amnesty international

INDONESIA
The Anti-subversion Law: A Briefing

Introduction

"*[T]he Anti-subversion Law can be used to punish people whose ideas are different from those of the government. It allows prosecutors and judges to act as if they can read the accused's mind*".[1]

In Indonesia subversion is punishable by death, yet those accused of this crime are denied the most basic rights - including the right to a fair trial - which would provide them with the opportunity to defend themselves against the charge. Most of those convicted of subversion in Indonesia have done nothing more than peacefully express views which differ from those of the government authorities. In a state where national stability, security and order are among the key "national goals" such peaceful opposition - perceived or real - is considered to threaten the stability of the state and its ideology and, as such, is deemed subversive.

The legislation which makes the criminalisation of peaceful dissent possible is the 1963 Anti-subversion Law. This law has been employed extensively by the Indonesian Government to silence dissent by detaining without trial hundreds of thousands of alleged political opponents during the past 32 years. Hundreds of others charged with subversion have been put through unfair trials and sentenced to long terms of imprisonment or even put to death.

---

[1] Indonesia's National Commission for Human Rights (Komnas HAM) on the Anti-subversion Law. Jakarta Post, 9 April 1996.

In recent years, faced with strong criticism of the law, including from Indonesia's National Commission on Human Rights (*Komisi Nasional Hak Azasi Manusia* - Komnas HAM), its use by the authorities had declined. The international community had referred to the decline in use of the Anti-subversion Law as evidence of an improving human rights situation in Indonesia. Its application, however, had not ceased entirely particularly in more remote areas that are less accessible to international scrutiny such as Aceh in northern Sumatra.

This downward trend was sharply reversed after the raid on the Jakarta headquarters of the Indonesian Democratic Party (*Partai Demokratik Indonesia* - PDI) by members of the security forces and alleged supporters of a rival faction of the PDI in July 1996.[2] In the months following the raid over one hundred political activists, human rights defenders, trade unionists and others were arrested accused of having instigated the riots which followed the raid. Ten of the people arrested have since been charged under the Anti-subversion Law and are now on trial in Jakarta.[3] Having failed to find evidence of their involvement in the riots the authorities did not drop the charges but changed the allegations to focus on criticism of the authorities allegedly made by the defendants in the past. All 10 are also charged under Article 154 of the Criminal Code as a subsidiary charge which punishes expressing "hostility, hatred or contempt against the Government of Indonesia" with up to seven years' imprisonment. Three labour activists are also on trial for subversion in the East Java town of Surabaya for their involvement in peaceful labour activism.[4] Amnesty International considers this to be a clear example of the use of repressive legislation to restrict civil and political rights in Indonesia.

In a further example of a worrying trend towards an increased use of the law, another four people are facing charges under the Anti-subversion Law for their alleged role in riots in the West Java town of Tasikmalaya.

Amnesty International believes that most, if not all, of those now on trial, or facing charges under the Anti-subversion Law are prisoners of conscience detained solely for their peaceful activities or expression of their views including calling for greater democracy in Indonesia, questioning the dominance of the military in Indonesian politics and calling for accountability for the Indonesian President and government for human rights violations.

[2] For further information see *Indonesia: Arrests, torture and intimidation: The Government's response to its critics*, AI Index: ASA 21/70/96.

[3] The ten are: Budiman Sujatmiko, Garda Sembiring, Ignatius Damianus Pranowo, Ignatius Putut Arintoko, Ken Budha Kusumandaru, Petrus Haryanto, Suroso, Victor da Costa, Yacobus Eko Kurniawan and Muchtar Pakpahan. Two other people - I Gusti Anom and Wilson - are also detained facing subversion charges.

[4] The three are: Coen Hussein Pontoh, Dita Indah Sari and Mohamad Sholeh. A further 11 activists were arrested in Surabaya in connection with the events in Jakarta in July 1996 and were originally threatened with several charges including subversion as a subsidiary charge. They were however, released from detention and it appears that the charges may now been dropped.

This document provides a summary of Amnesty International's main concerns relating to the Anti-subversion Law and how this legislation has facilitated serious human rights violations including the imprisonment of prisoners of conscience, torture, unfair trials, "disappearance" and possible extra-judicial killings.

Amnesty International continues to call on the government for this legislation to be repealed. The organization is also calling on the authorities to immediately and unconditionally release all those who are currently detained and on trial, or facing charges, under the Anti-subversion Law because of their peacefully held views or non-violent activities.

The Anti-subversion Law

The Anti-subversion law was first issued as a Presidential Decree (Presidential Decree No. 11, 1963), by former President Sukarno in the context of the period of confrontation with Malaysia. In the aftermath of the 1965 coup attempt, which resulted in the establishment of the New Order Government, the decrees of Sukarno were deemed to be unconstitutional, and provision was made for their review. The first provisional parliament established under the New Order Government was given two years to decide whether various decrees of the previous government were in the interests of the people and whether they were constitutional. Presidential Decree 11/1963 was eventually ratified and formally incorporated into law in 1969.

