

INDONESIA

Impunity and human rights violations in Papua

“We have experience in operations in East Timor, be careful we will shoot you all”.

A threat to Murjono Murib, a Papuan political activist as he was beaten with the barrel of a gun by members of the Police Mobile Brigade (Brimob) while detained in Wamena Prison, Papua, 4 February 2001.

“If you make false reports I will shoot you and your lawyer... If you want to report to international organizations or to journalists, I am not afraid”.

A Brimob officer to a detainee and his lawyer in Manokwari, Papua after the lawyer had filed a complaint that his client had been tortured in police custody, 22 June 2001.

Introduction

Impunity is not an abstract concept, but is a phenomenon with a direct and causal link to the commission of human rights violations. The confidence to beat the political activist or to threaten him, the human rights lawyer and the detainee with death results from the certainty that you will be exempt from punishment. In Indonesia, such confidence is bred of a well entrenched pattern of infrequent and ineffective investigations; of rare and compromised trials; and of the signals sent by political leaders through speeches, actions and, perhaps most significantly, lack of action.

Despite three changes of government in Indonesia since mid-1998, each of which has promised reform, the human rights situation in Indonesia remains grave and impunity is still the status quo. The recent start of trials in Indonesia into serious crimes committed in East Timor during 1999 could represent an important step towards changing this situation. However, concerns about the fairness of the procedures and the limited number of cases that are due to come before the *ad hoc* Human Rights Court on East Timor has raised fears that the process may reinforce impunity rather than deliver justice. In the meantime, thousands of allegations of human rights violations in Indonesia, both past and present, have not been investigated and trials of suspects in human rights cases remain the exception rather than the rule.

Each failure to bring perpetrators of human rights violations to justice reinforces the confidence of perpetrators that they are indeed above the law. This connection was explicitly recognized by United Nations (UN) Committee against Torture (the Committee) in November 2001 when it examined Indonesia's first periodic report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its concluding remarks the Committee expressed concern about a climate of

impunity in Indonesia, “advanced in part because of the fact there has been little progress in bringing to trial members of the military, the police or other state officials, particularly those holding senior positions, who are alleged to have planned, commanded and/or perpetrated acts of torture and ill-treatment”.¹

To date the UN Commission on Human Rights (UN CHR) has been unwilling to address this connection in relation to Indonesia. While it has raised the need for trials of perpetrators of crimes against humanity and other serious crimes committed in East Timor during 1999, including by the Indonesian military and police, it has failed to recognize that human rights violations, including extrajudicial executions, “disappearance” and torture are being widely committed in Indonesia itself by the very same state institutions.

The following report provides information on the human rights situation in Papua from where an Amnesty International delegation has recently returned. During its mission to Papua in January 2002, Amnesty International documented cases of extrajudicial executions, “disappearances”, torture and arbitrary detentions. Amnesty International urges the UN CHR not to shy away from its responsibility to address these and other serious human rights violations in Papua and other parts of Indonesia.

At the same time, the UN CHR must put pressure on the Indonesian government to ensure that the East Timor trials in Jakarta which began in March 2002 meet with international standards of fairness. A credible process in the East Timor cases could contribute both to strengthening systems of accountability in Indonesia and preventing human rights violations from being committed in the future. However until now basic steps to ensure that the trials will be fair have not been taken, including because the Law on Human Rights Courts is not fully consistent with international law and standards;² the witness/victim protection program, although provided for in law, has not yet been established; and judges and other relevant officials have had insufficient training in and experience of the implementation of human rights law and standards. Amnesty International is also concerned the limitations on the jurisdiction of the *ad hoc* Human Rights Court on East Timor means that many hundreds of cases of serious crimes cannot be heard by the court and that perpetrators of the vast majority of the crimes committed in the context of the popular consultation in East Timor will therefore escape justice.³

¹ Conclusions and Recommendations of the Committee against Torture - Indonesia. Twenty-seventh session 12-13 November 2001, CAT/C/XXVII/Concl.3, 22 November 2001.

² See Amnesty International report: *Indonesia: Comments on the Law on Human Rights Courts (Law 26/2000)*. AI Index: ASA 21/005/2001, February 2001.

³ A popular consultation on independence, administered by the UN, took place in East Timor on 30 August 1999. The East Timorese voted overwhelmingly for independence. In the months proceeding the vote and the weeks following the announcement grave human rights violations were committed against independence supporters by members of pro-Indonesian militia with the support and involvement of the Indonesian security forces. Under international pressure, the Indonesian authorities have conducted investigations into five cases and

an *ad hoc* Human Rights Court on East Timor has been established to hear these cases. However, under Presidential Decree No. 96/2001 which authorized the establishment of the court, it only has jurisdiction over crimes committed in the two months of April and September 1999 and in three out of 13 districts in East Timor.

