

PARALLEL REPORT

**To the Initial Report of Indonesia on the
Implementation of the
International Covenant on Civil and Political Rights (CCPR/C/IDN/1)**

**Prepared Jointly
By**

**The International Federation for Human Rights
(FIDH)**

And

**The Commission For The Disappeared and Victims Of Violence
(KontraS, Indonesia)
(Member of FIDH)**

**Submitted to the
United Nations Human Rights Committee**

**For Consideration during the
108th Session, Geneva on Indonesia
10-11 July 2013**

Submitting Organizations

The International Federation for Human Rights (**FIDH**) takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice. It works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights. FIDH was established in 1922, and today unites 178 member organizations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level. Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.

The Commission for the Disappeared and Victims of Violence (**KontraS**) is non-governmental organization committed to protecting and promoting human rights in Indonesia. Established in 1998, KontraS is one of the leading organizations in Indonesia that continues to confront the authoritarianism of the Soeharto regime and fights for the right to be free from all forms of violence and repression, especially resulting from the abuse of state power. KontraS has offices throughout Indonesia.

KontraS is active on several fronts. KontraS comprehensively monitors and documents past and current human rights violations in Indonesia and disseminates information on those violations through technology, written reports, and media in order to increase information, knowledge of, and accountability for abuses. KontraS also conducts broad lobbying activities on laws, policies, and practices and provides legal support and legal services to victims of human rights abuses at the individual and community levels. Last, KontraS engages in extensive advocacy at the national, regional, and international levels and has testified before various foreign governmental and intergovernmental bodies.

This submission responds to several of the issues posed by the Human Rights Committee during its 107th session to be taken up in connection with the consideration of the Initial Report of Indonesia (CCPR/C/IDN/1) on the International Covenant on Civil and Political Right (Covenant or ICCPR). It is based on KontraS's own expertise and comprehensive monitoring of the civil and political rights situation throughout Indonesia, including through independent investigations and KontraS's work with and support to victims, their families and communities. The information presented here reflects the situation in Indonesia over the last four years.

Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

Question 1: Please state whether the provisions of the Covenant are directly applicable by domestic courts and to what extent they are invoked and applied. Please also provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant. Please provide information on measures taken to implement the National Strategy on Access to Justice which was launched in 2009. Please state whether the State party intends to accede to the Optional Protocol to the Covenant.

1. The provisions of the Covenant should be directly applicable to the domestic courts. KontraS has submitted hundreds of cases to courts invoking the application of the Covenant to request remedy on behalf of victims of human rights violations, but the domestic courts have never made reference to or applied the Covenant. KontraS has regularly invoked the Covenant in its correspondence on human rights to the State institutions, but the State has never referenced the Covenant in its replies.
2. Although human rights are guaranteed under the Constitution and several laws, including Law No.39/1999, effective remedies are not available for abuses. They are particularly hard to achieve when the police and military are the perpetrators (detailed below). In Indonesia, the military and police continue to resort to violence, brutality and torture and manipulate the administration of justice. In 2012, KontraS documented 704 cases of such violations by the police and 94 cases by the military.
3. While Indonesia launched a National Strategy on Access to Justice in 2009, actual access to justice remains challenging. KontraS has facilitated thousands of cases on behalf of victims, substituting for the Government's obligations. The Law and Human Rights Ministry announced the allocation of IDR40 billion (approximately €3 million) to be disbursed in 2013 to select legal aid entities nationwide, but this amount is nominal and insufficient to meet the needs of the Indonesian people in the current environment of pervasive violations.

Issue of Concern: *Availability of Effective Remedies for Violations Committed by the Police*

4. In March 2011, Presidential Regulation No. 17/2011 on the National Police Commission equipped the body with the mandate to monitor the process of follow-up on suggestions and complaints made by citizens. The Commission has oversight of and may request a re-examination of cases already adjudicated by the police on alleged breaches of the codes of conduct and ethics. The Commission does not have separate investigative capacity, however, even in instances of human rights violation or corruption, and its findings cannot be used to compel criminal prosecution.

5. The internal police mechanisms – the ethics and disciplinary bodies – are generally insufficient to address human rights violations. Ethics and disciplinary bodies may only impose light sanctions and have been biased in favour of the police. While the criminal courts maintain jurisdiction over relevant crimes, police rarely face sanctions beyond these internal mechanisms, including prosecution. In the case of the Neka Pratama, who died in police custody from torture, policemen were prosecuted and sentenced to 3 to 4 years' imprisonment, yet the police ethics and disciplinary committee refused to dismiss those police from service.

