

HUMAN RIGHTS IN INDONESIA

HEARING

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

HOUSE OF REPRESENTATIVES

ONE HUNDRED AND THIRTEENTH CONGRESS

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HUMAN RIGHTS IN INDONESIA

THURSDAY, MAY 23, 2013

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, D.C.

The commission met, pursuant to call, at 10:00 a.m., in Room 2261 Rayburn House Office Building, Hon. James P. McGovern [co-chairman of the commission] presiding.

Mr. McGovern. Thank you very much. Let me apologize to everybody for being late.

Anyway, good morning. Welcome. Thank you for attending this important hearing on human rights in Indonesia. I want to thank J. P. Shuster and the staff of the Tom Lantos Human Rights Commission for organizing this hearing. I also want to thank our witnesses for testifying and for everything that they do to advance the protections of human rights in Indonesia.

This week 15 years ago, President Suharto resigned as President of Indonesia. That event marked an end to over four decades of authoritarian rule at the beginning of what has become Indonesia's remarkable transition to a civilian-led democracy. In the year since, Indonesia has held two direct Presidential elections and two nationwide parliamentary elections, each of which was seen as largely free and fair.

Indonesia has also managed the difficult task of considerably lessening the role of its military and domestic affairs and internal security. So in this context, Indonesia has seen improvements that were thought to be unimaginable by some just two decades ago. Specifically, Indonesia has experienced a deep decentralization of power to local authorities; the rise of highly active media in civil society; and a general improvement in the protection of human rights, including in the areas with a history of secessionist movements.

Importantly, such improvements led prior to the decision of the U.S. to sign a bilateral partnership agreement with Indonesia in November of 2010. However, despite such admirable progress in our improved relations with Indonesia, significant challenges remain.

As Indonesia has decentralized political power and improved its human rights record, it has also failed to control local military and police units for which it remains responsible or effectively punish those who violate human rights. Credible reports indicate that Indonesia's police have committed torture and other ill treatment, unnecessary and excessive use of force when carrying out arrests, and unlawful killings. Investigations into reports of police abuses are also rare. And police often subject complainants to further intimidation and harassment.

I am also especially concerned about the increasing harassment, intimidation, and attacks against religious minorities in Indonesia. In particular, the Ahmadiyya have faced increased maltreatment in recent years. I was especially disturbed to learn of the February 2011 incident in

which a mob of 1,500 people brutally attacked an Ahmadi community in Banten, resulting in the death of 3 people as local police made practically no effort to intervene.

I am also troubled by violence and discrimination against Christians, especially in West Java province, where local officials have used their licensing powers to discriminatorily prevent the building of churches; in one case, despite a ruling by the National Supreme Court that there were no grounds for sealing off the disputed building sites.

Also of concern is the ongoing tension in West Papua between the region's indigenous Melanesian people and Indonesia's security forces. In April 2009, the Tom Lantos Human Rights Commission held its first of a series of hearings on the rights of indigenous peoples, which included witnesses from West Papua. We heard testimony describing the violence and repression endured by indigenous peoples, by multinational mining and timber companies backed up by the full force of the Indonesian military, police, and local officials.

I am deeply concerned that the situation is not improved. I find it very problematic that some military officers charged with human rights-related offenses have been tried in military courts, which manifestly lack sufficient independence and impartiality, and that military officers suspected of such offenses are charged with disciplinary, rather than criminal, offenses.

In August of 1999, I traveled to Indonesia and met with President Habibie. I went to East Timor to review the preparations for the historic referendum on independence in East Timor and investigate the human rights situation.

As we all remember, horrible violence was let loose against the people of East Timor immediately after they voted for freedom. Hundreds of people, including many I had just met, were murdered by Indonesian-supported militias and security forces. Today Timor-Leste is a free and independent nation. And the United Nations has recently withdrawn the last of its peacekeeping forces. And it lives side by side with Indonesia in friendly relations.

We move on to overlook the significant progress Indonesia has made over the past 50 years or the significance of our improved relationship with Indonesia, but it is also important that we use today to address the ongoing issues that threaten our mutual interests in achieving respect for human rights and the rule of law in Indonesia. In doing so, I hope that we not only use this opportunity to clarify the high standard to which we hold our international partners but to also remind ourselves of the high standards to which universal human rights norms hold all countries, including the United States.

So, having said that, I am happy to welcome our first panel: Deputy Assistant Secretary Dan Baer, Bureau of Democracy, Human Rights and Labor at the U.S. Department of State; and Susan Sutton, the Office of Maritime Southeast Asia, U.S. Department of State. We welcome you both here and look forward to your testimony. Thank you.

Mr. Baer. Thank you Mr. Chairman.

STATEMENTS OF DAN BAER, DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE; AND SUSAN SUTTON, DIRECTOR, OFFICE OF MARITIME SOUTHEAST ASIA, U.S. DEPARTMENT OF STATE

STATEMENT OF MR. BAER

Mr. Baer. Thank you for all that you do personally to make sure that human rights stays in the spotlight here on the Hill. And for our government, you have largely certainly been a leader. We thank you for your leadership from the Hill. It has made our work easier.

I would also like to pay tribute to the late Tom Lantos, for whom this commission is named, and his work on behalf of human rights for so many years. It is a pleasure to testify today with my colleague Susan Sutton.

I appreciate the interest in Indonesia. The State Department officials, both in Washington and in Indonesia, have clearly communicated that the United States believes that the respect for universal human rights is essential to Indonesia's strong future.

Under Secretary Wendy Sherman was in Jakarta earlier this week and discussed a broad range of important issues, including human rights. Also earlier this week, during the roll-out of the international religious freedom report, Secretary of State Kerry said religious freedom is a core American value that is not an American invention but, rather, a birth right of every human being.

Indonesia has enjoyed a reputation for respect for religious pluralism. However, an increase in societal attacks by extremist groups and violence towards members of religious minorities along with ineffective government responses are threatening to tarnish that image. The Setara Institute reported 226 cases of interference with religious freedom by non-state actors in 2012 compared to 194 the previous year.

The 2008 anti-Ahmadiyya decree freezes certain activities of the Ahmadiyya Muslim community and bans proselytizing by members of the group. In 2012, a number of regional governments enforced decrees limiting or banning the free practice of the Ahmadiyya Muslim religion.

In 2011, as you mentioned, 3 Ahmadiyya Muslims were beaten to death by a mob of more than 1,500 while police failed to intervene. Ultimately, the convicted perpetrators received light sentences of four to six months while an injured Ahmadi victim was sentenced to seven months for allegedly provoking the attack.

Another disturbing trend is the numbers of closures of churches and Ahmadiyya mosques, an issue that is again exacerbated by restrictive laws. The 2006 decree and the construction of houses of worship is not meant to be retroactive but has often been used by extremist groups to encourage the closing of religious buildings established prior to 2006.

Approximately 50 churches were forcibly closed across Indonesia in 2012. One church was demolished in March of this year. And four Ahmadiyya mosques were closed in April of this year, and another was forced to close this week.

Blasphemy laws used to restrict religious freedoms and freedom of expression are also a part of the problem. After a Shia cleric was sentenced to 4 years in prison for "deviant teachings," approximately 300 of his followers were resettled to a sports complex in Sampang. Our embassy and consulate continue to press local officials in Madura, East Java to allow the 200 remaining Shia to return to their homes.

While some instances of violence occur along these activity lines, the underling causes are often more complex, including rule of law issues, political manipulation, and land issues. To tackle increasing intolerance towards members of religious minorities, these underlying issues must be addressed.

Although extremist groups are loud, they speak for a very small, narrow minority. The majority of Indonesians support religious tolerance and mutual respect.

In terms of other civil and political rights, Indonesia is headed in the right direction. The vast majority of Indonesians are able to say and publish what they want to criticize their government, to peacefully change their leaders, to assemble and associate as they see fit. However, significant challenges remain. Some of the laws governing online expression are vague and can be interpreted in ways that violate human rights.

The government continues to apply treason and conspiracy statutes to criminalize nonviolent political speech that it deems separatist. Over 80 individuals remain in jail, some serving lengthy sentences and many suffering harsh treatment on these kinds of political charges.

In 2012, during Indonesia's universal periodic review at the U.N., at the Human Rights Council, we called on Indonesia to end endorsement of and to repeal the relevant provisions of its criminal code.

Consensual same-sex sexual activity is illegal in Indonesia. And many local regulations especially criminalize it along the same lines as prostitution. A local Jakarta ordinance allows police to classify any transgender person as a sex worker.

Members of the LGBT community are harassed by police and coerced to pay bribes to avoid detention. And, as is often the case in Indonesia, police and local officials routinely defer decisions on physical protection, investigation of crimes, and protection of rights to extremist groups.

The human rights enjoyed by most Indonesians are less well-protected and conflict-affected in ethnic and religious minority areas. In Aceh in Indonesia's far west, the significant progress spurred by the 2005 Helsinki Peace Agreement could be accelerated if national and local authorities establish the truth commission and human rights courts provided for by the 2006 Aceh law.

In Indonesia's far east, as you mentioned, historical grievances and deliberate social and economic marginalization continue to fuel a decades-old low-intensity insurgency in Papua and West Papua provinces. Armed insurgents honoring civilians and members of security services are routinely injured and killed in sporadic violence.

The past commission of serious human rights violations by Indonesian security forces in Jakarta, East Timor, Aceh, Papua, and elsewhere has been widely publicized. Today, we see that Indonesia's defense and police establishments have broken with that model and are transforming.

Professionalization and accountability are improving but not complete. And backsliding is a possibility. Today, human rights violations committed by Indonesian military and police are not command-driven or widespread.

In recent years, we have seen several cases of small groups of relatively low-ranking personnel committing very serious crimes, including murder and torture. The government investigates those cases and, in a break from the past, has prosecuted some perpetrators. We welcome these steps, but it is important to note that accountability is incomplete because in most cases, the perpetrators are charged with a minor offense and do not receive a sentence commensurate with the actual violent crime committed.

We have seen recently the government's willingness in some cases to court-martial the perpetrators after they have completed the prison sentence. We are watching very carefully the military's investigation of the March 2013 attack on a prison in central Java in which several guards were injured and 4 prisoners were executed.

Eleven Kopassus personnel have been arrested. And the conduct of the investigation and trial and punishment of the perpetrators will speak volumes about the extent of the cultural shift underway within the military.

Indonesia is poised to be one of the most important countries of the Twenty-First Century if they continue their democratic progress. Many democratic changes are irreversible. And the overwhelming majority of Indonesians and most government officials want a rights-respecting, peaceful, and inclusive society. However, many reforms are works in progress. And backsliding on some of the most critical advancements is possible.

Indonesia has many partners and friends, including the United States. And, of course, as elsewhere, the strongest partners of the Indonesian Government come from within. The civil society organizations and advocates, journalists, and others who by pushing the government to do better help cement the considerable gains made by and for the Indonesian people.

I thank you again for exploring these vitally important issues and giving me the opportunity to testify today and welcome your questions.

Mr. McGovern. Thank you very much for your excellent testimony.

And now we will hear from Ms. Sutton.

STATEMENT OF MS. SUTTON

Ms. Sutton. Thank you, Mr. Chairman for inviting me to testify here today on human rights in Indonesia.

I am happy to be here with my colleague Dan Baer. Our two bureaus work together very productively on this issue. As it turns out, in much of my prepared testimony, you have actually already covered a lot of the things that I was going to say. So I am going to try to summarize as I go.

As you note, it is 15 years since President Suharto stepped down after 32 years in power. It is actually 15 years almost to the day. It was May 21st. And I think a lot of us remember that day.

It is worth remembering, however, that in many ways, 1998 was a terrible year in Indonesia. Jakarta saw massive riots that targeted members of the ethnic Chinese community. Hundreds of people died. And many businesses were burned or looted in violence, widely understood to be fomented by the Indonesian military.

Our human rights report for the year detailed close to 200 attacks, many fatal, on moderate Muslim religious leaders as well as on suspected practitioners of black magic. The following year wasn't much better. In 1999 in Maluku, over 1,000 people died in intracommunal warfare between groups of Christians and Muslims. And in East Timor, as you have recounted, there was a terrible aftermath of the independence referendum. Even with that grim example, movements in Aceh and Papua continued to clamor for independence with some elements in each resorting to violence. As the new millennium began, some Indonesians feared their country was destined for unending chaos or even disintegration.

So it is useful at this anniversary to take a look at what Indonesia has become since that turning point in 1998 and particularly in regards to human rights.

And I would echo very much the comments that you made. Indonesia today is an electoral democracy. The only country in Southeast Asia ranked fully free by Freedom House.

The U.S. Commission on International Religious Freedom points to Indonesia's vibrant media, which allows for a free market of religious ideas and publication. It points out that the majority of Indonesia's diverse religious communities operate openly and with few restrictions. Although our State Department religious freedom report adds that members of groups within those denominations espousing to being deviant or blasphemous do not always enjoy the same freedoms.

I think that, as you look at Indonesia's weaknesses, you see a flourishing of civil liberties enjoyed by most Indonesians but not equally enjoyed by all. The range of topics acceptable for

free debate and discussion is far more open than in the past, but it is not limitless. Indonesia has made good progress enshrining the principles of civil rights in its law and in implementing them fairly widely, but it has not yet succeeded in ensuring they are respected in the hardest cases, especially those cases when they fear that doing so may lead to societal conflict. And, thus, as Dan pointed out, we see restrictions on prosthelytizing and blasphemy. Many Indonesians accept these restrictions as measures to prevent intercommunal conflict and to assure respect for traditions that they hold dear, but they run afoul of freedoms of expression and religion.

Some religious minority congregations face obstacles in regards to their ability to build new houses of worship or keeping existing ones open, particularly due to a 2006 decree requiring them to get approval from members of other religious groups in the community.

Despite a wider area for political debate, some forms of nonviolent political speech are criminalized. Political parties may campaign loudly against the government, but activists in Papua have been imprisoned for campaigning peacefully for independence from the state.

As you heard, NGOs have reported over 200 cases of abuses of religious freedom by non-state actors in 2012. Of particular concern are these cases, such as the ones you mentioned, which involve violent attacks against members of religious minorities by extremist groups, such as the Islamic Defenders Front. In a number of documented cases, local officials and police have not protected the victims of these assaults.

The governments aren't responsible for the prejudices of their citizens. Every country has intolerant people. But they are responsible for protecting every citizen's right to be secure in his person, regardless of his ethnicity or beliefs. To achieve that goal, the Indonesian Government must overcome a long tradition of impunity for government officials and for security forces who neglect their duties, engage in corruption or themselves participate in human rights violations.

The Government of Indonesia deserves credit for the progress that is made in improving the human rights record of its security forces but appropriately punishing offenders has proven to be one of the most difficult reforms to institute. This lack of deterrence through accountability has weakened overall reform efforts.

Looking ahead, I see some reasons for concern in the short term and reasons for optimism in the longer term. Indonesia will hold elections next year. Election campaigns can call out the worst in political leaders who find appeals to ethnic or religious identity to be an easy way to win votes.

Papua was granted special autonomous status in 2001, but there is still no resolution to conflict there. We support the territorial integrity of Indonesia. We believe that a sincere response from the government to the Papuan's desire for dialogue, to promote peace and reconciliation will strengthen, not weaken Indonesia's security and unity.

We should also be encouraged by the fact that the leadership of Indonesia itself acknowledges the imperative to promote tolerance, not to satisfy international critics but to answer to the expectations of its own people, as Dan pointed out.

In a speech last month, Indonesian President Yudhoyono said, "Like all Indonesians, I know that harmonious relations among our diverse ethnic and religious groups is of supreme importance to our national survival. We must continue to work hard to maintain moderation, pluralism, and tolerance in our society."

So from the mayhem and chaos of the late '90s, Indonesia has built a functioning democracy. It has improved the respect for human rights of its citizens. Now it needs to keep on. It needs to go forward on the path it chose in '98, when its people rejected authoritarian rule. It needs to build on its successes so far to firmly establish democratic governance and to ensure that the rights of all its citizens are equally respected. The United States looks forward to supporting that process in the future, as we have since it began.

So thank you for holding the hearing.

Mr. McGovern. Well, thank you for your testimony. I appreciate it.

Both of you, those buzzers were votes, but what I want to try to do is kind of get through a few questions so that you don't have to wait around. And then I will go vote, and we will let the next panel in. So if I am speaking quickly, that is why. Okay?

Mr. Baer, what leverage does the United States have in promoting greater human rights protections in Indonesia? What are your top priorities in this area? And in your experience, what institutions or officials can the U.S. influence? And where does our influence fail to have a meaningful impact?

Mr. Baer. Thank you, Mr. Chairman.

In order of those three points, I mean, I think in terms of leverage, obviously in any bilateral relationship, there are always things that one side wants or the other, but I think the most powerful leverage really in terms of human rights for Indonesia is the very real desire, both within the society and within the government, to increasingly take on and embrace the leadership role that they have taken, both regionally and internationally, in the years to come.

You know, that is something that is actually very much in the U.S. national interest for them to play a leading role on the global stage and something that they recognize in their own interest. The connection between their own domestic political arrangements, having a peaceful resolution in Papua, et cetera, the connection between that and their ability to step out and really be a leader on the world stage I think is one that they rightly understand and one that we reinforce in our conversations with them. And so progress on human rights, you know, a good election in the next year, et cetera, those are all things that will help contribute to strengthening Indonesia's image on the world stage. And we continue to reinforce that and to support it where we can.

In terms of priorities, you know, the accountability for past violations is something that is always front and center on our agenda, underscoring it really is a cultural shift that needs to take place. If you talk to people in Indonesia, there is not the expectation for accountability in

response to these abuses yet. And that is something that needs to change because accountability is a crucial part of rule of law.

And as Indonesia continues to consolidate democratic gains and seek to reap the ongoing economic benefits of them, accountability is also very important for making people trust that when people don't play by the rules in other realms, that there will be punishment. And so we will continue to reinforce that across the board.

One other priority that I would say is an emerging one where we have both good stories to tell and concerns, Indonesia co-sponsored a resolution that we supported at the Human Rights council on internet freedom last summer. And that is a good thing. I would put them as they are an important country in that debate about the way that we treat expression and association online. And, for that reason, making sure that their domestic laws are consistent with international standards with respect to the internet, with respect to human rights as they seek to figure out how they will respond to the internet and other new technologies is another area of priority. I would go on to several others, but I will stop there.

In terms of institutions, I mean, I think we have very strong relations with the Executive Branch. We are able to work across ministries. They have several coordinating ministries that work with different areas of work. I have worked closely with one of the coordinating ministries on the voluntary principles of security and human rights because we have been encouraging Indonesia to become a member of that which we think would help them deal with some of the security issues revolving around natural resources, including in Papua. So I would say we have good relations with both parliamentary--we meet with members of parliament as well as the executive branch. And those institutions are important from a governmental side.

But, again, as I said in my testimony, you know, one of the advantages about working with Indonesia and having discussions on these issues with Indonesia is that they are such a vibrant civil society that is able to make the case for change from within that we find ourselves echoing their points, rather than having to make them as a chorus of one. So I would say that those institutions are the most important.

Mr. McGovern. Let me ask another question. We will go to Ms. Sutton. There is some dispute that there was a rising tide of religious intolerance in Indonesia. Yet, according to the Jakarta-based Setara Institute, which monitors religious freedom in Indonesia, there were 216 cases of violent attacks on religious minorities in 2010, 244 cases in 2011, and 264 cases in 2012.

Do you agree that there was a rising tide of religious intolerance in Indonesia? And if so, what might be done to reverse it?

Mr. Baer. We are very concerned about these. You know, as you said, there is an increase in numbers reported, and we are very concerned about any acts of religious intolerance and the apparent increase, particularly with respect to the Ahmadiyya as well as some minority Christian groups, et cetera, as I mentioned, the closure of religious buildings, as well as the violent attacks. You know, this is a combination.

As Susan said, you know, there are deep prejudices and societal tensions, et cetera. That is not an excuse. It is a background reality. And the government needs to, as other governments need to, step up and figure out how to get the right police capacity to protect the rights of all where it is needed.

