

# INDONESIA & EAST TIMOR @Political Prisoners and the "Rule of Law"

## *1. Introduction*

The New Order government has made a habit of jailing its political opponents. Since 1966 an estimated 3,000 alleged government opponents have been sentenced, following unfair trials, to periods of imprisonment ranging from a few months to life, or even to the death penalty. Hundreds of thousands more have been detained without charge or trial, for periods ranging from a few days to more than 14 years.

The practice of arbitrary political imprisonment in Indonesia reached a peak in the years 1965 to 1967 when somewhere between 500,000 and one million real or alleged members of the Indonesian Communist Party (*Partai Komunis Indonesia*, PKI) were detained following an unsuccessful coup on 1 October 1965 that the authorities blamed on the PKI. Many of those detained were held, without ever being charged or tried, for periods ranging from a few days to 14 years. Some 1,000 others were eventually convicted of subversion in unfair trials and sentenced to heavy prison sentences, or to death.

The situation has improved dramatically since the 1960s. In the late 1970s the vast majority of PKI prisoners were released, and in 1981 the government introduced a new Code of Criminal Procedure which provided significant legal protection for the rights of detainees and suspects. More recently, the authorities have begun to show restraint in their use of the draconian Anti-Subversion Law, under which the vast majority of political prisoners were once tried; and some convicted of subversion have been granted conditional release for good behaviour. No political prisoners are known to have been judicially executed since 1991. Most political trials are now open to the public, foreign observers are usually permitted to attend, and the substance of charges and defence are usually reported in the press. Finally, the newly established National Commission on Human Rights has indicated that it is concerned about the plight of long-term political prisoners, and about the practice of political imprisonment generally.

Despite these advances, the practice of political imprisonment persists, and looks set to continue in the coming years. In late 1994 an estimated 350 alleged government opponents were still held in prisons throughout Indonesia and East Timor, some 40 of them sentenced in the previous year alone.

Many of these prisoners neither used nor advocated violence and are prisoners of conscience. Virtually all were sentenced in trials that failed to meet international standards of fairness, or to comply with Indonesia's own Code of Criminal Procedure; many were

tortured or ill-treated while under interrogation. Some are now serving life sentences and are unlikely to be released before they die. A few suffer serious mental and physical disabilities, others have already died in custody from ill-health. At least 22 have been judicially executed in the past decade after years in prison, while six elderly men remain on death row for political crimes allegedly committed more than a quarter of a century ago.

This report explains why, despite the government's often stated commitment to promoting internationally-accepted human rights norms and principles, the practice of political imprisonment persists in Indonesia and East Timor. It begins with an outline of the laws, regulations and codes that are used by the authorities to imprison and to intimidate real and alleged dissidents. It then looks briefly at various aspects of the process of political imprisonment, focusing on unfair trials, prison conditions, terms of remission, detention without trial, and restrictions following release.

The report also describes the experiences of some of the 350 men and women who remain in prison for their political beliefs nearly 30 years after the New Order came to power. It outlines the charges brought against them, their treatment in police or military custody, and the nature of their trials. Drawing from letters written to friends and from statements made in court, it offers a glimpse into their lives in prison, their suffering and their struggle for dignity. The report concludes with a number of suggestions for addressing the problem of political imprisonment.

## ***2. Repressive Legislation***

A wide array of repressive laws and regulations have been used to imprison, and even put to death, real or alleged political opponents, and to dissuade potential dissidents from exercising their rights. The laws also contain procedural provisions which can encourage other violations. Significant improvements in new laws on the judiciary and in the new Code of Criminal Procedure have been undermined by official indifference and non-compliance.

Some of the most repressive laws were inherited directly from the Dutch colonial government, or from the "Old Order" of President Sukarno which the current government swept aside in the name of restoring respect for the rule of law. These laws have not only survived under the New Order, they have been widely and energetically employed to imprison its real or alleged opponents.

The current Criminal Code is inherited from the colonial period. Conscious of the need to rid the legal system of the legacy of the past, the government has undertaken to amend it. However, this initiative is unlikely to have an impact on the bulk of Indonesia's repressive legislation for two main reasons. First, the Draft Criminal Code submitted to the Ministry of Justice for review in March 1993, incorporates virtually all of the old laws on

"crimes against the state" without significant amendment.<sup>1</sup> Second, much of the most problematic legislation is in the form of Presidential and Ministerial decrees, directives and decisions, which exist independently of, and therefore are largely unaffected by, the Criminal Code.

