



ASIAN HUMAN RIGHTS COMMISSION

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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: Indonesia - the sham trial of human rights defender Munir Said Thalib highlights the need for judicial and legal system reform

On this Human Rights Day, the Asian Human Rights Commission (AHRC) would like to direct your attention to the state of the Indonesian justice system. Since the country's first democratic presidential election of 2004, the ordinary Indonesian citizen has not seen an improvement in the protection of her rights and violence continues to plague Indonesian society. The AHRC believes that this has much to do with the country's inept judicial and legal system.

The Indonesian legal system is such that torture, disappearances and other grave human rights abuses are not considered crimes and are not punishable by the penal code. This is the case even though Indonesia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998. While torture is considered a crime against humanity under Law No. 26 of 2000 in the Human Rights Court Act, the penal code does not define the act of torture and has no specific provisions for the prosecution of torture. At present, torture is treated in the same way as ordinary maltreatment between civilians. Furthermore, there are no provisions for the compensation of victims and no complaint mechanisms through which abuse can be reported.

Without relevant laws against human rights violations as well as the effective enforcement of these laws, it is not possible for grave human rights abuses to be addressed or for victims to be served justice. Instead, the perpetrators are granted impunity and encouraged to commit further abuses. The numerous gross abuses that continue to haunt Indonesia after so many years include the 1965-66 massacres, the 1998 May riots, the Trisakti and Semanggi killings, the Tanjung Priok and Abepura cases. In the latter two cases, the police and military officers charged with committing violations were recently acquitted by the human rights court. A recent class-action lawsuit filed against the government by victims of the 1965-66 massacres was dismissed by the court on jurisdictional technicalities without taking note of the case merits. While President Yudhoyono presented a 'heroes' award' to the student victims of the Trisakti and Semanggi killings in August 2005, there is no justice for their families. Similarly, the attorney general

refuses to prosecute the perpetrators of the May riots. In this way, the Indonesian legal system offers nothing in the way of redress to victims of human rights abuses.

Most recently, this is visible in the sham trial of human rights defender Munir Said Thalib. At present, the trial into Munir's death is ongoing at the Central Jakarta court, with defendant Polycarpus Budihari Priyanto, a Garuda Indonesia pilot. While summing up on December 1, the prosecution recommended a life sentence for Polycarpus for premeditated murder and the use of false documents. As the sole suspect, Polycarpus is clearly a scapegoat, while those ultimately responsible for Munir's death have yet to be apprehended. The shoddy prosecution stems largely from ineffective police investigation. While Munir's death has received much publicity in Indonesia as well as internationally, this has made little difference in obtaining justice for Munir's family.

Indonesia must therefore be urged to immediately reform its justice system, beginning with the amendment to its torture legislation in accordance with the provisions of the Convention against Torture. The Committee against Torture's recommendations of 2002 require the government to:

Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted so that victims get justice and the perpetrators are punished [A/57/44, paras. 36-46, E. 10].

Indonesia's recent ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights obligates the government to ensure that its laws and institutions protect the rights of its people and provide effective redress. On the occasion of Human Rights Day, it is time for the Indonesian government to demonstrate its commitment to the principles and spirit of the international covenants it is party to.

The Asian Human Rights Commission therefore urges you to exert the authority of your office and pressure the Indonesian government to take concrete measures to this effect. We reiterate that a first step in this direction would be to take action against the perpetrators of human rights abuse in accordance with legal provisions. Until this is done, there can be no effective justice system and no rule of law in the country.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

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A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

INDONESIA: Trial of human rights defender exposes absence of justice and rule of law in Indonesia

The investigation into the death of human rights defender Munir Said Thalib and the subsequent trial, which began in August 2005, is a significant and telling indicator of the dire human rights and rule of law situation within Indonesia.