Amnesty International has consistently campaigned for the repeal of the Anti-subversion Law because its provisions have been used to sentence to death or imprison people for the peaceful exercise of their rights to freedom of expression, opinion and association. Amnesty International believes that the vague wording of the law, the breadth of its application and the absence of any explicit safeguards relating to detainees' rights following arrest and during detention make the law open to interpretation and therefore to mistakes and to abuse by officials. In turn this has made it possible for the Anti-subversion Law to become a tool for the repression of peaceful opposition to the government and its policies in a manner which violates international standards. An unofficial translation of the law can be found in Appendix I.

Amnesty International's main concerns about the Anti-subversion Law are:

- ***It has been used to arrest and imprison people for the peaceful exercise of their rights to freedom of opinion and expression and to their rights to freedom of assembly and association guaranteed under Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR);***

- ***People detained under the Anti-subversion Law are denied rights guaranteed under the Indonesian Code of Criminal Procedure (KUHAP) and under international standards for fair trial. In the absence of these safeguards detainees have been subjected to incommunicado detention without charge or judicial supervision and to torture and "disappearance";***

- ***The punishment for violating the Anti-subversion Law includes the death penalty which Amnesty International opposes in all circumstances.***

More specifically Amnesty International's concerns with the legislation and its application include:

- The vague and sweeping language of the law permits the prosecution and conviction of anyone whose words or actions can be construed as disruptive of public order, or critical of *Pancasila*[5], the government , its institutions or its policies.

Subversive activities are broadly defined to include actions which "*distort, stir up trouble or digress*" from *Pancasila* or the state (Article 1.1a). People considered to be "*spreading feelings of hostility or creating hostility, dissension, conflict, chaos, instability or restlessness among the population*" may also be charged with subversion (Article 1.1c). In addition, activities considered to disturb, hamper or stir up trouble for industry, production, distribution or trade are punishable under the Anti-subversion Law (Article 1.1d) as is "*expressing sympathy with the enemy of the Republic of Indonesia or with a state which happens not to have friendly relations with the Republic of Indonesia*" (Article 1.2).

- Provisions contained in the Anti-subversion Law grant exceptional powers to the military and the prosecution to investigate cases and detain people for up to one year without charge or trial. These provisions have led to human rights violations during arrest, detention and investigation. The two clearest examples of this relate to the process of investigation and to the period of detention:

[5] *Pancasila* is Indonesia's state ideology. It embodies five principles - belief in one God, humanitarianism, national unity, democracy and social justice.

a) The responsibility for the investigation of subversion cases rests with the Attorney General/Highest Ranking Military Prosecutor (Article 5) rather than with the police who are exclusively charged with the investigation under provisions of Indonesia's Code of Criminal Procedure (KUHAP).

b) The Attorney General/Highest Ranking Military Prosecutor is also authorised to order the detention without trial of a person suspected of subversion for up to one year (Article 7). In practice detention is renewable indefinately. This contrasts with provisions in KUHAP under which a complex table of limits on pre-trial detention exist.

♦Under another provision defence lawyers may be called as witnesses and may be imprisoned if they fail to cooperate (Article 12) notwithstanding Article 170(1) of KUHAP (see Appendix II) and in contravention of Article 22 of the United Nations (UN) Basic Principles on the Role of Lawyers (see Appendix III).

Apart from the provisions noted above, the rights of suspects during arrest, detention and investigation under the Anti-subversion Law have never been made explicit. The Indonesian Code of Criminal Procedure (KUHAP), introduced in 1981 contains provisions which protect the rights of detainees and people charged with crimes. However, Article 284 of KUHAP provides "temporary exception" for laws which themselves contain special legal procedures - this would include the Anti-subversion Law - and may be used to argue that KUHAP does not apply.

In addition, the possibility that KUHAP does not apply also exists because of the powers of investigation given under the Anti-subversion Law to the Attorney General and the military. Under Article 1 of KUHAP "investigators" are defined as "state police officials" or other "civil service officials". It does not include the military and, as such, any investigations carried out by the military will not be subject to KUHAP. To Amnesty International's knowledge the military do not have any written procedures for carrying out investigations.

Past cases show that, regardless of the debate about whether or not safeguards contained in KUHAP apply, people detained under the Anti-subversion Law are frequently denied their basic rights in violation of international standards.

The most common violations are listed below under the headings - " arrest and pre-trial detention" and "trial". National law and international standards that are contravened by these practises are indicated in brackets. The relevant articles of the national law and international standards referred to in each case are set out in full in Appendices II and III respectively.

