

INDONESIA

ONGOING IMPUNITY, MILITARY VIOLENCE AND CHALLENGES FOR THE NEW AG

Introduction

While some progress in the human rights context can be noted in 2010, the problem of impunity was not sufficiently addressed by the government during the year. The judicial mafia taskforce, a mechanism set up by the President in order to root out judicial corruption and the ongoing challenges to the immunity enjoyed by the Indonesian National Police represent positive developments that may yet bear fruit. On the international front, Indonesia signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2010. However, none of these steps have as yet resulted in more accountability for perpetrators of serious human rights violations.

The system of impunity in the country means that rights remain a theoretical, political exercise in many cases, rather than a reality for victims. Human rights violations are often only addressed when public attention requires it. Systematic reforms that ensure accountability are lacking.

In the legislature, years of delays in reviewing the country's criminal code to include human rights violations such as torture, or the failed review of the military law in order to hold members of the military accountable through fair trials in civilian courts, show a lack of vision and political will concerning credible and effective reforms. In 2010, hopes for developments have been replaced by disappointment.

The selection of a new Attorney General (AG) in November 2010 presented new opportunities to address the problem of gross violations of human rights. However, the authorities opted for Mr. Basrief Arief as the new AG, despite civil society groups having campaigned for other candidates. Many activists deplored the selection of this person, as he represents a continuation of the previous, discredited AG and the practices of his office, which had been a serious barrier to human rights and the fight against impunity.

The attempted nomination in 2010 of former dictator Suharto as a national hero portrays the prevalence of Indonesia's past in its present-day life. Addressing the impunity that still

accompanies violations that occurred under Suharto's rule will be the test case of the new AG's ability and the strength of the prosecution system. Discussions concerning human rights issues remained largely a political exercise rather than a technical effort designed to ensure the effective reform of the criminal justice system, which the AHRC considers to be the best means of improving the protection of human rights in Indonesia at present. Several violent attacks on religious minorities were ignored by the police, which represent a clear setback concerning the freedom of religion. While Indonesia showed a strategic commitment to human rights reforms in the country by adopting a National Action Plan for human rights for the period 2004-2009, it has failed to come up with a follow-up plan since 2009. The earlier National Action Plan was not implemented until one year after its expiration.

Most of the cases the Indonesia desk of the Asian Human Rights Commission (AHRC) received in 2010 concerned the use of violence and torture by the police. Case evidence shows that the use of torture by the police or military is not a rare, extreme occurrence. Torture, is used endemically and even systematically, as a routine way to investigate and intimidate persons. Victims are often arbitrarily arrested and held under false charges, enabling the use of torture.

In the Papuan provinces violence by the security forces continued to be a serious concern in 2010. In such remote regions the military enjoys more immunity and is repeatedly involved in cases of torture and killings in the name of the fight against separatists. The case of serious torture of Tuanliwor Kiwo in 2010 in the Papuan highland region attracted considerable media attention and raised the issue of military crimes in the Papuan highland region. Despite international pressure, a detailed victims testimony and a video recording of the torture itself, no members of the military had been held accountable for this case. At the time of writing this report.

Also of great concern is the rise in the number of reported cases of attacks and reprisals against human rights defenders, notably journalists and anti-corruption activists working to uphold human rights. The AHRC itself became the subject of a cyber-attack on its website in October 2010, which is believed to have been made with the purpose



Papuan Torture victim Tuanliwor Kiwo gives detailed testimony concerning his torture by the military, which they filmed. No action has been taken against the perpetrators.

Source: local activists

of making its content inaccessible, after the video showing the Indonesian military torturing indigenous Papuan Tuanliwor Kiwo was posted there. While the origin of the sophisticated attack has not been identified, the AHRC suspects the possible involvement of Indonesian authorities in this attack, which made the AHRC's website unavailable for several days, obstructing many of its urgent campaigns in favour of human rights.

An increase in violent attacks against religious minorities was also witnessed in 2010. The police typically do not intervene to protect victims, often claiming that they do not have the capacity to protect persons from such violence.

In September 2010, Indonesia signed the International Convention for the Protection of all Persons from Enforced Disappearances. This first step into the direction of furthering the application of international human rights norms in the country and is an expression of the acknowledgment of the problem of enforced disappearances in Indonesia.

1. Impunity

The AHRC believes that one of the main reasons why violence and even torture continue to be perpetrated by the police and security forces in Indonesia is the persistence of a system of impunity, which means there is no deterrent against such acts and no consequences for those who perpetrate them. Concerning torture, the fact that torture is not criminalized under the country's law is a major factor ensuring such impunity. The right to be free from torture is recognised in the Constitution, but it has not been integrated into the Penal Code.

Another major component in the system of impunity is the fact that crimes committed by the military against civilians cannot be tried in civilian courts. The lack of transparency of military courts cannot guarantee the effective prosecution of alleged perpetrators in line with international human rights law and fair trial standards. Furthermore, problems with endemic corruption in the criminal justice system make impartial and effective law enforcement elusive.

During Suharto's reign and until 1998, several serious cases of gross human rights violations, including crimes against humanity, took place in Indonesia. Human rights groups were therefore understandably outraged when Suharto was nominated as a recipient of the "Hero of the Nation" award in 2010. NGOs filed a petition to the Constitutional Court challenging the nomination. Following this pressure, President Yudhoyono declined to award the former dictator with the "hero" title. This shows how far away from addressing the crimes of the past Indonesia currently is.

