ASIAN HUMAN RIGHTS COMMISSION

AHRC-SPR-006-2012

INDONESIA: Violation is the rule, protection the exception

EXECUTIVE SUMMARY

For Indonesia, 2012 has been the year of the ratification of international human rights instruments. Two Optional Protocols to the Convention on the Rights of the Child and the Convention on the Rights of Migrant Workers were ratified by the government, which invited compliments from the international community. In addition to the ratifications, the government and Parliament managed to pass a new law on the juvenile court system that is more in accordance with the international standards on the protection of children's rights. Progress on the enhancement of human rights can also be seen in the judiciary, with Supreme Court judges declaring that the death penalty is a violation to the right to life.

It is a terribly difficult task to point out the positive progress in human rights that the Indonesian government has achieved in 2012, other than the three developments mentioned. The reason is simple; it is human rights violations – and not protection or progress – that has been trending throughout the year. In this report, the AHRC has noted with concern three significant issues dominating the human rights discourse in the country from the end of 2011 till the end of 2012.

Violence perpetrated by security officials, triggered by conflicts over natural resources between villagers and companies, is one. Another relates to the protection of religious minorities and their rights, and the third centres on the state of human rights in Papuan provinces.

As in previous years, impunity remains a big issue in human rights discourse within the country. In all the

Human rights treaties	Ratification
International Covenant on Civil and Political Rights	2005
International Covenant on Economic, Social and Cultural Rights	2005
International Convention on the Elimination of All Forms of Racial Discrimination	1999
Convention on the Elimination of Discrimination against Women	1984
Convention on the Rights of Child	1990
Optional Protocol to the CRC on the Involvement of Children in Armed Conflict	2012
Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography	2012
Convention against Torture	1998
Convention on the Rights of Persons with Disabilities	2011
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	2012

mentioned issues, the perpetrators are rarely brought to trial and punished proportionately. The nuance of impunity is particularly strong in the issues of past human rights violations. In 2012, the National Human Rights Commission (Komnas HAM) made public the reports concerning the Mysterious Shootings that took place in the 1980s and the human rights abuses against 'the communists' in 1965-66. Despite the investigations conducted by Komnas HAM for years, the Attorney General's Office (AGO) has refused to take up the human rights body's reports, claiming insufficient evidence to prosecute.

A. KEY EVENTS AND HUMAN RIGHTS VIOLATION TREND IN 2012

Conflict over natural resources resulting in violence:

A clash between the police and civilians took place in Mesuji, Lampung, towards the end of 2011[1]. The police arrested a villager who harvested palm in a disputed land. Later, other villagers attempted to free him from custody. Responding to this attempt, the police unnecessarily shot a villager. This triggered anger amongst the villagers, who later burnt parts of the plantation area of PT Barat Selatan Makmur Investindo (PT BSMI) and PT Lampung Interpertiwi (PT LIP). Police responded to the villagers' actions with more indiscriminate shootings in which a villager was shot in the hand, while another died due to a gunshot to his head. Eight villagers were injured, in total, and one person rendered dead.

What happened in Mesuji was not an isolated case. A month after the shooting in Mesuji, police officers in Bima, West Nusa Tenggara, shot local farmers who were demonstrating against the gold exploration plan in the area[2]. The local farmers were conducting a peaceful protest against the Regent's decision to grant a concession to PT Sumber Mineral Nusantara (PT SMN) for gold exploration on 24,980 hectares of land, when approximately 500 police officers approached them on 24 December, 2011. A negotiation between the leader of the protesters and the police was ongoing when the police suddenly started shooting the protesters. The shooting resulted in the death of two persons and injuries to 77 others. Five people were also injured due to indiscriminate beatings by the police and 37 persons were arrested. Excessive use of force by the police against peaceful demonstrators, protesting against companies and the unfair exploration of natural resources, also took place on 2 February, 2012, in Rokan Hulu, Riau. Five farmers were injured and five others were arrested simply due to their involvement in a peaceful protest against the activities of a palm plantation company, PT Mazuma Agro Indonesia (PT MAI), on disputed land[3].

1 See 'Land dispute led to indiscriminate shooting against villagers in Mesuji', an urgent appeal published by the AHRC, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-053-2012
2 Find the details of the case in 'Police killed two villagers and injured 82 others in anti-gold mining protest, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-021-2012
3 See http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2012

A local NGO, the Institute for Policy Research and Advocacy (ELSAM), noted that there were at least 30 cases of land conflicts throughout Indonesia, between January and April 2012 itself[4]. Most of the cases took place in Sumatra, Kalimantan, and Sulawesi. North Sumatera and Riau are two provinces that have the most land conflict cases, both having six cases each during the first quarter of 2012.

Police shoot and injure five farmers in Riau during land rights protests

Farmers in Rokan Hulu regent have been in conflict with PT MAI since 1998. They believe the acquiescence to, and possession of, 5508 ha of land in Batang Kumu village by the company were illegal, not only because the affected communities were not consulted but also due to the fact that the company's activities started prior to the grant of concession by the local authorities. Farmers had been forcibly evicted, their crop destroyed, and their houses burnt during the course of the conflict. In 1999 and 2010, two years alone, approximately 80 houses were set on fire, allegedly under the order of PT MAI and the Head of Sungai Korang village at that time, Marahalim Hasibuan. In 2009, 14 villagers were arrested, and six of them sentenced to six years imprisonment.

Despite the disputed status of the land, PT MAI started its on-site activities on 2 February, 2012. The villagers who had started gathering since morning were trying to block two excavators and two bulldozers from conducting any activity on the land. The excavators and bulldozers, however, were protected by Mobile Brigadier (Brimob) officers, who responded to the villagers' attempt with indiscriminately gunfire without warning. As a result, three persons were shot in the leg, one person was shot on his thigh, and another suffered a wound to his buttocks. Complete information on this case is available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2012.

The failure of the government and the companies to consult with, and ask for, the consent of the community has triggered the resentment of the latter towards the former. The villagers of Lambu sub-district, for instance, were not aware of the gold exploration plan of PT SMN until 2010, i.e. two years after the company had obtained a permit from the government. Similarly, the local farmers in Rokan Hulu objected to PT MAI's activities as the grant of right to acquiescence 5508 ha of land in Batang Kumu village by the company was done without them being consulted. Those local farmers and villagers have legitimate reasons to demand prior consultation and consent as their lives are affected by the companies' presence and activities. In some cases, the farmers and villagers have been forcibly evicted from land they legitimately own. Even in cases where lands have not been arbitrarily grabbed, company activities can bring damage to the environment, making the neighbourhood less liveable for residents. The gold mine operation in Bima, for instance, is likely to dry up the water resources, which will disrupt the farmers' agricultural activities and livelihood.

4 'Continue to Perpetrate: 2012 First quarter report of the human rights situation in Indonesia', p. 15-16, ELSAM, 2012 (hereinafter 'ELSAM First Quarter of 2012 report')

The UN Special Rapporteur on the Right to Food, Olivier De Schutter, has established a set of core principles on large-scale land acquisitions and leases, one of which calls for free, prior, and informed consent of the local communities affected by any shifts in land use[5]. The set core of principles also calls for the participation of such communities in the decision-making process. The Indonesian government, however, is yet to establish any procedure under national laws to ensure these two essential principles. The current law no. 18 Year 2004 on Plantation, for instance, does not impose any obligation on the government and companies to consult affected communities. It only requires the companies wishing to acquire land belonging to an indigenous group to hold a public consultation in order to obtain the group's consent[6]. Yet, even in such case, the law sets a very high standard in determining which groups are indigenous, by requiring the issuance of a regional / provincial regulation declaring that a group falls within such category[7] – a provision that is incompliant with the 'self-identification' principle[8].

Instead of setting up mechanisms to guarantee the right of affected communities to participate in decision-making, the Indonesian government has been allowing the use of state apparatus for the protection of companies' business and interests. In many instances, police officers have acted more as security guards of the companies than as protectors and servants of society.