Arrest and pre-trial detention

In many cases people arrested under the Anti-subversion Law are:

♦not informed of the reason for their arrest or the charges against them
- Article 18(1) of KUHAP
- Article 9(2) of the International Covenant on Civil and Political Rights [ICCPR]
- Principle 10 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [Body of Principles];

♦denied the right to notify or to have their family notified of their arrest or detention
- see Article 18(3) of KUHAP
- Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners [Standard Minimum Rules]
- Article 16 of the Body of Principles;

♦not brought promptly before a judge
- Article 9(3) of the ICCPR
- Principle 11 & 37 of the Body of Principles;

♦There is no provision for the detention of the suspect to be regularly reviewed
- Principle 11(3) and 37 Body of Principles;

♦not granted access to legal representation
- Article 54 of KUHAP
- Principle 17 & 18 of the Body of Principles
- Principle 1 of UN Basic Principles on the Role of Lawyers;

♦not permitted visits from members of his/her family
- see Article 60 of KUHAP
- Rule 92 of the Standard Minimum Rules
- Principle 19 of the Body of Principles;

♦subjected to ill-treatment or torture
- Article 117(1) of KUHAP
- Article 5 of the Universal Declaration of Human Rights [UDHR]
- Principle 6 and 21 of the Body of Principles
- Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT];

Trial

Subversion trials routinely fall short of international standards for fair trials. In most cases they are little more than show trials. Fundamental to this is the lack of independence of the judiciary in Indonesia. Although by law the judiciary is independent, the administration of the courts by the Ministry of Justice creates a direct link with the executive branch and a dependancy on it for salaries, promotions and other benefits. Even where the system provides formal guarantees of autonomy and impartiality, these are routinely undermined, particularly by the military.

Subversion trials are characterised by the following features:

- ***presumption of innocence is compromised by public statements made by the authorities about the accused and by propaganda against them in the media before and during the trial***
  - ***Article 66 (?) Of KUHAP***
  - ***Article 11 of the UDHR***
  - ***Article 14(2) of the ICCPR***
  - ***Principle 36(1) of the Body of Principles;***

- ***accused persons are frequently denied access to, or threatened not to appoint, legal counsel of their own choice***
  - ***Articles 54 & 55 of KUHAP***
  - ***Article 14(3)(d) of the ICCPR***
  - ***Article 1 of the Basic Principles on the Role of Lawyers;***

- ***the court often appoints lawyers for the accused who lack previous experience of Anti-subversion cases and whose independence is questionable***
  - ***Principle 6 & 16 of the Basic Principles on the Role of Lawyers;***

- ***defence lawyers are often refused access to court documents before the trial starts - see Articles 143(4) & 144(3) of KUHAP***
  - ***Article 11 of the UDHR***
  - ***Article 14(3)(b) of the ICCPR***
  - ***Principle 36 of the Body of Principles;***

- ***people accused under the Anti-subversion Law are often convicted on the basis of uncorroborated confessions. In many cases the accused or witnesses have alleged that their statement was involuntarily extracted under torture, ill-treatment or other duress***
  - ***Article 117(1) of KUHAP***
  - ***Article 5 & 11 of the UDHR***
  - ***Principle 6 & 21 of the Body of Principles***
  - ***Article 2(2) of the CAT;***

- *evidence and allegations of torture and ill-treatment are routinely ignored by the courts*
  - *see Article 117(1) of KUHAP*
  - *Article 15 of the CAT;*

- *the accused is frequently denied the right to question witnesses who testify against them*
  - *Article 165(2) of KUHAP*
  - *Article 11 of the UDHR*
  - *Article 14(3)(e) of the ICCPR;*

- *defence requests to call and question witnesses are often denied or obstructed*
  - *Article 65 of KUHAP*
  - *Article 11 of the UDHR*
  - *Article 14(3)(e) of the ICCPR*

- *defence lawyers, prosecutors and judges are subjected to pressure from the military and government to ensure a guilty verdict*
  - *Article 14(1) of the ICCPR*
  - *Principle 16 of the Basic Principles on the Role of Lawyers*
  - *Principle 1 and 2 of the UN Basic Principles on the Independence of the Judiciary;*

- *by law defendants found guilty of subversion have the right of appeal against a decision of the court of first instance. In practice some prisoners have not been permitted to appeal against convictions of subversion. In other cases individuals have spent many years in detention waiting for the results of their appeals. Many alleged members of the Communist Party of Indonesia (Partai Komunis Indonesia - PKI) which was held responsible for the 1965 coup attempt were denied the right to appeal. Those allowed to appeal often waited 10 or 20 years to learn that their appeals had been rejected. In some cases sentences have been increased on appeal.*
  - *Article 67 of KUHAP*
  - *Article 14(5) of the ICCPR;*

- *while currently subversion trials of civilians take place in civilian courts, in the past extraordinary military tribunals (Mahkamah Militer Luarbiasa - Mahmilub) were set up to try high ranking people accused of involvement in the alleged PKI coup attempt in 1965. These trials were uniformly unfair.*

Given that many of the guarantees for a fair trial are not respected acquittal is extremely rare.

The Anti-subversion Law in practice

The Anti-subversion Law is the harshest of the repressive legislation available to the Indonesian Government to silence its alleged opponents.[6] It was the legal instrument most commonly used against the estimated 1,000 people who were brought to trial for their alleged involvement in the coup of 1965 which was blamed on the Communist Party of Indonesia (Partai Komunis Indonesia - PKI).[7] The trials of those accused of PKI membership or participation in the coup were uniformly unfair. Although the vast majority of suspected PKI prisoners were released by 1980, 14, most of whom were found guilty of subversion, remain in prison. Five of the fourteen are under sentence of death.

