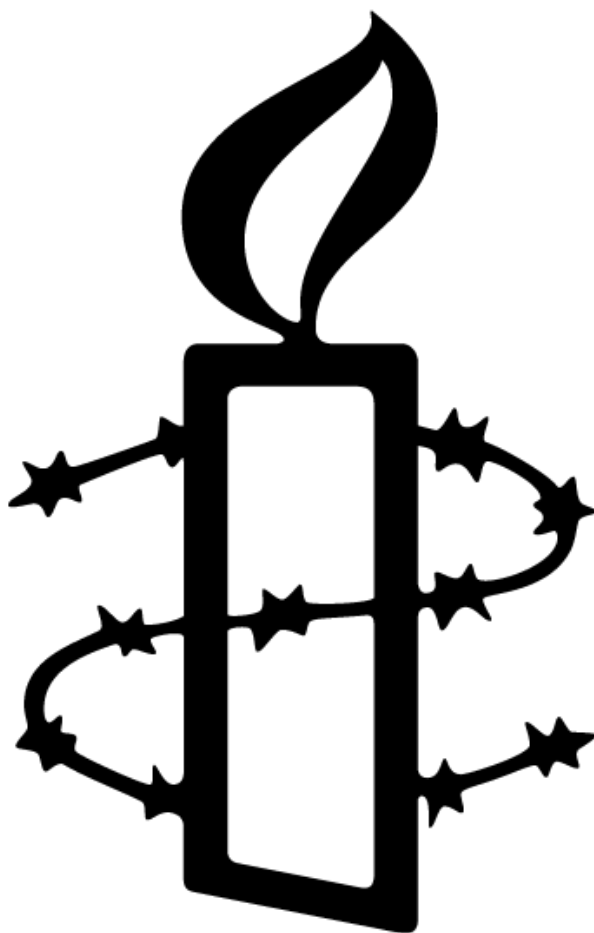


INDONESIA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
140TH SESSION, 4-28 MARCH 2024



AMNESTY
INTERNATIONAL



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In this submission to the UN Human Rights Committee (the Committee), Amnesty International emphasizes concerns on violations of the obligation of states to ensure access to justice and effective remedies for victims of past crimes under international law, the right to life, the right to be free from torture and other ill-treatment, freedom of opinion and expression, the right to peaceful assembly and the right to participate in public affairs.

1. INTRODUCTION

Amnesty International is providing the following information to the UN Human Rights Committee (the Committee) in advance of the consideration of Indonesia's second periodic report in March 2024. This submission emphasizes concerns about Indonesia's compliance with the International Covenant on Civil and Political Rights (the Covenant), focusing on violations of the obligation of states to ensure access to justice and effective remedies for victims of past crimes under international law, the right to life, the right to be free from torture and other ill-treatment, freedom of opinion and expression, the right to peaceful assembly and the right to participate in public affairs. This is not an exhaustive list of concerns.

2. PAST CRIMES UNDER INTERNATIONAL LAW, GROSS HUMAN RIGHTS VIOLATIONS, AND THE STATE OBLIGATION (ARTICLE 2(3))

On 26 August 2022, Indonesian President Joko Widodo, signed Presidential Decree No. 17 of 2022 establishing the Non-Judicial Settlement of Past Gross Human Rights Violations Team (PPHAM Team). Article 3 of Decree 17/2022 stipulates that the PPHAM Team's role was to disclose past crimes under international law and gross human rights violations, and to propose non-judicial resolutions, such as rehabilitation, social support and health insurance to benefit victims and their families, as well as suggesting actions to guarantee non-recurrence.¹

The PPHAM Team concluded its work and delivered its findings to the President on 29 December 2022. Subsequently, on 11 January 2023, the President publicly disclosed some of its findings, including an acknowledgment of and regret for 12 past crimes under international law and gross human rights violations. In response to PPHAM Team's report, President Joko Widodo issued two regulations on 15 March 2023: Presidential Decision 4 of 2023 on the Establishment of the Monitoring Team for the Non-Judicial Settlement of Gross Past Human Rights Violations Team's Recommendations (PKPHAM Team); and Presidential Instruction 2 of 2023 on the Implementation of Team PPHAM's Recommendations.

Decision 4/2023 stipulates the composition of PKPHAM team, which comprises a Steering Committee and an Executive Team.² Instruction 2/2023 describes in more detail: how the two teams should carry out their mandates and operationalize PPHAM Team's recommendations on a more technical level; and outlines the responsibilities of relevant ministries. For instance, it is the duty of the Ministry of Home Affairs to coordinate regional governments to collect victim data, of the Ministry of Public Works and Housing to build memorials, and of the Chief of National Police to conduct a series of human rights training sessions for its personnel and so on.

However, a clear plan to implement each of PPHAM Team's recommendations has not been communicated to the public. For instance, there are no clear guidelines on how the Ministry of

¹ BPK RI, "Keputusan Presiden (KEPPRES) Nomor 17 Tahun 2022: Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran Hak Asasi Manusia yang Berat Masa Lalu" (Presidential Decree (KEPPRES) No. 17 of 2022: The Establishment of the Non-Judicial Settlement of Past Gross Human Rights Violation Team), <https://peraturan.bpk.go.id/Details/226936/keppres-no-17-tahun-2022> (accessed on 6 October 2023).