Excerpts of minimum human rights principles applicable to large-scale land acquisitions or leases

Principle 1 – Negotiations on investment agreements should be transparent. Local communities potentially affected should be participated.
Principle 2 – Any shifts in land use can only take place with the free, prior and informed consent of the affected communities.
Principle 3 – States should adopt legislation protecting the rights of communities and specifying the conditions according to which shifts in land use or evictions may take place, as well as the procedures to be followed.
Principle 4 – Local population should benefit from the revenues generated by the investment agreement.
Principle 10 – States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

5 Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, principle 1 on p. 16, UN Doc. A/HRC/13/33/Add.2, 28 December 2009
6 Law No. 18 Year 2004 on Plantation, Art. 9 (2), LN 2004 No. 84, 11 August 2004
7 Id., Comment on Art. 9 (2)
8 See ILO Convention No. 169 concerning Indigenous and Tribal Peoples, Art. 1 (2), 27 June 1989

Persecution and discrimination against religious minorities:

Violence and discrimination against religious minority groups in Indonesia in 2012 has attracted the attention of the international community. As in the previous year, the Christian community and the Ahmadiyah have been subjected to discrimination, which took the form of the closing down of places of worships and intimidation. Yet, as pointed out by ELSAM, unlike 2011, the persecution of religious minorities this year has not been only concentrated in Java. It has also spread to other locations[9]. For example, attacks and violence towards the Ahmadiyah in 2012 took place not only in Singaparna, Tasikmalaya and Cisalada, all of which are located in Java Island, but also in Batam[10]. In April 2012, the fundamentalist group Islamic Defenders Front (*Front Pembela Islam*, FPI) intimidated, beat, and threatened the leader of Ahmadiyah Batam, making him signed a statement saying that his congregation will no longer hold their regular religious activities at Ruko Nagoya.

The congregation of the Yasmin Indonesian Christian Church (GKI Yasmin) still have their rights denied by the local government of Bogor, who refused them permission to build a church on land they legally own, despite the Supreme Court's judgement in favour of the congregation. A similar problem is experienced by the Batak Protestant Church (HKBP) Filadelfia, in Bekasi, whose Reverend was subjected to death threats by villagers. In the middle of 2012, it was also reported that at least 17 churches were closed down by the local government of Aceh Singkil, as the establishment of such churches was considered to be illegal.

The case of HKBP Filadelfia

HKBP Filadelfia bought a piece of land located in Jejalen Jaya village in 2007. The understanding was that the site would be where their house of worship would be located. HKBP Filadelfia went through all the procedures required by law for the establishment of places of worship, including those enshrined under the 2006 Joint Regulation of the Ministry Religious Affair and the Ministry of Interior. On Christmas Day in 2011, however, the Muslim residents of Jejalen Jaya village held a massive protest, refusing the presence of a church in the area. This was followed by the issuance of a letter by the Regent of Bekasi ordering HKBP Filadelfia to stop construction of the church and to stop conducting their service of worship in the village. Since then, any attempt by the congregation to hold a service in the land they bought has been stopped by the residents. The dispute was later taken to relevant courts, all of which ruled that HKBP Filadelfia has the right to establish a church on the disputed location.

9 ELSAM First Quarter of 2012 report, supra note 4, p. 10

10 The AHRC documented several cases of attacks against the Ahmadiyah community in Indonesia. See, for instance, 'Ahmadiyah members in Batam are threatened, ill-treated and illegally arrested with the acquiescence of the police', available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-086-2012; and 'Police failed to protect Ahmadiyah mosque from attacks by Islamic fundamentalist group in Singaparna', available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-071-2012

The judgments of the courts have been ignored by the local authorities of Bekasi. This has given the message to the residents that they have the right to prevent HKBP Filadelfia's congregation from establishing the church or conducting a service of worship, and intimidation and attack against the congregation has continued. Reverend Palti Panjaitan has received death threats from the villagers. Stones, plastic bottles, faeces, and urine have been thrown at the congregation when they have attempted to reach their church.

(Picture 1: sign expressing the villages' rejection to the establishment of HKBP Filadelfia church)

Seeing the increased intimidation and attacks directed against them, the congregation of HKBP Filadelfia is no longer trying to hold services on the disputed location, but instead conducts the same in front of the Presidential Palace in Jakarta. The government continues to fail to respond to their demands.

More information can be found at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-087-2012. And, an AHRC interview with Reverend Palti Panjaitan from HKBP Filadelfia, is available at http://www.humanrights.asia/countries/indonesia/opinions/interviews/AHRC-ETC-015-2012.

Discrimination and persecution are also experienced by the Shia community in Sampang, East Java. The leader of the community, Tajul Muluk, was tried and punished under the blasphemy provisions stipulated in the Penal Code. His assertion that the current version of disseminated Quran is not the original one and his dissenting belief concerning the five pillars of Islam and six pillars of Islamic faith have resulted in him being sentenced to a two year term of imprisonment by the Sampang District Court[11]. Later, in August 2012, approximately 500 people claiming to be Sunni Muslims attacked the Shia community in the same area, which resulted in the death of one member, injury to seven others and the destruction of 40 houses[12]. The police had been previously informed about the imminent attack by the so-called Sunni Muslims group, yet it failed to take adequate measures and sent only five officers to prevent the attack. A more appropriate number of security officers were deployed only after the attack was over.

There has been no evidence of the involvement of state officials in the persecution and discrimination against religious minorities, yet their lack of response and failure to keep being neutral have aggravated the problem. There were only three officers sent towards Ahmadiyah village in Cisalada to prevent the attack; the intimidation directed to the Ahmadiyah leader in Batam was performed with the acquiescence of a top

11 In its written statement submitted to the 20th Session of the UN Human Rights Council, the Asian Legal Resource Centre, AHRC's sister organisation, expressed its concern on the trial of Tajul Muluk. See 'INDONESIA: Blasphemy law should be repealed to show Indonesia's commitment to the protection of freedom of expression', available at http://www.alrc.net/doc/mainfile.php/hrc20/718/

12 'Police's failure to protect the Shia minority in Sampang resulted in the death of a person, many others injured and houses were burnt', states an AHRC Urgent Appeal, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-164-2012

official in Barelang District Police; and police officers were present on-site when the Ahmadiyah mosque in Singaparna was attacked by a fundamentalist group. In early 2012, President Susilo Bambang Yudhoyono delivered a statement through his spokesperson saying it is not possible for him to intervene in GKI Yasmin's case as the Law on Local Government stipulates that such an issue falls within the authority of the local, and not the central, government[13].

In some other instances, the security officers and state officials openly take the side of the majority groups by asking the persecuted communities to stop insisting, give up their rights, and conduct their religious activities somewhere else. The Indonesian Interior Ministry suggested the relocation of GKI Yasmin to a land provided by the government and called such a proposal 'a solution which benefits everyone'[14]. The Regent of Sampang was also considering the option of relocating the Shia community[15]. In a separate occasion, the Religious Minister stated that conversion of Ahmadiyah to mainstream Islam will solve the tension between the two groups. Coupled with the absence of prosecution and trial against those responsible for the attacks, such statements and suggestions proposed by such government officials have sent the wrong message to the public – that it is minorities and their difference that is to be blamed for violence taking place.

As of today, there is inadequate legal protection for religious minorities in Indonesia. Criminal investigation of violence directed against minorities hardly ever takes place. Even when it does, the perpetrators are let off lightly, as happened in Cikeusik case, where those responsible for the death of three Ahmadiyah members were sentenced to only 3-6 months in prison. In the Cikeusik case, the prosecutors and judges applied the 'general' criminal provisions on incitement, assault, and destruction under the Penal Code. The using of articles under the current Penal Code in cases of violence against religious minorities is problematic as the Code does not include discriminatory motive as an aggravating factor. The Anti-Discrimination law, enacted in 2008, establishes discriminatory motive as an aggravating factor yet is only applicable in cases concerning ethnic and racial discrimination, but not religious one.