Since the 1965 coup, the threat of a communist resurgence has been a constant theme in Indonesian politics. This perceived threat to the stability of the nation has been used by the authorities to justify the arrest and imprisonment of its opponents. The Anti-subversion Law in particular has been employed widely against "leftist" critics of the government. In 1989 two students - Bambang Subono and Bambang Isti Nugroho were found guilty of subversion and sentenced to seven and eight years' imprisonment respectively. The following year a fellow student - Bonar Tigor Naipospos - was sentenced to eight and a half years' imprisonment for subversion. The charges against the three were based principally on their involvement in an informal study group and the possession and distribution of works by the well known Indonesian author Pramoedya Ananta Toer.[8] Amnesty International considered all three to be prisoners of conscience - all three have been released.

Many others, apart from those accused of links with communism, have also been tried and sentenced under the Anti-subversion Law including Muslim activists and individuals accused of pro-independence activities in Aceh and Irian Jaya.

In 1985 a series of trials took place of people arrested in connection with a demonstration the previous September in Tanjung Priok - the port area of north Jakarta. During the incident

[6] A series of articles, known as the "Hate-sowing Articles", originally introduced by the Dutch Colonial Government, are also retained under the Criminal Code and are frequently used to imprison, or intimidate, alleged political opponents. The Hate-sowing Articles forbid "spreading hatred" against government officials and are punishable by up to seven years' imprisonment. In addition, Article 134 of the Criminal Code punishes "insulting the President" with a maximum of seven years.

[7] Around 500,000 others were arrested and detained without trial after the 1965 coup.

[8] Pramoedya Ananta Toer was himself imprisoned between 1965 and 1979 in the wake of the coup and was adopted by Amnesty International as a prisoner of conscience. Since his release a number of his books have been banned including *Rumah Kaca* which was banned by an order of the Attorney General in June 1988.

scores of people were killed when government troops opened fire on crowds protesting about the desecration of a local mosque. Around 100 people were brought to trial, many charged with subversion. One of those found guilty of subversion was Lieutenant General (Ret.) Hartono Rekso Dharsono, a leading member of a group of non-active or retired military officers outspoken in their criticism of the government, known as the Group of 50 (Petisi 50). The charges against him were mainly based on his presence at a meeting at which the significance of the Tanjung Priok incident was discussed and his signing of the Group of 50's "White Paper" which called for an independent investigation into the shootings. Despite testimony from both prosecution and defence witnesses stating that General Dharsono's presence at the meeting did not incite anyone but, on the contrary, injected an element of calm and reason into a heated discussion, he was sentenced to 15 years' imprisonment. The chief prosecutor reportedly said in his final statement that it was not necessary to prove the effects of General Dharsono's actions because, under the Anti-subversion Law, acts which "might" undermine the state or cause unrest were subversive - regardless of their ultimate impact.[9]

At least 50 people accused of links with Aceh Merdeka, an armed resistance movement in the province of Aceh, north Sumatra, were found guilty of subversion in trials which took place between 1991 and 1994. All were convicted after unfair trials and Amnesty International believes that at least 24 may be prisoners of conscience. At trials of the alleged leadership of Aceh Merdeka which began in March 1991, the public prosecutor acknowledged that members of this group "were not armed" but alleged that they were "the brains which planned the terrorist actions" of Aceh Merdeka. There is little or no evidence that any of this group had used or advocated violence.

There were numerous serious irregularities during both the pre-trial and trial process. Most defendants were arrested by the military authorities and held incommunicado in military custody, without charge, for several months.

The attitude of the military authorities in the region towards the rights of detainees was summed up by a military commander who told lawyers of the Indonesian Legal Aid institute (LBH) in 1991 that "[y]ou can eat your KUHAP [Code of Criminal Procedure]. It doesn't apply here".

Few, if any, of the detainees were allowed visits from their relatives until their trial began. The confessions of many defendants and testimony of some prosecution witnesses were extracted under duress. During the trial, the judicial authorities ignored testimony that confessions had been made under torture. In addition defendants were not permitted lawyers of their choice but were defended by court-appointed lawyers most of whom lacked experience of cases being tried under the Anti-subversion Law. The defence of the 50 was further compromised

[9] Agence France Presse (AFP), 23 December 1985

by the fact that most lawyers were appointed only a few days before the trial, they were unable to meet their clients until the first court session and were denied access to crucial court documents. In addition, heavy political pressure was placed by the military authorities on defence lawyers not to mount a strong defence.

The trials in Aceh took place in the context of the counter-insurgency operations which began in 1989 and resulted in the unlawful killing of an estimated 2,000 civilians by the military over the next four years. At least 1,000 people were held in unacknowledged incommunicado detention in Aceh and North Sumatra for periods ranging from a few days to more than one year. Widespread arbitrary detention also resulted in further serious violations such as torture, "disappearance", and extrajudicial execution. These practices were facilitated by the legal provisions governing arrest and detention under the Anti-subversion Law which gives the military authorities almost unlimited powers of arrest and allows for the administrative detention of alleged "subversives" for up to one year in law and longer in practice.[10] In 1995 a further five people were tried and sentenced to terms of imprisonment of between six and 20 years for their alleged role in Aceh Merdeka. At least two are known to have been charged under the Anti-subversion Law. It is believed that their trials may also have not met with international standards for fair trial.

