

INDONESIA

Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/IND/Q/1)

- AMAN
- Asian Commission on Human Rights
- Arus Pelangi
- Ardhanary Institute
- CDS
- Community Legal Aid Institute
- Consortium of National Law Reform (KRHN)
- ELSAM
- Gaya Nusantara
- Imparsial
- Indonesian Conference on Religion and Peace (ICRP)
- Indonesia Legal Resource Center (ILRC)
- Institute for Criminal Justice Reform (ICJR)
- International Coalition for Papua
- International Human Rights Advocacy (HRWG)
- Jakarta Legal Aid
- Kalyanamitra
- KontraS
- KPI
- PBHI – Indonesian Legal Aid and Human Rights
- Sejiwa
- TAPOL
- Wahid Institute
- Women’s Solidarity

Geneva - Jakarta, 28 June 2013

With the support of the Centre for Civil and Political Rights and Franciscan International

**COMMENTS FROM
CIVIL SOCIETY ORGANISATIONS IN INDONESIA
ON THE LIST OF ISSUES**

REVIEW OF THE FOURTH PERIODIC REPORT OF PHILIPPINES

(CCPR/C/IND/Q/1)

108st session of the Human Rights Committee

Geneva – June 2013

I. Introduction

1. This joint report is prepared by Indonesia's NGO Coalition on International Human Rights Advocacy (HRWG) with Arus Pelangi, Ardhanary Institute, Wahid Institute, Kalyanamitra, ICJR, KRHN, CDS, PBHI, KPI, Elsam, Jakarta Legal Aid, AMAN, ILRC, Sejiwa, Imparsial, Women's Solidarity, ICRP, Gaya Nusantara and The Community Legal Aid Institute. This report is prepared with the support of the Centre for Civil and Political Rights (CCPR-Centre).
2. Report for the situation of Papua, made by Franciscans International, TAPOL, KontraS, International Coalition for Papua and Asian Commission on Human Rights.

II. Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

Issue 1: Please state whether the provisions of the Covenant are directly applicable by domestic courts and to what extent they are invoked and applied. Please also provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant. Please provide information on measures taken to implement the National Strategy on Access to Justice which was launched in 2009. Please state whether the State party intends to accede to the Optional Protocol to the Covenant.

3. One of the challenges currently faced by legal and judiciary reform in Indonesia is how to position international human rights instruments' provisions as a reference for each and every law enforcer, especially judges, in every court, such as in General Court, State Administrative Court, Industrial Relations Court and Constitutional Court. The Indonesian government has made several improvements post 1998 reformation, including amending the constitution by adding a specific chapter on human rights, legalizing laws respectively on Human Rights and the Human Rights Court.

District Courts

4. The level of compliance to the Covenant's provisions by the courts can be assessed based on the courts' decisions, such as in the case of torture. Judge panel of district courts generally pronounced light sentences for torture perpetrators even though the victims were seriously injured or had died. Some of the courts' verdicts appear to contradict the very essence of justice. For example, in the ruling of the District Court of Sijunjung in the Sumatera Barat province that trialled the death of two brothers, Faisal (14) and Budri (17) who had been detained by Sijunjung police on 28 December 2011, the Judge panel sentenced four Sijunjung police officers for a maximum of three years jail term.
5. The judge sentenced Al Indra for three years and subsidiary three months in prison. Defendant, Syamsul Bahri, was charged a jail term of one year and six months based on

Article 351 Paragraph (1) *junto* Article 55 Paragraph (1) item (1). Randi Agusta was sentenced to two years imprisonment.¹

Constitutional Court

6. This case does not only happen in court districts, but also in the Constitutional Court. On several submitted judicial reviews, the rulings of the Constitutional Court deviate from several provisions of the 1945 Constitution and Covenant, especially regarding rights to religion, freedom and the right to live.
7. In 2009, a number of non-governmental organizations and individuals concentrating on pluralism issues in Indonesia submitted a judicial review on Law No. 1/PNPS/1965 on blasphemy. The judicial review was submitted based on - among others - the argument that the Blasphemy Law is no longer in accordance with the 1945 Constitution (amended), particularly with Chapter XA on Human Rights, Article 28A to 28J and Article 29, as well as, Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The Blasphemy Law, especially Article 1, has been used to criminalize anyone whose religious interpretation or activity is perceived as contrary to the teachings of Indonesia's recognized religions, namely Islam, Protestant, Catholic, Hinduism, Buddhism and Kong Hu Cu.
8. This law - consisting of only four main articles and an article concerning the declaration of the enactment of the law and regulates administrative and penal sanctions on anyone breaking the provision mentioned above, i.e. stern warning to individuals to stop their activities by the Joint Decree of the Indonesia's Minister of Religious Affairs, Minister of the Interior and Attorney General.² Moreover, the President has the authority to dissolve religious and faith-based organizations if they continue to violate Article 1 of the Blasphemy Law.³ Afterwards, if the individual or organization's management continues to violate this law, they will be sentenced to five years imprisonment.⁴ The law also states that Article 1 is included in the Penal Code as Article 156A, sentenced to five years imprisonment.⁵
9. These regulations are the ones that were used to issue the joint decree of three ministers to religious organizations perceived deviating a certain religion's teaching, such as one that was issued to the Ahmaddiya community.
10. In 12th April 2010, the Constitutional Court eventually ruled that the Blasphemy Law is not contrary to the constitution and ICCPR's Article 18. Yet two of nine Constitutional Court judges - Judge Haryono and especially Judge Maria Farida Indarti - said that the Constitutional Court should repeal Law No. 1/PNPS/1965 since the Law is discriminatory against followers and organizations of faith-based and spiritual organizations.⁶ Regarding Article 4, Judge Maria Farida Indarti argued that although its Paragraph (156A) is not *materiële delicten*, it is placed among *haatzaai artikelen*, Article 4 Paragraph (156A) is often arbitrarily applied.⁷

¹ Regarding cases of torture can be found in the report released by Working Group Against Torture (WGAT).

² Article 2 Paragraph (1) of Law No.1/PNPS/1965

³ Article 2 Paragraph (2) of Law No.1/PNPS/1965

⁴ Article 3 of Law No.1/PNPS/1965

⁵ Article 4 of Law No.1/PNPS/1965

⁶ Dissenting Opinion of Constitutional Court's Judge Maria Farida Indarti in Constitutional Court Decision No. 140/PUU-VII/2009 pages 317 – 319

⁷ *Ibid*, page 320

11. Even though the Constitutional Court turned down the judicial review, in one of its legal considerations, the Court accepted the experts' point of view stating that the Law needs to be revised, so that there is no room for misinterpretation when being implemented. The Constitutional Court stated that it is within the authority of lawmakers (Government and House of Representatives) to revise the Law through national legislation, as the Constitutional Court does not have the authority to redact and make any substantial revisions.⁸
12. Unfortunately, in the last three years, the Government and House of Representatives haven't taken any steps to revise the Law. Instead, the government refused the recommendation of Universal Periodic Review (UPR) in May 2012 whereby, Denmark recommended to revise/repeal Law No.1/PNPS/1965⁹.

Constitutional Court versus Death Penalty

13. In 2007, five people were put on the death penalty for drug offenses and submitted a judicial review of the death penalty regulated by Law No. 22 Year 1997 on Narcotics. Those five people argued that Article 28A of the 1945 Constitution explicitly states that "Each person has the right to live and the right to defend his life and existence". In accordance with Covenant's Article 28I Paragraph (1), the Constitution also states that the right to live and other rights are non-derogatory human rights.
14. Unfortunately, the Constitutional Court rejected the submission based on several reasons, including: (a) The Court argued that all human rights in Chapter XA of the 1945 Constitution are subject to limitation and are not absolute, as stated in Article 28J of the 1945 Constitution.¹⁰ The Court argued that the limitation in Article 28 J is the same with that of Article 6 (2) of ICCPR and other international instruments.¹¹
15. The Court argued that drug related crimes are regulated in Law No.22 Year 1997 is a provision implemented from *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* that Indonesia has ratified and implemented through Law No. 7 Year 1997. The Constitutional Court argued that drug related crimes are *particularly serious crimes* equivalent to *the most serious crimes*, such as genocide crimes and crimes against humanity. Reason being was that both *the most serious crimes* and Convention on Narcotic Drugs and Psychotropic Substances-defined *particularly serious crimes* "adversely affect the economic, cultural and political foundation of society" and bring "a danger of incalculable gravity".¹²
16. In the end, Constitutional Court qualified the crimes in the Narcotics Law's articles written above as equivalent to *the most serious crime* in accordance with ICCPR's Article 6.¹³ But, four of nine Constitutional Court's judges gave dissenting opinions. H. Harjono said that a submitter of foreign nationality has equal legal standing with that of an Indonesian nationality, while Judge Achmad Roestand, Judge H.M. Laica Marzuki and Judge Maruarar Siahaan argued the Constitutional Court should accept the judicial review.

⁸ *Ibid*, point 3.71 page 304

⁹ Report of the Working Group on Indonesia, A/HRC/21/7 Recommendation: R - 109.31

¹⁰ Constitutional Court Decision No. 2-3/PUU-V/2007 page 412

¹¹ *Ibid*, page 412, 416-419

¹² *Ibid*, page 425 letter (f)

¹³ *Ibid*, page 425 letter (g)

Remedy for Victims

17. According to information provided in the NGO report for the List of Issues, the provisions regarding remedy for victims are stated in the Law No. 26 Year 2000 on Human Rights Court. Its Chapter VI on Compensation, Restitution and Rehabilitation, Article 35 states that:
- (1) Every victim of a violation of human rights violations, and/or his/her beneficiaries, could receive compensation, restitution, and rehabilitation.
 - (2) Compensation, restitution, and rehabilitation as referred to in clause (1) shall be recorded in the ruling of the Human Rights Court.
 - (3) Provisions concerning compensation, restitution, and rehabilitation shall be further governed in a Government Regulation.
18. These provisions prompted uncertainty and injustice for victims since the word “could” in the Paragraph (1) defines the reparation not as the rights of victims of gross human rights violation, while reparation is the imperative and inalienable rights of victims of human rights violation. Using the word “shall” in legal definitions means that the compensation, restitution and rehabilitation can be not given or are not mandatory to give to victims.
19. In its implementations, the respective judge panel of established Human Rights Court, such as the Ad-Hoc Human Rights Court for East Timor and the Ad-Hoc Human Rights Court in the Abepura (Papua) case, never decided to give compensation, restitution and rehabilitation for victims. Moreover, none of the attorneys dealing with these gross human rights violations demanded for compensation, restitution or rehabilitation in their submission.¹⁴
20. In the Ad-Hoc Human Rights Court for the Tanjung Priok Crimes on 20th August 2004, the Court charged two out of fourteen defendants - as guilty, namely (1) Sutrisno Mascung (former commander of Group III Yon Arhanudse 06) sentenced to three years jail term and subjected to compensate thirteen victims and their heirs); (2) Rudolf Adolf Butar-Butar (former military commander of District 0502/North Jakarta) sentenced to ten years jail term and subjected to compensate victims and their heirs. Yet, in the Court of Appeals and Court of Cassation on 28th February 2006, they were discharged.¹⁵ Hence, nobody was charged as guilty in this Tanjung Priok case.
21. The mechanism of remedies is mandated to Witnesses and Victims Protection Institution (LPSK), which provides special support for victims of gross human rights violations in the form of medical aid and psycho-social rehabilitation¹⁶ by meeting various procedures and certain conditions, including reference letters issued by the National Commission on Human Rights (Komnas HAM).¹⁷ Through this institution, victims of gross human rights violation have the right to file *“a right to compensation in violation cases*

¹⁴ Supriyadi Widodo Eddyono, et.al “*Perlindungan Saksi dan Korban Catatan Atas Pengalaman Pengadilan HAM Ad Hoc Kasus Pelanggaran HAM Berat di Timor-Timur*” page 6. <http://perlindungansaksi.files.wordpress.com/2008/07/catatan-pengadilan-ham-tim-tim3.pdf>

¹⁵ Monitoring and Documentation of KontraS, “*Matrix Putusan Pengadilan HAM di Indonesia*” <file:///C:/Documents%20and%20Settings/UserXP/Desktop/Matrix%20Putusan%20Pengadilan%20HAM%20di%20Indonesia.htm>

¹⁶ Article 6 of Law No. 13 Year 2006 on Witnesses and Victims Protection Institution (LPSK)

¹⁷ Appendix to LPSK's Regulation No. 4 Year 2009 regarding SOP of Medical and Psycho-social Aids.

*and a right to restitution or compensation from the offender" to the court.*¹⁸ Yet the decision regarding compensation and restitution remains in court.¹⁹

National Strategy on Access to Justice

22. The National Strategy program focuses on (1) Access to Justice in Legal and Judiciary Reform; (2) Access to Justice in Legal Aid; (3) Access to Justice in Local Governance; (4) Access to Justice in Land and Natural Resources; (5) Access to Justice for Women; (6) Access to Justice for Children; (7) Access to Justice for Workers; and (8) Access to Justice for Poverty Basket Inflation and the Marginalized.²⁰ This program however, has showed little results, with the exception of the Law No. 16 Year 2011 on Legal Aid.

Accession of Optional Protocol to the ICCPR

23. The 2010-2014 Action Plan on Human Rights has planned ratification on a number of human rights instruments. Human rights instruments to be ratified in 2013-2014 are OPCAT, CPED, OP CEDAW, ICC, the 1951 Refugee Convention and Protocol 1957. These planned ratifications are Indonesian government's commitment in the UPR May 2012. In addition, the NGOs urges the Government to include the ratification of Optional Protocol to the ICCPR in the subsequent Action Plan on Human Rights.

Recommendations:

The State Party should:

- 1) Particularly the Ministry of Law and Human Rights, harmonize legal regulations with ICCPR and other international human rights instruments.
- 2) Continue its effort in ratifying and implementing the international conventions, including OPCAT, CPED, OP CEDAW, ICC, the 1951 Refugee Convention and Protocol 1957, as stated on the 2010-2014 Action Plan on Human Rights;
- 3) Ratify the First Optional Protocol of ICCPR and include the ratification process in the next Action Plan on Human Rights.
- 4) Provide remedies to victims of human rights violations in accordance with the standard of human rights.

Issue 2: Please provide updated information on measures taken to harmonise regional legislation with national legislation (by laws) in line with the State party's decentralisation policy which is governed by Law No. 32 of 2004 considering that, according to the State party's report (CCPR/C/IDN/1, para. 11), most laws at the regional level of the State party are incompatible with national laws. Please provide information on measures taken to ensure that national and regional laws are compatible with the Covenant.

24. Law No. 32 Year 2004 has stated that the Local Government does not have any authority on five affairs, namely (a) foreign policy, (b) defence, security, (c) judicial, (d) monetary and national fiscal, and (e) religion.²¹ In the last ten years, several local regulations contrary to the Law have been legalized. Those regulations can be

¹⁸ Article 7 Paragraph (1) of Law No. 13 Year 2006 on Witnesses and Victims Protection Institution (LPSK)

¹⁹ Article 7 Paragraph (2) of Law No. 13 Year 2006

²⁰ National Strategy on Access to Justice

²¹ Article 10 Paragraph (3) of Law No. 32 Year 2004 on Local Governments

categorized into three. First, regulations concerning tax and retribution on various sectors, such as mining and forestry. Second, regulations prohibiting minor religious communities, as faced by Ahmaddiya community. Third, regulations that discriminate against women, such as the Regulation of Palembang City No. 2 Year 2004 on Eradication of Prostitution, Regulation of Padang Pariaman Regency No. 02 Year 2004 on Prevention, Action against and Eradication of Immorality, and Regulation of Tangerang City No. 8 Year 2005 regarding the Ban on Prostitution.

25. Unfortunately, the Central Government differs on handling these three categories. The government just repealed the local regulations concerning retribution or tax. As mentioned in the report of States Parties CCPR/C/IDN/ Paragraph (11)) there were as many as 1,480 local regulations repealed; however those regulations are only related to the retribution or tax. Meanwhile, the regulations prohibiting minor religious communities such as the Ahmaddiya community and discrimination against women were never repealed. Indonesian civil society has taken several steps, such as conducting training and publishing local regulations drafting manual, to enhance the capacity of local government in drafting human rights-based local regulations.²² In the future, the government is expected to strengthen the cooperation with civil society to conduct training on the drafting of local regulations.

Recommendations:

The State Party should:

- 1) Immediately revise or repeal local regulations that discriminate against women, children, religious minorities and LGBT to ensure they are in line with the ICCPR.
- 2) Facilitate and enhance the capacity of local governments in drafting local regulations, along with civil society and NHRI.

Ad-Hoc Human Rights Courts Mechanism and the Komnas HAM Mandates.

Issue 3: Please provide information on the steps that have been taken to strengthen the cooperation between the National Commission on Human Rights (Komnas HAM) with the State party's institutions. What steps have been taken to establish an ad hoc Human Rights Court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament (DPR). Furthermore, what measures have been put in place to ensure that Komnas HAM can challenge decisions of the Attorney General not to prosecute cases of human rights violations that Komnas HAM has recommended for prosecution? Please respond to allegations that members of the government in the State party have stated that military officials should ignore summons from Komnas HAM in connection with investigations of alleged gross human rights violations.

26. The Indonesian Government has yet to establish the Ad-Hoc Human Rights Court for the enforced disappearance in 1997 and 1998 as recommended by Komnas HAM in 2006. Even the House of Representatives' Special Committee in 2009 has issued four related recommendations, i.e. (1) The President to establish Ad-Hoc Human Rights Court; (2) To

²² Collaboration between Institute of Policy Research and Advocacy (ELSAM) and Law and Human Rights Division of Sanggau regency (Kalimantan Barat province) on the release of Manual of Drafting Human Rights-based Local Regulations, 2011.

clarify the status of 13 alleged victims of enforced disappearances, (3) To rehabilitate the rights of the victims' family, (4) To ratify the international convention on enforced disappearances. It can however, be concluded that since 2006, the government has not taken any special measures to realize those recommendations, particularly on establishing an Ad-Hoc Human Rights Court. However, the efforts to settle that case are more obstructed due to the result of the consultation meeting between the President and House of Representatives on 25 February 2013. At this consultation it was agreed that they are unable to establish an Ad-Hoc Human Rights Court because the inquiry held by Komnas HAM has yet to declare the suspects, hence the process is being reverted back to Komnas HAM. The Attorney General however, has the authority to investigate and declare the suspects.

27. The result of that consultation is basically contrary to the authority of and mandate given to Komnas HAM - as the inquirer - as stated in Law No. 26 Year 2000 on Human Rights Court. The Law states that Komnas HAM as the inquirer²³ has the authority to - among others - conduct an inquiry and inspection of gross human rights violation.²⁴ This provision is in accordance with the definition of the Inquiry, that is to investigate into the existence of an event suspected as a gross human rights violation to be followed up by an Investigation,²⁵ in this case pursuit by the General Attorney²⁶ who has the authority to arrest, detain and prosecute.²⁷
28. Therefore, in reference to the Law No. 26 of 2010 on the Human Rights Court, the consultation meeting should have led to the order for the General Attorney to follow up the Komnas HAM's Inquiry Report, namely to investigate, arrest, detain or prosecute instead of recommending to return the inquiry to Komnas HAM. Principally, the working standard of Komnas HAM in conducting an inquiry, including on enforced disappearances in 1997-1998, has mentioned individuals responsible for this case in the Inquiry Report given to the General Attorney.²⁸
29. Komnas HAM has taken several steps in settling the conflict of authority with the General Attorney in cases of gross human rights violation, such as conducting intensive meetings with the General Attorney. The last meeting took place in June - July 2012 where they discussed the result of Komnas HAM's inquiry on 1965 Massacre and mysterious shootings.²⁹ But those steps are ineffective to settle the conflict of interest/authority between Komnas HAM as the Inquirer and General Attorney as Investigator. Therefore in 2009, Komnas HAM suggested to revise Law No. 26 Year 2000 on Human Rights Court.³⁰ One of the suggestions was to strengthen the authority of Komnas HAM as Inquirer to also be the Investigator. Revision of this Law has as well been

²³ Article 18 of Law No. 26 Year 2000 establishing Komnas HAM as the Inquirer on Gross Human Rights Violation.

²⁴ Article 19 Paragraph (1) letter (a) of Law No. 26 Year 2000 on Human Rights Court.

²⁵ Article 1 letter (5) of Law No. 26 Year 2000

²⁶ Article 21 Paragraph (1) of Law No. 26 Year 2000

²⁷ Article 11, Article 12 and Article 23 of Law No. 26 Year 2000

²⁸ Chairman of Komnas HAM mentioned that regarding the inquiry on enforced disappearance, Komnas HAM has examined 77 witnesses and the examinations resulted the names of those responsible for the events. <http://www.metrotvnews.com/metronews/read/2013/03/23/1/140753/Komnas-HAM-Desak-SBY-Laksanakan-Rekomendasi-DPR>

²⁹ Interview with the Senior Staff of Komnas HAM, 27 May 2013.

³⁰ Suggestion on revision of the Law was delivered by Komnas HAM to House of Representatives' Legislation Body on 10 November 2009. http://www.dpr.go.id/complorgans/baleg/lapsing_RDPI_DENGAN_MUI_NU_MUHAMMDIYAH_PGI_KWI_DAN_WALUBI.pdf. Revision of the Law has been listed in 2010-2014 National Legislation Program. http://www.dpr.go.id/complorgans/baleg/prolegnas_Prolegnas_2010-2014.pdf

listed in the 2010-2014 National Legislation Program. Yet the discussion on the revision of Law No. 26 Year 2000 and Law No. 39 Year 1999 on Human Rights have yet to be held.

