

SHADOWS AND CLOUDS

Human Rights in Indonesia – shady legacy, uncertain future

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



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Ho Kim Ngo, mother of one of the 16 student activists who were allegedly killed by the Police in the 1999 Semanggi II incident, calling on the government to deliver justice for her son.

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Acronyms and terminology

AGO	Attorney General's Office
AHRC	The Asian Human Rights Commission
BNPT	Badan Nasional Penanggulangan Terorisme (National Counter-terrorism Agency of Indonesia)
BIN	Badan Intelijen Negara (National Intelligence Agency of Indonesia)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DPR	Dewan Perwakilan Rakyat (the People's Representative Council)
FPI	Front Pembela Islam (Islamic Defenders' Front)
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
HTI	Hizbut Tahrir Indonesia
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICG	International Crisis Group
Imparsial	The Indonesian Human Rights Monitor
JI	Jemaah Islamiyah
Kompolnas	National Police Commission
Komnas HAM	National Human Rights Commission of Indonesia
KontraS	The Commission for "the Disappeared" and Victims of Violence
Kopassus	Special Force Command (of the Indonesian military)
LBH	Lembaga Bantuan Hukum (Legal Aid Institute)
LIPI	The Indonesian Institute of Science
LSF	Film Censorship Board
MK	Mahkamah Konstitusi (the Constitutional Court of Indonesia)
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
MUI	Majlis Ulama Indonesia (Council of Ullamahs of Indonesia)
NU	Nahdlatul Ulama
Otsus	Special autonomy
Satgas Pemberantasan Mafia	Task Force to Eradicate Judicial Mafia
SBY	Susilo Bambang Yudhoyono
TNI	Tentara Nasional Indonesia (National Defense Forces of Indonesia)
TPM	Tim Pengacara Muslim (Muslim Lawyers Team)

INTRODUCTION

Until recently, it was commonplace to hail Indonesia as one of the success stories of democratisation. Since the fall of Suharto in 1998 and the launch of *Reformasi*, Indonesia has gradually evolved into a stable democracy, with regular, relatively free and fair elections, a surge of international human rights instruments ratification, and with wider protection and stronger guarantees for human rights than at any time in the past, a “flourishing democracy and a bastion of tolerance”, in the words of the usually tough-talking *Economist*¹. Though not unfounded, the picture is not quite as rosy for human rights as it seems. Two main reasons emerge for this increasingly disturbing trend: unsettled scores inherited from the past, and new emerging patterns of intolerance; the two are clearly linked, as impunity for past violations set its imprint for current and future violations.

In light of this troubling context and the need to enhance understanding of the factors perpetuating human rights abuses, from 23 May to 3 June 2010, the International Federation for Human Rights (FIDH), in cooperation with the Commission for the Disappeared and Victims of Violence (KontraS) and Imparsial (the Indonesian Human Rights Monitor), organised an international fact-finding mission to Indonesia. The mission aimed to assess the structural causes of human rights violations, with a focus on democratic reforms and the balance of powers; the rise of radical religious fundamentalism and the growing intolerance of ethnic and religious minorities; human rights violations perpetrated in the context of fighting terrorism; and persistent impunity, especially among high-ranking officials and state security forces.

These human rights violations are not always perpetrated by state agents (though some of them are, such as the alarming increase in police abuse and deaths in custody when Densus 88, the police antiterrorist unit, intercepts suspects), as many of the human rights violations which we are now witnessing are committed by non-state actors, such as hard-line Islamic groups. However, the government has reacted with complicit passivity at best, and with duplicitous underhanded support to perpetrators at worst. Not only is it failing to apprehend suspects in human rights violations, let alone punish them, but its political, administrative and legal record often finds it siding with illiberal groups or restricting the independence of some important institutions. Many attacks against minority groups (be they religious or other) have happened in recent years: every single witness interviewed by the mission testified that the police simply stood by, or, at times, even facilitated the attackers, be it against ethnic minorities, against churches, against gay and lesbian groups, against lawyers before the Constitutional Court, and wherever it happens in Indonesia. The escalating constraints imposed on the National Human Rights Commission of Indonesia (Komnas HAM) do not bode well either.

The fact that all ministries now have a human rights section, and the Director General of Human Rights now coordinates human rights norms in the day-to-day running of the government could be understood as human rights mainstreaming. However, it appears to be more of a whitewash than the reflection of a genuine commitment to human rights. Several experts paradoxically analyse the move as a way to sideline human rights, by flaunting this mainstreaming and remaining passive on all important fronts. As a senior lawyer said: “The government is completely indifferent to the issue of human rights. Basically it uses human rights when politically convenient, but there is no commitment. Yudhoyono has a political agenda, and in order to achieve it, he panders to the fundamentalist groups or the most reactionary sectors of

1. The Economist, “SBY’s feet of clay”, 21 October 2010.

Indonesian society; or sticks to the army, his *corps d'origine*"². As often, the discourse on public order, security and stability serves as pretext for a growing neglect for human rights. In other words, while Indonesia has progressed enormously on the human rights front since Suharto's regime collapsed twelve years ago, serious problems remain, and renewed challenges have appeared, which undoubtedly questions the government's commitment to human rights and the rule of law.

Concern for human rights has arisen in two main areas:

- Unsolved human rights issues dating back to the Suharto era or its immediate aftermath, such as impunity for violations in East Timor or other cases of gross human rights violations; more generally, the status of civilian control over the army remains dubious. The situation in Papua, which appears to be a remnant of strong armed New Order tactics, replete with torture of separatists, is another example. The government has by all accounts appeared very reluctant to reopen cases from the past, so much so that it has made it a condition of e.g. the EU-Indonesia human rights dialogue. The lingering legacy of New Order is particularly noticeable – and damaging – in the hesitant approach to security sector reform.

- In recent years, a growing trend of intolerance towards minorities has raised serious concerns. While the authorities are seldom directly responsible for the violations of civil liberties, their passivity is so alarming that several observers have been led to believe the government may have been deliberately, though not openly, lending support to illiberal groups in the country, in particular Islamic fundamentalist groups. The fact that several state or para-statal institutions have either turned more radical (e.g. in the case of the Council of Ullamahs of Indonesia, or MUI) or lost some of their independence (e.g. in the case of Komnas HAM), does not help. Many observers note the impact of the general atmosphere of radicalisation on the policies of the government, either too weak to counter them or using religion for reasons of political opportunism.

This double jeopardy has made some collateral damage: human rights defenders have become more vulnerable as they stand up for Indonesia's traditionally pluralist, liberal social fabric. SBY, as president Yudhoyono is commonly called, in spite of repeated verbal assurances, has not taken a strong stance to defend human rights or the institutions designed to protect them. His passivity amounts to a culpable complicity. "Human rights are no doubt part of SBY's discourse, but they are certainly not a part of his administration's priorities or even concerns"³, says a human rights activist.

The mission delegation was composed of Mr. Sherif Azer (Egypt) and Ms. Anne-Christine Hubbard (France). The delegates wish to thank KontraS and Imparsial for their invaluable help in preparing this mission, as well as all the individuals, government officials and groups who took time to meet with them.

2. Interview with FIDH delegation, May 2010.

3. Interview with FIDH delegation, June 2010.

I. SHADOWS FROM THE PAST

1.1. A lingering pattern of impunity

In spite of adequate legislation to hold perpetrators of human rights violations to account, be it in the Penal Code, which covers such crimes as murder, assault, kidnapping, rape and destruction of property, or in the Human Rights Law adopted in the years following Suharto's downfall, the implementation of these provisions has been uneven and unimpressive, mainly for political reasons.

The Indonesian authorities have consistently failed to deal substantially and rigorously with past human rights abuses. Several causes can be brought forth to explain this dereliction: an army which will not let go of the remnants of its former power, an entrenched culture of impunity in security forces, corruption in the judiciary, where there also exists a "culture of subservience" (in the words of a leading jurist), a tradition of police abuse, and weak oversight mechanisms, among others, have made justice for past human rights violations an uphill task, to which should now be added what is fast becoming a pattern of impunity. The International Crisis Group (ICG) notes that "the privileged position of the security forces, especially the army, during the Suharto era fostered a 'culture of impunity' that enabled military officers to feel that whatever actions they took in the name of protecting the state were not subject to the application of law"⁴ – this, unfortunately, remains to some extent true more than 12 years after Suharto's fall in May 1998.

Many observers cite SBY's repeated public stances on "leaving the past behind and starting over" as a clear signal of a lack of political will to prosecute past abuses committed by his former colleagues (SBY being a former general). In the terms of *the Economist*, "the army has not shed the bad habits it developed in East Timor and Aceh. No senior member of the armed forces, in which Mr Yudhoyono was once a general, has been convicted for abuses carried out under Suharto or since"⁵. Although investigations by various bodies, including Komnas HAM, have uncovered much evidence of killing and other crimes, they have led only to a glaringly low number of convictions, and usually with disproportionately light sentences. This was made particularly evident during the discussion on the Commission on Truth and Reconciliation on the East Timor cases.

This culture of impunity has also set the stage for future human rights violations. Usman Hamid, Coordinator of KontraS, states that "state accountability is absent, which facilitates other human rights abuses to take place again without an effective remedy. Interestingly, the President is yet to respond to the previous parliament's recommendation on the establishment of a court to try the responsible perpetrators of the 1997/1998 enforced disappearance cases."⁶ The odd role played by the Attorney General's Office (AGO) has been noted by many, with

4. ICG: Indonesia: Accountability vs. Impunity for gross human rights violations, 2001, p. 7.

5. SBY's feet of clay, *the Economist*, *op.cit.*

6. Usman Hamid, "The year of Human rights paradoxes in Indonesia", *Jakarta Post*, 21 December 2009.

either inconsistent or very low-quality indictments handed in, or an inordinate use of technicalities to refuse sending defendants to trial. “The Attorney General Office plays a key, albeit underestimated, role in SBY’s silent reluctance to enforce human rights”, says an expert. “They quietly block investigations, proceed to ban books, hamper prosecutions... It is a very important element in the quiet neglect of human rights which is typical of this administration”⁷. It should be added that the AGO is traditionally viewed as one of the most corrupt offices in Indonesia’s public administration ⁸.

Be it the army, the police, or the intelligence agencies, the continued impunity enjoyed by high level decision makers has been consistent, from 1998 up until 2010. While some have argued that *Reformasi*, like any momentous regime change, required reconciliation and forgiveness rather than justice and retribution, the argument sounds rather hollow when it comes to human rights violations committed long after the fall of the New Order. As exemplified by the case of assassination of Munir Said Thalib, a leading human rights defender in Indonesia, the pattern of impunity is deeply set, and there clearly is no political will to modify the situation. Even legislation regarding freedom of expression is used to protect impunity. The decision by the US to resume military partnerships with the infamous *Kopassus* ⁹ certainly does not provide incentive to end impunity and prosecute human rights violations committed or ordered by higher ranking officials.

This pattern of impunity should be viewed in the context of a judiciary which may still come under the sway of the executive in sensitive cases, as well as of a weakened Komnas HAM. The decision (though not Yudhoyono’s) that the Secretary General of Komnas HAM should be a civil servant has also contributed to lessen the independence of the Commission, since the Secretary General – and through him, the executive - has come to play a much bigger role, in budgeting and in administrative matters. The number of commissioners has also dwindled, which further limits its impact.

1.1.1 Feeble attempts to deal with gross human rights abuses

The high hopes that were raised in the early years of *Reformasi* of a thorough system of accountability were soon dashed, and Indonesia’s record in dealing with the gross human rights violations that happened during the Suharto years is distinctly unimpressive.¹⁰

Between 2002 and 2004, the special human rights courts that tried the East Timor cases, the Tanjung Priok massacre¹¹, and a December 2000 shooting incident in the Papuan town of Abepura handed down a few convictions, but many more acquittals, in spite of overwhelming evidence. The very few sentences imposed on senior generals were eventually overturned by the Supreme Court, which also comprised mostly civilian judges. In many cases, the prosecution seemed to act as a defence attorney for the accused generals ¹², part of a more general

7. Interview with FIDH delegation, November 2009.

8. Transparency International, November 2010. <http://www.ti.or.id/en/index.php/news/2010/11/11/the-police-and-tax-office-are-most-corrupt>

9. Special Force Command of the Indonesian army.

10. On this issue, see ICG, *op.cit.*, and Human Rights Watch (HRW), *Justice Denied in East Timor*, Dec. 2002; *The Indonesian Military and Ongoing Abuses*, July 2002.

11. The 12 soldiers sentenced for their role in the killing of scores of Muslims at a mosque in Tanjung Priok in September 1984 were all acquitted on appeal in 2005.

12. See International Center for Transitional Justice, *Intended to fail – The trials before the ad hoc human rights court in Jakarta*, August 2003.

discernible pattern of prosecutors unwilling or unable to press human rights cases. In 2007, the then Attorney General Abdurrahman Saleh insisted, against the recommendations of Komnas HAM, that he could not investigate the 1998 shootings of demonstrators by the military at the Semanggi interchange in Jakarta, arguing he could not investigate without a presidential decree on an ad hoc court – an argument most experts refute. Indonesian human rights NGOs state that Indonesia's laws do not adequately safeguard the right to effective remedy and the right to redress in cases of human rights violations by the army or the police¹³. Members of the military personnel charged with a criminal offence can demand to be tried in camera before a military court. Military courts' proceedings are notoriously lacking in transparency and do not guarantee justice to civilians.

The ad hoc courts to try the 1999 East Timor massacres are telltale examples of this impunity. Of the 18 original defendants, only six were convicted and five of those were acquitted by the Supreme Court. The only defendant whose conviction was confirmed was also the only East Timorese national (a militiaman), when all the Indonesian defendants, including all the army officers, were acquitted. The militiaman was ultimately released.

Observers have listed the central aspects that led to an “overall failure to provide credible accountability according to international standards”¹⁴:

- The failure of the prosecution in almost all the trials to press its case with professional commitment and to produce sufficient inculpatory testimony and documents, despite the ready availability of that evidence; the failure extended beyond evidentiary matters and encompassed the scope and strength of the indictments, the competence and motivation of prosecutors, and the proper application of International Humanitarian Law.
- The failure of the prosecution to present a coherent and credible account of the violence in East Timor sufficient to justify convictions in crimes against humanity cases.
- The obvious failure of political will in the Attorney General's office and the highest levels of the Indonesian government to encourage or even permit a serious attempt to establish the identity and guilt of those most responsible for the crimes committed; the systemic problem of the lack of prosecutorial independence was once again highlighted.
- The failure by the court to prevent systematic use of intimidation and harassment of witness or victims by the army or militia during the trials¹⁵.
- The failure to establish clear command responsibility at the institutional level, not just individual culpability.
- The failure to investigate and indict individuals at the high command level of the National Defense Forces of Indonesia (TNI).

Several observers note that the legal basis for the tribunals, Law 26/2000, manifested some substantive limitations; including its limited jurisdiction: it extends only to gross violations amounting to genocide and crimes against humanity, while “lesser” human rights violations are not included.

13. Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1, on Indonesia, April 2008.

14. *Idem*, p. v

15. See Amnesty International, *We Cry For Justice - Impunity persists ten years on in Timor Leste*, 2009.

1.1.2 The Munir case

If one hoped that impunity would be limited to crimes committed in the Suharto era, one was unfortunately to be disappointed. As has been manifest with the Munir case, which involved intelligence agencies, the pattern of impunity lingers on – as well as, in Imparsial’s words, a pattern of “informal assassinations”. According to Imparsial, the intelligence sector is “the last heritage of the security approach typical of Suharto’s regime”¹⁶, and has barely been affected by reform.

Munir Said Thalib, a leading human rights activist who had played a leading role in the investigations on human rights violations perpetrated by the Indonesian army, particularly in East Timor, and who had led numerous investigations into the disappearances of activists in Aceh and Papua under Suharto’s regime, died on a Garuda flight from Jakarta to Amsterdam in September 2004. It quickly emerged that he had been poisoned with arsenic during the flight or on a stop-over in Singapore, and an off-duty Garuda pilot, Pollycarpus Budihari Priyanto, who was on the Garuda flight, rapidly came under suspicion¹⁷. In January 2008, the Supreme Court sentenced Mr. Pollycarpus to 20 years’ imprisonment.

Some elements soon implicated state intelligence agencies in the murder - specifically the National Intelligence Agency (BIN), and its former Deputy Chief, Major General (Ret’d) Mr. Muchdi Purwopranjono, who had been former General Commander of Kopassus (Special Force Commando) in 1998. Muchdi was allegedly dismissed from his former powerful position as Kopassus Commander after an investigation led by Munir revealed Muchdi’s involvement in the disappearance of 13 anti-government activists in 1997 and 1998.

Some 40-odd phone calls between Pollycarpus and Muchdi on or about the day of Munir’s assassination, direct and damning witness testimonies, and large funds paid by BIN to Pollycarpus (a “non-organic” member of BIN), tended to substantiate these allegations of Muchdi being the mastermind of Munir’s assassination. Muchdi was charged with “premeditated murder” and tried by the South Jakarta District Court in late 2008.

However, on 31 December 2008, the South Jakarta District Court decided to acquit Muchdi for want of evidence. Presiding Judge Suharto said that “the defendant [was] not legally nor certainly proven to have been involved in the killing of Munir”, and the panel of judges argued that the State Prosecutor had failed to substantiate its primary and secondary allegations that the retired military General had solicited and assisted Mr. Pollycarpus Priyanto in the murder of Mr. Munir. President Yudhoyono himself, who had originally stated the Munir case to be “the test of our history”, seems to have been convinced of Muchdi’s role in the murder; he announced soon after the verdict that he would ask the AG and the police chief to personally explain the collapse of the case against Muchdi.

The decision, though, came as little surprise: almost all witnesses for the prosecution either failed to materialise or revoked testimonies given in the earlier trials of Setiawan (former director of Garuda, also convicted for his involvement in the murder), or Pollycarpus. Incredibly, none of the witnesses was under official protection, and five even retracted statements they provided

16. Imparsial, *Test of Our History? A Thick Wall on the Murder Investigation of Munir*, January 2007, p. 98.

17. For a detailed analysis of the Munir investigation and trial, see Imparsial, *Test of our History*, *op. cit.*

during initial investigations. Budi Santoso, a former staffer of Muchdi and key prosecution witness, is a telling example: he originally told detectives that Pollycarpus admitted to him that Muchdi ordered him to kill Munir, but despite 14 summonses, Budi did not appear, and is reportedly stationed at the Indonesian embassy in Afghanistan. The only other significant evidence submitted (records of the 40 phone calls between Pollycarpus and Muchdi in the period leading up to Munir's murder, including one on 7 September 2004, the day Munir was killed) was rejected by the judges on unclear grounds. It is said that recordings of these calls were given to prosecutors but, inexplicably, not submitted to the judges. The questions arise as to why the judges prevented the records of the 40 phone calls being tabled, why police investigators failed to obtain or produce the contents of the calls for the court), as well as to why so many witnesses recanted their testimonies. Out of the seven witnesses from BIN, five retracted their testimony, and two did not appear before the court, but were not found guilty of contempt of court. Attorneys who were present during the court sessions state that the indictment sheet against Muchdi was unacceptably weak; it did not include the verdict against Pollycarpus, nor the fact that Muchdi had used BIN facilities to call Pollycarpus, or that Pollycarpus had attended several meetings on the BIN premises, nor, as stated, the 40 phone calls between the two men.