## 2.1 The Anti-Subversion Law

A cornerstone of Indonesia's repressive legislation is the Anti-Subversion Law. Originally promulgated as a Presidential Decree in 1963, this law has been used to justify the detention without trial of hundreds of thousands of alleged government opponents, and to put thousands more through show trials.<sup>2</sup> The vague and sweeping language of the law permits the prosecution and conviction of anyone whose words or actions can be construed as disruptive of public order, or critical of *Pancasila*, the government, its institutions or its policies. Article (1) of the law reads:

*The following are guilty of the crime of subversion:*

- 1. Anyone who has engaged in activities with the intention, or the apparent intention, or which s/he knew, or ought to have known might have the effect of:*
  - (a) distorting, undermining or deviating from the national ideology Pancasila or the basic policy of the State, or*
  - (b) overthrowing, destroying or undermining the power of the State or the authority of the lawful government or the machinery of the State, or*
  - (c) disseminating feelings of hostility or arousing dissension, conflict, disorder, disturbances or anxiety within a segment of the population or in society as a whole, or between the Republic of Indonesia and a friendly state, or*
  - (d) disturbing, retarding or disrupting industry, production, distribution, commerce, cooperatives or transport conducted by the Government or based upon a*

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<sup>1</sup> Commenting on the draft Criminal Code in 1993, the then director of the Indonesian Legal Aid Institute, Abdul Hakim Nusantara, said: "...the draft is very, very dangerous especially on definitions of crimes against the state."

<sup>2</sup> The original legislation was Presidential Decree No.11/1963 on Eradicating Subversive Activities. In the aftermath of the 1965 coup, Sukarno's Presidential Decrees were deemed to be unconstitutional, and provision was made for their review. In 1966, the Indonesian representative assembly (MPRS) recommended the review of Presidential Decree No.11/1963 with a view to its possible repeal. However, in 1969, on the initiative of the Minister of Justice, the decree was enacted into law, as UU No.11/PNPS/1963 (Act No.5 of 1969).

*decision of the Government or which has widespread influence on the livelihood of the people.*

The trials conducted under this law are, in effect, political show trials aimed at intimidating real or imagined critics of the government. They have failed in most respects to conform to international standards of fairness. Significantly, in 30 years only one person tried under the law has been found not guilty.

The Anti-Subversion Law also facilitates other human rights violations, such as incommunicado detention, torture, "disappearance" and extrajudicial execution. Key provisions of the Code of Criminal Procedure designed to protect the rights of detainees either do not apply, or are commonly ignored, when the authorities invoke the Anti-Subversion Law. For example, while the Code limits pre-trial detention, and requires judicial approval of detention beyond 60 days, the Anti-Subversion Law allows detention for periods of one year, renewable indefinitely on the authority of the Attorney General. In effect, this means that political suspects can be held indefinitely at the discretion of the local or regional military commander. And while the Code clearly states that only the police are authorized to carry out arrests and investigations, in subversion and other political cases military authorities commonly assume these responsibilities.

The Anti-Subversion Law also provides harsher penalties than other laws on political crimes, including the death penalty. The standards of evidence required to produce a conviction for subversion are also much less rigorous, so that the law is commonly used where the authorities cannot find adequate evidence. The exceptional powers granted to the military and the prosecution under this law, and the heavy restrictions it imposes on detainees' rights, make serious human rights violations almost inevitable. In a frank assessment of the law, one of Indonesia's preeminent legal scholars, Dr Adnan Buyung Nasution, recently commented:

*The Anti-Subversion Law was clearly designed to protect and defend authoritarian power against any democratic challenge, and it has been used all along as a kind of Sword of Damocles, always threatening to cut off the head of anyone who is considered to threaten that power.<sup>3</sup>*

The government has used the Anti-Subversion Law somewhat less frequently in recent years. For example, East Timorese resistance leader, Xanana Gusmão, was not tried for subversion, nor were several other East Timorese tried for their political activities in the past

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<sup>3</sup> Adnan Buyung Nasution, cited in *Suara Pembaruan*, 3 May 1993.

year. This shift has been noted by representatives of some governments, who have described it as a positive development.<sup>4</sup>

While any reduction in the use of the law is welcome, it must be emphasized that, in cases which escape international scrutiny, the law continues to be applied as in the past. In March 1994, for example, at least three suspected members of *Aceh Merdeka* were sentenced to 19 years' imprisonment each for subversion. They joined some 50 Acehnese sentenced to terms of up to life for subversion over the past four years. In October the state prosecutor announced that a further five alleged *Aceh Merdeka* members would soon be brought to trial, also on charges of subversion. Furthermore, a reduction in current applications of the law cannot remedy the injustice inflicted upon those who remain in jail many years after being convicted at unfair trials under the Anti-Subversion Law.