And there are some national-level legal reforms that send a signal to people on the ground, like the Ahmadiyya decree, about who deserves full protections or not. And so making national-level legal changes could also send a signal of tolerance revising the blasphemy law, even if it is intended to prevent religious tensions. We have seen around the world and there was a recent study by the Pew Foundation that showed that where laws like blasphemy laws are in place, societal tensions are actually higher, rather than lower. Restrictions on freedom of expression and freedom of religion, whether they are intended to or not, are often justified on the basis of reducing tensions, but the reality is empirically we can show that they don't reduce tensions. And, in fact, it correlates. Whether or not it is causal, it correlates

To increase societal tensions. So there are a number of steps that they can take. And, obviously, as Susan said, the election, any election, is a time when there is a risk of passions becoming more heated. And so we will be closely watching this and urging the government to do what it can to reduce the number of violent attacks, et cetera, as the election approaches.

Mr. McGovern. Thank you.

Ms. Sutton, America's cooperation with Indonesia has steadily improved, as evidenced by the signing of our comprehensive partnership agreement with Indonesia in November of 2010 and our re-engagement with Indonesia's security forces in the form of military-to-military assistance.

We also have mutual interests in counterterrorism efforts, disaster response, and regional security. In such a context, how should the U.S. policy-makers balance those interests with the interests of protecting human rights?

Ms. Sutton. Well, I really think that--

Mr. McGovern. I think that--

Ms. Sutton. Yes. I will keep it short. I don't think that there is a conflict between those two interests. If the Indonesian security forces are not seen as protectors of the citizens and not as protectors of a clique of the leadership or protectors of their own interests, they can't do the job they need to do. They can't professionalize. They can't reform. They can't become a responsible force. So I don't think there is a balancing act.

Reform of the security forces to make them more professional, more accountable of a proud, competent, capable, respected force will help us in all the other areas that we want to work in.

Mr. McGovern. So what can we do to foster greater professionalism and respect for human rights among both the Indonesian military and police forces, especially among the Kopassus special forces and the anti-terror Detachment-88, I think both of which the U.S.

supports, I guess. You know, are there conditions that we place on our assistance to these entities sufficient to promote professionalism and respect for human rights?

Ms. Sutton. Well, on Kopassus, as you know,--

Mr. McGovern. Right.

Ms. Sutton. --in 2010, we announced a very slow, very cautious step-by-step approach. And at this point, it is still very slow and very cautious. We only have occasional visits and subject matter expert exchanges, which are like conferences. We don't do any training. We don't provide any equipment to Kopassus. And we have a ways to go because of concerns about ensuring that there is a new culture enshrined and that the government is doing everything it needs to do to ensure accountability.

I think that, you know, people from the government always talk about training and how training has a great effect. And, you know, obviously we see training has a better effect in some places than it has in others. So I think that the contact, the training, I do think that those have an impact. But I think they have to be combined with a very steady emphasis on the principles that we are concerned about.

And, as you know, we have a very aggressive vetting effort. Any unit that is going to benefit from U.S. assistance has got to be checked to make sure that it has not been involved in human rights abuses. And if they have been, then they go into the penalty box. And that is pretty effective.

Mr. McGovern. I know I have to go vote, but, you know, I mean, ultimately, you know, it depends on the political will of the government and the institutions that exist in Indonesia as to whether or not--

Ms. Sutton. Yes.

Mr. McGovern. --you know, some of these institutions that had a history of human rights abuses and terrible activity have actually kind of cleaned up their act. I mean, that is where the accountability is so important.

Ms. Sutton. Right.

Mr. McGovern. We may have a few other questions, which I am going to submit in writing to you if that is okay because you have been kind and I was late. And you are kind enough to kind of give us some great testimony and answered these questions very quickly. But there were a few more that we may have that we might want to submit in writing. And that way I can spare you from having to wait and wait and wait.

I will just close with this. I appreciate what both of you do. And I appreciate your commitment to human rights. And the whole point of this commission is to raise awareness and to pressure the administration and others to pay more attention. I don't think you guys need any pressuring, but it is helpful I think for us to discuss these things publicly and to I think let the

Indonesian Government know that, look, we appreciate the relationship that we have established, but we are still watching in the areas of human rights.

Mr. McGovern. So, with that, I am going to briefly recess so I can go vote on something that I am sure is totally meaningless, but, nonetheless, I have to vote on it. And I will be right back. Thank you.

[Brief recess.]

Mr. McGovern. All right. I guess we are ready for the next panel: John Sifton, Asia Advocacy Director for Human Rights Watch; T. Kumar, the Director for International Advocacy, Amnesty International USA; Sri Suparyati, Deputy Coordinator, Commission for the Disappeared and Victims of Violence; Octovianus Mote--am I pronouncing that right?

Mr. Mote. That is fine.

Mr. McGovern. --a Yale University Law School Fellow and former Kompas journalist. I want to welcome all of you here and look forward to your testimony. I apologize for the vote that came up, but there was nothing I could do about it.

So at this time, Mr. Sifton, why don't we begin with you? And welcome.

Mr. Sifton. Thank you.

STATEMENTS OF JOHN SIFTON, ASIA ADVOCACY DIRECTOR, HUMAN RIGHTS WATCH; T. KUMAR, DIRECTOR FOR INTERNATIONAL ADVOCACY, AMNESTY INTERNATIONAL USA; SRI SUPARYATI, DEPUTY COORDINATOR, COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE; AND OCTOVIANUS MOTE, YALE UNIVERSITY LAW SCHOOL FELLOW AND FORMER KOMPAS JOURNALIST

STATEMENT OF MR. SIFTON

Mr. Sifton. Mr. Chairman, I would like to thank you and your staff for inviting me to testify today and thank the committee at large for focusing on Indonesia's rights record, which, sadly, all too often does not receive the attention it deserves.

I have provided a longer version of my testimony to the committee. And it has been placed on Human Rights Watch's website. But I am going to limit myself to discussing only one of these issues in detail: the issue of the persecution of religious minorities.

But first I do want to acknowledge some of the points raised by the State Department colleagues who preceded us as well as speak directly to any officials from the Indonesia Government who may be here today. And what I want to say is that it is decidedly not in dispute

that Indonesia has seen enormous changes over this 15-year period that we have been referring to. Human Rights Watch, of course, is aware of the general and widespread improvements that have occurred with respect to civil and political rights and particularly civil society and media and as well as the major improvements in social and economic spheres and health and education indicators.

But the human rights situation of Indonesia cannot continue to be gauged in comparison with the country's past. Genuine reforms should be recognized, but the Indonesian Government should be judged by the same set of standards as any other government and criticized objectively for failing to meet those obligations. To do otherwise would really be to condemn the people of Indonesia to a lowered standard of rights protections. And that is not appropriate.

The written version of my testimony focuses on four particular areas of concern: first, the situation in Papua and related issues of freedom of expression; and, second, the issue of military impunity for rights abuses; third, the worsening persecution of religious minorities; and, last, an issue that often doesn't get a lot of attention but is quite disturbing, the issues involving migrants and asylum seekers, about which we are about to put out a report this summer.

I can't discuss all of these issues now, but they are in the written testimony. But I am going to say a few quick things about Papua, the Indonesian military rights record, and then turn to the religious minorities issue.

As far as Papua goes, I have to say Human Rights Watch remains very concerned. The area continues to be under quasi-military occupation. Military and police forces exercise extensive control over the ethnic Papuan population. You know, other witnesses are going to speak about this, but I think it is an issue of very serious concern.

A lot of the problematic incidents that have occurred over the last few years are reviewed in our written testimony. And Mr. Baer referred to them as well. I just want to mention that just a few weeks ago, this last May 1st, which was the 50th anniversary of the day when Papuan territory was ceded to Indonesia by the United Nations, in 1963, there were public events to commemorate and protest that date. And things did not go well.

On the day before the planned protest, Indonesian police reportedly shot and killed two Papuan protestors in the City of Sorong. And on the day itself, at least 20 protestors were arrested in Biak and Timika, not for violently protesting. Many of the persons arrested were detained only for raising the pro-independence Morning Star flag. That was the act for which they were arrested. So, yet, again, we see how Indonesia punishes subjects for exercising their right that they possess under international human rights law, the right to peacefully protest and engage in free expression.

I also note briefly in my testimony the ongoing case of Filep Karma, long-time Papuan activist who has been imprisoned since 2004 for advocating peacefully for Papua's independence from Indonesia. And I assume some of my co-panelists will discuss that case in more detail. I would only note that Karma has been in prison for almost a decade now. He was arrested in 2004, again at a protest at which the Morning Star flag was raised. He was sentenced to 15 years

in prison. Filep Karma is a political prisoner or, as my colleagues at Amnesty International would say, a prisoner of conscience.

And I would note that no allegations about violence have ever been made against Karma. He has spoken extensively against the use of violence. He said at one point, "We want to engage in a dignified dialogue with the Indonesian government, a dialogue between two peoples with dignity, and dignity means we have no use of violence."

On military impunity,--I was going to talk about this in a little more detail, but I have to note that my State Department colleagues were offered an unvarnished criticism--Indonesia continues to have a very, very serious record with military impunity. It is not in dispute.

The rights record overall may have improved, but the fact is when members of the Indonesian military are engaged in human rights abuses, they are almost never punished. And events just this last March are going to be a big test as to whether that is still true. And, frankly, things are not looking good.

I speak about in my testimony the events of late March and April, when a set of Kopassus soldiers, angry that one of their colleagues had been killed in a bar fight, broke into a prison, where the four gentlemen who had killed their colleague allegedly were being held, and executed them. They beat up the police and found the four men who had allegedly killed their colleague, and they executed them. And on the way out, they took the video surveillance camera tapes. Whether these folks get held accountable will, as Mr. Baer said, be a key test of the impunity question.

So, on freedom of religion, where I will end, Human Rights Watch has published an extensive report on this subject that was issued earlier this year. And the report--I have a few copies over there. It is on our website. It describes what is unambiguously a worsening environment for religious minorities across Indonesia. And, as the report notes, "Islamist militants are increasingly," increasingly, "mobilizing in mobs to attack religious minorities" with almost complete impunity. In addition to that, you have all of the harassment and we would call administrative inconveniences that the state itself and local governments impose on Christian groups and Shia groups.

At the end of the day, what we need to do is identify exactly what is going wrong here. And the fact of the matter is that there are senior government officials, including the religious affairs minister and the home minister, who have continued to justify the restrictions on religious freedom that are being imposed on minorities and who continue to say things and do things that suggest that they simply don't care when radical mobs attack minorities. The religious affairs minister, in particular, has himself inflamed tensions by making highly discriminatory remarks about Ahmadiyya and Shia religious communities, suggesting in public that both are heretical faiths.

I would gladly answer more questions about our report about the worsening attacks, but I really think the record speaks for itself. Our report speaks for itself. And the members from the Setara Institute speak for themselves. So there really shouldn't be any dispute about the subject

that you asked my State Department colleagues about, whether the situation is getting worse or not.

I speak with the State Department regularly. My colleagues speak with the embassy in Jakarta regularly. And I know that they know that the situation is getting worse. The only question is whether the U.S. Government or the State Department, in particular, is willing to admit that fact publicly. They may have other reasons to not say so publicly, but I know, again I know, that they know that the situation is getting worse.

So I will leave it there and be glad to answer questions after my co-panelists testify.

[The statement of Mr. Sifton follows:]

Testimony of John Sifton,
Asia Advocacy Director,
Human Rights Watch:

Tom Lantos Human Rights Commission
Hearing of May 23, 2012
“Human Rights in Indonesia”

Mr. Chairman, I would like to thank you for inviting me to testify today, and thank the committee for focusing on Indonesia’s human rights record, which too often today does not receive the attention it deserves.

Indonesia has seen enormous changes over the last 15 years. Human Rights Watch is aware of the general and widespread improvements that have occurred with respect to basic civil and political rights, particularly the flourishing civil society and media.

The country’s current human rights situation, however, cannot continue to be gauged in comparison with the country’s past. Genuine reforms should be recognized, but the Indonesian government should be judged by the same set of standards as any other government and criticized objectively for failing to meet its human rights obligations. To do otherwise would be to condemn the people of Indonesia to a lowered standard of rights protections.

Human Rights Watch wishes to focus on four particular areas of human rights concern: First, the situation in Papua and related issues of freedom of expression. Second, the issue of military impunity for rights abuses. Third, the worsening persecution of religious minorities. And last, issues involving migrants and asylum seekers.

Free Expression in Papua and Elsewhere

Human Rights Watch remains very concerned with the situation in Papua and West Papua, on the eastern end of the Indonesian archipelago, where Indonesian military and police forces

exercise extensive control over the ethnic Papuan population, and often harass and bring politically motivated prosecutions against Papuans who are believed to be involved in pro-independence groups.

In October 2011, a pro-independence rally in Papua was dispersed violently by Indonesian security forces—three protesters were killed and many more injured. Several were severely beaten. Six months later, a court in Papua convicted five men for statements made at the event—Selsius Bobii, a social media activist; August Sananay Kraar, a civil servant; Dominikus Sorabut, a filmmaker; Edison Waromi, a former political prisoner; and Forkorus Yaboisembut, a Papuan tribal leader—and sentenced them to three years in prison.

Forkorus Yaboisembut had visited Washington, D.C. in 2010 and met with members of Congress and State Department officials. He is in his 50s and likely weighs less than 100 pounds, but that did not stop the security forces from beating him very badly at the rally.

An apparent government crackdown on independence activists from May to August 2012 resulted in an upsurge in violence in Papua. Forty-seven reported violent incidents in this period left 18 people dead, including an Indonesian soldier involved in a traffic accident, and dozens of wounded, including a German tourist. On June 14, 2012, police shot and killed the deputy chairman Mako Tabuni of National Committee for West Papua (Komite Nasional Papua Barat or KNPB), a militant Papuan independence group, triggering riots in the Jayapura neighborhood of Wamena, over perceptions that Tabuni was the victim of an extrajudicial execution. Papua police alleged that Tabuni was involved in numerous shootings, but have not offered clear evidence to support the claim.

Violence broke out in Papua again very recently, on May 1, 2013, on the fiftieth anniversary of the day when Papuan territory was ceded to Indonesia by the United Nations, in 1963. Indonesian police reportedly shot and killed two protesters in the city of Sorong the day before the protests, and at least 20 protesters were arrested in the cities of Biak and Timika on the day of the protests, most for raising the pro-independence Morning Star flag.

The UN High Commissioner for Human Rights, Navi Pillay, condemned the arrests in a statement, and noted that since May 2012, her office had received 26 reports concerning alleged human rights violations in Papua, including 45 killings and cases of torture, many linked to security officials. And as Human Rights has done, she criticized the government's failure to investigate and prosecute security force personnel implicated in abuse.

Also in May 2012, more than a dozen UN member countries raised tough questions during Indonesia's Universal Periodic Review at the UN Human Rights Council about human rights problems in Papua including the ongoing impunity for abuses by security forces, restrictions on the rights to freedom of expression, and excessive restrictions and surveillance of foreign journalists and human rights researchers. But Indonesia rejected all of the Papua-related recommendations, denying the country has political prisoners or a problem of impunity in Papua, and claiming without basis that "national journalists" could travel freely in the region.

Frank La Rue, the UN Special Rapporteur on freedom of opinion and expression, visited Indonesia in January but was denied permission to visit Papua, highlighting Indonesia's failure to act in compliance with the Human Rights Council's recommendations.

The committee should also consider the case of Filep Karma, another Papuan activist imprisoned for peacefully advocating Papua's independence from Indonesia. Almost nine years ago, on December 1, 2004, Karma helped organize a ceremony to mark the anniversary of Papua's independence from Dutch colonial rule. The event was attended by hundreds of Papuan students who shouted "Freedom!" and waved the Papuan "Morning Star" flag, which is illegal under Indonesian law. When protesters tried to raise the flag, security forces disbanded the rally. Karma and others were arrested, and the following year he was found guilty of treason for organizing the event and sentenced to 15 years' imprisonment.

No allegations about violence have ever been made against Karma; he has spoken extensively against the use of violence in protesting the Indonesian government. "We want to engage in a dignified dialogue with the Indonesian government," he has said. "A dialogue between two peoples with dignity, and dignity means we have no use of violence."

In November 2011, the UN Working Group on Arbitrary Detention issued an opinion that the Indonesian government was violating international law by detaining Karma and called for his immediate and unconditional release.

Indonesia's jailing of peaceful protesters is not limited to Papua. Several dozen Moluccan protesters—persons who support an independent Moluccan republic—were arrested in connection with a June 29, 2007 protest during National Family Day festivities at a stadium on Ambon island. During the event, which was attended by President Susilo Bambang Yudhoyono, 28 Moluccan independence groups members entered the stadium and began a traditional dance called the *cakalele*, and then unfurled the banned flag of the Republic of the South Moluccas. The protest was led by a Moluccan school teacher named Johan Teterisa. A tribal chief named Ferdinand Waas helped organize the protest. The dancers, mostly young men who came from Haruku Island, east of Ambon, embarrassed President Yudhoyono in front of foreign guests: when he spoke after the dance he told the audience that there is "no tolerance" in Indonesia for separatism. Most of the protesters were immediately arrested during the event, and Human Rights Watch later documented in a 2010 report how many of them were severely tortured by Indonesian authorities after arrest. Most were then prosecuted for treason and sentenced to terms in prison in a range of about 8 to 10 years. Seven of the original protesters today suffer from severe health problems related to their torture and beatings after arrest.

Military Impunity

Indonesia's security forces continue to commit serious abuses with almost complete impunity. The military justice system has a poor prosecution record in human rights cases, and there is no civilian jurisdiction over soldiers, even for serious rights abuses.

These failings are highlighted in an incident last year in Papua: On June 6, 2012 over 300 soldiers from the 756th Battalion went on a rampage in the Papuan village of Wamena as a reprisal for an incident in which villagers beat to death a soldier involved in a fatal traffic accident. Soldiers randomly fired their weapons into shopping areas, burned down 87 houses, stabbed 13 villagers, and killed a native Papuan civil servant. Although military officials on June 12 apologized for the incident and promised compensation, victims said military investigators failed to question them about the incident. They said rather than paying any compensation, the military has limited its response to the violence to a traditional Papuan “stone-burning” ceremony and declared the case closed. No one is known to have been prosecuted for the violence.

Concerns about impunity of the security forces resurfaced this year in Java, Indonesia’s most populous island. On March 23, 11 members of the Special Forces Command (Komando Pasukan Khusus or Kopassus), were arrested for breaking into the Cebongan prison in Yogyakarta, central Java, and murdering four detainees in their cell. Investigators said the motive for the murders was revenge for a killing, three days earlier, of Kopassus member Heru Santoso, for which the four detainees had been arrested. Santoso and the 11 Kopassus suspects all served with Kopassus Group II in Kartasura, about a two-hour drive from Yogyakarta.

Investigators say that the Kopassus suspects, disguised with ski masks and carrying AK-47 assault rifles, forced their way into the prison, beat two prison guards who subsequently required hospitalization, and executed the four detainees. When leaving after the 15-minute attack, the assailants seized the prison’s closed circuit television recordings.

On March 24, the day after the attack, the military commander for Central Java, Maj. Gen. Hardiono Saroso, whose authority extends to Kopassus Group II, rejected the allegations that Kopassus personnel had perpetrated the prison murders. But nine days later, on April 2, army commander Gen. Pramono Edhie Wibowo indicated that Kopassus members had been involved in the prison attack. On April 4, an army investigating team revealed that the nine Kopassus soldiers had perpetrated the attack, and on April 6, the armed forces announced that Saroso, the Java commander, had been dismissed from his post in connection with the prison murders.

At the same time, senior military and government officials have publicly defended the suspects and downplayed the severity of the crime. On April 4, army investigator Brig. Gen. Untung Yudhoyono repeatedly described the four slain detainees as “thugs” and said their murders were an expression of Kopassus loyalty. On April 12, Defense Minister Purnomo Yusgiantoro publicly denied that the prison murders were a human rights violation on the basis that the killings were “spontaneous [and] unorganized.” Kopassus commander Maj. Gen. Agus Sutomo on April 16 insisted that the prison raid was an act of mere “insubordination” rather than a human rights issue.