At present, the trial into Munir's death is ongoing at the Central Jakarta court, with defendant Pollycarpus Budihari Priyanto, a Garuda Indonesia pilot. The hearing of witnesses in Pollycarpus' trial has finished and the trial is set to end in mid-December 2005. While summing up on December 1, the prosecution recommended a life sentence for Pollycarpus for premeditated murder and the use of false documents. As the sole suspect, Pollycarpus is clearly a scapegoat, while those ultimately responsible for Munir's death have yet to be apprehended. The work of the prosecution has been shoddy, which largely stems from the ineffective investigation conducted by the police. Neither the prosecution nor the police have taken into account the findings of the presidential fact-finding team, appointed to investigate Munir's death due to concerns regarding the poor work done by the police. The team submitted its report in June 2005, but it has yet to be made public. Furthermore, during its work, the team was hindered by a lack of cooperation by the state intelligence agency; some senior officers were key suspects but refused to meet with the team. The complete disregard towards the team's report shown by the police as well as the lack of cooperation by the state intelligence agency in meeting with team members show the lack of respect these institutions have for the law and for any commitment made by the Indonesian government towards human rights.

There was a recent attack on Munir's supporters outside the court, prior to the scheduled hearing of a state intelligence agent who had been called twice before but had yet to show up. More than 50 unidentified people attacked those demanding justice for Munir's case. This is not the first attack on Munir's supporters; his family and colleagues have been subjected to threats and intimidation since they began to call for proper investigations into his death last year. The police have investigated none of these attacks and have provided no protection to the victims. While Munir's death has received much publicity in Indonesia and internationally, it has made little difference in obtaining justice for Munir's family. President Susilo Bambang Yudhoyono had made numerous promises regarding Munir's case as well as Indonesia's human rights situation in general after becoming the first directly elected president, but there have been few results. Since the mandate of the fact-finding team expired and they submitted the report, President Yudhoyono has taken no action regarding the case. If this is the redress available for such a prominent case, what is available to the ordinary Indonesian citizen can be imagined.

The reason for such a situation can be found in the country's ineffective justice institutions and poor legal system. The police, prosecution and judiciary are defective and largely incapable of either protecting or promoting the rule of law within the country. A key reason for this is the lack of legal structures that allow for the establishment of the rule of law.

The Indonesian legal system is such that torture, disappearances and other grave human rights abuses are not considered crimes and hence are not punishable by the penal code. This is the case even though Indonesia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998. While torture is considered a crime against humanity under Law No. 26 of 2000 in the Human Rights Court Act, the penal code does not define the act of torture and has no specific provisions for the prosecution of torture. At present, torture is treated in the same way as ordinary maltreatment between civilians. Furthermore, there are no provisions for the compensation of victims and no complaint mechanisms through which abuse can be reported.

Apart from torture, Indonesia has no laws to deal with disappearances and other grave human rights abuses, which has led to many past abuses not being redressed. The 1965-66 massacres are one such atrocity that has yet to be dealt with by the Indonesian government and society, when some half a million to a million unarmed civilians were killed, for alleged communist sympathies. In addition to those killed, hundreds of thousands more were tortured and imprisoned, including political opponents of the ruling regime. The families of those killed or imprisoned were also victimized through a programme of institutional ostracism that denied them the opportunity to engage in normal economic and social life. They have been imprisoned, dismissed from their jobs, denied access to education and ostracised by having ex-tapol (ex-political prisoner) put on their identification documents. This situation continues today, 40 years after the incident.

The Truth and Reconciliation Commission bill, passed by the government in September 2004, is yet another act of injustice delivered to these victims. The bill omits any definition of who is a perpetrator and further forces the victims to forgive their perpetrators if they want compensation; according to the bill's provisions, only when the perpetrators are given amnesty by the government can the victims be given compensation, and amnesty is given after the victims grant forgiveness. While the Commission is at present in the process of being established, it has understandably little support from victims and other concerned groups. A list of commission members is currently pending with the President for final nominations. Without provisions for genuine justice--which would include legal remedies for the prosecution and punishment of the perpetrators as well as compensation for the victims--the Commission is a tool to whitewash the massacre, rather than an attempt at reconciliation.

