



FREEDOM, JUSTICE, EQUALITY:

HUMAN RIGHTS AGENDA FOR THE ELECTED GOVERNMENT OFFICIALS

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Cover photo: Silhouette of three presidential candidates in a podium giving speech amidst the background of protest in a soccer stadium. © Dani Afrian

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EXECUTIVE SUMMARY

As the forthcoming presidential elections in February 2024 draw near, Amnesty International has prepared a briefing for the newly elected president and vice president of Indonesia, outlining the country's current human rights issues and the Indonesian government's failure to uphold its legal obligations to respect, protect, promote, and fulfil human rights. Indonesia continues to fail to guarantee people's rights to express their opinions peacefully amidst a shrinking civic space. Even though the Indonesian Constitution guarantees freedom of expression and peaceful assembly, this briefing highlights Indonesia's failure to guarantee peaceful expression of opinions. Problematic regulations, including the Electronic Information and Transactions (EIT) Law and the New Penal Code continue to suppress peaceful criticism and opinion, highlighting the country's struggle for human rights.

Indonesia also fails to deliver on its commitment to end impunity of members of the security forces suspected of being responsible for human rights violations. Despite promises made by President Joko Widodo to ensure accountability for human rights violations committed by the security forces, those suspected of criminal responsibility for human rights violations and crimes under international law are rarely brought to justice. Indonesia's commitment to providing access to justice and effective remedies to victims of gross human rights violations and crimes under international law also remains in question. Although President Widodo has made promises to solve past human rights abuses and has taken some positives such as acknowledging 12 incidences of gross human rights violations that occurred in Indonesia between 1965 and 2003, further action to bring those suspected of criminal responsibility to justice and enable victims' access to truth have yet to be taken.

The United Nations has also expressed concerns about human rights in Indonesia. Mary Lawlor, the UN Special Rapporteur on Human Rights Defenders, expressed concern when two prominent Indonesian human rights defenders, Fatia Maulidiyanti and Haris Azhar, were criminalized for criticizing the government's plan to build a gold mine in Intan Jaya, Papua. In another case, UN experts criticized the increase in militarization and intimidation surrounding the multi-billion dollar tourism development project Mandalika in West Nusa Tenggara.

In this context, Amnesty International calls on the newly elected president and vice president to publicly commit to ensuring that the human rights of the Indonesian people are respected, protected, promoted and fulfilled, in line with Indonesia's international human rights obligations and the country's own constitution, in addition to incorporating the following human rights principles in their vision, mission, policies and programmes:

1. Respect, protect, promote, and fulfil the rights to freedom of expression, association and peaceful assembly;
2. Ensure accountability for human rights violations committed by members of the security forces;
3. Provide and ensure access to justice and effective remedies to victims of human rights violations.

This briefing does not cover all cases of human rights violations in Indonesia. The absence of a case does not imply that it is of no concern to Amnesty International.

This briefing is composed of three main chapters. The first chapter outlines human rights issues surrounding freedom of expression and peaceful assembly, including the lack of protection for human rights defenders and women human rights defenders as well as LGBTIQ groups from attacks and harassment. The second chapter discusses the lack of accountability of the security forces involved in human rights violations, such as the use of excessive force in cases of peaceful assembly, unlawful killings and torture and other ill-treatment. The final chapter outlines the obligation of justice, truth and reparation for victims of gross human rights violations in Indonesia. In each chapter, Amnesty International seeks to remind the Indonesian government of its obligation to ensure that human rights are respected, protected, promoted and fulfilled.

KEY RECOMMENDATIONS

Freedom of Expression and Freedom of Peaceful Assembly

- Immediately repeal or revise problematic regulations that are used to suppress human rights including the rights to freedom of expression, association, and peaceful assembly such as Articles 27 (1), 27 (3) and 28 (2) of the Electronic Information and Transaction (EIT) Law and provisions for treason under the New Penal Code;
- Take effective measures to ensure that threats, attacks, intimidation, and harassment of human rights defenders (HRDs), activists, as well as journalists and media outlets, are promptly, thoroughly, impartially, independently, transparently and effectively investigated, and that those suspected of being responsible are tried in line with international standards of fairness. Authorities should also pass the Protection of Human Rights Defenders Bill;
- Guarantee that international human rights organizations and journalists are, in practice, provided with unimpeded access to Papua to ensure that human rights violations are fairly reported to national and international communities.

Accountability

- Ensure prompt, thorough, independent, impartial, transparent, and effective investigation into all allegations of human rights violations by members of the security forces. The findings of these investigations should be made public in a timely manner. Those suspected of criminal responsibility should be brought to justice in a fair trial, and victims should be provided with access to justice and effective remedies;
- Acknowledge publicly the serious problem of torture and other ill-treatment by members of the security forces in Indonesia and send a clear public message to all the security forces that torture and other ill-treatment are unacceptable and strictly prohibited at all times, that any allegations of torture and other ill-treatment will be promptly, thoroughly, impartially, independently, transparently and effectively investigated, and that those suspected of criminal responsibility will be brought to justice in a fair trial;
- Publicly condemn all forms of gender-based violence, intimidation, and harassment by law enforcement agents, and make clear that any such acts perpetrated by members of the security forces will not be tolerated.

Gross Human Rights Violations

- Instruct the Attorney General Office (AGO) to undertake investigations of gross human rights violations based on Indonesian National Human Rights Commission's (Komnas HAM) preliminary investigation and recommendations in accordance with the Law on Human Rights Court;
- Establish a programme to provide and ensure access to justice and effective remedies to victims, including full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence) to all victims of past human rights violations in Indonesia. The programme should be devised in consultation with victims to ensure that the reparation programme is effective and reflects the diverse needs and experiences of victims/survivors, including based on gender and any other status;
- Ratify and accede to the Rome Statute of the International Criminal Court and the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and incorporate their provisions into domestic law and implement them in policy and practice.

INTRODUCTION

A HUMAN RIGHTS AGENDA FOR THE NEXT INDONESIAN GOVERNMENT

As the presidential and parliamentary elections in February 2024 draw near, Amnesty International continues to document human rights violations and circumstances in which Indonesian authorities still fall short of upholding their legal obligations to respect, protect, promote and fulfil human rights.¹ Indonesia continues to fail to guarantee people's rights to express their opinions peacefully amidst a shrinking civic space.² It also fails to deliver on its commitment to end the impunity of the security forces suspected of being responsible for human rights violations, and to provide access to justice and effective remedies to victims of gross human rights violations and crimes under international law.³

During the 41st session of the Universal Periodic Review (UPR) in 2022, Indonesia received 269 recommendations from 108 states regarding its human rights enforcement.⁴ Many states submitted a recommendation to repeal problematic regulations, including the Electronic Information and Transaction (EIT) Law and the New Penal Code, both of which curtail civic space.

Amnesty International is concerned that the misuse of the EIT Law will create a climate of fear in civil society and lead to self-censorship. This is particularly true in cases of sexual harassment or violence against women, as women's voices are often suppressed by social attitudes, cultural norms and patriarchal values. Protection of women's freedom of expression is vital to holding those suspected of criminal responsibility to account and ensuring access to justice and effective remedies to victims of gender-based violence.

In response to the 4th UPR cycle recommendation, Indonesia has committed to conducting prompt, thorough and transparent investigations into all allegations of extrajudicial killings and human rights violations committed by members of the security forces in the provinces of Papua, holding those suspected of criminal responsibility accountable, and prioritizing civilian protection, including the protection of women and children.⁵ However, commitment to combating impunity must translate into action that it may be implemented in both policy and practice. This is essential

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1. As stated in Articles 28, 28 A - 28 J of the 1945 Constitution of the Republic of Indonesia.
 2. Amnesty International, "*Silencing voices, suppressing criticism: The decline in Indonesia's civil liberties*", ASA 21/6013/2022, <https://www.amnesty.org/en/documents/asa21/6013/2022/en/> (accessed on 08 May 2023).
 3. Amnesty International, "*Amnesty International Report 2022/23: The state of the world's human rights*", <https://www.amnesty.org/en/documents/pol10/5670/2023/en/> (accessed on 08 May 2023).
 4. The UPR is a mechanism under the Human Rights Council whereby all UN Member States can either "support" or "note" the recommendations from others on the human rights situation in the country. The UPR has been held every four years since 2006. While the UPR Working Group conducts the review, the review derives from a national report, information from independent human rights experts and other stakeholders. Amnesty International submitted a joint report with the Alliance of Independence Journalists in March 2023. See: <https://www.amnesty.org/en/documents/asa21/5434/2022/en/>.
 5. Report of the Working Group on the Universal Periodic Review, "*Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*", Indonesia Addendum, A/HRC/52/8/Add.1, para. 9. The noted recommendations are no. 140.261, 140.263, 140.266, 140.267, and 140.268.

in order to prevent the reoccurrence of human rights violations in the future. Each and every failure to ensure accountability for gross violations of human rights and crimes under international law perpetuates the idea that perpetrators enjoy impunity and are above the law.

Amnesty International recognizes a few, though insufficient, improvements in the protection of human rights in Indonesia under the Joko Widodo administration.⁶ In 2023, President Widodo publicly acknowledged 12 cases of past gross human rights violations. Despite these improvements, there is as yet no concrete roadmap for seeking accountability and providing truth, justice, and redress to the victims of these 12 gross human rights violations.

Concerns about human rights in Indonesia have also been raised at local, national, and international level. On freedom of expression, widespread protests and reports from Indonesian civil society organizations (CSOs) indicate that the freedom to voice criticism and engage in public protest in Indonesia is deteriorating.⁷

This is in stark contrast to the 2014 promise made by then-presidential candidate President Widodo to promote human rights, to reform the security forces and to put an end to impunity by prosecuting past human rights violations. Moreover, in preparation for the 2019 presidential elections, President Widodo's national campaign team also acknowledged Amnesty International's Nine Human Rights Agenda that includes freedom of expression, accountability of the security forces and addressing impunity for past human rights violations.⁸ Despite all of these pledges, much remains to be done.

