



RIGHTS NOW

9-POINT HUMAN RIGHTS AGENDA FOR
INDONESIA'S ELECTION CANDIDATES

INDONESIA

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Cover photo: An Indonesian citizen entered a ballot after using her vote in the 2009 presidential election at Cipto Mangunkusumo Hospital (RSCM) polling station, Jakarta, 8 July 2009. © TEMPO/Imam Sukanto



CONTENTS

1. UPHOLD THE RIGHT TO FREEDOM OF EXPRESSION AND PROTECT HUMAN RIGHTS DEFENDERS	7
2. RESPECT AND PROTECT THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF	11
3. ENSURE ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS COMMITTED BY SECURITY FORCES	15
4. ESTABLISH ACCOUNTABILITY FOR PAST HUMAN RIGHTS VIOLATIONS	19
5. UPHOLD THE RIGHTS OF WOMEN AND GIRLS	23
6. RESPECT HUMAN RIGHTS IN PAPUA	27
7. CLOSE THE ACCOUNTABILITY GAP FOR HUMAN RIGHTS ABUSES BY COMPANIES IN PALM OIL SECTOR	31
8. END THE DEATH PENALTY	35
9. END HARASSMENT, INTIMIDATION, ATTACKS AND DISCRIMINATION AGAINST LGBTI PEOPLE	37

INTRODUCTION

AN OPPORTUNITY FOR CHANGE

As the Indonesian presidential and parliamentary elections on 17 April 2019 draws near, Amnesty International calls on all presidential and parliamentary candidates to commit publicly to ensuring that human rights are protected, respected and fulfilled, as provided in international human rights law and standards and the country's own Constitution.

Amnesty International acknowledges that since the end of President Suharto's rule in 1998, Indonesia has embarked on a series of key reforms aimed at enforcing better safeguards for the protection of human rights, enhancing the rule of law and reforming the public security sector. Indonesia has also ratified several international human rights treaties.

However, despite some progress, Indonesia's human rights record in many areas has been floundering, including ongoing human rights violations committed by the security forces; undue restrictions in law and practice on the rights to freedom of expression and freedom of religion; entrenched gender-based discrimination and other violations of women's human rights; failure to ensure justice, truth and reparation for past abuses; ongoing human rights violations in Papua; and the continued use of the death penalty.¹

This briefing highlights the current situation in these areas, although it should be noted that they do not represent an exhaustive list of Amnesty International's concerns with regards to human rights in the country. It draws on Amnesty International's ongoing research on Indonesia, which involves regular contact with local and international non-governmental organizations, human rights defenders, victims and their families, lawyers, government officials, journalists and other individuals.

All presidential and parliamentary candidates should commit firmly to act on the following human rights agenda should they get elected:

1. Uphold the right to freedom of expression and protect human rights defenders;
2. Respect and protect the right to freedom of thought, conscience, religion and belief;
3. Ensure accountability for human rights violations committed by security forces;
4. Establish accountability for past human rights violations;
5. Uphold the rights of women and girls;
6. Respect human rights in Papua;
7. Close the accountability gap for human rights abuses by companies in palm oil sector;
8. End the death penalty;
9. End harassment, intimidation, attacks and discrimination against LGBTI people.

Amnesty International calls upon all presidential and parliamentary candidates to address Indonesia's human rights situation explicitly in their campaign meetings and forums and through the media. Their commitment to human rights must be visible in their campaign in order for people to be able to consider this when casting their vote.

¹ They are International Covenant on Civil and Political Rights (ICCPR), ratified in 2006; International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified in 2006; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1984; International Convention on the Elimination of All forms of Racial Discrimination (ICERD), ratified in 1999; Convention on the Rights of the Child (CRC), ratified in 1990; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified in 1998; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified in 2013; and the Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2011. Indonesia also signed the Convention for the Protection of All Persons from Enforced Disappearance in 2010, but has not yet ratified it.

1. UPHOLD THE RIGHT TO FREEDOM OF EXPRESSION AND PROTECT HUMAN RIGHTS DEFENDERS

Despite the Indonesian Constitution enshrining the right to freedom of expression, Amnesty International continues to see the use of legislation that unduly restrict its exercise and that has led to scores of individuals detained solely for freely expressing their opinion during President Joko Widodo's administration.

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

In July 2017, President Joko Widodo signed the Government Regulation in Lieu of Law (Perpu) No. 2/2017. This new repressive regulation imposes more restrictions on the rights to freedom of association and expression, and the right to freedom thought, conscience, religion and belief than the Law on Mass Organization which the new legislation amends.⁴ Prior to the amendment, the law already unduly limited the legitimate purpose of mass organizations to maintaining the value of religion and belief in god; preserving and maintaining the norms, values, morals, ethics and culture; or establishing, maintaining, and strengthening the unity of the nation. It also prohibited organizations from “abuse, blasphemy or defamation against any religion acknowledged in Indonesia”⁵ and the dissemination of any ideology that contradicts with Pancasila (The Five State Founding Ideology) which was defined as atheism, communism and Leninist Marxism.

The new amendment expands the grounds to prohibit an ideology to any which seeks to replace or amend Pancasila and the 1945 Constitution. Moreover, the amendment eliminates the involvement of the judiciary in deciding the disbandment of an organization, leaving the authority to do so in the hands of the Government. The Perpu was apparently motivated by the governments’ plan to ban Hizb-ut-Tahrir Indonesia (HTI), a transnational Islamic political movement which “aspires to establish a caliphate and to implement Shari’a law in the country”.⁶ Eventually HTI was disbanded by the government by declaring the organisation illegal.⁷

² Amnesty International, *Indonesia: Victim of acid attack faces defamation charge* (Index: ASA 21/7131/2017); *Indonesia: Accused of defamation for social media posts* (Index: ASA 21/4641/2016).

³ Amnesty International has documented examples of the use this provision to stifle the rights to freedom of expression: Amnesty International, *Indonesia: Five years imprisonment and fine for Facebook post: Alnoldy Bahari* (Index: ASA 21/8348/2018); *Indonesia: Defender under investigation for defamation* (Index: ASA 21/4833/2016).

⁴ Further, the Law requires foreign organizations to obtain a permit to operate and that their activities must not disrupt the “stability and unity” of Indonesia; they may not carry out “practical political activities” or fundraising.

⁵ The officially recognized religions in Indonesia are Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Amnesty International, *Indonesia: Freedom of association* (Index: ASA 21/024/2013).

⁶ Amnesty International, *Indonesia: Amendment of the Mass Organizations Law expands threats to the freedom of association* (Index: ASA 21/6722/2017).

⁷ BBC Indonesia, *Kasasi ditolak Mahkamah Agung, HTI tetap dibubarkan* [Supreme court rejected cassation, HTI still disbanded], 16 February 2019, available at: <https://www.bbc.com/indonesia/indonesia-47250801>.

Despite the above restrictions, Indonesia has seen a marked increase in the space for freedom of expression following the fall of Suharto in 1998. However, a culture of silence has particularly prevailed regarding the mass human rights violations that occurred in 1965. Amnesty International is concerned about continued attempts by the Indonesian authorities to silence public discourse, including by disbanding events, related to the 1965 mass atrocities.⁸

Human rights defenders in Indonesia also continue to face threats, attacks, intimidation and unjust prosecution for their legitimate work. Novel Baswedan, a prominent investigator for the independent state anti-corruption commission (Corruption Eradication Commission, or KPK) suffered an acid attack in Jakarta on 11 April 2017 that severely damaged his corneas.⁹ After two years of investigation, the police has not identified those responsible. In January 2018, environmental activist Heri Budiawan was sentenced to ten months imprisonment by the Banyuwangi District Court, East Java Province, for violating Article 107a of the Indonesian Criminal Code on “crimes against state security” for displaying during a protest the hammer and sickle symbol of communism, a banned ideology, which he denies.¹⁰ In October 2018, the Supreme Court upheld the conviction and increased the sentence to four years’ imprisonment.

There is still no accountability for attacks against human rights defenders. More than 14 years after the killing of prominent human rights defender Munir Said Thalib, the authorities have failed to bring all perpetrators to justice, including those who ordered the attack. Until now three people have been convicted for their involvement in Munir’s death, but there are credible allegations that high-level authorities were involved in the attack, all of whom have not been brought to justice.¹¹ In February 2017, the Administrative Court in Jakarta overturned a decision by the Public Information Commission that ordered the authorities to publish the government’s Fact Finding Team report on the murder. Some sources have alleged that the report implicated senior intelligence officers. In August 2017, the Supreme Court upheld the Administrative Court’s decision, but the government still has not complied with the court’s order.

Amnesty International continues to document the arrest and detention of peaceful political activists, particularly in areas with a history of pro-independence movements in Papua and Maluku. By February 2019 nine people are still imprisoned, some sentenced for as long as 20 years, for attending, organizing or participating in peaceful political activities or protests, or for possessing, raising or waving prohibited pro-independence flags in the those regions.¹² Amnesty International considers them to be prisoners of conscience, detained solely for peacefully expressing their political views. Many of those detained were charged with “rebellion” (*makar*) under Articles 106 and 110 (crimes against the security of the state) of Indonesia’s Criminal Code. These *makar* articles enable law enforcement officials to detain, prosecute and imprison people solely for exercising their rights to freedom of expression and peaceful assembly and provide a maximum sentence of life imprisonment.

Amnesty International welcomes the release of at least 60 prisoners of conscience from Papua and Maluku during Joko Widodo’s administration.¹³ In May 2015, the President granted clemency to five Papuan political activists and pledged to grant clemency or an amnesty to others. In November 2015, Papuan pro-independence activist Filep Karma was released after spending more than a decade in prison for his peaceful political expression. In December 2018, a prisoner of conscience from Maluku who was serving a 15-year sentence for *makar*, Johan Teterissa, was released after serving more than 11 years in prison. Others were released only after finishing their unjust prison terms or passing away in prison. In recent years, Amnesty International has seen less political activists in Papua and Maluku charged under the *makar* provisions.

⁸ Amnesty International, *Indonesia: Stop intimidating participants in events concerning 1965 human rights violations* (Index: ASA 216908/2017); *Indonesia: Close gap between rhetoric and reality on 1965 mass human rights violations* (Index: ASA 21/4914/2016); *Indonesia: Truth-seeking and formal apology are essential for 1965/1966 resolution* (Index: ASA 21/3936/2016); *Indonesia: President must not undermine efforts to seek truth, justice, and reparation for serious human rights violations* (Index: ASA 21/3671/2016); and *Indonesia: Stop silencing public discussions on 1965 violations* (Index: ASA 21/2785/2015).

⁹ At the time of the attack he was leading an ongoing investigation into misappropriation of funds for an electronic ID cards project, in which members of parliament and high-ranking government officials are implicated. Amnesty International, *Indonesia: Victim of acid attack faces defamation charges* (Index: ASA 21/7131/2017).

¹⁰ Amnesty International, *Indonesia: Activist in prison for crime against state security* (Index: ASA 21/7884/2018).

¹¹ Amnesty International, *Indonesia: Failure to deliver full justice for the killing of human rights defender Munir* (Index: ASA 21/032/2013).

¹² Amnesty International Indonesia monitoring data

¹³ Amnesty International, *Indonesia: Setting the Agenda: Human Rights Priorities for the New Government* (Index: ASA 21/011/2014), p. 9.

