenders working in different situations to identify vulnerabilities and types of violence suffered by women human rights defenders in Indonesia. Women defenders were then defined as women working not only on women's rights, but also on land rights, indigenous rights, conflict areas, fundamentalism and poverty. Based on the testimonies of 58 human rights defenders from which 436 cases of human rights violations were recorded, 10 specific vulnerabilities and types of violence suffered by women defenders were categorized: rape; sexual abuse; sexual terror; sexual harassment; sexual stigmatization; attack on women's role as mother, wife and children; corrosion of credibility based on marital status; marginalization and rejection based on morality, religion, custom, culture, and family reputation; belittlement of women's capacity and issues; and exploitation of women's identity.¹⁰

57. The Special Representative noticed that the activities and safety of women human rights defenders have been adversely affected by laws, policies and a social environment that place restraints on their fundamental freedoms. For instance, Ms. Ellen from Bhinneka Tunggal Ika Group received death threats and was publicly discredited in the media ("dirty woman") after demonstrating in Jakarta against the Anti-Pornography Law which is said to have a negative gender impact. Similarly, Ms. Ismawati Gunawan from the Coalition of Indonesian Women was insulted and assaulted during a demonstration in Tangerang against a local regulation on

finding report and acting on its recommendations", ("Expert on Extrajudicial Executions Urges Indonesia to Release and Act on Report of Presidential Fact-Finding Team", 28 March 2007).

¹⁰ "Women Human Rights Defenders: Struggling under Pressure", Komnas Perempuan's documentation on the situation of women human rights defenders in Indonesia, 2006.

“immoral” acts also believed to have a negative gender impact, by supporters of the regulation and in front of police officers present at the rally.

58. The Special Representative was disturbed by the case of Ms. Wa Ode Habibah, KPI Muna, Sulawesi Tenggara who was advocating for the right of women to be free from domestic violence and whose house in Muna was burnt down because of her activities. A complaint was reportedly filed with the police, but the investigation did not lead to any arrest; instead, the defender was accused by the police of having burnt down her own house.

2. Defending the rights of LGBTI and HIV/AIDS persons

59. The Special Representative is particularly concerned about the lack of protection for defenders who are engaged with issues that are socially sensitive such as the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons or public awareness on HIV/AIDS.

60. She received credible reports of violations against such defenders. For instance, Ms. Maria, Gaya Nusantara, East Java, who advocated for equal rights for LGBTI persons in East Java, was subsequently assaulted and intimidated. The victim filed a complaint with the police, but they reportedly did not register her complaint, allegedly in the absence of national legislation on LGBTIs. She further sought legal counselling from lawyers, but they refused to take up her case because of the apprehension of the issue of LGBTI in the country as a “foreign product”. In another case, Mr. Hartoyo, an advocate for women’s rights in Aceh, was subjected to torture and degrading treatment by police officers while in custody because of his sexual orientation. The Special Representative was further informed of intimidation directed at Ms. Baby Jim Aditya in Jakarta, who was warned in 2003 not to attend the funeral of a patient who had died from AIDS.

3. Defending the rights of indigenous peoples

61. Activists engaged in defending the rights of indigenous peoples are at particular risk, especially in West Papua. The Special Representative was informed of cases where indigenous peoples had been arrested when raising publicly the issue of their cultural flag or threatened when struggling for the preservation of their natural habitat. One defender received death threats and blackmails as a result of her advocacy work on the rights of indigenous peoples over natural resources. She reported the threats to the police, but the case was reportedly not taken up. The threats continued and she was forced to leave her place with her entire family.

4. Church workers

62. The Special Representative was distressed by the plight of church workers in West Papua who have repeatedly voiced concerns regarding human rights violations suffered by the local population and have as a result been publicly accused of being linked to the separatist Papua Free Movement (OPM). She gathered several cases of church workers who had been physically assaulted, threatened or had their homes searched by the military and the police. The situation of religious defenders is relatively safe in Jayapura; however, in remote and isolated areas of the province, serious violations occur.

