



INDONESIA

IT'S NOT GOOD ENOUGH

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 27TH SESSION OF THE UPR WORKING GROUP, MAY 2017

AMNESTY
INTERNATIONAL



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First published in 2016

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 21/5345/2016

September 2016

Original language: English

amnesty.org

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Indonesia taking place in May 2017. In it, Amnesty International evaluates the implementation of recommendations made to Indonesia during its previous UPR in 2012, noting that important recommendations have yet to be implemented.

Amnesty International is concerned about the failure by Indonesia to ensure truth, justice and reparations for the victims of past human rights violations and their relatives, and the fragile justice system in the country. Rather than listening to victims and their families, the authorities have attempted to silence public discussions in many areas of Indonesia and have disbanded events related to the mass human rights violations that occurred in 1965-66 and the use of unnecessary and excessive force, particularly in Papua.

Legislation is used to criminalize peaceful political activities and violations of the right to freedom of expression are particularly severe in areas with a history of pro-independence movements, such as Maluku and Papua. Religious minorities still face harassment, intimidation and attacks.

In the final section of this document, Amnesty International makes a number of recommendations to Indonesia to address the human rights concerns raised in the submission.

FOLLOW UP TO THE PREVIOUS REVIEW

In its last UPR in 2012, Indonesia accepted recommendations to accede to a number of international human rights treaties, including the Rome Statute of the International Criminal Court, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ILO Convention No. 189 on Domestic Workers.¹ However, the government has yet to implement these recommendations.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, A/HRC/21/7, recommendations 108.1 (Iraq), 108.2 (Chile), 108.3 (Austria), 108.4 (Slovenia), 108.5 (Sweden), 108.6 (Switzerland), 108.7 (United Kingdom of Great Britain and Northern Ireland), 108.8 (Turkey), 108.9 (Maldives), 108.10 (Ecuador), 108.11 (Spain), 108.12 (Argentina), 108.13 (Mexico), 108.14 (Timor-Leste), 108.15 (Morocco), 108.20 (Slovakia), 108.21 (Germany), 108.22 (Liechtenstein), 108.23 (Australia), 108.24 (Hungary), 108.25 (Latvia), 108.26 (France), 108.28 (United States of America), 108.70 (Denmark), and 109.8 (Slovakia).

Indonesia also accepted recommendations to revise the Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) to criminalize torture.² However, torture is still not defined as a criminal offence in the Criminal Code or other national legislation.³

Indonesia also accepted recommendations to extend a standing invitation to the UN Special Procedures⁴ and specifically accepted to invite and facilitate the visits of the Special Rapporteurs on adequate housing and on health,⁵ the Special Rapporteur on freedom of expression,⁶ the Working Group on enforced or involuntary disappearances,⁷ the Independent Expert on minority issues,⁸ the Special Rapporteur on the right to food,⁹ and the Special Rapporteur on the rights of Indigenous Peoples.¹⁰ Since the last UPR, the Special Rapporteurs on adequate housing and on health have visited Indonesia.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Indonesia's Criminal Code (KUHP) and Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) contain a number of provisions that do not meet the requirements of international human rights law and standards.¹¹ For instance, the Criminal Code contains provisions that criminalize some forms of peaceful expression.¹² Additionally, the Criminal Procedure Code does not guarantee the right to challenge the legality of one's detention or the right to be brought before a judge or other judicial officer without delay and allows for prolonged

² A/HRC/21/7, recommendations 108.26 (France), 108.27 (Spain), 108.28 (United States of America), 108.29 (New Zealand), and 108.69 (Republic of Korea).

³ There is ongoing discussion and debate on a draft or provision of the Indonesian Criminal Code Revision that includes the definition of torture. There is also a specific draft law against torture.

⁴ A/HRC/21/7, recommendations 109.11 (Latvia), 109.12 (Austria) and 109.16 (Republic of Korea).

⁵ A/HRC/21/7, recommendation 108.55 (Republic of Korea).

⁶ A/HRC/21/7, recommendation 108.55 (Republic of Korea).

⁷ A/HRC/21/7, recommendation 109.15 (Mexico).

⁸ A/HRC/21/7, recommendation 109.15 (Mexico).

⁹ A/HRC/21/7, recommendation 109.15 (Mexico).

¹⁰ A/HRC/21/7, recommendation 109.15 (Mexico).

¹¹ Discussion and debate on a draft law of the Indonesian Criminal Code Revision, has been ongoing for more than three decades.

