

# Indonesia

## Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-8 April 2008

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under B, Amnesty International raises concern over shortcomings of the Indonesian Criminal Procedure Code, and on death penalty and counter-terrorism legislation.
- In section C, we describe concerns related to abuse and harassment of human rights defenders, prisoners of conscience, restrictions on freedom of expression and assembly, impunity for human rights violations, and exploitation and abuse of women domestic workers.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

### **B. Normative and Institutional Framework**

#### **Indonesia's Code of Criminal Procedure**

Amnesty International has a number of concerns in relation to the ongoing review of Indonesia's Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) which determines the procedures and rights of individuals at the different stages of investigation and trial. While the existing KUHAP provides many safeguards for the protection of the rights of suspects and defendants, there are a number of areas where it does not meet international standards for fair trials such as the right to legal counsel and the right to challenge one's detention.

Amnesty International welcomes the government's initiative to review and reform the Code with a view to strengthening human rights protection and the rule of law. However, on the basis of a draft of the revised KUHAP obtained on 15 September 2005, the organization is concerned that in certain respects the draft revised KUHAP remains inconsistent with international fair trial standards and leaves suspects and defendants, particularly those in detention, vulnerable to human rights violations. The draft revised KUHAP lacks several fundamental safeguards to ensure that an individual is not unjustly punished, arbitrarily detained or subject to torture or ill-treatment. For example, the draft revised KUHAP must be amended to require that any person who is arrested or detained must be promptly brought before a judge or other officer authorised to determine the legality of the arrest or detention.

The draft revised KUHAP also lacks provisions which require the authorities to inform suspects and defendants of their rights, in a timely way, and in language they can understand. These include the right to legal counsel and access to lawyer who may be present at all stages of the investigation; the right to an interpreter; the right to visits by family members; the right to medical care; and the right to remain silent. In order to exercise these rights a suspect or defendant must know that such rights exist. The draft revised KUHAP also lacks sufficient provisions to ensure that everyone detained or accused of a criminal offence has the right to legal counsel during detention, at trial and on appeal. Furthermore, the draft revised KUHAP fails to explicitly acknowledge and safeguard the right of every person suspected of, or charged with, a criminal offence to be presumed innocent until and unless proven guilty according to law and after a fair

trial. Finally, the draft revised KUHAP does not contain sufficient provisions to deter the use of torture and other ill-treatment in all circumstances.

Serious concerns also relate to the implementation of the KUHAP. From Amnesty International's experience the old version of the Criminal Procedure Code has often not been fully implemented and enforced by the police and judicial authorities;<sup>1</sup> the draft revised code could face the same shortcomings in this respect unless appropriate measures are included to ensure that the new code is implemented fully.

### **Death Penalty and Counter-Terrorism legislation**

To Amnesty International's knowledge, at least 99 people are believed to be under sentence of death in Indonesia. Thirteen of these were convicted and sentenced to death in 2006. At least one person was executed in 2007: Ayub Bulubili. His was the first execution recorded by Amnesty International in Indonesia since September 2006.

Amnesty International is opposed to the imposition of the death penalty in all circumstances. The organization is concerned that the death penalty is provided for in Indonesian law for a very large number of criminal offences.<sup>2</sup> In this respect the organization is deeply concerned that two recently adopted laws, the Law on Human Rights Courts (Law 26/2000) and the Law on Combating Criminal Acts of Terrorism (Law 15/2003) both contain provisions for the death penalty and fall short of international standards for fair trials. Amnesty International has previously expressed concerns that Indonesia's "anti-terrorism" legislation risks undermining human rights. In particular, the legislation includes an offence of "terror" or "acts of terrorism" which are identified as a criminal act, but not defined. A related law, the Law on Combating Criminal Acts of Terrorism related to the Explosion of Bombs in Bali (Law 16/2003) applies to those involved in the bombings in Bali retroactively with the possibility of being sentenced to death contrary to international human rights law, which prohibits retroactive application of criminal law. This worrying trend to greater use of the death penalty has also been confirmed by a recent ruling by the Indonesian Constitutional Court to uphold the death penalty for drug offences.<sup>3</sup>

## **C. Protection and promotion of human rights in Indonesia**

### **The human rights situation in Papua**

There is an active independence movement in the Papua province, towards which the Indonesian security forces have at times responded with unnecessary or excessive force, including extrajudicial executions, as well as using torture and arbitrary detentions. Access to Papua for journalists and human rights organizations is tightly controlled thus restricting dissemination of information on the human rights situation, especially outside main cities. Members of local human rights organisations have been harassed and intimidated because of their work, and in recent years some have been forced to leave the province. Church leaders are among those who have voiced the concerns of the local population about human rights

<sup>1</sup> See Amnesty International Annual Report 2006 and 2007, and "*Indonesia (Aceh): Torture of gay men by the Banda Raya police*", ASA 21/004/2007;

<sup>2</sup> The death penalty can be imposed for murder with deliberate intent and premeditation; attempting to assassinate the President or Vice-president or render him unfit to govern; treason; premeditated murder of the head of state of a friendly state; piracy resulting in death; theft resulting in death; producing, processing, extracting, converting or making available narcotics; crimes against humanity; and "terrorism".

