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SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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INTRODUCTION

In July 2013, the Human Rights Committee (the Committee) will examine Indonesia's initial report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) to assess the state party's compliance with the provisions of the Covenant both in law and practice.[1] Amnesty International submits the following information for consideration by the Committee in advance of its examination of Indonesia's state report.

Although the Indonesian government has taken some positive steps since its accession to the ICCPR in 2006 with a view to fulfilling its treaty obligations under the Covenant, Amnesty International remains concerned at the authorities' ongoing failure to fully implement the Covenant at the national level.

Amnesty International's main areas of concern include ongoing serious human rights violations by the security forces; restrictions in law and practice on the rights to freedom of expression and freedom of religion which are beyond what is acceptable under the Covenant; discrimination and other violations of women's human rights; abuses of the rights of migrant domestic workers; the failure to ensure justice, truth and reparation for past abuses; and the continued use of the death penalty. It is important to note that the concerns listed here are not exhaustive.

This briefing draws on Amnesty International's ongoing research on Indonesia, which involves regular contact with local and international non-governmental organizations, victims and their families, lawyers, government officials and other individuals.

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[1] Human Rights Committee, Initial reports of States parties: Indonesia [19 January 2012] UN Doc. CCPR/C/IDN/1, 19 March 2012, available at: http://www.un.org/ga/search/view_doc.asp?symbol=CCPR%20/C/IDN/1, accessed 13 June 2013 for the Committee's list of issues see: Human Rights Committee, List of issues in relation to the initial report of Indonesia (CCPR/C/IDN/1), adopted by the Committee at its 107th session (11–28 March 2013), UN Doc. CCPR/C/IDN/Q/1, 29 April 2013, available at: http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.IDN.Q.1_ENG.doc, accessed 13 June 2013.

1. ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY THE SECURITY FORCES

Articles 2, 6, 7 and 9

1.1 POLICE

During the last fifteen years the Indonesian authorities have made significant progress towards increasing the effectiveness and independence of the police force, particularly since the separation of the police from the military in 2000. Successive governments have put in place a number of key legislative and structural reforms to strengthen police effectiveness; maintain public order; and promote the rule of law. Moreover sections of the police force have been trained in international human rights law and standards, and community policing initiatives have been taken forward in order to develop police professionalism and accountability to the public.[2]

However, Amnesty International continues to receive reports of serious human rights violations by police, including unlawful killings; unnecessary or excessive use of force; and torture and other cruel, inhuman or degrading treatment or punishment during arrest, interrogation and detention. Amnesty International has itself documented dozens of human rights violations committed by the Indonesian police in recent years (for further information, see also Section 2.1.2 on violence by security forces against peaceful political activists).

■ On 15 February 2013, in Depapre, Papua province, plainclothes police officers arbitrarily arrested Daniel Gobay and two other men, without a warrant, in an operation to search for armed separatists. The three men were first forced to crawl on their stomachs to the Depapre sub-district police station approximately 30 metres away and then moved to the Jayapura district police station an hour later. There they were then forced to strip, were kicked in the face, head and back, and beaten with rattan sticks. Police officers allegedly pressed the barrels of their guns to their heads, mouth and ears. Separately, Matan Klembiap and three other men were also arbitrarily arrested without a warrant by plainclothes police officers on the morning of 15 February in Depapre and taken to the Jayapura district police station. The four men were also forced to strip and were kicked and beaten with rattan sticks and wooden blocks by police officers. One of the men testified on a video, published on 19 February, that police gave him electric shocks. On 16 February, five of the men were released without charge but Daniel Gobay and Matan Klembiap have been charged with "possession of a sharp weapon" under the Emergency Regulation 12/1951. They are now being tried at the

[2] Amnesty International, *Unfinished Business; Police Accountability in Indonesia* (Index: ASA 21/013/2009), June 2009, p13.

Jayapura District Court.[3] Amnesty International is not aware of any criminal investigation into the torture or other ill-treatment of these men.[4]

- On 17 March 2012, 17 men from Sabu Raijua District, East Nusa Tenggara province were arrested for the murder of a policeman. The West Sabu sub-district police allegedly stripped, handcuffed and beat them in detention for 12 days. Some of the men suffered stab wounds and broken bones and police reportedly forced them to drink their own urine. The men were released without charge at the end of June 2012 due to lack of evidence.[5] Amnesty International is not aware of any independent investigation into the allegations of torture or other ill-treatment.

- On 24 December 2011, some 100 protesters blocked the road to Sape port near Bima, West Nusa Tenggara province, demanding the revocation of an exploration permit issued to a gold mining company. An estimated 600 police, including the Police Mobile Brigade (Brimob) unit, were dispatched to the port to disperse them. Reports indicate that the police initially attempted to break up the protest peacefully, but quickly resorted to violence including by firing live bullets. Police shot dead at least three people and injured dozens. According to Indonesia's National Human Rights Commission (Komnas HAM), which conducted an inquiry into the incident, the Bima District Police Chief had ordered officers to use force. Police punched, kicked and dragged protesters who had put up no resistance. Around 40 protesters, including children, were injured. At least 30 protesters suffered bullet wounds to their legs, torso and arms. Komnas HAM also found evidence that the police had compromised the investigation, using officers involved in the shooting to collect the empty bullet casings from the scene. Internal police disciplinary proceedings held in Mataram, the capital of West Nusa Tenggara province, found five police officers in breach of police procedures for beating and kicking protesters while attempting to disperse them. They were reportedly punished with three days' detention, written warnings and postponement of further training. Amnesty International is not aware of any criminal investigation into the deaths of the three people, the unnecessary or excessive use of force against others, or the ill-treatment of protesters.[6]

Although the authorities have made some attempts to bring alleged perpetrators to justice using internal disciplinary mechanisms, criminal investigations into human rights violations by the police are all too rare, leaving many victims without access to justice and reparation. This situation is made worse by the lack of an independent, effective, and impartial complaints mechanism which can deal with public complaints about police misconduct, including criminal offences involving human rights violations. While existing bodies such as

[3] ALDP Papua, "Sidang Matham Klembiap Dimulai" [Matham Klembiap Trial Begins], 5 June 2013, available at: http://www.aldp-papua.com/sidang-matham-klembiab-dimulai/ accessed 12 June 2013.

[4] Amnesty International, *Two men detained, feared tortured in Papua* (Index: ASA 21/005/2013), 22 February 2013.

[5] Amnesty International Report 2013, Indonesia Section (Index: POL 10/001/2013).

[6] Amnesty International, *Excessive Force; Impunity for Police Violence in Indonesia* (Index: ASA 21/010/2012), April 2012, pp2-3.

Komnas HAM, the National Ombudsman or the National Police Commission (Kompolnas) are able to receive and investigate complaints from the public, they are not empowered to refer these cases directly to the Public Prosecutor's Office.

Indonesia has yet to fully incorporate a definition of torture in its Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP). The lack of sufficient legal provisions on "acts of torture" creates a loophole which has devastating consequences. It does not provide a sufficient legal basis on which state agents can be brought to court. Further it fails to provide a legal deterrent to prevent state agents from committing these acts.[7]

Amnesty International considers that the Indonesian authorities should:

- Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all allegations of human rights violations by police, in particular where it has caused injury or death. The findings of these investigations should be made public in a timely manner. Where sufficient admissible evidence exists, those suspected of criminal responsibility, including those with command responsibility, should be prosecuted in proceedings which meet international standards of fairness without recourse to the death penalty and victims should be granted reparation;

- Incorporate provisions on the crime of torture in the Criminal Code as a matter of priority. The definition of torture should be consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;

- Conduct a thorough review of police tactics and the use of force and firearms during arrest and during public order policing, with a view to ensuring that they meet international standards, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and

- Establish an independent police complaints mechanism to receive and deal with complaints from the public. The body should be operationally independent of the government, political influence and the police itself, and accessible to members of the public throughout the country. Its mandate should empower it to, among other things, carry out effective investigations and refer cases to the Public Prosecutor. It should also have the power to choose when to supervise or manage investigations conducted by police investigation officers and when to carry out its own independent investigations.

[7] See in this respect the Committee's General Comments, Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 18; Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI\GEN\1\Rev.1 at 30, para. 13.

1.2 MILITARY

The Indonesian military (*Tentara Nasional Indonesia,* TNI) has also undertaken institutional and legislative reforms. Specific laws and regulations have been put in place to ensure that the military respects and protects human rights. Article 2.d of the Law on the Indonesian National Armed Forces (Law No. 34/2004) defines a professional soldier, among other things, as someone that "adheres to the principles of democracy, civilian supremacy, human rights, national laws, and international laws which have been ratified". In September 2010, the military issued an internal regulation to prohibit torture. Although the regulation contains a definition of torture consistent with international law, it states that the penalty for such acts should be "in accordance with existing laws" (Article 12). As the Indonesian Criminal Code does not currently define acts of torture or provide penalties for such acts, in reality the regulation is not an effective tool in ensuring legal accountability for acts of torture committed by military personnel.[8]

Amnesty International continues to receive credible reports of human rights violations committed by the Indonesian military in recent years, including extrajudicial executions, and torture and other cruel, inhuman or degrading treatment (for further information about cases, see also Section 6.2 on impunity for past abuses).

- On 23 March 2013, at least 15 men,[9] wearing masks and carrying firearms raided the Cebongan prison in Yogyakarta province and extra-judicially executed four detainees in their cells. While the regional military commander initially denied military involvement in the killings,[10] an internal military inquiry later named twelve members of the Special Forces Command (*Komando Pasukan Khusus, Kopassus*) as suspects. The four detainees were allegedly involved in the killing of a member of their unit. At the time of writing the twelve were awaiting trial before a military tribunal.[11]

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[8] Regulation of Commander of the National Military No. Perpang/73/IX/2010 dated 27 September 2010 regarding the prohibition of torture and other cruel, inhuman, or degrading treatment in the enforcement of law within the National Military.

[9] *Tempo*, "Gelagat Penembak di LP Cebongan Versi Dirjen Lapas" [Indications of the shooters in Cebongan Prison according to the Directorate of Prison], 3 April 2013, available at: http://www.tempo.co/read/news/2013/04/03/063470891/Gelagat-Penembak-di-LP-Cebongan-Versi-Dirjen-Lapas, accessed 31 May 2013; and *The Jakarta Post*, "Mystery still shrouds Cebongan prison attack", 11 April 2013, available at: http://www.thejakartapost.com/news/2013/04/11/mystery-still-shrouds-cebongan-prison-attack.html, accessed 31 May 2013.

[10] The *Jakarta Post*, "Upholding justice in Cebongan", 11 April 2013, available at: http://www.thejakartapost.com/news/2013/04/11/upholding-justice-cebongan.html, accessed 13 June 2013; and *Tempo*, "Pangdam Diponegoro: Kami Tak Terlibat di Cebongan" [Pangdam Diponegoro: We are not involved in Cebongan], 26 March 2013, available at: http://www.tempo.co/read/news/2013/03/26/063469392/Pangdam-Diponegoro-Kami-Tak-Terlibat-di-Cebongan, accessed 31 May 2013.

[11] *The Jakarta Post*, "Cebongan case files will be soon given to military prosecutors", 21 May 2013, available at: http://www.thejakartapost.com/news/2013/05/21/cebongan-case-files-will-be-soon-given-

■ On 6 June 2012, two soldiers on motorcycles reportedly ran over and injured a three year-old child playing by the side of the road in the village of Honelama in Wamena, Papua province. Villagers who witnessed the incident chased the soldiers, stabbed one to death and injured the other. In retaliation, two truckloads of soldiers from army battalion Yonif 756/Wamena arrived at Honelama village not long after and reportedly opened fire arbitrarily on the village killing one person, Elinus Yoman. According to reliable local sources, soldiers also stabbed around a dozen people with their bayonets. In addition, soldiers reportedly burned down dozens of homes, buildings and vehicles during the attack. No one has been brought to justice for the attacks.[12]

■ In October 2010, a video was posted on YouTube showing Papuan men being kicked and otherwise ill-treated, with at least one being clearly tortured by men in uniform. The men were being interrogated about the location of weapons. Following media outcry about the incident, senior Indonesian government officials commented on the video and called the torture and other ill-treatment the men were subjected to – which included one of the men having his genitals burned – a "minor violation". After President Susilo Bambang Yudhoyono ordered an investigation into the incident documented in the video, three soldiers were tried and convicted before a military tribunal. Victims were too frightened to testify in person due to the lack of adequate safety guarantees. The three soldiers were subsequently given sentences of between eight and 10 months for "deliberately disobeying orders". No criminal charges were filed against the soldiers.[13]

Criminal offences, including crimes under international law, by military personnel can only be tried in military courts under the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM). If there is a combination of military and civilian actors involved, suspects can be tried before a joint military civilian court (*pengadilan koneksitas*).[14] In 2004 the new Law on the Indonesian National Armed Forces (Law No. 34/2004) subjected soldiers to the authority of the civilian courts for violations of the Criminal Code. However, this has yet to be implemented as the House of People's Representatives has failed to amend the Law on Military Tribunals (Law No. 31/1997) to provide civilian courts jurisdiction over members of the military for all crimes committed against civilians.[15]

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military-prosecutors.html, accessed 31 May 2013; and *The Jakarta Post*, "Prison attack dossiers given to TNI prosecutors", 22 May 2013, available at: http://www.thejakartapost.com/news/2013/05/22/prison-attack-dossiers-given-tni-prosecutors.html, accessed 31 May 2013.

[12] Amnesty International, *Indonesia: Investigate military attacks on villagers in Wamena, Papua* (Index: ASA 21/020/2012), 8 June 2012.

[13] See Amnesty International, *Indonesian soldiers' sentence for Papua abuse video too light*, 24 January 2011; and Amnesty International, *Indonesian authorities urged to investigate Papua "torture video"*, 19 October 2010.

[14] Amnesty International, *Time to Face the Past: Justice for Past Abuses in Indonesia's Aceh Province* (Index: ASA 21/001/2013) (Amnesty International, *Time to Face the Past*), p32.