For most of these cases of gross human rights violations in recent decades a process has been initiated under the Human Rights Court Law (Law no. 26 of the year 2000). However, the process to challenge impunity concerning these gross violations of rights, have been obstructed for political reasons. For example between 1997 and 1998, 23 students and other activists were reportedly abducted by the Army Special Forces Command (known as Kopassus) because of their political activism in the struggle for change and democracy under the New Order regime. This movement finally led to the reformation of the Indonesian state towards a modern democracy. 13 of the students remain missing until now. After the National Human Rights Commission had published its inquiry results in 2006 and submitted it to the attorney general, the case has since then been delayed, pending with the AGO. While the AG had taken action to allow for the establishment for an ad-hoc court per human rights court law in the Tanjung Priok case or cases of major abuses in East Timor, he turned the argument around in this sensitive case, claiming that an ad-hoc court would have to be set up first before he would start any investigations. After years of delays a special committee of the parliament recommended in September 2009 the president to take action by setting up the ad-hoc court. No ad-hoc court was set up in 2010 while the legality of the establishment of the special committee in the parliament and thus its recommendation was questioned.

The Attorney General has played a key role in causing these delays. Many of the alleged perpetrators, who have been powerful military leaders, are still actively involved in politics and continue to maintain considerable influence.

In November 2010 Basrief Arief was sworn in as the new Attorney General replacing Henderman Supandji. Conservative groups had been suggesting that the candidate should come from within the previous Attorney General's Office (AGO), while civil society groups and other stakeholders have deplored

Impunity & Freedom of Assembly



Arrest of protesters on September 27. Source: KontraS

On September 28, 2009 the House of Representatives issued several recommendations to the President to bring the perpetrators of the infamous student disappearances of 1998 to justice. Human rights activists who protested against the inaction of the president in Jakarta with a tent action in front of the presidential palace were arrested during the evening of September 27, 2010. The Asian Human Rights Commission strongly condemns the arrest of human rights defenders after a peaceful protest.

the lack of impartiality shown by all in this office, as well as their role in upholding the current culture of impunity in the country. They were therefore calling for the new AG to come from outside of the current AGO department. The selection of Mr. Arief is has been criticised by civil society, as he has worked in the AGO before, and is thus an insider and viewed as being co-responsible for the corrupt practices the AGO has allegedly been involved in the past. However, Mr. Arief has vowed not to be intimidated by political parties when taking office, as requested by the President. Whether he will be able to act independently of political interference will be watched closely and is best measured by whether he will take action on the many cases of gross violations of human rights that are currently filed with his office, and bring them into the human rights court process as is expected under the law.

List of gross violations of human rights that are pending with the attorney general

1965: After Suharto's coup millions of communist suspects and party members were killed or detained for decades. Many continue to be stigmatised and suffer from discrimination.

Mysterious Shootings: Between 1981 and 1984 the New Order regime of President Suharto conducted military operations to increase security and public order. Mysterious shootings occurred in some provinces of Indonesia and, based on a monitoring report by Komnas HAM, around 5000 people were killed during this military operation.

Talangsari case (February 7, 1989): Soldiers from Garuda Hitam Military Resort Command in Lampung Province of Indonesia attacked village Talangsari in Lampung Province. 246 people were killed. Komnas HAM concluded an inquiry in October 2008 and submitted it to the AGO, where it has since stagnated.

Trisakti and Semanggi I+II incidents (1998): On 12 May 1998, four students were shot dead by the armed forces at the University of Trisakti in Jakarta during a demonstration to urge political reform. On November 8 -14, 1998 the armed forces committed violence against students and civilians during a demonstration to reject the Special Session of the House of Representatives (DPR). The armed forces opened fire and as a result more than 14 students died and 109 people were injured. On September 1999, the armed forces shot students who voiced their rejection of the National Security and Safety Bill.

May Riots (13 - 15 May 1998): The May 1998 riots occurred in several places in Indonesia. The armed forces were not deployed to keep the peace and maintain

order. Widespread looting took place and a mall and shopping centre were set on fire. Several local NGOs note that large-scale rapes occurred as well as attacks on members of the Tionghoa (Indonesian-Chinese) ethnic group in several cities across the country.

Abepura case (December 7, 2000): The police conducted an operation against local residents and university students in the Abepura regency of Papua province to find the perpetrators of an attack on the Abepura police station that had taken place earlier. This reportedly led to torture, police violence, extra-judicial killings, forced eviction, arbitrary arrests and detentions, and unfair trials.

Wasior (June 13, 2001): This case occurred in Wondiboi village of Wasior district, Papua. Five members of Mobil Brigade of the Police (Brimob) and one civilian were killed in base camp of the commercial company CV Vatika Papua Perkasa. Subsequently a police operation was conducted by Manokwari district police during which grave human rights violations were committed against local residents.

Wamena (April 4, 2003): This incident was triggered by a break-in at the Military District Command 1702 (Kodim) of Jaya Wijaya Regency in Papua. Thieves got away with 29 guns and 3500 bullets. After this incident, the Kodim conducted a military operation during which torture, shootings and summary executions, as well as the burning of a school and clinic took place.

Recent cases of violence in the West Papuan highlands gave more evidence of the systematic nature of human rights violations committed by security forces against indigenous Papuans. The AHRC is of the view that the situation in Papua, consisting of intimidation, destruction of property, arbitrary arrests and detention, torture and extra-judicial killings, amounts to a gross violation of human rights. The AHRC therefore urges Komnas HAM to conduct inquiries regarding these violations with a view to bringing the situation into the human rights court process.

2. Freedom of religion

The AHRC will first highlight the protection of religious freedom, as this has become of increased concern in 2010, due to a series of setbacks experienced during the year. Several attacks by fundamentalist groups against members of religious minorities took place and were accompanied by inaction that equates to acquiescence by the police. The police claimed that it doesn't have enough personnel at the sites of these attacks to prevent them, although the AHRC believes that a major cause for the inaction is the close linkages between the police and the groups that are carrying out the attacks.

