

Indonesia:

Piecemeal approaches to systemic and institutionalised discrimination



A Shadow Report to the Initial to Third Periodic Reports (CERD/C/IDN/3) to the CERD Committee

Asian Indigenous & Tribal Peoples Network

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Part I

INTRODUCTION AND EXECUTIVE SUMMARY

“When the Soeharto regime was overthrown, an opportunity arose for the review of the 1945 Constitution and the adoption of a new Constitution to meet the aspirations of the people for a democratic country under the rule of law, as happened in the Philippines in 1987. Unfortunately, this did not happen. The piecemeal amendments to the Constitution since 1998, and moreover some of these amendments yet to be implemented, are not satisfactory.” – Dato Param Cumaraswamy, UN Special Rapporteur on Independence of Judges and Lawyers in his Indonesian mission report to the 59th session of the United Nations Commission on Human Rights in March-April 2003.¹

Reform in Indonesia has been all about piecemeal amendments to the Constitution of 1945 and various laws. The Initial to Third Periodic Reports (CERD/C/IDN/3 of 4 April 2006) under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) only informs about the positive administrative measures taken so far, and not about the counter-measures taken to nullify many of these positive measures. The message of the periodic reports can be summarised in one sentence: since discrimination is prohibited under Law No. 39 of 1999 concerning human rights, there are no violations of the provisions of ICERD in Indonesia.

For many nations, it has taken generations of sustained campaigning, affirmative actions and enforcement of the anti-discrimination laws to combat all forms of discrimination. Indonesia claims to have achieved the same with one piece of legislation. Nothing could be far from the truth in a country where majority Javanese Muslims often are engaged in conflicts with pre-dominantly Christian indigenous peoples in the outlying Islnds, and the government led by majority Javanese Muslims often protects the interest of the majority.

In this shadow report, Asian Indigenous and Tribal Peoples Network, highlights the following key facets of racism and discrimination in Indonesia:

1.1 Racism and racial discrimination in Indonesia can only be rightly understood from a series of violent conflicts that took place in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan after the fall of Soeharto. The extent of the violence was such that by August 2004 there were 1.3 million internally displaced persons spread throughout the Archipelago. The descriptions of these conflicts as separatists, uncivil, inter-religious i.e. between the Muslims and the Christians or conflict over mere land and natural resources are simplistic and misleading. These conflicts have racial dimensions and they took place between the *transmigrasis*, the settlers from Java, Bali and Madura who were implanted in the outlying Islands inhabited by indigenous peoples. The *transmigrasis* mainly follow Islam while the indigenous peoples are predominantly Christians. Many indigenous peoples like the Papuans ethnically belong to the Melanesian stock and are therefore different from the *transmigrasis*. An estimated 3.6 million people were planted on the lands of indigenous peoples upto 1990² which according to the Operations Evaluation Department of the World Bank had a “major negative and irreversible impact on indigenous peoples”.³ Yet, the periodic reports do not mention a single word about its population transfer programme.

2.1 The 1945 Constitution of Indonesia recognised the indigenous peoples. Clause 3 of Article 28I provides that “The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.” However, through Presidential Instruction No. 26 of 1998, the government banned the use of the terms “indigenous” and

“non-indigenous” in all official documents. In its periodic reports, Indonesian government had the audacity to describe this racist Instruction as a reflection of its “further commitment to eradicating and preventing the occurrence of any form of discrimination in Indonesian society,... grant the equal treatment and services for all the people of Indonesia; as well as reviews and adjusts all laws and regulations, programs, policies and the implementation of programs”. This Presidential Instruction denies the cultural identities of indigenous peoples, violates their cultural rights and negates the principles for affirmative action as provided under the ICERD.

2.2 A number of Acts such as the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes deny the *ulayat*, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian Law (BAL) No. 5 of 1960.

2.3 In its Periodic Reports (para 64), Indonesia states that “*in reality, ensuring the survival of the indigenous people is proven to be a daunting task. The indigenous people live dependent on nature, not by social contract*”. What the periodic reports fail to mention is that “ensuring the survival of the indigenous peoples is proven to be a daunting task” because of the policies and programmes adopted by the government of Indonesia. For example, the proposed Kalimantan Border Oil Palm Mega-project requires 1.8 million hectares of land at the heart of Borneo. This project will not only destroy three national parks of Betung Kerihun (800,000 hectares), Kayan Mentarang (1,360,000 hectares), and Danau Sentarum (132,000) but will also destroy indigenous peoples’ means of survival – dependence on nature as rightly recognized by the Indonesian government. It will change their way of life, modes of production and indigenous peoples

evicted from their lands will be reduced to labourers in the plantations. The lands of indigenous peoples are already being grabbed by force, fraudulent means and inducements. Under the law, the quantum of compensation is determined by the government and indigenous peoples do not have the right to free, prior and informed consent.

3.1 In Papua, which was annexed through rigged Act of Free Choice of 1969, there have been reports of consistent and systematic violations of human rights and fundamental freedoms against indigenous Papuans of the Melanesian ethnic origin by the security forces mainly belonging to the Javanese Muslims. The fall of Soeharto’s dictatorship changed little.

3.2 There are many prisoners of conscience in Papua who were arrested for merely raising the Papuan Morning Star flag. On 26 May 2006, an Indonesian court sentenced Mr Filep Karma to fifteen years in prison on charges of treason and expressing hostility towards the state for taking part in a flag-raising ceremony on 1 December 2004. Another student, Yusak Pakage received a ten-year sentence for the same offence.⁶ On 9 and 11 July 2007, leading leaders of the Papuans belonging to the Papuan Presidium Council and Papuan Dewan Adat were interrogated for hours together in Jayapura for raising the Morning Star flag during the opening ceremony, of the Papuan Tribal Congress.⁴ Earlier on 1 July 2007, the Indonesian military reportedly started shooting in villages in Bolakme when the flag was raised.⁵

3.3 Many Papuan leaders espousing the right of self-determination of Papua were systematically eliminated. Mr Theys Eluays, leader of the Papuan Presidium Council, was murdered while being driven home from a dinner at the Kopassus Special Forces’ headquarters in the provincial capital Jayapura on 10 November 2001. He went to hold talks with the army. On 21 April 2003, a military court in the port city of Surabaya convicted four army personnel belonging to Indonesia’s notorious Kopassus, Indonesian

Special Forces Command, for “mal-treatment”, and not for murder of Theys Eluay.⁷

- 3.4 Many Papuans have been facing intimidation and harassment for meeting the UN Special Representative of the UN Secretary General on Human Rights Defenders during her visit to Indonesia in June 2007. This includes attempt at the lives of Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura and intimidation of Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid and Mr. Albert Rumbekwan, head of the *Komisi Nasional Hak Asasi Manusia* (National Human Rights Commission, Komnas HAM), Papua Province.
- 3.5 Impunity reigns supreme in Papua. On 8 September 2005, a special Human Rights Court in Makassar acquitted two senior police officers who were found guilty by the National Human Rights Commission, Komnas HAM, for allowing the killing of three Papuan students and the torture of over 100 others in Abepura on 7 December 2000. The two accused police officers, Brigadier General Johny Wainal Usman and Senior Commissioner Daud Sihombing were charged with command responsibility for the killings and torture. They faced a maximum penalty of life imprisonment if convicted. But Chief Prosecutor I Ketut Murtika recommended the minimum penalty of only 10 years, claiming the two accused had “served the nation” and “did not have malicious intentions”. The court went a few steps further to exonerate both the accused officers and rule that they were not guilty of allowing their subordinates to torture and kill civilians during the raid.⁸
- 3.6 The Papua Special Autonomy Law No. 21/2001 provided a window of opportunity to resolve the historic problems but the authorities in Jakarta have squandered it. In violation of Article 76 of Law No. 21 of 2001 (Papuan Special Autonomy Law) which stipulates that the creation of new provinces in Papua must have the approval of

the Papua People’s Council (Majelis Rakyat Papua) and the Provincial Legislative Council, the government went ahead and divided the Papua into two provinces after then President Megawati Sukarnoputri passed Presidential Decree No.1 of 2003.⁹ The Presidential Decree No. 1 of 2003 called for the speedy implementation of Law No. 45/1999 which authorized to divide the West Papua into Papua, Central Irian Jaya and West Irian Jaya. While the creation of Central Irian Jaya was abandoned due to violent protest, Indonesia’s Constitutional Court in a judgement in November 2004 sanctified the partition of Papua into two provinces as a political *fait accompli*.

- 3.7 The present administration of President Susilo Bambang Yudhoyono also does not have any political will to resolve the Papua problems. Instead of implementing the Papua Special Autonomy Law, on 16 May 2007 President Yudhoyono signed the Presidential Decree No. 5/2007 regarding the Speeding of the Development of the Province of Papua and the Province of West Papua. This Decree instructs 11 ministers, 2 governors and all regents in Papua to: [1] maintain the food security and poverty reduction, [2] improve the quality of education services, [3] improve the quality of health services, [4] improve basic infrastructure to improve the accessibility of the isolated and remote areas as well as the border area, and [5] take affirmative action for development of the indigenous Papuans.¹⁰ Though access to basic services remains a priority for the Papuans, this is an attempt to reduce the Papua political conflict into an economic one.
- 3.8 The PT Freeport Indonesia owned by the United States based global mining giant Freeport-McMoRan Copper & Gold Inc in Jayapura, Papua has been responsible for destruction of environment and livelihood of the indigenous peoples. *The New York Times* reported on 27 December 2007 that 160 people had been killed by the military between 1975 and 1997 in the

mine area and its surroundings.¹¹ *The New York Times* further reported that its requests to “visit the mine and its surrounding area, which requires special permission for journalists were turned down”.

3.9 Since 1977 violations of human rights have been systematically and consciously carried out by the Indonesian military and police with the support of PT Freeport Indonesia.¹² After a series of riots in March 1996 against the Freeport mine in which the mine was forced to shut down for three days, Freeport hired Indonesian army for its protection. The company documents obtained by *The New York Times* showed that “from 1998 through 2004, Freeport gave military and police generals, colonels, majors and captains, and military units, nearly \$20 million. Individual commanders received tens of thousands of dollars, in one case up to \$150,000.... Freeport spent \$35 million on military infrastructure - barracks, headquarters, mess halls, roads - and it also gave the commanders 70 Land Rovers and Land Cruisers, which were replaced every few years. Everybody got something, even the Navy and Air Force.”¹³

3.10 Freeport failed to benefit indigenous Papuans. It reportedly provided Indonesia with \$33 billion in direct and indirect benefits from 1992 to 2004.¹⁴ In 2005, the company’s annual report stated that it extracted metals worth US\$3.5bn and paid \$1.2bn in taxes and royalties to the government in Jakarta. However, Papuans suffered further pauperization. Papua is at the lowest rank in Human Development Index (HDI) amongst Indonesia’s 32 provinces with 35% of the total population living below the poverty line.¹⁵

3.11 The Freeport mining has destroyed the environment and livelihood of the indigenous Papuan peoples. According to *The New York Times*, approximately 300,000 tons of mine waste is being dumped into the Aghawaghon-Aijkwa river system daily which destroyed the ecosystem. According to the Freeport, it “will generate an estimated six billion tons of waste

before it is through - more than twice as much earth as was excavated for the Panama Canal”.¹⁶ At least 2.5 million hectares of land have been taken away from indigenous Papuans¹⁷ who were forced to surrender their ancestral lands in the form of concessions given to the company by the Indonesian Government.¹⁸

4.1 In its periodic reports, Indonesia rightly admits that religious profiling promotes “racial discrimination” and it cites the City of Bogor where incorporation of the religious denomination on the Citizen Identification Card was stopped as a good example. But after the submission of the periodic reports, on 8 December 2006, the Indonesian House of Representatives passed the Civil Registration Bill that requires citizens to mention their faiths on legal documents like identity cards and birth certificates. The bill requires citizens to state one of the six religions, Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.¹⁹

4.2 While in its periodic reports (Para 28), Indonesia recognizes that “Indonesians usually practice Islam, Protestantism, Catholicism, Hinduism and Buddhism as well as other beliefs, including traditional indigenous religions”, it fails to mention that non-formal or “traditional indigenous religions” such as the Naurus in Maluku; Kepercayaan in Kalimantan, Papua and Java; Kaharingan in Kalimantan; Sunda Wiwitan in West Java; and Tolotang in South Sulawesi are not recognised²⁰ and classified as “other”. About 0.2 per cent of the 241 million population of Indonesia were classified as ‘other’ by the Central Bureau of Statistics as per its national decadal census in 2000. They face harassment and difficulties in the form of long delays and they have to pay bribes, euphemistically called ‘extra’ payment, when they apply for an identity card, *Kartu Tanda Penduduk* (KTP).