The organization is also concerned about people being prosecuted for blasphemy, in accordance to Law Number 1/PNPS/1965 and Article 156(a) of the Criminal Code.¹⁴ The blasphemy law has been used to imprison people for as long as five years, simply because they have peacefully exercised their right to freedom of expression or freedom of religion.¹⁵ These provisions are often used to target individuals who belong to minority religions or faiths or hold minority opinions. In May 2017, Jakarta Governor Basuki Tjahaja Purnama, an ethnic Chinese Christian known as Ahok, was sentenced to two years' imprisonment for "insulting Islam" in one of his public speeches.¹⁶ In August 2018, the Medan District Court in North Sumatra Province convicted Meliana – an ethnic Chinese Buddhist woman – of blasphemy under Article 156(a) of the Criminal Code and sentenced her to 18 months in prison for complaining about the loudspeaker volume at a local mosque which was very near to her house.¹⁷ The Court concluded that Meliana's complaint was a form of "insulting Islam". In October 2018, the High Court of North Sumatra upheld the lower court decision.

Within January 2017 to December 2018 alone at least 18 people have been convicted under blasphemy laws. Amnesty International also notes with concern that blasphemy provisions are found in the latest draft Criminal Code, enshrined under chapter VII entitled "Crimes Against Religion and Religious Life".¹⁸

Recommendations to the new Indonesian government and parliament:

- *Immediately and unconditionally release all prisoners of conscience deprived of liberty solely for peacefully exercising their rights to freedom of expression, thought, conscience, religion and belief;*
- *Repeal or substantially amend laws and regulations which impose undue restrictions on the rights to freedom of expression, thought, conscience, religion and belief. In particular, repeal Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation and Article 156(a) of the Criminal Code;*
- *Remove the blasphemy provisions in the current draft law of the Criminal Code amendment and other draft legislation;*
- *Repeal or substantially amend Articles 106 and 110 of Indonesia's Criminal Code, ensuring that these articles can no longer be used to criminalize freedom of expression beyond permissible limitations in accordance to international human rights law and standards;*
- *Ensure that the Electronic Information and Transaction (ITE) Law is not misused by the authorities to criminalize freedom of expression and thought, conscience, religion and belief;*
- *Repeal criminal defamation provisions that are contained in the ITE Law and the Criminal Code, and ensure that any defamation claim is treated as a matter for civil litigation;*
- *Take effective steps to ensure that threats, attacks, intimidation and harassment of human rights defenders are promptly, effectively and impartially investigated and that those responsible are brought to justice in accordance with international fair trial standards and without recourse to the death penalty;*

¹⁴ The blasphemy provision in Article 156(a) of the Criminal Code criminalizes "any person who in public deliberately expresses his/her feelings or engages in actions that in principle is hostile and considered as abuse or defamation of a religion embraced in Indonesia".

¹⁵ Amnesty International published a report "Prosecuting beliefs: Indonesia's blasphemy laws" (Index: ASA 21/018/2014) highlighting how the blasphemy laws are fundamentally incompatible with Indonesia's obligations under international human rights law, and violate legally binding provisions on freedom of expression, conscience and religion, equality before the law and freedom from discrimination. The report is available at: <https://www.amnesty.org/en/documents/asa21/018/2014/en/>.

¹⁶ Ahok is the first high rank government official convicted of blasphemy. Amnesty International, *Indonesia: Blasphemy conviction demonstrates intolerance* (Index: ASA 21/6213/2017).

¹⁷ Amnesty International, *Indonesia: 18 months in prison for mosque noise complaint* (Index: ASA 21/9007/2018).

¹⁸ The latest draft is the 28 June 2018 version and is available at: <http://reformasikuhp.org/r-kuhp/>.

- *Ensure a safe and enabling environment in which human rights defenders are able to carry out their work without fear of reprisals; and*
- *Initiate a new and independent police investigation into the attacks of human rights defenders in Indonesia, especially the killing of Munir and the attacks to Novel Baswedan, to ensure that all those responsible, including those who ordered the attack, are brought to justice in accordance with international fair trial standards and without recourse to the death penalty.*

2. RESPECT AND PROTECT THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF

The right to freedom of thought, conscience, religion and belief is guaranteed in Indonesia's Constitution, in particular Article 29(2) on freedom of religion and worship and article 28E(2) on freedom of belief, expression of views and thought in accordance to one's conscience. In 2014, Joko Widodo rose to power with his *Nawa Cita* or nine priority agenda which included strengthening Indonesia's diversity and social restoration through, among other things, enforcing the law in accordance with the constitutional mandate.¹⁹ The vision and mission document further elucidates that freedom of religion shall be guaranteed and legal steps shall be taken against those who commit violence in the name of religion.²⁰

Despite these constitutional guarantees and political pledges, Amnesty International notes the continued violations of the right to freedom of thought, conscience, religion and belief of minorities in Indonesia. Religious minorities in Indonesia continue to be subjected to systemic discrimination sanctioned by existing laws and regulations. They also experience physical attacks by mobs acting in the name of religion, as well as closure of their places of worship, to which the State affords little protection. In the few cases where the authorities have prosecuted those responsible for the attacks, the victims are often prosecuted alongside the attackers. This approach is a seeming effort to pursue "justice" based on the assumption that somehow the minorities have provoked the violence against them by simply existing or practicing their belief.

Blasphemy laws in Indonesia exist within a context of, and appear to contribute to, an atmosphere of intolerance which has negative social consequences for minority religious communities. Religious minority groups in Indonesia, including Shi'a, Ahmadiyya, Christian and other communities often face harassment, intimidation and attacks. In May 2018, local police evacuated at least 23 members of the Ahmadiyya religious minority in East Lombok, West Nusa Tenggara Province to another town after neighbouring villagers destroyed their homes and possessions. Victims of the attack, mostly women and children, have not yet been able to return to their homes. The commander of the local police force had promised to initiate an investigation into the attacks, but no one has been prosecuted so far.²¹

At least 1,500 members of the religious minority group the Fajar Nusantara Movement (Gafatar) – who followed 'Millah Abraham' religious belief - were forcibly evicted from their villages in Mempawah, West Kalimantan in January 2016.²² In February 2016, a Joint Ministerial Decree (No. 93/2016) was issued by three ministries²³ forbidding the 'Millah Abraham' religious belief. The authorities consider the belief 'heretic' because it intermixes the religious teachings of Islam, Christianity and Judaism.²⁴ In March 2017, three leaders of the 'Millah Abraham' religious belief were convicted of blasphemy and sentenced to between three

¹⁹ *Visi Misi Jokowi –Jusuf Kalla* [Jokowi and Jusuf Kalla's Vision and Mission], May 2014, on file with Amnesty International.

²⁰ *Visi Misi Jokowi –Jusuf Kalla*, Ibid, p. 30.

²¹ Amnesty International, *Indonesia: Homes of religious minority destroyed by mob* (Index: ASA 21/8453/2018). See also Amnesty International, *Indonesia: Religious minority members forcibly evicted* (Index: ASA 21/3409/2016).

²² Amnesty International, *Indonesia: Religious minority members forcibly evicted from West Kalimantan* (Index: ASA 21/3351/2016).

²³ The Decree was issued by the Minister of Religious Affairs, the Attorney General and the Minister of Home Affairs.

²⁴ Amnesty International, *Indonesia: Authorities must repeal Joint Ministerial Decree discriminating against minority belief* (Index: ASA 21/3787/2016).

to five years' imprisonment under Article 156(a) of the Criminal Code by a district court in Jakarta. The ruling was appealed, but was later upheld by the Jakarta High Court.²⁵

In October 2015, Christian churches were attacked by a group of at least 200 people in Aceh Singkil District despite the local government already giving in to their pressure and issued a plan to demolish 10 churches in the district for not having legitimate building permits. Although local police had known that there was a plan to attack one of the churches, they did not provide adequate protection nor took measures to prevent the attack. The violence caused widespread panic among Christians in Aceh, and around 4,000 people fled to neighbouring North Sumatra province.²⁶

At least 100 members of the forcibly evicted Shi'a community from Sampang, Madura Island, have been in temporary accommodation in Sidoarjo, East Java Province, since August 2012 after their village was attacked by an anti-Shi'a mob. They are still waiting to return to their homes in Sampang. The community reportedly faced intimidation and harassment by local government officials pressing them to convert to Sunni Islam if they wanted to return to their homes.²⁷

At least 100 people belonging to the Ahmadiyya community from Ketapang, West Lombok subdistrict, West Nusa Tenggara Province, are still displaced and living in temporary accommodation after being attacked by mobs in February 2006. The internally displaced community are still living in squalid conditions in the Provincial Capital, Mataram.²⁸

Discriminatory bylaws or regulations against religious minorities have also been issued by local authorities in a number of provinces, districts and cities across the country restricting Ahmadiyya activities and worship, citing the Joint Ministerial Decree No. 3/2008 as their legal basis. The Decree, issued by the Minister of Religious Affairs, the Attorney General, and Minister of Home Affairs, forbids the Ahmadiyya from promoting their activities and spreading their religious teachings.²⁹ In West Java, the "Regulation of the Governor of West Java No. 12/2011 concerning Prohibition of Activities of the Indonesian Ahmadiyya Congregation in West Java", among other things "prohibits followers of the Ahmadiyya community from carrying out activities... related to the spreading of interpretation and activities that deviate from the fundamental teachings of Islam".³⁰

Discrimination and violence are also experienced by *aliran kepercayaan* or local indigenous beliefs. In November 2015, a place of worship of a local indigenous community in Rembang, Central Java Province, was burned down by a mob during the process of renovation. Before the attack, the community leader had received a threat by a local Islamic organization and was asked by the Rembang District head of government to stop the renovation.³¹

However, it should be noted that some positive strides have been made to assure the freedom of religion of *aliran kepercayaan* adherents. In 2016, the Constitutional Court found religion must be defined to include *aliran kepercayaan*, not only the six religions defined under Law Number /PNPS/1965 (Islam, Christianity, Catholicism, Buddhism, Hinduism and Confucianism), to avoid being discriminatory. The previous more limited interpretation of what religions are acknowledged by the State had led to difficulties for *aliran kepercayaan* adherents obtaining national identity and household registry cards, which in turn had made it difficult for them to obtain work, social security benefits and marriage certificates.³²

²⁵ Amnesty International, *Indonesia: Minority religious leaders convicted of blasphemy* (Index: ASA 21/5851/2017).

²⁶ Amnesty International, *Indonesia: Christian minority in Aceh under threat* (Index: ASA 21/2756/2015).

²⁷ Amnesty International, *Prosecuting Beliefs, Indonesia's Blasphemy Laws*, Footnote No. 15, pp. 28-30.

²⁸ See some of the latest media coverages on the issue, such as Tsering D. Gurung, 'Jalan Tak Ada Ujung Pengungsi Ahmadiyah di Lombok' [The Never Ending Road for Ahmadiyya IDPs in Lombok], *Vice*, 18 September 2017, available at: https://www.vice.com/id_id/article/mb7ex3/jalan-tak-ada-ujung-pengungsi-ahmadiyah-di-lombok and Sofyan Arif Candra Sakti, 'Pemulangan Pengungsi Syiah ke Sampang Jadi PR Besar Bupati Sampang yang Baru Dilantik' [The Return of Syiah IDPs to Sampang is the Major Homework for the Newly Appointed Sampang Head of District], *Tribun News*, 30 January 2019 available at: <http://surabaya.tribunnews.com/2019/01/30/pemulangan-pengungsi-syiah-ke-sampang-jadi-pr-besar-bupati-sampang-yang-baru-dilantik>.