Issue of Concern: *Availability of Effective Remedies for Violations Committed by the Military*

6. Pursuant to Act No.31/1997, allegations against members of the military irrespective of subject matter must be tried before the military tribunals. Although Article 65 of Law No. 34/2004 on the Indonesian military subsequently provides that ordinary (i.e., non-military) crimes committed by military members must be tried through the civilian criminal courts, the Indonesian Parliament and Government, particularly the Ministry of Defence, refuse to enforce Article 65.
7. Two other exceptions exist to the jurisdiction of the military tribunal – the first, for corruption under the anti-corruption laws and, the second, for widespread or systematic attacks of civilians, which may be tried by a human rights court. In this context, however, only three cases have been brought before human rights courts: the 1984 Tanjung Priok case, the 1999 East Timor case, and the 2000 Abepura case.
8. The military tribunal lacks transparency and independence. Cases may only be submitted for trial, completed for trial, and closed in the interest of law, public, or military by the Military Commander, Chief of Staff and the commander or unit head as designated. The Military Commander also wields the power to establish the Honorary Council, which oversees dismissal of the tribunal judges, and to appoint and dismiss the court clerks.
9. Suspects previously convicted by the military tribunal have received light sentences. For example, those convicted for torture of Papuans, which was videotaped and appeared in a Youtube video, only received sentences of 8-10 months' imprisonment. Similarly, the nine members of Battalion 744/Satya Yudha Bakti Atambua only received one-year sentences.
10. In practice, the military may continue to act with impunity and often contravene the authority of the police, who are mandated to investigate their crimes. In two particularly shocking incidences in 2013, the military attacked the Police Headquarters in South Sumatra, known as OKU case (2013), and murdered four detainees in Cebongan Penitentiary (2013). Police often refuse to investigate

complaints against the military or question military suspects.

11. KontraS has conducted investigations into the recent extrajudicial killings of the four detainees in Cebongan Penitentiary in 2013. As a result of our investigation, we found that, in addition to the extrajudicial killing of the four detainees who were implicated in the murder case of a Special Forces member, ten prison officials were also assaulted or injured. Evidence suggests that this was a premeditated attack and many other individuals, including the four assassinated and possibly higher-ranking officials in the military, may have had prior knowledge of the attack.
12. Eleven soldiers are now facing charges for military court for this attack, but based on the track record of military tribunals in Indonesia, there is strong reason to believe the perpetrators will get off with minimal sentences, or possibly acquittals. The Government must investigate whether others were involved in or had prior knowledge of the attack on the Cebongan Penitentiary.

Question 3: Please provide information on the steps that have been taken to strengthen the cooperation between the National Commission on Human Rights (Komnas HAM) with the State party's institutions. What steps have been taken to establish an ad hoc Human Rights Court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament (DPR). Furthermore, what measures have been put in place to ensure that Komnas HAM can challenge decisions of the Attorney General not to prosecute cases of human rights violations that Komnas HAM has recommended for prosecution? Please respond to allegations that members of the government in the State party have stated that military officials should ignore summons from Komnas HAM in connection with investigations of alleged gross human rights violations.

13. Following from its investigations, the Komnas HAM has recommended the Attorney General to prosecute the mass murder case of 1965/1966 and the cases of Trisakti-Semanggi I & II, Wasior-Wamena (Papua), Talangsari (1989), the May Riot (1998), and the Enforced Disappearance of Activists from 1997 to 1998. Including these, almost all cases of gross human rights violations that the Komnas HAM has recommended for prosecution have been rejected by the Attorney General.
14. Prosecutors are generally unwilling to investigate cases that may implicate members of the Government. The Attorney General continues to apply certain manipulated or incorrect interpretations of law to refuse prosecution. For instance, the Attorney General has asserted the principle of *ne bis in idem* (double jeopardy) to avoid prosecuting cases tried previously before biased military tribunals or has rejected the results of the investigations of the Komnas HAM because its investigators do not take an oath.
15. In 2006, the Komnas HAM recommended to the Attorney General the formation

- of an ad hoc Human Rights Court to prosecute the cases of the fourteen pro-democracy activists who were disappeared between 1997 and 1998, but the Attorney General refused to cooperate without a decree from the President. In September 2009, a Special Committee established by the DPR made official recommendations to the President: 1) to establish an ad hoc Human Rights Court; 2) to initiate an independent and impartial investigation into the whereabouts of the disappeared; 3) to provide reparations and rehabilitation for the families of the disappeared, and; 4) to ratify the U.N. Convention on the Protection of All Persons from Enforced Disappearances.
16. In April of 2012, the Ombudsman of Indonesia declared that by failing to implement the recommendations, the President and the administration committed maladministration. Nevertheless, the President has refused to make a decree to the effect of establishing the ad hoc Human Rights Court. Although the ratification of the U.N. Convention on the Protection of All Persons from Enforced Disappearances is part of Indonesia's National Action Plan on Human Rights, to this day the government has failed to actually fulfill any of the recommendations put forth by the Komnas HAM. In addition, the person who is widely believed to be responsible for these disappearances and many other gross human rights violations, former Special Forces Commander Prabowo Subianto, is now a front-runner for the upcoming presidential election in 2014.