Human Rights Watch is concerned that the Kopassus suspects will not be prosecuted to the full extent of the law. Under Indonesian law, military personnel cannot be tried in civilian courts, with only a few rarely invoked exceptions. The military justice system has jurisdiction to prosecute crimes committed by soldiers, but it has a very poor prosecutorial record. The military

criminal code does not contain a crime of torture, among other shortcomings. While a 2000 Law on Human Rights Courts authorizes human rights courts to assert jurisdiction over cases involving allegations that members of the military committed serious human rights abuses, at present it applies only to allegations of genocide and crimes against humanity, and not to the broad spectrum of conduct that constitutes human rights abuse.

During the UN Universal Periodic Reviews of Indonesia's human rights record in 2007 and 2012, the Indonesian government committed to reforming the military tribunal system. That promised reform includes adding torture and other acts of violence to the military criminal code of prosecutable offenses and ensuring the definition of those offenses are consistent. However, to date the government has not added those offenses to the military criminal code.

Kopassus' record of human rights violations and its failure to hold the abusers accountable spans its operations across Indonesia, beginning in the 1960s in Java and extending to East Timor, Aceh, and Papua in the decades since. The well-documented East Timor abuses prompted the United States to impose a ban on military contact with the elite forces in 1999. In 2010, the US lifted the ban. Human Rights Watch and domestic human rights organizations criticized the ban on the basis that the Indonesian military, and Kopassus in particular, had failed to demonstrate a genuine commitment to accountability for serious human rights abuses.

Serious abuses by Indonesian forces and the failure to fully prosecute and punish military personnel extends far beyond Kopassus. In a number of cases over the past decade, the Indonesian military justice system has dispensed extremely lenient sentences to soldiers convicted of serious human rights abuses against civilians:

- On May 30, 2010, several Indonesian soldiers detained two Papuan farmers, Tunaliwor Kiwo and Telangga Gire, at a military checkpoint in Tingginambut, Puncak Jaya, in Papua. The soldiers tortured them, demanding the farmers lead them to alleged weapons caches in their village. A graphic video documented the soldiers perpetrating sexual violence against Kiwo and threatening to kill Gire. The military tribunal convicted only three soldiers involved in the torture on charges of "insubordination" and handed down prison sentences of between eight and ten months.
- Video footage documented abuses perpetrated on March 17, 2010, by a 12-soldier checkpoint unit of the army's 753rd Battalion, led by Lt. Cosmos in Papua's Kolome village also in Puncak Jaya. The video documented the unit interrogating Papuan villagers, beating them with their helmets and kicking them. Lt. Col. Adil Karo-Karo, a military judge, criticized the soldier who recorded the abuse, saying "You're stupid. Knowing how sensitive it was, why did you keep recording it anyway?" On November 12, 2010, the Jayapura military tribunal found Cosmos and three soldiers under his command guilty of "insubordination." Cosmos was sentenced to seven months in prison while the three privates received sentences of five months each.
- In June 2008, a military court found 13 navy personnel guilty of opening fire on a group of civilians in Pasuruan, East Java, killing four civilians and injuring several others in May 2007. The shootings were in connection with a land dispute involving a business that had hired the soldiers to provide security. Although the relevant charges carried a

maximum penalty of 15 years in prison, the soldiers received prison terms ranging from 18 months to 36 months, and dismissal from the military.

- Three soldiers were convicted in July 2005 of torturing a civilian in Bogor, West Java, on the suspicion that he had stolen a pair of sandals. According to a forensic report, the civilian died the following day from injuries sustained as a result of the torture. A military court convicted the soldiers of assault and sentenced them to prison terms ranging between six weeks to 18 months.
- Three soldiers convicted in July 2003 for raping four women in North Aceh, subject to up to 12 years' imprisonment, were given prison sentences ranging from two years and six months to three years and six months and dismissal from the military.

Freedom of Religion

In February, Human Rights Watch published a comprehensive report on the frequent and occasionally deadly attacks on religious minorities in Indonesia. The report describes a worsening environment for religious minorities across Indonesia. Islamist militants are increasingly mobilizing in mobs to attack religious minorities—with almost complete impunity. Light prison terms are imposed on those prosecuted sent a message of official tolerance for such mob violence. Dozens of regulations, including ministerial decrees on building houses of worship, continue to foster discrimination and intolerance.

Throughout 2012, dozens of minority Christian congregations, including GKI Yasmin church in Bogor and HKBP Filadelfia church in the Jakarta suburb of Bekasi, reported that local government officials arbitrarily refused to issue them permits required under a 2006 decree on building houses of worship. Both churches had already won Supreme Court decisions to build such structures. Senior government officials, including Religious Affairs Minister Suryadharma Ali and Home Affairs Minister Gamawan Fauzi, continued to justify restrictions on religious freedom in the name of public order. They both offered affected minorities “relocation” rather than legal protection of their rights.

Suryadharma Ali has himself inflamed tensions by making highly discriminatory remarks about the Ahmadiyah and Shia religious communities, suggesting that both are heretical. In September 2012, he stated that the “solution” to religious intolerance of Ahmadiyah and Shia was their conversion to the Sunni Islam that most Indonesians follow. That same month, President Yudhoyono called for the development of an international instrument to prosecute “religious blasphemy,” which could be used to restrict free expression and the religious freedom of minorities.

According to Indonesia’s Setara Institute, which monitors religious freedom, attacks on religious communities increased from 216 in 2010 to 244 in 2011 to 264 attacks in 2012. These figures suggest the situation is worsening.

Some of the worst recent attacks involved a Shia village in Sampang regency on Madura Island. On December 29, 2011, Sunni militants burned down houses and a madrasa, an Islamic school, causing around 500 Shia residents to flee. Police arrested and charged only one of the militants

for the arson attack. On August 26, 2012, at the end of Eid, the holiday following the end of Ramadan, hundreds of Sunni militants again attacked the same Shia village and burned down around 50 Shia houses, killing one man and seriously injuring another. Several police officers at the scene failed to intervene to stop the attack—video footage of the attack shows police standing around while Sunni militants attack. Many of the Shia attacked remain displaced from their homes.

In November 2012, Acehese villagers attacked a Muslim sect in Bireuen, Aceh, targeting the house of a Muslim teacher, Tengku Aiyub Syakuban, who clerics accused of disseminating “heretical teachings.” Hundreds of villagers were involved in the attack and set fire to Syakuban and his student Muntasir, both of whom were burned to death. One of the attackers also somehow died in the violence. No one was arrested.

One of the most troubling recent attacks occurred on February 6, 2011, in Cikeusik, a village in western Java, when a crowd of around 1,500 Islamist militants armed with stones, sticks, and machetes attacked a small gathering of two dozen Ahmadiyah. In a video of the attack, the mob is shouting, “You are infidels! You are heretics!” Local police can be seen but many leave when the crowd begins descending on the Ahmadiyah. The video shows the crowd viciously kicking and beating several men with large pieces of wood. By the time the attack is over, three men are bludgeoned to death. It is a disgusting sight, to see a mob beat human beings to death. But it is doubling troubling to realize that police were on the scene and left, making them complicit in the crime.

But the authorities are not only responsible for acts of omission. Officials have been directly involved in the persecution of religious minorities.

In March 2012, a court in Central Java sentenced Andreas Guntur, the leader of the spiritual group Amanat Keagungan Ilahi, to four years’ imprisonment on charges of blasphemy on the basis of allegedly improper teachings of certain verses of the Quran.

In June 2012, a West Sumatra court sentenced Alexander An, an administrator of the “Minang Atheist” Facebook group, to 30 months in prison and a fine of 100 million rupiah (US\$11,000) for “inciting public unrest” via Facebook postings espousing atheism.

In July 2012, an East Java district court sentenced Shia cleric Tajul Muluk to two years’ imprisonment for blasphemy against Islam. The East Java high court later increased his sentence to four years and two months for causing “riots” in August.

In October 2010 a preacher named Antonius Richmond Bawengan from Jakarta was arrested and prosecuted for handing out controversial leaflets that angered local Muslims in Central Java. In 2011, he was convicted of blasphemy and sentenced to five years’ in prison.

In 2010 a local court in Sumatra convicted two Baha’i members, Syahroni and Iwan Purwanto, of “trying to convert” Muslim children to the Baha’i faith, which is not recognized under

Indonesian law. The charge was not supported by clear allegations. Both men were sentenced to five years in prison.

There are also a panoply of discriminatory laws and policies in Indonesia that make life extraordinarily difficult for religious minorities. A Christian group that wants to build a new church is tied up with regulations that are often enforced at the whim of local authorities. A Shi'a woman will be told she cannot identify herself as "Muslim" on her government ID card, because the Shi'a faith is deemed heretical. A Baha'i couple will be forced to say they are Muslim in order to get a marriage certificate; if they refuse, their marriage cannot be recognized, and their children will be considered fatherless on their birth certificates. And atheists can be punished by hard jail time.

Migrants and Asylum Seekers

More than four million Indonesian women work abroad in Malaysia, Singapore, and the Middle East as live-in domestic workers. These women often encounter a range of abuses, including labor exploitation, psychological, physical, and sexual abuse, and situations of forced labor and slavery-like conditions. The Indonesian government has become an increasingly vocal advocate for its workers abroad, successfully negotiating the pardon of 22 Indonesian women on Saudi Arabia's death row, calling for improved labor protections, and ratifying the Migrant Workers Convention.

However, Indonesia has consistently failed to rein in abusive recruitment agencies that send workers abroad. Many agencies charge workers high fees that leave them heavily indebted and give them deceptive or incomplete information about their work conditions. Revisions to its migration law remain pending.

Within Indonesia, an important draft law extending key protections to domestic workers has languished in parliament. The country's labor law excludes all domestic workers from the basic labor rights afforded to formal workers, such as a minimum wage, overtime pay, limits to hours of work, a weekly rest day, and vacation. Hundreds of thousands of girls, some as young as 11, are employed as domestic workers. Many work 14 to 18-hour days, seven days a week, with no day off. Many employers forbid child domestic workers from leaving the house where they work and pay little or none of their salaries. In the worst cases, girls are physically, psychologically, and sexually abused by their employers or their employers' family members.

Indonesia detains and mistreats thousands of asylum seekers, including children, from Sri Lanka, Afghanistan, Burma, and elsewhere. Asylum seekers face detention, abuses in custody, limited access to education, and have little or no basic assistance.

In February 2012, an Afghan asylum seeker died from injuries allegedly inflicted by guards at the Pontianak Immigration Detention Center.

Indonesia is not party to the 1951 Refugee Convention, and does not provide most migrants opportunities to obtain legal status, such as to seek asylum. Many migrants consider traveling on

to Australia on boats arranged by smugglers a viable option, despite the risks of drowning in the dangerous sea crossing.

Human Rights Watch is becoming increasingly concerned with the plight of children migrants and asylum seekers in particular. Our research has found that hundreds of unaccompanied children—again, people fleeing war, violence, and poverty in countries as far away as Afghanistan, Sri Lanka, and Burma—are detained each year in Indonesia and held in terrible and violent conditions, often for months or even years, with no access to education, with their fundamental right to seek asylum ignored. We will be issuing a report on this subject this summer.

Thank for allowing me to testify today.

Mr. McGovern. Thank you very much.

Mr. Kumar?

Mr. Kumar. Thank you very much, Chairman.

STATEMENT OF MR. KUMAR

Mr. Kumar. Amnesty International is grateful that you are holding this hearing. We are grateful because U.S. relationship with Indonesia is very strong, but in that relationship, human rights is missing in a meaningful manner. I mean, there are statements. That is reflective in the comprehensive partnership agreement that U.S. signed that mentioned human rights, but the repercussions are missing there.

So, having said that, I would like to go through main concerns, which my colleague from Human Rights Watch mentioned, to emphasize the deteriorating situation there.

Fifteen years have passed from a dictatorship to a democracy, but when you compare 15 years, the abuses are not lessening. It is increasing in different sectors, the latest one, of course, the religious freedom issues.

Our State Department colleague Baer mentioned an active civil society, "vibrant civil society." That is the term he used. Yes, there is vibrant civil society. There are human rights differences. But the abuse is something he missed to mention here. They have been abused, tortured, imprisoned. Criminal defamation cases have been filed. This is under democracy, by the way. The amount of work is so vital.

And, to cap it all, a famous and important human rights defender called Munir was poisoned and killed on his flight. He was on a flight to Holland. And so far no meaningful steps have been taken. President Yudhoyono basically asked for a report, and he did not make public a report. As to what happened, who is responsible, he said there are suspicions there are senior officials who are involved in this case. This is the plight of human rights defenders there.

So we would urge Congress take this as a priority and urge President Yudhoyono--he is going to be in the U.S. I don't know whether he is coming here. He is going to be in the U.S. to receive an award in New York soon--to release that report. That is all. Why are you holding it? That is the most important thing. So we would urge you to act on that.

So human rights defenders are still facing abuses. Second is there are over 70 to 80 people prisoners there. These are nonviolent, peaceful protesters, which we call it prisoners of conscience. Filep Karma from Papua is one. There are other people in Maluku and other religious-related prisoners.

You can ask for their release. I know you have a project going on. Amnesty is a part of it. And it would be great. It would be great if you can keep the pressure on these 70 prisoners.

The danger we are seeing is there is going to be an election next year. We don't know who is going to win. We don't want to guess.

The current percent in whatever is said and done, it is a very good relationship with President Obama and the administration. And also he doesn't have any black spots, even though he was a foreign military--no black spots. So he can do it. So this one year is extremely crucial to get these 70 people out and also to bring the report out on this Munir, what happened to him, how he was killed on the plane, and all the rest of it.

The third one is the security forces. What we are seeing today is nothing different than what happened. The difference may be a little less now than what happened in Timor. No one has been held accountable in a meaningful way. There are police officers in a lower rank who may have been held accountable. We are talking starting from 1966, when half a million to one million so-called communists who were killed. No one was held accountable.

East Timor massacre, no one was held accountable.

Aceh, no one was held accountable in a meaningful manner.

The 1988 democracy uprising, 13 students disappeared by the Kopassus, the special forces. No one has been held accountable.

And currently in Papua and other places, they are going on a rampage. I mean, they can kill and get away from murder. And the latest one is what happened in the prison. They were able to get into the prison, execute them. And they arrested 11 people. Let's see what is happening. Let the administration, U.S. administration, hold these people accountable for these abuses.

The other one is the Detachment-88, which was mentioned earlier. This is a special police unit that was created after the Bali bombing to counter extremist forces. And this Detachment-88 was trained, more or less advised, by the U.S. So they won't. I mean, the U.S. has a lot of responsibility for their behavior. This Detachment-88, not only going after so-called extremists, they are also going after nonviolent political demonstrators. In Papua, Maluku, and other places, we have seen this over and over again. So U.S. can ask to stop these things because U.S. created this unit.

So, on that note, we would urge the U.S. Congress to urge U.S. administration to make sure that Detachment-88 does not abuse human rights. They were given a task for something else, but they are doing something else there.

So, in a nutshell, this hearing is bringing important issues to the forefront. The timing is perfect because of the upcoming elections. And there are specific things that Congress can do to push directly the administration to ask directly President Yudhoyono.

Thank you very much for inviting Amnesty.

[The statement of Mr. Kumar follows:]

Human Rights in Indonesia

Before the:

Tom Lantos Human Rights Commission
U.S. House of Representatives

Testimony by:

T. Kumar
International Advocacy Director
Amnesty International, USA

May 23, 2013

Thank you Mr. Chairman and members of the Tom Lantos Human Rights Commission; Amnesty International is pleased to testify at this important hearing.

This hearing is important because of the continuing human rights abuses in Indonesia and lack of attention paid by the international community to address these abuses.

The human rights situation in Indonesia is disturbing. There are several political prisoners still languishing in prisons. Human rights defenders face obstacles and there has been no progress in the investigation into the killing of a prominent human rights defender Munir Said Thalib. Indonesian Security forces continue to commit abuses with impunity, including the recent execution of four prisoners inside a prison. The situation in Papua is not improving and religious minorities face increasing abuses. A U.S.-trained police unit, Detachment – 88, has been implicated in serious human rights abuses.

Our main concerns are as follows:

Human rights defenders:

Amnesty International continues to receive credible reports of attacks, threats and intimidation of human rights defenders in Indonesia. Most past human rights violations against human rights defenders, including torture and other ill-treatment, possible unlawful killings and enforced disappearances, remain unsolved and those responsible have not been brought to justice. There are ongoing reports of intimidation and attacks against human rights defenders, and some have subjected to criminal defamation proceedings due to their work in recent years.

According to Articles 311(1) of Indonesia's Criminal Code: "Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted, shall, if he does not

produce said proof and the charges has been made against his better judgment, being guilty of calumny, be punished by a maximum imprisonment of four years”, and Article 316: “The punishments laid down in the foregoing articles of this chapter may be enhanced with one third, if the defamation is committed against an official, during or on the subject of the legal exercise of his office”.

That means criminal defamation carries formally the possibly of up to five years and a few months’ imprisonment under Indonesian law.

Failure to investigate attack against human rights defender:

On 6 May 2012 Tantowi Anwari, an activist from the Association of Journalists for Diversity (Sejuk) was beaten and kicked by members of the Islamic Defenders Front (FPI) in Bekasi while he was covering the disruption of the HKBP Filadelfia church service. Despite filing a police report a year ago, Tantowi Anwari has not been informed of any progress on his case.

Criminal defamation case against community activist:

On 13 July 2012 the Maluku provincial police charged Oyang Orlando Petrus, a community activist from southwest Maluku, with criminal defamation. He had been a vocal critic of mining in the area and its impact on the environment and was previously attacked and stabbed by unknown persons in April 2012. No one has been brought to justice for the attacks.

Recommendations:

- Take effective steps to ensure that human rights violations committed against human rights defenders are promptly, effectively and impartially investigated and that those responsible are brought to justice in fair trial proceedings;
- Ensure an environment in which it is possible to defend human rights without fear of reprisal or intimidation;
- Ensure that provisions in the Criminal Code, which allow for terms of imprisonment for acts of defamation, are repealed, and that the newly revised Criminal Code does not contain provisions punishing with terms of imprisonment individuals who publicly criticize public officials; and
- Support the creation of special mechanisms to ensure the protection of human rights defenders in Indonesia.

Case of Human Rights Defender Munir Said Thalib

Prominent human rights activist Munir Said Thalib, was found dead on a Garuda Airlines flight from Jakarta to the Netherlands on 7 September 2004. An autopsy carried out by the Dutch authorities showed that he had been poisoned with arsenic.

Although three persons have now been convicted of involvement in Munir's death, credible allegations have been made that those responsible for the murder at the highest levels are still at large. Former deputy of the state intelligence agency, Muchdi Purwoprandjono (known as 'Muchdi'), was acquitted of charges of soliciting and assisting in the murder of Munir on 31 December 2008. His trial was criticized by local and international human rights groups as violating international standards of fairness and due process, as it was marked by the systematic retraction of prior sworn statements by key witnesses, and by the presence of organized groups seeking to influence the trial.

In response to the domestic and international outcry over Munir's death, President Susilo Bambang Yudhoyono ordered an independent fact-finding team to work in parallel to the police investigation. This team gave him its report in June 2005. The report has yet to be made public, although though this had been recommended by the presidential decree that created the fact-finding team.

Recommendations:

- Initiate a new, independent investigation into the murder of Munir and bring perpetrators at all levels to justice in accordance with international human rights standards;
- Conduct a review of past criminal proceedings into Munir's killing, including alleged violations of international human rights standards; in particular, investigate reports of witness intimidation and bring those suspected of committing them to justice;
- Call for the 2005 report of the fact-finding team into Munir's killing to be made public, as a key step towards establishing the truth.

ACCOUNTABILITY AND HUMAN RIGHTS VIOLATIONS BY THE SECURITY FORCES

Police

Amnesty International continues to receive credible reports of human rights violations committed by the police in Indonesia, including unlawful killings, torture and other ill-treatment, unnecessary and excessive use of force and firearms when carrying out arrests and during demonstrations, and failure to protect victims of human rights abuses.

Investigations into reports of police abuses are rare, and police often subject complainants to further intimidation and harassment. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences amounting to human rights violations and are often not

known to the public. Furthermore, external police oversight bodies do not have the adequate powers to bring to justice those responsible for human rights abuses.