[15] Amnesty International, *Time to Face the Past*. The 2005 Helsinki Peace Agreement (Memorandum of Understanding) between the Indonesian government and Free Aceh Movement (*Gerakan Aceh Merdeka,*

Amnesty International shares the view of Committee members expressed in 2012 that the jurisdiction of military courts must be restricted "if it is to be fully compatible with the Covenant: *ratione personae*, military courts should try active military personnel, never civilians or retired military personnel; and *ratione materiae*, military courts should never have jurisdiction to hear cases involving alleged human rights violations."[16]

Amnesty International considers that the Indonesian authorities should:

- Revise the Law on Military Tribunals (Law No. 31/1997) so that military personnel suspected of offences involving human rights violations are prosecuted only before independent civilian courts in proceedings which meet international fair trial standards and which do not impose the death penalty. Victims should be provided with reparation; and

- Establish a vetting system to ensure that, pending investigation, law enforcement or security officials about whom there is evidence of serious human rights violations do not remain, or are not placed, in positions where they could repeat such violations or influence witnesses.

GAM) also specifies that "*all civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh*" (Article 1.4.5).

[16] Report of the Human Rights Committee, Communication Nos. 1914-17/2009, *Musaev v. Uzbekistan*, views adopted 21 March 2012, UN Doc. 4/67/40 (2011-12), Joint opinion by Committee members Mr. Fabián Omar Salvioli and Mr. Rafael Rivas Posada (partially dissenting), para. 4.

2. FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBY

Articles 19 and 21

The resignation of former President Suharto in 1998 brought about greater respect for freedom of expression in Indonesia. The authorities repealed legislation which had been used to silence critics in the past and restrictions on the media, political parties and labour unions were removed.[17]

Further, Indonesia enshrined guarantees to freedom of expression and peaceful assembly in its Constitution and in national legislation. Article 28E(2) of Indonesia's 1945 Constitution provides that "[e]very person shall have the right to the freedom … to express his/her views and thoughts, in accordance with his/her conscience" and Article 28E(3) that "Every person shall have the right to the freedom to associate, to assemble and to express opinions."[18] Law No. 39/1999 on Human Rights provides that "[e]very citizen has the right to express his opinion in public" (Article 25) and "[e]veryone has the right to peaceful assembly and association" (Article 24.1).

Despite this progress, the authorities continue to use legislation to criminalize peaceful political activities in Maluku and Papua, and to imprison people solely for the peaceful exercise of their rights to freedom of expression and opinion, conscience and religion. Further Amnesty International continues to receive credible reports of attacks, intimidation and criminalization of human rights defenders and journalists in Indonesia.

2.1 CRIMINALIZATION OF PEACEFUL POLITICAL ACTIVITY IN PAPUA AND MALUKU

Amnesty International continues to document the arrest and detention of peaceful political activists in areas with a history of pro-independence movements such as Papua and Maluku. The organization acknowledges that there have clearly been incidents of violence committed by non-state actors in Papua and recognizes that the Indonesian government can use domestic criminal law to deal with violent attacks. However, the government has consistently failed to make a distinction between violent armed groups and peaceful activists, and

[17] In 1999 the Indonesian authorities repealed the Anti-subversion Law, which had been widely used to imprison prisoners of conscience. In December 2006 Indonesia's Constitutional Court declared unconstitutional the use of Articles 134, 136 and 137 of Indonesia's Criminal Code which criminalized "insulting the President or Vice-President" with up to six years' imprisonment. In July 2007, the Constitutional Court declared unconstitutional the so-called "hate-sowing articles" (Articles 154 and 155) of the Criminal Code which criminalized "public expression of feelings of hostility, hatred or contempt toward the government" and "the expression of such feelings or views through the public media".

[18] Second Amendment to the Constitution, August 2000.

between peaceful expression of opinion and acts of physical violence.

Over 70 people are currently imprisoned, some as long as 20 years, for attending, organizing or participating in peaceful political activities, protests or possessing, raising or waving the prohibited pro-independence flags of Maluku and Papua. Many of those arrested are charged with "rebellion" (*makar*) under Articles 106 and 110 (crimes against the security of the state) of Indonesia's Criminal Code which carries a maximum life sentence. [19]

The UN Working Group on Arbitrary Detention (WGAD) has consistently raised concerns about provisions in the Criminal Code relating to national security contained in four chapters of Book II of the Code.[20] According to the WGAD "[m]ost of these provisions are, especially inasmuch as the intentional element of the crime is concerned, drafted in such general and vague terms that they can be used arbitrarily to restrict the freedoms of opinion, expression, assembly and association".[21] The WGAD has stated that "these provisions carry grave risks of arbitrary detentions, as long as they have not been abrogated or their content amended to make them compatible with international standards guaranteeing the freedoms of opinion and expression".[22]

■ Papuan activist Filep Karma is currently serving 15 years in prison for taking part in a peaceful demonstration during which the "Morning Star" flag – a banned symbol of Papuan independence – was raised. Filep Karma was arrested at the site of the ceremony. Police reportedly beat him on the way to the police station. He was subsequently charged with "rebellion" under Articles 106 and 110 of the Indonesian Criminal Code. On 26 May 2005, Filep Karma was sentenced to 15 years' imprisonment. His sentence was upheld by the Supreme Court on 27 October 2005. In November 2011 the WGAD issued an opinion stating his detention was arbitrary on the grounds that it violated his right to freedom of expression

[19] The word *makar* has no direct equivalent in English. However, for the purpose of this document it will be translated as "rebellion". Article 106 enables the authorities to sentence a person to life imprisonment or a maximum of twenty years imprisonment for any attempts undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof while Article 110 (1) allows for a maximum of six years imprisonment for conspiracy to commit 'crimes against the security of the state' under Articles 104 to 108.

[20] See Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January-12 February 1999), UN Doc: E/CN.4/2000/4/Add.2, 12 August 1999 (Report of WGAD on its visit to Indonesia); WGAD, Opinion No. 41/2008 (Indonesia); and WGAD, Opinion No. 48/2011 (Indonesia). The four chapters include "Crimes against the security of the State" (Chapter. 1, Articles 104-129), "Crimes against the dignity of the President and Vice-President" (Chapter 2, Articles 130-139); "Crimes against public order" (Chapter 5, Articles 154-181); and "Crimes against public authority" (Chapter 8, Articles 207-241).

[21] Report of WGAD on its visit to Indonesia, Supra No20, para 50.

[22] Opinion No. 48/2011 (Indonesia), para 25. See also Report of WGAD on its visit to Indonesia, Supra No20, para 51.

and assembly, and because he was subjected to an unfair trial.[23]

2.1.1 THE BAN ON "SEPARATIST" FLAGS

Amnesty International documented a significant increase in arrests after the authorities issued Government Regulation No. 77/2007, which prohibits the display of regional logos or flags which are also used by separatist organizations.

Regulation No. 77/2007 was issued in December 2007. Article 6.4 of the regulation prohibits the display of regional logos or flags which have the same features as those used by "organization[s], groups, institution[s] or separatist movements" in Indonesia. It has led to a ban on the "Morning Star" and "Fourteen Star" flags in the Papua region, the "Benang Raja" flag in Maluku, and the "Crescent Moon" flag in Aceh,[24] as they are associated with separatist movements in Indonesia.

These flags are symbols mostly used by peaceful pro-independence or pro-autonomy movements in Indonesia and often simply reflect local communities' identities. They do not feature any "violent" logo or message in themselves, nor do they symbolize or imply violence. Thus describing the mere act of raising them as a "violent" or "disruptive" act is grossly inaccurate. Rather, raising such flags in and of itself is a peaceful act. Amnesty International considers that the ban on waving these flags cannot be considered a legitimate restriction on freedom of expression and association as set out in Article 19 of the Covenant.[25]

Amnesty International considers all those who have been detained solely for peacefully displaying regional flags, including the Morning Star flag and the Benang Raja flag, prisoners of conscience who should be immediately and unconditionally released.

2.1.2 VIOLENCE BY SECURITY FORCES AGAINST PEACEFUL POLITICAL ACTIVISTS

Amnesty International has documented unlawful killings, resort to unnecessary or excessive force, as well as torture and other ill-treatment of some of these peaceful political activists during arrest, detention and interrogation by the police and military personnel, including the counter-terrorism unit Detachment-88 (Densus-88). However, there are rarely independent investigations into such allegations, and the perpetrators are not held to account. In some cases human rights violations committed by police officers are dealt with through in-house disciplinary hearings and perpetrators are handed down sentences such as written warnings (for additional information on violations by security forces, see also section 1 on accountability for human rights violations by the security forces, p6).

- On the afternoon of 19 October 2011, military and police units started firing live ammunition into the air to break up the Third Papuan People's congress, a peaceful gathering held in Abepura, Papua province. As they fled, police units from the Jayapura City

[23] See Opinion No. 48/2011 (Indonesia)

[24] Amnesty International is unaware of any person who was arrested or detained in recent years for having raised the Crescent Moon flag.

[25] See Amnesty International, *Jailed for Waving a Flag: Prisoners of Conscience in Maluku* (Index: ASA 21/008/2009), (Amnesty International, *Jailed for Waving a Flag*), p19.

police station and the regional police headquarters fired tear gas and then arrested an estimated 300 participants. Those arrested were held overnight at the regional police headquarters but most were released later without charge. Police and military officers allegedly beat participants with their pistols, rattan canes and batons during the arrest. The bodies of three participants were later found near the area where the congress had been held with bullet wounds[26]. Eight police officers involved in the violent crackdown were only given written warnings on 22 November 2011.[27] On the other hand five political activists who participated in the peaceful gathering were subsequently sentenced to three years' imprisonment each by the Jayapura District Court for "rebellion" under Article 106 of the Indonesian Criminal Code.[28]

■ In July 2007, 23 men, mainly teachers and farmers, led by Johan Teterissa, held a peaceful public protest in front of President Susilo Bambang Yudhoyono who was a attending a ceremony to mark National Family Day in a field in Ambon, Maluku province. During the protest the "Benang Raja", a flag symbolizing South Maluku independence was raised. Twenty-two of the men were escorted from the site of the peaceful protest by about 20 police and presidential guards, who punched them and beat them with rifle butts. In custody, many of them were repeatedly beaten, forced to crawl on their stomachs over hot asphalt, whipped with electric cables and had billiard balls forced into their mouths. The police – including officers from the anti-terrorism unit Detachment-88 – also beat them on their heads with rifle butts until their ears bled, and fired shots close to their ears, causing long-term damage to the victims' hearing. There has been no independent, impartial investigation into these complaints.[29] Johan Teterissa is serving a 15-year prison sentence while the 21 other protestors arrested with him in June 2007 have all been sentenced to between four and 20 years' imprisonment. A twenty-third activist was arrested in June 2008 and sentenced to four years' imprisonment. Johan Teterissa and dozens of other peaceful political activists are currently in prisons on Java island hundreds of kilometres from their families in Maluku province. In November 2008 WGAD declared Johan Teterissa's detention to be arbitrary on the grounds that he was imprisoned for the exercise of his rights to freedom of expression and peaceful assembly and because he had been subjected to an unfair trial.[30]

Amnesty International considers that the Indonesian authorities should:

■ Immediately and unconditionally release all prisoners of conscience, that is, those deprived of liberty solely for peacefully exercising their right to freedom of speech or peaceful assembly, in Indonesia;

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[26] See Amnesty International, *Indonesia: Government must act on Komnas HAM's findings of human rights violations at Papuan Congress* (Index: ASA 21/034/2011), 8 November 2011.

[27] See Amnesty International, *Indonesia: "Slap on the wrist" for police violence in Papua is accountability failure*, 23 November 2011.

[28] See Amnesty International, *Indonesia: Sentencing of Papuan activists a setback to free expression and assembly* (Index: ASA 21/011/2012), 16 March 2012.

[29] See Amnesty International, *Jailed for Waving a Flag*, Supra No25, pp21-24.

[30] WGAD Opinion No. 41/2008 (Indonesia).

- Repeal or else amend laws and regulations which impose on the right to freedom of expression restrictions beyond those allowed under international human rights law. In particular:

1. Repeal or else amend Articles 106 and 110 of the Indonesian Criminal Code so that these articles are no longer used to criminalize freedom of expression; and

2. Revoke immediately Article 6 of Government Regulation No. 77/2007 which prohibits the display of separatist logos or flags, or else bring it into compliance with the Covenant and the Indonesian Constitution.

- Conduct effective and independent investigations into all allegations of human rights violations, including torture and other ill-treatment by the security forces, and ensure that all those responsible are brought to justice in fair trials without the imposition of the death penalty, and that victims receive reparation.

2.2 PROTECTION OF HUMAN RIGHTS DEFENDERS AND JOURNALISTS

In May 2012, the Indonesian government as part of the Universal Periodic Review (UPR) at the Human Rights Council, accepted recommendations to guarantee adequate protection for human rights defenders and to conduct impartial and independent investigations into acts of violence committed against human rights defenders and bring those responsible to justice.[31]

However, Amnesty International continues to receive reports of intimidation and attacks against human rights defenders and journalists. Most past human rights violations against human rights defenders, including torture and other ill-treatment, possible unlawful killings and enforced disappearances, remain unsolved and those responsible have not been brought to justice.

- In September 2012, Papuan human rights lawyer Olga Hamadi was threatened after investigating allegations of police torture and other ill-treatment in a murder case in Wamena, Papua province. There was no investigation into the threats, and fears for her safety remain.

- On 6 May 2012 Tantowi Anwari, a journalist and activist from the Association of Journalists for Diversity (Sejuk) was beaten and kicked by members of the Islamic Defenders Front (FPI) in Bekasi while he was covering the disruption of the Filadelfia Batak Christian Protestant Church (*Huria Kristen Batak Protestan*, HKBP) church service. Despite filing a police report in May 2012, Tantowi Anwari has not been informed of any progress on his case.

- The authorities have failed to ensure full accountability for the killing of prominent human rights activist Munir Said Thalib (Munir). He was found dead on a Garuda Airlines

[31] Report of the Working Group on the Universal Periodic Review – Indonesia, UN Doc: A/HRC/21/7, 5 July 2012, paras 108.115 (Republic of Korea), 108.117 (Greece), 108.118 (Norway) and 108.119 (France).

flight from Jakarta to the Netherlands on 7 September 2004. An autopsy carried out by the Dutch authorities showed that he died as a result of arsenic poisoning. Although three people have now been convicted for involvement in the killing, there are credible allegations that those responsible for ordering his murder are still at large. A 2005 report by an independent fact-finding team established by President Susilo Bambang Yudhoyono has yet to be made public, although publication of the findings had been recommended by the presidential decree that established the team.

Further, the Indonesian authorities continue to restrict access to international human rights organizations, international journalists and other observers to the provinces of Papua and West Papua in eastern Indonesia. The denial of free and unimpeded access to these provinces limits independent reporting of the human rights situation there. In May 2013, the UN High Commissioner for Human Rights, Navanethem Pillay, urged Indonesia to "allow international journalists into Papua and to facilitate visits by the Special Rapporteurs of the UN Human Rights Council".[32] A visit by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression scheduled for January 2013 has been postponed indefinitely.