Human rights in Papua:

The year 2012 in Indonesia has been marked by the escalation of violence and tension in the Papuan provinces, particularly after the UN UPR session took place in May, where Indonesia was heavily criticised for human rights abuses in such provinces (see the sub-chapter on UN Universal Periodic Review below). A German tourist was shot only a week after the UPR session and this incident was followed by more shooting of civilians. At the time of writing this report, the identities of the perpetrators still remain

13 Such a statement was delivered by the President's spokesperson, Julian Aldrian Pasha, to the press. As reported by Suara Pembaruan, 'UU Pemda Halangi Presiden Tangani GKI Yasmin' ('Local Government Law prevents the President to deal with GKI Yasmin'), accessed on September 2012 at http://www.suarapembaruan.com/home/uu-pemda-halangi-presiden-tangani-gki-yasmin/16876

14 'INDONESIA: Religious minorities' relocation is not a solution' – a statement issued by the AHRC, on 11 September 2012, available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-182-2012

15 'Shia group offered relocation', The Jakarta Post, 8 September, 2012

unknown. However, the Indonesian authorities point their fingers to *Komite Nasional Papua Barat* (West Papua National Committee, KNPB), a political organisation aiming at the independence of West Papua.

In early June, the leader of KNPB, Buchtar Tabuni, along with two other members of the organisation, was arrested by the police. The police claimed that KNPB was engaged in a series of violent acts and, as a leader, Buchtar had to be held responsible. A week after the arrest of Buchtar, on 14 June, 2012, the Secretary General of KNPB, Mako Tabuni, was shot to death by police officers[16]. The police did not deny their involvement in the shooting, but insisted that it was necessary, as Mako was trying to grab the guns carried by the officers. The police made a statement claiming bullets were found on Mako's body, yet such a statement runs contrary to the information obtained by the AHRC. Witnesses testified that Mako was unarmed at the time of the shooting. An investigation report produced by the Australian Broadcasting Corporation (ABC) reveals that Detachment 88 (*Densus 88*), the counterterrorism squad of the Indonesian National Police, was involved in the killing of Mako Tabuni. The Indonesian Defence Minister rejected the accusation and told the press that Mako's killing was not a violation of human rights.

The persecution towards activists of KNPB continued after the arrest of Buchtar Tabuni and the killing of Mako Tabuni. The police blamed KNPB not only for violence and shootings of civilians but also bombings that took place in Wamena, including the one that happened in an empty police station in September. Following the bombings, the police raided the headquarters of KNPB in Wamena, where they claimed to find two active bombs. Five Papuan activists were arbitrarily arrested a month later for allegedly importing or distributing explosive materials, but later released by the police due to lack of evidence. There is a strong allegation that their arrest was based on their activism rather than their involvement in crime. This was indicated by the fact that the police seized and copied the activists' documents on their political movements, which had no relationship to the charge imposed[17].

The bombing of the police station and the finding of bombs at the KNPB headquarters took place around the time of the inauguration of Irjen Tito Karnavian as the new Chief of the Papuan Regional Police. His inauguration had raised concerns that Densus 88 will be deployed more actively in Papua provinces, given his background as former head of the counterterrorism squad. The deployment of Densus 88 is worrying; the squad has a record of shooting terrorist suspects to death with impunity.

Security officers opened fire on Papuans not only in political-related cases but also in other instances. In 2012, the AHRC documented several cases where police and military officers shot civilians for insignificant fighting, petty crime, or simply out of revenge. In May, three police officers shot five Papuans in Degeuwo after the latter refused to obey the order of the former to leave the billiard parlour at which they were having a game. The shootings resulted in the death of one of the Papuans, Melianus Kegepe,

16 In relation to the escalated violence in Papua provinces post-UPR session on Indonesia, the AHRC, through its sister organisation, Asian Legal Resource Centre, delivered an oral statement to the 20th Session of the UN Human Rights Council in June 2012. Text of the oral statement is available at http://www.alrc.net/doc/mainfile.php/hrc20/727/

17 'Police arbitrarily arrested five Papuan activists and copy documents related to their political activities', an Urgent Appeal issued by the AHRC, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-185-2012.

while the rest were injured[18]. A month later, in Wamena, military officers of Battalion 756 Wimane Sili attacked civilians in Kampung Honai Lama, resulting in the death of a civilian, injury to 13 others, and destruction of 87 civilian houses[19]. The attack was conducted by the military officers as revenge – having learned that two of their colleagues were stabbed by residents of Kampung Lama. The residents committed the stabbing because the two officers had hit a 10 year old boy with a motorcycle and were unlikely to be brought to justice. Crimes committed by security officers in Papua provinces are rarely punished.

The shooting of civilians by security officers also happened in Nabire in September. Kristian Belau and his friends were blocking the road connecting Nabire and Pedalaman. Whereas his two other friends managed to escape, Kristian Belau who was drunk but unarmed was shot by the police in his right thigh. The police later spread false news saying that Kristian was shot in crossfire between the police and an armed civilian group[20].

The military attacks civilians and their property in Wamena

In the morning of 6 June, 2012, two members of Battalion 756 Wimane Sili, named Pratu Sahlan and Prada Parloi Pardede, were riding a motorcycle at high speed in Kampung Honai Lama when they hit Kevin Wanimbo, a local 10-year old boy. This triggered the anger of Kampung Honai Lama residents who later stabbed the two military officers. Pratu Sahlan died due to the attack while Prada Parloi Pardede was injured.

On the same day in the afternoon, other military officers from Battalion 756 Wimane Sili opened fire on the residents of Kampung Honai Lama after they learned that their colleagues had been attacked. Local villagers were beaten up with wood blocks by the military officers, and the houses were burned and destroyed. Vehicles parked in front of the houses were burned and some public facilities were destroyed, including an electricity pole in Potikelek Market.

(Picture 2: the burnt houses in Wamena. Source: local activist)

18 'Police shot civilians in a petty fight in Papua resulted in one person died and four others injured', is an Urgent Appeal by the AHRC, http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-110-2012.
19 'Military members shot civilians and burned their properties in Wamena, West Papua', an Urgent Appeal by the AHRC, http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-103-2012.
20 'Police shoot an unarmed civilian and spread a false report on the incident in Nabire, Papua', an Urgent Appeal by the AHRC, http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-103-2012

arms, thighs, necks and other parts of their bodies. The arson of houses by the military left some local residents homeless. Out of fear, they left their houses and were too afraid to return.

The AHRC made an intervention in this case through the appeal AHRC-UAC-103-2012, but no legal measures have been taken to bring the officers responsible for the attack to justice.

The attack by military officers resulted in the death of Elinus Yoman, who was shot to death, and brought injury to 13 others. Eight of them were severely injured, stabbed as they were on their heads, backs, knees,

In June 2012, the AHRC issued an urgent appeal documenting the torture of 42 prisoners and detainees by prison guards at Abepura Correctional Facility (LP Abepura)[21]. The torture was triggered by a verbal argument between a political prisoner, Selfius Bobii, and the Head of the Correctional Facility, Liberti Sitinjak, who was not happy with the criticism of Selfius. He ordered the guards to put Selfius in solitary confinement. Other detainees and prisoners, who were witnessing Selfius being taken to the isolated cell, yelled and protested against such measure. The guards were offended so they took the other prisoners out of their cells and beat, kicked, and hit them with fists, wood blocks, as well as iron rods.

The prisoners were also dragged into the yard and forced to walk whilst crouching for about 200 metres. Beatings and kicking continued while they were made to walk thus. The prison guards stepped on prisoners' and detainees' fingers and toes, and made remarks such as 'you are all stupid, that is why you ended up here'. The torture and ill-treatment continued for about two and a half hours. Torture is widely practised throughout Indonesia, but Papua is one of the areas where prevalence of such practice is high.

UN Universal Periodic Review 2012:

On 23 May 2012, Indonesia had its human rights situation reviewed at the UN Universal Periodic Review (UPR). Prior to the session, the Asian Legal Resource Centre (ALRC), the sister organisation of the AHRC, submitted a stakeholder's report along with a local NGO, KontraS[22]. In the submission, the two organisations pointed out a number of human rights issues which the government has not dealt with, such as torture, impunity, violence, and the persecution of activists in Papua as well as discrimination and intimidation against religious minority groups. The AHRC also submitted a joint report, specifically dedicated to discuss the human rights issues in Papua, along with Franciscans International and the Faith Based Network on West Papua[23].

