

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

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MAIN REPORT |

The Cost of Terror

On July 17th, 2009, two suicide bombers attacked the JW Marriott and Ritz-Carlton Hotels in Jakarta, killing nine people and injuring dozens more. The attacks were the first since 2005 and came as a serious blow to the Indonesian government. Renewed doubt was cast over the ability of the national law enforcement agencies to combat terrorism, and calls were made for the expansion of already controversial terrorism laws.

Any moves to strengthen the powers and policing role of the military are particularly concerning, and should serve as a sober reminder of the repressive days of the New Order era. Indonesia has an international responsibility to protect basic human rights – even those of terrorists – in any actions countering terror.

ADDITIONAL FEATURE |

Indonesian AIDS Policy: Stigma, Discrimination and Challenges

In Indonesia, as in many other parts of the world, discrimination exists against people who live with HIV or AIDS (PLHAs). This stigma evolved through idea that AIDS was an illness brought on through deviant behaviour such as illicit drug use, men having sex with men (MSM), and premarital/extramarital sex. Unfortunately, some PLHAs are entirely ostracized from the community, adding further suffering to their lives already made difficult by the illness.

OPINION |

Torture and Bribery Codependent in Indonesia

In a closed environment, detainees feel powerless to deal with the police. Victims and their families and relatives therefore resort to bribing police to escape torture instead of pursuing justice via legal avenues. The bribes continue, although the reward is only temporary. It is believed that paying bribes neither ends a victim's suffering nor decreases the attacks. Rather, bribes simply institutionalize the practice of torture.

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CAVEAT:

Let her or him be aware

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THE EDITOR'S CUT

This month, as Indonesia celebrates 64 years since independence, CAVEAT is proud to release its third edition. As a very young publication, CAVEAT has been enjoying positive feedback from its readers as well as some constructive criticism. We are reaching a wider audience than ever and are very pleased to continue providing a quality report for our loyal readers.

This month, we want to examine three crucial human rights matters which are currently being intensely debated not only at the national level but also on a global scale. These are counterterrorism and the protection of human rights, global AIDS strategies and the implications for human rights and the ongoing crime of torture.

Ever since two near-simultaneous explosions struck hotels in Jakarta mid-July, Indonesia has been at odds over how to best execute counterterrorism measures. While nobody can question the necessity for comprehensive and effective prevention mechanisms – and requirement for severe punishment for those responsible – the actions of the Indonesian military, police force and government have made us question the cost of freedom. Local human rights groups have criticized the counterterrorism actions of the government as being excessive and disproportionate, and highlighted the threat posed to our own civil rights as the crackdown on terrorism continues unchallenged.

Several recent cases, including the arrest of Muhammad Jibril and the Temanggung siege, have brought into question the State's commitment to protect human rights throughout its counterterrorism activities. In the case of Jibril, a terrorist suspect, was he kidnapped by the police or was he legally arrested, and what implications does his suspension of rights have on justice for all? The case of the raid in Central Java, which involved an 18 hour siege, shootout and deaths carried out by police's crack counterterrorist squad, was filmed live on

air and created superfluous hysteria. In this atmosphere of redemption and fear, it is very easy for the public to wrongly justify the arbitrary arrest, detention, and – as some high-profile cases have shown, torture – of people suspected of being linked to terrorism.

In August, Indonesia hosted the 9th International Congress on AIDS in Asia and the Pacific (ICAAP IX). In Indonesia, people living with HIV/AIDS (PLHAs) have for too long stigmatized and discriminated for their illness. The Indonesian National AIDS Commission (KPAN) has to play a more active role in ensuring that not just AIDS is reduced, but beyond that that PLHAs will no longer be stigmatized and discriminated against. A human rights based-approach in its National Strategy would be a good starting point for combating HIV/AIDS and the human rights violations which surround it.

The last section of this month's CAVEAT draws on the experience of our organization to examine the issue of torture through a law and economic perspective. In his article entitled, "Torture and Bribery Codependent in Indonesia," Ricky Gunawan argues that paying bribes neither ends a victim's suffering nor decreases the likelihood of attack. Rather, bribes simply institutionalize the practice of torture. The State needs to show it takes torture seriously by criminalizing torture, so both victims and their families feel the need to speak out about their suffering and break the cycle.

We hope this edition of CAVEAT provides you with fresh insight into Indonesia's contemporary human rights concerns and welcome, as always, your comments and thoughts on what we are doing right, and what we could be doing better.

