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Police seize an effigy of Indonesian President Megawati Sukarnoputri at a demonstration in front of Jakarta's Merdeka Palace on May 8, 2002.
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Under Soeharto there were thousands of political prisoners and everyone knew about it. People would go to the prisons every day to visit them out of solidarity. Now, no one knows about it and they are forgotten.

-- Human Rights Watch interview with Habib Rachman, defense lawyer, LBH Rakyat

A RETURN TO THE NEW ORDER? Political Prisoners in Megawati's Indonesia

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A RETURN TO THE NEW ORDER?

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I. INTRODUCTION

On October 24, 2002, Nanang and Muzakkir, two young political activists, were found guilty by a Jakarta court and sentenced to one year in prison. Their case gained widespread domestic media coverage and prompted much editorial debate about the validity of the prosecution. Unlike the protagonists of many other high profile news stories in contemporary Indonesia, Nanang and Muzakkir were neither suspected terrorists nor disgraced military figures. Rather, they were ordinary Indonesians, frustrated by Indonesia's political system, eager for reform. They became politically engaged and attended a non-violent, anti-government protest a few months earlier. Their crime? They expressed their dissatisfaction with the Indonesian government by stamping on pictures of President Megawati Sukarnoputri and Vice-President Hamzah Haz.

Moves by the police and Indonesian leadership to silence them sparked a media debate, in what many believed to be an unprecedented post-Soeharto era shift in policy. However, a Human Rights Watch investigation has uncovered many other similar cases—both before and after the arrest of Nanang and Muzakkir—which call into question the commitment of the Indonesian government to respect the rights to freedom of expression and assembly and to implement genuine political reform. Under the veneer of democratization and away from the spotlight on the war on terror and military action in Aceh, a quietly growing trend is emerging of regressive policies aimed at curtailing political dissent in Indonesia.

Since the arrest of Nanang and Muzakkir more activists have been arrested and charged for the non-violent expression of dissent, aimed at President Megawati and her administration. In the process, draconian colonial-era laws—which most Indonesians assumed had been relegated to the dustbin of history—in the Indonesian Criminal Code have been dredged up to facilitate politically motivated prosecutions, and once again are being used as a political tool to silence dissent.

These arrests, trials, and convictions raise questions about the commitment of the Megawati government to political reform and political pluralism, in what is supposed to be a post-Soeharto era. With parliamentary and presidential elections scheduled for mid-2004 (the presidential election will be the first in Indonesia in which the president will be directly elected by the Indonesian people), this trend is particularly worrisome.

In this report Human Rights Watch looks specifically at non-violent activists who have been arrested, detained, and convicted under two groups of articles in the Indonesian Criminal Code (KUHP) that criminalize “insulting” the executive and “sowing hate” against the government. Human Rights Watch remains deeply concerned that President Megawati is dismantling the fundamental rights to freedom of expression and assembly to spare herself and her government from public criticism. Instead of working to eliminate the discredited policies of Soeharto's New Order, Megawati's legacy may be their resurrection. Human Rights Watch calls on the Indonesian government and parliament to repeal the laws on insulting the president and vice president and the “hate-sowing” legislation. Until then, the Indonesian government must make a public commitment not to undertake any further prosecutions using these laws, drop any pending charges under these provisions, and release all persons detained or imprisoned for violation of these laws.

II. BACKGROUND

Arrests of political activists and opposition leaders during the Soeharto era in Indonesia have been well documented. Soeharto and his military ran a police state whose tentacles reached into virtually all islands and villages of the archipelago. Journalists were often arrested and magazines were banned. It was unlawful to make statements deemed insulting to the president and legal restrictions on free expression were strictly enforced.¹

¹ See, e.g., Human Rights Watch, *Academic Freedom in Indonesia: Dismantling Soeharto Era Barriers* (New York: Human Rights Watch, 1998); Human Rights Watch and Amnesty International, “Release Prisoners of Conscience Now!,” *A Joint Human Rights Watch and Amnesty International Report*, June 1998; Human Rights Watch/Asia, “Press Closures in Indonesia One Year Later,” *A Human Rights Watch Report*, vol. 7, no. 9 (c), July 1995; Asia Watch, “Students Jailed for Puns,” *A*

After the fall of Soeharto in May 1998, it was hoped by many that Indonesia would enter an era of liberalization, in which fundamental human rights principles, such as freedom of expression, would be respected. Since May 1998, Indonesia has opened up at a rapid rate in many areas of society. Political activism has become a *raison d'être* for a newly invigorated and politicized youth. Jakarta's political landscape has also opened up, exemplified by a flowering of civil society groups, political parties, labor unions, and a proliferation of new, uncensored media.

Soeharto's first two successors, President B.J. Habibie and President Abdurrahman Wahid, took a *laissez-faire* approach to freedom of expression, association, and assembly. Both took concrete steps to address past abuses. By the end of Wahid's tenure most political prisoners, convicted during the Soeharto era, had been released. More important for the future of Indonesia, the era of politically motivated trials in Indonesia appeared to be over.

Demonstrations (known as *aksi*) against all levels of government became a common sight among the traffic jams of central Jakarta.² Small groups of individuals holding up banners and decrying the latest issue are a regular sight outside the parliament, various foreign embassies, and the Supreme Court. Most of these groups are left alone, painting a picture of free expression and free assembly in modern day Indonesia.

But this is only part of the picture. Although Soeharto is no longer in power, many of the institutions he created and nurtured remain. They have deep roots in both political culture and law. Dismantling a thirty-two-year legacy of authoritarianism cannot happen overnight. This will require committed, reform-minded political leadership.

Unfortunately, there are few signs that President Megawati and her administration have such a commitment. The daughter of Sukarno—Indonesia's first president, who led Indonesia to independence, and a founder of the non-aligned movement—Megawati's presidential style is often compared to that of a monarch, which may explain her use of "lese majeste" laws intended to make the head of state inviolable, or above criticism.

Megawati and her party, PDI-P (*Partai Demokrasi Indonesia—Perjuangan*, the Indonesian Democratic Party—Struggle), won a plurality of votes in Indonesia's 1999 general election. But because of Indonesia's indirect electoral system, in which the simultaneously elected parliament then selects the president, Megawati found herself relegated to the position of vice-president. The presidency went to Abdurrahman Wahid, who outmaneuvered Megawati and assembled the votes necessary to gain election by the parliament. Only on July 23, 2001, after Wahid had plunged Indonesia into a constitutional crisis and parliament moved to impeach him, did Megawati become president.