²⁹ Amnesty International, *Prosecuting Beliefs, Indonesia's Blasphemy Laws*, Footnote No. 15, p. 11.

³⁰ Amnesty International, *Submission to the UN Human Rights Committee for the 108th Session*, (Index: ASA 21/018/2013) p. 21.

³¹ Amnesty International Report 2015/2016: The State of World's Human rights (Index: POL 10/2552/2016), p. 189.

³² See the Judicial Review petition against the Civic Administration Law (MK 97/PUU-XIV/2016), available at: https://mkri.id/public/content/persidangan/putusan/97_PUU-XIV_2016.pdf.

Amnesty International has also long noted the closure and takeover of places of worship by local authorities, in some instance of which the local governments refused to reopen them or reissue their building permit despite courts having ruled in favour of the impacted congregations. These include the cases of the Taman Yasmin Indonesian Christian Church (*Gereja Kristen Indonesia*, GKI), in Bogor, West Java and the Filadelfia Batak Christian Protestant Church in Bekasi, Greater Jakarta area.³³

Recommendations to the new Indonesian government and parliament:

- *Take effective steps to ensure that members of religious minorities are protected and able to practice their faith free from fear, intimidation and attack;*
- *Establish thorough, independent, impartial and effective investigations into the harassment, intimidation and attacks against any religious minority and bring those responsible to justice in accordance with international fair trial standards and that victims are provided reparations;*
- *Guarantee the safe, voluntary and dignified return of displaced minority religious communities to their homes or provide permanent resettlement and adequate alternative housing elsewhere in the country, after genuine consultation with them;*
- *Comply immediately with the Indonesian Supreme Court ruling to issue a building permit to the Taman Yasmin Indonesian Christian Church and the Filadelfia Batak Christian Protestant Church.*

³³ Amnesty International's position on the case GKI Yasmin is documented in Amnesty International, *Indonesia: Church congregation threatened* (Index: ASA 21/017/2011), and on the case of HKBP Filadelfia in Amnesty International, *Indonesia: Demand protection for church congregation* (Index: ASA 21/018/2012).

3. ENSURE ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

During the past twenty years the government and parliament have taken significant steps to reform the Indonesian National Police and Military Forces, which include a number of legislative and structural measures to strengthen the police's effectiveness in preventing and detecting crime, maintaining public order and promoting the rule of law³⁴ and ensure the military's adherence to "the principles of democracy, civilian supremacy, human rights, as well as national and international laws stipulations".³⁵ Both the police and the military have also introduced some internal regulations to ensure that international human rights standards are upheld during their operations.³⁶

However, Amnesty International continues to receive reports of serious human rights violations by both the police and military, including unlawful killings, unnecessary or excessive use of force, and torture and other cruel, inhuman or degrading treatment or punishment during arrest, interrogation and detention.

In concentrated frequency, abuses by the police and military have been found in Papua which include unlawful killings.³⁷ The use of torture and other ill treatment in police work is also prevalent in Indonesia's easternmost provinces, for example the use of a snake at the Resort Police of Jayawijaya, Papua province to extract a confession from a person suspected of theft in February 2019, which video was circulated through social media early this year.³⁸ The military has also been found committing torture and ill treatment in their operations in Papua. In November 2017, for instance, a man suspected of being involved in a protest against the leaders of a village in Merauke was dragged out of his house and beaten by soldiers before he was handed over to the police the next day. He died later that day. A few days later, in a public ceremony a local military commander presented an agreement signed by military personnel and a person the military claimed as a representative of the victim's family, specifying that the case shall be settled through a non-judicial process in exchange for compensation money provided by the local military commander.³⁹

Similar practices exist elsewhere in Indonesia. Between January and August 2018, at least 31 were killed in police shootings in the 2018 Asian Games' host provinces of Greater Jakarta and South Sumatra. Many of these killings occurred during police operations designed to secure the host cities of the international event.⁴⁰ These shootings occurred after several high ranking police officials announced that the police would conduct

³⁴ Amnesty International, *Unfinished Business; Police Accountability in Indonesia* (Index: ASA 21/013/2009) p. 13.

³⁵ Article 2.d of the Law on the Indonesian National Armed Forces (Law No. 34/2004) defines a professional soldier, among others, to be someone who adheres to these principles.

³⁶ For instance, the police have the Regulation of the Chief of the National Police on the Use of Force in Police Action (No. 1/2009) and the Regulation of the Chief of the National Police regarding the Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police (No. 8/2009) to ensure that international human rights standards are upheld during policing operations. Meanwhile the military have *Perpang* (the Commander of Military Regulation) No. 73/IX/2010 on Against Torture.

³⁷ Amnesty International, Report, *"Don't bother, just let him die": Killing with impunity in Papua*, (Index: ASA 21/8198/2018).

³⁸ BBC Indonesia, *'Polisi di Papua kenakan sanksi bagi anggota yang interogasi tahanan dengan ular'* [Papua police will provide sanction to its member who interrogated a detainee with a snake], 11 February 2019, available at <https://www.bbc.com/indonesia/indonesia-47194528>.

³⁹ Amnesty International, *Indonesia: Independently investigate the torture and unlawful killing of a man in Papua* (Index: ASA 21/7535/2017).

⁴⁰ Amnesty International, *Dozens killed on the streets in police crackdown ahead of Asian Games* (Press Release, 16 August 2018), available at <https://www.amnesty.org/en/latest/news/2018/08/indonesia-dozens-killed-on-the-streets-in-police-crackdown-ahead-of-asian-games/>.

'special operations' to combat 'street crimes' and tackle 'terrorism threat' that could disrupt the Asian Games.⁴¹ The police claimed that all the shootings were carried out in accordance with internal operating procedures.

The number suspected drug dealers killed by the police has also increased sharply in the last few years, from 18 in 2016 to at least 99 in 2017 and 74 in 2018.⁴² Some of the officers involved in the incidents were seconded to the National Narcotics Agency (BNN). Police claimed that all the killings were in self-defence or because the suspects attempted to flee. The escalation of fatality came after several high-ranking Indonesian officials, including the President, advocated for tougher measures against drug-related crimes, including the use of unrestrained lethal force against suspected traffickers.⁴³

Investigations into reports of police abuses are rare, and on the occasions where alleged police perpetrators are held to account, this is most commonly done through internal disciplinary mechanisms rather than judicial proceedings. In April 2016, for example, the then Chief of the Indonesian National Police in a rare admission of police brutality confirmed that an alleged terrorism suspect had been assaulted to death by members of the elite Detachment-88 counter-terrorism unit. A month later two members of the unit received administrative sanctions for the incident after an internal police hearing.⁴⁴ No other action was taken to hold the pair accountable in a court.

There is no independent, effective, and impartial mechanism to deal with public complaints about police and military misconducts, including criminal offences involving human rights violations. This leave many victims without access to justice and reparation. While there are independent commissions that can receive complaints on abuses by security apparatus, such as the National Human Rights Commission (Komnas HAM), the National Ombudsman (Ombudsman Republik Indonesia, ORI), or, specifically for the police, the National Police Commission (Kopolnas), their findings cannot be submitted to the public prosecutor.⁴⁵ They also cannot carry out official autopsies or examine autopsy reports, death certificates and other medical certificates in suspected human rights violations involving the police or military personnel. In terms of the police, the commissions can only send the findings of their inquiry on police abuses to the police, which forwards them to *Propam* unit (the Police's Division of Profession and Safety) for internal investigation.

In the case of military, such findings can only be submitted to the Military Police and the case can never be tried before a civilian court because under Indonesia's Military Criminal Code military personnel can only be tried in military courts even for criminal offences, including human rights violations. Amnesty International has expressed concerns about the lack of independence and impartiality of these courts.⁴⁶ Although the amended Law on the Indonesian National Armed Forces (Law No. 34/2004) subjected soldiers to the authority of the civilian courts for violations of the Criminal Code, the government and parliament still have not amended the Law on Military Tribunals (Law No. 31/1997) to allow military personnel to be tried in civilian courts for crimes committed against civilians. Despite Joko Widodo's 2014 campaign pledge to "end all impunity" in the country, including by revising the Law on Military Tribunals used to shield the security

⁴¹ Amnesty International, *Independent and effective investigation needed in response to police shootings of suspected criminals leading up to the 18th Asian Games* (Index: ASA 21/8821/2018).

⁴² Based on a joint data collection by University of Melbourne, Amnesty International Indonesia, KontraS (the Commission for the Disappeared and Victims of Violence) and LBH Masyarakat (Community Legal Aid Institute), on file with Amnesty International. See also Amnesty International Report 2017/2018, the State of the World's Human Rights, (Index: Index: POL 10/6700/2018), p. 195.

⁴³ Amnesty International, *At least 60 killed as police shootings of drug suspects skyrocket* (Press Release, 16 August 2017), available at <https://www.amnesty.org/en/latest/news/2017/08/indonesia-at-least-60-killed-as-police-shootings-of-drug-suspects-skyrocket/>.

⁴⁴ Amnesty International, *Police chief's shocking torture admission only tip of iceberg* (Press Release, 21 April 2016), available at <https://www.amnesty.org/en/latest/news/2016/04/indonesia-police-chief-shocking-torture-admission-only-tip-of-iceberg/>.

⁴⁵ The only exception is when there are cases of alleged "gross abuses of human rights" ("*pelanggaran hak asasi manusia yang berat*") defined in the Law on Human Rights Courts (No. 26/2000) as genocide and crimes against humanity. Here Komnas HAM can conduct a *pro-justicia* inquiry and submit its findings directly to the Attorney General's office for investigation.

⁴⁶ Amnesty International, Indonesia: *Military tribunals being used to shield human rights violators*, available at: <http://www.amnesty.org/en/news/indonesia-kopassus-trial-2013-06-19>; Amnesty International, *Indonesian soldiers' sentence for Papua abuse video too light*, available at: <http://www.amnesty.org/en/news-and-updates/indonesian-soldiers%E2%80%99-sentence-papuaabuse-video-too-light-2011-01-24>; Amnesty International, Indonesian authorities urged to investigate Papua "torture video", (Press Release, 19 October 2010), available at: <https://www.amnesty.org/en/news-andupdates/indonesian-authorities-urged-investigate-papua-torture-video-2010-10-19>; and Amnesty International, Report, *Don't bother, just let him die: Killing with impunity in Papua*.

Footnote No. 37.

forces from prosecutions for human rights violations⁴⁷, the amendment of the law has not been included in the 2015-2019 national legislative agenda.⁴⁸

Torture is not yet a specific criminal offense under Indonesia's Criminal Code, despite the fact that Indonesia has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The newest, publicly available draft law on Criminal Code amendment has new provisions (Article 613 and 614) that define torture in accordance with international standards.⁴⁹ However it remains to be seen when it will be passed, bearing in mind that the Code's amendment has been discussed since the 1960s, and the post 1998 effort to realize this has started since at least 2005.