In February 2010, Komnas HAM appointed a public examination team to “verify the evidence and the trial process” that had led to Mr. Muchdi's acquittal. The team reported that Mr. Muchdi's trial and the subsequent appeal by the Prosecutor had suffered from a number of irregularities, including allegations of witness tampering, unprofessional handling of the case by prosecutors, the failure of the district court judge to summon at least two key witnesses for the prosecution, and the appellate court judge's lack of experience in reviewing criminal trials. Nonetheless, an appeal filed by the Prosecutor against the verdict of acquittal of Muchdi was rejected on 15 June 2009 by the Supreme Court. The decision to launch a new investigation and subsequently ask a review of the trial lies now with the State Attorney General. The police has so far neither produced any new evidence nor new suspects. KontraS has brought this case to the attention of the Judicial Commission in 2008 and the Task Force to Eradicate Judicial Mafia (*Satgas Pemberantasan Mafia*) in 2010. However, neither body has responded.

Convicting Muchdi might not be enough “to build the rule of law and judicial independence in a fledgling democracy, but it may just be enough to finally put a murderer away and symbolically bury Suharto-era military impunity”¹⁸.

In quite a spectacular reversal of roles, Muchdi has now filed a lawsuit against Usman Hamid, KontraS coordinator, for defamation.

1.1.3 Perpetuating impunity through culture: the imposition of an official version of history

This pattern of impunity is aggravated by restrictions imposed on critical review of Indonesia's recent history. Apart from constituting serious violations of freedom of expression, recent bans, by either the Attorney General Office or the Film Censorship Board (LSF), of some cultural or scientific works only serve to perpetuate the notion that security agencies are immune, not just from prosecution, but also from critical analysis. Justice does not merely require judicial

18. Tim Lindsey, Jemma Parsons, “*Failure of Justice in Indonesia*”, *The Australian*, 9 January 2009.

trials, though they arguably constitute the key element of accountability; justice also demands a re-evaluation, through a public debate, of the very policies which led to systematic abuse and repression.

On 23 December 2009, the Attorney General's Office announced the banning of five books, among which three were directly related to historical reappraisal of past policies:

- Pretext for Mass Murder: The September 30 Movement and Suharto's Coup (*Dalih Pembunuhan Massa Gerakan 30 September dan Kudeta Suharto*) by John Roosa. The book analyses the origin of the mass killings of communist suspects in 1965, and the subsequent overthrow of Sukarno by Suharto, who had taken over command of the army.
- Lekra Did Not Burn Books: The Silent Voice of the Cultural Pages of the *Peoples Daily*, 1950-65 (*Lekra Tak Membakar Buku: Suara Senyap Lembar Kebudayaan Harian Rakjat 1950-1965*), by Rhoma Dwi Aria Yuliantri and Muhidin M. Dahlan.
- The Voice of the Church for the Suffering of the Oppressed: The Spilling of Blood and Tears of God's People in Papua Must Be Ended (*Suara Gereja bagi Umat Tertindas Penderitaan Tetesan Darah dan Cucuran Air Mata Umat Tuhan di Papua Barat Harus Diakhiri*) by Cocratez Sofyan Yoman.

Attorney-General Hendarman Supandji stated that these works could "erode public confidence in the government, cause moral decadence or disturb the national ideology, economy, culture and security". The 1963 Law on Securing Printed Materials, which gave the AGO the power to ban books in order to protect public order, was struck down by the Constitutional Court in a very recent decision –October 2010. The Court stated that allowing the Attorney General unchecked power to ban books was the "approach of an authoritarian state, not one based on law" and would no longer be legally binding. From now on all requests to ban books must be approved by a court. However, the Constitutional Court ruled that the Attorney General can still monitor printed material and request a court to ban them.

What it appears, however, is the deliberate protection and perpetuation of a certain myth on the role of the army, of security forces, as well as of Suharto. It creates the cultural space for impunity to linger.

Similarly, several films have recently been banned by the Film Censorship Board (LSF), including three documentary films about East Timor (*Timor Loro Sae, Tales for Crocodiles, and Passabe*), as well as a film about Aceh¹⁹. None of those were allowed at the 8th Jakarta International Film Festival in December 2006. More recently, the Australian movie *Balibo*, on the murder of five Australian journalists by the Indonesian army during the invasion of East Timor in 1975, was banned from Indonesian theatres. The LSF dates back to the Dutch colonial period and now comprises of 45 members from nine ministries, religious organisations, the military, the police and the National Intelligence Agency. Its decision-making process is famously opaque.

19. The Black Road. Dir. William Nessen, 2005.

1.2. The persisting power of the military

One of the lingering issues of the new Indonesia is the place of the military, which enjoyed inordinate power during the Suharto years. “Not much *Reformasi* in the army, or in the security sector”²⁰, says an analyst. President Yudhoyono seems more than reluctant to implement the parts of the new legislation relative to the army that would jeopardise its privileges, notably the provisions on the dismantlement of military business (Art. 78 of the TNI Bill).

This overblown role of the army was due in part to its “Dwifungsi” (dual function): national defence and security as well as maintaining the political and social integrity of the nation – which meant that for decades, the military was an integral element in the political and economic development of the nation.

Therefore, making it return to the barracks became one of the key challenges of the young democracy. By and large, the reform has taken place, and the army (now called TNI²¹) is now in theory confined to national defence.

Two pieces of legislations, Law No. 3/2002 on State Defence and Law No. 34/2004 on the Indonesian Armed Forces (commonly called the TNI Act), set out the structure, the mandate and the functions of the newly reformed TNI.

According to the State Defence Act No.2/2002, the TNI is “a defence instrument of the unitary Republic of Indonesia” (Article 10). The Act stipulates that the military has four main functions:

- (a) to uphold national sovereignty and maintain state’s territorial integrity;
- (b) to safeguard the safety of the people and the nation;
- (c) to undertake military operations other than war; and
- (d) to participate actively in international and regional peace keeping missions

The TNI Act handed authority over the army to the civilian Department of Defence, for the first time since the 1950s. It includes important steps, such as the provision to remove allocated military posts in the People’s Representative Council (DPR), and the separation of the military from the police services. Very importantly, it included provisions for the divestment of all military business, through its article 76, which imposed a five-year deadline (until 16 October 2009) for the Indonesian government to “take over all business activities that are owned and operated by the military, both directly and indirectly”.

However, several areas of unfinished reform and “unkept promises”²² remain. 9/11 and the American need for support in South East Asia for its “war on terror” signalled a change in the international context: the USA dropped its reservations on the Indonesian army’s human rights record, and a renewed cooperation program was initiated, which contributed greatly to the army’s return to grace. “Despite the fundamental changes to the military’s presence in politics and society since Suharto’s fall, the Indonesian armed forces remain a highly problematic institution (...). The experience in Thailand has shown that militaries with a long history of politicization can stage sudden comebacks even after extended periods of political abstinence,

20. Interview with FIDH delegation, June 2010.

21. Indonesia’s military changed its name from Indonesia’s Armed Forces (*Angkatan Bersenjata Republik Indonesia*, ABRI) to Indonesia’s Defence Force (*Tentara Nasional Indonesia*, TNI) in April 1999.

22. Human Rights Watch, *Unkept Promises*, January 2010.

especially if the power structures that underpin the military's strength remain unreformed"²³, writes Indonesia specialist Marcus Mietzner. Human Rights First goes as far as saying that the military has actually seen its influence rise anew in the past few years ; it cites as evidence the fact that more regional commands have been created; that officers have rebuffed attempts to summon them before the National Human Rights Commission over the 1998 killings of anti-Suharto student demonstrators; that the ad hoc tribunals to try the East Timor crimes served as mechanism of impunity for the military (and the police); finally, that the dramatic decentralization of economic and political decision-making allowed the army's territorial structure to retain influence at local levels even as it appeared to yield formal power in Jakarta. Four main areas of concern remain:

1.2.1 Weak civilian oversight and lingering autonomy of the army

Imparsial noted in 2004, at the time of the adoption of the TNI Act, that some provisions left room for ambiguity. Article 3 of the Act, on the use and mobilization of the TNI force, places the TNI at the same level as the cabinet, which means "the TNI Chief could still be involved in politics, particularly in the policy-making process"²⁴. TNI headquarters is hierarchically at the same level as the Department of Defence, with both institutions answering directly to the president, and TNI chiefs have invariably insisted that their direct superior is the president, not the minister. Moreover, while Defence Ministers have often been civilians since 1998, the key bureaucratic posts in the department have been continuously held by active TNI generals²⁵.

Furthermore, Art. 47(2) still sustains the non-military role of the TNI, by allowing active military personnel to occupy positions in the Department of Policy and Security, in the National Intelligence Agency (BIN) and in the Anti-Narcotics Agency. Art. 70 allows TNI to autonomously establish cooperation with national or international agencies; this paves the way for a possible legalisation of the abuse of power, according to observers.

Mietzner notes that so far civilian defence officials have lacked the expertise and the political clout to professionally review strategic, technical and operational questions of military management and present alternative ideas²⁶, while parliamentary oversight of the army remains insufficient. No doubt the fact that the main political parties count numerous former army officers within their ranks plays a role in this difficult hand over of control. The weak civilian oversight is also due to the territorial command and the persisting business activities of the military.

1.2.2. The outdated territorial command system (koter)

The *Koter* system establishes the military organisational structure, which follows the civilian administration down to the village level²⁷. Indonesia is a unique case, says an observer: it

23. Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia*, Institute of Southeast Asian Studies, Singapore, 2009, p.314.

24. Imparsial, *A Portrait of TNI Reform in the Enactment of the TNI Act*, December 2004, p. 28.

25. Most importantly, the secretary-general of the department has traditionally been a three-star officer nominated directly by TNI headquarters.

26. M. Mietzner, op. cit., p. 320.

27. The TNI originated from a combination of modern military units (the Dutch trained forces KNIL and Japanese trained military PETA) and regionally focused guerrillas (people's fronts). A direct consequence of this beginning was the establishment of semi autonomous regional or territorial units responsible for independent funding and logistics arrangements. See Suzanne Burford, *An increasing role for the TNI in Indonesian security policy*, p. 7 sq.

is the only country where the army has always had personnel structure exactly paralleling and mirroring the administration, down to the smallest unit²⁸. This continues to provide the military with considerable residual powers, both political and economic. Indeed, although the army is formally depoliticised, the territorial command allows for the perpetuation of de facto political power by local commanders, since they remain ex-officio members of informal local leadership circles (called *Muspida*), which include the governor, senior local legislators, the police chief, the head of the local court, etc. In these circles, key decisions are made, which means the military still are at the centre of some of the most important political negotiations. The TNI has repeatedly insisted that the country's police force remains inadequate to the tasks it is responsible for and still needs TNI support in case of serious security disturbances²⁹. The army cleverly used the post-Bali climate to push for a strengthening of its own intelligence capacity down to the village level, in a way which would only serve to reinforce the existing territorial command structure.

The territorial command system is also key in perpetuating the military's business practices, as it turns out that the vast majority of military enterprises are not large conglomerates, but small cooperatives attached to the territorial units at each level. Moreover, it is essentially military personnel in territorial commands who engage in off-duty activities such as smuggling, business protection, and illegal logging³⁰.

1.2.3. The persistence of military business

Military self-financing is a long term practice in Indonesia, and it is estimated that up to 70% of the TNI's budget comes from sources outside the national government. Military self financing raises special concerns because of the potential for conflicts of interest and abuse of power. As documented by Human Rights Watch³¹, money-making ventures by the military undermine civilian control over the armed forces and fuel human rights violations. They also contribute to crime and corruption, impede military professionalism, and distort the function of the military itself. Due to the inherent conflict of interest between providing security and profit-seeking, military economic entanglements routinely motivate abusive behaviours including extortion, property seizures and profiteering. This is especially common in outer regions rich in natural resources.

As stated above, the TNI Act gave a five-year deadline for the government to take over all economic activities held by the army. A few days before the lapse of the deadline, SBY promulgated a decree, soon followed by Department of Defence regulations; expert observers agree that the presidential decree and the regulations are "totally inadequate"³². Contrary to the provisions of the TNI Act, which planned the shut down or the takeover of all military holdings and business activities, the decree and the regulations merely organise the restructuring of the entities (cooperatives and foundations) through which the army holds its investments. The government has set up a team to oversee these transformations, but it has no clear authority over the TNI or its businesses, lacks independence, is not required to report publicly on its

28. The majority of the more than 200,000 army personnel are serving under twelve territorial commands that cover the country from Aceh to Papua.

29. Cf. Jun Honna, *The Peace Dividend*, www.insideindonesia.org/content/view/1070/47/

30. See Mietzner, *op. cit.* p. 315 Sq.

31. Human Rights Watch, *Too High a Price*, June 2006.

32. Human Rights Watch, *Unkept Promises*, January 2010

work, and faces no deadline to complete its work.

This lack of compliance with the TNI Act raises serious concerns as to SBY's political will and the army's resistance to change. It also concretely means that the army maintains its sources of self financing, thus severely limiting the ambit of any civilian oversight. As a result, the TNI retains considerable autonomy in relation to budgeting and defence policy.

1.2.4 Continued impunity of high ranking officers and martial courts

Aside from the more general impunity affecting high ranking Suharto-era decision-makers, the army has been meted out a singularly lenient treatment. Under the present system, such cases are usually handled by the military, with few cases ever making it to a tribunal. In the few cases that do, soldiers frequently face charges that do not reflect the scale of the abuse, and the trials lack transparency. Although military personnel are subject to the criminal code, military officers charged with gross human rights violations have normally been tried in military courts with military prosecutors and military judges³³. In none of these cases were senior officers charged, and the sentences were relatively light.

2004 saw the transfer of overall responsibility for the administration of military justice from TNI headquarters to the Supreme Court. However, most observers agree that this was largely of symbolic nature. TNI retained its authority of military judges, with civilian Supreme Court officials arguing that they were unable to exercise proper supervision of military personnel. Military courts (described by one observer as "organised and officially sanctioned impunity"³⁴) remain active, and a serious, in-depth reform of military justice is no doubt needed. In 2007, the parliament debated a bill that would have amended Law No. 31/1997 to overhaul the justice system to enhance civilian court jurisdiction over crimes committed off duty by members of the military. However, the bill failed to pass and the likelihood of it being taken up again by the parliament remains uncertain. Though this was an important step towards achieving greater military accountability, the facts soon showed its limits, as civilian judges often lacked the courage or the expertise to deal with cases involving the armed forces.

1.3 Insufficient reform of the police

The Indonesian police, first hailed in the early post-Suharto years as a key element in the democratisation process, and in divesting the army of its traditional power through a clear reassignment of internal security, have had mixed results.

On the one hand, its independence, professionalism and competence have vastly increased, thanks in part to expanded funding and training programs, in cooperation with Australian and American police (at least for its elite corps). Since 1999, the police have been made independent from the army as a result of the People's Consultative Assembly (MPR) Decree No. VI separating the TNI and the Police, and MPR Decree VII in 2000 regarding the roles of TNI and Police. The presidential decree 89/2000 adopted in July 2000 and the National Police Act (Law No. 2/2002) outline the scope of police authority: it is to maintain security and social order, enforce the law and "provide protection, nurturing and service to the community". They have the primary responsibility for arrest, detention and investigation, and are directly under

33. ICG, Indonesia: Impunity vs. *Accountability for gross human rights violations*, February 2001.

34. Interview with FIDH delegation, November 2009.

the authority of the President. The police forces have soared from 180,000 in 1992 to over 400,000 members in 2009, 90% of which are lower rank police (Bintara).

A growing area of concern is the partisan use of the police by the government. Witnesses again and again testify to the fact that the police intervenes only in very selective cases. In cases where hard-line religious groups such as the Islamic Defenders' Front's (FPI) attack on religious and other minorities or peaceful gatherings, the police is known not to intervene (see Section 2.1). The police is also very reluctant to act against the FPI and other fundamentalist groups.

1.3.1. Institutional overlap between army and police

Institutionally, there is no clear delineation of authority between the army and the police, as the TNI Act 2004 gives the military authority for acts "other than war" (Art. 7.2 (b)), and it mandates the army to "assist the Indonesian National Police in tasks of security and social order to be regulated by law" (Art. 7.2. (b) 10). This is reinforced by the Police Act which provides that "in the interests of carrying out security functions, the Indonesian National Police may request assistance from the Indonesian National Military" (art. 41.2). The overlap of the mandates of the security forces has led to severe tensions between the police and army, and is detrimental to rights-based policing. A clearer distinction between the scope of the mandate of each force is necessary.

1.3.2. Police abuse

Another area of concern is a "tradition" of police abuse, especially against poor and marginalised communities. "It is clear that the police are still committing human rights violations and conventional violence in the form of shooting, torture, and illegal arrest/detention"³⁵. Human rights violations committed by the police include: excessive use of force leading in some cases to fatal shootings, torture and other ill-treatment during arrest, interrogation and detention, where suspects lack access to adequate legal safeguards; and inadequate access to medical care while in police custody.

Type of violation	2005-2006	2006-2007	2007-2008
Shooting/misuse of firearm	43	62	23
Torture during interrogation	43	24	14
Illegal arrest and detention	65	36	39
Clash with fellow police officers	/	6	/
Clash with TNI personnel	5	12	1
Other abuses of power	23	30	12

Source: KontraS, reports in the media as of May 2008

35. Indria Fernida, "Police Accountability and the Enforcement of human rights", in Journey of Reform – Security Sector Reform in Indonesia, November 2008, p. 77.

In cases where victims have reported police abuses, police often subject them to further intimidation and harassment³⁶. Corruption is pervasive in the police. Several observers link this culture of abuse to the fact that the police has only very recently been made independent from the army, and there is thus still a deep-rooted “culture of militarism and of ‘shoot first, ask questions later’ policy”³⁷. (See section below on anti-terrorism cases)

1.3.3. A culture of impunity

Furthermore, impunity seems entrenched, with both internal and external complaints or disciplinary mechanisms either weak or inefficient, and the courts manifestly reluctant to convict police officers. “Control over the police is institutionally very weak”, writes Indria Fernida³⁸. The internal mechanisms in particular (the Disciplinary Code and the Code of Ethics) do not offer sufficient guarantees of police accountability, are not widely known among the police force and are hampered by the lack of post-operational paper trail. The process to lodge an external complaint about police misconduct is also obscure and unclear for the public, and Propam (the Internal Disciplinary Division, the main police body to deal specifically with external complaints) does not have strong powers of independent investigation. It has been repeatedly accused of lack of impartiality and is, in the words of the head of Komnas HAM, a “cosmetic institution”. Complaints stemming from individuals in custody are often followed by reprisals and further harassment.

The newly established National Police Commission (Kopolnas), which also accepts complaints about police misconduct, does not however aim to be a police oversight body; its mandate is more to provide policy advice to the upper echelons of the police. It is still a largely political organ, whose independence from the police as well as from the executive is not yet clear³⁹.