Scores of people believed to have peacefully advocated independence for Irian Jaya - Indonesia's most north-easterly province - have also been tried and convicted under the Anti-subversion Law. In 1989, 37 people were found guilty of subversion and sentenced to terms of imprisonment of between two and twenty years for participating in a peaceful flag-raising ceremony in December 1988 to proclaim an independent state of "West Melanesia". The following year, at least 30 others were alleged to have planned demonstrations to commemorate the 1988 flag-raising and similarly convicted of subversion. Despite strict limitations on the public reporting of these trials, details obtained about the basis of the charges against these and other people tried for subversion strongly indicated that the trials did not meet internationally defined standards of fairness. Approximately 26 political prisoners from Irian Jaya convicted under the Anti-subversion Law since 1988 are believed to be still in prison.

Violations of both national law and international standards have also occurred during the arrests, detention and trials of those currently on trial under the Anti-subversion Law. Budiman Sujatmiko, Petrus Haryanto, Garda Sembiring, Ignatius Damianus Pranowo, Ignatius Putut Arintoko, Ken Budha Kusumandaru, Petrus Haryanto, Suroso and Victor da Costa were all arrested on 11 and 12 August 1996 and were held incommunicado in the custody of the Armed Forces Intelligence Services (Badan Intelijen ABRI - BIA) until 18 August. They were arrested without warrants and their families were not notified of their whereabouts or the charges against them for over one week. Attempts by family members and lawyers to find out where they were and to visit them met with acknowledgment of their detention but no specific details on their

[10] For further information see *Indonesia: "Shock Therapy": Restoring Order in Aceh, 1989-1993* (ASA 21/07/93).

whereabouts and refusal to permit visits by either lawyers or families. Even after 18 August, when the detainees were moved into the custody of the Attorney General's office, family visits were restricted to one day a week for 30 minutes only. The detainees were also given only restricted access to lawyers at this stage with meetings also being limited to 30 minutes. During the time that they were held by BIA the detainees were interrogated by military and police personnel and by the prosecutor. In one case an interrogation session lasted for 24 hours. Amnesty International is also seriously concerned that the trials of these nine and that of Muchtar Pakpahan which are in progress are not proceeding according to internationally accepted standards for fair trial.

Debate about the Anti-subversion Law

There have been repeated attempts in Indonesia to have the Anti-subversion Law repealed, both on constitutional and human rights grounds. Indonesian human rights advocates have claimed that the content of the law is at odds with both domestic and international prevailing legal principles and norms. They have also claimed that it is inconsistent with the spirit of the 1945 Constitution -- in particular with Article 28 which guarantees freedom of speech, assembly and association.

Lawyers representing accused in subversion trials have also argued that the Anti-subversion Law is unconstitutional. The defence team representing the Tanjung Priok defendants argued that since the law had been issued by President Sukarno as an emergency measure it had no validity under the present government. In the case of Bambang Isti Nugroho, one of the three Yogyakarta students found guilty of subversion, lawyers argued that the law was constitutional only in a formal sense. From a moral, juridical and historical perspective they argued that the law had no place in a country which claimed to be guided by the rule of law. Lawyers for Bambang Subono also said that the law should be repealed because it is in conflict with Pancasila and the spirit of New Order. Lawyers for the people currently on trial for subversion have similarly argued that the Anti-subversion Law should not be used anymore as it was drawn up during a volatile period and is no longer relevant.

Adding weight to the arguments of lawyers in Indonesia, the government appointed National Commission for Human Rights (Komisi Nasional Hak Azasi Manusia - Komnas HAM), after a thorough review of the law, concluded that it contradicts universal norms for human rights and is incompatible with Indonesia's Criminal Code. It stated that the Anti-subversion Law:

"can be used to punish people whose ideas are different from those of the government. It allows prosecutors and judges to act as if they can read the accused's mind".[11]

[11] Jakarta Post, 9 April 1996.

Komnas HAM cited three reasons for calling for the law to be dropped:

- ***the law contradicts existing laws and the process of democratization that the country is pursuing;***

- ***the law encourages the violation of human rights because it is in conflict with other laws;***

- ***the law is too general in nature which allows the government to arbitrarily interpret its contents.***

The international community has also added its voice to those calling for the Anti-subversion Law to be repealed. In the report by United Nations High Commissioner for Human Rights on his trip to Indonesia and East Timor in December 1995, he recommended that the Anti-subversion Law be repealed.[12] In 1992, the UN Special Rapporteur on torture also recommended that the legislation be taken off the statute books following his visit to the country.[13] In view of the lack of action taken by the Indonesian Government to implement this and other recommendations by the Special Rapporteur, the UN Commission on Human Rights, in its 1993 resolution on East Timor, urged the government to implement fully the recommendations.[14]

The authorities have shown no indication that they will accept the UN or Komnas HAM's recommendations. The Indonesian Armed Forces (ABRI) have steadfastly opposed calls to abolish this repressive legislation. Indeed, in September 1996 a spokesman for ABRI stated that it has been drafting an internal security act which it intends to submit to parliament soon. It was said that the proposed act had been drafted out of concern that Indonesia no longer has an effective legal base to deal with the major crises that endanger the nation's unity and that "Indonesia badly needs a powerful internal security act to control the increasing demand for greater political freedom from its educated citizens."[15]

[12] *Report of the High Commissioner for Human Rights on his visit to Indonesia and East Timor, 3-7 December 1995*, E/CN.4/1996/112, 14 March 1996, paragraph 7(b).