Not only is the Anti-Subversion Law still being used, and not only do hundreds of prisoners continue to suffer because of its past use, but high-ranking government and judicial authorities continue to oppose its abolition. Indeed, some government officials have actually argued for extending the law's scope. Their arguments reveal the dangers inherent in the law. Responding to calls for abolition in early 1993, for example, the Attorney General accused the abolitionists themselves of being subversives:

*Those who say that the Anti-Subversion Law is unpopular, are those who have the intention of committing subversive acts themselves.*<sup>5</sup>

Despite the widespread criticism and the obvious threat that the law poses to human rights, there are indications that it will be incorporated, with minor revisions, into the new Criminal Code. Some observers have welcomed this as a step forward since incorporation might impose certain legal constraints on its use. In practice, this is unlikely to make much difference. It may simply give the law more permanence and legitimacy.

Lawyers, parliamentarians, and international human rights experts, including the UN Special Rapporteur on torture, have called repeatedly for the repeal of the Anti-Subversion Law. Some claim that it is unconstitutional, others that its content contravenes prevailing legal

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<sup>4</sup> For example, in April 1994 an Amnesty International member received a letter from the State Department of the United States of America. While the letter deplored the torture and unfair trial of Adnan Beuransyah, a possible prisoner of conscience, it also noted that "the Indonesian Government has been much more selective during the past year in applying the Anti-Subversion Law, which is a positive development".

<sup>5</sup> Attorney-General Singgih, cited in *Republika* 5 February 1993. On the same occasion, Singgih defended the subversion law by saying it is "...very important for the protection of the state ideology *Pancasila*", *Jakarta Post* 5 February 1993.

principles and norms. All agree that it has been an instrument of repression which is inconsistent with government claims that it respects and protects human rights.

## 2.2 The Hate-sowing Articles

Faced with strong domestic and international criticism of the Anti-Subversion Law, the government has turned increasingly to articles contained in the Criminal Code to imprison, or to intimidate, alleged political opponents. Seeking to evade allegations that it imprisons its political opponents, it has sought to portray prisoners charged and convicted under these articles as common criminals. However, an examination of the substance of the charges brought in such cases indicates that many are political prisoners, and frequently prisoners of conscience.

The authorities have relied especially on a series of articles which forbid "spreading hatred" against government officials. The Hate-sowing Articles (*Haatzaai Artikelen*) were introduced by the Dutch colonial administration in the early 1900s and, with the rest of the colonial criminal code, were incorporated into Indonesia's Criminal Code after independence. Commenting on the use of these laws, a respected Indonesian legal scholar, Loebby Loqman, said in 1992: "*To date, these articles have been used against those who are considered to disagree with government policy.*"<sup>6</sup>

Articles 154, 155 and 160 are frequently used to suppress dissent. Under Article 154, "...the public expression of feelings of hostility, hatred or contempt toward the government..." is punishable by up to seven years' imprisonment. Article 155 prohibits the expression of such feelings or views through the public media, with a maximum penalty of four-and-a-half years' imprisonment. Article 160 prescribes a maximum of six years' imprisonment for "inciting" others to disobey a government order or to break the law. Article 134, although not usually described as one of the Hate-sowing Articles, punishes "insulting the President" with a maximum sentence of six years' imprisonment.

These articles have been used in recent years, both singly and in combination, to imprison a range of alleged government critics, including trade unionists, student demonstrators, human rights activists, and members of communities protesting against forced eviction from their lands by government authorities.

## 2.3 The Code of Criminal Procedure

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<sup>6</sup> Another Indonesian human rights lawyer (Nursyahbani K) commented: "Expressing an opinion is always regarded by the authorities as incitement or hatred of those in power." *Forum Keadilan*, 26 November 1992.

It is not only repressive laws which have contributed to the human rights problem in Indonesia, but the often arbitrary way in which even the best laws have been implemented. Laws which provide some protection for detainees or defendants are often emasculated by Ministerial and Presidential Decrees or regulations on their implementation. Even in the absence of such regulations, laws which protect the rights of ordinary citizens or which circumscribe the power of the state, are frequently ignored by government and military officials. This is most evident in the implementation of the Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP).