Amnesty International calls on the UN CHR to:

- Recognize the grave human rights situation in Papua and elsewhere in Indonesia, including Aceh, by adopting a resolution condemning these violations and calling upon the Indonesian authorities to take immediate steps to prevent them;
- Urge the Indonesian government to end impunity by bringing perpetrators of human rights violations to justice, both for serious crimes committed in East Timor and for past and current human rights violations in Papua, Aceh and elsewhere in Indonesia. In the case of the East Timor trials which are already in progress, the Indonesian government should be urged to take all necessary measures, without delay, to ensure that the procedures meet international standards for fair trial;
- Urge the Indonesian government to take steps to ensure that the right to freedom of expression is respected throughout Indonesia, including in the contested areas of Papua and Aceh;
- Urge the Indonesian government to take all necessary measures to ensure the protection of human rights defenders from human rights violations, including by conducting immediate, effective and impartial investigations into human rights violations, threats and other forms of harassment against human rights defenders in Papua, Aceh and elsewhere in Indonesia;
- Urge the Indonesian government to ensure that all members of its security forces and members of the judiciary receive training in the practical implementation of human rights standards;
- Urge the Indonesian government to implement, without further delay, the recommendations of the UN Committee against Torture and of other UN human rights mechanisms and bodies;
- Urge the Indonesian government to issue invitations to the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders to visit all areas of Indonesia, including Papua and Aceh.

The right to freedom of expression denied

The political status of Papua (previously known as Irian Jaya) has long been contested.⁴ An independence movement, mainly consisting of small groups of armed fighters, has been in existence since the late 1960s. However, since the fall of former President Suharto in May 1998, a broad based civilian movement has emerged with formal structures and an identifiable leadership. The response by successive governments in Jakarta over the past four years to the challenge posed by this movement has been inconsistent, oscillating between support for and engagement in dialogue to repression. Currently, the latter most clearly characterizes central government policy on Papua.

In the past year senior members of the Papua Presidium Council (*Presidium Dewan Papua* - PDP), a body created in February 2000 to lead the civilian independence movement, have been put on trial for their legitimate and peaceful political activities. In the meantime, on 10 November 2001, Theys H. Eluay the head of the PDP, who was also among the PDP members on trial, was abducted and murdered. Local police officials have indicated in statements to the media that members of the Special Forces Command (Kopassus) were responsible for the killing. The effect of these and other events has been to diminish further the already constricted space for freedom of expression in Papua.

⁴ Netherlands New Guinea, as it was formally known, was a Dutch colony until October 1962 when, under an agreement brokered by the United States, authority for the territory was briefly transferred to the United Nations Temporary Executive Authority before being handed over to Indonesia on 1 May 1963. Under the agreement, a UN-supervised referendum, known as the "Act of Free Choice" took place in 1969 to decide whether or not Papua would remain under Indonesian rule. The majority of the 1,025 Papuans who voted in the referendum were handpicked by the Indonesian government. They voted unanimously in favour of integration with Indonesia. The vote is considered to have been fraudulent by most Papuans and is the basis for the recent demand for Indonesia to "rectify history" by making public the facts around the referendum.

On 4 March 2002, three members of the PDP, Don Flassy, Thaha Al-Hamid and Reverend Herman Awom, were acquitted of attempting to separate Papua from Indonesia or rebellion (*makar*), (Articles 106 and 110 of the Criminal Code - KUHP); of participation in an illegal association (KUHP Article 169) and “spreading hatred against the government” (KUHP Article 154).⁵ It remains unclear whether the charges against a fourth PDP member, John Mambor, whose trial was suspended because of his ill-health, will now be dropped on the basis of the decision to acquit the other PDP defendants.

The accusations against the four PDP leaders centred around their involvement in three events: ceremonies to raise the Morning Star flag throughout Papua on 1 December 1999;⁶ participation in the Great Consultation (*Musyawah Besar* - Mubes); and participation in the Second Papuan National Congress. The Mubes and Second Papuan National Congress were meetings held in Jayapura, the capital of Papua, in February and May/June 2000 respectively, at which plans for developing and implementing a political strategy for the civilian pro-independence movement were discussed. The Second Papuan National Congress, which had been approved and partially financed by former President Wahid, produced a resolution which focussed on non-violent methods of achieving independence for Papua. It made no reference to supporting the armed struggle.

In the summing up of the case it was stated that although Don Flassy, Thaha Al-Hamid and Reverend Herman Awom were guilty of rebellion they would not be punished because of the role of the authorities in approving and financing the events. Although the decision to acquit the three is to be welcomed, Amnesty International is concerned that the decision does not appear to signal a recognition of the right of PDP members and other activists in Papua to engage in peaceful political activities. As one of the defence lawyers pointed out, the decision by the judges that the actions of the defendants did amount to crimes sets a bad precedent and is likely to discourage PDP members and others from engaging in legitimate political activities in the future.

While Amnesty International takes no position on the political status of Papua, it believes that a durable solution to the problem can only be found if Papuans are able to participate fully and safely in the process of finding that solution. A necessary pre-condition is for Papuan people to be able to engage in legitimate, non-violent political activities without risk of imprisonment or other human rights violations.