21 'Prison guards tortured 42 prisoners and detainees at Abepura correctional facility in Papua', an Urgent Appeal by the AHRC available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-099-2012
22 Stakeholders' submission concerning the Universal Periodic Review on Indonesia, submitted by the Asian Legal Resource Centre and KontraS, available at http://www.alrc.net/PDF/ALRC-UPR-13-001-2011-Indonesia.pdf
23 Joint stakeholders' submission on the human rights situation in Papua, submitted by Franciscans International, Faith Based Network on West Papua, and the Asian Human Rights Commission, downloadable at http://www.humanrights.asia/resources/special-reports/AHRC-SPR-002-2011/view

In the May session, 74 delegations made statements, some of which highlighted various important human rights issues and provided several recommendations[24]. Human rights issues being taken up in the session included the ratification of international human rights instruments; the absence of the criminalisation of torture and human rights education for government officials. Concerns on the human rights situation in Papua were expressed by many states such as Japan who requested the Indonesian government to 'halt immediately reported human rights violations by military and police officers and a general climate of impunity in Papua'[25]. Canada and the USA voiced their concern on the use of articles on treason under the Penal Code against activists in Papua[26], whereas France called on the government to grant access to foreign journalists to visit Papua[27].

Responding to issues of discrimination against religious minorities raised by the delegations during the session, the Foreign Minister Marty Natalegawa claimed that Indonesia 'attached the highest priority to the issue of freedom of religion' and that such right is guaranteed both in the Constitution and the laws[28]. As for the abuses in Papua, the Minister argued that security officers who 'committed excesses in carrying out their responsibilities to maintain law and order have been held accountable and brought before the relevant courts'[29].

In all, there were 179 recommendations given by delegations attending the session, and 149 of them enjoyed the support of the Indonesian government[30]. Indonesia made the commitment to ratify more international human rights instruments, including the two protocols to the UN Convention on the Rights of the Children (CRC), the Rome Statute, OPCAT, OP CEDAW and ILO Convention No. 189 on Decent Work for Domestic Workers. It also promised to grant access to the International Committee of the Red Cross (ICRC) to any part of the country including Papua and West Papua; to combat impunity; to guarantee freedom of religion and full respect of minorities' rights; and to ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech.

Although it accepted more recommendations than it rejected, the government mainly accepted those of a general nature and rejected those particularly essential for the improvement of human rights situation in the country. For instance, it refused to amend the 1965 Blasphemy Law, as suggested by Denmark; to revise the law on military courts, as called for by Switzerland; and to grant access to foreign journalists to Papua, as recommended by France. Indonesia also refused to support the recommendation calling for abolition of the death penalty. In refusing some of these recommendations, such as matters related to the Blasphemy Law and death penalty, the Indonesian government argued that the Constitutional Court has

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24 Report of the Working Group on the Universal Periodic Review on Indonesia, UN Doc. A/HRC/21/7, 5 July 2012, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement (hereinafter 'Report of Working Group on the UPR on Indonesia')
25 Id., para. 84
26 Id., para. 109.32 and 109.33
27 Id., para. 108.114
28 Id., para. 76
29 Id., para. 102
30 See Report of Working Group on the UPR on Indonesia, supra note 24, as well as the addendum document, UN Doc. A/HRC/21/7/Add.1, 5 September, 2012

dealt with the issues and declared them to be in accordance with the 1945 Constitution. In some other instances, the government simply denied the human rights violations pointed out during the session by delegations of other states. It denied the existence of indigenous people in the country, as well as discriminatory local regulations against homosexuals in Aceh, and the ongoing human rights violations by military and police officers in Papua. Responding to the two latest issues in Aceh and Papua, the government claimed 'the recommendations do not reflect the actual situation in the Provinces they refer to'[31].

B. HUMAN RIGHTS - THEMATIC ISSUES

B.1 Past Human Rights Violations

In August 2011, the *ad hoc* team established by the National Human Rights Commission (Komnas HAM) to investigate the case of the Mysterious Shootings which took place in 1982-1985 concluded its work which was started three years before. It was not until June 2012, however, that Komnas HAM decided to make public the final report concerning the case[32].

During the period of 1982-1985, many individuals known as criminals during their life time were shot to death and had their bodies left at public places such as roads, markets, and rivers. The shootings took place in various parts of Indonesia but they were particularly prevalent in the Javanese provinces. It was reported that the total number of victims reached 9,000.

Investigation conducted by Komnas HAM reveals that there were official policies set by the Indonesian government at that time to reduce crime rates by arbitrarily killing and arresting those who were involved in criminal activities. In Central Java, for instance, Komnas HAM found that *Operasi Cerah* (Bright Operation) and other similar operations were launched by the military to decrease the level of crime in the area. Activities conducted under these operations, Komnas HAM reports, included killings, torture, enforced disappearances, and arbitrary deprivation of liberty. In Yogyakarta, the arbitrary arrests were sometimes conducted by military officers in uniform, or by unidentified groups of men, or by people wearing masks.

At the end of its report, Komnas HAM highlighted that there is sufficient evidence to conclude that human rights violations took place during the Mysterious Shootings period between 1982 and 1985

31 Addendum to the Report of Working Group on the UPR on Indonesia, para 6.5
32 Ringkasan eksekutif hasil penyelidikan tim ad hoc penyelidikan pelanggaran hak asasi manusia yang berat – peristiwa penembakan misterius periode 1982-1985 (Executive summary of report by the ad hoc team on the investigation regarding gross human rights violations – Mysterious Shootings within the period of 1982-1985), Komisi Nasional Hak Asasi Manusia, 31 June, 2012

amount to crimes against humanity as prohibited under Law No. 26, Year 2000 on Human Rights Court. It has recommended that the Attorney General Office (AGO) follow up its finding, in accordance with the procedure established by the Human Rights Court Law[33]. In August, the AGO established a team, consisting of 12 prosecutors led by D. Andhi Nirwanto, to study the Komnas HAM's findings concerning the Mysterious Shootings case. Yet, later, in early November, the Attorney General announced that what Komnas HAM found was insufficient for the AGO to conduct further investigation, and returned the case documents to Komnas HAM[34].

The Komnas HAM report on Mysterious Shootings was not the only finding published in 2012 that was dismissed by the AGO. A month after the release of the Mysterious Shootings report, Komnas HAM published its conclusion to the investigation concerning human rights abuses during 1965-1966 experienced by persons allegedly involved in a communist movement[35]. It took approximately four years for Komnas HAM to conclude the investigation, which was begun in June 2008. Komnas HAM gathered the information from 349 witnesses and victims, and focused its enquiry on several areas: the Maumere, Pekambingan Correctional Facility in Denpasar, South Sumatra, Moncongloe Camp in South Sulawesi, Buru Island in Maluku, and a detention centre on Gandhi Street in Medan, North Sumatra. As in the case of Mysterious Shootings, Komnas HAM pointed out in the conclusion of its report that the abuses which took place constitute crimes against humanity, which falls under the jurisdiction of the *ad hoc* Human Rights Court. The report noted nine forms of abuse that took place, including arbitrary killings, slavery, torture, rape and other sexual assaults, as well as enforced disappearances[36].

Following the publication of Komnas HAM's finding on the human rights abuses in 1965-1966, the Coordinator Political, Legal and Security Affairs Minister Djoko Suyanto insisted that the mass abuses were justified 'in order to protect the country from communism'[37]. The Minister did not deny the findings of Komnas HAM, but claimed that Indonesia would not be as it is today had the government not taken such measures against those involved in communism. The Minister's statement was heavily criticised by human rights groups. But, one of the biggest religious groups in Indonesia, Nahdlatul Ulama, shared the Minister's view. A leader of the group claimed that Nahdlatul Ulama is in favour of reconciliation, but does not consider the state's recognition of the abuses to be necessary. In early November, Attorney General Basrief Arief mentioned that Komnas HAM's finding on the 1965-1966 abuses has been sent back to Komnas HAM for further completion, along with the report on the Mysterious Shootings case.

