



## Letter to EU Delegates Regarding the EU-Indonesia Human Rights Dialogue

June 23, 2010

Sylvia Escobar  
Ambassador at Large for Human Rights  
Spanish Presidency of the European Union

Rolf Timans  
Head of Unit for Human Rights  
Directorate General for External Relations  
European Commission

Re: EU-Indonesia Human Rights Dialogue

Dear Ambassador Escobar and Mr. Timans,

We write to you in advance of the European Union's first Human Rights Dialogue with Indonesia on June 29, 2010. We believe this dialogue is a crucial opportunity to candidly assess recent trends in human rights in Indonesia that are deeply worrying, as well as areas in which the government's reform efforts have stalled. We urge you to use the occasion of the EU-Indonesia Human Rights Dialogue to seek concrete commitments from the Indonesian government to address these human rights issues.

Our concerns include several issues central to topics placed on the draft agenda. These include: political prisoners; religious freedom; domestic workers; migrant domestic workers abroad; and the ASEAN Commission on Human Rights. In addition, we have serious concerns about two issues that are not currently reflected on the draft agenda: freedom of expression and military reform and accountability.

### 1. Political Prisoners

Although Indonesia has made huge strides in opening space for free expression since the Suharto era, Indonesian officials continue to enforce a number of laws that criminalize the peaceful expression of political, religious, and other views. These laws include offenses in Indonesia's criminal code such as treason or rebellion (*makar*) and "inciting hatred" (*haatzai artikelen*), which have been used repeatedly against political activists, primarily from the Moluccas and Papua. As a result, more than 100 activists are currently imprisoned for peacefully voicing political views, holding demonstrations, and raising flags or displaying symbols that the Indonesian authorities interpret as calls for independence. A June 23, 2010 Human Rights Watch report, "Prosecuting Political Aspiration," provides information on a number of these cases and details torture of several political prisoners and the government's failure to hold those responsible to account. Most of these allegations of torture and other ill-treatment involve members of the police Detachment 88/Anti-Terror Squad in Ambon and police and prison guards in Papua. Human Rights Watch also found other serious abuses suffered by political prisoners, including denial of adequate medical services, the use of long-distance prison transfers to isolate prisoners from their families and communities, and poor prison conditions.

A widespread lack of accountability contributes to the ongoing abuses by law enforcement and security forces in Papua. Indonesia has been able to maintain this climate of impunity by maintaining tight restrictions on access to Papua by foreign human rights monitors and journalists, thereby keeping abuses by security forces out of the global spotlight. In 2009, Indonesia expelled the International Committee of the Red Cross (ICRC) from Papua.

In May 2010 the Indonesian Ministry for Law and Human Rights transferred Anthonius Ayorbaba, the warden of Abepura prison in Papua, to a post in Sumatra. Human Rights Watch had long expressed serious concerns about Ayorbaba, who continually failed to take action when

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presented with evidence of abuses committed against prisoners by guards under his command. The ministry's decision followed an April 2010 determination by the Papuan office of the National Commission on Human Rights (Komnas HAM) that guards at the prison frequently beat prisoners, prison security was poor, and Ayorbaba bore responsibility and should be transferred without delay. However, aside from Ayorbaba's transfer, little has been done to address the numerous allegations of prisoner abuse in Abepura and other prisons across Indonesia.

Human Rights Watch recommends that you:

Urge the Indonesian government to immediately and unconditionally release all prisoners held for the peaceful expression of their political views.

Urge the Indonesian government to amend or repeal all laws that have been used to imprison individuals for their peaceful political activities, including articles 106 and 110 of the Indonesian criminal code on rebellion and article 6 of Government Regulation No. 77/2007, which prohibits the display of separatist logos or flags, to bring Indonesian law into conformity with international standards.

Urge the Ministry of Law and Human Rights to ensure that authorities promptly respond to credible reports of torture and ill-treatment in custody by conducting thorough and impartial investigations, hold legally accountable all those responsible, and revise rules and practices at jails and prisons to ensure compliance by all security forces with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Urge the Ministry of Law and Human Rights to open a formal, transparent investigation into all credible complaints of abuse raised by human rights groups and the families of prisoners at Abepura prison in Papua and elsewhere, and take appropriate disciplinary or judicial action against all prison officials found to be responsible.

Urge the Ministry of Law and Human Rights to permit civil society organizations to conduct regular prison visits and speak confidentially with prisoners.