[13] *Report of the visit by the Special Rapporteur on torture to Indonesia and East Timor*, E/CN.4/1992/17/Add.1, 8 January 1992, paragraph 80(f).

[14] Resolution 1993/97 concerning East Timor 49th Session of the UN Commission on Human Rights Geneva, February 1993.

[15] Jakarta Post, 17 September 1996.

APPENDIX I

Unofficial Translation of the Anti-subversion Law

DECREE TO ERADICATE SUBVERSIVE ACTIVITIES

(Presidential decree no.11 year 1963; LN 1963-101; MB 16 oct. 1963; tend. TLN 2595)

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

a. That subversive activities constitute a danger for the safety and life of the Nation and the State which is going through a revolution to build an Socialist Indonesian society;
b. That in order to safeguard the efforts to achieve the aim of the revolution it is necessary to have a regulation with regard to the eradication of subversive activities as mentioned;
c. That this regulation is in the framework of safeguarding the efforts to achieve the aim of revolution, so that it is carried out with a Presidential Decree;

In view of:
Article IV of the Decision of the Provisional People's Consultative Assembly
No. I/MPRS/1960 in relation with article 10 of the Decision of the Provisional People's Consultative Assembly No. II/MPRS/1960.

HAS RESOLVED

Has decided:

THE PRESIDENTIAL DECREE REGARDING THE ERADICATION OF SUBVERSIVE ACTIVITIES

PART I
SUBVERSIVE ACTIVITIES

Art. 1. (1) Those held responsible for carrying out subversive criminal activity are:
1 Whoever has carried an activity with the intention or evidently with the intention or which is known or reasonably considered to be known of:
a. distorting, stirring up trouble or digressing the state ideology Pancasila or the course of the state, or
b. overthrowing, damaging, or undermining state power or the authority of the legal Government or the State Apparatus, or

c. spreading feelings of hostility or creating hostility, dissension, conflict, chaos, instability or restlessness among the population or society in general or between the Republic of Indonesia and a friendly State, or

d. disturbing, hampering and stirring up trouble for industry, production, distribution, trade, cooperation and transportation run by the Government or based on Government's decision, or which has a wide influence on the life of the people;

2Whoever has carried out an action or an activity expressing sympathy with the enemy of the Republic of Indonesia or with a State which happens to be not friendly relations with the Republic of Indonesia;

3Whoever has carried out damaging or destroying buildings which have functions for public interest or private property or the property of bodies in general;

4 Whoever has carried out activities of spying;

5 Whoever has carried out sabotage.

(2) Whoever traps the taking of actions as mentioned in section (1)above, is also held responsible for having carried out a criminal subversive activity.

Art. 2. An activity of spying is defined as an action against the law to:

a.possess, control or obtain with the intention to pass them on or give them directly or indirectly to a foreign State or organisation or to counter-revolutionary organisation of persons, maps plans, drawings or descriptions about military installations or military secrets or information about Government secrets on politics, diplomacy or the economy;

b. investigate for the enemy or for another State about things as mentioned in point a or accept lodgings, hide or help an enemy investigator;

c.carry out, facilitate or spread propaganda for the enemy or for another State, which is not in a friendly relation with the Republic of Indonesia;

d.carry out activities which are in conflict with the interest of the state, so that investigation, indictment, expropriation or limitation of freedom, sentencing a verdict or other actions can be carried out by or on behalf of en enemy power;

e. give to/or receive from the enemy or another State which is not on a friendly relation with the Republic of Indonesia or the enemy assistants or assistants of that State, things or money, or carry out an activity for the benefit of the enemy or that State or their assistants, or cause difficulties, block or foil an action against the enemy or that State or their assistant.

Art. 3. Sabotage is defined as an action of somebody with the intention or evidently with the intention, or which is known or reasonably considered to be known as damaging, hampering, obstructing, harming or eliminating something very important for the efforts of the Government, about;

a. staple supplies for the people which are imported or produced by the Government;

b. production, distribution and cooperation controlled by the Government;

c. military, industrial, production and trade objects and projects of the State;

d. projects of the overall development plan in industry, production, distribution and communications;
e. installations of the State;
f. communications (land, sea, air and telecommunications).

PART II
INVESTIGATION AND PROSECUTION OF SUBVERSIVE ACTIVITIES

Art. 4. The apparatus of State power must give the necessary support to the investigation and prosecution of subversive activities.

Art. 5. The investigation and prosecution of subversive activities is carried out in accordance with the valid stipulations under the leader ship and with the guidance of the Attorney General/Highest Ranking Military Prosecutor as far as it is not stipulated differently in this regulation.