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33 Id., p. 48

34 'Jaksa Agung belum bisa sebut jenderal pelanggar HAM berat' ('Attorney General still cannot name generals committing gross human rights violations'), 9 September 2012, http://news.liputan6.com/read/451817/jaksa-agung-belum-bisa-sebut-jenderal-pelanggar-ham-berat

35 Pernyataan Komisi Nasional Hak Asasi Manusia (Komnas HAM) tentang Hasil Penyelidikan Pelanggaran HAM yang Berat Peristiwa 1965-1966 (Statement by the National Human Rights Commission on the Investigation Report concerning Gross Human Rights Violations 1965-1966), Komisi Nasional Hak Asasi Manusia, 23 July 2012

36 Id., p. 22-24

37 '1965 mass killings justified: Minister', The Jakarta Post, 1 October 2012. Responding to the Minister's claim, the AHRC issued a statement, 'No mass killings can ever be justified', 3 October, 2012, available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-190-2012

It is not the first time Komnas HAM has had its reports dismissed by the AGO. In fact, the AGO's reluctance to respond to Komnas HAM's findings with the gravity they deserve has been the major obstacle preventing legal proceedings on past human rights violations. Komnas HAM's report on the Talangsari case, where military and police officers attacked civilians resulting in the death of at least 130 persons and the persecution of over 200 people, for instance, was submitted to the AGO in 2008. But, no measure has yet been taken by the AGO to respond to this report. Similarly, the case of shootings against student activists, which occurred in 1998 and 1999, was also investigated by Komnas HAM. The findings were disregarded by the AGO despite the fact that, according to the Law No. 26 Year 2000 on Human Rights Court[38], and the Constitutional Court's judgement in 2007[39], it is obliged to investigate a human rights violation case, upon completion of Komnas HAM's enquiry.

B.2 Torture

The practice of torture has remained widespread in Indonesia in 2012. Two torture cases that attracted public attention this year were that of the two brothers in Sijunjung and the torture of Erik Alamsyah. Both cases took place in West Sumatra. The two brothers, aged 17 and 14, were found hanging in the bathroom of Sijunjung sub-district police station. The police initially declared that Faisal and Budri died due to suicide, but the autopsy result reveals bruises on the dead bodies. Komnas HAM held an investigation in the case and came to the conclusion that the two brothers did not commit suicide but, instead, were victims of premeditated murder. The police later revised its statement and admitted it is possible that Faisal and Budri were subjected to torture, but refused to recognise that the death of the two boys were due to such abuse[40]. Nine police officers were tried by the internal oversight mechanism, Propam, which sent them for disciplinary action for negligence. At the time of writing, a criminal proceeding against three police officers is still ongoing. The three officers are Head of Sijunjung Sub-district Police, AKP Syamsul Bahri; Head of the Criminal Unit, Iptu Al Indra; and, Head of the Intel Unit, Aipda Irzal.

Not long after the case of the Sijunjung brothers became a matter of public discussion, another torture case from West Sumatra emerged. According to a report published by ELSAM and Padang Legal Aid Institute (LBH Padang)[41], Erik Alamsyah was arrested with his two friends, Marjoni and Nasution Setiawan, for alleged involvement in theft of a motorcycle. The police arrested Erik and Nasution on 30 March 2012, after having arrested Marjoni about a week earlier. Erik and Nasution attempted to escape from six police

38 Law No. 26 Year 2000 on Human Rights Court, Art. 21 (1), LN 2000 No. 208
39 Constitutional Review on Law No. 26 Year 2000 on Human Rights Court, p. 94, No. 18/PUU-V/2007, Constitutional Court of Indonesia, 21 February 2008
40 Information is based on AHRC's interview with Era Purnama Sari, an advocate at Padang Legal Aid Institute (LBH Padang) on 20 November 2012. LBH Padang is representing the family of Faisal and Budri
41 Ketiadaan perlindungan saksi, potensi gagalkan penghukuman – resume laporan #1, pemantauan persidangan penyiksaan Erik Alamsyah (The absence of witness protection, potential failure to punish – resume of the report on court monitoring on Erik Alamsyah's torture case), ELSAM and LBH Padang, 2012 (hereinafter 'ELSAM and LBH Padang's report on court monitoring regarding Erik Alamsyah's torture case')

officers, who were going to arrest them. They fell off their motorcycle in their escape attempt, but were taken to Bukittinggi Sub-District Police Station in good condition at around 1 pm in the afternoon.

In the police station, both Erik and Nasution were physically abused by the officers. They were beaten with blocks of wood, a broom, belts, and a bamboo stick. Nasution Setiawan was also hit in his knee with a hammer by the police officers. They were tortured in the same room for about 10 minutes before being separated. Nasution Setiawan testified to Komnas HAM that he saw Erik being tortured by the police and that he heard Erik screaming in pain from the other room. At around 4 pm, Nasution Setiawan and Marjoni were allowed to see Erik, who was wounded and lying on the floor. He complained of pain in his stomach and the police brought him to the hospital. However, Erik died shortly after he arrived at the hospital. The police initially claimed that Erik died due to an accident. However, an autopsy conducted upon the order of West Sumatra Regional Police reveals that many wounds were found on his body.

In 2012, the AHRC documented three torture cases that took place in Medan, North Sumatra. The three cases share a common pattern in which the victims were taken to a place, such as a hotel or a cleared land, to be tortured before they were taken to the police station. Munawir Alamsyah, who was arrested for a drugs offense, was taken to a house located in Ring Road, Medan, to be tortured for approximately seven hours by police officers of the Narcotics Unit of the North Sumatra Regional Police[42]. In the Sun An and Ang Ho case, the sexual assault and torture that they endured were conducted in a hotel room[43]. As in Munawir Alamsyah's case, the officers of Medan Timur sub-district Police drove Ang Ho around the city before taking him to the police station. The AHRC also documented that Rokki Hutapea, a person allegedly involved in an aggravated theft, was brought to an unidentified place where he was beaten by police officers with a wood block until his head was severely injured[44].

The problem of torture in Indonesia does not only stop at the fact that it is widely practiced by law enforcement officials in the country. The issue is aggravated by the difficulty to hold the perpetrators accountable and punish them proportionately. In the case of Rokki Hutapea and Munawir Alamsyah, for instance, neither criminal nor disciplinary proceedings are taking place despite complaints having long been submitted by relatives. In instances where the criminal complaints are being taken up, the legal process usually slow and protracted – as in the case of torture of the two brothers in Sijunjung. The complaints were submitted by the victims' relatives at the beginning of 2012, but the court is still examining the admissibility of the case.

42 'Police tortured and denied a drug offender's access to legal counsel and medical examination', an Urgent Appeal by the AHRC, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-085-2012
43 'Torture victims sentenced to life imprisonment on fabricated charges while allegations on their abuse are not investigated', an Urgent Appeal by the AHRC, available on http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-193-2012
44 'Police in Medan protect torturers by failing to respond adequately to a torture complaint', an Urgent Appeal by the AHRC, available on http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-197-2012

Rokki Hutapea's case – Police in Medan protect torturers by failing to respond adequately to a torture complaint

Rokki Hutapea was arrested in Medan, North Sumatra, on 30 January, 2012, for his alleged involvement in an aggravated theft case. At the time of arrest, the police blindfolded Rokki, tied him on his back and forced him to get into a car. Rokki was taken to an unidentified place where he was beaten by the police using a wood block on his arms, back, and head to the stage that his head began to bleed. The police later took the blindfold off and poured brake fluid on Rokki's head, as they said it would stop the bleeding. Rokki was severely injured, but the police took him directly to Medan District Police Station without giving him any medical treatment.

(Picture 3: Rokki Hutapea. Source: LBH Medan)

At the police station, Rokki begged the police to take him to the hospital as he was in a severe pain. The police took him to the hospital but asked Rokki not to tell the truth to the doctor. Rokki was ordered by the police to tell the doctor that injuries he got were a result of him getting into a fight or because he fell over. Rokki received 12 stitches on the outside of, and 4 stitches inside, his head.

After learning what had happened to her son, Rokki's mother lodged a complaint with the criminal division of North Sumatra Regional Police on 8 February, 2012. She also submitted a complaint to the Police's Professionalism and Security Affair Division about a week later. Although both complaints were brought at the beginning of 2012, the police still have not provided Rokki's mother with any updates on investigation of the case. Her lawyer from LBH Medan has been sending letters to the police yet the police have failed to reply.