Urge the Indonesian government to remove arbitrary restrictions on access to all regions of Papua by journalists and humanitarian and human rights workers and to allow the ICRC to resume its operations in Papua.

Seek credible commitments from officials at the Ministry of Foreign Affairs that EU member state embassy personnel will be permitted to visit and monitor the situation of political prisoners throughout Indonesia.

## **2. Freedom of Expression**

The Indonesian government has recently taken steps that cast serious doubt on its commitment to the right to freedom of expression. In 2006, Indonesia ratified the International Covenant on Civil and Political Rights, which upholds the right to freedom of expression, among other fundamental rights. While freedom of expression does not appear on the draft agenda for the EU-Indonesia Human Rights Dialogue, we nevertheless urge you to raise this important issue with the Indonesian government.

As documented in the May 2010 Human Rights Watch report "Turning Critics into Criminals," Indonesian officials continue to enforce several criminal defamation and insult laws that effectively restrict the right to freedom of expression of anti-corruption activists, journalists, and citizens seeking to report misconduct or air consumer complaints. These restrictions are at times imposed in a manner that suggests improper influence by powerful national or local-level actors on their implementation. Human Rights Watch identified over a dozen instances in the last three years in which public officials or influential private actors used criminal defamation laws, several of which contain heightened penalties for insulting or defaming a public official, as a tool of retaliation against critics. Even in cases where those charged were acquitted or sentenced to probation, the bringing of criminal charges against them in the first place has a dangerous chilling effect throughout their communities and among members of their professions.

Recently, the Indonesian government has taken a number of steps that further threaten freedom of expression. In 2008, the parliament enacted the Law Regarding Electronic Information and Transactions (Undang-Undang Informasi dan Transaksi Elektronik, or ITE Law), which authorizes up to six years' imprisonment for internet-based defamation. The authorities used this law to detain two individuals who tried to report alleged campaign violations by supporters of the president's son, a candidate for parliament, prior to the April 2009 legislative elections. And in February 2010, in response to increasingly vocal anti-government demonstrations, President Yudhoyono's spokesman publicly called for the government to strengthen the criminal laws prohibiting "blaspheming state symbols," such as the president.

Human Rights Watch recommends that you:

Call on the Ministry of Law and Human Rights, working with the parliament, to take steps to amend or repeal laws that restrict the right to free expression, including the "insult" and criminal defamation provisions of the criminal code and the criminal defamation provisions of the ITE Law. The ministry should replace criminal defamation laws with civil defamation provisions that comply with international standards on freedom of expression.

Call on the Ministry of Foreign Affairs to grant the request of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to visit Indonesia.

### **3. Religious Freedom**

Indonesia fails to fully safeguard the right to freedom of religion. This right, as set out in the International Covenant on Civil and Political Rights, protects both the freedom to worship individually or with others, and to be free from coercion that would impair the ability to have a religion or belief of one's choice. The government continues to enforce a "blasphemy" law, set out in article 156(a) of the Indonesian criminal code, which authorizes the imprisonment of persons whom the authorities consider to have deviated from the central tenets of one of the six officially recognized religions in Indonesia. The law has been used in recent years to prosecute and imprison members of religious minorities and traditional religions. On April 19, 2010, Indonesia's Constitutional Court dealt a severe blow to religious freedom by upholding the law on grounds that it allows for the maintenance of public order. Top government officials who appeared before the Constitutional Court on the matter, including Suryadharma Ali, the minister of religious affairs, and Patrialis Akbar, the minister for law and human rights, argued in favor of the constitutionality of the law.

In June 2008, the minister of religious affairs issued a decree ordering members of the Ahmadiyah religious movement to cease their public religious activities. In the ensuing weeks, Islamist militants attacked or forcibly closed several Ahmadiyah mosques and displaced adherents from their homes. In this and other instances, including one involving a Protestant congregation in the Besaki suburb of Jakarta in February 2010, law enforcement officials failed to intervene against organized groups seeking to forcibly close churches or otherwise block religious minorities from observing their faiths. Often, the groups sought to justify their actions by reference to a ministerial decree requiring anyone building "a house of worship" to receive prior approval from the community. In the instances when the police have intervened, such as the case of a December 2009 attack on Ahmadiyah in the Tebet suburb of Jakarta, they have frequently arrested the targets of the attack rather than their attackers.