Recommendations to the new Indonesian government and parliament:

- *Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all allegations of human rights violations by security forces, in particular where they have caused injury or death. The findings of these investigations should be made public in a timely manner;*
- *Where sufficient admissible evidence exists, those suspected of criminal responsibility, including those with command responsibility, should be prosecuted in proceedings which meet international standards of fairness without recourse to the death penalty, and victims should be granted reparation;*
- *Accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the earliest opportunity, incorporate the provisions in to domestic law and implement it in policy and practice; and*
- *Revise and enact at the earliest opportunity a new Criminal Code that comply with international human rights law and standards, and that includes provisions explicitly prohibiting acts of torture.*
- *Establish an independent police complaints mechanism to receive and deal with complaints from the public. The body should be operationally independent of the government, political influence and the police itself, and accessible to members of the public throughout the country. It should be sensitive to the needs of women, especially those who are alleging sexual violence and rape. Its mandate should empower it to, among other things, carry out effective investigations and refer cases to the Public Prosecutor. It should also have the power to choose when to supervise or manage investigations conducted by police investigation officers and when to carry out its own independent investigations; and*
- *Revise the Law on Military Tribunals (Law No. 31/1997) so that military personnel suspected of offences involving human rights violations are prosecuted only before independent civilian courts in proceedings which meet international fair trial standards.*

⁴⁷ *Visi Misi Jokowi –Jusuf Kalla*, May 2014. Footnote 23 , on file with Amnesty International.

⁴⁸ Hukumonline.com, *Revisi UU Peradilan Militer Hilang dari Prolegnas* [Revised Law on the Military Court Missing from the Legislative Priority Programme], available at <http://www.hukumonline.com/berita/baca/lt55026782e5658/revisi-uu-peradilan-militer-hilang-dari-prolegnas>.

⁴⁹ Draft Criminal Code 28 June 2018 version. Footnote No. 18.

4. ESTABLISH ACCOUNTABILITY FOR PAST HUMAN RIGHTS VIOLATIONS

Serious human rights violations, including unlawful killings, enforced disappearances, torture and other ill-treatment, and rape and other crimes of sexual violence, which occurred during the rule of former President Suharto from 1966 to 1998 and during the early reform period between 1998 and 2002, are yet to be adequately addressed.⁵⁰ President Joko Widodo took office in October 2014 on the back of his campaign promise to improve respect for human rights, including to address all past serious human rights violations through the judicial system to end impunity.⁵¹ This has not yet happened. In fact, despite demands by victims and NGOs that the alleged perpetrators be brought to justice, President Joko Widodo announced that the government would establish of a non-judicial mechanism to resolve all past human rights violations.

According to the Attorney General and the Coordinating Minister for Politics, Legal and Security Affairs, the government's proposal to form a “reconciliation committee [*komite rekonsiliasi*]” or “national harmony council [*dewan kerukunan nasional-DKN*]” is because there is insufficient evidence to bring past human rights violations before the Human Rights Court, the judicial mechanism established under Law No. 26/2000 to try “gross violations of human rights”. DKN's establishment was approved by the President in mid-2018 with the view to resolve past human rights violations through mediation.⁵²

However, the establishment of non-judicial reconciliation mechanisms such as DKN do not satisfy Indonesia's obligations under international law to investigate and, if sufficient admissible evidence exists, prosecute those responsible for grave human rights violations and crimes under international law, in fair trials without recourse to the death penalty. Such mechanisms also do not replace the government's obligations to implement victims' rights to truth and full and effective reparation to address the harm they have suffered. Human rights and victim groups are concerned that this process may prove to be further distraction from efforts to deliver truth and justice. This is especially because most of Komnas HAM's investigation on suspected gross human rights violations, conducted in accordance to its mandate as provided in Law No. 26/2000 on Human Rights Court, have not been followed up with criminal investigation and prosecution by the Attorney General Office.⁵³

Meanwhile, the government and parliament have not passed a new law to establish a comprehensive national truth commission. Despite the fact that a government's draft for a new Truth and Reconciliation Commission (TRC) Law is already available, and its enactment is included in the 2015 – 2019 national legislative agenda (*program legislasi nasional or prolegnas*), the House of People's Representatives has not deliberated it.⁵⁴ The absence of a TRC law has further denied victims their right to truth and full and effective reparation, as well as obstructed the efforts to secure the establishment of a similar commission in Papua. As regulated in Law

⁵⁰ These include the mass violations in 1965-66, the 1998 May riots, 1984 Tanjung Priok mass violations against political Muslim groups and the conflicts in Aceh, Papua and Timor-Leste (then known as East Timor).

⁵¹ Visi Misi Jokowi –Jusuf Kalla, Footnote No. 19.

⁵² Tempo.co, *Jimly Asshidique: National Harmony Council Consists of 17 Members*, 5 June 2018, available at <https://en.tempo.co/read/918997/jimly-asshidique-national-harmony-council-consists-of-17-members>.

⁵³ These cases include the purge against the alleged communist members and supporters of 1965-1966, the unexplained killings of alleged criminals in the 1980s, the 1989 Talangsari Lampung mass killings, the enforced disappearance of anti-Suharto activists in 1997-1998, the Trisakti University shootings, the Semanggi I and II shootings in 1998 and 1999, human rights violations in Wasior in 2001 and Wamena in 2003, both in Papua and three human rights violation cases in Aceh (the 1999 Simpang KKA case in North Aceh, the torture center of Rumoh Geudong case in Pidie and 2003 Jambo Keupok case in South Aceh in 2003).

⁵⁴ See the 2015 – 2019 parliament's national legislation program list, available at <http://www.dpr.go.id/uu/prolegnas-long-list>.

No 21/2004 on The Special Autonomy of Papua, the Papuan TRC is to be a representative of the national one.

In Aceh, a TRC has been established through a 2013 bylaw and started to operate in 2016. Set to conclude its mandate in 2021, the Commission looked into past human rights abuses in the autonomous province to uncover the truth, preserve the memory, and prevent the recurrence. To date the central government has not declared its support of the Commission.

There has been a lack of effort to establish a comprehensive and effective reparation program for victims of human rights abuses. Laws and regulations in Indonesia relating to reparation for victims of human rights violations remain inadequate and preclude victims from accessing remedies before national courts, including the attachment of the right to reparation to guilty verdict from the Human Rights Court⁵⁵ which has not tried a case since 2005.

In the Universal Periodic Review (UPR) at the UN Human Rights Council in May 2017, Indonesia government did not accept the recommendations “to address past human rights violations and ensure reparations to the victims”, and only accepted those that call for the pursuance of the criminal investigation on alleged gross human rights violations in Wasior and Wamena, both in Papua.⁵⁶ Indonesia also failed to explicitly accept recommendations to ratify the Rome Statute of the International Criminal Court, a recommendation that it had accepted in its previous review sessions.⁵⁷

Each failure to investigate or bring those responsible to trial reinforces the confidence of perpetrators that they are indeed above the law.

Recommendations to the new Indonesian government and parliament:

- *Address past human rights violations and take long overdue measures to provide the victims and their families with truth, justice and full reparations, with the first step being to listen to the victims and their families and not silence their voices;*
- *Review all information that the Attorney General has received in relation to crimes under international law committed in Indonesia, including from Komnas HAM and other bodies, and ensure complete investigations. Whenever sufficient admissible evidence exists, those suspected of the crimes should be prosecuted before national courts in proceedings which meet international fair trial standards and which do not impose the death penalty;*
- *Pass a national truth and reconciliation law, in line with international law and standards, to guarantee access to truth, justice and reparations to victims of past human rights violations, including during the events of 1965-1966, the 1998 May riots, and the conflicts in Papua, Aceh and Timor-Leste. The commission should be complementing rather than replacing criminal proceedings and without the power to issue amnesties, in order to establish the facts about past human rights abuses including preserving evidence and identifying perpetrators; recommend reparation measures to address the suffering of victims; and recommend institutional reforms to ensure that such abuses will not be repeated;*

⁵⁵ Amnesty International, *Time to Face the Past: Justice for Past Abuses in Indonesia's Aceh Province* (Index: ASA 21/001/2013). p.41

⁵⁶ Amnesty International, *Public Statement, Indonesia must end impunity for past human rights violations; Human Rights Council adopts Universal Periodic Review outcome on Indonesia* (Index: ASA 21/7170/2017).

⁵⁷ The ratification program to accede to the Rome Statute of the International Criminal Court also is not included in the 2015-2019 National Human Rights Action Plans (*Rencana Aksi Nasional Hak Asasi Manusia*), despite being included in the previous National Human Rights Action Plans.

- *Establish a programme to provide full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights abuses in Indonesia. The programme should be devised in consultation with victims, to ensure that the reparation programme is effective and reflects the different needs and experiences of victims/survivors, including based on gender or any other status;*
- *Accede to the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court, incorporate their provisions into domestic law and implement them in policy and practice.*

5. UPHOLD THE RIGHTS OF WOMEN AND GIRLS

While the Indonesian government has taken some positive steps to fulfil its pledge to combat gender-based violence and eliminate discrimination against women and girls, barriers continue to exist in law, policy and practice which inhibit the full exercise of their human rights and are inconsistent with Indonesia's human rights obligations under international human rights law. These include rights enshrined in the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which the government ratified in 1984 and made into law the same year (Law No.7/1984).

There are a number of laws and regulations at the national or local level that discriminate against women and that perpetuate gender stereotypes. For example, the Marriage Law (Law No 1/1974), grounded on the unequal position between men and women, allows polygamy.⁵⁸ The law also maintains an unequal legal age of marriage: 16 for females, and 19 for males. Although decreasing, marriage at a young age is still relatively widespread in the country especially among girls. This practice is more often found in rural areas and slums.⁵⁹ The Constitutional Court's December 2018 decision deeming that the determination of different marriageable age between men and women is discriminatory and unconstitutional may bring positive developments. The Court in the decision instructed the Parliament to set the same minimum marriageable age for both men and women within three years. However, the Court did not recommend what the minimum age should be.⁶⁰ Meanwhile, the Indonesian House of Representatives still has not revised the Marriage Law despite it being on the National Legislation Program (*Prolegnas*) since 2006.

A new Acehese Islamic Criminal Code (*Qanun Jinayat*) was passed by the Aceh Parliament (DPRA) in October 2014 and came into force a year later, expanding the use of corporal punishment and introducing criminal offences related to consensual sexual activity between unmarried couples: "being alone with someone of the opposite sex who is not a marriage partner or relative" (*khalwat*); intimacy between unmarried couples (*ikhtilath*)⁶¹; consensual sex outside marriage ("adultery" or *zina*); and consensual sexual activity between individuals of the same sex [between men (*liwath*),⁶² and women (*musahaqah*)⁶³]. False accusation of these "offences" is also considered to be a crime. However, a rape victim who reports the crime to investigators can also be punished for false accusation if the investigators cannot find sufficient evidence to substantiate the rape report and the victim is unwilling to take five Islamic oaths on the veracity of her or his report.