Seven men were reportedly tortured in Papua province in February 2013 while they were interrogated by police about the whereabouts of two pro-independence activists. According to credible sources, plainclothes police officers arbitrarily arrested Daniel Gobay and two other men on the morning of 15 February 2013 in Depapre, Papua province. The three men were first forced to crawl on their stomachs to the Depapre sub-district police station approximately 30 metres away and then moved to the Jayapura district police station an hour later. There they were then forced to strip, were kicked in the face, head and back, and beaten with rattan sticks. Police officers allegedly pressed the barrels of their guns to their heads, mouth and ears. They were interrogated until late at night and in the morning of the following day.

Matan Klembiap and three other men were arbitrarily arrested separately by plainclothes police officers on the morning of 15 February in Depapre and taken to the Jayapura district police station. The four men were also forced to strip and were kicked and beaten with rattan sticks and wooden blocks by police officers. One of the men has testified on video that police gave him electric shocks.

On 16 February, five of the men were released without charge but Daniel Gobay and Matan Klembiap were kept in police custody. They have since been charged with "possession of a sharp weapon" under the Emergency Regulation 12/1951 and are currently awaiting trial

Excessive use of force by police against demonstrators in Papua:

On 23 October 2012, around 300 people gathered for a pro-independence demonstration organized by the West Papua National Committee (KNPB) in front of the State University of Papua in Manokwari, West Papua province. Manokwari sub-district police and military personnel prevented them from proceeding along the road. In response to stones thrown by a few protesters, police opened fire indiscriminately, firing shots into the air and at the crowd. Some demonstrators alleged that they were beaten by police.

At least eleven demonstrators were reportedly injured, four of them suffering gunshot wounds. A journalist, Oktovianus Pogau, who was covering the demonstration, stated that he was attacked by the police. One of them held him around his throat while another punched him in the face as he tried to retrieve his press card to show them. At least five police officers also reportedly suffered injuries. Indonesia has yet to fully incorporate a definition of torture in its Criminal Code, thus failing to meet its obligations as a state party to the UN Convention against Torture (UNCAT). The lack of sufficient legal provisions on "acts of torture" creates a loophole which has devastating consequences. It does not provide a sufficient legal basis on which state agents can be brought to court. Further it fails to provide a legal deterrent to prevent state agents from committing these acts.

Recommendations:

- Review the internal system for submitting and processing complaints of police abuse to ensure that investigations into police misconduct are prompt, impartial and independent. Furthermore, an independent police complaints mechanism to receive and deal with complaints from the public should be established. This mechanism should have the power to submit its findings to the Public Prosecutor; and
- Incorporate provisions on the crime of torture in the Criminal Code as a matter of priority. The definition of torture should be consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Military

Credible reports of human rights violations committed by the military continue to emerge including unlawful killings, torture and other ill-treatment, and unnecessary and excessive use of force.

Despite a public commitment made by President Susilo Bambang Yudhoyono in February 2012 that cases of human rights violations would be “legally processed and perpetrators penalized”, investigations into reports of human rights violations by security forces are rare and only a few perpetrators have been brought to justice.

This lack of accountability is exacerbated by the failure to revise the Law on Military Tribunals (Law No. 31/1997). Military personnel charged with human right offences are tried in military courts. Amnesty International has expressed concerns about the lack of independence and impartiality of these trials.

In the afternoon of 6 June 2012, two soldiers on motorcycles reportedly ran over and injured a three year old child playing by the side of the road in the village of Honelama in Wamena. Villagers who witnessed the incident chased the soldiers and stabbed one to death and injured the other.

In retaliation, two trucks of soldiers from army battalion Yonif 756/Wamena arrived at Honelama village not long after and reportedly opened fire arbitrarily on the villagers killing one person, Elinus Yoman. According to reliable local sources, soldiers also stabbed around a dozen people with their bayonets. In addition, soldiers reportedly burned down dozens of homes, buildings and vehicles during the attack. Many of the villagers fled the area and were afraid to return to their homes. No one has been brought to justice for the attacks.

Recommendations:

- Take the necessary steps to ensure that all military personnel who have been involved in human rights violations, including those with command responsibility, are held accountable. Those individuals suspected of involvement in extrajudicial killings, torture

and other serious human rights violations including deliberate acts of cruel, inhuman or degrading treatment should be prosecuted in civilian courts in proceedings which meet international standards of fairness, without the imposition of the death penalty, and victims should receive reparations; and

- Immediately revise the Law on Military Tribunals so that military personnel suspected of offences involving human rights violations can be investigated and tried in an independent civilian judicial system and victims and witnesses provided with adequate protection.

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS:

The Indonesian government has made little progress in delivering justice, truth and reparation for past human rights violations which occurred under the rule of Suharto and during the *reformasi* period (from 1998) including during the events of 1965-66,¹ the 1998 May riots,² and the conflicts in Aceh, Papua and Timor-Leste. These crimes included unlawful killings, rape and other crimes of sexual violence, enforced disappearance, and torture and other ill-treatment.

The Law on Human Rights Courts (No. 26/2000), established to try cases of gross human rights violations, has very limited scope and has yet to be properly implemented. It has jurisdiction only over acts of genocide and crimes against humanity, and thus war crimes and the vast majority of human rights violations perpetrated in Indonesia fall outside its remit.

In 2006 the Indonesian Constitutional Court ruled that the Law on the Truth and Reconciliation Commission (No. 27/2004) was unconstitutional, as it gave powers to recommend amnesties for perpetrators of serious crimes. A new law has been drafted and is scheduled for discussion in Parliament in 2011-2014; however, to date there has been no progress on this. Further, there has been no progress to establish local truth commissions in the provinces of Aceh and Papua as provided for in autonomy laws governing those areas.

Enforced disappearances of 13 political activists in 1997-98:

The fate and whereabouts of 13 political activists who disappeared in 1997-1998 during the last months of President Suharto's rule remain unknown. In 2007, a Special Committee (*Pansus*) was set up by the Indonesian Parliament in response to a 2006 report by the Indonesian Human Rights Commission (Komnas HAM), as well as ongoing pressure from human rights organizations and the families of the disappeared. On 30 September 2009, the Indonesian Parliament recommended that the Indonesian President create an *ad hoc* human rights court to try those responsible for enforced disappearances in 1997-1998. Other recommendations included an immediate search for the 13 disappeared activists by the Indonesian authorities; the

provision of “rehabilitation and compensation” to the victims’ families; and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

While the Indonesian government has expressed its intention to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and signed the treaty in September 2010, none of the other recommendations have been acted on. Those responsible have not been brought to justice and the victims’ families continue to be denied their right to truth, justice and reparation.

Recommendations:

- Ensure that all past human rights violations can be effectively investigated and prosecuted. To this end the Indonesian authorities should:
 1. Revise the Law on Human Rights Courts to expand its remit to include war crimes and other crimes under international law such as extra-judicial killing, enforced disappearance and torture; and
 2. Ratify the Rome Statute of the International Criminal Court at the earliest opportunity, incorporate its provisions into domestic law and implement it in policy and practice;
 3. Ratify promptly the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or from other states parties.
- Debate, enact and implement at the earliest opportunity a new law on truth commissions in line with international law and standards;
- Establish a national program to provide reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights abuses. The programme should be devised in consultation with victims and should take in to account the different experiences of women and men, girls and boys, who experience conflict differently; and
- Provide full and effective reparation to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility. In particular, support through donation the establishment of a trust fund to provide a comprehensive reparation programme for victims of past crimes.

Prison killings - Recent example: Indonesia Special Forces Command (Kopassus).

Amnesty International is concerned about the extrajudicial killings of four detainees in Cebongan prison, Jogjakarta on 23 March by members of the Indonesia Special Forces Command (Kopassus).

The killings are a stark reminder that failure to comprehensively reform institutions and combat impunity can lead to new abuses.

Amnesty International is also concerned that the soldiers would be tried in a military court rather than in a civilian court. Human rights organizations have highlighted the lack of independence and impartiality of trials in military courts, the lack of protection for victims and witnesses and that military officers suspected of such offences are often charged with disciplinary rather than criminal offences

Recommendation:

- Undertake an independent, effective investigation into the killings at Cebongan prison and ensure that the perpetrators are brought to justice in independent, civilian courts.

Freedom of Expression:

Indonesian authorities continue to use legislation to criminalize peaceful political activities – violations of the right to freedom of expression are particularly severe in areas where there has been a history of pro-independence movements such as Maluku and Papua. Indonesian authorities have reacted strongly towards individuals who have called for independence. Amnesty International has documented dozens of arrests in past years of peaceful political activists there. Over 70 people are currently imprisoned for peaceful political activities, protests or possessing, raising or waving the prohibited pro-independence flags of Maluku and Papua.

Amnesty International takes no position whatsoever on the political status of any province of Indonesia, including calls for independence. However the organization believes that the right to freedom of expression includes the right to peacefully advocate referendum, independence or other political solutions that do not involve incitement to discrimination, hostility or violence.

Papua:

Papuan activist Filep Karma is currently serving 15 years in prison for taking part in a peaceful demonstration during which the “Morning Star” flag (a banned symbol of Papuan independence) was raised. Filep Karma was arrested at the site of the ceremony. Police reportedly beat him on the way to the police station. He was subsequently charged with “rebellion” under Articles 106 and 110 of the Indonesian Criminal Code. On 26 May 2005, Filep Karma was sentenced to 15 years’ imprisonment. His sentence was upheld by the Supreme Court on 27 October 2005.

In November 2011 the UN Working Group on Arbitrary Detention issued an opinion stating his detention was arbitrary on the grounds that it violated his right to freedom of expression and assembly, and because he was subjected to an unfair trial (Opinion No. 48/2011 (Indonesia)).

On 16 March 2012, political activists Forkorus Yaboisembut, Edison Waromi, August Sananay Kraar, Dominikus Sorabut, and Selpius Bobii were each sentenced to three years’ imprisonment

by the Jayapura District Court. They were arrested on 19 October 2011 for participating in the Third Papuan People's Congress, a peaceful gathering held in Abepura, Papua from 17-19 October 2011, and charged with "rebellion" under Article 106 of the Indonesian Criminal Code. On 16 March 2012 they were each sentenced to three years' imprisonment. Amnesty International considers all five men to be prisoners of conscience and calls for their immediate and unconditional release.

Amnesty International is also concerned about credible reports about threats and intimidation against the five and one of their lawyers during their trial. These reports raise serious concerns about the wider process of justice in Indonesia, and specifically in the Papua region.

Amnesty International has documented torture or other ill-treatment of some of these peaceful political activists during arrest, detention and interrogation by the police, including the counter-terrorism unit Detachment-88 (*Densus-88*). However, there are rarely independent investigations into such allegations, and the perpetrators are not held to account.

South Maluku

Teacher Johan Teterissa is serving a 15-year prison sentence for leading a peaceful public protest in front of President Susilo Bambang Yudhoyono, during which a flag symbolizing South Maluku independence was raised. The 21 other protestors arrested with him in June 2007 have all been sentenced to between four and 20 years' imprisonment. A twenty-third activist was arrested in June 2008 and sentenced to four years' imprisonment.

The 22 men, who are mainly teachers or farmers, were escorted from the site of the peaceful protest by about 20 police and presidential guards, who punched them and beat them with rifle butts. In custody, many of them were repeatedly beaten, forced to crawl on their stomachs over hot asphalt, whipped with electric cables and had billiard balls forced into their mouths. The police – including officers from the anti-terrorism unit Detachment-88 – also beat them round the head with rifle butts until their ears bled, and fired shots close to their ears, causing long-term damage to the victims' hearing. So far, there has been no independent and impartial investigation into these complaints.

On 4 April 2008, Johan Teterissa was sentenced to life imprisonment for leading the flag-raising incident. Three months later this was reduced on appeal to 15 years. In November 2008 the UN Working Group on Arbitrary Detention (WGAD) declared Johan Teterissa's detention to be arbitrary on the grounds that he was imprisoned for the exercise of his rights to freedom of expression and peaceful assembly – Opinion No. 41/2008 (Indonesia). The WGAD also found Johan Teterissa's detention to be arbitrary because he had been subjected to an unfair trial.

He is currently serving his sentence in Batu prison, Nusakambangan Island, Java, hundreds of kilometres away from his friends and family. Amnesty International considers Johan Teterissa a prisoner of conscience, jailed merely for peacefully exercising his right to

freedom of expression. The organization calls for his immediate and unconditional release.

Recommendations:

- Immediately and unconditionally release all prisoners of conscience in Indonesia;
- Repeal or else amend regulations which impose on the right to freedom of expression restrictions beyond those allowed under international human rights law. In particular:
 1. Repeal or else amend Articles 106 and 110 of the Indonesian Criminal Code so that these articles are no longer used to criminalize freedom of expression; and
 2. Revoke immediately Article 6 of Government Regulation No. 77/2007 which prohibits the display of separatist logo or flags, or else bring it into compliance with international human rights standards and the provisions of the Indonesian Constitution.
- Conduct effective and independent investigations into all allegations of human rights violations, including torture and other ill-treatment by the security forces, and ensure that all those responsible are brought to justice in fair trials without the imposition of the death penalty, and that victims receive reparations; and
- Ensure that all prisoners in Indonesia have access to any medical treatment they require and that prison conditions, conditions in detention facilities, and the treatment of prisoners meet standards provided for in Indonesian law as well as under the UN Standard Minimum Rules on the Treatment of Prisoners.

Freedom of Religion:

There have been increasing levels of harassment, intimidation and attacks against the Ahmadiyya, Shi'a, Christians and other religious minority groups in Indonesia. These include attacks and burning of places of worship and homes, at times leading to the displacement of these groups. Those who commit acts of violence against religious minorities are rarely punished.

The Ahmadiyya:

In March 2008 a Joint Ministerial Decree was issued to restrict activities by members of the Ahmadiyya community. The decree prescribes that among other things Ahmadiyya members should cease the propagation of their beliefs.

While there had been sporadic attacks and harassment against the Ahmadiyya community prior to the issuing of the Decree, the levels of harassment, intimidation and attacks have increased since then. Further there has been an increase in the number of local regulations restricting the

activities of the Ahmadiyya. The regulations include prohibiting the Ahmadiyya from distributing pamphlets, putting signs in front of their offices and places of worship, as well as forbidding them from wearing anything to indicate that they are Ahmadiyya members. These local regulations have been directly linked to the arbitrary closure of Ahmadiyya places of worship in recent years. In particular some hardline Islamist groups have used the local regulations as a justification to protest, at times violently, against the Ahmadiyya community and force the closure of their places of worship.

The Ahmadiyya are a religious group, who consider themselves to be a part of Islam. Many mainstream Muslim groups say they do not adhere to the accepted belief system. There is a tendency by the authorities to blame the group for “deviant views” when attacks against them occur.

Closure of Ahmadiyya places of worship in West Java:

On 29 April 2013 an Ahmadiyya congregation in Sukabumi, West Java received a letter from the Sukabumi Mayor’s office informing them that due to “security reasons” they would have to handover the building to the Indonesian Ulema Council (MUI) and the Ministry of Religious Affairs or action would be taken against them. One month earlier hundreds of members of the Islamic Defenders Front (FPI), a radical Islamist group in Indonesia, had gathered outside the building calling for it to be shut down. Should the Sukabumi Ahmadiyya place of worship be closed, it would become the fifth Ahmadiyya place of worship closed in West Java since early April.

On 12 April 2013 three Ahmadiyya places of worship in Cianjur, West Java were shut down by the local office of the Co-ordinating Board for the Monitoring of Mystical Beliefs (*Bakorpakem*), which is under the Attorney General’s Office. *Bakorpakem* officials were accompanied by members of the FPI. Police reportedly stood by watching.

On 4 April 2013, dozens of members of the Bekasi Administrative Police (Satpol PP) sealed the Al- Misbah place of worship belonging to the Ahmadiyya. The local authorities had threatened to close the place of worship in Bekasi, West Java in February 2013 reportedly after facing pressure from the local branch of the FPI. At least 20 Ahmadiyya followers refused to leave and remained at the site three weeks after it was sealed in protest against the closure and also to protect their belongings.

Ahmadiyya community displaced and forgotten in West Lombok:

An Ahmadiyya community from West Lombok have been in temporary accommodation since they were displaced following an attack on their homes in February 2006.

The displaced families are unable to return to their homes because the local authorities and police say they cannot guarantee their safety if they return to their hamlet. Conditions in their temporary shelter have been inadequate for years - they live in three 20-by- 8-metre dormitories, where rooms for each family are only three metres square each and are divided by banners and sarongs tied up with plastic string. The facilities lack essential services. Tap water is frequently cut off by the authorities and there is no electricity supply. Dozens of adults in the shelter do not have identity cards and have faced various obstacles in obtaining them from the local authorities. Because they lack identity cards, they are unable to access essential services, including free healthcare available to the poor.

Those responsible for the 2006 attack have not been brought to justice. Recent reports indicate that around 130 people – including children – are still living in the temporary shelter in West Nusa Tenggara, over seven years since they were first displaced.

The Shi'a:

There have also been recent attacks on other religious minority groups, such as the Shi'a. Amnesty International is concerned that the police have failed to provide adequate protection to the Shi'a communities when they have been attacked, intimidated and harassed.

Shi'a community attacked and homes burnt:

On the morning of 26 August 2012 an anti-Shi'a mob of around 500 people armed with sharp weapons and stones attacked a Shi'a community in Nangkrenang village in Sampang, Madura island. One person was slashed to death while another victim, Muhammad Thohir, was stabbed. Stones thrown by the mob injured dozens of others. Thirty-five houses belonging to the Shi'a community were set on fire by the mob. Many from the community fled the village into hiding. Others were evacuated to a temporary shelter at a sports complex in Sampang. Five people were sentenced to between eight months and four years' imprisonment in connection with the attack. A sixth person charged was acquitted.

Over eight months later, some members of the Shi'a community remain in the Sampang temporary shelter and are now at risk of being forcibly evicted by the local authorities. According to a credible local source, the East Java and Sampang district authorities told the Shi'a community in January 2013 that they would have to convert to Sunni Islam if they wanted to return to their homes, otherwise, they would be forcibly relocated either to another part of the province or to somewhere outside Java island. The displaced community rejected being relocated, preferring to return to their homes and livelihoods in safety. The local authorities have failed to provide adequate assistance to the community and in early May 2013, halted clean drinking water and food supplies to the displaced community.

The Shi'a community on Madura island has been intimidated and attacked before. On 29 December 2011, a mob set fire to a place of worship, boarding school and various homes in the vicinity. Police did not take adequate measures to protect the community and instead of intervening to stop the attack, recorded it on their phones. Only one person was eventually charged and sentenced to three months' imprisonment for the attack.

Christians - attacks on churches

Amnesty International continues to receive reports of attacks against Christian churches and property. In many cases the police fail to adequately protect these groups from harassment.

The congregations of the Taman Yasmin Indonesian Christian Church, in Bogor, East Java, and the Filadelfia Batak Christian Protestant Church, in Bekasi, Greater Jakarta area face ongoing disputes with the local authorities over their buildings permits, leading to the church buildings being sealed. The cases were brought before the courts and in both cases the Supreme Court ruled in favour of the churches. However the authorities have refused to enforce the court decisions. Both congregations have continued to worship outside their sealed-off buildings, leading to protests against them, including from radical Islamist groups. Police have failed to take adequate measures to protect the congregations.

Blasphemy provisions and misuse of incitement laws:

Amnesty International is concerned about provisions in the Indonesian Criminal Code which criminalize blasphemy. 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. At least six prisoners of conscience are behind bars on blasphemy charges. These laws are often used to target individuals who belong to minority religions, faiths and opinions. They are fundamentally incompatible with Indonesia's international human rights obligations to protect and respect the rights to freedom of expression, and freedom of thought, conscience, religion and equality.

Tajul Muluk, a Shi'a Muslim religious leader from East Java is currently on trial facing charges of blasphemy under Article 156(a) of the Indonesian Criminal Code, and "offensive actions" under Article 335 of the Code. His arrest followed reports that, on 1 January 2012, a religious decree (*fatwa*) was issued by the Sampang branch of the Indonesia Ulema Council (MUI) about what was described as Tajul Muluk's "deviant teachings", and two days later a police report was

filed against him. His lawyers are concerned that intimidation by anti-Shi'a groups means that he will not receive a fair trial. The East Java High Court increased his sentence to four years in September 2012 upon appeal. Amnesty International considers Tajul Muluk a prisoner of conscience and calls for his unconditional and immediate release.