4.3 The discrimination against members of Ahmadiyah has been sanctioned by the State since 1980s through the Majelis Ulama Indonesia (the government-endorsed Council of Islamic

Scholars).²¹ The ban was further reiterated on 14 August 2005 by Religious Minister Maftuh Basyuni on the ground that Ahmadiyah is against the Islamic teachings.²² A report of the special commission of the Komnas HAM released on 25 January 2007 found a pattern to the attacks against the Ahmadiyahs including arsons, vandalism, and evictions etc in which the authorities either remained mute witness and/or participated themselves in the criminal acts.²³

- 4.4 The provincial and regency authorities often ban non-recognised religions. For example, in October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned thirteen religious sects, including Ahmadiyah, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs (aliran kepercayaan), as being deviations of Islam, Christianity, and Hinduism.²⁴
- 4.5 The Joint Ministerial Decree No. 1/2006 issued by Religious Affairs Ministry and Home Affairs Ministry further restricted religious freedoms of the non-Muslims. This Decree requires religious groups that want to build a new house of worship to obtain the signatures of at least 90 worshippers and 60 people from other faiths residing near its vicinity.²⁵ The enjoyment of the religious freedoms of the minorities has been made dependent on the wishes of the majority Muslims.
- 4.6 Religious minorities face atrocities from the fundamentalist vigilante groups. The provincial and regency authorities have adopted disingenuous strategy of closing down the churches or banning Ahmadiyah citing security reasons. The ban on Ahmadiyah was imposed by the Regency administration of Bogor,²⁶ Kuningan²⁷ and Cernjur in West Java respectively in July and September 2005. The provincial government of West Nusa Tenggara banned the Ahmadiyah activities in October 2005. Ahmadiyah activities have remained banned formally in East Lombok since 1983 and in West Lombok since 2001.²⁸

- 5.1 Though ethnic Chinese are no longer required to produce the Republic of Indonesia Citizenship Certificate (SBKRI) if they want to obtain documents such as ID cards, passports and birth certificate, there are still 50 articles of law, regulation, or decree that discriminated against ethnic Chinese citizens.²⁹ Despite official reforms, the ethnic Chinese still face societal discrimination. A routine or normal crime by an individual Chinese Indonesian attracts the wrath of majority Muslims to the whole community. On 11 May 2006, about 1,000 native Indonesian students threatened to attack the ethnic Chinese in case the police failed to investigate into the alleged tortured to death of a housemaid, Hasniati, a native Indonesian at her employer's house, an ethnic Chinese Indonesian in Makassar city of South Sulawesi.³⁰
- 5.2 Impunity led to the increased attacks on the ethnic Chinese. At least 1,217 people died in three days of rioting in Jakarta on 14-14 May 1998 in which members of the ethnic Chinese community were primarily targeted. Hundreds of shops and buildings belonging to them were looted and burnt down by the rioters.³¹ About 85 ethnic Chinese women and girls were sexually assaulted including 52 of them being raped.³² Despite the ad hoc team of the National Human Rights Commission (Komnas Ham) identifying some 20 military officers including former Armed Forces commander General Wiranto and former Strategic Reserve Command (Kostrad) chief Prabowo Subianto and some civilians as being behind the May 1998 riots in Jakarta,³³ the Attorney General refused to order further investigation that would have led to prosecution of the perpetrators.
- 6.1 Indonesia's National Human Rights Commission, Komnas HAM remained a toothless wonder despite its incorporation under the Law No 39 of 1999 concerning Human Rights. In reality, Law No. 26 of 2000 concerning Human Rights Courts governs the functions of the Komnas HAM. Under Article 19 of Law No.

26 of 2000,³⁴ the Komnas HAM is authorised to inquire any alleged gross human rights violations without subpoena powers. Based on this inquiry of the Komnas HAM, the Attorney General takes the final decision under Article 21³⁵ whether to order further inquiries or not for eventual prosecution. Since the Komnas HAM in the first place is legally constrained through denial of subpoena powers, inquiry cannot be effectively conducted by it to compel the Attorney General to order further inquiries. This is nothing but an effective procedural obstacle to provide impunity.

6.2 In May 2006, the Komnas HAM stated that it had submitted inquiry reports into the six alleged gross violations of human rights (Trisakti 1998, Semanggi I 1998, Semanggi, May 1998 riots, Wasior 2001-2002, and Wamena 2003) it had investigated to the Attorney General for further investigations. But no investigation has been launched into any of these six cases.³⁶

7.1 Human rights courts of Indonesia established under Law No. 26 of 2000 have the notorious reputation of shielding the culprits. As stated above even two officials charged by the Attorney General for the killing of three Papuan students and the torture of about 100 others on 7 December 2000 at Abepura, West Papua were exonerated by the Human Rights Court. The US State Department's Country Report on Human Rights Practices (Indonesia 2006) stated "in recent years Komnas HAM's efforts to expose human rights violations and bring perpetrators to account were undermined by a number of court decisions regarding its jurisdiction or authority. In 2003 a Jakarta court refused to subpoena former and active military officers who had ignored Komnas HAM summonses to face questioning about 1998 riots, which claimed more than 1,200 lives."

C. Concerns and recommendations

AITPN makes the following recommendations for consideration by the CERD Committee;

1. The Committee should take note of racial

dimensions of the conflicts that took place after the fall of Soeharto as a result of the State sponsored population transfer programme of the settlers mainly from Java, Bali and Madura which had major "negative and irreversible impact" on the indigenous peoples inhabiting the outlying islands of Indonesian Archipelago.

The Committee should recommend to the State party, World Bank, Asian Development Bank, UN agencies and other multilateral and bilateral financial institutions to undertake affirmative action programmes to remove the negative impacts with full and effective participation of indigenous peoples.

2. The Committee should express its disapproval of the Presidential Instruction No. 26 of 1998 banning the use of the terms "indigenous" and "non-indigenous" in all official documents.

The Committee should recommend the State party to repeal that Presidential Instruction No. 26 of 1998 banning the use of the terms "indigenous" and "non-indigenous" in all official documents.

3. The Committee should express concerns about the exclusive rights of the State over natural resources at the expense of the rights of the indigenous peoples and non-recognition of the *ulayat*, customary rights of the indigenous peoples in particular under the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and the Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes as recognised under Article 3 and Article 5 of the Basic Agrarian Law No. 5 of 1960;

The Committee should recommend to the State party to amend various laws relating to indigenous peoples in particular the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and

Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes to recognise the rights of the indigenous peoples.

4. The Committee should note that the government of Indonesia does not fully implement the right of ownership, collective or individual, of the members of indigenous peoples over the lands traditionally occupied by them in its practice concerning indigenous peoples. It should also express concerns at the proposed Kalimantan Border Oil Palm Mega-project which requires 18 million hectares of land at the heart of Borneo.

The Committee should urge the State party to fully respect and implement the right of ownership, collective or individual, of the members of indigenous communities over the lands traditionally occupied by them in its practice concerning indigenous peoples . The State party should seek the prior informed consent of communities while taking away any land for the Kalimantan Palm Oil Project in full conformity with the general recommendation No. 23 of the ICERD.

5. The committee should express concerns about the lack of implementation of the Papua Special Autonomy Law No. 21/2001 and division of Papua into two provinces in clear violation of the Article 76 of the Special Autonomy Law.

The Committee should call upon the government of Indonesia to fully implement the Papua Special Autonomy Law No. 21/2001 in letter and spirit and initiate dialogue with the legitimate representatives of Papuan society on a wide range of issues including truth, justice and reconciliation, security arrangements, and division of the province.

6. The Committee should express concerns about the continued imprisonment of a large number of prisoners of conscience arrested for raising the Papuan Morning Star flag.

The CERD Committee should call upon the State party to release all the prisoners of conscience including Mr Filep Karma and

Yusak Pakage who were sentenced to 15 years and 10 imprisonment respectively for raising the Papuan Morning Star flag and to immediately stop intimidation and harassment of the leaders of the Papuans belonging to the Papuan Presidium Council and Papuan Dewan Adat for raising of the Morning Star flag during the opening session of their Congress on 6 June 2007.

7. The CERD Committee should remind the State party about the responsibility to protect those who testify with the UN mechanisms and express concerns into attempt at the lives of Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura and intimidation of Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid (LP3BH) Mr. Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province for testifying before the UN Secretary General's Special Representative on Human Rights Defenders in July 2007.

The CERD Committee should urge the State party to order an inquiry into these allegations and report to the UN Special Representative on Human Rights Defenders.

8. The CERD Committee should express its concerns about the acquittal of the armed forces who were held responsible for gross human rights violations after inquiry by the National Human Rights Commission, Komnas HAM.

The Committee should urge the State party to take measures for ensuring independence and impartiality of judiciary including capacity building through technical cooperation programmes with the Office of the High Commission for Human Rights.

9. The CERD Committee should take note of the report of *The New York Times (The Cost of Gold - The Hidden Payroll: Below a Mountain of Wealth, a River of Waste)* of 27 December 2005 which, among others, brought into focus the linkages between the protection money provided to TNI personnel by the

Freeport and human rights violations on indigenous Papuans, destruction of environment and livelihood of indigenous peoples among others by dumping of 300,000 tons of mine waste into the Aghawaghon-Aijkwa river system daily, and existence of the highest level of poverty in Papua among the Indonesia's 32 provinces.

The CERD Committee should recommend the State party to (1) ensure full respect for human rights and fundamental freedoms of indigenous peoples in Papua, (2) institute a Commission of Inquiry to investigate linkages between the so-called protection money provided to TNI personnel by the Freeport and human rights violations on indigenous Papuans and take appropriate actions; (3) establish a "Permanent High Powered Committee" consisting of environmental scientists, representatives of the Papuans and representatives of the Komnas HAM to monitor the environmental effects on the populace and the nature; and (4) develop verifiable mechanisms to provide benefits of the Freeport revenues to indigenous Papuans.

10. The Committee should note the acknowledgement of the State party that religious profiling contributes to racial discrimination. At the same time, the Committee should express concerns about the "religious profiling" under the Civil Registration Law of 2006 which only recognizes six religions.

The Committee should recommend the State party to repeal of the Civil Registration Law of 2006 to give equal status and recognition and access to assistance from the State party to all the religions including "traditional indigenous religions" such as the Naurus in Maluku; Kepercayaan in Kalimantan, Papua and Java; Kaharingan in Kalimantan; Sunda Wiwitan in West Java; and Tolotang in South Sulawesi.

11. The CERD Committee should express concerns about the (1) ban on Ahmadiyahs imposed by the Indonesian government and local authorities such as the Regency administration of Bogor,

Kuningan and Cirnjur in West Java respectively in July and September 2005, the provincial government of West Nusa Tenggara in October 2005, East Lombok in 1983 and in West Lombok in 2001; and (2) ban on other religious beliefs such as the Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs (aliran kepercayaan) imposed by the Ministry of Religious Affairs in West Nusa Tenggara.

The Committee should recommend to the State party to withdraw the bans imposed on different religions and sects including the ones imposed by the provincial and regency governments.

12. The CERD Committee should express serious concern that the Joint Ministerial Decree No. 1/2006 issued by Religious Affairs Ministry and Home Affairs Ministry that requires signatures of at least 90 worshippers and 60 people from other faiths residing near its vicinity to construct a place of worship violate the right to religious freedoms.

The CERD Committee should recommend withdrawal of the Joint Ministerial Decree No. 1/2006

13. The Committee should take note of the report of the special investigation commission of the National Human Rights Commission (Komnas HAM, Komisi Nasional Hak Asasi Manusia) of 25 January 2007 about the pattern to the attacks against the Ahmadiyahs starting with heresy followed by public campaigns against Ahmadiyah mosques, holding meetings or putting up banners, then making threats, and finally, once the masses have been inflamed, resort to vandalism, burnings, and evictions and other acts of violence with the tacit approval and/or participation of the officials in these criminal acts.