² According to Article 6 of Decision 4/2023, the Steering Committee's mandates are threefold: providing guidance to the Executive Team; establishing strategic issues and steps to resolve problems; and reporting on monitoring and evaluation processes. Article 8 of Decision 4/2023 stipulates that the Executive Team was tasked with: monitoring, evaluation and control; conveying recommendations and considerations to the Head of the Steering Committee; and reporting on monitoring and evaluating findings periodically, and at the request of the Head of the Steering Committee'.

Finance should carry out its mandate stipulated under Instruction 2/2023 to coordinate ministerial and institutional budgets to implement PPHAM Team's recommendations.³ Furthermore, concerning the collection of victim data, Law 39 of 1999 on Human Rights, and Law 26 of 2000 on the Human Rights Court, stipulate that the compilation of victim records is the responsibility of the National Human Rights Commission (Komnas HAM) in the context of investigating crimes under international law and human rights violations. However, Instruction 2/2023 suggests that the Director General of Population and Civil Registration under the Ministry of Internal Affairs should take on a similar role.

When the President announced his acknowledgement and regret for 12 past crimes under international law and gross human rights violations, Amnesty International had already stressed the importance of pursuing justice and accountability simultaneously, because non-judicial means should not be perceived as a replacement for fulfilling the obligation under international law to investigate violations effectively, promptly, thoroughly and impartially, and, if there is sufficient admissible evidence, to prosecute all those suspected of criminal responsibility in fair trials before ordinary civilian courts and without recourse to death penalty.⁴

Although President Joko Widodo has stated that the 'establishment and recommendations of the PPHAM Team are not a substitute for victims' access to justice, the Coordinating Minister for Political, Legal, and Security Affairs declared on 23 June 2023 that addressing past crimes under international law and gross human rights violations through judicial procedures is "difficult" from a criminal procedural law perspective, especially due to the lack of evidence.⁵ This statement comes in the context of numerous unresolved cases, with those suspected of crimes under international law yet to face prosecution and legal consequences.

As enshrined under Law 26/2000, 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 because, in several instances, the AGO has not considered Komnas HAM's preliminary findings as meeting substantive requirements for proceeding with an investigation.⁶ To date, 13 investigations of gross human rights violations have stalled because of this.⁷ Additionally, on 8 December 2022, the courts acquitted a former military commander of the unlawful killing of four Papuan high school students in the tragedy in Paniai District in 2014.⁸

³ In response to Amnesty International's request for Public Information Openness (KIP), as detailed in letter 131/AII-Kemenkeu RI/II/2023 dated 13 July 2023, the Ministry of Finance, in its communication letter S-147/AG.1/2023 asserts that "fulfillment of budget requirements for the completion of Team PPHAM's recommendations comes from the budget of the relevant Ministry/Institution." The formula for calculating compensation will be "followed up in accordance with the duties, functions and authority of the relevant Ministry/Institution according to the type/option of recommendations for recovery."

⁴ Amnesty International, "KASUM: Tim Penyelesaian Non-Yudisial Pelanggaran HAM Berat Masa Lalu dan Komposisi Keanggotaannya Melukai Korban serta Mencederai penegakkan HAM," <https://www.amnesty.id/kasum-tim-penyelesaian-non-yudisial-pelanggaran-ham-berat-masa-lalu-dan-komposisi-keanggotaannya-melukai-korban-serta-mencederai-penegakkan-ham/> (accessed on 8 September 2023).

⁵ Republika, "Mahfud:Proses Hukum Pelaku Pelanggaran HAM Berat Tetap Berjalan," <https://news.republika.co.id/berita/rwpljg409/mahfud-proses-hukum-pelaku-pelanggaran-ham-berat-tetap-berjalan> (accessed on 18 October 2023).

⁶ BBC Indonesia, "Kejaksaan Agung kembalikan berkas kasus pelanggaran HAM berat, bagaimana komitmen Presiden Jokowi?," <https://www.bbc.com/indonesia/indonesia-46822119/> (accessed on 21 November 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 21 November 2023).

⁷ Amnesty sent a letter to both Komnas HAM (010/AII - Komnas HAM RI/II/2023) and the AGO (011/AII - Kejaksaan Agung RI/II/2023) in January 2023 requesting a list of cases and an update of the process of investigating gross human rights violations within their authority. In response, Komnas HAM explained that it has submitted 16 investigation results to the AGO. However, in the AGO's response to Amnesty, they stated that the 13 investigations are still in the process of being investigated by Komnas HAM.

⁸ 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 21 November 2023).

2.1 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to:

- Review all information that the AGO has received about crimes under international law committed in Indonesia, including from Komnas HAM and other bodies, and ensure thorough, impartial, independent, transparent and effective investigations.
- Thoroughly, impartially, independently, transparently and effectively investigate all cases of crimes under international law and gross human rights violations in which the suspects have been released, until all those who are suspected of criminal responsibility, both directly and people in command or superiors, are identified and brought to justice in fair trials.
- 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-repetition) to all victims of past human rights violations in Indonesia. The programme should be devised in consultation with victims to ensure that it is effective and reflects the different needs and experiences of victims and survivors, including based on gender or any other status.

3. THE RIGHT TO LIFE (ARTICLE 6(1))

Violations of the right to life have been reported in several regions of Indonesia, including unlawful killings and enforced disappearance⁹ Papua is one of the regions in Indonesia with the highest number of unlawful killings, with at least 65 suspected incidents carried out at the hands of members of the security forces, involving 106 victims, recorded between January 2018 and May 2023.