Amnesty International is also concerned about the misuse of incitement provisions in the Electronic Information and Transaction (ITE) Law, which have been used to criminalize freedom of expression. Amnesty International is aware of at least one prisoner of conscience behind bars for incitement.

On 14 June Alexander Aan, an atheist, was imprisoned for incitement after he allegedly posted statements and pictures which some people construed as insulting Islam and the prophet Mohammad. He was arrested in January 2012 and charged with “disseminating information aimed at inciting religious hatred or hostility” under Article 28 (2) of the Electronic Information and Transaction (ITE) Law, and for religious blasphemy under Article 156 (a-b) of the Indonesian Criminal Code. Alexander Aan was sentenced to two and a half years’ imprisonment and a fine of 100 million rupiah (US\$10,600) for violating the Electronic Information and Transaction (ITE) Law. The decision was reportedly upheld by the West Sumatra High Court and the Supreme Court. Amnesty International considers Alexander Aan a prisoner of conscience and calls for his immediate and unconditional release.

Recommendations:

- Conduct prompt, effective, independent and impartial investigations into all reports of intimidation, harassment and attacks against the Ahmadiyya, Shi'a, Christian groups and other religious minorities and bring the perpetrators to justice in accordance with international fair trial standards, and without recourse to the death penalty;
- Ensure the police protect the rights of all citizens regardless of their religious or other beliefs and put in place a proactive strategy for preventing and addressing incidents of religiously based violence. The police should also ensure they register and investigate all cases of religious-based violence, threats and intimidation, regardless of the religious background of the victim
- Repeal Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation (the Presidential Decision), and Article 156(a) of the Criminal Code created by the Presidential Decision;
- Immediately revoke the 2008 Joint Ministerial Decree and all other regulations that restrict the activities of the Ahmadiyya community in Indonesia or otherwise violate their right to freedom of thought, conscience and religion; and
- Ensure that the Electronic Information and Transaction (ITE) Law is not misused by the authorities to criminalize freedom of expression.

SHARI'A LAW AND ACEH

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education, and family affairs. Some of these laws and regulations do not conform to international human rights law and standards, nor do they respect provisions in Indonesia’s Constitution and the Human Rights Act (No. 39/1999).

In Aceh a bylaw on *khalwat*, which was passed in 2003 (No. 14/2003), prohibits being alone with someone of the opposite sex who is not a marriage partner or relative, with caning as punishment. In April 2012 a woman and man were each caned nine times in Langsa, East Aceh district, after being found guilty of *khalwat* by the local Shari’a Court. Caning constitutes cruel, inhuman and degrading treatment and may amount to torture.

In September 2009, the Aceh regional parliament passed the Aceh Criminal Code (*Qanun Hukum Jinayat*), which criminalized a number of acts, including *khalwat*; consensual sexual relationships involving a married person (adultery, known as *zina*); intimate relationships between unmarried people such as kissing (known as *ikhtilath*), and homosexuality (including lesbianism). Amnesty International and other non-governmental organizations have expressed serious concerns about the Code, in particular about provisions which provide for stoning to death for adultery and caning of up to 100 lashes for homosexuality. To date, the Code has yet to be implemented, and is currently being revised by the Aceh regional parliament.

There has been an increase in the use of caning as a form of punishment which is provided under Shari’a law in Aceh. At least 72 men and women were caned in Aceh in 2011. At least 45 people were caned in 2012 for gambling, and *khalwat*.

Recommendations:

- End the use of caning as a form of punishment and repeal the laws that allow it in Aceh province; and
- Undertake a review of all local regulations that have been put in place in the last decade in Indonesia, including Aceh, to ensure that they are in full conformity with international human rights law and standards, and other human rights provisions set out in the Indonesian Constitution and in the 1999 Law on Human Rights.

Justice, truth and reparation – The case study of Aceh

Almost eight years after the end to the devastating Aceh conflict, victims and family members are still waiting for the Indonesian authorities to provide them with truth, justice and full reparation for past human rights abuses. These included violations committed by members of the security forces and their auxiliaries, including unlawful killings, enforced disappearances, torture, forcible displacement of civilians, arbitrary arrest and detention of those suspected of supporting GAM. They also included human rights abuses committed by the armed pro-

independence movement GAM, such as hostage-taking and the targeted killing of suspected informers, government officials and civil servants.

Truth

Victims' groups and local Acehnese NGOs have long called for the Indonesian authorities to establish the truth about crimes committed during the conflict, in particular to find out what happened to disappeared and missing persons. There are currently two initiatives to establish truth commissions that would cover crimes committed in the Aceh conflict. However they have been stalled for many years. At the national level, a law establishing a truth and Reconciliation Commission was struck down by the Constitutional Court in 2006 on the basis that the provision requiring that amnesty be granted to perpetrators of gross human rights abuses before victims can receive compensation and rehabilitation was unconstitutional. A new draft truth and reconciliation law which does not provide for amnesties has been submitted to Parliament; however, it is unclear whether there is sufficient political will to pass the draft law.

Efforts to establish a truth commission for Aceh, as provided in the 2005 Peace Agreement and the 2006 Law on Governing Aceh have also stalled. Although the Aceh Parliament is now pushing for the passage of a law establishing a truth commission for Aceh, a lack of political will at the central government level may pose a barrier to the establishment of a truth commission in Aceh, prolonging the suffering of victims and their families and denying them their right to truth.

Justice

Although rarely labelled as such, many of the human rights abuses committed during the Aceh conflict constitute crimes under international law. Many of the violations and abuses committed by both sides in the context of the non-international armed conflict that existed between 1989 and 2005 may amount to war crimes. Most perpetrators of crimes under international law have never been brought before an independent civilian court of law in Indonesia. Criminal justice is a vital part of victims' right to an effective remedy. Where crimes were committed in Aceh or elsewhere in Indonesia, national authorities must ensure that they are investigated and, if sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in proceedings which meet international fair trial standards.

Reparation

Although some measures to compensate people for their loss or to assist children whose parents were killed during the conflict were taken during and shortly after the Aceh conflict, most survivors do not trust the justice system as an avenue to seek reparation, and there has yet to be a comprehensive reparation programme specifically aimed at victims of crimes under international

law in Aceh and their families. Laws and regulations in Indonesia related to reparation for victims of human rights abuses remain inadequate and inconsistent with international law and standards. Victims face serious obstacles in seeking reparation before national courts both in law and practice.

Recommendations to the US government

Considering some of the crimes which occurred during the Aceh conflict constitute crimes under international law, the US should:

- Exercise jurisdiction, including, where necessary and where there is sufficient admissible evidence, universal jurisdiction, over persons suspected of crimes under international law, including possible war crimes and crimes against humanity, committed during the Aceh conflict.
- Provide necessary funding and support to NGOs, including women's groups and other civil society actors working on truth, justice and reparation for victims of the Aceh conflict; and
- Provide technical assistance to support reforms of the security sector and the criminal justice system in Indonesia.

Recommendations to the Indonesian authorities:

- Acknowledge that serious human rights violations and abuses, including crimes under international law, were committed during the Aceh conflict;
- Set up immediately a truth commission in line with international standards to ensure that victims, their families and affected communities are provided with full disclosure about what happened during the Aceh conflict and ensure that specific measures are taken to reveal the fate and whereabouts of victims of enforced disappearances;
- Take effective measures (including law reform) to investigate and, where there is sufficient admissible evidence, prosecute those responsible for crimes under international law, including possible war crimes and crimes against humanity, torture, extrajudicial executions and enforced disappearances committed during the conflict; and
- Establish a program to provide full and effective reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to all victims of human rights violations and abuses in Aceh. The program should be devised in consultation with victims and should take into account the different experiences and

needs of women and men, girls and boys, who experience conflict differently, as well as any other relevant groups.

THE DEATH PENALTY

Indonesia resumed executions in March 2013 after a four year hiatus, when Adami Wilson, a Malawian national was executed by firing squad. On 16 May 2013, three men convicted of murder were also executed by firing squad. Around half of those on death row, many of whom are foreign nationals, have been convicted of drug-related offences. So far in 2013 at least six people have been sentenced to death. At least 12 people were sentenced to death in 2012.

Death sentences in Indonesia are carried out by firing squad. The prisoner has the choice of standing or sitting and whether to have their eyes covered, by a blindfold or hood. Firing squads are made up of 12 people, three of whose rifles are loaded with live ammunition, while the other nine are loaded with blanks. The squad fires from a distance of between five and 10 metres.

Amnesty International believes there at least 130 prisoners convicted to death sentences in Indonesia. The death penalty is usually imposed for the crimes of murder with deliberate intent and premeditation; producing, processing, extracting, converting or making available narcotics; and “terrorism”. In the past Amnesty International has expressed concern about trials which, in some cases, failed to uphold international standards of fairness. Among the violations reported to Amnesty International are the lack of access to lawyers, lack of access to interpreters and use of torture to extract confessions.

Concerns about the continued application of the death penalty in such circumstances are heightened by the amendment of the clemency law (Law No. 22/2002) in August 2010 restricting those sentenced to death to the submission of only one plea for clemency to the President within a year of the verdict.

Recommendations:

- Halt executions immediately and commute without delay all outstanding death sentences and ensure rigorous compliance in all death penalty cases with international standards for fair trials;
- Immediately establish an official moratorium on executions, with a view to abolishing the death penalty; and
- Release information on the number of prisoners under sentence of death in Indonesia and disclose their names and other relevant information to their families.

DOMESTIC WORKERS:

An estimated 2.4 million domestic workers in Indonesia, the vast majority of whom are women and girls, are not legally recognized as workers. As a result, they are often exploited

economically and many live and work in abusive conditions. A draft law on domestic workers has been on the legislative agenda since 2010; however, the debate and passage of the draft legislation has faced continued delays. At the time of writing there has been no progress on its enactment by Parliament.

Recommendations:

- Enact specific legislation regulating the labour rights of domestic workers which recognizes their status as workers and guarantees their rights in accordance with international law and standards. In particular there should be reasonable limitation on working hours; guarantees of remuneration for an adequate standard of living; clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave); standards on termination of employment; and access to dispute resolution mechanisms, including courts. The law should also explicitly include legal provisions pertaining to the specific needs of women, in particular during and after pregnancy; and
- Ratify the ILO Domestic Workers Convention (No. 189) and ILO Maternity Protection Convention (No.183), incorporate its provisions into domestic law and implement it in policy and practice.

MATERNAL HEALTH AND SEXUAL AND REPRODUCTIVE RIGHTS:

Indonesia has one of the highest maternal mortality ratios in the East Asia and Pacific region with an estimated 220 maternal deaths per 100,000 live births. Women and girls are disproportionately affected by Indonesia's restrictions on sexual and reproductive rights. Laws and policies discriminate on the grounds of marital status and exclude unmarried women and girls from full access to reproductive health services. They further require the husband's consent for married women and girls to access certain reproductive health services.

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion, or a health worker providing one, may be sentenced to up to four or 10 years' imprisonment respectively. As a result, abortions in Indonesia are often performed clandestinely in unsafe conditions. Under the new Health Law passed in 2009, there are only two exceptions under Indonesian Law in which a woman may legally seek and health workers perform an abortion: if the health of the mother or foetus is endangered or in the case of pregnancy resulting from rape.

According to women's groups, there is a lack of awareness among women and girls from poor and marginalized communities of the provisions pertaining to rape in the Health Law, and of legal exceptions to the criminalization of abortion generally. Further the authorities have yet to issue an implementing regulation on abortion, as provided for by the Health Law, almost four

years after the law was passed leaving many doctors and health workers uncertain if they can provide these services.

The government has also failed to eliminate practices which are discriminatory or cruel, inhuman and degrading to women and girls, such as female genital mutilation and early marriage. In November 2010 the Indonesian Health Ministry issued a regulation (No. 36/MENKES/PER/XI/2010) which legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it.

Recommendations:

- Repeal all laws and regulations, at both the central and local levels, that violate sexual and reproductive rights, and ensure women and girls can realize their sexual and reproductive rights free from coercion, discrimination and the threat of criminalization;
- Remove legal and policy provisions on matters related to sexual and reproductive health that discriminate on the
- grounds of marital status;
- Repeal legal provisions criminalizing abortion in both the Criminal Code and the Health Law. In cases of unwanted pregnancy as a result of rape or where the pregnancy poses a threat to their life or health, ensure that women and girls have access to safe abortion services as currently provided in law; and
- Repeal the Regulation of the Minister of Health No. 1636/MENKES/ PER/XI/2010 concerning female circumcision and enactment of specific legislation prohibiting female genital mutilation, providing appropriate penalties for those who perform female genital mutilation.

Female Genital Mutilation (FGM)

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning “female circumcision” (*sunat perempuan*). The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as “the act of scratching the skin covering the front of the clitoris, without hurting the clitoris”. The procedure includes “a scratch on the skin covering the front of clitoris (frenulum clitoris) using the head of a single use sterile needle” (Article 4.2 (g)). According to this regulation, the act of “female circumcision” can only be conducted with the request and consent of the person circumcised, parents, and/or guardians (Article 3.1).

The regulation violates a number of Indonesian laws –for example Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Presidential Decree No. 36/1990

concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 39/1999 on Human Rights; Law No. 23/2002 on Child Protection; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health – and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women.

In its July 2012 Concluding Observations the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) expressed deep concern about what it described as Indonesia’s “serious regression” with regard to the practice of female genital mutilation. It recommended that the Indonesian authorities take immediate steps to withdraw the 2010 regulation authorizing certain medical practitioners to conduct “female circumcision” and to adopt legislation which criminalizes female genital mutilation. It requested the government to provide written information on steps taken to implement this recommendation within two years.

During research carried out in March 2010, Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl’s “cleanliness” (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls’ urge towards “sexual activity” during adulthood. Some women described the procedure as being merely a “symbolic scratch”, while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that there would be some bleeding as a result.

Recommendations:

- Immediately repeal the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 concerning female circumcision; and
- Put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include:
 1. The enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation;
 2. The publicizing and dissemination of the 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women; and
 3. The implementation of public awareness-raising campaigns at community levels and within health institutions to change the cultural perceptions associated with female genital mutilation.

Thank you for inviting Amnesty International to testify.

T. Kumar
International Advocacy Director
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Mr. McGovern. Thank you very much for your testimony. And we will now turn to Ms. Suparyati. Welcome.

Ms. Suparyati. Thank you, Mr. Chairman.

STATEMENT OF MS. SUPARYATI

Ms. Suparyati. Thank you very much for inviting me to speak here today. I would also like to thank FIDH, the International Federation for Human Rights, for bringing me to Washington from Jakarta.

During the Suharto era, the Indonesian military and police committed many egregious violations. Our current government, led by President Susilo Bambang Yudhoyono has refused to prosecute these crimes or provide reparations to victims for past violations or to put into place regulations that would stop abuses from happening in the future.

I would like to highlight two emblematic cases of ongoing impunity within the Indonesian armed forces, the unsolved murder of KontraS' founder and human rights activist Munir Said Thalib, and the enforced disappearances that took place between 1997 and 1998.

Munir Said Thalib was murdered on September 7, 2004 on a Garuda Airlines flight from Jakarta to Amsterdam. In 2005, President SBY ordered an investigation into his murder, but the report from this investigation was never released.

On November 9, 2005, the members of the U.S. House of Representatives sent a letter to President SBY urging him to release the report and act on its recommendations. At the time, the letter was widely reported in the press and helped to draw international attention to the Indonesian Government's failure to act.

As a result, the Indonesian police opened an investigation. And a former Garuda pilot was convicted of the murder and sentenced to 20 years in prison. However, KontraS' own research on this case leads us to believe that the convicted pilot was only a hired assassin and that the people who plotted Munir's murder are still at large.

Between 1997 and 1998, 13 pro-democracy activists disappeared, never to be heard from again. In 2009, the Indonesian House of Representatives issued official recommendation to President SBY on this case. The recommendation included creating an ad hoc human rights tribunal, initiating an independent investigation into the whereabouts of the disappeared, providing reparation to the families of the disappeared, and ratifying the U.N. Convention on the Protection of All Persons from Enforced Disappearances.

Although the ratification of the convention is part of the Indonesian National Action Plan on Human Rights, to this day the government has failed to actually fulfill any of the recommendations put forth by the Indonesian Human Rights Commission. 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.

These are only two examples of the pervasive impunity for human rights violations in Indonesia. This is especially troubling within the Indonesian military as soldiers accused of human rights violations are currently tried in military courts, even in instances when the alleged crimes are perpetrated against civilians. This has resulted in many perpetrators of gross human rights violations receiving extremely lenient sentences. For example, the 9 soldiers found guilty of torture and killing 17-year-old Charles Mali received only a one-year prison sentence from the military tribunal. In addition to the to the abuse and lenient sentencing, military tribunals are often not transparent and do not meet international standards.

The widespread impunity for past human rights violations has created a climate where state security forces are not deterred from committing more abuses and the military and police continue to commit human rights violations on a daily basis.

In 2012, KontraS documented at least 704 human rights violations committed by the police and 94 violations committed by the military. These included shootings, torture, arbitrary arrests and detention, among others.

In a particularly shocking case, in March 2013, military Special Forces raided a Central Java prison and killed 4 prisoners who were awaiting trial. Eleven soldiers are now facing charges in military court for this attack, but based on the track record of military tribunals in Indonesia, there is a strong reason to believe the perpetrators will get off with minimal sentences or possibly even acquittals.

This cycle of unchecked violence is made worse by the failure of Indonesian laws and military tribunal court to reinforce accountability for human rights violations. For example, the President recently passed a law on internal and public security, which gives the military authority to intervene in situations that threaten public order. The ambiguity of this law could provide the military with authority to suppress dissent and freedom of expression in the name of security and public order.

In addition, the Indonesian criminal code does not articulate torture as a specific crime. Torture continues to be common during arrests and detention, and the perpetrators are never held to account.

In light of these ongoing abuses and lack of justice for victims, we believe it is in the best interest of the United States to be careful in its relationship with Indonesia to avoid supporting a military and police force that are guilty of gross human rights violations. Moreover, it is the moral responsibility of the United States to use its influence over Indonesia to push for greater accountability and respect for international law.

We call on the U.S. Government to insist that President SBY exercise leadership in addressing past human rights abuses committed by Indonesian security forces and preventing future violence by releasing the 2005 report on Munir Said Thalib's death and acting on the recommendation therein; implementing the recommendation of the Indonesian Parliament regarding the enforced disappearances in 1997-1998; condemning ongoing violence by the Indonesian military and police against civilians and reforming the policies of these state institutions to ensure that perpetrators of any future acts of violence are held accountable in civilian courts; reform Indonesia criminal court to reflect international human rights norms and laws, by, for example, criminalizing the use of torture and limiting military involvement in questions of internal security.

If the Indonesian government fails to provide these protections and the Indonesian military and police continue to commit human rights abuses, the U.S. Congress must insist on terminating any funding for Indonesian armed forces.

This is not unprecedented. The U.S. Congress enacted a ban on military funding for Indonesia from 1992 to 1995 in response to human rights violations by Indonesian military in East Timor. However, despite ongoing violations and impunity, Indonesia has received hundreds of millions of dollars in military assistance from the U.S. since Obama came into office. In September 2012, Obama proposed another \$1.4 billion arms package for Indonesia.

Until the Indonesian government can stop gross human rights violations and hold military leadership accountable, the U.S. should terminate this support to the Indonesian armed forces.

Thank you again for your attention for the important issue.

[The statement of Ms. Suparyati follows:]

Written Testimony of Ms. Sri Suparyati

Deputy Executive Coordinator

Commission for the Disappeared and Victims of Violence (KontraS)

Thank you very much for inviting me to speak to you today. I would also like to thank FIDH - the International Federation for Human Rights – for bringing me to Washington from Jakarta. My organization, The Commission for the Disappeared and Victims of Violence (KontraS), recently celebrated our 15th anniversary. Our organization has offices throughout Indonesia where we monitor past and current human rights abuses and advocate on behalf of victims.