Megawati's time in office has been marked by economic instability, domestic terrorism, and, perhaps most crucially, a resurgent military. While virtually all Indonesian political commentators—and many in the civil administration and military itself—agree that the military was the root of the problem during the Soeharto period and remains in desperate need of wholesale reform, the military and President Megawati have formed close bonds on many sensitive issues.

Because of her weak political position, Megawati immediately began accommodating military interests to strengthen her power and authority. Her leanings towards the military were also a result of her mistrust and uneasy relationship with the Islamic parties in her coalition government. However, Megawati's concessions to the military have come at a high price. Previous efforts under Wahid to reform the military by refocusing it on

Human Rights Watch Report, vol. 5, no. 5, March 1993; Asia Watch (now Human Rights Watch/Asia), "Anatomy of Press Censorship in Indonesia," *A Human Rights Watch Report*, vol. 14, no. 12, April 1992; Asia Watch (now Human Rights Watch/Asia), "Indonesia: Criminal Charges for Political Caricatures," *A Human Rights Watch Press Release*, May 13, 1991; Asia Watch (now Human Rights Watch/Asia), "Indonesia's Salman Rushdie," *A Human Rights Watch Press Release*, April 10, 1991.

² Some of these so-called "protestors" are rounded up and are actually paid for by political figures.

national defense instead of acting as an occupying force and carrying out police functions—all of which led to systematic human rights violations—have been pushed back under Megawati. This has been exemplified by the establishment of two new provincial military commands in Aceh and Maluku in 2002. The launching of military action in Aceh in May 2003 can also be seen as an attempt to satisfy hardliners in the military intent on wiping out the separatist movement there.

Less obvious have been moves to strengthen the military's role in politics and domestic security. Despite last year's constitutional amendment removing the military from their thirty-eight reserved seats in parliament, the military has been working hard to strengthen its political clout behind the scenes. Domestically, this has taken the form of portraying itself as the only credible bulwark against national and international terrorism, rhetoric which has also fit well into the American and Australian agenda of securing the TNI as a regional ally against al-Qaeda.

More worrisome is new anti-terrorism legislation and a proposed law on the role of the military, both of which would further entrench the military in policing and other civilian functions. One proposed article in the new military bill would permit the military to take action against any activities deemed to constitute a threat to the nation's sovereignty, or territorial integrity, without civilian, or even presidential, oversight.

Within this context the relationship between Megawati and the military appears to have been mutually beneficial. However, despite consolidation of power at the top, Megawati's national popularity is, in fact, critically weak. Widely condemned for failing to respond adequately, or sincerely, to the October Bali bombings, she was also seen by the electorate as weak for having bowed to Western pressure over the bombings.

Megawati has also failed to address endemic corruption in both the bureaucracy and the judiciary. She has been much criticized for continuing to support an attorney general under investigation for corruption and a convicted felon as parliamentary speaker. More recently Megawati has also personally borne the brunt of public condemnation for price-hikes on staples in January 2003.

Historically, Indonesian presidents have been able to largely ignore public dissent because they were elected by the national assembly without popular participation in the vote. However, a constitutional amendment in August 2002 mandating direct election of the president and vice-president means that Megawati cannot afford to be as complacent as her predecessors. In theory this amendment should increase the legitimacy of the presidency. In practice it means that Megawati will have to face Indonesia's voters directly and on her own merits. As the elections approach, the government increasingly has responded with criminal prosecutions of persons who have taken part in public acts of protest against Megawati or her administration. As Hendaridi, chair of PBHI (*Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia*) in Jakarta, summarized the situation to Human Rights Watch:

Megawati is very dependent on the military because she is aware that her own authority is weak. This is because although she is from the majority party, she only attained the presidency as a result of a compromise with other parties. The TNI, however, is very strong, so she tries to accommodate their priorities. The characteristic is authoritarian, exemplified by arresting people who insult the president. I think she is very worried that her authority can be destabilized.³

³ Human Rights Watch interview with Hendaridi, Chairman, PBHI (*Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia*, Indonesia Legal Aid and Human Rights Association), Jakarta, November 20, 2002.

III. THE USE OF COLONIAL LEGISLATION AND SOEHARTO-ERA PRACTICES TO DETAIN POLITICAL ACTIVISTS

Although political space for dissent has increased enormously since the fall of Soeharto, broadly worded laws limiting freedom of expression remain on the books, and continue to enable authorities to arbitrarily target individuals. These laws, on their face and in their application, violate the fundamental right to freedom of expression. Article 19 of the Universal Declaration of Human Rights, which is widely regarded as reflecting customary international human rights law, states: “Everyone has the right to freedom of opinion and expression.”⁴

Article 28 of Indonesia’s 1945 Constitution refers to freedom of expression, but subsequent legislation and regulations restricted this basic right.⁵ The result is that, by law, Indonesians can still be imprisoned for “insulting” the president, or expressing “feelings of hatred” against the government, even if such sentiments are offered as part of a peaceful exercise of political dissent.

For the purposes of this report Human Rights Watch has looked specifically at non-violent activists who have been arrested, detained, and convicted under two groups of articles in the Indonesian Criminal Code (KUHP).⁶

- The “lese majeste” articles of KUHP. Articles 134, 136, and 137 criminalize “insulting” the president or vice-president of Indonesia and provide criminal penalties for anyone who “disseminates, demonstrates openly or puts up a writing or portrait containing an insult against the president or vice-president.” The articles authorize prison terms of up to six years for violations.
- The “hate sowing” (*Haatzai Artikelen*) articles of KUHP. Articles 154, 155, and 156 criminalize “public expression of feelings of hostility, hatred or contempt toward the government ” and prohibit “the expression of such feelings or views through the public media.” The articles authorize prison terms of up to seven years for violations.

Left over from the Dutch colonial administration, these articles were often used by the Soeharto government to restrict free expression. Political opponents, critics, students, and human rights defenders were targeted and silenced. Not only are the articles subject to over-broad interpretation, but their very essence is to limit the rights of individuals to free expression. They also violate the spirit of Indonesia’s constitution, which had sought to protect this right at the time of independence.

During the recent trial of an activist on charges of insulting President Megawati, the defense summed up these arguments by stating:

In articles 134 and 137 (1) of KUHP the substance of the criminal act is not really clear. The consequence is that it opens up opportunities for the authorities, represented in this matter by the police and the prosecutors, to carry out an authoritarian interpretation against the actions of an individual; whether it is an action, a word, or even a thought, which is different from the official opinion of the authorities. This is indeed dangerous for the development of the democratic process, human rights, and the development of law in Indonesia.⁷

⁴ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 19. Similar language is found in the International Covenant on Civil and Political Rights, to which Indonesia is not a party.