Neither President Yudhoyono nor the minister of home affairs has spoken out against or invalidated dozens of local bylaws in force throughout Indonesia that improperly restrict the rights to equality under law, freedom of expression, and freedom of religion. Recent restrictions include limiting women's movement at night, prescribing their attire, and requiring candidates for legislative office to pass a Quran reading test. Additionally, since 2006 the province of Aceh has implemented Sharia (Islamic law) in a manner that is explicitly discriminatory, restricting Muslim women's choice of attire and forbidding close proximity between unmarried women and men who are not their husbands or relatives. In January 2010 officials in Aceh's Sharia police force confirmed that they were conducting patrols in so-called "vice-prone areas" and establishing roadblocks to monitor the attire of vehicle passengers in an effort to identify and lecture women who may be violating dress codes or behavioral rules. The national government continues to ignore these infringements of basic rights, and has not yet called for the reform of Aceh's discriminatory and repressive laws and policies.

Human Rights Watch recommends that you:

Urge the Ministry of Law and Human Rights to actively seek the repeal of statutes and regulations that restrict freedom of religion, including the blasphemy law, the ministerial decree banning the religious practices of the Ahmadiyah, and the ministerial decree requiring community approval for the construction of houses of worship.

Call on the Indonesian government to reaffirm the principles that the religious activities of one group should never be beholden to the approval of others, and that law enforcement authorities have an obligation to protect members of religious minorities from violent attack and other infringements of their basic rights.

Call on the Ministry of Law and Human Rights to coordinate with the Ministry of Home Affairs to review and invalidate all local laws, in Aceh and elsewhere, that infringe upon the right to freedom of religion.

#### **4. Domestic Workers**

As Human Rights Watch documented in its February 2009 report, "Workers in the Shadows," hundreds of thousands of girls in Indonesia, some as young as 11, are employed as domestic workers in other people's households. Many girls work 14 to 18-hour days, seven days a week, with no day off. Many employers forbid these child domestic workers from leaving the house where they work, withhold payment of salary until after the child leaves employment and returns home, and then either fail to pay at all or pay less than was promised. In the worst cases, girls are physically, psychologically, and sexually abused by their employers or their employers' family members. Presently, Indonesia's labor law excludes all domestic workers from the basic labor rights afforded to formal workers, such as a minimum wage, overtime pay, an 8-hour workday and 40-hour workweek, a weekly day of rest, and vacation leave. This exclusion in law has a discriminatory impact on women and girls, who constitute the vast majority of domestic workers, and devalues domestic work and domestic workers.

In a promising move, the legislative council of the Indonesian parliament initially placed a Domestic Worker's Law on the legislative agenda for 2010. However, the legislative commission considering the bill, Commission IX on manpower, ceased its deliberations in June 2010 because of internal disagreements over the bill's provisions. It now appears increasingly unlikely that the bill will be put to a vote before the full parliament this year.

Human Rights Watch urges that you:

Publicly call for members of Indonesian parliament to complete the draft law on domestic workers, ensuring that its provisions meet international labor standards, and bring it to a vote before the end of 2010.

Encourage the Ministry of Law and Human Rights, Ministry of Foreign Affairs, and Ministry of Manpower to support a strong law that provides domestic workers with the same basic labor protections as workers in the formal sector and contains special protections for child domestic workers.

Encourage authorities to vigorously enforce existing protections for domestic workers, including child workers, already available under the Manpower Act, the Child Protection Act, and the Domestic Violence Act.

#### **5. Migrant Domestic Workers Abroad**

Following several high-profile cases of abuse and deaths of Indonesian domestic workers abroad, the government froze new migration of domestic workers to both Malaysia and Kuwait in 2009 pending negotiations aimed at strengthening labor protection provisions in bilateral agreements with those countries. Indonesia is reportedly on the verge of reaching agreement on revisions to a 2006 Memorandum of Understanding (MOU) with Malaysia on migrant domestic workers. As Human Rights Watch noted in a March 4, 2010 statement, the draft MOU contains positive and long overdue provisions to protect migrant women's right to retain possession of their passports and have a weekly day of rest, but it also gives employers the option of paying a worker to forego the mandated weekly day of rest. The unequal power relationship between the employer and domestic worker enables employers to easily abuse this provision. Negotiations have stalled on establishing a minimum wage and stronger regulations on exorbitant recruitment fees and long-term debt arrangements that put migrant domestic workers at high risk of forced labor, including debt bondage. Additionally, the draft MOU fails to outline a strategy for important national-level labor and immigration reforms, or to create consistent and effective implementation mechanisms.