Issue of Concern: *Ineffective Remedies for Gross Violations in Aceh*

17. The Helsinki MoU in 2005 and subsequent laws provided for the establishment of an ad hoc Human Rights Court and a Truth and Reconciliation Commission (*Komisi Kebenaran dan Rekonsiliasi* or KKR) to address the gross human rights violations in Aceh. In 2008, the establishment of the KKR was proposed, but the discussion has just started in 2013. The President and the House of Representatives should immediately order the Ministry of Law and Human Rights to immediately establish the ad hoc Human Rights Courts in Aceh as well as encourage the President and Governor of Aceh to form the KKR and to accelerate the recovery process of victims.

Issue of Concern: *Ineffective Remedies for Gross Violations in Timor Leste*

18. Indonesian security forces undertook a brutal military campaign in East Timor (Timor Leste) before, during, and after the 1999 referendum. Militia groups, in conjunction with Indonesian security forces, unleashed waves of violence, destruction, forced displacement and intimidation. A *Komnas HAM* inquiry on the 1999 crimes in East Timor led to ad hoc human rights trials of eighteen perpetrators, and six of those were convicted. Upon appeal, all perpetrators were acquitted.
19. After the Final Report release of the UN-backed Commission on the Truth and Friendship (CTF), the Government of Indonesia and the Democratic Republic of

Timor-Leste has yet to implement a reparations program, although both the Commission for Reception, Truth and Reconciliation (CAVR) and the CTF recommended forms of reparations to victims. In 2011, the President issued Decree No. 72/2011 on the Action Plan for the Implementation of the recommendations of the CTF, and a Working Group Monitoring Implementation of the Plan of Action was established. Yet, up to now, no further information on the progress of this working group and action plan is available.

Issue of Concern: *Ineffective Remedies for the 1965/1966 Mass Killings*

20. In July 2012, Komnas HAM Period of 2007-2012 announced the results of the long investigation into the serious human rights violations in 1965-1966 and Mysterious Murder cases (1982-1985)¹. It found evidence of gross human rights violations, such as murder, extermination, enslavement, expulsion or forcible transfer of population, arbitrary detention. The Komnas HAM recommended that the Attorney General immediately conduct an investigation on the results of its report and requested that the President set a policy for effective remedy to victims.
21. On several occasions, the Attorney General stated that the events of 1965/1966 were not categorised as criminal violations. In November 2012, the Attorney General returned the Komnas HAM's investigation report to it on the grounds that the Attorney General considered parts of the investigation report to be incomplete. The Komnas HAM has repeatedly completed the report and re-sent it back to the Attorney General.

Issue of Concern: *Ineffective Remedies for the Extrajudicial Killing of Munir*

22. The case of the extrajudicial killing of Munir, a prominent human rights defender and the founder of KontraS, also remains unresolved. Munir Said Thalib was murdered in September 2004 on a Garuda Airlines flight from Jakarta to Amsterdam. In 2005, the President ordered a fact-finding team to investigate his death, but the report from this investigation was never released. In November 2005, the members of the U.S. House of Representatives sent a letter to the President urging him to release the report and act on its recommendations. At the time, the letter was widely reported in the press and was helpful in bringing international attention to Munir's murder and the Indonesian government's failure to act. As a result, the Indonesian police opened an investigation and a former Garuda pilot, Pollycarpus Budihari Prijanto, was convicted of the murder charge and sentenced to 20 years in prison. However, KontraS's own research on this case leads us to believe that the convicted pilot was only a hired assassin, and that

¹ Fathiyah Wardah, "Komnas HAM: Terjadi pelanggaran HAM berat pada Peristiwa 1965/1966", 2013 (National Commission on Human Rights; Violations happened during 1965/1966 case), available at : <http://www.voaindonesia.com/content/komnas-ham-terjadi-pelanggaran-ham-berat-pada-peristiwa-1965-1966/1443521.html>, diakses 26 Februari 2013

the people who plotted Munir's murder are still at large. The decision to launch a new investigation and subsequently ask a review of the trial lies now with the Attorney General, but no substantive actions have been taken towards that end.