The political influence of mainstream religious groups has increased, as has the fundamentalist views among them. Neither the government nor local officials and the police have taken a strong stance concerning the protection of religious minorities.

After members of the Batak Christian Protestant Church (HKBP) in Ciketing, West Java were stabbed and beaten by Islamists in September 2010, the mayor prohibited members of the HKBP from worshipping in the city, justifying this by citing security problems caused by the worship activities. On September 15, the Jakarta area military commander, Jakarta area police, the general secretary and the director general of the Ministry of the Interior, and the Department of Religion decided in a meeting that the church should conduct its worship in a different location. Hundreds of security forces stopped the HKBP from entering their property for the worship service, on the following Sunday rather than protecting their peaceful activities.

In October 2010, the Sepatan Baptist Christian Church (GKB Sepatan) in Banten Province was prohibited from continuing to worship in the congregation pastor's home. Islamic groups had pressured local officials to prohibit worship by the GKB Sepatan completely, but the church resisted threats and harassments.

The National Police have admitted that in many in cases of violent attacks, the Islamic Defenders Front (FPI) is allegedly responsible, but the police have done little to ensure that the FPI halt these attacks. The FPI is reported to maintain close links with police and military and aims at establishing Islamic Sharia law in Indonesia. The former head of the National Police, Police General Bambang Hendarso Danuri, had committed, while still in office, to follow up on the incidents and to address the problem. His successor Police General Timur Pradopo, who is alleged to have close links with FPI will now have to implement this commitment.

3. Human Rights Defenders and Freedom of Expression

Media and the Fight Against Corruption

2010 included a series of incidents that speak to the Indonesian authorities' increased undermining of the freedom of expression, through intimidation and even killing of persons exercising this right. In particular, members of the media who reported on the sensitive issue of corruption faced reprisals by State-agents. Given the effect that corruption has on the delivery of justice and the enjoyment of human rights in Indonesia, the AHRC considers that media efforts to expose corruption are important contributions to the fight against impunity, the reform of public institutions and ensuring accountability. Such activities play a key role in the development of effective systems for the protection of human rights. The discussion of other sensitive issues, such

as the 1965 massacres in Indonesia, the past gross abuses in Timor Leste or the ongoing grave situation in West Papua, have been obstructed by the banning of books through the AG or the censoring of movies. The banning of books was declared void by the Constitutional Court later. This constitutional review presents an important step forward in terms of protection of the freedom of expression in 2010.

The AHRC welcomes the initiative by the Ministry of Law and Human Rights as well as the initiative of the National Human Rights Commission to conduct research and consultations with the view to developing processes and mechanisms to improve the security situation for human rights defenders. The processes have yet to result in the development of legislation or other mechanisms, and the AHRC urges the government to develop and implement an effective protection system for human rights defenders through this initiative. In particular, the Ministry should ensure the timely completion of the draft and its submission to the parliament for adoption.

While the media largely resisted attempts to limit their freedom, journalists in remote areas faced a very hostile climate when reporting on corruption or military issues including killing and threats.

The State's Witness and Victims Protection Agency has so far failed to act to protect members of the media reporting on corruption and to prevent the attacks that such persons have been subjected to. In July an anti-corruption activist was attacked and injured with a machete, reportedly for his involvement in the preparation of a report by the Jakarta based NGO, Indonesian Corruption Watch. See the AHRC case at the end of this section. Some days earlier on July 7, the headquarters of Indonesia's main weekly political magazine, called Tempo, was attacked with three Molotov cocktails. The incident is widely believed to be a reprisal following the magazine's earlier detailed reporting about six police generals' unexplainably large bank accounts. An unidentified group reportedly bought 30000 copies of the publication by 4am on the day of publication of this issue, resulting in the magazine being unavailable to others for several days while further copies were being printed. It is thought the group were acting on behalf of the police.



Cover of Tempo issue titled Fat Bank Account of a Police Officer

On July 30, Mr. Ardiansyah Matra's, a journalist in Papua who had reported about a controversial investment project supported by local politicians, which is thought to

have involved corruption, was found dead in a river. His injuries give rise to suspicion that he may have been killed. Journalists in the south Papuan Merauke area where he was working had earlier received threatening messages, including death threats. While the police claim that his death was a suicide, the National Human Rights Commission have requested the police to take more testimonies and to investigate all allegations of threatening messages. Five days earlier the bureau chief of Kompas' office - Indonesia's most widely read newspaper - in East Kalimantan was reported dead. He had reported on environmental issues.



Mr. Ardiansyah Matra'is,
source: Kebebasan

The law on Securing Printed Material, enacted in 1963, during the Sukarno era, gave the Attorney General the power to ban books in order to protect public order, until the law was reviewed by the Constitutional Court in October 2010. In late December 2009, the Attorney General's Office had announced the banning of five books covering subjects including human rights in Papua, religious diversity, and the 1965 massacres that occurred as part of Suharto's rise to power. According to then-Attorney-General, Hendarman Supandji, these books could "erode public confidence in the government, cause moral decadence or disturb the national ideology, economy, culture and security."

22 books have been banned in the last six years. On December 23, 2009, the Attorney General's Office announced the banning of five books, including *Pretext for Mass Murder: The September 30 Movement and Suharto's Coup*, by John Roosa.

In October 2010, the Constitutional Court of Indonesia ruled that the law was anti-constitutional and therefore no longer binding, removing the Attorney General's power to censor books.

