

Facts in the Agenda for the Review of the International Covenant on Civil and Political Rights (ICCPR)

On March 11-12, 2024, at Palais Wilson in Geneva, the Indonesian government concluded a review session of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee. In this review, Indonesia faced criticism and questions regarding the respect, fulfillment, and protection of human rights for civil society. Representatives from the Indonesian government present included those from the Ministry of Communication and Information, the Ministry of Law and Human Rights, the Indonesian National Police, the Office of the President's Staff, the Ministry of Foreign Affairs, and the State Secretariat.

During this occasion, the committee focused its recommendations and questions on the transparency of the Indonesian government in handling important cases such as the murder of Munir Said Thalib, gross human rights violations, violence in Papua, the death penalty, protection for human rights defenders, the elimination of discriminatory policies and anti-discrimination legislation, refugee issues, strengthening independent institutions such as the National Commission on Human Rights (Komnas HAM) and the National Commission on Violence Against Women (Komnas Perempuan), and controversies related to elections involving Gibran Rakabuming Raka.

The coalition condemned the government for not adequately addressing several questions and recommendations put forth. This criticism is based on observations that the government tends to evade or distort facts, hindering the process of resolving cases. Some of the discrepancies in information revealed include:

First, the manipulation and failure of the Government in addressing gross human rights violations. The ICCPR Committee inquired about the progress of gross human rights violation cases that have stalled at the Attorney General's Office. KontraS noted that the Indonesian Government failed to provide clear answers, claiming that there is still coordination between the National Commission on Human Rights (Komnas HAM) and the Attorney General's Office to address cases such as Wasior, Paniai, and Wamena in accordance with Presidential Instruction No. 2 of 2023.

However, this was deemed inappropriate as the Government should have referred to Law No. 26 of 2000 concerning Human Rights Courts to instruct the Attorney General's Office to investigate and prosecute these cases based on the findings of the Komnas HAM investigation. Law No. 26 of 2000 is an important legal basis for enforcing the law against gross human rights violations, so Presidential Instruction No. 2 of 2023—which focuses more on non-judicial resolution—is seen as the government's attempt to maintain impunity and not provide comprehensive justice to the victims. The Government also claimed that non-judicial resolution does not neglect the judicial process, but in reality, there have been no Human Rights Courts or ad hoc Human Rights Courts established to prosecute perpetrators of gross human rights violations in accordance with Law No. 26 of 2000.

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Second, false promises of restitution for victims of gross human rights violations. The ICCPR Committee highlighted discrepancies in providing restitution to victims in Indonesia through the Human Rights Violations Monitoring Team (PPHAM) which only reached a small portion of the total number of victims. Despite the millions of victims of gross human rights violations in Indonesia, the Government was unable to provide satisfactory answers during the session.

The coalition considers the restitution provided to thousands of victims to be nothing but false promises by the Government and a means of washing hands without substantially and fairly resolving cases. They noted that the program has various issues, such as discrepancies in victim data with the reality on the ground, uneven distribution, and ambiguity in aid allocation. The Rumoh Geudong site, which was destroyed, remains neglected without reconstruction as a memorial effort. Recommendations and assistance for victims outside Aceh have also not materialized, such as the provision of priority BPJS, scholarships, physical rehabilitation, and unclear social assistance from the Ministry of Social Affairs, as it refers to the Family Hope Program intended for the poor.

Therefore, the fulfillment of the right to restitution for victims of serious human rights violations through this non-judicial mechanism cannot be expected. Moreover, these victims are scattered across various regions in Indonesia, from Aceh to Papua, each with its own complexities and different victim conditions, while the term of the PPHAM Monitoring Team ended on December 31, 2023. Therefore, the team formed by Joko Widodo is unlikely to succeed in providing restitution aimed at restoring the victims' conditions to their original state or before the crimes occurred (*restitutio in integrum*) and providing comprehensive justice for the victims.

Third, mere rhetoric from the Indonesian Government regarding the condition and human rights situation in Papua. One of the statements in question is the government's refusal to acknowledge the militaristic approach in Papua as a contributing factor to the deterioration of human rights conditions in the region. Additionally, the government outlined several factors contributing to the increasing number of internally displaced persons (IDPs) through natural disasters, horizontal conflicts, and attacks from separatist groups known as the Armed Criminal Group (KKB). The government also boasted about the creation of the New Autonomous Region (DOB) in Papua as a form of development that benefits civil society in Papua. Moreover, the government emphasized that separatist groups that continue to attack civilians should not be tolerated.

