

INDONESIA

Full justice? - Military trials in Irian Jaya

Introduction

In April 1995 reports of serious human rights violations in the Indonesian province of Irian Jaya began to emerge¹. The reported violations included extrajudicial executions, 'disappearances', torture and arbitrary detention of civilians. An investigation by Indonesia's National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM) confirmed that human rights violations had been committed by military personnel. A subsequent military inquiry into the violations led to the trial and conviction of four members of the Indonesian Armed Forces (ABRI) in February 1996. The four soldiers were sentenced to terms of imprisonment having been found guilty of charges related to the killing of three civilians in Hoesa village, in the Paniai region of Irian Jaya.

Amnesty International has consistently maintained that there is a clear link between exemption from punishment and continued and widespread human rights violations in Indonesia and East Timor. The organization has repeatedly urged the government to conduct full and independent inquiries into reports of human rights violations and to bring those responsible to account. Amnesty International therefore welcomed the initiative taken by ABRI to investigate violations committed by its soldiers in Paniai, Irian Jaya, and to bring the alleged perpetrators to justice.

However, Amnesty International has substantive concerns about the nature of the military investigation, the subsequent trials of the four soldiers and the fact that no one has been brought to account for other recorded abuses in Irian Jaya. The organization's concerns relate to three main points:

- ◆ the military authorities have not reported on the methods and findings of its investigation in contravention of the United Nations (UN) Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Moreover, the circumstances in which the inquiry was conducted, and the findings that have become known as a result of the trials of the four soldiers, raise doubts about the thoroughness, independence and impartiality of the investigation;

¹ For further information see: Indonesia: Irian Jaya - National Commission on Human Rights confirms violations (ASA 21/47/95), September 1995.

- ◆ the military trials related to the killing of only three people during one incident: meanwhile other confirmed human rights violations in Irian Jaya remain uninvestigated and their perpetrators have not been held accountable;
- ◆ reports about the trials received by Amnesty International raise concerns that neither the victims or the accused received full justice.

In view of these concerns, Amnesty International believes that the military investigation and the resulting trials of the four soldiers have been an inadequate response to the human rights violations found to have been committed in Irian Jaya since October 1994. The organization therefore urges the Indonesian Government to ensure that the trials of the four soldiers are not the end of the process, and calls on the government to initiate full, independent and impartial investigations into *all* of the reported human rights violations in Irian Jaya, and to bring to justice those responsible in trials which meet with internationally accepted standards for fair trial.

Background

Among the reports about human rights violations that took place in Irian Jaya after October 1994 was a collection of testimonies released by the Catholic Church of Jayapura in August 1995. The testimonies included allegations of extrajudicial executions, 'disappearances', torture and arbitrary arrests, particularly around the area of the PT Freeport Indonesia Mine at Tembagapura in the Paniai region². These reports included descriptions of soldiers from Battalion 752 opening fire on a group of people gathered for a prayer meeting in Hoesa village on either 31 May or 1 June 1995. According to these testimonies, 11 people, including women and children, were killed by the soldiers.

In the wake of the Jayapura Catholic Church's report, Komnas HAM set up an inquiry into the allegations which included sending two fact-finding teams to Irian Jaya. On 22 September 1995, Komnas HAM released a four-page statement which stated that the Commission had found evidence of human rights violations carried out by military personnel between October 1994 and June 1995. It referred specifically to 16 extrajudicial killings, four 'disappearances' and unlawful and arbitrary arrests. Although the press

² Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia: A report by the Catholic Church of Jayapura.

release did not identify the 16 victims of the killings, the Commission stated in media interviews that 11 people had been killed in Hoesa village in the incident described above³.

Military investigation and charges

The military authorities initially responded to the allegations of human rights violations with a number of conflicting statements; these statements either denied or downplayed the role of members of the security forces in the violations. However, in the face of mounting national and international pressure the military began its own inquiry in late September or early October 1995. A preliminary investigation resulted in the arrest in late October of four soldiers accused of making six procedural errors that led to human rights violations⁴. A further investigation conducted by the Irian Jaya military police (*Pomdam* - military police, Irian Jaya) resulted in charges being brought against the four soldiers: Second Lieutenant Mardjaka and Privates Titus Kopogau, R.H. Renyaan and La Ode Zahnudin.

A thorough and impartial investigation?

Pomdam has not published the methods or the findings of its investigations making it impossible to determine the scope of its inquiry and the conclusions reached, or whether indeed the inquiry has been completed. The only public indication of the findings of the military inquiry are the charges of involvement in the killing of three people in Hoesa village - Theo Awonkwame, Maria Alomang and Maria's child, Arince⁵ - which led to the conviction of the four soldiers.

While Amnesty International welcomes the initiative taken by the military in conducting its own investigations, the organization has a number of concerns about the inquiry. In particular, Amnesty International is concerned about the following points:

- ◆ in relation to the earlier Komnas HAM inquiry, Amnesty International expressed concern that excessive military surveillance, fear of military reprisals and intimidation of witnesses undermined the Commission's efforts to investigate fully reports of human rights violations in Irian Jaya. The organization remains concerned that the persistence of such conditions - largely caused by the military presence in the area

³ For further information about Komnas HAM's investigation and Amnesty International's concerns about it see Indonesia: Irian Jaya - National Commission on Human Rights confirms violations (AI Index: ASA 21/47/95), September 1995.

⁴ Jakarta Post, 30 October 1995.

⁵ The three are referred to in the Catholic Church report as **Theo Amokwme** (35), **Maria Alomang** (22) and **Lina Alomang** (5).