However, the film censorship board (LSF) has banned several movies, in particular those covering controversial issues related

Pretext for Mass Murder The September 30 Movement and Suharto's Coup was banned for most of 2010. In it Canadian Dr. John Roosa analyzes the September 30th Movement and explains how it led to mass killings and the overthrow of President Sukarno. In 1965, a rumour spread that a secret communist movement was plotting to overthrow President Sukarno. General Suharto took command of the army and called for a campaign against communist suspects, which led to the killings of thousands of ordinary Indonesians and Suharto's seizure of power.

Read more <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-049-2010>

to Timor Leste. The body dates back to the Dutch colonial period and is comprised of members of the government, military, religious groups, the police and the national intelligence agency. Its decisions lack transparency. The Australian film *Balibo* was banned at the end of 2009 from Indonesian cinemas. Mukhlis Paeni, the head of the LSF, said the movie was politically dangerous. It depicts the killing of five Australian journalists by the Indonesian army during the invasion of Timor in 1975. An administrative court upheld the banning in June 2010.

Case examples:

Anti-corruption activist maimed in South Jakarta

Unknown assailants attacked Tama Satrya Langkun, an anti-corruption activist in Jakarta with a machete on July 8, 2010. There are serious concerns that the attack is connected to his contribution to the controversial report published by Indonesia Corruption Watch (ICW) prior to this attack. The attack also follows in the aftermath of the bombing of *Tempo* magazine's office a few days earlier, when *Tempo* magazine reported on the matter. Further case details are available here: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-100-2010/>

Impunity for military officer in Aceh who threatened to kill a journalist for reporting on illegal logging

After reporting about an illegal logging business and the possible involvement of the police and the army, against the request of Lieutenant Amin, journalist Mr. Ahmadi was summoned on 21 May, 2010, by Lt. Amin. The officer reportedly beat Mr. Ahmadi and threatened him and his family if he didn't change or retract the content of the article. Higher-ranking military officers later apologized to Mr. Ahmadi, but no further legal action had been taken at the time of writing, especially since this case cannot be tried in a civil court. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-079-2010>

Police shut down and revoke the licence of a radio station for broadcasting on rights issues

Radio Era Baru was forcibly shut down on March 4, 2010, by the police, reportedly in response to pressure from Chinese officials, who objected to the station's airing of criticism of Beijing's human rights record. The Indonesian Broadcasting Commission refused to renew the station's licence, ostensibly because there was an overlap of the use of frequencies with other stations. The radio director filed against the cancellation of the broadcasting license to a civilian court in 2008 and lost, and is now appealing the

case before the Supreme Court. On 10 March, 2010, the Indonesian Human Rights Commission (Komnas HAM) publicly urged the Indonesian Broadcasting Commission to explain its actions. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-045-2010>

Dozens are injured in police attacks during protests against alleged land grabbing

On July 15, 2009, the Indonesian police shot at, arrested and intimidated peasants who were protesting against the alleged illegal occupation of their land by a government-owned plantation company, PT Perkebunan Nusantara (PTPN). Dozens of peasants been injured by police violence during the last year with at least 11 shot; 13 face criminal trials for their protest actions, whereas no reports were filed against the PTPN employees. During the following days police reportedly conducted aggressive sweeping operations in the local villages and arrested several more land workers for their role in the protests, while intimidating others. Article 160 (disobedience against public authorities) and 212 (resistance and rebellion) of the Indonesian Penal Code (KUHP) appear to have been used questionably, in violation of the workers' rights to free expression and association. Please see the full case at:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-171-2009>

4. The Judicial Mafia and the need for effective oversight of the Judiciary

Corruption in the Indonesian judiciary is perceived as endemic and has in recent years been referred to as the Judicial Mafia by the media and civil society.

Organised corruption in judicial matters illustrates a systemic problem that can only be addressed by independent bodies. The judicial mafia is not limited to corrupt activities in the judiciary but plays a role in other institutions of the criminal justice system. At the police level this mafia's presence is felt through arbitrary arrests and detentions, reporting and investigations on fabricated charges, confiscation of documentation etc. At the court level corruption leads to the postponement of sentencing, the manipulation of facts, the non-application of sentences and the application of inappropriate laws. Case examples detailed below show people facing years in prison for petty crimes, while others receive no punishment for serious crimes or bribe their way into luxurious prison cells.

One of the recent corruption cases which illustrates the mafia's power is the attempt to weaken the Corruption Eradication Commission (KPK) by the National Police in October 2009. Criminal charges were filed by the National Police against two KPK commissioners, Chandra M. Hamzah and Bibit Samad Riyanto. However, this case was exposed as being a fabrication concocted by members of Attorney General's office and the

National Police through the public broadcasting of a wiretapped telephone conversation between the plotters. The widely publicised incident forced President Yudhoyono to publicly support the KPK and its work, and is a significant embarrassment for the police and the AG's office. The President, still in his first 100 days in office since his re-election, followed up by promising to put an end to the judicial mafia phenomenon in Indonesia. His first move was to set up a Judicial Mafia Taskforce for 3 years to combat the practices and ensure law enforcement.

In July 2010 several members of the House of Representatives' Commission III on law and human rights demanded that the President dissolve the taskforce, claiming that it had overstepped its authorities by acting as a "super-body" and that it were driven by personal interests¹. These members of the parliamentary commission stated that the taskforce was not acting concerning cases closely related to the President and his allies, and lacked impartiality as a result. However, while the taskforce lacks direct constitutional power and independence and therefore has shortcomings, the AHRC believes that it does still play an important intermediary role in addressing the issue of judicial corruption.