¹² Articles 106 and 110 of the KUHP for "rebellion" against the state (*makar*) and Article 156(a) of the KUHP for criminalization of blasphemy or religious defamation. Amnesty International is concerned that the Criminal Code Revision draft law contains provisions criminalizing adultery in contravention with international human rights standards (Articles 483 - 486). Such provisions violate international law and standards relating to physical and mental integrity, and their implementation may violate equality before the law, as women tend to be prosecuted more than men. See Amnesty International, Joint Open Letter with LBH Masyarakat, *Open Letter to the House of People's Representatives on the Reviewing and Passing of a New Criminal Code* (Index: ASA 21/022/2009).

pre-trial detention.¹³ Finally, there are no provisions in the Criminal Code which allow victims and their relatives to obtain reparation for crimes under international law, such as torture, extrajudicial execution and enforced disappearance.¹⁴

Amnesty International is concerned about the lack of an effective, independent and impartial oversight mechanism to investigate human rights violations committed by the security forces and take forward its findings in prosecutions. Criminal investigations into human rights violations by the police are rare, and attempts to hold alleged police perpetrators to account, mostly through internal disciplinary mechanisms, leave many victims without access to justice and reparation. Meanwhile, criminal offences, including crimes under international law, committed by military personnel can only be tried in military courts under the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM).¹⁵

In Aceh province, the Aceh Islamic Criminal Code (*Qanun Jinayat*) came into effect on 23 October 2015 following its adoption by the Aceh Provincial Parliament (*Dewan Perwakilan Rakyat Aceh*, DPRA) on 27 September 2014. The Code criminalizes consensual sexual relations and same-sex sexual relations¹⁶ and extends the use of caning as a form of punishment.¹⁷

¹³ This relates to a suspect who is charged with a crime punishable by below nine years' imprisonment. They can be detained – by the police, prosecutor and the court - up to 111 days before seeing a judge under the Criminal Procedure Code. A suspect who is charged with a crime punishable by nine years' imprisonment or more can be detained for up to 171 days before seeing a judge. See Amnesty International, *Indonesia: Briefing to the UN Committee against Torture* (Index: ASA 21/003/2008), p. 15 and Amnesty International, *Flawed Justice: Unfair Trials and the Death Penalty in Indonesia* (Index: ASA 21/2434/2015), p. 33.

¹⁴ See Amnesty International, *Indonesia: Time to Face the Past; Justice for Past Abuses in Indonesia's Aceh Province* (Index: ASA 21/001/2013), p. 41.

¹⁵ While existing bodies such as the National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM), the National Ombudsman or the National Police Commission (*Komisi Kepolisian Nasional*, Kompolnas) are able to receive and investigate complaints from the public, they are not empowered to refer these cases directly to the Public Prosecutor's Office. The only exception is when there are cases of alleged "gross abuses of human rights" defined in the Law on Human Rights Courts (No. 26/2000) as genocide and crimes against humanity. Here Komnas HAM can conduct a *pro-justicia* inquiry and submit its findings directly to the Attorney General's office for investigation.

¹⁶ The new code, among other things, introduces criminal offences relating to consensual intimacy or sexual activity for unmarried couples, consensual sex outside marriage and same-sex sexual relations. See Amnesty International, Public Statement, *Indonesia: Repeal or revise all provisions in the new Aceh Islamic Criminal Code that violate human rights* (Index: ASA 21/2726/2015).

¹⁷ In Aceh, judicial caning was introduced in 2003 as a punishment for adultery, consumption of alcohol, being alone with someone of the opposite sex who is not a marriage partner or relative (*khalwat*), and for Muslims found eating or drinking during sunlight hours in the fasting month of Ramadan or providing facilities for other Muslims to do so. The new code also introduces punishments for wrongfully accusing someone of committing *ikhtilath* ("intimacy between unmarried couples"), falsely accusing a person of rape and it creates serious barriers for women and girls to report rape or other forms of sexual violence. See Amnesty International, Public Statement, *Indonesia: Repeal or revise all provisions in the new Aceh Islamic Criminal Code that violate human rights* (Index: ASA 21/2726/2015).

HUMAN RIGHTS SITUATION ON THE GROUND

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Serious human rights violations, including unlawful killings, enforced disappearances, torture and other ill-treatment, and rape and other crimes of sexual violence, occurred during the rule of former President Suharto from 1966 to 1998 and during the early reform period between 1998 and 2002.¹⁸ These violations are yet to be adequately addressed. Despite demands by victims and NGOs that the alleged perpetrators be brought to justice, President Joko Widodo announced the establishment of a non-judicial mechanism to resolve all past human rights violations rather than a judicial mechanism. According to the Attorney General, the authorities decided to form a “reconciliation committee” because there is insufficient evidence relating to the past human rights violations for these to be brought to the Human Rights Court, the judicial mechanism established under Law No. 26/2000 to address “gross violations of human rights”.¹⁹ Human rights groups are concerned that the “reconciliation committee” will compromise Indonesia’s obligations under international law to prosecute those responsible for grave human rights violations and crimes under international law if sufficient admissible evidence exists.