Art. 6. (1) For purposes of investigation, every official given the task of investigation can, within the area of the authority wherever and at any time, if necessary with the support of other apparatus of power and observing the fallowing stipulations, enter any place and carry out a search and confiscate things, including letters which have or could be suspected of having relations with subversive activities.

(2) Except if caught red-handed, if the action is carried out in a building, the official as mentioned in point (1), accompanied by two witnesses, must first show a written order to search and confiscate issued by an authorized investigation officer.

(3) From the action as mentioned in point (2), a report must be made within the time of twenty four hours mentioning the name and position of the official carrying out that action, the names of witnesses accompanying, the way the search is carried out and the results and information about the Time, place and objective of the action mentioned.

(4) Copies of the report on the search/confiscation mentioned should be given to the owner or occupant of the building concerned within 3 times twenty four hours at the latest.

Art. 7. Without lessening other valid stipulations for temporary detention, the attorney General/Highest Ranking Military Prosecutor within their respective area of authority, is also authorized to order the detention of somebody accused of carrying out subversive activities for at the most one year.

Art. 8. Within a period of three months after a person has been temporarily arrested, because of being accused of having carried out subversive criminal activities, the investigator/prosecutor/military prosecutor must admit a report on the result of the investigation to the attorney General/Highest Ranking Military Prosecutor

PART III
INVESTIGATION IN COURT

Art. 9. (1) Subversive criminal cases are tried by courts of justice within the general judicature or courts of justice within the military judicature according them their respective authority.

(2) The courts of justice mentioned in section (1) use the judicial procedure which is in force for the respective courts as far as it is not stipulated differently in this regulation.

(3) The composition of courts within the general judicature to try subversive criminal cases is as follows:
a. a Chairman,
b. two members judges,
c. a public Prosecutor and
d. a clerk of the court.

Art. 10. (1) The first stage of the investigation of a subversive criminal case starts as latest one month after the file of the case has been received by the clerk of the court. The investigation is carried out and a verdict is given in the shortest possible time.

(2) In the case of an application for appeal, within twenty one days the file of the case is sent to the court handling the case at the level of appeal. The court of appeal gives the verdict at the latest one month after the file of the case has been received, or in an additional investigation is carried out by the court, one month after the file of the case mentioned has been returned.

(3) In a situation where the accused is fully or partly acquitted, an application for appeal can be submitted.

Art. 11. (1) If the accused does not appear in court after being legally summoned twice continuously, the court is authorized to try him in absentia.
In this case the summon is legal only if it is done by publishing it twice continuously, each time in at least two daily news papers as decided by the judge.

(2) The verdict of the court mentioned in section (1) is notified to the accused with mentioning the name of the court that gave the verdict, the date and number of the verdict and the injunction of the verdict, by placing twice continuously each time in at least two daily newspaper as appointed by the public prosecutor concerned. One copy of the newspaper where the verdict was placed must be put into the file of the case.

(3) An application of appeal can be submitted against a verdict given in absentia. For the accused applying for appeal the time of submitting the application starts as from the latest date of the newspaper where the notification was placed.

Art. 12. (1) Everybody being examined as a witness or expert witness should give his information about his knowledge related to the case being tried.

(2) Without lessening the stipulations valid about bank secrets, the obligation as mentioned in section (1) is also valid for those whose knowledge about something must usually be kept secret because of his profession and position, except for religious functionaries and doctors within his respective areas of duties.

(3) The word "Public Prosecutor" as mentioned in article 3 section (2) of Law No. 23 Prp year 1960 about Bank Secret (State Gazette year 1961 No.71), especially within the framework of eradicating subversive activities, is also defined as investigating official, while the word "Attorney General" is also defined as the related Minister/Commander Armed Forces.

PART IV
THREAT OF PUNISHMENT

Art. 13. (1) Whoever has carried out subversive criminal activities as mentioned in article 1 section (1) number 1,2,3,4 and section (2) is punished with death sentence, life long prison sentence or prison sentence of a maximin of 20 (twenty) years.

(2) Whoever has carried out subversive criminal activities as mentioned in article 1 section (1) number 5 is punished with death sentence, life long prison sentence or prison sentence for a maximin of 20 (twenty) years and or a fine of 30 (thirty) million rupiah at the highest.

Art. 14. Wealth, wish is the property or non-property of the accused obtained from or used as a means to carry out the subversive criminal activities, can be confiscated.

Art. 15. Whoever does deliberately not meet the obligation as mentioned in article 12 section (1) is punished with a prison sentence of at the longest 5 (five) years or a fine of at the highest 5 (five) hundred thousand rupiah.

Art. 16. The actions as mentioned in Article 13 and 15 are crimes.

Art. 17. (1) If the subversive criminal activity is carried out or on behalf of a corporate body, company organisation, foundation or the other organisation, against those who have given the order to carry out the subversive criminal activity mentioned or against those who acts as the leader of that action, as well as against both.