⁵ KUHP Article 154 is one of a group of provisions under KUHP which were inherited from Dutch colonial law and are collectively known as the “hate sowing articles”. Under former President Suharto they were widely employed to detain and imprison political opponents. The provisions do not comply with international standards for freedom of expression and Amnesty International has consistently campaigned for them to be repealed.

⁶ The Morning Star flag is a popular symbol of independence and flag raising ceremonies have commonly been used to express opposition to Indonesian rule in Papua.

Prisoners of Conscience and violence in Wamena

Amnesty International is also calling for the immediate and unconditional release of five prisoners of conscience in Wamena, Jayawijaya District. Reverend Obed Komba, Amelia Yiggibalom (f), Reverend Yudus Meage, Murjono Murib and Yafet Yelemaken, all members of the Wamena Panel (the local branch of the PDP) who were sentenced to between four and four-and-a-half years' imprisonment in March 2001 after being found guilty of rebellion (KUHP Articles 106 and 110). The five are currently under a form of town arrest (*kota ditahan*) pending the outcome of an appeal to the President.

The five were initially questioned by the police on the basis of accusations that they were responsible for instigating violence in Wamena, Jayawijaya District, on 6 October 2000 in which it is reported that 13 Papuans and 24 non-Papuans were killed. The violence began with a series of police raids on command posts (*Pos Komando* - posko) which had been established as centres for political and other discussions and where Morning Star flags were flying. The flag poles were cut down with chain saws and over 80 people were arrested. Many of them were tortured or otherwise ill-treated and one passer by, Eliaser Alua, was shot dead. News of these events prompted a violent reaction from local people which resulted in revenge attacks by locals against non-Papuan residents. A number of Papuans also died in this violence as members of the security forces opened fire on the crowds.⁷

The five Panel members were summoned for questioning on 11 October 2000. After one week of daily interrogations which took place without lawyers and which often lasted late into the night it became apparent that there was no evidence of their involvement in the violence. Indeed, Reverend Komba had been in Jayapura on 6 October 2000 seeking advice from the PDP on how to avert the prospect of violence if the police went ahead with plans to remove Morning Star flags from the Wamena area. Other Panel members tried to meet with the local chief of police (Kapolres) on 6 October 2000 to negotiate a peaceful settlement and also attempted to calm the crowds. One Papuan involved in attacking non-Papuans explained to the Amnesty International delegation how the Panel members had tried to dissuade him and his followers from entering Wamena town to participate in the violence.

In the absence of any evidence against them, the Panel members were told by the police that they must find those who were responsible for the attacks on the migrants. Unable and unwilling to do so they were themselves arrested and charged. The evidence for the charges focussed on their membership of the PDP as Panel representatives and of their activities in informing local people of the results of the Mubes and Second National Papuan Congress. The trials took place under tight security and international monitors were denied

⁷ See Amnesty International Report: *Indonesia: Commentary on Indonesia's first report to the UN Committee against Torture*. AI Index: ASA 21/048/2001, November 2001. See also: *Violence and Political Impasse in Papua*. Human Rights Watch, Vol. XX, No. X(X), July 2001.

permission to attend. The five were found guilty on 10 March 2001 and the verdict has been upheld in appeals to both the High and Supreme Courts.

Seventeen other people were brought to trial in Wamena in relation to the events of 6 October 2000. All but one was a member of Papuan Taskforce (*Satuan Tugas Papua - Satgas Papua*), a security group set up in early 2000 to protect PDP members. The 16 Satgas members, who had been detained during the morning raids on the poskos, were held with other detainees in the auditorium of Wamena Police Resort (Polres) where they were subjected to beatings and racist abuse. They were denied food and water and prevented from sleeping. Interrogations were carried without the presence of a lawyer and at least two of the detainees are known to have been forced to sign statements without first being permitted to read them. It is reported that others could not read or write and that one could not speak Bahasa Indonesia, the language in which the statements were written and in which the interrogations took place. While in police custody a number of them claimed to have witnessed the torturing to death of Yohanes Udin, a young photographer from Flores, Nusa Tenggara who had been in Papua documenting the activities of the Satgas members.

On 4 February 2001, when the trials of the 17 were already in progress and the five Panel members were waiting for theirs to begin, Brimob officers entered Wamena prison and kicked and beat with an iron rod six of the Satgas members. Murjono Murib, the head of the Wamena Panel, was also struck on the back with the butt of a rifle. During the attack Murjono Murib was warned by a Brimob member that “*we have experience in East Timor operations, be careful we will shoot you all*”. He was also told that if he did not admit in court to his involvement in the violence his nails would be pulled out.

The 16 Satgas members were found guilty of rebellion, of disobeying an order by a state official and of possessing sharp weapons - an accusation which the defendants denied. They were acquitted of using force against a state official. The seventeenth person, Sudirman Pagawak was also found guilty of rebellion and of blocking a public road. Amnesty International believes that the 17 may be prisoners of conscience whose arrest may have been motivated by their affiliation with the independence movement. The organization considers that contradictions in the evidence, including about whether they were armed should be reexamined without delay. In the meantime, it is apparent that the trials fell short of international standards of fairness and that a prompt review of these cases is therefore necessary.