Human rights groups have also been sceptical of the government’s commitment to address past human rights violations following the appointment by President Widodo in July 2016 of Wiranto as the new Coordinating Minister for Politics, Legal and Security Affairs. Wiranto was indicted for crimes against humanity by the UN-sponsored tribunal in Timor-Leste in February 2003 and named as a suspect in the inquiry initiated in 1999 by the National Commission on Human Rights (Komnas HAM) for “gross violation of human rights” surrounding the 1999 referendum in East Timor. However, he has never been charged in Indonesia.²⁰

Many of the cases that were investigated by the National Human Rights Commission under Law No. 26/2000 have not been fully investigated by the Attorney General’s Office or brought to court, leaving the alleged perpetrators at large and the victims without full and effective reparation.²¹

¹⁸ These include the mass violations in 1965-66, the 1998 May riots, and the conflicts in Aceh, Papua and Timor-Leste (then known as East Timor).

¹⁹ On 17 March 2016, the then Coordinating Minister for Politics, Legal and Security Affairs Luhut Pandjaitan stated that the government aimed to settle past serious human rights violation cases through this mechanism but no progress has been reported. See, Amnesty International, Public Statement, *Indonesia: President Must not Undermine Efforts to Seek Truth, Justice and Reparation for Serious Human Rights Violations* (Index: ASA 21/3671/2016).

²⁰ In February 2003, the UN sponsored Special Panels for Serious Crimes of the Dili District Court, Timor-Leste indicted Wiranto, then the Indonesia’s Minister of Defence and Security, and Commander of Armed Forces, for crimes against humanity in connection with the events in East Timor in 1999. See Amnesty International, *Timor-Leste: ‘We Cry for Justice’; Impunity Persists 10 Years on in Timor-Leste* (Index: ASA 57/001/2009).

²¹ These cases include the purge against the alleged communist members and supporters of 1965-1966, the mysterious killings of alleged criminals in the 1980s, the 1989 Talangsari Lampung mass killings, the enforced disappearance of anti-Suharto activists in 1997-1998, the Trisakti University shootings, the Semanggi I and II shootings in 1998 and 1999, human rights violations in Wasior in 2001 and Wamena in

More than 10 years after the murder of prominent human rights defender Munir Said Thalib the authorities have yet to bring all the alleged perpetrators to justice.²²

In July 2016, the Aceh Provincial Parliament (DPRA) appointed seven Commissioners to the Aceh Truth and Reconciliation Commission, due to operate between 2016 and 2021. The Commission is mandated to uncover the circumstances that led to abuses in the past, including to ensure that such crimes will not be committed again and that the shared experiences are acknowledged and preserved.²³ To date, however, the central government has not declared its support of the Commission.

FREEDOM OF EXPRESSION, THOUGHT, CONSCIENCE AND RELIGION

Guarantees to freedom of expression and peaceful assembly are enshrined in the Constitution and national legislation. Despite this, the authorities continue to use legislation to criminalize peaceful political activities, particularly in areas where there is a history of pro-independence movements, such as Maluku and Papua. The authorities also tend to react strongly against individuals calling for the independence of Maluku and Papua. In previous years, Amnesty International has documented hundreds of arrests of peaceful political activists, particularly in Papua.²⁴

Makar or “rebellion” provisions in Articles 106 and 110 of the Criminal Code are still used to criminalize freedom of expression in Maluku and Papua. In April 2016, a political activist in Timika, Papua province, was charged with “rebellion” and could face life imprisonment for organizing a peaceful prayer in the backyard of a church.²⁵ Since Indonesia’s last review in 2012, at least 26 people have been charged under these Articles.

2003, both in Papua and two human rights violation cases in Aceh (the 1999 Simpang KKA case in North Aceh and 2003 Jambo Keupok case in South Aceh in 2003).

²² Munir was a prominent human rights campaigner in Indonesia, who took up the cause of dozens of activists subjected to enforced disappearances during the last months of the Suharto government in 1998. He also played a significant role in uncovering evidence of military responsibility for human rights violations in Aceh and Timor-Leste. He was found dead on a Garuda Airlines flight from Jakarta to Amsterdam on 7 September 2004. An autopsy carried out by the Dutch authorities showed that he died as a result of arsenic poisoning. Although three state-owned Garuda Airlines staff have been convicted of the killing, there are credible allegations that those responsible were at the highest levels of government and have not yet been brought to justice.