The failure to prosecute police officers before civilian courts further contributes to the general impunity of the police. This, combined with some legal loopholes (such as the provision in the Law of Criminal Procedure according to which police can block, delay or discontinue legal proceedings against its employees), makes it difficult for victims of police abuses to get proper redress or compensation. A leading jurist sees the police as the main source of threats and potential threats to human rights in Indonesia.

1.3.4 Police inaction in human rights violations committed by non-state actors

The deep imprint left by the legacy of several decades of abuse of power, a culture of disrespect for human rights, and a general “disregard for law enforcement itself”⁴⁰, manifests itself in the shocking inaction of police in the face of assaults or other violence committed by non-state actors, especially hard-line Islamic groups. All witnesses narrate again and again the same story: when radical groups, such as the FPI or the Hizbut Tahrir Indonesia (HTI), use violence,

36. See Amnesty International, *Police Accountability in Indonesia*, June 2009. Amnesty International has also published an extensive report on the torture in Indonesia. Amnesty International, Indonesia – *Briefing to the UN Committee against Torture*, 2008.

37. Interview with police expert, November 2009.

38. Indria Fernida, art.cit. p.83.

39. Three of the nine commissioners are government representatives: the Coordinating Minister for Politics, Law and Security (who chairs the commission), the Minister of Interior and Minister of Law and Human Rights.

40. Indria Fernida, “Police Accountability and the Enforcement of human rights”, in *Journey of Reform – Security Sector Reform in Indonesia*, Nov. 2008, p. 81

especially against minorities, the police is often passive at best, and a facilitator of violence at worst (see section below on violence against minorities). The police too often let violent sectors of society take “justice” in their own hands. This dubious complicity of the police with some extremist elements in Indonesian society is also an indicator of its politicised background; the age of a neutral and professional service is yet to come. KontraS has documented in the year 2008 alone more than 53 cases of police tolerance of violent acts, the great majority of which acts targeting freedom of religion ⁴¹.

1.4 Anti-terrorism and human rights abuses

Counter terrorism plays an important part in the public policy discourse of the successive presidents since 2001, and of Yudhoyono in particular. This has made him an important ally of Western countries, especially the United States, in the “war on terror”. However, several in Indonesia see this move as rather well calculated: “Counter terrorism is where the money is – of course they would do all that is openly necessary to please the United States” ⁴². Indeed, according to Imparsial, a leading human rights organisation, foreign assistance has poured into Indonesia in various forms - from cash, to trainings to early detection equipments ⁴³. A number of collaborations are developed for the fight against terrorism with countries such as the United States (US\$ 250 million, equipment, training assistance), Canada (equipment), European Union (min € 27.5 million), UK (training and equipment), Germany (training of police officers, equipment), France (training of police officers), Australia (US\$ 5.5 million, followed by another 10 million, assistance in capacity building and facilities), Japan (US\$ 47.4 million and assistance in training and equipment), New Zealand, Jordan, and Singapore.

Human rights abuses have been on the increase in the context of counter-terrorism, notably police abuse in detention, and extrajudicial executions. The types of violations are “typical of the culture of violence which has plagued the security sector for decades” ⁴⁴, says an analyst. Although counter-terrorism is a new concern, unknown to the Suharto era, and flushed with foreign money, its methods appear to many as “old wine in new bottles”: a culture of violence, of torture, and of impunity of security officers who perpetrate them. Many hold the view that counter-terrorism is a key obstacle to security sector reform. The role of confession is held to be essential in the judicial tradition of Indonesia, at the expense of other forms of evidence, notably material. The over-estimation of confession as evidence has led to the slippery slope of coerced testimonies, and of torture.

The fight against terrorism became an issue in Indonesia after 9/11 when the US embarked Indonesia in its counterterrorism plans, thus re-legitimising the army and providing the Indonesian government with funds to enhance counterterrorism capability. It became a salient domestic issue after the devastating bombing in Bali in 2002, which killed over 200 people, during Megawati Sukarnoputri’s tenure. Several other terrorist attacks have taken place in Indonesia since then, many of which undertaken by Jemaah Islamiyah or some splinter groups thereof.

41. Idem.

42. Interview with FIDH delegation, May 2010.

43. See Imparsial, *War against terrorism in Indonesia and its implications to human rights, 2002-2009 Monitoring Report Coalition for security of civil society*. Jakarta, 2010.

44. Interview with FIDH delegation, November 2009.

Different laws are used to prosecute terrorist acts, among which three figure prominently:

- The anti-terrorism law 15/2003
- Emergency law 12 of 1951
- Some provisions of the Criminal Code (relating to armed robbery)

1.4.1 Law 15/2003

Soon after the 2002 Bali bombing, draft antiterrorism legislation then under debate was rushed through, first as a decree on 18 October 2002 (barely a few days after the bombing). The decree, coupled with a second one making it retroactive to cover the Bali bombing, was approved in its entirety by the parliament in March 2003, as Law 15/2003 on Combating Criminal Acts of Terrorism.

The Law applies to “any person who intentionally uses violence or the threat of violence to create a widespread atmosphere of terror or fear in the general population or to create mass casualties, by forcibly taking the freedom, life or property of others or causes damage or destruction to vital strategic installations or the environment or public facilities or international facilities” (chap. III, section 6). Many human rights NGOs have decried this overly broad definition of terrorism, which could include legitimate political expression, especially in light of section 20, which provides that anyone responsible for bothering or intimidating and investigator can be sentenced to up to 15 years imprisonment. The law specifically authorises the prosecution of those who aided and abetted acts of terrorism including by hiding terrorist suspects and withholding information about terrorist acts.

Chapter V of the law allows suspected terrorists to be detained for seven days without warrant (as opposed to a single day allowed by the Code of Criminal Procedure) and detained for six months for questioning and prosecution. The denial of access to lawyers during initial stages of interrogation heightens the risk of torture and forced confessions.

The powers of investigators are also extended. They may now examine personal mail and tap telephone conversations and other communication for a period of up to one year (section 31). Significantly, uncorroborated intelligence reports produced by agencies run by the armed forces, police, and the BIN may also be used now to initiate investigations, order detentions, and as legal evidence (section 26). “Of all the provisions [of the Law], this is perhaps the most unusual and the most worrying from a civil rights point of view. Clearly the notion that contrived intelligence reports could result in a conviction regardless of the material they are based on opens huge opportunities for exploitation by unscrupulous police. This is particularly of concern given the unimpressive record of Indonesian intelligence to date” writes law professor Tim Lindsey⁴⁵. BIN, in particular, is known as fiercely conservative and repressive body, as again manifested in the Munir case. Komnas HAM sees in the unregulated power of BIN one of the main sources of danger for human rights in Indonesia. It appears that a law to regulate BIN is currently under consideration.

The sanctions include the death penalty or life imprisonment (section 6).

45. Tim Lindsey, *Indonesia's new anti-terrorism law: damned if you do, damned if you don't*. Undated publication.

Imparsial classifies the threats to civil liberties posed by the Law in various categories ⁴⁶:

Protection of Civil Rights

- a. The Law may be used to curtail press freedom and freedom of expression, as its articles are ambiguous due to loose definitions. It fails to clearly differentiate acts of terrorism from political dissent. Article 20 for example stipulates ‘gestures intimidating to the investigators.’ ‘Intimidating gestures’ are not clearly defined in the article. This article can potentially restrict mass media or any individuals expressing critical of government policy and actions.
- b. It can jeopardise individual rights as phone tapping, scrutiny on bank records and so forth are justified based on intelligence report (Article 26.2 and Article 30).

Judicial System

- a. The Law threatens the independence of judicial system as it allows the involvement of non-judicial intelligence officials such as State Intelligence Agency and the military.
- b. It undermines public ability to scrutinise both the judicial system and involvement of non-judicial intelligence into legal proceeding. Pre-trial mechanism from Anglo-Saxon system is adopted but its judicial system is left out, resulting on breaches on the right for habeas corpus. (Article 26 point 2).

State Authority

- a. The Law is prone to abuse of power of the State because it provides expansive authority to intelligence personnel, from the National Intelligence Agency and the military, to pursue any means necessary to prevent terrorism or to gather information in relation to terrorist activity (Article 26).
- b. Pre-trial mechanism stipulated in the Law in relation to the admissibility process (in which judges gather preliminary evidence, release warrant for arrest, confiscation and torture) leads to impunity for intelligence personnel (Article 26 .2).

There have been talks of toughening the anti-terror law for some years now, and SBY pledged to do so during his re-election campaign in 2009. In September, the Indonesian government established the interdepartmental National Counter-terrorism Agency (BNPT) ⁴⁷. The head of Detachment 88 (the police section specially charged with terrorism cases) stated in late 2009 and in 2010 that he wanted preventive detention to be extended from 6 to 30 days, or even possibly 60 days. It appears that some recommendations were made to expand the list of terrorist acts to include acts constituting “precursors to terrorism”, e.g. an active incitement to commit terrorist acts, or glorifying jihad.

Imparsial writes that “It can be concluded that Law No. 15/2003 fails to both prevent terrorism and empower government officials with a comprehensive anti-terrorism policy. Instead, it is a mere counter terrorism policy supporting the coercive nature of the government officials

46. See Imparsial, *War against terrorism in Indonesia and its implication to human rights*, 2010.

47. The BNPT wields greater authority than the National Police’s Special Detachment 88 counterterrorism squad. Inspector General. (ret) Ansyaad Mbai was appointed chief of the agency, which coordinates actions with other authorities such as the Ministry of Religious Affairs and the Ministry of Education.

from the police, military and intelligence. Moreover, any plan for amendment is aimed not to improve its flaws but to provide an even more authority to the State, particularly its coercive apparatus. Periodic evaluation on anti-terrorism by the government is swept under the rug”⁴⁸.

A serious problem arose when the Constitutional Court ruled in 2004 that the anti-terrorism legislation under which the Bali bombers had been convicted (including three on death row) was unconstitutional, as it allowed for retrospective prosecution, contrary to Art. 28(i) of the Indonesian Constitution and Art. 15 of the International Covenant on Civil and Political Rights (ICCPR). The bombers had been prosecuted under a law which had been enacted only after the deed. In an amazing defeat for the rule of law and for human rights, and in a clear travesty of legality, the Minister of Justice as well as the Chief Justice of the Constitutional Court argued that this ruling should be interpreted as meaning that the law was unconstitutional from the moment the court had recognised it as such, not before⁴⁹. All convictions were consequently upheld.

1.4.2 Law 15/2003 in practice

The first few months and years of application of the anti-terrorism Law 15 confirmed the worst fears of human rights defenders, with religious activists, farmers’ groups, land right activists, separatist movement activists (notably in Aceh at the time, and in Papua), and students threatened with prosecution under the law. In Aceh, just two months after the law was enacted, five long-time Free Aceh Movement (GAM) civilian negotiators were arrested and charged under the antiterrorism law, and were eventually sentenced to between 12 and 15 years imprisonment (they were released under the 2005 Aceh agreement, while one died during the tsunami). During the pre-trial detention, the negotiators had limited access to lawyers and reported being subjected to threats and ill-treatments. Cases of torture in detention were recorded, as were cases of unlawful detention, detention of a suspect’s family members as means of pressure, ill-treatment amounting to torture, coerced confessions, arbitrary arrests, lack of respect for the detainee’s rights, and harassment of human rights defenders. Things then improved for a while, to the extent that ICG could write that “[The law] has several provisions that are open to abuse, but with a couple of glaring exceptions (...), it has not been abused.”⁵⁰. Detachment 88, the police squad in charge of anti-terrorism, founded in 2005, is considered the elite of the police, and certainly benefits from much higher levels of funding, equipment and training, and considerably better conditions, than the rest of the police force. It comprises approximately 200 men. According to the head of Detachment 88, Brigadier Usman Nasution, 464 suspects were arrested by the squad between 2000 and 2003, and 440 since 2003. Several observers expressed concern about the opacity of Detachment 88’s budget, which appears to have at least two different sources of funding (the state budget and external sources, such as foreign countries, or even private donors, such as TV channels).

However, since late 2009, the situation has deteriorated anew, and a sudden increase of custodial deaths and cases of torture has been noted. At least 20 individuals are said to have been killed between July 2009 and May 2010 in raids to capture terrorists. “The difference is that, while one could blame poor training for the initial extrajudicial killings by anti-terrorist police, there

48. Imparsial, War against terrorism in Indonesia and its implication for human rights, *op.cit.*, p. 36.

49. See HRW, Letter to the President Yudhoyono, 27 October 2008.

50. Sidney Jones, “Terrorism, counter-terrorism and human rights in Indonesia”, Submission to the International Commission of Jurists by the International crisis Group, December 2006, p. 1.

is no doubt that the suspects are now being deliberately killed”, notes an observer ⁵¹.

Impartial claims of at least 36 cases of arbitrary arrests under the law. Human rights defenders and other activists seem to have been put at risk by the anti-terror law. In 2003, local community members protesting the reopening of a controversial pulp and paper factory in Porsea, North Sumatra, were reportedly labelled terrorists by police and intelligence officers and threatened with sanctions under the anti-terror law. In the same year in West Java, farmers’ groups in Pasundan and Cianjur who challenged land claims of the state-owned forestry and plantation agencies were also threatened by security officers with the law. Many complaints come from Muslim groups and defence lawyers, who claim that since 2003 the authorities routinely round up Muslim activists and graduates of religious boarding schools with no evidence of wrongdoing. TPM (an Islamic lawyers association) has made a complaint to Komnas HAM claiming systematic use of intimidation and harassment of their clients and their relatives by the police. Even when promptly released, many individuals complain of violations such as lack of notice to their families and lack of an attorney, made possible by the existing legislation.

Several cases of death in custody of terrorist suspects have surfaced. For example, in July 2003, a suspect named Ikhwaanuddin died in police custody; in February 2006, a JI member, Hernianto, serving a 12-year sentence in connection with the Bali bombings, died of kidney failure in a hospital. These cases have not been independently investigated.

Moreover, security officials often also arrest the whole family of those suspected with terrorism. Iman and Agung Manan, sons of Bali Bombing II suspect M. Salman by District Military Command (Komando Distrik Militer/Kodim) apparatus in Manado as stated by Chief of Wirabuana Military Area Command (Komando Daerah Militer/Kodam), were arrested by the police. Munfiatun or Fitri, the wife of an alleged mastermind behind numerous bombings in Indonesia – Noordin M. Top, was also arrested in 2004 and is brought to court in 2005.. It appears to have been a case of mistaken identity ⁵². Police might also arrest children: on 9 June 2007, police, failing to obtain information on the whereabouts of alleged terrorist Taufik Kondang, a 16-year-old Isa Ansyori and his 19-year-old cousin Nur Fauzan were arrested by the police⁵³.

It also appears that, at least in the first few years following the adoption of the anti-terrorism law, police interpreted the seven-day preliminary investigation rule as giving them license to withhold information that an arrest had occurred, and to even deny that they held the suspects in custody; at least for a while, counter-terrorism thus allowed, under the guise of the law, “disappearances” of suspects. In Semarang (Central Java), four individuals, presumed friends of the much-wanted Noordin M Top (a leader of one the most active terror groups) were arrested and placed in secret detention on 13 January 2005. Their whereabouts were only ascertained approximately a week later. The NGO KontraS states that such cases are far from unique, and cites similar secret arrests and detentions having occurred in Jakarta, West, Central and East Java, Bali, Aceh, North Sumatra, North Sulawesi, East Kalimantan. According to KontraS, the majority of the cases involved Detachment 88, and in a limited number of cases, the army or BIN. As of 1 October 2005, KontraS had counted 20 cases of arbitrary arrests where suspects

51. Interview with FIDH delegation, June 2010.

52. See Imparsial, *op. Cit.*

53. Lampung Pos, “JI Leader: Abu Dujana’s Leader Arrested/Pimpinan JI: Atasan Abu Dujana Ditangkap”, 10 June 2007.

were held incommunicado. In another case, Abdullah Azzam, a medical volunteer, claimed that police detained and questioned him for 26 days without charge or notification in 2005. Several cases have been reported in central Sulawesi where suspects were unlawfully arrested or wrongfully charged, or where depositions were proved to be fakes made by the police (in this case, the local police, not Detachment 88).

According to documentation by KontraS, between 2000 – 2009, 596 people have faced terrorism charges for their alleged involvement in a number of cases, including the 2002 and 2005 bombings in Bali, the bombings of the JW Marriot and Ritz Carlton in Jakarta in 2009 and attacks in Poso from 2006 to 2007; 533 of these terrorist suspects have been brought before a court. During this period, 63 people were killed during security operations by Detachment 88. Between 2009-2010, KontraS documented a dramatic increase in the number of terrorist suspects, which stands at 444 people, out of whom 420 have been brought before a court. During this period, 24 people were killed during operations by Detachment 88.

One problematic application of the terrorism law has been in Poso (Central Sulawesi), site of intense communal conflict between Muslims and Christians in 2000-2001. It appears that for various political reasons⁵⁴, the anti-terrorism law has been extensively applied, in a context which might not have warranted it: the anti-terrorism law is often used in cases of communal tensions. In 2005 in Poso, a number of human rights defenders working for Foundation for Human Rights Advocacy and Legal Studies Development (HAM/LPSHAM) Central Sulawesi were arrested arbitrarily by Detachment 88 in an operation led directly by high-ranked official of Poso Resort Police and tortured in the process. It all started with a bomb in Tentena, a sub district in Poso district in Central Sulawesi on 28 May 2005. Four LPSHAM activists Jumaedi (25-year-old), Jumeri (23-year-old), Mastur (25-year-old) and Sutikno (23-year-old) were arrested by the police and were coerced into admitting to be the authors of the bomb attack.⁵⁵ Coercion by the police included verbal intimidation; and threats; assaults by hands, batons and a spade handle; slaps and having rifles pointed at them; forced nudity and immersion in water; fed stale food; buried up to their necks; having their faces smeared with chili sauce and hanged upside down.

On 1 July 2005, Jumaedi was arrested at home in an operation directly led by the deputy head of Poso resort police. The police came with no warrant, searched through his house, confiscated a number of belongings and prevented his wife from making any calls. He was coerced into signing a warrant, before being dragged to Pendolo where he was interrogated, before being led to a cell with other detainees. He was repeatedly beaten over the next few days, was fed only once, and was not allowed to call an attorney or his relatives. In his later statement, he narrates how the police officer who interrogated him kept repeating “No human rights here”, and that the anti-terrorism law would be applied with full force to him.

Another victim, Jumeri, was arrested by the police, brought to a garden and was instructed to dig a hole, in which he was buried up to his neck, had four rifles pointed at him, had his face smeared with chili sauce and was beaten with a spade handle. Another victim, Mastur Saputra, had his head covered with black plastic bag after he was interrogated in Mulia hotel Pendolo and had plastic ropes tightened around his neck twice. The last victim, Sutikno, was

54. See Jones, art.cit, p.5.

55. KontraS, South East Sulawesi LPSHAM and PBHI, “Human Rights Violation Reporting/Pelaporan Kasus Pelanggaran HAM” submitted to head of National Commission of Human Rights, July 2005.

arrested around 18.30 in the evening and brought to Poso Lake where he was stripped down and submerged into the lake for around two hours. He was also ordered to climb a tree while rifles are pointed at his buttocks.