In many instances, the government's priority to advance the national economy through various large-scale infrastructure and development projects is not accompanied with respect for and the protection of the human rights of the affected communities. Amnesty International has identified cases of human rights violations committed by members of the security forces as part of the authorities' efforts to secure and implement economic development policies such as the National Strategic Projects (PSN).⁹ For example, two prominent Indonesian human rights defenders, Fatia Maulidiyanti and Haris Azhar have been criminalized for their criticism of the government's plans for a gold mine in Intan Jaya, Papua. Mary Lawlor, United Nations Special Rapporteur on Human Rights Defenders, expressed concerns regarding the criminalization of the two HRDs.¹⁰ In another instance, UN experts called out increasing militarization and intimidation in the area around the Mandalika megaproject in West Nusa Tenggara, a multi-billion dollar tourism development project.¹¹

Furthermore, concerns about human rights in Papua have also been raised by the international community. In the 2023 Global Overview, UN Special Adviser to the Secretary-General on the

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6. Including, among others, Law on Sexual Violence Crimes (law no. 12/2022) that finally legalized in 2022 after more than ten years of process and on early 2022 President Widodo acknowledge twelve gross human right violation that based on the Non-Judicial Settlement Team for Gross Human Rights Violations (PPHAM).
 7. See for example: PUSAKA report "*Dong Penjarakan Tong Pu Suara & Pikiran*", <https://pusaka.or.id/dong-penjarakan-tong-pu-suara-dan-pikiran/>; AJI & SEJUK press release "*Jelang Tahun Politik, Pemberitaan Media Online Diskriminatif Terhadap LGBT*", <https://aji.or.id/read/press-release/1530/staff.html>; Tapol, "*West Papua 2022 Freedom Of Expression And Freedom Of Assembly Report*", https://www.tapol.org/sites/default/files/sites/default/files/pdfs/West_Papua_2022_Freedom_of_Expression_Assembly_Report_English%202.pdf. <https://aji.or.id/read/press-release/1530/staff.html> (accessed on 16 May 2023)
 8. The meeting at Amnesty International Indonesia's office was also attended by the Indonesian National Human Rights Commission (Komnas HAM) and the opposition campaign team (Prabowo-Sandi), see: Komnas HAM, "*9 Agenda Prioritas Penanganan HAM untuk Jokowi dan Prabowo*", <https://www.komnasham.go.id/index.php/news/2019/4/18/789/9-agenda-prioritas-penanganan-ham-untuk-jokowi-dan-prabowo.html> (accessed on 5 April 2023).
 9. Amnesty International, "*Indonesia: End harassment of residents opposed to 'national strategic projects'*," <https://www.amnesty.id/indonesia-end-harassment-of-residents-opposed-to-national-strategic-project/>
 10. Mary Lawlor (@MaryLawlorhrds), "*Concerns about Indonesian HRDs Fatia Maulidiyanti and Haris Azhar*," Twitter, 28 February 2023, <https://twitter.com/MaryLawlorhrds/status/1630501359123308544>
 11. Several UN Experts such as Ms Pichamon Yeophantong, Mr Damilola Olawuyi, Ms Fernanda Hopenhaym, Ms Elzbieta Karska and Mr Robert McCorquodale from the Working Group on human rights and transnational corporations and other business enterprises; Mr. Olivier De Schutter, Special Rapporteur on extreme poverty and human rights; Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Ms. Irene Khan, Special Rapporteur on the promotion and protection of the freedom of opinion and expression; Mr. Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous Peoples; Mr. Balakrishnan Rajagopal, Special Rapporteur on the right to adequate housing. Further see: "*Indonesia: UN experts alarmed by reports of increased militarization and intimidation around Mandalika project*", 1 March 2023, <https://www.ohchr.org/en/press-releases/2023/03/indonesia-un-experts-alarmed-reports-increased-militarization-and> (accessed on 9 April 2023)

Prevention of the Genocide, Alice Wairimu Nderitu, highlighted allegations of harassment, arbitrary arrests and detention of Papuans, and the non-recognition of the rights of indigenous Papuans that has in turn enabled the alleged appropriation of indigenous lands. Nderitu further stated that “humanitarian assessment and assistance as well as a genuine, inclusive dialogue to address underlying grievances is encouraged.”¹²

This briefing is composed of three main chapters. The first chapter outlines human rights issues concerning freedom of expression and peaceful assembly, including the lack of protection of human rights defenders and women human rights defenders as well as LGBTIQ groups, from attacks and harassment. The second chapter discusses the problem of the lack of accountability of the security forces implicated in human rights violations, such as the use of excessive force in cases of peaceful assembly, unlawful killings and torture and other ill-treatment. The final chapter describes the obligation to provide justice, truth, and reparation to victims of gross human rights violations. In each chapter, Amnesty International seeks to remind the Indonesian government of its obligation to ensure that human rights in the country are respected, protected, promoted, and fulfilled.

12. United Nations, “*Interactive Dialogue with the Special Adviser on the Prevention of Genocide* (as per HRC/RES/49/9, 2022)”, https://www.un.org/en/genocideprevention/documents/Remarks_Alice%20Wairimu%20Nderitu_Special%20Adviser_53rd_Session_HRC_Interactive_dialogue%20.pdf (accessed on 4 October 2023)



Bandung / Indonesia - October 22, 2020: Hundreds of labour held a demonstration in Bandung, Indonesia rejecting the Job Creation Act in the Omnibus Law.
© Algi Febri Sugita / Shutterstock.

RESPECT, PROTECT, PROMOTE AND FULFIL THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

1. PROBLEMATIC REGULATIONS

Civic space in Indonesia has been shrinking over the last decade. While Indonesia guarantees the rights to freedom of expression and peaceful assembly through its constitution and the Law on Human Rights (Law No. 39/1999), a number of problematic regulations exist that have been used to suppress peaceful expression of criticism and opinion, including the Electronic Information and Transactions (EIT) Law and the newly adopted Penal Code, which will potentially further restrict freedom of expression and undermine the right to peaceful assembly.

At least five states¹³ have recommended Indonesia repeal or revise these provisions during the 4th UPR cycle. Regrettably, most of the recommendations are only noted, as opposed to supported, by Indonesia, indicating lack of commitment from the government.¹⁴

Amnesty International and others have documented the trend of shrinking civic space, including in our latest report, “Silencing Voices, Suppressing Criticism: The Decline in Indonesia’s Civil Liberties,”¹⁵ which highlights the serious threat to civil liberties in Indonesia.¹⁶ Amnesty International believes that it is imperative for the government to abolish or revise such problematic regulations in order to create a fair and open society in which people can participate meaningfully in the political, economic, social and cultural life and enjoy their rights to freedom of expression and peaceful assembly.

13. Austria, Canada, USA, Switzerland, and Norway.

14. Report of the Working Group on the Universal Periodic Review, “Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, Indonesia Addendum, A/HRC/52/8/Add.1, para. 9. The noted recommendations are no.140.49, 140.111, 140.112, and 140.113.

15. See Amnesty International, “Silencing voices, suppressing criticism: The decline in Indonesia’s civil liberties”, ASA 21/6013/2022, <https://www.amnesty.org/en/documents/asa21/6013/2022/en/>.

16. Other research confirming the decline had been published by the Survey Institute of Indonesia (Lembaga Survey Indonesia, <http://www.lsi.or.id/riset/447/rilis-survei-lsi-03-november-2019>, 2019), Freedom House (<https://freedomhouse.org/country/indonesia/freedom-world/2022>, 2021), and Indikator Politik (see Moh. Khory Alfarizi, “Survei Indikator Politik Indonesia: 62,9 Persen Rakyat Semakin Takut Berpendapat”, Tempo, 9 April 2022, <https://nasional.tempo.co/read/1580168/survei-indikator-politik-indonesia-629-persen-rakyat-semakin-takut-berpendapat>, 2022). See also Amnesty International, “Silencing Voices, Suppressing Criticism: The Decline in Indonesia’s Civil Liberties,” 2022.

2. ELECTRONIC INFORMATION AND TRANSACTIONS (EIT) LAW



© ↑ Jakarta / Indonesia - 2023: Peaceful protest by EIT Law Victims Association to revise the EIT Law at Car Free Day Jakarta © Amnesty International Indonesia.

Certain provisions under the EIT Law (Law No 11/2008 as amended by Law No 19/2016) are among the most misused. The articles that criminalize defamation and the dissemination of information that incites hatred via electronic media have been widely used to excessively target critics and restrict other forms of legitimate expression on digital platforms. According to Amnesty International's findings, at least 504 individuals were charged with alleged violations of articles under the EIT Law between January 2019 and May 2023.¹⁷

For example, on December 2022, a youth activist in West Nusa Tenggara was arrested and charged with violating the EIT Law for allegedly inciting hatred against members of the West Nusa Tenggara Regional Rouse of Representatives (DPRD). According to the activist, he had received unconfirmed information that several members of the DPRD had been arrested for drug use, but that they had later been released in exchange for payment. To verify this information, the activist sought clarification from the Chairman of the DPRD through a WhatsApp group, referencing the information received. The activist was subsequently arrested and accused of disseminating hatred towards members of the DPRD and charged under the EIT Law. Even though the panel of judges acquitted him of all charges, the prosecutor filed a cassation. At the time of writing, the cassation process is still underway.¹⁸

The EIT Law has also been used against victims of sexual harassment, resulting in revictimization. One well-known case is that of Baiq Nuril, who was prosecuted under the EIT Law for defamation

17. Amnesty International monitoring on the allegation of violations of Article 27 (1), 27 (3) and 28 (2) of the EIT Law. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs).

18. Sistem Informasi Penelusuran Perkara (SIPP) Mataram District Court, https://sipp.pn-mataram.go.id/index.php/detil_perkara# (accessed 30 June 2023).

after recording an instance of sexual harassment against her by her employer in 2018.¹⁹ Following a public outcry, President Joko Widodo granted Nuril an official pardon in 2019. In another case, police arrested a woman in South Sulawesi for alleged incitement of hatred under Article 28 (2) of the EIT Law. She used the hashtag #PercumaLaporPolisi (reporting to the police is useless) to demand justice for the murder of her brother, who died after being shot by the police when attempting to escape during an arrest.²⁰

Amnesty International is concerned that the misuse of the EIT Law will create a climate of fear within civil society and lead to self-censorship. This is particularly true in cases of sexual harassment and/or violence against women, as women's voices are often suppressed by social attitudes, cultural norms and patriarchal values. Protection of women's freedom of expression is vital to holding those suspected of criminal responsibility to account and ensuring access to justice and effective remedies for victims of gender-based violence.

President Widodo is aware of the misuse of the EIT Law and declared his intention to revise the law in 2021. Discussions have taken place in parliament regarding the revision of the law, but as of the time of publication, no actual changes had been implemented.

Although the New Penal Code, passed on December 2022, repealed some problematic articles of the EIT Law, this law will not enter into force until December 2025. Further, the New Penal Code raises other problems, including reinstating articles outlawing insulting the president and vice president—which the Constitutional Court had previously annulled in 2006, both directly and through audio-visual or digital media, and punishable by up to 3.5 years and 4.5 years in jail respectively. The new law also includes articles that criminalize insulting the government and state institutions, and vaguely outlaws unsanctioned public demonstrations deemed to disturb the public order. These broad provisions could be misused to suppress legitimate criticism and peaceful assembly.