The UN Special Procedures have expressed concerns regarding reports alleging unlawful killings, enforced disappearances, torture and other ill-treatment and the forced displacement of at least 5,000 Indigenous Papuans by the Indonesian security forces between April and November 2021, most of whom have not returned to their homes due to the heavy security presence and ongoing armed clashes.¹⁰

In August 2022, six members of the Indonesian military killed and mutilated four Indigenous Papuans in Timika, West Papua province after a deal to buy weapons from the Indonesian troops went wrong. On 26 August 2022 local residents of Iwaka village, outside the town of Timika, discovered their bodies in sacks floating down the Pigapu River.¹¹ In February 2023, a military court in Papua region sentenced the five soldiers to prison terms ranging from 15 years to life. One of the six soldiers died before receiving a verdict. They were all fired from their positions in the Indonesian military.¹²

In many instances, the authorities fail to investigate these threats and to bring suspected perpetrators to justice, leading to impunity and encouraging further threats and attacks.

⁹ Unlawful killings carried out by order of a government or with its complicity or acquiescence violate the right to life, a key human right protected both by international human rights law and Indonesia's Constitution.

¹⁰ UN Special Procedures, "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).

¹¹ Human Rights Watch, "Indonesian Soldiers Arrested for Killing 4 Papuans", <https://www.hrw.org/news/2022/09/02/indonesian-soldiers-arrested-killing-4-papuans> (accessed on 25 October 2023).

¹² Al Jazeera, "Indonesia military court jails four soldiers over Papua killings", <https://www.aljazeera.com/news/2023/2/16/indonesia-military-court-sentences-4-soldiers-for-papua-killings> (accessed on 25 October 2023).

In September 2023, joint military police officers allegedly shot five Indigenous Papuans to death in Yahukimo Regency, Papua Pegunungan province. The five victims, aged between 15 and 18, were members of the Kingmi Church Papua congregation. According to the Head of the Yahukimo Churches Federation, Pastor Atias Matuan, military personnel were stationed at the Dekai city limits, requiring residents leaving subdistrict Dekai to report to the security post. If they failed to report, they were considered part of the West Papua National Liberation Army, even if they were not carrying war equipment. The five victims were walking on foot, and were not carrying any sharp tools or weapons, but the Indonesian security forces shot them, and they died from gunshot wounds to the abdomen, chest and legs.¹³ As of the end of December 2023, no investigative process has been initiated.

3.1 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to ensure that:

- All unlawful killings alleged to have been committed by Indonesian security forces are investigated promptly, thoroughly, independently, impartially, transparently and effectively. The investigation, and any prosecutions, should not be limited to direct perpetrators, but should also investigate any involvement of commanders, irrespective of rank.
- Where sufficient admissible evidence is found, suspects are prosecuted before civilian courts in proceedings that meet international fair trial standards and do not impose the death penalty.
- Victims and their families receive comprehensive and effective reparations in accordance with international standards.

4. TORTURE AND OTHER ILL-TREATMENT (ARTICLE 7)

Acts of torture and other ill-treatment involving members of security forces as alleged suspects are still reported across Indonesia. In July 2023, nine members of the Jakarta Metropolitan Police allegedly tortured a suspected drug dealer, resulting, after a severe beating, in the death of the victim.¹⁴ The officers tortured the alleged suspect to obtain a confession, which he did not make. After the victim's death, they disposed of the body in Bandung, where a truck driver finally found it a few days later. At the time of writing this report, none of those suspected of crimes of the torture had been charged.

In Papua, a region with a high number of cases of torture and other ill-treatment, torture is often used to obtain confessions from suspects. On 22 February 2022, a number of military officers tortured seven minors detained after having been accused of stealing an SS2 assault rifle and 25 rounds of ammunition at PT Modern Post, Tapulunik Sinak Airport, Puncak.¹⁵ The officers took the minors to a room next to the security post, where they interrogated and tortured them repeatedly with cables and iron bars.¹⁶ One of the victims had injuries and bruises all over his body and claimed to have been tortured from morning until night. According to the victim, the torture only stopped after one of the

¹³ Jubi, "PGGY: 5 shooting victims in Yahukimo are not members of TPNPB", <https://jubi.id/tanah-papua/2023/pggy-5-korban-penembakan-di-yahukimo-bukan-anggota-tpnpb/> (accessed on 29 October 2023).

¹⁴ CNN Indonesia, "Aniaya Tersangka sampai Tewas, 9 Polisi Polda Metro Terancam Dipecat" (Suspect beaten to death, 9 Metro Police officers threatened with dismissal), 29 July 2023, <https://www.cnnindonesia.com/nasional/20230728232859-12-979296/aniaya-tersangka-sampai-tewas-9-polisi-polda-metro-terancam-dipecat> (accessed on 29 October 2023).

¹⁵ Amnesty International, "Penyiksaan Anak di Puncak Papua Bukti Negara Tidak Serius Lindungi Anak di Papua", (Child Torture in Papua is a Proof that State is not Serious in Protecting Children in Papua) <https://www.amnesty.id/penyiksaan-anak-di-puncak-papua-bukti-negara-tidak-serius-lindungi-anak-di-papua/> (accessed on 30 March 2023).

¹⁶ 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).

minors died. At the time of writing this report, none of the none of those suspected of crimes of torture had been charged.