- make it unlikely that the military authorities could conduct a full or impartial investigation into abuses by its own members.

- ◆ based on the reports published by the Jayapura Catholic Church and Komnas HAM, Amnesty International is concerned that the apparent findings of the military investigation does not accurately reflect the full scale of the human rights violations which took place in the village of Hoesa on 31 May or 1 June 1995, and elsewhere in Irian Jaya from October 1994.
- ◆ Pomdam does not appear to have taken note of calls by local people in Irian Jaya and domestic non-governmental organizations (NGOs) for an investigation into the role of the mining company, Freeport McMoRan Copper and Gold Corporation, in the human rights violations⁶.
- ◆ Pomdam has failed to report on the scope, methods or findings of its investigation as required by Principle 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions⁷.

Trials

All four soldiers were charged in connection to the killing of the three civilians in Hoesa village. Privates Titus Kopogau and R.H. Renyaan were charged with murder under Article 338 of Indonesia's Criminal Code (KUHP), which carries a maximum sentence of 15 years' imprisonment. La Ode Zahnudin is believed to have been charged with the same offence. All three were also charged with disciplinary offences under military law.

⁶ Komnas HAM announced on 7 March 1996 that it would send another investigation team to Irian Jaya to investigate reports of human rights violations. The announcement came after a delegation of leaders from Irian Jaya's Amungme tribe complained to Komnas HAM of Freeport's involvement in the abuses.

⁷ Principle 17 states: "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it."

Second Lieutenant Mardjaka was charged under Article 121, paragraph 1 of Indonesia's military code which states that "[a] member of the military who, to the damage of the interest of the military or the State, intentionally gives or delivers false or inaccurate official notice to his superior...", may be sentenced to a maximum of two years and eight months' imprisonment. The charge was based on the accusation that he reported that 10 civilians had been killed during the shooting in Hoesa village - a figure which closely reflects the findings of both Komnas HAM and the Jayapura Catholic church. The military authorities, however, using Pomdam's findings, appear to have concluded that the total number of people killed in the village was three and that Second Lieutenant Mardjaka had therefore given false testimony.

Statements in the media by the military suggest that Second Lieutenant Mardjaka was also charged and found guilty of ordering his subordinates to shoot villagers if they ran away when challenged. However, according to observers at his trial he was only formally charged under the article of the military code referred to above.

The trials of the soldiers began on 29 January in a military court in Jayapura, the capital city of Irian Jaya. Although the trials of all four took place at the same time Second Lieutenant Mardjaka was tried in separate proceedings. On 13 February 1996 he was sentenced to one year and four months' imprisonment and was also expelled from the armed forces. He is currently appealing to a higher military court. On 14 February 1996 the military court announced the verdicts in the trial of the three other soldiers: R.H. Renyaan and Titus Kopogau were convicted of the murder of the three civilians and sentenced to two and three years' imprisonment respectively. La Ode Zahnudin was found guilty of being an accomplice to the murder and received a one year prison sentence. All three were expelled from ABRI.

Full justice?

While Amnesty International welcomes the action taken by the military authorities to bring to justice soldiers responsible for human rights violations in Irian Jaya, the organization is concerned that the charges against the soldiers may have resulted from an investigation that was incomplete. Unfortunately, the classification by the judge of all documents relating to the trial as state documents, further inhibits a full analysis of the way in which the proceedings were conducted and the issues that were addressed. However, on the basis of information received Amnesty International is concerned that:

- ◆ the trials related only to the killing of three people in Hoesa village. No one has yet been brought to account for the other violations found to have taken place by Komnas HAM including the killing of another eight civilians in Hoesa. Rather, the military authorities have sentenced Second Lieutenant Mardjaka to a term of

imprisonment on the basis that his report that 10 civilians were killed in Hoesa village was an exaggeration.

- ◆ the final account of events in Hoesa village on 31 May or 1 June 1995, given by ABRI after the verdict was handed down, was that the villagers had shot at the military patrol with bows and arrows prior to the patrol opening fire. This is not consistent with the testimonies contained in the Catholic Church's report which was later verified by Komnas HAM.

A full and fair examination of the facts?

The organization is also concerned by reports it has received about the trials which indicate that they did not take place in an atmosphere which was conducive to a full and fair examination of the charges against the four soldiers. The concerns raised in these reports included the following points:

- ◆ observers at the trials of the four soldiers faced questioning by officials during court sessions. The observers raised concerns that this was intended to intimidate members of the public into staying away from the proceedings;
- ◆ doubts about the reliability of the witnesses has been expressed by local non-governmental organizations. In particular, they have raised concerns that the witnesses brought by the prosecution were not among the witnesses who had alleged that none of the witnesses who had provided information to the two investigations were called to give evidence at the trials. In addition, the witnesses called by the prosecution were from the *Tenaga Bantunuan Operasi* (TBO) - civilian units set up to assist the military - concern was expressed that these witnesses may have been particularly vulnerable to pressure from ABRI.
- ◆ the Indonesian Government has so far failed to bring any prosecutions on the basis of Komnas HAM's findings. Rather, prosecutions were brought in local military courts only after an investigation conducted by local military police. This is in contrast to the investigation and court-martial of two soldiers after the killing of civilians in Liquiza in January 1995, which were conducted by a national level military council (*Dewan Kehormatan Perwira* (DKP)). Provincial NGOs fear that by conducting the investigation and trials in Irian Jaya, and by utilising local military personnel, the authorities were attempting to localise the issue and reduce its impact nationally.