Arbitrary arrests on grounds of Terrorism, 2004 to 2009⁵⁶

No	Name	Location of Arrests	Date	Reason for Arrest	Further Information
1	Hambali, (32-year-old) religious teacher and his assistant Bubun (37-year-old)	Miftahul Hidayah Islamic School, Ciseureuh Kampong, Cimaragang Village, Cidaun, Cianjur	22 October 2004	Hiding five terrorists, two of whom are Dr Azahari and Noordin M Top.	They are released as soon as the police fails to provide supporting evidence.
2	H. Abdurrahman Ahmad Andri Siregar	Gading Tutuk Complex I No. 2, Soreang, West Java	21 April 2005	Resemblance to Noordin M Top	Released on 22 April 2005
3	Isa Ansyori (16), son of the alleged terrorist Taufik Kondang	A repair shop in Yogyakarta	9 June 2007	Withholding information on suspect Taufik Kondang who is arrested in Bekasi	Released on 22 June 2007
4	Nur Fauzan (19), cousin to Isa Ansyori	A repair shop in Yogyakarta	9 June 2007	Idem	Idem
5	Two Haya village residents, Ambon, who spread Islamic teachings to children.	Haya Village, Central Maluku	10 June 2005	Being involved in Abu Bakar Ba'asyir and Dr. Azahari's network	Released on 13 June 2005
6	A man known as U	/	15 June 2005	Being involved in Pamulang bombings in the residence of Abu Jibril, Witanaharja Complex, Pamulang	Released on 27 June 2005
7	Suratmanto, Hananto and Tugino (employers for building material shop owned by Joko Sumanto)	Building material shop owned by Joko Sumanto in Wonogiri, Central Java	July 2005	Involvement in a terrorist network	Released on 6 July 2005
8	Ahmad Djaelani (Jejen)	Rote Island, East Nusa Tenggara NTT	October 2005	Resemblance to Noordin M Top.	Charged with ID card/ Passport forgery.
9	Fahrudin	Rote Island, East Nusa Tenggara NTT	October 2005	Friend of Jejen, who has a resemblance to Noordin M Top	Idem
10	Masimin Hasan, (47-year-old), Singapore citizen	Banteng Kampong RT 08/05, Kertajaya Village, Sub District Cicurung, Sukabumi, West Java	4 October 2005	Having a resemblance to Dr. Azhari	Examined for 12 hours, then released.
11	Hasan	Resident of Kaliwining, Rambipuji, Jember	9 October 2005	Involvement in a bomb explosion/ able to identify one out of three suicide bombers.	Released on October 12 2004
12	Syamsul Arifin	Jember	9 October 2005	Idem	Released on October 10 for lack of evidence
13	Syamsul Hadi	Jember	9 October 2005	Idem	Idem

56. Source: Imparsial, op.cit. Pp.47-49.

14	Ilham	Jember	9 October 2005	Idem	Idem
15	Kuswata	Cilegon, Banten	11 October 2005	Involvement in Bali Bombing II	Released
16	Syaiful	Idem	Idem		Released
17	Nanang (31)	Sukabumi, West Java	12 October 2005	Idem	Idem
18	Uyok (28)	Sukabumi, West Java	12 October 2005	Idem	Idem
19	Suryono (Boy)	Jember	13 October 2005	Involvement in Bali Bombing II	Released after he was kidnapped by a group of gangsters for interrogation
20	GA	Panarukan Village, Sisingamaraja	16 October 2005	Possession of Documents on Jl	Brought to Bali Regional Police Headquarters and was released on October 18 2005
21	KA	Panarukan Village, Sisingamaraja	16 October 2005	Possession of documents on Jl	Idem
22	NN	Panarukan Village, Sisingamaraja	16 October 2005	Idem	Idem
23	Agung (14-year-old)	North Sulawesi	18 October 2005	Idem	Released for lack of evidence
24	Iman (16-year-old)	Idem	Idem	Idem	Idem
25	DY	Idem	Idem	Idem	Idem
26	CR	Tomohon, Manado, North Sulawesi	19 October 2005	Involvement in Bali Bombing II	Released on October 20 2005 for lack of evidence
27	SD	Tomohon, Manado, North Sulawesi	19 October 2005	idem	idem
28	Edi Pambudi	Bukit Mawar II No. 147 Sendang Mulyo, Tembalang, Semarang	19 November 2005	Alleged terrorist	Released after ten hours of examination at the Semarang regional police headquarters for lack of evidence
29	M. Fachrudin (Epeng), brother-in-law of Edi Pambudi	Idem	Idem	Idem	Idem
30	Adi Purwanto (Fachrudin's fellow)	Idem	Idem	Idem	Idem
31	Nanang Hadi Setiawan and Bahrudin, both work on explosive materials in Freeport; Ayatullah Islami is a religious teacher	Freeport Area in Papua	27 July 2006	Involvement in terrorist network	Released on 29 July 2006
32	Drs Taufan Haji alias Drs Mustofa Akbar.	In a rented house on Pengayoman Blok F5 No. 5, behind Maternity Ward Bunda, Panakkukang, Makassar	25 July 2009	Having a resemblance to Noordin M Top	Arrested for other charges
33	Budi, member of the Navy	Gang Mangga, Tugu Selatan, Koja Sub District, North Jakarta	5 August 2009	Involvement in terrorist network	Released on 6 August 2009
34	17 Filipino Jamaah Tabligh preachers performing khuruj	Nine of them are arrested in Purbalingga and the rest 8 in Solo	14 August 2009	Involvement in terrorist network	Released on 15 August 2009

35	Iwan Herdiansyah, 27-year-old	Cibingbin Market, Kuningan, West Java.	15 August 2009	Suspected as courier for terrorist fund	Released on 21 August 2009
36	Makruf Hamid (37-year-old), along with 11 fellow preachers from Jamaah Tabligh Islamic school in Tanjung District, Sub District Purwokerto Selatan	Nurul Huda Mosque. Sida Kangen Village, Kalimantan District, Purbalingga, Central Java	16 August 2009	Involvement in terrorist network	In prison for two nights and released on 18 August 2009

Prima facie evidence suggests Indonesia has entered a program of “rendition”, though it is not confirmed whether it is still on-going. A non-Indonesian suspect, Omar al-Faruq, was secretly turned over to the U.S. authorities in 2002, but the US did not reciprocate and denied Indonesian police access to the Indonesian operative known as Hambali, arrested in August 2003 in Thailand. He was allegedly moved to Guantanamo.

There are also grave concerns about the increasing and unsupervised powers of the various intelligence agencies, especially BIN. This is to be seen in light of Indonesia’s history, fraught with abuses and unwarranted extensions of “national security threats” or its contemporary equivalent, terrorist acts. According to one observer, “the government cannot distinguish between an act of terrorism and some forms of political dissidence”⁵⁷. Counter-terrorism has also re-energised the army, which under the Defence Act has the authority to engage in acts “other than war”. The talk of a stepped-up role for the military in anti-terrorism loomed large in the presidential campaign in 2009 (and still does), especially after the police mismanaged some high-profile arrests. The army could barely repress its glee and argued that their professionalism was again needed, as was the territorial command system. The TNI, as stated, benefitted largely from September 11, as the US administration under George W. Bush argued that the only way to fight terrorism in Indonesia was to work with the military. The US IMET (International Military Education and Training) program to Indonesia, which had been cut off after the TNI-orchestrated 1999 violence in East Timor, resumed.

In any event, whatever future enhanced role the army might or will get in counter-terrorism, there is no doubt that the current atmosphere is not conducive to further reforms and civilian oversight of the army. The same goes for BIN: since 2005, an expanded role for the intelligence agency is being sought, which would no doubt weaken human rights protection and guarantees, as well as accountability mechanisms. More generally, human rights defenders express concern not just about the provisions of the law, but also about a political environment in which the institutions that deal with anti-terrorism (police, BIN, TNI) are given an (almost) free rein and have little or no tradition of human rights accountability. They also decry the lack of formal rules of engagement for the police when targeting a terrorist suspect; more often than not, the police “prefers to shoot and ask questions later”, says a specialist⁵⁸.

Most human rights observers regret the narrow, law-enforcing perspective on counter-terrorism adopted by the government. All agree that a wider angle should be taken on, including better de-radicalisation programs, curbing on hate speech, regulation of Pensatren (the local madrassahs), among others.

57. Interview with FIDH delegation, November 2009.

58. Interview with FIDH delegation, May 2010.

1.4.3 Impact of counter-terrorism on intelligence reform

Intelligence in Indonesia is regulated by several pieces of legislation:

- Inpres No. 5/2000 on the Containment of Terrorism Acts
- Inpres No. 5/2002 on State Intelligence Coordination
- The above-mentioned Law No. 15/2003

An “Intelligence Bill” is currently under consideration in order to unify the legal basis of the Indonesian intelligence agencies. Its provisions are being directly influenced by counter terrorism policy. In particular, the intelligence agencies, and BIN in particular, have been fiercely pushing for the power to arrest individuals. BIN is also pushing to become the coordinating agency of all intelligence bodies, which, given BIN’s human rights record, does not bode well. Several officials involved in the discussions on the Intelligence Bill stated to the delegation that as of now, the draft envisages handing more power to BIN, and with less transparent procedures to monitor and supervise its activities. No proper, convincing oversight mechanism is being considered. In general, observers note the lack of regulation regarding declassification of information within the intelligence community, which reinforces the opacity in which the agencies have been working.

The Munir case was perceived as a test of how intelligence agencies would accept transparent and thorough investigative processes. As was noted earlier, the intelligence agency performed dismally in that respect. Out of the seven witnesses from BIN expected to testify, five revoked their statement, and two did not come to the trial with no consequences. As one observer noted, it is the very same people who were involved in Munir’s case who are now drafting the Intelligence Bill.

Several key issues to intelligence reform have been identified by experts⁵⁹:

- The importance of de-linking intelligence from the military, and of setting up proper intelligence training which would be under civilian rule (as of now, most intelligence officers are soldiers or ex-soldiers, thus indirectly perpetuating the inordinate power of the army)
- The importance of involving the legislature in the drafting of the Bill, in the oversight mechanisms of the intelligence agencies, and in its regulations. The executive has held sway too long over intelligence agencies, thus reducing them too often to simply an instrument of its own interests, rather than serving the general interest. “There is a necessity for an external oversight on the intelligence community, including parliamentary control, in order to overcome the paradox between the principle of transparency in a democratic society and the confidential nature of the intelligence”⁶⁰. The role of the judicial institution is also important with regards to external oversight.
- The necessity of a clear division of functions between intelligence and law enforcement.
- The importance of clarifying the special powers given to intelligence through explicit regulation.

59. See e.g. Aleksius Jemadu, “accentuating the coordination in Indonesian intelligence reform”, in *Journey of reform – security sector reform in Indonesia*, *op. Cit.*, p. 102.

60. Fajrul Falaakh, “The Framework for intelligence regulation in Indonesia”, *Journey of reform – security sector reform in Indonesia*, *op. Cit.*, p. 114.

1.5 Enduring violations in Papua⁶¹

Papua was integrated into Indonesia relatively late, as it remained under Dutch rule until 1962. Then, without Papuan participation or consultation, Indonesia and the Netherlands signed the New York Agreement ceding Papua to Indonesia; the Agreement included a clause providing for a referendum on staying in Indonesia to be held within six years. This “Act of Free Choice”, or *Pepera*, was held in 1969. At the time, the population of Papua was estimated at approximately 800,000, and only 1,022 individuals (i.e. less than 1% of the population of the province) participated in the Act. This “referendum” of 1969 has consistently been held by the Indonesian authorities as the legal basis for its continued rule over Papua. The *Organisasi Papua Merdeka* (Free Papua Movement), the OPM, was founded in the 1960s, and low-level separatist actions have been led since then; separatist movements picked up steam after the fall of Suharto, and human rights violations are commonplace. Papua has been granted Special Autonomy (Otsus, in Bahasa) in 2001, which has disappointed many Papuans as Jakarta keeps de facto control over the province and thwarts all efforts at empowering local Papuans; it has also had very little effect in terms of better protection or realization of human rights in Papua. The failure of the central authorities to address the legitimate grievances of the Papuans is one of the reasons for an upsurge of political violence in 2009 and 2010, one reason for which was the increased activity of the militant activists from the West Papua National Committee (*Komite Nasional Papua Barat*, KNPB).⁶²

The Indonesian Institute of Science, LIPI, which has developed a “Road Map for Papua”, has identified four sources of conflict in Papua:

1. Marginalisation of, and discrimination against, indigenous Papuan people as a result of economic development, political conflict and mass migration into Papua since 1970: while immigrants constituted 2% of the population in Papua in 1959, they had jumped to 41% in 2005, and were expected to be the majority by 2011⁶³.
2. Failure of development, in particular in the fields of education and health for indigenous Papuans, and the failure to empower the people’s economy.
3. The contradiction between Papua and Jakarta about history and political identity. This issue can only be resolved by means of dialogue along the lines of the dialogue that occurred in Aceh, and a “recognition” (*rekognisi*) of the political identity of Papuans.
4. Lack of accountability for past state violence against citizens in Papua, and persistent human rights violations by the state apparatus, especially the army.

The far-flung province remains under a tight lid; freedom of expression and association, as freedom of movement, remains a thorny issue, as the government perceives any dissent as separatist-inspired. It also remains the last province where the military has quasi unchecked powers. Papua remains the last stronghold of the TNI, where it keeps, as before, quasi unchecked powers. While in the rest of Indonesian territory the TNI has had to cede its power to the police, it has not done so in Papua, where military business is also thriving due to the presence of the Freeport mine, one of the largest gold and copper mining operations in the world – as well as one of the most controversial. The protection of the mine, which has witnessed several attacks

61. Papua refers generally to both the West Papua province and Papua province of Indonesia, unless otherwise indicated.

62. See ICG, *Radicalisation and Dialogue in Papua*, Asia Report 188, 11 March 2010.

63. LIPI, Papua- A road Map: *Negotiating the Past, Improving the Present and Securing the Future*, p. 13.

in recent years, is the object of turf wars between the army, the private security companies, and the national police (Polri). The army's business also extends to cocoa and other plantations.

Papua is the scene of constant and systematic human rights violations. Authorities have greatly limited access to the island to external observers, which explains the difficulty to get adequate and reliable information. Student leaders, trade unions, all human rights defenders, are accused of separatism and may be charged under the anti-terrorism law, or "disappeared". Many Papuan activists report being systematically intimidated, harassed, and threatened, preventing them from fully exercising their freedoms of association and expression. On 24 June 2010, police shot and killed Melkias Agape in the city of Nabire. On 30 June, Police Mobile Brigade (BRIMOB) officers shot and killed Mika Boma and injured another four persons during a clash with rioters in Paniai. On 3 August 2010, members of the BRIMOB allegedly shot and killed tribal leader and former political prisoner Yawan Wayeni at his house in Mantembu village, Yapen Island, Papua. On 30 July 2010, the naked body of Ardiansyah Matra's, a journalist working in Papua, was found in the river Gudang Arand in Merauke, with his arm tied to a tree, after going missing for two days. He had received death threats in the days before his disappearance, and was allegedly kidnapped last year by soldiers who threatened to kill his family after he wrote a series of articles for *Jubi* magazine about illegal logging by local military officers. Other journalists in Papua received a series of threats by SMS in the run-up to the 8 August election for district head in Merauke. In one incident, Lala, a reporter with *Bintang Papua*, received a bloodstained letter containing death threats.

Gruesome ways of intimidation are used, as evidenced by the recent release of some videos showing acts of torture committed against Papuan individuals by army officers. The TNI has officially acknowledged its responsibility in the matter. Three low-ranking officers of the Pam Rahwan Yonif 753/Arga Vira Tama squad, based in Nabire, Papua, were arrested and tried after the media storm that ensued once the video had been made public. They were condemned to five months' imprisonment on 11 November 2010, for their involvement in the torture session. The officers were Chief Pvt Sahminan Husain Lubis, Second Pvt Joko Sulistiono and Second Pvt Dwi Purwanto⁶⁴. Though President Susilo Bambang Yudhoyono trumpeted the trial as evidence of Indonesia's commitment to upholding human rights, it has been widely criticised by human rights activists as deceptive, and below standards for fair trial. In particular, there appears to be serious doubts as to the identity of the officers involved – the ones who have been condemned are alleged to have been involved in another event.

Papua is also noteworthy by the repeated use of the Antiterrorism Law as a means of control and rule over a restless province.

The death in December 2009 in the hands of the mobile brigade of the police (Brimob) of a well-known separatist leader, Kelly Kwalik, is another case in point. Kelly Kwalik had abandoned violent tactics and joined with the West Papua National Coalition for Liberation, an umbrella organisation of pro-independence groups to seek a negotiated settlement to West Papua's issues, and had not been militarily active. His death has not been investigated by the authorities. It is reported that he died in Timika in his relatives' home on 16 December, after having been accused of being responsible for earlier shootings near Freeport. Kwalik had denied any responsibility in the shooting.

64. The verdict, read out by chief judge Lt. Col. Adil Karokaro at the Cendarawasih Military Court III/19 in Jayapura, was heavier than the three months previously demanded the military prosecutor.

Probably the most famous political assassination occurred in 2001. The Papuan Presidium Council (PDP), which strongly supported independence, and which had been set up in 2000, had elected Theys Eluay, chief of the Sentani tribe and a well-respected, high-profile community leader, as its head. Although the PDP decided to pursue the path of dialogue, eschewing violence, alarmed army intelligence officers set up a special task force, which identified in a document famously known as the “Ermaya” document, a number of ‘target persons’, including Theys Eluay and other leaders of the Council. On 10 November 2001, Theys, was invited to a Heroes Day celebration at the headquarters of Kopassus troops in Hamadi, near Jayapura. On the way home, his car was ambushed, the driver was forced to flee, never to be seen again, and the car was driven away. The next day, Theys’s body was found 50 kilometres from the site of his abduction. An autopsy later stated that he had died of suffocation. Seven Kopassus officers were later tried and convicted of the crime; they were given three-and-a-half year sentences or less, while a senior Indonesian army officer hailed the convicted men as ‘heroes’⁶⁵.

Civil and political rights are, sadly, not the only rights violated, as the situation remains dire as far as education and health are concerned. The quality of education in Papua is far below the national standard (by an average 10 percentage points). Even though education has been identified at a top priority in the Medium-Term Development Programme (RPJM) and the Regional Government’s Working Programme (RKPD), it has not been treated as a priority in the Regional Budget (APBD). In 2008, education was allocated a mere 4.19% of the total budget under the Special Autonomy (Otsus) arrangement. The right to health is equally neglected: according to LIPI’s “road map”, The provision of medical facilities is also a matter of great concern. Facilities at most of the clinics (puskesmas) in Papua are at a very low level and are well below standard for a health service because of the paucity of doctors and medicines. 65% of Papuans visit the nearest clinics when they are ill and need medicine. Conditions at auxiliary clinics are also a matter for concern. This is despite the fact that many serious diseases such as HIV/AIDS are prevalent among Papuans and already for a long time have reached epidemic proportions. (Around 68% of Papuans are suffering from HIV/AIDS while 77% have malaria.) Tuberculosis is also widespread. Infant mortality is also serious because of the poor nutritional condition of mothers during pregnancy. Even so, the regional government allocates only 8% of the budget (30 billion rupiahs) to health.