Human rights defenders also continue to be subjected to criminal defamation. In particular Articles 310, 311 and 316 of the Criminal Code have been used to silence journalists and human rights defenders while they conduct their legitimate work on behalf of the human rights of others.[33] Indonesia's criminalization of defamation, carrying as it does the possibility of imprisonment formally for over five years, is a disproportionate restriction of the right to freedom of expression and has a chilling effect on the work of human rights defenders.

- On 9 April 2013, a women's rights activist, Rahayu Kandiwati was charged with criminal defamation under Article 310 of the Criminal Code for speaking out against domestic violence committed by the Deputy Mayor of Magelang in Central Java.[34]

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[32] *UN Newswire*, "Indonesia must allow peaceful protests in Papua, stresses UN rights chief" 2 May 2013, available at: http://www.un.org/apps/news/story.asp?NewsID=44812#.UZ9AJVsrW5U, accessed 24 May 2013.

[33] See Article 310: " Any person who intentionally attacks someone's honour or good name by alleging a certain fact, with the clear intent to make that fact known publically, be punished by a maximum imprisonment of nine months or fine a maximum of four thousand five hundred rupiah; Article 311.1: "Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted, shall, if he does not produce said proof and the charges has been made against his better judgment, being guilty of calumny, be punished by a maximum imprisonment of four years" and Article 316: "The punishments laid down in the foregoing articles of this chapter may be enhanced with one third, if the defamation is committed against an official, during or on the subject of the legal exercise of his office." That means criminal defamation carries formally the possibly of up to five years and a few months' imprisonment (four years enhanced by one third).

[34] See *Suara Merdeka*, "Istri Wawali Kota Magelang Ditetapkan Tersangka"[Wife of Deputy Mayor becomes suspect], 9 April 2013, available at: http://www.suaramerdeka.com/v1/index.php/read/news/2013/04/09/152318/Istri-Wawali-Kota-Magelang-

- On 13 July 2012 the Maluku provincial police charged Oyang Orlando Petrus, a community activist from southwest Maluku, with criminal defamation. He had been a vocal critic of mining in the area and its impact on the environment and was previously attacked and stabbed by unknown persons in April 2012. No one has been brought to justice for the attacks.

Amnesty International considers that the Indonesian authorities should:

- Take effective steps to ensure that human rights violations committed against human rights defenders are promptly, effectively and impartially investigated and that those responsible are brought to justice in fair trial proceedings;
- Ensure an environment in which it is possible to defend human rights without fear of reprisal or intimidation;
- Ensure that international human rights organizations and journalists are provided free and unimpeded access to the provinces of Papua and West Papua;
- Ensure that provisions in the Criminal Code which allow for terms of imprisonment for acts of defamation, are repealed, and that the newly revised Criminal Code does not contain provisions punishing with terms of imprisonment individuals who publicly criticize public officials; and
- Support the creation of special mechanisms to ensure the protection of human rights defenders in Indonesia.

2.3 LAWS CRIMINALIZING BLASPHEMY AND INCITEMENT

Amnesty International is concerned about provisions in the Criminal Code which criminalize blasphemy. Article 156(a) of the Criminal Code created by the "Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation" imposes a prison sentence "for whosoever in public intentionally expresses their views or engages in actions that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia".[35]

The blasphemy laws have been used to imprison people for as long as five years, simply because they have peacefully exercised their rights to freedom of expression or freedom of religion. They are often used to target individuals who belong to minority religions, faiths and opinions. They are fundamentally incompatible with Indonesia's obligations under the Covenant and its commitments to protect and respect freedom of expression, and freedom of

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Ditetapkan-Tersangka, accessed 23 May 2013; and *Antara* "Istri Pejabat dan Aktivis Perempuan Jadi Tersangka" [Officials' wife and women's activist made suspects], 9 April 2013, available at: http://www.antarajateng.com/detail/index.php?id=76925#.UZ3IVVsrW5V, accessed 23 May 2013.

[35] For further information about Amnesty International's concerns relating to blasphemy provisions, see *Indonesia: Judicial review of law number 1/pnps/1965 concerning the prevention of religious abuse and/or defamation*, amicus brief submitted by Article 19 the Global Campaign for Free Expression, Amnesty International, the Cairo Institute for Human Rights Studies, and the Egyptian Initiative for Personal Rights (Index: ASA 21/002/2010), 11 March 2010.

thought, conscience and religion as well as equality (for further information about religious minorities see also section 3.1)

- In July 2012, Tajul Muluk, a Shi'a Muslim religious leader from East Java was sentenced to two years' imprisonment for blasphemy under Article 156(a) of the Criminal Code by the Sampang District Court. His arrest followed reports that, on 1 January 2012, a religious decree (fatwa) was issued by the Sampang branch of the Indonesia Ulema Council (MUI) about what was described as Tajul Muluk's "deviant teachings".[36] The East Java High Court increased his sentence to four years in September 2012 upon appeal.

Amnesty International is also concerned about "incitement" provisions in Law No. 11/2008 on Electronic Information and Transaction (ITE) that have been used to criminalize freedom of expression. These include Article 27(3) which criminalizes "the conduct of anyone who intentionally and without right distributes an/or transmits and/or makes accessible electronic information and/or electronic documents that contains insults and/or defamation" and Article 28(2) which criminalizes "the dissemination of information that incites hate or enmity among certain individuals and/or groups based on ethnicity, religion, race or intergroup relation".

- On 14 June 2012 Alexander Aan, an atheist, was imprisoned for "incitement" after he posted statements and pictures which some people construed as insulting Islam and the prophet Mohammad. He was initially charged with blasphemy under Article 156(a) of the Criminal Code as well as "disseminating information aimed at inciting religious hatred or hostility" under Article 28(2) of the Law No. 11/2008 on Electronic Information and Transaction (ITE). On 14 June 2012 he was sentenced to two and a half years' imprisonment and a fine of 100 million Indonesian rupiah (US$10,600) under the ITE law.[37]

At the time of writing Amnesty International estimates that at least six people are imprisoned under blasphemy and incitement provisions solely for the peaceful exercise of their rights to freedom of expression or religion.

Amnesty International considers that the Indonesian authorities should:

- Immediately and unconditionally release all those deprived of liberty solely for peacefully exercising their rights to freedom of expression, conscience and religion in Indonesia;
- Repeal Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation and Article 156(a) of the Criminal Code created by the Presidential Decision; and
- Ensure that the Electronic Information and Transaction (ITE) Law is not misused by the authorities to criminalize freedom of expression.

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[36] See Amnesty International, *Indonesia: Shi'a leader imprisoned for blasphemy must be released* (Index: ASA 21/025/2012), 12 July 2012.

[37] See Amnesty International, *Indonesia: Atheist imprisonment a setback for freedom of expression* (Index: ASA 21/021/2012), 14 June 2012.

3. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Article 18

The right to freedom of religion in Indonesia is guaranteed in the Indonesian Constitution.[38] President Susilo Bambang Yudhoyono has frequently made public commitments to promote religious tolerance and pluralism and uphold the right to freedom of religion [39] Moreover, in May 2012, during the Universal Periodic Review at the Human Rights Council, the Indonesian government reaffirmed its commitment to ensuring the protection of freedom of religion and to address cases of religious intolerance.[40]

However, Amnesty International continues to receive credible reports of increasing levels of harassment, intimidation and attacks against religious minority groups in Indonesia, including Ahmadiyya[41], Shi'a and Christians. These include the closure, attacks and burning by mobs of places of worship and homes, at times leading to the displacement of communities belonging to these groups, with little or no intervention from the police. Further there is a number of existing regulations that discriminate against religious minorities both at the national and local level and that are not in line with Article 18.

3.1 VIOLENCE AND DISCRIMINATION AGAINST RELIGIOUS MINORITIES

3.1.1 DISCRIMINATORY LAWS AND REGULATIONS IMPACTING RELIGIOUS MINORITIES

Many of the incidents of discrimination, intimidation and attacks against religious minority groups, in particular the Ahmadiyya, have been fuelled by discriminatory laws and regulations

[38] Article 29(2) of the original constitution of 1945 stipulates that "the state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief", and article 28E(2) of the second amendment of the constitution recognises that "Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, in accordance with his/her conscience".

[39] *Kompas*,"SBY: Kebebasan Beragama Dijamin Negara" [SBY: State guarantees freedom of religion], 27 December 2010, available at: http://nasional.kompas.com/read/2010/12/27/22330682/, accessed 10 June 2013; and *Tempo*, "SBY: Negara Menjamin Kebebasan Beribadah" [SBY: State guarantees freedom to worship], 6 May 2013, available at: http://www.tempo.co/read/news/2013/05/26/063483346/SBY-Negara-Menjamin-Kebebasan-Beribadah, accessed 10 June 2013.

[40] Amnesty International, *Indonesia: Religious freedom under attack as Shi'a villagers face eviction* (Index: PRE01/018/2013), 15 January 2013.

[41] The Ahmadiyya are a religious group who consider themselves to be a part of Islam. Many mainstream Muslim groups say they do not adhere to the accepted Islamic belief system.

at the national and local level.

These include the Presidential Decision Number 1/PNPS/1965 which criminalizes blasphemy and which was incorporated into article 156(a) of the Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP).[42] These provisions have been used to publically condemn members of minority faith and beliefs as being "deviant" and to criminalize these individuals.

Further, a Joint Ministerial Decree (No. 3/2008) was issued in 2008 by the Minister of Religious Affairs, the Attorney General, and Minister of Home Affairs forbidding the Ahmadiyya from promoting their activities and spreading their religious teachings. Discriminatory bylaws or regulations have also been issued by local authorities in a number of provinces, districts and cities across the country restricting Ahmadiyya activities and worship.[43] Local authorities and radical Islamist groups have cited the Joint Ministerial Decree and local regulations to justify their intimidation and attacks against the Ahmadiyya.

- In March 2011, the Governor of West Java issued "Regulation of the Governor of West Java No. 12/2011 concerning Prohibition of Activities of the Indonesian Ahmadiyya Congregation in West Java". Article 3 of the Regulation, among other things, "prohibits followers of the Ahmadiyya community from carrying out activities… related to the spreading of interpretation and activities that deviate from the fundamental teachings of Islam". These activities include spreading Ahmadiyya teachings, installing their signboards in public places and on their places of worship and educational institutions, as well as using anything that could identify them as Ahmadiyya followers.[44]

These discriminatory regulations contravene Article 10 (3)(f) of Law No. 32/2004 on Regional Autonomy. In the autonomy law, the powers to make regulations on matters of religion are in the exclusive domain of the central government. Provincial or district/city regulations are therefore invalid to the extent that they are inconsistent with higher laws, such as national laws or regulations, according to the hierarchy of laws in Article 7 of Law No. 12/2011 on Law-making.

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[42] For further information about Amnesty International's concerns relating to blasphemy provisions, see *Indonesia: Judicial review of law number 1/pnps/1965 concerning the prevention of religious abuse and/or defamation*, amicus brief submitted by Article 19 the Global Campaign for Free Expression, Amnesty International, the Cairo Institute for Human Rights Studies, and the Egyptian Initiative for Personal Rights (Index: ASA 21/002/2010), 11 March 2010.

[43] There are local regulations restricting Ahmadiyya activities in a number of cities (Bekasi, Depok, Bogor, Samarinda, Pekan Baru, Padang, Cimahi), districts (Pandeglang, Kampar, Sukabumi, Cianjur, Kuningan, Garut, West Lombok) and provinces (Banten, East Java, West Java, South Sulawesi) in Indonesia.

[44] Amnesty International, *Open letter on human rights violations against the Ahmadiyya in West Java* (Index: ASA 21/032/2011), 14 October 2011 (Amnesty International, *Open letter on human rights violations against the Ahmadiyya in West Java)*.

Amnesty International considers that the Indonesian authorities should:

- Repeal Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation (the Presidential Decision), and Article 156(a) of the Criminal Code created by the Presidential Decision;

- Immediately revoke the 2008 Joint Ministerial Decree and all other regulations that restrict the activities of the Ahmadiyya community in Indonesia or otherwise violate their right to freedom of thought, conscience and religion; and

- Ensure that any regulations issued at the provincial and at the district level are in compliance with human rights protections as provided in the 1945 Indonesian Constitution and Indonesia's obligations under international law, in particular the Covenant.

3.1.2 ATTACKS AGAINST RELIGIOUS MINORITIES

Over the last few years, there have been numerous incidents of violence against religious minorities in Indonesia. These include attacks and burning of places of worship and homes by mobs, in some cases forcibly evicting communities – including children – out of their homes and into temporary shelters and accommodation.

In some cases, despite having prior knowledge of threats against minority religious communities, the Indonesian police did not take necessary preventive measures to stop the attacks or mobilize adequate numbers of police personnel to protect the community. There is also a tendency by the authorities to blame the minority groups for "deviant views" when attacks against them occur. Further, investigations by the police as a first step towards holding perpetrators to account have been weak. In the few cases in which perpetrators have been brought to the courts, the charges on which they were convicted have not reflected the seriousness of the crimes.