The Committee should urge the government of Indonesia to take appropriate actions against the officials who remain mute witness or encourage criminal acts against religious minorities and implement the recommendations of the Komnas HAM.

14. The Committee should express concerns about the existence of over 50 laws which discriminate against the ethnic Chinese.

The Committee should request the government of Indonesia to set up a committee to review all the laws, regulation, or decree that discriminate against ethnic Chinese citizens and repeal the these discriminatory laws, regulations and decrees.

15. The Committee should take serious note of the failure of the Attorney General to order further inquiries into the six alleged gross violations of human rights (Trisakti 1998, Semanggi I 1998, Semanggi, May 1998 riots, Wasior 2001-2002, and Wamena 2003) referred to it by the Komnas HAM after inquiries.

The Committee should recommend to the State party to instruct the Attorney General to initiate appropriate inquiries to establish accountability into the six alleged gross violations of human rights on which Komnas HAM (Trisakti 1998, Semanggi I 1998, Semanggi, May 1998 riots, Wasior 2001-2002, and Wamena 2003) had already submitted its report.

16. The Committee should note that the lack of subpoena powers and the powers to approach the courts independently by the Komnas HAM encourages impunity and renders the Commission ineffective.

The Committee should recommend to amend the Law No 39 of 1999 concerning Human

Rights and Law No. 26 of 2000 concerning Human Rights Courts to (1) provide the powers of a court to the National Human Rights Commission, Komnas HAM among others for (a) summoning and enforcing the attendance of witnesses and examining them on oath; (b) discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses or documents; (f) any other matter which may be prescribed; and (2) empower the Komnas to file cases directly and independently before the judiciary.

17. The Committee should express concerns that there are no national institutions to deal with the rights of indigenous peoples.

The Committee should recommend the government of Indonesia to establish a National Commission on Indigenous Peoples in conformity with the Paris Principles on National Human Rights Institutions.

18. The Committee should also express concerns about the lack of specific anti-discrimination laws.

The Committee should recommend to the State party to develop national anti-discrimination laws.

Part II

TRANSMIGRATION: UNDERSTANDING THE ISSUES OF RACE & DISCRIMINATION IN INDONESIA

a. The issues of race and discrimination

According to the Initial to Third Periodic Reports (CERD/C/IDN/3 of 4 April 2006), Indonesia has a spectacular record of racial harmony and does not face problems of race and discrimination.

As it is known since the fall of Soeharto in 1998, Indonesia witnessed sharp increase of violence as a result of civil unrest, crime, separatism, and inter-communal violence. The most serious conflicts and violence took place in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan. The extent of the violence was such that by August 2004 there were 1.3 million internally displaced people (IDPs) spread throughout the Archipelago. While majority returned to their original places often without adequate compensation, the number of IDPs is presently between 1,50,000 and 2,00,000.³⁷

There are attempts by donors like the World Bank, Asian Development Bank to describe these racial conflicts as inter-religious i.e. between the Muslims and the Christians or conflict over mere land and natural resources. The World Bank and Asian Development Bank had supported the sponsored population transfer of the people from Java, Bali and Madura islands to lands of the indigenous peoples in the outlying islands. They funded support under which the *transmigrasis* received houses, land for farming forcibly taken from the indigenous peoples, and a subsistence and production package during their early settlement years.³⁸ Moreover while the *transmigrasis* mainly follow Islam, the indigenous peoples are predominantly Christians. Many indigenous peoples like the Papuans who ethnically belong to the Melanesian stock are altogether different from the *transmigrasis*.

As the transmigration programme had major “negative” and “irreversible” impact on the

indigenous communities and the World Bank and Asian Development Bank had failed to take corrective measures, there are attempts to undermine the racial conflicts.

b. Scale of transmigration

An estimated 3.6 million people were planted on the lands of indigenous peoples upto 1990 in almost all the outlying Islands. As per the 2000 census, Papua showed a population of 14,60,846 indigenous Papuans and 772,684 non-indigenous people.³⁹ The *transmigrasis* today represent half the total population of the Papuan indigenous population of 1.5 million and they are in control of the province.⁴⁰

“The development target for REPELITA VI (1994-99) was to relocate 600,000 families, consisting of 350,000 government-sponsored families and 250,000 spontaneous transmigrant families. Before the economic crisis hit Indonesia in mid-1997, the government envisaged the resettlement of 316,000 families as part of the highly controversial Swamp Rice Mega Project in Central Kalimantan over a period of six years. The project, however, collapsed in the same year and less than 27,000 families were resettled in 1997-1998 (20,000 of them in Central Kalimantan). The original target for the following year was to resettle 86,000 families mostly to Eastern Indonesia, but the project stymied because as a direct consequence of the economic crisis, political unrest and social conflict.⁴¹ According to figures issued by the transmigration authorities, only 2,265 families were to be resettled in the fiscal year 2000. The number of unofficial spontaneous transmigrants (i.e. uncontrolled migrants) is probably high, but no official data exist”.⁴²

c. Negative impact on indigenous peoples: The World Bank’s findings

“Between 1969 and 1993 the World Bank and the

Table 1: Transmigration Figures 1950 - 2000/01⁴³

	Pre- Repelita 1950-69	Repelita I 1969- 74	Repelita II 1974- 79	Repelita III 1979- 84	Repelita IV 1984- 89	Repelita V 1989- 94	Repelita VI 1994- 99	Repelita VII 1999- 2000 (by Nov 99)
Target (families)	-	38,700	250,000	500,000	750,000	550,000	600,000	16,235
Families actually moved	100,000	36,483	118,000	535,000	230,000	n/a	300,000	4,409
No. of people	500,000	174,000	544,000	2,469,560	1,061,680	n/a	1,500,000	22,000

Sources: Indonesia's Transmigration Programme - An Update: A report prepared for Down To Earth by M. Adriana Sri Adhiati and Armin Bobsien (ed.), July 2001

ADB together provided US\$1.4 billion, equivalent to 92% of the external financial assistance, and about 15.2%” for the trans-migration programmes. The World Bank supported the Transmigration Program through seven projects totaling \$560 million.⁴⁴ Though human rights organizations campaigned against the transmigration programmes, the World Bank refused to pay any heed.

In its report in January 1994, the Operations Evaluation Department (OED) of World Bank studied five out of seven transmigration programmes supported by the World Bank.

The OED studied the following five projects:

“Transmigration 1 (approved 1976): a pilot operation to test strategies for agriculture, social, and economic development of transmigration sites in southern Sumatra.

Transmigration 2 (approved 1979): to resettle about 30,000 families in four sites along the Trans-Sumatra highway.

Transmigration 3 (approved 1982): to resettle 2,000 families in the same location as Transmigration 1.

Transmigration 4 (approved 1983): to resettle 6,000 families in a remote area of East Kalimantan.

Swamps 1 (approved 1981): to resettle 3,200 families on land to be developed in two stages for paddy and other crop production.”⁴⁵

The OED study found major negative and irreversible impact of the transmigration programmes on indigenous peoples. It stated,

“Transmigration had a major negative and probably irreversible impact on indigenous people, particularly the Kubu Rimba. With the extensive forest clearing now underway in T2 as part of the development of the uncleared areas to oil palm, the Kubu Rimba have been (and are being) displaced”.⁴⁶

The OED identified the protection for indigenous peoples as the major outstanding issue but indigenous peoples never received any tangible protection. The OED in its January 1994 report stated, “In 1984 the Kubu Rimba requested, and the Governor of Jambi province agreed to provide, an area close to the Duabelas Hills as a conservation area, but no action had yet been taken” after 10 years.⁴⁷

The OED also noted “the Dayak communities in East Kalimantan have not yet been compensated for lands acquired for the project”.⁴⁸ Indigenous peoples in all the outlying Islands were never properly

compensated for the lands grabbed from them for the *transmigrasis*. The World Bank and other financial institutions and the government of Indonesia failed to rectify the negative impact on the indigenous peoples. It is simply because Indonesian government repeatedly sought to brush aside its racist policies and programmes, often with the support of the international financial institutions to decimate the identity of the indigenous peoples. The Presidential Instruction No. 26 of 1998 banning the use of the terms “indigenous” and “non-indigenous” in all

official documents is a reflection of this racist policy .

What is disturbing is the fact that in its Periodic Reports, Indonesian government had the audacity to describe the Instruction as a reflection of its “further commitment to eradicating and preventing the occurrence of any form of discrimination in Indonesian society”,... “grant the equal treatment and services for all the people of Indonesia; as well as reviews and adjusts all laws and regulations, programs, policies and the implementation of programs”.

Part III

NON-IMPLEMENTATION OF ICERD

According to the Periodic Reports, Law No.39 of 1999 on Human Rights is the panacea and has successfully resolved all the problems related to human rights violations including discrimination.

In paragraph 87, the periodic reports claimed that every one in Indonesia has the legal protection from discrimination as provided under Article 3 of the Law No.39 of 1999 which provides that “Every person has the rights for the protection of human rights and basic rights, without discrimination”.

This Shadow Report shows there are systematic discrimination in Indonesia and there is no protection under the law.

1. Discrimination against indigenous, *Adat*, communities

a. (II)legal framework

The 1945 Constitution of Indonesia recognized indigenous peoples. Section 18B of the 1945 Constitution recognised “traditional communities” such as the Dayak tribes of Kalimantan, families living as sea nomads, and the 312 officially recognized indigenous groups in Papua.⁴⁹

Article 28 of the 1945 Constitution of the Republic of Indonesia (as amended in 2002) specifically recognized limited ownership rights of indigenous peoples. Clause 4 of Article 28H states that “Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party”. Clause 3 of Article 28I further provides that “The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.”

The rights of indigenous peoples were also enunciated under Article 6 of the Law No.39 of 1999 on Human Rights. It states:

“(1) In the interests of upholding human rights, the differences and needs of indigenous peoples

must be taken into consideration and protected by the law, the public and the Government.

(2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times.”

However, the rights of the traditional communities have often been undermined by supremacy of national interest. Article 33 of the Constitution of Indonesia established the exclusive right of the State over natural resources in the name of national interest and gave the State the arbitrary powers to limit or abrogate the rights of the indigenous peoples. Article 33 provides that:

“1. Economic matters are managed as common efforts based on family principles.

2. Productive activities related to natural resources, which have importance to the State and significance for the livelihood of the Indonesian people, will be managed exclusively by the State.

3. The earth, water and natural resources are under the control of the State and should be utilized for the maximum welfare of the Indonesian people.

4. The national economic system should be conducted in accordance with the following principles: togetherness, equitable efficiency, sustainability, environmental friendliness, independence, and balancing progress and national economic unity.

5. The implementation of this article will be regulated by further laws.”

The supremacy of national interest was also reiterated under Article 3⁵⁰ and Article 5⁵¹ of the Basic Agrarian Law No. 5 of 1960 which recognized the *ulayat*, customary rights of the indigenous peoples, although in a limited way.

There are a number of legislations directly relating to indigenous peoples, some of which were

revised after the fall of Soeharto, which failed to ensure the rights of the indigenous peoples.

Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999)

The primary aim of Law No. 5 of 1967 concerning Basic Forestry Law was to accelerate development to improve economic growth through extraction of natural resources, including forest resources. This Act and its implementing regulation facilitated the issuance of forest concessions to big companies by extinguishing the *ulayat* rights of the indigenous communities. The present Forestry Act No. 41 which replaced the Government Regulation No. 21 of 1971 (Right of Forest Exploitation and Forest Harvest Produce) also does not protect the customary/traditional rights of the indigenous peoples.⁵²

Law No. 11 of 1967 on the Principles of Mining

The focus of the Law No. 11 of 1967 concerning Basic Provisions on Mining is to achieve the goal of economic development through the extraction of mining resources. In its pursuit for rapid economic development, the Government ignored the rights of the indigenous peoples while prioritizing on the large companies (including foreign investment) in the exploitation of mining resources. There is a provision for compensation but only for the land taken and not for the mineral resources beneath the land.⁵³

Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem

The enactment and implementation of Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem also resulted in further marginalisation of the indigenous people and denial of their rights over natural resources. This Act, invoking the concept of eminent domain as provided under Article 33 of the 1945 Constitution places the State in the lead to manage protected areas (Articles 16 and 34). It is the duty of the Government to direct and motivate people to participate in the conservation of biological resources (Article 37

Para.1) but this Act does not explain the procedures as to how the protected areas will be set up or determined. Before the procedures were developed, the Government unilaterally declared and established several protected areas, including buffer zones, without prior consultation and consent of the indigenous people of the concerned areas. For example, the Government unilaterally declared and set up the Lore Lindu National Park in Central Sulawesi.⁵⁴

Supremacy of the “Public Purpose”

In the absence of clear cut laws recognizing the rights of indigenous peoples, titling of individual land holding remains extremely crucial. However, procedures for the titling of individual land holdings, apart from being defective, also lag far behind the rate at which new land holdings are being created. A five-year-old National Assembly Decree (TAP MPR IX/2001), requiring reforms of forestry and agrarian laws, is yet to be put into effect. The imposition of a uniform administrative structure throughout Indonesia down to the village level during the New Order (Orde Baru) rule consciously ignored the traditional rights of the indigenous peoples.