⁵ 1945 Constitution of the Republic of Indonesia, article 28 (“Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law”).

⁶ KUHP (*Kitab Undang-Undang Hukum Pidana*, Indonesian Criminal Code).

⁷ Trial Document: “Defense Submission in the Kias Tomo Case,” October 30, 2002 (copy of Indonesian language original on file at Human Rights Watch).

Human rights groups and reformists, in Indonesia and abroad, had hoped that in a democratic Indonesia these articles would be repealed. Munarman, Chair of the Indonesia Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia* or YLBHI) in Jakarta, told Human Rights Watch: “There are only two ways to stop the law being used to oppose politics. You can stop using it in practice, but this is really not strong enough. To be effective you have to rescind it from KUHP.”⁸

Since Megawati came to power this legislative legacy has been resurrected, not eradicated, by her administration. Given the number of high-profile issues swirling in Indonesia at the moment, little international or domestic attention has been given to these developments. But free expression is a necessary condition for the exercise of all other rights, and these prosecutions cast a shadow over all the human rights gains made in Indonesia since the fall of Soeharto. Rachland Nashidik, Program Director of IMPARSIAL, told Human Rights Watch:

This is the first time since the New Order that we have political trials again. I don’t know if it will continue ... the government will take stronger steps to imprison people using these draconian laws ... It has been a long-time demand to take the articles out ... The repeal of the provisions have to be part of major reform in Indonesia.⁹

Human Rights Watch calls on the Indonesian government and parliament to repeal the laws on insulting the president and vice president and the “hate-sowing” legislation. Until then, the Indonesian government must make a public commitment not to undertake any further prosecutions using these laws, drop any pending charges under these provisions, and release all persons detained or imprisoned for violation of these laws.

IV. ARRESTS, TRIALS AND CONVICTIONS

The systematic reimposition of colonial legislation and Soeharto-era practices can be traced to July and August 2002, when numerous arrests of political activists took place in Jakarta. These individuals were arrested solely for expressing their non-violent political views at peaceful demonstrations in the capital. The arrests followed a series of anti-government and anti-Megawati demonstrations, centered on dissatisfaction with rising oil and rice prices and the general economic downturn in Indonesia.

The protests were marked by performance art pieces depicting the fall of Megawati. They ranged in size from thirty participants to several hundred. By post-Soeharto standards, these demonstrations were not large, and certainly not a threat to the stability of the government. However, it appears the authorities decided to crack down against participants in order to ensure that neither the organizers nor the demonstrations were given the chance to flourish. Police tactics varied from targeting prominent protestors at these demonstrations to arbitrarily arresting other participants.

The systematic arrests of demonstrators appears to have been prompted by a statement President Megawati made on July 8, 2002, when she publicly condemned those who voiced opposition to the government. Megawati was reported as saying that symbols of the country had to be respected and that if she met demonstrators who did not respect those symbols she would ask them to choose another nationality: “If they do not like this country it is better that they leave Indonesia and choose another country.”¹⁰

After these statements were made, arrests of demonstrators “insulting” President Megawati increased significantly.

⁸ Human Rights Watch interview with Munarman, Chair of YLBHI (*Yayasan Lembaga Bantuan Hukum Indonesia*, Indonesian Legal Aid Foundation), Jakarta, November 20, 2002.

⁹ Human Rights Watch interview with Rachland Nashidik, Program Director, IMPARSIAL, Jakarta, November 19, 2002.

¹⁰ “Megawati Kecam Penginjak Foto Presiden dan Wapres,” *Kompas*, July 9, 2002; “Megawati Kesal Fotonya Diinjakinjak,” *Warta Kota*, July 9, 2002; “Mega: Bukannya Saya Takut,” *Suara Merdeka*, July 9, 2003.

They were stepped up in January 2003 when widespread protests and demonstrations erupted following the government's announcement of an increase in electricity, telephone and fuel prices. Massive protests took place across the archipelago, including in Java, Sulawesi, Kalimantan, and as far east as Papua.¹¹ The scale of these demonstrations forced the government to backtrack on its commitments to the IMF and to retract the price-hikes. It was a sobering reminder to both the national and international community of the strength inherent in such public opposition. For Megawati it was also a symbol of the festering popular dissent against her government and a reminder that it was popular dissent, expressed through similar, albeit larger, demonstrations that contributed greatly to the downfall of Soeharto.

That the demonstrators personalized their dissent, and aimed all their grievances at the personage of Megawati, clearly hit a presidential nerve. Reacting to the January protests, Megawati again responded publicly: "When I look at my pictures—and I actually look pretty there—and see people stomping on them, I feel like I want to throw up...like a volcano about to explode...[I will] remember that face [referring to a demonstrator]."¹²

Following these statements, a spokesman for the police reiterated the point by saying that the police would also take strict action against those demonstrators insulting "state symbols." Chief Detective Prasetyo from the Jakarta police station explicitly warned that perpetrators would be charged under article 134 of KUHP and that this would "be imposed upon those burning posters or an effigy of the president."¹³

The Minister of Manpower, Jacob Nuwawea, a PDI-P leader, also threatened students who held protests against President Megawati Soekarnoputri. He stated, "Some of them stepped their feet on her pictures. They've gone too far. If they keep on doing it, they will have to face PDI Perjuangan supporters. I warn you, students, don't repeat your actions."¹⁴

Many Indonesians were appalled and some were frightened by these statements. As Hendardi of PBHI told Human Rights Watch, "Megawati is trying to use the articles, not just the hate sowing articles...it is a trend. She's not clear if she is a democrat. She only sees the ripping of the photos, but not the substance of the criticism."

Johnson Panjaitan, another noted defense lawyer from PBHI in Jakarta, said that: "We are actually setting up a program to anticipate the situation getting worse. This is a clear policy of Megawati's. Since Nanang's case the police have become increasingly harsh against all student actions."¹⁵

Restrictions on freedom of expression in Indonesia also appear to be extending to the press. In February 2003, two editors of *Rakyat Merdeka*, a popular daily newspaper, were summoned by the police over an article which allegedly insulted the president. Minister of Manpower Jacob Nuwawea publicly accused the newspaper of being too critical of PDI-P and its supporters, and was quoted as threatening the paper by saying, "*Rakyat Merdeka*, I warn you not to write [articles] that abuses PDI Perjuangan. If they insist to insult PDI Perjuangan leaders, they will have to face thousands of PDI Perjuangan supporters."¹⁶

The exact number of cases in which non-violent political opponents of the Megawati government have been arrested, tried, and convicted is difficult to establish in this far-flung archipelago where information does not always make its way back to the center. However, it is clear that this phenomenon is widespread and on the increase. To illustrate this trend, Human Rights Watch highlights in detail seven cases and summarizes eight others.