Thank you for your ongoing support!

The Editor

MAIN REPORT

The Cost of Terror:

Are basic human rights being sacrificed in the fight against terrorism?

"I regret to say that international human rights experts, including those of the UN system, are unanimous in finding that many measures which States are currently adopting to counter terrorism infringe on human rights and fundamental freedoms."

Former Secretary-General of the United Nations, Kofi Annan, discussing a global approach to fighting terrorism in March, 2005.

INTRODUCTION

On July 17th, 2009, two nearly simultaneous explosions struck the JW Marriott and Ritz-Carlton Hotels in the Mega-Kuningan foreign embassy and business district in Jakarta. In a coordinated attack, two suicide bombers blew themselves up minutes apart from each other in the two American-owned hotels, killing nine people and injuring dozens more.

The attacks came as a serious blow to the Indonesian government, with renewed doubt cast over the ability of the national law enforcement agencies to combat terrorism. The twin-blasts were the first terrorist acts in Indonesia since 2005, and the government had attributed the lull in extremist activity to its efforts disbanding networks, arresting and charging individuals and implementing new counterterrorism measures. Rumors began circulating that a splinter group of Jemaah Islamiyah – the virtually shattered terrorist network responsible for the 2002 Bali Bombings – were behind the attacks and fuelled fears that extremist terrorist groups had re-emerged in Indonesian once more.

Both the Indonesian government and the international community quickly issued public statements condemning the attacks. The United Nations Security Council stated that "terrorism... constitutes one of the most serious threats to international peace and security [and is] criminal and unjustifiable", and expressed its total confidence in the Indonesian government to bring the "perpetrators, organizers, financiers, and

sponsors of these reprehensible acts of terrorism to justice".

Indonesia's specialist counterterrorist unit, Detachment 88, was dispatched to follow up on intelligence leads and find those responsible while the public was advised to remain alert to any "suspicious" behavior in their communities. The hunt for Noordin M. Top, the fugitive believed responsible for orchestrating the attacks, culminated in a spectacularly violent raid in Central Java in which a house was surrounded, riddled with bullets and the occupants all killed. Since then, a number of arrests have been made – all allegedly without warrants – and raids carried out nationwide, with many people being detained without charge under special counterterrorism laws.

UN bodies like the Security Council, along with governments around the world, unanimously and rightly condemn acts of terrorism due to the indiscriminate and unjustifiable suffering they inflict and the threat to peace that they pose. The means by which counterterrorism efforts are carried out domestically however must not compromise international laws – particularly human rights laws – if the fight against terrorism is to be won for those it is aiming to protect.

Unfortunately, and also somewhat contradictorily, the post-9/11 era has seen many countries, particularly the United States, wage war against terrorism (which is collectively an attack on human rights and the rule of law) by sacrificing some of the key rights of its citizens, essentially playing

into the hands of the terrorists in the process.

Strict new legislation like the Patriot Act and detention facilities like Guantanamo Bay, initially condoned by the public which feared further attacks, led to one of the darkest and most controversial periods in US military history. Indeed, one of the first steps US President Barack Obama took upon being inaugurated into office was to order the closure of Guantanamo and review of harsh military interrogation tactics for terror suspects. When signing the orders, Obama said the US would continue the fight against terror but maintain “our values and our ideals”.

Indonesia, along with Australia and many other regional and international nations, also enacted controversial legislation following 9/11 which eroded certain basic tenets of freedom in the name of combating terrorism. The Constitutional Court of Indonesia ruled that a retroactive clause within Indonesia’s counterterrorism laws “violated the Constitution” and went against the basic principles of legislation, though these measures still remain the country’s only terrorism laws to date.

This is not to say that counterterrorism measures should not be taken, or that the threat of terrorism is not real: since 2000 Indonesia has experienced bomb attacks against the Jakarta Stock Exchange, embassies, hotels, nightclubs, markets, churches and numerous other targets. The challenge is to incorporate the protection and upholding of international laws on human rights for all – whether the victims, suspects or perpetrators of terrorist acts – while executing counterterrorist measures in a bid for justice and peace.

With this in mind, the Human Rights Commission in April 2005 appointed a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The decision to establish such a position was a clear statement from the Member States that protecting human rights and honoring pre-existing international conventions was

crucial to the international fight against terrorism.