Even if one’s individual land holding is registered albeit under a deceptive system, he/she has little rights vis-à-vis the government. Indonesian state exercises sovereign power under the controversial principle of the ‘controlling right of State’ (Hak Menguasai Negara) to regulate, manage, operate, classify, utilize, reserve and preserve natural resources for the benefit of the people on natural resources including deciding on and regulating the legal relations between people and natural resources.

On 3 May 2005, President Susilo Bambang Yudhoyono signed Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes to further strengthen the sovereign power of the state on land acquisition. The new Regulation vaguely defines “public interest” and violates landowners’ rights as set out in the 1962 Property Law.

In June 2006, the Indonesian government made

cosmetic amendments to the Regulation No. 36 of 2005 by dropping some of the development projects like public assets, schools, health clinics, government buildings and telecommunication facilities specified under “public interest”. However, the basic draconian thrust of the Regulation remained intact. The decree still empowers the government to take over any land for public interest and strip private land owners of their property rights if they do not agree to State offers of compensation

Therefore, indigenous peoples have no right to land in Indonesia. They live on the lands at the mercy of the government and not because their rights are recognised.

b. All Dayaks should be plantation labourers!

In its Periodic Reports (para 64), Indonesia states, “Article 28 (1) of the 1945 Constitution guarantees full respect for the rights for indigenous people. However, in reality, ensuring the survival of the indigenous people is proven to be a daunting task. The indigenous people live dependent on nature, not by social contract. They have full rights.”

What the periodic reports fail to mention is that “Ensuring the survival of the indigenous people is proven to be a daunting task” because of the policies and programmes adopted by the government of Indonesia without ensuring the rights of indigenous peoples. Indonesia is driven by the interest of the majority Javanese and unsustainable development projects at the cost of the indigenous peoples.

The proposed Kalimantan Border Oil Palm Mega-project is a case in point.

Exercising the sovereign powers, in July 2005, President of Indonesia Susilo Bambang Yudhoyono announced the Kalimantan Border Oil Palm Mega-project to be implemented by the Indonesian State Plantation Corporation (PT Perkenunan Nusantara or PTPN). The project will require 1.8 million hectares of land at the heart of Borneo and, among others, will destroy three national parks of Betung Kerihun (800,000 hectares), Kayan Mentarang (1,360,000 hectares), and Danau Sentarum (132,000) as well as surrounding “protection forest” for the plantation.

The PTPN stated that palm oil plantations would generate an annual inflow of US\$45 million in tax revenue to the State.

The PTPN further claims that the project will create jobs for nearly 400,000 persons. Indigenous peoples are poor and they have little resources. Certainly, indigenous peoples will not be the owners of the plantations but will be transformed into labourers. Their lands are being appropriated by force, fraudulent means and inducements for the Palm Oil Plantations.

The project which is being implemented will change indigenous peoples’ way of life and eventually destroy their cultural identity.

c. Special Focus: Discrimination in Papua

The grant of asylum to 43 Papuan refugees by Australia in January 2006 once again brought international spotlight on continuing gross human rights violations in Papua. The former Dutch colony of West Papua was forcibly annexed by Indonesia. Under the United States brokered deal, the Dutch accepted to formally transfer the territory in October 1962 to an interim United Nations administration, which would then turn it over to Indonesia on 1 May 1963. Then, at the end of 1969, more than six years later, Papuans would be given the chance under a UN supervised “Act of Free Choice” to decide whether or not they wished to stay under Indonesian rule.

The day following the transfer of power to Indonesia, thousands of school textbooks about Papua and Papuan “Morning Star” flags were publicly burned. One day later the Papuan Parliament, the New Guinea Council, was dissolved; and in the same month laws were passed banning all political activity, including publications and meetings. In the same year an Anti-Subversion Decree provided the armed forces with a *carte blanche* to arrest and to imprison anyone considered to be acting against the interests of the state.⁵⁵

The “Act of Free Choice” was exercised when West Papua was already in the throes of virtual civil war. The plebiscite held in 1969 was not conducted on the basis of “one man, one vote” but through 1,025

representatives who gave their opinion to be part of Indonesia under threat of imprisonment and death. In November 1969, the United Nations approved the implementation of the Act of Free Choice and accepted its result.

The diplomatic note of disquiet expressed by the United Nations observer was completely ignored. The representative wrote:

“I regret to express my reservation regarding the implementation of Article XXII of the Agreement, relating to “the rights, including the rights of free speech, freedom of movement and of assembly of the inhabitants of the area.. ... In spite of my constant efforts, these important provisions were not fully implemented and the [Indonesian] Administration exercised at all times a tight political control over the population”. - wrote the representative of the UN in his report to the Secretary-General.⁵⁶

From 1969 to November 1998, Irian Jaya or Papua remained designated as a Military Operations Area, without the knowledge of the Papuans. The security forces were given a free hand to combat the Organisasi Papua Merdeka (OPM), Free Papua Movement and Papua National Liberation Army. Papuans claim that thousands of civilians were killed, terrorized and often tortured, raped and killed during counter insurgency campaigns.

It is essential that CERD Committee reviews the situation of discrimination in West Papua especially within the framework of the Article 15 of the ICERD.

i. Non-implementation of the Papua Special Autonomy Law, 2001

After the fall of Soeharto in 1998, his successor, President BJ Habibie adopted Law No. 45/1999, which among other things, mandated to divide the province into three - West Irian Jaya, Central Irian Jaya and Irian Jaya.⁵⁷ This was considered as an attempt to divide the Papuans and undermine the call for independence after East Timor became independent.

In a departure from Habibie, his successor President Abdurrahman Wahid sought to assuage the sentiments of the Papuans, renamed Irian Jaya as “West Papua” and introduced Papua Special Autonomy Law No. 21/2001. Unfortunately, Law

No. 21/2001 did not include an article stipulating that Law No. 45/1999 was no longer valid.

Nonetheless, Article 76 of Law No. 21 of 2001 (Papuan Special Autonomy Law) stipulated that the creation of new provinces in Papua must have the approval of the Papua People’s Council (Majelis Rakyat Papua) and the Provincial Legislative Council. However, the formation of the Papua People’s Council had repeatedly been postponed as the government did not have seriousness to implement Law no.21/2001.

Ambiguity on the status of Law No. 45/1999 and Law No. 21/2001 persisted and a situation of limbo prevailed.

Even before the constitution of the Papua People’s Council, President Megawati Sukarnoputri, successor of President Wahid passed Presidential Decree (Inpres) No.1 of 2003⁵⁸ calling for the speedy implementation of Law No. 45/1999 and divide the West Papua into Papua, Central Irian Jaya and West Irian Jaya.

The government however had to shelve creation of Central Irian Jaya in August 2003 following violent clashes in Timika over the partition. But, two other provinces West Irian Jaya and Papua were created.

After the partition of Papua, Indonesia’s Constitutional Court sanctified the partition in November 2004. In a judgment on the constitutional validity, the court ruled that while the Special Autonomy law superseded Law No. 45/1999 creating the new province of West Irian Jaya, the new province should be recognized nonetheless as its existence was already a political fait accompli.

There are two provinces now: Papua and West Irian Jaya and the applicability of the Papua Autonomy Law hangs in balance.

Like the way Law No. 21/2001 failed to include an article invalidating the applicability of Law No. 45/1999, no new regulation reconciling the status of West Irian Jaya with Special Autonomy have followed.

The non-implementation of the Special Autonomy in Papua led to general dissatisfaction among the indigenous Papuans. An EU-funded

survey, conducted in 2006 by the Indonesian NGO SNUP (National Solidarity for Papua) and Kemitraan (the World Bank-initiated Partnership for Governance Reform in Indonesia) found that sixty per cent of the 323 respondents from six districts in Papua said they had no confidence that Special Autonomy would result in any improvement in their living conditions; 76% said Special Autonomy was not being well implemented and 62% said the local government structure was hardly capable of implementing the Special Autonomy law.⁵⁹

Instead of implementing the Papua Special Autonomy Law, on 16 May 2007, the Presidential Decree No. 5/2007 regarding the Speeding of the Development of the Province of Papua and the Province of West Papua was issued. This Decree instructs 11 ministers, 2 governors and all regents in Papua to: [1] maintain the food security and poverty reduction, [2] improve the quality of education services, [3] improve the quality of health services, [4] improve basic infrastructure to improve the accessibility of the isolated and remote areas as well as the border area, and [5] take affirmative action for developing indigenous Papuans.⁶⁰

The latest Presidential Decree is another attempt to reduce the political question of Papua into an economic one.

ii. Prisoners of conscience

The Indonesian government remains extremely intolerant towards any political expression. There are many political prisoners of conscience who have been sentenced for raising the Papuan “Morning Star” flag.⁶¹

Case 1: Recent harassment of the Papuan leaders

On 6 July 2007, the Papuan Police through its letter no. Pol. Pgl/668/VII/2007/Dit Reskrim summoned 11 leaders of the Organising Committee of the Papuan Tribal Community Congress for raising the West Papuan Morning Star flag during its opening ceremony. The following 11 leaders of the Papuans were summoned as witnesses in the case of crimes against state security under Article 106 of the Penal Code.

Those who were called are:

1. Mr Thom Beanal: Chairman of Dewan Adat Papua (DAP) of the period of 2002-2007
2. Mr Willy Mandowen: Moderator of Presidium Dewan Papua (PDP)
3. Mr Benyamin Yarisetouw
4. Mr Thaha Moh. Alhamid: General Secretary of PDP
5. Mr Forkorus Yaboisembut: Chairman of DAP of the period of 2007-2012
6. Mr Leonard Imbiri: General Secretary of DAP of the period of 2002-2007 and 2007-2012
7. Mr Yakob Kasimat: Secretary of the organising committee
8. Mr Welem Rumasep: Deputy Secretary of the organising committee
9. Ms Astrid Rumbonde: Deputy Secretary of the organising committee
10. Ms Alfrida Faidiban: Treasurer of the organising committee
11. Ms Asmira Alhamid: Deputy Treasurer of the organising committee

On 7 July 2007, 8 of 11 people who were summoned presented themselves to the Police, including Thaha Moh. Alhamid, Forkorus Yaboisembut, Leonard Imbiri, Yakob Kasimat, Welem Rumasep, Astrid Rumbonde, Alfrida Faidiban dan Asmira Alhamid. They were interrogated from 10.30 am to 9 pm. Though they were not threatened, Ms Anum Siregar, the lawyer was threatened by the interrogator who asked her: “You haven’t been beaten so why you don’t speak up”.

All the 11 persons were once again interrogated for the second time from 10.30 am to 3 pm on 9 July 2007.

Case 2: Imprisonment of Mr Filep Karma and Mr Yusak Pakage

On 26 May 2006, Mr Filep Karma an indigenous Papuan was sentenced to 15 years imprisonment on charges of treason and expressing hostility towards the state by raising Papua’s Morning Start flag on 1 December 2004. Mr Yusak Pakage, a 26 year-old

student, was sentenced to ten-years imprisonment for protesting his arrest.⁶²

Other prisoners of conscience arrested for raising the Papuan Morning Star flag include Welmus Musa Asso, Mayus Togodly, Andi Asso, Ghen Jhon Hilapok, Heri Asso, Jean Hasegem and Gustaf Ayomi.

iii. Other human rights violations by the TNI

Indonesian armed forces, the TNI were accused of killing, raping and torturing civilians with impunity in West Papua.