Wamena in context

The raids by the police in Wamena on 6 October 2000 was one in a series of operations over the proceeding two years in which Morning Star flags were forcibly removed. While much of the rest of Indonesia was enjoying a relaxation of restrictions on freedom of expression and association which followed the resignation of former President Suharto in May 1998, in

Papua the security forces were quick to resort to violence against those demanding independence.

The first post-Suharto incident dates back to July 1998 when the security forces opened fire on a crowd of people who had assembled to guard the Morning Star flag which was flying in Biak. Although there had been violent clashes between independence supporters and the Indonesian security forces in Biak several days previously, on 5 July 1998 the security forces opened fire in the early hours of the morning on crowds who had stayed overnight to guard the flag - many of them were reported to have been sleeping at the time of this operation. At least eight people are believed to have been extrajudicially executed and some 150 people were reported to have been arrested and subjected to torture or otherwise ill-treated by the security forces. Subsequent operations took place in other locations, including Sorong (July 1999); Timika (December 1999); Nabire (February and March 2000); Merauke (February 2000); Sorong (August 2000); Fakfak (December 2000); Merauke (November and December 2000); and Manokwari (May 2001). The exact number of deaths resulting from these operations is unclear, but is thought to be at least 37. Dozens of other people sustained injuries both from being shot and as a result of torture or ill-treatment and numerous people were arbitrarily detained.

With the exception of the Biak and Wamena cases none of these incidents have been investigated. The investigation carried out by the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM) into the events in July 1998 in Biak confirmed that human rights violations had taken place, but despite a recommendation that a complete investigation be carried out no further action has been taken by the authorities. Following the events of 6 October 2000 in Wamena, two members of Komnas HAM visited the town. They stayed for two days, but little is known about their activities because they have never reported publicly. No member of the security forces has been brought to justice for committing violations in this or any of the other cases referred to above.

Extrajudicial executions, torture and unlawful arrests in Manokwari District

Conflict over natural resources has been a feature of opposition to Indonesian rule in Papua in recent years but is also the context for human rights violations in its own right. The most publicised cases have been those around the vast gold and copper mine of PT Freeport Indonesia in Tembagapura in the Mimika District of Papua, where evidence was found that extrajudicial executions, “disappearances”, torture and arbitrary arrests were carried out by Indonesian security forces in the mid-1990s.⁸ However, similar conflicts over land and

⁸ See, AI documents: Indonesia: *Irian Jaya: National Commission on Human Rights confirms violations*, AI Index: ASA 21/47/94; *Indonesia: Full justice? - Military trials in Irian Jaya*, AI Index: ASA 21/17/96. See also: *Trouble at Freeport: Eyewitness accounts of West Papuan resistance to the Freeport*

cultural rights, environmental damage and compensation are the cause of tension elsewhere in Papua and have also resulted in human rights violations.

In Wasior Sub-district, Manokwari District, over 150 people were reported to have been arbitrarily detained, and/or tortured, at least one person is known to have died in police custody and an unknown number of people unlawfully killed or “disappeared”, during the course of operations led by the Police Mobile Brigade (Brimob) in the second half of 2001.

These events had their roots in longstanding disputes between local people and logging companies in Wasior but were specifically the result of two attacks by armed groups in the area in March and June 2001. The first attack resulted in the deaths of three employees of timber company PT. Darma Mukti Persada (DMP) on 31 March 2001. It followed a protest over land rights and compensation by people from Wombu village against DMP, but according to many reports those responsible for the attack did not come from the local community. The second attack, and the one that solicited the harsher reprisals, took place on 13 June 2001 when five members of Brimob who were a part of the security guard for the CV Vatika Papuana Perkasa (CV VPP) logging company in Wondiboi village were killed, also by an unidentified armed group. According to the reports the five members of Brimob were off duty at the time of the attack. A CV VPP employee was also killed in the attack.

Amnesty International condemns the killings of both the logging company employees and the members of Brimob and recognizes the responsibility of the Indonesian authorities to identify and bring to justice those suspected of carrying out the killings. However, the organization is seriously concerned by the way in which these events appear to have been used to justify reprisals that were entirely disproportionate and arbitrary in nature and which seem to have been motivated more by revenge and a desire to punish the whole community than to identify and bring to justice the individuals responsible for the killings. Moreover, Amnesty International is concerned that the Indonesian authorities have so far not investigated the reports of human rights violations in the area although they have been well documented and publicised by local human rights organizations. The reports, together with a request to investigate, have also been sent by local non-governmental organizations (NGO) to Komnas HAM but no response has yet been received.