Furthermore, for this Commission to be effective, the Witness and Victims' Protection Bill pending discussion in the Justice and Human Rights Ministry must be enacted urgently. Without adequate protection to victims of human rights violations, it is not likely that they will come forward with their complaints. All these legal loopholes ensure that perpetrators of the grave human rights violations that have occurred in the last decade have not been prosecuted. The police, prosecution and judiciary all work to grant impunity rather than punish the perpetrators, thereby obstructing the course of justice. The Indonesian government ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in October 2005 and thus has an obligation to ensure that its domestic justice institutions and legal system protect the rights enshrined in these treaties, as well as afford remedies to persons whose rights are violated. The government's reservations on self determination and optional protocol on the death penalty and individual complaint do not detract from this responsibility.

Until recently, the Indonesian police worked under the military and served to repress dissent. Although the two agencies are now separate, the police continue to use militaristic methods in their work, while the military continues to play a significant role in civilian affairs. To illustrate, 51-year-old Bagus Hariyanto was arrested by army officers in Jakarta on October 15, 2005 for stealing the bicycle of one officer. According to eyewitness reports, Bagus was then forced to strip, run and do push ups. He was also tied to a pillar. When Bagus was released the next day--after his family paid USD 27 for the bicycle--he had numerous injuries, including a broken hand. On October 17, Bagus died. An autopsy found that the victim had been attacked by a hard object to his head and had his bones broken.

Immediately after his death, senior army officers attempted to cover up the incident and pay off Bagus' family; while the head of public relations at the Jakarta Military Regional Command told the press that Bagus had died of a drug overdose, another officer gave USD 120 to the family and demanded they sign a letter stating they would not sue the army. Needless to say, no action has been taken to punish the perpetrators or inquire as to why military officers were doing the job of the police in arresting persons suspected of theft.

The Indonesian police are no better when it comes to the investigation of crimes. On September 12, 2005, 28-year-old Sanep was arbitrarily detained and tortured by the Resort Police of Belitung Timur, in an attempt to force him to confess to a theft. Sanep was later released when the officers realized they had the wrong person. These officers have also not been held responsible.

In another instance, the police opened fire on a peasant gathering in Lombok, West Nusa Tenggara Province on September 18, 2005, injuring 37 peasants. The police apparently fired at the crowd without warning after a peasant representative tried to read a public declaration. The group of peasants had gathered to meet with an international delegation of 15 La Via Campesina leaders and representatives from several international NGOs to discuss violations of their rights. However, the license received by the delegation was unexpectedly withdrawn the night before the scheduled visit. On the morning of September 18, local police attempted to dismiss the 700 to 1000 peasants waiting for the La Via Campesina delegation, and then shot without warning.

After meeting with representatives from La Via Campesina and other NGOs, the Indonesian National Police promised to investigate the incident properly. Subsequently, the Indonesian National Police sent a team to Lombok for the investigation. However, instead of investigating the shooting, the police announced that they were searching for 10 suspects who allegedly attacked the police during the gathering. They have not given any information about these suspects to the public as yet. This has increased fear amongst people in the area as they believe they might be arrested at any time.

The Indonesian prosecution system also has many problems. It takes little initiative to investigate cases of human rights abuse and other crimes on its own, instead waiting for political motivation. For this reason, the attorney general of Indonesia has done all but nothing to deliver redress to the victims and survivors of the May 1998 riots and the Trisakti and Semanggi killings. Due to the lack of effective investigation by the prosecution agency into these abuses, concerned groups, including the National Human Rights Commission--Komnas HAM, conducted their own investigations and submitted reports to the attorney general's office. These were overlooked, allegedly due to petty technicalities. The latest reports were submitted early in 2005, also with no result. While President Yudhoyono presented a 'heroes' award' to the student victims of the Trisakti and Semanggi killings on the occasion of Indonesia's national day in August 2005, no justice has been served by way of investigation and prosecution.