Right to life (art. 6)

Question 9: Please respond to allegations that security personnel in the State party killed alleged criminals, and terrorist suspects in the course of apprehending them in 2011. Please also respond to reports that as a result of excessive use of force during protests on 19 October 2011 in Jayapura, Papua and on 24 December 2011 on Buma Island and West Nusa Tenggara, the police used excessive force and killed several protesters. What measures have been taken to investigate these incidents as recommended by Komnas HAM?

23. We note that violence continues unabated in Papua up to now, including a spate of murders and extrajudicial killings in 2012. Based on KontraS's monitoring, currently thirty-eight Papuan political prisoners remain in detention or imprisonment. In 2012, KontraS monitored 151 cases of violence by State and unknown actors affecting as many as 427 victims. Shootings in particular increased from twenty-nine documented incidences in 2011 to fifty incidences in 2012, occurring mainly in the areas of Abepura, Jayapura, and Puncak Jaya – the oft identified base of the Free Papua Movement.
24. In Puncak Jaya, security operations were often conducted to seek Free Papua Movement actors. The case of torture which was uploaded on *Youtube* (2010) and other torture cases that gained wide public attention occurred in Puncak Jaya region. On the other hand, Abepura and Jayapura are the meeting points where the civil society frequently convenes to conduct peaceful protests. Yet, clashes between security forces and protesters are also common. Those include the mysterious night-time shooting in June 2012 and the case of Tri Sasono, a resident from Ngawi, East Java, who work as security guard and was shot dead while riding a motorcycle in Jayapura.

Issue of Concern: Repression of Human Rights Defenders Working in Papua

25. Civil society and human rights defenders working at the local and provincial level and regions with special autonomy suffer from limited access to protection and justice mechanisms. The stigmatization of human rights defenders as 'separatists' in the provinces of Papua and West Papua continues and is used to legitimise the maintenance of a large military presence in the provinces. Additionally, access to the region for international human rights workers and journalists remains heavily restricted and difficult, adding to the isolation of human rights defenders working in Papua, increasing their vulnerability and leading to a decline in accountability

of security forces in the two provinces².

Question 10: Please provide data on the number of deaths and their causes in the State party's prisons and places of detention. Please also provide information on the specific measures that are being taken to prevent deaths in prison. What measures have been taken to investigate, and where appropriate, prosecute and punish acts of prison personnel or inter-prisoner violence that have led to deaths in prisons and detention facilities? Please provide data on the number of prison personnel that have been disciplined or prosecuted for cases related to deaths in prisons or detention facilities.

26. The Government has not established a National Preventive Mechanism to investigate prisons as promoted by the Optional Protocol of the Convention against Torture. Thus, interested institutions, including the Komnas HAM and NGOs must obtain a permit from the police before investigating cases relating to death in custody.

Question 11: Please provide information on the status of the de facto moratorium on the death penalty following reports that the State party has resumed the execution of persons convicted of crimes related to drugs and terrorism. Please state whether the State party is considering acceding to the Second Optional Protocol to the Covenant.

27. Attorney General's Office stated in December 2012 that there were, as of that date, 133 individuals on death row: seventy-one on drug charges, sixty for murder convictions, and two for terrorism. A criminal defendant who has been sentenced to death in a district court can appeal to the relevant high court and to the Supreme Court. It sometimes occurs that a defendant who is not sentenced to death at first instance will, upon appeal, receive the death penalty. The executive branch has also commuted a number of death sentences, however, reducing the number of people sitting on Indonesia's death row. Executions in Indonesia are by firing squad and are vulgar, slow and painful. A condemned prisoner only learns of his impending execution 72 hours before he is to be executed.
28. Popular opinion in Indonesia supports the death penalty, and the Government has not embarked on any programs to educate citizens on the matter. In a statement in February 2013, the Attorney General said that twelve inmates could face the firing squad in 2013. It seems unlikely that Indonesia will accede to the Second Optional Protocol to the Covenant when the first execution in four years occurred only one month following the Attorney General's statement. It has been alleged that the recent execution of Ademi Wilson in March 2013, which ended Indonesia's 4-year *de facto* moratorium on the death penalty, was intended to reap popular support ahead of the elections in 2014.

² Submission of Shadow Report on the Situation of Human Rights Defenders in Indonesia for the 13th Session of the UN Universal Periodic Review for Indonesia by the Civil Society Coalition for the Protection of Human Rights Defenders, November 21, 2011.