¹¹ "Violence erupts as street demonstrations heighten," *The Jakarta Post*, January 8, 2003.

¹² Marianne Kearney, "Megawati fumes over student protests," *South China Morning Post*, January 30, 2003; Berni Moestafa, "Ambiguous law separates criticism from insult," *The Jakarta Post*, January 30, 2003.

¹³ "Police vow to crack down on citizens who 'insult' state symbols," *The Jakarta Post*, January 9, 2003.

¹⁴ "Jacob threatens media, students not to criticize PDI-P," *The Jakarta Post*, February 23, 2003.

¹⁵ Human Rights Watch interview with Johnson Panjaitan, Secretary General, PBHI, Jakarta, November 20, 2002.

¹⁶ "Jacob threatens media, students not to criticize PDI-P," *The Jakarta Post*, February 23, 2003; "Police summon editor over article allegedly insulting Megawati: lawyer," *Agence France-Presse*, February 19, 2003.

Nanang Mamija and Muzakkir

Nanang, a 20-year-old street food vendor, and Muzakkir, a 21-year-old street musician, were arrested on June 30 and July 1, 2002, respectively. They appear to be the first to be convicted for “insulting” President Megawati. Megawati’s statement in early July suggesting that those criticizing her should “choose another country” seems to have been in response to the June 24, 2002, demonstration in which Nanang and Muzakkir participated.

This demonstration was staged in front of the Presidential Palace on Jalan Merdeka Utara in Jakarta. It had been organized by GPK and STN, two small activist organizations.¹⁷ About thirty people gathered to protest poverty and violations of the rights of the poor in Indonesia. More specifically, the demonstrators demanded that President Megawati step down in light of rising oil, gas, and fuel prices.

This was not the first demonstration of this kind, and some of the participants had participated in many before, including at the same location earlier in the year. Nanang was one of the demonstrators. He told Human Rights Watch:

I left my house in Tangerang at about 12 p.m and met up with some friends and gathered at Gambir Station. There were about thirty people. We started the demonstration at 2:30 p.m and had finished by about 4:30 p.m. At that time there were no arrests, but there were lots of witnesses and police around.¹⁸

In front of the main group of demonstrators was a smaller group of people carrying out a performance art piece. They had painted their bodies in various colors to represent the suffering of Indonesia’s masses. Several people also had slogans painted on their bodies, including the message “*Mega Hamzah Haz Turun*,” (Megawati and [Vice-President] Hamzah Haz Step Down).

Four people were also carrying a “tandu” (sedan chair) raised on poles. On top of this chair was a poster of Megawati and Hamzah Haz. A large cross had been painted over their faces.

When the procession arrived in front of the palace two or three people started making speeches with a speakerphone. The demonstrators joined in and started chanting “*Turunkan Megawati Soekarnoputri dan Hamzah Haz dan bentuk pemerintahan transisi*,” (“Bring Down Megawati Soekarnoputri and Hamzah Haz and form a transitional government”).

The chair with the photos was then smashed onto the ground, and the photos were stamped on. Six of the art performers threw old uncooked rice onto the photos to symbolize the suffering of the masses, who were being forced to eat bad rice. Nanang and Muzakkir were part of the group of performance artists and were seen stamping on the photos. Muzakkir was also one of the “tandu” bearers.¹⁹

After the performance was finished the participants went home. No arrests were made at this time.

During the following week Indonesian newspapers published articles about the demonstration, with reactions from senior officials, including the Manpower Minister Jacob Nuwawea.²⁰

A week after the demonstration, on June 30, 2002, Muzakkir was arrested. He was apprehended while busking at a set of traffic lights in Jakarta. Nanang was then arrested at his home on July 1, 2002. They were both questioned by Indonesian police at the central Jakarta police station, charged, and then held in detention until their trial. Nanang told Human Rights Watch:

¹⁷ *Gerakan Pemuda Kerakyatan*, The Peoples’ Youth Movement; *Serikat Tani Nasional*, National Farmers’ United.

¹⁸ Human Rights Watch interview with Nanang Mamija, Salemba Prison, Jakarta, November 22, 2002.

¹⁹ Human Rights Watch interview with Taufik Basari, Nanang and Muzakkir’s Defense Lawyer with LBH (*Lembaga Bantuan Hukum*), Jakarta, November 18, 2002.

²⁰ “*Menghina Mega, Memenjarakan Tapol*,” *Kompas*, August 31, 2002.

I was arrested at about 2:30 a.m in my house by the police. They were wearing normal clothes, not uniforms. They did not have an arrest warrant, I was not read my rights before I was arrested. I was taken by taxi to the Central Jakarta police station with two police officers. I was then questioned without a defense lawyer. At about 4 p.m I was interrogated by the two policemen who had arrested me. Another civilian person arrived who slapped me in the face twice. I was then taken to another place where I was again questioned by other people. I was then taken to cell 28, which was normally reserved for people on narcotic offences. After that I was moved to cell 34 where I was put together with Muzakkir. We were then ordered by the police to beat each other up in the cell at the Central Jakarta Police station. One of them said "Oh, you're the ones who trod on Mega's photo."²¹

Both men were charged under article 134 and article 55(1) of the Indonesian Criminal Code for deliberately insulting the president and vice-president of Indonesia. A subsidiary charge was also leveled against both men under article 137(1) and article 55(1) for intentionally making public a picture, or portrait, containing an insult against the president or vice-president.²² The indictment also referred to a third suspect named "Alam" and other persons unknown. To date the police apparently have failed to apprehend these other suspects.

The Indonesian newspaper *Kompas* followed Nanang and Muzakkir's case throughout their arrest and trial proceedings. At an early stage they concluded that the arrests were extraordinary as the police typically would have released the two men immediately and only kept them in detention because of President Megawati's public outburst against demonstrators. One of Nanang and Muzakkir's defense lawyers, Daniel Panjaitan, from LBH Jakarta, agreed and publicly stated: "This trial is only the result of Mrs. President's emotional feelings. It is true that there is a legal basis, but it has been a long time since these articles were used by Soeharto."²³

Nanang and Muzakkir's trial started on August 21, 2002; the two men remained in detention for almost four months before the final decision was issued in their case on October 24, 2002.