Without effective investigation into crimes, it is not possible to prosecute the perpetrators, which is the responsibility of the prosecution department. The prosecuting agency must therefore ensure that effective investigations occur, sufficient evidence is collected and a fair trial ensues. One of the reasons the attorney general refuses to act upon the Trisakti and Semanggi killings is that the Indonesian parliament concluded in 2000 that no violations of human rights had taken place. While this conclusion has been challenged and the parliament is set to reopen investigation of these incidents, the attorney general's office cannot conclusively accept or infer to such political proceedings. Only judicial bodies have the authority to decide whether human rights violations have occurred or not, and it is the attorney general's responsibility to carry out investigations to this effect. One of the key roles of the prosecution and judicial institutions is to provide an effective remedy to victims whose rights have been violated. This is done through prosecuting the perpetrators and punishing them in accordance with international legal principles, as well as awarding suitable compensation to the victims. Not only do these actions serve to redress the wrong done to the victims, but in punishing the perpetrators, a clear message is sent to society that such abuses will not be tolerated. The attorney general of Indonesia however, seems to be sending the message that perpetrators of crimes can walk free, and thereby encouraging future violations.

Similarly, the Indonesian judiciary is also weak and ineffective. In the last few years numerous human rights courts have been set up, purportedly to address the human rights abuses within the country. In practice however, these courts have little authority or effectiveness. To illustrate, nearly all the military and police officers charged with committing human rights violations in East Timor, the Tanjung Priok case and Abepura were acquitted either in the human rights courts, or during appeals in the high court and supreme court. These acquittals occur not only due to a lack of effective investigation and prosecution, but also because judges and other judicial officers are not qualified in international law or human rights principles. A class-action lawsuit against the current and former presidents of Indonesia by a group of individuals imprisoned after the 1965-66 massacres was recently dismissed by the court; the judge decided the case purely on jurisdictional technicalities, not on merits; the court can apparently only hear cases that are filed within a certain period of time after the incident. In this way, the judicial system grants impunity to the perpetrators, while offering nothing to the victims. Even the compensation, restitution and rehabilitation provisions under domestic law are not enforced, as the verdict is always appealed by the perpetrators.

According to Indonesia's domestic legal system, gross human rights violations to be addressed in human rights courts can also be investigated by the National Commission of Human Rights--Komnas HAM. Although the Commission has investigated certain cases of violations, there has been no progress in other cases, such as the 1989 Talangsari case, where several hundred Muslims were attacked and shot at by the military. In other instances the Commission's inquiries are not made public, particularly when senior military officials are involved, such as the 1998 disappearance of students. The Commission's mandate is limited and does not include the investigation of individual cases of human rights abuse. Furthermore, even when the Commission conducts investigations and makes relevant recommendations to government agencies, their findings are usually ignored. It is thus necessary to expand its mandate. The Commission should also promote international laws and mechanisms and encourage state agencies to work within these frameworks.

Lack of action and law enforcement also means that discrimination and violence against civilians as well as minority groups continues within the country. There has been a recent increase in the killing of civilians in Poso, as well as attacks on religious minorities, including Christians and the

Ahmadiyyahs (a minority Muslim group). In response to this spate of violence, the state intelligence and military are attempting to revive a system of infiltration within villages, which will further worsen the situation. This response also indicates the state's total failure to deliver justice.

While the Memorandum of Understanding between the Indonesian government and the Free Aceh Movement of August 15, 2005 is seen as a chance for lessening violence in Aceh, unless the proposed human rights court and truth and reconciliation commission are more effective than those already existing in the country, there will be no justice.

It is thus essential for civil society in Indonesia to vigorously campaign for the reform of justice mechanisms--the police, prosecution and judiciary, as well as other public institutions such as the National Commission of Human Rights. The ratification of international covenants must be used as a basis for such reform, particularly the amending of domestic law to include international provisions. In particular, the domestic law against torture must be immediately revised so that victims get justice and the perpetrators are punished. If the state takes punitive action against its own criminals, the society will begin to trust the national justice system and it will pave the way for the establishment of the rule of law.

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About AHRC The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984