In reality, KontraS noted that the excessive deployment of security forces such as the TNI and Polri is one of the main factors contributing to the deterioration of human rights in Papua. Throughout 2023, there were 29 cases of violence by the police, 4 by the TNI, and 6 joint TNI-Polri incidents involving shootings, beatings, arbitrary arrests, forced dispersals, intimidation, torture, and sexual violence. As a result, 67 civilians were injured and 41 killed. The deployment of forces, consisting of 1,142 police personnel and 6,388 TNI personnel, greatly contributes to an atmosphere of fear and suppression among civilians. Furthermore, the discourse of adding Military Regional Commands (Kodam) proposed by the TNI Commander

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General Agus Subiyanto exacerbates the potential climate of fear and perpetuates militarism in Papua.

In various conflicts, the government appears to oversimplify the issue by attributing all incidents to attacks from the KKB. However, this overlooks the government's resistance to abandon its militaristic approach by deploying large-scale forces from both the TNI and Polri. Additionally, the government's claims regarding the continuation of special autonomy and the establishment of DOBs are highly problematic, as these policies were passed despite significant opposition from communities in several districts and cities in Papua. These policies seem forced and did not undergo a thorough, meaningful, and beneficial participatory process.

Fourth, the government's claim regarding the revision of the Criminal Code (KUHP) as a step forward for human rights and democracy is too hasty and does not reflect the actual conditions.

In reality, the revision of the KUHP still contains elements that threaten human rights, especially freedom of speech and expression, including press freedom. Criminal law revisions should strengthen the protection of individual rights, not limit them.

The revised KUHP, enacted as Law No. 1 of 2023 and effective from 2026, could be used as a tool for criminalizing citizens who criticize government officials. However, Article 19 of the ICCPR guarantees that criticism of officials is part of freedom of expression and cannot be prohibited or punished.

Problematic provisions in the new KUHP are evident in Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of the Criminal Code regarding defamation and slander against the president/vice president and state institutions/public authorities, including through information technology means.

These articles clearly restrict criticism of the government or state institutions. The provisions regarding insults to authority in the revised KUHP can pose a risk of criminalization for criticism that should be considered part of democratic rights.

The provisions in the revised KUHP also threaten press freedom. Other articles, such as Article 433 on defamation and Article 436 on mild insults, could be used to suppress journalists who report critically on the government or public officials.

Although Press Law No. 40 of 1999 regulates press freedom, the provisions in the revised KUHP are not in line with press freedom and may lead to different interpretations. This could be abused to limit press freedom.

Similar rhetoric was also expressed by the government regarding the revision of the Information and Electronic Transactions Law (UUITE), emphasizing extensive public consultations and judicial reviews that allegedly met ICCPR standards. However, the revisions to problematic

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articles, especially Article 27 regarding attacks on honor or reputation and Article 28 regarding the dissemination of electronic information, which are considered misleading, still lack safeguards to protect information that represents critical public opinions expressed for the public interest. The absence of these safeguard standards continues to allow the use of the UUITE articles as tools for criminalizing those who are critical of both public and private sectors.

Fifth, focusing specifically on press freedom, the Indonesian government refers to activists, journalists, and human rights defenders as partners when responding to the concerns of committee members about the worrying situation faced by activists, journalists, and human rights defenders in Indonesia who are vulnerable to criminalization. This response is highly contradictory when considering the facts about the trend of criminalization often targeting activists, journalists, and human rights defenders in Indonesia.

Based on the shadow report compiled by the HRWG, data from the Alliance of Independent Journalists (AJI) shows an increasing trend of criminalization against journalists year by year. Throughout 2023, AJI recorded 89 cases of criminalization against journalists in various forms, increasing from around 60 cases in 2022 and 40 cases in 2021. The use of the ITE Law remains a worrying trend, as also noted by the 'Semua Bisa Kena' microsite where there were 6 cases of journalist criminalization based on the ITE Law in 2023.

Sixth, the aspect of Business and Human Rights where Civil Society Organizations oppose all self-defense actions claimed by the Indonesian government before all committees, the international community, human rights defenders, and all affected parties.

Based on the National Strategic Project (PSN) report by YLBHI together with Civil Society Organizations through a shadow report on ICCPR review, the Indonesian government once again proves its inability to address human rights violations. In relation to the PSN, the committee highlighted several important issues. In corruption cases where the Indonesian Government refuses to acknowledge efforts to weaken the Corruption Eradication Commission (KPK) as the sole basis for all corruption cases in Indonesia. Corruption cases in the PSN have also been presented to the committee in briefings at ICESCR.

Regarding the Right to Livelihood for farmers and rural communities, the government has failed to address the real issue of livelihood for communities affected by development projects, such as land evictions, criminalization, and arbitrary arrests. For example, in the case of Yogyakarta International Airport where 20,000 farmers and their families were neglected in the economic chain due to land grabbing issues.

On the issue of pollution, the government also fails to address limited access to water and sanitation in the PSN Bromo Tengger. Moreover, the government does not pay attention to air pollution issues that have occurred in Jakarta in recent months due to large factories around the city.

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In the issue of excessive use of violence and extrajudicial killings, the government claims that they are no longer implementing impunity for the perpetrators. However, we are fully aware that this situation is far from reality. Criminalization and arbitrary arrests often occur in PSN cases such as the Eco-City Rempang and Nagari Air Bangis projects. Currently, residents of Rempang who have experienced criminalization in the trial process and verdicts are expected to be released soon.

Seventh, the UN Human Rights Committee also raised concerns regarding the existence of discriminatory laws in Indonesia. Some of these laws include Ministerial Regulations No. 9 and 8 of 2006 concerning the construction of places of worship, which in practice perpetuate majoritarianism instead of guaranteeing the religious and belief rights of every individual. Additionally, the presence of Qanun Jinayat in Aceh, accommodating physical punishment practices for children (aged 12-18), was also highlighted by the UN Human Rights Committee.

In response to these questions, the delegation from the Indonesian Government evaded responsibility by stating that they do not have the authority to revoke discriminatory regional regulations. However, the Regional Government Law has granted the Ministry of Home Affairs the authority to prevent the enactment of discriminatory regional regulations, even having the power to annul them throughout 2015-2016. Furthermore, the Ministry of Law and Human Rights also has the authority to evaluate discriminatory regional regulations. However, these powers have not been fully utilized.

Discriminatory treatment experienced by refugees and asylum seekers in Indonesia also came under scrutiny by the Committee. In a shadow report submitted alongside the Human Rights Working Group (HRWG), the SUAKA Association, an organization advocating for refugee rights in Indonesia, noted that one serious issue often used as a pretext for the criminalization of refugees and asylum seekers is employment. Refugees and asylum seekers who are found working are targeted, despite their need to earn a livelihood to meet their daily needs.

One root of this problem is the non-ratification of the 1951 Refugee Convention by the Indonesian Government. Questions from Committee members about whether the Indonesian Government intends to ratify the 1951 Convention remained unanswered by the delegation during the last session. Instead of providing a clear response, the delegation represented by Achsanul Habib from the Indonesian Ministry of Foreign Affairs used the fact that Indonesia has not ratified the 1951 Convention as an excuse, suggesting that Indonesia has already gone beyond its responsibilities because, according to him, even though Indonesia is not yet a party to the 1951 Convention, it has made many efforts to assist refugees. This was strongly countered by one Committee member, stating that even though Indonesia is not a party to the 1951 Convention, the rights of refugees that should be protected and fulfilled are the same rights guaranteed by the ICCPR.

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Eighth, the government's denial of discrimination and all forms of violence perpetrated or perpetuated by the state against LGBTIQ+ individuals was highlighted by the UN Committee. The Committee questioned the government's commitment and concrete plans to promptly enact comprehensive anti-discrimination legislation protecting all vulnerable groups as a follow-up to the UPR recommendations received by the government in 2017 and 2022. In response, the Government stated that discrimination against LGBTIQ+ individuals does not exist or is non-existent. The Government also claimed that Indonesia is a highly diverse country that respects this diversity.

Indonesian trans men are deeply disappointed and condemn the Government's response. The Government's statement is in stark contrast to the existing reality and harms LGBTIQ+ individuals who are currently targeted by over 60 discriminatory policies categorizing LGBTIQ groups, especially transgender individuals, as pathological or disordered. The pathologization of trans and LGBTIQ individuals stipulated in Ministry of Social Affairs Regulation No. 8 of 2012 serves as the basis for dozens of discriminatory policies, including Bogor City Regulation No. 10 of 2021 on Prevention and Control of Sexual Deviation Behavior (P4S).

These discriminatory policies not only pathologize transgender and other LGBTIQ individuals and perpetuate stigma but also pave the way for persecution by society, such as West Sumatra Regional Regulation No. 8 of 2019 concerning the Implementation of Social Welfare, which states that social welfare implementation can involve community participation, including in 'preventing the spread of deviant behavior of lesbian, gay, bisexual, and transgender individuals.' Furthermore, almost all of the aforementioned policies promote torture disguised as 'rehabilitation,' which is a form of 'conversion therapy' or forced conversion efforts in the form of arbitrary arrest and detention, physical violence, sexual violence, and other forms of violence.

The government's statement also denies the state's torture against transgender groups in the Legal Gender Recognition process. In its response to the Committee before the review, the Government stated that transgender individuals can change their gender in civil registration documents. However, the Government overlooks the fact that courts require a diagnosis of transsexualism within the framework of mental disorders and require affirmative gender-affirming surgeries such as the removal of reproductive organs for trans men or forced sterilization. These requirements, besides being torture, also place transgender groups in increasingly vulnerable situations to violence in their daily lives because their identity documents do not reflect their lived gender identity. This violates the right to bodily autonomy that the State must protect within the framework of the right to privacy, the right to security, and the right to be free from torture, cruel, inhuman, or degrading treatment.