In a further step, a global counterterrorism strategy for the United Nations was adopted by all 192 Member States – including Indonesia – on 8th September 2006, and launched at a high-level meeting of the General Assembly on the 19th September, 2006. Then Secretary-General of the United Nations, Kofi Annan, identified five key elements as the basic pillars for the global counterterrorism strategy: dissuading groups from resorting to terrorism; denying terrorists the means to carry out an attack; deterring states from supporting terrorist groups; developing state capacity to prevent terrorism; and defending human rights in the context of terrorism and counterterrorism.

This international agreement clearly showed that the global community believed the protection of human rights when countering terror was not secondary but absolutely necessary to effectively defeating terrorism. Kofi Annan said that upholding international conventions of human rights law was “a prerequisite to every aspect of any effective counter-terrorism strategy. It is the bond that brings the different components together”.

As Indonesia currently tackles this renewed terrorist threat, the government must remember its commitment to uphold the tenets of the global counterterrorism strategy and protect human rights at all costs throughout its fight for justice. An “ends justifies the means” or “desperate times call for desperate measures” mentality must not prevail, or Indonesia will end up desperately trying to remedy the failures of its action as the United States is currently trying so hard to do.

BACKGROUND ON COUNTERTERRORISM REGULATIONS IN INDONESIA

Following the 2002 Bali Bombings, President Megawati, citing an imminent emergency, issued two pieces of counterterrorism legislation in the form of a “regulation in lieu of law” (known in

Indonesian as a Perppu). These regulations, if not formally adopted by parliament, are quickly dissolved, but with the sense of urgency and public demand for results, parliament quickly adopted both in early 2003.

The first regulation was a modified version of a draft bill on counterterrorism that had been under discussion for months, while the second enacted laws which could be applied retroactively to those responsible for the Bali Bombings.

The first law on counterterrorism applied then, as it still does now, to “anyone who deliberately uses violence or the threat of violence to create a widespread atmosphere of terror or to cause mass casualties by robbing individuals of freedom or causing the loss of life or property, or damage or destruction to strategic vital installations or public or international facilities.” While this description of terrorism included a mention of individual freedoms, one notable absence in this law was any reference to motivation. The minimum sentence is four years in prison, with the maximum sentence is death.

In July 2004, the Constitutional Court ruled that the second regulation – adopted as the 2003 Law No. 16 regarding Counterterrorism – allowing the first counterterrorism measures to be applied retroactively to the Bali bombers violated the Constitution. The nine judges of the court unanimously agreed that the measure, specifically enacted to be applied to the actions of the terrorists responsible for the bombings, violated the cardinal human rights principle of non-retroactivity.

Many people in Indonesia and abroad disagreed with the decision, arguing that exceptional crimes such as the Bali Bombings – which left 202 people dead – deserved exceptional measures. However, based on Indonesia’s commitment to uphold human rights through the global counterterrorism strategy, this ruling was not only reasonable and just, but essentially obligated under international agreements.

Still, the judges ruled that their decision would not overturn the bombers guilty sentences, and could not be applied to those who had already exhausted their appeals, such as three bombers who had already been sentenced to death and were executed in November 2008.

CHALLENGES TO HUMAN RIGHTS PROTECTION THROUGH COUNTER-TERRORISM IN INDONESIA

If Indonesia is to sufficiently and honorably uphold its commitments made when it agreed to the UN global counterterrorism strategy, and fight terrorism in a way that does not ultimately reduce the freedom of Indonesian citizens, then it is currently faced with a number of challenges. Capturing those responsible for the July bombings is necessary for restoring domestic, regional and international security, but some recent proposals from the government and other actors could lead Indonesia down the wrong path if a strong stance on human rights fails to materialize.

Calls for powers to be extended

– In the wake of the July hotel bombings, questions were immediately raised over the function of the National Intelligence Agency (BIN), the police terrorist surveillance unit and a specific Counterterrorism Desk at the Office of the Coordinating Minister for Political, Legal and Security Affairs. The government was soon blamed for not effectively coordinating these various departments by bringing them under the guise of a singular, unified counterterrorism agency, as proposed by the House of Representatives in January 2007, and President Yudhoyono was soon accused of complacency on the issue.

Any call for legislation that strengthens the powers and policing role of the military is particularly concerning, and should serve as a sober reminder of the repressive days of the New Order era. During that time, a similar measure known as the Anti-Subversion Law was routinely used by the military and intelligence agency to detain “terrorists” without trial, most of who ended up being student and opponents of the government.