Introduced in 1981, the Code of Criminal Procedure was justly hailed by legal experts as a significant improvement over its predecessor, particularly in the protection it offered the rights of detainees and defendants.<sup>7</sup> Among the more positive provisions in the Code relating to the protection of the rights of detainees and witnesses are the following:

- Sole responsibility for arrest, detention and investigation in criminal cases rests with the Police. (Article 18)
- Suspects must be served with a written warrant of arrest, unless they are caught *in flagrante delicto*, and their relatives must be furnished with a copy of the warrant. (Article 18)
- Detainees have a right to consult with and to be accompanied by legal counsel of their own choice at all stages of interrogation (Articles 54, 55 and 57).
- Legal counsel should be free to meet and speak in confidence with their client. (Articles 70 and 71)
- Detainees have a right to have access to medical professionals (Article 58).
- Arrests are valid for a maximum of 24 hours, after which the authorities must authorize detention or release the suspect (Article 19)
- A conviction may not be based on only one piece of evidence and therefore may not be based solely on a suspect's confession. (Article 183)
- Duress in any form may not be used by investigating officials to obtain information from a suspect or witness. (Article 117)

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<sup>7</sup> The rights of suspects and defendants are spelled out in Chapter VI of Indonesia's Code of Criminal Procedure (KUHAP). A 1982 Ministry of Justice Circular argued that the new Code conformed with international human rights law. See Chapter IV of Ministry of Justice Circular M.01.PW.07.03 TH 1982.

- Suspects/detainees have a right to challenge the legality of their arrest and detention in a pre-trial hearing, known as *pra-peradilan*. (Articles 77 to 82)

In practice, key provisions in the Code are often ignored, or their implementation obstructed by those in positions of power. The problem was summarized by a military commander in Aceh who told lawyers from the Indonesian Legal Aid Institute in 1991: "*You can eat your [Code of Criminal Procedure]. It doesn't apply here.*" For example, detainees are entitled to have a lawyer but many do not have one at the time of interrogation. Police and military authorities regularly deny detainees access to relatives and lawyers and obstruct their efforts to provide legal aid.

The effectiveness of certain provisions in the Code are undermined by other provisions, or by Ministry of Justice guidelines for their implementation. For example, while arrests are valid for only 24 hours they can be extended for a further 60 days without judicial review. One implementing guideline stipulates that suspects may have access to a lawyer only during working hours; but interrogation frequently occurs at night, outside working hours. Moreover, the Code does not require investigating authorities to inform legal counsel of their intention to interrogate a suspect, and as a matter of course they prefer not to do so. While one article of the Code indicates that lawyers should be free to talk in confidence with their clients in prison, another waives this provision where the suspect is accused of a "crime against the state", that is a political crime. A ministerial guideline requires that a prison official be present during conversations between detainees and their lawyers.

The guarantees in the Code are not backed by effective legal sanctions against non-compliance. The Code forbids the use of duress to extract information from a suspect or witness - and the use of torture is a criminal offence under the Criminal Code - but there is no clear rule excluding the use in court of evidence or testimony improperly obtained by the authorities. An accused may complain in court that a confession or testimony was extracted under duress, but the judge decides whether to admit the complaint as evidence. Judges usually dismiss or ignore such pleas, and sometimes threaten defendants with legal action for perjury.

In addition, the judiciary's lack of independence means that judges are disinclined to pursue alleged breaches of the Code which emerge during a trial. Although the system of pre-trial hearings, introduced in the 1981 Code, should allow for some control in cases where torture has been used in investigations, judges are reluctant to rule against the police or other state authorities.

These problems are especially acute in the case of political detainees. As noted above, certain guarantees in the Code of Criminal Procedure do not apply to detainees accused of subversion. The Anti-Subversion Law also grants the security forces expanded powers of

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search and seizure, and imposes much heavier restrictions on detainees' access to legal assistance, relatives and doctors. In the rare event that an allegation of torture or ill-treatment is formally raised in court by a detainee, members of the judiciary tend to be even more reluctant than usual to take remedial action.

### ***3. The "Rule of Law"***

Indonesian government and military authorities claim that the New Order is based on the "rule of law" rather than political power. But the practice of political imprisonment in Indonesia and East Timor tells a somewhat different story. Far from demonstrating the supremacy of law over power, it reveals how the law can be applied arbitrarily against alleged dissidents, and how readily the judicial system can be influenced by those in power.

