



UNITED NATIONS HUMAN RIGHTS COMMITTEE  
**108<sup>th</sup> Session of the UN Human Rights Committee**  
8 to 26 July 2013

**ALTERNATIVE REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
TO THE UN HUMAN RIGHTS COMMITTEE ON THE INITIAL REPORT OF INDONESIA  
UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Submitted June 2013

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## ICJ ALTERNATIVE REPORT TO THE HUMAN RIGHTS COMMITTEE ON THE INITIAL REPORT OF INDONESIA

1. The International Commission of Jurists (ICJ) welcomes the opportunity to submit its comments to the UN Human Rights Committee (HRC) in relation to the Committee's consideration of the initial periodic report of Indonesia, submitted under article 40 of the International Covenant on Civil and Political Rights (ICCPR).

2. In this submission, the ICJ provides alternative replies to some of the questions raised in the List of Issues to be considered during the examination of the initial report of Indonesia. The ICJ addresses issues concerning: the right to an effective remedy; the right to life; and the rights of persons belonging to minorities. The ICJ concludes with suggested recommendations on what steps Indonesia should undertake to improve its implementation of and adherence with its obligations under the Covenant. This alternative report complements the information provided to the Committee in the ICJ's submission on the preparation of a List of Issues for the examination of Indonesia's initial report.<sup>1</sup>

### ICJ ALTERNATIVE REPLIES TO THE LIST OF ISSUES

#### Article 2: Right to an Effective Remedy

List of issues, paragraph 3:

What steps have been taken to establish an *ad hoc* Human Rights Court to investigate cases of enforced disappearances committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament (DPR)?

3. Under Article 43 of Indonesia's Law 26/2000, or the 2000 Human Rights Court Law, cases of gross violations of human rights that occurred prior to 2000 are to be heard by an *ad hoc* Human Rights Court. The law further provides that the President shall establish this *ad hoc* Court upon recommendation of the Indonesian Parliament (DPR).

4. In 2006, the Indonesian Commission on Human Rights (Komnas HAM) submitted its Final Report on the Inquiry on Enforced Disappearances, which revealed that at least 13 pro-democracy activists remained unaccounted for, from among the numerous abductions that occurred from 1997 to 1998. These people, allegedly subjected to enforced disappearance, are identified as: Sonny, Yani Afri, Ismail, Abdun Nasser, Dedi Hamdun, Noval Alkatiri, Wiji Thukul, Suyat, Herman Hendrawan, Bimo Petrus Anugerah, Ucok Munandar Siahaan, Yadin Muhidin and Hendra Hambali. In its report, Komnas HAM recommended the establishment of an *ad hoc* Human Rights Court to prosecute the alleged perpetrators of the enforced disappearances. In September 2009, the DPR issued recommendations echoing those made by Komnas HAM. It also recommended providing rehabilitation and compensation to the families of the victims.<sup>2</sup>

5. Despite the recommendations from the Komnas HAM and Parliament, there was no follow-up by the Government until March 2013. At a gathering of family members of the 'disappeared' persons, Albert Hasibuan, a member of the Presidential Advisory Council, remarked that "a court would operate before [President] Yudhoyono's tenure ends in 2014".<sup>3</sup> However, his statement was disputed a few days later by Djoko Suyanto, Indonesia's Coordinating Political, Legal, and Security Affairs Minister, who said that Albert Hasibuan had

<sup>1</sup> International Commission of Jurists, *Submission for the preparation by the Human Rights Committee of a List of Issues to be considered during the examination of the initial report of Indonesia*, submitted December 2012, available at URL: <http://www.icj.org/human-rights-committee-list-of-issues-for-the-examination-of-indonesia/>.

<sup>2</sup> International Commission of Jurists, with other human rights groups, *Open Letter to the President of Indonesia on Enforced Disappearances*, 29 August 2012, available at URL: <http://www.icj.org/open-letter-to-the-president-of-indonesia-on-enforced-disappearances/>.