In a statement read out in court by GPK, on behalf of the accused, they charged that the men were not being tried fairly, and that they had not committed a criminal act. Regarding the articles being used, they commented:

These articles, which are being imposed upon us, are relic articles from the Dutch colonial era, which repressed the national independence movement... and now the Mega-Hamzah government imposes these articles. Do they consider their control as the same as the Dutch era before them? Are they right, and we are wrong, with the result that we have to be tried for the sake of preserving their power?²⁴

Because of the political significance of the charges on undermining freedom of expression in Indonesia, a defense coalition made up of several national NGOs was formed to act on behalf of Nanang and Muzakkir. The coalition was called *Tim Advokasi Gerakan Rakyat* (The Peoples' Movement Advocacy Team).²⁵

During the trial the defense argued that the performance art was only symbolic, and that the participants acted only to convey their political message, which was to symbolize that the authorities were not in touch with the needs of the poor. However, defense arguments and submissions on the validity of the application of this law

²¹ Human Rights Watch interview with Nanang Mamija, Salemba Prison, Jakarta, November 22, 2002.

²² Trial Document: "Indictment against Muzakkir and Nanang Mamija," Jakarta, August 2, 2002 (copy of Indonesian language original on file at Human Rights Watch).

²³ "Diadili, Dua Penginjak Foto Presiden dan Wapres," *Kompas*, August 22, 2002.

²⁴ Trial Document: "Statement for the accused, Trial of Nanang and Muzakkir, Central Jakarta Court," August 28, 2002 (copy of Indonesian language original on file at Human Rights Watch).

²⁵ The team was made up of lawyers from PBHI, LBH Jakarta, LBH Rakyat, KONTRAS (*Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan*, Commission for the Disappeared and Victims of Violence) and UPC (Urban Poor Consortium).

were rejected by the panel of judges presided over by Judge Sirande Palayukan. He argued that the articles in question, 134 and 137, were applicable because they had not yet been repealed from KUHP.²⁶

Taufik Basari, one of the defense lawyers for this case, told Human Rights Watch that there was no flexibility in the application of the law during trial. He continued:

We see that the judge only looked at the law in a formal legalistic manner, which was positive in a way. But, the judge in his decision did not consider the matter of democratization, which has already been occurring in Indonesia. The judge only looked at whether or not the photo of President Megawati and Vice President Hamzah had been stamped on, and whether or not this was an insult to the president.²⁷

Basari also believed that the authorities, and the judge, were trying to set a precedent with this case. A guilty verdict would serve as a warning to other demonstrators of the risks inherent in public dissent. He told Human Rights Watch:

It is uncontested that they were guilty of stamping on the picture of Megawati and Hamzah. However, they were not leaders or organizers of the demonstration. The message however to others is clear, "Do not do the same thing as them, or you will be brought to justice just like they were."²⁸

In their closing arguments, the defense summarized the case by saying:

In the context of a country which is calling itself democratic, opposition movements or disagreements with the government are very proper and normal....Freedom to express thoughts, and other forms of expression, are part of the rights of citizens which have to be protected. Not with arrests and imprisonment like what has happened to both of these suspects...More tragic is that they have been arrested and ensnared with hate sowing articles, which are already not appropriate in this climate at the moment, as they are a relic of the colonial era...The arrests and detention of both these suspects is like a grand scenario which was systematically prepared and planned. It is like both suspects have become an 'exhibition' for whoever is opposing the policies of the government.²⁹

At the close of trial the prosecutors asked for sentences of one year and four months for both individuals. On October 24, 2002, the judge found both men guilty and sentenced each to one year in prison, including time served, and a fine of Rp1,000 each.³⁰

After the verdict, the defense filed a complaint with the Supreme Court that there were indications that the District Court judges had not acted independently in the case.³¹ At the time of writing Nanang and Muzakkir remain detained in Salemba Prison, Jakarta, pending the outcome of their appeal.

²⁶ "Eksepsi Kasus Penghinaan Kepala Negara Ditolak: Pasal 'Haatzaai Artikelen,'" *Kompas*, September 7, 2002.

²⁷ Human Rights Watch interview with Taufik Basari, Defense Lawyer with LBH, Jakarta, November 18, 2002

²⁸ Ibid.

²⁹ Trial Document: "Defense's Closing Arguments, *Tim Advokasi Gerakan Rakyat*," October 21, 2002 (copy of Indonesian language original on file at Human Rights Watch).

³⁰ Trial Document: "Judge's Written Decision, Central Jakarta District Court, " November 18, 2002 (copy of Indonesian language original on file at Human Rights Watch); "Dua Demonstran Diganjar Setahun Penjara," *Kompas*, October 25, 2002.

³¹ Trial Document: "Defense Request to the Supreme Court," Jakarta, October 31, 2002 (copy of Indonesian language original on file at Human Rights Watch).

Raihana Diany³²

At 2 p.m on July 16, 2002, seven human rights defenders from ORPAD (*Organisasi Perempuan Aceh Demokratik*, the Acehnese Democratic Women's Organization), were arrested while staging a peaceful protest in Banda Aceh. The next day all were released, except for Raihana Diany, ORPAD's chairperson. Raihana was subsequently charged under article 134 of the Indonesian criminal code for insulting the head of state.

The charges specifically related to her involvement in scribbling over a portrait of President Megawati at the July 16 protest. According to the prosecution, Raihana led the six other demonstrators in carrying several banners, including one which read, "Replace Mega-Hamzah for Aceh freedom, form a Government of the poor People."³³ They also carried pictures of the president and vice president, which had been marked over with an "X."

Raihana's trial started on November 14, 2002, in the Banda Aceh District court. She was represented by the Aceh branch of Indonesia's Legal Aid Foundation. Each of the six other women who had been arrested at the same time as Raihana were called as witnesses for the prosecution.

On January 7, 2003, Raihana was found guilty and sentenced to six months of imprisonment. Because she had been in detention since July 16, 2002, she only had an extra nine days to serve before being released.

According to the Presiding Judge, Arsil Marwan, Raihana was found guilty for "attempting to topple the Megawati-Hamzah government." The judge continued by saying that "the defendant has disgraced the government's pride."³⁴

After sentencing one of her defense lawyers, Rufriadi, head of LBH Aceh, stated, "The Indonesian government should fully support whatever Raihan[a] does, not instead imprison her. This means that the law is still taking sides with the authorities and not with the people."³⁵

After leaving prison Raihana returned to chair ORPAD and continues to campaign for the rights of women in Aceh.