#### **3.1 A Dependent Judiciary**

In law, the Indonesian judiciary is independent of the executive; the reality is very different. Limitations on judicial independence are particularly evident in political cases, where the military has unquestioned authority and judges avoid rulings which would embarrass the government or the security forces. This lack of independence is partly institutional. Judges, court officials and public prosecutors are in practice dependent on the executive branch for their salaries, promotions and other benefits. Those who defy the executive and the military may find their career prospects limited.

Several laws and regulations undermine the independence of the judiciary. All government employees, including judges, must be members of the sole civil servant's organization, *Korps Pegawai Negeri Republik Indonesia* (KORPRI), which operates under the auspices of the powerful Ministry of Home Affairs. The President may intervene directly in judicial matters, by indicating cases which he wishes to see pursued. The Supreme Court may determine whether government decrees and instructions conform with basic laws, but does not have the power of full judicial review.

Even where the judicial system provides formal guarantees of autonomy and impartiality, these are routinely undermined, particularly by the military. Whatever the law may say, the judiciary is an arm of the regime. This has been evident in virtually all political trials.

#### **3.2 Political Trials**

The Indonesian Government has sought to justify the imprisonment of political opponents on the grounds that they have been tried and convicted "in accordance with the law". For

example, an official of the Indonesian embassy in Vienna sought to reassure Amnesty International members that:

*Indonesia respects both national and international laws. Indonesia, as a country based on the rule of law, does not tolerate actions such as groundless arrests. Indonesia, as other countries, surely adheres to the principle that suspects may only be arrested and detained with solid reason. The procedures of detention and the grounds on which individuals can be arrested are stipulated in the Indonesian Code of Criminal Procedure (KUHAP).<sup>8</sup>*

But the reality is that, at virtually every stage of the investigation and trial process, defendants in political cases encounter treatment at odds with minimal guarantees in Indonesian and international law.

The charges are often so vague, the evidence of guilt so patently thin, and the sentencing so draconian that they are clearly designed as a public warning against dissent. They are effectively show trials, characterized by the following general features:

- Once charges have been filed, guilt is assumed and conviction is a foregone conclusion.
- Defendants are routinely denied access to legal counsel of their choice, and defence lawyers are often refused access to court documents before the trial starts.
- Political cases are often handled by inexperienced, court-appointed lawyers who provide an inadequate defence.
- Defendants are often convicted on the basis of uncorroborated confessions or testimony extracted under duress.
- Trials are conducted in Indonesian, which is not always understood by defendants, and competent translators are not always provided.
- Defendants are frequently denied the right to cross-examine prosecution witnesses, while witnesses for the defence are often barred.
- Evidence of ill-treatment, torture and other irregularities in the pre-trial process are routinely ignored by the courts.

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<sup>8</sup> Letters to various Amnesty International members from the Counsellor, Head of Information and Cultural Affairs, Indonesian embassy, 12 August 1994.

- Defence lawyers, prosecutors and judges are subjected to pressure from military and government authorities to ensure a guilty verdict.

The government has sought to answer domestic and international criticism by pointing out that political trials are open to the public, and by permitting international observers to attend them. Such openness is welcome, but it is not in itself a guarantee that trials will be fair. The Indonesian authorities, and some other governments, have been quick to applaud the presence of foreign observers at political trials. But they have frequently failed to mention that almost all such observers - representing a range of international organizations - have found that the trials attended failed to meet basic standards for fair trial.

### **3.3 Treatment of Prisoners and Conditions of Release**

Torture and ill-treatment are prohibited under the Indonesian Criminal Code, the Code of Criminal Procedure and by various ministerial regulations. According to the authorities, they are also proscribed by armed forces service oaths. However, these laws and regulations have not prevented torture and ill-treatment or provided effective avenues for redress. Nor have they been effective in ensuring that the perpetrators are brought promptly to justice.

Torture and ill-treatment are commonplace in Indonesia and East Timor and regularly result in death or serious injury. Methods of torture and ill-treatment appear to be standard, with a similar repertoire of techniques reported throughout the various regions of Indonesia and in East Timor. Most political detainees experience some or all of the following methods: beating on the head, shins and torso with fists; lengths of wood, iron bars, bottles, rocks or electric cables; burning with lighted cigarettes; electrocution; slashing with razor blades and knives; death threats, mock executions and deliberate wounding with firearms; immersion for long periods in fetid water; suspension upside-down by the ankles; isolation, sleep and food deprivation; mutilation of the genitals, sexual molestation and rape. While this does not prove that torture is overt government policy, it does indicate that it has become institutionalized within the armed forces.