C. Situation of human rights defenders in West Papua and Aceh provinces

63. Since the establishment of her mandate to 1 December 2006, the Special Representative has sent 35 communications to the Government on 99 individual defenders and several other activists of human rights and humanitarian non-governmental organizations. Fifteen cases relate to the situation of women human rights defenders or activities related to the promotion and protection of the human rights of women. With the exception of a few cases on human rights violations in Papua, virtually all the communications transmitted by the Special Representative relate to alleged killing, disappearance, attacks, arrest, detention (often incommunicado), intimidation and harassment of defenders in Aceh. In many cases, the police or the military were reportedly involved or failed to protect defenders from attacks by non-State entities. The Special Representative has also sent jointly with other mandate holders communications on general allegations related to massive human rights violations in Aceh. While acknowledging the response of the Government to a few communications, the Special Representative regrets the absence of replies to most of the communications.

1. Climate of fear in West Papua

64. The Special Representative visited Jayapura, capital of the West Papua province, on 8 and 9 June 2007. She had the opportunity to meet with the Secretary of Province, officials from related provincial government offices, the Provincial Prosecutor, the Provincial Chief of Police, the Provincial Chief of Military Command, members of the People's Representative Council of Papua, representatives of MRP (Papua People's Council), religious leaders belonging to the Consultative Forum of Religious Leaders of Papua, members of Komnas HAM-Papua, and individual human rights activists.

65. A climate of fear undeniably prevails in West Papua, especially for defenders engaged with the rights of the Papuan communities to participation in governance, control over natural resources and demilitarization of the province. The situation of these defenders does not seem to have eased, and despite the adoption of the Special Autonomy Law in 2001, their legitimate activities for the protection of human rights continue to be targeted. The Special Representative heard credible reports of incidents involving arbitrary detention, torture, and harassment through surveillance. She was also informed of cases where human rights defenders had been threatened with prosecution by members of the police and the military. It was alleged that when defenders had attempted to register their complaints, that had been denied and they had been threatened. Instances of excessive and disproportionate use of force when policing peaceful demonstrations were also brought to her attention.

66. The Special Representative is particularly disturbed by allegations that when defenders expose abuse of authority or other forms of human rights violations committed by the security apparatus, they are labelled as separatists in order to undermine their credibility. The Special Representative believes that this trend places human rights defenders at greater risk and must be discouraged by the concerned authorities.

67. The Special Representative is also concerned about complaints that defenders from West Papua working for the preservation of the environment and the right over land and natural resources (deforestation and illegal logging) frequently receive threats from private actors with powerful economic interests but are granted no protection by the police. Some old and recent

cases concern direct involvement of the police and military. Complaints were made to the police, but no action was reportedly taken. Sometimes, the police did not even make the effort to examine the facts. The Special Representative reminds the Government that it has a responsibility to protect its citizens against the harmful activities of non-State actors.

68. This climate of fear has reportedly worsened since the incident of Abepura in March 2006, where five members of the security forces were killed after clashes with protesters demanding the closure of the gold and copper mine, PT Freeport. Lawyers and human rights defenders involved with the trial received death threats. The harassment of these lawyers and defenders around the trial was interpreted as a warning to the community of human rights defenders, who have decreased their activities out of fear of harsh treatment.

69. Interference with freedom of movement and with defenders' efforts to monitor and investigate human rights violations was also reported. The Special Representative was perturbed to hear that Komnas HAM is prevented by law enforcement authorities from carrying out its official duties. She was particularly disconcerted by reports that Mr. Albert Rumbekwan, Director of the branch of Komnas HAM in West Papua, was intimidated and threatened on several occasions by the police and unidentified persons in the course of his fact-finding activities. For instance, in March 2006, following the Abepura incident, Komnas HAM tried to conduct an investigation into the incident but the Chief of the local police reportedly warned Mr. Rumbekwan and his colleagues that "if they continue the investigation, the police will kill them". Mr. Rumbekwan tried to explain the mandate of Komnas HAM to the officer, but this latter threw away the documents Mr. Rumbekwan was handing to him. Mr. Rumbekwan reported all the cases to Komnas HAM in Jakarta, but according to him, no assistance was provided.