I want to speak with you today about the documented pattern of past and present gross human rights violations committed by the Indonesian military and police against civilians. During the Soeharto era, the Indonesian military and police committed many egregious violations. Our current government, led by President Susilo Bambang Yudhoyono (also known as SBY), has done almost nothing to hold perpetrators accountable for past and current abuses, or to put into place regulations that would stop abuses from happening in the future. The current government refuses to investigate or prosecute these crimes, nor provide reparations to victims. Yet more troubling is the fact that violations committed by the state security forces have not stopped since the country's transition to democracy; a culture of violence and impunity continues to permeate the military and police.

1. Impunity for past human rights violation

Despite having been in power for several years, the government of SBY has not taken significant steps to solve the problem of impunity for past human rights abuses committed in Indonesia. I would like to highlight two emblematic cases of ongoing impunity within the Indonesian armed forces: the unsolved murder of KontraS's founder and human rights activist Munir Said Thalib, and the enforced disappearances that took place between 1997 and 1998.

a. Munir's murder

Munir Said Thalib was murdered on September 7, 2004 on a Garuda Airlines flight from Jakarta to Amsterdam. In 2005, President SBY ordered a fact-finding team to investigate his death, but the report from this investigation was never released. On November 9, 2005, the members of the U.S. House of Representatives sent a letter to President SBY 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 the people who plotted Munir's murder are still at large.

b. Enforced disappearances of 1997-1998

Wiji Thukul, an Indonesian poet born in 1963, was known for being openly critical of the Indonesian government and the social conditions in the country. He has been missing since 1998. To date, his family knows nothing of his whereabouts.

Wiji Thukul is one of 13 pro-democracy activists who disappeared between 1997 and 1998. In response to a report published by the Indonesian Human Rights Commission in 2009 on these

enforced disappearances, the Indonesian House of Representatives issued four official recommendations to President SBY:

- 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.

Although the ratification of the Convention 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 Indonesian Human Rights Commission. 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.

These are only two examples of the pervasive impunity for human rights violations in Indonesia, especially those committed by State security forces. This is especially troubling within the Indonesian military, as soldiers accused of human rights violations are currently tried in military courts, even in instances when the alleged crimes are perpetrated against civilians. This has resulted in many perpetrators of gross human rights violations receiving extremely lenient sentences. For example, the military tribunal that found thirteen soldiers of the Tim Mawar (known as the Rose Team) guilty of kidnapping pro-democracy activists in 1997 and 1998, sentenced them to only 20 to 22 months in prison. Similarly, nine members of the 774th Battalion received only a one-year prison sentence for the torture and killing of 17-year-old Charles Mali. Often such cases are not even adjudicated, as many are settled out of court. Even if cases are tried in court, military tribunals are often not transparent and do not meet international standards. These practices violate, *inter alia*, Article 26 of the ICCPR by treating military personnel as though they are above the law, and denying the victims of gross human rights violations protection before the law.

2. Ongoing human rights violations committed by the armed forces

The widespread impunity for past human rights violations has created a climate where state security forces are not deterred from committing more abuses, and the military and police continue to commit human rights violations on a daily basis.

In 2012, KontraS documented at least 704 human rights violations committed by the police, and 94 violations committed by the military. These included shootings, torture, arbitrary arrests and detention, among others. In a particularly shocking case, on March 23rd 2013, members of the military Special Forces raided a Central Java prison and shot and killed four prisoners who were awaiting trial for murder charges. 11 soldiers are now facing charges in 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 even acquittals.

This cycle of unchecked violence is exacerbated by the failure of Indonesia's laws and criminal code to reinforce accountability for human rights violations. For example, the President recently passed a law (Presidential Instruction (Inpres) No. 2/2013) on internal and public security, which gives the military authority to intervene in situations that "threaten public order." The ambiguity of this law could provide the military with authority to suppress dissent and freedom of expression in the name of security and public order.

In addition, the Indonesian criminal code does not articulate torture as a specific crime. Torture continues to be common during arrests and detention, and perpetrators are never held to account.

Recommendations

In light of these ongoing abuses and lack of justice for victims, we believe it is in the best interest of the United States to be cautious in its relationship with Indonesia, so as to avoid supporting a military and police force that are guilty of gross human rights violations. Moreover, it is the moral responsibility of the United States to use its influence over Indonesia to push for greater accountability and respect for international law.

We call on the US government to insist that President SBY exercise leadership in addressing past human rights abuses committed by Indonesian security forces, and preventing future violations, by:

1. Releasing the 2005 report on Munir Said Thalib's death and acting on the recommendations therein;
2. Implementing the recommendations of the Indonesian Parliament regarding the enforced disappearances in 1997-1998, by creating an ad hoc Human Rights Court, initiating an investigation into the whereabouts of the disappeared, and providing rehabilitation and reparations for the victims' families;
3. Condemning ongoing acts of violence by the Indonesian military and police against civilians, and reforming the policies of these state institutions to ensure that perpetrators of any future acts of violence are held accountable in civilian courts;
4. Reform Indonesia's criminal court to reflect international human rights norms and laws, by, for example:
 - a. criminalizing the use of torture, and
 - b. limiting military involvement in questions of internal security through provisions outlining proportionality and the last resort principle.

If the Indonesian government fails to provide these protections and the Indonesian military and police continue to commit human rights abuses, the U.S. Congress should insist on terminating any funding for the Indonesian armed forces. This is not unprecedented; the U.S. Congress enacted a ban on military funding for Indonesia from 1992 to 1995 in response to human rights violations by the Indonesian military in East Timor. However, despite ongoing violations and

impunity, Indonesia has received hundreds of millions of dollars in military assistance from the U.S. since Obama came into office. In September 2012, Obama proposed another 1.4 billion dollar arms package for Indonesia.

Until the Indonesian government can curtail gross human rights violations and hold military leadership accountable, the U.S. should terminate this support to the Indonesian armed forces.

Thank you again for your attention to this very important issue.

Mr. McGovern. Thank you very much.

And I want to say, Mr. Mote, I mispronounced your name in the very beginning, and I want to apologize for that. But we are glad to have you here, and you are our final witness. Please proceed.

Mr. Mote. Thank you very much, Mr. Chairman.

STATEMENT OF MR. MOTE

Mr. Mote. I am very pleased to be here because today was Papuans' commemoration of 50 years of Indonesian occupation. If we talk about 15 years of change in Indonesia, in West Papua, we are experiencing there is no change in 50 years of Indonesian organization.

Mr. Chairman, today West Papua's people, all who are in West Papua as well as in exile, people are watching this testimony, and because this is very historic because 50 years after U.S. Government helped to put us being part of Indonesia.

And in this moment, I will not describe the facts and figures of the human rights situation for the two reasons. First, the situation has been regularly detailed in reports, by government reports, that just go from the State Department and particularly because from the Human Rights Watch and Amnesty as well as human rights detail about human rights violations in West Papua, but I detail some of the issues in my written statement.

Second, most importantly, why I didn't talk about the facts and figures, because we should pay more attention to take action in the final resolution for the half century of unresolved conflict in the Pacific. In the current graphical context in Asia and the Pacific, which has been worked by heightening the original conflict in south China Sea and Korean Peninsula, we cannot afford to overlook escalating conflict in West Papua in our part in the Pacific. The argument of the act stems from the U.N. principle of the responsibility to protect, which the U.S. and all United Nations members unanimously endorse.

In the case of West Papua, there are a number of promising signals that international support can pave the way toward concrete steps toward a peaceful solution under RTP. In early 2012, the President of Indonesia, Mr. Yudhoyono, publicly expressed his willingness to engage

in serious dialogue with Papuans during the audience with Papuan church leaders. He expressed this twice on separate occasions, suggesting that he was committed to ending conflicts in Papua once and for all.

However, it has been a year now and only left a couple of months, and we have not heard any follow-up to this commitment. Instead, Indonesian police and military operations in Papua have intensified. And the security forces continue to commit the crimes against humanity.

On the West Papuan side, we have embarked on a peace initiative initially agreed during our Congress in 2000 in Jayapura, the capital city of West Papua, the Papua province. We explicitly and unanimously endorsed using only peaceful means in the struggle for our rights.

Since then, various elements of the Papuan community have engaged in peace campaigns, including church leaders, political leaders, student movements, women's groups, and even Papuan freedom fighters. In other words, the pursuit of a peaceful solution to the seemingly intractable conflict in West Papua is more than desirable. It is rooted in our deep conviction. This belief has become the fountain of our struggle for peace.

I elaborate more details about how the peace presented by Papuan Catholic priest Father Neles Tebay, but there is no progress at all from President Yudhoyono about whether or not he will continue to dialogue with West Papua. And he appointed a special rapporteur, Dr. Farah Hussain. He already reported nine times, but there is no response back and there isn't precedence.

Despite providing a third of Indonesian national income, the West Papuan provinces, the central government provides very minimal public service to Papuans. The latest report of Indonesian Bureau of Statistics wrote Papua at the bottom of the Indonesian human development index during 15 years, from 1996 to 2011. Papuans are the bottom country in years of schooling, life expectancy and per capita income. This fact posed a serious question of the effectiveness of the 2002 special autonomy in addressing the basic need of the Papuans. That is why Papuans symbolically return special autonomy package to central government during a massive rally in 2010.

And this failure of the special autonomy is also recognized by Indonesian leaders, such as the governor of Jakarta. And he said that the relation between Jakarta and Papua is exactly as relation in colonial times between Jakarta and Western Melanesia Island outside of Indonesia.

The high level of state violence together with impunity and denials as well as the minimal levels of public service have put West Papua as a nation at the risk of extinction, as described by U.N. members, the former special adviser to U.N. secretary general on genocide prevention.

An analysis by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School in 2002 had suggested the possibility of genocide occurring in West Papua. In a similar vein, James Elmslie, an Australian researcher from the Centre for Peace and Conflict Studies at the University of Sydney, concluded that the demographic shift in Papua has marginalized in the genus Melanesian Papuans in their own land.

James Elmslie used very conservative data, Mr. Chairman. And he came up to the conclusion in 2020, which is 7 years from now, Melanesian West Papuans only will be 28.99 percent in our land. He was not using the influx of population on the special autonomy that raised about five percent. He was only using very conservative data. So I believe that these 28 percent in 7 years will be faster than that 7 years.

Academic fact I don't read that just to give how important the negotiation. So, therefore, I would like to only--the studies that I was intending to read give us good grounds to argue that in the long run, nonviolent resistance in Papua, particularly the call for peace dialogue, is more likely to succeed than violent resistance. It is a matter of time. But as these studies reveal, the international community must play a significant role as a catalyst of peace processes. Now is the time for the U.S. Congress, which is I really believe with your chairmanship and your stamp on human rights, to act and to endorse Papuan peace initiatives. We cannot afford to sacrifice more lives for solvable conflicts like in Papua.

In 2010, the House Subcommittee on Asia and the Pacific held the first ever congressional hearing on West Papua. The hearing was organized by Congressman Eni Faleomavaega to examine Indonesia's deliberate and systematic abuses in Papua. I take this example. When the congressman organized this, the responses in Indonesian media was saying only Papua members, congressmen or congresswomen, were there. So Indonesian Government ignores, no worry. You know, only a few of them are there.

So I believe the same things will happen, congressmen, if when they see you, the only one lead here--

Mr. McGovern. Let me assure anybody who has any questions about that that there are many members of the Human Rights Commission and there are multiple hearings going on all at once. But I don't want anyone to be deceived because I am the only one here today that that means I am the only one who cares. That would be the wrong impression to get.

There are very many concerns about human rights in this Congress. So I want to be clear. This is a bipartisan concern. And there will be actions that come out of this hearing that will be bipartisan. So I thank you for--

Mr. Mote. Thank you for that.

And I would like to conclude my testimony with this, that this is the time to act without any further delay. This is the time for the Congress to act to prevent the violence and slaughter of Indonesia's Papuans using sovereignty as a license. This is very important because Obama said that we cannot allow the sovereignty as a license to slaughter your own people. This is what the Indonesian Government did in West Papua since they occupy West Papua. West Papua is always closed, and nobody is allowed to visit West Papua. Even our U.S. ambassador was forbidden to visit with West Papua.

I think also it is our moral responsibility because J. F. Kennedy, Mr. Chairman, was deeply involved in cooperation with Papua into Indonesia; secondly, because U.S. State Department is very well-informed by what is going on in West Papua; and, finally, I think this is our moral responsibility as human beings.

Therefore, I would like to ask, Mr. Chairman, to pass a U.S. Congress resolution urging the U.S. government to exercise its responsibility to protect in order to end crimes against humanity against West Papuan people. Second, the same resolution should urge the Indonesia government to begin good faith negotiations with the Papua peace team with mediation by an international party; the third, to support the Papuan peace team with logistical and research support through U.S.-based research and think tank institutes in order to develop its capacity to represent Papua as a peace negotiator; four, to request the U.S. administration to provide moral, political, and necessary logistical support to the Yudhoyono administration to initiate peace negotiations with the Papuan peace team; and, lastly, to condition U.S. security assistance to Indonesia on ending human rights violations in West Papua and whether the Indonesian government is negotiating in good faith with the people of West Papua.

I thank you, Mr. Chairman.

[The statement of Mr. Mote follows:]

A Written Statement of Mr Octovianus Mote¹ to the Tom Lantos Human Rights Commission (TLHRC) of the US Congress hearing on Human Rights in Indonesia on 23 May 2013

Introduction

This written statement not only summarizes the deteriorating human rights situation in West Papua² (Indonesia), but more importantly outlines the urgency for the international community to take action to find a peaceful solution to the longest unresolved conflict in the Pacific. The main argument of this statement is that under the Responsibility to Protect (R2P) framework, the international community should take an immediate action to stop the ongoing crimes against humanity in West Papua. This argument will be summarized to frame this statement.

The rest of the statement will discuss two major interrelated parts. First, it elucidates facts and figures that have led to the conclusion of the urgency of an international intervention to assist the Indonesian state in fulfilling its responsibility to protect. This exposition will be followed by a

¹ The author is a West Papuan leader living in exile who was granted asylum and a US citizenship. He is the secretary of the Papuan Peace Negotiators Team. See appendix.

² In this statement, the term “West Papua” refers to the Western part of the Island of New Guinea which consists of two Indonesian provinces of West Papua and Papua.

brief analysis of the critical development of peace initiatives since 2011. This part explores possibilities to build peace in West Papua in the long-run by way of initiating peace talks between Jakarta and Papua. The statement will conclude with recommendations.

The responsibility to protect (RTP): a brief summary

The ‘responsibility to protect’ (R2P) recognizes that ‘the primary responsibility for the protection of its people lies with the state itself’, but it also assumes that the international community has a responsibility to protect populations which are suffering serious harm either at the hands of the state itself, or where the state is ‘unwilling or unable to halt or avert’ the harm. In upholding its responsibility to protect, the international community recognizes not only the possibility of taking collective action under Chapter VII of the UN Charter, but has also committed itself ([A/RES/60/1, para. 138-140](#)) ‘to use appropriate diplomatic, humanitarian and other peaceful means...to help to protect populations’, and to ‘helping States build capacity to protect their populations.’

Status of human rights in West Papua

Indonesia is a signatory to the major international human rights treaties and conventions, and the Indonesian House of Representatives have passed a number of important human rights laws which protects Indonesian citizens. The international conventions Indonesia is party to include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention of Elimination of Discrimination Against Women (CEDAW), and the Convention of the Rights of the Child (CRC). Important domestic laws include Law 39/1999 on Human Rights and Law 26/2000 on Human Rights Courts. Just like the US, so too Indonesia prefers to be assessed based on its own laws. For our purposes this legal framework provides us with clear sets of criteria to assess the status of human rights in West Papua.

Both national and international sources have closely monitored the current status of human rights in West Papua. While some diplomatic missions in Jakarta (e.g. the United States, the United Kingdom, Australia, Japan, New Zealand, the Netherlands) are permitted to regularly visit West Papua, representatives of the UN human rights mechanisms and international scholars and

journalists are often prevented from visiting the territory. This fact not only suggests a policy of isolating of West Papua from international audience, it illustrates the degree of sensitivity of the Indonesian authorities towards this particular region. This policy, however, does not help anyone because West Papuans continue to feel alienated and discriminated against; the Indonesian administrations feel obliged to commit extensive resources to defend its isolation policy; and the international community continues to question this policy given Indonesia's claim as a multiparty democracy. More importantly, this policy does not help address the protracted conflicts in Papua. On the contrary, it simply sweeps the burning issues under the carpet.

This observation is not only based on my own assessment. A number of international monitoring bodies have produced similar conclusions. The U.S. State Department,³ for instance, is among the few foreign governments who closely monitor the status of human rights in Papua and publishes it in its annual report on Indonesia. The amount of information about Papua presented in the report is generally much greater than that on any other area in Indonesia. This fact illustrates the high level of awareness of the U.S. administration of events on in West Papua. Furthermore, the annual report suggests the degree of resources that the U.S. Embassy in Jakarta has allocated to adequately monitor the development of human rights situation in West Papua over the years.

From an NGO perspective, "Faith-based Network for West Papua,"⁴ a joint collaboration of local and international NGOs, produces an annual report that covers civil and political rights, as well as economic, social and cultural rights. This report is presented to the UN Human Rights Council and elsewhere. Other groups regularly issue reports and alerts about human rights violations in West Papua.

Foreign governments, the international community, and the United Nations are well informed of what is going on in Papua. Then why is the international community has not taken any action to stop crimes against humanity against Papuans? The international community, particularly the

³ See the most recent report here

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204203#wrapper>

⁴ Faith-based Network for West Papua, "Human Rights in Papua 2010/2011" see

http://www.faithbasednetworkonwestpapua.org/reports_and_analyses/fbn

U.S. administration, cannot pretend that they are not informed. Then, what is the purpose of publicizing the human rights situation in West Papua every year?

It is not the objective of this statement, however, to answer those questions. Rather, the following discussion will summarize the current status of human rights in Papua in order to reiterate the urgency to address the continuing crimes against humanity. Various reports record that in the last five years the human rights status of Papua has not significantly improved or been adequately addressed. On the contrary, the Papuan rights remains fragile and unprotected.

First is the problem of *habeas corpus*. This ancient principle reminds us of people's fight and victory against the monarchs in the European middle ages where the monarchs assumed power over people's bodies. The recurrence of reported cases of torture and extra-judicial killings illustrate the degree of state penetration into the personal integrity. Torture by state authorities, in particular, remains prevalent although this crime is preventable. In a similar vein, ongoing extrajudicial killings underscore the continuing practice of state brutality against civilian Papuans.

For example, from 30 April and 1 May 2013 many Papuans marked the 50th anniversary of the transfer of administration of West Papua from the United Nations Temporary Executive Administration to Indonesia. With a heavy handed approach, the Indonesian police and army shot dead three people in Sorong and injured three others. In Timika, the police dispersed the protesters and arrested and detained civilians after they took to the street to commemorate the historic moment of the transfer of administration of their country 50 years ago. The forceful reaction from the Indonesian security apparatus invoked worldwide reaction. Papuan students organized a number of rallies in Jakarta and elsewhere in Indonesia. In Australia, Papuan and joined by Indonesian students released a joint press statement condemning the attack against civilians. Moreover, Australian academics raised their concerns to the Australian Minister for Foreign Affairs urging the Australian government to act.

The UN High Commissioner for Human Rights, Navi Pillay, released a statement⁵ just two days after the incident. She said she was disappointed to see 'violence and abuses continuing in

⁵ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13287&LangID=E>

Papua’, and she described the latest incidents as ‘unfortunate examples of the ongoing suppression of freedom of expression and excessive use of force in Papua.’ Such a prompt response from the highest UN official dealing with human rights sends a clear signal that the violence in Papua is a priority on the UN’s human rights agenda. In claiming that ‘[i]nternational human rights law requires the Government of Indonesia to conduct thorough, prompt and impartial investigations into the incidents of killings and torture and [to] bring the perpetrators to justice’, Pillay invokes the fundamental responsibility of all states to protect their own citizens.