29. In one recent instance of “tough justice”, in January 2013, Ms. Lindsay Sandiford, a British citizen, was sentenced to death for drug trafficking by a Bali court. The prosecution asked for a 15-year sentence, but the court imposed the death penalty instead. In another instance in January 2013, Mr. Muhammad Rizal, was sentenced to death by the Pekanbaru District Court in Riau, Sumatra for a double murder. The prosecutor recommended a sentence of life imprisonment. KontraS is also aware of the sentencing of four other individuals to death this year.

Issue of Concern: *Death by Firearm Committed by Police and Military and Anti-Terrorism Unit Operational Detachment 88 (Densus 88)*

30. In addition to the prevalence of extrajudicial killings in Indonesia, we note that violence and death often results from the use or misuse of firearms by the military and police. In 2012, KontraS documented 102 cases of shooting, where forty-eight individuals were killed and 103 were injured. Firearms were often discharged against suspected terrorists, suspected criminals, and people demonstrating in relation to agrarian conflict or natural resources.
31. The authority to use firearms is regulated in Law No. 2/2002 on the Police and Police Regulation No. 1/2009 on the Use of Force in Police Action. There lacks an appropriate standard operating procedure on use of firearms, however. In May 2013, in counterterrorism actions, Detachment 88 killed seven suspects.

Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person, treatment of persons deprived of their liberty, independence of the judiciary and fair trial (arts. 7, 9, 10 and 14)

Question 14: *Please respond to allegations that torture and ill treatment of detainees is widespread especially at the moment of apprehension and during pre-trial detention, and that it is mostly used to extract confessions. What measures have been put in place to ensure that evidence obtained under torture is inadmissible and is excluded in court? Please provide data on the activities of the Internal Affairs Division and the National Police Commission which are mandated to investigate complaints against police officers. Specifically, please provide data on: (a) the number of complaints received against police officers; (c) investigations carried out; (d) prosecutions, convictions and types of penalties imposed; and (e) compensation awarded to the victims of torture or ill-treatment.*

32. Indonesia has not yet criminalized the act of torture. In addition, the courts consistently refuse to examine allegations of torture by accused during pre-trial procedures. The Witness and Victim Protection Agency also remains ineffectual in addressing allegations of human rights violations, including threats and harassment that may originate from the Police and the Military.

33. In 2012, KontraS documented 1351 instances of arbitrary arrest, harassment and detention – mostly of demonstrators who were protesting against fuel hikes, in agrarian conflict areas, and against the fleecing of natural resources. Most arrests involved some form of assault by police. In addition, we documented seventy-nine cases of torture that occurred during arrest and interrogation leading to the deaths of eleven people and the injury of 125.
34. Torture is particularly prevalent in Papua. KontraS has documented cases of torture inflicted upon at least forty-two victims in the Abepura Prison. Torture is often inflicted upon individuals suspected of supporting or being members of the Free Papua Movement. In one recent incident, in November 2012, Uamang Frengki was on his way to church when he was abducted by plain-clothed police officers in a car. After arriving at the police station, Frengki was interrogated and accused of purchasing weapons and providing food to members of the Free Papua Movement. During four hours of interrogation, Frengki was beaten upon his face and body so that he could not walk for four days.

Issue of Concern: *Violations of Rights to Liberty and Security and Freedom from Torture in Land Conflicts and Targeting of Human Rights Defenders Who Work on These Issues*

35. In 2011, KontraS documented fifty-seven cases of land conflict, including plantations, forestry, and mining, where the police and military were involved. As a result of police and military violence, twenty-nine people died, sixty-three were shot, 240 people were injured, and 233 were arrested or faced threats and intimidation. Through its investigations, KontraS identified forty-nine members of the police and nineteen members of the military, among others, as having committed these abuses.
36. The targeting of environmental and land rights defenders who work with indigenous and rural communities, especially on land-grabbing but also access to water-working area (like fisheries), is a serious problem in Indonesia. Harassment takes many forms, including prosecution on criminal defamation or spurious charges, arbitrary arrest and detention, intimidation and threats by telephone calls or SMS, direct verbal threats, physical violence (beating and sexual abuse), smear campaigns and stigmatization (as ‘separatists’, ‘communists’, ‘enemies of Islam’ and ‘agents of Western powers’), extrajudicial killings, restrictions on the right to peaceful assembly, etc.
37. Abuses are perpetrated by both state and non-state (companies, hired criminals, members of extremist religious organisations) actors, many of whom are usually paid to defend the interests of corporations. A significant number of criminal cases are not processed according to legal and judicial requirements, which constitutes negligence by the state, perpetuating a culture of impunity in Indonesia.