3. THE NEW PENAL CODE

At the end of December 2022, the Indonesian House of Representatives (DPR) passed the New Penal Code which also contains a range of ambiguous and problematic provisions, despite the grave concerns of several UN Special Rapporteurs. In November 2022, the Working Group on Discrimination Against Women and Girls, the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on freedom of religion or belief, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls expressed their "grave concern regarding the proposed amendments to the Indonesian Criminal Code, *Revisi Kitab Undang-undang Hukum Pidana (RKUHP)* that would continue limiting access to abortion, discriminate against women and girls, religious or belief minorities and LGBT persons, punish extramarital sex and live-in relationships and hamper the freedoms of expression, religion or belief and association."²¹ The Code will come into force in December 2025, and may have significant impact on freedom of expression.

19. Amnesty International, "Jokowi Harus Segera Memberikan Amnesti kepada Baiq Nuril," <https://www.amnesty.id/jokowi-harus-segera-memberikan-amnesti-kepada-baiq-nuril/> (accessed on 31 March 2023).

20. CNN Indonesia, "Kronologi Istri Polisi Ditangkap Usai Unggah #PercumaLaporPolisi," <https://www.cnnindonesia.com/nasional/20230307174801-12-922069/kronologi-istri-polisi-ditangkap-usai-unggah-percumaLaporPolisi> (accessed on 31 March 2023).

21. Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls, its causes and consequences, OL IDN 2/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27706> (accessed on 6 October 2023)

Article 218 of the New Penal Code restores a ban on insulting the president and/or vice-president, while Article 240 criminalizes insulting the government and state institutions. Even though the law draws a distinction between an “insult” and “criticism”—with only the former leading to a violation of the law—the provisions as drafted leaves room for subjective misinterpretation that could be weaponized by those seeking to suppress legitimate criticism.²²

Article 256 undermines the rights to freedom of expression and peaceful assembly by criminalizing public parades or protests that take place without prior notification to the authorities and that result in “disturbances of the public interest”. This provision similarly amounts to an excessive restriction on the right of peaceful assembly, as the Human Right Committee in General Comment No. 37 provides that “notification must not be required for spontaneous assemblies for which there is not enough time to provide notice.”²³

Further, Article 192 criminalizes acts of treason that have the intention to make “part or all the territory of Indonesia fall into the hands of foreign authorities or to separate from Indonesia”. This provision is almost identical to the prohibition of treason in the Old Penal Code, which is notorious for its misuse to suppress peaceful political expression, especially in Papua and Maluku.²⁴

Recent cases of allegations of treason under the Old Penal Code include the arrest and detention of students of Jayapura University of Technology and Sciences (USTJ) in November 2022, when several students held a vigil to commemorate the 21st anniversary of the abduction and killing of pro-independence leader Theys Eluay. According to reports, police fired tear gas to disperse the students who had raised the Morning Star flag—a symbol of Papuan independence. Fifteen students were arrested, three of whom were subsequently sentenced to ten months’ imprisonment for treason.²⁵ Amnesty International believes that the New Penal Code will perpetuate such violations of the rights to freedom of expression and assembly.

Amnesty International does not take any position regarding the political status of any region in Indonesia, including calls for independence. However, the organization believes that the right to freedom of expression includes the right to peacefully advocate for independence through referenda, or other political positions.

Amnesty International believes that the criminalization of treason should be limited to actions that involve physical attacks/violence, in accordance with the use of the term “force” in the grounds for limitation of human rights based on national security under the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR.²⁶

4. PROTECTION OF HUMAN RIGHTS DEFENDERS

Human rights defenders (HRDs) frequently face threats, intimidation and imprisonment as they are at the forefront of the efforts to advance and protect fundamental human rights. Between January 2019 and May 2023, Amnesty International documented at least six types of attack against HRDs: intimidation and physical attacks, criminalization, digital attacks (hacking and doxing), attempted unlawful killings and/or death threats and the use of problematic legal provisions to silence critical voices (legal assaults) such as defamation. During this same period,

22. Similar concern has been expressed by the Human Rights Committee in General Comment No. 34 on article 19 of the ICCPR. The committee mentioned that “a mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.” Thus, any law on such matter, including the defamation of head of state, is of the committee’s concern.

23. General Comment No. 37 on the right of peaceful assembly, para. 72.

24. On 7 April 2021, in Maluku, at least twenty armed soldiers raided Alexander Workala’s house. Upon finding a book on the status of the Republic of South Maluku (RMS) under international law and the “Benang Raja,” the RMS flag, Alexander was taken to West Seram police station, where his head was beaten. The police accused Alexander of treason. Alexander denied the accusation and stated that he had only ever campaigned for independence by peaceful means. See: *Silencing Voices, Suppressing Criticism: The Decline In Indonesia’s Civil Liberties*, Amnesty International, 2022.

25. See Amnesty International Report 2022/23, “*The State of The World’s Human Rights*”, p. 193-194.

26. Paragraph 29 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights read: “National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”

Amnesty International also documented at least 427 physical and/or digital attacks on HRDs, affecting at least 1,106 individuals.²⁷

In August 2021, the Indonesian Coordinating Minister for Maritime and Investment Affairs accused two prominent HRDs, Fatia Maulidiyanti and Haris Azhar, of defamation. The allegation was based on a video broadcast on Azhar's YouTube channel that featured a discussion between himself and Maulidiyanti about a report arguing that multiple companies and military figures were involved in the Indonesian government's plans for exploration of the Wabu Block gold mine in Intan Jaya, Papua.²⁸



 Jakarta / Indonesia - 2023: Human rights defender Fatia Maulidiyanti and Haris Azhar on their sixth hearing trial at East Jakarta District Court © Amnesty International Indonesia.

On 17 March 2022, Azhar and Maulidiyanti were charged with defamation under Article 27 of the EIT Law. Following nearly a year of uncertainty, the case file was submitted to the Attorney General's Office in March 2023. At the time of this writing, the judicial proceedings are ongoing, with evidence suggesting that principles of fair trial have not been observed. For example, the judges provided the minister with special treatment, allowing him to testify in Maulidiyanti and Azhar's cases at the same time. This was despite the fact that Maulidiyanti and Azhar's trials were held separately since the first hearing, following the judges' rejection of a motion by Maulidiyanti and Azhar's attorneys to combine the cases. However, when the minister gave his testimony, the

27. Amnesty International monitoring data on attacks on Indonesian human rights defenders. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs). According to the 1998 HRDs Declaration and other international standards, Amnesty International defines HRDs as individuals or groups who defend and/or promote human rights at local, national, regional, or international levels without using hatred, discrimination, or violence. In this report, Amnesty International monitors HRD cases involving journalists, environmental activists, human rights activists, academics, university students, anti-corruption activists, anti-mining activists, political/Papuan activists, indigenous people, labour activists, farmers, fisherman, advocates, women's rights activists, human rights organizations, media institutions and education institutions.

28. Amnesty International, "Indonesia: Prosecution of two human rights defenders is 'blatant disrespect' for human rights," (Press Release, 8 March 2023), <https://www.amnesty.id/indonesia-prosecution-of-two-human-rights-defenders-is-blatant-disrespect-for-human-rights/> (accessed on 27 March 2023).

panel of judges decided that the trial was to be combined, allegedly due to the minister's business interests and time constraints.²⁹

In addition to Maulidiyanti and Azhar, many other individuals engaged in the defence of human rights have encountered instances of attacks and intimidation. Notable examples include Veronica Koman, Victor Yeimo, Wensislaus Fatubun and Yones Douw, among others. These cases came to the attention of the United Nations (UN) and have been incorporated into the 2022 report pertaining to cooperation with the UN, its representatives, and mechanisms in the field of human rights.³⁰

5. WOMEN HUMAN RIGHTS DEFENDERS

Women human rights defenders (WHRDs) are more likely to experience attacks targeting their bodies and identities, such as underreported sexual violence and sexist remarks, which negatively impact on their ability to exercise their rights.³¹ Although Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Law No. 7/1984 and recently passed the Law on Sexual Violence Crimes (Law No. 12/2022), WHRDs in Indonesia continue to face layered threats due to the intersection of gender, identity, cultural norms and other factors. WHRDs are often targets of misogynistic attacks and gender-based violence.

According to the findings of the National Commission on Violence Against Women (*Komnas Perempuan*), violence against WHRDs continues in Indonesia due to the lack of understanding of the important role played by women coupled with an absence of regulations governing their protection.³² Amnesty International also finds that WHRDs experience additional vulnerabilities as they often have anxiety for the safety of their children who they worry might also become targets due to their mother's activities.³³

6. ENVIRONMENTAL AND LAND RIGHTS DEFENDERS

HRDs may also experience diverse impacts from the same attacks due to their heightened vulnerability. In particular, indigenous peoples and environmental and land rights defenders are vulnerable to various types of threats, including the threat of legal action by business interests. Such legal cases are often very challenging to defend and win due to the HRD's lack of adequate resources in comparison to those of corporations.

According to UN Office of the High Commissioner of Human Rights (OHCHR), non-state perpetrators of violations against HRDs, including private companies, have an increasing impact on the economic and social rights of people residing in communities where these businesses are based.³⁴ There are several cases of members of the security forces employed by companies using excessive force and powers to stop peaceful protests by communities through violence and even forced relocation. In the case of Indonesia, Amnesty International has credible evidence of at least 44 physical and/or digital attacks by state and non-state actors against environmental and land

29. Amnesty International, "Pengadilan kasus Haris dan Fatia abaikan prinsip fair trial," <https://www.amnesty.id/pengadilan-kasus-haris-dan-fatia-abaikan-prinsip-fair-trial/> (accessed on 3 July 2023). (accessed on 3 July 2023).

30. Cooperation with the United Nations, its representatives and mechanisms in the field of human rights - Report of the Secretary-General (A/HRC/51/47), Annex II, paras. 88-93, <https://www.ohchr.org/en/documents/reports/ahrc5147-cooperation-united-nations-its-representatives-and-mechanisms-field> (accessed on 6 October 2023).

31. UNGA, "Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders (A/RES/68/181)", 18 December 2013.

32. Komnas Perempuan, "Manual Perlindungan Keamanan Perempuan Pembela HAM di Indonesia," 2022, <https://komnasperempuan.go.id/download-file/918> (accessed on 10 May 2023).

33. See Amnesty International Report, "Silencing Voices, Suppressing Criticism: The Decline in Indonesia's Civil Liberties," (Index Number: ASA 21/6013/2022) page. 33.