The National Police and Indonesian Military (TNI) were quick to respond, claiming stronger legislation and greater

involvement of the military was required in the fight against terror. National police spokesman Insp. Gen. Nanan Soekarna suggested Indonesia should have regulations that authorize security officials to apprehend and detain anyone who has colluded in any way with terrorist groups, citing Malaysia's "Internal Security Act" and Singapore's strong legislation as the sole reason those countries managed to avoid terrorist attacks.

Any call for legislation that strengthens the powers and policing role of the military is particularly concerning, and should serve as a sober reminder of the repressive days of the New Order era. During that time, a similar measure known as the Anti-Subversion Law was routinely used by the military and intelligence agency to detain "terrorists" without trial, most of who ended up being student and opponents of the government. President Yudhoyono, when confirming the military would have a more active role in combating terrorism, admitted the military had been involved in "dark, bizarre" actions in the past but claimed the move would not jeopardize democracy.

"We have to be open. We don't adopt models like Guantanamo, for instance. Security has to be clear and transparent and in line with regulation," Yudhoyono said. Shortly after, Defence Minister Juwono Sudarsono said the TNI could directly take action against people suspected of being involved in terrorism. Pledges from the military to behave may fall on deaf ears however, with countless reports from both Indonesian and international agencies concluding that reform in the TNI has been slow and largely ineffective, at best.

Despite the experience in the United States and research from the latest report by the International Crisis Group that show tougher legislation will not eradicate terrorism, several key players in Indonesia have already called for the expansion of the country's counterterrorism laws. The head of the Counterterrorism Desk, Ansyaad Mbai, recently called for the detention and interrogation period for terrorist suspects

specifically to be extended from seven days to one month, in which time they cannot access lawyers. Ansyaad further called for the pre-trial detention period for terror suspects to be extended from 100 days to one year. Similar suggestions have been echoed by law enforcement and military players nationwide, along with calls for those "inciting" terrorism to be arrested and charged with terror-related crimes.

On the 25th August, 2009, the National Police arrested Mohamad Jibril for allegedly recruiting financial donors and channelling funds for the July hotel bombings. One of his lawyers, Muhammad Haryadi, said the Jibril family had not been told of his arrest or issued with a warrant, despite the fact National police spokesman Insp. Gen. Nanan Soekarna had announced the arrest to the media. When asked of their son's whereabouts, his charge or evidence linking him to the accusations, police refused to provide any answers.

In the February 2009 report from the Human Rights Commission, the UN Special Rapporteur found that unlawful conduct and illegal activities had taken place within the intelligence agencies of many countries worldwide. When considering Indonesia's commitment to the UN's global counterterrorism strategy, which calls for the protection of human rights in the fight against terrorism, the strengthening of some of the more questionable laws on detention and interrogation of suspects runs the risk of violating this agreement. Any further erosion of key legal standards, such as *habeas corpus*, will further contradict the purpose of fighting terrorism in the name of democracy and all it entails.

STANDARD LEGAL CONSIDERATIONS VS. COUNTERTERRORISM MEASURES

Laws on Terrorism – Indonesia's counterterrorism measures may be having a serious impact on due process of rights for individuals suspected of committing a terrorist act. While targeted sanctions against suspects may be an effective tool in Indonesia's efforts to combat terrorism, such procedures may also pose a number of

serious challenges to human rights. Measures should be taken to ensure a transparent listing and de-listing process. They should be conducted based on clear criteria, and with appropriate, explicit and uniformly applied standards of evidence. Every action should be performed within an effective, accessible and independent mechanism of review for both the individuals and the State. At the very least, the codified standards required to ensure that fair and clear procedures are followed need to be respected.

It is the right of an individual to know the case against him or her as soon as possible. In addition, without contradicting the point of temporary detention, all individuals deserve the right to be heard within a reasonable time of arrest by the relevant decision-making body, the right to effective review by a competent and independent review mechanism, the right to counsel with respect to all proceedings, and the right to an effective resolution.

The Right to a Fair Trial – Every government, including that of Indonesia, has the duty to actively protect its citizens from terrorism. However, this does not justify the violation of human rights in order to achieve this end. Just like any other suspected criminal, a suspected terrorist should be treated in a way which respects their human rights, regardless of the seriousness of the allegations against them.