In response to the 4th Universal Periodic Review (UPR) cycle recommendation in March 2023, Indonesia has committed to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The enactment of OPCAT requires states parties to establish national preventive mechanisms in the form of visiting bodies to monitor and oversee detention places, such as prisons. However, at the time of writing this report, Indonesia had not yet ratified OPCAT.

4.1 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to ensure that:

- 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 strictly prohibited at all times; any allegations of such treatment must be promptly, thoroughly, impartially, independently, transparently and effectively investigated; and all those suspected of criminal responsibility will be brought to justice in fair trials and without recourse to the death penalty.
- Undertake comprehensive reform of the security forces, focusing on human rights and the rule of law, which aims to achieve, among other things, equal treatment and opportunities for everyone in gaining access to security and justice, with the police and military services protecting and promoting respect for human rights.
- 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 them, with penalties imposed for failing to report, or for covering up, misconduct.
- 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 31/1997) so that military personnel suspected of offences involving human rights violations are only prosecuted before independent civilian courts, in proceedings that meet international fair trial standards.

5. FREEDOM OF OPINION AND EXPRESSION (ARTICLE 19)

Since 2019, hundreds of individuals, including human rights defenders (HRDs), have been targeted with attacks and harassment, solely for expressing critical opinions and participating in peaceful protest. The government continued to curtail human rights under draconian laws, such as the Electronic Information and Transactions (EIT) Law. Its vague provisions have become a pretext for filing police reports and carrying out arrests for various issues, including defamation under Article 27(3) and hate speech under Article 28(2) of this law.

Amnesty International recorded that at least 536 individuals were charged with alleged violations of articles under the EIT Law between January 2019 and November 2023. The most recent case, in November, involved a former journalist who publicly questioned the neutrality of the police as a law

enforcement body. The former journalist, currently a campaigner for a presidential candidate, was reported by several civil society groups for alleged hate speech. As a response to the report, the police summoned him. November 2023 also witnessed a defamation charge against a lecturer in the Faculty of Law at Pakuan University, West Java, who criticised of the Dean of the university. His case proceeds as a follow up on the Dean's report to the police.

In another case, two prominent Indonesian HRDs, Fatia Maulidiyanti and Haris Azhar, were reported to the police in August 2021 by the Coordinating Minister for Maritime and Investment Affairs, for alleged defamation under Article 27(3) of the EIT Law. The accusation was based on Azhar's YouTube channel video, where he and Maulidiyanti discussed a report on alleged connections between military operations and mining activities in Intan Jaya Regency, Papua. As of November 2023, the prosecutor has demanded that Maulidiyanti receive a 3.5-year imprisonment, while Azhar was indicted for four-years.¹⁷ On 8 January 2024, the East Jakarta District Court eventually acquitted Haris Azhar and Fatia Maulidiyanti of any charges.¹⁸ However, the prosecutor filed a cassation, and the final verdict is not determined yet.

One case entailed an environmental activist who opposed a mining plan. Budi Heriawan, known as Budi Pego, has been incarcerated for a second time in Banyuwangi, East Java, for "crimes against state security" after the Supreme Court not only rejected his appeal but raised his prison term from 10 months to four years. This was the first conviction under the existing Penal Code that bans communist ideology since the downfall of Indonesia's repressive regime under former President Soeharto in 1998.¹⁹

Journalists have also become targets of intimidation, criminalization and digital attacks because of their work, especially when covering human rights and public interest issues such as corruption or government projects. Two journalists working at TribunnewsSultra.com were summoned by the Baubau city police in Southeast Sulawesi on 23 March 2023 following a defamation report against them by a businessman. They were charged for their online articles on an alleged rape case involving an orphan in the city. The police are still investigating.²⁰ In September 2022, the Kendari District Court in Southeast Sulawesi sentenced a journalist to seven months in prison for defamation for his reporting of a corporate tax case.²¹ Similarly, on 26 March 2020, the Pasarwajo District Court in Buton Regency, Southeast Sulawesi, sentenced a journalist to two years in prison for defamation in relation to his critical article about an infrastructure project in the Central Buton Regency.²²

These defamation cases illustrate that, when the state intervenes, individuals in Indonesia who are critical of those in power are criminalized. In the case of journalists, the authorities not only violate the ICCPR but also ignore the Press Law (Law 40 of 1999), which stipulates that disputes related to journalistic works should be resolved through the Press Council.

¹⁷ Amnesty International, "Indonesia: 'Alarming' defamation indictment for two human rights defenders", <https://www.amnesty.id/indonesia-alarming-defamation-indictment-for-two-human-rights-defenders/https://www.amnesty.org/en/documents/asa21/6557/2023/en/>

¹⁸ Amnesty International, Indonesia: Acquittal of human rights defenders gives new hope for human rights", <https://www.amnesty.id/indonesia-two-defenders-acquittal-new-hope-for-human-rights/>

¹⁹ The UN Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes jointly sent an appeal to the Indonesian government in September 2023 seeking clarification from the government, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28403>

²⁰ Aliansi Jurnalis Independen, "Menulis Berita, Dua Jurnalis Tribunnews Sultra Dipanggil Menjadi Saksi," <https://advokasi.aji.or.id/read/data-kekerasan/2139.html?y=2022&m=1&ye=2023&me=4>

²¹ Aliansi Jurnalis Independen, "Jurnalis Kendari Diterapkan Tersangka UU ITE" [Kendari journalist named as a suspect under the EIT law], <https://advokasi.aji.or.id/id/read/data-kekerasan/2096.html> (accessed on 9 November 2023)