During its visit to Manokwari, the Amnesty International delegation met some two dozen victims and witnesses of the operations, all with strikingly similar stories to tell. A 15 year-old girl (name withheld to protect her security) described how she had been shot in her left hand and right foot on 27 June 2001 as she ran from her village, to

McMoRan mine in Irian Jaya, Indonesian and Indonesian military repression: June 1994-February 1995, ACFOA, 5 April 1995, and Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia - A Report by the Catholic Church of Jayapura, August 1995.

escape a group of between 10 and 15 Brimob who had arrived in search of Daniel Yairus Ramar, the head of Wondama Tribal Council (*Dewan Persekutuan Masyarakat Adat Wondama* - DPMA), who the authorities suspected of being behind the attack in Wondiboi on 13 June 2001. She spent the night alone hiding in the forest before returning the following day. Her seven-year old brother, who had run after her, never returned and it is feared that he became lost in the forest. Her uncle described how the Brimob officers had ordered all the men of the village to gather at the house of the village head, Corneles Sumuay, where they were punched and beaten with rifle butts. Corneles Sumuay was stabbed with a bayonet. Daniel Yairus Ramar was later captured in Nabire District. He died in custody at Manokwari Polres on 20 July 2001 apparently as a result of torture.

The 60 year-old principal of a primary school (name withheld to protect his security) was among some 10 teachers from the Wondiboi area who were reportedly detained and tortured after 13 June 2001. He was detained by members of Brimob on 17 June 2001 as he and his family were about to board a boat for Wasior to escape the police operations. He was taken to the Police Sector (Polsek) in Wasior where he was beaten by five members of Brimob. According to the testimony he gave to Amnesty International researchers he was repeatedly hit on the head - he counted 21 blows; struck with the magazine of a gun on his forehead and with the butt of a rifle on the back; hit under one of his eyes so that it filled with blood; and kicked in the chest. He tried asking the Brimob officers why they were treating him in this way, what he had done wrong, but they did not respond: *"they neither asked me questions or accused me of anything, they simply beat me"* he said.

The primary school principal was released later that day apparently because Brimob realised that they had made a mistake when they could not find his name on a list of people that they were searching for. One Brimob officer even apologised to him. Yet two days later, on 19 June 2001 he was summoned again to Polsek Wasior where he was beaten once more before being released the same day. He remains confused about why he was detained, but believes it may be because he belonged to a clan from which a member had been arrested in connection with the Wondiboi attack.

Most of those detained in relation to the Wasior attacks have been released without charge, although some are still required to report regularly to the police. However, 26 have been charged with various offences including rebellion (KUHP Articles 106, 108 & 110), participation in a group intending to commit a crime (KUHP Article 169) and the possession of certain kinds of weapons under Emergency Law No.12 of 1951. Sixteen have already been convicted and sentenced to prison terms of between 14 and 21 months. There are serious concerns about the fairness of their trials, including because of irregularities in arrest and detention procedures and allegations that the defendants were tortured while in pre-trial detention.

Intimidation and harassment of human rights defenders

Human rights defenders involved in investigating and publicising the cases referred to above, as well as other incidents, have themselves become the target of human rights violations. They have received death threats, been accused of defamation and been summoned for questioning by the police. Their activities are also routinely monitored and, at various times, they have been denied access to parts of Papua.

Amnesty International condemns the harassment and intimidation of human rights activists and the restrictions on their right to free and secure access to all areas of Papua. The organization urges the UN CHR to remind the Indonesian government of its responsibility to protect human rights defenders as spelled out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). The Declaration on Human Rights Defenders states that:

“Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and freedoms” (Article 1);

“The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration” (Article 2.1).

During Brimob led operations in Wasior Sub-district which started in June 2001, human rights monitors were prevented from travelling to the area. A joint team, consisting of church representatives and Manokwari based NGOs attempted to visit the area in early July 2001, but were told by the local police chief (Kapolres) that *“their security could not be guaranteed”* - a phrase which has come to be regarded in Papua as an implicit threat. Another team did manage to negotiate permission for a two day visit to Wasior in October 2001, but were greeted on their arrival by some 20 members of Brimob firing shots into the air. Members of the team told Amnesty International that conditions in Wasior at the time made it impossible for them to carry out their work effectively - local people were too frightened to speak openly with them and the team itself was also concerned about their own security.

Lawyers representing political detainees in Manokwari have also been subjected to intimidation. In June 2001, Yan Christian Warinussy, the Director of the legal aid organization Legal Aid, Research, Investigation and Development (*Penelitian, Pengkajian*

dan Pengembangan Bantuan Hukum - LP3BH), was threatened with death because he had written a letter of complaint to the chief of police in Manokwari protesting about treatment of a number of his clients. In the letter, he complained that six detainees, arrested in relation to a flag raising incident on 1 May 2001, had been beaten by members of Brimob. After leaving following a visit to the six men on 22 June 2001 in Manokwari Polres, Yan Christian Warinussy was called back to the compound by a police official. When he returned he found the six detainees lined up outside their cell with some seven police officers, including Brimob members. Yan Christian Warinussy was asked by a Brimob officer why he had written the letter and from where he had got the information. The detainees were then asked who had been beaten. One of them explained that he had been hit on the back of the head. It was at this point that the Brimob officer took out his pistol and said “[i]f you make false reports I will shoot you and your lawyer”. He threw the letter of protest on the ground, stepped on it and said “[t]he legal aid foundation is talking nonsense. If you want to report to international organizations or to journalists, I am not afraid”.