The Indonesian Criminal Procedure Code determines the procedures and rights of individuals at different stages of the investigation and trial. Its provisions should also include crucial safeguards to the right to a fair trial, and protection from torture and arbitrary arrest or detention. A fair trial, legal assistance, access to adequate food and water, access to health protection, and access to information, are all rights enshrined within the Indonesian Criminal Procedure Code, and to which a suspected terrorist claims equal protection.

In isolation, the principle of fair trial is itself is a crucial element to procedural law. The right to a fair trial is a norm of international

human rights law, designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most fundamental of which are the right to life and liberty of the person. It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law”.

Furthermore, the Universal Declaration of Human Rights states a set of agreed points on this matter. Article 10 stipulates that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him”. In addition, there is also protection to the rights of privacy and the principle of presumption of innocence, which means **that even terror suspects should be presumed innocent until a final court decision** is reached. In Indonesia, these rights are also recognized in the 1945 Constitution, enshrined in article 28D.

In gross contradiction to this, Article 25 of the Indonesian Law on Terrorism requires that a person, while supposedly presumed innocent, may be kept in jail for up to 6 months during their investigation, without trial. Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical to ensuring that counterterrorism measures are effective and in respect of the law. The human rights protections for all persons charged with criminal offences, including terrorism-related crimes, include the right to be presumed innocent, the right to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, and the right to have a conviction and sentence reviewed by a higher tribunal satisfying the same standards. This standard law of the criminal procedure code is being threatened significantly by the current legislation on terrorism and proposed amendments to the laws.

The Right to Life – Both international and national human rights law recognizes the duty of the State to protect individuals suspected of committing a crime prior to facing trial. In Indonesia, however, some measures adopted by the State to protect its citizens from acts of terrorism are themselves challenging an individuals' right to life. During an August 9 raid on a property believe to be occupied by Noordin M. Top, the crack police unit Detachment 88 adopted a "shoot-to-kill" policy and after an 18 hour siege dragged the corpse of a man (who was not Noordin) from the bullet-riddled house. In a separate raid in Bekasi on the same day, two men were shot and killed during a raid.

In the context of counterterrorism, the High Commissioner for Human Rights has emphasized the importance of ensuring that the entire law enforcement machinery, from police officers to prosecutors to the officers operating detention and prison facilities, operate within the law. It has also cautioned that, in the fight against terrorism, extreme vigilance is applied by those in positions of authority against all forms of abuse of power, and that they should instil a culture of respect for the law by those entrusted with its application. In stark contrast to these recommendations, the shoot-and-kill operation on August 9 highlights the excessive and ultimately ineffective measures being taken by the government of Indonesia to combat terrorism.

More concerning, however, is how this incident displays the use of "deliberate" or "targeted killings" as a tactic to eliminate suspected individuals, rather than arresting them and bringing them to justice. The UN Human Rights Committee has stated that targeted killings should not be used as a deterrent or punishment, and that the utmost consideration should be given to the principle of proportionality. Before contemplating the use of deadly force, every other measure to arrest a person suspected

of committing acts of terror must be completely exhausted.

In addition, the raid showed approaching a single suspect with a disproportionate measure of force was not terribly effective, as by doing so authorities lost the potential to use the suspect as an informant. Alive, the suspect could have been taken to the authorities and interrogated, and justice eventually carried out through the correct channels.

Torture – One of the most disturbing aspects to have emerged from the closure of Guantanamo Bay was the revelations of the horrific, systematic use of torture to extract information from terrorist suspects. In the global context of the 'war on terror', torture is often discussed as a justifiable ends to a means, and a necessity from preventing future terrorist attacks. Indeed the argument behind laws that allow suspects to be detained – without charge – for extended periods is so that interrogation can be used to its full potential and the most possible information extracted. Such conditions are already questionable, at best, and highly vulnerable to abuse and potential torture.

Indonesia has ratified the UN Convention Against Torture, which guarantees that the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment is absolute under national and international law. It is a peremptory norm – or norm of *jus cogens* – and is non-derogable, even in states of emergency which may threaten the security of a nation. The use of torture and other cruel, inhuman or degrading treatments to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad.

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ADDITIONAL FEATURE

Indonesian AIDS Policy: Stigma, Discrimination and Challenges

HUMAN RIGHTS AND AIDS

Indonesia recently hosted the 9th International Congress on AIDS in Asia and the Pacific (ICAAP IX) from August 9 -13 2009. In light of the terrorist bombings which struck Jakarta just a few weeks previously, it was a timely opportunity for the country to show the international community its continuing ability to hold forums of scale and importance. Furthermore, by hosting this international congress, Indonesia sent the strong message that it is still a place where pluralism and tolerance are encouraged. The congress was also an essential element in Indonesia's commitment to reducing the spread of the pandemic in the region. As the congress theme "Empowering People, Strengthening Networks" suggested, the meeting set a strong agenda in empowering people living with HIV, and highlighted the importance of supporting them through a strengthened network across Asia, the Pacific, and beyond.

