

Asian Indigenous & Tribal Peoples Network

[AITPN has Special Consultative Status with the UN ECOSOC]

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Indonesia:

Transmigration, human rights violations and impunity

[Contribution under the Universal Periodic Review of the Human Rights Council]

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I. Human rights situation on the ground

a. Impunity: Key factor encouraging continued human rights violations

Despite establishment of democracy, the Indonesian military (TNI) plays the central role in law enforcement and therefore, law enforcement remains militaristic. Impunity to the security forces continues to encourage widespread human rights violations. Even the highest judiciary has been acting as the agent of the government by delivering anti-rights judgements. The judiciary failed to establish accountability with regard to the gross human rights violations in East Timor and the murder of prominent human rights defender Munir Said Thalib on 7 September 2004 by exonerating the main accused Polycarpus Budihari Priyanto on 3 October 2006.¹ Earlier, in September 2005, two senior police officers - Brigadier General Johny Wainal Usman and Senior Commissioner Daud Sihombing were acquitted by a Special Human Rights Court in Makassar even after the National Human Rights Commission, Komnas HAM, found them guilty for allowing the killing of three Papuan students and the torture of over 100 others in Abepura on 7 December 2000.² Impunity is all pervasive.

b. Transmigration: The root cause of the conflicts

Serious conflicts following the fall of Soeharto regime in 1998 in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan, among others displaced 1.3 million persons across the Archipelago.³ These conflicts were often described as “civil unrest”, “separatist” and “inter-communal violence”. In reality, these conflicts took place between the transmigrasis - an estimated 3.6 million Javanese, Madurese and

¹. Indonesia: Acquittal Bolsters Impunity for Munir’s Murder, HRW, October 6, 2006

². West Papua Crisis: Don’t blame the Safe Haven, Asian Centre for Human Rights, 29 March 2006.

³. Specific groups and individuals: Mass Exoduses and displaced persons – Report of the representative of the Secretary-General on Internally Displaced Persons submitted in accordance with commission resolution 2001/54, E/CN.4/2002/95/Add.2, 15 February 2002 (Economic and Social Council)

Balinese – who were planted on the lands of indigenous peoples across the Islands. The Operations Evaluation Department of World Bank which studied five out of seven transmigration programmes supported by the World Bank in its report in January 1994 stated, “Transmigration had a major negative and probably irreversible impact on indigenous people, particularly the Kubu Rimba. With the extensive forest clearing now underway in T2 as part of the development of the uncleared areas to oil palm, the Kubu Rimba have been (and are being) displaced”.⁴ These negative effects have never been addressed by either the World Bank or Indonesian government and continue to underlie the conflicts in Indonesia.

c. The West Papua imbroglio:

A scrutiny of the human rights situation in Indonesia cannot be complete without reference to the situation in West Papua. It does not necessarily mean debating whether Papua was allowed to exercise the right of self-determination under the Act of Free Choice. But the denial of self-determination which Indonesia promised under the Papua Special Autonomy Law No. 21/2001 and continued flagrant human rights violations in West Papua where foreigners are not given free access must be raised.

Apart from many prisoners of conscience, West Papua continues to witness serious human rights violations. The World Council of Churches stated that the number of reported cases of extra-judicial killings and arbitrary detention and torture reached an all time high of 136 and 838 cases respectively as on 14 October 2003 since the much-proclaimed reform period (1998-2001).⁵ The Papuan human rights organisation, ELSHAM has recorded 19 summary executions including of Tolinawimban Gire, Yustinus Murib, Derek Murib, Pastor Elisa Tabuni, Moses Douw, Marinus Kogoya, Sodema Hubi, Mokaneak Kossy, Marius Marian and Yunus Giay, 18 cases of arbitrary arrests, 157 cases of torture and two cases of enforced disappearances in Papua from 2001 to 2006.⁶ Human Rights Watch documented 14 cases of human rights violations including extrajudicial killings which took place in 2005 and 2006 out of which members of the police forces were found responsible in 10 cases.⁷ The West Papua National Authority based in Australia in a memorandum to United Nations Secretary-General Ban

⁴ . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbln0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

⁵ . World Council of Churches: "violations, systematically planned and executed", West Papua Action Newsletter No. 14, October 2003, available at:

<http://westpapuaaction.buz.org/newsletter/no14.htm#Top>

⁶ . No human rights improvement under special autonomy, TAPOL Bulletin No. 185, January 2007,

<http://tapol.gn.apc.org/bulletin/2007/Bull185.htm#otsus>

⁷ . Out of Sight, Endemic Abuse and Impunity in Papua's Central Highlands, HRW, available at:

<http://hrw.org/reports/2007/papua0707/>

Ki-Moon on 2 November 2007 cited specific cases of killing and enforced disappearances by the State.⁸

An estimated 20,000 Papuans have been internally displaced due to the military operations and some 13,500 refugees fled across the border to Papua New Guinea since the Papua Special Autonomy Law was passed in 2001.⁹

d. Stop the proposed Kalimantan Border Oil Palm Mega-project:

The proposed Kalimantan Border Oil Palm Mega-project being implemented by the Indonesian State Plantation Corporation (PT Perkenunan Nusantara) requires 18 million hectares of land at the heart of Borneo. It will destroy the identity of all indigenous Dayak people in Kalimantan through displacement and will eventually reduce them to plantation labourers. While Indonesian government has put the project temporarily on hold, AITPN has received credible reports that lands from indigenous peoples are being acquired by force, fraudulent means and inducements for various private companies. In effect, the project is still on!