Recommendations:

The State Party should:

- 1) Immediately establish an ad hoc Human Rights Court to investigate and try cases of enforced disappearances committed between 1997 and 1998 as recommended by Komnas HAM and House of Representatives' Special Committee.
- 2) Immediately discuss the revision of Law No. 26 Year 2000 on Human Rights Court and Law No. 39 Year 1999 on Human Rights.
- 3) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Counter-terrorism measures and respect of Covenant guarantees

Issue 4: Please explain how the Law on Combating Criminal Acts of Terrorism affects the rights guaranteed under the Covenant. Specifically, please explain how the requirement under article 25 of this Law to detain suspects of terrorism for a maximum period of 6 months, and the provision permitting the conduct of closed investigations without recourse to legal assistance for a period of no longer than 3 days are compatible with the Covenant?

30. The Explanation of Law No. 15 Year 2003 on Combating Criminal Acts of Terrorism mentions that acts of terrorism is not solely a lack of legal enforcement but are also to do with social, cultural and economic factors that are closely related to the national resilience problem, thus the policy and measures to prevent and combat criminal acts of terrorism are aimed to maintain a balance between the responsibility to protect the state sovereignty, victims' and witnesses' rights, as well as, the suspects'/defendants' rights.³¹
31. In its implementation, combating acts of terrorism is dominated by repressive efforts rather than preventive efforts in the form of deradicalization programs, so it is not surprising that the number of acts of terrorism in Indonesia has not decreased at all. The government needs to pay attention to planning and budgeting, which has been ignored all this time. With the absence of planning and budgeting of deradicalization programs, the civil and political rights of each and every person are likely to be threatened/violated. The planning is related to the involvement of society, educational institutions, all ministries/institutions, societal organizations and local governments to work together in drafting a more systemic terrorism prevention program, including preventing terrorism in the family, environment, and working place. With the budgeting by the Government, the terrorism deradicalization program will run, thus minimizing the number of acts of terrorism.

It turns out that the objective of this Law, as mentioned above, is not balanced out by humanistic regulations, such as Article 25 and Article 26 regulating a very long detention and arrest periods contradictive to Covenant.

³¹ Explanation of Law No. 15 Year 2003, UU NO.15/2003; General Explanation

32. This Law was undeniably made in haste after the first Bali Bombing in 2002. Unfortunately, this law was legalized after a very short time thus prompting pros and cons in the society toward its articles. Even though the Law was criticized by various groups of society, the government and House of Representatives adopted it to become Law No. 13 Year 2003 one year later without revising its several crucial articles, including: (a) provision on duration of detention. This Law gives the Inquirer the authority to detain someone for six months for the interest of Inquiry and Prosecution.³² This duration is longer than that stated in the Penal Code, ruling that the duration of detention on the Inquiry and Prosecution levels, including possible extensions, is 110 days.³³ (b) Regarding Arrest. This Law establishes that the Inquirer can arrest anyone highly suspected of criminal acts of terrorism based on initial evidence for 7 periods of 24 hours.³⁴ This provision is contrary to Article 19 Paragraph (1) of the Criminal Procedure Code, which states that the longest duration of arrest is one day.
33. These repressive practices of combating criminal acts of terrorism have encouraged another violation, that is, arbitrary arrest. According to the monitoring report released by Imparsial on False Arrest Cases on accusation of terrorism during 2004-2009, there were 36 false arrest cases with the duration of arrest ranged from 10 hours to 11 days.³⁵

Recommendations:

The State Party should:

- 1) Enhance its role on deradicalization programs to prevent terrorism and criminal acts of terrorism in Indonesia's students, society and state apparatus.
- 2) Amend Law No. 25 Year 2003, particularly its Article 25 and Article 26, in order to comply with the ICCPR.

Non-discrimination, equality between men and women

Issue 5: Please indicate any legislative and administrative measures relating to the protection against discrimination on all grounds including race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status. Please provide an update on the process of drafting a law on Gender Equality. Please also explain any measures being taken to amend the 2008 Pornography Law and local legislation which prohibit and criminalise consensual same-sex sexual activity.

34. Since its beginning, the drafting of Law Number 44 Year 2008 on Anti Pornography has been criticized by various society groups on its philosophy, sociology, and legal aspect. The law also endangers the rights of Civil society groups, especially women, lesbian gay bisexual and transgender (LGBT), indigenous people, and artist groups in Indonesia. It is evident that the law is not effectively used by the law enforcement officers and government in the effort to spare the society from the danger of pornography. The Pornography Act has the potential to discriminate especially against LGBTs, since there are several provisions that are intended to criminalise homosexuals.³⁶

³² Article 25 Paragraph (2) of Law No. 13 Year 2005 on Combating Criminal Acts of Terrorism

³³ Article 24 and Article 25 of Penal Code

³⁴ Article 28 UU of Law No. 13 Year 2005

³⁵ Imparsial's, Monitoring report "The Implications of War on Terrorism on Human Rights in Indonesia 2002-2009" page 35, November 2009

³⁶ Article 1, Definition of pornography in the Pornography Act is: Pornography is picture, sketch, illustration, photos, writings, voice, sound, moving image, animated picture, cartoon, conversation, body movement, or any other forms of message through various

35. Up to now, there has been no initiative from the parliament or government to amend the laws. The approach that was used by the Indonesian House of Representatives and the government is one of morality, instead of a respect to human rights. The Pornography Act is strengthening discriminative views and legitimizing intolerant groups to conduct violence against LGBT. Indonesian civil society has submitted a Judicial Review, unfortunately the Constitutional Court did not grant the requests.

In every policy, the wording used is “everybody” however in fact not everyone receive proper and fair treatment especially people with different sexual orientation and gender such as LGBT. The definition of gender is also very limited to include only men and women. Another problem lies in the discriminative conduct by the law enforcement officers in providing their service for LGBT groups. It is due to the fact that LGBT/ LGBT groups have not been acknowledged in Indonesia. An example is the ID card, which only accommodates 2 types of gender: men and women.

Bill of Gender Equality and Justice

36. In 2012, based on the inputs from the civil society and academics, Indonesian parliament included the Gender Equality Bill as a priority in the national legislation program. The bill triggered quite stiff pro-contra, especially amongst Islam fundamentalists³⁷, Indonesian Ulema Council and several Islamic parties in the parliament,³⁸ which think that gender equality will lead to equality between men and women in family, either in their responsibilities and rights in the family, which will affect the enforcement of Islamic law in Indonesia.

37. The parliament has opened the space for civil society to give their inputs, either for those who are against or those who support it. However the bill which was drafted by the Parliament (as per February 2013) was still gender neutral, gender terminology in the bill was only based on sexual differences between men and women, thus it gave no equal space for other groups such as transgenders. Moreover, the substance of the bill has not included CEDAW principles of substantive equality and non-discrimination. The bill is more about the implementation strategy of Gender Mainstreaming as a national development strategy, than one that provides a comprehensive guarantee of women’s rights and state responsibility to fulfil it. There is no provision on an independence complaint mechanism in the bill, for women whose rights have been violated.

Moreover, there is no provision on special protection for minority and marginalized groups and temporary special treatment as state responsibility to accelerate substantive equality. The drafting process of the bill is still not clear, and even risks of being brushed aside, due to the challenge that some parliament members still consider that the bill is not a priority.

communication media and/or show in public, which contains obscenity or sexual exploitation which violates obscenity norm in the society. In the Article 4 (1): Everyone is prohibited from producing, making, multiply, copying, distributing, airing, importing, exporting, offering, selling, renting or providing pornography which explicitly contain: sexual intercourse, including deviating sexual intercourse. The definition of “deviating sexual intercourse” is sexual intercourse or other sexual activity with death body, animal, oral sex, anal sex, lesbian, and homosexual. The criminal sanction of minimum 6 (six) months and maximum 12 (twelve) years or a fine of minimum Rp. 250.000.000,00 (two hundred fifty million rupiah) and maximum Rp. 6.000.000.000,00 (six billion rupiah)

³⁷ Those Islam fundamentalists are radical Islam groups or organisations which refuse gender mainstreaming, such as *Hizb Tahrir Indonesia* (HTI), *Front Pembela Islam* (FPI/ Islamic Defender Front) and *Kesatuan Aksi Mahasiswa Muslim Indonesia* (KAMMI/Unity of Indonesian Moslem Student Action).

³⁸ <http://www.voa-islam.com/lintasberita/suaraislam/2012/07/02/19742/ijtima-ulama-mui-resmi-tolak-ruu-kesetaraan-dan-keadilan-gender/>

CEDAW Implementation

38. Although Indonesia has domesticated CEDAW through Law Number 7 Year 1984, the implementation is not effective. Existing national women's rights mechanisms have not completely given protection for women have been a victim of discrimination and gender based violence. Violations of women's rights and fundamental freedom in the forms of discrimination or violence are still ongoing through policy/legislation and practice of social cultural norms in the society.
39. The National Commission on the Violence Against Women (Komnas Perempuan) recorded that there are 282 discriminative bylaws, which have not been reviewed or annulled by the government.³⁹ From those bylaws there is a *Qanun* in Aceh, which still enforces corporal punishment such as caning⁴⁰. Caning tends to be used against the poor, women and minority groups, since they cannot give an amount of money/gold as an exchange of the punishment.⁴¹ The enforcement of Qanun is conducted by the Acehese Syariah Police (Wilayahul Hisbah) and the Syariah court in Aceh. Several cases of sexual harassment and false arrests were committed by WH against women in Aceh, because they were found to have committed khalwat (dating), alone in a secluded place with the opposite sex who was not their husband/wife and not wearing Moslem clothes.
40. The enforcement of syariah conducted by WH also tends to indiscriminate treatment for adults and children. WH should use Law Number 23 Year 2002 on Child Protection especially on the investigation mechanism and legal process for children and should not make direct arrests which are conducted by officials in uniforms and should not treat children as adults.
41. Furthermore, in several regions in Indonesia such as in East Nusa Tenggara, West Nusa Tenggara and Sulawesi, policy/cultural rules continue to be used which discriminate against women, children and vulnerable groups. Castes⁴² and social classes in societies lead to violence against women, such as domestic violence, rape and sexual violence committed by cultural leaders and even parents, who do not treat women fairly, since cultural settlement often places women or lower caste societies in the place where they have to step back and to accept these crime that are committed against them.
42. The importance of ratifying OP-CEDAW has become a political policy of Indonesian government, as stipulated in the Presidential Decree Number 40 Year 2004 on Indonesia's National Plan of Action on Human Rights (RANHAM) Year 2004-2009. In the RANHAM, it was planned that in 2005 a Bill on OP-CEDAW Ratification will be prepared.

³⁹ referring to Komnas Perempuan report on discriminative and problematic bylaws in Indonesia

⁴⁰ Aceh Province in the Law Number 11 Year 2006 on Aceh Governance has specialty in drafting Syariah based legislation called as Qanun, one of which provides corporal punishment such as caning and stoning for offenders or criminals. Balai Syura recorded that caning in Aceh has been enforced since 2002, which directed more on violation of Qanun which provides how to dress, Qanun Khalwat on the prohibition to be alone with opposite sex, who is not *muhrim*, in secluded places; Qanun Maisir on alcohol; and Qanun Khamar on gambling practice. The mechanism of caning is still problematic since it is conducted in public and the accused's eyes are not covered so that he/she knows that the punishment is witnessed by the society and sometimes his/her children also witness the process. Law enforcement officers in Aceh said that the mechanism is conducted based on the consideration that the perpetrator/accused will be shamed and wary so that he/she will not repeat the same mistake and violates the law.

⁴¹ Working Group Against Torture (WGAT) related to response on the relevant list of issue to torture and arbitrary treatments

⁴² Culture in Sumba is quite strict, due to the influence of local religion, Marapu, and also caste levels in Sumba Island. Based on their culture, there are 3 castes, Maramba (noble), Mandamu and Ata (slave). The caste system is still enforced, especially in East Sumba and Central Sumba.

Ratification of OP CEDAW was re-included in RANHAM 2011-2014, as stipulated in the Presidential Regulation Number 23 Year 2011 on RANHAM 2011-2014, however ratification has still not occurred.

Recommendation:

The State Party should:

- 1) Ratify the OP CEDAW according to National Plan of Action on Human Rights
- 2) Revise and annul policy (Pornography Act) and bylaws which discriminate women, LGBT and other minorities
- 3) Expedite the drafting and enactment of Gender Equality and Justice Bill

Issue 6: Please provide updated information on the measures being taken to improve (a) women's status in the political, economic and social life of the country, (b) the levels of women in employment in positions of responsibility both in the public and private sector, (c) equal pay for work of equal value between men and women, and (e) literacy and school enrolment rates for girls and women. Please indicate specific measures taken to eliminate the persistent patriarchal attitudes and deep rooted stereotypes in society which are responsible for undervaluing jobs associated with women

43. Women representation in the politic and public has been accommodated by the State through the provision of responsibility for all political parties, which participate in the election, to include a minimum of 30% quota for women representatives, including a sanction for political parties, which cannot fulfil the quota, to not participate in the election. However the provisions are only enforced at the central level.
44. In the period of 2009-2014, women representation in the House of Representative is only 18% (from 560 persons – women parliament member is 110) and women representation at the provincial level is also still far from 30%. The effort of 30% quota for women representation is an affirmative action, but is still facing challenges such as; Political parties still has no commitment to implement 30% quota for women, since the political parties in Indonesia have not provided women representation as their internal precondition, such as including women representation in their Statutes.
45. Women have difficulty in getting support for them to participate in public and political sphere, from the society or/and their family, due to many of them having the view that it is not appropriate for women to have full activities outside their homes.
46. The working system and mechanisms of politics at the parliament and political party has not accommodated the double role of women, where women are still doing domestic tasks although they also have their career in politics and in public. The election system with its high cost has closed the opportunity for women to win the elections, since women cannot afford the candidacy process.
47. The representation number, which has not reached the minimum quota has impacted on the quality of policies, which are drafted and produced by the parliament, there is no budget allocation provided for women and children to get adequate fundamental rights

guarantee. As a result, Indonesia still has a high maternal mortality number, 228/100.000 birth, 5,3 millions women are still illiterate, and the number of women suffering from and school drop out rate are still quite high.

States of emergency and imprisonment for inability to fulfil a contractual obligation (arts. 4 and 11)

Issue 7: Please explain why article 28I (1) of the Constitution of 1945 and “Regulation in lieu of Law No. 23 of 1959” regulating the rights that are non-derogable in a state of emergency do not include article 11 of the Covenant as required by article 4 of the Covenant. Please provide information on efforts to revise the law that governs states of emergency to ensure that it is compatible with article 4 of the Covenant.

48. Besides the 1945 Constitution and Government Regulation in Lieu of Law (Perpu) No. 23 Year 1959, the Law No. 39 Year 1999 on Human Rights does not formulate/guarantee the Covenant's Article 11 as one of non-derogatory rights. Even though this right has been established by the Human Rights Law, it is unfortunately not listed in the Special Articles, i.e. Article 4 guaranteeing a number of non-derogatory rights. But this provision is indeed ruled in Article 19 Paragraph (1) and Paragraph (2) of Law No. 39 Year 1999 respectively saying “No offender or criminal shall be threatened with punishment in the form of seizure of part or whole of assets he legally owns” and “No person found guilty by a tribunal shall be imprisoned or incarcerated for being unable to fulfil the obligations of a loan agreement.”

Notes on National Security Law

49. One of the concerns voiced by Indonesian civil society in the last three years is in regards to the Draft Law on National Security. The government's plan to realize the Draft Law on National Security indeed prompted a lot of questions regarding its meaning and objectives since instead of revising the Government Regulation in Lieu of Law on the State of Emergency, the government proposed the Draft Law on National Security, which is perceived as worse than the Government Regulation in Lieu of Law No. 23 Year 1995. Indonesian Civil Society's Coalition for Security Sector Reform⁴³ noted several articles of that Draft Law as threats to democracy and human rights in Indonesia, such as: **(a)** Article 16 *junto* Article 17 including the explanation on the category of multi-interpreted, repressive and subversive threats. These articles widely define the spectrum, target, types and form of threats yet in the meantime do not explain who the main actor to handle them is. This potentially causes an overlap of actors of security (Article 16 *junto* Article 17 including the explanation). Thus, it can be interpreted that actors or elements of national security have roles related to all kind of security to handle all type of threats, from military threats to threats without weapons. Meanwhile, the explanation on the types of threats without weapon in the explanation of Article 17 is categorized as mass strike, destruction of national moral value and ethics, ignorance, injustice, civil disobedience and poverty. The explanation is obviously multi-interpreted hence threatens civil freedoms and human rights, freedom of expression (labor action, student action, farmer action, press). Moreover, the Draft Act gives Indonesian National Armed

⁴³ The coalition consisted of various non-governmental organizations in Indonesia, such as Imparsial, KontraS, YLBHI, Elsam, LBH Masyarakat, IDSPS, AJI Indonesia, Lespersi, HRWG, The Ridep Institute, ICW, Infid, LBH Jakarta, LBH Pers and Setara Institute.

Forces (TNI) and State Intelligence Agency (BIN) the authority to arrest, inspect and tap conversations (Explanation of Article 54 letter (e) *junto* Article 20).

(b) The Draft Act gives actors of security the special authority to tap conversations (Article 54 letter (e) *junto* Article 20). Referring to Constitutional Court Decisions No. 006/PPU-1/2003, No. 012-016-019/PUU-IV/2006 and No. 5/PUU-VIII/2010, the Constitutional Court argues that a separate regulation on the same level with Law is needed to prevent the possibility of abusing the authority to tap and record conversations.

(c) The Status of National Security. The Draft Law on National Security does not nullify the Government Regulation in Lieu of Law No. 23 Year 1995. Therefore Indonesia will have two different regulations concerning the state of emergency. For instance, the Government Regulation in Lieu of Law No. 23 Year 1995 does not recognize the term of Civil Order as recognized by Draft Law on National Security as part of the status of national security.⁴⁴

50. Even though the House of Representatives has rejected the Draft Law on National Security on 20th March 2012⁴⁵, but the government keeps on showing its conservative attitude by listing the Draft Law into 2013 Legislations. The government also prioritizes other three problematic draft laws, namely on State Secrets, on Reserve Components and on Military Disciplinary.

Recommendations:

1. The State Party and in particular the Government and the House of Representatives should immediately repeal the Government Regulation in Lieu of Law No. 23 Year 1995 and other draft laws potentially violating the principles and protection of human rights, such as Draft Law on National Security and Draft Law on Reserve Components.
2. The State Party should immediately discuss the revision of Law No. 31 Year 1997 on Military Courts beforehand and to delay the discussion of Draft Law on Military Disciplinary.
3. The State Party and, in particular, the Government and the House of Representatives schedule discussions on the revision of Law No. 39 Year 1999 on Human Rights, by ascertaining the revision of Article 4 and Article 11.

Issue 8: Please provide information on measures being taken to amend Law No. 19 of 2000 in order to abolish the Gijzeling system, which allows the imprisonment of individuals for civil debts for a period of 6 months which sentence may be extended to a maximum period of 3 years.

⁴⁴ Press release issued by Imparsial "RUU Kamnas; Mengancam Kebebasan dan Demokrasi" <http://www.imparsial.org/id/2010/critical-review-ruu-kamnas.html>

⁴⁵ Tempo Online: 'Dewan Tolak RUU Kemanan Nasional' www.tempo.co/read/news/2012/03/20/078391558/Dewan-Tolak-RUU-Keamanan-Nasional

51. In relation with the question no. 8, there are in fact a lot of cases of police officers arresting, detaining, legally processing people who were unable to meet their responsibility as stated in agreements, such as in debt cases. This happened to Mr. ADW and his wife, Mrs. J who has a printing and design business. ADW was detained for five days and is currently tried by District Court of Tangerang on the accusation of fraud and embezzlement of money he borrowed from Mr. Y.
52. The police usually use articles on fraud and embezzlement to arrest debtors who are incapable of paying back their debts. Even though the debtors have paid some instalments or signed a statement before the notary by guaranteeing their properties as collateral, the police remain trying to legally process people like ADW. This is where and when corruption and collusion between the police and creditors take place. The police often take advantage of this kind of situation to arrest and detain people incapable of meeting their responsibility on the accusation of embezzlement, while the case itself is a civil case as experienced by ADW.

Chronology of ADW's case

Early on (since April 2011), ADW always paid back every debt to Y, including profit shares and interest. But since ADW's business experienced significant loss in September 2011, ADW couldn't pay all the debt until its due date.

On 27 September 2011, ADW, Y, and an officer from Tangerang Metro Police named Mr. HP came to a notary to make an official document on "Payment Agreement" due in 45 days and in which ADW put his company's printing machine as collateral. During those 45 days, ADW was only able to pay 16 instalments.

On 27 January 2012, Y officially filed a lawsuit against ADW in Tangerang Metro Police on accusation of fraud and embezzlement (Penal Code's Article 378 and Article 372).