34. United Nations High Commissioner for Human Rights (OHCHR), Fact Sheet No. 29, "Human Rights Defenders: Protecting the Right to Defend Human Rights," (Fact Sheet, 1 April 2004), <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-29-human-rights-defenders-protecting-right-defend-human> (accessed on 10 May 2023).

rights defenders involving at least 202 men, women and institutions took place between January 2019 and May 2023.³⁵

In March 2023, dozens of officers from the police and prosecutor's office arrested Budi Pego, a farmer who has been very vocal in protesting against a gold mine that operates in Banyuwangi, East Java. His arrest was based on a 2018 Supreme Court verdict that convicted him of a crime against state security for propagating communist ideology, meaning that the verdict had been left unexecuted for nearly five years.³⁶ He was sentenced to four years' imprisonment for "openly promoting pro-communist ideology by displaying a hammer and sickle symbol on a banner during a protest in 2017". This is the first time this anti-communist provision has been used to restrict and punish peaceful protest in Indonesia since 1998.³⁷

This case is one example of how draconian legal provisions are frequently used to silence environmental and land rights defenders, in breach of their rights to freedom of expression and peaceful assembly. Among the most commonly used criminal provisions are crimes against public order and internet-based defamation. The former is usually used against those who organize protests and blockades as a popular form of resistance. In such situations, it becomes easier for companies, government officials or, in some cases, vigilante groups to infiltrate the protesters and incite a section of the protesters to engage in rioting and/or illegal activities.³⁸

Environmental defenders and Indigenous Peoples share a common goal of protecting the environment from exploitation and destruction. Consequently, they both face similar risks and threats. The absence of the right of Indigenous Peoples in Indonesia to Free, Prior and Informed Consent (FPIC) as required under international law and standards exacerbates the risk of persecution. The failure to finalize the Indigenous Peoples Bill, which should acknowledge and respect the particular rights of Indigenous Peoples, has persisted for more than a decade. It is critical that this Bill is now enacted in a timely manner and includes the right to FPIC to empower Indigenous Peoples to give or withhold their consent to activities that affect their rights, including the rights to livelihood and customary lands.³⁹

7. JOURNALISTS AND MEDIA INSTITUTIONS

Journalists, especially those reporting on human rights and public interest issues, are also subject to attacks and intimidation. Amnesty International has documented at least 182 cases of attacks against journalists and media outlets between January 2019 and May 2023, affecting at least 316 victims including individual media workers and media outlets.⁴⁰

Project Multatuli, an independent media institution, was attacked multiple times after it reported on sexual violence and other sensitive cases. In October 2021, Project Multatuli suffered a digital attack after publishing a report on child sexual abuse allegedly committed by a prominent civil servant in East Luwu, South Sulawesi. One of Project Multatuli's staff told Amnesty International that hours after publishing the report, Project Multatuli's website became inaccessible. It was later confirmed that the website had come under a DDoS (Distributed Denial of Service) attack, a form

35. Amnesty International monitoring data on attacks on Indonesian human rights defenders. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs).

36. Amnesty International, "Pemenjaan Budi Pego cederai wajah badan peradilan, termasuk Mahkamah Agung," <https://www.amnesty.id/pemenjaan-budi-pego-cederai-wajah-badan-peradilan-termasuk-mahkamah-agung/> (accessed on 3 July 2023).

37. Supreme Court Decision No. 1567 K/Pid.Sus/2018, p.6

38. Agung Wardana, forthcoming, "Hegemonic Environmental Lawfare in Southeast Asia", a research project funded by the Alexander von Humboldt Foundation at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany.

39. United Nations High Commissioner for Human Rights (OHCHR), "Free, Prior and Informed Consent of Indigenous Peoples," available at <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> (accessed on 1 April 2023)

40. Amnesty International monitoring data on attacks on Indonesian human rights defenders. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs).

of digital attack in which the perpetrators aim to disrupt internet network services. Then, in March 2023, after publishing a story on how the police were allegedly fabricating a case of child sexual abuse by seven adult males in Baubau, Southeast Sulawesi, a similar attack happened, taking their website offline for day.⁴¹

Amnesty International believes digital attacks on the media are increasing due to critical reporting. This stifles criticism, limits journalism, and threatens human rights, democracy and press freedom, as protected under Article 18 of the Law on Press (Law No. 40/1999) which penalizes the obstruction of journalists from carrying out their duties with two years in imprisonment or a fine of IDR 500 million.

At the 52nd Human Rights Council Session, the Human Rights Council's adopted Indonesia's 4th cycle UPR, in which Indonesia agreed to support six recommendations on efforts to protect HRDs, including conducting investigations into attacks on HRDs and developing procedures for ensuring the safety of HRDs.⁴²

An important steps in securing the protection of HRDs is to establish a regulatory mechanism at the legislative level, such as the Protection of Human Rights Defenders Bill. Complying with the Declaration of Human Rights Defenders (UN General Assembly Resolution 53/144), this regulation should encompass a definition of HRDs, recognition of their work, and mechanisms for their protection. This Bill is also needed to ensure that every government entity, including the security forces, have a complete understanding of the role and importance of HRDs. Amnesty International believes that such public recognition can demonstrate the state's full alignment and support of the work of HRDs.

8. DEFENDING LGBTIQ RIGHTS

The rights of LGBTIQ community in Indonesia face ongoing challenges and are increasingly under attack, particularly in the lead up to the general elections in February 2024. Amnesty International has recorded several cases of attacks and intimidation against the LGBTIQ community, including physical attacks, intimidation, discrimination at work, and discriminatory statements made by state officials and/or regulations that pose threats to their lives. This illustrates the failure of government to fulfil its obligation under international law to protect the rights of LGBTIQ people in Indonesia.

LGBTIQ people face discrimination across multiple fronts and have also been subjected to physical attacks. According to media reports between January 2021 and May 2023, verified by Amnesty International, there were at least 48 cases of attacks and intimidation in the form of, among others, police raids, criminalization and discrimination at work committed in Indonesia by state and non-state actors against LGBTIQ people.⁴³ However, we believe the actual number is likely to be higher as cases of human rights violations and abuses against LGBTIQ people are rarely exposed or reported to the authorities.

Based on media reports that Amnesty International has verified, there are instances in which state officials, instead of safeguarding LGBTIQ communities from ongoing intimidation and attack, have been engaged in perpetuating, endorsing, and overlooking discrimination against LGBTIQ people, including by issuing discriminatory statements and regulations. For instance, on 1 January 2023, the Mayor of Medan in North Sumatra, M. Bobby Afif Nasution, stated that "Medan City doesn't

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41. Project Multatuli, "*Her Two Daughters Were Sexually Assaulted. She Went to the Indonesian Police, But They Arrested Her Eldest*", <https://projectmultatuli.org/en/her-two-daughters-were-sexually-assaulted-she-went-to-the-indonesian-police-but-they-arrested-her-eldest/> (accessed on 10 August 2023).
 42. Report of the Working Group on the Universal Periodic Review, "*Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*", Indonesia Addendum, A/HRC/52/8/Add.1, para. 9. The noted recommendations are no. 140.95, 140.96, 140.97, 140.98, 140.99, 140.101.
 43. Amnesty International conducts monitoring media reports of intimidation against the Indonesian LGBTQIA+ community and verifies the reports on a regular basis. These cases include police raids, criminalization, discriminative dismissal from work and physical attacks.

have LGBT, and we're anti-LGBT!".⁴⁴ The mayor then emphasized that the city's culture does not promote same-sex relationships, so such behaviour must be avoided.⁴⁵ A few days later, on 9 January 2023, a leader of a prominent religious-based NGO in Medan quoted the mayor by saying: "Don't give space to LGBT!".⁴⁶ Amnesty International is concerned that this statement may influence other leaders and communities, and eventually intensify attacks against LGBTIQ community.

Moreover, based on verified media reports between January and May 2023, at least four state officials have made remarks that endorse intentional efforts to establish local regulations targeting the LGBTIQ community at the municipal or regional level.⁴⁷ Indeed, in July 2023, the Regional Government of Garut, West Java, enacted the Anti-Immorality Regulation (Garut Regional Regulation No. 47/2023). The regulation requires that a team, led by the Garut District Head and the Municipal Police Unit (Satpol PP), monitor and limit the activities of LGBTIQ people. The district head also requested the security forces to provide assistance and support to this team.⁴⁸ According to the regulation, LGBTIQ people being monitored will receive "preventive treatment" in order to ensure they return to the "straight path" through health, social, religious and "family-based" approaches.⁴⁹

Besides Garut, a similar regulation exists in Bogor, West Java. Article 6 of the Prevention and Management of Sexually Deviant Behaviour Regulation (Bogor Regional Regulation No. 10/2021) regards gay, lesbian, bisexual and transgender people as being "sexual deviants".⁵⁰ Under this regulation, those identified as "sexual deviants" will receive treatment such as rehabilitation and counselling. In addition, according to Arus Pelangi—a human rights organization promoting equality and anti-discrimination of LGBTIQ communities—between 2008 and 2017 at least 45 discriminatory local regulations (*Peraturan Daerah*) were passed against LGBTIQ communities.⁵¹

The enactment of local regulations against LGBTIQ people violates a number of human rights. The targeting of a specific group on the exclusive basis of sexual orientation and gender identity is, inherently, against the fundamental principles of universality, equality and non-discrimination guaranteed under international human rights. In particular, the adoption of "preventive" and "counselling" treatment referred to in both the Garut and Bogor anti-LGBTIQ regulations is harmful to people receiving the treatment. Such measures resembles conversion therapy practices, in which the Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI) has called for a ban on these practices because they are inherently humiliating, demeaning and discriminatory.⁵²

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44. CNN Indonesia, "Bobby Deklarasikan Anti-LGBT di Kota Medan: Kemaksiatan Harus Ditekan," 3 January 2023, <https://www.cnnindonesia.com/nasional/20230103072926-20-895319/bobby-deklarasikan-anti-lgbt-di-kota-medan-kemaksiatan-harus-ditekan> (accessed on 30 June 2023).
 45. *Ibid.*
 46. Antara Sumut, "MUI imbau jangan berikan ruang pada LGBT di Medan," 9 January 2023, <https://sumut.antaranews.com/berita/515652/mui-imbau-jangan-berikan-ruang-pada-lgbt-di-medan> (accessed on 30 June 2023).
 47. Detikjabar, "Usulan Perda Anti-LGBT Diprotes, Bupati: Ini Urusan Orang Garut!" <https://www.detik.com/jabar/berita/d-6541625/usulan-perda-anti-lgbt-diprotes-bupati-ini-urusan-orang-garut>; Pemkot Bandung, "Pemkot Bandung Siap Dukung Susun Naskah Akademik Perda Larangan LGBT", <https://www.bandung.go.id/news/read/7528/pemkot-bandung-siap-dukung-susun-naskah-akademik-perda-larangan-lgbt>; Antara, "Wali Kota Makassar dukung penggodokan raperda LGBT", <https://www.bandung.go.id/news/read/7528/pemkot-bandung-siap-dukung-susun-naskah-akademik-perda-larangan-lgbt>; JPNN.com, "Bobby Nasution tegas tolak LGBT, Wakil Ketua DPRD Medan dorong bentuk Perda", <https://sumut.jpnn.com/sumut-terkini/3403/bobby-nasution-tegas-tolak-lgbt-wakil-ketua-dprd-medan-dorong-bentuk-perda> (accessed on 18 July 2023).
 48. Tempo.co, "Bupati Garut Terbitkan Perbup tentang Anti Maksiat yang Larang LGBT," 13 July 2023, <https://nasional.tempo.co/read/1747404/bupati-garut-terbitkan-perbup-tentang-anti-maksiat-yang-larang-lgbt> (accessed on 18 July 2023).
 49. Portaljabar, "Bupati Garut: Pemdakab Garut Akan Tindak Pelaku LGBT Melalui Preventif Pembinaan," 13 July 2023 available at <https://jabarprov.go.id/berita/bupati-garut-pemdakab-garut-akan-tindak-pelaku-lgbt-melalui-preventif-pembinaan-9653> (accessed on 18 July 2023).
 50. Bogor Regional Regulation No. 10/2021 on the Prevention and Management of Sexual Deviant Behavior
 51. Arus Pelangi, "Catatan Kelam 12 Tahun Persekusi LGBTQI di Indonesia," 2019, p. 72 (accessed on 3 July 2023).
 52. OHCHR, "Report on Conversion Therapy", <https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf> (accessed on 20 September 2023)