The criminalisation of consensual sexual activity is a breach of international human rights law and standards. In particular the UN Human Rights Committee has ruled that laws criminalizing consensual sexual activity violate the right to privacy and should be repealed. Laws criminalizing consensual sex outside marriage create serious barriers for women and girls to report rape or other forms of sexual violence. Women and girls who have experienced sexual violence are likely to be deterred from reporting the violence, not only because of social stigma and discriminatory attitudes that blame women for the violence they suffer, but also because of the fear that if their allegation is not believed or they are unable to supply the required 'proof' they could be accused of *khalwat*, *ikhtilath*, *zina*, or making false accusation. The bylaw, which provides additional

⁵⁸ Amnesty International, *Left Without A Choice: Barriers to Reproductive Health in Indonesia* (Index: ASA 21/013/2010), p. 16.

⁵⁹ Amnesty International, *Indonesia: Briefing to the UN Committee on the Elimination of Discrimination against Women* (Index: ASA 21/022/2012), p.8.

⁶⁰ Constitutional Court Decision No. 22 PUU-XV/2017, 13 December 2018, available at: https://mkri.id/public/content/persidangan/putusan/22_PUU-XV_2017.pdf, pp. 59-60.

⁶¹ *Ikhtilath* are intimate acts such as touching, hugging and kissing between a man and woman who are not married, that is done willingly by both parties, either in a closed or open location.

⁶² *Liwath* is consensual sodomy between men.

⁶³ *Musahaqah* is consensual sexual stimulations committed by two or more women by way of rubbing their body parts or vaginas to illicit sexual arousal or pleasure.

punishments for falsely accusing a person of rape, exacerbates this and makes it less likely survivors of rape and other forms of gender-based violence will report the abuse.

Additionally, all these "crimes" are punishable by caning which are carried out in public, a punishment that violate the international law prohibition of torture and other cruel, inhuman or degrading treatment set out in the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), to which Indonesia is a state party.⁶⁴ In a patriarchal society such as Aceh, public punishment for consensual sexual activity also adds an additional dimension of punishment for women because of widespread gender stereotypes that seek to control women's sexuality through notions of "shame" and "damage to reputation".

The government has also failed to eliminate practices which are harmful to women's and girls' health, discriminatory and cruel, inhuman and degrading, such as female genital mutilation. Further it has yet to enact specific legislation prohibiting female genital mutilation with appropriate penalties as recommended by the CEDAW Committee in 2012 and the Human Rights Committee in 2013.⁶⁵

Amnesty International is also concerned that marital rape has yet to be criminalized in the Criminal Code, and the Domestic Violence Law No. 23/2004 refers to sexual violence (*kekerasan seksual*) in Article 5 but not specifically to rape (*perkosaan*). A draft law on elimination of sexual violence (*Rancangan Undang-Undang Penghapusan Kekerasan Seksual*, commonly referred to as RUU PKS), has been in the national legislation program (*program legislasi nasional* or *Prolegnas*) since 2016 without being passed into law. This draft law criminalizes sexual harassment, sexual exploitation, forced use of contraceptives, forced abortion, rape-regardless gender of the victim and whether the act occurs inside or outside of marriage, forced marriage, forced prostitution, sexual slavery and sexual torture. The bill expanded the definition of rape to include acts of 'enforced sexual encounter' where the victim is unable to consent. This is an improvement to the definition of rape in Article 285 of the Criminal Code that defines rape as forced copulation with a woman and only when it occurs outside marriage. The draft law also includes articles that provide the right to restitution for victims and establishes a special institution to guarantee and assist the provision of the right.⁶⁶

Labour discrimination in the workplace is captured in Amnesty International's 2016 report on labour rights abuses in plantations in Indonesia that provide palm oil to Wilmar, the largest palm oil producer in the world.⁶⁷ Most plantations included in the study hire women as casual workers, even when they have worked for the company for years. In comparison, men, especially those working as harvesters, are more likely to be employed on permanent contracts.⁶⁸ Casual workers are vulnerable to practices of forced labour; the imposition of penalties for failing to meet target and the lack of clarity and transparency on deductions of wages leaves them at risk of pressure from their supervisors who can exact work under the threat of loss of pay or loss of employment.⁶⁹ Women are also more likely to work for plant maintenance, which subject them to dangerous chemicals including herbicides without adequate personal protective equipment.⁷⁰ This constitutes violations of their rights to health and to safe and healthy working conditions.

Domestic workers, most of them are women and girls, are not legally recognized as workers. As a result, they are often exploited economically and live and work in abusive conditions. In addition, they lack adequate sexual and reproductive health information.⁷¹ Despite then President Yudhoyono publicly committing support for the Convention at its adoption at the ILO, Indonesia still has not ratified the International Labour Organization (ILO) Domestic Workers Convention (No. 189), a landmark treaty setting out international

⁶⁴ Amnesty International, *Indonesia: End caning as a form of punishment in Aceh* (ASA 21/3853/20160).

⁶⁵ Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia, CEDAW/C/IDN/CO/6-7, 7 August 2012, paras 21-22 and the Human Rights Committee Concluding observations on the initial report of Indonesia, CCPR/C/IDN/CO/1, 21 August 2013, para 12.

⁶⁶ Based on draft law per October 12, 2016, available at the Parliament's website (<http://www.dpr.go.id/doksileg/proses2/RJ2-20161111-040327-4431.pdf?fbclid=IwAR3lkQ3wel4T6LAkeSfQ1Revk7S0gc6Xu7wJYN5jb55SffoShxW02Q0x2Og>).

⁶⁷ Amnesty International, *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names* (Index: ASA 21/5184/2016).

⁶⁸ *Ibid.*, p.10.

⁶⁹ *Ibid.*, p. 7.

⁷⁰ *Ibid.*, p. 9.

⁷¹ See CEDAW Concluding Observations to Indonesia, CEDAW/C/IDN/CO/6-7, 2012, paras. 37-38 and Amnesty International, *Indonesia: Briefing to the UN Committee on the Elimination of Discrimination against Women* (Index: ASA 21/022/2012), 25 June 2012, pp 16-19.

standards for the protection of domestic workers' rights.⁷² A Domestic Workers Protection draft law was on the National Legislation Program (*Prolegnas*) from 2010 to 2014. However, the Parliament did not include it in the *Prolegnas* for 2015 – 2019.⁷³

Further, Indonesian migrant domestic workers continue to be exposed to trafficking and forced labour by Indonesian recruitment agencies. Amnesty International welcomes the passing of Law for the Protection of Migrant Workers No. 18/2017. The law afforded specific stipulations for the rights of migrant workers, the duties of the central and local governments, and consolidated services for the placement and protection of migrant workers, all of which are in compliance with Indonesia's obligations as a state Party to the International Convention of the Rights of All Migrant Workers and Members of Their Families. The law will come into force later this year. However, it should be noted that the law still does not provide protection for the migrant workers' families nor afford protection for non-documented workers from being criminalized as stipulated by the Convention. Thus, the danger of the criminalization of undocumented migrant workers remains.

There has also been a failure to take effective steps to deliver justice, truth and reparation to women and girls who were victims of human rights abuses during past conflicts. In addition, many survivors of rape and other crimes of sexual violence have yet to be provided with medical, psychological, sexual and reproductive, and mental health services or treatment.⁷⁴

Recommendations to the new Indonesian government and parliament:

- *Review and amend the Marriage Law (No. 1/1974) to eliminate provisions that discriminate against women or perpetuate gender stereotypes, including early marriage and polygamy;*
- *Bearing in mind Indonesia's obligations as a State Party to both CEDAW and CRC, the new government should take measures to prevent early marriage, including by amending Law No. 1/1974 to have minimum marriageable age standard that is in line with the international standards and equal for both men and women;*
- *Revise Indonesia's laws on rape and other forms of sexual violence to bring the definitions of these crimes and their investigation and prosecution in line with evolving international human rights standards, including by adopting specific legislation criminalizing marital rape;*
- *Repeal or revise all provisions of the Aceh Islamic Criminal Code which violate human rights, including all provisions that criminalize consensual sexual activity outside marriage, consensual same-sex sexual activity and consensual sexual activity between adolescents and the Imposition of caning as a form of punishment;*
- *Enforce Indonesia's strong general legal framework on labour rights and urgently address the critical gaps in protection around forced labour and casual workers . This should include the abolition of work practices such as piece rates, targets, penalties, casual work, arrangements, use of hazardous chemicals which create risks to workers' safety, all of which disproportionately affect women especially in the palm oil sector;*

⁷² The Convention was adopted on 16 June 2011 and came into force in September 2013. In 2011 then President Susilo Bambang Yudhoyono spoke at its adoption at the International Labour Conference in Geneva, making public commitments to support it in and urging other delegates at the conference to do so.

⁷³ Amnesty International, *Improved legal protections needed for domestic workers* (Index: ASA 21/006/2015).

⁷⁴ Amnesty International, *Indonesia: Briefing to the UN Committee on the Elimination of Discrimination against Women* (Index: ASA 21/022/2012) pp. 26-29.

- *Pass specific legislation to protect the labour rights of domestic workers in accordance with international law and standards and ratify International Labour Organization Convention No.189 concerning Decent Work for Domestic Workers, incorporate its provisions into domestic law and implement it in policy and practice. Ensure that the implementation of the Law for the Protection of Migrant Workers No. 18/2017 will be in accordance with the standards set by the International Convention of the Rights of All Migrant Workers and Members of Their Families. Further legislation should also be passed for the protection of the migrant workers' families and for non-documented migrant workers;*
- *Provide full, effective and transformative reparation to all victims of past human rights abuses and take specific measures to ensure that women can access effective reparation, including measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women.*

6. RESPECT HUMAN RIGHTS IN PAPUA

Amnesty International continues to receive credible reports of unlawful killings and unnecessary and excessive use of force and firearms by both police and military personnel during peaceful pro-independence protests and gatherings. The government has consistently failed to make a distinction between violent armed groups and peaceful activists. Further, political activists and others accused of links to pro-independence groups have been tortured or otherwise ill-treated during arrest and detention.⁷⁵ Accountability for such acts is rare and at most security personnel receive disciplinary sanctions.

Amnesty International takes no position on the political status of any province of Indonesia, including calls for independence. However, the organization believes that the right to freedom of expression includes the right to peacefully advocate for referendums, independence, or other political positions.

Amnesty International has documented 69 cases of suspected unlawful killings by security forces in Papua between January 2010 and February 2018, with a total of 95 victims. Most of the victims, 85 of them, have Papuan ethnicity. 28 unlawful killing cases were linked to the call for independence or referendum Papua and occur mainly security forces deal with peaceful political protests, particularly flag-raising ceremonies or religious gatherings on commemoration dates.

The majority of the unlawful killings occurred in the context of events that were unrelated to calls for independence or a referendum for Papua, for example when security forces use excessive force in exercising their duties in responding to peaceful social protests or arresting criminal suspects, or as forms of misconduct, such as when committing acts of reprisals for security forces personnel being wounded or killed.

Regardless of whether the killings were related to calls for independence or referendum or not investigations into reports of unlawful killings by security forces in Papua are rare. There is no independent, effective, and impartial mechanism to deal with public complaints about misconduct by security forces, including criminal offences involving human rights violations, leaving many victims without access to justice and reparation.

On 8 December 2014, four young Papuan students were killed, and many others injured when police and military personnel opened fire on a crowd of protestors at the Karel Gobai field, in Enarotali, Paniai District, Papua province. This incident was the first serious human rights violation in Papua under President Widodo's administration. On 27 December 2014, President Joko Widodo, in office less than two months, stated that he wanted the Paniai's case to be resolved immediately to prevent recurrence.⁷⁶ In January 2015, Komnas HAM established a team to undertake an initial investigation into the case, and in March 2016, it set up a *pro-justicia* inquiry team to undertake a more detailed investigation into allegation of gross human rights violations.⁷⁷ To date the Commission has not issued its investigation report.