²² Kompas.id, "Jurnalis di Buton Tengah yang Dituduh Cemarkan Nama Bupati Divonis 2 Tahun Penjara," <https://regional.kompas.com/read/2020/03/27/11364121/jurnalis-di-buton-tengah-yang-dituduh-cemarkan-nama-bupati-divonis-2-tahun>

5.1 PAPUA AND MALUKU

A different pattern of restrictions on the right to freedom of expression can be found in Eastern Indonesia, such as in Papua and Maluku, where there is a history of pro-independence groups. In these regions, the state often uses repressive measures against individuals and activists, including a blanket prohibition of peaceful protest, and threats of arrest and prosecution under the treason (*makar*) articles of the Penal Code, mainly Articles 106 and 110, which govern crimes against the security of the state.

Amnesty International recorded that in Papua and Maluku, between January 2019 to June 2023, at least 135 people were arrested and detained for exercising their right to express their political opinions. People in these regions who were peacefully expressing their views by possessing or displaying their traditional flag or arguing for the right to self-determination have been charged and or convicted under treason provisions, mostly under Articles 106 and 110 of the Old Penal Code, which stipulates a maximum sentence of death.

For instance, on 7 April 2021, up to 20 fully armed soldiers raided the house of Aleksander Workala, a resident of West Seram Regency, Maluku. After finding a book and the “Benang Raja” flag of the Republic of South Maluku (RMS), Aleksander Workala was taken by the troops to the West Seram police station. There, he was beaten on the head and charged with treason.

The next day, 8 April 2021, the police came to Pieter Likumahua’s house to question him about Aleksander Workala’s case. Benjamin Naene, who accompanied Pieter, was also arrested and detained after confessing to the police that he was an RMS activist. Both were charged with treason.

On 28 December 2021, the judges found the three activists guilty of treason. Pieter was sentenced to three years and three months in prison, while Aleksander Workala and Benjamin were each sentenced to three years. On 4 January 2022, the three activists appealed to the Ambon High Court which, on 23 February 2022, rejected their appeal and upheld the guilty verdict of the District Court. The three RMS activists are still serving their sentences at West Seram Prison.

In 2023, a resident of Negeri Piliانا, Central Maluku, was prosecuted at the Masohi District Court on charges of treason under Article 106 of the Criminal Code. On 28 February 2023, he erected the RMS flag at the boundary of the Negeri Piliانا Protected Forest after performing a traditional Sasi ritual with residents of Negeri Piliانا. He then took pictures and uploaded them to social media. This was a protest against the actions of the Maluku Provincial Forestry Department and the Manusela National Park Office, which had placed stakes or boundaries in the Petuanan area of Negeri Piliانا. On 18 March 2023, the police arrested and detained him on charges of treason. At his first hearing, on 14 August 2023, he was charged with “committing treason with intent to cause all or part of the country’s territory to fall into the hands of the enemy or to separate part of the country’s territory”.

Despite its draconian use, which breaches Article 19 of the ICCPR, Indonesia maintained the treason articles in the New Penal Code passed in 2022. Indeed, this Code expands the scope of treason to include insult against the President and Vice President, the Unitary State of the Republic of Indonesia and the government.²³

5.2 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to ensure that:

²³ In the new Penal Code, treason provisions cover six articles, 191-196.

- Drop all charges against individuals solely for peacefully exercising their human rights.
- Ensure that defamation is treated as a matter for civil litigation.
- Take effective measures to ensure that threats, attacks, intimidation, and harassment against individuals expressing peaceful opinions, including human rights defenders and journalists, 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.
- Respect, protect, promote, and fulfil the rights to freedom of expression, including by ensuring a safe and enabling environment in which media outlets, journalists, civil society organizations, and human rights defenders are effectively protected and can work safely without any fear of reprisal.
- Immediately repeal or revise problematic regulations that are used to undermine and 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 Law and provisions for treason under the New Penal Code.

6. THE RIGHT TO PEACEFUL ASSEMBLY (ARTICLE 21)

In recent years, Amnesty International has documented numerous instances of security forces using unnecessary or excessive force in crowd-control and the policing of assemblies. These included cases of arbitrary arrest, criminalization, and the disproportionate use of less-lethal weapons, such as tear gas, rubber bullets, and water cannons, which led to injuries and civilian deaths. Security officers suspected of criminal responsibility for allegations of excessive use of force are rarely brought to justice, resulting in little to no accountability.²⁴

On 31 July 2023, around 1,000 residents of Nagari Air Bangis in West Sumatra held a peaceful demonstration against a plan to build an oil refinery in their area as part of the Indonesian government's national strategic projects. Protesters were concerned about the environmental impact of the oil refinery, which threatened their livelihoods. Security forces violently dispersed the protest and arbitrarily arrested 18 people.²⁵ At least four journalists were subjected to intimidation and physical attacks when covering the protest.²⁶

In a separate case, on 7 September 2023, a clash in Rempang Island, Riau Island Province, occurred when local residents tried to resist the entry of security personnel deployed to safeguard a land measurement process for the development of a multibillion-dollar industrial area on the island, also part of the government's national strategic projects. Residents were concerned as the development plan included a "relocation" scheme that would result in the forced eviction of local people from their land and livelihoods. After some protesters started throwing rocks and water bottles, the security