The first inspector, after inspecting the plaintiff, witness, expert witness and defendant, decided to halt the investigation. In July 2012, ADW sent an "Utmost Good Faith to Pay Debt" letter, copied to The Chief of Tangerang Metro Police and his subordinates. In the letter, ADW admits that he is incapable of paying his debt since his business has yet to recover from its loss. ADW proposes to pay monthly instalments and promises to increase the amount of instalments once the finance of his business recovers. But Y never replied to the letter.

Later, a new inspector was assigned to Tangerang Metro Police, who then reopened the case on argument that the police found new evidence, which was a Purchase Order.

In September 2012, the police arrested ADW without first, second and third warrants. ADW was detained for five days in Tangerang Metro Police and his status became a city arrest after being tortured.

During the inspection in the police office, ADW refused to sign the official report of his interrogation since there were some remarks/information added by the Inspector, especially on Point 6. But ADW was then forced to sign the report. In 31 January 2013, the Inspector submitted the file to the Prosecutor. Before the Prosecutor, ADW

nullified the remark on Point 6 since it wasn't his. The District Court is announcing its decision in 19 or 20 June 2013.⁴⁶

Recommendations:

The State Party should:

1. Amend the Law No. 19 of 2000 in order to abolish the Gijzeling system and to ensure that the Law is compatible with article 11. The detention of the persons detained for civil debts should be reviewed.

Right to life (art. 6)

Issue 9: Please respond to allegations that security personnel in the State party killed alleged criminals, and terrorist suspects in the course of apprehending them in 2011. Please also respond to reports that as a result of excessive use of force during protests on 19 October 2011 in Jayapura, Papua and on 24 December 2011 on Buma Island and West Nusa Tenggara, the police used excessive force and killed several protesters. What measures have been taken to investigate these incidents as recommended by Komnas HAM?

53. The use of firearms is often used against the suspect by the police. As recorded by the Indonesia Legal Aid and Human Rights Association (Perhimpunan Bantuan Hukum dan Hak Asasi Manusia –PBHI) since 2011, 136 people have died from at least 468 shooting cases against suspects and under the pretext to maintain order. The police always state that the shootings take place due to shootouts, attempts to escape from the police, resisting police orders and dispersing crowds. Internal police regulation on the use of force, especially firearms, becomes legitimate when there is a review of the use of firearms, which only takes place internally and behind closed doors.⁴⁷

Relevant Information on Papua

54. Three Papuans during the 3rd Papuan Congress, namely Mr. Daniel Kadepa (30), Mr. Maks Yeuw (37) and Mr. Yakop Samonsabra (37) were killed by the security forces. The victims worked as security guards (PETAPA) at the event. Daniel Kadepa was hit by bullets in the back of his head and his chest; Maks Yeuw died as the result of two bullets hitting his chest and stomach; and Yacob Samonsabra's was hit in the head by a bullet. All three bodies were found behind a nearby military base in Abepura (Korem Abepura).

55. According to the report of Human Rights in West Papua 2013, by the International Coalition for Human Rights and Peace for Papua, Indonesian security personnel were involved in the killing of Mr. Terjoli Weya (23) on the 1st of May 2012 during a protest organised by a pro-independent organisation KNPB at Taman Imbi. On May 15, 2012, Melianus Kegepe (23) was shot by police special forces (Brimob) in a billiard bar at the Degeuwo 45 (Paniai regency) illegal gold panning site, reportedly as a result of an argument between four of his tribes men and the bar's owner. On June 6, 2012, Elinus

⁴⁶ The information was shared by Jakarta Legal Aid as ADW's Legal Representatives. June 2013

⁴⁷ Based on Indonesia Legal Aid and Human Rights Association (PBHI), 2012.

- Yoman (27) was killed by members of military Battalion Yonif 756 Wimane Sili in Honelama village, West of Wamena, during a violent act of revenge. The retaliation happened after two members of Battalion 756 had crashed into a child on a motorcycle at Honelama village, and one of them was stabbed to death and the other one was injured. On June 4, 2012, Yesa Mirin (22), Fanuel Tablo (29) and Tanius Kalakmabin (20) were killed by the police force when the police forcefully dispersed a KNPB protest at Harapan village, near Sentani city. Yesa Mirin was hit and killed by a bullet to the lower back as he tried to escape from the approaching security forces. His family also reported that he had wounds all over his body, which appeared to have been caused by beatings after the arrest. Fanuel Tablo died on June 6, 2012, of blood loss due to a bullet wound to the back of his head. Tanius Kalakmabin reportedly died of his injuries at the Yowari public hospital in Sentani after having been shot.
56. On June 14, 2012, Musa Mako Tabuni (30), the vice chairman of the pro-independence organization KNPB, was killed by police special forces in Waena, a suburban area of Jayapura, as he tried to run from the Special Forces, who were trying to arrest him. It was reported that Mako Tabuni repeatedly asked the officers to show him a warrant during the arrest. Witnesses reported that the Special Forces shot Mr. Tabuni in his right thigh as he tried to escape.
 57. On November 4, 2012, the dead body of Paul Horis and heavily injured Klismon Woi were found on the Fak-Fak river bank in Fak-Fak regency. Klismon Woi died of his injuries two days later (November 6, 2012) in Fak-Fak public hospital. The autopsy revealed that Paul Horis had died as the result of a big hole on the top of his head and a broken neck. Klismon Woi was admitted with a ruptured spleen and severe bruises on the head, legs and ribs. Both activists were leading members of the KNPB pro-independence organization. They had been riding a motorbike before the incident happened, which was found undamaged at the site of crime.
 58. On December 16, 2012, Hubertus Mabel (30), the leader of the KNPB's militant wing, was killed by the anti-terrorist Special Forces Detachment 88 close to Habusa Village, near Wamena. At the end of December 2012, members of the Indonesian military reportedly shot at seven Papuan fishermen near Papan Island, in the Raja Ampat archipelago, killing La Tula (13), La Nuni (55), La Jake (30) and La Edi (20). Three other fishermen, La Amu (20), La Udin (30) and La Self (20), were seriously wounded by gunshots. The perpetrators then reportedly tried to get rid of the bodies of the four victims, which had been under water for almost a week when they were found. It is unclear why the men were shot.
 59. Similarly, Komnas HAM has not taken any measures to establish the facts of the incidents and recommend any prosecution.
 60. As has been stated in the answer to issue number 4 that practices of terrorism eradication have been dominantly conducted in repressive means such as shoot-to-kill policy against the terrorist suspects. In March 2013, Komnas HAM investigated a video that recorded the killing of a terrorist suspect in Poso, which occurred on 22 January 2007 in Tanah Runtuh, Poso, Central Sulawesi.
 61. The investigation of Komnas HAM stated that the event recorded on the video was carried out by members of the police's Anti-Terror Special Detachment 88 (Densus 88) that occurred on 22 January 2007 in Tanah Runtuh, Poso, Central Sulawesi. This

conclusion was obtained by Komnas HAM was based on the statements from victims and witnesses. In this case, there were at least 3 (three) people who were shot at the location, namely Mr. Ilang (died on location), Mr. Rasiman (shot on the right foot although he was already surrendered and raised his hands), and Mr. Wiwin (shot on the chest although he was already surrendered and raised his hands). Despite the wounds, Wiwin, Tugiran, and Rasiman experienced tortures at the location, on the way to the police office, until the interrogation process in the Poso District Police headquarter. Fachruddin, one of the wanted men who was arrested in good condition, was not shot by the police, but he died one day after being detained in the Central Sulawesi Police headquarter.

62. The result of Komnas HAM investigation also stated that on the incident of shooting in the location, 11 people also died who were not on the list of wanted men namely, Firman, Nurgam alias Om Gam, Idrus, Totok, Yusuf, Muhammad Syafri alias Andrias, Afrianto alias Mumin, Hiban, Human, Sudarsono, and Ridwan Wahab alias Gunawan. The incident also claimed the life of a police personnel named Police Chief Sergeant Ronny. This repressive action has received harsh reaction from various groups of people demanding the government to disband the Anti-Terror Special Detachment 88.
63. Unfortunately, Komnas HAM is unable to discover who is responsible for these acts in this incident and it has affected to the result of the investigation whereby no further effort has been made.

Recommendation:

The State Party should:

- 1) Reduce the number of military forces deployed in Papua and ensure the compliance by the security forces with Indonesia's obligations under international human rights laws and standards.
- 2) Develop independent and effective complaint mechanisms for victims concerning human rights violations by the security forces, which can ensure follow-up, independent investigations and prosecutions of perpetrators and provide adequate remedies to victims.
- 3) Ensure that the National Police applies effective oversight of the provincial police in Papua and ensure that residents of Papua can enjoy a high standard of law enforcement. For this, negligence and corruption within the police should be addressed with serious sanctions and criminal procedures where applicable.

Issue 10: Please provide data on the number of deaths and their causes in the State party's prisons and places of detention. Please also provide information on the specific measures that are being taken to prevent deaths in prison. What measures have been taken to investigate, and where appropriate, prosecute and punish acts of prison personnel or inter-prisoner violence that have led to deaths in prisons and detention facilities? Please provide data on the number of prison personnel that have been disciplined or prosecuted for cases related to deaths in prisons or detention facilities.

64. Report of the Penitentiary Directorate General of Ministry of Law and Human Rights⁴⁸ mentions that in 2010 there were 791 death cases in the penitentiary centres, in 2011 there were 352 cases, and in 2012 there were 404 cases. Deaths due to HIV/AIDS virus were the prevalent ones amounting to 204 cases in 2010, 105 cases in 2011, and decreased into 73 cases in 2012. However, irregular cases such as suicides, heart problem, and other infections were never autopsied. Inmates died in the detention due to violence committed by the wards. Nevertheless, the death figures in the police detention centres are very difficult to be known by the public, and torture and ill-treatment are prevalent.⁴⁹

Recommendations

The State Party should:

1. Take measures to guarantee that all occurrences of injury and death in prisons and detention centres are duly investigated and their authors prosecuted.
2. Improve and ensure that all detainees have access to adequate health services.

Issue 11: Please provide information on the status of the *de facto* moratorium on the death penalty following reports that the State party has resumed the execution of persons convicted of crimes related to drugs and terrorism. Please state whether the State party is considering acceding to the Second Optional Protocol to the Covenant.

Death Penalty

65. Based on the Attorney General Office Letter Number B-67/E/Euh.3/04/2013 dated 4 April 2013 on Request for Information on Number and Identity of Peoples Sentenced to Death in Indonesia, there are 115 people sentenced to death across Indonesia. However, based on the Annual Report of the Attorney General Office 2012, it was recorded that there were 113 people sentenced to death up until December 2012, which consisted of 60 for murders, 51 for narcotics, and 2 for terrorism.⁵⁰ On the data and identity of peoples sentenced to death in Indonesia, the government has to provide complete information on their number and identity, their nationalities, District Court that examined and sentenced them in the first instance, and their whereabouts.

Execution

66. The last time Indonesia executed a death sentence was in 2008, then recommencing execution in 2013. In 2008, Indonesia executed 10 (ten) peoples, who are:

No	Name	Nationality	Date	Crime
1	Hansen Anthony Nwaliosa	Nigeria	26 June 2008	Narcotics
2	Samuel Iwuchukwu Okoye	Nigeria	26 June 2008	Narcotics
3	Ahmad Suradji	Indonesia	10 July 2008	Premeditated

⁴⁸ Recapitulation Data of the Prisoner and Detainee Death Cause. Penitentiary Directorate General of the Ministry of Law and Human Rights. 2012.

⁴⁹ Further information can be found in the report issued by Working Group Against Torture (WGAT).

⁵⁰ See Suara Karya online, 27 December 2012, *Delapan Terpidana Dapat Dieksekusi* (Eight sentenced persons can be executed), Source: <http://www.suarakarya-online.com/news.html?id=318066>, and Berita Satu.com, 8 January 2013, *Eksekusi Mati Terhambat Birokrasi* (Bureaucracy obstructed Execution), Source: <http://www.beritasatu.com/hukum/91003-eksekusi-mati-terhambat-birokrasi.html>

				murder
4	Usep (TB Yusuf Maulana)	Indonesia	18 July 2008	Premeditated murder
5	Sugeng	Indonesia	19 July 2008	Premeditated murder
6	Sumiarsih	Indonesia	19 July 2008	Premeditated murder
7	Rio Alex Bullo	Indonesia	8 August 2008	Premeditated murder
8	Mukhlas	Indonesia	9 November 2008	Terrorism
9	Imam Samudra	Indonesia	9 November 2008	Terrorism
10	Amrozi	Indonesia	9 November 2008	Terrorism

67. Execution was conducted in Indonesia in March 2013 after 4 years of *de facto* execution moratorium. On 14 March 2013, Indonesia executed Adami Wilson. Wilson was a Nigerian, who used Malawi passport and in his legal documents, it was stated that he was a Malawi national. Wilson was sentenced to death for narcotics by Tangerang District Court on 24 May 2004 (No. 53/Pid.B/2004/PN.TNG), affirmed by Bandung High Court on 18 October 2004 (No. 253/Pid/2004/PT.BDG), and by the Supreme Court on 29 August 2005 (No. 1131 K/Pid/2005).

68. Based on the Attorney General Office Letter Number B-67/E/Euh.3/04/2013, 4 April 2013, on Request for Information on Number and Identity of Peoples Sentenced to Death in Indonesia, after the execution of Adami Wilson, the Attorney General Office will execute 9 (nine) other peoples: 6 (six) persons for premeditated murder, and 3 (three) for narcotic cases.

69. On 17 May 2013, the Attorney General Office executed another 3 people for meditated murder, who were Suryadi Swabuana bin Sukarno, Jurit bin Abdullah, and Ibrahim bin Ujang.

70. It was published before that in June 2013, the Attorney General Office will execute 6 (six) other peoples, but then it was delayed until September/October 2013.⁵¹

Positive development

71. Executions conducted by Indonesia in 2013 are regressive and shocking steps, since Indonesia has taken steps, which indicated that it is moving towards the elimination of death penalty. This is evidenced by:

- a. Supreme Court:

⁵¹ See Berita Satu.com, 7 June 2013, *Eksekusi Enam Terpidana Mati Ditunda* (Executions of Six Peoples Sentenced to Death are delayed), Source: <http://www.beritasatu.com/hukum/118326-eksekusi-enam-terpidana-mati-ditunda.html>, and The Jakarta Globe, 7 June 2013, *Indonesia Delays Death Penalty for Six Inmates*, sumber: <http://www.thejakartaglobe.com/news/indonesia-delays-death-penalty-for-six-inmates/>

- 1) In its Case Review decision No. 45 PK/Pid.Sus/2009 on 6 October 2010, annulled the death sentence against Hillary K. Chimezie and sentenced her to 12 (twelve) years imprisonment.
 - 2) In its Case Review Decision No. 39 PK/Pid.Sus/2011 on 16 August 2011, annulled death sentence against Hanky Gunawan and sentenced him to 15 (fifteen) years imprisonment.
- b. President Susilo Bambang Yudhoyono granted clemency to:
- 1) Meirika Franola on 26 September 2011, based on Presidential Decree No. 35/G/2011, reduced the sentence from death to life imprisonment.
 - 2) Deni Setia Maharwa on 25 January 2012, based on Presidential Decree No. 7/G/2012, reduced the death sentence to life imprisonment.
 - 3) Indra Bahadur Tamang (a Nepal national), substituted death sentence into life imprisonment.
- c. In November 2012, Indonesia chose to abstain in the vote on the UN General Assembly Resolution on the Moratorium on the Use of Death Penalty A/C.3/65/L.44/Rev.1, although Indonesia always voted against the death penalty in previous resolutions.

Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person, treatment of persons deprived of their liberty, independence of the judiciary and fair trial (arts. 7, 9, 10 and 14)

Issue 12: Please provide an update on the specific steps that have been taken to revise the current Criminal Code so that it prohibits torture and it includes a definition of torture that complies with article 7 of the Covenant and article 1 of the Convention against Torture. Please provide information on the measures taken to combat the alleged widespread torture and ill treatment of detainees, and poor conditions in prisons that are allegedly exacerbated by overcrowding because most prisons and detention facilities operate at almost double capacity.

72. In principle, the definition of torture in line with the CAT has been adopted into the revision of the Penal Code, however, the Indonesian Government has no concrete agenda to discuss this Penal Code revision since ten years ago. Even, the deliberation of the Penal Code revision will not be carried out until 2014, since the government and the House of Representatives will be focusing on the general election. Not only that, the draft revision of Penal Code consists of 700 articles and it is unlikely the government and the House of Representatives are able to discuss all the articles in the revision within one year. Therefore, it is imperative for the Indonesian Government to adopt a discussion method for the revision of the Penal Code and prepare special alternative means on the definition of torture, which has been included in the revision of the Penal Code, but will not be finished by next year.

Recommendations:

The State Party should:

- 1) Accelerate the revision of the Penal Code and Criminal Procedural Code that have been in hiatus in the last 10 years. In particular, the Parliament should ensure that

the review of the Penal Code and the Criminal Procedural Code are scheduled to be reviewed in the coming sessions.

- 2) Amend the current criminal law to ensure that torture is criminalised and that its definition is consistent with the Convention against Torture. Ensure that the definition of torture included in the draft of Penal Code is in line with the definition of article 1 of the Convention against Torture.

Issue 13: Please provide information on the steps taken to grant access to prisons and detention facilities by independent monitoring bodies following the refusal by the government in 2009 to grant access to the International Committee of the Red Cross (ICRC) to inspect prisons and detention facilities in the State party. Please respond to allegations that the State party requested the ICRC to close its field offices in Aceh and Papua provinces. Please confirm whether an independent monitoring mechanism has been designated to monitor the conditions of imprisonment and detention and the situation of prisoners and detainees, with powers to conduct unannounced visits. Please explain the mandate of the Ombudsman for Correctional Facilities.

73. To date, there is no single independent body, both national and international, that have access to detention centres, including the ICRC and Komnas HAM. Although, Indonesia has accepted the UPR recommendation No. 109.10 in 2012 to allow the ICRC to carry out detention visits to Papua. However, in practice, since 2010 the ICRC is unable to open representative offices in the regions, mainly in Papua and Aceh and it does not have any access to carry out monitoring in detention centres.

74. Following the closure of the ICRC field office in Papua in 2009 on the request of the Government of Indonesia, the gap left in independent monitoring of prisoners remains unresolved. Komnas HAM, which has the mandate to monitor the human rights conditions of prisoners, remains ineffective to carry out their duty. While the Government of Indonesia claims that Papua has no political prisoner, at present 76 Papuans⁵² are sentenced to jail for political reasons. These prisoners have repeatedly raised their concerns to the relevant authorities in regards to mistreatment and bad prison facilities but minimal action has been taken to address their concerns.

On 24 May 2013, 25 Papuan political prisoners released a public statement declining a reported government offer of amnesty.⁵³ In the statement, they stated that they do not seek the individual freedom, but the freedom for Papua. This statement illustrates the degree of distrust of the judicial system.

75. The Indonesian Government has made a draft of academic papers to ratify the OP-CAT and currently, the government and the national human rights institutions-NHRI (Komnas HAM, Child Protection Commission of Indonesia, Ombudsman Commission, and Women Protection Commission) are preparing the national prevention mechanism method as a part of the OP-CAT ratification process.

Recommendations

The State Party should:

⁵² See Papuan Behind Bars at <http://www.papuansbehindbars.org/?p=1857>

⁵³ See <http://www.thejakartaglobe.com/news/papua-political-prisoners-decline-sbys-clemency-offer/>

- 1) Ratify the OP-CAT in accordance with the National Human Rights Action Plan in 2013.
- 2) Immediately open the access of monitoring to detention centres to national and international independent bodies.
- 3) Support the NHRI in carrying out national prevention mechanism mandate.
- 4) Invite the ICRC to reopen its field office in Papua and grant unconditional access to it to visit any prisoners in any prison in Papua
- 5) Identify prisoners allegedly detained for political reasons and review their situation
- 6) Encourage the government of Indonesia to conduct reform of prisons and detentions systems as part of the amendment of the Criminal Code in order to comply with human rights standards

Issue 14: Please respond to allegations that torture and ill treatment of detainees is widespread especially at the moment of apprehension and during pre-trial detention, and that it is mostly used to extract confessions. What measures have been put in place to ensure that evidence obtained under torture is inadmissible and is excluded in court? Please provide data on the activities of the Internal Affairs Division and the National Police Commission which are mandated to investigate complaints against police officers. Specifically, please provide data on: (a) the number of complaints received against police officers; (c) investigations carried out; (d) prosecutions, convictions and types of penalties imposed; and (e) compensation awarded to the victims of torture or ill-treatment.

Torture Cases in Papua (Please refer to the Report on Torture from the Working Group Against Torture for additional information)

76. Allegations that torture and ill treatment of detainees is widespread especially at the moment of apprehension and during pre-trial detention.
77. Notwithstanding the legislative and regulatory provisions referred to by the government of Indonesia in its initial report (paras 90-99), the torture and ill-treatment of detainees continues to be widespread in Papua.
78. According to a report, '[No political prisoners? The suppression of political protest in West Papua](#)', by the human rights organisation, TAPOL, in 2012 torture or ill-treatment on arrest and in detention was reported in the case of 28 political arrests. Seven cases of forced confessions were also reported.
79. In a broader context, a recent doctoral thesis at ANU (Hernawan, 2013) that examines the history and politics of the fifty-year practice of torture in Papua illustrates that torture has become the mode of governance in Papua during the period. Therefore, it requires much deeper and holistic measures to eradicate the problem.
80. A case from February 2013 indicates the gravity of the problem. On 15 February 2013 Mr. Matan Klembiap was driving home when his car was stopped by five police officers wearing civilian clothes and carrying assault rifles. The police officers pointed their rifles at Mr Klembiap and the other three men who were with him. They were taken to the Jayapura District Police Station where they were ordered to take off their clothes before several police officers started to beat and electrocute them. They were questioned about

the whereabouts of two pro-independence activists, but as none of them was able to provide the requested information, they were allegedly kicked, beaten with rattan sticks on the back and electrocuted in the face.