The work of human rights activists in Jayapura on two high profile human rights cases, that of the killing of Theys H. Eluay in November 2001 and the Abepura case of December 2000 [see below], has also resulted in threats of death, criminal action against them and other forms of harassment and intimidation. On 11 February 2002 Yohanes Bonay and John Rumbiak, the Director and Coordinator respectively of the Papuan based Institute for Human Rights Study and Advocacy, (*Lembaga Studi dan Advokasi Hak Asasi Manusia - Elsham*) received reports that they were to be killed by Kopassus. Elsham has taken a leading role in campaigning for an effective investigation by the authorities into the murder of Theys H. Eluay and has published a report, based on its own investigations, which points to the involvement of the security forces. It is believed that the threats against the Yohanes Bonay and John Rumbiak related to this work.

Yohanes Bonay has also received death threats and been summoned for questioning by the police in connection to Elsham’s work on the Abepura case of 7 December 2000 in which one person was shot dead, two high-school students died in police custody as a result of torture and around 100 others, some of them children, were arbitrarily detained and tortured or otherwise ill-treated.⁹ Yohanes Bonay, together with Demianus Wakman, the Director of Papua branch of the Legal Aid Foundation (*Lembaga Bantuan Hukum - LBH*), were both questioned by the police in December 2000 in relation to statements that they had made to the media criticising the actions of the police. They were both accused of defamation, a charge which in Indonesia carries a prison term of up to four years. Yohanes Bonay was detained overnight but neither was ever formally charged. It is unclear whether the investigation is still open.

⁹ See Amnesty International Report: *Indonesia: Commentary on Indonesia’s first report to the UN Committee against Torture*. AI Index: ASA 21/048/2001, November 2001. See also: *Violence and Political Impasse in Papua*. Human Rights Watch, Vol. XX, No. X(X), July 2001.

Amnesty International also encountered difficulties in carrying out its work in Papua. Misreporting in the media in Jakarta led to a request by the central authorities for Amnesty International to withdraw its delegation from Papua in January 2002. The organization believes that these problems were indicative of the broader and more serious problems facing local human rights defenders in the province.

Unresolved cases of human rights violations in Papua

No perpetrator of human rights violations in Papua has been brought to justice in recent years. The last case known to Amnesty International was in 1999 when a soldier was convicted of killing a Papuan and sentenced to five years' imprisonment. Prior to that four members of the Indonesian military were found guilty in February 1996 by a military court of charges relating to the killing of three civilians in Hoesa village, in Paniai District. At the time Amnesty International recognized the investigations and trials to be a positive step, but also had substantive concerns about the quality, thoroughness and independence of the process.¹⁰

The failure to effectively investigate and to bring to trial suspects in two recent and particularly high profile cases places in doubt the commitment of the central government to bring to justice perpetrators of human rights violations. The two cases, that of Abepura in December 2000 and Theys H. Eluay differ from the hundreds of other cases of human rights violations only in that investigations processes have been initiated by the authorities. However, in common with most other human rights cases, in neither case have suspects yet been arrested or charged.

The Abepura case

In the Abepura case of 7 December 2000, a Commission of Inquiry into Human Rights Violations in Papua/Irian Jaya (*Komisi Penyelidik Pelanggaran Hak Asasi Manusia Papua/Irian Jaya* - KPP HAM Papua/Irian Jaya) was established by Komnas HAM in accordance with its role under Law 26/2000 on Human Rights Courts. Under this relatively new legislation Komnas HAM is the sole body empowered to initiate and carry out a preliminary inquiry into suspected cases of crimes against humanity or genocide over which the human rights courts have jurisdiction. The investigation was completed in May 2001 but not without encountering a series of obstructions which prompted the investigation team to publicly protest about lack of police cooperation and intimidation of witnesses.¹¹

The final report of the KPP HAM - Papua/Irian Jaya concluded that there was strong evidence of gross human rights violations, including torture, extrajudicial executions,

¹⁰ *Indonesia: Full Justice? - Military trials in Irian Jaya*, AI Index 21/17/96, March 1996.

¹¹ Press Release, KPP HAM Papua/Irian Jaya, 21 March 2001, *Regarding Recent Developments in Witness Questioning*.

persecution based on gender, race and religion and arbitrary detentions and restrictions on freedom of movement. The report identified 25 members of the regional police and Brimob as possible suspects, including senior officers. It recommended that the case be investigated further and that the suspects be brought to trial in a human rights court. The report was submitted to the Attorney General's office in May 2001. It was returned to Komnas HAM for further clarification and was then resubmitted on 16 August 2001.