²⁴ See Amnesty International, "Freedom, Justice, Equality: Human Rights Agenda for the Elected Government Officials", ASA 21/7407/2023, <https://www.amnesty.org/en/wp-content/uploads/2023/12/ASA2174072023ENGLISH.pdf>

²⁵ Amnesty International, "Proyek Strategis Nasional kembali bermasalah, aparat represif sikapi aksi damai warga Nagari Air Bangis", 7 August 2023, <https://www.amnesty.id/proyek-strategis-nasional-kembali-bermasalah-aparat-represif-sikapi-aksi-damai-warga-nagari-air-bangis/>

²⁶ Kompas.id, "Oknum Polisi Intimidasi Jurnalis Saat Pemulangan Paksa Massa Aksi di Masjid Raya Sumbar," 6 August 2023, <https://www.kompas.id/baca/nusantara/2023/08/06/oknum-polisi-intimidasi-jurnalis-saat-pemulangan-paksa-massa-aksi-di-masjid-roya-sumbar>

forces fired water cannons and tear gas into the crowd. Reports indicate that officers also used rubber bullets against the protesters.²⁷

Some of the tear gas grenades were fired towards the gates of a local elementary school and a junior high school, causing the chemical irritant to enter the compounds of the two schools.²⁸ Amnesty International Indonesia's partner organizations found that the security officers fired tear gas grenades from the start. Videos recorded by residents also show that the grenades were fired at eye-level towards the protesters, an extremely dangerous practice, which risks inflicting serious injuries or even death.²⁹ At least 25 students were taken to hospital with breathing difficulties and other symptoms,³⁰ and around 20 other individuals were injured during the incident,³¹ with at least one man suffering head wounds after being hit by a rubber bullet.³²

The Indonesian police were already under scrutiny following a disproportionate use of tear gas on 1 October 2022 after a football match between Arema FC and Persebaya FC in the Kanjuruhan Stadium in Malang, East Java, which led to the deaths of hundreds of civilians. Following the defeat of Arema FC, dozens of the team's supporters stormed the pitch. To disperse the crowd, police fired approximately 45 tear gas grenades into the stands. This led to a stampede that resulted in many fans being trampled to death and asphyxiated, as many of the stadium gates were locked or only partially open. At least 135 people were reported to have died, including 40 children and two police officers, with a further 443 sustaining injuries.³³

Three police officers were named on suspicion of negligence in this deadly incident. Surabaya District Court initially sentenced the commander of the 3rd Mobile Brigade Company of the East Java Police to 18 months' imprisonment. The two other officers – 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 2023.³⁴ The judges decided that there was insufficient evidence to convict them, and that the tear gas did not injure the football fans because it was blown away by the wind. As a result, the court did not find any causal link between the police operation and the victims' deaths.³⁵

On 23 August 2023, the Supreme Court overturned the acquittal of the two police officers. The former head of the Prevention Unit of the Malang Regency Police was sentenced to two years in prison, and the chief of operations of the Malang Regency Police was sentenced to two years and six months in prison.³⁶ The prosecutions, however, are so far still limited to direct perpetrators; those in command have not yet been held accountable for their human rights crimes. In September, families of the victims went to Jakarta to stage protests and file complaints to the police, the office of the National Human Rights Commission and the Witness Protection Agency.³⁷

²⁷ Findings of Amnesty International's partner organizations from interviews with local residents in Rempang from 11 to 13 September 2023.

²⁸ Findings from interviews with local residents in Rempang from 11 to 13 September 2023 (previously cited).

²⁹ Findings from interviews with local residents in Rempang from 11 to 13 September 2023 (previously cited).

³⁰ VOA, "Proyek Rempang Eco City Dinilai Tak Berpihak ke Masyarakat Adat, Jokowi: Ini Soal Komunikasi", 12 September 2023, <https://www.voaindonesia.com/a/proyek-rempang-eco-city-dinilai-tak-berpihak-ke-masyarakat-adat-jokowi-ini-soal-komunikasi/7265085.html>

³¹ Findings from interviews with local residents in Rempang from 11 to 13 September 2023 (previously cited).

³² Tempo.co, "Kesaksian Warga Rempang Dapat 12 Jahitan di Kepala usai Terkena Peluru Karet Polisi," 8 September 2023, <https://nasional.tempo.co/read/1769783/kesaksian-warga-rempang-dapat-12-jahitan-di-kepala-usai-terkena-peluru-karet-polisi>

³³ Komnas HAM, "Press release: "Penyampaian Laporan Pemantauan dan Penyelidikan Tragedi Kemanusiaan di Stadion Kanjuruhan Malang 1 Oktober 2022", 039/HM.00/XI/2022, [https://www.komnasham.go.id/files/20221102-keterangan-pers-nomor-039-hm-00-\\$OY.pdf](https://www.komnasham.go.id/files/20221102-keterangan-pers-nomor-039-hm-00-$OY.pdf)

³⁴ 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/>

³⁵ VOI "Tear Gas Blown Away by the Wind, the Judge's Reason for Acquitting the 2 Police Officers Accused in the Kanjuruhan Tragedy, Police: We Respect The Court," 17 March 2023, <https://voi.id/berita/264709/gas-air-mata-tertiup-angin-alasan-hakim-vonis-bebas-2-polisi-terdakwa-tragedi-kanjuruhan-polri-kami-hormati-pengadilan>