81. Mr Klembiap was held in Jayapura District Police Station until 18 February 2013 when he was moved to Abepura Prison. During the four days he was in Jayapura District Police Station he was continuously interrogated and asked about his relationship with pro-independence leaders. During the interrogation he was allegedly continuously tortured. Mr. Klembiap was beaten with a wooden beam, rifle butts and rattan sticks. His legs and arms were positioned under the legs of a table and crushed resulting in his toenail being pulled out. His fingers were injured and he suffered severe head wounds due to the beating. Mr Klembiap did not receive any medical care, did not have legal representation, and was denied access to his family.
82. Earlier in November 2012, Mr. Frengky Uamang was arrested by two police officers wearing civilian clothes who accused him of being involved in gun trade and providing food for pro-independence activists. His fingernails were pulled using pliers, he was forced to slither on his stomach and were subjected to gunpoints.
83. The situation of detainees in Indonesian detention centres and prisons is exacerbated by overcrowding, overstaying due to administrative gridlock and general poor conditions. In West Papua, overcrowding is a problem in Abepura, Fak-fak, Manokwari, Sorong and Merauke prisons. Abepura prison, where a number of political prisoners are being held, was recently operating at 141% of its capacity. It has seen numerous riots over poor conditions and the abuse of inmates. Detainees in West Papua suffer from a lack of clean water, very limited medical facilities, arrogance of the prison warders, and the regular use of violence in the prison. In April 2012, it was reported that 42 inmates in Abepura prison were subjected to kickings as well as beatings with wood blocks and iron sticks. A similar incidence was also reported in January 2013 where 20 inmates were whipped by prison guards. Despite of the injuries suffered by the inmates, there was no medical treatment provided for them. There have been no criminal investigations conducted on these torture and ill-treatment cases as of today. It had only been reported that the head of the prison was removed and relocated twice following the pressure from human rights organisations.
84. Because detainees suffer from torture, ill-treatment and poor prison conditions, they develop a variety of health problems, which are not taken seriously by the authorities. The government fails to provide adequate medical treatment for detainees with the result that they are forced to rely on local NGOs, church and community groups and international solidarity organisations to fund their treatment. In 2012, Papuan political prisoners experienced a range of major and minor health complaints. Filep Karma suffered health problems not for the first time and was eventually granted permission to travel to Jakarta for medical attention. Kimanus Wenda suffered abdominal pains, which were eventually diagnosed as a hernia. Jafrai Murib, suffered a stroke in 2011 and received no initial care, which is critical for recovery in stroke victims.
85. The Indonesian government has failed to act on the May 2008 recommendation of the Committee Against Torture that the state should establish consistent and comprehensive standards for an independent monitoring mechanism for all places of detention, ensuring

that any body established, at the local or national level has strong and impartial mandate and adequate resources.⁵⁴

86. Furthermore, even though the Special Rapporteur on torture, inhuman and degrading treatment visited nine prison, police and military detention centres in 2008, the Indonesian government has not taken appropriate measures to improve the conditions in places of detention. The government has also failed to take appropriate steps to criminalize the practice of torture with the result that torture still continues and impunity is ongoing.⁵⁵ The government has also failed to implement the recommendations of the Special Rapporteur on Torture on the adoption of an anti-torture action plan which includes awareness-raising programmes and training (...) to ensure state officials live up to their human Rights obligations and fulfil their specific task in the fight against torture.⁵⁶ This should include the formulation of torture prevention guidelines for the police and the security forces, which should be introduced in the police and military academy. The recommendations also include the establishment of independent complaint mechanisms, which have sub-poena power to review complaints and take necessary steps for prosecutions.⁵⁷

Recommendation:

The State Party should:

- 1) Take all the necessary measures to put an end to torture and ill-treatment in detention.
- 2) Ensure that all cases of torture and ill-treatment are properly investigated and prosecuted, that the perpetrators are sentenced and that victims of torture and ill-treatment receive adequate reparation and compensation
- 3) Ensure the Department of Corrections complies with UN standards and principles on the treatment of persons in detention and that all such persons are provided with proper medical care and full access to health facilities.
- 4) Carry out reform in the police and military academy to ensure that they impress human rights standards on their recruits during their training and the recruits comply with human rights standards whenever they are on duty.
- 5) Carry out ongoing reform of the administration of justice so that the system is well funded and personnel are well trained and comply with human rights standards.

Issue 16: Please respond to reports that pre-trial detainees and convicted prisoners are not segregated in several of the State party's prisons such as in the Pondok Bambu prison (Jakarta) and the Juvenile Detention Centre of Kutoarjo (Central Java). Please also respond to allegations of lack of segregation between juveniles and adult prisoners and between accused and convicted persons in the State party. What measures are being taken to ensure such segregation is complied with in all places of deprivation of liberty in the State party?

⁵⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/428/16/PDF/G0842816.pdf?OpenElement>

⁵⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/90/PDF/G0811490.pdf?OpenElement>

⁵⁶ See Mission Report of the SR on Torture, A/HRC/7/3/Add. 7, para 76.

⁵⁷ Idem, paras 79 and 83.

87. There is a strong indication that there is no separation of pre-trial detainees and inmates, especially in the juvenile category, which can be seen from the availability of current infrastructures of detention centres in Indonesia. Aside from infrastructure issue, judicial mechanism and administrative system in detention centres are not able to reduce the over-capacity problem through, for instance parole that can take years to process.
88. Based on the report and information obtained by the Working Group Against Torture (WGAT) in addressing this issue, it is stated that the number of juvenile detention centres is only 19, while Indonesia consists of 34 provinces, 410 districts, and 98 cities. Meanwhile, the number of juveniles (male and female) that commit crimes is increasing each year. As a consequence, the number of juvenile detainees and inmates will also be higher. Based on the report of the State Ministry of Women Empowerment and Child Protection, in 2012 there were 3.083 male juvenile inmates and 274 female juvenile inmates. Further, there are 49.283 male detainees and 2.162 female detainees. Thus, it can be confirmed that the condition of juvenile detention centres are over-capacity.

Issue 17: Please respond to reports that although the law criminalises rape, the incidence of rape is high and that courts bestow minimum sentences on persons convicted of rape. Please provide information on specific measures that are being taken to ensure that sentences for rape deter others from committing this crime.

89. For the last thirteen years until 2011, from 400.939 cases submitted to the Komnas Perempuan, 93.960 cases are sexual violence.⁵⁸ And 70.115 cases of the sexual violence occurred in the domestic sphere, where the perpetrators were husbands, fathers, even brothers and close relatives. The number of cases of sexual violence that occurred in the public sphere is 22.285⁵⁹. The highest type of sexual violence is rape. Since 1998 until 2010, Komnas Perempuan has recorded that there have been 4.845 cases of rape, 1359 cases of women trafficking for sexual exploitation, and 672 sexual harassment cases.⁶⁰ Since early 2013, the number of cases of rape has reached high levels and mostly involves girls under the ages of 18 years.⁶¹
90. In the early annual report published by Indonesian Women Coalition for Justice and Democracy, rapes occurred at home due to the lack of adequate housing standards. Poverty has impacted the society, which means adequate housing standards have not been fulfilled and as a consequence women and girls are more vulnerable to harassment and sexual violence in their own homes.
91. The social system in societies considers rape as taboo, which makes children more vulnerable to sexual violence such as rape. Cases of rape in public in Indonesia are increasingly occurring in public transport.
92. Moreover, legal institutions in Indonesia are not functioning well. Law enforcement officials such as Police, Prosecutors and Judges are not doing their job well, especially in prosecuting rape perpetrators, thus there is no deterrent effect. When a rape is not

⁵⁸ Komnas Perempuan, 2011 Annual Notes: 'Catatan Tahunan 2011'. Pg. 3, <http://www.komnasperempuan.or.id/2012/03/catatan-ktp-tahun-2011-stagnasi-sistem-hukum-mengantung-asa-perempuan-korban/>

⁵⁹ *Ibid*, pg. 5.

⁶⁰ *Ibid*, pg.6.

⁶¹ Komnas Perempuan Press Release of 2012 Annual Report: <http://www.komnasperempuan.or.id/2013/03/siaran-pers-komnas-perempuan-catatan-tahunan-catahu-2012/>

prosecuted and settled by the police, the case will become prevalence among perpetrators. Another issue is the perspective of law enforcement officials, which is still gender biased. In several cases of rape, they were settled as consensual acts.⁶²

93. Sentences for rape perpetrators are also very low and do not constitute justice for the victims. This is partly due to the provision on rape in the Criminal Code⁶³, which has not been revised to be in line with the development of existing rules and policies in Indonesia. Until now, Indonesian Criminal Code has not been revised especially on the articles related to violence against women, domestic violence, rape, molestation, pornography, etc. Thus, it is also important for the Government in response to various crimes, to amend the Criminal Code.

Recommendation:

The State Party should:

1. Amend the Criminal Code by revising the definition in order to include the marital rape, and the related sanctions. .

Issue 18: Please respond to reports that violence against women, including domestic violence remains a problem that is exacerbated by under-reporting and poor documentation by State authorities. Furthermore, please respond to reports that the law does not prohibit female genital mutilation (FGM), and that in November 2010 the Ministry of Health issued a decree that prohibits “grave types of FGM” but explicitly permits doctors, midwives and licensed nurses to conduct FGM. Please explain how the medicalization of the practice of FGM is compatible with the rights provided under the Covenant.

94. Female genital mutilation is a practice that still occurs in Indonesia. A joint-research by the Ministry of Health and Ministry of Women Empowerment and Child Protection seven years ago showed that 68% of female genital mutilation in South Sulawesi and Banten for example, were conducted by non-medical persons. Such research then became the consideration basis for the Health Minister in 2006 to enact the prohibition of female genital mutilation.

95. Circular Letter of Directorate General Public Health, Ministry of Health, Number HK 00.07.1.31047a on 20 April 2006 on the Prohibition of Medicalisation of Female Genital Mutilation. However two years later, Indonesian Ulema Council published a *fatwa*, which rejects the prohibition on the ground that female genital mutilation is a part of *syariah*. In 2010 the Indonesian Ulema Council even pressed the Ministry of Health to enact PMK No. 1636 Year 2010 which legalized the practice of female genital mutilation, even though in many other parts of the world it has been prohibited.

96. In several areas in Indonesia such as West Sumatera, West Java, West Nusa Tenggara, and South Sulawesi, the practice of female genital mutilation is still a tradition. Female

⁶² Report of LBH APIK Jakarta 2006-2010

⁶³ Article 285 on Rape: Any person who by using force or threat of force forces a woman to have sexual intercourse with him out of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of twelve years. Rape is defined as an act “...by using force or threat of force forces women who is not his wife to have sexual intercourse with him...” The elements in the crime are: by force or threat of force; forces a woman who is not his wife; to have sexual intercourse. In nowadays context, such provision is outdated, since rape has developed greatly in its operation and types. For example: what if the rape occurred not in the forms of sexual intercourse (for example by forcibly inserting the penis to victim’s mouth/anus, or inserting other things inside victim’s vagina), and what if the rape committed against wife (marital rape)

genital mutilation is mostly related to religion, especially Islam, although it is still triggered pro and contra. The implication of the enactment of PMK No. 1636 is every hospital and even private maternity clinics have to provide their service to conduct female genital mutilation, based on the reason that female genital mutilation when conducted medically will be safer and more hygienic.

97. Although cultural analysis states that female genital mutilation in its practice is not causing any problem and is merely symbolic, several findings of reproductive health study centres have found that female genital mutilation impact directly on women, especially those whose clitoris is partly cut or scratched. These women have reported that they suffer from pain and several other women have admitted that after having genital mutilation they have suffered from sexual insensitivity, and have not been able to enjoy sexual intercourse.

Recommendation:

The State Party should:

1. Annul Minister of Health Letter PMK Number 1636 Year 2010 which allows female genital mutilation (FGM)

Please refer to the Report on Torture from the Working Group Against Torture for Issues number 15, 19, 20, and 21

Issue 22: Please provide information on the challenges encountered to implement Law No. 21 of 2007 on “Combating the Criminal Act of Trafficking in Persons”. Please provide information on: (a) the number of prosecutions, convictions, and the sanctions imposed on persons involved in trafficking in persons; and (b) the impact of the training programmes for professionals involved in implementing the State party’s measures against trafficking, including the police, immigration officers, the judiciary, members of the prosecution authorities and social workers.

98. To prevent and handle the issue of trafficking in person, Indonesia has adopted the Law No. 21 of 2007 on Eradication of Trafficking in Person. This law has also produced several follow-up policies such as the Presidential Regulation No. 69/2008 on the Formation of Task Force on Trafficking Prevention and Eradication as well as the initiation of a centralized service centre that involves all networks of regional hospitals and police.

99. The Law No. 21 of 2007 has been implemented for 5 years in Indonesia, however, according to some resources such as the IOM, which conducts direct observation of implementation, up until 2012 there were 114 trafficking cases. For 2012 alone, there were 3.943 trafficking victims, of which 3.559 were females and 384 were males.⁶⁴

100. Modes of trafficking are also developing and threatening young female victims. The Migrant Care also raises the fact that 43% of migrant workers (equal to 2 million people) become trafficking victims in the receiving countries.

⁶⁴ “IOM Indonesia Maret 2005-Juni 2010”, accessed from <http://counterwomentrafficking.blogspot.com/p/data-dan-fakta.html>

101. Unfortunately, the Law No. 21 of 2007 is unable to be optimized, as in most cases they are solved with criminal charges bearing less sanction and they tend to criminalize the victims.
102. A number of regions in the Eastern part of Indonesia such as Sulawesi, East Nusa Tenggara (NTT), and West Nusa Tenggara (NTB) have also experienced an increase of trafficking cases, as the local governments and society have yet to fully understand the trafficking issue and realize the law on trafficking eradication. The lack of socialization is one of the core problems.
103. The State Ministry of Women Empowerment and Child Protection that receives mandates to utilize anti-trafficking task force is structurally incapable. The ministry does not have a complete mandate to implement Law No. 21 of 2007. The ministry's mandate is limited to the involvement of shaping the policy, not to the formation and development of the policies to all related ministries and other State institutions to technically implement the policies or through prevention programs.
104. To date, the number of trafficking cases is still high. One of the modes used by traffickers are migrant workers. Based on the cases handled by the IOM Mission in Indonesia since 2005 until 2011, 53,33% of trafficking victims worked overseas as domestic workers.⁶⁵
105. The current law on migrant workers, which is Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers in Overseas, contributes towards the occurrence of trafficking. Furthermore, this law provides a huge role and space to private parties, immigration officials, and recruitment officials. This is made worse by the lack of supervision mechanisms, thus the government is unable to guarantee that the immigration process to private parties accord with the law. This condition enables illegal practices such as identity fraud, scamming, and trafficking in person.

Recommendation:

The State Party should:

- 1) Conduct an evaluation on Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Person.
- 2) Expedite the revision of the Law No. 39 of 2004 in accordance with the Convention on the protection of migrant workers and their family members.

Issue 24: Please provide information on measures taken to resettle internally displaced persons (IDPs) in the State party, particularly those that were displaced due to communal violence in Ambon, Maluku province. What measures have been put in place to monitor the return and resettlement conditions of IDPs, and to implement the 2007 Law on Disaster Management?

106. One of the force displacement cases recorded by the NGO *Aliansi Masyarakat Adat Nusantara* (AMAN) occurred in the Pekasa indigenous community, located in West Nusa Tenggara province, and affected 172 peoples in the area. In December 2011, about 30 members of heavily armed military forces burnt down 63 houses in the community. The

⁶⁵ *Ibid.*

forced displacement occurred under the pretence that Pekasa territory is a protected forest area based on Law on Forestry 41/1999.⁶⁶ Law on Forestry 41/1999 has been one of the main causes of agrarian conflicts affecting indigenous peoples in Indonesia. For more than ten years since its implementation, it has been used as an instrument by the Indonesian Government to deprive the right of indigenous peoples over their land and territories. Indigenous forests have been taken away and transferred as State forest. Furthermore, in the name of the State, the forest is given to private sectors through various concession schemes without considering, nor respecting the rights and lives of respective indigenous community in the region.⁶⁷

107. As a result of the incident, Pekasa people were internally displaced. However, they went back to their territory and reoccupied the territory. The Pekasa people built the burnt houses themselves. As a consequence, the people have to deal with the intimidations and terrors of the military along with the government regarding the displacement issue.

108. Another case occurred in the Karonsie Dongi indigenous community, located in South Sulawesi province. The case occurred in relation to the existence and activity of “PT. Vale Indonesia, Tbk.”, a big Brazil nickel mining company. The displacement took place in the 1970s, where the Karonsie people were internally displaced to Central Sulawesi. During the year of 2000, despite the terrors and intimidations of the military, Karonsie people have been committed to reclaiming their territory, which started with 10 households. The initiative was taken as Karonsie indigenous peoples have greatly suffered from the displacement that directly caused their livelihood, economic condition, and most importantly their identity as indigenous peoples. As of now, there are 30 households in the area. They strongly oppose the compensation from the company and displacement plans offered by the Indonesian government.⁶⁸

109. From the two forced displacement cases mentioned above, the Human Rights Committee is urged to express concern on the forced displacement issues in Indonesia and to encourage the Government of Indonesia to:

- 1) Recognize customary forest within indigenous territory as decided by the recent Ruling of Indonesian Constitutional Court number 35/PUU-X-2012 on the judicial review of Law on Forestry 41/1999, protect the right of indigenous peoples to their territory, and establish a monitoring mechanism that includes all measures to prevent forced displacement of indigenous peoples;
- 2) Review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of violations against right to privacy of indigenous peoples;
- 3) Reduce and ultimately withdraw the presence and excessive activity of military in the territories of indigenous peoples considering the violent displacement process, which have great negative impacts toward the right to privacy of indigenous peoples in the region;

IDPs as a cause of religious conflicts (Ahmadiyya and Shia)

⁶⁶ Fact sheet on indigenous peoples rights violation, Pekasa indigenous community, Aliansi Masyarakat Adat Nusantara, 2012.

⁶⁷ See Ruling of the Constitutional Court of Indonesia Number 35/PUU-X/2012.

⁶⁸ Submission to the Special Rapporteur on the Rights of Indigenous Peoples, Case Study on Extractive Industries In or Near Indigenous Territories, Mining Case in Karonsie Dongi Indigenous Community, Aliansi Masyarakat Adat Nusantara (AMAN), 2013.

110. The failed protection over minorities has meant many of these people end up being victims of intolerance and violence towards themselves and to their properties and houses of worship/religious. This has been the case for the Ahmadis (in Lombok, West Java and other regions) and the Shiites (in Sampang).⁶⁹
111. Since 2001 Ahmadiyya adherents suffered persecution, discrimination and violence perpetrated by intolerant groups. Throughout 2001-2006, attacks occurred at least once every year. One of the worst cases occurred on 4 February 2006; whereby there was an assault against Ahmadiyya adherents, which caused them to take refuge in Transit Boarding house, Mataram, West Nusa Tenggara. As of today, the refugees still have not been able to return to their villages and the State has not provided them with the best solution.⁷⁰
112. Similar events have occurred among Shiites of Sampang, who have been victims of violence since December 2011, as their settlement and Islamic boarding schools of the Shiites were attacked and burnt by a **mob on August 26, 2012**,⁷¹. Shia adherents of Sampang are still housed in a shelter (in a sports building of Sampang, Madura) and haven't been able to return to their homes.⁷²
113. The Sampang Regency Government, Madura, has not been treating refugees humanely. They are always being forced to relocate to other regions (not returning to their homes and villages). At one point, the Sampang Regency Government also suspended food aid for the refugees. On March 2, 2013 Sampang Government also cut off power to the sports building, hence the shelters were pitch-dark. For 9 months in exile, refugees were living in a prison like jail, they were closely watched; every refugee who wished to go out were registered and questioned. The food aid was inadequate and used to the degree of modest necessity.⁷³

IDPs Ambon-Maluku

114. Dozens of IDPs of Ambon-Maluku have still not received any assistance from Maluku Government. In 2009, the Maluku Government has provided relief to 8.183 IDPs. However, due to the trifling efforts of the local government in data recording and supervising the IDPs, there are many remaining refugees who have not received this aid. Despite this the Maluku Province Government has stated that the management of refugees has been completed.
115. Previously, on July 15, 2010, Maluku Governor, National Commission on Human Rights and IDP community conducted a mediation and agreed that the Province Government of Maluku must resolve the issue of remaining IDPs within six months after the agreement. However, the deal has not been realized yet.⁷⁴

⁶⁹ See Annex III, Joint Complaint_Forced Displaced Sampang Shiites_Indonesia_2012)

⁷⁰ "7 Years State Omission over Ahmadi Refugees in Mataram", 4 February 2013, retrieved from <http://sejuk.org/siaran-pers/286-7-tahun-negara-telantarkan-pengungsi-ahmadiyah-mataram-.html>

⁷¹ The attack caused one fatality, 49 houses and a mosque were burned down. Perpetrators consisted of 200 people.