<sup>3</sup> Bagus BT Saragih and Margareth Aristonang, *Govt does about-face on human rights tribunal*, The Jakarta Post, 22 March 2013, available at URL: <http://www.thejakartapost.com/news/2013/03/22/govt-does-about-face-human-rights-tribunal.html>.

"misinterpreted" the President. According to Djoko Suyanto, the President instructed him to deal with cases "comprehensively and altogether, not limited to certain cases such as those in 1998".<sup>4</sup> He added that the responsibility to set up an *ad hoc* court lies in the hands of Komnas HAM and the Attorney General.<sup>5</sup>

6. It should be noted that, in response to the 2006 Final Report of Komnas HAM, the Attorney General has expressed the view that the preliminary investigations of the Komnas HAM were flawed and that certain details, such as names of specific persons, were still needed.<sup>6</sup> For these reasons, the Attorney General recently stated that he is of the opinion that the establishment of an *ad hoc* court would not be possible at this point in time.<sup>7</sup>

7. The ICJ believes that the delay in the establishment of an *ad hoc* Human Rights Court is due to the fact that further investigations into the alleged enforced disappearances from 1997 to 1998 may involve allegations concerning several prominent members of the Indonesian Government who continue to be influential in the country to this day, including Prabowo Subianto and former General Wiranto. Prabowo Subianto, former head of the Special Forces Command (Kopassus), is currently the chief patron of the Great Indonesia Movement Party (Gerindra). Wiranto, the former chief of the Indonesian National Armed Forces (TNI), is now the chair of the People's Conscience Party (Hanura).<sup>8</sup> Both are said to be frontrunners for the presidential elections in 2014.<sup>9</sup>

8. The ICJ further notes that Indonesia has not yet positively responded to requests from the UN Working Group on Enforced and Involuntary Disappearances (WGEID) to undertake an official visit to the country. The WGEID's requests to the Government of Indonesia were made in 2008, and again in 2011. During the second cycle review of Indonesia under the Universal Periodic Review (UPR), the report of the Human Rights Council's Working Group on the UPR included a recommendation from Mexico that the Government extend an invitation to the WGEID.<sup>10</sup> While noting that it invites Special Procedure mandate-holders to undertake country visits in Indonesia "on the basis of its priority and needs for the promotion and protection of human rights", the Government of Indonesia rejected this recommendation.<sup>11</sup>

#### **Articles 6 and 7: Right to Life and Prohibition against torture and ill-treatment**

List of issues, paragraph 9:

Please respond to reports that as a result of excessive force during protests on 19 October 2011 in Jayapura, Papua... the police used excessive force and killed several protesters. What measures have been taken to investigate these incidents as recommended by Komnas HAM?

9. From 16-19 October 2011, at least 5,000 people gathered at Zakeus Field in Jayapura,

<sup>4</sup> Bagus BT Saragih, *Minister defies SBY's advisor over rights court*, The Jakarta Post, 21 March 2013, available at URL: <http://www.thejakartapost.com/news/2013/03/21/minister-defies-sby-s-advisor-over-rights-court.html>.

<sup>5</sup> Francisco Rosarians, *Djoko Suyanto Bantah SBY Abaikan Kasus 1998*, Tempo.co, 21 March 2013, available at URL: <http://www.tempo.co/read/news/2013/03/21/063468588/Djoko-Suyanto-Bantah-SBY-Abaikan-Kasus-1998>.

<sup>6</sup> Bagus BT Saragih, *Prabowo could escape int'l rights tribunal*, The Jakarta Post, 19 March 2013, available at URL: <http://www.thejakartapost.com/news/2013/03/19/prabowo-could-escape-int-l-rights-tribunal.html>. See also Akhmad Mustain, *Menkopolhukam: Tak ada Arahan Presiden Bentuk Pengadilan HAM*, MetroTVNews, 21 March 2013, available at URL: <http://www.metrotvnews.com/metronews/read/2013/03/21/1/140286/Menkopolhukam-Tak-ada-Arahan-Presiden-Bentuk-Pengadilan-HAM>.