Details of the case can be found at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-197-2012.

Although Indonesia has been a state party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) since 1998, it has failed to criminalise torture. The absence of any criminal provision prohibiting torture leads to disproportionate punishment being handed down by the court, as charges imposed on perpetrators fail to reflect the gravity of the offence committed. In Erik Alamsyah's case, the police officers that tortured Erik Alamsyah to death were sentenced by Bukittinggi District Court to only 10-12 months of imprisonment, for committing ordinary assault under Article 351 (1) of the Penal Code. The court failed to take into account that Erik died

because he was tortured by the officers – a fact which would make articles on murder, or at least assault that resulted in death, more relevant than that of ordinary assault.

Lack of protection for victims and witnesses is another area that impedes the prevention of torture in Indonesia. ELSAM and LBH Padang noted several irregularities during the legal proceeding of Erik Alamsyah's case, including withdrawal of testimony by a key witness, Nasution Setiawan[45]. Unlike what he previously said to LBH Padang, Nasution stated before the court that Erik was injured as he fell over the motorcycle when they attempted to escape from the police. ELSAM and LBH Padang noted that Nasution was detained at the same detention facilities as that which held the six officers responsible for torturing Erik, and was brought to court in a car along with the same perpetrators.

Indonesia has established a Witnesses and Victims Protection Agency under the Law No. 13 Year 2006, yet the protection given by the agency has been criticised for being inadequate.

B.3 The Death Penalty

After hardly being discussed in the previous year, the debate on the death penalty was back on the table in 2012. Although no executions were carried out during the year, the courts handed down the death penalty in several cases. Clemency was granted to several convicts so that the number of people on death row is currently 111 (by August 2012), five less than in 2011.

In late September, the Banten High Court converted the imprisonment imposed by a lower court to a British citizen, Gareth Dene Cashmore, to death. The High Court insisted the earlier sentence did not represent a strong enough deterrent. At around the same period, a Muslim mass organisation Nahdlatul Ulama (NU) proposed the death penalty for persons convicted of corruption and for civil disobedience against paying taxes. Local NGO KontraS recorded that Prabumulih District Court in South Sumatera also handed down death penalty to Efran Feri Ferdiansyah and Milna, a couple who were involved in a murder case[46].

A month prior to the judgment by the Banten High Court in the Gareth Cashmore's case, the Indonesian Constitutional Court reaffirmed its support for the death penalty. In a review of an article in the Penal Code on theft/murder (an act of theft that results in the death of the victim) punishable with death penalty, the Court claimed the death penalty is not a violation to the right to life as guaranteed in the 1945 Constitution[47]. It reaffirmed its 2009 judgment stating the right to life is not absolute and the death penalty should be understood as a justified restriction on such right[48]. The Court also set out that

45 ELSAM & LBH Padang's report on court monitoring of Erik Alamsyah's torture case, supra note 40, p. 7
46 Data obtained from KontraS's report
47 Constitutional review on Article 365 (4) of the Penal Code, No. 15/PUU-X/2012, Constitutional Court of the Republic of Indonesia, 18 July, 2012
48 Id., p. 20

theft/murder can be categorised as one of 'the most serious crimes' and the death penalty is necessary to provide a deterrent effect to the community[49].

The Supreme Court, however, does not subscribe to the view held by the Constitutional Court. In a case concerning an ecstasy producer, the Supreme Court established that the death penalty imposed upon him is a human rights violation[50]. The judges examining the case upheld that the right to life has a non-derogable characteristic, meaning it cannot and shall not be restricted in any circumstances[51]. The judges also underlined that the death penalty is not in accordance with the aims of punishment which are supposed to be 'educative, preventive and corrective'[52].

B.4 Freedom of expression and opinion and the protection of human rights defenders

In her report on Indonesia, the UN Special Rapporteur on the situation of human rights defenders, Hina Jilani, expressed her concern regarding human rights violations suffered by human rights defenders in Indonesia. The report was released in 2007, but it is still relevant in today's situation in the country, as human rights defenders and journalists are still subject to intimidation, threats, and abuses. While conducting a visit at Jejalen Jaya Village to report the situation concerning the HKBP Filadelfia case (see 'Persecution and discrimination towards religious minorities' sub-section), on 6 May, 2012, human rights activist and journalist Tantowi Anwari was beaten by villagers, allegedly provoked by a member of Islamic Defender Front (Front Pembela Islam, FPI). The police did not take any legal measures against those who committed the beatings but, instead, took Tantowi to a police station 'for the sake of his safety'[53].

On 16 October 2012, a Riau-based journalist named Didik Herwanto was taking photographs of the accident of the Indonesian Air Force's Hawk 200[54]. There was displeasure that Didik was taking pictures of the accident. Lieutenant Colonel Robert Simanjuntak approached and kicked him. Didik was pushed until he was lying on the ground and the military officer strangled him. Didik was also beaten on his head and kicked in his pelvis. Another person in an orange uniform then came and took away Didik's camera, while five more officers came and started stamping on him. Didik was trying to explain that he is a journalist working for Riau Pos. But, the military officers ignored him and said 'we do not care if you're a journalist of Riau Pos or what'. Didik was subject to continuous beatings until another military officer came and rescued him. As a result of the beatings, Didik suffered a serious injury to his left ear, bruises on his back, and a severe pain in his right hip that made it difficult for him to walk.

49 Id., p. 19-20
50 Hanky Gunawan's Final Appeal, Case No. 39 PK/Pid.Sus/2011, Supreme Court of the Republic of Indonesia, 16 August, 2011
51 Id., p. 53
52 Id. Responding to the progressive judgement by the Supreme Court, the AHRC sent an open letter to the Chief Justice. See 'Supreme Court should encourage judges not to impose death penalty', available at http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-016-2012
53 Staff of the AHRC was present at the location during the beating on 6 May, 2012. After trying to take pictures of Tantowi, who was being taken to the police station, the AHRC personnel was herself subject to identity check by the police
54 Information obtained from local NGO, KontraS

Environmental activist beaten by two strangers

I Wayan Suardana, also known as Gendo, is an environmental activist working for local NGO WALHI, and a law firm called Wihartono and Partners. On 5 November, 2012, at 11:30 am, two strangers came to the law office where he was working looking for him. Gendo talked to them. They asked him to wait, as they need to call for their friends first. About an hour later, the two strangers left, but two other people arrived. Similar to the previous two unidentified men, they were looking for Gendo. As soon as they found Gendo, the second batch of strangers started beating him repeatedly. Before they left, one of them punched Gendo on his chin and warned him to be careful if he 'keeps messing up things.' As result of the beatings, Gendo's lips began bleeding and he almost lost some of his teeth. Gendo filed a complaint to the Bali Regional Police on the same day, as confirmed by case receipt No. TBL/179/XI/2012/SKPT/Polda. Gendo has been involved in advocacy and campaign against so-called development activities destructive to the environment. For instance, he has been actively conducting advocacy against the violation related to the environmental impact analysis documents in a toll establishment project in Nusa Dua.

Suppression on the right to freedom of expression and opinion in Indonesia does not only take place in the form of physical assault, but also in the criminalisation of those who appear to be offensive to the mainstream public. On 18 January, 2012, an atheist living in Padang, Alexander Aan, was arrested for posting materials considered to be blasphemous on Facebook[55]. Aan posted a status questioning the existence of god, a note entitled 'The Prophet Muhammad was attracted to his own daughter-in-law', and a comic entitled 'The Prophet Muhammad had been sleeping with his wife's maid'. Aan was charged with three alternative articles: disseminating information aimed at inflicting religious hatred, committing religious blasphemy, and calling for others to embrace atheism. In June 2012, Muaro Sijunjung District Court found him guilty for the first charge and sentenced him to two and a half years imprisonment[56]. Aan later appealed to the High Court, which reaffirmed the judgment of the District Court. The case is currently under appeal examination at the Supreme Court.