In addition to harmful and discriminatory laws, LGBTIQ communities often face intimidation from other groups. The most recent instance of this took place in July 2023, when activists from eleven countries in Southeast Asia planned to gather in Jakarta for the ASEAN Queer Advocacy Week. One week prior to the event there was widespread media coverage in Indonesia advocating for the prohibition of this event.⁵³ Religious conservatives and anti-LGBTIQ groups actively lobbied authorities to prevent the event from taking place, using demonizing and aggressive messages against LGBTIQ communities. As a result of increasing pressures and security concerns, the organizers were forced to cancel the event. Amnesty International is aware of reports confirming that the organizers were subjected to intimidatory tactics, including receiving death threats and doxing.⁵⁴ In addition, a WhatsApp message was reportedly disseminated by the police, urging hotel management in Jakarta to promptly report any activities associated with the advocacy week.⁵⁵

Amnesty International is concerned that the implementation, including statements of support from state authorities, of anti-LGBTIQ or discriminatory regulations and unchecked acts of intimidation is likely to have a chilling effect on LGBTIQ communities. According to Amnesty International's conversation with groups and organizations promoting equality and anti-discrimination of LGBTIQ communities, the enactment of anti-LGBTIQ regulations drives members of the community to limit their freedom of expression, even if they do not live in the regions where the regulations are implemented.⁵⁶

The Indonesian government has a legal obligation to respect, protect, promote and fulfil the right to freedom of expression for everyone, regardless of their gender and sexual identities under the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law No. 12/2005. The government must also ensure that every person is entitled to be free from discriminative treatment as enshrined in Article 28I, section 2 of the 1945 Indonesian Constitution. The lack of adequate protection against discrimination based on sexual orientation and gender identity can be detrimental to physical, mental and wellbeing and has a detrimental impact on the right to health of LGBTIQ people.

With the adoption of Indonesia's 4th UPR cycle, Indonesia supported two recommendations to end discrimination against LGBTIQ persons, particularly in a healthcare setting, and agreed to pass anti-discrimination laws.⁵⁷ Indonesia also noted four recommendations to reject discriminatory national and local laws and to protect LGBTIQ people.⁵⁸ In order to uphold this commitment, Indonesia must first recognize the specific forms of discrimination and violence faced by LGBTIQ people and pass legislation to holistically tackle these issues, including addressing stigma, bias and prejudice, protecting LGBTIQ people from discrimination and attack, holding those suspected of criminal responsibility accountable, and providing remedy and justice to survivors.

53. CNN Indonesia, "Pertemuan LGBT se-ASEAN Batal Digelar di Jakarta," <https://www.cnnindonesia.com/nasional/20230712125409-20-972500/pertemuan-lgbt-se-asean-batal-digelar-di-jakarta> (accessed on 10 August)

54. Amnesty International received a written correspondence from the organizer concerning the situation.

55. *Ibid.*

56. Based on Amnesty International's Focus Group Discussion with ten organizations on June 2023.

57. Report of the Working Group on the Universal Periodic Review, "Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", Indonesia Addendum, A/HRC/52/8/Add.1, para. 9. The noted recommendations are no. 140.254, 140.255.

58. *Ibid.*, The noted recommendations are no. 140.251, 140.252, 140.253, 140.256.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS:

- Immediately repeal or revise problematic regulations that are used to suppress human rights including the rights to freedom of expression, association and peaceful assembly, such as Articles 27 (1), 27 (3) and 28 (2) of the EIT Law and treason provisions under the New Penal Code;
- Take effective measures to ensure that threats, attacks, intimidation and harassment of HRDs, as well as journalists and media outlets, are promptly, thoroughly, impartially, independently, transparently and effectively investigated, and that those suspected of being responsible are brought to justice in a fair trial. Those responsible should also be tried in accordance with international justice standards by passing the Protection of Human Rights Defenders Bill;
- Respect international human rights law in eradicating transphobia, homophobia, gender-based violence, and the criminalization of individuals based on their gender expression, gender identity, or sexual orientation, including by repealing national and local laws that legitimize systemic discrimination against LGBTIQ people and implementing regulations that respect, protect, promote, and fulfil their rights; and
- Immediately and unconditionally release individuals who are being detained or imprisoned solely for the peaceful exercise of their right to freedom of expression or opinion and drop any criminal proceeding against them.

RECOMMENDATIONS ON PROTECTION OF HUMAN RIGHTS DEFENDERS:

- Immediately consider and pass the Indigenous Peoples Bill in conformity with public and Indigenous Peoples' aspirations whilst ensuring it meets appropriate international law and standards to safeguard indigenous peoples' rights. It is important to note that the Bill must include FPIC principles using transparent and accessible procedures;
- Allow HRDs to freely carry out their work in a safe environment without fear and reprisal by, among others, not using treason provisions under the New Penal Code to suppress, threaten, arrest, detain or imprison individuals who peacefully express their political opinion;
- Ensure that WHRDs have access to effective remedies, including adequate access to comprehensive support services for those WHRDs who experience violence, including the provision of medical care, and legal and social services; and
- Stop the deprivation of rights, intimidation, criminalisation and violence against Indigenous Peoples and their defenders.

RECOMMENDATIONS ON PROTECTION OF RIGHTS OF LGBTIQ PERSONS:

- Revise the Law on Human Rights (Law No. 39/1999) to recognize LGBTIQ people as a protected group;
- Pass comprehensive anti-discrimination legislation to eliminate discrimination against marginalized groups, including LGBTIQ people, and to strengthen state mechanisms to protect them;
- Ensure that no public official makes statements that could be interpreted as allowing discrimination on the basis of sexual orientation or gender identity;
- Publicly condemn attacks on LGBTIQ people, and stress that such violence will not be tolerated; and
- Promptly, thoroughly, impartially, independently, transparently and effectively investigate and punish attacks on the basis of sexual orientation or gender identity expression in compliance with international human rights laws. The government must also safeguard the LGBTIQ people from any threats.



Indonesian police release gas bombs at demonstrators in front of the Jakarta parliament building, Indonesia, September 2022. © Prayoga Nugroho / Shutterstock.

HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES: A CALL FOR ACCOUNTABILITY

1. STATE OBLIGATIONS

In response to the 4th UPR cycle recommendation, Indonesia has committed to conducting prompt, thorough and transparent investigations into all allegations of extrajudicial killings and human rights violations in Papua, holding those suspected of criminal responsibility accountable, and prioritizing civilian protection, including the protection of women and children.⁵⁹ Now the government must realize this commitment in the form of concrete action. Members of the security forces suspected of human rights violations, including those with command responsibility, should be prosecuted in proceedings that meet international standards of fairness without recourse to the death penalty.

Moreover, Indonesia has committed to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a response to the 4th UPR cycle recommendation.⁶⁰ Additionally, torture has also now been defined in the New Penal Code (Articles 529 and 530), making it a specific criminal offense. With it, the New Penal Code has established several regulations, standard minimum guidelines, and ethical codes for detainee care, as well as human rights training for law enforcement on investigative interrogation.

The government must ensure that its commitment to enforce the law, rules and codes is implemented consistently at all times in accordance with international human rights standards. Despite the promise made by President Widodo to ensure accountability for human rights violations committed by members of the security forces, those suspected of criminal responsibility for human rights violations and crimes under international law are rarely brought to justice.⁶¹ One of the starkest examples is the aftermath of the Kanjuruhan disaster in Malang in which the authorities once again failed to provide justice, truth and reparation to the victims of excessive use of police force.

Amnesty International recognizes the numerous challenges that security forces face in discharging their duties. However, these challenges must not be used as pretext for undermining human rights and absolving the authorities and the security forces of their human rights obligations. It is vital to ensure and enforce accountability of the security forces in order to address human rights violations and restore trust. The absence of justice, truth and reparations results in members of the security forces feeling assured that they enjoy impunity. It is crucial for the Indonesian government to address impunity and enforce strict measures to hold all those suspected of criminal responsibility for human rights violations and crimes under international law accountable, ensuring justice.

As enshrined under international human rights law and standards, security forces have authority, but their powers are limited. Without proper limits and supervision, wide-ranging powers can unduly restrict human rights. Such limitations on power and authority are required in order to comply with international standards including the provisions of international human rights treaties ratified by Indonesia and human rights provisions in domestic legislation.

Although some steps have been taken to combat impunity, much more work needs to be done by the government.⁶² Impunity erodes the trust of the people, especially the victims' families, in the security forces. Amnesty International continues to receive reports of human rights violations and

59. *Ibid.*, The noted recommendations are no. 140.261, 140.263, 140.266, 140.267, and 140.268.

60. *Ibid.*, Recommendation no. 140.6, 140.8, 140.9, 140.10, 140.11, 140.12, and 140.13.

61. Many of those responsible for gross human rights violations have not been prosecuted for their crimes, including past gross human rights violations that have been acknowledged by President Joko Widodo. Moreover, Amnesty's report in 2018 on "*Don't Bother, Just Let Him Die: Killing with Impunity in Papua*," shows that none of the 69 incidents have been investigated by an independent institution. In 25 cases, no investigation was conducted, and in 26 cases, police or military claimed to have conducted internal investigations but did not make the results public. Only six perpetrators were held accountable for the deaths. For complete information see: <https://www.amnesty.org/en/documents/asa21/8198/2018/en/>.