Since August 2001 there has been a singular lack of progress. To Amnesty International's knowledge the Attorney General's office has not carried out an investigation into the case in accordance with its role under Law 26/2000 on Human Rights Courts. Under this law the investigation by the Attorney General's office must be completed within a period of no longer 240 days from the date that the inquiry findings have been received and declared complete by the Attorney General's office.¹² Amnesty International has always maintained that the time lines in Law 26/2000 are too rigid and are unrealistic in the complex cases which are to be dealt with under it.¹³ However, the organization is equally concerned that the Attorney General's office may not complete the investigation by the 240 day deadline and fears that non-compliance with the law as it exists may impact negatively on the prospect of justice in this case should it ever be brought to court.

The Theys H. Eluay case

In the meantime, the case of the abduction and murder of Theys H. Eluay on 10 November 2001 has resulted in a significant increase in the levels of tension in Papua. The killing of the 64 year-old leader of the PDP is widely regarded in Papua as proof that the authorities favour violence and repression rather than dialogue - a view that is reinforced with each investigation which fails to lead to the identification and arrest of suspects.

To date there have at least five separate investigations into the death of Theys H. Eluay, including by the regional police, the Indonesian military headquarters, Komnas HAM and, most recently, the military police and a National Inquiry Commission (*Komisi Penelitian Nasional* - KPN). Despite the successive investigations, five months on from the day that Theys H. Eluay's body was found justice in this case seems to be as allusive as in all previous human rights cases in Papua.

¹² According to Law 26/2000 on Human Rights Courts Article 22 (1), (2) & (3) of Law 26/2000 the investigation by the Attorney General's office must be completed within a period of 90 days from the date the inquiry findings are received and declared complete. This time period may be extended for 90 days by the Chief Justice of the Human Rights Court and by a further 60 days if necessary.

¹³ See: *Indonesia: Comments on the Law on Human Rights Courts (Law No.26/2000)*, AI Index ASA 21/005/2001, February 2001.

In January 2002, the regional police chief (Kapolda), Brigadier General Made Mangku Pastika, publicly stated that police investigations had revealed evidence indicating that members of Kopassus were involved in the killing. Until recently senior military and government officials regularly and publicly denied military responsibility for the killing. However, on 27 March 2002, the Indonesian military spokesman, Major General Sjafrie Sjamsoeddin, publicly stated that on the basis of the investigations carried out by a military police inquiry team (Tim Puspom TNI) there were strong indications that a number of military personnel were involved in the abduction and murder of Theys H. Eluay. The spokesman denied that the killing was carried out as part of a policy or with the knowledge of the military headquarters.¹⁴ On the same day the commander of Kopassus was quoted by the news weekly Tempo as saying “[n]one of my subordinates were in any way involved in the case”.¹⁵

Tim Puspom TNI began its investigations in February 2002. In the meantime, a separate investigation team, the National Inquiry Commission, was established by Presidential Decree on 5 February 2002 and began yet another investigation.

Amnesty International shares the concerns of local non-governmental organizations and other human rights activists in Papua that neither the Tim Puspom TNI nor the KPN can be regarded as credible or independent. In particular, the organization is concerned that the involvement of members of the military in both is likely to have a negative impact on the impartiality of the investigations and that, in the absence of a victim/witness protection program, witnesses are likely to be inhibited from speaking openly for fear of reprisals.

The Tim Puspom TNI departed from Papua on 8 March 2002. According to reports in the local media it claimed to have interviewed close to one hundred witnesses. Many of the witnesses have already been interviewed several times by different investigation teams and some have already complained to local NGOs that they feel intimidated by the repeated questioning sessions in which they say that they are often made to feel like suspects rather than witnesses.

¹⁴ Jakarta Post, 27 March 2002, *Military officers to be linked to Theys' murder*.

¹⁵ Tempo Interactive, 27 March 2002, *Maj. Gen. Amirul Isnaini: Kopassus Not Involved in Theys' Murder*

In the meantime, the head of the KPN, Koesparmono Irsan, a retired police officer and member of Komnas HAM, has publicly stated that the KPN does not have the authority to conduct a criminal investigation¹⁶ and two members of the 11 member team, both Papuan legislators, have tendered their resignations. One of them, Simon Patrice Morin, was quoted in the media as saying that there is no role for the team and that “*what we need now is firmness from Megawati as president to use her power in following up the findings of the police*”.¹⁷ The KPN is scheduled to complete its investigations on 1 May 2002. According to the Presidential Decree (10/2002) under which the KPN is established, it is authorised to report to the President and make its report public. However, any recommendations made by the KPN will not be legally binding.

Amnesty International fears that the plethora of investigations into the killing of Theys H. Eluay is being used to obstruct the case from being brought to trial. In the interests of justice, Amnesty International believes that the trials of suspects in this case should take place without further delay if there is sufficient evidence against them. These trials should take place in a civilian court in a manner which is consistent with international standards for fair trial. Amnesty International also believes it is necessary to carry out a broader investigation into human rights violations in Papua to identify the patterns and causes of such violations. Such an investigation should also address, among other things, issues of command responsibility which are not provided for under ordinary criminal law in Indonesia and should recommend measures to prevent human rights violations from being committed in the future.