Cultural rights have also been constrained; in particular, the introduction of PP 77/2008 which prohibits the use of certain cultural symbols was perceived as both an illegitimate and undue restriction of cultural rights, but also a slight at Papuan political identity. The government’s immediate rejection of a project, called SK14, adopted by the Papuan people’s Council (Majelis Rakyat Papua, MRP), a body set under Otsus legislation to protect Papuan cultural values, that all candidates for elected offices at the sub-provincial level had to be indigenous Papuans further questions the authorities’ will to acknowledge the specific rights and legitimate grievances of the Papuan population. ICG writes that many Papuan leaders, both moderate and militant, believe Jakarta has systematically undermined the concept of autonomy since Papua was divided in 2003 into two provinces⁶⁶.

As stated, grievances in Papua have been deepened by the fact that there is a near complete impunity for human rights violations committed in the province by armed forces or the police.

65. Carmel Budiardjo, “Arnold Ap and Theys Eluay”, *Inside Indonesia*, October-December 2008.

66. ICG: *Indonesia: the deepening impasse in Papua*, briefing 108, August 2010.

The Abepura case is telling, in line with the other ad hoc human rights trial that have happened in Indonesia since the fall of Suharto: while the authorities hail as a formidable human rights success that the trials be held, the fact that they have delivered almost no conviction is itself a sign that justice is not being done for the victims of human rights violations. In the case of Abepura, only two suspects (out of a list of 25 compiled by Komnas HAM) got charged by the Attorney General's office for the crimes of gross human rights violations, including torture, extrajudicial executions, persecution, arbitrary detentions and restrictions on freedom of movement during the raid of a student centre in Abepura, close to Jayapura, the capital of Papua Province, in December 2000. The two police officers remained free and on active duty during the trial. In 2005, the two officers were acquitted; the victims were denied rehabilitation and compensation. In January 2007, the Supreme Court confirmed the verdict. By February 2007, the two police officers had resumed their duties and had even been promoted⁶⁷.

In 2004, Komnas HAM submitted reports to the Attorney General's office indicating that it had found sufficient initial evidence to suggest that security forces had committed crimes against humanity in two separate incidents in Papua, in Wasior in 2001 and in Wamena in 2003. The reports have gone back and forth between Komnas HAM and the AG's office, as the AG's office repeatedly stated that there was insufficient evidence to hold trial. Komnas HAM's latest submission on the Wasior and Wamena cases occurred in 2009. So far, no step has been taken by the AG's office.

1.6 A shaky judiciary

1.6.1. The post-*reformasi* restructuring of the judiciary

If the judiciary was famously subservient during the New Order era, Reformasi has undoubtedly led to major changes in this respect, in particular through several amendments to the 1945 Constitution adopted in the years immediately following Suharto's fall from power. The essence of the amendments was to change the structure of central government by reducing the power of the executive, and more specifically, to enhance the power of the judicature by providing for a much cleaner separation of powers between the various organs of the state.

One of the main problems plaguing the judiciary in Indonesia was the so-called "two roofs system", whereby, as per Article 11 of the former Law 14/1970, the judiciary had two hierarchical superiors: the Supreme Court for technical and judicial matters, but the Ministry of Justice (i.e. the executive) for matters of administration, finance and organisation. Law 35/1999 amended this infamous Article 11, and brought all branches of the judiciary under the control of the Supreme Court in all matters ("one roof system"). In other words, the judiciary is no longer accountable to the executive, and one of the main instruments of power of the executive power over the judiciary has now been removed. Though slow in implementation, the government nonetheless took important steps to abide by Law 35/1999.

The new Law 35/2009 also limited the purview of the executive in deciding whether or not a military officer should be tried in a general court: Under the old Law 8/1981 this decision was made by two members of the executive, the Minister of Law and Legislation (formerly the Minister of Justice) together with the Minister of Defence and Security. According to the

67. Reported by Amnesty International, Indonesia -briefing to the UN committee against Torture, asa 21/003/2008, p. 41.

new Law number 35/1999, a crime committed by a military officer together with a civilian is to be tried in a general court, unless the Chief Justice of the Supreme Court decides that the case should be tried in a military Court of Justice⁶⁸. The International Commission of Jurists (ICJ) notes that “this change indicates the shift of authority from the executive to legal assessment by a court”⁶⁹. Since Law 35/1999 (later replaced by Law 4/2004), and a spate of other laws in the years 2003-2004⁷⁰, the responsibility for the management of all of the judicial bodies has hence now been handed over to the Supreme Court, with the sole exception of the Military Courts.

Furthermore, Law 43/1999 changed the status of subordinate court judges from that of civil servants to state officeholders.

Meanwhile, a number of new institutions in the judicial field, including the Judicial Commission, the Anticorruption Court, the Commercial Court, the Human Rights Court, the Fisheries Court, among others, were set up. All of these special bodies are characterised by the appointment of ad hoc judges selected from outside the judiciary to sit side by side with career judges.

2001 saw the adoption of three important amendments: first, the Chief Justice and Deputy Chief Justices of the Supreme Court would in future be chosen by, and from among, the justices of the Supreme Court themselves. Second, a Judicial Commission was to be established that would have the power to nominate appointees to the Supreme Court and other powers to protect and uphold the honour and conduct of the judges. Third, the setting up of a Constitutional Court with the power to conduct Constitutional Review, to decide on disputes between certain state institutions, and to hand down decisions in impeachment proceedings brought against the President and/or Vice President.

The higher judiciary is hence now comprised of three bodies, the Supreme Court, the Constitutional Court (established in 2003), and the Judicial Commission which oversees the appointment of Judges. It should be noted, however, that Military courts remain untouched.

1.6.2 The conflict with the Judicial Commission

The reorganisation of the judiciary and its increased independence have not spelled the end of problems. In particular, the judiciary has been plagued by some internal problems, most prominent among which, a violent conflict between the Supreme Court and the Judicial Commission, which came to existence in 2005, a year after the adoption of the Judicial Commission Law (Law 22/2004).

The conflict started when the Judicial Commission recommended that the Supreme Court suspend a judge involved in a controversial decision by the West Java High Court, which the Supreme Court refused to do, on the basis that this exceeded the powers of the Judicial Commission and violated the principle of judicial independence as guaranteed by the Constitution and the

68. If the case is tried in a General Court of Justice, the panel of judges is to be mixed: two judges, including the President, are civilian judges and one is a military judge. This procedure is called “Peradilan Koneksitas”.

69. ICJ, “Attacks on Justice”, Indonesia, www.icj.org/dwn/database/indonesia.pdf

70. Law Number 5 of 2004 (which amended a number of articles of Law Number 14 of 1985 on the Supreme Court); Law Number 8 of 2004; Law Number 9 of 2004 (which amended Law Number 2 of 1986 and Law Number 5 of 1986. Law Number 35 of 1999 (and Law Number 14 of 1970) was replaced in its entirety by Law Number 4 of 2004 on Judicial Power. Then in 2006 Law Number 3 of 2006 on the Religious Courts was amended.

relevant legislation. Similar conflicts between the Supreme Court and Judicial Commission have repeatedly occurred since then.

The ill-feeling between the two institutions peaked when the press published a list of 13 ‘rogue’ Supreme Court justices compiled by the Judicial Commission. The Supreme Court claimed that the Commission had recklessly compiled the list without carrying out any formal investigations. Incensed at the list, certain justices even reported the matter to the police. The situation reached a climax when 31 Supreme Court justices challenged the constitutionality of the Judicial Commission Law in the Constitutional Court. The Constitutional Court held that Judicial Commission had engaged in courses of action that had violated the principle of judicial independence, and were therefore in violation of the Constitution. Accordingly, the Court struck down the said provisions of the Judicial Commission Law allowing for oversight and monitoring of judges by the Commission, and recommended that the House of Representatives and government take immediate steps to amend the legislation⁷¹.

1.6.3. Other lingering issues – corruption and influence peddling

1.6.3.1 Corruption

In spite of the changes allowing for judicial independence, most observers agree that the judiciary remains susceptible to influence from outside parties, including business interests, politicians, and the security forces. Corruption remains a salient problem, and low salaries continue to be a factor in the acceptance of bribes. Bribes and extortion often influence prosecution, conviction, and sentencing in civil and criminal cases. When prosecutors do not deliberately leave huge loopholes in their case, judges themselves will often find technical reasons for a not-guilty verdict. In 2008 the National Ombudsman Commission reported receiving 166 complaints of judicial corruption involving judges, clerks, and lawyers. As a result of an independent fact-finding team’s investigation, President Yudhoyono appointed a Task Force to Eradicate Judicial Mafias (“judicial mafias” is the name in Indonesia for the groups racketeering in court cases) tasked with investigating the network of case brokers and influence peddlers who act as intermediaries in judicial cases. According to jurist Rifqi Assegaf, the Supreme Court frequently appears to lack resolve in punishing errant judges found guilty of abuse of power (including involvement in corruption), with many of them only minor blames in the form of transfers. In fact, some judges strongly suspected of being involved in corruption have received promotions⁷².

At any rate, several lawyers interviewed by the delegation forcefully insisted on the fact that in their experience, corruption in the judiciary ran so high as to make the notion of independence wholly empty. The existence of “case brokers”, who work as intermediaries between attorneys and judges to agree on a bribe or a commission, is allegedly a very common practice.

1.6.3.2 Pressure from political sources

It appears judges may still be subject to pressure from government authorities, which appeared to influence the outcome of cases. The pressure might not necessarily be a direct, ominous

71. See Rifqi Assegaf, “Judicial reform in Indonesia, 1996-2006”, www.ide.go.jp/English/Publish/Download/Asedp/pdf/074_3.pdf

72. *Idem*.

one; it can be a more diffuse form of intimidation. A human rights lawyer stated that “in cases of blasphemy, you can never win, even when the law is clearly on your side – there is simply too much pressure on the judge”⁷³. It should be noted that in cases of blasphemy, radical groups such as the FPI (see below) make a point of organising demonstrations right outside the court premises, attending all court sessions, and creating as vast a media circus as possible. In such conditions, lawyers say, it makes it very difficult for the judge to remain independent. Radical groups seem to have adopted this tactic of indirect pressurisation from the army, whose posturing and show of force at every court session during the ad hoc human rights trials are well-recorded. An attorney further recalls the trial of the heads of FPI (Munarman and Habib Riziek) after the Monas incident on 1 June 2008, where the FPI had attacked peaceful demonstrators on a central square in Jakarta. The two men were tried “in a very intimidating atmosphere.... there is no doubt the procedure was flawed”⁷⁴.

Several observers note that the courts have become compliant in legalising a posteriori the use of force by law enforcement agencies. “The courts cannot, nor do they wish to, control the use of force by police”⁷⁵, says one. However, it should be noted that while accusations of intervention by the executive in judicial affairs are becoming increasingly rare at the central level, the situation is very different in the provinces. In a 2002 survey of members of the judiciary, it was found that the vast majority of attempts to interfere in judicial affairs were made by local governments or local legislative councils.

Parties threatening Judicial independence	Percentage
Local government	19.8
Local legislative council	12.8
President of the relevant court	9.9
Military officers	9.5
Political parties	9.1
Officials of a Higher Court	7.4
Central Government	4.9

Source: Mahkamah Agung, Kertas Kerja Pembaruan Sistem Pembinaan Sumber daya Manusia Hakim, Jakarta: MARI, 2003, quoted by Rifqi Assegaf, idem, p.19.

Conflicts have also arisen between the Supreme Court and the Anti-Corruption Commission. In 2005, the Anti-Corruption Commission attempted to get to the bottom of allegations of bribery involving three Supreme Court justices, including the Chief Justice. The Anti-Corruption Commission raided the offices of the Supreme Court justices involved, as well as the Chief Justice’s office, but did not provide due evidence implicating the Supreme Court justices.

However, just like in the case of the conflict with the Judicial Commission, the tension damaged the reputation and serenity of the newly formed judicial institutions.

73. Interview with FIDH delegation, June 2010.

74. Idem.

75. Idem.

1.6.4 An increasingly conservative Constitutional Court

The Constitutional Court was established by the Constitutional Court Act in August 2003. Its powers, which are laid down in article 24(c) of the Constitution, include the final say in reviewing law against the Constitution, disputes over the authority of state institutions, the dissolution of political parties and disputes over election results. It also is obliged to rule on any attempt to impeach the president. It comprises nine members; three put forward by the president, three by the Supreme Court and three by the House of Representatives (DPR).

The Constitutional Court (Mahkamah Konstitusi/MK in Bahasa) has shown independence since its inception, and has to some extent, especially at first, been successful in ensuring that enacted laws do not violate human rights. However, as Simon Butt, a leading expert on the Constitutional Court of Indonesia, has pointed out ⁷⁶, some decisions have been “unusual”; e.g. as in the case of the Judicial Commission noted above, when the MK prohibited the Judicial Commission from exercising its main function - monitoring judges – on the basis that it would hamper the independence of the judiciary. The MK’s ruling that the Anti-Corruption Court had been established on an unconstitutional basis, and should therefore be dissolved until new relevant laws are enacted is similarly regarded by observers as a weakening of the fight against corruption; without court to prosecute corruption cases, they argue, all efforts to eradicate corruption are bound to be much less significant.

Recent years have seen more troubling rulings by the MK.

Two rulings in 2008 and 2009 upholding criminal defamation provisions and insult provisions in the Penal code and in the ITE law raised concern among human rights defenders, especially as it appeared that the Court departed radically from its earlier argumentation on freedom of expression which had led it to overturn other provisions on *lèse majesté* in previous years. In two rulings in 2008 and 2009, the court declared that criminal defamation laws constituted a permissible restriction on freedom of expression intended to safeguard the competing right to protect one’s honour and dignity as guaranteed by article 28(g) of the Constitution. The court said: “[w]e cannot expect to achieve order in the social life or mutual life known as society if each person uses his/her freedom arbitrarily. In the foregoing context, restriction of freedom by laws is a must.”⁷⁷

The court further ruled that criminal penalties were not a disproportionate response to defamation, stating that proportionality is a matter which “depends on the values adopted by the community” and that the incidence of defamation prosecutions was “not significant” compared to the number of corruption accusations published in the media ⁷⁸.

In its 2009 decision on the criminal defamation provisions of the ITE law, the court reiterated its reasoning in its 2008 Criminal Code decision, finding that the provisions constituted a justifiable restriction on freedom of expression intended to serve the equally important goal of safeguarding citizens’ right to protect their honour and dignity.

76. Simon Butt in “The Future of Indonesia beyond 2014: Prospects and Challenges”, Conference organised by RSIS, Nanyang Technological University, Singapore, 4 November 2008.

77. Constitutional Court decision No. 14/PUU-VI/2008, p. 49.

78. See HRW, *Turning Critics into Criminals*, Human rights consequences of defamation laws in Indonesia, May 2010.

However, concerns about the MK have been raised even higher with two recent rulings which shook the human rights community. In both cases, only one judge dissented out of nine – the sole woman, and the sole non-Muslim, Maria Farida Indrati.

In March 2010, the MK upheld the so-called Anti-Pornography Bill of 2008, which has been perceived by many as imperilling minority rights and religious freedom, since the law criminalises all works and “bodily movements” including music and poetry that could be deemed obscene and capable of violating public morality, and offers heavy penalties. Detractors of the bill rejected it on the grounds that its terms were poorly defined and thus allowed for too wide an interpretation, that it duplicated existing protective legislation in the criminal code that outlaws pornography; and that it criminalised artistic and cultural expression that is part of Indonesia’s diverse ethnic heritage⁷⁹. The law also puts women’s rights at risk, by putting the blame on the “cause” of sexual arousal. Indeed, only three days after the law was ratified in 2008, three exotic dancers in Mangga Besar, West Jakarta were arrested, while the managers and owner of the club were left alone⁸⁰.

Even more worryingly, in a widely contested decision handed on 19 April 2010, the MK upheld the Blasphemy restrictions included in Article 156(a) of the Penal Code, which provide criminal penalties (up to five years imprisonment) for those who express religious beliefs that deviate from the central tenets of the six officially recognised religions, arguing that it allows for the maintenance of public order. This was a serious setback for religious freedom and freedom of expression in Indonesia⁸¹. (The substance of the law is discussed below)

The constitutional challenge to the blasphemy law had been filed in October 2009 by a group of Indonesian NGOs, on the basis that the law violated the constitutional right to freedom of expression and Indonesia’s obligations under international human rights treaties. (It should be noted that members of Islamist groups, notably the Islamic Defenders Front (FPI), led a violent attack on lawyers for the petitioners at the Constitutional Court building following the last court hearing on March 24.) Several government officials served as witnesses in the court’s examination, Suryadharma Ali, Minister of Religious Affairs (who has, among others, repeatedly called for the ban of the Ahmadiyahs in Indonesia), and Patrialis Akbar, Minister for Law and Human Rights. Both argued in favour of the constitutionality of the law, saying that if it were overturned, violent mobs would probably attack religious minorities⁸², and that “[annulment of] the law will create conflict, instability and disharmony. It is urgently needed to endorse religious tolerance”. “If the Blasphemy Law was scrapped before a new law was enacted ... it was feared that misuses and contempt of religion would occur and trigger conflict in society,” Constitutional justice Akil Mochtar said. “This law is very important ... to prevent both horizontal and vertical conflict from occurring,” another judge said⁸³. The government provided little evidence to support these statements, and to the contrary, a review of recent prosecutions under the Blasphemy Law fails to produce a single example of the Blasphemy Law facilitating religious tolerance⁸⁴. In practice, mob violence has often accompanied

79. See Robin Bush, “Fighting for Indonesia’s cultural diversity”, in *In Asia*, 24 September 2008.

80. See Soe Tjen Marching, ““Anti-porn” bill could threaten Indonesian women”, 25 November 2008.

81. See Article XIX, Indonesia: Court Decision Upholding “Defamation of Religions” Laws is Major Setback, 27 April 2010 ; Amnesty International: Document - Indonesia: Amicus Brief to the Constitutional Court of Indonesia: Judicial review of law number 1/pnps/1965 concerning the prevention of religious abuse and/or defamation, ASA 21/002/2010.

82. See HRW, Indonesia: *Court Ruling a Setback for Religious Freedom*, 19 April 2010.

83. Jakarta Post, “Court upholds Blasphemy Law”, 27 April 2010.

84. See Caveat “Religious freedom in Indonesia – multiple choices, not short answer” <http://indonesia.ahrchk.net/docs/CaveatV09-II.pdf>

criminal blasphemy allegations. Choirul Anam, who represented the petitioners, asserted that the blasphemy law played an instrumental role in creating sectarian tensions and religious conflict rather than preventing them.