This reality is exacerbated by the fact that these crimes are rarely punished, perpetuating the cycle of impunity. The level of impunity has been so entrenched for so long that the Indonesian judicial system is unable to penetrate it. One of the latest examples is the court hearings on the torture case filmed, leaked and distributed on *YouTube*⁶ in 2010. There were two separate incidents captured in the footage. The first part depicts eight Papuan highlanders stripped in front of two Indonesian army soldiers. But only two of the victims were identified under the names of Kotoran Wonda and Dipes Tabuni. While interrogating these terrifying Papuans and calling them ‘*monyet*,’ ‘*anjing*,’ or ‘*bajingan*’ (monkey, dog, bastard), the soldiers kicked their heads with their army boots and punched them with their helmet. The soldiers demanded they confess to being members the Papuan ‘separatist’ movement OPM. The second footage shows two Papuan highlanders being tortured. Telangga Gire (30) had a knife at his throat and Tunaliwor Kiwo (50) was burnt on his genitals by members of the Indonesian army questioning them about the location of Free Papua Movement (OPM/*Organisasi Papua Merdeka*) weaponry near the highland town of Mulia.

The leak prompted a wave of international public reaction pressuring the Indonesian government to address these atrocities. Instead of showing its usual resistance to bow to public pressure, the Indonesian government responded fairly quickly. Courts martial to hear the cases were

⁶ This footage appeared for the first time on *YouTube* on 17 October 2010 but then was removed on the following day. In its press release dated 17 October 2010 (<http://www.humanrights.asia/news/press-releases/AHRC-PRL-021-2010>), the Asia Human Rights Commission acknowledged that it received the footage and then published it on its website at the same date (<http://video.ahrchk.net/AHRC-VID-012-2010-Indonesia.html>). Similarly, the Fairfax News Media independently received the first part of footage and uploaded it on the same website (<http://www.youtube.com/watch?v=uEisR8rFLOo&feature=related>). By 20 May 2013, the viewers reached 136,625.

established in early 2011 in Jayapura, the provincial capital of Papua. As a result, seven soldiers⁷ were found guilty and sentenced to jail for five to ten months. These modest sentences for three of the soldiers were reduced on appeal to three months.⁸ The court, however, did not find them guilty of torture or assault. Rather, they were found guilty of “not following orders.” Similarly, the court found the commandant of the group guilty and sentenced him to seven months again not for torture. Rather, because he “deliberately provided an opportunity to his subordinates to not follow his orders.” As the verdicts fixed on the matter of “following orders,” the court martial failed to recognize torture as a form of state-sponsored brutality. (In fact, torture is not banned under Indonesian law.) To make it worse, the court did not actually try the cases of Kiwo and Gire.⁹ Rather, it only dealt with the cases of Dipes Tabuni and Kotoran Wonda from the first part of the video who were tortured because they were accused of being commandants of the OPM.

These verdicts go to the essence of this statement. It opines that torture in Papua constitutes a state-sponsored crime and has become a mode of governance as revealed by new research done at the Australian National University in Canberra, Australia.¹⁰ Torture, however, is not the only coercive method that is frequently employed by the Indonesian security services to intimidate civilians in Papua and across Indonesia. The Indonesian state apparatus has no hesitation to use killing, surveillance, arbitrary arrest and detention, and disappearances.

⁷ The cases of seven soldiers were filed in five different dossiers. The first dossier no. PUT/ 186-K/PM.III-19/AD/IX/2010 includes Private Sahminan Husein Lubis, Private Dwi Purwanto, and Private Joko Sulistiono who were all sentenced to five month imprisonment. The second dossier no. 187-K/PM.III-19/AD/IX/2010 contains the case of Lieutenant Cosmos, the commandant of the group, who was sentenced to seven-month imprisonment. The third dossier no. PUT/03-K/PM.III-19/AD/I/2011 contains the case of Private Tamrin Mahangiri who was sentenced to eight-month imprisonment. The fourth dossier no. PUT/04-K/PM.III-19/AD/I/2011 contains the case of Sergeant Irwan Rizkyanto who was sentenced to ten-month imprisonment. Finally, the dossier no. PUT/05-K/PM.III-19/AD/I/2011 contains the case of Private Yakson Agu who was sentenced to nine month imprisonment.

⁸ The appeal court decision no. 66-K/PMT.III/BDG/AD/XII/2010 reduced the sentence of Private Sahminan Husein Lubis, Private Dwi Purwanto, and Private Joko Sulistiono from five to three month imprisonment. The other soldiers did not appeal.

⁹ For the discussion of the confusion of these two separate incidents, see Human Rights Watch analysis at <http://www.hrw.org/news/2010/11/21/indonesia-stop-stalling-investigating-torture-video-episode-0>.

¹⁰ See Hernawan, Y.B. 2013, “From the Theatre of Torture to the Theatre of Peace: The Politics of Torture and Re-imagining Peacebuilding in Papua, Indonesia” a PhD dissertation at the Australian National University, Canberra, Australia.

The high level of state violence together with impunity and denials have put Papuans as one of the nations at “risk of extinction” as described by Juan Mendez, the former Special Adviser to the UN Secretary General on genocide prevention.¹¹ Analysis from the Allard K. Lowenstein International Human Rights Clinic Yale Law School in 2002¹² had earlier suggested the possibility of genocide occurring in West Papua. In a similar vein, Dr James Elmslie, an Australian researcher from the Centre for Peace and Conflict Studies at the University of Sydney examined the demographic shift in Papua which have marginalized indigenous Papuans, slow motion genocide.¹³ James Elmslie predict that in 7 years from now (2020) Melanesian People in West Papua only be 28,99 percent and 71,01 percent are Indonesian.

The risk of extinction is higher if we combine state-sponsored violence with the minimal public services available for the Papuans. Although West Papua is the third largest income earner for Indonesia, Papuans have to survive on very minimal public services. The latest report of the Indonesian Bureau of Statistics¹⁴ ranks Papua at the bottom of the Indonesian National Human Development Index during 1996-2011 (15 years!). Papuans are at the bottom of the country in average years of schooling, life expectancy, and per capita income. These facts pose a serious question of the effectiveness of the 2002 Special Autonomy in addressing the basic needs of Papuans. That is why Papuans symbolically returned the Special Autonomy package to the central government during a massive rally in 2010. The Governor of Yogyakarta Sultan Hamengkubuwono X, one of the most respected Indonesian government officials, recently said that “The Special Autonomy which simply relies on economy and security is proved failed to provide prosperity for Papuans despite the provision of the USD 28.3 billion funds from 2001-

¹¹ See Voice of America (VOA) interview <http://www.voanews.com/content/a-13-2006-01-27-voa58/323573.html>

¹² Brundige, E., Winter King, Priyeha Vahali, Stephen Vladeck & Xiang Yuan 2004, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control*, the Allard K. Lowenstein International Human Rights Clinic, Yale Law School, New York.

¹³ Elmslie, Jim, 2010. “West Papuan Demographic Transition and the 2010 Indonesian Census: ‘Slow Motion Genocide’ or not?” Sydney: Centre for Peace and Conflict Studies of the University of Sydney.

¹⁴ See http://www.bps.go.id/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=26¬ab=2

2011.”¹⁵ Instead he proposed that the central government concentrate on building trust with Papuans before talking about economic development.

The confusion and overlapping policies are reflected in different conflicting decisions such as the splitting off of the Province of West Papua from the existing Province of Papua through a presidential decree. This decision contradicts the Special Autonomy Law, which says that any new province can only be established through the Special Autonomy mechanism, not by a presidential decree. Legally, the latter has a lower status than a law (e.g. the Special Autonomy Law). In a similar vein, *pemekaran* (the creation of new local governments/regencies) has exacerbated the policy confusion and more importantly seriously undermined the ability of local governments to deliver high quality public services to Papuans.

In other words, the authority to govern Papua has not been transferred fully to the local government of Papua as the spirit and the letter of the Special Autonomy Law stipulates. Rather, the central government continues to retain essential elements of the authority which hamper the ability of the local government to function properly. This situation worsened when in 2011 the Yudhoyono administration established *Unit Percepatan Pembangunan Papua dan Papua Barat* (UP4B), a task force mandated to accelerate development in Papua and West Papua Provinces.¹⁶ With a very broad mandate but limited authority, this unit has found it extremely difficult to fulfill its own promises to Papuans. The gap between promises and reality is not novel to West Papua but at the same, exacerbates Papuan distrust towards Jakarta.

The policy confusion brings about serious consequences in the Papuan daily life. For instance, local governments are unable to provide the Papuan market women with a proper market space despite the affirmative policy towards Papuans. Their demand for a market space in the city of Jayapura remains unresolved despite the election promise of the mayor (who is himself indigenous Papuan) to build a permanent market for the women. *Solpap*,¹⁷ a local solidarity

¹⁵ <http://www.suarapembaruan.com/home/sri-sultan-tumbuhkan-kepercayaan-jakarta-terhadap-papua-sebelum-memulai-dialog/35557>

¹⁶ Presidential Decree No. 65/2011 see www.up4p.go.id

¹⁷ This solidarity network consists of a mixed of elements within Papuan society, including university students, activists, lectures, religious leaders, lawyers who collaborate with the Papuan market women to demand a market space for them <http://www.facebook.com/groups/SOLPAP/>

network that works very closely with the Papuan market women, continues to provide moral and lobby support for the women. The network's support maintains and nurtures the consolidation among the women and put pressure on the Jayapura mayor to fulfill his promise.

We can easily find a similar story from the public health sector. A recent outbreak of malnutrition has caused at least 95 lives in the newly establish district of Tambrauw and 61 lives from the District of Yahukimo. Both local¹⁸ and national¹⁹ media presented the figures which met a strong denial from the Minister of Health.²⁰ This approach illustrates the ways the government deals with life-threatening situation which constitutes one of the major priorities of the Special Autonomy.

This above description provides us with a good representation of a worrying situation of Papuans who are at risk of extinction. This picture requires an immediate action to stop the crimes against humanity, but there is enormous reluctance from the international community to become involved in lasting solutions. Perhaps as a feasible alternative, the following discussion will offer ideas which requires further follow-up.

Promising signals of peace negotiations?

There are a number of promising signals that need international supports to be able to pave the way to a more concrete step towards a peaceful solution. Early in 2012 the President of Indonesia, Dr Yudhoyono, publicly expressed his willingness to engage in serious dialogue with Papuans when he met with Papuan church leaders in Jakarta. He expressed this on two separate occasions, suggesting that he was committed to ending conflicts in Papua once for all. However, it has been a year now and we have yet to see any follow up to this commitment. Instead, the Indonesian police and military continue to conduct intensive and destructive operations in West Papua.

¹⁸ <http://tabloidjubi.com/2013/04/11/menkes-bantah-95-orang-meninggal-di-tambrauw/>

¹⁹ <http://www.metrotvnews.com/metronews/read/2013/04/13/6/146291/Kemenkes-Pastikan-tidak-Ada-Wabah-di-Tambrauw>

²⁰ <http://www.thejakartapost.com/news/2013/04/12/health-ministry-team-check-deaths-samenage.html>

On the West Papuan side, we have embarked on peace initiatives initially agreed during our Congress in 2000 in Jayapura. We explicitly and unanimously endorsed using only peaceful means in the struggle for our rights. Since then various elements of the Papuan community have engaged in peace campaigns, including church leaders, political leaders, student movements, women's groups, and even the Papuan freedom fighters. In other words, the pursuit of a peaceful solution to the seemingly intractable conflict in West Papua is more than desirable. It is rooted in our deep conviction. This belief has become the fountain of our struggle for peace.

For instance, since 2009, an indigenous Papuan Catholic priest, Father Neles Tebay, established Papua Peace Network to specifically promote the idea of dialogue between Jakarta and Papua. In conjunction with the Indonesian Institute of Sciences (LIPI), he organized public consultations with the public throughout Papua to gather feedback on the idea of dialogue between Jakarta and West Papua. The findings of this effort were presented to top government officials, but their response remains limited and far from enthusiastic.

Despite this limited response, the Papua Peace Network successfully organized an important Papua peace conference in 2011. During this conference, a senior Indonesian cabinet minister delivered a speech representing the government's position on dialogue. It was at this event that some 500 Papuan representatives democratically elected myself and five others as the Papuan peace negotiation team. The other members are Leonie Tanggahma, Rex Rumakiek, Dr. John Ondawame, and Benny Wenda.²¹ All of us are Papuan leaders living in exile and based in different parts of the world.

In early 2012, our negotiation team began a collaboration with the Peacebuilding Compared Research Project²² at the Australian National University (ANU) in Canberra, Australia. This

²¹ For further information of the profile of this team, please see appendix enclosed.

²² The Peacebuilding Compared research project is led by Distinguished Professor John Braithwaite. It will cover up to 48 country cases. The research will analyze peacebuilding strategies from diverse contexts in search of keys to effectiveness. Restorative and responsive regulatory theory, useful in many other domains, will be tested on unique data on governance of peacebuilding. Each case will also stand alone as a contextually rich account of successes and failures of peacebuilding in that nation. The next stage of the project will focus on 20 Asian and African case studies, with funding from the Australian Research Council Discovery Scheme. See <http://regnet.anu.edu.au/peacebuilding-compared/home>

collaboration is helping us develop our capacity in lobbying and negotiations. One of its achievements is the establishment of our secretariat at ANU to provides us with logistical and research support.

Nonetheless, a peace accord remains distant and the chance to embark on peace talks with the Indonesian government remains fragile. This fragility lies in the fact that President Yudhoyono has not yet concretely implemented his commitment to dialogue and peace. His long delay has had a tremendous impact on the status of human rights and human security in Papua. For instance, we regularly to receive reports of police brutality. The treatment of the Papuan political prisoners serving sentences in prisons in Papua remains dire.²³ The Indonesian government has resisted proposals for UN human rights investigators to visit Papua; Visits by international scholars, journalists, some diplomats and others to the territory are also restricted.

To address the fragility and urgency, it is important that the international community to play a proactive role to implement its responsibility to protect. In the context of Indonesia, peacebuilding and the involvement of the international mediation is not novel. On the contrary, the Indonesian experience has benefitted tremendously from international mediation. For instance, during the Indonesian decolonialization process in 1940s, the involvement of the U.S. and Australia contributed to securing the transfer of sovereignty from the colonial power Netherlands to Indonesia. The UN played a major mediating role in ensuring East Timor's right to self-determination. More recently, Indonesia benefitted from the international intervention to end the Aceh conflict. The intervention of Finland greatly contributed to the negotiations that culminated in the signing of the Helsinki Agreement, in 2005.²⁴ Renegotiating relationship between Jakarta and Papua is the key to resolving the conflict in Papua in the long run. More importantly, a peace accord would contribute to peace and stability not only to Papua and Indonesia as a whole, but also in the Pacific region which contains other fragile states.

²³ See www.papuansbehindbars.org for the most comprehensive and recent report of the status of the Papuan political prisoners prepared by a coalition of Papuan and international NGOs.

²⁴ See Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, 2005. Helsinki.

My conviction and analysis is not entirely new. I have drawn empirical studies of prominent international scholars who describe the effectiveness of peace negotiations, even when they fail. I present to you here two most recent examples: Erica Chenoweth and Maria Stephan's study on nonviolent resistance and the 2012 Human Security Report.

Chenoweth and Stephan's quantitative study sheds new light on the effectiveness of nonviolent resistance (Chenoweth & Stephan 2011). Based on 323 case studies worldwide from 1900 to 2006, their research shows that nonviolent resistance was successful in 53% of cases in achieving the objectives of a resistance movement compared to only 26% of armed struggles. The core factors in the success of nonviolent methods are their ability to cause the defection of state security forces to take the side of nonviolent movements and to mobilize broad participation from the general public. In the Papuan context, however, causing the defection of the Indonesian military (TNI) to the Papuan cause would be very difficult. Another part of their argument is that nonviolence attracts more sympathy and support from the international community than violence which eventually contributed to the effectiveness of nonviolent resistance.

In a similar vein, the 2012 Human Security Report²⁵ from Simon Fraser University provides us with the most recent examples of the effectiveness of peace accords in ending armed conflict. The report examines four different ways to end conflicts during the period of 1950-2004: peace agreement, ceasefire, victory, and other forms of conflict terminations. The report showed that the effectiveness of peace agreements in ending conflict is slightly lower (32%) than ceasefires (38%). But the report also demonstrates that "although peace agreements are less stable than victories, they lead to a much greater reduction in battle deaths." The research finds that more than an 80% drop in death tolls after peace agreement even if the agreements fails and conflict restarts. This effect does not apply to all other types of terminations. Over all, a peace agreement is empirically more effective in stemming violence by addressing root causes of violence. This process has resulted in the dramatic drop of death tolls.

These studies give us good grounds to argue that in the long run nonviolent resistance in Papua, particularly the call for peace dialogue, is more likely to succeed than violent resistance. It is a matter of time. But as these studies reveal, the international community must play a significant

²⁵ <http://www.hsrgroup.org/human-security-reports/2012/overview.aspx>

role as a catalyst of peace processes. Now is the time for the U.S. Congress to act and to endorse Papuan peace initiatives. We cannot afford to sacrifice more lives for solvable conflicts like Papua.

In 2010, the House subcommittee on Asia and the Pacific held the first ever congressional hearing on West Papua. The hearing was organized by Congressman Eni Faleomavaega to examine “Indonesia’s deliberate and systematic abuses in Papua.”²⁶

In line with Sultan Hamengkobuwono X, I believe that peace negotiations will be a starting point to stop violence and to rebuild Papua, although the negotiations may not be able to immediately solve the problems of the market women or poor healthcare. Nonetheless, the sign from President Yudhoyono of his willingness to engage with Papuans is both encouraging and undermining. It is encouraging because it illustrates how a protracted conflict can be resolved peacefully. But it is also undermining our trust to Jakarta as the promise has a little reality. This situation resonates with the responsibility of the international community to act on its R2P.

Conclusions and recommendations

Therefore, we present you the following recommendations to consider:

1. To pass a U.S. Congress resolution urging the U.S. government to exercise its responsibility to protect in order to end crimes against humanity against West Papuan people;
2. The same resolution should urge the Indonesia government to begin good faith negotiations with the Papua peace team with mediation by an international party;
3. To support the Papuan peace team with logistical and research support through U.S.-based research and think tank institutes in order to develop its capacity to represent Papuans at peace negotiations;
4. To request the U.S. administration to provide moral, political and necessary logistical support to the Yudhoyono administration to initiate peace negotiations with the Papuan peace team;

²⁶ ²⁶ This is the first hearing ever held in regard to the situation of human rights in Papua. See http://www.house.gov/list/press/as00_faleomavaega/eniholdswestpapuahearing.html. A transcript can be found at <http://etan.org/news/2010/09wpapuahearing.htm>.

5. To condition U.S. security assistance to Indonesia on ending human rights violations in West Papua and on whether the Indonesian government is negotiating in good faith with the people of West Papua.

Appendix

The Papua Peace Negotiation Team

The Papua Peace Negotiation Team was directly and democratically elected by Papuans during the Peace Conference organized by the [Papua Peace Network](#) in Jayapura in 2011. Since 2012, the team has worked very closely with the [Peacebuilding Compared](#) research project at the Australian National University led by Professor John Braithwaite. The team is mandated to represent Papuans in political negotiations with the Indonesian government.

Ms Leonie Tanggahma is a daughter of the late Ben Tanggahma, Minister for Foreign Affairs in exile of the Republic of West Papua which was unilaterally proclaimed by the Free Papua Movement (OPM) in the 1970s. She was a liaison officer of the Papuan-based human rights NGO ELSHAM in Europe, assisting in regular representation of the Papuan case at United Nations forums such as the Working Group on Indigenous Populations, the Commission on Human Rights (now the Human Rights Council) and its sub-commission. At present she works as a document management assistant in an international organization based in the Netherlands.

Mr Octovianus Mote is the former head of Papua Bureau of *Kompas*, the largest Indonesian daily. Following the meeting between 100 of Papuan leaders and President B.J. Habibie in 1999, he left Papua for exile in the US due to death threats by the Indonesian security services. Granted asylum and US citizenship, since then he has tirelessly lobbied the US Congress and the US government on the issue of human rights in Papua and Indonesia more broadly. He is currently Tom and Andy Berstein Senior Human Rights Fellow at Yale Law School. He is the secretary of the Papua Peace Team.