²³ The Aceh TRC was set up by an Aceh bylaw (*qanun*) passed by the local parliament (DPRA) on 27 December 2013. The setting-up of such a commission had been included in the 2005 Helsinki Peace Agreement and 2006 Law on Governing Aceh (No. 11/2006).

²⁴ Amnesty International, Public Statement, *Indonesia: End Mass Arrest and Crackdowns of Peaceful Protests* (Index: ASA 21/3948/2016); Amnesty International, Urgent Action, *Indonesia: Political Activists Detained and Charged* (Index: ASA 21/1932/2015); Amnesty International, Public Statement, *Indonesia: End Mass Arbitrary Arrests of Peaceful Protesters in Papua* (Index: ASA 21/1851/2015); Amnesty International, Public Statement, *Indonesia: End Attacks on Freedom of Expression in Papua* (Index: ASA 21/1606/2015); Amnesty International, Public Statement, *End Attacks on Freedom of Expression in Papua* (Index: ASA 21/022/2014); Amnesty International, Public Statement, *Indonesia: Drop Charges against ‘Freedom Flotilla’ Supporters in West Papua province* (Index: ASA 21/031/2013); Amnesty International, Public Statement, *Indonesia: Three Dead and 23 Protestors Detained for Their Peaceful Political Activism in Papua* (Index: ASA 21/013/2013); and Amnesty International, Public Statement, *Indonesia: Excessive Use of Force by Police against Demonstrators in Papua* (Index: ASA 21/041/2012).

²⁵ The Papuan activist is Steven Itlay who is the chairperson of the KNPB (the National Committee for West Papua) Timika chapter. In July 2016, two Papuan political activists also in Timika, Yanto Awerkion and Sem Ukago, were also charged with ‘rebellion’ and could face up to life imprisonment.

In Maluku, nine political activists were sentenced on 22 January 2015 to between one and four years' imprisonment by the Ambon District Court under Article 106 of the Criminal Code for commemorating the anniversary of the declaration of independence by the Republic of South Maluku (RMS) movement and carrying the "Benang Raja" flag, which is a prohibited symbol of the RMS pro-independence movement.²⁶

Some progress has been made towards protecting freedom of expression in Papua. In May 2015, President Widodo lifted restrictions on foreign journalists applying for permission to visit Papua, although this has yet to be fully implemented.²⁷ Also in May 2015, the President granted clemency to five political activists in Papua province and pledged to grant clemency or an amnesty to other imprisoned political activists. In November 2015, prisoner of conscience Filep Karma was released after spending more than a decade in prison for his peaceful political expression and activities.²⁸

Amnesty International has documented attempts by the police and the security forces in recent years to silence public discussions in many other areas of Indonesia, including by breaking up events, particularly those related to the mass human rights violations in 1965-1966.²⁹

Amnesty International is concerned about provisions in the Criminal Code which criminalize blasphemy and religious defamation.³⁰ In June 2015, the Banda Aceh District Court convicted

²⁶ At the end of 2015, at least 27 prisoners of conscience (POCs) in Papua and 29 POCs from Maluku remain imprisoned for being convicted of 'rebellion' under Articles 106 or 110 of the Criminal Code. At least 11 Malukan prisoners, including Johan Teterissa are being held in prisons on Java Island that are over 2,500km away from their families in Maluku province.

²⁷ For instance in early October 2015 after the lifting restriction on foreign journalist to visit Papua being announced, three Papuan male activists who had accompanied a French journalist to Pegunungan Bintang District in Papua, to cover the activities of the KNPB, were arrested and interrogated by the local immigration officer about the activities of the journalist. They were held for 10 hours before being released without charge. The Jakarta Post, *Three questioned on French journalist's visit to Papua*, 6 November 2016, available at: <http://www.thejakartapost.com/news/2015/11/06/three-questioned-french-journalist-s-visit-papua.html>, accessed on 12 September 2016.

²⁸ Amnesty International, *Indonesia: Papuan pro-independence activist jailed for raising a flag finally freed*, 19 November 2015, available at <https://www.amnesty.org/en/latest/news/2015/11/papuan-pro-independence-activist-jailed-for-raising-a-flag-finally-freed/>

²⁹ For example, in October 2015, organizers of the Ubud Writers and Readers Festival in Bali cancelled three panel sessions related to the 50th anniversary of the human rights violations after the Chief of Gianyar Resort Police threatened to revoke their permit; the authorities also banned numerous screenings of the film "The Look of Silence", a documentary film which won global acclaim, including the Academy Award nomination, about the victims and perpetrators of the 1965-66 human rights violations; on 3 May 2016, members of the Yogyakarta Resort Police disbanded another film screening about victims of 1965-66 violations although it was an internal event organized by a Yogyakarta journalist association (AJI Yogyakarta). The police stated that the organizers did not have permission to hold the event and that it could "trigger public disorder". See Join Open Letter by Amnesty International, TAPOL, Watch Indonesia! and ETAN, *Truth Seeking and Formal Public Apology Are Essential for 1965/1966 Resolution* (Index: ASA 21/3926/2016), 29 April 2016; Amnesty International, Public Statement, *Indonesia: President must not undermine efforts to seek truth, justice and reparation for serious human rights violations* (Index: ASA 21/3671/016); Public Statement, *Indonesia: Stop silencing public discussion on 1965 violations* (Index: ASA 21/2785/2015).