<sup>7</sup> Above note 3.

<sup>8</sup> Ibid.

<sup>9</sup> The Jakarta Post, *Prabowo, Wiranto compete to be most electable in 2014*, 29 April 2013, available at URL: <http://www.thejakartapost.com/news/2013/04/29/prabowo-wiranto-compete-be-most-electable-2014.html>.

<sup>10</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Indonesia*, UN Doc A/HRC/21/7 (2012), para 109.15

<sup>11</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Indonesia: Addendum*, UN Doc A/HRC/21/7/Add.1 (2012), para 6.4.

Papua, for the Third Papuan People's Congress. On the last day of the Congress, 19 October 2011, participants elected Forkorus Yaboisebut as "President" of West Papua and Edison Waromi as "Prime Minister". Participants also allegedly displayed banned separatist symbols while the newly-elected President read out the 1961 Declaration of Independence for the 'Republic of West Papua'.<sup>12</sup> As participants started to leave that afternoon, Indonesian military forces allegedly began firing shots in the air.<sup>13</sup> The military troops were reported to have forcibly entered a nearby seminary, causing damage to the buildings in the premises.<sup>14</sup>

10. According to a report made public by Komnas HAM on 4 November 2011, at least 387 participants were arrested and 96 of them were assaulted. Three people were also confirmed dead: Daniel Kadepa, Max Saseyo, and Jacob Samansabra.<sup>15</sup> Two leaders of the Congress, Forkorus Yaboseimbut and Edison Waromi, were arrested and charged with treason.<sup>16</sup> Komnas HAM concluded in its report that Indonesian police and military troops committed human rights violations in their actions on 19 October 2011, including in respect of the right to life and freedom from torture and other ill-treatment. Komnas HAM recommended that the Indonesian National Police should investigate these violations.<sup>17</sup> It submitted its report to President Yudhoyono, who in turn rejected it, stating that the matter was still being investigated by the Indonesian National Police.<sup>18</sup>

11. In November 2011, the National Police Internal Supervisory Commission held four trials on charges of breach of code of ethics for police officers alleged to have been responsible for unlawful conduct. The Commission later revealed that these officers used 'extreme measures' in dispersing the Congress participants. The code of ethics trials resulted in the issuance of written warnings to all police officers involved in the violence, including a former Jayapura Police Chief. Four Papua police brigade mobile members were detained in a special cell for 14 days, while five enlisted officers were placed in detention for seven days.<sup>19</sup> No person was held responsible, however, for the deaths of Daniel Kadepa, Max Saseyo, and Jacob Samansabra.<sup>20</sup>

12. It is important to note that code of ethics trials, which look at allegations of violations under the new Code of Ethics for police officers that was enacted on 4 October 2011, and the Government Regulation on Police Discipline No. 2/2003 (Disciplinary Code), are administrative proceedings. Sanctions for violations under the Disciplinary Code may vary from physical exercises, attending school for a year, salary and/or promotion freeze, dismissal and/or 'physical restriction' or detention for 21 days.<sup>21</sup> Violations under the Code of Ethics may be subject to sanctions that range between transfer of department, function or area, to dismissal

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<sup>12</sup> Report by GKI on Third Papuan People's Congress and the Declaration of Independence, West Papua Human Rights Media, 21 October 2011, available at URL: <http://westpapuamedia.info/2011/10/22/report-by-gki-on-third-papuan-congress-and-declaration-of-independence/>.

<sup>13</sup> Indonesian security opened fire on People's Congress, West Papua Media Alerts, 21 October 2011, available at URL: <http://www.scoop.co.nz/stories/WO1110/S00611/indonesian-security-opened-fire-on-peoples-congress.htm>.

<sup>14</sup> Statement of Father Dr. Neles Tebay, Rector of Fajar Timur School of Philosophy and Theology, and Father Gabriel Ngga OFM, Provincial of the Franciscan Order in Papua, available at URL: <http://www.converge.org.nz/pma/wp-cath1011.pdf>.