e. Persecution of religious minorities:

Religious freedom remains a critical issue of Indonesia not only because of the increased fundamentalism but also because of the preferential treatment given to the six officially recognized religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. "Other non-recognised religions" face discrimination and restrictions. In October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned 13 religious sects, including Ahmadiya, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs of indigenous peoples.¹⁰ On the other hand, Civil Registration Act adopted by the Indonesian House of Representatives on 8 December 2006 requires citizens to state their faith on legal documents like identity cards and birth certificates etc.¹¹

f. Persecution of human rights defenders:

Human rights activism remains dangerous, not only because Indonesian government failed to ensure accountability for the murder of Munir but also because the State has a systematic policy to persecute the human rights defenders, especially in Papua. On 1

⁸. Source: Free West Papua.com, available at <http://freewestpapua.com/node/165>

⁹. "Dynamics of Conflict and Displacement in Papua, Indonesia" Edited by Eva-Lotta E. Hedman, Refugee Studies Centre, September 2007

<http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper42.pdf>

¹⁰. International Religious Freedom Report 2006, Indonesia chapter, US Department of State, available at <http://www.state.gov/g/drl/rls/irf/2006/71341.htm>

¹¹. Indonesian House passes controversial bill into law, People's Daily Online, 9 December 2006, available at: http://english.people.com.cn/200612/09/eng20061209_330484.html

April 2007, Franciskus Madhu (30), a Roman Catholic priest was shot dead in his church by three unidentified gunmen in Lubuagan in northern Kalinga province.¹²

The Indonesian Army, the TNI is contemptuous of Ms Hina Jilani, UN Secretary General's Special Representative on human rights defenders. Ms Jilani visited Indonesia from 5-12 June 2007 and Mr Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura; Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid, Manokwari; and Mr Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province called on her in Jakarta. On return, they were threatened by officials from the intelligence and Indonesian Armed Forces who dared to give their names and telephone numbers. The Komnas Ham was requested to investigate but it failed to investigate these allegations.

II. State's human rights obligations and commitments

Indonesia has failed to fulfill its obligations and commitment at national and international level.

a. No recognition of *ulayat*, customary, rights

The Constitution of Indonesia of 1945 under Article 18 and Article 28 recognizes the "traditional communities" and their cultural identities and traditional rights and the same were affirmed by the Act No. 39 of 1999 on Human Rights. Yet a number of Acts such as the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes failed to recognize the *ulayat*, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian Law No. 5 of 1960. Further, Presidential Instruction No. 26 of 1998 banned the use of the terms "indigenous" and "non-indigenous" in all official documents.

b. Failure to amend the Criminal Code

The Indonesian government also failed to amend the draconian Criminal Code introduced during the Dutch colonial period which has been widely used by the government to intimidate critics. On 17 July 2007, Constitutional Court declared Article 154 and Article 155 of Indonesian Criminal Code that banned expression of "feelings of hostility, hatred or contempt" as unconstitutional.¹³ These are piece meal solutions while the Criminal Code requires complete repeal to bring conformity with its treaty obligations as required under Articles 7 of the Act No. 39 of 1999 on Human Rights.

¹². Indonesian Catholic priest killed in Kalinga, The Manila Times, 3 April 2007

http://www.manilatimes.net/national/2007/apr/03/vehev/top_stories/20070403top3.html

¹³. Court move opens up free speech, The Jakarta Post, 18 July 2007

c. Failure to strengthen the NHRC

The *Komisi Nasional Hak Asasi Manusia* (KOMNAS HAM), the National Human Rights Commission and Human Rights Tribunal remain ineffective. *The Konmas Ham* cannot be judged simply from its robust findings of the crimes against humanity that were perpetrated in Jakarta in 1984 (Tanjung Priok), 1997 and 1998 (Trisakti, Semanggi and the riots accompanying the fall of Soeharto); East Timor in 1999; and at least three times in Papua —2000 (Abepura), 2001 (Wasiur), 2003 (Wamena) because of its inability to implement its own findings in these cases of human rights violations.

d. Failure on international human rights obligations

Considering that international laws are not self-executing, Indonesian government has failed to bring conformity with the ratified treaties at domestic level. In addition, it failed to withdraw the reservations to the Treaties ratified by it.

Indonesia has also not ratified key international instruments like Convention for the Protection of All Persons from Enforced Disappearance, ILO Convention No. 169 relating to Indigenous and Tribal Peoples in Independent Countries, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, and 1st and 2nd Optional protocols to the ICCPR.

III. Enhancement of State's capacity

AITPN recommends that the following areas should be considered for technical cooperation:

- Considering the absence of disaggregated data on indigenous peoples on human rights violations is an area which requires technical cooperation;
- Increased understanding of human rights for judiciary through judicial colleges;
- Establishment of a National Institutions on the traditional communities/indigenous peoples.

IV. Cooperation with HRC, Treaty Bodies and OHCHR

Indonesia has failed to issue standing invitations to the Special Procedures and extend an invitation to the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

The government of Indonesia also failed to establish mechanism for implementation of the recommendations of the Treaty Bodies.

Indonesia failed to submit various periodic reports under Convention on the Elimination of All Forms of Discrimination against Women since 13 October 2001, under International Covenant on Civil and Political Rights since 23 May 2007 and under Convention on the Rights of the Child since October 2007.