⁷² In context of the case, civil society in Indonesia also had delivered Individual Complaint to the Special Rapporteur on Religious Freedom and Belief, Special Rapporteur on Human Rights of Internally Displaced Persons, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Special Rapporteur on the Right to Food, and Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. Complaints enclosed (Annex II).

⁷³ "Shia Refugees Treated Inhumanely" *Saturday, 04 May 2013*, <http://www.shnews.co/detile-18936-pengungsi-syiah-diperlakukan-tak-manusiawi.html>

⁷⁴ "Urge Governor to Resolve Refugees Issue, FKP2K Storms Governor Office" *Siwalima*, 4 June 2013, http://www.siwalimanews.com/post/fkp2k_serbu_kantor_gubernur

116. For the past 13 years, since 1999, these IDPs have lived as internally displaced persons. Due to the trauma from religious based conflict, they have been afraid to return to their place of origin. Hence, they are still taking refuge in Vitas Barito warehouse, in Ambon. These IDPs come from conflict-affected regions that date back from 1999 and they have been moving from one shelter to another before finally taking refuge in Vitas Barito, Ambon. The number of IDPs in Vitas Barito is 29 families, comprising of 119 people, 54 male and 65 female.

117. In terms of livelihood, they take any job that is available: rough labourer, *ojek* (bicycle/motorcycle taxi), cab driver, peddler, massager or laundrymen. Sometimes they also get help from their relatives. The physical state of the building is pitiful: the border wall is made of plywood, some refugees only have wooden beds and traditional mats, bare minimum waste disposal, the cement floor starts to break down and some parts of the floor building have not been cemented; rusty zinc roofs have started to leak when it rains and a number of wooden roof frames are already fragile. (Annex 4)

118. In terms of the children's education, IDPs find difficulty in obtaining access to learning tools (books, shoes, bags, etc.), however the school location is nearby. Health care in the neighbourhood is adequate and they are given free health care service. The refugees, in order to access clean water, (for drinking and cooking), have to jump a 1.5 meters high wall behind the complex from a well belonging to neighbouring villagers. Water can be taken daily in the morning and evening, except on Sundays. As for the public sanitary facility: there is only one well between the buildings and they have to share with others. It is the same situation in using the inadequate electrical facilities.⁷⁵

Recommendations:

The State Party should:

- 1) Provide the best solution for refugees of Shia, Ahmadiyya and in Ambon and give them the freedom to choose a location for their residence, all of which are supported by the Central or Local Government.
- 2) Ensure the fulfilment of Shia, Ahmadiyya and Ambon refugees' needs, as the Government has not provided a solution yet.
- 3) Protect refugees from violence or intolerance, if they still want to return to their hometown.

Issue 25: Please respond to allegations of forcible evictions in rural areas, particularly those located close to extractive industries and plantations. Please provide information on the conduct of the evictions, the alternative housing provided, and how these evictions affect the right to privacy of evictees.

Freedom of religion and belief, freedom of opinion and expression, and freedom of assembly and participation in the conduct of public affairs (arts. 18, 19, 20, 21 and 25)

⁷⁵ The Data is based on report of accompaniment results by Jesuit Refugee Service (JRS) Indonesia. JRS, *Protracting Refuge: Study Case on Internal Refugee at Vitas Barito, Passo, Ambon*, (Yogyakarta: JRS, March 2013),

Issue 26: Please provide information on instances when a religion can be defamed under Law No. 1 of 1965 on the Defamation of Religion. Furthermore, please provide information on instances when the law was applied and the penalties that have been imposed on individuals who have been found to be in contravention with this law. Please explain how this law is compatible with the provisions of article 19 and 20 of the Covenant, in particular in light of General Comment No. 34 on article 19 of the Covenant relating to freedoms of opinion and expression. What measures have been taken to guarantee freedom of expression in West Papua?

Law No.1/PNPS/1965

119. The recommendation on Law No.1/PNPS/1965 is one of the submissions rejected by the Government of Indonesia in the 2012 UPR⁷⁶. Yet Indonesia retains Law No. 1/PNPS/1965 concerning Prevention of Misuse and/or Desecration of Religion or known as Law on Prevention of Blasphemy, while it had been applied for its Judicial Review by Indonesian Civil Society in 2009.
120. The essence of the Law is the prohibition of making submissions (in public), which: 1) expressing feelings or conducting act of hostility to a religion; 2) expressing feelings or conducting act of **misuse to a professed religion** in Indonesia; 3) expressing feelings or conducting act of **desecration of a professed religion** in Indonesia; 4) acts with the purpose of preventing others from adhering to any religion that based on the belief in the One Almighty God.
121. The law only acknowledges 6 official religions in Indonesia; therefore any religion and belief, except those 6, are considered as illegal by the State and subject to the official religions. Discrimination occurs against those who refuse to submit themselves. Therefore, the Law becomes State's instrument to arbitrate and penalize differing belief/interpretation from the mainstreams (of the six religions) using Article 156a of the Penal Code. For the period of 2003 – 2012, 39 individuals have been punished under the Law by State Courts across nations and 37 of these victims are sentenced to prison, which ranges from 6 months to 4 years. (see Annex I).
122. The Law also comprises another inter-department instrument (called Bakor Pakem or Monitoring of Spiritual Beliefs in Society Task Force) to determine which interpretation of a religion is or isn't considered as "deviant from principal teachings of the said religion"; and if necessary, to initiate investigation on cults that allege to commit deviation of religion, as well as to crack down on them. In this context, Law 1/PNPS/1965 and Bakor Pakem are two elements that continue to be the main problems for the right to freedom of religion and belief in Indonesia, and the number of cases of criminalization against groups of religion/belief who have been deemed as disgracing or contradicting the 6 official religions has substantially increased.⁷⁷
123. One of the people who suffered from this type of criminalization is *ustadz* (a male teacher) Tajul Muluk, a Shia religious figure in Sampang, Madura. On 29 December 2011, the house of Tajul Muluk - the leader of *Jamaah Ahl al- Bait* Association (IJABI) – and two houses belonging to other Shiites and a *Mushalla* (small mosque) used as worship place,

⁷⁶ Report of the Working Group on Indonesia, A/HRC/21/7 Recommendation: R - 109.31

⁷⁷ "Uli Parulian Sihombing", et al., Questioning the Monitoring of Spiritual Beliefs in Society Task Force" Legal Study on Monitoring Religious Beliefs in Indonesia, (Jakarta: ILRC, 2008).

were burnt down by approximately 500 people who claimed to be a part of the *ahl as-sunnah wa al-Jamaah* group. KH. Bukhori Maksum issued a fatwa (ruling) that Ustadz Tajul Muluk's teaching is astray and misleading.⁷⁸

124. Similar cases occurred to Alexander Aan, a State employee of Bappeda (Regional Body for Planning Development) in Dharmasraya, West Sumatera. He wrote a status in his *Facebook* stating: "God is not Exist". His statement in the cyberspace caused a group of youths from Sungai Kambuik, Pulau Punjung, storming the Regency Office of Dharmasraya. Aan insisted that anything he expressed was correct according to him and it was his personal opinion. Aan then was beaten by the mob until he got bruises. Afterward Aan was taken to Sub-Precinct Police Station of Pulau Punjung, Dharmasraya, and Aan was accused of committing religious blasphemy. The object of the allegation was Aan's postings in his personal *Facebook* account (Alex An) that contained some writings and pictures of Prophet Muhammad that have been considered as insulting the Prophet Muhammad, and another allegation stating that Alexander Aan was the administrator in a *Facebook* group called "Atheist Minang".

125. He was indicted of breaching Article 28 paragraph 2 *Jo*, Article 45 paragraph 2 in Law No.11 of 2008 concerning Electronic Information and Transaction, Article 156a (a) of the Penal Code concerning religious blasphemy and Article 156a (b) of the Penal Code concerning solicitation to others not to profess any religion. Board of Justice declared that Aan was found guilty for breaching Article 28 (2) of Electronic Information and Transaction (ITE) Law regarding hostility in context of SARA (Ethnicity, Race, Religion and Intergroup relation) and sentenced to 2 years imprisonment and six months in the Muaro Sijunjung District Court.⁷⁹ Later on, Padang High Court strengthened the verdicts of Muaro Sijunjung District Court to paying fines of 100IDR.

Recommendation:

- 1) Government should abolish Law No. 1/PNPS/1965 that criminalizes one's beliefs.
- 2) Government should abolish the policy regarding 6 official religions that discriminates traditional beliefs (adherents of beliefs and cults)

Freedom of Expression in Papua

126. Papua is still a conflict area and this situation has led to the freedom of expression in Papua to be deteriorated in comparison to other regions in Indonesia. In Papua, freedom of religion and cultural expressions are more tolerated than the freedom to social and political rights, which is ranked as the worst compared to all other regions. A research in October – December 2012 in Papua and 4 other areas in Indonesia ranked Papua with the lowest scores (31.25 on a scale of 100).⁸⁰

127. According to the research, when compared to other regions, the number of violence against journalists is particularly high in Papua and they have never been followed with a

⁷⁸ Roisul Hukama reported Ustadz Tajul Muluk to Precinct Police Station of Sampang on charge of religious blasphemy, specifically on a statement that Al-Qurans in circulation are not pristine. Tajul was sentenced with 2 years of imprisonment. The form of blasphemies, according to Board of Justice of State Court, inter alia, that he was proven to teach that the Pillars of Islam are 8 and Faith Pillars are 5; unlike the guidance of Islam embraced by local citizens. Subsequently Tajul proposed an appeal, but the High Court of East Java levied harsher penalty into 4 years in prison. Uli Parulian Sihombing, et al., *Unfairness in Faith: Monitoring Result of Cases concerning Religious Blasphemy and Hate Speech Based on Religion in Indonesia*, (Jakarta: ILRC, 2012), p. 55

⁷⁹ Uli Parulian Sihombing, et al, *Unfairness in Faith*, p. 55.

⁸⁰ Results of Elsam's research in 5 provinces of Indonesia, namely Jakarta, West Sumatra, West Kalimantan, Yogyakarta and Papua. See summary <http://www.elsam.or.id/?act=view&id=2436&cat=c/101>

comprehensive law reinforcement acts against the perpetrators. Even more, perpetrators of violent behaviour have never been captured by law enforcements. Due to their reports, journalist and media companies, frequently suffer from intimidations. Perpetrators are varied, starting from law enforcements, local governments, and also pro-independence groups. The frequent conflicts in the area, although not in situation of crisis, recurrently become a reason for law enforcements to commit repressive actions against various forms of peaceful expression, such as peaceful demonstrations, and specifically on the raising of the Papuan morning star flag.

128. Even to date, the government has still not given foreign journalists access into Papua.⁸¹ During March 2013, as the incidents of violence committed by the security apparatus occurred, the High Commissioner for Human Rights, Navi Pillay, delivered her statement to the Government of Indonesia urging that the government grants foreign journalists access into Papua.⁸²
129. The evidence on the ground suggests that measures taken to guarantee freedom of expression in West Papua have been non-existent or wholly ineffective. If anything, violations of the right to freedom of expression appear to have intensified during 2013.
130. Indigenous Papuans continue to be severely punished for peaceful political activities. They are regularly arrested and detained for actions, such as raising the Papuan Morning Star flag or attending demonstrations and public events that are associated with Papuan nationalism. They are frequently charged with treason ('makar') under Article 106 of the Indonesian Criminal Code and if convicted face prison sentences of up to twenty years or life imprisonment.
131. According to the 'Papuan Behind Bars' website launched by a coalition of Papuan civil society groups, in May 2013, there were at least 76 political prisoners in Papuan prisons, up from 40 in April 2013.
132. A report by the human rights organisation, TAPOL, indicates that during 2012, there was at least 210 political arrests in 28 separate incidents in the territory. The arrests indicate a pattern of targeting and harassment, which is being used to limit freedom of expression and assembly in West Papua. Of those arrested, 134 were released without charge (64%), 45 were reportedly charged (22%) and the fate of the remainder remains unknown. Of the 45 people charged, the most common charge was treason under Article 106 of the Indonesian Criminal Code, which was used in the cases of 20 people. In cases where the sex of the detainee was reported, 9% were women.
133. A case from 2010 exemplifies how ordinary Papuans can be punished for harmless activities perceived to have political connotations.
134. On 20 November 2010, nine men, who were ordinary farmers - Miki Meaga, Toebaga Kilunga, Meki Tabuni, Wombi Tabuni, Obeth Kosay, Pastor Ali Jikwa, Oskar Hilago, Meki Elosak and Peres Tabuni - were walking to a funeral in the central highlands/Puncak Jaya area. They had with them a Morning Star flag for burial alongside the deceased, Marthen Wenda. The men were arrested before they reached Mr Wenda's residence, where mourning was underway. Local people allege they were tortured when they were

⁸¹ "The Foreign Minister Explain Foreign Prohibition into Papua ", Monday, March 11, 2013, <http://www.hukumonline.com/berita/baca/lt513da30eef1ac/menlu-jelaskan-larangan-asing-ke-papua>

⁸² "UN Human Rights Commissioner Urges Indonesia to Grant Access for International Journalists to Papua, " Tabloid Jubi, 30 May 2013, retrieved from <http://tabloidjubi.com/2013/05/03/komisioner-ham-pbb-desak-indonesia-buka-akses-jurnalis-internasional-ke-papua/>

arrested. They were tried, found guilty of treason, under article 106 and article 110 of the Indonesian Penal Code and sentenced to eight years in prison.

135. More recently, during events to commemorate the 50th Anniversary of the Administrative Transfer of Papua to Indonesia on 1 May 1963, three people were killed by security forces and at least 30 demonstrators were arrested across West Papua. The Indonesian authorities had earlier issued a statement banning demonstrations commemorating 1 May 2013, in clear violation of the rights of freedom of expression, association and assembly as guaranteed in the Indonesian Constitution. In a statement issued on 2 May 2013, the UN High Commissioner for Human Rights, Navi Pillay, expressed serious concerns over these crackdowns on mass demonstrations and the reported use of excessive force by the police.⁸³
136. On 8 May 2013, another ban on public demonstrations was issued when a coalition of human rights groups and civil society organisations announced their intention to carry out nation-wide demonstrations on 13 May 2013 demanding accountability from the government for the 1 May 2013 events.
137. The government's usual response to questions about political prisoners is that there are no political prisoners in West Papua. In June 2012, the Minister for Law and Human Rights stated: "We have never detained anybody for expressing their freedom of speech as has been accused by some parties. The Papuans, who were detained, including Filep Karma, are those who have obviously violated the law on treason. Therefore, it's misleading to address them as political detainees."⁸⁴
138. In May 2013, unconfirmed reports emerged that President Yudhoyono had promised to release all Papuan political prisoners, but as yet there is no evidence that this will happen. Indonesia's Coordinating Minister for Political, Legal and Security Affairs denied there was a plan to grant clemency to prisoners. In any event, such an initiative can only be meaningful and effective if the offer of release is unconditional and part of a comprehensive policy to end once and for all the punishment of free expression in West Papua..
139. According to the report of Human Rights in West Papua 2013⁸⁵, journalists face intimidation, threats and violence in West Papua, while foreign journalists are not permitted to travel to the region. As a result, media freedom is seriously affected and independent reporting on the situation locally is difficult, if not impossible. In 2012, the Alliance of Independent Journalists' (AJI) chapter in West Papua recorded twelve cases of violence and intimidation against journalists in Papua, which marks an increase as compared with 2011, during which seven cases were recorded. Journalists are obstructed from covering demonstrations, cases of corruption and court cases of political prisoners.
140. Between October 2011, and March 2013, 17 demonstrations were recorded in Papua. Pro-independence and human rights activists were typically the target of arrests. The demonstrations concerned a range of issues, with the more politically sensitive issues, such as flag raisings, often resulting in violent dispersal and arrest of demonstrators by

⁸³ See the statement of the UN High Commissioner on Human Rights at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13287&LangID=E>

⁸⁴ See the statement in <http://www.thejakartapost.com/news/2012/06/14/papuans-angered-president-s-statement.html>

⁸⁵ The report is published jointly by the International Coalition for Papua and Franciscans International in 2013.

the police. While the Special Autonomy law recognises symbols of regional identity, the Morningstar flag was subsequently banned under Presidential Regulation 77/2007.

141. In 2012, members of National Committee for West Papua (Komite Nasional Papua Barat - KNPB) organised demonstrations in most areas of Sentani, Jayapura and Manokwari. Other demonstrations were conducted by university students, elementary school students, pro-independence activists, members of the West Papua National Authority and human rights activists. In Timika, Freeport mining company workers demonstrated concerning labour rights. Of the 17 recorded demonstrations between October 2011 and Spring 2013, several participants were shot and killed in three demonstrations:

- a labour demonstration at Freeport in October 2011;
- a KNPB demonstration in May 2011,
- and a KNPB demonstration in June 2012 .

Furthermore, another five demonstrations ended with arrests, five demonstrations were also dispersed, while ten ended peacefully without obstruction by the police.

Excessive non-lethal use of force, including forced dispersals and arbitrary arrests, were recorded in the following cases: demonstrations demanding a referendum on independence; celebrating the formation of the Federal Republic of West Papua; rallies in support of the International Lawyers for West Papua; December 1 celebrations; the raising of the Bintang Kejora (Morning Star) flag; and rallies in support of political prisoners. December 1 is seen by many Papuans as Papuan National Day. Other protests ending with dispersals but without arrests included the 1 year celebration of the declaration of the Republic of West Papua Federation. While in February and May 2012, demonstrations by the KNPB in front of the Papuan People's Council (MRP) calling for a referendum ended peacefully, a KNPB demonstration on the same subject in June 2012 was dispersed, after a wave of killings by unknown persons and arrests in Spring 2012 had been taking place.

142. Demonstrations which ended peacefully in 2012 included: a demonstration by workers demanding higher wages; a demonstration in front of the MRP demanding a referendum; a demonstration to reject the establishment of the government's temporary department for the acceleration of development in Papua (UP4B); a demonstration to protest against the visit of the Secretary General of the UN, Ban Ki Moon, to Indonesia; a demonstration to oppose the rise of fuel prices; a demonstration related to insufficient compensation by the government for the use of private land; and a demonstration calling for past human rights abuses to be resolved.

143. In January 2013, the government invited the UN Special Rapporteur on Freedom of Expression to visit Indonesia in accordance with a commitment made in March 2012 at the Universal Periodic Review of Indonesia. However, the visit was postponed for reasons that have not been officially explained. It is understood they relate to the government's refusal to allow the Special Rapporteur to visit West Papua and Maluku, where there are also political prisoners. The Special Rapporteur reminded the government of its commitment to invite him to visit Indonesia during the 23rd session of Human Rights Council in June 2013.

Recommendations

The State Party should:

- 1) Initiate a prompt and fair investigation of cases of violence against journalists in Papua.
- 2) End the practice of charging persons engaged in peaceful political activities with criminal offences such as treason under Article 106 and article 110 of the Indonesian Criminal Code, as well as Article 160 on incitement.
- 3) Order the unconditional release of West Papuan political prisoners as part of a comprehensive policy to end the punishment of free expression.
- 4) Revoke Presidential Regulation 77/2007 that prohibits the use of the Morning Star flag and respect the flag as a symbol of indigenous and regional identity as stipulated under the Special Autonomy Law.
- 5) Recognise the freedoms of expression and opinion, of assembly, and of self-determination of the peoples, as fundamental rights according to ICCPR.
- 6) Provide adequate training for people working in governmental and administrative agencies to foster understanding, respect and protection of the rights to the freedom of expression and opinion, peaceful assembly and self-determination, while they perform their duties.

Issue 27: Please respond to reports that the *Ahmadiyya* religious group has not been allowed to hold national conferences since 2008, when the Bali police refused to issue them a permit, and that some local governments in the State party continue to restrict their right to assembly. Please respond to allegations about police interference of religious groups in the conduct of their right to peaceful assembly.