<sup>15</sup> At least three dead in chaos at Papuan People's Congress, Radio New Zealand International, 21 October 2011, available at URL: <http://www.rnzi.com/pages/news.php?op=read&id=63898>.

<sup>16</sup> 96 Assaulted at Papuan Congress, says Komnas HAM, The Jakarta Post, 3 November 2011, available at URL: <http://www.thejakartapost.com/news/2011/11/03/96-assaulted-papuan-congress-says-komnas-ham.html>.

<sup>17</sup> Amnesty International, Indonesia: Government must act on Komnas HAM's findings of human rights violations at Papuan Congress, 10 November 2011, available at URL: <http://www.amnesty.org.nz/news/indonesia-government-must-act-komnas-ham's-findings-human-rights-violations-papuan-congres>.

<sup>18</sup> Ibid.

<sup>19</sup> Farouk Arnaz, National police hold four code of ethics trials over Papua violence, Jakarta Globe, 28 November 2011, available at URL: <http://www.thejakartaglobe.com/archive/national-police-hold-four-code-of-ethics-trials-over-papua-violence/481369/>.

<sup>20</sup> Ibid.

<sup>21</sup> See Articles 9 & 33 of the Government Regulation on Police Discipline No. 2/2003 (Disciplinary Code)

without honor.<sup>22</sup>

13. In March 2012, the Jayapura District Court sentenced leaders of the Congress, Forkorus Yaboisembut, Edison G. Waromi, Selpius Bobii, Dominikus Sorabut and Agustinus Makbrawen Sananay Kraar, to three years imprisonment.<sup>23</sup> They were found by the court to have declared an independent state of West Papua, therefore violating Article 106 of the Indonesian Criminal Code.<sup>24</sup> Forkorus Yaboisembut, Edison G. Waromi, Selpius Bobii, Dominikus Sorabut and Agustinus Makbrawen Sananay Kraar have filed an appeal against the judgment.

14. The ICJ verified that, other than the code of ethics trials held by the National Police Internal Supervisory Commission, there has not been any follow-up by the Indonesian Government on the findings of Komnas HAM in its report. No criminal charges have been filed against the police officers involved in the violent dispersal of participants of the Congress. There have also been no further investigations into the deaths of the three men.<sup>25</sup>

List of issues, paragraph 11:

Please provide information on the status of the *de facto* moratorium on the death penalty following reports that the State party has resumed the execution of persons convicted of crimes related to drugs and terrorism.

15. On 15 March 2013, the Indonesian Government executed Adami Wilson Bin Adam, a Nigerian national who was convicted in 2004 of smuggling one kilogram of heroin into the country.<sup>26</sup> This was the first carrying out of a death sentence since 2008 when Indonesia executed three men convicted of the 2002 Bali bombings.<sup>27</sup> After the execution of Adami Wilson Bin Adam, Indonesia's Attorney General, Basrief Arief, announced that the Government would execute nine more convicts in 2013.<sup>28</sup>

16. On 17 May 2013, the Indonesian Government executed three prisoners: Suryadi Swabuana, Jurit bin Abdullah, and Ibrahim bin Ujang. All three prisoners were convicted of murder and had filed clemency applications that were rejected.<sup>29</sup>

17. There are at least 130 people currently under sentence of death in Indonesia. More than half of them are convicted of drug-related offenses.<sup>30</sup> Death sentences in Indonesia are carried out by firing squad.<sup>31</sup>

18. During the second cycle UPR of Indonesia in 2012, Indonesia rejected recommendations to abolish the death penalty or establish a moratorium on executions. The

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<sup>22</sup> See Article 21 of Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 14 Tahun 2011 Tentang Kode Etik Profesi Kepolisian Negara Republik Indonesia (Code of Ethics), 2011, available at URL <http://humas.polri.go.id/dms/SetiapSaat/PERKAP%20NOMOR%2014%20TH%202011%20TTG%20KODE%20ETIK%20PROFESI.pdf>.