<sup>3</sup> For more information see "*Indonesia: a briefing on the death penalty*" ASA 21/040/2004, pages 2-6; "*Indonesia: Amnesty international deploras death penalty for drug offences*", ASA 21/020/2007.

violations, and as a result some of them have been publicly accused of being linked to the independence movement.

Amnesty International has campaigned for the release of individuals who have been imprisoned solely for raising peacefully the independence flag. In 2005 Filep Karma and Yusak Pakage were arrested during a peaceful flag-raising ceremony in Abepura, Papua. The two men were sentenced to 15 and 10 years of imprisonment and remain in prison at the moment.<sup>4</sup>

#### **Freedom of expression and assembly**

At least eight prisoners of conscience were sentenced to prison terms during 2006 and eight others sentenced in previous years remain in jail. They include peaceful political activists, union leaders, religious practitioners and students. In 2007, the situation seems to have worsened with the arrest of over 40 people in June in Ambon, Maluku province following the visit by President Susilo Bambang Yudhoyono. According to reports, the incident occurred when dancers performing a traditional dance in front of the President, unexpectedly started to raise the independence flag. They were subsequently arrested by the Anti Terror Brigade 88 and brought to the police station. During the interrogations they were allegedly beaten and threatened. Most of them were charged with subversions under articles 110,104, 164 and 165 of the Criminal Code. If they are charged and if it is confirmed they that have not committed any violence, Amnesty International will consider them as prisoners of conscience who should be immediately released.

#### **Impunity for human rights violations**

Amnesty International is gravely concerned about the persistent climate of impunity for human rights violations in Indonesia. Indonesia has consistently failed to bring to justice those responsible for gross human rights violations committed in Aceh, Papua, Timor-Leste and elsewhere. The violations include extra-judicial executions, torture and other ill-treatment, enforced disappearances and arbitrary detention. Despite the creation in 2000 of a human rights court to deal with gross human rights violations, including crimes against humanity, and the setting up of ad-hoc courts to consider past crimes, these have failed to deliver justice and reparations for the victims and their families.

Amnesty international is deeply concerned that perpetrators of serious human rights violations continue to enjoy impunity, which also fuels a lack of trust by the local population in state institutions. This is particularly problematic in areas of past or current open conflict like Aceh and Papua. In 2005, two senior Indonesian police officers accused of allowing the killing of three Papuan students and the torture of over a hundred others, were acquitted. This means that so far not a single member of Indonesia's security forces has been held to account for these crimes after nearly five years of investigations and legal proceedings.<sup>5</sup> Up to now, no progress has occurred to deliver justice or compensation to the victims.

The justice process set up in Timor-Leste and Indonesia to investigate and prosecute the crimes which occurred in 1999 in Timor-Leste (then East Timor) has so far failed to deliver justice to the victims leaving the perpetrators of crimes against humanity at large.<sup>6</sup> The latest initiative was the setting up by Indonesia and Timor-Leste of a joint Truth and Friendship Commission to document the 1999 crimes and to promote reconciliation. Amnesty International condemns the terms of reference of this Commission as it allows amnesties for perpetrators of

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<sup>4</sup> See "*Indonesia: the Jayapura flag-raisers*", ASA 21/004/2005

<sup>5</sup> See "*Indonesia: Killing and torture acquittals demonstrate failure of justice system*", ASA 21/018/2005

<sup>6</sup> See "*Amnesty International & Judicial System Monitoring Programme Indonesia & Timor-Leste Justice for Timor-Leste: The Way Forward*", ASA 21/006/2004

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serious human rights violations. This year, the UN Secretary-General also condemned the terms of reference of this commission and refused to allow UN staff to testify before it.

### **Domestic workers**

Domestic workers in Indonesia are frequently subjected to human rights abuses in their place of work. There are approximately 2.6 million domestic workers in Indonesia, the majority of whom are women and girls. They regularly experience economic exploitation, and physical, psychological and sexual violence. Some have been killed at the hands of their employer.

Amnesty International has documented many cases in which domestic workers are victims of acts of violence including sexual harassment or rape by their employer. Many domestic workers also report being subjected to physical violence, such as being beaten with a stick, a broom, or an iron bar. The conditions in which many domestic workers live are of concern; many do not have their own bedroom, or their room does not have a lock, or sometimes even a door.

In 2004, a Law Regarding the Elimination of Violence in the Household (Law 23/2004) was passed by the Indonesian Parliament. Domestic workers were specifically included in the law as potential victims of violence. Amnesty International welcomes this development. However, the law has yet to be fully implemented, especially with regard to violence against domestic workers. Reporting of incidents of abuse or violence is also very low. Despite developments in national legislation such as the law cited above, deficiencies remain in criminal law, in particular addressing the challenges of investigating gender-based crimes, including sexual violence.