38. As an example, journalists documenting illegal logging, environmental degradation or exactions committed by the police are subjected to attacks and fell victims of assassination, such as environmental journalist Mr. Ardiansyah Matra'is in Merauke, Papua, environmental journalist Mr. Muhammad Syaifullah in Balikpapan, East Kalimantan, Chief Editor of the Pelangi Weekly, Alfrets Mirulewan, in Southwest Maluku, journalist Mr. Ahmadi in an Aceh and journalist Banjir Ambarita in Jayapura, Papua province.
39. Environmental and land rights defenders are also often subjected to judicial harassment. The last case is that of Anwar Saddat, Director of the Indonesian Forum for the Environment (Walhi) South Sumatra who was arrested and detained after a staged demonstration in January 2013 that centered on a land dispute between the state-owned plantation company PT Perkebunan Nusantara VII Cinta Manis. Anwar Sadat has assisted the residents of Betung Village District, Kab. Ogan Ilir, South Sumatra Province. Anwar accompanied residents who questioned the arrest of some of the village farmers. He was charged with destruction of property (the gate of the regional police station) and with organizing a provocative action (demonstration) in the case of Ogan Ilir in the South Sumatra Regional Police Area in Lampung. He was sentenced to two years and six months in prison on his last trial.
40. But dozens of other such activists have faced criminalisation such as in July 2010, Messrs. Firman Syah and Dwi Nanto, two environmental and land rights activists of Friend of the Earth (*Wahana Lingkungan Hidup* - WALHI) Bengkulu, who accompanied villagers during a rally protesting against State plantation firm PT Perkebunan Nusantara (PTPN) VII in a land dispute. They were arrested along with 18 peasants from New Pering village, Alas Maras district, Seluma³, and named as suspects for obstructing PTPN VII. In February 2011, the Bengkulu District Court sentenced all of them to three months and twenty days in prison, a fine of 250,000 rupiah (about 21 euros) and a 15-day detention period in breach of Act No. 18 of 2004 on Plantation⁴.

Question 15: *Please provide information on measures taken to prohibit the widespread use of corporal punishment in the State party. What measures are being taken to repeal local legislation such as the Criminal Code of 2005 in Aceh, which introduced corporal punishment for certain offences, and whose enforcement is entrusted to the "morality police" (Wilayatul Hisbah) who execute these punishments in public by using methods such as flogging?*

41. Flogging continues in Aceh. Between June 2011 and June 2012, KontraS

³ WALHI helps the peasants to reclaim their land, which has been annexed by force by PTPN VII since 1986.

⁴ See INFID and IMPARSIAL, *Written Statement to the 16th session of the UN Human Rights Council*, UN Document A/HRC/16/NGO/80, February 24, 2011.

documented the public flogging of forty-seven individuals, each receiving between six and twelve lashes.

Question 20: *Please state the measures that the State party is taking to ensure that suspects have access to lawyers and legal aid. Please respond to reports of corruption in the provision of legal aid services, including an allegation that the speed of cases funded under the legal aid scheme depends on the payment of a bribe.*

42. Corruption is widespread throughout the Government. Moreover, anti-corruption activists are subjected to reprisals. Criminal libel, slander and “insult” laws prohibit intentionally publicising statements that may directly harm another person’s reputation, even if the statements or allegations in question are true. Acts under these provisions of the Criminal Code are punishable with up to 16 months of imprisonment. Another law, enacted in 2008, punishes defamation committed through the Internet with imprisonment of up to six years and heavy fines. These provisions make anti-corruption activists and journalists uncovering grafting cases extremely vulnerable to criminal proceedings and had a chilling effect on investigative work, resulting in self-censorship in a number of cases.

Freedom of religion and belief, freedom of opinion and expression, and freedom of assembly and participation in the conduct of public affairs (arts. 18, 19, 20, 21 and 25)

Question 26: *Please provide information on instances when a religion can be defamed under Law No. 1 of 1965 on the Defamation of Religion. Furthermore, please provide information on instances when the law was applied and the penalties that have been imposed on individuals who have been found to be in contravention with this law. Please explain how this law is compatible with the provisions of article 19 and 20 of the Covenant, in particular in light of General Comment No. 34 on article 19 of the Covenant relating to freedoms of opinion and expression. What measures have been taken to guarantee freedom of expression in West Papua?*

43. Law No. 1/PNPS/1965 is the central culprit for denying the freedom of religion and concerns the prevention of religious abuse and/or defamation. Article 1 of the Presidential Decision prohibits “[e]very individual ... in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion.”
44. Law no. 1/PNPS/1965 is particularly troubling because it allows the government to discriminate against religions that are deemed as outside majority viewpoints. The vague, abstract nature of this Presidential Decision has allowed the State to intervene within the private sphere and impose an official definition of religion

that necessarily excludes anyone who wishes to deviate from that doctrine. The law has unfortunately led to the passage of at least 15 federal and local level regulations that codify the discrimination of local religious minority communities in West Java, Bekasi, Bogor, East Java and South Sumatra.