<sup>23</sup> Nethy Dharma Somba, *Papuans found guilty of subversion, get 3-year jail terms*, The Jakarta Post, 17 March 2012, available at URL: <http://www.thejakartapost.com/news/2012/03/17/papuans-found-guilty-subversion-get-3-year-jail-terms.html>.

<sup>24</sup> Article 106 of the Indonesian Criminal Code: "The attempt undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof shall be punished by life imprisonment or a maximum imprisonment of twenty years".

<sup>25</sup> Telephone interview with Ms. Poengky Indarti, Executive Director of the Indonesian Human Rights Monitor (IMPARSIAL), 31 May 2013.

<sup>26</sup> *ICJ calls on Indonesia to abolish death penalty*, International Commission of Jurists, 22 March 2013, available at URL: <http://www.icj.org/icj-calls-on-indonesia-to-abolish-death-penalty/>.

<sup>27</sup> Ibid.

<sup>28</sup> *Death Row: Indonesia to execute nine more inmates*, NewsDesk, 18 March 2013, available at URL: <http://newsdesk.asia/death-row-indonesia-to-execute-nine-more-inmates/>.

<sup>29</sup> *Indonesia: ADPAN appeals for three more prisoners facing execution – all three executed on 17 May 2013*, ADPAN.net, 17 May 2013, available at URL: <http://adpan.net/2013/05/16/indonesia-adpan-appeals-for-three-more-prisoners-facing-imminent-execution-and-for-an-end-to-executions-in-indonesia/>.

<sup>30</sup> *Independent UN human rights expert urges Indonesia to halt executions*, UN News Centre, 28 March 2013, available at URL: <http://www.un.org/apps/news/story.asp?NewsID=44512&Cr=deathReport>.

<sup>31</sup> Ibid.

UN GA has in repeated resolutions called on retentionist States to observe such a moratorium with a view to abolition, most recently on 21 November 2012. In its response to corresponding recommendations, the Government said that death penalty is imposed "selectively only for serious crimes".<sup>32</sup> However, this Committee has expressed the view that drug-related offenses do not amount to "serious crimes" within the meaning of article 6(2) of the ICCPR and thus should not carry the penalty of death.<sup>33</sup> This view is supported by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who has stated that "there is no persuasive record that the death penalty contributes more than any other punishment to eradicating drug trafficking".<sup>34</sup> Indonesia is not a party to the Second Optional Protocol to the ICCPR.

### **Article 27: Rights of Persons Belonging to Minorities**

List of issues, paragraph 31:

Please provide information on the measures being taken to protect the rights of ethnic and religious minorities such as the *Ahmadiyah* followers.

19. According to Setara Institute, an Indonesian-based NGO that conducts research on democracy, political freedom and human rights, the year 2012 recorded a total of 264 incidences of religious intolerance.<sup>35</sup> Of this figure, 31 cases were found to be against the Ahmadiyah community.<sup>36</sup> The survey also concluded that there were some 145 types of acts carried out by the Government against various religious minorities, with the police being one of the main perpetrators.<sup>37</sup> Examples of Government action include the sealing of places of worship, banning prayers, cordoning, arrests, detention, intimidation and restricting freedom of expression.<sup>38</sup> There were also incidents of police failures to act in the protection of these vulnerable religious groups.<sup>39</sup>

20. At present, there are several laws in Indonesia that continue to criminalize Ahmadiyah religious activities. They are as follows:

- Regulation of the Governor of West Java No. 12/2011 concerning Prohibition of Activities of the Indonesian Ahmadiyah Congregation in West Java issued on 3 March 2011. This regulation prohibits the Ahmadiyah community from promoting their teachings across the West Java province for reasons of maintaining security and public order (section 2). Activities that have been banned include the spreading of Ahmadiyah religious teachings orally, in writing or electronically; setting up signboards in public places; and the use of anything that could be attributed to Ahmadiyah (section 3(2)).
- Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of the Interior of the Republic of Indonesia No. 3/2008 concerning A Warning and Order to the followers, Members and/or Leading Members of the Indonesian Ahmadiyah Jama'at and to the General Public dated 9 June 2008. The Decree prohibits the promulgation of Ahmadiyah interpretations and activities (sections 1 and 2).
- Joint Decree of the Indonesian Religious Affairs and Home Affairs concerning Building Houses of Worship No. 1/2006, which regulates and imposes strict conditions before

<sup>32</sup> UN Doc A/HRC/21/7/Add.1 (2012), above note 12, para 6.6.