Judge Maria Farida Indrati issued the sole dissenting opinion, arguing that the law should be found unconstitutional because it explicitly discriminated against religious minorities and would force individuals to abandon traditional and minority beliefs against their will. She stated that the legislation was “a product of the past,” and that “wrongful acts were being carried out against minority groups in its name.” The majority, however, argued that it “was still needed to maintain public order among religious groups.” The judges provided some “clarification” on the interpretation of the laws, specifying that while Article 1 of Law No. 1/PNPS/1965 identifies the six religions recognised by the government, it also instructs the state to “leave alone” members of other religious groups, meaning the government should allow them to practice without interference.

The chairman of Komnas HAM criticised the ruling, accusing the court of failing in its obligation to uphold constitutional protections of human rights.

The president of the MK, Judge Mahfud (a former Minister of Defence), defended the ruling with some odd arguments, based on considerations other than constitutional protections: “Some believe the Blasphemy Law, instead of preventing conflict, actually triggers it, particularly in the case of hard-line groups attacking minorities. (...) The fact is that argument is absolutely untrue. Violence in such cases (...) occurs because they did not apply the Blasphemy Law. (...) It provides the state with the task of preventing the public from taking the law into their own hands when they feel the names of their religions are being tainted. (...) If someone goes ahead and taints the name of a certain religion, to avoid anarchy, there must be a legal foundation for certain actions [taken by the government]”⁸⁵.

85. “Constitutional Court bows to no one, Mahfud declares”, *Jakarta Globe*, 28 April 2010.

II. DARK CLOUDS ON THE HORIZON

Unsolved issues from the past, a culture of impunity, added to a seemingly increasingly weak political will from the authorities to protect human rights, have set the stage for some alarming developments as far as human rights are concerned. There is some human rights mainstreaming within the various governmental organs, and in the different ministries. The president has repeatedly professed his attachment to human rights and democratic accountability. However, all these well-meaning gestures do not compensate the very troubling trend which has recently emerged; a trend of constant human rights abuses committed by either state organs or non-state actors, but in any event always with a degree of complicity from the authorities. The above-mentioned pattern of impunity indeed now extends to non-state actors, such as hard-line Islamic groups, who have proceeded to a campaign of discrimination and persecution against religious minorities or more generally against anyone perceived as endangering their very narrow understanding of Islam.

The authorities, in particular the police, remain shamefully passive during such assaults. But this pattern of re-emerging human rights violations is not confined to non-state actors, as shown e.g. by the increase in police abuse (after a dip in the years 2004-2007) and the lack of accountability in the Munir case. The problematic rulings by the Constitutional Court appear to weaken the human rights protections in the country. All these recent setbacks, especially in the fields of freedom of expression, religious freedom and minority rights, have raised the issue of the government's commitment to human rights beyond a public adherence to them. In practice, SBY's government has been lukewarm at best to take the necessary political and legal steps to promote and protect human rights in the country. In the terms of *the Economist*, "the president has seemed disappointingly slow to stand up for greater religious tolerance. His government seems especially reluctant to stamp out violence by the Islamic Defenders' Front, or FPI, a group of thugs with religious pretensions and a record of bloody intimidation against Christians, Muslims of the Ahmadiyah sect and others"⁸⁶. Seen in a less lenient light, the government may even appear to be undermining rights and Indonesia's fragile democracy through its support to illiberal groups, and, as noted, its reluctance to prosecute law enforcement officials involved in human rights violations. Indeed, political expediency and opportunism seem to be the order of the day in Jakarta.

2.1 Minorities in jeopardy

There is unanimous agreement among Indonesia experts that minorities, most notably religious but not exclusively, have felt increasingly vulnerable in recent years. The end of the New Order spelt the end of a monolithic political debate, monopolised by carefully selected parties and spokespeople. The opening up of the political space has also meant the rapid development of Islamic parties and hard-line groups, among which the Islamic Defenders Front (FPI) and Hizb ut-Tahrir Indonesia (HTI), probably the most extremist of them, now figure prominently. FPI was originally established in 1998 at the behest of the police and army, to counteract liberal

86. "SBY's feet of clay", *The Economist*, art.cit.

pro-democracy groups. Though it has had links with the violent Jemaah Islamiyah in the past, it seems to have now rejected the path of terrorism per se. FPI appears to have developed a highly efficient double-edged tactic: violent methods of harassment, intimidation and assaults, on the one hand, and formidable use of advocacy tools, on the other (as was manifest during the Ahmadiyah decree negotiations – see below).

It appears the government is leading a two-pronged policy: preening its anti-terrorist credentials by cracking down harshly on terrorist groups and cells (and incidentally pacifying Western backers and donors, who have financed a great deal of the antiterrorism effort in the last decade), occasionally at the expense of the rights of the presumed terrorists, while on the other hand cajoling radical groups which have officially renounced terrorist violence, though not other forms of less extreme violence⁸⁷. Essentially, “the authorities distinguish groups which resort to terrorist violence and groups which bash bars and attack minorities, and have decided to side with the latter”⁸⁸.

By cracking down on Islamic terrorism, while cuddling up to other Islamic groups, it is believed the government seeks to win over its key Muslim constituency, and please its allies in the coalition, in particular the religious PKS (Prosperous Justice Party). Embracing such radical groups out of political expediency has occurred at the expense of the generally tolerant and open Indonesian society, and more particularly, at the expense of minorities. “The government is playing with fire”, says an observer, “it is using religion as a means to score some cheap political points, but these fundamentalist groups are pushing it ever further in its Islamic ‘hardline-sation’ ”⁸⁹. “Public order is used as a pretext to crack down on minorities”, says another human rights activist, “but the government cannot hide that there is a de facto collusion between its actions and radical groups”⁹⁰. Others point to the fact individuals accused of terrorism share attorneys with high ranking intelligence officers: e.g. Muchdi’s lawyers (see the Munir case, above) come from TPM, a group of lawyers dedicated to defending radical Islamists. Meanwhile, the two main Muslim organisations, Muhammadiyah and NU remain rather passive in the face of such threat to Indonesia’s traditionally interwoven, syncretic religious and social fabric⁹¹.

2.1.1 Religious minorities

This climate has led to religious minorities feeling increasingly threatened. During SBY’s presidency, “religious minorities have experienced harassment, intimidation, discrimination and even violence perpetrated by groups espousing intolerance and extremism under the banner of Islamic orthodoxy,” states the 2010 annual report of the United States Commission on International Religious Freedom (USCIRF)⁹². As noted above, Suryadharma Ali, minister of religious affairs, and Patrialis Akbar, minister for law and human rights, both argued forcefully in favour of the constitutionality of the Blasphemy Law before the Constitutional Court. The thrust of the argument was that if the Blasphemy Law was overturned, violent mobs would attack religious minorities, and hence threaten their rights; the fact that they used the risk to

87. See ICG briefings n° 147, 92, 94, 95.

88. Interview with Sidney Jones, ICG, June 2010.

89. Interview with the FIDH delegation, June 2010.

90. Interview with the FIDH delegation, June 2010.

91. See Masdar Hilmy, *Islamism and Democracy in Indonesia – Piety and Pragmatism*, Institute of Southeast Asian Studies, Singapore, 2010.

92. <http://www.uscirf.gov/images/annual%20report%202010.pdf>

minorities in order to restrict their religious freedom is ironical at best, perverse at worst.

On 31 August 2010, Suryadharma blamed the Ahmadiyah instead of their attackers for the recent cases of anti-Ahmadiyah violence, which he believed were due to the failure of the Ahmadiyah to adhere to the 2008 anti-Ahmadiyah decree. He later added in news reports that, “To ban [the Ahmadiyah] is far better than to let them be. ... To outlaw them would mean that we are working hard to stop deviant acts from continuing.”⁹³ If the government is serious about preventing violence, it should punish violent behaviour, not imperil the rights of those threatened by violent groups. It is a fact that in Indonesia, Islamic extremist groups have been free to attack Ahmadiyah sites, churches, Shiite mosques, Hindu temples, bars, and nightclubs with relative impunity, because their actions are to some degree legitimised by the blasphemy law and institutions like the MUI. Police have been known to stand by while such attacks take place, or even to participate in them, as was found in a comprehensive study of freedom of religion in 12 Indonesian provinces by the Setara Institute for Democracy and Peace ⁹⁴. While in some instances the government has taken a strong stand against sectarian violence, its overall response has been criticised as weak and inconsistent. In June 2010, a group of lawmakers called on President Susilo Bambang Yudhoyono to crack down on the FPI and other hard-line Islamic groups – to no avail. Many observers also point to decentralisation as a potential risk to pluralism and agree on the increasing influence of the ultra-conservative Wahhabi strand of Islam (imported from Saudi Arabia) progressing across the country.

FPI has been emboldened by the passivity of the authorities, and shows less and less hesitation to use force. They went as far as to harass and assault the lawyers who were arguing the unconstitutionality of the Blasphemy Law on the very premises of the Constitutional Court in March 2010. “Their usual modus operandi is to make a show of force”, says an analyst, “and strike fear in others thanks to the passivity of the police. But they are nothing but cowards, as is often the case with violent groups – if anyone resists, they immediately bow down” ⁹⁵. Freedom House notes that “hard-line activists appear to be wielding an outsized influence on the government and legal system, pushing the country toward further intolerance and instability” ⁹⁶. Some suggest that Islamic groups use stealth tactics to conceal power grabs: the exploit political democracy and freedom of expression to pursue anti-democratic ends ⁹⁷.

2.1.1.1 The legal framework

It should be noted that freedom of religion or belief is explicitly guaranteed by the Indonesian Constitution in its Article 28(e) and reinforced by the Law Concerning Human Rights (No. 39 of 1999). Both instruments stipulate that everyone enjoys freedom to worship according to his religion and beliefs. Indonesia ratified the ICCPR in 2006, which provides, in its article 18, for the “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Members of religious minorities “shall not be denied the right, in community with other members of their group, ... to profess

93. Quoted by HRW, Indonesia: *Uphold Religious Freedom*, 4 November 2010.

94. See Setara-institute.org

95. Interview with FIDH delegation, June 2010.

96. Freedom House, *Policing Belief: Indonesia*, October 2010.

97. See Robert Pringle, *Understanding Islam in Indonesia*, Edition Didier Millet, Singapore, 2010, chapter: “Islamic Extremism and Democracy”, p. 176.

and practice their own religion.” Restrictions on the right to freedom of religion to protect public safety or order must be strictly necessary and proportional to the purpose being sought. The country is also a state party to a number of other human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention Against Torture (CAT). Indonesia was elected to the UN Human Rights Council for a one-year term in 2006, and re-elected for a three-year term in 2007. As a member of the council, Indonesia is expected to robustly uphold and protect human rights norms enshrined in the Universal Declaration of Human Rights.

However, several restrictions to religious freedom exist in Indonesian law.

By far the most important legislation relating to freedom of religion is Presidential Resolution (now Law) no 1/PNPS/1965 on the Prevention of Religious Abuse and Blasphemy. According to it, only six religions are recognised officially by the Ministry of Religious Affairs: Islam, Catholicism, Christianity (i.e. Protestantism), Buddhism, Hinduism, and Confucianism (which was withdrawn from the list in 1967, and reinstated only in 2000 by Presidential resolution 6/2000). The Ministry does not recognise atheism, nor animism or any other traditional forms of worship; “beliefs” (since the term religion is denied to them) outside the six officially recognised religions can register with the Ministry for Culture and Tourism as social organisations but not as religious groups, and they do not have the right to establish a house of worship. No oath, marriage or ritual may be conducted according to them. A human rights analyst says “you have no place in this society if you do not belong to one of the six religions – and be assured that none of your heirs ever will, either”⁹⁸.

According to Law 23/2006, Indonesian citizens are required to identify their religion (out of the six officially recognised) on their state-issued identification papers. Islam is the only religion for which you do not need to prove your affiliation to register. According to the NGO Coalition on ICERD, the government’s policy has been systematic and three-pronged for the past decades: segregate between recognised and non-recognised religions; nullify the civil rights of the individuals outside the six officially recognised religions; pressure them legally to adopt an official religion⁹⁹.

Indonesia’s criminal blasphemy provision, Article 156(a) of the Penal Code, is based on Law No. 1/PNPS/1965. Article 156(A) assigns up to five years of imprisonment for anyone who “deliberately in public gives expression to feelings or commits an act: a) which principally has the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; or b) with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.” Article 1 of the 1965 presidential decision prohibits “every individual... in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion.” The provisions lack clarity as to what acts constitute blasphemy or “religious defamation,” leaving them

98. Interview with FIDH delegation, June 2010.

99. NGO coalition on ICERD, “Unveiling racial discrimination and impunity in Indonesia”, Alternative report on ICERD, August 2008, pp. 45-47.

open to abuse. In practice, the laws are used to target religious minorities, and particularly those who adhere to interpretations of Islam that are not sanctioned by the government. Indonesia's blasphemy law in Article 156(a) of the Penal Code, and the 1965 presidential decision that established it, contravene international human rights standards on freedom of expression and freedom of religion. The laws' application gives rise to a host of other human rights abuses, including the right to due process, freedom from arbitrary detention, the right to security and privacy, and freedom from discrimination.

Prosecutions under the Blasphemy Law include:

- In October 2009, 70-year-old Bakri Abdullah was arrested in eastern Lombok on blasphemy charges. He had violated Article 156(A) of the Penal Code by claiming to be a prophet, reportedly angering some people in his village. In May 2010, Bakri was sentenced to one year in jail for blaspheming against Islam, with the court reportedly showing lenience on account of his age.
- The case of school teacher, Ms Holle, in Central Maluku in 2008. In 2008, Holle, an elementary school teacher, was accused of making insulting remarks about Islam in a lecture. Rumours incited a rally which resulted in mob violence. The mob destroyed 67 houses, a house of worship, and a community building. Holle was charged under the Blasphemy Law.
- The 2007 case of the videos of the College Student Service Organisation. In April 2007, eight people were arrested in Malang, East Java on blasphemy charges on the basis of the allegation that they disseminated a prayer training video. The video, produced by the College Student Service Organisation, depicted 30 Christians being instructed by their leader to put Qur'ans on the floor. An additional 33 persons were later arrested in connected with the videos and, in September 2007, all 41 persons were sentenced to five years in prison for blasphemy. All 41 persons were released on reprieve during August 2008 Indonesian Independence Day Celebrations.
- The 2006 case of Regent, Ratna Ani Lestari, of the East Java regional district of Banyuwangi. In May 2006, the local legislature voted to oust their Regent from office on the grounds of blasphemy, as the Regent, though Muslim by birth, was accused of having converted to Hinduism through marriage.
- The Lia Eden case. In 2006, a Jakarta court sentenced three leaders of a spiritual movement called the Eden Community - Lia Eden, M. Abdul Rachman, and Wahyu Andito Putro Wibisono - to prison terms of two to three years for violating the blasphemy law. The sect, known as the Kingdom of Eden or Salamullah, was founded and led by Lia Aminuddin, also known as Lia Eden, who claimed to be a reincarnation of Mary, the mother of Jesus, and a messenger of the angel Gabriel—both important figures in Islam. She was arrested on blasphemy charges in December 2005 and sentenced to two years in prison in June 2006. Lia was arrested on blasphemy charges for a second time in December 2008, along with a colleague and follower, Wahyu Anindito. The alleged offense was disseminating pamphlets, including to government offices, that called on the government to abolish all other religions and adhere to Salamullah. In June 2009, Lia was sentenced to two and a half years in prison, and Wahyu to two years. Abdul

Rachman, Lia's deputy, claimed to be a reincarnation of the prophet Muhammad, and in 2007 he was arrested and charged with blasphemy. He was initially convicted, but the Central Jakarta District Court ruled in his favour on appeal, acquitting him of all charges. The Jakarta prosecutor's office challenged that ruling, and in November 2007 the Supreme Court found Abdul Rachman guilty of blasphemy and sentenced him to three years in prison.

- Others prosecuted under the law include members of the many traditional religions practiced in Java, Sumatra, Borneo, Sulawesi, and other parts of Indonesia.

The blasphemy law also serves as the legal basis for a number of government regulations that facilitate official discrimination on the basis of religion. These include a June 2008 government decree that ordered members of the Ahmadiyah religious community to cease all public religious activities (see below).

The blasphemy law is used to maintain strict limits on the interpretation of Islam. For example, Muhammad Yusman Roy, the director of an Islamic boarding school in Malang, East Java, was arrested in May 2005 under suspicion of violating Article 156(A) by reciting and providing his students with Islamic prayers in Bahasa Indonesia, the Indonesian language. (Earlier the same month, the MUI's Malang chapter had issued a fatwa banning the use of any non-Arabic language for reciting prayers). Roy was eventually not found guilty of blasphemy, but was convicted under Article 157 of the Penal Code for "despoiling" Islam by distributing pamphlets to stir hatred. He was sentenced to two years in prison, and his boarding school was closed. On the building of houses of worship, a joint ministerial decree was issued in 2006 by the attorney general and the ministers of home affairs and religious affairs which tightened conditions to build a house of worship; it now requires 90 followers and the approval of 60 local residents for any plans to construct or expand a house of worship¹⁰⁰.

It should be added that the March 2009 UN Human Rights Council resolution on Defamation of Religion was supported by Indonesia. The non-binding resolution came under heavy criticisms from civil society, media groups, and both secular and religious groups for supporting the concept of 'defamation of religion' which may be used to justify intimidation and persecution of human rights defenders and individuals belonging to minority religions¹⁰¹.

2.1.1.2 An increasingly reactionary MUI

The increasing number of attacks on minorities and the growing power of groups such as FPI and HTI have gone parallel to the radicalisation of the Majelis Ulama Indonesia (Council of Ullamahs of Indonesia), the MUI, whose strident voice and fatwas play an important and negative role in the

100. Section 14 of the decree regarding the Construction of Places of Worship states:

"(1) The construction of places of worship is obliged to fulfill administrative and technical building regulations.

(2) Aside from fulfilling the regulations stated in article (1), the construction of places of worship must fulfill special regulations including:
a. A list of names and ID (Kartu Tanda Penduduk) of the members of the place of worship amounting to at least 90 (ninety) people is considered valid by the local official in accordance to the regency level as stated in section 13 article (3);

b. the support of the local community of at least 60 (sixty) people that is considered valid by the head of the community/village leader;
c. written recommendation by the head of the religious department in the regency/city; and
d. written recommendation by the FKUB of the regency/ city.

(3) If the regulations stated in article 2(a) has been fulfilled yet the regulations in 2(b) have not, the regional government is obliged to facilitate the construction of the place of worship by providing a location".

101. Reuters, "U.N. body adopts resolution on religious defamation," 26 March 2009.

protection of human rights in Indonesia. While the MUI used to be composed of moderate Muslims, it is now increasingly radical, with NU and Muhammadiyah being sidelined ¹⁰².