- On the morning of 5 May 2013, an anti-Ahmadiyya mob attacked at least 20 houses, a school and a mosque belonging to the Ahmadiyya congregation in Tejowaringin village, Tasikmalaya district, West Java province. The mob threw stones at the homes, smashing windows and also set fire to an Ahmadiyya place of worship in the village. The Ahmadiyya community had alerted the Tasikmalaya district police about a possible attack but the police failed to mobilize adequate numbers to protect the community.[45] According to the police the attackers were from the radical Islamist group, the Islamic Defenders Front (Front Pembela Islam, FPI). No one was injured, but many of the Ahmadiyya followers, including children, have reportedly been traumatized by the incident. The police subsequently arrested two men and charged them with vandalism. They have since been released pending trial.[46]

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[45] See *Okezone.com*, "Polisi Justru Kabur Saat Kampung Ahmadiyah Diserang" [Police flees during attack against Ahmadiyya village] 6 May 2013, available at: http://bandung.okezone.com/read/2013/05/06/527/803128/redirect, accessed 13 June 2013

[46] *The Jakarta Post*, "Men suspected of attack on Ahmadiyah village freed", 29 May 2013, available at:

■ On the morning of 26 August 2012, an anti-Shi'a mob of around 500 people armed with sharp weapons and stones attacked a Shi'a community in Nangkrenang village in Sampang, Madura Island. The Omben sub-district police in Sampang had prior knowledge of the threats against the Shi'a community but did not take necessary preventive measures against the attack, including mobilization of adequate numbers of police personnel to protect the community. According to the National Human Rights Commission (Komnas HAM) only five police personnel were at the scene.[47] Muhammad Hasyim was slashed to death while another victim, Muhammad Thohir, was stabbed. Stones thrown by the mob injured dozens of others. Thirty-five houses belonging to the Shi'a community were also set on fire by the mob. Many from the community fled the village into hiding while others were evacuated to a temporary shelter at a sports complex in Sampang.[48] Five people were subsequently sentenced to between eight months and four years' imprisonment for committing violence (Article 170), "maltreatment" (Article 351) and manslaughter (Article 338).[49] A sixth person charged was acquitted.[50] This was the second attack against the Shi'a community in a period of a year.[51]

■ On 6 February 2011, over 1,000 people wielding rocks, machetes, swords and spears stormed the house of an Ahamadiyya leader in the sub-district of Cikeusik, Banten province. The mob surrounded the house where at least 18 Ahmadis were gathered, demanding that they disperse. They then charged inside the home, attacking and killing three Ahmadis. The victims were found with multiple injuries including stab wounds and lacerations. At least five others were seriously injured. The mob also destroyed the house, as well as vehicles parked around it.[52] The police did not take adequate steps to prevent the attacks or to mobilize

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http://www.thejakartapost.com/news/2013/05/29/men-suspected-attack-ahmadiyah-village-freed.html, accessed 13 June 2013.

[47] See *Tempo*, "Komnas HAM Anggap Polisi Tak Serius Lindungi Syiah" [National Human Rights Commission believes police not serious about protecting Shi'a], 28 August 2012, available at: http://www.tempo.co/read/news/2012/08/28/179426002/Komnas-HAM-Anggap-Polisi-Tak-Serius-Lindungi-Syiah, accessed 13 June 2013.

[48] Amnesty International, *Indonesia: Stop attacks against Shi'a community in East Java* (Index: ASA 21/033/2012), 28 August 2012.

[49] Mukhsin alias Tamam Bin Moh.Rowi (10 months for committing violence); Mat Safi bin Misnoto (one year and six months for "maltreatment"); Saniwan alias Muhriyah (eight months for committing violence); Saripin (eight months for committing violence); and Hadiri (four years for manslaughter).

[50] Amnesty International, *Indonesia: Stop attacks against Shi'a community in East Java* (Index: ASA 21/033/2012), 28 August 2012.

[51] In a previous attack on the community on 29 December 2011, a mob of around 500 people, some carrying sharp weapons enter Nangkrenang village and set fire to a place of worship, boarding school and various homes in the vicinity. Security forces were seen filming and watching the attack as it occurred. Only one person was eventually charged and sentenced to three months' imprisonment for the attack. See Amnesty International, *Indonesia: Shi'a Muslims at risk of attacks in Indonesia* (Index ASA 21/002/2012), 13 January 2012.

[52] Amnesty International, *Indonesian authorities must investigate Ahmadiyya killings* (Index: PRE01/051/2011), 7 February 2011.

adequate police personnel to protect the community.[53] On 28 July a court in Serang District, Banten sentenced 10 men and two boys to three to six months' imprisonment for inciting violence, committing violence in the public sphere, committing maltreatment and committing assault with other person. No one was charged with the murder of the three Ahmadis.[54]

Government failures to adequately address cases of religious violence and discrimination have meant that followers of these minority religious groups displaced by violence have often been unable to return to their homes following the violence, and have had to stay in temporary shelter for years without access to basic facilities or adequate privacy, space and security.

- About 130 people, including women and children, from Ketapang, West Lombok sub-district belonging to the Ahmadiyya community have been living in temporary accommodation in Mataram, Lombok seven years after they were attacked by mobs in February 2006 . The local authorities have repeatedly told the community that it was better for them to live in the shelter as neither they nor the police could guarantee their security and protection if they returned to their homes.[55]

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[53] Eight police officers from the Cikeusik sub-district police, Pandeglang District police and the Banten regional police were found subsequently guilty in internal disciplinary proceedings for failing to follow internal regulations and to protect the public and were given sanctions including written warnings, removal from their position, delayed promotion, delayed education and administrative detention of up to 21 days. Three police officers were initially charged under Article 359 of the Criminal Code for "negligence leading to a death of another person" and Article 531 of the Criminal Code for "failing to extend or provide assistance that leads to a death" in August 2011. However, their investigation files were returned to the police in October 2011 and Amnesty International is not aware if the three were eventually brought to trial. See *Tribun News*, "Berkas Tersangka Tiga Polisi Kasus Cikeusik Tak Lengkap" [Dossiers of three police suspects from Cikeusik case incomplete], 7 October 2011, available at: http://www.tribunnews.com/2011/10/07/berkas-tersangka-tiga-polisi-kasus-cikeusik-tak-lengkap, accessed 13 June 2013.

[54] See Amnesty International, *Indonesia: Ahmadiyya killings verdicts will not stem discrimination*, 28 July 2011, and *Kompas*, "12 Terdakwa Cikeusik Divonis 3-6 Bulan" [12 charged for Cikeusik incident sentenced between 3-6 months], 29 July 2011, available at: http://regional.kompas.com/read/2011/07/29/02584525/12.Terdakwa.Cikeusik.Divonis.3-6.Bulan, accessed 13 June 2013.

[55] An Amnesty International visit in March 2010 found that the community was living in three 20-by-8-metre dormitories, where rooms for each family were only three metres square each and were divided by banners and sarongs tied up with plastic string. The facilities lacked essential services. Tap water was frequently cut off by the authorities and there was no electricity supply. Dozens of adults in the shelter do not have identity cards and have faced various obstacles in obtaining them from the local authorities. According to information from credible sources as of May 2013 the situation in the shelter remains the same. Because they lack identity cards, they are unable to access essential services, including free healthcare available to the poor.

Amnesty International considers that the Indonesian authorities should:

- Conduct prompt, effective. independent and impartial investigations into all reports of intimidation, harassment and attacks against the Ahmadiyya, Shi'a, Christian and other religious minorities and bring the perpetrators to justice in accordance with international fair trial standards, and without recourse to the death penalty;

- Ensure the police actively protect the rights of all citizens regardless of their religious or other beliefs and put in place a strategy for preventing and addressing incidents of religiously based violence. The police should also ensure they register and investigate all cases of religious-based violence, threats and intimidation, regardless of the religious background of the victim; and

- Guarantee the safe, voluntary and dignified return of displaced minority religious communities to their homes or to permanent resettlement and adequate alternative housing elsewhere in the country, according to their wishes.

3.1.3 FORCED CONVERSIONS

Amnesty International is also concerned about credible reports that local government officials, at times working with radical Islamist groups, have intimidated or threatened Ahmadiyya or Shi'a followers in an attempt to force them to denounce their beliefs.

- In April 2011 Ahmadiyya families in Sukagalih village, Sukaratu sub-district in West Java reported receiving visits every few weeks by village administration staff and members of the hard-line Islamist group the Islamic Defenders Front (*Front Pembela Islam*, FPI). The Ahmadiyya members reported being given invitation letters asking them to attend meetings where they would be expected to leave the Ahmadiyya faith. Those who agreed to attend are made to sign a register. Officials have reportedly informed the Ahmadiyya members that "if you do not want to sign, we will not be responsible for what might happen to you".[56]

- According to human rights groups, Shi'a followers in Sampang, East Java who were forcibly evicted by an anti-Shi'a mob and have been living in a temporary shelter since August 2012 have been pressured by the East Java and Sampang district authorities to convert to Sunni Islam if they wanted to return to their homes. Otherwise, they would be forcibly relocated either to another part of the province or to somewhere outside Java island.[57]

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[56] Amnesty International, *Open letter on human rights violations against the Ahmadiyya in West Java*, Supra No44.

[57] See *Tempo* "Kontras: 26 Warga Syiah Dipaksa Pindah Akidah" [Kontras: 26 Shi'a followers forced to convert], 6 November, available at: http://www.tempo.co/read/news/2012/11/06/058439961, accessed 13 June 2013; and *Portal KBR* "JIAD: Pemerintah Jangan Paksa Jemaat Syiah Pindah Keyakinan" [JIAD: Authorities must stop forcing Shi'a followers to convert], 16 November 2012, available at: http://www.portalkbr.com/berita/nasional/2303834_5486.html, accessed on 13 June 2013.

Amnesty International considers that the Indonesian authorities should:

- Take steps to ensure that all religious minorities are protected and allowed to practice their faith free from fear, intimidation and attack; and
- Investigate reports that the local government officials have been involved in the intimidation of Ahmadiyya followers forcing them to renounce their faith.

3.1.4 CLOSURE OF PLACES OF WORSHIP

Amnesty International has also documented the closure or takeover of places of worship by local authorities. In some instances the authorities have refused to reopen the places of worship or to issue a building permit despite court ruling in favour of the congregation stating that it would affect religious harmony.

- The Taman Yasmin Indonesian Christian Church (*Gereja Kristen Indonesia*, GKI), in Bogor, West Java, was closed and sealed off by the Bogor city administration in 2008 after its building permit was revoked. The Bogor city administration claimed that the permit was obtained using falsified signatures from members of the community. However, in December 2010 the Indonesian Supreme Court overturned the decision and ordered the church to be re-opened. Nevertheless, the authorities in Bogor have refused to comply with the ruling, citing fears that doing so would spark social unrest. Members of the congregation, who have been forced to conduct their weekly services on the pavement outside the church have been harassed, intimidated and attacked by mobs since 2008.[58]

- In April 2008 the Filadelfia Batak Christian Protestant Church congregation applied for a permit to build a church in Bekasi, Greater Jakarta area. Although their application met all requirements, the permit was not issued. While waiting for the permit, the congregation decided to build a makeshift church in which they could conduct their weekly Sunday services. On 31 December 2009, the Bekasi District Head issued a letter prohibiting the construction of a church building on the site and banning the congregation from worshipping on their land. Leaders of the congregation submitted the case to the Bandung Administrative Court in March 2010. The Court ruled in their favour in September 2010, ordering the Bekasi District Head to withdraw the letter and grant the church a building permit. Appeals by the Bekasi District local government to the Jakarta Administrative Court, and the Indonesian Supreme Court were also rejected. In rejecting the appeal, the Supreme Court ruled that preventing the congregation from worshipping on the church property was in violation of the law. However, the Bekasi authorities continue to defy the Supreme Court ruling and have refused to issue the church building permit. Since being prohibited to build their church, the congregation have been forced to hold services on the pavement outside the sealed-off building. The congregation have faced numerous protests, intimidation and threats since they began worship outside the church in December 2009.[59]

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[58] Amnesty International, *Indonesia: Church congregation threatened* (Index: ASA 21/017/2011), 6 July 2011.

[59] Amnesty International, *Indonesia: Demand protection for church congregation* (Index: ASA 21/018/2012), 30 April 2012.

Amnesty International considers that the Indonesian authorities should:

- Immediately comply with the Indonesian Supreme Court ruling to issue building permits to the Taman Yasmin Indonesian Christian Church in Bogor and the Filadelfia Batak Christian Protestant Church in Bekasi; and

- Denounce all incidents related to the attack against places of worship and ensure that the perpetrators are brought to justice.

3.2 SHARI'A LAW AND ACEH

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education, and family affairs.

Aceh's provincial legislature passed a series of bylaws governing the implementation of Shari'a law after the enactment of the province's Special Autonomy Law in 2001. Caning was introduced as a punishment carried out by Islamic courts for a range of offences including adultery, consumption of alcohol, being alone with someone of the opposite sex who is not a marriage partner or relative (*khalwat*) and for any Muslim found eating, drinking or selling food during sunlight hours in the fasting month of Ramadan.[60]

At least 45 people were caned in 2012 for gambling and *khalwat.*

In addition to the Aceh bylaws providing for caning, the Aceh Islamic Criminal Code (*Qanun Hukum Jinayat*) passed by the Aceh parliament in 2009 provides for stoning to death for adultery and caning of up to 100 lashes for homosexuality and premarital sex.[61] This code has not yet been implemented, in part because of intense criticism at local, national, and international levels. A revision of the Code is currently being discussed by the local government and parliament of Aceh. The stoning sentence has reportedly been removed however the current draft continues to impose caning as a form of punishment. [62]

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[60] A person guilty of "adultery" or *khalwat* faces between three to nine lashes under Aceh bylaw No. 14/2003; Aceh bylaw No.13/2003 provides for a maximum 12 lashes for gambling; the consumption of alcohol is punishable with 40 lashes under Aceh bylaw No.12/2003; and Aceh bylaw No.11/2002 provides that up to two lashes can be given for any Muslim found eating or drinking and further, that up to six lashes can be given for selling food during sunlight hours in the fasting month of Ramadan.

[61] Amnesty International, *Open letter about the Islamic Criminal Code in Aceh* (Index: ASA 21/021/2009).

[62] The *Jakarta Globe*, "Aceh Government Removes Stoning Sentence from Draft Bylaw", 12 March 2013, available at: http://www.thejakartaglobe.com/news/aceh-government-removes-stoning-sentence-from-draft-bylaw/579227/, accessed 3 June 2013.

Amnesty International considers that the Indonesian authorities should:

- End the use of caning as a form of punishment and repeal the laws that allow it in Aceh province; and

- Undertake a review of all local regulations that have been put in place in the last decade in Indonesia, including Aceh, to ensure that they are in full conformity with the Covenant as well as with human rights provisions set out in the Indonesian Constitution and in the 1999 Law on Human Rights.

4. WOMEN'S RIGHTS

Articles 2, 3, 7 and 26

4.1 FEMALE GENITAL MUTILATION

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning "female circumcision" (*sunat perempuan*).[63] The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as "the act of scratching the skin covering the front of the clitoris, without hurting the clitoris". The procedure includes "a scratch on the skin covering the front of the clitoris (frenulum clitoris) using the head of a single use sterile needle" (Article 4.2 (g)). According to this regulation, the act of "female circumcision" can only be conducted with the request and consent of the person circumcised, parents or guardians (Article 3.1).[64]

This regulation violates a number of Indonesian laws[65] and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women and girls.