The District Court judgment reflects a lack of understanding of judges with regard to human rights, particularly those related to freedom of expression and the concept of limitation on rights. The AHRC submitted a third-party intervention (*amicus curiae* brief) on this matter to the Court[57], emphasising that freedom of expression may be limited only when it is strictly necessary and that non-theistic belief should be protected under the notion of freedom of religion. The Court, however, insisted that the punishment

55 For details on the case, refer to 'An atheist on trial for religious defamation in Padang, West Sumatra', an AHRC Urgent Appeal, available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-063-2012
56 'Atheist in Padang sentenced to two and a half years imprisonment', an AHRC Urgent Appeal update available at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-021-2012
57 Amicus brief submitted by the AHRC is available in English and Bahasa Indonesia at http://www.humanrights.asia/countries/indonesia/cases/alexander-aan-2012/

of Aan is not against human rights principles as such an act is necessary to protect the right and reputation of others[58].

B.5 Human rights related laws and bills

Law No. 2 Year 2012 on Land Acquisition for Public Interest

Towards the end of 2011, the Parliament enacted a law concerning land acquisition for public interest that sparked criticism from civil society organisations. Despite its fine title, it is believed that the law will perpetuate the practice of arbitrary and forced evictions for the sake of so-called 'public interest' and 'development'. The law is currently being challenged in the Constitutional Court by various civil society organisations concerned with issues of human rights, environment and social justice. One of the provisions contested by such organisations is Article 10, which establishes the list of construction activities considered to be in the interest of the public[59]. The organisations are concerned such construction activities will benefit business and companies more than the public.

The absence of recognition and guarantees on lands belonging to indigenous people is another issue. The law establishes a set of procedures for the government to legally acquire land from its rightful owner, including providing them with compensation. There is also a public consultation and complaint mechanism established under the law. These procedures and mechanisms, however, are available only to individuals or entities that hold land tenures recognised under the Agrarian Law, Law No. 5 Year 1960, and not to indigenous peoples, who have distinctive right and relationship with their land.

Law No. 7 Year 2012 on Social Conflict Management

In May 2012, the Parliament enacted the Law on Social Conflict Management. The law grants the power to determine whether a clash amounts to 'social conflict' to the head of local government (regents, mayors and governors) as well as to the President, dependant on their scope of authority)[60]. The President, for instance, has the authority to declare a clash as social conflict if it occurs or has impact at the national level. A 'state of conflict' shall not last for more than 90 days but upon consultation with the Parliament may be extended for up to 30 days[61].

58 The case of Alexander Aan, Case No. 45/PID/B/2012/PN.MR, p. 43-44, Muaro District Court, 14 June, 2012.
59 Constitutional review on the Law No. 2 Year 2012 on Land Acquisition for Public Interest, Case No. 50/PUU-X/2012, Minutes of hearing, Constitutional Court of Republic of Indonesia, 11 June, 2012
60 Law No. 7 Year 2012 on Social Conflict Management, Articles 16, 18 and 20, LN 2012 No. 116 (hereinafter 'Social Conflict Management Law')
61 Id., Articles 22 and 29

In a 'state of conflict', the local authorities and President are allowed to impose curfew, block the conflict area, and relocate as well as prohibit individuals and group of individuals from entering such area[62]. The declaration of a clash as a conflict also grants the authorities the ability to deploy military to the conflict area[63], which is legally problematic in, at least, two ways. Firstly, the 1945 Constitution clearly sets out that the function to maintain security and order falls within the authority of the police and not the military. Secondly, the military deployment mechanism under the Social Conflict Management Law is not in accordance with the standard set by the Law on Indonesian Military No. 34 Year 2004. According to the Military Law, the President can deploy military power only with the *consent* of the Parliament[64]. Yet, the Social Conflict Management Law sets a lower standard on this matter. It establishes that, for conflict at the national level, the President can deploy military power after *consultation,* not necessarily consent, of the *leaders* of the Parliament[65]. In cases where conflicts take place at the city, regent or provincial level, the local authorities have to ask the central government for military deployment, if they wish any. It is unclear whether the central government has to in turn seek consent, or consult with, or merely inform the Parliament after the request for military deployment from local authorities is submitted.

Given the characteristics of force used by the military, its deployment should be made highly restrictive. The military is, by definition, armed. Under international human rights standards, the use of lethal weapons can be only justified when it is strictly necessary and proportionate. For this reason, the authority to deploy military should be limited and subject to consent of Parliament, it being the representatives of citizens.

The problem with the Social Conflict Management Law also lies in its provisions regarding reconciliation and conflict settlement that prioritise the use of an 'indigenous approach'[66]. Without undermining the right of indigenous people to uphold their values and customs, the AHRC is of the opinion that legal proceedings have to take place where crimes are committed during the conflict. Indigenous approaches used for reconciliation and conflict settlement, such as public apologies, or the granting of restitution can be used to complement, not substitute, criminal legal proceedings.

Law No. 11 Year 2012 on Juvenile Criminal Court system

A new law on the Juvenile Criminal Court has been enacted by the Parliament to replace the previous one created in 1997. Unlike most laws the Parliament enacted this year, the law has provoked praise from various stakeholders for its compliance with international standards on children's rights. The new law has revised the age limit of children that can be taken to criminal legal proceedings from 8-18 years old to 12-

62 Id., Articles 26-28
63 Id., Article 33
64 Law No. 34 Year 2004 on Indonesian Military, Art. 17 (2)
65 Social Conflict Management Law, supra note 59, Art. 33 (3)
66 Id., Articles 37 (2), 40 and 41

18 years old[67]. The law also contains a specific provision regarding the rights of a juvenile in criminal proceedings that was absent in the previous Juvenile Court Law, Law No. 3 Year 1997.

Restorative justice is the theme dominating the law which was enacted in July. There is not only an explicit article emphasising the obligation of law enforcement officials to prioritise such justice. Stricter restrictions on detention and punishment of juveniles have also been established by the new law. One of its provisions, for instance, implies that bail should be the rule and detention should only be an exception, whilst another article sets out that only those children no younger than 14 years having allegedly committed crimes subject to a minimum 7 years of imprisonment may be detained. The period of detention established by the new law is also much shorter than what is stipulated under the 1997 Law[68].

Stages of proceeding	Law No. 3 Year 1997	Law No. 11 Year 2012
Investigation	20 + 10 days	7 + 8 days
Prosecution	10 + 15 days	5 + 5 days
First instance trial (district court)	15 + 30 days	10 + 15 days
Second instance trial (high court)	15 + 30 days	10+ 15 days
Third instance trial (Supreme Court)	25 + 30 days	15 + 20 days
Possible total period of detention	**200 days**	**110 days**

The punishment that may be handed down by the judges to convicted juveniles is also more varied in the 2012 law. It includes warnings, community service, work experience, and fulfilment of traditional / cultural obligations as punishment[69], and it prohibits the court from sending juveniles younger than 14 years to imprisonment[70]. Another feature which distinguishes the new law from the one it substituted is that it contains several articles guaranteeing the rights of children who are victims or witnesses to a crime.

Laws challenged at the Constitutional Court

In 2011, the Parliament enacted the Law No. 17 Year 2011 on Intelligence which was heavily criticised by human rights watchdogs for its extensive vague provisions that may result in arbitrary interpretation and disproportionate deprivation of basic rights. A group of local NGOs challenged the law in 2012 in the Constitutional Court, which concluded its judgment in October the same year.

The NGOs challenged 17 provisions under the law, including those defining specific terms such as 'threats' and 'enemies'; articles granting the power of surveillance to the National Intelligent Agency (Badan Intelijen Nasional, BIN); and broad provisions criminalising the leaking of intelligence secrets. The NGO coalition also challenged the provision granting BIN the authority to recommend the rejection

67 Law No. 11 Year 2012 on Juvenile Criminal Court System, LN 2012 No. 153. Article 1 (3) of the law defines 'Children in conflict with law' as children aged between 12-18 who are allegedly involved in crimes
68 Id., Articles 33-38
69 Id., Art. 71 (1)
70 Id., Art. 69 (2)

/ acceptance of clearance of non-Indonesian individuals and organisations. Having listened to the arguments presented by the NGOs as claimant, and the government as respondent, the Constitutional Court dismissed all the arguments submitted by the NGOs and decided Law No. 17 Year 2011 is in accordance with the Indonesian Constitution. In its reasoning, the Constitutional Court put heavy emphasis on the possibility to limit human rights as well as the need of BIN to be granted extensive authorities given 'the multidimensional character of threats today due to globalisation and technology development'.