Since the earliest human societies, discrimination has negatively affected the lives of people whose sex, colour, caste, etc. has been considered inferior to the dominant norm. In Indonesia, as in many other parts of the world, discrimination exists against people who live with HIV or AIDS (PLHAs). This stigma evolved through idea that AIDS was an illness brought on through deviant behaviour such as illicit drug use, men having sex with men (MSM), and premarital/extramarital sex. Unfortunately, some PLHAs are entirely ostracized from the community, adding further suffering to their lives already made difficult by the illness.

UNAIDS defines HIV-related stigma and discrimination as: "...a 'process of devaluation' of people either living with or associated with HIV and AIDS...Discrimination follows stigma and is the unfair and unjust treatment of an individual based on his or her real or perceived HIV status". Stigma and discrimination are daily realities for people living with HIV and for people belonging to groups particularly vulnerable to HIV infection. Such groups include sex workers, MSMs, people who inject drugs (IDUs), prisoners, and people with tuberculosis. Members of these groups are already stigmatized, and are thus also more likely to face discrimination than others if diagnosed with HIV. This hampers prevention and treatment efforts as people attempt to hide or deny their HIV status. Lawyers Collective argues that HIV and AIDS not only make social, political, and economic disempowerment more visible, but also contribute to the vulnerability of these marginalized groups.

From the above description, it is clear that a lack of understanding about the basic facts of HIV and AIDS and how the virus can be transmitted, treated and prevented, can lead to stigma, discrimination and eventual human rights abuses. Therefore, a strategic AIDS policy to simultaneously address the national epidemic while ending stigma and discrimination is essential.

**INDONESIAN NATIONAL AIDS COMMISSION:
LOOKING FORWARD TO A RIGHTS-BASED
APPROACH POLICY**

In the developing world, which includes Indonesia, the spread of HIV is further

catalysed by poverty and migration. Poverty limits people's ability to access information, health and social services, and prevents them from purchasing the simple mechanisms which prevent HIV transmission, such as condoms and clean syringes. Migration creates communities which may be cut off from social and family networks, and are thus more vulnerable to behaviours (such as sex work or drug use) which increase their risk of HIV infection.

Indonesia's KPAN has a three-year HIV National Strategic Plan which is due to end in 2010. It is thus important to now focus on lessons learnt from past experiences to make this forthcoming plan more effective. It needs to promote human rights and public health efforts, rather than undermine them, and in particular focus on policies which will prevent the creation of laws designed to further marginalise key populations such as sex workers and IDUs. Indeed, these groups should be at the forefront of any HIV efforts since, according to the World Health Organisation, sexual contact and injecting drug use contribute 51% of all new HIV infections in Indonesia. In many other countries, laws, policies and regulations contribute to a supportive legal environment for HIV and AIDS prevention. If the policies and laws in Indonesia do not create this same environment, stigma and discrimination will persist.

Of fundamental importance is that basic human rights have to be placed at the heart of the Indonesian AIDS Policy, with every target group treated with dignity, non-discrimination, public participation and accountability. Furthermore, the HIV prevention and treatment programs enshrined in the policy should be implemented across the board, regardless of an individual's background, social status, religion, ethnicity or sexual orientation. LBH Masyarakat believes that the KPAN should encourage broader public participation in decision making, in particular consulting with PLHA's. Finally, all programs carried out have to be monitored and those in charge held accountable.

As defined by Lawyers Collective, an AIDS Policy placed into a human rights framework means using anti-discriminatory measures to propose ethical solutions to the legal and political dilemmas raised by HIV epidemic, while maintaining longer-term goals of directing the balance of power into a more equitable system. As previously mentioned, PLHAs often face problems such as discrimination and stigma through the traditional, group-targeted approach taken by the current KPAN Strategic Plan. A rights-based approach would be a more effective alternative, as this approach considers all of an individual's vulnerabilities, not just in terms of their risks of HIV infection, but also in terms of their social and cultural environment.