According to World Council of Churches, the number of reported cases of extra-judicial killings and arbitrary detention and torture reached an all time high of 136 and 838 cases respectively as on 14 October 2003 since the much-proclaimed reform period (1998-2001).⁶³ A recent report published by Human Rights Watch documented 14 cases of human rights violations including extrajudicial killings which took place in 2005 and 2006. Out of these 14 cases, members of the police forces were found responsible in 10 cases.⁶⁴

Innocent civilians are extra-judicially killed during military crackdowns and sweeping operations. Those who were killed included a 22-year old Dany Hisage who allegedly died after being shot during sweeping operation conducted by the security forces following a clash between security forces and demonstrators in the Central Highlands on 17 March 2006;⁶⁵ four people and a priest who were killed by shots allegedly fired from a TNI (armed forces) helicopter in the Puncak Jaya regency in October 2004;⁶⁶ Rev. Eliza Tabuni who was shot dead and his son, Melkias Tabuni, who managed to flee with serious injuries, by an armed forces unit while on their way to a place of worship in Guragi after being questioned⁶⁷ and four students who were killed by policemen in retaliation after a group of armed Papuan separatists raided a police post in Abepura outside the capital city of Jayapura, in which two police officers and a security guard were killed on 7 December 2000.⁶⁸

On 17 January 2005, TNI personnel allegedly beat local Papuan residents in Nabire. While seven were

seriously injured, one Miron Wonda died of beatings.⁶⁹

On 10 April 2005, police allegedly extra-judicially killed one Tolino Iban Giri and arrested eight other innocent persons during a raid in Mulia City, capital of Puncak Jaya Regency to nab a group of 11 Free Papua Movement or Organisasi Papua Merdeka (OPM) rebels. Local church leaders corroborated that Tolino Iban Giri and the eight others were not members of OPM.⁷⁰

On 14 July 2005, soldiers allegedly tortured a villager Mr Petto Wenda of Ndome (Pyramid) on suspicion of being an OPM member by slashing his face and body with a knife and razor and then pouring petrol over his head and setting his hair on fire.⁷¹

iv. PT Freeport Indonesia and poverty of the Papuans

PT Freeport Indonesia owned by the United States based global mining giant Freeport-McMoRan Copper & Gold Inc has been exploiting West Papua's copper and gold reserves for the last 40 years. Initially, the company entered into contract with the Government of Indonesia in 1967 and the same was re-negotiated subsequently. The company's presence in West Papua has been one of the main causes of human rights violations of the indigenous Papuans. As *The New York Times* reported on 27 December 2005, requests to "visit the mine and its surrounding area, which requires special permission for journalists were turned down".⁷²

Human rights violations for profit:

Since 1977 violations of human rights have been systematically and consciously carried out by the Indonesian military and police with the support of PT Freeport Indonesia.⁷³ However, protests by the Amungme, Dani, Komoro and Ekari indigenous peoples living in the vicinity of the mine have been dealt with brutally.

An Australian anthropologist, Chris Ballard, who worked for Freeport, and Abigail Abrash, an American human rights campaigner, estimated that 160 people had been killed by the military between

1975 and 1997 in the mine area and its surroundings.⁷⁴

According to the National Human Rights Commission, 16 people were murdered in Agani village and four 'disappeared' in Timika while another report stated that 11 people, including four children and a Protestant Minister died on 31 May 1995 after troops opened fire on villagers gathering for prayer. The local population blamed the Indonesian military and Freeport security guards for these attacks.⁷⁵

The Cendrawasih university campus case:

Freeport PT continues to evoke strong reactions from indigenous peoples because of the suffering endured by them and the complicity of the company in financing the presence of the military. Military and the authorities have been over-jealous to prosecute those who protest against the Freeport.

On 16 March 2006, a crowd of about 500 protesters had blocked the way outside the Cenderwasih University to the PT Freeport Mines at Grasberg in the West Papuan provincial capital of Jayapura demanding closure of the operations. Protesters, mostly university students allegedly beat three policemen and an air force officer to death while at least 19 demonstrators were injured⁷⁶ and two died⁷⁷ in gunshot fired by police.

The police and Brimob (Brigade Mobil) launched manhunt against the suspects, primarily the students. The police forces reacted indiscriminately in pursuing and attacking innocent civilian population living between Kotaraja and Waena or passing through these areas.⁷⁸ The main targets were student dormitories and other student locations. This resulted in hundreds of students going into hiding in the jungles. As on 22 March 2006, at least 1,200 students of the Cendrawasih University fled from 18 dormitories and went into hiding in the jungles fearing brutal torture by the Mobile Brigade in retaliatory attacks.⁷⁹ During the sweepings, Brimob Papua and Polda Papua destroyed seven student dormitories in the area of Abepura and these excesses were acknowledged by Kapolda Papua, Tommy Jakobus. The dormitories were repaired but none of the security forces responsible for such excesses were

prosecuted.⁸⁰

On 17 March 2006, police arrested 57 people out of which 5 were named as suspects.⁸¹ With the arrest of 11 more, the number of arrestees rose to 68⁸² and the list of suspects to 12 as on 19 March 2006.⁸³ Altogether 23 arrestees, most of them students from various colleges in Jayapura were identified as suspects, interrogated and detained by Papua POLDA.⁸⁴

The charges⁸⁵ were briefly as follows:-

1. Selvius Bobii was charged with inciting others to use violence (Article 160 of the Criminal Code).
2. Nelson Rumbiak was charged with aggravated theft (Article 365) for stealing two canisters that had been used by Brimob for tear gas to break up the action before the conflict occurred, which had been found by the accused at the site of the incident.
3. Othen Dapyal, Elkana Lokobal, Musa Asso, Moses Lobokal, Mon Jefri Obaja Pawika and Mathias Mihel Dimara were charged with using violence against other persons (Article 170).
4. Ferdinando Pakage and Luis Gedi were charged jointly with resisting members of the security forces in the performance of their duties, resulting in loss of life of a security force member (Article 212 relating to 214, para 2).
5. Marcus Kayame, Patrisius Aronggear, Thomas Ukago, Perius Waker, Elyas Tameka and Bensur Mirin jointly were charged with using violence to resist members of the security forces in the performance of their duties (Articles 218 and 214, para 1).

In a trial, impartiality of which has been questioned, sixteen of the suspects have been convicted of alleged involvement in the 16 March 2006 violent protest. They were awarded 5 to 15 years' imprisonment, while seven were still awaiting judgment and detained at Abepura prison in Papua as of September 2006.

All of them were reportedly intimidated and ill-

treated in custody, most particularly during police interrogation in order to force them to 'confess' their involvement in the violence. One of the 16 reported that a senior police officer threatened to shoot him if he did not disclose certain information. The accused alleged that two hours before their trial in May 2006, they were brutally beaten by police officers with boots, batons and rifle butts in order to compel them to admit before the court that they were guilty. Those who refused to acknowledge the charges of which they were accused were allegedly beaten and kicked by police when they returned from the court. One of them, Nelson Rumbiak, was reportedly beaten by police officers after revealing in court that he had been intimidated and ill-treated in police custody.⁸⁶

As cited in page under the section on National Human Rights Institutions, impunity reigned supreme in West Papua.

Protection money for the army officers:

Since 1970s, Freeport's mining operations have been guarded by the Indonesian military, the TNI. As the TNI has also been engaged in fighting against the Papuan rebellion for independence, there has been collusion in suppressing the movement for independence and demand for more benefits from the Free Port. After a series of riots in March 1996 in which the mine was forced to shut down for three days, the CEO James Moffett reached an agreement with army officers presided over by Major-General Prabowo Subianto, the son-in-law of the dictator Soeharto under which the army officers privately received funds from the company.

The New York Times in an article *The Cost of Gold – The Hidden Payroll: Below a Mountain of Wealth, a River of Waste* on 27 December 2005 exposed the link:

“Company records obtained by The Times show that from 1998 through 2004, Freeport gave military and police generals, colonels, majors and captains, and military units, nearly \$20 million. Individual commanders received tens of thousands of dollars, in one case up to \$150,000, according to the documents.

In short order, Freeport spent \$35 million on military infrastructure - barracks, headquarters, mess

halls, roads - and it also gave the commanders 70 Land Rovers and Land Cruisers, which were replaced every few years. Everybody got something, even the Navy and Air Force.

In April 2002, the company gave the senior commander of forces in Papua, Maj. Gen. Mahidin Simbolon, more than \$64,000, for what was described in Freeport's books as “fund for military project plan 2002.” Eight months later, in December, he was given more than \$67,000 for a “humanitarian civic action project.

In later filings with the Securities and Exchange Commission, Freeport reported that it had paid the military a total of \$4.7 million in 2001, and \$5.6 million in 2002. The company did not indicate whether the money was paid into commanders' personal accounts, or what the money was used for.”⁸⁷

Company spokesperson Siddharta Moersjid confirmed to the press that Freeport had in fact been paying allowances to the military and police since 1970s and that arrangement had been made more comprehensive following an incident in Tembagapura in 1996.⁸⁸

Profits of the company; poverty of the people:

Freeport says that it provided Indonesia with \$33 billion in direct and indirect benefits from 1992 to 2004.⁸⁹ In 2005, the company's annual report says it extracted metals worth US\$3.5bn and paid \$1.2bn in taxes and royalties to the government in Jakarta.

However, Papuans suffered further pauperization. Papua is at the lowest rank in Human Development Index (HDI) amongst Indonesia's 32 provinces. The number of people living below the poverty line has increased to more than 35% out of the total population and population below the poverty line is concentrated around Freeport's mining concession.⁹⁰

Destroying the livelihood and environment:

The Freeport mining has destroyed the environment and livelihood of the indigenous Papuan peoples. It has reportedly appropriated at least 2.5 million hectares of land of the indigenous

Papuans⁹¹ who were forced to surrender their ancestral lands in the form of concessions given to the company by the Indonesian Government.⁹²

According to the Freeport's own estimates it "will generate an estimated six billion tons of waste before it is through - more than twice as much earth as was excavated for the Panama Canal"⁹³ will destroy the indigenous communities.

Approximately 300,000 tons of mine waste is being dumped into the Aghawaghon-Aijkwa river system daily. This has resulted in the destroying of at least 130 km of tropical forest which is the ancestral land of Kamoro indigenous people in Mimika District.⁹⁴ The Freeport's concession area is about 230 square kilometres (90 square miles). After conducting a three-day inspection of the PT Freeport's operation sites at Timika in West Papua in May 2006, a six-member team of House of Representatives, headed by lawmaker Catur Sapto Edy, confirmed that the tailing system used by PT Freeport in its operation in Timika, Papua, has caused severe damage to the environment. According to Sony Keraf, a former environment minister under the Megawati Soekarnoputri administration, "as a result of this method, tailings are scattered randomly in various locations, forming small islands and million tons of hazardous waste had caused severe destruction to the Arafuru coastline".⁹⁵

The New York Times in its issue of 27 December 2005⁹⁶ reported the following about the impact on the environment:

"With Suharto's ouster in 1998, after 30 years of unchallenged power, Freeport's special place was left vulnerable. But its importance to Indonesia's treasury and its carefully cultivated cocoon of support have helped secure it against challenges from local people, environmental groups, and even the country's own Environment Ministry.

Letters and other documents provided to *The Times* by government officials showed that the Environment Ministry repeatedly warned the company since 1997 that Freeport was breaching environmental laws. They also reveal the

ministry's deep frustration.

At one point last year, a ministry scientist wrote that the mine's production was so huge, and regulatory tools so weak, that it was like "painting on clouds" to persuade Freeport to comply with the ministry's requests to reduce environmental damage.

Much of that waste has already been dumped in the mountains surrounding the mine or down a system of rivers that descends steeply onto the island's low-lying wetlands, close to Lorentz National Park, a pristine rain forest that has been granted special status by the United Nations.

A multimillion-dollar 2002 study by an American consulting company, Parametrix, paid for by Freeport and its joint venture partner, Rio Tinto, and not previously made public, noted that the rivers upstream and the wetlands inundated with waste were now "unsuitable for aquatic life." The report was made available to *The Times* by the Environment Ministry.

All the while Freeport sealed its relations with the military, the country's fledgling environment ministry could do little but watch as waste from the mine piled up.

This year Freeport told the Indonesian government that the waste rock in the highlands, 900 feet deep in places, now covers about three square miles.