Amnesty International is also concerned that domestic workers are denied basic workers' rights. The work of domestic workers is currently not provided equal protection under Indonesian law. The National Manpower Act (Law 13/2003) protects fundamental workers' rights, including regulation of hours of work per week, defined rest periods, holiday and leave arrangements. However, the protections in this Act do not cover private households and thus domestic workers. Domestic workers are consequently left without legal protections of their employment rights and without a legal basis on which to claim a minimum wage, the regulation of reasonable working hours, and other rights guaranteed to workers in Indonesia under the Manpower Act.<sup>7</sup>

### **D. Achievements, best practice, challenges and constraints**

Amnesty International welcomes steps taken by the Indonesian government, including the ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2006, and the cooperation extended to the UN Special Procedures (the Special Rapporteur on torture and the Special Representative on human rights defenders). It also welcomes the bold decisions taken by the constitutional court on freedom of expression in 2006<sup>8</sup> and this year<sup>9</sup>, and the recent passing of the domestic violence law (2004), law on the protection of victims and witnesses (2006), and anti-trafficking law (2007).

However, these are some key challenges that the government must address to uphold its commitment to human rights protection, including as a member of the Human Rights Council:

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<sup>7</sup> *Indonesia – Exploitation and abuse: the plight of women domestic workers*, ASA 21/003/2007 [edit marks]

<sup>8</sup> *Indonesia: landmark ruling for freedom of expression*, ASA 21/024/2006

<sup>9</sup> In July the so-called "Hate Sowing Articles" (154 and 155 of the Criminal Code), which criminalize public expressions of hatred towards the state were scrapped by the constitutional court.

- The government should ensure that the revised KUHAP is consistent with international standards for fair trial.
- The Indonesian government must ensure that both law and practice implement international law and standards on fair trial to ensure the protection of all suspects, victims and witnesses. Furthermore, any violations of the Criminal Procedure Code by state agent should be investigated and prosecuted adequately.<sup>10</sup>
- The government should remove from domestic legislation all provisions allowing for the death penalty and immediately declare a moratorium on all and review the Law on Combating Criminal Acts of Terrorism to ensure that it conforms to international human rights standards.
- The government should ensure that the right to freedom of expression and assembly is upheld in Papua province, and that local and international journalists, humanitarian workers and human rights defenders have full, unimpeded and unhindered access to the people of the province. The government should also ensure that all members of the police and military are made aware of the legitimate role of human rights defenders and their responsibility to protect them, as set out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
- The government should support the recent ruling of the Constitutional Court by removing all articles in the Criminal Code which impinge on the right to freedom of expression and association, and immediately release any persons imprisoned for the peaceful exercise of those rights.
- The government should promptly investigate and prosecute all reports of extrajudicial executions, torture and other ill-treatment, excessive use of force during demonstrations and harassment of human rights defenders, bring to justice those responsible and ensure that victims of gross human rights violations receive effective reparations.
- The government should incorporate the ILO minimum standards on domestic workers into the 2006 draft law to regulate the conditions of domestic workers. The law must specifically mention a minimum wage, clearly defined daily hours of work and minimum rest periods; provisions on night work and on overtime, including adequate compensation; and provisions for public holidays, sick leave and maternity leave.

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<sup>10</sup> For more information see the report "Indonesia: Comments on the draft revised Criminal Procedure Code", ASA 21/005/2006, pages 3-16  
*Amnesty International*

**Appendix: AI documents for further reference**Indonesia's Code of Criminal Procedure

- *Indonesia: Comments on the draft revised Criminal Procedure Code* AI Index: ASA 21/005/2006, <http://web.amnesty.org/library/Index/ENGASA210052006>

- *Indonesia (Aceh): Torture of gay men by the Banda Raya police*, ASA 21/004/2007, <http://web.amnesty.org/library/Index/ENGASA210042007?open&of=ENG-2AS>

- Annual report entry 2006

- Annual report entry 2007

Death penalty and Counter terrorism legislation

- *Indonesia: a briefing on the death penalty*", AI Index: ASA 21/040/2004, <http://web.amnesty.org/library/index/engasa210402004>

- *Indonesia: Amnesty international deploras death penalty for drug offences*", AI Index: ASA 21/020/2007, <http://web.amnesty.org/library/index/engASA210202007?open&of=eng-IDN>

The human rights situation in Papua

- *Indonesia: the Jayapura flag-raisers*, AI Index: ASA 21/004/2005,

<http://web.amnesty.org/library/Index/ENGASA210042005?open&of=ENG-IDN>

Impunity for human rights violations

- *Indonesia: Killing and torture acquittals demonstrate failure of justice system*, AI Index: ASA 21/018/2005, <http://web.amnesty.org/library/Index/ENGASA210182005?open&of=ENG-IDN>

- Amnesty International & Judicial System Monitoring Programme Indonesia & Timor-Leste. Justice for Timor-Leste: The Way Forward, AI Index: ASA 21/006/2004,

Domestic workers

- *Indonesia – Exploitation and abuse: the plight of women domestic workers*, AI Index: ASA 21/003/2007, <http://web.amnesty.org/library/index/engasa210062004>