A significant problem relating to the functioning of the judiciary relates to flaws in the Judicial Commission that are permitting the continuation of corruption and cronyism. With the passing of the 3rd constitutional amendment in November 2001, the Judicial Commission was established as a body to ensure a checks and balances system for the judiciary. It was empowered to recommend candidates for the Indonesian Supreme Court and to monitor the conduct of judges. The current seven members of the Judicial Commission were appointed by the President with the agreement of the People's Representative Council in August 2005.

In December 2010 the parliamentary commission III selected seven new members for the judicial commission. This selection came late due to lack of qualified applications. Prof. Eman Suparman was elected as their chair by the seven commissioners. The commissioners announced to set up new and strong regulations for their internal processes. This could give the commission enough momentum to regain some of its past strength. Indonesia Corruption Watch (ICW) deplors that the delays to the recent selection of the Judicial Commission's membership has resulted in the President prolonging the tenure of the existing commissioners. According to ICW it is an administrative violation that could eventually paralyse the Commission.

The commission's authority had earlier been challenged through an application by Supreme Court judges to the Constitutional Court for a judicial review of the Law

1 For more information concerning this please see here: <http://www.thejakartapost.com/news/2010/07/31/dissolution-sought-judicial-mafia-taskforce.html>

22/2004 which implements the Commission's constitutional mandate. The application for review claims that the commission interfered with judges' independence in deciding on cases. This led to the Constitutional Court's decision that nullified the Judicial Commission's monitoring functions as they were laid out in the law, stating that the law's formulation in that regard leaves too much uncertainty. The Judicial Commission's function is currently reduced to the proposal of candidates for the appointment of Supreme Court justices, until the parliament creates a new judicial commission law. This process may take several years.

The AHRC emphasizes the need for an effective, credible and independent body to oversee judicial conduct. The Judicial Commission law should be re-drafted by the parliament to include oversight functions to ensure the proper conduct of the judiciary, in line with the body's Constitutional mandate "of overseeing and upholding the honour, dignity and behaviour of judges."

5. Arbitrary arrests, torture and extra-judicial killings by the police persist

Despite the adoption in 2009 of new police regulations which are supposed to ensure the implementation of Indonesia's human rights obligations and expressly prohibit torture, the use of torture continued to be widespread in the country as of the end of 2010. While the code looks good on paper, it has not been effectively introduced into police practices since there was no internal system to disseminate the code or monitor its implementation. The standard operation procedures have not been reviewed in order to bring them in line with the provisions included in the code. A lack of systems to ensure accountability of members of the police and delays in criminalizing torture through a review of the Penal Code are the main factors that enable the continuing use of torture by the police. The problem is also the same for the military in areas in which it is deployed, such as parts of Indonesia with armed separatist movements. The AHRC published a video showing the military's involvement in the ill-treatment and torture of indigenous Papuans in October 2010, which prompted the military to admit that members of the military were involved in such acts. However, as 2010 came to an end, there was little to indicate that even in such a well-publicised case would impunity be successfully challenged. Please read the section on Papua for more information on this case.

In its approach to overcome the militarised image of the Indonesian National Police, the police set up a long-term strategic plan, according to which it would spend 2005 – 2009 building public trust. 2010 - 2015 would be used to build partnerships and 2015 - 2028 would be a period dedicated to "striving for excellence." Assessments by civil society groups assert that the trust-building phase has not been conducted successfully. The police is still widely regarded as being corrupt and rife with misconduct by individual members of the police.

In order to strengthen the accountability of the police, the National Police Commission (KOMPOLNAS) would have to be given a stronger mandate and greater independence. KOMPOLNAS should be given the power to investigate allegations of police misconduct that are brought to them. It should be given a role in police internal policy development to allow for internal reforms and it should be given an independent budget. KOMPOLNAS is currently funded by the police.

The planned penal code review has not been completed, and therefore the act of torture has still not been criminalized.

Examples of human rights violations by the Indonesian police:

Innocent man allegedly arrested over false charges after illegal investigation process

Mr. Aan was interrogated by the police a first time on December 7, 2009, in the Artha Graha commercial office building in Jakarta, regarding a drug case. He was interrogated a second time a week later at the same place, for gun possession. During his interrogation, he was severely beaten by a civilian who is allegedly involved in police corruption. The officers did nothing to stop him, which amounts to torture. The police further subjected him to humiliating treatment, forcing him to remove his clothes during interrogation, before taking him to the police station, where he was denied the right to see a lawyer or a doctor and was again interrogated. He was convicted of drug possession without any evidence and detained. His wife and KontraS filed several complaints to several police units and to the National Commission for Human Rights.

In an update to the case issued on 26 May 2010 (AHRC-UAU-022-2010), the AHRC reported that as of May 2010, Mr. Aan had been detained for more than five months, before judges decided that the drugs charge was fabricated and that Mr. Aan should be acquitted. However, no compensation has been arranged, and no legal actions have been taken against the three police officers, despite the complaints Mr. Aan's wife has filed. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-026-2010>

Innocent person arrested on false charges and tortured in police custody

Police officers of the sector police of the Beji sub-district of Depok city in West Java illegally arrested Mr. J.J. Rizal on December 5, 2009, on false charges of being a pickpocket. Some of them did not wear uniforms during the arrest. The victim was publicly beaten by the officers, which resulted in serious injuries, including damage to his hearing. Mr. Rizal filed a complaint against the police and an internal disciplinary unit forced the officers to apologize.

In an update (AHRC-UAU-008-2010) the AHRC reported in February 2010 that the four policemen responsible for Mr. J.J. Rizal's illegal arrest and torture have been charged with police violence and arrested. The case has been delivered to the high office of the public prosecutor in Bandung, West Java, but due to delays in the launching of the prosecution, all the alleged perpetrators have been released.