⁷⁵ Amnesty International, *Activist Shot by Police Denied Proper Medical Care: Yakonias Womsiwor*, (Index: ASA 21/9186/2018); Amnesty International, *Poor Prison Conditions for Papuan Activist*, (Index: ASA 21/4085/2016); Amnesty International, *Papuan Activists Detained and Charged*, (Index: ASA 21/1932/2015); and Amnesty International, *Four Students in Danger after Police Torture*, (Index: ASA 21/1312/2015).

⁷⁶ President Joko Widodo, *Pidato pada Perayaan Natal Bersama Nasional 2014* [Speech at the National Joint Christmas Celebration 2014], Jayapura, Papua Province, 27 December 2014, available at <http://setkab.go.id/pidato-presiden-joko-widodo-pada-perayaan-natal-bersama-nasional-2014-di-stadion-mandala-jayapura-papua-27-desember-2014/>.

⁷⁷ This term refers to a preliminary inquiry by Komnas HAM that can lead to a judicial investigation by the Attorney General (See Articles 18 and 21 of Law No. 26 of 2000). Amnesty International, *Indonesia: Formation of inquiry team into Paniai shootings offers hope for justice*, (Index: ASA 21/1423/2015).

The Attorney-General has not yet followed up Komnas HAM's investigations of Wasior and Wamena cases,⁷⁸ which were submitted in 2001 and 2004 respectively. During the Universal Periodic Review on Indonesia at the UN Human Rights Council in May 2017, the Minister of Foreign Affairs promised that the Attorney General would finalize a criminal investigation into both cases and bring them before the Human Rights Court. Further, the government accepted the recommendation to “investigate all human rights cases in Papua”.⁷⁹ Despite that commitment it has not yet happened.

A Truth and Reconciliation Commission in Papua to establish the truth about past violations, and a Human Rights Court as provided for in Law No. 21/2001 on Special Autonomy for the Papua province (Articles 45 and 46), have yet to be established.

Security forces have often used repressive measures against pro-independence activists, such as blanket prohibitions on peaceful protest,⁸⁰ mass arrests⁸¹ and prosecution under the rebellion (*makar*) articles in the Criminal Code (mostly under Articles 106 and 110 for crimes against the security of the state).⁸² With heightened pro-independence political activism in Papua in the last decade, particularly led by students and youth, this trend is on the increase. In May 2015, the Papuan police arrested 264 activists across the region who had planned peaceful protests marking the 52nd anniversary of the UN's handover of Papua to the Indonesian government.⁸³ The number of the arrests spiked the next year to at least 2,200 Papuan activists who attended peaceful rallies in several cities in Indonesia.⁸⁴ This trend continued into 2018 with the arrest of at least 537 people at rallies held on 1 December 2018 in various big cities in Indonesia, a date many Papuans consider as their independence day.⁸⁵

Indonesia government under the administration of President Widodo made some progress on the issue of freedom of expression in Papua. In May 2015, the President lifted restrictions on foreign journalists visiting Papua, although in practice they still need to get a special permit and are under constant surveillance.⁸⁶ In February 2018, President Widodo met the then UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein to discuss a range of human rights issue in Indonesia. During the meeting the President Widodo invited the High Commissioner to visit Papua.⁸⁷ However, to date the Papua mission has not been carried out.⁸⁸

⁷⁸ In its report *Indonesia: Grave human rights violations in Wasior, Papua* (Index: ASA 21/032/2002), Amnesty International provided a summary of human rights violations, including extrajudicial executions, torture and arbitrary detentions, during a Brimob operation in Wasior subdistrict from April to October 2001. Over 140 people were estimated to have been detained, tortured or otherwise ill-treated. One person died in custody as a result of torture and at least seven are believed to have been extra-judicially executed. Twenty-seven were imprisoned after unfair trials, while hundreds of villagers were internally displaced by operations that destroyed dozens of houses.

⁷⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Indonesia*, Addendum, A/HRC/36/7/Add.1, recommendation 141.63.

⁸⁰ *Maklumat Kapolda Papua tentang Penyampaian Pendapat di Muka Umum* [Papuan Chief of Police Force's Decree on Delivering Opinion in Public] 1 July 2016 banning many pro-Papuan independence organizations, including KNPB from organising peaceful assembly for advocating separatism.

⁸¹ Amnesty International, *Indonesia: End Mass Arbitrary Arrests of Peaceful Protesters in Papua* (Index: ASA 21/1851/2015).

⁸² For recent cases of arbitrary arrest and detention in Papua see Amnesty International, *Sentenced to One Year in Prison for Posting FB Video: Agustinus Yolema*, (Index: ASA 21/9760/2019); Amnesty International, *Police Must Drop 'Rebellion' Charges against Three Papuan Political Activists* (Index: ASA 21/9688/2019); Amnesty International, *Papuan Prisoner of Conscience Denied Parole: Octovianus Warnares* (Index: ASA 21/7008/2017).

⁸³ Amnesty International, *End Mass Arbitrary Arrests of Peaceful Protesters in Papua* (Index: ASA 21/1851/2015).

⁸⁴ Amnesty International, *Annual Report 2016/2017, The State of the World's Human Rights*, p. 188 (Index: POL 10/4800/2017).

⁸⁵ Amnesty International, *Release Hundreds of Papuans Arrested at peaceful pro-independence rallies* (Press Release, 4 December 2018), available at: <https://www.amnestyindonesia.org/indonesia-release-hundreds-of-papuans-arrested-at-peaceful-pro-independence-rallies>.

⁸⁶ Amnesty International, *Submission to the UN Universal Periodic Review; Third Cycle, It's not Good Enough*, (Index: ASA 21/5345/2016) p. 11 and Amnesty International, *Annual Report 2016/2017, The State of the World's Human Rights*, (Index: POL 10/4800/2017). p. 188

⁸⁷ Opening remarks by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at a press conference during his mission to Indonesia, 7 February 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22638&LangID=E>.

⁸⁸ Opening statement and global update of human rights concerns by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at 38th session of the Human Rights Council, 18 June 2018, available <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23206&LangID=E>.

Recommendations to the new Indonesian government and parliament:

- *Take the necessary steps to ensure that all police and military personnel who have been involved in human rights violations in Papua are held accountable, such as those responsible for the human rights violations which were committed in Wasior and Wamena, Paniai and elsewhere in Papua. Those individuals suspected of involvement in serious human rights violations should be prosecuted in civilian courts in proceedings which meet international fair trial standards and without recourse to the death penalty, and victims and their families should receive reparations;*
- *Thoroughly review the police, military and other security forces' policy and conduct in the use of force and firearms, including during public assemblies and arrests, to ensure that they meet international standards, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;*
- *Establish a Papuan Human Rights Court and Truth and Reconciliation Commission as mandated by the 2001 Special Autonomy Law and ensure that it operates in accordance with international human rights law and standards; and*
- *Ensure that international human rights organizations and journalists are in practice provided with unimpeded access to the provinces of Papua and West Papua.*

7. CLOSE THE ACCOUNTABILITY GAP FOR HUMAN RIGHTS ABUSES BY COMPANIES IN PALM OIL SECTOR

Amnesty International has documented serious human rights abuses in the palm oil sector in Indonesia. *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names* investigated severe labour abuses on plantations owned by suppliers and subsidiaries of Wilmar International Ltd (Wilmar), the world's largest processor and merchandiser of palm and lauric oils. Amnesty International found forced labour, child labour, arbitrary deductions of pay and payments below the applicable minimum wage in the relevant provinces, gender discrimination (where women were hired as casual daily labourers, denying them permanent employment and social security benefits) and a lack of adequate safety equipment exposing workers to health risks, including from the use of paraquat-based herbicides, and the increased risk of respiratory damage while working through the haze in North Sumatra and Central Kalimantan caused by forest fires in 2015.⁸⁹

The organization found that the abuses identified were not isolated incidents but due to systemic business practices, in particular the low level of wages, the use of targets and 'piece rates' (where workers are paid based on tasks completed rather than hours worked), and the use of a complex system of financial and other penalties. Workers, especially women, are employed under casual work arrangements, which make them vulnerable to abuses.

In 2018, Wilmar issued an update, which reported some improvements on their subsidiaries' plantations.⁹⁰

Indonesia has an obligation to respect and protect human rights in the context of corporate activities through regulation, oversight, investigation, adjudication and punishment. Indonesia's obligations are based on the human rights treaties it has ratified and other international standards, including, but not limited to, ICCPR, ICESCR, CEDAW, CRC and ILO Convention on Forced Labour.

Under international law therefore, the government of Indonesia has an obligation to protect the rights of all persons to work, to the enjoyment of just and favourable conditions of work, to health, and to social security, amongst other rights.⁹¹ It is required to abolish forced labour⁹² and protect children from economic exploitation and from performing any work that is likely to be hazardous to or interfere with the child's education, health or development.⁹³ The government has to guarantee that all of these rights can be exercised

⁸⁹ Amnesty International, *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names*, November 2016 (Index: ASA 21/5184/2016), available at <https://www.amnesty.org/en/documents/asa21/5184/2016/en/>.

⁹⁰ Wilmar, *Strengthening Labour Practices: Two Year Progress Report*, 9 November 2018, on file with Amnesty International.

⁹¹ Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights require states parties to guarantee the rights of all persons to work and to the enjoyment of just and favourable conditions of work. Article 8 guarantees the right to form trade unions and join trade unions of your choice and Article 9 recognizes the right to social security. Article 10 requires states parties to provide special protection to mothers during and after childbirth and paid maternity leave and Article 12 sets out states obligations to ensure the right to the highest attainable standard of physical and mental health.

⁹² Article 8, International Covenant on Civil and Political Rights, Article 1, Forced Labour Convention, 1930 (No. 29), and Article 1, Abolition of Forced Labour Convention, 1957 (No. 105).

⁹³ Article 32, Convention on the Rights of the Child, Articles 2 and 3, Minimum Age Convention, 1973 (No. 138), and Article 1, Worst Forms of Child Labour Convention, 1999 (No. 182).

without discrimination of any kind, to ensure equal rights of men and women, and to take into account and address the particular problems faced by rural women.⁹⁴

Article 25 of the Forced Labour Convention, 1930 requires states to ensure that the illegal exaction of forced labour is punishable as a criminal offence and that the penalties imposed by law are adequate and strictly enforced. The Convention was ratified by the Dutch colonial government in 1933,⁹⁵ and Indonesia has accepted that it applies to Indonesia. Indonesia also ratified the Abolition of Forced Labour Convention, 1957 (No. 105) and published it in Law No. 19/1999. However, it has not created a specific offence of forced labour under the Indonesian Criminal Code or under its labour laws. Overtime work, without the worker's consent, breaches Article 78 of the Manpower Act and amounts to a criminal offence under Article 188. Employers have been prosecuted for human trafficking when the trafficking was for labour exploitation, including if it involved forced labour.⁹⁶ However, forced labour itself is not punishable as an offence and victims lack effective remedies.