In its July 2012 Concluding Observations the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) expressed deep concern about what it described as Indonesia's "serious regression" with regard to the practice of female genital mutilation. It recommended that the Indonesian authorities take immediate steps to withdraw the 2010 regulation authorizing certain medical practitioners to conduct "female circumcision" and to adopt legislation which criminalizes female genital mutilation.[66] It requested the government to provide written information on steps taken to implement this recommendation within two years. To date no steps have been taken to implement the recommendation to withdraw the 2010 regulation. Indeed, in the context of the Universal Periodic Review of Indonesia in September 2012 the Indonesian government rejected a

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[63] Minister of Health of the Republic of Indonesia Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision, 15 November 2010, enacted in Jakarta on 28 December 2010.

[64] Commentary based on an unofficial translation, on file with Amnesty International.

[65] For example Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Presidential Decree No. 36/1990 concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 39/1999 on Human Rights; Law No. 23/2002 on Child Protection; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health.

[66] See *Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia* (UN Doc. CEDAW/C/IDN/CO/6-7), 27 July 2012, paras 21-22.

recommendation to repeal the regulation.[67] Further, the government defended the regulation stating "[t]he regulation of the Ministry of Health of November 2010 was issued to ensure a safe procedure, and by no means to encourage or promote the practice of female circumcision."[68]

A 2003 study conducted by the Population Council in Jakarta with the support from the Ministry for Women's Empowerment concluded that "extensive medicalization of [female circumcision] has already occurred in some parts of the country and is underway in others".[69] This conclusion was supported by a 2009 Indonesia-wide survey on female genital mutilation, published by the Institute of Population and Gender Studies, Yarsi University, Jakarta, which found that "medicalization" of female genital mutilation "continues to this day without showing any tendency of a downward trend".[70] The 2009 study, which examined the practice of female genital mutilation by health institutions (general hospitals, women and children's hospitals, and maternity clinics) and health professional organizations, found that 18 per cent performed female genital mutilation.[71] Of those, 56 per cent said that the procedure was "symbolic" and did not remove any part of the genitalia and the remaining 44 per cent admitted to removing parts of the female genitalia.[72]

During research carried out in March 2010,[73] Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl's "cleanliness" (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls' urge towards "sexual activity" during adulthood. Some women described the procedure as being merely a "symbolic scratch", while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that

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[67] See Addendum to the *Report of the Working Group on the Universal Periodic Review: Indonesia* (UN Doc: A/HRC/21/7/Add.1), 5 September 2012 para 6.8, referring to recommendation 109.26 (Norway) in *Report of the Working Group on the Universal Periodic Review: Indonesia* (UN Doc: A/HRC/21/7), 5 July 2012.

[68] *Report of the Working Group on the Universal Periodic Review: Indonesia* (UN Doc: A/HRC/21/7/Add.1), 5 September 2012 para 6.8.

[69] Population Council, *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions to Uphold Women's Health Rights*, Jakarta, September 2003, p39.

[70] See Prof Dr. Jurnalis Uddin, et al, *Female Circumcision: A Social, Cultural, Health and Religious Perspective, Institute of Population and Gender Studies*, Yarsi University, Jakarta (Jakarta: Yarsi University Press, 2010), (Uddin et al, 2010), p162.

[71] Uddin et al, 2010, Supra No70, pp3-4.

[72] Uddin et al, 2010, Supra No70, pp8-10.

[73] Amnesty International, *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010).

there would be some bleeding as a result.

Amnesty International considers that the Indonesian authorities should:

- Immediately repeal the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 concerning female circumcision; and

- Put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include:

1. The enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation;

2. The publicizing and dissemination of the 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women; and

3. The implementation of public awareness-raising campaigns at community levels and within health institutions to change the cultural perceptions, including gender stereotyping, associated with female genital mutilation.

4.2 GENDER STEREOTYPES PERTAINING TO MARRIAGE AND CHILDBEARING

Women's role and status in Indonesia are widely perceived in relation to marriage and motherhood. The stereotyping of women's – as well as men's – roles is codified in law. The Marriage Law (No. 1/1974) states that "the husband is the head of the family while the wife is the head of the household" (Article 31.3). "[T]he husband has the responsibility of protecting his wife and of providing her with all the necessities of life in a household in accordance with his capabilities" (Article 34.1), while the wife "has the responsibility of taking care of the household to the best of her ability" (Article 34.2).

The Marriage Law provides that the legal age of marriage in Indonesia is 16 for women, and 19 for men (Article 7). The Marriage Law authorizes polygamy.[74] According to Article 4.1 and 4.2, men may seek to have more than one wife provided that (a) their wife does not fulfil the obligations of a wife; (b) their wife has a health condition which cannot be treated; or (c)

[74] Polygamy is also referred to in other legal provisions. See for example government regulation No. 10/1983, which was later revised with government regulation No. 45/1990, which stipulates that a male state official can marry more than one woman only after receiving permission from his superiors. The regulation also stipulates that permission can only be granted if a state official's wife fulfils one of three criteria – namely she is incapable to serve in her duty as a wife; has an incurable disease; or is incapable of giving birth to a child. In *The Jakarta Post*, "Police Chief Responds To Polygamy Claims", 12 May 2010, available at: http://www.thejakartapost.com/news/2010/05/12/police-chief-responds-polygamy-claims.html, accessed 3 June 2013.

their wife has not borne a child (*isteri tidak dapat melahirkan keturunan*). Provisions pertaining to different minimum ages for marriage between women and men, and to polygamy support gender stereotyped roles and differential treatment between women and men. For example, the pre-condition set in Article 4(c) supports a gender stereotypical view that women's primary function is to bear children.

Parliament has failed to prioritize the revision of the Marriage Law despite it being on the National Legislation Programme (*Prolegnas*) since 2006.

In its 2012 Concluding Observations the CEDAW Committee stated that it was "deeply concerned about the persistence of a large number of discriminatory laws at the national level, in particular the provisions in the Marriage Act of 1974". The Committee further stated that Indonesia had "not taken any action towards those by-laws which constitute discrimination against women".[75] It recommended the Indonesian government repeal discriminatory provisions within the Marriage Law and amend all discriminatory bylaws. With regard to repealing the Marriage Law, the Committee requested the Indonesian government to report back on progress within two years. At the time of writing no progress had been made to repeal the law.

Amnesty International considers that the Indonesian authorities should:

- Review and amend the Marriage Law (No. 1/1974) to eliminate provisions that discriminate against women, including age of marriage and polygamy, or perpetuate gender stereotypes; and

- Conduct a public education campaign designed at eliminating gender stereotypes and raising awareness of the risks associated with early marriage.

4.3 DISCRIMINATION IN ACCESS TO SEXUAL AND REPRODUCTIVE HEALTHCARE AND SERVICES

Women and girls across Indonesia continue to face serious obstacles in law, policy and practice, to fulfilling their sexual and reproductive rights, obstacles which are rooted in gender discrimination.

Both the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) provide that access to sexual and reproductive health services may only be granted to legally married couples, thus excluding all unmarried people from these services.[76] District health officers and other government officials told Amnesty International in March 2010 that contraception and family planning services are intended solely for married people in accordance with laws and policies.

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[75] *Concluding observations of the CEDAW Committee on Indonesia*, para 17.

[76] See *Left without a choice*, Supra No73, pp24-26.

This situation leaves unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases,[77] and human rights abuses. For example, unmarried adolescents who become pregnant are often forced by the school administrators to stop schooling. Instead of risking rejection by the wider community, some women and girls may decide – or be forced – to marry when they become pregnant, or else to seek an unsafe abortion which puts them at risk of serious health problems and maternal mortality.[78]

For unmarried women and girls who want to continue pregnancy, it remains unclear how they can access reproductive health services during pregnancy and at the time of the birth, without getting married first. Amnesty International's research suggests that the fear of stigmatization can discourage pregnant unmarried women and girls, especially if they are from poor and marginalized communities, from seeking antenatal and postnatal services. Unmarried women and girls who are rape victims may also not receive access to reproductive health services, either because they do not know they are entitled to these services or due to the fear of stigmatization.

In July 2012 the CEDAW Committee raised concerns about "[t]he insufficient provision of comprehensive education on sexual and reproductive health and rights, which is limited, in practice, to married couples."[79]

Amnesty International considers that the Indonesian authorities should:

- Review and amend the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) to bring them into line with the Covenant and other international human rights rules and standards. In particular legal provisions which discriminate on the grounds of marital status (for example access to family planning services and reproductive health services) should be amended and requirements for the husband's consent should be removed; and

- Take measures to ensure that state officials, health workers and other service providers provide women and girls, men and boys, regardless of their marital status, age-appropriate sexual and reproductive health information and services. Monitoring mechanisms should be in place to ensure that reproductive health programmes are implemented free from discrimination.

- Conduct targeted campaigns to highlight the impact on women's and girls' health and human rights of policies, laws and practices, at the central and local levels, which are stereotyping the roles of women and girls. These campaigns should be developed in consultation with women and girls and should be conducted in particular in rural areas and among the least educated. They should highlight the link between discriminatory practices and reproductive health.

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[77] Amnesty International notes that men and boys are also at risk of sexually transmitted diseases, however the organization had not undertaken specific research in this regard.

[78] See *Left without a choice*, Supra No73 p25.

[79] *Concluding observations of the CEDAW Committee on Indonesia*, para 41(c) and (d).

4.4 RESTRICTIONS ON ACCESS TO INFORMATION ON SEXUALITY AND REPRODUCTION

Indonesia's Criminal Code contains provisions which criminalize supplying information to people relating to the prevention and interruption of pregnancy (Articles 534, 535 and also 283).[80] Penalties range between two and nine months' imprisonment. Furthermore, Article 299 of the Criminal Code provides for up to four years' imprisonment for any person who gives treatment to a woman which contributes to the termination of her pregnancy or which makes her believe that it is intended to induce termination of pregnancy (this could be applied to, for example, emergency contraception).

Although Amnesty International is not aware of individuals being arrested and prosecuted for having violated these provisions, the fact that they remain part of Indonesian law has a chilling effect on information providers.

Amnesty International considers that the Indonesian authorities should:

- Repeal provisions in the Criminal Code criminalizing the dissemination of information on the prevention of pregnancy and revise the Pornography Law (No. 44/2008) to ensure that it is fully consistent with the Covenant and other international rules and standards; and

- Publicly support the work of human rights activists, who are promoting and providing sexual and reproductive health information and services (for example contraceptives) and ensure that they are able to do their work free from the threat of criminalization.

4.5 DRESS CODES

Amnesty International is concerned about some regulations on dress codes in Indonesia which are discriminatory towards women and girls. In 2009 the National Commission on Violence against Women (Komnas Perempuan) identified 21 regional regulations on dress codes which "directly discriminate against women" in intent or impact.[81] The Commission

[80] Article 534 provides that "[a]ny person who either openly exhibits means for preventing pregnancy, or without being requested offers, by disseminating in writing, shows where such means or services for the prevention of pregnancy are available, shall be punished by a maximum light imprisonment of two months". Article 535 provides that "[a]ny person who either openly exhibits means for the termination (*menggugurkan*) of pregnancy, or openly or without being requested offers or shows where such means or services for the disturbance of pregnancy are available, shall be punished by a maximum light imprisonment of three months ". Article 283 provides that "any person who offers, hands over permanently or temporarily shows to a minor who he knows or reasonably suspects not yet to have reached the age of seventeen years, either a piece of writing, a portrait or an article offending against decency, or a means to prevent or to terminate (*mencegah atau menggugurkan*) pregnancy, shall be sentenced to a maximum of 9 months' imprisonment".

[81] National Commission on Violence against Women (Komnas Perempuan), In the name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia, 2009, p19.

found that regulations on dress codes also discriminate against minority beliefs and cultures.[82] Punishments for women and girls who do not conform to dress codes range from disciplinary sanctions for civil servants to social sanctions, including public shaming.

- In Aceh province, the Shari'a police (called Wilayatul Hisbah), and in some cases members of the public, conduct raids to ensure women comply with the local regulation on dress codes (Aceh Regional Regulation (Qanun) No. 11/2002 on the Implementation of Sharia in the fields of Belief, Worship and Promotion of Islam). Non-compliance can lead to warnings or detention. In May 2012 local newspapers reported that 62 women in Bireuen district were detained for wearing "tight clothing".

Amnesty International considers that the Indonesian authorities should:

- Ensure that any restrictions on dress are demonstrably necessary and proportionate for the achievement of a purpose recognized as legitimate under international human rights law; and

- Take effective measures to protect women from violence, threats, or coercion by law enforcement officials or members of the general public to compel them to wear particular forms of dress.

[82] *Ibid.* pp33-35.

5. MIGRANT DOMESTIC WORKERS

Article 8

Research by Amnesty International indicates that significant numbers of Indonesian migrant domestic workers are being exposed to trafficking and forced labour by Indonesian recruitment agencies and that the government is failing in its duty to properly regulate and where necessary punish those responsible for abuses against domestic workers, and take steps against agencies which are involved in these activities.

The following information is based on interviews conducted by Amnesty International with 97 Indonesian migrant domestic workers and returnees in Hong Kong and Indonesia respectively between May 2012 and March 2013.

Amnesty International's research indicates that a significant number of brokers and recruitment agencies are involved in the trafficking of Indonesian migrant women as they use deception to recruit the women into jobs where they will later face exploitation and situations of forced labour.

In 2012, the International Labour Organization (ILO) noted that migrant domestic workers' "adequate legal protection in Indonesia and abroad, has not yet been sufficiently addressed by the Indonesian government. As a result, domestic workers are exposed to institutionalized trafficking and forced labour practices throughout the entire migration cycle".[83]

Indonesia's *Law No. 39/2004 Concerning the Placement and Protection of Indonesian Workers Abroad* (Law No. 39/2004) stipulates that recruitment agencies must manage the recruitment process for migrant domestic workers. In practice, there is little government involvement either as a direct service provider or through the adequate monitoring of recruitment agencies to ensure that they comply with their obligations under the law.

Most prospective domestic migrant workers, almost entirely women, are recruited by unregistered brokers who are paid by recruitment agencies. Working on commission, it is not unusual for brokers to make false promises about the terms and conditions of work. After agreeing to go abroad, prospective migrant domestic workers travel to a training centre in Indonesia, run by the recruitment agency for which the broker works, to undergo mandatory education (e.g. language) and job skills training.