62. The Paniai Trial is one of the instances. Notwithstanding Komnas HAM's recommendation that 41 people be tried for their role in the Paniai tragedy in 2014, the Attorney General's Office has only indicted one of the alleged perpetrators. Subsequently, the alleged perpetrator, a former military officer, was acquitted of all allegations of crimes against humanity and murder based on command responsibility by Indonesia's Human Rights Court in Makassar on 8 December 2022. See <https://www.amnesty.id/indonesia-verdict-in-2014-paniai-tragedy-a-slap-in-the-face-for-victims/>

crimes under international law by both the police and the military, including unlawful killings, excessive use of force as well as torture and other ill-treatment during arrest and detention.

2. EXCESSIVE USE OF FORCE

Indonesian authorities are increasingly cracking down on peaceful dissenters across the country and allowing repression by state agencies to continue with impunity. While government officials, including President Widodo, have repeatedly stated that they are committed to respecting and protecting the right to freedom of expression, the facts indicate otherwise.

In early February 2022, the Deputy Chief of the Indonesian National Police (POLRI), General (Pol) Gatot Eddy Pramono, said that the police were working to eliminate the culture of violence among police officers.⁶³ However, in May 2022, member of the police force allegedly used excessive force, torture and other ill-treatment including beatings against students and activists who staged a demonstration in Abepura, Papua. One of the students told Amnesty International that two police officers approached him, grabbing his head and hands from behind.⁶⁴ According to the student, the police kicked him in the chest and put a gun to his head and then fired it, hitting an electricity pole. Another man who was not wearing a uniform hit the student in the chest with a wooden club until he passed out.⁶⁵ At least 37 students were injured during the protest due to excessive use of force by police officers, including sustaining beatings with rubber batons and wooden clubs to the head and chest, causing severe injuries.⁶⁶

Based on information released by the Indonesian National Human Rights Commission (Komnas HAM), on 10 October 2022, dozens of Arema FC supporters stormed the pitch following the defeat of their team by arch-rivals Persebaya FC in the Kanjuruhan Stadium in Malang, East Java.⁶⁷ To disperse the crowd, police fired tear gas into the stands in an attempt to control the situation.⁶⁸ The firing of approximately 45 tear gas canisters into the crowd resulted in a stampede, which in turn resulted in many fans being trampled to death and asphyxiated as many of the stadium gates locked shut or only partially open.⁶⁹ At least 135 people were reported dead, including 40 children and two police officers, with a further 443 sustaining injuries.⁷⁰



Kepanjen, East Java, Indonesia, December 7, 2022. Arema FC supporters wrote graffiti and posted protest posters in the Kanjuruhan stadium area after the deadly panic caused by police tear gas. © Toto Santiko Budi / Shutterstock.

Amnesty International notes that three police officers were named suspects of negligence in this case. Initially, East Java's Surabaya District Court sentenced the commander of the 3rd Mobile Brigade Company of the East Java Police to 18 months' imprisonment, while the two other officers - the chief of operations of the Malang Regency Police and the former head of the Prevention Unit of the Malang Regency Police - were acquitted on 16 March 2023.⁷¹ The judges decided that there was insufficient evidence to convict them, and that the tear gas did not injure the

63. CNN Indonesia, "Polri Klaim Sedang Hilangkan Budaya Kekerasan dan Arogansi", <https://www.cnnindonesia.com/nasional/20220210174401-12-757670/polri-klaim-sedang-hilangkan-budaya-kekerasan-dan-arogansi> (accessed on 29 March 2023).

64. Interview with one of the students, 19 May 2022.

65. *Ibid.*

66. Hengky Yeimo, "Demonstran Petisi Rakyat Papua: Kami Dibubarkan, Ditendang, dan Dipukul," <https://jubi.id/tanah-papua/2022/demonstran-petisi-rakyat-papua-kami-dibubarkan-ditendang-dan-dipukul/> (accessed on 30 March 2023).

67. Komnas HAM, "Press Release: Penyampaian Laporan Pemantauan dan Penyelidikan Tragedi Kemanusiaan di Stadion Kanjuruhan Malang 1 Oktober 2022", No: 039/HM.00/XI/2022, <https://www.komnasham.go.id/files/20221102-keterangan-pers-nomor-039-hm-00-00Y.pdf> (accessed on 30 March 2023).

68. *Ibid.*

69. *Ibid.*

70. *Ibid.*

71. Amnesty International, "Indonesia: Authorities failing to provide justice to victims of football stadium disaster", <https://www.amnesty.id/indonesia-authorities-failing-to-provide-justice-to-victims-of-football-stadium-disaster/> (accessed on 30 March 2023).

football fans because the gas was carried away by the wind.⁷² As a result, the court did not find any causal link between the police operation and the victims' deaths.⁷³

On 23 August 2023, the Supreme Court finally overturned the acquittal of two police officers. The former head of the Prevention Unit of the Malang Regency Police was sentenced to two years in prison, while the chief of operations of the Malang Regency Police was sentenced to two years and six months.⁷⁴ Amnesty International believes that prosecutions should not be limited to direct perpetrators, and that investigations should also examine the involvement of the most senior responsible commanders, irrespective of rank. The authorities in this case disregarded a crime of omission and did not hold the superiors accountable.

3. UNLAWFUL KILLINGS AND TORTURE AND OTHER ILL-TREATMENT

Crimes under international law and human rights violations by security forces, including unlawful killings, have been reported in several regions of Indonesia. Amnesty International has documented at least 171 victims of torture and other ill-treatment allegedly at the hands of the security forces in 38 provinces between June 2019 and June 2023.⁷⁵

For example, in April 2022, the police allegedly tortured five youths after they were accused of being involved in a beating that resulted in the death of a student in Gedongkuning, Yogyakarta. Amnesty International has received credible information from a coalition of NGOs that during the interrogation, the five youths were repeatedly beaten.⁷⁶ The Deputy Chief of Yogyakarta Regional Police, Brigadier General (Pol) Raden Slamet Santoso, admitted that his officers used violent measures while investigating the Gedongkuning incident.⁷⁷ At the time of writing, those suspected of criminal responsibility were still under investigation by the Indonesian police's internal disciplinary unit (Provost).⁷⁸

Papua is a region with a high number of cases of unlawful killings, with at least 72 suspected incidents carried out at the hands of members of the security forces, involving 114 victims, the killings were recorded between January 2018 and May 2023.⁷⁹ The Office of United Nations High Commissioner for Human Rights (OHCHR) received reports of allegations of unlawful killings, enforced disappearances, torture and inhuman treatment and the forced displacement of at least 5,000 Indigenous Papuans by the Indonesian security forces between April and November 2021 due to the heavy security presence and ongoing armed clashes.⁸⁰

72. Voice of Indonesia, "Wind Inflated Tear Gas The Reason Judge Sentenced Free 2 Police Defendant Of The Judicial Tragedy, Police: We Respect The Court," <https://voi.id/en/news/264709/gas-air-mata-tertiup-angin-alasan-hakim-vonis-bebas-2-polisi-terdakwa-tragedi-kanjuruhan-polri-kami-hormati-pengadilan> (accessed on 3 April 2023).

73. *Ibid.*

74. Kompas.id, "MA Law Two Police in the Kanjuruhan Tragedy Case, Cancel the PN Exemption Verdict", [https://app.komp.as/voztmJk4jf2Ce4r8](https://app.kompas.as/voztmJk4jf2Ce4r8) (accessed on 25 August 2023)

75. Amnesty International monitoring data on torture and other ill-treatment. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs).

76. Amnesty International, "Surat Terbuka: Usut tuntas dugaan penyiksaan terhadap lima pemuda di Yogyakarta", <https://www.amnesty.id/surat-terbuka-usut-tuntas-dugaan-penyiksaan-terhadap-lima-pemuda-di-yogyakarta/> (accessed on 30 March 2023).

77. Kompas.com, "Wakapolda DIY Akui Anak Buah Aniaya Tersangka "Klith" yang Tewaskan Anak Anggota DPRD Kebumen di Gedongkuning", <https://nasional.kompas.com/read/2023/03/10/11403621/wakapolda-diy-akui-anak-buah-aniaya-tersangka-klith-yang-tewaskan-anak> (accessed on 30 March 2023).

78. CNN Indonesia, "Provos Periksa Anggota Polda DIY soal Dugaan Kekerasan di Kasus Klith", <https://www.cnnindonesia.com/nasional/20230314041418-12-924637/provos-periksa-anggota-polda-diy-soal-dugaan-kekerasan-di-kasus-klith> (accessed on 30 March 2023).

79. Amnesty International monitoring data on unlawful killings in Papua. For data monitoring purposes, we collect data from reliable media outlets that have been registered with the Press Council. Any data collected from the media will be verified and corroborated with our local partners (i.e., local NGOs, CSOs, and coalitions of NGOs).

80. Office of the United Nations High Commissioner for Human Rights (OHCHR), "Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid", <https://www.ohchr.org/en/press-releases/2022/03/indonesia-un-experts-sound-alarm-serious-papua-abuses-call-urgent-aid> (accessed on 30 March 2023).

According to Human Rights Monitor, as of December 2022, there are approximately 60,000 internally displaced persons (IDPs) from the Nduga, Puncak, Intan Jaya, Maybrat, Pegunungan Bintang and Yahukimo districts.⁸¹ The IDPs live in squalid conditions, deprived of various essential facilities (such as food, health services, education, and sanitation), and the vast majority of these IDPs have not received any support from the government.⁸²

Concerns regarding the situation in Papua have also been communicated to Indonesia's minister of foreign affairs on 27 December 2021 under the mandates of the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of internally displaced persons. These concerns include allegations indicating several instances of extrajudicial killings, including young children, enforced disappearance, torture and inhuman treatment and the forced displacement of at least 5,000 indigenous Papuans by security forces between April and November 2021.⁸³

According to Amnesty International's findings, on 22 February 2022 a number of military officers allegedly tortured seven minors detained following accusations of stealing an SS2 assault rifle and 25 rounds of ammunition at PT Modern Post, Tapulunik Sinak Airport, Puncak Regency, Papua.⁸⁴ The officers took the minors to a room next to the security post, interrogated and tortured them repeatedly with cables and iron bars.⁸⁵ One of the victims had injuries and bruises all over his body and claimed to have been tortured from morning until night.⁸⁶ According to the victim, the torture only stopped after one of the minors died.⁸⁷

Amnesty International is also concerned about the restrictions on access to Papua placed on international human rights NGOs and foreign media, which have been in place for many years, and include Amnesty International. The denial of access to Papuan provinces limits independent reporting of the human rights situation. It contributes to the climate of impunity in a region with a history of torture and other ill-treatment, unnecessary and excessive use of force and firearms and unlawful killings by security forces.