Ahmadiyya

144. Since 2008, Law No. 1/PNPS/1965 is the foremost ground for a ban on Ahmadiyya, including their freedom to assemble as well as to perform Annual National Conference (Jalsah). The Law was reinforced by a Joint Decree from the Minister of Religious Affairs, the Attorney General and Minister of Interior (LCS) No. 3/2008, KEP-033/A/JA/6/2008, 199 of 2008. It essentially prohibits the entire activities of Ahmadiyya in Indonesia that is considered as desecrating Islam and forbids them to disseminate their religious interpretation and activities:

- a. It warns and orders the general public not to declare, suggest or attempt to gain public support for an interpretation of a religion that is professed in Indonesia or to conduct religious activities that resemble the religious activities of that religion which are deviant from the principal teachings of that religion.
- b. It warns and orders adherents, members, and/or trustees of Ahmadiyya Jama'at Indonesia (JAI), providing that they professed Islam as religion, to bring to an end any dissemination of interpretations and activities that are perverted from the principal teachings of Islam, i.e. disseminating provident that recognizes the

presence of other prophet with all his teachings who comes after the Prophet Muhammad SAW.⁸⁶

145. In terms of policy, both regulations give rise to local regulations prohibiting worshipping and religious activities of the Ahmadis. Since 2008 until March 2011, at least 21 regional policies have been recorded as banning Ahmadiyya's activities and the number has been increasing. These local level policies have increased the practice of violations and intolerance by vigilante groups/intolerants against Ahmadiyya in Indonesia.
146. Moreover, the Indonesia Ulema Council (MUI) has been exacerbating the amount of discrimination against Ahmadiyya in Indonesia. MUI's *Fatwa* (ruling) concerning "Ahmadiyya Heresy" has become a reference for the Governments, national and regional authorities, to limit and forbid Ahmadiyya's religious activities in Indonesia. MUI's fatwa has become a way for various local regulations to prohibit Ahmadiyya's religious activities, and used as a type of justification for intolerant groups to attack, ban and even kill the Ahmadis in Indonesia.⁸⁷
147. As reported in the NGO Report submitted for the List of Issues (December 2012), violations of Ahmadiyya's activities in Indonesia have been increasing from year to year and government officials every so often are engaged in such violations. In nearly all cases, violation against Ahmadiyya's right to freedom of religion began with local government policies and then followed by attacks or pressure from vigilant groups or government authorities to have Ahmadiyya to disband them selves and cease their activities.
148. Within 2013 alone, there have been at least four cases that occurred to Ahmadiyya, i.e. attacks and arson of Ahmadiyya residents in Tasikmalaya, West Java (5 May 2013), which resulted in 20 damaged house,⁸⁸ the sealing of Ahmadiyya Mosques at Jati Bening, Bekasi, West Java (4 April 2013),⁸⁹ as well as in Sukabumi by Islamic Defenders Front (on 24 March 2013)⁹⁰ and also the destruction of Ahmadiyya Mosque in Tulung Agung (16/5/2013) in addition to joint force that forcedly sealed off worship facilities belonging to Ahmadiyya Jamaat Indonesia (JAI) in Sukadana village, Campaka District, Cianjur Regency, West Java, on Saturday 12 April 2013. The latter was committed by Bakor Pakem of Cianjur to three mosques, two medreses and a shop and residence owned by JAI.⁹¹
149. In Jati Bening, Bekasi, on 4 April 2013, Municipal Police of Bekasi, supported by members of Bekasi Precinct Police and Armed Forces, froze property of Ahmadiyya's worship house (mosque) by removing the whole assets out of the mosque and covering the entire mosque's fence with zinc plates (in order to block access), while approximately 30 people were still inside the mosque. Afterward, on April 5, 2013, the police called the people (Ahmadis) inside the mosque to immediately leave the premises because there

⁸⁶ LCS Minister of Religious Affairs, Attorney General and Minister of Interior No. 3/2008, KEP-033/A/JA/6/2008, 199 of 2008

⁸⁷ See other Regional Regulations and Policies at: <http://indonesiatoleran.or.id/category/kebijakan/lokal/>

⁸⁸ "Mob ransacks Ahmadiyya village", *The Jakarta Post*, 5 May 2013, <http://www.thejakartapost.com/news/2013/05/06/mob-ransacks-ahmadiyah-village.html>

⁸⁹ "Bekasi Ahmadis in stand off", *The Jakarta Post*, 6 April 2013, <http://www.thejakartapost.com/news/2013/04/06/bekasi-ahmadis-stand.html>

⁹⁰ "FPI Mob Seals Off Ahmadiyya Mosque in Sukabumi", 25 March 2013, http://www.wahidinstitute.org/Program/Detail/?id=469/hl=id/Massa_FPI_Segel_Masjid_Ahmadiyah_Di_Sukabumi

⁹¹ "Ahmadiyya Mosque and Medreses in Cianjur Sealed Off" *Tempo*, 12 April 2013, <http://www.tempo.co/read/news/2013/04/12/058473080/Masjid-dan-Madrasah-Ahmadiyah-di-Cianjur-Disegel>

had been a threat of FPI heading to and attacking the mosque, although the attack was never proven to have occurred.⁹²

150. Regarding these facts and cases, regrettably, there has not been any decisive action by the Government to guarantee and protect the rights of Ahmadiyya to worship, assemble nor conduct religious activities due to the raids of intolerant groups.

Police and Apparatus interference

151. The amount of involvement of State authorities in banning Ahmadiyya activities and intimidating them to repent back into Islam can be seen from "operation prayer mat" made by a number of military personnel targeting the Ahmadiyya in West Java.⁹³ These armies came to several Ahmadiyya mosques and took control of them, as well as coerced the jamaat to repent. In their statement however, the National Armed Force denied committing the operation.

152. Other state actors that are directly involved in the violation is Municipal Police Unit, which on many occasions participated in the sealing and closing off of Ahmadiyya's mosques in Indonesia as, for example, occurred in Jakarta in May 2013.⁹⁴ Government authorities' contribution to the banning of Ahmadiyya's activities also appears in West Java Governor's statement, Ahmad Heryawan, declaring that: if the Ahmadiyya – that has been considered as deviant – is not exist; then the problem is gone.⁹⁵ Previously, in 2011, the Governor of West Java also released Regulation of West Java Governor No. 12 of 2011 on the Prohibition of Ahmadiyya activities in West Java.

153. Similar cases have been committed by the Government of Padangpanjang, West Sumatra. The Government of Padangpanjang organized a meeting to socialize the prohibition of Ahmadiyya teachings in the region and invited MUI and made MUI fatwa declaring Ahmadiyya Heresy as a reference, in addition to 3 Ministries Joint Decree on Ahmadiyya.⁹⁶

Recommendations:

The State Party should:

- 1) Guarantee protection of religious minority groups - such as Ahmadiyya, Shiites, and Christian - to run their activities and implement their religious practices in accordance with their own faiths, from the intolerant/vigilante groups.
- 2) Revoke local policies that discriminate against minority religions, such as the Ahmadiyya and Shia.

Issue 28: Please respond to reports that in the Aceh province candidates for political office are required to demonstrate an ability to read the Qur'an in Arabic without which they are

⁹² HRWG monitoring results on the field and over Ahmadiyya victims of Jati Bening, Bekasi

⁹³ See the story at: <http://www.kemendagri.go.id/news/2011/03/17/mendagri-tak-keberatan-dengan-operasi-sajadah> and <http://www.rmol.co/read/2011/03/16/21197/Operasi-Sajadah-TNI-Tak-Langgar-HAM->

⁹⁴ Enclosed in the Complaint delivered to SR Freedom of Religion and Belief and The Special Rapporteur of Peaceful Assembly and Association regarding Municipal Police Unit (Satpol PP)'s actions against congregation of HKBP Filadelfia Bekasi.

⁹⁵ "West Java Governor: Problems will Disappear if Ahmadiyya Disappear", *Kompas*, 7 May 2013, <http://regional.kompas.com/read/2013/05/07/13543759/twitter.com>

⁹⁶ "Municipal Administration's Office of Nation Unity, Politics and Community Protection (Kesbangpol Linmas) socializes banning over Ahmadiyya teaching", 4 December 2012, <http://www.padangmedia.com/1-Berita/77881-Kesbangpol-Sosialisasikan-Larangan-Ajaran-Ahmadiyah-.html>

not allowed to participate in the conduct of public affairs. Please explain how this requirement is compatible with the provisions of the Covenant?

154. Aceh is unique when compared with other provinces in Indonesia, which was established through Law on Regional Autonomy. The autonomy lies on Aceh's competence to implement Islamic Sharia as a whole; through legislation or judicial system. Although in practice, the set of laws derived from Islamic Sharia in Aceh every so often does not correspond to the values of human rights.
155. The phenomenon of local regulations with Sharia backgrounds does not happen merely in Aceh, but disseminating and rapidly increasing in several areas of Indonesia; including regional ordinance that obliging Qur'an literacy for State officials.
156. In early August 2012, Regent of Mamuju of West Sulawesi Province, Mr. Suhardi Duka stated that any Muslim civil servant is required to be Quran literate. Each state employee will be required to read the Quran, therefore every enrolment test of Civil Servants Candidate (CPNS) in the region shall comprise an examination of reading and writing Koranic verses. Mamuju government has collaborated with Mamuju Department of Religious Affairs regarding the implementation of the assessment of Koranic literacy.
157. On October 17, 2012, 16 people from 3 villages (i.e. West Rappang and Beroangin Village of Mapilli District, and Bulu village of Bulu District) who were prospective candidates of village heads in Polewali Mandar West Sulawesi were required to attend a selection test comprising of reading and writing Koranic verses at Religious Affairs Office of Mapilli.
158. On April 30, 2012, House of Makassar city passed a regional regulation on Makassar Koranic Literacy. The Bill regulates several points related to efforts in improving Koranic literacy in the city of Makassar. Nurniati, Secretary of Special Committee, said that the House has discussed the Draft Bylaw since 2011 and ratified it currently after an extensive debate. Mandatory Koranic literacy for Muslim children starting from elementary school up to high school is also enacted in the city of Samarinda.⁹⁷ Local ordinance (Perda) on Requirement of Koran Reading and Writing over Muslims of Gorontalo was passed by local legislators on Wednesday (17/10/2012). The ordinance inter alia contains general provisions on the use of regional government budget for the eradication of Koranic illiteracy for Gorontalo citizens. In August 2012, the plenary meeting of Sidrap House in South Sulawesi enacted a Draft Bill of Qur'an Reading and Writing Education for School Age Children.⁹⁸
159. The Government of Bekasi Regency in the future will make it obligatory for all civil servants (PNS) to be able to read the Quran in a regional ordinance. In addition, there is also a local bylaw made by the Government of Tasikmalaya, West Java, which shall form the Sharia Police Unit that acts upon upholding local regulations (Perda) No. 12 in 2009. It contains people's values based on the teachings of Islam (WI, 2012)
160. On the other hand, the Government has also laid the foundation to eradicate these local ordinances or prohibit its occurrence, as the Minister of Interior and the Ministry of Law and Human Rights have had Joint Regulations No. 20/2012 and No. 77/2012 which provide authority to both Agencies to eliminate or prevent local bylaws which conflict

⁹⁷ Annual Report of Wahid Institute 2012, p. 20

⁹⁸ Annual Report of Wahid Institute 2012, p. 20.

with the Constitution and human rights. However, since these regulations have been issued, none of them were reviewed and annulled by the Ministry of Interior, especially rules that violating the rights of minorities.⁹⁹ As for rulings, the National Government merely annulled tax and retribution-related bylaws.

Recommendations:

The State Party should:

- 1) Execute Joint Regulations of Minister of Interior and Minister of Law and Human Rights No. 20/2012 and 77/2012 to revoke regional regulations that discriminate minority religions/beliefs.
- 2) Guarantee the right of every citizen to play an active role in the public affairs and ensure that they are not discriminated based on belief/religion they professed.

Non-discrimination, marriage, family and measures for the protection of minors (arts. 2, 23, 24 and 26)

Issue 29: Please provide information on specific measures taken to amend the law that sets the age of criminal responsibility at 8. Please also explain the measures being taken to revise the age of sexual consent which is currently set at 12.

161. In 2012, the Government adopted Law No. 11 of 2012 on Juvenile Criminal Justice System. This Law stated that the age of criminal responsibility is to rise from 8 year-olds to 12 year-olds.¹⁰⁰ This is also in line with the Constitutional Court's judgement on 25th February 2011 about the minimum age in the criminal responsibility is 12 years old. This Law on Juvenile Criminal Justice System also gives the possibility of child imprisonment (as regulated in Article 71 of the Law), although imprisonment will not be carried out at a regular penitentiary, but at a Juvenile Penitentiary. The Law No. 11 of 2012 also sets time for infrastructure set-up preparation and readiness of officials in five years.

162. According to Article 108 of the Law No. 11 of 2012, it will effectively enter into force two years after the adoption (1st August 2014).

Issue 30: Please explain how Law No. 1 of 1974 on Marriage, which provides that a child born out of wedlock does not have the same rights as a child born to married parents, including with respect to inheritance under the Civil Code, complies with the Covenant. Furthermore, please explain the measures that are being taken to accelerate birth registration which is allegedly too low.

163. The amendment of Law No. 1 of 1974 on Marriage has not yet been realized, despite the fact that this law contradicts the CEDAW, the CRC, and the ICCPR. On 13th February 2012 the Constitutional Court issued a judgment that recognizes civil partnership between a child out of wedlock and his/her biological father, however, this judgment is difficult to be applied. The Government has not adopted a governmental regulation to implement the said judgment.

⁹⁹ "Government issues decree to repeal flawed, biased local bylaws", *The Jakarta Post*, Tue, January 08 2013, <http://www.thejakartapost.com/news/2013/01/08/govt-issues-decree-repeal-flawed-biased-local-bylaws.html>

¹⁰⁰ Article 1, Par. 3 of the Law Nr. 11 of 2012 on Juvenile Criminal Justice System.

164. Challenges emerge from various parties, including the Religious Court, as this institution has jurisdiction over disputes concerning civil rights of a child born out of wedlock. The Religious Court rejects the Constitutional Court's judgment, even until now the plaintiff of the case before the Constitutional Court who claims the rights of his/her child has not received clear status for his/her child, thus leaving the child outside the list of heirs.
165. The Constitutional Court's judgment raises confusion as; on the other hand, it states that all affairs concerning inheritance and descendants have to follow more specific laws such as the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and the Civil Code. Nevertheless, according to Islamic law and the Civil Code, it is acknowledged that the status and position of a child born out of wedlock is still in a disadvantage position.
166. A month after the Constitutional Court's judgment, the Indonesian Ulemma Council (Majelis Ulama Indonesia/MUI) also issued the Fatwa No. 11 of 2012. This fatwa was issued to answer public's questions on matters that are not clear in the Constitutional Court's judgment. MUI reminded among others that a child born out of wedlock does not have relations of nasab, inheritance, and nafaqah with his/her biological father. In addition, the MUI also reminded the Government that it is obliged to protect children born out of wedlock and to prevent any child from being neglected.
167. The non-recognition of the civil relationship of a child born out of wedlock has many consequences. Currently, there are various groups of people that cannot register their children, for instance, "*kelompok penghayat*" who cannot register their members' marriages to the Religious Affairs Office (Kantor Urusan Agama/KUA) or civil administration office (kantoran sipil). This matter also gives impact to other rights of children, such as the right to education since to register to an elementary school; it is a requirement to have a birth certificate and a family card, whilst, at the same time, to have access to these two documents, a marriage certificate is required.

Rights of persons belonging to minorities (art. 27)

Issue 31: Please provide information on the measures being taken to protect the rights of ethnic and religious minorities such as the *Ahmadiyah* followers. Please also provide an update on the status of the bill on the "Recognition and Protection of Traditional Minorities".

The dissolution and prohibition of practicing religion and constructing worship house

168. According to civil society's record, prohibition of practicing one's religion was the predominant offence in 2012, in the form of banning religious houses and activities.¹⁰¹ Three cases that still cannot be resolved by the Government are, chronic violations of rights undertaken by local authorities of Bekasi (against the HKBP Filadelfia Bekasi), Bogor (against Church GKI Taman Yasmin) and Aceh (against 20 churches in Singkil).¹⁰²
169. The State's failure to protect the rights of religious minorities can be seen by the example of the congregation of HKBP Philadelphia Bekasi, who were unable to carry out their Christmas service in their Church due to the intense pressure made by intolerant

¹⁰¹ Annual Report of Wahid Institute 2012, p. 28

¹⁰² As described in the Alternative Report to UN Human Rights Commission by the civil society. These cases were mentioned also in the UPR process.

groups. As the police did not want to thwart the movement of the intolerant mob, the service was cancelled.¹⁰³

170. Recently, on March 7, 2013, the Municipal Police Unit sealed the worship house of HKBP Setu, at Taman Sari Village, Setu District, Bekasi Regency, stating that it did not have a building permit. Municipal Police Unit warned them, that if the worship building was not disassembled within 7 days (by 14 March 2013), the Regency Government would demolish it by force. On March 21, 2013, the Municipal Police Unit forcibly tore down the HKBP Church of Setu, Bekasi.¹⁰⁴

171. Prohibition from practicing religion was also endured by the Peace of Christ Catholic Church, of Kampung Duri, Tambora, West Jakarta, on March 23, 2013. At that time, an intolerant mob blockaded and besieged approximately 50 congregation members who were worshipping in the Church. Owing to the roadblocks, they couldn't get out of the Church. Before the incident, Tambora Sub-precinct Police had asked the congregation not to worship at the Church. On April 3, 2013, the Mayor of West Jakarta held a meeting with Interfaith Communication Forum (FKUB) and the local intolerant *Ulema* to discuss the issue. FKUB and the scholars asked the Mayor to ban the congregation from worshipping or to relocate the Church; but the Mayor refused such requests by stating that he had not authorisation to do so.¹⁰⁵

Traditional minorities

172. The implication of Law No. 1/PNPS/1965 is the limitation of only 6 religious convictions that are considered as official religions and it makes minority religious groups/believers beyond those 6 to endure double discriminations: as a minority and to be alienated from the 6 official religions.¹⁰⁶

173. Law No. 23 of 2006 concerning Civil Administration (Article 8 (2), 61 (4), and 64 (2)) also recognizes the 6 religions in Indonesia as a part of the identity of citizens, consequently it discriminates personal identity of other groups of religion/belief/faith.¹⁰⁷ It affects the citizenship identity of Indonesian traditional faith adherents and believers, as their religious beliefs are still specified on their ID cards. In practice, civil registry officers refuse to record traditional religion/belief identity of its adherents/believers, yet bureaucrat often compels the adherents to select one of the six official religions to be registered.¹⁰⁸

174. In relation to the electronic ID cards (e-KTP) issue, faith adherents/believers also remain at a discriminated position, since the (National) Government only provides 6 columns of religion into Computer data logging in all regions of Indonesia. As a result, the faith believers once again cannot record their religious identity on their ID cards.

¹⁰³ "HKBP Filadelfia Congregation Fail to Worship in Church", *Portal KBR*, 25 December 2012, http://www.portalkbr.com/nusantara/jawabali/2405761_5538.html / see also, <http://www.thejakartapost.com/news/2012/12/26/gki-yasmin-filadelfia-churches-another-christmas-persecution.html>

¹⁰⁴ "Bekasi church bulldozed over permit issue", *The Jakarta Post*, 22 March 2013, <http://www.thejakartapost.com/news/2013/03/22/bekasi-church-bulldozed-over-permit-issue.html>; the following link depicts the church bulldozed by Municipal Police Unit of Bekasi: <http://www.youtube.com/watch?v=C-QisK3sWC0>

¹⁰⁵ Results of HRWG Monitoring and communications with Priest of Peace of Christ Catholic Church

¹⁰⁶ According to the record of Directorate of Beliefs in the Almighty God, Ministry of Culture and Tourism, the number of faith adherent organizations in Indonesia reaches 238.

¹⁰⁷ For example: the Beliefs in the Almighty God's adherents are not under the Ministry of Religious Affairs, but still under the Ministry of Culture and Tourism, because politically and in every policy, Indonesia has not acknowledge these groups as official religions.

¹⁰⁸ HRWG's Report, 2011. Trisno, et.al, *Menuntut Hak Penghayat Kepercayaan di Indonesia*, (Jakarta: HRWG, 2011).

175. In the absence of an identity right, minority groups of faith adherents/believers in Indonesia suffer many types of discrimination, such as violation against their right of citizenship, right to register their marriage legally, right of the child to be registered, and all the progressive rights that they should be entitled to. In many cases, faith believers cannot register their marriage in the Civil Registry bureau or Office of Religious Affairs. As a result, faith believers' marriages do not have legality before the law.¹⁰⁹ It also imposes upon the legal status of children of faith adherents; as well as on allowances for their wives and children. Just because their marriage could not be registered, the husband cannot receive benefits, because he is considered as a bachelor.
176. At school, children of faith believers are also required to attend religious education classes, which consist of only the 6 acknowledged religions. As a result, faith believers have to enrol to one of those religions, as this field of study is counted as one of the national examination subjects. In fact, from time to time there are children of faith believers who fall short in class for refusing to profess to one of these religions.¹¹⁰
177. In addition to legislations, administrative rights of faith adherents are also constrained by field authorities or officials in charge who fail to comprehend the laws. A number of legislations that have protected the rights of faith believers - such as reflected in the Law on Civil Administration and Government Regulation No. 27 of 2007 – cannot be implemented properly either.

Discrimination in Legal Course

178. Apart from cases of physical violence and intolerance faced by Ahmadiyya, they also have to put up with discrimination in the implementation of law. For example, there was a trial of one of the FPI members at Bandung State Court over the destruction of An-Nasir Mosque, Bandung, 10 January 2013, a judge denied an Ahmadi witness to take oath using the Quran. As a final point, he did not swear an oath in accordance with customary Muslims manner in Court.¹¹¹
179. The police apparatus are also perpetrators of discrimination. For example, the police apparatus made Pastor Palti (of HKBP Filadelfia Bekasi) a suspect for allegedly harassing and attacking a member of an intolerant group during Christmas Mass, December 24, 2012. At that time, Reverend Palti was surrounded by intolerant masses and trying to defend himself. However, he did not beat Abdul Azis, and confessed to the police that he was repeatedly punched on his celiac plexus by Pastor Palti. Previously, over the incident, the Pastor along with 6 HKBP Philadelphia congregation members had been questioned with the status as witnesses and eventually the Police established Pastor Palti as a suspect.