70. The Special Representative was disturbed by reports that international human rights monitors and journalists entering West Papua are subject to tight restrictions and only a few are permitted to operate, resulting in a scarcity of information on the human rights situation in West Papua, mostly with regard to allegations of human rights abuses occurring in remote areas. It is worth noting that, despite guarantees given by the capital to allow visits to West Papua, local authorities often deny access.

71. The concerns of the Special Representative regarding the situation of human rights defenders in West Papua persist, despite the assurance to her by the Military Commander and the Chief of Police in Papua that there was no institutional policy to target defenders. According to various credible sources, an increase of military presence has been witnessed on the island, despite an official statement alleging the opposite.

72. According to reliable sources, a number of human rights defenders with whom the Special Representative met during her visit in West Papua were threatened and intimidated during and after the end of the mission. On 8 June, shortly after the arrival of the Special Representative in Jayapura, the vehicle in which Ms. Frederika Korain and Rev. Perinus Kogoya, and Mr. Barthol Yomen, members of the Peace and Justice Commission for the Diocese of Jayapura (SKP Jayapura), were driving was hit by a car driven by intelligence officers. The Special Representative sent a communication about this incident on 11 July 2007. The Government however responded that "this incident was evidently a misunderstanding that led to no injuries of those involved. However, the perpetrators fled the scene with only a weak excuse to exonerate culpability, but apparently not before one of them had given his name and his

telephone number”.¹¹ The Government later gave a detailed account of the incident, concluding that “the exact details of the incident [had] been changed and the events dramatized to politicize them”.¹²

73. On 9 June 2007, Mr. Yan Christian Warinussy, Director of LP3BH (Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum or Institute of Research, Analysis and Development of Legal Aid) of Manokwari, was subjected to surveillance, and on 29 July he received threatening text messages on his mobile phone linking his human rights work to the separatist movement. The Special Representative alerted the Government about this situation in two communications sent on 11 July and 28 August 2007. The Government replied that “nothing malefic came of this incident and investigations thereafter have not thus far been able to establish either a clear description or the whereabouts of the alleged perpetrators”.¹³

74. The most worrying case is that of Mr. Albert Rumbekwan, who on 11 June 2007 received death threats on his mobile reportedly stating: “You who are reporting about the human rights situation in Papua are trying to destroy the people. You want evidence of people being killed, I will kill your tribe, your family and your children will become only bones to show that there is only a zone of peace in Papua”. The Special Representative expressed her grave concern in two communications addressed to the Government on 11 July and 10 August 2007. The Government responded that “[w]hile it is most unfortunate that these incidents should occur during the official visit of the Special Representative [...], it must be stressed that such incidents are not the norm ... over the years, [Mr. Rumbekwan] has undertaken an increasingly high profile role as a campaigner for peace, justice and human rights in his region of West Papua ... [t]his is something he continues to do to date as head of Komnas HAM in Papua and it should be noted that he has in fact received police protection and escort since he reported he was being harassed”.¹⁴ While the Special Representative welcomes the granting of police protection following these threats, she remains concerned at reports that threats against Mr. Rumbekwan and his family persist, indicating that the measures taken by the police are ineffective and should be reinforced.

2. Human rights defenders in Aceh: remaining concerns

75. The Special Representative visited Banda Aceh, capital of the Aceh province, on 10 and 11 June 2007. She had the opportunity to meet with the Governor, the Provincial Chief of Police, the Provincial Chief of Military Command, the Provincial Attorney-General’s Office, and individual human rights activists. She also took part in a public forum on the human rights situation of women in Aceh.