Most of the women interviewed by Amnesty International in 2012-2013 stated that their recruiter did not provide them with accurate information on their remunerated activities, conditions of work and/or breakdown of the training costs and recruitment fee prior to their arrival at the training centre. Without accurate information of this kind, prospective migrant

[83] ILO, *Combating Forced Labour and Trafficking of Indonesian Migrant Workers*, available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/projectdocumentation/wcms_153145.pdf, accessed 21 April 2013.

workers cannot make an informed decision about whether to take the job or not. By the time they find out the true terms and conditions of work – either at the training centre or in the country of destination – it is too late to withdraw from the migration process, as they are already in debt to the recruitment agency and securing work abroad is the only means they have to repay what they owe.

This is in line with the findings of the 2011 random survey by the Indonesian Migrant Workers Union (IMWU)[84] involving 930 Indonesian migrant domestic workers in Hong Kong, which found that 77 per cent of respondents were not informed about the cost of their training and a further 63 per cent felt that they did not receive the necessary information about their work in Hong Kong at this stage of recruitment.[85]

During the training period in Indonesia, the trainees' freedom of movement is restricted in order to prevent women from changing their minds about going abroad for employment and returning home. For example, the majority of interviewees stated that they were not permitted to leave the training centre unless they deposited cash – usually between IDR 1,000,000-3,000,000 (US$100-300) – or a property certificate (land, house, motorcycle) as collateral to the recruitment agency. At least 12 of the 97 women interviewed by Amnesty International were also subjected to mandatory contraception injections, especially before being allowed to visit their homes. It was also common practice to confiscate mobile phones and to restrict contact with family and friends by limiting phone calls or visits to one day per week.

In addition, recruitment agencies ensure that they maintain control over migrant domestic workers both at the training centre and when the women are in the destination country by confiscating important personal and family documents. Migrants must normally deposit several documents as a guarantee to pay the recruitment fees as soon as they arrive at the training centre. The documents include birth certificate, family certificate, property titles, school diploma, promissory note from the family to pay the fees and Indonesian ID card. The removal of these documents is also used as a coercive mechanism to ensure that Indonesian migrant domestic workers stay in the job they are sent to in Hong Kong, as they are not able to get their documents back until their debt has been fully repaid.

Consequently, once prospective migrants arrive at the training centre, it is virtually impossible for them to change their mind and return home. Despite a government breakdown of the cost structure of recruitment fees,[86] their debts to the recruitment agency for accommodation, subsistence, and education and training are in reality charged at a flat rate

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[84] From July to September 2011, IMWU, in conjunction with the International Trade Union Confederation (ITUC) and Hong Kong Confederation of Trade Unions (HKCTU), carried out a questionnaire, which was completed by 930 Indonesian migrant domestic workers in neutral venues (e.g. parks, on the streets) throughout Hong Kong and the New Territories.

[85] ITUC, IMWU and HKCTU, Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p23 and p32.

[86] The current cost structure is outlined in Indonesia's Manpower and Transmigration Ministerial Decree No. 98/2012.

from day one. Thus, if prospective migrants change their mind after a couple of days or in the second week, they will still be liable to pay the full education and training fee to the recruitment agency. The repayment is usually HK$21,000 (US$2,700) over the initial seven months of work in Hong Kong.[87]

The combination of debts the prospective migrants have incurred by starting the training programme (both travel costs and recruitment fees) and the restrictions on their freedom of movement once at the training centre, leaves the women with little choice but to go through with the foreign employment, even once they find out they have been deceived by the broker and/or the recruitment agency in relation to the job they were promised and the charges they would incur in order to take it up.

To exacerbate matters, according to the interviews conducted by Amnesty International, it is common practice for recruitment agencies to have migrants sign a contract without reading or fully understanding its content and to fail to provide them with the obligatory Foreign Employment Identity Card (*Kartu Tenaga Kerja Luar Negeri* or KTKLN). The card's purpose is identification, proof of having complied with governmental procedures for foreign employment, and access to protection mechanisms.[88] Similarly, the IMWU survey found that 38 per cent of migrant domestic workers were not informed about or were not given the opportunity to read and understand the contents of the documents that they were told to sign.[89]

Interviews clearly indicate that migrants have little or no awareness of their rights, including redress mechanisms. Under Law No. 39/2004, all migrant domestic workers are required to attend the training programme and government-run Final Pre-Departure Programme (*Pembekalan Akhir Pemberangkatan* or PAP), where their rights and responsibilities are explained. Despite this, virtually no interviewees were informed of the breakdown of their recruitment fees, including for insurance coverage. This mandatory insurance policy costs IDR 400,000 (US$40)[90] for a two-year employment contract and covers the migrants during pre-departure, placement and return. It insures the workers and their family in the event of failed recruitment, unpaid wages, early termination of contract, contractual deception, physical abuse, sexual harassment and assault, legal proceedings, being stranded, illness,

[87] This exceeds the 2012 Ministry of Manpower and Transmigration Ministerial Decree No. 98/2012 on the Components and Placement Fee of Domestic Workers Candidates with Hong Kong as the Destination Country, which sets the maximum total fee recruitment agencies can charge at IDR 14,780,400 or HK$13,436 (US$1,730).

[88] See "Pelayanan Penerbitan KTKLN (SE /KA/V/2011) [Publishing Services KTKLN (SE /KA/V/2011)]", available at: http://www.bnp2tki.go.id/peraturan-ka-bnp2tki-mainmenu-175/6822-pelayanan-penerbitan-ktkln-se-kav2011.html, accessed 14 May 2013 (in Indonesian).

[89] ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p29.

[90] Cost of insurance outlined in both Decrees No. KEP.186/PPTK/VII/2008 and No. 98/2012 on recruitment fees.

industrial accident and death.[91] The IMWU survey also revealed that 52 per cent of the respondents were not aware that they had paid for any insurance.[92]

Many Indonesian migrant domestic workers interviewed by Amnesty International reported that upon arrival in Hong Kong, they discovered that their working conditions were different from what their broker, their recruitment agency or both had promised in Indonesia. Typically, this included false or misleading information related to the wages they would receive, job type, statutory weekly rest day and workload.

Article 24 of Law No. 39/2004 requires that recruitment agencies in Indonesia have a business partner or placement agency, in the destination country. It is through the placement agency that recruitment agencies are able to exert further control over the migrant domestic worker to ensure that recruitment fees are duly repaid.

Several interviewees stated that their employers prohibited them from leaving the household. This is often due to the explicit instructions given to employers by placement agencies in Hong Kong, especially during the repayment period. The migrants' deprivation of liberty is exacerbated by the removal of their identity and other personal documents. The vast majority of interviewees revealed that their employer or placement agency in Hong Kong confiscated their passport and contract, usually shortly after their arrival.

Amnesty International considers that the Indonesian authorities should:

- Strengthen the monitoring of the recruitment process for migrant domestic workers, and impose adequate penalties for those who violate Law No. 39/2004;

- Improve the quality of the training and final pre-departure (PAP) programmes so that migrant domestic workers receive and understand their contract, are in possession of the KTKLN and are fully aware of their rights, including access to redress mechanisms both abroad and in Indonesia. This should be done by ensuring that all aspects of the training process are delivered on a tripartite basis (i.e. involving representatives of the government, recruitment agencies and migrant/domestic workers' trade unions);

- Fully implement Indonesia's Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons, particularly by prosecuting brokers and recruitment agencies who use deception to recruit migrant domestic workers;

- Incorporate the provisions of the International Convention on the Protection of the Rights

[91] Amnesty International meeting with the Ministry of Manpower and Transmigration in Jakarta, Indonesia on 10 April 2013. See also: "Jenis Resiko yang Ditanggung Asuransi TKI" [Indonesian Migrant Workers' Insurance Coverage], available at: http://www.asuransi-tki.com/p/jenis-resiko-yang-ditanggung-asuransi.html, accessed 14 May 2013 (in Indonesian).

[92] ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p31.

of All Migrants Workers and Members of Their Families into domestic law and implement it in policy and practice; and

- Ratify and fully implement the ILO Domestic Workers Convention (No. 189), incorporate its provisions into domestic law and implement it in policy and practice.

6. JUSTICE, TRUTH AND REPARATION FOR PAST ABUSES

Articles 2, 6, 7 and 9

There remains a persistent culture of impunity for past human rights violations committed by the Indonesian security forces, including in Aceh, Papua and Timor-Leste (formerly East Timor). Attempts to bring the alleged perpetrators to justice have been grossly inadequate, and many persons suspected of serious crimes, including crimes under international law remain at large. Commitments to establish truth commissions have not been fulfilled. Victims of past violations have not been provided with full and effective reparation.

6.1 GAPS IN THE LEGAL AND INSTITUTIONAL FRAMEWORK

The lack of an institutional and legislative framework that is fully consistent with international law and standards contributes to the failure to address impunity for past human rights violations in Indonesia. A Law on Human Rights Courts (No. 26/2000), established to try cases of "gross violations of human rights", has very limited scope and has not been fully implemented. The small number of cases which have been prosecuted before the Human Rights Courts have all resulted in either acquittals or convictions being overturned on appeals.[93] Attempts to pass a new law and enact a national truth commission have stalled six years after the Constitutional Court struck down the flawed Law on a Truth and Reconciliation Commission (No. 27/2004). Most victims are unable to access their right to an effective remedy before Indonesian courts and there exists no effective reparation programme. Furthermore, Indonesia has yet to make concrete commitments to ensuring that crimes under international law will never be committed with impunity again, including by acceding to the Rome Statute of the International Criminal Court and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

6.1.1 FLAWED LEGAL FRAMEWORK TO PROSECUTE HUMAN RIGHTS VIOLATIONS

Law No. 26/2000 on Human Rights Courts was established after considerable pressure by the international community on the Indonesian government to address serious crimes committed in Timor-Leste (the East Timor) in the context of the 1999 independence referendum. This mechanism, which provides for the setting-up of both permanent and ad-hoc Human Rights Courts, contains a number of provisions which fall short of the Covenant's requirements.

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[93] No one is currently imprisoned as a result of trials before the permanent human rights court in Makassar (Abepura case, 2000), or as a result of trials before the ad-hoc human rights courts (Tanjung Priok, 1984 and East Timor, 1999). See International Center for Transitional Justice (ICTJ) and KontraS (the Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto,* April 2011, (ICTJ and KontraS, *Derailed*), p41, available at: http://ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English_0.pdf, accessed 10 June 2013.

The Law on Human Rights Courts limits their jurisdiction to "gross abuses[94] of human rights" (*"pelanggaran hak asasi manusia yang berat"*) which it defines only as genocide and crimes against humanity. Therefore it excludes other crimes under international law without any basis, including: war crimes, torture, extrajudicial execution and enforced disappearance.[95]

Komnas HAM is the sole body expressly authorized to initiate and carry out preliminary *pro-justicia* inquiries into alleged cases of "gross abuses of human rights" (Article 18 of the Law on Human Rights Courts). It is not clear whether prosecutors could conduct preliminary inquiries. Any restriction on the ability of prosecutors to conduct inquiries would be inconsistent with their independence and contrary to the UN Guidelines on the Role of Prosecutors, in that it limits their ability to select cases for investigation.

Articles 21 and 23 of the Law on Human Rights Courts provide that the investigation are to be undertaken and prosecutions conducted by the Attorney General, who is a political official, not an independent professional prosecutor. Moreover, the Law on Human Rights Courts is silent on whether decisions taken by the Attorney General, including not to proceed with an investigation or prosecution, can be legally challenged. Decisions on whether or not to open an investigation or to prosecute could be, or be perceived to be, politically motivated if sufficient safeguards are not put in place to ensure that these decisions are made on the basis of neutral criteria, such as the sufficiency of admissible evidence. Even the perception of political bias undermines justice. As long as his or her independence is not guaranteed, the Attorney General should have no role in deciding whether or not to investigate or prosecute. Such decisions should be taken in all cases by an independent professional prosecutor, in accordance with neutral criteria and without any political or other improper pressure.[96]

It is particularly concerning that the only mechanism Komnas HAM can use to follow-up on the failure of the Attorney General to proceed with investigations into reports of human rights violations it has submitted, is to request a written statement from the Attorney General concerning the progress of the investigation and prosecution of a case (Article 25 of the Law on Human Rights Court). In practice, many of the cases that Komnas HAM has submitted to the Attorney General's Office have not been investigated and prosecuted:

- *The 1965-1966 violations:* On 20 July 2012, Komnas HAM submitted a *pro-justicia* inquiry report to the Attorney General's Office which found that government officials had been involved in the systematic persecution of members of the Indonesian Communist Party (PKI) and suspected communist sympathizers following the abortive 1965 coup. A range of human rights violations occurred in the context of the abortive 1965 coup, including unlawful killings, torture, enforced disappearances, rape, sexual slavery and other crimes of

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[94] The law uses the Indonesian word "pelanggaran" which can mean either "violation" or "abuse" when translated in to English. Amnesty International translates this word as "abuse" and thus considers it to refer to both human rights violations by the state and human rights abuses by non-state actors.

[95] See Amnesty International, *Time to Face the Past*, Supra No14, p30; and *Amnesty International's Comments on the Law on Human Rights Courts (Law No. 26/2000*) (Index: ASA 21/005/2001), p2.

[96] Amnesty International, *Time to face the past*, Supra No14, p31.

sexual violence, slavery, arbitrary arrest and detention, forced displacement and forced labour. An estimated 500,000 to one million people were killed and hundreds of thousands were held without charge or trial. Many victims and their families also faced violations of their social, economic and cultural rights, and continue to experience discrimination in law and practice.[97] The Commission's three year investigation found evidence that widespread human rights violations occurred nationwide between 1965 and 1966 and continued into the early 1970s at a lower level. According to the Commission, these findings meet the criteria of 'gross violations of human rights', which include crimes against humanity, as defined by the Indonesian Law No. 26/2000 on Human Rights Courts. Komnas HAM called on the Attorney General to launch an official investigation based on its findings and to establish an *ad hoc* Human Rights Court to bring the perpetrators to justice, as provided by the Law on Human Rights Courts. Komnas HAM also called on the authorities to establish a truth and reconciliation commission and to make a formal apology to the victims and their families. However, there is no sign that the Attorney General will launch any investigation.[98]

- *The Wasior and Wamena cases in Papua:* In September 2004, Komnas HAM submitted *pro-justicia* inquiry reports to the Attorney General's office indicating that it had found initial evidence that suggested that security forces had committed crimes against humanity, including acts of torture in two separate incidents in Papua, in Wasior in June 2001 and Wamena in 2003.[99] The files in both cases were reportedly returned by the Attorney General's Office to Komnas HAM in late December 2004 because they were deemed to be incomplete. Amnesty International has been told that the files have since been resubmitted by Komnas HAM to the Attorney General. To date there have been no new developments in the case.