Unlike many other Muslim countries, Indonesia does not have a grand mufti. They instead created their own organisational body with the establishment of the MUI in 1975 ¹⁰³. Utilitarian considerations by Suharto were also part of the calculation: the aim was to pander to the Muslim constituency by creating this organ designed to justify the government acts in light of Islam. This function has shifted since Reformasi: the MUI sees itself not merely as the “spokesman” of the State to Muslims, but equally or perhaps even more as Islam’s voice. The number of MUI members has fluctuated: during the first period (1975-1981), it was comprised of seven ulama members. As of 2008, it comprises no less than 140 members, including an Advisory Council of 50, an Executive Council of 21, and 11 different commissions with more than 70 members. The Fatwa Commission is the most important of the commissions. Muhammadiyah and Nahdlatul Ulama used to be all-powerful, but other smaller organisations such as Persatuan Islam, al-Irsyad, and Nahdlatul Watan are also given equal rights. As of July 2008, the MUI has issued 96 fatwas, consisting of four main issue areas: ritual or ibadah (23 fatwas), religion (11 fatwas), social issues (40 fatwas), science and technology (11 fatwas), and one section of fatwas issued by the Seventh National Congress in 2005 (11 fatwas).

Before the downfall of Suharto, the MUI was heavily under the yoke of the regime; all new MUI members had to be approved by the President, making it thereby almost impossible for a radical or an ultra-conservative Muslim to become member, and the fatwas would not counter the general philosophy of his policies. In the post-Suharto era, however, the MUI has had near complete autonomy in selecting its members, which has entailed a seeming loss of any filter for membership; this has meant the entry of radical Islamic groups, which has had a direct impact on the content of the fatwas adopted. The MUI has issued fatwas against Shi’ism, Ahmadiyah, Islam Jama’ah, Darul Arqam, and Christianity. At its seventh national congress in July 2005, the MUI issued 11 fatwas against pluralism, secularism, liberalism, interfaith prayer, interfaith marriage and all alternative interpretations of religious texts. The MUI coined an acronym “SIPILIS”, implying that secularism, pluralism and liberalism were comparable to a venereal disease ¹⁰⁴.

Recently, “MUI’s war against heresy has expanded beyond Ahmadiyah and SIPILIS. MUI fatwas against Al Qiyadah Al Islamiyah, Lia Eden, and other ‘deviant’ sects have led to the forced ‘re-Islamisation’ of some of the sects’ followers and closure of prayer centres across the country. Interestingly enough, MUI is not acting alone. President Susilo Bambang Yudhoyono, Attorney General Hendarman Soepandji and National Police Chief General Sutanto have each supported MUI’s campaign against Islamic heresy, thereby granting MUI greater legitimacy to decide matters of public piety” ¹⁰⁵.

102. It should be noted that there is a financial incentive in membership in MUI, as the MUI is officially the organism that certifies that food products are Hallal.

103. Luthfi Assyaukanie, *Fatwa and Violence in Indonesia*, Freedom Institute and Paramadina University, Jakarta, *Journal of Religion and Society*, Volume 11 (2009).

104. See Jeremy Menchik, “Illiberal but not intolerant”: understanding the Indonesian Council of Ulama”, *Inside Indonesia*, 90, Oct-Dec 2007.

105. Idem.

2.1.1.3. In practice, increased vulnerability of religious minorities

Although the government cannot be blamed for all the illiberal legislative measures taken around the country – for instance, many districts, newly empowered after the implementation of decentralisation, have adopted Shari’a-inspired local legislation – there is a definite trend within the government to condone, allow, or at worst promote, and conspire with, radical Islamic groups and their agenda to narrow down Indonesian religious space. Islamic extremist groups have mounted dozens of violent attacks on churches, Ahmadiyah mosques, and businesses that serve alcohol, claiming they were protecting Islam from insult. The radical groups include the FPI, Hizb ut-Tahrir, Islamic Ulema Forum, Islam Troop Command, and the Anti-Apostate Movement Alliance.

But the government not only tolerates systematic discrimination against minority religious groups, it also repeatedly fails to punish perpetrators of religious discrimination, just as it consistently fails to use police forces to intervene when religious violence is directed at minorities. It falls far short of its international commitment and constitutional duties in protecting religious freedoms, and clearly turns a blind eye when non-state actors violate the rule of law in the name of religion. An observer says that the “government uses the law as and when it sees fit. They pick and choose among the provisions of the Penal code which one serves their purpose just now. And there is no doubt that calling on the police to prevent violent thugs from harassing whomever they dislike is not in the government’s priorities at this moment”¹⁰⁶.

The only time the government took action against the hard-line groups occurred on 1 June 2008, when the FPI very publicly attacked peaceful demonstrators and NGOs by the National Monument (Monas) in Jakarta. The NGOs were demonstrating in favour of religious pluralism and against the proposal to ban the Ahmadiyahs. In spite of the police intervention and the apparent support to the NGOs and demonstrators, the government nonetheless went on to adopt the decree restricting the Ahmadiyahs’ religious freedom. Several activists who were part of the Monas demonstration viewed this as a “typical sign of the duplicity of the government: in front of the international media, they pretend to defend human rights, but once the spotlight is off, they sneak off with the FPI and endorse all their intolerant, dangerous ideas”¹⁰⁷. The authorities’ double standard is manifest also in the fact that while the government does not hesitate to restrict freedom of expression, freedom of association and fundamental rights of members of minorities, it constantly shields behind the facade of these very liberties to refrain from acting against the hard-line groups. In June 2010, after yet another incident involving violent action by FPI members, calls by MPs for the dissolution of the FPI (whose statutes appear to contravene the Indonesian Constitution) were heard – to no avail.

The Setara Institute, an NGO working in the field of religious freedom, indicates in its Annual Report for 2009 that 200 violations against freedom of worship were reported throughout 2009, and 367 in 2008, the bulk of which happened on or around the adoption of the anti-Ahmadiyah decree, and targeting the Ahmadiyah community¹⁰⁸ (see below). The report claims state agencies were involved in 139 of the 200 cases. Of these 139 cases, 38 cases were a result of state omissions; 101 cases involved active participation of state officials. (West Java had the highest

¹⁰⁶. Interview with FIDH delegation, June 2010.

¹⁰⁷. Interview with FIDH delegation, June 2010.

¹⁰⁸. Setara Institute for Democracy and peace, *Acting and Siding Intolerantly*, 2009.

number of violations of religious rights, with 57 cases, followed by Jakarta with 38 cases and Banten with 10 cases). The vulnerability of minorities extends to Shi'as (a community already condemned by an MUI fatwa in 1984), who have been harassed by FPI-led groups, and to the tiny Jewish community in Surabaya. In May 2010 a group of Shi'as was prevented to go to a group prayer in Tegal (Central Java) by the police, on the grounds that due to threats from FPI, the prayer would lead to public disorder. In June 2006, when a Shi'a group called Ijabi was attacked by a Muslim mob in Bondowoso, East Java.

The damage to the traditionally multicultural fabric of Indonesia has manifested itself in particular through an increasing number of attacks on non-Muslim places of worship, such as the attack on a protestant church in Bogor on 27 April 2010. More generally, non-Muslims face increasing difficulties in getting the approval for the establishment of places of worship. In 2010, 30 churches have been attacked in Indonesia, according to the Setara Institute. Several non-Muslim religious officials interviewed by the delegation insisted that local populations were seldom opposed to the establishment of churches or temples: "What happens most often", says one, "is when a church has received all the necessary approvals, some outsiders come to pressure and intimidate the locals into withdrawing their approval"¹⁰⁹. The case of the Christian church in Depok is well-known: in March 2009 the mayor of Depok, Nurmahmudi Ismail, withdrew the licence to build the church, on the grounds that he did not want to cause religious commotion in his district. His decision was rescinded by a court in Bandung in September 2009. However, due to pressure, attacks and threats from radical Muslim groups, the church has yet to be built¹¹⁰.

The ongoing harassment and intimidation of the Batak Christian Protestant Church (HKBP) at Bekasi City, West Java, is the latest manifestation of religious intolerance. Having been denied a permit to build a church, the Batak congregation gathered in a housing complex to worship, which led to daily demonstrations by radical Islamic groups. This in turn led to local officials banning the congregation from meeting in that location.

As stated, local authorities also contribute to the tightening of the religious space, by adopting Sharia in bylaws.

Number of districts to have adopted Shari'a-inspired local legislation:

1999	3
2000	7
2001	20
2002	16
2003	29
2004	19
2005	25
2006	13
2007	3
2008	5
2009	1

109. Interview with FIDH delegation, June 2010.

110. Compact Direct News, "Despite Court Victories, Church Building in Indonesia Blocked", 22 September 2009

It has to be noted that in most cases, such Shari'a-inspired legislation focuses on women's activities and attire, or on minority religions' right to worship, which is why they often contradict human rights standards.

2.1.1.4 The specific case of Ahmadiyahs – systematic persecution

Ahmadiyahs in Indonesia are fast turning into what they are in Pakistan: an easy target for all – radical groups, populist politicians, a coward government – to prey upon, at little cost and in complete impunity. The Ahmadiyahs are now subject to systematic persecution, which runs contrary to the government's public assurances about its commitment to human rights. The Ahmadiyah community, an offshoot of Islam whose members venerate the founder, Mirza Ghulam Ahmad, represent an estimated 200,000 persons in Indonesia. Ahmadiyahs are considered "heretics" primarily because of their belief that Muhammad was not the final prophet of Islam.

The trouble first started for the Ahmadiyahs when the MUI issued a fatwa condemning the Ahmadiyah doctrine and its "deviance" in June 1980. The MUI's fatwa soon became a powerful tool to discredit Ahmadiyah members and their activities in Indonesia, and the Ahmadiyah suffered a few cases of harassment, e.g. in September 1988, when an Ahmadiyah mosque in Garut, West Java, was attacked. Things took a turn for the worse after the fall of Suharto, though. On September 6, 2002, an Ahmadiyah complex in Maluku was assailed by a group of Muslims. Four days later, in East Lombok, another mob attacked and destroyed an Ahmadiyah mosque. In Kuningan, two mosques and 18 houses were destroyed.

The persecution against Ahmadiyah in Indonesia reached a new height in July 2005. It all started in Bogor, where Ahmadiyah's Islamic boarding school known as Al-Mubarak Campus is located. In July 2005, the Ahmadiyahs had held an annual meeting on the compound. Before the event ended, however, a mob from the FPI and the Institute for Islamic Study and Research (LPPH) started demonstrating near the premises. As the situation got worse, the police escorted all the participants out of the complex for the sake of their safety. Ten days later, the local administration closed down the complex and ordered all Ahmadiyah activities to stop, oddly arguing that Ahmadiyah teachings could spark public disorder. This is exact moment the MUI chose to issue its second fatwa on the Ahmadiyahs, a fatwa which explicitly banned Ahmadiyah as a heretical sect. Soon after, a number of policies, regulations and local government bans were enacted to further restrict the activities of the Ahmadiyah community.

For example, in October 2005, the provincial Ministry of Religious Affairs in West Nusa Tenggara reportedly banned 13 "deviant" sects, including Ahmadiyah; in July and September 2005, the local regency administrations of Bogor, Kuningan, and Cianjur in West Java province banned Ahmadiyah; and in September 2008, the provincial government in South Sumatra imposed a ban, reportedly at the request of the local MUI chapter. The central government, which has final authority on religious affairs, has been criticised for failing to make any attempts to overturn or challenge these bans. Throughout 2006 and 2007, the government remained silent in respect of the MUI fatwas, failed to review or revoke local government regulations restricting the Ahmadiyah and tolerated ongoing violence (with police failing to arrest those responsible for violence against the Ahmadiyah). On 4 February 2006 an Islamic mob gathered in Dusun Ketapang, West Lombok. They attacked and burnt every single house belonging to Ahmadiyah members. This was the second attack in a period of five months. Dozens of

police including the public order police unit were present but did little to prevent the attacks. The Ahmadiyah families were evacuated in trucks and eventually transferred to a shelter in Mataram city. Although the police carried out investigations to identify those responsible, no one involved in the attacks is known to have been brought to justice. Meanwhile, the displaced community in Mataram has been all but forgotten and left in complete limbo, without any possibility to return to their homes ¹¹¹. According to the Asian Legal Resource Centre, in June 2007 a mosque and several Ahmadiyah followers in Tasikmalaya, West Java, were attacked by a mob made up of members of the FPI and GERAK, an anticommunist movement. In October 2007, the MUI issued a further fatwa containing guidelines condemning Islamic groups such as the Ahmadiyah. At the end of the month, the Indonesian chief of police, General Sutanto, reportedly ordered all provincial police chiefs to track down, question, and detain leaders of the Ahmadiyah community. A broad crackdown on the community took place over the next few weeks, including police raids on followers' homes and harassment and intimidation by extremist groups like the FPI. One of the leaders, Moshadeq, was charged with blasphemy under Article 156(A) and in April 2008 was sentenced to four years in prison.

Things got progressively worse. The FPI and other groups, through a combination of intimidation, blackmail, strong-armed tactics and shrewd advocacy, pressured the government into issuing its infamous anti-Ahmadiyah decree in June 2008 ¹¹²:

On 9 June 2008, the Indonesian government announced a joint ministerial decree “freezing” activities of the Ahmadiyah sect. For months hard-line Islamic groups had been putting increasing pressure for a full ban, while civil rights groups and many public figures argued that any state-imposed restrictions violated the constitutional guarantee of freedom of religion. On the morning of 9 June, a massive demonstration took place in front of the presidential palace, calling for a ban on Ahmadiyah. The decree drafting team was hastily called to the religious affairs ministry for an emergency meeting, and the decree was released that afternoon. The way the decree was issued showed how radical elements, which lack strong political support in Indonesia, have been able to develop contacts in the bureaucracy and use classic civil society advocacy techniques to influence government policy ¹¹³.

The decree outlawed public teaching of Ahmadiyah beliefs by ordering the Ahmadiyah community to “stop spreading interpretations and activities which deviate from the principal teachings of Islam,” including “the spreading of the belief that there is another prophet with his own teachings after Prophet Mohammed.” The Ahmadiyahs are also strongly encouraged to ‘return to mainstream Islam.’ Violations of the decree are subject to up to five years of imprisonment. The decree also increases the likelihood of religious vigilantism. In June, a religious affairs ministry spokesman stated: “We’ll let the public act as the watchdog. They can file reports to law enforcers whenever they see JAI [Ahmadiyah] followers violate the decree. Whether or not the latter are guilty of violations will be decided by the courts”. He also stated that MUI was putting together a monitoring team to determine whether the Ahmadiyah community was obeying the decree. The team would be organised by MUI branches at province, district and sub-district levels.

111. Amnesty International, *Displaced and Forgotten Ahmadiyahs in Indonesia*, asa 21/006/2010, June 2010.

112. ICG, *Implications of the Ahmadiyah Decree*, briefing 78, July 2008.

113. ICG, *Idem*.

The anti-Ahmadiyah decree has spawned a series of violent attacks against Ahmadiyah mosques or places of gathering. The U.S. Commission on International Religious Freedom reports that since 2008, 35 Ahmadiyah mosques have been vandalised, and 21 mosques or meeting points have been forcibly closed. The Setara Institute for Peace and Democracy recorded 33 cases of attacks in 2009 against the Ahmadiyah community. On 18 June 2010, six Ahmadiyah mosques in Cianjur, West Java, were sealed off by about 100 people, as police stood by and watched to ensure that no “anarchistic action” took place. On 20 June 2010, a local FPI contingent shut down Ahmadiyah headquarters in Makassar, South Sulawesi, mobs sealed off two more mosques in Cianjur, and dozens of youths tried to blockade an Ahmadiyah mosque in Tangerang, West Java. On 26 June 2010, the al-Ghofur Mosque used by Ahmadiyah families in Cianjur, West Java, was sealed off and its sign torn down by a mob of about 500, who then clashed with police. In late July, municipal police and hundreds of people organised by militant Islamist groups forcibly tried to close an Ahmadiyah mosque in Manis Lor village. On 1 October, mobs attacked the Ahmadiyah community in Ciampa, south of Jakarta, burning their mosque and several houses. Hundreds of people protested before an Ahmadiyah in Tanjung Priok, Jakarta’s harbor area on Nov 5.

Since August 2010, Religious Affairs Minister Suryadharma Ali has repeatedly called for the Ahmadiyah faith to be banned in Indonesia. He concluded, reportedly “after a long period of contemplation and asking for divine advice”, that banning Ahmadiyah would be the best solution for all the problems relating to the group ¹¹⁴. SBY has not repudiated these statements which clearly contravene both Indonesia’s obligations under international law and the Indonesian constitution.

2.1.2 Other minorities at risk

Assaults by fundamentalist groups, in particular by the FPI, have, as noted, targeted a wide range of actors – essentially any group which does not follow their very narrow interpretation of Islam and of what public life should be about. They have contributed decisively to the shrinking of the religious and political space in Indonesia, with the complicit passivity of the police. Religious minorities are hence not the only ones to attract the wrath of the fundamentalist groups. Ethnic Chinese have been targeted by the FPI, most recently during the Chinese New Year celebrations in 2010, when the FPI attempted to block the Chinese New Year Parade. Gay and lesbian groups or events have similarly been the targets of attacks or intimidation, with the collusion of the police.

On 25-28 March 2010, the International Lesbian and Gay Association (ILGA) – Asia organised a conference in Surabaya. All administrative permits and police authorisation had been obtained. On the second day of the conference, mobs claiming to be from FPI attacked the participants and took over the hotel where the conference was being held; they also sealed off the Surabaya office of Gaya Nusantara, the local organisational host (it remained closed by vigilantes until April 21). The attackers are reported to have demanded the list of conference participants, which they were, incredibly enough, given. Witnesses report that the fundamentalists remained in the hotel for 72 hours, to ensure that the conference would not take place. All witnesses testify that the police did not intervene, and even occasionally sided with the attackers, and

114. “Religious Affairs Minister to ban Ahmadiyah”, The Jakarta Post, 30 October 2010. <http://www.thejakartapost.com/news/2010/10/30/religious-affairs-minister-ban-ahmadiyah.html>.

eventually asked the organisers to cancel the remainder of the conference.

A similar attack by FPI occurred during a meeting on transgender issues in Depok (West Java) on 30 April 2010. There too, witnesses testify that city officials as well as police officers colluded with the attackers. Threats were also made against an HIV/AIDS seminar in Bandung (West Java) on 11 May 2010, causing it to be relocated. More generally, Indonesia's homosexual community has been made increasingly vulnerable in recent months, as some activists have been threatened or stalked. As with incidents involving religious minorities, witnesses all state that the police does not intervene during the incidents, and very seldom is there a follow up in terms of investigation and arrests when complaints are filed. On 22 May 2010, twenty-four hours after they issued a permit to do so, police in Yogyakarta, Indonesia denied lesbians, gay, transgender groups, women's-rights activists and other human-rights activists the right to hold a cultural performance to mark the International Day Against Homophobia and Transphobia (IDAHO).