A new draft Criminal Code was submitted by the government to lawmakers in March 2015, but it does not include any provisions to criminalize forced labour.

The main governmental body with responsibility for monitoring and enforcing labour laws is the Ministry of Manpower. Labour inspections are one of the Ministry's core functions. The Directorate General of Labour Inspection is responsible for inspection of working conditions, occupational safety and health, women and child workers, and labour inspection capacity building across all sectors including agriculture. It has four directorates covering each of these functions. Indonesia has decentralised labour inspection so that responsibility is in the hands of provincial and local authorities. Labour inspectors, in coordination with the police, have the authority to investigate labour crimes.

Presidential Decree No. 21/2010 sets out the framework for coordination and states that district level authorities should report the results of labour inspections to the Governor of each Province who is then responsible for reporting this information to the Ministry of Manpower.

Indonesia does not make information publicly available on the level of funding available for the labour inspections, the numbers of inspectors in total and per province and region, or the number of inspections carried out, investigations, prosecutions, convictions or penalties imposed.

The UN Committees on the Rights of the Child and on Economic, Social and Cultural Rights have stressed the need for the government of Indonesia to increase the number of labour inspectors and strengthen their capacity.⁹⁷

Although Indonesia has a strong general legal framework on labour rights, it needs to urgently address the critical gaps in protection that have been highlighted above. It is failing to adequately resource, monitor and enforce its labour laws and to prevent and remedy abuses. The government is violating its obligation to protect people from abuses of their rights. It urgently needs to implement the recommendations of UN treaty monitoring bodies and increase the number and capacity of labour inspectors to monitor abuses. It should make disaggregated information publicly available on the number of inspectors, inspections, investigations, prosecutions, convictions and other penalties imposed.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations and make a pledge to deliver these commitments if elected.

⁹⁴ Articles 2, 11, 12 and 14, Convention on the Elimination of All Forms of Discrimination Against Women, Articles 2 and 3, International Covenant on Economic, Social and Cultural Rights, Articles 2, 3 and 26, International Covenant on Civil and Political Rights, and Articles 1 and 2, Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (ILO Convention No. 111).

⁹⁵ Staatsblad No. 261 Year 1933.

⁹⁶ See for example State Prosecutor v. Yuki Irawan bin Suharjo Susilo, Judgment of the Banten High Court, in case No. 40/PID/2014/PT.BTN, 22 April 2014.

⁹⁷ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Indonesia*, UN Doc. E/C.12/IDN/CO/1, 19 June 2014, para 15 (c). UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, UN Doc. CRC/C/IDN/CO/3-4, paras 72 (b) and (d).

Recommendations to the new Indonesian government and parliament:

- *Amend the Criminal Code and the Manpower Act to introduce forced labour as an offence. Ensure that the penalties imposed by the law are adequate and strictly enforced;*
- *Implement the recommendation of the UN Committee on Economic, Social and Cultural Rights and ensure that minimum wage levels are sufficient to ensure a decent living for workers and their families and which does not jeopardise their ability to enjoy other rights;*
- *Investigate all the potential criminal offences and other breaches of Indonesian law set out in Amnesty International's 2016 report. Based on the results of the investigations, take all necessary enforcement actions in collaboration with other relevant agencies, including prosecutions in accordance with international standards for fair trials, against the companies involved;⁹⁸*
- *Ensure that all victims have access to effective remedies and reparation, including to complaint mechanisms that are accessible and safe;*
- *Increase the number of labour inspectors and strengthen the capacity of labour inspectors to monitor and enforce breaches of labour laws, including on palm oil plantations across the country; and*
- *Make disaggregated information publicly available on the number of inspectors employed by the Ministry, inspections, investigations, prosecutions, convictions and other penalties imposed for breaches of labour laws, with a break down per sector, including for palm oil plantations.*

⁹⁸ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Indonesia*, UN Doc. E/C.12/IDN/CO/1, 19 June 2014, para 15.

8. END THE DEATH PENALTY

Less than three months after taking office, the new administration under President Joko Widodo executed six people by firing squad in January 2015. The Indonesian and foreign nationals were convicted of drug-related crimes. President Widodo stated that he would refuse to consider any clemency applications from death row prisoners related to drug-trafficking offences. Despite the national and international outcry that followed the executions in January, the Indonesia government conducted two other rounds of execution in April 2015 and July 2016 where eight and four people, respectively, were executed.⁹⁹ All those executed were convicted of drug-related crimes. During the last round of execution, the government gave last-minute stays of execution for ten of the 14 prisoners scheduled to be executed to allow for the prosecutors to review the cases. The Attorney General told the media on the day of the execution that his office would conduct a comprehensive review to ensure there is “no judicial and non-judicial error” in the cases of the 10 prisoners.¹⁰⁰ Amnesty International has not received an update on the review progress of the ten cases’ review process.

In several of the cases, defendants did not have access to legal counsel from the time of arrest and at different stages of their trial and appeals. The police ill-treated some of them to make them “confess” to the crimes or counter-sign police investigation dossiers used as evidence in court. Several prisoners were brought before a judge for the first time when their trials began, months after their arrest and some of them did not receive legal assistance when appealing against their conviction or sentence, or did not even submit an appeal application because they were not informed by their lawyers of their right to do so. Executions went ahead in 2015 and 2016 even though the prisoners’ appeals were pending. Despite the clear prohibition under international law on the use of the death penalty against persons who were below 18 years of age or have a mental or intellectual disability, Amnesty International documented claims two prisoners made in relation to their juvenility and mental disability, which were not adequately investigated by the authorities. While the man who was younger than 18 at the time of his arrest, was released in 2017 after his new legal team at KontraS and the Ministry of Law and Human Rights worked on the case, a man with severe mental disability was executed in 2016. Further the organization is concerned that the death penalty also continues to be used extensively for drug-related offences, even though these offences do not meet the threshold of the “most serious crimes”.

Although there has been no execution carried out by the government since July 2016, Indonesia’s courts continue to impose new death sentences for crimes related to drug-trafficking, murder and terrorism. As of December 2018, there are at least 308 people on death row.

Since 2007 the UN General Assembly has adopted, with increased cross-regional support, seven resolutions calling on all states that still retain the death penalty to establish a moratorium on executions with a view to abolishing this punishment. Indonesia voted against the first three resolutions, but has switched its vote to abstention since 2012.¹⁰¹ The overall number of votes in favour of these resolutions grew from 104 in 2007 to 123 in 2018.

⁹⁹ Three rounds of execution in 2015 and 2016 have resulted 18 people being executed, who included three Indonesians and 15 foreign nationals, all for drug-related offences.

¹⁰⁰ Amnesty International, *Four Executed, Ten Still at Risk*, 29 July 2016, Index: ASA 21/4581/2016.

¹⁰¹ The seven UN GA resolutions on a moratorium on the use of the death penalty are 62/149 of 18 December 2007 (Indonesia voted against); 62/168 of 18 December 2008 (against); 65/206 of 21 December 2010 (against); 67/176 of 20 December 2012 (abstain); 69/186 of 18 December 2014 (abstain); 71/187 of 19 December 2016 (abstain); and 73/175 of 17 December 2018 (abstain).

Recommendations to the new Indonesian government and parliament pending full abolition on the death penalty:

- *Establish an independent and impartial body, or mandate an existing one, to review all cases where people have been sentenced to death, with a view to commuting the death sentences; in particular in all cases where the death penalty has been imposed for drugs offences or where the trial did not meet the most rigorous international fair trial standards, or in cases where the procedures were seriously flawed, offer a retrial that fully complies with international fair trial standards and which does not resort to the death penalty;*
- *Bring provisions in national legislation that allow for the use of the death penalty in line with international law and standards, including by removing from the scope of the death penalty any offence other than intentional killing, and ensure that all those who have been sentenced to death for other offences, in particular for drug-related offences, have their sentences commuted accordingly;*
- *Ensure that in proceedings related to offences where the death penalty might be imposed that the most rigorous internationally recognized standards for fair trial are respected, including by implementing all relevant recommendations made by the UN Human Rights Committee and the UN Committee against Torture; and*
- *Improve access for all people facing the death penalty to competent legal assistance for those facing criminal charges or where there is a possibility to pursue appeals or other recourse procedures, in particular for those from disadvantaged or marginalized socio- economic backgrounds, and ensure that resources are available to Legal Aid Providers pursuant to Law No. 16 of 2011 on Legal Aid to avail competent pro-bono lawyers in all regions of the country.*

9. END HARASSMENT, INTIMIDATION, ATTACKS AND DISCRIMINATION AGAINST LGBTI PEOPLE

In the last few years harassment, intimidation, attacks and discrimination increased against lesbian, gay, bisexual, transgender and intersex (LGBTI) in Indonesia after several public officials made inflammatory, inaccurate or misleading statements in January 2016 on the grounds of “defending the country’s public morality and public security”.¹⁰² The discrimination, threats, intimidation, acts of vigilantism and other harassment of individuals because of their sexual orientation or gender identity have been perpetrated both state and non-state actors.¹⁰³

Before 2016, LGBTI people in Indonesia already faced discrimination and social stigma in many aspects of their lives, including in the fulfilment of both, civil and political, as well as economic, social and cultural rights. However, since early 2016 there have been more orchestrated and constant initiatives by politicians to marginalize LGBTI people in Indonesia on the pretext that they violate the interpreted teachings of the religions embraced by Indonesians and that they suffer from mental disease and thus should be cured to be ‘normal’.¹⁰⁴ LGBTI people who organize themselves largely can report violence against them to law enforcement, and with the support of other civil society actors can secure remedy to a certain extent. One example of this is the forced closure of Al Fatah Islamic school (*Pesantren*) for transwomen in Yogyakarta by Islamic Jihadist Front (FPI). With the support of civil society actors, including Yogyakarta Legal Aid, the transwomen were evacuated to the local Police office and the *Pesantren* could be reopened.¹⁰⁵

In various incidents in the last few years following the inflammatory statements by public officials, LGBTI individuals had to suffer many human rights violations, including to the restriction of their freedom of expression and assembly; losing their jobs, social security and right to health; as well as being subjected to torture or other ill-treatment by law enforcement officials. Meanwhile, those suspected of crimes against LGBTI people have enjoyed almost complete impunity.¹⁰⁶ It is unknown whether LGBTI individuals who are not organized have attempted to report to the authorities when they are targeted or attacked due to their sexual identity or orientation, although it is highly unlikely due to the stigma they suffer and the state-sponsored violations against them.

LGBTI people in Aceh are experiencing the worst of the generally deteriorating situation against the LGBTI people in Indonesia. Aceh province enjoys special autonomy status in Indonesia, and is legally allowed to

¹⁰² Amnesty International, *Stop inflammatory and discriminatory statements that put the LGBTI community at risk*, (Index ASA 21//2016).

¹⁰³ See Amnesty International Report 2016/2017: The State of the World’s Human Rights, *Indonesia* (Index: POL 10/4800/2017), p. 187.

¹⁰⁴ The latest setback was that in early 2018, the Indonesia’s lawmakers inserted a provision in the draft law on criminal code amendment that provided an expansion of ‘adultery’ offences to include criminalization of consensual same sex relationship. See <https://www.reuters.com/article/us-indonesia-lgbt-insight/criminal-code-revamp-plan-sends-chill-through-indonesias-lgbt-community-idUSKBN1FT2I0> and <https://www.theguardian.com/commentisfree/2018/feb/14/indonesia-is-about-to-outlaw-homosexual-sex-can-we-stop-it>.