<sup>33</sup> Human Rights Committee, *Concluding Observations: Third Periodic Report of Sri Lanka*, UN Doc A/50/40 (1995), para 449.

<sup>34</sup> *Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Doc A/67/275 (2012), para 60.

<sup>35</sup> Setara Institute, *Kepimpinan Tanpa Prakarsa: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia*, March 2013, available at URL: <http://www.setara-institute.org/sites/setara-institute.org/files/Reports/Religious%20Freedom/121217-kepemimpinan%20tanpa%20prakarsa-indonesia2.pdf>, pg 208.

<sup>36</sup> *Ibid*, pg 209.

<sup>37</sup> *Ibid*, pg 40.

<sup>38</sup> *Ibid*, Table 1, pg 42-43.

<sup>39</sup> *Ibid*.

any religious building plans can be approved.

- Article 156(a) of the Indonesian Criminal Code, which punishes blasphemy with a maximum sentence of imprisonment of five years.

## **RECOMMENDATIONS**

21. Against the background of the information provided, as well as in the context of the thematic areas considered in this submission, the ICJ calls on the Committee to make the following recommendations to the Government of Indonesia:

### **Article 2**

1. Instruct the Attorney General to initiate prompt, thorough, independent and effective investigations into the enforced disappearance of the 13 pro-democracy activists in 1997 and 1998 and, where there is sufficient admissible evidence, prosecute those responsible in trials that meet international fair trial standards and do not impose the death penalty.
2. Establish an *ad hoc* Human Rights Court, adhering to international standards of independence, impartiality and fair trial as recommended by Komnas HAM and the Indonesian Parliament (DPR).
3. Provide for access to a full and effective remedy and reparations (including, as necessary, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to victims of enforced disappearances and/or their families.
4. Promptly ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims, or from other States parties.
5. Invite the UN Working Group on Enforced or Involuntary Disappearances (WGEID) to undertake an official visit to Indonesia, and extend to the WGEID all reasonable cooperation and assistance to facilitate a timely and effective country mission.

### **Articles 6 and 7**

6. Promptly establish an independent, impartial, thorough and effective investigation into the human rights violations allegedly committed by Indonesian police forces in the dispersal of participants of the Third Papuan People's Congress on 19 October 2011, as documented in the findings in the report of Komnas HAM.
7. Immediately establish a moratorium on executions with a view to abolishing the death penalty, and take steps towards the abolition of the death penalty in law.
8. Promptly take measures with a view to becoming party to the First and Second Optional Protocols to the ICCPR and the Optional Protocol on the Convention against Torture.

### **Article 27**

9. Review all domestic laws and regulations that are inconsistent with the rights of members of minorities, to enjoy their own culture, to profess and practise their own religion, or to use their own language, including: Regulation of the Governor of West Java No. 12/2011 concerning Prohibition of Activities of the Indonesian Ahmadiyah Congregation in West Java; Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of the Interior of the Republic of Indonesia No. 3/2008 concerning A Warning and Order to the Followers, Members and/or Leading Members of the Indonesian Ahmadiyah Jama'at and to the General Public; Joint Decree of the Indonesian Religious Affairs and Home Affairs concerning Building Houses of Worship No. 1/2006; and Article 156(a) of the Indonesian Criminal Code.
10. Ensure prompt, effective and independent investigations into all allegations of both actions and omissions by Government authorities relating to the prevention and

sanctioning of acts involving the violation of the rights of ethnic and religious minorities such as the Ahmadiyah community.

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