³⁶ Kompas.id, "MA Law Two Police in the Kanjuruhan Tragedy Case, Cancel the PN Exemption Verdict", <https://app.komp.as/voztmJk4jf2Ce4r8>

³⁷ Tempo.co, "Kisah Vidia, Penyintas Tragedi Kanjuruhan dan Keluarga Korban Lainnya Memperjuangkan Keadilan", 1 October 2023, <https://nasional.tempo.co/read/1778289/kisah-vidia-penyintas-tragedi-kanjuruhan-dan-keluarga-korban-lainnya-memperjuangkan-keadilan>

6.1 PEACEFUL ASSEMBLY IN PAPUA

The same pattern is also identified in Papua, with a slight difference. There, people engaging in peaceful demonstrations, particularly on political issues, often face criminal charges under treason provisions. This not only violates the right to peaceful assembly but also infringes upon the right to freedom of political expression guaranteed by international human rights law.

On 8 August 2023, the panel of judges at the Jayapura District Court in Papua three Indigenous Papuans guilty of treason under Article 106 of the Penal Code. According to the legal team of the three defendants, they were each sentenced to 10 months in prison.

The three were arrested after holding a freedom of expression event with a group of other students at the campus of the University of Science and Technology Jayapura (USTJ) on 10 November. The event was broken up and some students were arbitrarily arrested by the police on the pretext that it was dominated by speeches and pamphlets calling for a referendum, an independent Papua, and the raising of the Morning Star flag.

The police initially arrested 15 students after dispersing the gathering. Six were released at 23:00 on 11 November 2022, while nine students remained in custody as suspects. Of those nine, three were charged with treason at Jayapura District Court and sentenced to 10 months in prison. After serving time in prison, the three were released on 7 September 2023.

On 5 May 2023, Papuan activist Victor Yeimo was sentenced to 8 months in prison after the judges found him guilty of treason. He had been arrested without a warrant on 9 May 2021 for his alleged involvement in a peaceful anti-racism protest in 2019. As spokesperson for the West Papua National Committee, Victor was charged with treason for a statement he made during that protest, when he called for a referendum on independence. Victor Yeimo was released on 23 September 2023.

6.2 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to ensure that:

- Conduct prompt, thorough, impartial, independent, transparent and effective investigations into all credible allegations of unnecessary or excessive use of force, and hold officers found to have acted unlawfully to account.
- Urgently review and reform policies on the use of tear gas and other less-lethal weapons – including explicitly prohibiting the firing of tear gas grenades directly at individuals and in confined spaces – to ensure that these weapons are always used in full compliance with international human rights standards.
- Immediately repeal or revise provisions that unduly restrict the right to freedom of peaceful assembly, including treason provisions in the Criminal Code.

7. THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS (ARTICLE 25)

7.1 JOB CREATION LAW

On 17 December 2019, Indonesia's government introduced the Job Creation Bill to consolidate 79 laws into 11 clusters, comprising 1,244 articles, including those related to labour and employment.

On 12 February 2020, the government presented the Bill to the legislature, leading to the establishment of the Working Group (Panja) on 14 April 2020, to review the Bill.³⁸

Although Panja claimed to have organized numerous consultation meetings between 20 April and 3 October 2020, concerns persist about the transparency and inclusivity of this process. For instance, the government's claims that 14 trade unions were part of the public consultation were contested by the unions, which stated that they had been excluded from the start.³⁹ This lack of participation occurred despite Amnesty International's early warnings about the possible negative impact of the Bill on workers' rights. One example of this was the Bill's failure to account for inflation when determining the minimum wage and eliminating the city- or district-level minimum wage, potentially leading to a uniform provincial minimum wage, irrespective of differing living costs.⁴⁰

On 2 November 2020, Indonesia's government passed Law 11 of 2020 on Job Creation, aiming to stimulate the economy by simplifying licensing procedures and expediting policy decisions to enhance adaptability to global changes.⁴¹ However, the lack of transparency during the drafting of the Bill, and the potentially harmful provisions within the resulting Job Creation Law, sparked widespread protests from 6 October to 10 November 2020. Amnesty International's research confirmed numerous instances of excessive use of force, detention in solitary confinement, and torture and other ill-treatment.⁴²

In November 2021, the Constitutional Court of Indonesia issued Decision 91/PUU-XVIII/2020, ruling that Law 11/2020 was legally flawed, and directing the government to amend it by November 2023.⁴³ In response, the government replaced Law 11/2020 with Government Regulation in Lieu of Law 2 of 2022 on Job Creation, which was subsequently enacted as Law 6 of 2023. This process raises concerns about the right to participate in public affairs, as Law 15 of 2019 on the Promulgation of Law grants the president exclusive authority to enact government regulations in lieu of laws.

7.2 PENAL CODE

On 18 September 2019, the government and the House of Representatives (DPR) agreed to enact a new Penal Code (KUHP), replacing the old KUHP that had remained virtually unaltered since 1908. This occurred against widespread concerns regarding the limited opportunities for public participation and the incorporation of provisions that could unduly constrain various human rights.

Responding to these concerns, a wave of protests surged nationwide, involving thousands of students, labour unions, activists and concerned citizens, challenging problematic aspects of the new Penal Code Bill (RKUHP) and other proposed laws. During these protests, reports emerged of the police using excessive force against demonstrators, involving the use of tear gas, rubber bullets, live rounds and mass detention. Amnesty International's research confirmed that at least 403 protesters were

³⁸ OkeNews, "Kronologi Lahirnya UU Cipta Kerja yang Jadi Kontroversial di Masyarakat," <https://nasional.okezone.com/read/2020/10/07/337/2289793/kronologi-lahirnya-uu-cipta-kerja-yang-jadi-kontroversial-di-masyarakat?page=2> (accessed on 25 October 2023).