More information on the judgment of the Constitutional Court on Intelligent Law can be found at http://www.humanrights.asia/opinions/interviews/AHRC-ETC-032-2012.

Discussed bills

The **Social Organisation Bill** has been included in the list of prioritised legislation established by Parliament since 2005. The debate on the bill, however, has increased in 2012 as the draft has started to take shape. Civil society organisations have expressed their concerns on the bill, as it contains provisions that are not in compliance with the right to freedom of opinion, expression, and association, all of which are guaranteed both in the Constitution as well as in various international human rights instruments.

According to the Bill, to be able to operate in the country, every organisation should be registered with the Indonesian government; those failing to do so will be considered illegal organisations and not be allowed to conduct any activities. The requirements imposed by the Bill to organisations seeking registered status from the government, however, are too burdensome and vague, and such vagueness curtails the freedom of expression and association in the country. The Bill, for instance, obliges all social organisations to preserve the integrity of the state; to adhere to and respect religious as well as cultural values, morality, ethics and decency norms[71]. The organisations shall also maintain national security and public order. Without any clear definition, these terms are subject to arbitrary interpretation. An organisation which dissents with the central government or promotes religious values upheld by minorities can be easily declared as a banned organisation under the Bill.

Organisations not in compliance with the obligation to respect and preserve such vague values may be temporarily banned by the executive, initially without any intervention from the judiciary. Legal proceedings to challenge the executive's decision to ban an organisation will take place only if the organisations object to such decision.

The Bill also establishes that persons who have resigned or are removed from the administration of an organisation are prohibited from creating a new organisation that has similar characteristics or goals to the one they used to work for. Any new organisation with similar characteristics or goals will automatically not

71 Draft on the Law concerning Social Organisation, 30 May 2012 version

be recognised by the government. With the absence of an explanatory note on the Bill, it is difficult to assess what motivates Parliament and government in proposing such provisions.

The overcautious approach over anything foreign is also adopted in the Bill. Indonesian organisations which are or will be funded by foreign donors shall report to, and seek consent from, the government. Foreign organisations can possibly be established and conduct activities in Indonesia on the condition that they have obtained permission from the Ministry of Foreign affairs and are willing to submit a financial as well as an activities report to the government. As with the Indonesian ones, a foreign organisation's activities will also be constrained by several vague provisions under the Bill. Foreign organisations are not permitted to conduct activities that are not in accordance with Pancasila and the Constitution; that disrupt the stability and integrity of the country; that conduct intelligence gathering activities; that conduct activities jeopardising the relationship between Indonesia and other countries; and that breach the decency norms, religious, social, and cultural values, and morality and ethics accepted and recognised in Indonesia.

A bill on gender equality was also being discussed by the Indonesian Parliament during the course of 2012. The bill was aimed to push for a state of equality between men and women in the country by obliging all state institutions to, *inter alia*, impose temporary affirmative action as well as to harmonise current laws and public policies. Protests and refusals against the bill are being voiced from Islamic groups, who are of the view that it contains the teaching of liberalism and is against Islam. The bill, according to such groups, is diminishing the role of women as housewives and children educators at home.

B.8 Women and children's rights

A challenge to several provisions under the Law No. 1 Year 1974 on Marriage with the 1945 Constitution was brought to the Constitutional Court. One of articles contested by the complainants was Article 43 (1), which establishes that children born outside marriage only have civil relationship with the mother and her family. The article often led to women having children outside marriage to carry the burden of raising children without support from men.

The Constitutional Court agrees that provision in the Marriage Law, which rules on children born outside marriage, is incompatible with the Constitution. Without referring to any particular articles under the 1945 Constitution, the Court upheld that such children should also be declared to have a civil relationship with their biological father in order to address the issue of stigmatisation and discrimination faced by them within the society.

There have been efforts from different state institutions to improve gender equality in the country. Such efforts, unfortunately, are merely able to address the issue of formal gender inequality and not the substantial equality. In 2012, various high rank state officials delivered sexist comments as they spoke on the issue of pornography and rape. Following the establishment of the Anti-porn Task Force, whose main task is to support and monitor the implementation of the controversial Pornography Law, the Indonesian

Minister of Religious Affair Suryadharma Ali stated that 'there must be a set of universal criteria to define something as pornographic, one of which will be when someone wears a skirt above the knee'[72]. Responding to the rampant rape cases that have taken place in Jakarta, the Mayor of Jakarta Fauzi Bowo suggested women not to wear short skirts while travelling on public transportation[73]. According to him, by doing so, women are protecting themselves from rape. A similar comment was stated by the Chairman of the House of Representatives, who was promoting the issuance of a Parliament's internal regulation prohibiting women from wearing skirts above their knees[74].

C. RECOMMENDATIONS

As impunity is still a big theme in 2012, the AHRC calls for the government of Indonesia to ensure effective criminal investigation on human rights abuses and bring those responsible for the abuses to justice. In addition, the AHRC urges the Indonesian government to take the following measures:

- To ensure the principle of free, prior and informed consent is respected by local government and companies whose activities potentially affect the life of surrounding communities. The government has to provide legal guarantee and recognition on communal right to land;

- Definition of 'indigenous people' provided by Plantation Law has to be amended in accordance with international human rights standards. Principle of self-identification has to be guaranteed and the government should not have the authority to decide which groups are indigenous and which are not;

- To withdraw laws and regulations discriminatory towards religious minority groups. These laws include the 1965 Blasphemy Law, the Ministerial Regulations on building houses of worship, and the Ministerial Decree banning the Ahmadiyyah;

- To include religious discriminatory motive as an aggravating factor in punishing those committing religious-based violence and intimidation;

- To ensure the neutrality of law enforcement officials in dealing with conflicts between villagers and companies, as well as in the issues of religious-based violence;

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72 See 'Gugus Anti-Pornografi Mengatur Rok Mini' ('Anti-Pornography Task Force to regulate mini skirts'), available at http://us.nasional.news.viva.co.id/news/read/299999-gugus-anti-pornografi-mengatur-rok-mini
73 'Foke: 'Jangan Pakai Rok Mini di Angkot' ('Foke: 'Don't wear mini skirts in public transportation'), available at http://metrotvnews.com/read/news/2011/09/16/64986/Foke-Jangan-Pakai-Rok-Mini-di-Angkot-
74 'Marzuki Ali: Pelecehan Seksual Dipicu Pakaian Tak Pantas' ('Marzuki Ali: Sexual molestation caused by inappropriate clothing'), available at http://nasional.kompas.com/read/2012/03/06/14273563/Marzuki.Ali.Pelecehan.Seksual.Dipicu.Pakaian.Tak.Pantas.

- To ensure the AGO accepts and follows up the reports and recommendations on Mysterious Shootings and 1965-1966 human rights abuses;

- To criminalise the practice of torture, in accordance with the mandate of the UN CAT. The AHRC calls the Indonesian Parliament and government to expedite the revision process of the Penal Code and the Criminal Procedure Code. The Indonesian government needs also to establish a set of safeguards against torture, as recommended by the UN Special Rapporteur against Torture;

- The Supreme Court has to encourage the judges to no longer hand down the death penalty to the accused in cases they examine;

- To impose a moratorium on the death penalty. Those sentenced to death penalty must have their rights, including the right to meaningful clemency, respected;

- To revise laws unreasonably limiting right to freedom of expression – such as the Law on Electronic Information and Transaction – in accordance with international human rights standards;

- To understand the provisions concerning settlement using indigenous approach under the Law on Social Conflict Management, as a complement, and not substitutes, to criminal proceedings against those involved in, and responsible for, violence;

- To impose strict restriction on the deployment of military. Provisions under Social Conflict Management Law setting low requirements for military deployment needs to be revised in accordance with human rights principles;

- To ensure the regulation on social organisations under the Social Organisation Bill will not infringe the right to freedom of expression, opinion and association;

- And, to ensure the participation of civil society in the enactment process of the Gender Equality Bill and to ensure the provisions set out in such Bill are in accordance with international standards on the protection of women's rights.