



A Human Rights Watch Submission to the Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of Indonesia

1. Main issues of concern: Human rights abuses in Papua and West Papua

In 2006 Indonesia succeeded in securing membership of both the UN Human Rights Council and the UN Security Council. Indonesia also acceded to the ICCPR and the ICESCR. These are signs that Indonesia wants to be accepted as a rights-respecting member of the international community. Indonesia's human rights record has shown some progress in 2007 with two Constitutional Court decisions overturning legislated restrictions on free expression.

However, the human rights situation in Papua and West Papua has shown there a clear gap between Indonesia's international commitments and its rhetoric, and the reality on the ground. The remote Papua province is a region closed to outside observers. Human Rights Watch's report *Protest and Punishment: Political Prisoners in Papua* has documented severe restrictions on freedom of expression, assembly and association. Human Rights Watch has also documented serious abuses by police such as extrajudicial executions, torture and rape with impunity in its report *Out of Sight: Endemic Abuse in Papua's Central Highlands*. Threats and intimidation against human rights defenders in Papua have significantly increased in recent years.

a) Severe restrictions on freedom of expression

A low-level armed separatist insurgency in the province has resulted in a large military presence and a climate of mutual suspicion and fear. Papuans not involved in the armed insurgency have been caught up in anti-separatist sweeps or arrested as trouble makers for peacefully expressing their political views. Pro-independence activists are frequently targeted for arrest.

Peaceful political activists in Papua and West Papua continue to be classified as separatists, facing arrest and criminal conviction for their activities. In 2002 alone, 42 people were arrested in Papua for peaceful independence activities. Raising the Papuan flag or attending peaceful meetings to discuss self-determination for Papua are such activities. For example, in May 2005, Filep Karma and Yusak Pakage, were sentenced to 15 and 10 years in prison, respectively, for

raising the Papuan flag in December 2004. They were charged and convicted of both spreading hatred and rebellion.

Indonesian authorities have commonly used two sets of criminal laws against activists in Papua. The first is the colonial era “hate sowing” (*Haatzai Artikelen*) articles 154 and 155 of Indonesia’s Criminal Code, which criminalize “public expression of feelings of hostility, hatred or contempt toward the government” and prohibit “the expression of such feelings or views through the public media.” These are punishable by prison terms of up to seven years. A welcome move by Indonesia’s Constitutional Court on July 17, 2007 declared the *Haatzai Artikelen* provisions unconstitutional. However despite the decision, people already charged under these provisions like Karma and Pakage remain imprisoned.

The other criminal law provision most often used is “makar,” which translates into English as rebellion. This is often used against persons arrested for their alleged participation in or support for separatism. The crime of *makar* is listed in Indonesia’s criminal code in a section entitled “Crimes Against the Security of the State” (Kejahatan Terhadap Keamanan Negara). Those convicted may be imprisoned for up to 20 years.

b) Impunity of law enforcement officials

Police, particularly BRIMOB officers (Mobile Brigade police, the elite paramilitary corps used for emergencies), are responsible for some of the most serious rights violations in Papua and West Papua, although some reports of brutal treatment by Indonesian soldiers continue to emerge. A lack of internal accountability and a poorly functioning justice system mean impunity for perpetrators of abuses is the norm. In the central highlands both army troops and police units engage in largely indiscriminate village “sweeping” operations to pursue suspected militants. Excessive, often brutal force is used against civilians.

In 14 incidents documented by Human Rights Watch, which include eight alleged killings, two rapes, and many cases of ill treatment and torture, only one member of the security forces had faced prosecution. In this case, a low ranking officer was sentenced in a military court to eight months in prison for killing a 16-year-old Papuan high school student. Regarding the other offences, to our knowledge, no BRIMOB or regular police officers have been investigated or prosecuted for their role in the remaining seven killings. No officers have been charged in either of the two rape cases in which police were implicated or in connection with the cases of alleged police ill-treatment we documented.

In Papua and West Papua, human rights defenders face increasing intimidation including death threats, arbitrary detention and surveillance by Indonesian security forces. In 2007, the head of the Papua branch of Indonesia’s national human rights commission, Alberth

Rumbekwan, was subjected to continued surveillance, death threats and phone intimidation throughout the second half of 2007.

2. Cooperation between the government and NGOs and human rights experts

In June 2007 the UN Secretary-General's Special Representative on Human Rights Defenders, Hina Jilani, visited Indonesia including Aceh and Papua to assess the situation of human rights defenders. She noted that while prospects for promoting human rights had considerably improved, there remained resistance and little commitment to eliminate impunity for past and ongoing human rights violations. Of particular concern was the lack of protection those engaged in socially sensitive issues such as the rights of lesbian, gay, bisexual and transgender persons or public awareness on HIV/AIDS.

3. Human Rights Watch's recommendations

Human Rights Watch has conducted extensive research in Papua and West Papua in 2006 and 2007. Based on our research findings, Human Rights Watch urges the Indonesian government and parliament to:

Restrictions on freedom of expression:

- Immediately and unconditionally release all persons detained or imprisoned for the peaceful expression of their political views. Especially since some laws criminalizing free expression have been declared unconstitutional by the High Court in July 2007;
- Drop any outstanding charges against individuals awaiting trial for their peaceful political activities and make a public commitment to ensure no further arrests of individuals engaged in the peaceful expression of their beliefs;
- Repeal articles 154, 155, and 156 of the KUHP (Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code) criminalizing "public expression of feelings of hostility, hatred or contempt toward the government" and prohibiting "the expression of such feelings or views through the public media," and articles 106, 107, and 108 on treason. Make a public commitment not to undertake any further prosecutions using these laws; and
- End all arbitrary restrictions on access to Papua for journalists, diplomats and human rights organizations.

Impunity of police:

- Allow unfettered access for diplomats, journalists, and human rights organizations to all parts of the two Papuan provinces. Increased access to information will ensure more balanced and accurate reporting and allow problems such as police abuse to be identified and tackled rather than fester and contribute to continuing tensions in Papua;

- Investigate all cases involving allegations of abuses by the police or soldiers. Where the information justifies prosecution, the cases should be brought before civilian courts under the criminal law and not be dealt with solely as disciplinary offences to be resolved by internal police or TNI mechanisms; and
- Suspend from active service all police officers being investigated for human rights violations, pending the final determination of any legal proceeding. Authorities should dismiss officers found responsible for human rights violations.

Attachments:

Report Out of Sight: Endemic Abuse and Impunity in Papua's Central Highlands

Report Protest and Punishment: Political Prisoners in Papua