Offences involving human rights violations and crimes under international law are also currently not defined in the Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) making it very difficult for victims to seek justice before ordinary criminal courts in Indonesia.

Despite committing to accede to the Rome Statute of the International Criminal Court in Indonesia's last two National Human Rights Action Plans (*Rencana Aksi Nasional Hak Asasi*

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[97] Amnesty International, *Indonesia: Attorney General must act on Komnas HAM report on 1965-66 violations* (Index: ASA 21/028/2012), 27 July 2012. The victims and their families are still prohibited from becoming civil servants, military or police officers, teachers or judges. See Mudzayin, *Dibebaskan tanpa Kebebasan; Beragam peraturan diskriminatif yang melilit tahanan politik tragedy 1965-1966* [Freed without Freedom; Various discriminatory laws surrounding political prisoners of the 1965-1966 tragedy], 10 March 2008, KontraS, available at: http://kontras.org/buku/Buku%20Peraturan%20Diskriminatif.pdf.

[98] Amnesty International, *Indonesia: President must ensure truth and justice for 1997-98 enforced disappearances* (Index: ASA 21/006/2013), 22 March 2013.

[99] Amnesty International, *Indonesia: Briefing to the UN Committee against Torture* (Index: ASA 21/003/2008), section 7.2, p37; and ICTJ and KontraS, *Derailed*, p40, Supra No93 available at: http://ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English_0.pdf, accessed 10 June 2013.

Manusia) in 2004 and 2011, Indonesia has yet to do so. Recent reports indicate that the Ministry of Law and Human Rights has prepared a ratification law but has yet to submit it to parliament. The Minister of Defence is reported to oppose accession.

Indonesia took the positive step of signing the International Convention for the Protection of All Persons from Enforced Disappearance on 27 September 2010 but has yet to complete the ratification process.

Amnesty International considers that the Indonesian authorities should:

- Amend the Law on Human Rights Courts (Law No. 26/2000) to:

1. Expand its jurisdiction over other offences involving human rights violations and crimes under international law, in particular war crimes, torture, extrajudicial executions and enforced disappearance;

2. Ensure that Komnas HAM can conduct *pro-justicia* inquiries effectively, including that it has subpoena powers to call witnesses, with due guarantees of their safety, and that it can submit all inquiries regarding crimes under international law to an independent prosecutor for investigation, without any possibility of political interference in the process by the Attorney General or other political officials; and

3. Ensure that Komnas HAM and victims are kept informed of the status of investigations and that they can seek legal review of any decision not to investigate or prosecute offences involving human rights violations or crimes under international law;

- Revise the Criminal Code and the Criminal Procedure Code in compliance with Indonesia's obligations under the Covenant and other relevant international human rights law and standards, and as a priority define all offences involving human rights violations and crimes under international law and principles of criminal responsibility in accordance with international law and standards;

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance at the earliest opportunity, incorporate its provisions in to domestic law and implement it in policy and practice; and

- Accede to the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court, incorporate their provisions in to domestic law and implement them in policy and practice.

6.1.2 FAILURE TO ESTABLISH A TRUTH COMMISSION

In 2004, a law to establish a national Truth and Reconciliation Commission was adopted in Indonesia with powers to receive complaints; investigate "gross violations of human rights" which occurred in the past; and make recommendations for compensation and/or rehabilitation for victims. However, the legislation was seriously flawed as it empowered the Commission to recommend amnesties for perpetrators of crimes, undermining the possibility

of truth and justice. It provided that cases the Commission dealt with would be barred from prosecution and it made it a requirement that victims would only receive compensation if the perpetrator had been granted amnesty.

In 2006, the Indonesian Constitutional Court ruled that the Law on a national Truth and Reconciliation Commission (Law No. 27/2004) was unconstitutional, as it gave powers to recommend amnesties for perpetrators of serious crimes, and struck it down. A new law has been drafted by the Ministry for Law and Human Rights and is scheduled for discussion in parliament in 2011-2014. However, to date the bill has yet to be submitted to the House of People's Representatives.

The absence of a law regulating a national truth commission has also affected the establishment of local truth commissions in Aceh and Papua.

Both the 2005 Helsinki peace agreement and the subsequent 2006 Law on Governing Aceh (Law No. 11/2006, LoGA) contain provisions for the establishment of a Commission for Truth and Reconciliation in Aceh. The MOU provides that a "*Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures*" (Article 2.3). Further, the LoGA provides that the Truth and Reconciliation Commission in Aceh "*shall constitute an inseparable part of the [national] Truth and Reconciliation Commission*" (Article 229), and that it shall become effective no later than one year following the enactment of the LoGA (Article 260). However, the annulment of the 2004 Truth and Reconciliation Law and the subsequent delays in setting up the national Truth and Reconciliation Commission, has been used to delay the setting up of a local Truth and Reconciliation Commission in Aceh.[100]

In April 2013, the Aceh House of People's Representatives decided to accelerate the debate and passage of a draft bylaw (*qanun*) on a truth commission. However, On 19 April 2013, a Presidential spokesperson was quoted by the media as saying that an Aceh truth and reconciliation commission established by the local government in Aceh would have no legal basis as the 2004 law on a National Truth and Reconciliation Commission had been struck down by the Constitutional Court. He added that an Aceh truth commission would open old wounds and would affect the peace.[101]

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[100] Amnesty International, *Time to face the past*, Supra No14, p26.

[101] *Atjehpost.com*, "DPR Aceh bahas rancangan qanun Komisi Kebenaran dan Rekonsiliasi" [Aceh Parliament discuss draft bylaw on Truth and Reconciliation], 29 May 2013, available at: http://dpr-aceh.atjehpost.com/read/2013/05/29/53624/31/31/DPR-Aceh-kembali-bahas-rancangan-qanun-Komisi-Kebenaran-dan-Rekonsiliasi#.UaihqcjpdUI, accessed 13 June 2013; *Medan Bisnis*, "DPRA Konsultasi ke Kemenkum HAM Bahas Qanun KKR" [Aceh Parliament consults with Ministry of Law and Human Rights to discuss TRC bylaw], available at: http://www.medanbisnisdaily.com/news/read/2013/04/24/25553/dpra_konsultasi_ke_kemenkum_ham_bahas_qanun_kkr/#.Ubn4F8jpdUI, accessed 13 June 2013; and *VOA Indonesia*, "Komisi Kebenaran dan Rekonsiliasi Aceh Belum Bisa Dibentuk" [Truth and Reconciliation Commission cannot be formed yet], available at http://www.voaindonesia.com/content/komisi-kebenaran-dan-rekonsiliasi-aceh-belum-bisa-

Article 45 of the Law on Special Autonomy for Papua Province (Law No. 21/2001) also stipulates the establishment of a truth and reconciliation commission in Papua. However the failure to establish a national truth commission has also stalled the establishment of such a body 12 years on.

Amnesty International considers that the Indonesian authorities should:

- Establish without further delay an independent and impartial truth commission, complementing rather than replacing criminal proceedings and without the power to issue amnesties, in order to establish the facts about past human rights abuses including preserving evidence and identifying perpetrators; recommend reparation measures to address the suffering of victims; and recommend institutional reforms to ensure that such abuses will not be repeated; and

- Establish effective mechanisms, including possibly as part of the truth commission, to investigate and record the details of all missing and disappeared persons and search for, locate and release disappeared persons or, in the event of death, to respect and return their remains to their families and communities.

6.1.3 INADEQUATE REPARATION

Under the Covenant, the Indonesian government has an obligation to provide an effective remedy to those whose rights and freedoms have been violated, including reparations. However, laws and regulations in Indonesia related to reparation for victims of human rights abuses remain inadequate and inconsistent with the Covenant, and precludes victims from accessing remedies before national courts. There are no provisions under the Criminal Code which would allow victims and their relatives to obtain reparation for some of the crimes under international law. There have also been no efforts to establish a comprehensive and effective reparation program for victims of human rights abuses.

Law No. 26/2000 on Human Rights Courts provides that *"[e]very victim of a gross human rights violation or abuse, and/or his/her beneficiaries, shall receive compensation, restitution, and rehabilitation*" (Article 35.1) and that a human rights court may grant such measures in their ruling. However, most victims of human rights violations or abuses in Indonesia are unable to access these courts because their jurisdiction is limited, as noted, to crimes against humanity and genocide. Government Regulation No. 3/2002 on the Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations which implements Article 35.1 and 35.2 of the Law on Human Rights Courts states that victims must wait for the verdict to be upheld on all available appeals, before they are eligible for reparation measures. However, past experiences of human rights courts' rulings in Indonesia have been disappointing for victims and their families since, as noted, all the trials before the human rights courts in Indonesia have resulted either in acquittals or convictions being overturned on appeal.

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dibentuk/1644703.html, accessed 21 June 2013.

The 2006 Law on Witness and Victim Protection provides that victims of 'gross human rights violations' are entitled to medical services, psycho-social rehabilitation, to request compensation or restitution, and to protection and assistance from the Witness and Victim Protection Agency. Although some of these measures could be provided before a final decision on guilt or innocence is made, they remain difficult to access in practice.[102] Further, according to Regulation No. 44/2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, victim of 'gross human rights violations' can only apply for compensation when there is an ongoing Komnas HAM *pro-justicia* inquiry or before the Public Prosecutor files charges. In order to qualify the victim would require a referral letter from Komnas HAM showing he/she has suffered 'gross human rights violations'.[103]

Amnesty International considers that the Indonesian authorities should:

- Establish a programme to provide full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights abuses in Indonesia. The programme should be devised in consultation with victims, both women and girls and men and boys, to ensure that the reparation programme is effective and reflects the different needs and experiences of victims/survivors, including women and men based on their gender or any other status. It should also take in to account the nature of the violations and abuses and previous access to measures of reparation, in order to properly address the harm suffered. To avoid further delays in addressing the suffering of victims, the programme should be established immediately to start providing reparation to victims as soon as possible. If recommendations are made by a truth commission in relation to reparation, these should be considered and addressed at that time as part of a review of the programme.

6.2 IMPUNITY CASES IN INDONESIA AND TIMOR-LESTE

6.2.1 TIMOR-LESTE

The Indonesian government has consistently failed to address human rights violations – including crimes against humanity and other crimes under international law – committed by its security forces and their auxiliaries during the occupation of Timor-Leste (1975-1999) and in the context of the 1999 independence referendum. These crimes included unlawful killings, enforced disappearance, rape and other crimes of sexual violence against women and girls, torture and other ill-treatment.[104]

Despite a series of national and UN-sponsored justice initiatives – both in Indonesia and Timor-Leste – over 300 people indicted for crimes under international law continue to evade

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[102] The Witness and Victim Protection Agency is only based in Jakarta and has yet to set up any regional offices limiting access to witnesses and victims in other parts of the country. See Amnesty International, *Time to face the past*, Supra No14, pp37-38.

[103] Amnesty International, *Time to face the past,* Supra No14, p41.

[104] See Amnesty International, "*We cry for justice": Impunity persists 10 years on in Timor-Leste* (Index: ASA 57/001/2009).

justice in Indonesia. The Indonesian authorities have refused to co-operate with the UN-sponsored justice system in Timor-Leste and to extradite their nationals suspected of crimes against humanity to stand trial in Timor-Leste. In Indonesia, all 18 persons who have been prosecuted for crimes committed in Timor-Leste during 1999 by the *ad hoc* Human Rights Court in Jakarta were either acquitted or their conviction was overturned on appeal. To date, there has been no formal process to bring to justice those responsible for crimes under international law committed between 1975 and 1998.

In 2005 the governments of Indonesia and Timor-Leste set up the bilateral Commission of Truth and Friendship (CTF) to "establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the nonrecurrence of similar events".[105] The Commission was widely criticized, in particular provisions in its mandate allowing for amnesties for perpetrators of serious crimes, but its final report rejected amnesties and concluded that Indonesian security forces had committed crimes against humanity in Timor-Leste in 1999.[106]

The Commission recommended measures to provide collective reparation to the victims, including establishing a Commission for Disappeared Persons and a "solidarity fund" that "would give priority to meeting the humanitarian needs of those who suffered through the violence in 1999, and particularly in the areas of housing, health care, and economic opportunities".[107] However, to date Indonesia has largely failed to implement these recommendations.

Amnesty International considers that the Indonesian authorities should:

- Investigate all crimes involving human rights violations and violations of international law more generally, alleged to have been committed by Indonesian forces and pro-Indonesian militias in Timor-Leste between 1975 and 1999, and, where there is sufficient admissible evidence, prosecute those suspected of the crimes in trials which meet international standards of fairness and which do not impose the death penalty. Alternatively, Indonesia should extradite those suspected of these crimes to Timor-Leste or other countries that are willing to prosecute the cases in accordance with international standards and without the death penalty;

- Co-operate fully with investigations and prosecutions of persons accused of crimes in Timor-Leste between 1975 and 1999 before the national courts of Timor-Leste or other courts, including by entering into extradition and mutual legal assistance agreements with Timor-Leste and other governments; and

- Provide full and effective reparation to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility. In particular,

[105] Article 12, Terms of Reference for the Commission of Truth and Friendship.

[106] Final report of the Commission of Truth and Friendship, ppxiii-xiv.

[107] Final report of the Commission of Truth and Friendship, Section 9.2: Implementing mechanisms, p300.

Indonesia should support and contribute to the establishment of a trust fund towards the creation of a comprehensive reparation programme for victims of past crimes.

6.2.2 ACEH

The Aceh conflict between the armed pro-independence movement Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM) and the Indonesian government dated back to 1976, and peaked during military operations from 1989 until a peace deal was signed in 2005.

Amnesty International and other non-governmental organizations as well as state institutions have documented a range of violations committed by members of the security forces and their auxiliaries, including unlawful killings, enforced disappearances, torture, forcible displacement of civilians, arbitrary arrest and detention of those suspected of supporting GAM.[108] Human rights abuses committed by GAM, including hostage-taking and the targeted killing of suspected informers, government officials and civil servants, were also reported. Many of these human rights abuses constitute crimes under international law, including war crimes and possible crimes against humanity.[109]

As explained in Section 6.1.2, although the 2005 Helsinki Peace Agreement and the Law on Governing Aceh (Law No. 27/2004) provided for the establishment of a truth and reconciliation commission and a human rights court for Aceh, neither of these mechanisms has as yet been established. Most suspected perpetrators of crimes under international law in Aceh have never been brought before an independent civilian court of law in Indonesia and the very few trials into criminal offences which amount to human rights violations by members of the security forces have either been conducted by military or joint military-civilian courts (*koneksitas*) which lacked transparency.[110] Although some measures to compensate people for their loss or to assist children whose parents were killed during the conflict were taken during and shortly after the Aceh conflict, there has yet to be a comprehensive reparation programme specifically aimed at addressing the harm suffered by victims of crimes under international law in Aceh and their families. Many survivors of rape and other crimes of sexual violence have not been provided with medical, psychological, sexual and reproductive, and mental health services or treatment either during the conflict or after the conflict ended.