³⁹ Amnesty International Indonesia, "'Catastrophic' Omnibus Bill on Job Creation Passed into Law", <https://www.amnesty.id/catastrophic-omnibus-bill-on-job-creation-passed-into-law/> (accessed on 25 October 2023).

⁴⁰ Amnesty International Indonesia, "Omnibus Bill on Job Creation Poses 'Serious Threat' To Human Rights", <https://www.amnesty.id/omnibus-bill-on-job-creation-poses-serious-threat-to-human-rights/> (accessed on 25 October 2023).

⁴¹ Amnesty International Indonesia, "Indonesia: Investigate verified evidence of police violence during Omnibus Law protests," <https://www.amnesty.id/indonesia-investigate-verified-evidence-of-police-violence-during-omnibus-law-protests/> (accessed on 25 October 2023).

⁴² Amnesty International Indonesia, "Indonesia: Investigate verified evidence of police violence during Omnibus Law protests," <https://www.amnesty.id/indonesia-investigate-verified-evidence-of-police-violence-during-omnibus-law-protests/> (accessed on 25 October 2023).

⁴³ Constitutional Court of the Republic of Indonesia, "Court: Conditionally Unconstitutional, Job Creation Law Must Be Revised in Two Years", <https://en.mkri.id/news/details/2021-11-25/Court%3A%20Conditionally%20Unconstitutional%2C%20Job%20Creation%20Law%20Must%20Be%20Revised%20in%20Two%20Years> (accessed on 20 October 2023).

arbitrarily arrested and the police used excessive force during these protests, although the actual number could be higher.⁴⁴

On 20 September 2019, President Joko Widodo declared the need for further evaluation of the RKUHP. In 2021, the Ministry of Legal Affairs and Human Rights organized 12 “socialization activities” involving diverse stakeholders.⁴⁵ However, on 25 May 2022, during a public hearing between the Ministry and Commission III of the DPR, the government unilaterally announced that only 14 articles of the RKUHP remained problematic and in need of further discussions with civil society actors. On 6 July 2022, the government submitted an updated draft of the RKUHP to the DPR, which subsequently decided to hold private deliberations among members of parliament.⁴⁶

During a public hearing between civil society representatives and Commission III of the DPR on 14 November 2022, the Head of Commission III contended that the public had no right to demand explanations from parliamentarians regarding decisions to accept or reject public input.⁴⁷ Following this public hearing, the government revised the RKUHP. The revised and final draft was only made available to the public on 3 December 2022, during a plenary session in the DPR, when it was passed into the new KUHP, leaving little room for meaningful public participation.

7.3 RECOMMENDATIONS

Amnesty International urges the Indonesian authorities to ensure that:

- Amend regulations that are being used to violate human rights, including those affecting workers, as delineated in the Job Creation Law and those impacting the rights to freedom of expression, association and peaceful assembly under the KUHP.
- Ensure that revisions and future processes concerning the Job Creation Law and KUHP fulfil the rights of all individuals to engage in public affairs.
- Implement effective measures to investigate threats, attacks, intimidation and harassment of human rights defenders promptly, thoroughly, impartially, independently, transparently and effectively, and bring those suspected of responsibility to justice in fair trials.

⁴⁴ Amnesty International Indonesia, “Silencing Voices, Suppressing Criticism: The Decline in Indonesia’s Civil Liberties,” http://www.amnesty.id/wp-content/uploads/2022/10/ASA2160132022_FINAL_The-Divine-of-Civil-Liberties-in-Indonesia.pdf (accessed on 25 October 2023).

⁴⁵ Amnesty International Indonesia, “Surat Terbuka: Perihal : Pentingnya pembahasan menyeluruh RKUHP”, <https://www.amnesty.id/surat-terbuka-perihal-pentingnya-pembahasan-menyeluruh-rkuhp/> (accessed on 25 October 2023).

⁴⁶ Per the provisions of Article 95 of Law 13 of 2019, amending Law 17 of 2014 regarding the People’s Consultative Assembly, the People’s Representative Council, the Regional Representative Council, and the Regional People’s Representative Council, a ‘commission’ is defined as a “permanent component of the People’s Representative Council (DPR).” The functions of a commission, as outlined in Article 98, encompass the formulation, budgeting, and oversight of laws and their implementation. Conversely, as stipulated in Article 82, ‘fractions’ refer to “groupings of members based on political party configurations derived from general election outcomes.”

⁴⁷ Amnesty International Indonesia, “Pernyataan Sikap Koalisi Masyarakat Sipil untuk Kebebasan Berekspresi atas Pengesahan RKUHP,” <https://www.amnesty.id/pernyataan-sikap-koalisi-masyarakat-sipil-untuk-kebebasan-berekspresi-atas-pengesahan-rkuhp/> (accessed on 25 October 2023).

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info@amnesty.org



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@Amnesty



amnesty.org



Amnesty International
Peter Benenson House
1 Easton Street
London WC1X 0DW, UK

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Index: **ASA 21/7620/2024**

Publication: **January 2024**

Original language: **English**

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