45. A recent lawsuit brought by civil society organizations challenged the constitutionality of the law. In a decision that appeared heavily politically motivated, the Indonesian Constitutional Court upheld the constitutionality of the law, stating that it still served a purpose despite its recognized failures in protecting religious minorities. The Court inferred that without a better replacement, striking down the law as unconstitutional would create a legal vacuum concerning the right to practice one's religion in Indonesia. Until such time as the law is amended, the Court stated that it shall be deemed constitutional⁵.

Rights of persons belonging to minorities (art. 27)

Question 31: Please provide information on the measures being taken to protect the rights of ethnic and religious minorities such as the Ahmadiyyah followers. Please also provide an update on the status of the bill on the "Recognition and Protection of Traditional Minorities".

46. The right to freedom of religion and belief is explicitly enshrined in the Indonesian Constitution⁶. It is also articulated in other state laws and the state doctrine of Pancasila⁷. Yet the government has consistently failed to enforce this right, and religious intolerance in Indonesia is on the rise. This problem is exacerbated by: an incongruent system of local and national regulations, weak and discriminatory governmental institutions, and the unwillingness of government officials to enforce the rights of religious minorities.
47. In addition to Law No. 1/PNPS/1965, several other administrative regulations serve to discriminate against religious minorities. For example, Law No. 23/2006 concerning Administration requires individuals to identify their religion in legal documents such as identity cards and birth certificates. As a result, people must choose to identify with one of the six state-recognized religions or to not specify these six and be considered as godless. The process of establishing a house of worship also facilitates religious discrimination. According to the Joint

⁵ See Indonesian Constitutional Court Decision No. 140/PUU-VII/2009 (decided 19 April 2010), available in Bahasa Indonesia at <http://www.mahkamahkonstitusi.go.id/>.

⁶ See Section 28E and Article 28, Indonesian Constitution (UUD 1945).

⁷ Law no. 39 of 1999 on Human Rights and Law no. 12 ratifying the International Covenant on Civil and Political Rights.

Regulation between the Minister of Home Affairs and Minister of Religious Affairs 2006, one must obtain at least 90 identity cards to support the establishment of a house of worship and 60 cards from local residents and apply for a permit from the Religious Harmony Forum (Forum Kerukunan Umat Beragama /FKUB) on the district and provincial level to ensure that the house of worship includes local religious leaders. The complexity of this system allows those opposed to a religious group to easily thwart its efforts to establish a house of worship and can lead to clashes.

48. Various state agencies, including the Faith Community Supervision Coordination Board (Bakorpakem), the Forum for Religious Communication (FUKB), the Attorney General and the Ministry of Religious Affairs have all sanctioned legal discrimination against religious communities such as the Ahmadiyah, a distinct Muslim religious sect that is often the target of particularly virulent discrimination and acts of violence. The fact that the Government has consistently and repeatedly failed to come to the aid of the Ahmadiyah and other communities demonstrates the State's unwillingness to ensure the right to freedom of religion and belief for all people. Instead, it seems that in Indonesia, at least, the right is limited only to state-sanctioned versions of religion rather than individual choice.
49. Extremely troubling is the marked rise in incidents of persecution against minority religious communities in the last six years. Religious intolerance is growing in Indonesia. One particularly poignant example is the case of the Taman Yasmin Indonesian Christian Church. The Yasmin Church acquired permission to build a house of worship in Bogor, West Java but has continuously met opposition from the neighboring Muslim community. The Constitutional Court of Indonesia ruled in favor of the Yasmin Church's claim to territory in Bogor, however local government officials continue to stand in the way of the Yasmin Church and its worshippers, directly impacting the minority Christian group's freedom to practice its religion in Bogor.
50. In 2012, KontraS documented 371 violations of freedom of religion/belief in Indonesia. These violations include arson, shooting and destruction of property in and around places of worship, acts of violence against worshipers and/or the worship site, and forced closings of houses of worship. Of these cases, 145 involved the incitement, active participation, condonement, or conscientious omission of state officials. In January and February 2013, there were 18 documented violent acts toward religious minorities. These abuses occurred in the area of West Java, East Java, West Nusa Tenggara, Central Kalimantan, Sulawesi, Jambi, Riau, Banten, and Jakarta.
51. The police, the local governments, and military often act as the perpetrators of religious violence and may also contribute to the harassment of the members of communities whom they are supposed to protect. For example, on 24 December 2013, a group interrupted the HKBP Filadelfia Church during their Christmas worship, sealed the church, prohibited worship, and engaged in mass intimidation