Down below, nearly 90 square miles of wetlands, once one of the richest freshwater habitats in the world, are virtually buried in mine waste, called tailings, with levels of copper and sediment so high that almost all fish have disappeared, according to environment ministry documents.

The waste, the consistency and color of wet cement, belts down the rivers, and inundates and smothers all in its path, said Russell Dodt, an Australian civil engineer who managed the waste on the wetlands for 10 years until 2004 for Freeport.

About a third of the waste has moved into the coastal estuary, an essential breeding ground for fish, and much of that "was ripped out to sea by

the falling tide that acted like a big vacuum cleaner,” he said.

But no government, even in Indonesia’s new democratic era, has dared encroach on Freeport’s prerogatives. The strongest challenge came in 2000, when a feisty politician, Sonny Keraf, who was sympathetic to the Papuans, was appointed environment minister.

Behind the scenes, Mr. Keraf kept up the pressure, angered that the company was using the rivers, forest and wetlands for its mine waste, a process allowed during the Suharto years.

An internal ministry memorandum from 2000 said the mine waste had killed all life in the rivers, and said that this violated the criminal section of the 1997 environmental law.

In January 2001, Mr. Keraf wrote to the coordinating minister for economic affairs, arguing that Freeport should be forced to pay compensation for the rivers, forests and fish that its operations had destroyed.

Freeport says that local and regional governments have approved its waste management plans, and that the central government has approved its environmental impact statement and other monitoring plans.

But in a blistering July 2001 letter, Mr. Keraf took the governor of Papua to task for granting Freeport a permit in 1996 to use the rivers for its waste. The governor, Mr. Keraf said, had no authority to grant permits more lenient than the provisions of national laws.

Despite all these efforts, nothing happened. Mr. Keraf was unable to secure the support of other government agencies or his superiors in the cabinet.

In August 2001, a new government came to power, and a less aggressive minister, Nabil Makarim, replaced Mr. Keraf. At first, he, too, talked publicly of setting stricter limits on Freeport. Soon his efforts petered out.

The Environment Ministry has begun trying to put teeth into its rules where it can. It brought a criminal suit against the world’s largest gold

company, Newmont Mining Corporation, for alleged pollution, including a charge of not having a permit for disposing of mine waste into the sea. Newmont has fought the charges vigorously.

But in the case of Freeport, the ministry has had no traction. Freeport still does not hold a permit from the national government to dispose of mine waste, as required by the 1999 hazardous waste regulations, according to Rasio Ridho Sani, assistant deputy for toxic waste management at the ministry. Mr. Arkin, Freeport’s counsel, said that the company cooperated well with the environment ministry and that Freeport would not otherwise comment.

“Freeport says their waste is not hazardous waste,” Mr. Rasio said. “We cannot say it is not hazardous waste.” He said his division and Freeport were now in negotiations on how to resolve the permit question.

In doing so, two environmental experts, Harvey Himberg, an official at the agency, and David Nelson, a consultant, after visiting the mine for several days, issued a report critical of Freeport’s operations, especially the huge amounts of waste it had sent into rivers, something that would not be allowed in the United States.

Freeport “characterizes engineered alternatives as having the highest potential for catastrophic failure when the project otherwise takes credit for legendary feats,” the audit noted, like the pipelines more than 60 miles long down the mountains to carry fuel and copper and gold slurry.

At the time, the waste was jumping the riverbanks, “resulting in a massive die-off of vegetation,” the report said.

Today, many of the same problems persist, but on a much larger scale. A perpetual worry is where to put all the mine’s waste - accumulating at a rate of some 700,000 tons a day.

The danger is that the waste rock atop the mountain will trickle out acids into the honeycomb of caverns and caves beneath the

mine in a wet climate that gets up to 12 feet of rain a year, say environmental experts who have worked at the mine.

... But before 2004, the report obtained by The Times by Parametrix, the consulting company who did the study for Freeport, said that the mine had “an excess of acid-generating material.”

A geologist who worked at the mine, who declined to be identified because of fear of jeopardizing future employment, said acids were already flowing into the groundwater. Bright green-colored springs could be seen spouting several miles away, he said, a tell-tale sign that the acids had leached out copper. “That meant the acid water traveled a long way,” he said.

Freeport says that the springs are “located several miles from our operations in the Lorentz World Heritage site and are not associated with our operations.”

The geologist agreed that the springs probably were in the Lorentz park, and said this showed that acids and copper from the mine were affecting the park, considered a world treasure for its ecological diversity.

In the lowlands, the levees needed to contain the waste will eventually reach more than 70 feet high in some places, the company says.

Freeport says that the tailings are not toxic and that the river it uses for its waste meets Indonesian and American drinking water standards for dissolved metals. The coastal estuary, it says, is a “functioning ecosystem.”

The Parametrix report shows copper levels in surface waters high enough to kill sensitive aquatic life in a short time, said Ann Maest, a geochemist who consults on mining issues. The report showed that nearly half of the sediment samples in parts of the coastal estuary were toxic to the sensitive aquatic organisms at the bottom of the food chain, she said.

The amount of sediment presents another problem. Too many suspended solids in water can smother aquatic life. Indonesian law says

they should not exceed 400 milligrams per liter. Freeport’s waste contained 37,500 milligrams as the river entered the lowlands, according to an environment ministry’s field report in 2004, and 7,500 milligrams as the river entered the Arafura Sea.”

d. Defenders are at risks for meeting UN Special Representative

Human rights defenders from Papua consistently reported widespread monitoring of their activities by intelligence officials as well as threats and intimidation. Activists reported that intelligence officers took their pictures surreptitiously and sometimes questioned their friends and family members regarding their whereabouts and activities.

On 12 June 2007, Ms Hina Jilani, UN Secretary-General’s Special Representative on the situation of human rights defenders while wrapping up her visit to Indonesia stated that human rights defenders in Indonesia’s province of West Papua continue to face torture, arbitrary detention and harassment from the country’s police, military and security forces. Ms. Jilani also received complaints of non-registration of complaints of defenders and instead they being threatened. She added that while defenders working in the environmental field frequently receive threats from private actors with powerful economic interest, but are granted no protection by the police, other defenders who reports abuses of authority are labelled as separatists in order to undermine their credibility.⁹⁷

According to Ms. Jilani, harassment and intimidation of defenders was not confined to West Papua province but prevalent in other parts of Indonesia, including Aceh, although the situation has improved there after the signing of peace deal in 2005.⁹⁸

Those who met the Special Representative have since been facing the music from the Indonesian Armed Forces, the TNI. Even the staff of the Komnas Ham, the National Human Rights Commission, belonging to indigenous Papuan was not spared.

Case 1: Attempt at the lives of Frederika Korain and Priest Perinus Kogoya of Peace and Justice

Commission for the Diocese of Jayapura (SKP Jayapura)

On 8 June 2007, Mr Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura were returning to their home in Jayapura, West Papua after attending a public hearing with Ms. Hina Jilani in Jakarta on the previous day. While passing through Post 7, Sentani in Ifar (after a drive of 5-10 minutes from the airport), their SKP car was intentionally rammed by a blue Kijang car with police license plate number DS 1693 AF. The ramming damaged their car although they remain unhurt. When the SKP driver tried to stop the blue Kijang car, two men got out of it and identified themselves as intelligence commanders for the military regional command of Trikora (Komandan Intel Kodam XVII Trikora). One of them identified his name as FX. Subangun and that he works as an intelligence commander in KODAM Trikora. He had also the audacity to give his cell phone number: 0811484860 and all this was witnessed by police but none intervened.⁹⁹

Case 2: Surveillance over Mr Yan Christian Warinussy

Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid (LP3BH), Manokwari reported that he has been under surveillance both at his home and office following his meeting with Ms. Hina Jilani in Jayapura. At about 8 p.m. on 9 June 2007, Mr. Warinussy noticed a black Kijang Innova car with tinted windows parked in front of his house for about 20 minutes. At 11 pm, the car returned back to in front of his house on that night. At around 7 p.m. on 11 June 2007, two Kijang cars were again found parked in front of his office on Gunung Salju street for about 30 minutes. Again on 16 June 2007, at around 8 pm, Mr. Warinussy and the two PBI activists whose protection Mr. Warinussy had requested spotted a metallic-coloured Kijang diesel car with police license plate number DD 546 PD parked in front of his house for 20 minutes. The car left but again passed by twice that night without stopping. Again on 18 June 2007, at 11pm, that same

car was parked in front of his office. That car reportedly belongs to the Manokwari Telkomsel telephone company and is reportedly often borrowed by a member of the Indonesian Navy named Hery, who is believed to be working as an intelligence officer for the Armed Forces Strategic Intelligence Agency (BAIS) in Manokwari.¹⁰⁰

Case 3: Intimidation of Mr. Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province

On 11 June 2007, Mr Albert Rumbekwan received a text message from cell phone number 81344034383 that said "You who are reporting about the human rights situation in Papua are trying to destroy the people. You want evidence of people being killed, I will kill your tribe, your family and your children will become only bones to show that there is only a zone of peace in Papua."¹⁰¹

On 14 June 2007, Mr. Albert Rumbekwan received five more text messages from the same number, again containing death threats. At around 8 a.m. on the same day, unidentified persons parked three cars some 20 meters from his office. The cars were a black Avanza, a Kijang LZ and a white Kijang Kapsul. The occupants of the cars shouted at Mr. Albert Rumbekwan to come outside and see them. As he ignored them, they waited there and observed his movements until around 4 p.m. but he received a call from the same cell phone asking him to meet the caller at Swissbell Hotel at 7pm that night. These persons followed him when Mr. Albert Rumbekwan left for home in his official car. On the night of 17 June 2007, he found a car parked in front of his house for about two and a half hours.

The Commission for Disappeared Persons and Victims of Violence (KontraS) complained in writing to the Chief of Police for the Province of Papua (Kapolda Papua), Regional Military Commander of Trikora, chief of National Police (Kapolri), Foreign Affairs Minister of Indonesia, and the Head of Komnas HAM in Jakarta against the three abovesaid persons. But no action has yet been taken to investigate these matters.¹⁰²

2. Religious profiling: Discrimination against “other faiths”

The 1945 constitution of the Republic of Indonesia allows limited religious freedom. While Article 28E (1) provides, “Every person shall be free to choose and to practice the religion of his/her choice,” and Article 28E (2) provides, “Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.”¹⁰³

These religious freedoms are negated by Article 29(1) of the 1945 constitution which provides, “The state shall be based upon belief in one god.”¹⁰⁴ It implies that the extent of religious freedom that Article 28E seeks to provide is negated by Article 29(1) that gives preference to Islam. This raises superiority complex and breeds discrimination.

a. Non-recognition of indigenous peoples’ religions

While in its Initial to Third Periodic Report, Indonesia recognizes that “Indonesians usually practice Islam, Protestantism, Catholicism, Hinduism and Buddhism as well as other beliefs, including traditional indigenous religions”, it fails to mention that only six formal religions i.e. Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism are officially recognised.

The other non-formal or “traditional indigenous religions” such as the Naurus in Maluku; Kepercayaan in Kalimantan, Papua and Java; Kaharingan in Kalimantan; Sunda Wiwitan in West Java; and Tolotang in South Sulawesi are not recognised.¹⁰⁵ About 0.2 per cent of the 241 million total populations were classified as ‘other’ by the Central Bureau of Statistics as per its national decadal census in 2000.

In its periodic reports (para 11), Indonesia rightly accepts that religious profiling promotes “racial discrimination”. It states, “The City of Bogor no longer indicates religion on the Citizen Identification Card. The Decree of the Minister of Home Affairs No. 477/74054 of 18 November 1978 on incorporation of the religion denomination column on the ID card

(KTP) was revoked by the Circular Note (surat edaran) of the Minister of Home Affairs No. 477/805/SJ of 31 March 2000. This action was taken with the objective to eliminate the sense of racial discrimination that may be imposed by such incorporation of religion column in the ID card.”

Instead of extending this good practice, on 8 December 2006, the Indonesian House of Representatives passed the Civil Registration Bill that requires citizens to mention their faiths on legal documents like identity cards and birth certificates. The Act requires citizens to state one of the six religions, Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.¹⁰⁶ But it does not allow followers of beliefs, other than the six officially sanctioned religions to mention their religion on their legal documents.

Atheists and/or followers of non-recognised faiths continue to face official discrimination, most often in the registration of marriages and births and issuance of identity cards.¹⁰⁷ They are often denied services and basic constitutional rights. They face harassment and difficulties in the form of long delays and ‘extra’ payment when they apply for an identity card, Kartu Tanda Penduduk (KTP). Except Muslims, followers of other religions are required to present proof of their religion while applying for a KTP. The religious minorities have to endure the discrimination and harassment so long as they need a KTP which is indispensable to obtain a job, register marriage or birth or admission in a hospital. Followers of other minority beliefs, like the Sikhs, often choose to register as Hindu on their identity cards (KTP) in order to receive government services

Earlier, in October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned thirteen religious sects, including Ahmadiyah, Jehovah’s Witness, Hari Krishna, and nine forms of traditional beliefs (aliran kepercayaan), as being deviations of Islam, Christianity, and Hinduism.¹⁰⁸

The CERD Committee should note that apart from some Ahmadiyahs, the followers of other traditional religions are of non-Javanese origin.

b. Ban on religions

In paragraph 88, Indonesia again takes refuge in the Human Rights Law No.39 of 1999 stating that Article 17 of the Act guarantees every person effective protection, through competent national tribunal and other public institution against any act of discrimination. Once again, the assertion is far from the truth as many religions are banned in Indonesia.

Since 1980, the Ahmadiyah remained banned. First, the Majelis Ulama Indonesia (the government-endorsed Council of Islamic Scholars) issued a fatwa declaring Ahmadiyah 'outside Islam', that it was 'deviant' and could lead others into error. Then Minister for Religion, H Alamsyah Ratu Prawiranegara signed on that fatwa to provide legal sanctity and in 1984, the Ministry of Religion in Jakarta issued an instruction to its offices in the regions to carefully monitor the movement and do what they could to prohibit its activities.¹⁰⁹ Even the fall of Soeharto helped little. On 14 August 2005, Religious Minister Maftuh Basyuni reaffirmed that the government actually banned the spread of Ahmadiyah in Indonesia on the ground that it is against the Islamic teachings.¹¹⁰ Subsequently, on 23 August 2005, Abdul Rahman Saleh, the Attorney General also affirmed the prohibition on the practice of Ahmadiyah in the aforesaid regencies.¹¹¹

Local authorities often ban different religions. For example, in October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned thirteen religious sects, including Ahmadiyah, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs (aliran kepercayaan), as being deviations of Islam, Christianity, and Hinduism.¹¹²

The bans were imposed by the Regency administration of Bogor,¹¹³ Kuningan¹¹⁴ and Cernjur in West Java respectively in July and September 2005. The provincial government of West Nusa Tenggara banned the Ahmadiyah activities in October 2005. Ahmadiyah activities have remained banned in East Lombok since 1983 and in West Lombok since 2001.¹¹⁵

c. Restrictions on the constructions of places of worship

In its periodic reports (para 112), the government of Indonesia states,

"There are several cases related to racial discrimination. Among others are "Probolinggo case" and "Malang case", which involved religion-associated organizations. The "Probolinggo case" was a conflict between two different groups of Moslems, where the people who claim themselves to be the "righteous", raided and destroyed the premise of the so-called "infidel group". The authorities did not take any measures against the raiders, and detained the head of the so called "infidel group" instead. This was contrary to Law No. 8 of 1985 on Organizations, which stipulates that every organization has the right to conduct its activities."

Such a statement from the government should receive kudos from the UN Committees.

Yet, Indonesia failed to state what action has been taken against the authorities who wrongfully detained the victimized groups. In the aftermath of the spate of forcible closure of churches, the Government revised the 1969 Joint Ministerial Decree on Houses of Worship in March 2006. The Joint Ministerial Decree No. 1/2006 issued by Religious Affairs Minister Maftuh Basyuni and Home Affairs Minister Muhammad Maruf, requires religious groups that want to build a new house of worship to obtain the signatures of at least 90 worshippers and 60 people from other faiths residing near its vicinity.¹¹⁶ The new decree's requirements made it more difficult for the religious minorities to worship.¹¹⁷ The religious freedom of the religious minorities depends on the majority Muslims. It is clear that if there are less than 90 worshippers and/or if these worshipers failed to obtain support of 60 persons from other religions, they cannot even build a place of worship.

d. Attacks on places of worship of religious minorities

Given official sanction to ban the religions by the authorities, vigilantes take law into their hands and attack the religious minorities. Christians and

Ahmadiyahs remain vulnerable to such vigilante actions.

i. Attacks on the Churches

Several of places of worship belonging to the Christians were attacked, vandalized, forcibly shut down, or prevented from being established by the militant groups and majority religious groups across Indonesia. Militant groups forcibly shut down at least 35 churches- 25 in West Java, in Banten, 2 in Central Java, and 1 in South Sulawesi in 2005. Vigilante organizations such as the Alliance Gerakan Ant Apestates and Islam Defenders Group (FPI) justified the forcible closure saying that the churches operated without the required permission of the local government and the surrounding community as required by the 1969 Joint Ministerial Decree on Houses of Worship¹¹⁸ that was issued during Soeharto's New Order era.

Places of worship belonging to the Christians were forcibly closed by the members of the AGAP even after the revised Ministerial Decree. On 26 March 2006, a group of some 200 Muslim mobs from the Griya Bukit Jaya housing complex and other nearby residence forcibly shut down the Pentecostal Church in Bogor in West Java. At the time of closure, about 190 Christians were inside the church for regular Sunday service. Although 390 policemen were present at the compound during the attack they did not stop the self-styled religious vigilantes.¹¹⁹

It is alleged that police were present at the scene in most of the attacks but never acted to prevent such attacks by members of the militant organizations or frenzied mobs and police allegedly sometimes assisted militant groups in the attacks.¹²⁰

ii. Attacks on the Ahmadiyahs

Followers of the Ahmadiyah, an Islamic sect that orthodox Muslim consider is heretical, face systematic attacks. Members of the Ahmadiyahs faced at least 35 separate violent attacks between 1993 and 2005 across Indonesia.¹²¹

On the afternoon of 15 July 2005, about 10,000 members of the Indonesian Muslim Solidarity group attacked about 500 followers at the Ahmadiyah

Indonesia Congregation (JAI) at Mubarak Campus on Jl Raya Parung in Bogor, West Java. Armed with stones and batons, the attackers broke into the compound, damaged buildings and set fire to the women's dormitory.¹²²

A special investigation commission of the National Human Rights Commission (Komnas HAM, Komisi Nasional Hak Asasi Manusia) stated that on 25 January 2007 that there was a pattern to the attacks against the Ahmadiyahs. Once the formal declaration of heresy had been made against the Ahmadiyah small groups of people, organising and meeting at mosques or through religious associations, began public campaigns against Ahmadiyah mosques, by holding meetings or putting up banners, then made threats, and finally, once the masses had been inflamed, vandalism, burnings, and evictions were undertaken. The authorities tended to allow this behaviour and/or in some cases police and public order officials participated in it.¹²³

The year 2005 saw series of attacks. The following attacks on them were recorded:

- 18th February - vandalism of a mosque at Sintang, West Kalimantan.
- 28th June - vandalism of a mosque at Wajo, South Sulawesi.
- 8th-9th, 15th July - attacks on the Mubarak campus in Parung, Bogor, West Java.
- 26th July - threats against a mosque in Bandung, West Java.
- 27th July - vandalism of a mosque at Bogor.
- 29th July - forced closure of a mosque complex at Kuningan, West Java.
- 30th July - threats against members in Pamulihan, West Java.
- 2nd-11th August - threats against a mosque in Bogor, vandalism of a mosque and homes in Cianjur.¹²⁴

In February 2006, about 155 Ahmadiyah members took shelter at the Mataram transmigration center of West Nusa Tenggara under West Lombok regency after they were forced to flee from their homes in Ketapang by residents opposed to the supposedly un-Islamic nature of the sect's teachings.

The government, instead of ensuring their return, stopped the allowances in January 2007.¹²⁵

3. Discrimination against the ethnic Chinese

Till the amendment to the Indonesian Citizenship law on 11 July 2006,¹²⁶ the government required Chinese-Indonesians to produce the Republic of Indonesia Citizenship Certificate (SBKRI) if they want to obtain documents such as ID cards, passports and birth certificates whereas Indonesians of other ethnic groups such as Indians and Arabs were not required to do so.¹²⁷ Although ethnic Chinese are no longer required to produce Indonesian citizenship certificate, there are still 50 articles of law, regulation, or decree that discriminated against ethnic Chinese citizens.¹²⁸

The Chinese Indonesians also face discrimination from the bureaucracy. For instance, the Chinese Indonesians also referred to as Tionghoa of Tegal Alur in Cengkareng, West Jakarta are denied the legal documents such as ID Cards, Birth Certificates, Marriage Certificate; Household Registration Cards and the likes, and thus their citizenship rights. In the absence of such documents, they face difficulties in conducting marriage, obtaining education or occupation. Although there are no formal or official restrictions, the processes are so complicated and expensive that they effectively become obstacles to obtain such documents.¹²⁹

Despite official reforms, the Chinese Indonesians still face societal discrimination. A routine or normal crime by an individual Chinese Indonesian attracts the wrath of majority Muslims to the whole community. The incidents mentioned below indicates the extent of intolerance among the majority Indonesian.

On 11 May 2006, about 1,000 native Indonesian students threatened to attack the ethnic Chinese incase the police failed to investigate into the alleged tortured to death of a housemaid, Hasniati, a native

Indonesian at her employer's house, an ethnic Chinese Indonesian in Makassar city of South Sulawesi.¹³⁰

Again, on 7 August 2006, similar threat were reported to have been made by the university students in Makassar city after an alleged attempt to rape his housemaid, an indigenous Indonesian by the employer, an ethnic Chinese Indonesian.¹³¹

Impunity led to the increased attacks on the Chinese. At least 1,217 people died in three days of rioting in Jakarta on 12-14 May 1998. The members of the ethnic Chinese community were primarily targeted. Hundreds of shops and buildings belonging to them were looted and burnt down by the rioters.¹³² 85 ethnic Chinese women and girls were sexually assaulted including 52 of them being raped.¹³³

An ad hoc team of the National Human Rights Commission (Komnas Ham) headed by Solahuddin Wahid of Indonesia identifying some 20 military officers including former Armed Forces commander General Wiranto and former Strategic

Reserve Command (Kostrad) chief Prabowo Subianto and some civilians as being involved in the 13-15 May 1998 riots in Jakarta.¹³⁴

However, the Attorney General however refused to order further investigation that would lead to prosecution of the perpetrators. High-ranking military and police officers who held important posts in Jakarta during the riots have been left untouched. These include Jakarta Military commander Maj. Gen. Sjafrie Sjamsoeddin, Jakarta Police chief Maj. Gen. Hamami Nata (who died in 2003), Jakarta Governor Maj. Gen. Sutiyoso, Armed Forced Intelligence Body chief Maj. Gen. Zacky Anwar Makarim, Army Strategic Reserves Command (Kostrad) chief Lt. Gen. Prabowo Subianto and Jakarta Military Command chief-of staff Brig. Gen. Sudi Silalahi is the present Cabinet Secretary. Some of them are still in the military; others either got promotions or became prominent politicians.¹³⁵

Part IV

INEFFECTIVENESS OF THE NATIONAL MECHANISMS

The Human Rights Act of 1999 provides the basis of national mechanisms for protection of and promotion of human rights, *Komisi Nasional Hak Asasi Manusia* Komnas HAM and Human Rights Tribunal.

“That is the fact. Are there any benefits (of Komnas HAM’s existence)? If the answer is no, why do the government and the House not liquidate it?” - stated then Chairman of the National Commission on Human Rights (Komnas HAM) Abdul Hakim Garuda Nusantara while explaining the ineffectiveness of the Komnas HAM.¹³⁶

In July 2007, the House of Representatives selected 11 new members of the National Commission on Human Rights. It is unlikely to change the situation. The fledging reputation of the Komnas HAM has been succinctly captured by one of the new members, M. Ridha Saleh in an interview to *The Jakarta Post* on 16 July 2007:

“There are three important things about Komnas HAM that need reviewing, based on the experiences of commission members during the last tenure.

First, it is essential that Komnas HAM works beyond just providing recommendations. There is a need for procedural rights, which will enable us to file lawsuits against those who fail to carry out recommendations. We need the power to be able to put pressure on failing parties. Second, all members or staff of Komnas HAM must be legally protected and granted immunity in carrying out their tasks and investigations. There should be no threats posed to commissioners.