The treatment of political detainees generally improves after they have been sentenced and transferred to the prison system. Yet serious problems remain, particularly in more isolated areas and in high security prisons where access to lawyers, doctors and relatives may be heavily restricted. Health problems such as skin disorders, respiratory ailments and stiffness arising from unsanitary or unhealthy conditions are common. There are also periodic reports of the injury or death in custody of political prisoners in such prisons. Correspondence to and from political prisoners is often censored or intercepted. Corruption is rife in the Indonesian prison system, and prisoners without access to an independent source of income or basic daily necessities face serious difficulties.

Some political prisoners benefit from the rules on remission of sentences. Remissions of up to four months are granted annually on national independence day (17 August) to all prisoners considered to have behaved well. Recently revised regulations allow for the conditional release of most prisoners after they have served two-thirds of their sentence. However, other rule changes make early release unlikely for some. A 1987 presidential decree means political prisoners serving life sentences can only gain remission through a presidential pardon.

Political prisoners are seldom released unconditionally. Some of the conditions imposed contravene international human rights standards upholding the rights to freedom of thought, expression and opinion. Prisoners are required to demonstrate that they have reformed politically. Most must undergo political "re-education" in prison, and are required to swear allegiance to the state and *Pancasila* before release.

### 3.4 Detention Without Charge or Trial

In addition to the estimated 3,000 alleged political opponents jailed after unfair trials since 1965, many thousands of prisoners have been detained without charge or trial, some for 14 years. Arbitrary and incommunicado detention is routinely practised to intimidate suspected opponents and to gather political intelligence during counter-insurgency operations. It is also used to prevent or break up strikes, peaceful gatherings, demonstrations and exhibitions.

This practice has been widely criticized, forcing a shift in official tactics. Arbitrary detention now tends to be short-term; suspects are interrogated, often threatened or ill-treated, but released within the 24-hour legal limit. This allows the authorities to disrupt peaceful protests, and to intimidate suspected leaders, and still claim to be acting "in accordance with the law". Mass arbitrary detentions have also been justified in the interests of "national security".

Some of those held in arbitrary, unacknowledged military custody "disappear", making them vulnerable to torture and extrajudicial execution. This problem has been most acute in Aceh and East Timor, but conditions conducive to "disappearance" exist wherever the authorities are able to invoke the interests of "national security". In such situations the legal provisions designed to protect detainees' rights are either ignored or superseded by exceptional laws. The danger is greatest where detainees are held by units of the counter-insurgency force *Kopassus*. In the words of one Acehnese: *"If you're taken away by the military you have a 50-50 chance of coming back. If you're taken by Kopassus you can forget it"*.

### 3.5 Restrictions on Released Prisoners

Years after their release, many political prisoners face severe restrictions on their civil and political rights, and some effectively remain under house or city arrest. The problem is especially acute for those once imprisoned as PKI members or supporters. Although most were never tried or found guilty of any offence, their identity cards are marked "ET", an acronym signifying "Former Political Prisoner". This mark carries with it a powerful political and social stigma, as well as real legal limitations, that affect not only former detainees but also their relatives, including many who were not even born at the time of the 1965 coup.

Former prisoners or PKI members, and often members of their families, are prohibited from working in any occupation which might give them the opportunity to influence public opinion, for example as journalists, teachers, village heads, actors, puppeteers or religious preachers. Severe restrictions on freedom of movement mean that they are effectively under house or town arrest, and must seek special permission to travel or

even to move house. Many, including those who were never tried, must report to military or police authorities on a regular basis for years.

Former PKI prisoners also suffer political restrictions. They are granted the right to vote only with the explicit approval of government and military authorities, after investigations to establish their political attitudes and behaviour. Before the June 1992 national elections, the government announced that 36,345 former PKI prisoners would not be permitted to vote. Political party candidates are required to undergo political screening before their nomination can be accepted; those who pass the test but are later discovered to have had some link to the PKI are likely to be forced from office.

#### **4. The Prisoners**

The estimated 350 political prisoners held in late 1994 included advocates of independence for East Timor, Aceh and Irian Jaya, Islamic activists, former members of the PKI, university students, trade unionists, and human rights activists. They were in prison for "crimes" such as raising flags, advocating closer ties among Muslims, criticizing the state ideology *Pancasila*, disseminating information about human rights violations, demonstrating for democratic reform, and resisting forcible eviction.