and violence. When the police showed up, rather than question the attackers, the police interrogated Pastor Palti, the leader of the church, for allegedly assaulting one of the attackers. Occasionally, the police will criminalize members of the victimized religious group. For example, Tajul Muluk, a Shiite minority Syiah Community Leader in Sampang, East Java, was tried and sentenced on 12 July 2013 for two years' imprisonment for blasphemy against Islam.

Issue of Concern: *Shiite Minorities Still Refugees in the Sport Hall in Sampang*

52. On 29 December 2011, an Islamic school and houses of Shiite residents in the village of Karang Gayam, Sampang were burned by a mob that allegedly originated from an anti-Shiite group. There were 306 victims, including 110 were children under 9 years of age and thirty-six toddlers. In addition, there were dozens of elderly and pregnant women. These victims took refuge in the Sports Hall of Sampang, which is not equipped with adequate living facilities. Today, the Shiite minorities still live as refugees in the Sports Hall in Sampang, and in May 2013 the government suspended food aid for refugees, declaring that the emergency response period has expired.

Issue of Concern: *Continuing Persecution of the HKBP Filadelfia Church Community in Bekasi*

53. HKBP Filadelfia was founded in 2000 on the agreement Batakese communities who live in Bekasi West Java. In 2003, HKBP Filadelfia bought land and constructed two units of shop houses located in Bekasi to be a place of worship. The other residents in Bekasi have objected to the establishment of this place of worship. In June 2011, the court issued a decision to grant the permit on the establishment of the HKBP Filadelfia's house of worship; however the residents are continuing to oppose it. Since January 2012, every Sunday, a group of other residents congregate and subject the HKBP Filadelfia congregation to violence, threats, and intimidation. The Government has not taken sufficient steps to halt these abuses.

Issue of Concern: *Repression and Criminalisation of Human Rights Defenders Advocating for Rights of Persons Belonging to Minorities*

54. Lawyers who take up cases related to blasphemy and religious minorities often find themselves targets of harassment and intimidation, mostly by non-State actors, such as Islamist extremist groups. The situation is further aggravated by the fact that the police and other law enforcement agencies either fail to respond in the face of such incidents or, in some cases, even appear to openly side with extremist groups. Physical protection following such incidents is often not provided, and related complaints are not properly investigated, further adding to a climate of impunity and fear among minority groups and those defending their rights.

55. For example, in 2010, Messrs. Uli Parulian Sihombing, Nurkholis Hidayat and Choirul Anam, lawyers of the Legal Aid Foundation (LBH) representing various human rights organisations⁸, who initiated the judicial review of the blasphemy related provisions of the Criminal Code at the Constitutional Court, were attacked by members of the Islamic Defenders Front (*Front Pembela Islam* – FPI).
56. In recent years, there has been a marked increase in intolerance towards sexual minorities, blocking any progress in favour of the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people. The latter faced violent attacks and harassment by radical, extremist groups, such as the FPI or the Hisbut Tahrir Indonesia (HTI). Besides, the police remained passive when confronted with such acts.
57. There is currently no legislation for the protection of human rights defenders. Civil society initiated a draft law for the protection of human rights defenders. The National Human Rights Commission (NHRC) has also taken an initiative for the recognition and protection of human rights defenders with a proposal to amend the existing Human Rights Law (UU 39 2009). Both draft texts feature on the Indonesian Parliament's agenda for 2010-2014. Civil society has criticized the NHRC for being slow in monitoring and responding to certain cases of HRDs at risk⁹. Indonesia should adopt as soon as possible and implement a law for the protection of human rights defenders.

⁸ Including IMPARSIAL, the Institute for Policy Research and Advocacy (ELSAM), the Indonesian Legal Aid and Human Rights Foundation (PBHI), the Centre for Democracy and Human Rights Studies (DEMOS), Setara People's Union, Desantara Foundation and the Indonesian Legal Aid Foundation (YLBHI).

⁹ See 2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia.