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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF
INDONESIA**

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The International Commission of Jurists (ICJ) is a non-governmental organisation founded in 1952, in consultative status with the Economic and Social Council since 1957. The ICJ is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. It takes an impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. It provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level.

ICJ submission to the Universal Periodic Review of Indonesia

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ICJ submission to the Universal Periodic Review of Indonesia

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Indonesia. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) the recently enacted State Intelligence Law; and (2) international human rights instruments and mechanisms.

STATE INTELLIGENCE LAW 2011

2. On 11 October 2011, Indonesia's House of Representatives enacted the State Intelligence Law, which grants expanded powers to intelligence agencies. A draft of this law was initially introduced in 2002 and has since then been met with heavy opposition and criticism from national and international human rights groups. Key areas of concern regarding this law is its vague and overbroad language, in contravention of the principle of legality, that could lead to misinterpretation and abuse, and its lack of accountability measures that presents the danger of greater impunity on the part of intelligence agencies.

3. Under Article 6 of the Law, the mandate of Indonesian State intelligence agencies¹ is vaguely set out, including a provision empowering the agencies to stop or prevent "any effort, work, activities, or action, and/or opponents that may be harmful to national interests and national security" (Article 6(3)). The term "opponent" is loosely defined in Article 1(8) as "any party from within or outside the country that is undertaking effort, work, activities, or action that may be detrimental to national interest and national stability, and national security". The language of this provision may lead to abuse for political reasons, or this provision may be extended to apply beyond the original stated purpose of combating external threats, such as terrorism, espionage, sabotage, subversion, illegal extraction of natural resources, or transnational organised crime.

4. Article 26 of the State Intelligence Law forbids any person or group from revealing or disseminating State secrets. The penalty for violating this provision is imprisonment of up to 10 years, and fees not exceeding 500 million rupiahs (equivalent to USD \$57 000). The language of this provision may be used for the suppression of legitimate dissent, in exercise of the right to freedom of expression and association, and lead to prosecution of journalists who seek to disseminate information to the public. It may also be used to violate freedom of the press, despite the fact that this is enshrined in Indonesia's Press Law of 1999, which states that the national press shall not be subject to censorship, bans or broadcast limitations;² and that the national press has the right to seek, obtain, and disseminate ideas and information freely.³

5. Under the Law, the doctrine of "state secrets" may also be invoked to prevent investigations that would lead to holding persons accountable for human rights violations, or making information public that would allow victims of human rights violations to seek and obtain remedies.

6. While the ICJ acknowledges that secrecy may at times be necessary and legitimate in intelligence operations, it must be emphasised that State intelligence agencies should always be accountable for their actions. In the global report of the ICJ's Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, *Assessing Damage, Urging Action*, it is emphasised that the rule of law requires transparency as this concerns persons who make decisions, how those decisions are made, and what safeguards exist to prevent, or subsequently punish, corruption, misuse of powers, or illegality. To mitigate the inherent

risks associated with secrecy, it is essential that arrangements for accountability be strongly entrenched as essential features of intelligence structures.⁴

7. Article 42 of the Law provides that accountability of State intelligence operations would be ensured by provision of a written report to the President. Furthermore, Article 43 provides that within the State intelligence agencies, supervision of its agents would be undertaken by internal mechanisms and a special commission created within the House of Representatives. It is widely perceived that these two measures are insufficient to ensure genuinely accountable intelligence agencies, mainly due to concerns that a lack of independence by the President may also lead to his unwillingness to ensure effective accountability and address alleged complicity of State intelligence agents for human rights violations. For instance, from 1968 to 1998, President Suharto used State intelligence agents to suppress legitimate dissent in a manner that violated the rights of political opponents.

8. Furthermore, the Law provides “protection” to State intelligence agents when they perform their intelligence duties and functions. Under Article 24(1), the State has the “obligation to give protection to all State Intelligence Personnel in carrying out their intelligence duties and functions.” This protection is extended under Article 24(2) to family members of State intelligence agents. The Law does not define the term “protection” and hence, this may be construed to include the State having the obligation to grant immunity from criminal prosecution or civil liability to State intelligence agents. This provision may also be used to prevent any kind of investigation into the activities of State intelligence agents.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

9. Indonesia is party to several core human right treaties, but has yet to become a party to a number of them despite voluntary pledges to do so when Indonesia presented its candidature for membership in the Human Rights Council in 2006.⁵ Core human rights treaties in respect of which Indonesia is not a party are:

- First and Second Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR);
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR);
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- Rome Statute of the International Criminal Court; and
- Convention on the Status of Refugees.