Kias Tomo³⁶

Kias Tomo was arrested on July 26, 2002, at a student demonstration in front of the IISEP (*Institut Ilmu Sosial dan Ilmu Politik*) campus in South Jakarta. There were about seventy protestors present at this demonstration demanding that the government should decrease prices and that Megawati and Hamzah step down. This demonstration was organized by JAKER and LMND (*League Mahasiswa Nasional Demokratik*).

The demonstration started at about 2 p.m and some speeches were made. As part of a performance art piece, some of the demonstrators were also carrying a statue of Megawati, made out of bamboo and newspaper. According to the prosecution the statue was wearing an American style hat and had "IMF" written in large letters on it.³⁷

During the course of the demonstration the statue was set alight and burned. The demonstrators had wanted the burning to represent the loss of faith of the people in the president. According to the prosecution, leaflets distributed before and during the demonstration showed that the burning of the statue was a planned part of the action. The leaflets stated: "Overthrow the Mega-Hamzah government, Dissolve the MPR-DPR, Form a poor peoples' government. Join with us!! Burn Megawati's statue at the IISEP campus, August 26, 2002, 2 p.m."³⁸

³² Raihana Diany is 20-years old and the head of ORPAD (*Organisasi Perempuan Aceh Demokratik*), an NGO in Aceh.

³³ "Raihana Dituduh Hina Presiden dan Wapres," www.koalisi-ham.org, October 30, 2002.

³⁴ "Acehnese activist imprisoned for 'insulting' Megawati, Hamzah," *The Jakarta Post*, January 7, 2003.

³⁵ "Raihan di Vonis 6 Bulan Penjara," www.koalisi-ham.org, January 7, 2003.

³⁶ Kias Tomo is a 24-year-old final year accountancy student at Universitas Jaya Raya, East Jakarta.

³⁷ Trial Document: "Prosecutor's Indictment against Kias Tomo, Jakarta," October 3, 2002 (copy of Indonesian language original on file at Human Rights Watch).

³⁸ *Ibid.*

After the burning of the statue, the demonstrators dispersed and some of them entered the university campus to rest. About half an hour later, those who remained left the campus in a convoy of three pick-up trucks, each holding about twenty people. While they were driving, speeches were made through megaphones from the trucks.

However, approximately one hundred meters from the campus, the third and final truck in the convoy was blocked by the police. The police arrested thirteen of the passengers and took them to the police station. Kias Tomo was one of those arrested, and was subsequently the only person detained overnight in the station and charged.

Kias Tomo was charged under articles 134 and 137(1) for insulting the president. The charges specifically related to his participation in the dousing and setting alight of the statue of President Megawati at the demonstration.

It is clear that the police were more organized to make arrests at this demonstration than at previous ones. They had come prepared with photographic and video equipment. Police say they have photographic evidence that Kias Tomo was the sole perpetrator of the burning of the statue. Kias Tomo told Human Rights Watch:

Before we had even started the demo there were intelligence officers around. We had already distributed leaflets saying that we were going to burn Mega's statue, so they were ready. One week before there had been a burning of a statue of Mega at UNAS campus by students, but there were no arrests, even though there were police present. For this one we had distributed leaflets, so the police were ready for us.³⁹

One of Kias Tomo's defense lawyers told Human Rights Watch that he believed the Nanang and Muzakkir cases were the watershed for arrests of demonstrators in Jakarta and that "the police were much more likely to now respond quickly to anti-Megawati actions."⁴⁰

Kias Tomo was transferred from the police station to Cipinang prison on September 24, 2002. During his trial he read out a statement in court, which included the following:

I am not being tried fairly, and I am not guilty because the articles which I am being subjected to are relics from the Dutch in their repression of the national independence movement...Moreover, the New Order [Golkar and the Military] has clearly become the enemy of the people by urging compromises to continually oppress the people. This has definitely happened, because the formation of the Mega-Hamzah government was also the result of a reactionary collaboration of Golkar, the military and other fake reformists. The core of this is that the Mega-Hamzah government is the same as the New Order government.⁴¹

In their first submission to the court the defense argued that the burning of the statue of Megawati was part of a performance piece, and therefore should be classified as art. They argued that performance art was part of the cultural rights of the population, which was protected by law. However, the defense was also aware that the purpose of the trial was political. They began their first statement to the court by saying:

We return to political trials, which are spreading out in our state...Is it not every citizen's right to participate, help, supervise the implementation of the government, or is it that our country is now just owned by a group which only prioritizes the concerns of that represented group, with the

³⁹ Human Rights Watch interview with Kias Tomo, Cipinang Prison, Jakarta, November 23, 2002.

⁴⁰ Human Rights Watch interview with Habib Rachman, defense lawyer with LBH Rakyat, Jakarta, November 18, 2002.

⁴¹ Trial Document: "Statement for the accused, Kias Tomo," Jakarta, 2002 (copy of Indonesian language original on file at Human Rights Watch).

result that criticism and protests which are submitted have to always be considered as an action of insult towards the head of the state.⁴²

The defense also argued that the continued detention of Kias Tomo was technically illegal, and not in compliance with the Indonesian Criminal Procedures Code, as the original detention warrant had expired on October 14, 2002. These submissions were rejected by the judge.

The South Jakarta District Court found Kias Tomo guilty of the charges and sentenced him to eight months of imprisonment.⁴³

Billal Abubakar Ahmad Fauji⁴⁴

On July 30, 2002, another demonstration took place in front of the Presidential Palace in Jakarta. An estimated three to four hundred people took part, also to protest rising fuel prices and demand the resignation of President Megawati and Vice-President Hamzah Haz. The demonstration was organized by the PRD (*Partai Rakyat Demokratik*, Democratic Peoples' Party).

During the course of the demonstration speeches were made, and a performance art piece was acted out. Four chairs were set up, each with a picture placed on it of Megawati, Hamzah Haz, Amien Rais (MPR Speaker) and Akbar Tandjung (DPR Speaker), respectively. The chairs were intended to depict the seats of power occupied by each of these individuals. The chairs were then destroyed, and the pictures were ripped up by some of the performance artists and members of the general audience.

After the chairs were destroyed they were replaced by rattan mats to symbolize that the seats of power had been replaced by a government for the poor. The demonstration was witnessed by the police, who were seen taking photographs of the event. After the demonstration finished peacefully, everyone left.