¹¹ Response of Government of 16 August 2007.

¹² Response of Government of 27 September 2007.

¹³ Response of Government of 16 August 2007.

¹⁴ Response of Government of 28 September 2007.

76. The Special Representative was greatly encouraged by the improvement in the situation of human rights defenders in Aceh since the signing of a peace agreement and Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (*Gerakan Aceh Merdeka* - GAM) in August 2005. She was informed that the number of human rights organizations has since increased, that there is generally now more scope for human rights defenders to carry out their activities and that defenders' participation in peacebuilding initiatives was sought, even though it is still as a formality.

77. The Special Representative, nevertheless, voices concern at the continuous interference with activities of human rights defenders through surveillance by intelligence agencies and wrongful application of law on public meetings by the police who require permission, together with statutes, from NGOs for organizing workshops and seminars. When permission is not sought, the police reportedly conduct an investigation to know the content of the meeting.

78. The Special Representative stressed with the Chief of Police in Aceh the necessity to strictly supervise the issuance and monitoring of weapons fired in the course of policing demonstrations. The Special Representative requested a copy of records of violations by police officers during demonstrations and compensation given to victims for the last two years, and hopes to receive it in the near future.

79. In addition to interference, human rights defenders in Aceh are victims of stigmatization: in a public forum, a military commander stated that human rights defenders are "those who sell their own country". Such statements should be discouraged.

80. The Special Representative is further concerned at the situation of women human rights defenders. An overzealous implementation of sharia law has led to the delegitimization of the activities of women defenders. For instance, in the phase of post-tsunami reconstruction, voices of women regarding adequate housing were perceived as not in conformity with sharia law.

81. The Special Representative is deeply perturbed by the scores of unsolved cases of human rights violations between 2000 and 2005. Fifteen human rights defenders in Aceh are believed to have been executed extrajudicially and at least five were subject to enforced disappearance. Several others were subjected to torture, unlawful arrest and detention, false charges and other forms of harassment and intimidation. No perpetrator was reportedly brought to justice.

82. The Special Representative is mindful that justice for past abuses is crucial for the spirit of human rights defenders in Aceh and throughout the country. To this end, she calls for the establishment of a Human Rights Court in Aceh, as provided in the peace agreement. She welcomes the commitment of the Chief of Military in Aceh to respect human rights, and hopes that such commitment will be translated into genuine cooperation in the investigations of past violations of human rights where the military was, allegedly, the prime perpetrator in most cases.

83. The Special Representative was told by the Attorney-General in Aceh that after the signing of the Memorandum of Understanding, no cases of human rights violations were reported to his office. She deduces that the absence of such cases must imply that there is no reporting mechanism available for human rights defenders. Furthermore, she was surprised to hear that the office of the Attorney-General has had no interaction with Komnas HAM.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

84. Since 1998, Indonesia has achieved remarkable progress towards democracy by notably strengthening the legal and institutional framework for the promotion of human rights. However, this progress has been marred by the absence of concrete measures dealing directly with the protection of human rights defenders as well as flaws in the existing legislation. There are also serious constraints on the functioning of many of the institutions in place and their ability to fulfil their mandates effectively. The Special Representative is nevertheless encouraged by the willingness within the State apparatus to address these shortcomings.

85. In the vast majority of cases of violence against human rights defenders, police and military forces are the perpetrators of such violence. This widely documented pattern is due to the strong resistance from both entities to change attitude and institutional culture. Human rights defenders in Indonesia and the international community are expecting that the Government will ensure justice in the case of Munir and that the perpetrators of this crime will be brought to justice.

86. The Special Representative remains concerned about the situation of human rights defenders in West Papua and believes that their ability to defend human rights is adversely affected by the political conditions generated by the increased military presence in the province. The non-implementation of the Special Autonomy Law has heightened tensions that result in protest against repressive policies and targeting of human rights defenders who raise such issues.