³⁰ Article 156(a) of the Indonesian Criminal Code created by the Presidential Decision Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation imposes a prison sentence "for whosoever in public intentionally expresses their views or engages in actions that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia". The blasphemy laws have been used to imprison people for as long as five years, simply because they have peacefully exercised their rights to freedom of expression and/or freedom of religion. See Amnesty International, *Indonesia: Prosecuting Belief; Indonesia's Blasphemy Laws* (Index: ASA 21/018/2014). During the period of review, there have been at least 20 people convicted under the blasphemy articles.

and sentenced six former members of the religious organization Gafatar³¹ to between three and four years' imprisonment under Article 156 of the Criminal Code for insulting Islam.³²

On 29 February 2016, Joint Ministerial Decree No. 93/2016 was issued by the Minister of Religious Affairs, the Attorney General and the Minister of Home Affairs banning the "Millah Abraham" religious belief, adhered to by former members of Gafatar.³³ The Decree forbids ex-members or sympathisers of Gafatar to perform activities or to disseminate or interpret any teachings that deviate from the basic teaching of Islam. The Decree risks marginalizing this group and further worsening the current atmosphere of intolerance and fear that has led to harassment, intimidation and attacks against members of the Gafatar community.³⁴

On 25 May 2016, three leaders of this group were arrested and detained by the Criminal Investigation Unit of the Indonesian National Police. They have all been charged with blasphemy under Article 156a of the Criminal Code and "rebellion" (or *makar*) under Articles 107 and 110 of the Criminal Code.³⁵

THE HUMAN RIGHTS SITUATION IN PAPUA

Amnesty International continues to receive credible reports of unlawful killings and unnecessary or excessive use of force and firearms by the police and military personnel during peaceful pro-independence protests and gatherings. The government consistently fails to distinguish between violent armed groups and peaceful activists. Further, political activists and others accused of links with pro-independence groups have been tortured or otherwise ill-treated during arrest and detention.³⁶ Accountability for such acts is rare; at most, security personnel have been subject to disciplinary sanctions only.

³¹ Gafatar (*Gerakan Fajar Nusantara*) was founded in January 2012 with branches in 14 provinces across Indonesia. However, the organization was disbanded by its members in August 2015 after they were not able to get a registration permit from the Ministry of Home Affairs. The Indonesian Ulema Council (MUI), a national association of Islamic clerics considers Gafatar as the transformation of al-Qiyadah which it declared a "heretic" organization in November 2007. In April 2008 al-Qiyadah leader, Ahmad Mushaddeq, was found guilty under Article 156(a) of the Indonesian Criminal Code and sentenced to four years' imprisonment by the South Jakarta District Court for leading a "heretical sect" and claiming to be a prophet. In June 2008 the Makassar District Court in South Sulawesi convicted 21 members of al-Qiyadah for blasphemy under Article 156(a) of the Criminal Code.

³² Elsam (Institute for Policy Research and Advocacy), *Gafatar's Case Verdict: A Blow For Freedom of Association*, 17 June 2015, available at: <http://elsam.or.id/2015/06/gafatars-case-verdict-a-blow-for-freedom-of-association/>, accessed on 9 September 2016.

³³ The authorities consider the belief 'heresy' because it mixes the religious teachings of Islam, Christianity and Judaism.

³⁴ Before the decree was issued by the three ministers, Former members of the Gafatar community have previously faced attacks and imprisonment that stemmed solely from their religious beliefs. In January 2016, a mob attacked and set alight nine houses belonging to members of the community in Mempawah District, West Kalimantan. After the attacks, at least 2,000 people were forcibly moved by the local security forces to temporary shelters in Kubu Raya District and Pontianak City, West Kalimantan, and then transferred to several locations on Java Island without prior consultation. See Amnesty International, Public Statement, *Authorities must repeal Joint Ministerial Decree discriminating against minority belief* (Index: ASA 21/3787/2016).

³⁵ Amnesty International, Urgent Action, *Minority Religious Leaders Detained and Charged* (Index: ASA 21/4135/2016).