In a second update (AHRC-UAU-012-2010) the AHRC reported that on March 3, 2010, three of the four policemen responsible for Mr. J.J. Rizal's illegal arrest and torture have been convicted and sentenced to three months imprisonment each, for violence openly committed by united forces and maltreatment. Torture has not yet been criminalized; therefore perpetrators are not adequately convicted and punished. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2009>

Police officers torture a young woman to force her husband to surrender

On July 24, 2009, Ms. Mulyana, 24, was illegally arrested by Jakarta Metropolitan police officers and interrogated about a bank robbery in which her husband was alleged to have been involved. During her arrest and her two-day detention at the police station, she was tortured using electric shocks. The police officers also beat her and pulled her around by her hair. She was tortured in front of her husband, after he surrendered to the police. She was kept in detention for five more days, without any warrant. After her release, she received threatening phone calls from the police. She filed a report with the internal disciplinary unit of the national police headquarters, with the help of NGOs. Further case details are available here: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-175-2009>

Extra-judicial killings of two men while in the custody of the Aceh police

Mr. Muhammad Jabal ben Abdul Azis and Mr. Basri were arrested by the police on March 24, 2010, and were beaten during their arrest. Later that night, they were shot to death in what the police claim was a shoot-out between police and militants. However, the victims were unarmed and in custody when they were shot. Moreover, along with the bullet wounds, it appeared that both men had bled profusely from the head before being shot. This is one among many



**Ms. Mulyana shows wounds
from electric shocks
Source: KontraS**

cases of serious abuses by the police in Aceh. Further case details are available here: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-058-2010>

Police shoot to death two farmers in Pekanbaru

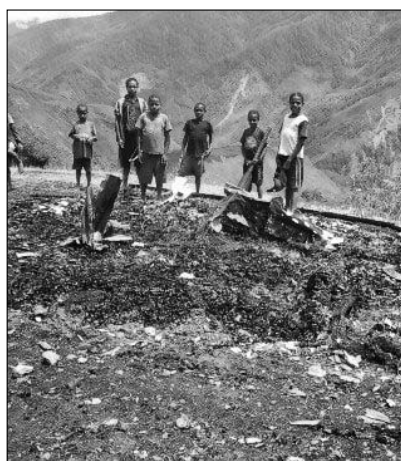
During a protest in Koto Cengar village on June 8, 2010 against palm-producing company, Tribakti Sari Mas, Inc. (PT TBS), two villagers, Ms. Yusniar and Mr. Disman were shot dead. The police claims the villagers attacked first, but according to eyewitnesses the police provoked the villagers and then began firing upon them. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-087-2010>.

6. The human rights situation in Papua and the need for reform of the military

The provinces of Papua and West Papua remain beset by high levels of militarisation by the Indonesian authorities, and this continues to be the source of a wide range of serious human rights violations. The military have increased their operations in the Papuan highlands in 2010, according to reports received by the AHRC. In particular, the military has launched repeated “sweeping operations” in the area around Puncak Jaya. These operations have reportedly resulted in the burning of houses, the killing of livestock, rapes, torture and killings. This show of force by the military is intended to intimidate suspected separatists and forms part of a crack-down on separatist movements in Papua.

In October 2010, the AHRC published a video showing members of the Indonesian military torturing indigenous Papuans who were suspected of supporting separatists. The release of the video triggered strong international outrage concerning the case and the wider actions by the military in Papua. The AHRC also posted the video on Youtube, but this was taken down within 24 hours. After this, the AHRC hosted the video on its website, which then became the target of a sophisticated cyber attack from unidentified sources that aimed at making the site’s content unavailable. This attack succeeded in making the AHRC’s web-content unavailable for several days. The AHRC suspects the involvement of Indonesian authorities in the attack. Other websites that had also published the video, also reportedly came under similar attacks. A detailed witness testimony



Burned village houses in Papua’s highlands. Source: local activists

video concerning torture survivor Tuanliwor Kiwo was published in early November 2010. The military claims not to be able to take action as they can't identify the perpetrators from the video itself.

The cases of violence by State security forces, such as the recent shooting by Wamena police into a crowd of protesters (see case below) or use of torture by the military as shown in the video, are clear examples of the authorities' readiness to use excessive force.



Scenes from the video of the torture of two indigenous Papuans by Indonesian military

This can only be enabled in a system where State agents are confident that they will enjoy impunity if they commit even serious abuses.

The military enjoys *de jure* impunity, through Indonesia's military law, which ensures that members of the military cannot be tried by civilian courts. Military tribunals lack transparency and are incapable of effectively upholding human rights standards. Typically give only very lenient punishments to soldiers, even concerning grave abuses. The national parliament has issued a decree to review the military law, but the discussions concerning this review have stalled due to opposition from some parties who continue to work to ensure that the military retains impunity. A review is urgently needed in order to provide adequate and impartial accountability mechanisms for members of the military, which at present effectively act beyond and above the law, especially in areas such as West Papua where they are deployed and are carrying out regular operations that often result in serious human rights violations against peaceful, innocent civilians.

The authorities have faced increasing criticism after their lack of implementation of the autonomy law for the Papuan provinces. Increasingly, groups of indigenous Papuans increasingly reject the law as a whole as a result. The law is viewed by many as providing the authorities with a smoke-screen that they use to convince critics that they are engaged in protecting the rights and the development



Three military men accused of violence against indigenous persons in Papua Province, Indonesia, faced trial by a military tribunal in 2010. They received only lenient punishment as a result of the trial. Source: AFP

of the indigenous population in Papua. In reality, indigenous Papuans continue to live in poverty and considerable social inequality, while Indonesia continues to plunder the province's significant natural resources.