At about 5 p.m Billal was arrested by an officer from the central Jakarta police station while he was walking from the demonstration on his way home. He was not an organizer of the protest or one of the performance artists. He is however ethnically East Timorese and therefore visibly darker than most of the other participants. According to his defense lawyer, he stood out from the crowd. This may have been the reason he was the only one targeted for arrest by the police.⁴⁵

Billal told Human Rights Watch:

On July 30, Tuesday, at about 1 p.m we began. There was a convoy from in front of the University of Indonesia to the palace. There were about 350 people on foot...friends began making speeches, while at the same time there was a performance art piece. After the demonstration and the art had finished we went home. The police were always following us, and as soon as we reached Jalan Pramuka I was arrested. I don't know why he was following us. Until he pulled out a gun, I did not even know he was a policeman. He was wearing preman⁴⁶ clothes.

Billal explained that he thought he was the only one arrested because:

I was standing by the door of the car. I was easy to get at, the others were sitting in the car. I think the police were too scared to arrest any more people in case there was a reaction against

⁴² Trial Document: "Defense Submission," October 30, 2002 (copy of Indonesian language original on file at Human Rights Watch).

⁴³ "Penjara buat Para Aktivistis Politik," *Kompas*, March 1, 2003.

⁴⁴ Billal Abubakar Ahmad Fauji is 27-years old and unemployed. He is a member of JAKER (*Jaringan Kesenian Rakyat*).

⁴⁵ Human Rights Watch interview with Habib Rachman, Billal's Defense Lawyer, LBH Rakyat, Jakarta, November 18, 2002.

⁴⁶ Preman are members of local groups of thugs in civilian clothing and are found across Indonesia.

them. I think the police who arrested me are not professional. They arrived to arrest me but did not have an arrest warrant or I.D, or explain why I was being arrested. It was like an illegal arrest. Why are they threatening us? They don't even know why they are arresting us.⁴⁷

Billal was then taken alone to the police station and placed in a detention room. "There were several policemen there asking for money. Three policemen hit me all over my body asking for money. I was there, in room twenty-eight, until August 28, and then transferred to Salemba prison."⁴⁸

Billal was charged under article 134 of KUHP, for drawing over and ripping up the photo of Vice-President Hamzah Haz at the July 30 PRD demonstration. A subsidiary charge was also leveled under article 137(1), for intentionally making public a picture or portrait containing an insult against the vice-president.⁴⁹

Billal claims that he had not in fact joined in with the performance art piece, or even watched it, as he was busy distributing PRD leaflets to the rest of the crowd. No other arrests or charges have subsequently been made against any other participant of the demonstration.

In a submission to the court during the trial, the defense argued that the use of articles 134 and 137 of the Indonesian Criminal Code was undemocratic and outdated. They referred to the recent sentencing of Nanang and Muzakkir, as the "ringing of death bells for democracy and reform" in Indonesia. With reference to Billal's case they argued:

[T]his is the time where we return to the law being used as a repressive apparatus to protect the priorities of those in power, this is the time where anti-democratic articles, like article 134 and 137 in KUHP, have returned to be used to ensnare pro-democracy activists who persevere to criticize government policies.⁵⁰

At the close of his trial, Billal was found guilty of the charges and sentenced to one year in prison by the Central Jakarta Court. At the time of writing he remained in Salemba prison awaiting the outcome of his appeal.⁵¹

M. Iqbal Siregar⁵²

Iqbal Siregar was arrested on January 24, 2003, by the Jakarta Metro Jaya police. He was accused of insulting President Megawati at a demonstration in front of the Presidential Palace on January 15, 2003. Demonstrators were protesting the president and vice-president for increasing electricity, cooking oil, and telephone prices in early January.

Iqbal was charged under articles 134 and 137 (1) of KUHP for insulting President Megawati, and for intentionally making public a picture, or portrait, containing an insult against the president.

According to the indictment, Iqbal is a member of the Islamic Youth Movement (GPI) and had participated in the January 15 demonstration along with members of several other groups.⁵³ He was accused of carrying a poster of President Megawati at the demonstration, in which she is depicted wearing a red blouse with both of her eyes blacked out. Written over the poster were the words "*Buronan Rakyat*" (The Peoples' Fugitive). Iqbal was also

⁴⁷ Human Rights Watch interview with Billal Abubakar Ahmad Fauzi, Salemba Prison, Jakarta, November 22, 2002.

⁴⁸ Ibid.

⁴⁹ Trial Document: "Indictment against Billal Abubagar Ahmat Fauzi," Jakarta, September 30, 2002 (copy of Indonesian language original on file at Human Rights Watch).

⁵⁰ Trial Document: "Defense Submission, LBH Rakyat," October 6, 2002 (copy of Indonesian language original on file at Human Rights Watch).

⁵¹ Human Rights Watch email communication with Billal's Defense Lawyer, March 11, 2003.

⁵² M. Iqbal Siregar is a 36-year-old teacher.

⁵³ Other groups attending the demonstration were the Reject Mega Alliance (*Aliansi Tolak Mega*, ATM), the Islamic Students' Association (*Himpunan Mahasiswa Islam*), and the Student Executive Body (*Badan Eksekutif Mahasiswa*).

accused of carrying the poster above the heads of nearby demonstrators and inciting them to start chanting “*Inilah Presiden Yang Mengecewakan Rakyat*” (“this is the president who disappoints the people”).⁵⁴

In a *Kompas* article, Iqbal was later quoted as telling his lawyers that he did not know who had brought the poster to the demonstration and that he was handed it when he arrived at the rally. He believes that his arrest was politically motivated.⁵⁵

Iqbal’s trial started on April 14, 2003, at the Central Jakarta District Court. The proceedings were presided over by Judge Kornelius Siahaan. Iqbal’s defense team argued that the indictment was factually inaccurate, unclear, and misleading. They also emphasized the political nature of the charges and argued that the judge had a burden of responsibility to respect free expression and human rights. They stated:

It is a duty for all of us to intensely look to the future, and aim for a future which is better, and to escape from the handcuffs of a repressive authority which is full of fear for us to express our opinions. Let us bring into reality freedom of expression in our country, our beloved Indonesia. Because of this, it is the duty of all of us to be responsible to keep going with the democratic process in Indonesia, and this includes the responsibility of this judiciary. At the foundation of this matter it is only fitting for the respected judge to see the set of problems in its entirety, not in a manner that is partial, or cut up, or return to using hate sowing articles which are extremely broad in interpretation.⁵⁶

The judge rejected the defense’s submission and claimed that the indictment was legally sound and that the case would continue.