³⁶ Amnesty International, Urgent Action, *Poor Prison Condition for Papuan Activist* (Index: ASA 21/4085/2016); Amnesty International, Urgent Action, *Papuan Activists Detained and Charged* (Index: ASA 21/1932/2015); Amnesty International, Urgent Action, *Prisoners of Conscience Being Tortured* (Index: ASA 21/020/2014); Amnesty International, Public Statement, *Indonesia: Investigate ill-treatment of protesters and*

On 30 April 2013, in Aimas District, Sorong, West Papua province, the police and soldiers opened fire on a group of people who had gathered peacefully to organize activities for the following day's commemoration of the 50th anniversary of the handover of Papua to the Indonesian government by the United Nations Temporary Executive Authority (UNTEA), killing three people and injuring two people.³⁷ Seven people were subsequently arrested and charged with "rebellion" (*makar*) under Articles 106 and 110 of the Criminal Code for possession of Morning Star flags.³⁸ On 4 December 2013, the Sorong District Court sentenced them to between one year and six months and three years and six months in prison.³⁹ There has been no independent investigation into the three deaths.

On 8 December 2014, four young students were killed and many others injured when police and military personnel opened fire on a crowd of protestors at the Karel Gobai field, in Enarotali, Paniai District, Papua province.⁴⁰ This incident was the first serious human rights violation in Papua under President Widodo's administration.

On 27 December 2014, President Widodo publicly committed to resolving the case.⁴¹ In January 2015, the National Human Rights Commission (Komnas HAM) established a team to undertake an initial investigation into the case,⁴² and in March 2016, it set up a *pro-justicia* inquiry team to undertake a more detailed investigation into allegation of gross human rights violations, as defined in Law No. 26/2000 on Human Rights Courts. However, to date the *pro-justicia* inquiry team has not carried out any investigations.⁴³

intimidation of journalists in Papua, (Index: Index: ASA 21/039/2013); Amnesty International Urgent Action, *Indonesia: Two men detained, feared tortured in Papua*, (Index: ASA 21/005/2013); Amnesty International Urgent Action, *Indonesia: Papuan political activist at risk: Yusak Pakage* (Index: ASA 21/032/2012).

³⁷ Two men, Abner Malagawak and Thomas Blesia, were killed and Salomina Kalaibin, a women, died on 6 May 2013 from gunshot wounds to her stomach and shoulder. Two others also suffered gunshot wounds during the incident.

³⁸ A symbol of Papuan independence which is prohibited under a 2007 government regulation.

³⁹ Amnesty International, Public Statement, *Indonesia: Release seven activists imprisoned in Sorong, Papua* (Index: ASA 21/040/2013).

⁴⁰ The crowd had gathered to protest against the beating of a child from Ipakije village, Enarotali, the night before allegedly by local army personnel. The four people who were found dead from gunshot wounds include Apius Gobay, aged 16, who was shot in the stomach; Alpius Youw, aged 18, in the buttocks; Simon Degei, aged 17, in his left rib; while Yulianus Yeimo, aged 17, had bullet wounds in his stomach and back. At least 17 others were also injured after being hit by bullets or bayoneted by the security forces. See Amnesty International, Public Statement, *Indonesia: Investigate Security Forces' Use of Lethal Force Against Papuans in Paniai* (Index: ASA 21/032/2014).

⁴¹ The Jakarta Globe, "Jokowi Breaks Silence on Killings in Paniai, Pledges to Resolve Shootings", 28 December 2014, available at: <http://jakartaglobe.beritasatu.com/news/joko-breaks-silence-security-force-killings-paniai/>.

⁴² "Human Rights Committee Readies Papua Investigation of Paniai Shooting", 9 January 2015, available at: <http://jakartaglobe.beritasatu.com/news/human-rights-committee-readies-papua-investigation-paniai-shooting/>.

⁴³ Interview Amnesty International to one of the members of the *pro-justicia* inquiry team and a commissioner of Komnas HAM in August 2016.

THE DEATH PENALTY

Indonesia resumed executions in March 2013 after a four year hiatus, when Adami Wilson, a Nigerian national was executed by firing squad.⁴⁴ Since then Indonesia has executed a further 22 individuals, both Indonesian and foreign nationals. Almost all the executions were related to drug-trafficking offences, which are crimes that do not meet the threshold of “most serious crimes” under international law and standards.⁴⁵ In December 2014, when first appointed, President Widodo publicly stated that he would not grant clemency to individuals who had been sentenced to death for drug-related crimes. To date, at least 175 people remain under sentence of death in Indonesia for murder, drug-related crimes and terrorism crimes.

