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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International NGO Forum on Indonesian Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Freedom of Expression and Opinion in Indonesia*

We, The Alliance of Independent Journalists (AJI), a journalist association in Indonesia that concern on freedom of expression and freedom of opinion in Indonesia, submit a written statement to you. Generally, Indonesia state neglects its obligation to fulfill, to respect, and to protect people's freedom of expression and freedom of opinion. In particular, Indonesia is lack of legal protection to freedom of expression. Below are some facts regarding to last statement:

1. Impunity for Journalists Killers

Journalists in Indonesia are still fear with violations as the killers and attackers of journalists enjoy impunity. In 1975 five journalists of Australian National Television were assassinated in East Timor during Indonesian invasion to that country. Some Indonesian military officers were suspected, but never brought to justice (trial in Australia). In 1999 a Dutch journalists Sander Thoenes was killed during Referendum. Indonesian soldiers were suspected, but never be trial in Indonesia. Also in 1999, Agus Muliawan (AFP) was killed in East Timor. No trial for this case.

While in 1996, Muhammad Fuand Syafruddin (Udin) of Berita Nasional assassinated. The mastermind and executors were never brought to justice. (A scapegoat was trial, but then he was freed for not guilty). In 2005, EllyuddinTelaumbanua (Berita Sore, Medan, and Northern Sumatra) was disappeared in Nias and believed to be killed. No suspect, no investigation by police. In 2003, Ersu Sori Siregar (RCTI TV) was killed during firefight between army and GAM, in the he was freed after being held as "hostage" by GAM. No investigation about this case.

And in 2006, Herlyanto (freelance) was killed by 9 hit men who were hired by a head of village, after reporting corruption. The suspects confessed, but they were freed because one was insane (but all 9 suspects were freed). According to AJI and Press council investigation, the one "insane" suspect was mentally healthy even was in mental hospital for several days. The mastermind was never brought to justice. And in 2009, Agus G. Hutapea (Aspirasi weekly, Northern Sumatra) was killed. No suspect was brought to trial.

In 2009, Anak Agung Gde Narendra Prabangsa (Radar Bali) was killed after reporting corruption on education project. The mastermind, Susrama (member of local parliament) was sentenced for life, and the executors were sentence for 5 years to 20 years. This is the first justice for journalists that were assassinated.

In February 2010, Marlon Brando Mramra, camera person of Mandiri Papua TV was killed by unknown man when he tried to protect a woman that was being attacked. Police does not capture the killer even though he was killed in public.

2. Criminal Laws Endangers Freedom of Expression and Opinion

Indonesia still applies criminal law to suppress freedom of expression and opinion. Defamation is the most frequent article used to bring journalists to court. It is stipulated in Article 310 Indonesian Penal Code stating those who found guilty of slander (oral

* The Alliance of Independent Journalists (AJI) and the Human Rights Working Group (HRWG), NGOs without consultative status, also share the views expressed in this statement.

defamation) face jail term of up to nine months; while those who commit libel (written defamation) face tougher penalty of jail term up to one year and four months (Article 310 point 2). Exemptions of defamation to protect public and private interest (public interest doctrine and self defense doctrine) are stipulated in Article 310 point 3 which states that statements of public interest or of self defense are not considered as defamation.

Another popular defamation article is false news (fitnah), stipulated in Article 317 which states that whoever create or disseminate oral or written defamatory false news will face jail term of up to four years. False news requires malicious intent, whereas the lack of it would lead to general defamation. General attorney usually use these two in pair as primary and secondary convictions.

Defamation of state officials and institutions also face jail term. Article 207 of Indonesian Penal Code stipulated that whoever commits neither slander nor libel to state officials or institutions will face jail term up to one year six month. Meanwhile article 207 point 2 of Indonesian Penal Code regulated that whoever disseminate printed materials in words or graphic on similar content will face jail term up to four months.

Protection of the reputation of foreign diplomat is regulated in article 143 and 144 of the Indonesian Penal Code. Article 143 stipulates that whoever commits such defamation will face a jail term up to five year.

Article 144 Indonesian Penal Code stipulates that whoever commit defamation to king or president or representative of another State will face a jail term up to nine months.

Incitement of hatred, regulated by article 160 and 161 of Indonesian Penal Code, pose a threat of imprisonment. Article 160 of the code states that whoever, including journalist, who incites hatred against the government will face a jail term up to six years.

Meanwhile, article 160 point 2 of Indonesian Penal Code regulates that dissemination of any materials which incitement hatred will face a jail term up to four years.”

Similar to incitement of hatred against the government, any journalistic works which trigger horizontal conflicts through hate-incitement are punishable by law. Article 156 regulates four years of imprisonment for those who commit such crime.

Article 157 of Indonesian Penal Code states whoever prints hate-inciting materials in words or pictures which can trigger horizontal conflicts will face a jail term up to two years and six months.

Article 156 point (a) of Indonesian Penal Code regulates blasphemy and states what whoever express any blasphemous feeling or act will face a jail term up to five years.

Obscenity, for expressions in words or in graphic deemed as pornographic, is frequently used to curb the press. It is regulated in article 282 of the Indonesian Penal Code which states that whoever disseminates such expression will face a jail term up to one year and six months.

Pornography Law threat freedom of expression as it defines “pornography” in article 1 point (1) as any man-made expression disseminate through any means of public communication or demonstration which stimulates sexual arousal and/or infringe public moral. This elusive definition creates ambiguity and results in legal uncertainty.

The press community deemed this as another threat to press freedom as it imposes imprisonment to journalists.

Electronic Information and Transaction Law threats freedom of expression and opinion on internet. Article 27 point (1) of the law regulates electronic distribution of obscene materials by prohibiting anyone, intentionally or not, from distributing and/or transmitting and/or making obscene material accessible.

Article 45 point (1) of the law stipulates that whoever distributes obscene materials will face a jail term up to six year or pay fee up to one billion rupiahs. This sanction is much stricter than those in either Indonesian Penal Code or Anti Pornography Law.

Criminal defamation stipulated in article 27 point (3) prohibits anybody to intentionally or unintentionally distribute and/or transmit and/or make defamatory expression available. It also serves a jail term up to six year or pay fee up to one billion rupiahs.

Accordingly, we recommend the following things:

- 1. Government of Indonesia should end impunity for journalists killer, make appropriate law enforcement to the suspects;
- 2. Government of Indonesia must revokes laws that threats freedom of expression and opinion, including criminal defamation laws, blasphemy laws, pornography laws and hate-speaks laws.