Examples of human rights violations in Papua and West Papua provinces:

Indiscriminate shooting at a demonstration by Wamena police results in one dead and two injured

On October 4, 2010, the police in Wamena, Papua province, indiscriminately shot live ammunition at a crowd of demonstrators. They killed Ismail Lokobal, seriously wounded Frans Lokobal and Amos Wetipo (which resulted in him slipping into a coma) and arrested at least four other persons. The demonstration resulted from the confiscation of an air cargo delivery to a local community security organization, following which organisation members protested at the airport office to protest against the confiscation. Further case details are available here:

<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-162-2010/>

No investigations have been started into the torture of an indigenous Papuan, detained in a case of mistaken identity

Mr. Kiten Tabuni, 23, was arbitrarily arrested after having been mistaken for a suspect in a murder case on July 23, 2009. He was brought to the KP3 airport security unit, the police office at the Wamena airport in Papua, where the officers badly beat him to force a confession, using their fists, regulation weapons and helmets, and kicked his face, head and legs. He was brought to a doctor to be examined only after his family came to the Jayawijaya police headquarters to protest. He was then released and had to spend eight days at the hospital for the torture he suffered. No investigation has been carried out into the allegations of torture and no compensation has been offered to the victim. Further case details are available here: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-168-2009>.

Villagers living in famine-affected areas in 2009 have not received adequate food and medical aid

In January 2009, 113 people died of starvation in Yahukimo, Papua province after a devastating crop failure which further aggravated their existing food insecurity. The rice subsidies that had been distributed by the government were woefully inadequate and took too long to arrive. In addition to that, medical assistance has never been distributed to date. It is the Indonesian state's responsibility to guarantee right to food for all people, according to domestic and international law. Further case details are available here:

<http://www.humanrights.asia/news/hunger-alerts/AHRC-HAU-001-2010>

7. UPR implementation

The Universal Periodic Review mechanism of the UN Human Rights Council, is one of the positive features of the young international body. All the members of the United Nations have to undergo a review of the human rights situation in their countries every four years under this system. All human rights can be considered under the review, so it is not dependent on the State having ratified particular international legal instruments.

The AHRC continued to monitor the implementation of the recommendations made to Indonesia as part of the UPR process in March 2008. [A/HRC/8/23 Report of the Working Group on the Universal Periodic Review – Indonesia: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ID/A_HRC_8_23_Indonesia_E.pdf].

The country will again be reviewed in 2012, so 2010 marks the half-way point between reviews and should therefore have already seen some measures by the authorities to implement the UPR's outcomes. The AHRC continues to receive information concerning human rights abuses that allow it to make an assessment of the state of this implementation. As of the end of 2010, over two years after Indonesia promised the international community that it would address a number of UPR recommendations, most of them lack implementation.

Indonesia did not accept the following recommendations made by members of the Human Rights Council UPR Working Group during the review:

- further measures to address the threats against Ahmadiyah families following a fatwa banning the Ahmadiyah
- the death penalty be abolished.
- standing invitation to all special procedures

The UPR report states: *These recommendations formulated during the interactive dialogue have been examined by Indonesia and the recommendations listed below enjoy the support of Indonesia:*

1. *Indonesia is commended for its efforts in the field of human rights training and education and is encouraged to continue in this regard, and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces.*

While some training activities took place for the security forces that included human rights aspects, there has been little to indicate that any human rights standards or practices have been included in the police or military's methods of work and policies.

2. *Indonesia, in line with its National Plan of Action, is encouraged to follow through on its intention to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment. Indonesia is further encouraged to consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.*

Indonesia's 2005 - 2009 National Plan of Action was not implemented until the end of 2010. No successor plan or implementation strategy was devised to follow up on the remaining required reforms since the end of 2009. Indonesia has not acceded to the Rome Statute of the International Criminal Court or to the two Optional Protocols to the Convention on the Rights of the Child. Indonesia had not signed or ratified the Optional Protocol to the Convention against Torture as of the end of 2010, despite demands from national and international civil society groups. Indonesia did, however, sign the International Convention on the Protection of All Persons from Enforced Disappearance in September 2010.

3. *Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.*

Attacks against human rights defenders including the killing of journalists working on human rights-related themes continued in 2010 as this AHRC report has presented in detail above. The climate for human rights defenders remains oppressive and hostile. This is in particular the case in remote regions such as Papua or the Maluku. Intimidation and arrests in Papua illustrate how this recommendation has not in any sense been implemented to date.

Many bureaucratic hurdles exist for civil society groups who attempt to interact actively in cooperation with the police to bring about human rights reforms. The police continue to be a closed institution in terms of dialogue with civil society.

It is acknowledged that the National Human Rights Commission & the Ministry for law and human rights have conducted research on the problem of human rights defenders. None of this research had resulted in the increased protection of defenders, however, as of the end of 2010. It is expected that possible legislation in this regard may be introduced, but is likely to also suffer from delays in the parliamentary debate that have prevented the criminalisation of torture to date, despite this being a process that has been ongoing for years. As several alleged perpetrators of human rights are still active in politics and

political parties, attempts to delay legislation that could result in accountability have been successful in the past.

4. *Welcomes Indonesia's reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard.*

While the President of Indonesia made some commitments to formally acknowledge the victimization of many who suffered from serious human rights violations under the Suharto regime, no judicial progress is at present being made in terms of providing effective remedies to the victims. The President and the Attorney General's Office continue to block efforts to bring all cases of gross human rights violations before a human rights court.