¹⁰⁹ Laws and regulations in Indonesia (inter alia Act of Civil Administration, Law on Marriage and Government Regulation No. 27 of 2007 concerning Directive on Implementing Act on Civil Administration) only recognize an officially authorized marriage founded on legitimate marriage according to their own religion, belief and custom. However, the restriction concerning 6 official religions has made faith believer's marriage to be considered as unlawful. As for marriage requirements stipulated in Government Regulation No. 27 of 2007, the provisions thus preventing faith adherents from obtaining marriage certificate. "Discrimination against Women of Faith Adherents", Portal KBR, 24 January 2013, http://www.portalkbr.com/berita/saga/2440825_4216.html

¹¹⁰ Laws and regulations in Indonesia (inter alia Act of Civil Administration, Law on Marriage and Government Regulation No. 27 of 2007 concerning Directive on Implementing Act on Civil Administration) only recognize an officially authorized marriage founded on legitimate marriage according to their own religion, belief and custom. However, the restriction concerning 6 official religions has made faith believer's marriage to be considered as unlawful. As for marriage requirements stipulated in Government Regulation No. 27 of 2007, the provisions thus preventing faith adherents from obtaining marriage certificate. "Discrimination against Women of Faith Adherents", Portal KBR, 24 January 2013, http://www.portalkbr.com/berita/saga/2440825_4216.html

¹¹¹ "Ahmadiyya Witness Taken Oath beyond Islamic Custom", 10 January 2013, <http://www.tempa.co/read/news/2013/01/10/058453410/Saksi-Ahmadiyah-Disumpah-di-Luar-Cara-Islam>

Recommendations

The State Party should:

- 1) Revoke any policy that closes down or seals minority groups' houses of worship, such as at GKI Taman Yasmin, HKBP Filadelfia and Setu Bekasi and Ahmadi's houses of worship.
- 2) Ensure the faith/traditional beliefs adherents can enjoy their rights as citizens, including the right to identity, marriage certificate, birth certificate, and so on, as well as providing computerized facility for e-ID cards of faith adherents/believers.

Draft Act on Recognition and Protection on the Rights of Indigenous Peoples

180. On December 16th 2011, the National Parliament of Indonesia officially decided in its meeting that the Draft Act on the Recognition and Protection on the Rights of Indigenous Peoples was among the priorities of the national legislation program (Prolegnas; the list of priority Draft Acts to be enacted by the Government of Indonesia) in 2012.

181. Despite the efforts and requests of indigenous peoples in Indonesia facilitated by AMAN including a number of regional and provincial consultations as well as submissions to National Legislation Body (BALEG), there are some concerns on the second Draft Act published by the National Legislation Body in February 2013. One of the key challenges identified by AMAN in the course of its advocacy for the Draft Act is that the misleading definition on customary institutions. In the recent Draft Act, the House of Representatives (DPR) defined the customary institution as an institution formed and legalized by the government, while indigenous peoples have their own customary institutions, regulated by their own customary systems.

182. Likewise, the right to self-identification is still a critical concern as indigenous peoples encourage Indonesian Government to establish a mechanism within the Draft Act to identify indigenous communities with full participation of the respective communities in order to implement their right to self-identification. However, the recommendation regarding indigenous peoples right to identify themselves as indigenous and to establish a national indigenous peoples commission to verify the identification, recommend the development concepts and plans related to indigenous peoples, and to mediate the conflicts faced by indigenous peoples is still not mentioned in the Draft Act.

183. If the Draft Act enacted without any proper recognition and comprehensive protection on the rights of indigenous peoples, the Act would not be able to meet the needs of indigenous peoples but just threaten them. It must be ensured that the enacted Draft Act meets the interest and needs and that it comprehensively protects indigenous peoples in Indonesia regarding the protection and promotion of their rights.

Recommendations:

The State Party should:

1. Recognize the right of indigenous peoples to self-identification and adopt the recommendation regarding the establishment of national indigenous peoples commission as an integral part in the Draft Act;

2. Recognize indigenous peoples institutions based on their own systems as a critical substance of the Draft Act on Recognition and Protection on the Rights of Indigenous Peoples;
3. Ensure that all measures taken to improve the content of the Draft Act on Recognition and Protection on the Rights of Indigenous Peoples shall be in full cooperation with the representatives of the indigenous peoples. Immediate enactment is strongly recommended;

Annexes

Cases Using the Blasphemy Law in Indonesia

Nr.	District Court (DC)	Defendant/Case	Complainant/religion accused	Supposition/Charged	Punishment
1.	Medan	HB Jassin/ Cerpen Langit Makin Mendung (1968) – <i>Sky Getting Cloudy Stroriette</i> (1986)	Regional Attorney of North Sumatera / Islam	Art. 156a par. a of the Penal Code	One year in prison with two years probation period.
2.	Central Jakarta	Arswendo Atmowiloto (1990)	Mass group/ Islam	Art. 156 and 156a par. a of the Penal Code	Five years in prison.
3.	Situbondo	Muhammad Saleh (1996)	KH Zaini Abdul Aziz/ Islam	Art. 156a par. a of the Penal Code	Five years in prison.
4.	Batam	Mas'ud Simanungkalit, Islam Hanif (2003)	Indonesia Ulema Council (MUI) of Batam/ Islam	Art. 156a par. a of the Penal Code	<i>Uncovered.</i>
5.	Kalabahi	Ir. Charisal Matsen Agustinus Manu,MSi / Book Cover of "Alor Dalam Angka" (2004)	Indonesia Ulema Council (MUI)/ Islam	Art. 156a par. a of the Penal Code	Two years in prison (Supreme Court verdicts).
6.	Bale Endah	Mangapin Sibuea/ Pondok Nabi dan Rasul Dunia, (2004) – <i>Prophet Hut and The World's Apostles</i> (2004)	Indonesia Christian Communication Froum (FKKI)/ Protestan	Art. 156a par. a of the Penal Code	Two years in prison
7.	Palu	Rus'an/ Article: Islam Agama yang Gagal (2005) – <i>Islam; a Failed Religion</i> (2005)	Palu Islamic Communication Forum/ Islam	Art. 156a par. a of the Penal Code	<i>Uncovered.</i>
8.	Probolingga	Ardi Husain/6 Pengurus YKNCA (2005) – <i>6 Management of YKNCA</i> (2005)	Probolingga Indonesia Ulema Council/ Islam	Art. 156a par. a of the Penal Code	Four years and six months in prison.

9.	Polewali Mandar	Sumardin Tappayya/ Shalat Bersiul (2005) – <i>Whistling Shala (Pray) (2005)</i>	Villages headman/ Islam	Art. 156a par. a of the Penal Code, Article 2 par. 1 of the Emergency Law Nr. 12 /Drt/1951	Six months in prison and 1 year probation period.
10.	Malang	Yusman Roy/ Shalat Dwi Bahasa (2005) – <i>Bilingual Shala (Pray) (2005)</i>	Mass group/ Islam.	Art. 156a par. a and article 157 par. (1) of the Penal Code	Not guilty on blasphemy. Guilty based on the article 157 and punished for two years in prison.
11.	South Jakarta	Teguh Santosa /Prophet Cartoon in Rakyat Merdeka Online Media (2006)	Mass group/ Islam	Art. 156a par. a of the Penal Code	Not guilty.
12.	Bekasi	Imam Trikarsohadi dan H. Abdul Wahab/ The making of prophet cartoon in PETA Tabloid (2006)	- /Islam	Art. 156a par. a of the Penal Code	<i>Uncovered.</i>
13.	Surabaya	Chief of Gloria Magazine, Surabaya (2006)	-/Islam	Art. 156a par. a of the Penal Code	<i>Uncovered.</i>
14.	Central Jakarta	Lia Aminuddin a.k.a Lia Eden/ Salamullah (2006)	Amin Djamaludin / Islam	Art. 156a par. a, art. 157 par. (1) and art. 335 of the Penal Code.	Two years in prison.
15.	Central Jakarta	Abdul Rachman/ Salamullah (2006)	Amin Djamaludin / Islam	Art. 156a par. a of the Penal Code	Three years in prison.
16.	Central Jakarta	Ahmad Musadeq/ Alqiyadah Al Islamiyah (2007)	-/Islam	Art. 156a par. a of the Penal Code	Four years in prison.
17.	Semarang	Raji/ Shalat Koplo (2008) – <i>Koplo</i>	-/ Islam	Art. 156a par. a of the Penal Code.	<i>Uncovered.</i>

		<i>Shala (Pray) (2008)</i>			
18.	Padang	Dedi Priadi and Gerry Luhtfi Yudistira/ Al-Qiyadah Al-Islamiyah Teaching (2007)	Mass group/ Islam	Art. 156a par. a of the Penal Code.	Three years in prison for each.
19.	Central Jakarta	Lia Aminudin/ Salamullah (2009)	Chief of Indonesia Islamic Movement (GUII) (Habib Abdurahman Assegaf)/ Islam	Art. 156a par. a of the Penal Code	Two years and six months in prison
20.	Central Jakarta	Wahyu Andito Putro Wibisono/ Salamullah (2009)	Chief of Indonesia Islamic Movement (Habib Abdurahman Assegaf) / Islam	Art. 156a par. a of the Penal Code	Two years in prison
21.	Kupang	Nimrot Lasbaun dkk/ Sion Kota Allah (2009) – <i>Sion; Allah's City</i>	-/Christian	Art. 156a par. a of the Penal Code	Six months in prison
22.	Klaten	FX Marjana (2009)	FKUI Klaten/ Islam	Art. 156a par. a of the Penal Code	<i>Uncovered.</i>
23.	PN Ambon	Wilhelmina Holle/ Kerusuhan Masohi-Maluku (2009) – <i>Masohi Riots, Moluccas (2009)</i>	-/Islam	Art. 156a par. a of the Penal Code	One year in prison
24.	Medan	Pator Moses Alegesen/ Papers translation (2009)	PHDI/Hindu	Art. 156a par. a of the Penal Code	Not guilty.
25.	South Jakarta	Agus Imam Solihin/Satrio Piningit (2009)	-/Islam	Art. 156a par. a of the Penal Code	Two years and six months in prison.
26.	Surabaya	Ahmad Naf'an (Gus Aan) / Ilmu Kalam Santriloka (2009) – <i>Santriloka Speech Science (2009)</i>	-/Islam	Art. 156a par. a of the Penal Code	Arrested. <i>Uncovered.</i>

27.	Ciamis	Ondon Juhana (2011)	Sri Asriyati and Wawang (victim) / Islam	Art. 156a par. a and article 378 of the Penal Code (fraud).	Four years in prison.
28.	Tasikmalaya	Oben Sarbeni (2011)	Indonesia Ulema Council (MUI)/Islam	Art. 156a par. a of the Penal Code	Four years in prison.
29.	Temanggung	Antonius Richmond Bawengan/ disseminating three brochures and two books (2011)	Peoples and the neighborhood management/ Islam and Christian	Art. 156a par. a of the Penal Code	Five years in prison.
30.	Sumber, Cirebon	Ahmad Tantowi/ Eden Heaven (2011)	Victims/ Islam	Art. 156a par. a and article 289 of the Penal Code	Ten years in prison.
31.	Klaten	Andreas Guntur Wisnu Sarsono/ Amanat Keagungan Ilahi (AKI) (2012) – <i>Godliness Greatness Message (2012)</i>	Mosque Activist Communication Forum/ Islam	Art. 156a par. a of the Penal Code	Four years in prison.
32.	Bandung	Pendeta Hadassah J Werner/ Bethel Tabernakel Church (2012)	Indrawati Tirtosoediro (former disciples) / Christian	Art. 156a par. a of the Penal Code	Not guilty.
33.	Garut	Sensen Komara/ Negara Islam Indonesia (2012) – <i>Indonesia Islamic Country (2012)</i>	-/Islam	Art. 156a par. a of the Penal Code and the subversive law	One year special treatment in the Mental Health Hospital.
34.	Padang	Alexander Aan/ Atheist (2012)	-/Islam	Art. 156a par. a of the Penal Code	Two years and six months in prison.
35.	Sampang	Tajul Muluk/ Shiite (2012)	-/Islam	Art. 156a par. a of the Penal Code	Two years in prison verdicts on the district court. Four years in prison verdict on the High Court of Surabaya.

Source: Indonesia Legal Resource Center (ILRC), 2012.



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Nr. 01/02/IC.UN/HRWG/IV/2013

To:

The Special Rapporteur on Freedom of Religion

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva

The Special Rapporteur of Peaceful Assembly and Association

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva

c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland
Fax: (+41 22) 917 90 06

1. GENERAL INFORMATION

- a. Does the incident involve an individual or a group? The incident involves a group.
- b. If it involves a religious or belief group please state the number of people involved and the denomination of the group: 736 persons.
- c. Country(ies) in which the incident took place: Indonesia.
- d. Nationality(ies) of the victim(s): Indonesia.
- e. Does domestic law require (re-)registration of religious associations and if yes, what is the current status of the group in question? The HKBP¹ is registered and recognized by the government as a *rechtsperson* Nr. 48 which written on State Gazette Nr. 360 of 1932. The head-quarter is in Tarutung, North Sumatera. Later on, many chapter of HKBP were established in Indonesia and also in many other countries.

2. IDENTITY OF THE PERSONS CONCERNED

Note: if more than one person is concerned, please attach relevant information on each person separately.

- Name: Torang Parulian Simanjuntak
 - Denomination of his/her religion or belief: Christian Protestant
 - Place of residence or origin: Bekasi
 - Sex: Male
 - Nationality(ies): Indonesia
- (Mr. Torang Parulian Simanjuntak is the priest and the leader of HKBP Setu, Bekasi)

¹ HKBP; *Huria Kristen Batak Protestan* – Protestant Bataknese Christian Church.

Member of the Coalition:

AJI, AJMI, AMAN, Arus Pelangi, BWI, DEMOS, ELPAGAR, ELSAM, FOKER LSM Papua, GANDI, GAYA Nusantara, HUMA, IDSPS, IKOHI, ILRC, IMPARSIAL, Institute of ECOSOC Rights, ITP, JATAM, Kalyanamitra, Kapal Perempuan, KBH Bengkulu, Koalisi NGO HAM Aceh, KontraS, KPI, KRHN, LBH ACEH, LBH APIK, LBH JAKARTA, LBH Pers, Mitra Perempuan, Migrant CARE, PBHI, PIAR-NTT, RACA Institute, RPUK Aceh, SAPA-Indonesia, Setara Institute, SKPKC-Fransiskan Papua, Solidaritas Perempuan, VHR,



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3. INFORMATION REGARDING THE ALLEGED VIOLATION

- a. Date and time (approximate, if exact date is not known): Thursday, 21 March 2013
- b. Place (location and country/countries): Bekasi Regency, West Java, Indonesia.
- c. Please provide a detailed description of the circumstances of the incident in which the alleged violation occurred respectively the nature of the governmental action:

On 20 March 2013, the priest of HKBP Setu went to the Bekasi Regency office to ask them about the information they have got before, regarding the plan of demolishing HKBP Setu's church on 21 March 2013. They were met by the chief of Satpol PP who gave them the letter on demolishing which signed by the Chief Officer of Satpol PP himself.

Thursday 21 Maret 2013 on 8.00am local time, the priest and its followers has gathered in front of the church which already banned on 7 March 2013. On 09.00am local time, the main road of Setu has been blocked by the intolerance mass from FPI² and FUIT. But until 11.00am local time, Satpol PP has not yet done the demolishing and the intolerance mass were getting closer to the church. On 12.00am local time, slowly the Satpol PP and police force came to the site with excavator. Looking this, the priest and his followers are hysterical and crying; they try to hinder the excavator. But finally the excavator going through the congregation and start do demolish the church.

Legal Background

Since 2010, the HKBP Setu has tried to fulfill the requirement to get the Permit to Established Building since the follower numbers are increasing. They have bought their own land in order to build a new building that could accommodate hundreds of persons. After the requirement of approval from the peoples who live nearby and the minimum number of followers needed to build a house of worship been fulfilled, the HKBP Setu has faced an obstacle; approval from the district headman. He was afraid of the pressure from the intolerance mass to not signing the filled requirement. Meanwhile, the congregation has collecting materials and start build the house of worship part by part.

But, on 7 March 2013 the Satpol PP of Bekasi City banned the church with the regulation of Peraturan Daerah³ Nr.7 of 1996 on Permit to Established Building along with the statement from Satpol PP that they give 7 days for the HKBP Setu to demolished their church by themselves otherwise the Satpol PP will demolished the church.

On 21 March 2013, finally Satpol PP force comes with signed letter from the Chief Officer of Satpol PP Bekasi City to demolish the unfinished church. According to the regulation Law Nr. 28 of 2002 on Establishing Building, on demolishing building is must have an approval from the Local Government and should use the special or certified services to demolished one building because related to the surround environment. And the demolition should be accompanied by the

² FPI = *Front Pembela Islam* –Islamic Defender Front.

³ *Peraturan Daerah*; Local Regulation which issued by the Regent

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Demolishing Letter from the chief of the Local Government and it couldn't be from one unit in the government. And also, prior to the demolition the church should receive the Warning Letter 1 up to 3 issued by the Local Government in order to inform the owner that the building will be demolished. But unfortunately, the church never gets the letters. Beside, the address written on the Satpol PP letter is not to the church. The letter addressed to the Manusung Sihite, other building that doesn't recognize by the congregation.

After the church has been demolished, the congregation conducted their prayer in front of the building rubbles. Including when the Easter come.

- d. Which indications exist that the victim(s) has been targeted because of his/her religion or belief?

This case is happened after the City Mayor of Bekasi has banned the HKBP Filadelfia Bekasi Church and ordered to stop the activity of Ahmadiyya Bekasi chapter. They are all targeted because of their religion/belief and also about the permit to build a house of worship even though the permit is on process.

- e. Identification of the alleged perpetrator(s), name(s) if known and/or function, suspected motive:

The perpetrator is the Mayor of Bekasi City who asked the Municipal Police Unit (Satpol PP) Bekasi to demolish the church without any letter of memorandum. And also the intolerance group which triggered the incident happened.

- f. Are the perpetrator(s) known to the victim? Yes.

- g. Are state agents or non-state-actors believed to be responsible for the alleged violation? Yes. The Satpol PP force said that they do the work according to the command of the Bekasi Regent, but without any letter that came along. Also present on the demolishing day; the Commander of Military Resort and the Chief of Police Sector Setu.

- h. If the perpetrators are believed to be State-agents, please specify (police, military, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.

1. Regent of Bekasi City, Mrs. Neneng Nurhasanah Yasin
2. Chief of Municipal Police Unit of Bekasi, Mr. Dikdik Jasmedi
3. Commander of Military Resort,
4. Chief of Police Sector, High Commissioner Mr. Isnaeni Ujiarto
5. Intolerance mass organization,

- i. If identification as State agents is not possible, do you believe that Government authorities or persons linked to them, are responsible for the incident, why?

Identification of the state agents is possible.

Member of the Coalition:

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- j. If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

There is lot of witnesses present in that accident, including journalist.⁴

4. STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANYONE ELSE ON HIS/HER BEHALF?

- a. Please indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e. police, prosecutor, court):
After the demolition of the church, the HKBP Setu planned to fill the lawsuit against the Bekasi Regent.
- b. Were any other steps taken?
Yes. The complaint has been filled to the MPR (People's Consultative Assembly).
- c. Steps taken by the authorities: Not yet. But the MPR has a plan to review the discriminative regulation both in local and national level and push the government to not issues the discriminative regulation on establishing the house of worship.
- d. Indicate whether or not, to your knowledge, there have been investigations by the State authorities; if so, what kind of investigations? Please indicate progress and status of these investigations as well as which other measures have been taken?
There is no investigation by the Regency. More over they broke the law on how to demolish a house of worship.
- e. In case of complaints by the victim or its family, how have those authorities or other competent bodies dealt with them? What has been the outcome of those proceedings?
The lawsuit has not been submitted yet. It will be submitted right after collecting evidence.

⁴ One of the news published by The Jakarta Post; <http://www.thejakartapost.com/news/2013/03/21/church-bekasi-demolished.html>

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5. Identity of the person submitting the case

1. Family name: Anam
2. First name(s): M. Choirul
3. Status: individual, group, non-governmental organization, inter-governmental agency, Government. Please specify: NGO. Human Rights Working Group (HRWG).
4. Address (telephone, fax, e-mail): +62 21 707 335 05, fax +62 21 3143 058, hrwg.indonesia@gmail.com
5. Please state whether you want your identity to be kept confidential: No.