87. As for the situation of defenders in Aceh, the Special Representative welcomes the improvement of this situation, although concerns remain with regard to surveillance activities by law enforcement authorities, stigmatization of defenders, restrictions that affect the work of women human rights defenders, and the score of unresolved cases.

88. The Special Representative looks forward to a sustained dialogue with the Government, notably by improving the ratio of responses to communications sent, and hopes that there will be a more uniform progress on the protection of human rights defenders in all parts of the country. Given its size, its population and its rich cultural diversity, Indonesia could set an inspiring example in the region.

B. Recommendations

89. With a view to improving the legal framework of NGOs, the Special Representative urges PLA Commission No. 3 on Human Rights and the Government to discuss the reform of Law 8/1985 as a priority.

90. The Special Representative recommends that legislation and procedures be instituted to prevent the prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of

human rights. For this purpose, it is important also to sensitize judicial and prosecutorial officials as well as the police so that human rights activities are not criminalized.

91. The Special Representative notes that several cases of gross human rights violations brought before the Supreme Court ended up in acquittals. Prospects for successful prosecution of gross human rights violations would be greatly strengthened if guidelines and standards are laid down by the Supreme Court for effective investigation, with directions that compel investigation and prosecution agencies to ensure that cases are based on investigations conducted under those guidelines.

92. The Special Representative particularly recommends that better system of coordination and support be created within Komnas HAM in order to ensure that regional representatives are able to operate effectively. They must receive full and timely support of the Commission if there is interference in their functioning or they are at risk in their regions.

93. The Special Representative notes that there are no standard operating procedures that ensure interaction with civil society in the work of Komnas HAM. By involving civil society and using its expertise in inquiries, national human rights institutions would endorse the legitimacy of the work of human rights defenders and contribute to recognition of their role.

94. The Special Representative further urges Komnas HAM to disseminate the Declaration on Human Rights Defenders in Bahasa Indonesia throughout the country.

95. The Special Representative urges the authorities to endorse the findings and recommendations of Komnas Perempuan, which is in need of greater visibility among the State apparatus.

96. The Special Representative urges the Ministry for Law and Human Rights to give more visibility to local human rights committees and to allow interaction with human rights defenders whose voices should be heard before these committees.

97. As regards law enforcement authorities, there is an acute need to train military and police officers specifically on the content of the Declaration of Human Rights Defenders. Heads of military and police may consider issuing clear instructions to prevent future cases of violations against human rights defenders and instructing commanders in the field not to make irresponsible comments about defenders which discredit their activities and put them at risk of reprisals.

98. The Special Representative calls on the military to create special complaint cells for registering and redressing incidents of harm or threats to human rights defenders. She particularly welcomes the commitment made by the Chiefs of Military in West Papua and Aceh to establish such a mechanism.

99. In the context of the Special Representative's concern regarding surveillance activities against defenders carried out by intelligence personnel, she observes that in Aceh, many military officers are not aware that under the terms of the Memorandum of

Understanding, surveillance of civilian activities is no longer within their sphere of authority. A similar trend was reported in West Papua, where the military is heavily engaged in surveillance activities. Democratic oversight of intelligence under laws and regulations fully respectful of human rights standards may protect human rights defenders against any abuse of law and authority. The Special Representative is concerned that the draft Intelligence Act may not sufficiently address the lack of accountability of intelligence services in order to ensure prevention of abuse. She therefore urges a review of the draft law to ensure its efficacy in this regard.

100. The Special Representative also urges the Government to review administrative procedures in order to remove restrictive regulations that impede the right of defenders to freedom of assembly and of association.

101. Finally, the Special Representative calls on the Government to release the report of the TPF presidential fact-finding team on the killing of Mr. Munir Said Thalib and act on the recommendations laid down in the report.