Aside from laying out the above human rights norms into the National AIDS Policy, KPAN must also aim to resolve the more basic problems routinely faced by people living with HIV. First of all, KPAN needs to effectively socialise and transmit information regarding HIV and AIDS to the Indonesian people, as currently there is little awareness of what programs KPAN run or how they approach HIV prevention and treatment. This socialisation needs to facilitate the correct understanding of HIV and AIDS, and create awareness of stigma and discrimination, the harm they cause, and the benefits of reducing them. One need only compare the public awareness campaign carried out by the KPAN with that of the Indonesian National Narcotic Agency (BNN) to conclude that the KPAN is seriously lacking in the ability to spread their message to the general public.

Lack of socialisation makes it difficult to effectively combat the stigma and discrimination experienced by PLHAs. Some months ago a boy was expelled from his village in North Sumatera because his parents were discovered to be HIV positive, and the other villagers were afraid the boy would transmit the virus to the rest of the community. This sad affair was the direct result of Indonesian people's lack of awareness of how HIV is transmitted.

UNAIDS provides guidelines on how to reduce stigma and discrimination as part of a national AIDS program, guidelines which could readily be used by the KPAN. These include participatory education, with activities that encourage dialogue, interaction and critical thinking; contact strategies, which involve direct or indirect interaction between people living with HIV and key audiences, in order to dispel myths about people affected by HIV; and mass media campaigns.

These issues, however, raise a number of pertinent questions: What is the KPAN currently doing to deal with discrimination and stigma? Does it have the complaint mechanism to resolve these issues? Does its current policy provide protection and assistance to the victim if they want to file a complaint to the authorities? In all these questions, LBH Masyarakat sees the KPAN lacking in commitment.

The programs required empowering PLHA's to access legal aid; an issue of real importance as they are so vulnerable to human rights violations, are also missing from the KPAN's current strategic plan. Respect for the rights of PLHA's or those at risk of infection are critical to the prevention and successful treatment of the disease. Significant HIV and AIDS related human rights issues include advancement of the right to health, the right to education, the right to privacy, the right to equality and non-discrimination, and the right to information and education.

PLHA's rights are often ignored or violated in their daily activities, not only by the surrounding community, but also through the acts of government institutions. Tragically, many people who commit these violations are unaware that what they are doing is wrong. For example, LBH Masyarakat hears of many cases in which people with HIV are dismissed from her/his job or school/university because of their HIV status. This is a violation of their right to work and right to education, with the ILO code of practice on HIV/AIDS and the World of Work clearly stating that HIV status

cannot be a reason to dismiss someone from their job.

PLHA's also routinely face negative attitudes or prejudices from the judicial system, which impede on their human rights by restricting their access to a fair and unbiased trial. The assessment of issues such as confidentiality of HIV status and protection in cases of rape/molestation are often compromised as a result of these prejudices. The judiciary system can also contribute to stigmatization when individuals from vulnerable groups are convicted but then prevented from accessing the support needed to prevent HIV transmission within the prison.

Another major issue needing urgent attention by the KPAN is the issue of overcrowded correctional institutions, which decreases sanitation levels and subsequently increases the ease with which HIV is transmitted. Many IDU's are imprisoned without adequate drug treatment, meaning they have little support in overcoming their addiction and, as a consequence, participate in needle sharing. Furthermore, treatment for prisoners living with HIV is very limited. Thus, the overcapacity, lack of drug treatment, and inaccessible treatment for HIV positive inmates, contributes to the widespread transmission of HIV within the prison system. The KPAN, together with relevant stakeholders such as General Directorate of Correctional Institute, should move to collectively resolve this problem. The Indonesian Government must begin treating drug users as patients who need clinical treatment rather than as criminals, and increase the number of rehab facilities inside the prisons rather than perpetuate the issues.

All of the described ingredients must be integrated into the Indonesian national AIDS policy. If we are unable to do this, we won't be able to win the battle against stigma and discrimination.

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OPINION

Torture and Bribery Codependent in Indonesia

By: Ricky Gunawan *

Jakarta, Indonesia — Indonesia ratified the U.N. Convention against Torture almost 11 years ago. This means Indonesia is legally obliged to take effective legislative, administrative, judicial or other action to prevent torture within its jurisdiction.

It also must ensure that all acts of torture are offences under its national laws. However, Indonesia still has no national legislation outlawing torture, placing it in violation of its international legal obligations under the convention.