Date: 15th April 2013

Signature of author:

M. Choirul Anam

Deputy Director of Human Rights Working Group

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Surabaya, 16th December 2012

To honorable;

Mr. Heiner Bielefeldt - Special Rapporteur on Freedom of Religion or Belief

Dr. Chaloka Beyani - Special Rapporteur on Human Rights of Internally Displaced Persons

Mr. Anand Grover - Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

Mr. Olivier De Schutter - Special Rapporteur on the Right to Food

Ms. Catarina de Albuquerque - Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation

OHCHR – Palais Wilson

United Nations Office at Geneva

CH-1211 Geneva 10, Switzerland

Dear Ms. Catarina de Albuquerque,

Messrs. Heiner Bielefeldt, Chaloka Beyani, Anand Grover and Olivier De Schutter:

The Freedom of Religion and Faith Advocacy Working Group (POKJA AKBB) of East Java is an alliance that was formed on May 1, 2012. The foundation of AKBB was derived from the concerns of non-governmental institutions to the situation of freedom of religion and belief in East Java, which increasingly worrying. AKBB Secretariat of East Java is located at Jl. Kidal No. 6, Surabaya, East Java (Office of Surabaya Legal Aid Foundation). Members of the Alliance are 12 non-governmental institutions. The following is the list of members of the AKBB Foundation of East Java:

1. Lembaga Bantuan Hukum (LBH) Surabaya (Surabaya Legal Aid Foundation)
2. Center for Marginalized Communities Studies(CMARs) Surabaya
3. Gereja Kristen Indonesia(GKI) Sinode Jawa Timur (The Indonesian Christian Church of East Java Synod)
4. Pusat Studi Hak Asasi Manusia (Pusham) Universitas Airlangga (Center for Human Rights Study of Airlangga University)
5. Jaringan Islam Anti Diskriminasi (JIAD) Jawa Timur (Non-Discrimination Islamic Network (JIAD) of East Java)
6. Komunitas GusDurian Jawa Timur (GusDurian Community of East Java)

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7. Komisi Perempuan Indonesia (KPI) Jawa Timur (Indonesia's Women Commission of East Java)
8. Mariam Foundation
9. Sapulidi Surabaya
10. Persatuan Mahasiswa Islam Indonesia (PMII) Jawa Timur (Indonesian Islamic Students Union of East Java)
11. KSGK
12. Komisi Perempuan Pro Demokrasi (KPPD) Surabaya (Pro-Democracy Women's Commission of Surabaya)

Brief Background

In the span of less than a year, there have been two major incidents of violence which caused Shiite residents in Sampang, Madura, must flee from their homes to shelters. The violence occurred on December 29, 2011 and in January 2012, which bring about numerous properties belong to the Shiite residents being destroyed or looted; and even causing one fatality after the second assault in August 2012.

As an outline, Shiites houses were concentrated at several area points in Sampang. This factor eased the attackers in identifying buildings belonging to the Shiite adherents. Those spots are in Nangkernang hamlet, Blu'uran village and Karanggayam village.

Violence in the name of religion has becoming a daunting memory for the victims, coupled with the inability of the Government to protect their rights to practice religion and belief as Indonesia citizens, have caused the victims increasingly afraid of conducting their religious activities.

After the second assault, the entire Shiite residents were evacuated for temporary to Sampang sports building (GOR Sampang) to date.

Victims

Victims of human rights violation of the current crisis situation are 284 residents of Shia adherents in Nangkernang hamlet, Karang Gayam Village, District of Omben, Sampang Regency. In the August 2012 attack, it resulted in fatality on Shiite followers, a man named Hamama (50) was killed, six people suffered serious injuries, and destruction of Shia adherents' property; furthermore, all Shiite followers of Sampang were evacuated back to GOR Sampang, as well as criminalization against leader of Sampang Shiite, Tajul Muluk.

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Track record of Shia Citizens in Refuge

Violence I (29 December 2012)

The first attack was carried out by a group of Anti-Shia on December 29, 2011. In the first attack, Ustadz Tajul Muluk in fact have already been living in relocation area in Surabaya and Malang for more than one year, due to expulsion scheme committed by the Regency Government of Sampang and the provincial Government of East Java.

The first attack, which damaged several buildings of Shiite villagers, happened around 9:30 AM, when Shiite villagers were in their own house and performed daily activities normally. When the attackers started to come, Shiites didn't fight back and only ran to save their life to the home of Tajul Muluk. At the time, Tajul Muluk was not at home because he was still in the form of forced displacement by the authority of Sampang to Malang city.

After sought refuge in the residence of Tajul Muluk, the attackers then moved forward to burn Tajul Muluk's house and it made the Shiite people had to search for place of safety again. Seeing this, the Police took evacuation measures for Shiites adherents to a safer place.

In this interval, Shia adherents sought refuge for about two weeks up to January 12, 2012 when 300 Shiite residents were forced to return to their own house, even though things were not completely safe for them to return.

Violence II (26 August 2012)

After the attack, which had damaged the homes of Shia adherents in Sampang, at 6.30 PM Shiite communities who have been evacuated in advance at the headquarters of Precinct Police Station of Sampang finally were transported to GOR Sampang, a temporary shelter. The number of evacuated people to the GOR Sampang on that night was as follows:¹

The Total number of the displaced persons was 105 people, with categories as follows

- a. Male = 51 individuals
- b. Female = 54 individuals
- c. Children = 36 individuals
- d. Toddlers = 9 individuals
- e. Elders = 3 individuals
- f. Grown-ups = 57 individuals

Psychologically, people who sought refuge were still experiencing excess of fear (paranoid) and trauma. The uncomfortable shelter condition for the displaced persons made them rest in the absence of necessities such as mattresses and blankets. The attack did not give them a chance to save their belongings also.

¹ The number of first group of temporary refugees (Sunday, August 26, 2011, 7: 30 PM)

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Access to Decent Food

In situation of social conflict at local scale, regional governments are responsible for fulfilling the basic needs of victims during their refuge until they can return to their homes. In this case, the Government of Sampang Regency should hold accountable to meet the basic needs of the displaced persons in GOR Sampang. Through the institution of the Disaster Response Team (Tanggap Siaga Bencana/TAGANA) formed by Sampang Government, the needs for food and water should be provided in condition that are ready to be consumed by the victim in refuge.

TAGANA have provided food and beverages to the displaced persons who were in GOR Sampang since one day after the assault, August 27, 2012. As for the schedule of food and beverage rations was supposed to be as follows:

- a. Breakfast at 07.30 AM
- b. Lunch at 12. 15 PM
- c. Dinner at 18.00 PM

However, this schedule was not always carried out in a timely manner.

For the composition of the food provided by TAGANA was arguably inadequate standard of essential for a person per day. Sometimes the given side dish was only a small slice of tempeh or other that was not adequate. In addition, sometimes the food was not well-cooked so it was difficult to digest. It would have implication on health immunity and caused disease in a while if food intake did not meet standards. The foods were distributed by the bundle by TAGANA.

TAGANA distributed food and drinks to the displaced persons by calling every head of household. The number of packets dispensed was based on the number of family members. Young children who were still breastfed by their mother did not receive food rations and their mother only received one pack of rice. In fact, one of the displaced persons named Bu Sabbar was bleeding because of the lack of food she consumed. She is currently treated at the Public Hospital of Sampang Regency.

On December 15, 2012, Rudi Setiadi, Head of Sampang Bakesbangpol (National and Political Unity Board) declared that the money from the provincial Government of East Java is depleted. He said that the Government each month has spend money for displaced person rations amounting to approximately Rp. 700,000. In his justification, the money was not only for displaced persons but also for consumption of apparatuses that stand guard at Karanggayam. The number of the personnel to get food rations was as much as 1,000 personnel, whereas the number of displaced persons entitled to food was as much as 283 individuals. Finally, as of November 19, 2012, any relieve in the form of food, drinking and clean water has been discontinued by Sampang Regency Government.

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Discriminatory health services

On Monday, August 27, 2011, at 01.30 PM Shiite adherents were evacuated to GOR Sampang using a Police truck. A man had leaking wound on the head, and a woman was fissured on the mouth and face. Three toddlers were vomiting and had blisters on the knees. Several other people suffered cuts all over their legs. All the wounded victims were only given minimum drug by medical personnel and only 2 people were taken to the hospital.

Mohammad Thohir, one of the victims who suffered sword cut on the stomach was evacuated to Public Hospital of Sampang Regency at 02.00 PM. By the time he reached hospital, the victim was not obtaining proper care. Until 10.30 PM the victim could not dispose his feces and victim's belly were swelling. Seeing the condition that he was in pain, Muhammad Zaini, son of victim asked the nurse to put warmed damp washcloth on his father's stomach. Conversely, the nurse stated that there wasn't any hot water on hand. In addition, the doctor was also not yet available on location so she can not do any act of treatment. Dr. Mulyono that served as the doctor in charge was not around. When he was phoned by the nurse, he promised that he'll check Thohir on the next day.

At 04:25 AM, Muhammad Thohir's condition was declining and critical but no nurse handled the victim. Until 06.00 AM Public Hospital of Sampang Regency did not take immediate action. A team of doctors could only decide that surgery shall be done by noon. After the operation, words were spreading out saying that Muhammad Thohir will be returned to GOR Sampang with his condition that was not fully recovered. According to a medic of Sampang Hospital, it is because the fund provided by Government of Sampang to take care Muhammad Thohir has run out.

Similar to health care that was given to Muhammad Thohir, Muhammad Hasyim aka Hamamah who was killed in the assault, finally was autopsied by a team of doctors the night after the incursion. After autopsied, the body was directly inserted into the morgue without being cleaned first. As a result, blood was scattered on the morgue floor.

As for the funeral, there was rejection from Karang Gayam villagers for Hamamah to be buried in their village. Karang Gayam people also threatened to block the funeral plans, if Hamamah's body continued to be buried in the village. With such conditions, families of the victim decided to finally bury him in Malang. Prior to the funeral, no preparation has been done by the Hospital of Sampang. Until August 27, 2011, 7: 00 AM, Hamamah's body has not been bathed and also not wrapped in shroud. In the afternoon at 03.00 PM then eventually Hamamah's body was able to be laid to rest in Public Cemetery of Malang City.

The healthcare service given by medical officials in GOR Sampang (shelter) was unprofessional. When examining a patient, a nurse said, "Therefore, Miss, if you are going to be relocated; don't refuse, if you obey the Government you'll be all right for sure." The sentence was considered cornering and uncomfortable for the victims. Thenceforward, displaced Shiites no longer trusted and were uncomfortable to the health services provided by

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Healthcare Coordinating Post granted by Healthcare Agency of Sampang Regency, because they felt intimidated.

Similar intimidating sentences often uttered by members of TAGANA. When one of the displaced persons was about to make a drink in TAGANA tent, a TAGANA member said, "Sir, if you still want to live well, better take Government's advice." Not only TAGANA, Sampang National and Political Unities Body (Bakesbangpol) officers who guarded at the entrance to GOR Sampang did the same as well.

The right to safe drinking and sanitation

Based on the findings of CMARs investigation team, public sanitary facilities (MCK) supplied by governments of Sampang Regency and East Java Province were inadequate for use. With the number of displaced persons as many as 283², governments of Sampang Regency and East Java Province only provided 5 water closets and 8 bathrooms. Supplies of clean water in the shelter were also very minimal. Once a day the Regional Water Company (PDAM) of Sampang Regency only sent one road tanker containing clean water. Supplies of clean water were accommodated in 3 medium-sized water tanks.

The toilets in shelter were also in damaged condition, including malfunction door locks and unmaintained hygiene. The proportion between displaced persons and toilets provided did not meet the essential, as well as insufficient water supplies.

Due to unmaintained hygiene, a number of evacuees were stricken with skin diseases. Some of displaced persons were stung by tomcats. Red spots began to appear on displaced persons' back. They complained of itching and burning due to tomcat stings. The Government seemed to overlook displaced persons that were hit by tomcat outbreaks. No serious attempt from the Health Department of Sampang to cope with the increasingly wide-spreading outbreaks of tomcat. Some children were also stricken with eye infections. All this time, treatments of displaced persons' disease were only conducted by team of volunteers.

Based on observations made by investigation team in GOR Sampang, water stock has run out as of the Government had stopped the relief to the displaced persons. As a result, they have to bathe using rain water they saved on their own. Of course, when there was no rain, they cannot take a bath.

In addition, they also cannot practice worship with feasible condition. Worship place was pretty inadequate; there was only small hall of worship (musala), so that they often practicing worship in any barren place, without any floor covering. Janitor was rarely seen to clean rubbish and thickened dust. As a result, sheeting (tarpaulin) which was usually used for worshipping became dirty. In addition, unpleasant smell was often wafted from the pallet.

² Up to September 10, 2012

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Current situation in Shelter

Since November 19, 2012, Sampang Regency Government and Provincial Government of East Java have terminated supplies of food, drinking water and clean water for the displaced Shiites in GOR Sampang. It has been 14 days that Shiites' displaced persons of Sampang were in this crisis. To meet the needs of food and drink, they have to chip in; and then the teamed up money were utilized to buy groceries. Later, foodstuff shall be cooked using stove belonging to volunteers. In addition, due to the discontinuation of clean water supply, the victim in refuge had to bathe using rain water if they can get hold of.

The health of displaced Shiites of Sampang was getting worse too, along with the crisis situation happened in GOR Sampang. The victim in refuge named Bu Sabbar had experienced hemorrhage due to shortage of food and drinks intake. She had to be taken to Public Hospital of Sampang due to bleeding and for surgery. Children also suffered itching and eye infection due to the unhygienic condition of GOR Sampang. A number of other victims were even exposed to illness such as asphyxia and cough due to similar condition.

Initially, the provincial government of East Java has disbursed a fund as much as 700 million rupiah for handling the displaced Shiites of Sampang. The funding was purportedly allocated for food, drinking water, and other basic needs of the displaced Shiites in GOR Sampang. In fact, based on a description of Rudy Setiadi, head of the Bakesbangpol of Sampang Regency, this fund was also used to finance the consumption of the entire State apparatus assigned in Sampang. It is recorded that consumption costs of 1000 East Java regional police personnel, and hundreds of Sampang Regency Government staffs were drawn from the fund allocated for the handling of displaced persons; while the number of displaced Shiites in GOR Sampang was amounting to 284 individuals. Therefore, the allocation of the fund for handling the displaced Shiites of Sampang was used a lot more for the cost of consumption of State apparatuses, rather than strictly for handling the displaced Shiites of Sampang.

Termination of food, drinking and clean water relief yesterday was also part of the Government's attempt to impel relocation that had been planned from the beginning. As the evidence, after the aid was ended, government officials that assigned at the GOR Sampang were intimidating the victim in refuge. When one of the evacuees went for medical treatment to a health post opened by Health Department of Sampang, she was forced to accept the relocation offer that had been planned by the Government. "Well Ma'am, rather than sickly like this, better follow the Government, or you should return to the Sunnis," said Ms. Sayati imitating the words of medical staff at that moment. In addition, similar intimidations were carried out by Disaster Response Team (TAGANA), Bakesbangpol officers, Health Department officials and Police officers of Sampang Regency.

So far, there is no certainty from Sampang Regency Government as well as provincial Government of East Java regarding the resolution of Sampang Shiites case. Government has not taken any action as regards when the displaced Shiite of Sampang shall be repatriated to

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their place of origin. It should be taken notice that from the very beginning, all the displaced Shiites Sampang refused relocation offer from the Government. They just want to go back to their homeland safely and live as usual. Some of the displaced Shiites even have agricultural land that have to be managed in their native land, Nangkernang hamlet, Karang Gayam village, District of Omben, Sampang Regency. The hanging fate of displaced Shiites Sampang is also a proof that the Government is not serious in handling the case settlement.

Legal Aspect of Handling the Internal Displaced Persons of Social Conflicts

Apart from its polemic, on May 10, 2012, the Government finally passed the Bill concerning the Social Conflict Management (RUU PKS) into Law No.7 of 2012 on Social Conflict Management. The enactment, according to the Government, is expected to bring down the conflict and prevent social conflict from erupting. Unfortunately, the RUU PKS cannot diminish the conflict that exists in Sampang. Even the early warning system was not done well, so there are no plans for the prevention of violence and even murder against specific social-religious groups.

In the Law, Article 32 paragraph (1) and (2) states that the Government and local government to commit acts of emergency rescue and protection of victim, which also includes basic fulfillment of the displaced persons, including the specific needs of women, children and persons with special needs. With this basis, termination of food and other basic needs supply is against the law.

Article 57 concerning Funding, paragraph (1) states that local government whose region experiencing conflict and has limited ability of funding may submit a request to the Government for post-conflict funds through a Special Allocation Fund (Dana Alokasi Khusus - DAK) by attaching terms of reference of post-conflict rehabilitation and reconstruction as well as its budget plan.

Chronological Overview of Incident

Physical assaults against Shia adherents in Sampang have happened twice, i.e. on December 29, 2011 and in January 2012. The attack occurred on December 29, 2011 at around 09:30 AM by the arson of boarding school complex, which consists of: *Musala*, girl dormitory, kindergarten and grocery store and then burning 3 other houses belong to Ustadz Tajul, Iklil, Tajul's mother and younger sister named Hani. Although victims had already reported and police intelligence had known that an attack was about to take place; there was only two police apparatuses arrived on the scene. Mobile Brigade (Brimob) arrived at 10:30 AM amounting to 25 fully armed personnel. But the effort was too late because the physical and psychological losses have incurred and chaos has beginning to subside. Shiite residents of

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Sampang were then evacuated to GOR Sampang, until January 12, 2012 they were forcibly repatriated by local government.

August 26, 2011 another assault occurred again, involving approximately 1500 people against Shiites of Nangkernang village. The news on this attack has been heard through direct intimidations against Shiite villagers during some periods before Ramadan. Moreover, in one occasion, one of the victims said that the intimidation was also launched by police officer. Intimidation started to harden since Tajul Muluk verdict on July 12, 2012. In the aftermath of the incident, the entire Shiite residents were finally evacuated back to GOR Sampang until recently (4/12).

Not only physical assault, psychological intimidation in the forms of threat, intimidation, coercion and terror were often suffered by Shia adherents. Shia has been existed and growing in the region of Sampang since 2004 and began to suffer from intimidation in 2006. The intimidation was especially addressed to Tajul Muluk in order not to spread the Shiite doctrine in the Sampang Regency. Perpetrators of intimidation were not only intolerant society, but also State apparatuses that were provoked by intolerant clerics. Shiite followers often received threats and coercion to convert from Shia to Sunni.

Perpetrators

Based on the results of investigation conducted by POKJA AKBB, actors involved since the assault in 2006 until now are as follows:

1. Noer Tjahja, Regent of Sampang
He was instrumental in facilitating intimidating meetings against Shiites. The meeting, which was originally a discussion forum with Tajul Muluk, became an intimidation arena against the Shiite villagers in attendance. He also actively committed hate speech against Shiite residents in various occasions, especially in religious gatherings with Sampang community.
2. Chief of Sub-Precinct Police Station of Omben
He was unresponsive in receiving victim's report regarding threat of attacks by sending very minimal force, which afterward giving rise to enormous damage to the victims. Also he actively became part of intimidating meetings against the Shiite community.
3. Chief of Precinct Police Station of Sampang
He was unresponsive in receiving victim's report regarding threat of attacks by sending very minimal force, which afterward giving rise to enormous damage to the victims.
4. Chief of Provincial Police of East Java
He participated in various meetings organized by the Government related to the Shia in Sampang.

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5. Rudy Setiadhi, Head Bakesbangpol of Sampang Regency
He ordered the cessation of logistics and other basic necessities supply to the displaced Shiites.
6. Abdullah Malik, Head of Social Department of Sampang Regency
He ordered volunteers of *Peduli Sampang* in GOR Sampang to leave and discontinue their social activities (1/9).
7. Syaifullah Yusuf, Deputy Governor of East Java
He tossed a discourse to relocate all Shia residents in Sampang to another region outside of Madura Island.
8. Soekarwo, Governor of East Java
He tossed a discourse to relocate all Shia residents in Sampang to another region outside of Madura Island.

Not only by State apparatus, violence was perpetrated by groups of intolerant (vigilantes) supported by those apparatuses. The arson of Shia Adherents' houses in December 2011 and August 2012 were also perpetrated by the intolerant groups, while security officers did not function properly. Currently the trial of Roisul Hukama is in progress, a civilian that was charged with perpetrating provocation and attack against Shiites' housing, which resulted in fatality of one Shia adherents.

Based on the explanation aforementioned, then we, on behalf of the Freedom Of Religion And Faith Advocacy Working Group (POKJA AKBB) of East Java appeal to international institutions to:

1. Asking for confirmation to the Government of Sampang Regency of Madura Island, provincial government of East Java, the Government of the Republic of Indonesia, East Java Provincial Police, and the Police of the Republic of Indonesia related to their seriousness in resolving the crisis situation happened in the shelter of GOR Sampang
2. Urging the Government of Sampang Regency, the Government of East Java province, and the Government of the Republic of Indonesia to immediately seek the repatriation of the displaced Sampang Shiites back to their native land in Nangkernang hamlet, Karang Gayam Village, District of Omben, Sampang Regency.
3. Urging the Government of Sampang Regency, the Government of East Java province, and the Government of the Republic of Indonesia to act upon rehabilitation of victims' rights of the displaced Sampang Shiites.
4. Urging the Police of the Republic of Indonesia to guarantee security and safety for the citizens of Shia Sampang as they repatriated back to Nangkernang hamlet, Karang Gayam Village, District of Omben, Sampang Regency.

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IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

- Contact number or address (please indicate country and area code):

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- Status: individual, group, non-governmental organization, religious or belief group, inter-governmental agency, Government. Please specify: **NGO coalition**. This complaint is written by the coalition of **POKJA AKKBB and HRWG**.

- Do you act with knowledge and on behalf of the victim(s)? Yes

- Please state whether you want your identity to be kept confidential: No.

Date you are submitting this complaint: 16th December 2012

M. Choirul Anam
Deputy Director of Human Rights Working Group

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Annex IC: Condition of Ambon Conflict's IDPs in Vitas Barito, Ambon



One of the evacuations buildings in Vitas Barito, Ambon.
Source: JRS Indonesia



One of the evacuations buildings in Vitas Barito, Ambon. Source: JRS Indonesia