10. Indonesia is systematically late in its periodic reporting obligations. Although it has provided reports to the Committee on the Rights of the Child, the Committee Against Torture, and the Committee on the Elimination of All Forms of Discrimination Against Women, Indonesia has failed to adhere to the reporting deadlines for:

- Its initial report to the Human Rights Committee (due 23 May 2007);
- Its combined fourth, fifth and sixth periodic reports to the Committee for the Elimination of Racial Discrimination (due 25 July 2010); and

- Its initial report to the Committee on Economic, Social and Cultural Rights (due 30 June 2008).

11. Although Indonesia has invited Special Procedures to undertake official visits to Indonesia on an *ad hoc* basis,⁶ it has not issued a standing invitation to the Special Procedures. Indonesia has failed to respond to requests to carry out visits by ten of the Special Procedure mandate holders, namely the Special Rapporteur on torture (1993), the Special Rapporteur on extrajudicial, summary or arbitrary executions (2004, reminder in 2008), the Special Rapporteur on freedom of religion or belief (1996, reminder in 2008), the Special Rapporteur on the right to freedom of opinion and expression (2002), the Independent Expert on foreign debt (2008 and May 2011), the Special Rapporteur on adequate housing (2008, reminder in 2009), the Working Group on enforced or involuntary disappearances (2008, reminder in August 2011), the Independent Expert on minority issues (2009), the Independent Expert on access to safe drinking water and sanitation (2008, reminder in 2010), and the Special Rapporteur on freedom of association and assembly (September 2011).

RECOMMENDATIONS

12. The ICJ calls upon the Working Group and the Council to urge the Government of Indonesia to:

Concerning the State Intelligence Law 2011

- i). Amend the State Intelligence Law and narrowly define provisions that are currently vague and overbroad, to prevent abuse and to prevent the law from becoming a tool for repression;
- ii). Ensure that a combination of effective internal and external controls and oversight mechanisms, including effective Parliamentary oversight, are clearly provided for in the State Intelligence Law;
- iii). Include within the Law mechanisms for judicial control of intrusive measures, together with mechanisms to allow access to courts, including appropriate remedies and reparation, for those whose rights are affected by application of the Law;
- iv). Ensure that the State Intelligence Law is genuinely accountable and does not encourage an institutional culture of secrecy;
- v). Ensure that serious human rights violations can never be justified in the name of "state secrecy";
- vi). Ensure that victims of human rights violations are never deprived of effective remedies or reparation on the grounds of national doctrines such as "state secrecy";

Concerning international instruments and mechanisms

- vii). Become a party to: the First and Second Optional Protocols to the ICCPR; the Optional Protocol to the ICESCR; the Optional Protocol to CEDAW; OPCAT; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Rome Statute of the International Criminal Court; and the Convention on the Status of Refugees;
- viii). Immediately sign, with a view to ratification, the Third Optional Protocol to the Convention on the Rights of the Child;
- ix). Issue a standing invitation to the Special Procedures;
- x). Accept at the earliest opportunity the requests to undertake official missions in Indonesia by the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to freedom of opinion and

expression, the Independent Expert on foreign debt, the Special Rapporteur on adequate housing, the Working Group on enforced or involuntary disappearances, the Independent Expert on minority issues, the Independent Expert on access to safe drinking water and sanitation, and the Special Rapporteur on freedom of association and assembly;

- xi). Present to the Council, during the plenary session to adopt the outcome document for the UPR of Indonesia, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- xii). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

¹ Under Article 9 of the State Intelligence Law, the term “State intelligence agencies” includes the *Badan Intelijen Negara* (State Intelligence Body), *Intelijen Tentara Nasional Indonesia* (Indonesian National Army Intelligence), *Intelijen Kopolisian Negara Republik Indonesia* (National Police Intelligence), *Intelijen Kejaksaan Indonesia* (Intelligence in the Attorney-General’s Offices), and the *Intelijen kementerian/ lembaga pemerintah nonkementerian* (Intelligence in non-ministerial departments).

² Indonesia Press Law 1999, Article 4(2).

³ Indonesia Press Law 1999, Article 4(3).

⁴ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights* (International Commission of Jurists, 2009) p.68.

⁵ Voluntary pledges made by Indonesia in support of its candidacy to the Human Rights Council during the election of the 60th session, 28 April 2006 (available at <http://www.un.org/ga/60/elect/hrc/indonesia.pdf>).

⁶ Namely: the Special Rapporteur on violence against women (1998); the Working Group on arbitrary detention (1999); the joint mission by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women to East Timor (1999); the Representative of the Secretary General on Internally Displaced Persons (2001); the Independent Expert on the right to development (2001); the Special Rapporteur on the right to education (2002); the Special Rapporteur on the independence of judges and lawyers (2002); the Special Rapporteur on migrants (2006); the Special Rapporteur on Myanmar (2006); the Special Representative of the Secretary General on the situation of human rights defenders (2007); the Special Rapporteur on torture (2007); and the Special Rapporteur on human rights in Myanmar (2010).