Research findings by the National Commission on Human Rights (Komnas HAM), Amnesty International and other human rights organizations have revealed systemic flaws in the administration of justice in Indonesia leading to violations of fair trial standards and other international safeguards that must be strictly observed in all death penalty cases.⁴⁶

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF INDONESIA TO:

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

- Ensure that any non-judicial mechanism to address past human rights violations does not absolve the criminal justice system of its responsibility to investigate and – if sufficient admissible evidence exists – prosecute those responsible for grave human rights violations and crimes under international law, in fair trials without recourse to the death penalty;

⁴⁴ Amnesty International, Press Release, *Indonesia: first execution in four years “shocking and regressive* (Index: PRE 01/130/2013).

⁴⁵ See the UN Human Rights Committee, General Comment No.6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN doc. HRI/GEN/1/Rev.9, May 2008. UN Safeguard No. 1 of UN Economic and Social Council resolution 1984/50 of 25 May 1984. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 9 August 2012, A/67/275, para.122. Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 14 January 2009, A/HRC/10/44, para. 66.

⁴⁶ See Amnesty International, *Flawed Justice: Unfair Trials and the Death Penalty in Indonesia* (Index: ASA 21/2434/2015) . In several of the cases considered, defendants did not have access to legal counsel from the time of arrest and at different stages of their trial and appeals. The police ill-treated some of them to make them “confess” to the crimes or countersign police investigation dossiers used as evidence in court. Several prisoners were brought before a judge for the first time when their trials began, months after their arrest and some of them did not receive legal assistance when appealing against their conviction or sentence. Executions went ahead in 2015 and 2016 even though the Indonesian courts had accepted to hear appeals put forward by the prisoners. Despite the clear prohibition under international law on the use of the death penalty against persons who were below 18 years of age or have a mental or intellectual disability, Amnesty International documented that claims two prisoners made in relation to their juvenility and mental disability were not adequately investigated and have resulted in the unlawful imposition of the death penalty.

- Address past human rights violations and take long overdue measures to provide the victims and their families with truth, justice and full reparations, with the first step being to listen to the victims and their families and not silence their voices;
- Pass a national truth and reconciliation law, in line with international law and standards, to guarantee access to truth, justice and reparations to victims of past human rights violations, including during the events of 1965-1966, the 1998 May riots, and the conflicts in Papua, Aceh and Timor-Leste.

FREEDOM OF EXPRESSION, THOUGHT, CONSCIENCE AND RELIGION

- Immediately and unconditionally release all prisoners of conscience deprived of liberty solely for peacefully exercising their rights to freedom of expression and thought, conscience and religion;
- Repeal or amend all provisions in laws and regulations, in particular Articles 106, 110 and 156(a) of the Criminal Code and Law Number 1/PNPS/1965 on the Prevention of Religious Abuse and/or Defamation, which impose restrictions on the right to freedom of expression and thought, conscience and religion, in line with Indonesia's obligations under international human rights law.

THE HUMAN RIGHTS SITUATION IN PAPUA

- Take the necessary steps to hold accountable all police and military personnel who have been involved in human rights violations in Papua, including by prosecuting them in civilian courts in proceedings which meet international fair trial standards and without recourse to the death penalty, and ensuring that the victims and their families receive reparations.

THE DEATH PENALTY

- Establish a moratorium on executions as a first step towards the abolition of the death penalty;
- Pending full abolition, immediately establish an independent and impartial body, or mandate an existing one, to review all death penalty cases, with a view to commuting the death sentences or offer a retrial that fully complies with international fair trial standards and which does not resort to the death penalty.

RATIFICATION OF INTERNATIONAL TREATIES AND COOPERATION WITH THE UN SPECIAL PROCEDURES

- Ratify the Rome Statute of the International Criminal Court, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ILO Convention No. 189 on Domestic Workers, as Indonesia committed to during its previous UPR,⁴⁷ and to incorporate their provisions into domestic law and implement them in policy and practice;
- Immediately accept and facilitate the visits requested by the Working Group on enforced or involuntary disappearances, the Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of religion or belief, and ensure that they are granted unimpeded access to all relevant locations and are able to meet freely with a wide range of stakeholders, including victims and their families, civil society organizations, government officials and members of the security forces.

⁴⁷ A/HRC/21/7, recommendations 108.1 (Iraq), 108.2 (Chile), 108.3 (Austria), 108.4 (Slovenia), 108.5 (Sweden), 108.6 (Switzerland), 108.7 (United Kingdom of Great Britain and Northern Ireland), 108.8 (Turkey), 108.9 (Maldives), 108.10 (Ecuador), 108.11 (Spain), 108.12 (Argentina), 108.13 (Mexico), 108.14 (Timor-Leste), 108.15 (Morocco), 108.20 (Slovakia), 108.21 (Germany), 108.22 (Liechtenstein), 108.23 (Australia), 108.24 (Hungary), 108.25 (Latvia), 108.26 (France), 108.70 (Denmark), 109.8 (Slovakia).