(2) A subversive criminal activity is also carried out by or on behalf a corporate body, company, organisation, foundation or other organisation, if that activity is carried out people who, on the basis of working relations well as based on any other relation, acts within the circle of that corporate body, company, organisation, foundation or other organisation, irrespective of whether those people each on his own carried out that criminal action or there is an element of criminal action with them.

(3) If the judicial act is taken against a corporate body, company, organisation, foundation or other organisation, that corporate body, company, organisation, foundation or other organisation is represented in court by the manager or, if there are more than one manager, by one of them. The judge can order to have the manager in person appear in court, and can also order that manager is brought in front of the judge.

(4) If the judicial act is taken against a corporate body, company, organisation, foundation or other organisation, all summons appear in court and all delivery of summons is addressed to the head of the management or the place where the management meet or has its office.

PART V

EXECUTION VERDICT

Art. 18. (1) The verdict of the court given in a case of subversive criminal activity is executed according to the stipulations in force, except if differently stipulated in this regulation.

(2) The verdict of the court which does not include a death sentence is not delayed because of an application for appeal.

PART VI
CLOSING ARTICLE

Art. 19. The stipulation in article 63 section (2)* of the Criminal Code (KUHP) Is not valid for criminal acts as mentioned in this regulation.

Art. 20. This Presidential Decree comes into force as from the day it is enacted (16 OCT. 1963).

* KUHP 63 (2) If for an act that falls under a general penal provision, there exists a special penal provision only the special penal provision shall be considered.

APPENDIX II

National Standards:

Indonesian Code of Criminal Procedure (KUHAP)

Article 18(1) - The task of making an arrest shall be executed by state police officers of the Republic of Indonesia by showing their assignment letters and handing over to the suspect the arrest warrant which contains the suspect's identity and mentions the reasons for his arrest, and explains in brief the criminal case of which he is suspect and his place of examination.

Article 18(3) - A copy of the arrest warrant as intended in section (1) shall be delivered to the family or the arrested immediately after his arrest.

Article 54 - In the interest of defence, a suspect or defendant has the right to get legal assistance from one or more legal advisers during the period and at every level of examination, according to the procedure determined by this law.

Article 55 - In order to get the legal adviser as mentioned in article 54, a suspect or defendant has the right to choose his own legal adviser.

Article 60 - A suspect or defendant has the right to contact and be visited by those who have family or other relationships with the suspect or defendant in order to get guarantees for their bail or to secure legal assistance.

Article 65 - A suspect or defendant has the right to seek and submit a witness and/or a person with special expertise to provide information which is favourable to him.

Article 66 - A suspect or defendant shall not be burdened with the duty of providing evidence.

Article 67 - A defendant or public prosecutor has the right to appeal against a decision of the court of first instance except against a decision of acquittal, absolution from all legal charges and court decisions in a lightening session.

Article 70 - The legal adviser as intended in article 69 has the right to contact and speak with the suspect at every level of examination and at every time in the interest of his case defence.

Article 117(1) - Information by a suspect and/or witness to an investigator shall be given without pressure from whomsoever and/or in any form whatsoever.

Article 143(4) - Copies of the letter delegating the case and of the lawsuit shall be sent to the suspect or his proxy or his legal adviser and the investigator, at the same time that the letter delegating the case is submitted to the court of first instance.

Article 144(3) - In case a public prosecutor changes a lawsuit he shall send copies of it to the suspect or his legal adviser and the investigator.

Article 165(2) - The public prosecutor, the defendant or legal adviser through the judge/chairman of the session shall be given an opportunity to put questions to a witness.

Article 170(1) - Those who because of their occupation, dignity and prestige or function are obliged to guard a secret, can ask to be freed from the obligation to give information as a witness, namely on the matter entrusted to them.

APPENDIX III

International Standards

Universal Declaration of Human Rights (UDHR)

Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11(1) - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.

Article 19 - Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 - Everyone has the right to freedom of peaceful assembly and association...

International Covenant on Civil and Political Rights (ICCPR)[16]

Article 9(2) - Anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and shall be promptly informed of any charges against him.

(3) - Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 14(1) - All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

Article 14(2) - Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 14(3) - In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

[16] The ICCPR has not been signed or ratified by Indonesia.

(b) - To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) -To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing: to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) - To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

Article 14(5) - Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[17]

Article 2(2) - Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 15 - Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

[17] CAT was signed by Indonesia in 1985 but has not yet been ratified.

UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)

Rule 92- An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)

Principle 6 - No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 10 - Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charge against him.

Principle 11(1) - A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

(2) - A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

(3) - A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 16 - Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody. ...

Principle 17(1) - A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

(2) - If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18(1)- A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

(2) - A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

(3) - The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstance, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. ...

Principle 19 - A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 21(1) - It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

(2) - No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 36(1) - A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Principle 37 - A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority have the right to make a statement on the treatment received by him while in custody.

UN Basic Principles on the Role of Lawyers

Principle 1 - All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

Principle 6 - Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with

the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

Principle 16 - Governments shall ensure that lawyers (a) are able to perform all of their professional functions with intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

Principle 22 - Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

UN Basic Principles on the Independence of the Judiciary

Principle 1 - The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Principle 2 - The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.