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[108] These include a parliamentary investigation team (*Tim Gabungan Fakta DPR*) set up in July 1998, an Independent Investigation Team established by former President Habibie in 1999 (*Komisi Independen Pengusutan Tindak Kekerasan di Aceh/KPTKA*) and an *ad hoc* investigation team by the National Human Rights Commission (Komnas HAM) in 2003. See Amnesty International, *Time to face the past*, Supra No14, p23-24.

[109] Amnesty International, *Time to face the past*, Supra No 14, p10.

[110] Amnesty International, *Time to face the past*, Supra No 14, p33.

Amnesty International considers that the Indonesian authorities should:

- Take effective measures to investigate and, where there is sufficient admissible evidence, prosecute those responsible for offences involving human rights violations and crimes under international law, including possible war crimes and crimes against humanity, torture, extrajudicial executions and enforced disappearances committed during the conflict, and ensure that those who may have perpetrated such violations are not granted amnesties or other measures to maintain impunity;

- Set up immediately, as a measure to complement but not replace criminal justice, a truth commission in line with international standards to ensure that victims, their families and affected communities are provided with full disclosure about what happened during the Aceh conflict; and

- Provide full, effective and transformative reparation to victims of human rights abuses committed in Aceh, including by taking specific measures to ensure that women can access effective reparation, including through measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women.

6.2.3 DISAPPEARED OR MISSING PERSONS

The Indonesian government has done little to establish the fate and whereabouts of those who were disappeared or went "missing" during the rule of Suharto or the subsequent *reformasi* period (from 1998), including during the conflicts in Timor-Leste and Aceh mentioned above. This situation exacerbates the suffering of the victims' families, who continue to demand that the Indonesian government take action and uncover the truth about what happened to their loved ones.

According to its 2012 Annual report, the Working Group on Enforced or Involuntary Disappearances (WGEID) holds information on 162 outstanding cases of disappearances in Indonesia, [111] while there are a further 428 outstanding cases in Timor-Leste which mostly occurred during the period of Indonesian occupation.[112] According to the WGEID "[t]he majority of cases of disappearances reported to the Working Group [concerning Timor-Leste] occurred between 1990 and 2000", during the Indonesian occupation and in the immediate aftermath of the 1999 Independence referendum.[113] The Indonesian government has yet to accept a request from the WGEID, pending since 2006, to visit the country.

- The fate and whereabouts of the 13 political activists who disappeared in 1997-1998 during the last months of President Suharto's rule remain unknown. Five disappeared in

[111] Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/22/45, 28 January 2013, section on Indonesia, p162.

[112] Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/22/45, 28 January 2013, section on Timor-Leste, p114.

[113] Report of the Working Group on Enforced or Involuntary Disappearances Addendum: Mission to Timor-Leste, UN doc. A/HRC/19/58/Add.1, 26 December 2011, para 22.

1997 and eight disappeared during the political crisis in early 1998. Nine others who were arrested and tortured by the military while being held incommunicado in a military facility in Jakarta in 1998, and who were subsequently released, have confirmed that at least six of the missing activists were held in the same facility.

In 2009, following an inquiry by the Indonesian Human Rights Commission (Komnas HAM), the Indonesian Parliament recommended that President Susilo Bambang Yudhoyono create an *ad hoc* Human Rights Court to try those responsible for enforced disappearances in 1997-1998. However, no-one has been prosecuted for these crimes either before an *ad hoc* Human Rights Court or other courts.[114] Other recommendations have also not been acted upon, including an immediate search for the 13 disappeared activists by the Indonesian authorities; the provision of "rehabilitation and compensation" to the victims' families; and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

While Amnesty International notes that the Indonesian government signed the Convention on the Protection of All Persons from Enforced Disappearance on 27 September 2010, Indonesia has so far failed to ratify the treaty, despite commitments by the government – most recently at the Universal Periodic Review in May 2012 as well as in its 2011-2014 National Human Rights Action Plan – to do so.

Amnesty International considers that the Indonesian authorities should:

- Immediately implement recommendations by the Indonesian Parliament to investigate and establish the fate and whereabouts of the 13 disappeared activists. Where sufficient admissible evidence exists, those suspected of crimes related to their enforced disappearance should be prosecuted in trials that meet international standards of fairness and which do not impose the death penalty. Victims and their families should be provided with full and effective reparation;

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance at the earliest opportunity, making declarations under Articles 31 and 32 recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals claiming to be victims of enforced disappearance or abduction, incorporate its provisions in to domestic law and implement it in policy and practice; and

- Immediately accept and facilitate a request from the Working Group on Enforced or Involuntary Disappearance (WGEID), pending since 2006, to visit Indonesia. Ensure the WGEID is granted unimpeded access to Aceh and all other relevant locations and is able to meet freely with a wide range of stakeholders, including victims and their families, civil society organizations, government officials and members of the security forces.

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[114] Amnesty International, *Indonesia: President must ensure truth and justice for 1997-98 enforced disappearances* (Index: ASA 21/006/2013).

7. THE DEATH PENALTY

Article 6

Indonesia resumed executions in March 2013 after a four year hiatus, when Adami Wilson, a Malawian national was executed by firing squad.[115] On 16 May 2013, three men convicted of murder were also executed by firing squad.[116] There are reportedly plans to execute another six death row inmates in 2013.[117]

In its General Comment No 6 the Committee observed that Article 6 of the ICCPR "refers generally to abolition in terms which strongly suggest that abolition is desirable", and that "all measures of abolition should be considered as progress in the enjoyment of the right to life".[118] It has since consistently called on states parties abolish the death penalty and accede to the Second Optional Protocol to the ICCPR.[119]

The recent executions marked a regressive step as there had been signals in recent years that the Indonesian authorities were moving away from the death penalty. In October 2012, after it was reported that President Susilo Bambang Yudhoyono had commuted the death sentence of a drug trafficker, Foreign Minister Marty Natalegawa stated that the commutation was part of a wider push away from the use of the death penalty in Indonesia.[120] In the same month it

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[115] Amnesty International, *Indonesia: first execution in four years "shocking and regressive"* (Index: PRE01/130/2013), 15 March 2013. Death sentences in Indonesia are carried out by firing squad. The condemned prisoner has the choice of standing or sitting and whether to have their eyes covered, by a blindfold or hood. Firing squads are made up of 12 people, three of whose rifles are loaded with live ammunition, while the other nine are loaded with blanks. The squad fires from a distance of between five and ten metres. See Perkap No. 12 Tahun 2010 [Chief of Police Regulation No. 12/2010] Article 19 and Article 15.e.

[116] Amnesty International, *Indonesia urged to halt planned executions*, 16 May 2013, available at: http://www.amnesty.org/en/news/indonesia-story-2013-05-16, accessed 3 June 2013.

[117] Amnesty International, *Nine More to be Executed in Indonesia* (Index: ASA 21/010/2013), 29 April 2013.

[118] Human Rights Committee, General Comment No. 6 - The right to life (Article 6), adopted at the sixteenth session, 1982, available at: http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/84ab9690ccd81fc7c12563ed0046fae3?Opendocument, accessed 13 June 2013.

[119] See for example concluding observations on Jamaica (UN Doc. CCPR/C/JAM/CO/3, 17 November 2011) para 10, Guatemala (UN Doc. CCPR/C/GTM/CO/3, 19 April 2012) para 13, Malawi (UN Doc. CCPR/C/MWI/CO/1, 18 June 2012) para 10, Ethiopia (UN Doc. CCPR/C/ETH/CO/1, 19 August 2011) para 19, Mongolia (UN Doc. CCPR/C/MNG/CO/5, 2 May 2011) para 6 and Kazakhstan (UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011) para 12.

[120] *The Jakarta Globe*, "Indonesia not Alone in Death Penalty Reticence: Ministers", 17 October 2012, available at: http://www.thejakartaglobe.com/archive/indonesia-not-alone-in-death-penalty-reticence-

was reported that the Supreme Court had commuted the death sentence imposed on a drug trafficker in August 2011, citing the death penalty as a violation of human rights and the Constitution.[121] Further in December 2012, at the UN General Assembly, Indonesia for the first time abstained rather than voted against a resolution calling for a global moratorium on the death penalty. In recent years the authorities have also taken measures to prevent the executions of Indonesian citizens abroad.[122] The Indonesian Foreign Minister reported that between mid of 2011 and end of 2012, 110 persons have been 'freed from the threat of death penalty' in other countries due to these efforts.[123]

Amnesty International believes that there are at least 130 prisoners under sentence of death in Indonesia. So far in 2013 at least six people have been sentenced to death. At least 12 people were sentenced to death in 2012.

The death penalty is usually imposed for the crimes of murder with deliberate intent and premeditation; producing, processing, extracting, converting or making available narcotics; and "terrorism".[124] However, around half of those currently on death row, many of whom are foreign nationals, have been convicted of drug-related offences – i.e. for offences that do not meet the "most serious crimes" threshold of "involving intentional killing" as defined in international standards.

Individuals who have been sentenced to death in a lower court can appeal to the relevant

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ministers/550602/, accessed 3 June 2013.

[121] Putusan Peninjauan Kembali Mahkamah Agung [Supreme Court's Decision on the Case Review] Hanky Gunawan, No. 39 PK/Pid.Sus/2011, on file with Amnesty International, pp53-54.

[122] Annual Press Statement by H.E. Dr. R. M. Marty M. Natalegawa Minister for Foreign Affairs of the Republic of Indonesia, Jakarta, 4 January 2012, p11, available at: http://www.kemlu.go.id/Documents/PPTM%202012/PPTM%202012%20-%20English.PDF, accessed 3 June 2013.

[123] Annual Press Statement by H.E. Dr. R. M. Marty M. Natalegawa Minister for Foreign Affairs of the Republic of Indonesia, Jakarta, 4 January 2013, p6, available at: http://www.kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?Name1=Pidato&Name2=Menteri&IDP=791&l=id, accessed 3 June 2013.

[124] Specifically, the death penalty is provided for in the following provisions of the Indonesian Criminal Code (Kitab Undang-undang Hukum Pidana, KUHP): Article 104 (The attempt with intent to deprive the President or Vice-president of his life or liberty or to render him unfit to govern); 111 (collusion with a foreign power resulting in war); 123 (entering military service in a country at war with Indonesia); 124 (assisting the enemy); 127 (fraud in delivery of military materials in time of war); 140 (premeditated murder of the head of a friendly state); 340 (murder with deliberate intent and premeditation); 365 (theft resulting in murder); and 444 (piracy resulting in the death of a person). The following laws also contain provisions which allow for a maximum sentence of death: Emergency Law No. 12/1951; The Military Criminal Code (*Kitab Undang-undang Hukum Pidana Militer*, KUHPM); Law No. 5/1997 on Psychotropic Drugs; Law No. 22/1997 on Narcotics; Law No. 26/2000 on Human Rights Courts; Law No. 20/2001 concerning acts of corruption; and Law No. 15/2003 on Combating Criminal Acts of Terrorism; Law No. 35/2009 on Narcotics.

high court and to the Supreme Court.

Concerns about the continued application of the death penalty are heightened by the amendment of the clemency law (Law No. 5/2010) in August 2010 restricting those sentenced to death to the submission of only one plea for clemency to the President within a year of the verdict.[125] Previously a person sentenced to death could request a clemency every two years if the execution was not carried out (Law No. 22/2002).[126]

Human rights groups have also expressed concern about death sentences following trials which, in some cases, failed to meet international standards of fairness. Concerns reported to Amnesty International include the lack of adequate access to lawyers, lack of adequate access to interpreters and use of torture to extract confessions, which are then admitted by courts.

■ Zulfiqar Ali, a textile worker from Pakistan, came to Indonesia in 2000 and was arrested at his home in West Java Province on 21 November 2004 for drug trafficking. During his pre-trial detention, Zulfiqar Ali was initially denied a lawyer and did not have adequate time and facilities to prepare a defence. During his arrest and detention, he was also refused the right to contact the Pakistan Embassy, in violation of the Vienna Convention on Consular Relations. Zulfiqar Ali was only allowed access to a lawyer one month after his arrest and states that he was beaten almost daily from the date of his arrest to 21 January 2005 by officers from the Bandara Soekarno-Hatta district police (Polres). He also stated that he was tortured by beating in detention until he signed a confession. He later needed stomach and kidney surgery because of the beatings, and is now in poor health. He was charged with possessing 300g of heroin and tried by the Tangerang District Court, Banten Province, on 20 January 2005. Five months later, on 14 June, he was sentenced to death by the same court. The court rejected a written statement by a witness, which admitted that the drugs did not belong to Zulfiqar Ali, on grounds that the statement had not been dated. Zulfiqar Ali's appeals to the High Court and to the Supreme Court were rejected and he remains under sentence of death. Reportedly, no material evidence has ever been brought against him. He now faces execution, and remains at Kedung Pane Prison in Central Java Province.[127]

Amnesty International considers that the Indonesian authorities should:

■ Halt executions immediately and commute all outstanding death sentences to terms of imprisonment;

■ Establish an immediate moratorium on executions, with a view to abolishing the death penalty;

■ Pending abolition, ensure full compliance with international standards restricting the use

[125] Article 2(3) of the Law No. 5/2010 on Clemency.

[126] Article 2(3) of the Law No. 22/2002 on Clemency.

[127] Anti Death Penalty Asia Network (ADPAN), Zulfikar Ali, Indonesia, (Index: ASA 21/024/2012), October 2012.

of the death penalty, particularly applying it only to the "most serious crimes" and abolishing the mandatory death penalty;

- Revise laws, policies and practices to ensure fair trials in line with international standards, especially upholding the presumption of innocence, the right to legal counsel, and the protection against forced confessions and discrimination; and

- Revise the Criminal Code and all other relevant articles in Indonesian legislation containing provisions for the death penalty so that the death penalty is no longer used as a form of punishment.