81. Human Rights Monitor, "*IDP Update 2022 – more than 60,000 IDPs in West Papua remain without government aid*," <https://humanrightsmonitor.org/news/idp-update-2022-more-than-60000-idps-in-west-papua-remain-without-government-aid/> (accessed on 22 June 2023).

82. *Ibid.*

83. Mandates of the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of internally displaced persons, AL IDN 11/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26909> (accessed on 6 October 2023)

84. Amnesty International, "*Penyiksaan Anak di Puncak Papua Bukti Negara Tidak Serius Lindungi Anak di Papua*", <https://www.amnesty.id/penyiksaan-anak-di-puncak-papua-bukti-negara-tidak-serius-lindungi-anak-di-papua/> (accessed on 30 March 2023).

85. Kompas.id, "*Investigasi Komnas HAM, Anggota TNI Diduga Aniaya Tujuh Anak di Sinak*", <https://www.kompas.id/baca/nusantara/2022/03/24/investigasi-komnas-ham-anggota-tni-diduga-aniaya-tujuh-anak-di-sinak> (accessed on 30 March 2023).

86. *Ibid.*

87. *Ibid.*

RECOMMENDATIONS

GENERAL RECOMMENDATIONS:

- Ensure prompt, thorough, impartial, independent, transparent and effective investigation into all allegations of human rights violations and crimes under international law by the security forces. The findings of these investigations should be made public in a timely manner;
- Where sufficient admissible evidence exists, those suspected of criminal responsibility, including those with command or superior responsibility, should be prosecuted in fair trials before ordinary civilian courts without recourse to the death penalty. Victims and their families should be provided with access to justice and effective remedies;
- Publicly acknowledge the serious problem of torture and other ill-treatment by security forces and send a clear public message to all security forces in Indonesia that torture and other ill-treatment are unacceptable and strictly prohibited at all times, that any allegations of such treatment will be promptly, thoroughly, impartially, independently, transparently and effectively investigated, and that all those suspected of criminal responsibility will be brought to justice;
- Publicly condemn all forms of gender-based violence, intimidation, and harassment by law enforcement officials, and make clear that any such acts perpetrated by security officers will not be tolerated;
- Undertake comprehensive reform of the security forces, focusing on human rights and the rule of law that aims to, among others, achieve equal treatment and opportunities for all in the access to security and justice, with the police and military services protecting and promoting respect for human rights; and
- Guarantee that international human rights organizations and journalists are, in practice, provided with unimpeded access to Papua to ensure that human rights violations are fairly reported to national and international communities.

RECOMMENDATIONS ON REGULATION AND INSTITUTIONAL REFORM:

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, incorporate the provisions into domestic law and implement it in policy and practice;
- Revise the Law on Military Tribunals (Law No. 31/1997) so that military personnel suspected of offences involving human rights violations are prosecuted only before independent civilian courts in proceedings that meet international fair trial standards;
- Ensure that appropriate capacity-building, including human rights training, is provided throughout the chain of command from senior to lower rank officers, to guarantee that the entire structure of the security forces understands the human rights principles applicable to their work; and
- Ensure that there are clear guidelines requiring members of the security forces to report abuses, and that personnel at all levels of the chain of command, including at the local level, know about these guidelines and are held responsible for enforcing such guidelines, with penalties imposed for failing to report, or covering up, misconduct.

RECOMMENDATIONS ON THE RIGHTS OF VICTIMS AND IDPs:

- Ensure that violence, intimidation, and harassment against women are promptly, independently, and impartially investigated in accordance with the Law on Sexual Violence Crimes;
- Ensure that the police establish a dedicated and specialized directorate to address violence against women and children, staffed with trained personnel with expertise in handling cases of gender-based violence. This directorate should collaborate with relevant agencies and organizations to guarantee a coordinated and effective response to cases of violence against women and children;
- Ensure and facilitate unhindered humanitarian access to humanitarian organizations, churches, UN agencies and their implementing partners to provide access to food, medical supplies, education and sanitation to the IDPs in need in Papua; and
- Guarantee the safe, voluntary and dignified return of the IDPs to their homes, including by significantly reducing the heavy security force presence in villages in Papua that may create fear and insecurity from the conflict.



Maria Catarina Sumarsih, mother of the late Bernardinus "Wawan" Realino Norma Irmawan, victim of Semanggi shooting, attends the 750th Kamisian rally in front of the State Palace in Jakarta to demand the government to give justice for human rights violations. © Amnesty International Indonesia.

END IMPUNITY: JUSTICE FOR VICTIMS OF CRIMES UNDER INTERNATIONAL LAW

At the 52nd session of the UPR in March 2023, the Human Rights Council's adopted Indonesia's 4th cycle UPR, in which Indonesia agreed to support the recommendation "to combat impunity effectively by promptly investigating past and ongoing human rights violations". Similarly, Indonesia also agreed to support recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). However, Indonesia only went as far as noting recommendations to ratify the Rome Statute of the International Criminal Court.⁸⁸

While the legal framework for gross violation of human rights in Indonesia has been regulated by the Law on Human Rights and Law on Human Rights Courts (Law No. 26/2000), parliament recently replaced its key provisions with weaker regulations under the New Penal Code. These reduce the sanctions against perpetrators and do not regulate command responsibility.⁸⁹ This has raised questions and concerns that those responsible for issuing an order that violates fundamental rights and freedoms could result in a loss of command or superior responsibility.

In addition, the introduction of new provisions regarding genocide and crimes against humanity in the New Penal Code appear to create legal uncertainty by not stipulating, as enshrined under the International Covenant on Civil and Political Rights (Article 15(2)) to which Indonesia is a state party, that nothing in the New Code "shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations," as previously regulated under the Law on Human Rights. This provides the potential for authorities to deny victims of gross human rights violations and crimes under international law access to justice, truth, and reparations for past crimes, as the framework of the new regulation could be used to deliberately misinterpret the application of the legality principle under international law.

Meanwhile, victims of gross human rights violations and crimes under international law continue to seek justice, truth and reparations while the government's commitment to end impunity remains in question. On 11 January 2023, enacting a recommendation from the government-commissioned Non-Judicial Settlement Team for Past Gross Human Rights Violations (PPHAM), President Widodo acknowledged and expressed his regret for 12 incidents of past gross human rights violations and vowed to prevent any reoccurrence in the future.⁹⁰ The non-judicial settlement is a process tasked with settling gross human rights violations outside of judicial procedures, comprising of compensation to the victims including rehabilitation and social assistance with the aim of victim recovery.⁹¹

The 12 cases acknowledged by the government are: 1) The 1965-66 mass killings; 2) The 1982-1985 mysterious shootings (Petrus); 3) The 1989 Talangsari Lampung mass killings; 4) The 1989 Rumah Geudong and Pos Sattis torture and killings, Aceh; 5) The enforced disappearances of Anti-Suharto activists in 1997-1998; 6) The 1998 May riots; 7) The Trisakti University and Semanggi I-II shootings and killings in 1998-1999; 8) The shaman killings in Banyuwangi in 1998-1999; 9) The 1999 Simpang KKA killings in Aceh; 10) The Bloody Crimes Against Humanity in Wasior, Papua in 2001-2002; 11) The Bloody Crimes Against Humanity in Wamena, Papua in 2003; and 12) The 2003 torture in Jambo Keupok Aceh. In March, President Joko Widodo issued Presidential Decree No. 4/2023 and Presidential Instruction No. 2/2023 to regulate the implementation of recommendations made by PPHAM.⁹²

Although President Widodo has made promises to solve past human rights violations and has taken positive steps by acknowledging 12 gross human rights violations that occurred between

88. Report of the Working Group on the Universal Periodic Review, "Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", Indonesia Addendum, A/HRC/52/8/Add.1, para. 9. The noted recommendations are no. 140.7, 140.27, 140.28, 140.29, 140.196.

89. Law No. 1/2023 on Penal Code, <https://peraturan.bpk.go.id/Home/Details/234935/uu-no-1-tahun-2023>

90. For President's statement, <https://www.presidentri.go.id/siaran-pers/presiden-jokowi-sesalkan-terjadinya-pelanggaran-ham-berat-di-tanah-air/> (accessed on 28 March 2023).

91. Statement from staff of the Executive Office of the President, <https://www.ksp.go.id/en/presidential-decree-on-non-judicial-settlements-of-past-human-rights-violations-centers-its-attention-to-victims-reparation.html> (accessed on 9 August 2023)

92. Presidential Instruction No. 2/2023 on the Implementation of Recommendations for Gross Human Rights Violations, <https://peraturan.bpk.go.id/Home/Details/24515/inpres-no-2-tahun-2023>.

1965 and 2003, further action to bring those suspected of criminal responsibility to justice and victims' access to the truth have yet to be made.

Amnesty International recognizes President Widodo's acknowledgement as a step to ensuring the provision of reparations to victims of gross human rights violations. We believe that the Indonesian government must conduct an effective investigation into any violations perpetrated by its officials in accordance with the state's duty to protect and guarantee human rights. Yet, despite government acknowledgement that gross human rights violations took place in Indonesia due to a number of overlapping factors, including acts of commission and omission by the state,⁹³ and despite President Widodo's statement that he will not preclude further judicial action, victim groups and human rights organizations are concerned that the non-judicial settlements are taken simply as a pretext to avoid a responsibility to hold those suspected of criminal responsibility into account.

This concern arises as a result of the government's failure to guarantee due process in the context of trials, and the fact that, when those suspected of criminal responsibility are brought to trial, they are all too frequently acquitted. This is evident in the trial of the 2014 Paniai tragedy. On 8 December 2022, a former military commander was acquitted by the Human Rights Court in Makassar, South Sulawesi province, of the unlawful killing of four Papuan high school students in Paniai District in 2014.⁹⁴

Previous investigations by Komnas HAM found that members of the XVII/Cenderawasih military unit opened fire on a crowd of Indigenous Papuans protesting alleged military abuses of Papuan children, killing four minors and injuring 21 others.⁹⁵ Additionally, many Papuans and other civil society organizations questioned the decision to hold the human rights court in Makassar rather than in Papua, as mandated in the Special Autonomy Law on Papua (Law No. 21/2001).⁹⁶ The Special Autonomy Law states that the human rights court involving cases in Papua must be held in Papua. This is important for providing transparency and accountability not just for the Indonesian public in general, but for Papuans in particular.⁹⁷

Additionally, during the investigation phase of cases of gross human rights violations, obstacles frequently arise. As enshrined under Law on Human Rights Court, if a preliminary investigation (*pro justitia*) from Komnas HAM finds sufficient evidence of gross human rights violations, the Attorney General's Office (AGO) is obligated to examine the findings and prosecute the case. However, this does not happen in practice as in a number of instances, the AGO has not considered the preliminary findings from Komnas HAM as meeting substantive requirements for proceeding with an investigation.⁹⁸ To date, there are thirteen investigations of gross human rights violations that have stalled because of this issue.⁹⁹

Amnesty International is also concerned that due to the recommendation to limit the provision of compensation to the 12 acknowledged cases, other victims of gross human rights violations will

93. Executive Summary of PPHAM's report received by Amnesty International. Amnesty International sent a letter (No. 043/AII - Kemenpolhukam RI/II/2023) on 7 March 2023 to the Coordinating Ministry for Politics, Law, and Human Rights requesting the full report to understand the comprehensive analysis, but at the time of this writing, no response has been received.