Human Rights Watch recommends that you:

Urge the Ministry of Foreign Affairs, the Ministry of Manpower, and the Ministry of Law and Human Rights to strengthen protections for Indonesian migrant domestic workers. These protections should be incorporated into Indonesia's Law 39 regulating migration and bilateral agreements with receiving countries and should include:

- o Stronger regulations governing recruitment agencies, including ending use of salary deductions to repay excessive recruitment fees, and mechanisms to monitor and enforce these standards;

- o Commitments by receiving countries to extend equal protection under their labor laws to migrant domestic workers;
- o Provision for a standard contract that ensures minimum labor protections, including a 24-hour rest period each week, a fair minimum wage, a limitation on weekly hours of work, and benefits;
- o Mechanisms for timely remedies for migrant domestic workers in cases of abuse, and to institute sanctions for employers and labor agents who commit these abuses;
- o Guarantees that workers may leave the employer's house outside of working hours and freely form associations and unions.

## **6. Military Reform and Accountability**

Since 1998, the Indonesian government has adopted several measures intended to reduce the military's influence on politics and independence from civilian authorities and curtail its serious human rights abuses. While some of these measures have been moderately successful, reform efforts have stalled in a number of essential areas, and President Yudhoyono has failed to address several major problems that remain. We are aware that military reform and accountability are not on the draft agenda for the EU-Indonesia Human Rights Dialogue, but we do feel these pressing issues are relevant to EU-Indonesia ties and thus we recommend you to raise them with the Indonesian government.

Indonesia has failed to hold accountable members of the Indonesian armed forces for past and more recent human rights abuses. The few soldiers convicted by military tribunals for abuses are invariably reinstated into the military ranks and promoted, including seven of 11 military personnel convicted of kidnapping student activists in 1997 and 1998. President Yudhoyono has not implemented the necessary reforms, but instead has appointed individuals implicated in serious rights abuses to high posts. Most notably, in January 2010 he appointed Lt. Gen. Sjafrie Sjamsuddin to the position of deputy defense minister, ignoring that Sjafrie has been implicated in several notorious incidents of human rights abuse for which he has never been credibly investigated.

In September 2009 the Indonesian parliament, acting on a report by the National Human Rights Commission, recommended the creation of an ad hoc court to investigate the enforced disappearances of student activists in 1997 and 1998. President Yudhoyono, whose authorization is required for the court's creation, has yet to act on the recommendation. Additionally, while there is broad-based agreement in Indonesia on the need to reform the military justice system, the Indonesian parliament has thus far failed to implement reforms such as subjecting military personnel to the jurisdiction of civilian courts when they are accused of committing crimes against civilians.

More than five years after the 2004 murder of prominent human rights activist Munir Said Thalib, the architects of the killing remain free. On February 9, 2010, a team established by the National Human Rights Commission determined that the 2008 trial of former deputy state intelligence chief and one-time Special Forces commander Muchdi Purwopranjono (in which the court acquitted him on charges of orchestrating Munir's murder) had suffered from serious shortcomings. The examination team recommended that prosecutors file for a "case review" of Muchdi's acquittal or that the police reopen the investigation into Munir's murder.

The Indonesian military's business interests also remain a serious concern. Since its creation, the Indonesian military has operated a vast business network, the effect of which has been to enrich officers while undermining civilian supremacy and contributing to human rights violations, as documented in Human Rights Watch's 2006 report, "Too High a Price." In September 2004 the Indonesian parliament passed a law that required the government to shut down or take over all military businesses by October 16, 2009. But the government repeatedly missed its own deadlines for action. Although the five-year deadline has now passed, the armed forces still retain extensive business holdings.