5. *While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.*

Since the fall of Suharto in 1998 Indonesia has embarked on several important reforms such as the creation of an active national human rights institution, an independent anti-corruption body and other judicial reforms. However, the list of important pending human rights reforms over the last years has not considerably shortened. The criminalization of torture and the reform of the military law to hold members of the military accountable to civil courts in cases of crimes committed against civilians have been discussed for years without legislation being produced.

6. *The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders.*

The draft code has not yet been adopted. Discussions between the Ministry of Law and Human Rights and the Parliament continue to produce these delays. The adoption of the code in the near future appears unlikely and while this is the cases impunity for torture remains and torture remains widespread and systematically used by the police and the security forces to obtain information and to intimidate populations where they are deployed.

7. *Capacity-building/cooperation/sharing of best practices:*

- (a) *Indonesia is encouraged to consider engaging in further dialogue at the regional and international level, and share best practices, as requested by States during the interactive dialogue;*

- (b) *Indonesia is encouraged to identify its capacity building needs related to the Universal Periodic Review follow-up and seek regional and international cooperation in this regard, including through integration of the Universal Periodic Review recommendations, as appropriate, into its national development strategy and into its dialogue with relevant stakeholders through existing mechanisms. Such capacity-building needs could pertain, inter alia, to issues such as harmonization of local laws with national and international standards or to strengthening national human rights institutions;*
- (c) *It was recommended that additional capacity-building measures be taken in support of programmes and projects on women and children.*

While a human rights dialogue with the EU and member countries was established, no national development strategy was devised to implement the UPR recommendations in a timely manner. The Sharia law applied in Aceh remains in contradiction with the constitution and international standards. The judiciary has not played an active role to review this situation.

Indonesia furthermore made the following voluntary commitments:

The State under review will involve civil society and national human rights institutions in consultation and socialization of the Universal Periodic Review procedure until its next Universal Periodic Review.

According to the information received, no formal process for interaction between the government and civil society groups has been devised or initiated since this commitment was made. Local human rights groups continue to demand a wider exchange on human rights reforms and the implementation of human rights principles.

8. Recommendations

The AHRC urges the Indonesian Government to take the following key actions in order to begin to effectively address the numerous human rights violations taking place, as well as the deeply entrenched system of impunity in the country:

- Criminalize torture in line with international law and standards
- Bring the military law review back on the national legislation programme for 2011 and reform the military law to enable members of the military to be held accountable for crimes committed against civilians in a civilian court, according to criminal procedure law.
- Ensure the freedom of religion and the protection of all religious minorities, notably by launching full, effective and transparent investigations into all cases in which police

officials have failed to intervene to protect members of such minorities from violent attacks in recent years. The national police must impartially protect the rights of all religious groups and all members of the police that allow violent attacks on religious minorities to be carried out without taking action must be punished, as acquiescence by State agents is a major factor that enables further violence of this type.

- Review the law on the Judicial Commission in order to equip it with clear authority to ensure the proper conduct of judges.
- Ensure that the National Police Commission (KOMPOLNAS) is given a stronger mandate and greater independence, notably by providing it with an independent budget that enables it to be more independent from the police. KOMPOLNAS must be given the power to investigate all allegations of police misconduct that are brought to them, and should be given a role in police internal policy development to allow for internal reforms.
- Draw up a strategic National Action Plan for human rights reforms, as the previous one for 2004-2009 has now come to an end, but many of its objectives have yet to be implemented and a new National Action Plan is therefore required and its implementation closely monitored.

Specifically concerning the Papuan Provinces, the Indonesian Government must:

- Allow international human rights monitors, development organisations and journalists unhindered access to the Papuan provinces.
- Change the “security approach” being used in Papua by the military, which includes sweeping operations and intimidation by the security forces and strong public presence of armed forces. The heavy militarisation in Papua is leading to widespread and grave human rights violations.
- Ensure that the police rather than military are deployed to ensure the rule of law in all areas of the Papuan provinces, including in cases of civil unrest.
- Komnas HAM should conduct inquiries regarding widespread violence by security forces in the Papuan provinces according to the Human Rights Court law.
- Respect and protect the rights to the freedom of expression and assembly, in particular by ensuring that peaceful demonstrations and the peaceful expression of political views are protected. Furthermore, all political prisoners in the Papuan provinces must be released.
- Ensure that a special taskforce under the Anti-Corruption Commission (KPK) investigates the endemic corruption in the public sector in the Papuan provinces, in order to ensure the effective use of autonomy law funds for the public good. This should include the establishment of free health care and access to education, as provided for in the law.

- Halt the use of the article of the penal code concerning “treason” that is being abusively used against Papuans who peacefully voice their views. Opposing political views should be met with dialogue and public consultations rather than repression.
- All past gross violations of human rights that occurred in the Papuan Provinces under the control of the Indonesian military must be promptly and fully investigated. Victims must be provided with effective remedies and all perpetrators must be brought to justice.

Annex I - Abbreviations

AG – Attorney General

AGO - Attorney General's Office

Brimob - Mobile Brigades of the Police

CTF – Truth and Friendship Commission

DPR - House of Representatives

ICW - Indonesian Corruption Watch

IDR - Indonesian Rupiah

KASUM - Solidarity Action Committee for Munir

Kodim - District Military Command

Komnas HAM - National Commission for Human Rights

Kopassus - Special Force Command

KPK - Commission against Corruption / Corruption Eradication Commission

LSF - Indonesia's Film Censorship Board

LPSK - Commission for witness and victim protection

OPM - Free Papua Movement

PDP - Papuan Tribal Presidium

POLRI - National Police of Indonesia

TNI - National Army of Indonesia

TRC - Truth and Reconciliation Commission

UPR – Universal Periodic Review