Third, Komnas HAM should also be provided with subpoena rights. We should be able to summon anyone relating to an investigation.

If these three things happen, the image of Komnas HAM — as an institution dedicated to guarding human rights in the country — might improve. (emphasis ours)”

It is clear that the effectiveness of the Komnas HAM cannot even be judged by its robust findings of

the crimes against humanity that were perpetrated in Jakarta in 1984 (Tanjung Priok), 1997 and 1998 (Trisakti, Semanggi and the riots accompanying the fall of Soeharto); East Timor in 1999; and at least three cases in Papua —2000 (Abepura), 2001 (Wasior), 2003 (Wamena).

Rather, as to how the Indonesia’s National Human Rights Commission has been caged by House of Representatives, DPR, Attorney General’s Office (AGO) and the Adhoc Human Rights Courts needs to be examined.

The KOMNAS HAM was established under the Law No 39 of 1999 Concerning Human Rights. However, in reality, Law No. 26 of 2000 concerning Human Rights Courts which governs the functions of the Komnas HAM.

Under Article 18 of the Law No 26/2000, the National Commission on Human Rights is mandated to conduct inquiry. Under Article 19, the NHRC is authorized to:

- “A. to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights;
- B. to receive reports or complaints from individuals or groups concerning the incidence of gross violations of human rights, and to pursue statements and evidence;
- C. to call on complainants, victims, or subjects of a complaint to request and hear their statements;
- D. to call on witnesses to request and hear their witness;
- E. to review and gather statements from the location of the incident and other locations as deemed necessary;
- F. to call on relevant parties to give written statements or to submit necessary authenticated documents;

G. on the order of the investigator to examine of letters; undertake search and seizure; examine houses, yards, buildings, and other places that certain parties occupy or own; dispatch specialists pertinent to the investigation”.

However, the NHRC has no power to enforce attendance but it depends on the goodwill of the authorities. Moreover, the final authority whether to prosecute or not based on the inquiry of the NHRC rest with the Attorney General under Article 23 of the Law No 26/2000.

a. The case of gross human rights abuses at Wasior and Wamena

On the Morning of 13 June 2001, five mobile brigade (Brimob) personnel and one civilian were killed at CV Vatika Papuana Perkasa (VPP) company base camp in Wondiboi village, Wasior district, West Papua. The police held the Free Papua Movement (OPM) responsible for these deaths. After the incident, Brimob personnel carried out sweep operations in the villages of Wondiboi, Yomakan, Wondamawi I and Isei. In these series of sweepings,¹³⁷ police allegedly killed four civilians, raped one; five disappeared, tortured many,¹³⁸ and burnt down dozens of homes to avenge the deaths of one civilian and five Police Mobile Brigade (Brimob) troops.¹³⁹

On 4 April 2003, alleged members of the OPM reportedly broke into a military arsenal in Wamena and escaped with 29 rifles. Two soldiers, First Lt. Napitupulu and Chief Sgt. Ruben Lena, and one civilian were killed in the robbery.¹⁴⁰ The Indonesian military carried out a series of military raids in Wamena town, and villages of Sinakma, Bilume, Asologaima, Woma, Honai lama, Napua, Wlaik, Moragame-Piramyd, Ibele, Ilekma, Kwiyage-Tiom, Hilume, Okilik, Kikume, near Kwiyage such as Luarum, Wupaga, Negeyagin, Negeya, Mume and Timine¹⁴¹ in Wamena Sub-district to nab the members of the OPM. In these sweeping operations, 9 civilians were killed, 38 tortured, 15 arbitrarily arrested and thousands displaced from their villages to refugee camps where 42 people died from exhaustion and hunger.¹⁴²

From 12 January 2004, the National Human Rights Commission (Komnas HAM) led by Commission chairman Abdul Hakim Garuda Nusantara started investigating these excesses.¹⁴³ The Komnas HAM established representative offices in the Papua towns of Wamena and Wasior. In September 2004, Komnas HAM submitted its investigation reports on both the above mentioned cases to the Attorney General's Office. Komnas HAM concluded that evidences it gathered during its investigations suggested that security personnel had committed crimes against humanity and gross human rights violations. In these two reports, Komnas Ham reportedly named as many as 168 members of the military and police as suspects.¹⁴⁴ But, no prosecution proceedings have been initiated.¹⁴⁵

b. Failure in the Abepura case, West Papua

Shortly after 1.00 a.m. on 7 December 2000, an unidentified group of people reportedly attacked a police post near the market in Abepura, a college town about ten kilometers from the provincial capital, Jayapura. Two policemen, Obeth Petrus Epa (Polsek) and Bharada Indra (Brimob), and a security guard, Paulus Padama, were killed. Police alleged that pro-independence highlanders (orang pegunungan tengah) carried out the attack and pro-independence guerrilla leader Matias Wenda, allegedly ordered the attack. There were no definitive accounts of the number of attackers and the kind of weapons they used.¹⁴⁶

Initially, none were caught as the attackers quickly dispersed in different directions seeing that Brimob and police reinforcements have arrived at the scene immediately after the attack began. But very soon, troop consisting of Brimob and police stormed in to the Ninmin student dormitory located up a hill about 300 meters from the Abepura. They were probably chasing a small group of the attackers who went to the Ninmin dormitory to appeal to the students to join them. The attackers immediately left after the students refused to do so and the troop reached the dormitory immediately thereafter and awakened the students. In all, there were 23 students – 14 male and 9 female who were sleeping. The

security forces awakened and rounded them up, and beat them brutally. Two of them died due to beatings, dozens suffered serious injuries.¹⁴⁷ The deceased were identified as Johny Karunggu (18) and Orry Doronggi (17).¹⁴⁸

During the day, the troops carried out sweeping operations in all residential areas of the highland people like Abepura, Skyline, Sentani and the student dormitory viz. Yapen Waropen dormitory. The troop carried out house to house sweeping raids, rounded up and brutally beaten people.¹⁴⁹ During the sweepings, police detained over a hundred people – including pregnant women and young children - and assaulted and tortured them. One high school student identified as Elkuis Suhunaib (18) was shot dead.¹⁵⁰

The response of the police in the aftermath of the killing of the three students was classic. They initially denied that any student had been killed in custody and allegedly threatened anyone who dared to report it. The police summoned, detained and interrogated Johanis Bonay, one of the directors of Elsham on 14 and 15 December 2000 for issuing a press release reporting that three Papuan students had been killed in the police action. The police threatened to prosecute him under Article 311 of the Indonesian Criminal Code for alleged libel.¹⁵¹

On 9 January 2001, National Human Rights Commission of Indonesia (Kom Nas Ham) announced that it would appoint a commission of inquiry to investigate the Abepura case. On 6 February 2000, the commission of inquiry was announced and the team was given 2 months time until 5 April 2000 to complete a preliminary investigation. From the beginning, the commission of inquiry faced vehement opposition. As soon as the investigation team reached Papua to begin investigating the police, the local office of the Justice and Human Rights Ministry sent an official letter stating its legal opinion that the investigation was illegal and advising the provincial chief of police not to cooperate with investigators.¹⁵²

The inquiry could not be completed in 2 months and had to be given another one month extension and

the inquiry commission finally interviewed over one hundred individuals, including fifty-one victims and thirty-nine police and Brimob officers. The police and Brimob refused to cooperate. While the commission of inquiry was interviewing the students victims, the police summoned at least 20 of them and told that they were suspected of involvement in the 7 December 2000 attack on the police post. It was done to intimidate witnesses and students victims from disclosing the truth before the investigation team. The intimidations stopped only after the investigation team protested and national police headquarters in Jakarta intervened.¹⁵³

Finally, the Komnas HAM named 25 security personnel to be guilty of killing and torture. However, only two of these suspects were charged by the Attorney General's Office, with no adequate explanation.¹⁵⁴

In September 2005, a special Human Rights Court set up in Makassar acquitted two senior police officers, accused of allowing the killing of three students and the torture of over 100 others in the college town of Abepura on 7 December 2000. The two accused police officers Brigadier General Johny Wainal Usman and Senior Commissioner Daud Sihombing were charged with command responsibility for the killings and torture. They faced a maximum penalty of life imprisonment if convicted. But chief prosecutor I Ketut Murtika recommended the minimum penalty of only 10 years, claiming the two defendants had “served the nation” and “did not have malicious intentions”. However, the court went a few steps further and exonerated both the accused officers. The Court ruled that they were not guilty of allowing their subordinates to torture and kill civilians during the raid.¹⁵⁵

What a travesty of justice when three of the victims were killed in police custody.

c. Letter of Komnas HAM on the status of inquiries

The following letter of the Commissioner of the KOMNAS Ham, to The Jakarta Post while responding to the statement of the Attorney General explains the regime of impunity in Indonesia.

Komnas HAM says it completed inquiry

The Jakarta Post, Saturday, May 20, 2006

“I refer to your report entitled Blame game continues over May 1998 shootings (The Jakarta Post, May 16, page 2), which quoted a statement by Wayan Pasek Swarta, spokesman of the Attorney General’s Office (AGO), as follows:

“Attorney General’s Office spokesman Wayan Pasek Swarta claimed prosecutors could not investigate the riots because the National Human Rights Commission (Komnas HAM) has failed to provide additional data in their report.

‘As soon as we received the report two years ago, we told Komnas Ham’s investigators to provide more data in relation to the riots. As of today, the investigators have failed to do so,’ Pasek told the Post over the weekend.”

The May 1998 riot is only one of six alleged gross violations of human rights which Komnas HAM has completed inquiries into and submitted to the Attorney General for investigation in accordance with the applicable law, namely the 2000 law concerning the Human Rights Court. These six cases, compiled in three dossiers, are:

(a) Trisakti 1998, Semanggi 1998 (known as “Semanggi I), and Semanggi II, known jointly by

their acronym “TSS.” The inquiry into these cases was completed and submitted to the Attorney General for investigation in 2002.

(b) May 1998, the inquiry into which was completed and submitted to the Attorney General for investigation in 2003.

(c) Wasior 2001-2002 and Wamena 2003, the inquiry into which was completed and submitted to the Attorney General for investigation in 2004.

No investigation has been launched into any of these six cases.

It’s been more than a year now that no action has been taken in response to Komnas HAM’s communications. Action would mean either determining, with proper justification, that the result of the inquiry concerned “does not sufficiently meet the elements of gross violations of human rights” and accordingly, returning the case to Komnas HAM or, if the investigator is not able to make such a determination, beginning the investigation without further delay.

ENNY SOEPRAPTO

Commissioner

Civil and Political Rights

Jakarta

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 1. In conducting an inquiry as referred to in Article 18, the inquirer is authorized:
 - A. to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights;
 - B. to receive reports or complaints from individuals or groups concerning the incidence of gross violations of human rights, and to pursue statements and evidence;
 - C. to call on complainants, victims, or subjects of a complaint to request and hear their statements;
 - D. to call on witnesses to request and hear their witness;
 - E. to review and gather statements from the location of the incident and other locations as deemed necessary;
 - F. to call on relevant parties to give written statements or to submit necessary authenticated documents;
 - G. on the order of the investigator to:
 - examine of letters;
 - undertake search and seizure;
 - examine houses, yards, buildings, and other places that certain parties occupy or own;
 - dispatch specialists pertinent to the investigation.
 2. The inquirer shall inform the investigator upon initiating an inquiry into an incident suspected of constituting a gross violation of human rights.
35. Article 21 of Law No. 26/2000 on Human Rights Court states,
 - “1. Investigation of cases of gross violations of human rights shall be undertaken by the Attorney General.
 2. Investigation as referred to in clause (1) excludes authority to receive reports or complaints.
 3. In undertaking the task referred to in clause (1), the Attorney General may appoint an ad hoc investigator, which may be a government agency and/or a public constituent.
 4. Prior to undertaking his/her task, an ad hoc investigator shall take an oath or pledge in accordance with his or her religion.
 5. To be appointed as ad hoc investigator, a person is required to:
 - a) be a Citizen of the Republic of Indonesia;
 - b) be at least 40 (forty) years of age and no more than 65 (sixty-five) years of age;
 - c) be a graduate at law or other graduate with expertise in law;
 - d) be of sound mind and body;
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The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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