#### **East Timor**

Hundreds of suspected opponents of Indonesian rule in East Timor have been tried and sentenced to lengthy prison terms since the invasion of 1975. Many were convicted of rebellion in a series of trials that began in 1984. However, political show-trials have continued in the 1990s, leading to the imprisonment of scores of people on charges including subversion, rebellion and "the expression of hostility" toward the government of Indonesia.

At the end of 1994 some 24 East Timorese were serving sentences ranging from a few years to life imprisonment for various political offences. Most were accused of organizing the procession to the Santa Cruz cemetery in November 1991 - during and after which Indonesian security forces opened fire killing up to 270 people - or the peaceful protest against the massacre held in Jakarta later that month. Many were held incommunicado and tortured while being interrogated.

In addition to those tried, thousands of East Timorese have been held without charge or trial, for periods ranging from a few days to several months, since late 1991. Many have been denied access to their relatives and lawyers and some are known to have been ill-treated and tortured.

#### **Aceh**

At least 50 people have been sentenced to prison terms of between three years and life since 1991 for their alleged links to *Aceh Merdeka*, an armed rebel group seeking independence for Aceh and parts of North Sumatra. All have been convicted in unfair trials under the Anti-Subversion Law, including at least three men sentenced to 19 years each in 1994. The trials of a further five alleged *Aceh Merdeka* members were announced by the authorities in October. At least 24 of those sentenced appeared to be prisoners of conscience, having neither used nor advocated violence.

Trials of the alleged leadership of *Aceh Merdeka* – including university lecturers, civil servants and school teachers – began in March 1991, at the height of an intensive counter-insurgency campaign in which some 2,000 civilians were killed. The public prosecutor acknowledged that members of this group "were not armed" but charged that they were "*...the brains which planned the terrorist actions*" of *Aceh Merdeka*. There was little or no evidence that any of this group had advocated violence or planned violent acts; in fact, some appeared to have argued openly against violence.

In addition to those jailed after unfair trials, at least 1,000 people were held in unacknowledged, incommunicado detention in Aceh and North Sumatra for periods ranging from a few days to more than a year between 1989 and 1994. Scores and possibly hundreds of Acehnese political detainees "disappeared" in custody, and many are feared to have been killed.

### **Irian Jaya**

More than 140 people have been jailed for subversion since 1989 for advocating Irian Jaya's independence. At least 50 remained in jail in late 1994, over half of whom were prisoners of conscience, serving sentences of up to 20 years' imprisonment. Many of these prisoners are held in East Java, more than 1,500 miles away from Irian Jaya, making it difficult for their relatives to visit them.

Among those jailed in 1989 was a group of 37 people who staged a peaceful flag-raising ceremony in December 1988 to proclaim the independent state of "West Melanesia". None of the group had used or advocated violence, a fact acknowledged by the Regional Military Commander for Irian Jaya one month before the group's leader, Dr Wainggai, was sentenced:

*[It is] really nothing more than a diplomatic group....It is not an armed movement....He had got together a few people to act as functionaries of a new state but he hadn't got around to making any laws.*

More than 40 other suspected supporters of independence were arrested and tried for subversion in 1989 and 1990, and sentenced to up to 17 years' imprisonment. Most were accused of planning to commemorate the 1988 proclamation.

### **Muslim activists**

Hundreds of Muslims have been jailed in Indonesia over the past 15 years. Most were accused of criticizing the government, of undermining *Pancasila*, or of attempting to establish an Islamic state. As of mid-1994, an estimated 150 Muslim prisoners remained in jail, including at least 50 prisoners of conscience.

One of the most significant series of Muslim trials began in 1985, a year after soldiers had massacred scores of protesters in Tanjung Priok, Jakarta. Around half of the 200 people arrested in connection with the protest were subsequently brought to trial. Some were accused of acts of violence, but scores were sentenced to years in jail because of their peaceful beliefs. Several prominent opposition figures were also jailed after criticizing the government's handling of the affair and calling for an independent inquiry.

The next major series of trials began in 1986 and continued until 1989. The defendants were members of small Islamic communities, known as *usroh* and based in Central Java, which aimed to spread Islamic teachings and values. At least 40 *usroh* members were convicted of subversion, for allegedly seeking to establish an Islamic state and undermine *Pancasila*. Little or no evidence was presented to substantiate these allegations.