Dr Otto Ondawame is the Vice Chairman of the West Papua National Coalition for Liberation. He was born in 1953 in Wanamum, Mimika Regency, in West Papua. Ondawame was a member of the OPM and went into exile in 1979. He obtained his PhD degree in political science from the Australian National University in Canberra in 2000, an MSc degree from the University of Western Sydney in 1995, Graduate Diplomas from the University of Sydney in 1994 and Uppsala University in 1986 and a Bachelor of Arts degree from Cenderawasih University, West Papua, in 1976. Ondawame was a recipient of the 2001 *Reconciliation Award*, bestowed by the Australians Against Execution group, and the 1972 *President Suharto Award for Academic Excellence*. In 2000, Ondawame joined the West Papua Project at the Centre for Peace and

Conflict Studies of the University of Sydney as project coordinator. Currently he is Coordinator for International Relations for the West Papua National Coalition for Liberation operating from its office in Port Vila, Vanuatu.

Mr Rex Rumakiek, born in Biak, is Secretary General of the West Papua National Coalition for Liberation (WPNCL) and former head of the Decolonisation Desk of the Pacific Concerns Resource Centre, Suva. He lives in Canberra.

Mr Benny Wenda, born in Papua Central Highland, is the leader of the *Koteka* Tribal Assembly. He lives in exile in Oxford, the United Kingdom. In 2003 he was granted political asylum by the British Government following his escape from custody while on trial in West Papua.

Further contact (until June 2013): Budi Hernawan OFM (budi.hernawan@anu.edu.au) at the [Regulatory Institutions Network](#), Australian National University, Canberra, Australia 0200. Tel. +61-2-6125 7065.

Mr. McGovern. Thank you, Mr. Mote. And I want to thank all of you for being here. And I want to thank you for what you do on behalf of human rights for people in Indonesia. And it is important that you are here, and it is important that we are having this hearing because there are lots of things happening in this country and around the world. And your being here makes it impossible for people not to reflect on what is happening in Indonesia. So it is important that you are here.

And among the things that I think some assignments that this commission can take on is I think we can adopt Filep Karma as a prisoner of conscience to be proud of our effort which we can do.

Can anyone explain to me why the report by the fact-finding group on Munir's death was not made public? Is there a reason or is it just not being made public?

Mr. Kumar. It is political. It may be that there may be names, which may be higher-ups in the religious community and the security community that the President is not willing to take the political stand.

But you want to say something. Sorry.

Ms. Suparyati. As far as we know, there is no willingness coming from our President, SBY, to release the report because we are concerned. And we are sure that under the report, there are recommendations that it is in relation with the intelligence body, that at the time, the intelligence body is a part of the enforcement body responsible for the murder of Munir.

Mr. McGovern. Mr. Sifton?

Mr. Sifton. Yes. I think it is important to probably opine for a moment on why Munir was killed. He was killed, in all likelihood, because he had information about the Indonesian Intelligence Service's abuses in 1998, in particular, but also just generally. And any report that really gets into the circumstances of his death will reveal that the highest levels of the Indonesian Intelligence Service were complicit, not just one rogue member, which is a theory that has been floated around, a rogue member of the intelligence service killing him because of a particular incident that he was implicated in by Munir, but, rather, that at the highest levels of the intelligence service, he was responsible.

Mr. McGovern. But there is no law, there is no restriction that says the government can't release the report if it wanted to?

Mr. Kumar. It is political.

Mr. McGovern. It is political? So maybe one of the things we can also do here is put pressure on the government to release that report. Look, you know, the road to reform requires transparency and a little sunshine. And sometimes it is not always comfortable, but it is essential if you go to change things. If you look the other way when crimes are committed and human rights abuses occur, chances are that they will continue to occur.

Mr. Sifton. And the high profile of this case, I mean, just to give you a sense, imagine if the CIA had had my boss, the director of Human Rights Watch, killed. Can you imagine--

Mr. McGovern. Right.

Mr. Sifton. --such a thing? I mean, that is essentially the situation that he is in analogous to Indonesia.

Mr. McGovern. Well, one of the ways our institutions here in the United States evolved and reformed was, in part, because of congressional hearings and fact-finding initiatives that helped kind of reveal some of the problems within the system, which then had to be credited. So I think we can make an effort to try to urge the Indonesian Government to allow there to be some sunshine and some transparency on this.

We have limited time. I have some questions here, which I am going to kind of go through and appreciate your answers. Mr. Sifton, we have seen that the Indonesian Government at the national and local levels has repeatedly failed to protect religious minorities from abuse. So what has to be done to improve law enforcement deterrence measures and prosecutions? Is there more the central government can be doing to protect religious minorities?

And just one other. I am going to throw a whole bunch of things at you at once. You note in your written testimony that military personnel cannot be tried in civilian courts with few exceptions and that the military justice system has a very poor prosecutorial record. Can you expand on the shortcomings of Indonesia's military justice system? And how should the U.S. leverage its improved military-to-military relationship with Indonesia to address some of these shortcomings?

Mr. Sifton. Okay. Well, on the religious side, there is a huge amount that the national government could do, both using their bully pulpit, although that is probably the wrong term, but using--

Mr. McGovern. Their megaphone.

Mr. Sifton. --their rhetoric, their megaphone,--

Mr. McGovern. Yes.

Mr. Sifton. --as well as particular things that the Religious Affairs Ministry could do. The problem is that the president has made a political decision to allow his religious affairs minister to be who he is. He is a radical, a Sunni extremist. And he is a political actor. And, for political reasons, he has been put where he is. And until the President of Indonesia becomes brave enough to deal with that political baggage that he brings by allowing this religious affairs minister to be in this post, it is hard to see any changes being made.

But what should happen, which I doubt will happen, is that he should get rid of his religious affairs minister and replace him with somebody who is more willing to address these problems.

One good thing Kumar mentioned was that the President is on his way to New York to be given an award by an organization in New York called the Appeal of Conscience, which is run by a rabbi named Arthur Schneier. We have written to them, Appeal of Conscience, to ask that award be rescinded and that the invitation be rescinded, but it would be helpful if members of the New York congressional delegation contacted Rabbi Schneier himself.

Mr. McGovern. How do you qualify for that award?

Mr. Sifton. Well, Appeal of Conscience is a religious tolerance organization. It is supposed to ostensibly be ecumenical and promote religious tolerance. As I have said, you know, SBY is not a fitting recipient of this award by any stretch of the imagination. And that is why the award--and this has become quite--it is on the front page of all of the Jakarta newspapers. It has now filtered into newspapers in Israel as well as the Jewish Daily Forward and Tablet. I mean, it has become a scandal. And I think it would be appropriate for Rabbi Schneier to rescind the award.

Anyway, that draws attention to it, but whether the President of Indonesia can actually grow the spinal fortitude to address this I don't know. But he could do a lot of things. He could appeal decrees against Shia and Ahmadiyya. There are a lot of things he could do, and we lay that out in our report. But it is a political question whether he will do that.

On the military side, the pivot to Asia means a lot more military-to-military engagement. There is no doubt about it. The President has asked for more military sales. He wants Apaches. He has just done a deal to get German tanks that the German Parliament after huge amounts of negotiation passed. Now, why Indonesia needs Leopard tanks from Germany, I am not exactly sure why they need tanks at all militarily. But the President of Indonesia has a dream that the Indonesian military will be as powerful as Australia's. I don't know why he wants to do that, but

it is an opportunity. If the Pentagon is going to be requested for assistance, it is going to give them leverage. And they can give advice on impunity. They can say, "You need to change your military justice system. It is too dependent on"--well, there are a lot of problems with the military justice system. From the fact that soldiers cannot be held accountable by civilian authorities, but also the actual military code is very problematic.

Here in the United States, there is a memorandum of understanding between the Department of Justice and the Department of Defense so that it is very easy to just transfer the cases over when it is appropriate. And they have been in many cases. Generally, our rule of thumb in Human Rights Watch is if civilians are killed, it is probably best to have a civilian prosecution, as opposed to military court-martial. Military court-martial should be for disciplinary issues and crimes within the military, not for dealing with atrocities or human rights abuses. And I think the U.S. can push that on them.

They can also push issues in Papua, such as giving them advice and saying, "Listen, from a counterinsurgency point of view," notwithstanding the point of view of independence and all of that, just because they really get upset when you raise independence. They say, "Don't mess with our sovereignty" and all of that. But you can say, "Look, even from a counterinsurgency point of view, you are aggravating the situation." It is clear now that there are young Papuans who are risk of abandoning the nonviolent methods that they have embraced by they are frustrated by even the continuing abuses. You say, "Look, if you really want to do good in this situation, you need to get the military out of there. You need to get the Indonesian military out of Papua and start transferring to a civilian law enforcement model." So those are the things that can be done. There is a huge amount of literature.

But, anyway, what the Congress could do which would be a great step forward is to get from the Pentagon by a letter, maybe from HFAC or from Lantos or from appropriations committees, a full accounting of the assistance, not just IMET and FMF but the NDAA-1206 assistance that might be going through, the export control licensing. Just get it in one place, everything that the U.S. military is giving Indonesia.

Mr. McGovern. Well, I think we can request that.

Mr. Sifton. Yes.

Mr. McGovern. Did you want to add something, Ms. Suparyati?

Ms. Suparyati. Yes. I just want to add regarding the freedom of religion, actually, we have a law to intervene in the regulatory affairs, like to prohibit it from militarist groups. This is under the Ministry of Home Affairs. But then our government, I mean, the Ministry of Home Affairs, doesn't want to take an agent and doesn't want to intervene because he is thinking that that is local government authority. So he doesn't want to take responsibility.

And the second, regarding the military court, actually, the two years later, there is effort to revise the law on military court, but now the effort now is still stuck because there is a negotiation between Papua and the Ministry of Defense regarding the minister of defense still doesn't want to release their member to bring to the civilian court.

Mr. McGovern. While I have you here, let me ask you a question. What particular challenges do human rights defenders, like you and your colleagues at KontraS, continue to face in Indonesia today? And what must be done to ensure that you and your colleagues can operate freely and effectively?

Ms. Suparyati. Actually, the challenge is like to assist for the victims, especially under the religion issues. We are assisting for the victims. Sometimes there are challenges to intimidation and threatening to the victims and also to the assistants, like NGOs.

And the other thing is under the issue of military abuses, this is also a very sensitive problem in Indonesia. So sometimes the first thing the intimidation and the threatening issue, if we provide the legal document or provide the assistance for the victims.

Mr. McGovern. Mr. Kumar, it seems that one of the trade-offs removing the Indonesian military from the country's domestic political affairs has been a widespread lack of accountability for past abuses. You talked about that. How does impunity for past human rights violations, including the widespread abuses that occurred in Aceh in the 1990s, affect the protection of human rights in Indonesia today?

Mr. Kumar. The point is that you give green light to military officers, current and future, that you can do anything and no one is going to hold you accountable. That is the danger that we are seeing. That is what is reflected in the breaking into the prison and killing four officers.

Mr. McGovern. So how do you assess the state of Indonesia's judiciary today and its ability to enforce laws protecting the rights of Indonesia or the country? Is there anything the United States can do to help strengthen?

Mr. Kumar. Yes, the strengthening rule of law issue. The rule of law, there are two aspects to it: regular criminal law, civil issues. That needs to be improved, but that is moving in the right direction. The other one is politically sensitive cases. If there are any politically sensitive cases coming down, how is the judiciary going to deal with that? That is where we succeed.

Lot of defects. For example, the Munir case, even in the attack on Shias, the judiciary is not stepping in. The police is not stepping in. It is law enforcement.

The one issue on the religious freedom which you asked earlier, the current wave of attack on religious minorities started after March 2008, when the joint ministry gave a resolution or some kind of directive was given that the Ahmadiyya community should not propagate to do other activities in their region. That gave a green light. Basically, they singled out the Ahmadiyya community. In other countries, like Pakistan, they said they are not Muslims. Here they didn't go that far, but they have gone farther, saying, "You can't. You should stop doing these things."

The minute the ministry-level directive came down, they have taken a green light and started attacking. That decree should be rescinded or some form of explanation should be given.

On the issue of past human rights abuses, we did not see any senior officials ever being brought. And there is a danger some may even become popular in the future--I don't want to name names; it was named earlier--in the next Presidential elections. That is where this one year is extremely crucial because if we miss this one-year timetable, it will be very difficult to see whether the U.S. will have any meaningful improvement or relationship with the President or even the willingness from the other and to have any meaningful improvements.

Detachment-88, as mentioned, is extremely important that U.S. should ask for comparability in religious freedom and, most importantly, Munir report should be brought.

Mr. McGovern. Right.

Mr. Kumar. It is not Munir report should be out. We are not talking about prosecution. We just want to know--

Mr. McGovern. What it is.

Mr. Kumar. --what the report says.

Mr. McGovern. Right. Mr. Mote, I am particularly concerned about threats that Indonesia's security forces pose to those in West Papua who are not involved in separatist activities. So what effect does the presence of Kopassus special forces in Detachment-88 have on the lives of ordinary citizens? And what should the United States be doing to promote the safety and well-being of those people?

Mr. Mote. These two units, special forces and the Detachment-88, their act on the ground is equally the same. And I think the only way, really, to change the attitudes, I think this is very important also for U.S. policy. We have to change the mindset here in Washington, D.C. that we only think that by assisting the military is using as a way to ask them to change.

The reality and historical fact is that the only time the military is learning is when President Clinton cut the military assistance.

Mr. McGovern. Right.

Mr. Mote. That is the only time when there is a really serious lesson to Indonesian military. So for me, I think I don't believe the way the policy will. Discuss the relation and ask them or put the condition in any assistance.

And I think this is very important because it is not about the number of the, whatever, training. This is about political recognition about the brutalities.

Mr. McGovern. I mean, I agree. Training in and of itself does not result in institutional reform.

Mr. Mote. No.

Mr. McGovern. You know? I mean, there needs to be the political will within a country to push that reform forward. So I can train all the soldiers that you send me, but if they go back

to an institution that is essentially corrupt or is essentially involved in human rights violations with impunity, nothing really changed. So I think things have to change.

I know we are running out of time here, but let me just ask, kind of conclude. And anyone who wants to respond to this can. Look, you know, as relations between our country and Indonesia continue to improve, you know, the question is, how can we in the United States better leverage its aid strategy, especially to its military-to-military assistance, to promote greater respect for human rights in Indonesia?

You have given me some examples, and I think I have learned that we have some assignments that we can do, you know, in terms of adopting a prisoner of conscience; in terms of asking for a report to be released; in terms of asking our own government, what actually is our assistance to Indonesia. Those are things I think we can do here. And we will work you on making sure we are making the requests appropriately.

But, beyond that, I mean, how do we keep human rights in the forefront? And, you know, where is our best leverage to be able to make a difference, and especially given the fact that this year, as you are saying, Mr. Kumar, it is a very important year?

Mr. Kumar. Yes. A couple of things, other than what we mentioned earlier, are that Deputy Secretary Dan Baer said some senior official is in Indonesia or is--

Mr. Sifton. Wendy Sherman.

Mr. Kumar. Wendy Sherman. We don't see any meaningful statements or any public gesture they make like that there. For example, they can ask for the release of the Munir report. They can meet with the family members of the political prisoners. There are more than 70 to 80 prisoners there.

Mr. McGovern. Does the U.S. embassy do that? I mean, I was just curious.

Mr. Kumar. It is not to the extent that you would like. And the ambassadors, of course, they will be meeting with the families, but with the senior officials. That will send a strong message. And also whenever they come here, it should be one of the top priorities, which we ask for everything, but in this case, if you miss this one window of opportunity, things will go back to worse there.

Mr. McGovern. Mr. Sifton?

Mr. Sifton. A quick word about political prisoners. I think it would be great if the Filep Karma case got more importance, but there is another methodology which I believe the Committee on Appropriations on the Senate side engaged in, which is to take a list of political prisoners. It doesn't need to be the whole list. It could just be sort of high-profile cases, cases involving people who are suffering from health problems, whatever. But take a list and use it, either informally or even formally, to hold up arms export licensing.

Recently the United States licensed I think nine Apache helicopters for Indonesia. And the Appropriations Committee did successfully gum up the works for a little while, asking

questions about Filep Karma and either other political prisoners, mostly Malukuans who had been arrested for unfolding the RMS flag in Ambon in the Maluku Islands. They were unable to ultimately block the sale because to do that, you would need a congressional resolution.

You could take political prisoner cases and gum up the works for arms export or even for outright conditionality in IMET and FMF and NDAA funding as well. So that is another thing.

But we should mention that Filep Karma is not the only political prisoner.

Mr. McGovern. I appreciate that. And there is a defense authorization bill coming up and the defense appropriations bill before the House in June. So there may be some opportunities to look at there.

Ms. Suparyati, did you want to add anything of things we can be--

Ms. Suparyati. I just want to add regarding the situation in Papua, recently we just received a number of cases. That is, there 40 people now expecting for the prison articles. And then there are 30 persons now still disappeared. So I just want to ask if Mr. Chairman can highlight for this situation in Papua because, you know, even there are many initiatives coming to the government to punish the perpetrators in the Papua, but then it is not suddenly can't stop the violence in Papua. It is still going on until now.

Mr. McGovern. Maybe when this hearing is over, you could just take a few minutes and kind of debrief staff on some ideas that we might pursue on that.

Mr. Mote, any last words?

Mr. Mote. Mr. Chairman, I would like to really call for the peace negotiation process that we tried to pursue. We have only maybe six months of opportunity before the President is resigned as the chairman of his political party will involve him--

Mr. McGovern. Right.

Mr. Mote. --in the campaign. So I would like, really, if any--as I said, we are calling for resolution kinds of things to recognize West Papua is the human rights tragedy and then, therefore, calling for the negotiation process. I think the State Department is already the policy, which I already admire in that sense, but we need more kind of active on that.

Thank you.

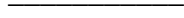
Mr. McGovern. I appreciate that. And I appreciate all of you being here. Again, I think this is important because it provides us with some important information and some important action items that, quite frankly, if we didn't have this hearing, we wouldn't be doing. And all this information we will get out to everybody on the commission.

These TVs are more than just so you could look at yourself. People can actually follow what is going on here. All this stuff will be posted on our web page. But I look forward to working with you on constructive ways that we can continue to improve our relationship with Indonesia while at the same time upholding a high standard of human rights.

So thank you very much. The hearing has come to an end.

[Whereupon, at 12:01 pm., the commission was adjourned.]

APPENDIX



MATERIAL SUBMITTED FOR THE HEARING RECORD



Tom Lantos Human Rights Commission Hearing

Human Rights in Indonesia

**Thursday, May 23, 2013
10:00 AM – 12:00 PM
2261 Rayburn HOB**

Please join the Tom Lantos Human Rights Commission (TLHRC) for a hearing on human rights in Indonesia.

Following its transition to democratic rule in the 1990s, Indonesia's political system has undergone enormous change, including a significant decentralization of power to local authorities and the decreased role of the military in domestic affairs and internal security. In this context, human rights protections have generally improved, including in areas with a history of secessionist movements like Aceh. Non-governmental organizations have also flourished, and many Indonesians now see democracy as part of their national identity.

Despite such significant reforms, Indonesia's human rights situation needs more progress. Indonesia's military and police retain a sense of impunity in some parts of the country, most notably in the restive eastern provinces of Papua. A well-documented rise in religious intolerance has also manifested itself in intimidation of and violence toward some religious groups, including Indonesia's Ahmadiya community and Christians in the West Java province. The State Department's 2012 Indonesia Country Report on Human Rights Practices reported instances of unlawful killings, arbitrary arrests and detention, numerous reports of torture between July 2011 and June 2012 and narrow limitations on the freedom of expression, particularly in areas with pro-independence movements.

This hearing will review Indonesia's current human rights situation and U.S. foreign policy with a view toward Indonesia's presidential and parliamentary elections in 2014.

The following witnesses will testify:

Panel I

- Deputy Assistant Secretary Dan Baer, Bureau of Democracy, Human Rights and Labor, U.S. Department of State
- Susan Sutton, Director, Office of Maritime Southeast Asia, U.S. Department of State

Panel II

- John Sifton, Asia Advocacy Director, Human Rights Watch
- T. Kumar, Director for International Advocacy, Amnesty International USA
- Sri Suparyati, Deputy Coordinator, Commission for the Disappeared and Victims of Violence (KontraS)
- Octovianus Mote, Yale University Law School Fellow & former Kompas journalist

If you have any questions, please contact the Tom Lantos Human Rights Commission at 202-225-3599 or tlhrc@mail.house.gov.

James P. McGovern
Co-Chair, TLHRC

Frank R. Wolf
Co-Chair, TLHRC