94. Amnesty International, "Indonesia: Verdict in 2014 Paniai tragedy a 'slap in the face' for victims", <https://www.amnesty.id/indonesia-verdict-in-2014-paniai-tragedy-a-slap-in-the-face-for-victims/> (accessed on 29 March 2023).

95. *Ibid.*

96. In Article 45 of the Special Autonomy Law in Papua, it is stated that to carry out the enforcement of human rights in Papua, the government should establish representative offices of Komnas HAM, the Human Rights Court, and the Truth and Reconciliation Commission in Papua.

97. Media Indonesia, "Warga Minta Pemerintah Gelar Pengadilan HAM Berat Paniai di Papua", <https://mediaindonesia.com/politik-dan-hukum/510155/warga-minta-pemerintah-gelar-pengadilan-ham-berat-paniaidi-papua> (accessed 20 June 2023)

98. BBC Indonesia, "Kejaksaaan Agung kembalikan berkas kasus pelanggaran HAM berat, bagaimana komitmen Presiden Jokowi?", <https://www.bbc.com/indonesia/indonesia-46822119> (accessed on 3 April 2023); Tempo, "Beda Paradigma Komnas-Kejagung Hambat Penanganan Kasus HAM Berat", <https://nasional.tempo.co/read/1351583/beda-paradigma-komnas-kejagung-hambat-penanganan-kasus-ham-berat> (accessed on 29 March 2023)

99. Amnesty sent a letter to both Komnas HAM (No. 010/AII - Komnas HAM RI/II/2023) and the AGO (No. 011/AII - Kejaksaaan Agung RI/II/2023) in January 2023 requesting list of cases and update of investigation process of gross human rights violations within their authority. In their response, Komnas HAM explained that it has submitted 16 investigation results to the AGO. However, in the AGO's response to Amnesty, they stated the 13 investigations are still in the investigation process at Komnas HAM.

be excluded. Thus, acknowledgement and the provision of similar redress to victims of other gross human rights violations, such as the murder of prominent human rights activist Munir, the invasion and occupation of East Timor from 1975 to 1999, the 1984 Tanjung Priok massacre, the 2000 Abepura incident, and the 2014 Paniai tragedy remain uncertain.¹⁰⁰

Furthermore, the Presidential Instruction fails to specifically outline the official acknowledgement and provision of redress to victims of conflict-related sexual and gender-based violence, such as in the case of the 1965–1966 mass killings and the May 1998 riots.¹⁰¹ In these cases, the criteria and procedures for accessing reparations must take into account the gender-specific nature of the harm suffered, including consequences of stigma and with the objective to overcome structures of inequality and discrimination.¹⁰² The failure to provide proportionate reparations to victims of gender and sexual violence may expose victims to the risk of further violence as it may send the message that violence against women and children is socially acceptable.

Non-judicial settlement does not replace nor nullify Indonesia's obligation to investigate and, if there is sufficient evidence, prosecute those suspected of criminal responsibility for gross human rights violations and crimes under international law and in fair trials before ordinary civilian courts and without recourse to the death penalty. Also, non-judicial settlement does not replace the government's obligation to ensure victims' rights to justice, truth and full and effective reparation to address the harm they have suffered. The state's duty to protect and guarantee human rights encompasses its responsibility to fulfil the right to truth for victims of gross human rights violations, as it is an inalienable and autonomous right.¹⁰³

Meanwhile, under Presidential Instruction No. 2/2023, different ministries have been tasked with providing medical care, social services and other compensation to victims. However, according to a number of victim groups and human rights organizations, there is no clear mechanism for collecting data on the number of victims and their needs.¹⁰⁴ As a result of the exclusion of numerous victims from the process, their rights to redress and reparation are not met.¹⁰⁵

Moreover, the Presidential Instruction does not include two essential recommendations from PPHAM, namely correcting the official history as told by the government (historical clarification) and the memorialization of tragedy. This raises concerns from victims and human rights activists, as historical clarification and memorialization are two methods for preserving the memory of tragedies and preventing reoccurrence in the future. Moreover, the process of historical clarification can serve as a crucial measure in reaffirming the dignity of victims and restoring their reputation, as well as that of their family members, who have endured unfounded accusations. This process is particularly important as a practical approach to restoring victims' dignity is yet to be evidenced.

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100. Indonesia has conducted four trials of gross human rights violations: the East Timor violations, the killings in Tanjung Priok in 1984, extrajudicial execution and torture in Abepura in 2000, and the killing of civilians in Paniai in 2014.
 101. In the final report of the International People's Tribunal on Crimes Against Humanity Indonesia 1965, found widespread sexual violence after the 1965 tragedy, see: *FINAL REPORT OF THE IPT 1965* OHCHR [https://uprdoc.ohchr.org > downloadfile](https://uprdoc.ohchr.org/downloadfile). In the May 1998 riot, the Joint Fact-Finding Team (TGPF) found at least 92 cases of sexual violence against women in Jakarta, Medan and Surabaya.
 102. OHCHR, "Sexual and Gender-Based Violence in the Context of Transitional Justice", October 2014, https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OnePagers/Sexual_and_gender-based_violence.pdf (accessed on 10 August 2023).
 103. The right to the truth covers victims' entitlement to know the full and complete truth as to causes and conditions pertaining to the gross human rights violations, reasons for perpetration, identity of perpetrators, fate and whereabouts of the victims, and progress and results of the investigation. Further see: United Nations General Assembly, Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1, 2005; Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91, 2006; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147
 104. Amnesty sent a letter to Ministry of Home Affairs (*Kementerian Dalam Negeri*) in July 2023 requesting the data collection mechanism for victims of gross human rights violation. However as of this writing, Amnesty International has not received any response yet.
 105. Tempo, "Data Semrawut Pelanggaran HAM berat", <https://majalah.tempo.co/read/nasional/169215/data-pelanggaran-ham-berat>, (accessed on 9 October 2023); Kompas, "27 Korban Pelanggaran HAM Berat Rumah Geudong Pertanyakan Kejelasan Status", <https://www.kompas.id/baca/nusantara/2023/07/02/27-orang-korban-pelanggaran-ham-berat-rumoh-geudong-pertanyakan-kejelasan-status> (accessed on 9 October 2023).

Indeed, on 23 June 2023, President Widodo inaugurated the non-judicial settlement process at Rumah Geudong in Pidie, Aceh province.¹⁰⁶ A week before the President's arrival, the remainder of the structure of Rumah Geudong was demolished, leaving only the wells and concrete steps in the vicinity of the building. Human rights organizations and victim's groups condemned the demolition because the building was the only remaining physical evidence of the Rumah Geudong tragedy.¹⁰⁷ In addition, impunity persists as officers suspected of perpetrating gross human rights violations have been given senior positions in the government, rather than held to account.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS:

- Instruct the AGO to undertake investigations of gross human rights violations based on Komnas HAM's preliminary investigation and recommendations in accordance with the Law on Human Rights Court;
- Accede to the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court, incorporate the provisions into domestic law and implement them in policy and practice;
- Ratify, without making any reservation, the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); incorporate provisions into domestic law and implement them in policy and practice; and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other states parties.
- Provide access to justice and effective remedies for victims and establish a programme to provide full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence) to all victims of past human rights violations in Indonesia. The programme should be devised in consultation with victims, to ensure that the reparation programme is effective and reflects the diverse needs and experiences of victims/survivors, including based on gender or any other status;
- Restore victim dignity by initiating a national program to provide the truth to victims and the public clarifying the causes and conditions pertaining to the gross human rights violations, reasons for perpetration and conditions of victimization; and
- Refrain from appointing individuals reasonably suspected of having carried out or carrying out crimes under international law to a strategic and commanding position, pending effective investigations into such allegations or which would grant them immunity from prosecution. In cases where any individuals suspected of criminal responsibility for crimes under international law hold government positions, they should be removed from active duty and prosecuted in fair trials before ordinary civilian courts and without recourse to the death penalty.

106. Rumah Geudong was used as a torture house for civilians accused of having affiliations with Free Movement Aceh when the region was under the status of a Military Operation Area (DOM) in 1989-1998.

107. Amnesty International, "Penghancuran Rumah Geudong merusak upaya keadilan atas kejahatan kemanusiaan", <https://www.amnesty.id/penghancuran-rumoh-geudong-merusak-upaya-keadilan-atas-kejahatan-kemanusiaan-di-aceh/> (accessed on 3 July 2023)

RECOMMENDATIONS ON VICTIMS' RIGHTS TO JUSTICE:

- Establish human rights court in Papua as mandated by the Special Autonomy Law on Papua to address human rights violations occurring in Papuan provinces;
- Review all information that the AGO has received in relation to crimes under international law committed in Indonesia, including from Komnas HAM and other bodies, and ensure complete investigations;
- Promptly reopen the criminal investigation of the Paniai shootings, so all persons suspected of criminal responsibility are effectively, thoroughly, impartially, independently, transparently and effectively investigated and, if there is sufficient admissible evidence, prosecuted in fair trial before a criminal court; and
- Continue to investigate all cases of gross human rights violations and crimes under international law in which the suspects have been released, until such time that all of those suspected of criminal responsibility, both directly and those in command or in their position as superiors, are identified and brought to justice.

RECOMMENDATIONS ON VICTIMS' RIGHTS TO TRUTH, REPARATION, AND GUARANTEE OF NON-RECURRENCE:

- Ensure victims and victims' families meaningful participation in the reparation programmes, from planning process to the implementation;
- Acknowledge and incorporate the history of gross human rights violations in official records, such as history books and memorialization to preserve individual and collective memory of the tragedy and to prevent the recurrence of violations in the future; and
- Establish mechanisms for the comprehensive collection of data of victims and their families to guarantee proportional and adequate compensation, as part of any non-judicial settlement process. The approach to data collection must also include trauma-informed methodologies.

**AMNESTY INTERNATIONAL IS A
GLOBAL MOVEMENT FOR HUMAN
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MATTERS TO US ALL.**

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FREEDOM, JUSTICE, EQUALITY:

HUMAN RIGHTS AGENDA FOR THE ELECTED GOVERNMENT OFFICIALS

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