In the meantime, Theys Eluay’s driver, Aristoteles Masoka, who was last seen on 10 November 2001 is still missing. According to some reports he was last seen at the Kopassus headquarters in Jayapura. There is serious concern for his safety and for that of other witnesses in this case.

Conclusion

Human rights violations are a daily reality in Papua. The causes are many, but at the root is a persistent failure by the authorities to hold those responsible to account. Lack of investigations and trials in Papua, as elsewhere in Indonesia, gives the appearance that the authorities tolerate or even condone human rights violations committed by its security forces. The deeply entrenched culture of impunity can only be changed through serious and systematic efforts by the Indonesian authorities to investigate all allegations of human rights violations and, where there is sufficient evidence, to bring suspects to trial in a manner which is consistent with international standards for fair trial.

¹⁶ Jakarta Post, 20 February 2002, *KPN could not do much in Theys’ death probe*.

¹⁷ AFP, 12 February 2002, *Member of new Indonesian Inquiry team into Papua leader’s death quits*.

In the meantime, trials of political leaders, the violent break up of pro-independence demonstrations, indiscriminate reprisals for attacks by armed groups and intimidation of human rights defenders and other activists have contributed to an environment in Papua where the right to freedom of expression is severely curtailed. Amnesty International fears that such conditions may encourage the use of violence by greater numbers of independence supporters and make the likelihood of a peaceful resolution to the political status of the province more remote.

Amnesty International urges the UN CHR not to allow another opportunity to pass to act against the grave human rights situation in Indonesia. To wait another year would not only fail the many thousands of victims of human rights violations in Papua and elsewhere in Indonesia but would also fail those who live in daily fear of becoming victims themselves. Amnesty International calls upon the UN CHR to adopt a resolution condemning the violations and to insist that the Indonesian government take immediate measures to prevent further human rights violations from being committed.

In the meantime, Amnesty International believes that a significant improvement in the human rights situation in Papua could be achieved if the Indonesian government was to act on the following recommendations:

- ***Prisoners of conscience and political prisoners*** - Immediately and unconditionally release all prisoners of conscience. Conduct a prompt and independent review of all cases where political prisoners have been convicted in trials which did not meet international standards for fair trial.
- ***Investigations and trials in the Wamena and Wasior cases*** - Effective and independent investigations should be established into human rights violations committed by members of the security forces in Wamena in relation to the events of 6 October 2000 and in Wasior Sub-district during the course of Brimob led operations during 2001. In order to be credible and impartial, such investigations should be carried out by a body offering the requisite guarantees of independence and which has the necessary skills and experience. In view of the alleged involvement of their members in human rights violations in both Wamena and Wasior, the military and the police should not be involved in the investigations.
- ***Justice in the case of Theys Eluay*** - If there is sufficient evidence, those suspected of involvement in the abduction and killing of Theys H. Eluay in November 2001 should be immediately charged and brought to trial. Trials should take place in a civilian court in a manner which is consistent with international standards for fair trial. Amnesty International believes that it is also necessary to carry out a broader investigation into human rights violations in

Papua to identify causes and patterns, to address, among other things, issues of command responsibility and to recommend preventative measures.

- ***Investigation and accountability in the Abepura case*** - On the basis of the report submitted by the KPP HAM Papua/Irian Jaya, and in accordance with its obligations under the Law on Human Rights Courts (Law 26/2000), the Attorney General should immediately carry out an investigation into human rights violations, including torture, deaths in custody and arbitrary detentions in Abepura in December 2000. The members of the investigation team should be independent and have expertise in investigating human rights cases.
- ***Protection of victims and witnesses*** - Effective protection should be provided for witnesses and victims in these and all other cases of human rights violations both during the investigation and trials and for as long as such protection is necessary.
- ***Suspending suspects from positions of responsibility*** - Individuals suspected of committing human rights violations should be suspended from positions of responsibility pending the outcome of investigations. This should include members of Brimob responsible for human rights violations in Wasior.
- ***Protection of human rights defenders*** - The authorities should fulfil its responsibility to protect human rights defenders, as spelled out in the Declaration on Human Rights Defenders, in order that they can carry out their legitimate work free from threats of human rights violations or unfounded criminal actions against them. Investigations should immediately be carried out into reported threats against human rights defenders.
- ***Training of members of the security forces*** - In view of the repeated failure of members of the security forces to act in accordance with both national law and international human rights standards, regular, detailed training in the practical application of human rights standards should be provided to all members of the police and military serving in Papua and elsewhere in Indonesia. Such training should be based on international standards relating to the treatment of detainees and the use of force and firearms by law enforcement officials including: the UN Code of Conduct for Law Enforcement Officials; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; and the UN Standard Minimum Rules for the Treatment of Prisoners.