As we elaborate in our January 2010 report, "Unkept Promise: Failure to End Military Business Activity in Indonesia," just prior to the deadline, on October 11, 2009, President Yudhoyono issued a decree creating an inter-agency Oversight Team to review the military's business interests. However, the decree and implementing regulations did not require the military to give up its businesses as mandated under the 2004 law. Instead, they merely provided for a partial restructuring of the entities-military cooperatives and foundations-through which it holds many of its investments. The decree also disregarded other independent sources of military income outside the approved budget process: criminal enterprises, individually owned businesses, and security payments from private companies. Moreover, the Oversight Team lacks independence, as a majority of its members, including the chair, are serving members of the military, and the team operates primarily from the Ministry of

Defense, which lacks independence from and authority over the military. The government's process, as outlined in the presidential decree and accompanying regulations, also did not provide for transparency and accountability.

Human Rights Watch recommends that you:

Call on the Indonesian government to ensure that those members of the Indonesian military accused of serious human rights violations, including those with command responsibility, are credibly investigated and disciplined or prosecuted as appropriate.

Urge the Indonesian government to establish an ad hoc tribunal on the enforced disappearances of students in the late 1990s, as recommended by the Indonesian parliament.

Urge the Ministry of Law and Human Rights to call for and facilitate essential structural reforms to the military, including credible investigations and prosecutions of all military personnel involved in serious violations of human rights and jurisdictional reforms that allow the civilian criminal justice system to investigate and prosecute alleged criminal acts by military personnel against civilians.

Convey a message to the Minister of Foreign Affairs that relations with the Ministry of Defense have been complicated by the appointment of Sjafrie Sjamsoeddin to the position of deputy defense minister, and that fresh, credible, and independent investigations into allegations of Sjamsoeddin's involvement in human rights violations are necessary.

Call for the Ministry of Law and Human Rights to ensure the conclusive resolution of the 2004 murder of leading human rights lawyer Munir Said Thalib by having prosecutors file for a "case review" of the acquittal of Kopassus commander Muchdi Purwopranjono or having police reopen the investigation into Munir's murder.

Call on the Indonesian government to release complete and detailed information on military budgets and spending, and convey support for a more transparent Military Business Oversight Team, the elements of which should include greater independence, the public release of all financial and legal audits, mandatory reporting on the activities of the team, and civil society participation.

## **7. ASEAN Intergovernmental Commission on Human Rights**

Human Rights Watch welcomes the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which held its first formal session in Jakarta in April 2010. However, we are concerned that certain aspects of the AICHR's mandate and structure (set out in its terms of reference) may undermine its ability to effectively monitor ASEAN member states' compliance with their international human rights obligations. This includes an appointment process that permits a government to replace its commissioner at any time and under any circumstances, which undercuts the AICHR commissioners' ability to act independently.

Another fundamental weakness of the AICHR is its lack of a mandate to investigate individual cases of human rights violations or to conduct country-specific, as opposed to thematic, investigations. We also share the concerns of other human rights organizations in Southeast Asia that ASEAN member states have not yet provided sufficient budgetary resources for the commission and that the AICHR Secretariat will have insufficient capacity to adequately support the commission's work.

We are also concerned about the failure to date of the AICHR and ASEAN member states to provide for systematic, sustained, and substantive participation of representative civil society organizations in the AICHR's work.

Human Rights Watch recommends that you:

Express support for Indonesia's appointment of an independent human rights expert who enjoys the support of civil society as its representative to the AICHR.

Call on the Ministry of Foreign Affairs to ensure that the AICHR's rules of procedure include measures to strengthen the independence of AICHR Commissioners, provide for regular and substantial consultation with civil society and non-governmental organizations, and require transparency in the AICHR's work, including providing sufficient advance notice of AICHR meetings and their agendas, as well as outcomes of those meetings, to the public.

Encourage the Indonesian government to call for the AICHR's mandate to be strengthened so that it can receive complaints of human rights violations and to conduct country-specific, as well as thematic, investigations into human rights issues.

Call upon all ASEAN member states to ensure that the AICHR receives sufficient member state funding and adequate staff resources to function effectively.

We hope that our information and recommendations will assist you in establishing concrete benchmarks for government commitments and actual progress on human rights to be achieved during the upcoming EU-Indonesia Human Rights Dialogue. Finally, we commend you for undertaking this dialogue and we sincerely hope that the EU will ensure human rights remains a central pillar of EU engagement with Indonesia in the coming years.

Sincerely,

Elaine Pearson  
Acting Asia Director

Lotte Leicht  
EU Director

Cc:

Chair of the European Parliament's Subcommittee on Human Rights, Ms. Heidi Hautala

Chair of the European Parliament's Foreign Affairs Committee, Mr. Gabriele Albertini

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