The U.N. Special Rapporteur on Torture has recommended that Indonesia should set up an independent national authority, such as a national commission or ombudsman, with investigative and prosecutorial powers. The institution's task would be to investigate torture cases in an independent manner, without affiliation to any government body.

Furthermore, such an authority would maintain the impartiality of its prosecutors and investigators and implement the principle of equality before the law in its entirety, especially in cases involving police or military officers as perpetrators.

To minimize the increasing number of torture cases, the government needs to be more proactive in its efforts to prevent torture. The Association for the Prevention of Torture has pointed out that this requires three integrated elements: transparency in institutions, an effective legal framework and capacity strengthening.

But implementing these elements is not easy. According to the Community Legal Aid Institute, or LBH Masyarakat, Indonesia's detention and correctional facilities are

closed to detainees' lawyers and the public, which makes it hard to verify reports of torture occurring in those place. In addition, these facilities are not subject to any monitoring mechanism.

The fact that torture mostly takes place behind closed doors makes it extremely difficult to pin down the perpetrators. Therefore, transparency in penal and correctional institutions is urgently required, and would pave the way for justice for torture victims.

In a closed environment, detainees feel powerless to deal with the police. Victims and their families and relatives therefore resort to bribing police to escape torture instead of pursuing justice via legal avenues. The bribes continue, although the reward is only temporary. It is believed that paying bribes neither ends a victim's suffering nor decreases the attacks. Rather, bribes simply institutionalize the practice of torture.

This phenomenon occurs as a result of social behaviour when dealing with torture cases. Bribing an officer to end torture creates negative repercussions in the fight against torture. By bribing a law enforcement officer, torture victims and their families constantly provide them financial benefits or incentives. This relationship substantiates one of the key difficulties in fighting torture.

According to the principles of law and economics, incentives and disincentives are not merely related to receiving or not receiving money: they are to ensure that laws induce compliance instead of fear. Scholars of law and economics argue that rational criminals will commit a crime only if the benefits are higher than the costs.

Such costs are influenced by the probability of the crime being detected, the degree of law enforcement and the severity of punishment. Hence, a good law implies that committing a crime produces a higher cost compared to its benefits.

This approach has a deterrent effect on crime when both the probability of detection is high and criminal punishment is severe. As mentioned earlier, the three integrated elements of torture prevention fit well with efforts that increase the probability of crime detection, which in turn means a higher level of law enforcement with respect to torture.

Similar to other crimes, corruption in government agencies, including law enforcement agencies, represents the profit maximizing behaviour of criminals. What makes it different from other cases is that when bribery is committed the victim also plays a very significant role in the crime. This suggests that redress provided to torture victims and their families can reduce and prevent the occurrence of torture.

Torture victims and their families need to be aware that they are a catalyst in stopping the practice of torture and ill treatment. The knowledge of events and courage to complain has considerable weight in determining who deserves to be punished. If torture victims are afraid to speak out about their suffering, the condemnable practice of torture will continue to reign in Indonesia.

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About LBH Masyarakat

Born from the idea that all members of society have the potential to actively participate in forging a just and democratic nation, a group of human rights lawyers, scholars and democrats established a non-profit civil society organization named the Community Legal Aid Institute (LBH Masyarakat)

LBH Masyarakat is an open-membership organisation seeking to recruit those wanting to play a key role in contributing to the empowerment of society. The members of LBH Masyarakat believe in the values of democracy and ethical human rights principals that strive against discrimination, corruption and violence against women, among others.

LBH Masyarakat aims for a future where everyone in society has access to legal assistance through participating in and defending *probono* legal aid, upholding justice and fulfilling human rights. Additionally, LBH Masyarakat strives to empower people to independently run a legal aid movement as well as build social awareness about the rights of an individual within, from and for their society.

LBH Masyarakat runs a number of programs, the main three of which are as follows: (1) Community legal empowerment through legal counselling, legal education, legal clinics, human rights education, awareness building in regard to basic rights, and providing legal information and legal aid for social programs; (2) Public case and public policy advocacy; (3) Conducting research concerning public predicaments, international human rights campaigns and advocacy.

These programs are conducted entirely in cooperation with society itself. LBH Masyarakat strongly believes that by enhancing legal and human rights awareness among social groups, an independent advocacy approach can be adopted by individuals within their local areas.

By providing a wide range of opportunities, LBH Masyarakat is able to join forces with those concerned about upholding justice and human rights to collectively participate and contribute to the overall improvement of human rights in Indonesia.

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