REFORMING THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Revise and enact at the earliest opportunity a new Criminal Code and Criminal Procedure Code that comply with international human rights law and standards;
- Establish an independent police complaints mechanism to receive complaints about alleged human rights violations from the public, to carry out effective investigations and to refer cases to the Public Prosecutor;
- Revise the Law on Military Tribunals (Law No. 31/1997) to ensure that military personnel suspected of offences involving human rights violations are prosecuted before independent civilian courts in proceedings which meet international fair trial standards and without recourse to the death penalty;
- Repeal or revise the Aceh Islamic Criminal Code and other bylaws that provide for caning as a punishment or violate other human rights and bring these into compliance with Indonesia's international human rights obligations.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁴⁸

REPORTS AND BRIEFINGS:

Indonesia: Flawed Justice: Unfair Trials and the Death Penalty in Indonesia (Index: ASA 21/2434/2015).

Indonesia: Prosecuting Belief; Indonesia's Blasphemy Laws (Index: ASA 21/018/2014).

Indonesia: Setting the Agenda: Human Rights Priorities for the New Government (Index: ASA 21/011/2014).

Indonesia: Submission to the United Nations Human Rights Committee for the 108th Session of the Human Rights Committee (Index: ASA 21/018/2013).

Indonesia: Time to Face the Past; Justice for Past Abuses in Indonesia's Aceh Province (Index: ASA 21/001/2013).

OTHER DOCUMENTS:

Open Letter to the Minister of Law and Human Rights on Amnesty International's Concerns at Reports of Planned Executions (Index: ASA 21/4560/2016).

Urgent Action, *Minority Religious Leaders Detained and Charged* (Index: ASA 21/4135/2016).

Urgent Action, *Poor Prison Condition for Papuan Activist* (Index: ASA 21/4085/2016).

Public Statement, *End Mass Arrest and Crackdowns of Peaceful Protests* (Index: ASA 21/3948/2016).

Join Open Letter Amnesty International with TAPOL, Watch Indonesia! and ETAN, Truth Seeking and Formal Public Apology Are Essential for 1965/1966 Resolution (Index: ASA 21/3926/2016).

Public Statement, *Authorities must repeal Joint Ministerial Decree discriminating against minority belief* (Index: ASA 21/3787/2016).

Public Statement, *President Must not Undermine Efforts to Seek Truth, Justice and Reparation for Serious Human Rights Violations* (Index: ASA 21/3671/2016).

Public Statement, *Stop silencing public discussion on 1965 violations* (Index: ASA 21/2785/2015).

Public Statement, *Repeal or revise all provisions in the new Aceh Islamic Criminal Code that violate human rights* (Index: ASA 21/2726/2015).

Urgent Action, *Papuan Activists Detained and Charged* (Index: ASA 21/1932/2015).

Public Statement, *End Mass Arbitrary Arrests of Peaceful Protesters in Papua* (Index: ASA21/1851/2015).

Public Statement, *End Attacks on Freedom of Expression in Papua* (Index: ASA 21/1606/2015).

⁴⁸ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/asia-and-the-pacific/indonesia/>

Public Statement, *Investigate Security Forces' Use of Lethal Force Against Papuans in Paniai* (Index: ASA 21/032/2014).

Public Statement, *End Attacks on Freedom of Expression in Papua* (Index: ASA 21/022/2014).

Urgent Action, *Prisoners of Conscience Being Tortured* (Index: ASA 21/020/2014).

Public Statement, *Investigate ill-treatment of protesters and intimidation of journalists in Papua*, (Index: Index: ASA 21/039/2013).

Public Statement, *Drop Charges against 'Freedom Flotilla' Supporters in West Papua province* (Index: ASA 21/031/2013), 3 September 2013.

Public Statement, *Three Dead and 23 Protestors Detained for Their Peaceful Political Activism in Papua* (Index: ASA 21/013/2013).

Press Release, *First execution in four years "shocking and regressive* (Index: PRE01/130/2013).

Urgent Action, *Two men detained, feared tortured in Papua* (Index: ASA 21/005/2013).

Public Statement, *Release seven activists imprisoned in Sorong, Papua* (Index: ASA 21/040/2013).

Public Statement, *Excessive Use of Force by Police against Demonstrators in Papua* (Index: ASA 21/041/2012).

Urgent Action, *Papuan political activist at risk: Yusak Pakage* (Index: ASA 21/032/2012).

**AMNESTY INTERNATIONAL
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