¹⁰⁵ Amnesty International, *Indonesia: Arrest of 51 people fuels hostile environment for LGBTI people*, 12 October 2017, available at <https://www.amnestyindonesia.org/indonesia-arrest-51-people-fuels-hostile-environment-lgbti-people> and Sri Lestari, *Kelompok pro dan anti-LGBT sama-sama gelar aksi di Yogyakarta* [Pro and Anti LGBT Simultaneously Hold Rallies in Yogyakarta], BBC Indonesia, 23 February 2016 available at https://www.bbc.com/indonesia/berita_indonesia/2016/02/160223_indonesia_demonstrasi_lgbt

¹⁰⁶ Amnesty International, *Crackdowns on LGBTI people hit alarming level* available at: <https://www.amnesty.org/en/latest/news/2018/11/indonesia-crackdowns-lgbti-people-hit-alarming-level/>; *Arrest of 51 People Fuels Hostile Environment for LGBTI People* (Index: ASA 21/7289/2017); *Stop inflammatory and discriminatory statements that put the LGBTI community at risk* (Index ASA 21//2016).

construct its own regional bylaws system based on Shari'a Law.¹⁰⁷ A number of the bylaws discriminate against LGBTI people. One of the bylaws with the worst impact is the Aceh Islamic Criminal Code (*Qanun Jinayat*).

Qanun Jinayat was passed in October 2014 and came into effect throughout the Province in October 2015. A number of the bylaws' provisions criminalise consensual same-sex relations with punishment of up to 100 months' imprisonment or 100 times caning.¹⁰⁸

In May 2017, for the first time two men were each caned 83 times in public after being convicted by the Banda Aceh Shari'a Court of consensual same-sex sexual relations between males (*liwath*) under the Aceh Islamic Criminal Code.¹⁰⁹

Consensual same-sex relations are not crimes under the Indonesian Criminal Code. However, there are several other bylaws outside the Aceh province - issued by authorities at the district or provincial level - that prohibit and criminalise consensual same-sex relationships.¹¹⁰ These bylaws clearly breach the country's Regional Autonomy Law (No. 32/2004 and No. 23/2014) which stipulate that regions in Indonesia cannot deviate from the national criminal justice system.

In December 2017, the Constitutional Court rejected a judicial review submitted by some academics who proposed the reinterpretation of the Criminal Code provision on adultery to include the criminalisation of consensual sexual relations. The Constitutional Court rejected the petition not on the ground of discrimination, but among others because the Court argued that they could not replace the power of parliament to expand a new criminal offense.¹¹¹

Attacks against LGBTI people in Aceh go beyond the implementation of the Islamic Criminal Code. On Saturday, 27 January 2018, the local North Aceh Police Force raided five beauty salons, a common workplace for transwomen in Indonesia, in Lhoksukon, Aceh province and arrested 12 people assumed to be transwomen. The police then subjected them to "punishments" by forcing them to roll on the ground in the park and cut their hair – apparently to make them "manlier". Shouting at them and kicking their backs while giving instructions, the police also forced them to take off their clothes, so they were half-naked. After humiliating them for two hours in front of people who had gathered at the park, the police took the twelve individuals back to the police station and forced them to sleep on the cold floor in their wet shorts without mattresses.¹¹²

Before being released without charge on the afternoon of 28 January, the police invited a Muslim cleric to give a sermon to the victims. The cleric told them that because of "the nature of a transgender person", it is fine "to kill a transgender person or other LGBTI people" and that "they are more evil than a *kafir* (infidel)".

¹⁰⁷ After prolonged armed conflict, the government of Indonesia and Free Aceh Movement signed the Helsinki Memorandum of Understanding on August 15, 2005, allowing the Province among others to re-establish *Qanun Aceh* "respecting the historical traditions and customs of the people of Aceh and reflecting contemporary legal requirements of Aceh (Article 1.1.6). This was followed by the enactment of Law No. 11/2006 on the Governance of Aceh, which stipulates that the province is allowed to implement Islamic Syariah, including for worship, family law, civil law, and criminal law, which will be regulated through *Qanun* (Article 125). The Helsinki Memorandum of Understanding is accessible at: http://www.acehpeaceprocess.net/pdf/mou_final.pdf.

¹⁰⁸ Articles 63 and 64 of the Aceh Islamic Criminal Code (*Qanun Aceh on Hukum Jinayat* No. 6/2014), available at: <https://dsi.acehprov.go.id/wp-content/uploads/2017/02/Qanun-Aceh-Nomor-6-Tahun-2014-Tentang-Hukum-Jinayat.pdf>. See also Amnesty International and the Institute for Criminal Justice Reform (ICJR), *Repeal or revise all provisions in the new Aceh Islamic Criminal Code that violate human rights* (Index: ASA 21/2726/2015).

¹⁰⁹ Amnesty International, *Indonesia: Caning of gay men an outrageous act of cruelty* (Press Release, 23 May 2017), available at: <https://www.amnesty.org/en/latest/news/2017/05/indonesia-caning-of-gay-men-an-outrageous-act-of-cruelty/>.

¹¹⁰ For instance: the Padang Panjang City Bylaw No. 9/2010 in West Sumatra province on Prevention, Eradication and Prosecution of Societal Disease. This bylaw provides punishment up to three months' imprisonment or fine of IDR 10 million (USD 687) for same-sex sexual relationship; the South Sumatra Provincial Bylaw No. 13/2002 on Eradication of Vice which provides punishment between two- and six-months' imprisonment or fine between IDR two and five millions (between USD 137 and 343); and the Palembang City Bylaw No. 2/2004 in South Sumatra Province on Eradication of Prostitution. This bylaw defines same-sex sexual relationship as prostitution that can be punished up to six months' imprisonment or fine of IDR 5 million (USD 343). Amnesty International is not aware that anyone has been convicted and sentenced by a court under these bylaws.

¹¹¹ Article 284 (1) of the Criminal Code criminalizes adultery, defined as when a married person has sex with someone who is not his or her spouse. This crime will be prosecuted only if reported by the spouse and that at the latest 3 months after the complaint divorce or separation proceedings is commenced. Constitutional Court Decision No. 46/PUU-XIV/2016, 6 December 2017, available at: https://mkri.id/public/content/persidangan/putusan/46_PUU-XIV_2016.pdf. pp. 28, 379.

¹¹² Amnesty International, *Indonesia: Police must protect -not attack- transgender women living under threat in Aceh*, (Press Release, 14 February 2018), available at <https://www.amnesty.org/en/latest/news/2018/02/indonesia-police-must-protect-not-attack-transgender-women-living-under-threat-in-aceh/>.

The police also made all 12 Individuals sign a document which they were not allowed to read, and which was later confirmed as an “agreement not to act like women” and not to complain about any police misconduct.¹¹³

As a result of the raid, a climate of fear was created where not just the 12 individuals but also other transwomen running beauty salons elsewhere in the Aceh Province closed down their salons for a month or more, and some temporarily moved to neighboring provinces to avoid being the next targets.

The raid and subsequent acts of torture and ill treatment became major news in Indonesia, and media reports indicated that internal investigation by the Regional Aceh Police Force was launched as a response. However, the result was not covered by the press. Amnesty International thus requested Police Headquarters’ Public Relations Department information on the progress and result of the investigation. The Police response specified that three police personnel, including the then Chief of North Aceh Police receiving disciplinary punishment for violating the police ethical code.¹¹⁴ Not a single police officer was brought to court for the torture and other ill-treatment inflicted on the 12 individuals. The Chief of North Aceh Police Force – who ordered and committed the alleged acts of torture and ill-treatment – was removed from his post and re-stationed in a different province.

In Aceh province, anti-LGBTI legislation expanded from criminalization of consensual same-sex relationships under its Islamic Criminal Code to restrict other critical aspects of LGBTI people’s lives under various bylaws in different districts - including those that negatively affect the right to work. For instance, in Bireun and Aceh Besar Districts, both District leaders (*Bupatis*) issued instructions forbidding beauty salons or coffee shop owners from employ LGBT workers.¹¹⁵ Although in practice these bylaws are not enforced strictly by the local authorities, they add to the creation of an environment of fear and persecution for LGBTI people in the province.

Recommendations to the new Indonesian government and parliament pending full abolition on the death penalty:

- *Respect Indonesia’s international human rights obligations and prevent, investigate and eliminate transphobia, homophobia, gender-based violence, and criminalisation of individuals due to their gender expression, identity or sexual orientation, including by revoking laws and regulations that legitimize systemic discrimination against them and Implementing those that protect, respect, and fulfil their rights;*
- *Publicly condemn attacks against LGBTI people, making clear that such violence is a criminal offence and will not be tolerated. The ongoing silence only sends an alarming message that such attacks and harassment will be tolerated by the government, paving the way for further discrimination against LGBTI individuals, activists and organizations;*
- *Ensure that no one in authority makes any public statement or order which could reasonably be interpreted as a licence to discriminate against or otherwise target any individual because of their sexual orientation or gender identity;*

¹¹³ Ibid.

¹¹⁴ A letter from the Police Headquarters’ Public Relations Department in reply to Amnesty International Indonesia’s request under Indonesia’s Law on Public Information Openness (No. 14/2008), on file with Amnesty International.

¹¹⁵ *Surat Instruksi Bupati Aceh Besar No. 1/2018 tentang Penertiban Perizinan terhadap Usaha Pangkas/Salon/Rumah Kecantikan di Aceh Besar* [Bupati Aceh Besar’s Instruction on Controlling the Permit for Barbershop/Beatu Salon in Aceh Besar] and *Surat Edaran Bupati Bireun tentang Standardisasi Warung Kopi/Café dan Restoran Sesuai Syariat Islam* [Bupati Bireun’s Circular on Standardization of Coffee Shop and Restaurant in line with Islamic Shari’a, 30 August 2018.

- *Ensure that thorough and impartial investigations are carried out into attacks and threats against individuals because of their sexual orientation or gender identity and that anyone reasonably suspected of a crime in this regard be prosecuted in line with international human rights law and standards. The authorities must also act to provide effective protection to LGBTI people who face threats to their lives and safety;*
- *Revoke any laws criminalizing consensual same-sex activity which contravene international human rights law and standards.*




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TO ONE PERSON, IT
MATTERS TO US ALL.**

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INDONESIA: 9-POINT HUMAN RIGHTS

AGENDA FOR ELECTION CANDIDATE

The Nine-Point Human Rights Agenda highlights key concerns in a number of human rights questions, including the protection for rights to freedom of expression, thought, conscience, religion and belief, accountability for past human rights violations and abuses by security forces, women and girls' rights, human rights situation in Papua, accountability for human rights abuses by companies in palm oil sector, death penalty abolition, and the protection of LGBTI individuals' rights.

This briefing highlights the current situation around the enlisted topics, although it should be noted that they do not represent an exhaustive list of Amnesty International's areas of concern with regards to human rights in the country. It draws on Amnesty International's ongoing research on Indonesia, which involves regular contact with local and international non-governmental organizations, victims and their families, lawyers, government officials, journalists and other individuals with the aim to direct the attention of all presidential and parliamentary candidates to the issues and the recommended measures for managing them.