In early 1989 the spotlight shifted from the *usroh* groups after government troops attacked an alleged militant Islamic sect in Lampung, known by the name of its leader, Warsidi. In the aftermath of the assault, which may have left as many as 100 people dead, the government began a widespread crackdown against Muslims believed to be linked with the "Warsidi Gang". Scores of Muslim activists were arrested in subsequent months in Lampung, Nusa Tenggara Barat, West Java and Jakarta. Most were tried for subversion in 1989 and 1990. All were found guilty and sentenced to terms of up to life imprisonment.

### **PKI prisoners**

A minute fraction of the more than 500,000 people arrested after the 1965 coup, about 1,000 in all, were brought to trial and sentenced to lengthy prison terms or condemned to death. Some 30 remained in prison in late 1994, more than a quarter of a century after their arrest. Most were believed to be prisoners of conscience. Because of their advanced age, a number of PKI prisoners have died in custody; others suffer serious physical and mental disabilities.

The trials of those accused of PKI membership or participation in the coup were uniformly unfair. The virulent anti-communism which followed the 1965 coup meant that few witnesses dared testify on behalf of suspected PKI members on trial for subversion. Defence lawyers acting for PKI members were accused of communist sympathies, threatened and harassed. Many of the witnesses were also prisoners, and in some cases the "evidence" they gave was extracted under torture. There were also serious doubts about the impartiality of the judges, particularly those who headed the special military courts which sentenced high-ranking PKI members to long prison terms or death. Many PKI prisoners were denied the right to appeal; those allowed to appeal often waited 10 or 20 years to learn that their appeals had been rejected.

In addition to those tried, hundreds of thousands were held without charge or trial for periods ranging from a few days to 14 years. A number of former PKI prisoners from both categories, tried and untried, remain under house arrest and face serious restrictions on their civil and political rights and freedom of movement.

### **Other Political Prisoners**

The government has also used repressive legislation to imprison scores of people whose dissenting voices, or criticism of government policy, are deemed unacceptable to those in power. These have included dozens of students sentenced to prison terms ranging from a few months to nine years for their non-violent political activities. Many other students have been detained without charge for short periods, apparently to disrupt their activities - however lawful - and to obtain information about their organizations. The government has used various methods, including short-term detention and imprisonment, to silence the advocates of workers rights and to undermine independent trade unions. Members of farming communities involved in land disputes with private or official bodies, and activists working with them, have suffered a range of abuses, including intimidation, death threats, attempted murder and imprisonment. Some are prisoners of conscience.

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**Recommendations to the Government of Indonesia**

1. Release immediately and unconditionally all prisoners of conscience - those held solely for the non-violent expression of their political or religious views.
2. Ensure that all those detained without charge in connection with their alleged political activities, are charged with a recognizably criminal offence and brought to trial promptly and fairly, or released.
3. Ensure the release, or the speedy and impartial review of the trials of all those sentenced in unfair political trials.
4. Prohibit explicitly by law all forms of torture and other cruel, inhuman or degrading treatment or punishment and ensure that all such acts are recognized as criminal offences, punishable by penalties which reflect the seriousness of the crime.
5. Guarantee that all detainees, including those held for suspected national security offences, are permitted prompt and regular access to lawyers of their choice, and to doctors and relatives.
6. Ensure that any person deprived of their liberty shall be held in an officially recognized place of detention and be brought before a judicial authority promptly after arrest.
7. Take all necessary steps, including the enforcement of existing legislation and the introduction of further legislation, to ensure that statements extracted under torture or other ill-treatment cannot be admitted as evidence during any legal proceedings, except against a person accused of torture as evidence that the statement was made.
8. Promptly repeal the Anti-Subversion Law and conduct a thorough review of all legislation pertaining to national security and public order to ensure that national security interests cannot be invoked to imprison people for the peaceful exercise of their right to freedom of expression
9. Abolish the death penalty and commute all existing death sentences.

**Recommendations to UN Member States**

1. Urge the Government of Indonesia to invite the UN Working Group on Arbitrary Detention to visit Indonesia and East Timor.
2. Urge the Indonesian Government to permit regular and unhindered monitoring of human rights in Indonesia and East Timor by domestic and international human rights organizations, including Amnesty International.
3. Encourage the Government of Indonesia to accede to the International Covenant of Civil and Political Rights and its Optional Protocols; and to the International Covenant on Economic, Social and Cultural Rights.
4. Encourage the Government of Indonesia to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to recognize the competence of the UN Committee against Torture to receive individual complaints and to hear inter-state complaints.