2.1.3 Human rights defenders

Human rights defenders have not been spared. The cases of Munir and the Monas incident have been noted above. FPI went so far as to assault, in March 2010, the lawyers who had requested the judicial review of the Blasphemy law right outside the Constitutional Court building, during the lunch recess of one of the hearing days. A group of approximately 50 FPI members surrounded the lawyers and started harassing and insulting them. Several were hit. Nurcholis Hidayat, of the Legal Aid Institute (LBH), saw his camera violently taken away, and was hit on his arms and hands. The lawyers were particularly incensed by the fact that although they immediately filed a complaint with the police, there had been no investigation whatsoever at the time of the interview with the FIDH (June 2010). The FPI already threw rotten fruit on the building of the LBH (one of the main human rights organisations in Indonesia) in Central Jakarta during the constitutional review. More generally, lawyers who have been taking cases of blasphemy or defending religious minorities are often themselves targets of harassment or intimidation.

2.1.4. Attacks on liberal Islamic groups

As witnessed in other countries with issues of active fundamentalist groups, intolerance by hard-line groups spreads to Muslim groups which do not share the same radicalism, or who have differing interpretations of the sacred texts. This is true in Indonesia too, where Jaringan Islam Liberal (JIL), a well-known coalition, founded in 2001, of Muslim intellectuals and theologians which challenge religious conservatism, has been repeatedly attacked by fundamentalist groups, which feel emboldened enough to resort to intimidation. In 2002, an obscure group issued a fatwa "authorizing" the murder of its founder and executive director, Uli Abshar-Abdallah ¹¹⁵. This was followed by another fatwa, this time pronounced by MUI, in 2005. JIL uses various programs such as public discussion, media syndication, radio talk shows, and workshops, which drastically expanded its public surface. Its position in defending Ahmadiyah and other religious minorities sparked the MUI's anger. Thus, when the MUI issued the fatwa on pluralism, liberalism, and secularism, many people think that it was addressed

115. See Robert Pringle, *Understanding Islam in Indonesia*, Edition Didier Millet, Singapore, 2010, "Islamic Extremism and Democracy", pp.165 sq.

particularly at JIL, which had indeed been critical of the MUI's fatwas against minority groups, particularly Ahmadiyah and Salamullah. In July 2005, JIL and other organisations formed the People's Alliance for Religious Freedom and held a press conference where they denounced the MUI's intolerant fatwas.

The first attempt to attack JIL's office in Utan Kayu, Central Jakarta, took place on 5 August 2005, just eight days after the MUI's fatwa on pluralism, liberalism, and secularism was released. Immediately after Friday prayers, Muslims gathered to listen to a "great sermon," which, among others, condemned liberal interpretation of Islam and liberal Islamic groups, with JIL in first place. After a tense standoff with FPI and HTI members in the frontline, the radical groups retreated, but JIL's office received threats almost every day. Provocative banners were hung everywhere near the office, urging people to ban and expel JIL. On 6 September, the Islamic Community Forum urged the Regent of Matraman (where JIL's office was located), Herral Astapraja, to close down JIL's office.

2.2. Freedom of expression

Unsurprisingly, freedom of expression has also suffered from the increasingly strident voices of radical Islamic groups, as from the government's culpable weak stance on human rights. Several experts interviewed concurred that the government is not concerned about human rights, in particular about freedom of expression, as much as about controlling the type of speech that can be uttered. The issue of book censorship is significant: although the Constitutional Court struck down in October 2010 the possibility for the Attorney General Office to ban books (it ruled that the 1963 Law on Securing Printed Materials violated Article 28(f) of the Constitution which guarantees freedom of expression), the fact that the Attorney General, subject to the executive, used liberally of this possibility until the Constitutional Court ruling - he had banned 22 works in the past six years - in itself raises doubt as to the authorities' genuine commitment to fundamental liberties. The Alliance of Independent Journalists (AJI) is pessimistic as to the three laws on internet regulation which are expected to be adopted in 2011 (draft on cyberregulation, draft for Convergence of Information, telecommunications and Broadcasting, and a ministerial decree on the content of internet): "If one judges by SBY's past actions, this does not bode well. Since he came to power, there has been a creeping, albeit unmistakable, shrinking of freedom of expression in Indonesia", says one of its directors¹¹⁶.

2.2.1 Legal framework

Indonesia's constitution explicitly protects freedom of expression. Article 28(e) states, "Every person shall have the right to the freedom of association and expression of opinion." Article 28(f) states, "Every person shall have the right to communicate and obtain information for the development of his/her personal life and his/her social environment, and shall have the right to seek, acquire, possess, keep, process, and convey information by using all available channels." In 2006 and 2007, a series of landmark rulings by the Constitutional Court invalidated several *lèse-majesté* and defamation articles of the Penal code as contrary to freedom of expression as guaranteed by the Constitution, and as potential obstructions for the proper functioning of democracy in Indonesia. However, these decisions did not completely eliminate criminal penalties for non-violent speech; it only shifted the charge onto other articles of the Penal

116. Interview with FIDH delegation, June 2010.

Code, namely Articles 310 to 325 of the Penal Code ¹¹⁷.

Article 310 prohibits defamation, defined as “intentionally harm[ing] someone’s honour or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof,” in the form of slander (punishable by up to nine months imprisonment) and libel (punishable by up to one year and four months imprisonment). The accused may seek to prove that his statement is true to escape punishment, but only if he or she claims that he acted “in the general interest” or out of necessity, or if the allegedly defamatory statement concerns an official acting in his official capacity. In cases in which a judge allows the accused to establish the truth of his statement, the burden of proof is on the accused and, if he fails, he can be found guilty of “calumny” under Article 311, which carries a more severe penalty of up to four years’ imprisonment. The Penal Code also refers to defamation of heads of States (Article 142 to 144) and of public officials (Article 207 and 208).

Article 27 of the Act on Electronic Information and Transaction (no. 11/2008) states that anyone distributing and/or transmitting and/or creating access to defamatory electronic document and/or information with or without any intention will face six years in prison. Individuals who are writing critically about the government on the internet – or simply in a private email – can thus be accused of defamation and face a six-years jail sentence – as has already happened. The Association of Independent Journalists (AJI) pointed out that Article 27 (3) is much more repressive than the Penal Code, in terms of sanctions and the terminology used. Anyone committing defamation through the electronic media faces six years in prison, whereas the Penal code provided for “only” one year and four months. Moreover, Article 27 (3) does not require defamation to be committed in public. Defamation through private communication channels is also sanctioned. Under the Indonesian Penal Code, defamation is punishable by law only if it is committed in public. Besides Article 27 (3), Article 28 (1) also stipulates a sanction of six years in prison for the distribution of false information on the Internet, which is much more stringent than what is stipulated in Article 311 of the Penal Code, which provides for four years in prison. The AJI filed a constitutional review of the ITE in February 2010, but the law has been upheld.

Indonesia is also considering a new draft penal code, which observers say currently contains some of the most restrictive offenses of the old regime. The latest draft, not yet debated by parliament and the subject of ongoing controversy, is said to include the *lese majeste* and “hate-sowing” offenses previously invalidated by the Constitutional Court and the Suharto-era offense of “subversion”.

2.2.2. Press freedom and extensive use of the defamation clauses

Throughout 2009, AJI reported a number of criminal defamation cases against Internet users in Indonesia. In 2008, there had been two cases - blogger Nurliswandi Pilliang faced charges filed by MP Alvin Lie and Prita Mulyasari was charged by the Omni International Hospital Alam Sutera Tangerang ¹¹⁸.

117. See HRW, *Turning Critics into Criminals – the human rights consequences of the defamation Laws in Indonesia*, May 2010.

118. Association of Independent Journalists (AJI), “The enemy of Press freedom”, August 2010.

1. Ujang Romansyah, a student from Bogor for updating his status on Facebook on 30 June 2009. Ujang was charged with defamation by Felly, fellow Facebookers for a message posted on his Facebook wall.
2. Muhammad Iqbal, a temporary employee at the Lampung Office of Forestry, was reported by secretary Veronica Bertha to the police on 2 July 2009 for a message he posted on Facebook. Iqbal had sent a message to another temporary employee in the same office, Belinda.
3. Imbar Ismail, a member of the South Sulawesi local parliament, was reported to the police on 23 September 2009 because he sent a message to Bandung-based dentist Dewi Riasari Zainuddin's inbox in Facebook. Words used in his message were deemed defamatory.
4. Luna Maya, a celebrity, was reported by workers from an entertainment programme on 15 December 2009. She was charged with defamation for her comments posted on Twitter.

Throughout 2009, Indonesian journalists also faced threats of violence. In 2009, there were 40 incidents of journalists being targeted, comprising of murder (1 case), assault (20 cases), obstruction of reporting (4 cases), lawsuits (7 cases), hostage taking (2 cases), intimidation (1 case), demonstration (2 cases) and censorship (2 cases).

Compared to 2008, the number of incidents of violence against journalists dropped. According to AJI Indonesia, in 2008 there were 60 cases of journalists being targeted, comprising of assault (21 cases), intimidation (19 cases), obstruction of reporting (9 cases), lawsuits (6 cases), censorship (3 cases), and demonstration (2 cases).

The U.S.-based magazine *Playboy* has also repeatedly run into troubles since April 2006. The magazine's publisher, Erwin Arnada, was tried for publishing indecent material in 2007 but was eventually acquitted. Though not a traditional blasphemy case, the incident is indicative of the state's attitude toward freedom of expression when it is challenged by religious extremists and threatened by restrictive laws.

The recent death of two environmental journalists, Ardiansyah Matra'is in Papua and Muhammad Syaifullah in Kalimantan, and the series of threats received by at least four local journalists in the run-up to local elections in Papua, underlines the intense pressure faced by journalists when covering environmental degradation and local politics in Indonesia¹¹⁹. On 30 July, the body of Ardiansyah Matra'is, a journalist working in Papua, was found in the river Gudang Arand in Merauke in Papua. He had received death threats in the days before his disappearance, and was allegedly kidnapped last year by soldiers who threatened to kill his family after he wrote a series of articles for *Jubi* magazine about illegal logging by local military officers¹²⁰. Other journalists in Papua received a series of threats by SMS in the run-up to the 8 August election for district head in Merauke. On 26 July, environmental journalist Muhammad Syaifullah was found dead in his home in Balikpapan, Borneo. Syaifullah was the Borneo bureau chief

119. Article 19, *Journalists Risk Lives for Reporting on Environmental Impacts and Local Politics*, 13 August 2010.

120. Article 19, art.cit.

of *Kompas*, Indonesia's biggest daily newspaper, and reported extensively on illegal logging and environmental issues relating to coal mining.

On 6 July 2010, two unidentified men threw three molotov cocktail bombs at the building of Tempo (a leading news magazine) offices in Central Jakarta. The week prior to the attack, the magazine had published a report very critical of the police, and denounced the corruption of high ranking police officers. No arrests have been made in the attack.

III. Conclusion and Recommendations

In light of the findings of this report, FIDH, KontraS and Imparsial make the following recommendations:

To national authorities:

- Support and initiate concrete measures to break impunity, especially among state actors, by, as a first step, devote adequate attention, resources and political will to properly investigate, prosecute and punish perpetrators in key test cases pending in court, as well as in all future cases of human rights violations;
- Establish an ad hoc tribunal to investigate the enforced disappearance of student activists in the late 1990s and the role of the Kopassus in these crimes, in line with a recommendation by the House of Representatives and the findings of Komnas HAM;
- Ensure promotion within the military, the police and the intelligence agencies are conditioned upon a clean record on human rights, and that credible evidence of human rights abuses should be cause for immediate suspension or termination of official duties;
- Ratify additional international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Invite UN special procedures to visit the country; and
- Exercise exemplary leadership as the chairman of ASEAN in 2011 to mainstream human rights standards into ASEAN, including within the ASEAN Intergovernmental Commission on Human Rights (AICHR), accelerate the work and strengthen the capacity of AICHR, and establish official and institutionalised channels of consultation between AICHR and civil society.

On the justice system and legislative framework:

- Promptly conduct effective, transparent, independent, and impartial investigation into all allegations of human rights abuses, especially those allegedly committed by state security forces;
- Provide trainings to prosecution lawyers to enhance their professionalism and ability to produce coherent arguments based on strong evidence;
- Establish clear command responsibility among state security forces at the institutional level for human rights violations;

- Grant and ensure access to lawyers by individuals suspected of terrorist offense during pre-trial detention and throughout the legal process; all arrests must be publicly announced, irrespective of the seven-day preliminary investigation rule;
- The State Attorney General should request a new investigation into the assassination of Munir Said Thalib and a review of the trial of Muchdi, with a view to establish clear responsibility for the murder and hold all perpetrators to account;
- Ensure that there is judicial oversight over the implementation of Section 31 of Law 15/2003 to prevent violations of the freedom of expression and of privacy;
- Eliminate provisions in Section 26 of Law 15/2003 that allows for uncorroborated intelligence to be used as legal evidence and basis for investigation and detention;
- Introduce effective and robust legislations to regulate and establish transparent and accountable oversight of the intelligence agencies, and ensure the use of evidence obtained through coercion or torture is absolutely prohibited in law and in practice;
- Take all necessary measures to guarantee the independence of the judiciary at all time and monitor, investigate, punish and prevent attempts of interference in judicial affairs by government officials at all level and by members of the military, the police and intelligence personnel; and
- Decriminalise defamation and amend the Criminal Code to ensure its provisions are consistent with Indonesia's obligations under international human rights law.

On the military and police:

- Ensure strong and effective civilian oversight over the military through, inter alia, placing the military under the supervision of the Department of Defence;
- In compliance with the provisions of the TNI Act, terminate or take over as soon as possible all military holdings and business activities to further enhance effective civilian authority over the armed forces;
- Clarify the mandate of the military and the police to minimise overlap and to ensure civilian policing functions are not arbitrarily assumed by the military;
- Strengthen the mandate of Propam to enhance its independence and ability to conduct impartial and effective investigation into complaints and streamline and clarify the process by which civilians could lodge a complaint against the police;
- Amend the Law of Criminal Procedures to limit the ability of the police to delay or discontinue legal proceedings against its members;
- Provide on-going and regular training to guarantee the neutrality, professionalism and human rights awareness of the police force and ensure the effectiveness of these

trainings through regular monitoring and evaluation; and

- Establish through legislations civilian criminal court jurisdiction over members of the military responsible for crimes perpetrated against civilians.

On the implementation of counter-terrorism measures:

- In consultation with all stakeholders, including civil society organizations, the government should amend Law 15/2003 to narrow the definition of terrorism, in line with international standards and good practices, so as to prevent abusive interpretation of the law to criminalise legitimate and peaceful activities and opinions;
- Cease the arbitrary labeling of individuals as ‘terrorists’ and arbitrary arrests;
- Cease the practice of arresting family members of those suspected of terrorist activity; and
- Establish clear and formal rules of engagement for the police when dealing with terrorist suspect, in line with the Istanbul Protocol.

On the human rights situation in Papua:

- Cease all intimidation, harassment and physical violence against human rights defenders and ensure fundamental human rights, both civil and political and economic, social and cultural, are fully respected and protected;
- Conduct prompt, effective, impartial and independent investigations into past and future cases of human rights violations against Papuans, including allegations of torture, as documented by recent mobile phone videos showing the apparent torture of Papuans by what appears to be members of the military; identify and prosecute those responsible and provide adequate remedies to the victims; and
- Allow local, regional and international civil society organizations, humanitarian groups, diplomats, foreign journalists and other relevant stakeholders to have unrestricted access to Papua.

On freedom of religion:

- Rescind the June 2008 decree banning the teachings of the Ahmadiyah and instruct provincial and local legislations and governments to review and revoke any legislations that are used to persecute religious minorities;
- Amend Article 156(a) of the Penal Code to clarify the definition of ‘blasphemy’ in order to prevent abusive and arbitrary interpretation, as a first step to protect freedom of religion of all Indonesians, including subscribers to religions not officially recognised;
- Investigate and prosecute all violent actions, perpetrated by state and non-state actors, aimed at individuals belonging to a minority religion; and

- Government officials and the police at all levels must exercise due diligence in providing strong protection to individuals and groups belonging to a minority religion and their places of worship and residence.

To the Member States of ASEAN and the ASEAN Intergovernmental Commission on Human Rights under the Chairmanship of Indonesia in 2011:

- Create and institutionalise a formal channel of communication and consultation through which civil society actors can constructively engage ASEAN and its various bodies, including its human rights mechanisms;
- High-level officials should hold interfaces with civil society representatives during the civil society event prior to the ASEAN Summit in Jakarta and ensure such interfaces are sustained in future summits; and
- AICHR should seek, as per its terms of reference, to obtain information from Indonesia on the promotion and protection of human rights in the country.

To the United States, the European Union and its Member States, Australia and other members of the international community:

- Urge the Indonesian government to ensure accountability for past and future human rights abuses through prompt, effective, independent, and impartial investigations, prosecution and punishment as appropriate;
- Ensure that all economic and military assistance to Indonesia is conditioned upon an improvement in its human rights practices and records, in general, and effective structural reforms of the military, in particular; and that Indonesia's compliance in this regards is regularly and closely monitored and evaluated, and that effective actions will be taken in case of non-compliance;
- In particular, all units of the Indonesian military and the police whose training receives foreign funding must be thoroughly vetted; the human rights records of members of these units must be made public and provided to the funding government; and all credible allegations of human rights abuses against any of these members must be promptly investigated, prosecuted and punished as appropriate;
- Embassies of donor countries should establish regular and institutionalised fora through which they could consult meaningfully with civil society in Indonesia, including human rights defenders, in order to benefit from their cooperation in monitoring Indonesia's human rights record and its compliance with international human rights treaties and standards;
- Urge the Indonesia government to take concrete measures to implement the recommendations issued by the Universal Periodic Review, UN human rights treaty bodies, and the special procedures;

- Urge the Indonesia government to report regularly to the United Nations Counter Terrorism Committee (UNCTC) pursuant to UN Security Council resolution 1624 (2005) on the actions it has taken to ensure its counter-terrorism measures comply with all of its obligations under international law, in particular international human rights law, refugee law and humanitarian law; the UNCTC should verify such compliance and share good practices with Indonesian authorities, especially during its country visits; and
- Urge the Indonesia government to issue a standing invitation to all UN special procedures, especially the UN special rapporteurs on freedom of religion or belief and on the protection of human rights while countering terrorism.



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Establishing the facts – Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society – Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community – Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting – Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



KontraS - The Commission for “the Disappeared” and Victims of Violence

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KontraS's vision is to establish Indonesia as a just and democratic country where people are free from fear, repression and discrimination. KontraS aims to 1) promote political awareness of all victims of abuse in order to fight for justice in Indonesia; 2) fight for the right to be free from all forms of violence and repression, especially resulting from the abuse of state power within the society; 3) fight for democracy and justice with other members of civil society; and 4) strengthen its own capacity to support a human rights agenda in civil society.

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Imparsial aims at promoting the application of internationally recognised human rights standards in public policy and practice. It defends human rights for all through establishing a standardised human rights documentation system, promoting the strengthening of national human rights instruments, and instituting a comprehensive system for the protection of Human Rights Defenders (HRDs). The name “Imparsial” was taken from the word impartial to denote the organization's commitment to upholding the fundamental equality of the rights possessed by all human beings, regardless of distinctions of any kind.

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FIDH represents **164** human rights organisations on **5** continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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