Iqbal has been in detention since his arrest and is being held at Salemba prison in Jakarta. On June 16 Iqbal was found guilty by the Central Jakarta District Court and sentenced to five months imprisonment. With time served he was due to be released the following week.⁵⁷

Faisal Saifuddin

On January 16, 2002, Faisal Saifuddin, head of the Jakarta office of the Acehese NGO SIRA (*Sentral Informasi Referendum Aceh*), was convicted and sentenced to one year in prison by the Central Jakarta court. Faisal was found guilty of “spreading hatred” against the government. The charges specifically related to his participation in organizing two demonstrations held on November 9 and November 13, 2000, in Jakarta. The motivation leading up to his arrest, two years later, appears to have been political.

On May 10, 2001, a bomb exploded at an Acehese student boarding house in Manggarai, South Jakarta. During the following days, Sofyan Jacob, the head of the Metro Jaya police station, announced that SIRA was believed to be behind the attack.⁵⁸

To counter these accusations and subsequent rumors, SIRA organized a press conference a week later to state its innocence. Two days later, police officers arrived at the SIRA office looking for documents. SIRA members claim that the police broke a window, seized documents and a computer, and took a leaflet upon which was printed “the government is neo-colonialist.” SIRA claimed that this leaflet was left over from a SIRA demonstration in 2000.

⁵⁴ Trial Document: “Prosecutor’s Indictment against M. Iqbal Siregar,” March 26, 2003 (copy of Indonesian language original on file at Human Rights Watch); “*Kejaksaan Segera Proses Perkara Penghinaan Presiden*,” *Tempo Interaktif*, March 20, 2003; “Activist Stands Trial for Insulting Megawati,” *The Jakarta Post*, April 22, 2003.

⁵⁵ “*Penjara Buat Para Aktivist Politik*,” *Kompas*, March 1, 2003.

⁵⁶ Trial Document: “Defense Submission,” April 24, 2003 (copy of Indonesian language original on file at Human Rights Watch).

⁵⁷ Human Rights Watch email communication with Iqbal’s defense lawyer, May 1, 2003; “Indonesian Activist Gets Five Months in Jail for Insulting President,” Associated Press, June 16, 2003.

⁵⁸ “*Polda akan Memanggil Ketua SIRA dan tokoh Solidamor*,” *Tempo Interaktif*, May 14, 2001.

A few days later, the police issued a summons for Faisal to appear at the police station for questioning. The summons was delivered via his defense team at PBHI. In response to the police summons, Faisal went to the police station with two of his defense lawyers. He told Human Rights Watch:

I was questioned at the Metro Jaya police station from 10 a.m until 5 p.m. The next day I was questioned from 10 a.m until 4 p.m, and the third day from 10 a.m until 12 p.m. I was questioned for three days, and it was clear that the questioning was not about the bomb. There were only three questions about the bomb, and anyway I have never been to that boarding house. The rest of the questions were about SIRA, and their political processes in Jakarta, and about SIRA in Aceh.⁵⁹

After questioning Faisal was released without charge. However, on August 2, 2001, the police issued a new summons for Faisal to go to the police station for further questioning. Faisal complied and again went to the station with two defense lawyers. While he was there the police issued a detention order and took him into custody.

Faisal was detained in the Metro Jaya police station until September 18, and then transferred to Salemba prison until April 17, 2002. He was charged with spreading hatred against the government under articles 154, 155 (1) and 64 (1) of the Indonesian Criminal Code.⁶⁰ The charges were not in relation to the bombing of the Acehese boarding house in Jakarta.

According to the prosecutor's indictment, the key accusations against Faisal Saifuddin were that on November 9, 2000, he led a demonstration in front of the United Nations office in Jakarta and also participated in a subsequent demonstration on November 13, 2000. At the demonstrations, flyers were distributed, including one dated November 8, signed by Faisal Saifuddin and by Muzakkir M., the Secretary of SIRA-Jakarta. The flyer allegedly accused the "neo-colonialist government of Indonesia" of crimes against humanity and "suppressing the basic rights and human dignity of the people of Aceh." It ended with an appeal to "the U.N. and the international community to press both the neo-colonialist government of Indonesia and GAM to implement a ceasefire and stop the violence in Aceh."⁶¹

The language in the flyer appears to have been the government's sole legal rationale for the conviction and one-year sentence. The prosecutors had asked for a two-year sentence. Faisal told Human Rights Watch, "This statement was issued in the press at the time of the demonstration, and widely reported on. So, why was I not arrested then? Also, other people were arrested from the boarding house for the actual bomb incident."⁶²

During the trial his accusations were more blunt. He stated:

[T]he police did not have the evidence which could say that SIRA was involved in the bombing. So finally the police looked for articles that could bring SIRA to court, with the result that they systematically planned to hush and prevent the civilian populations' resistance, and they chose to fall for the "hate sowing" articles, which have proven to be very potent in restricting activists.⁶³

⁵⁹ Human Rights Watch interview with Faisal Saifuddin, Jakarta, November 21, 2002.

⁶⁰ Trial Document: "Prosecutor's indictment against Faisal Saifuddin," October 11, 2001 (copy of Indonesian language original on file at Human Rights Watch).

⁶¹ Trial Document: "Prosecutor's indictment against Faisal Saifuddin," October 11, 2001 (copy of Indonesian language original on file at Human Rights Watch); Human Rights Watch, "Indonesia: Freedom of Expression Under Assault," *A Human Rights Watch Press Release*, January 18, 2002.

⁶² Human Rights Watch interview with Faisal Saifuddin, Jakarta, November 21, 2002.

⁶³ Trial Document: "Defense Submission," November 11, 2001 (copy of Indonesian language original on file at Human Rights Watch).

Faisal was released from prison on April 17, 2002, after serving eight months and fifteen days of his one-year sentence. Because of legal technicalities in his case, he was released prior to his appeal hearing being completed. On May 15, 2002, the Supreme Court in Jakarta upheld his original sentence and ordered him to return to prison to serve the remainder of his sentence.

Muhammad Nazar⁶⁴

On February 12, 2003, Muhammad Nazar was taken from his home in Lampulo Baro village, Banda Aceh, at about 1:30 a.m by armed police officers, who had arrived with an arrest warrant in hand. Nazar is the head of SIRA in Banda Aceh. The police handcuffed Nazar and took him straight into detention. They also seized a laptop, and various newspaper clippings, which they found at his home.⁶⁵

This was not the first time that Nazar had been arrested for expressing his political views. On November 20, 2000, Nazar was arrested and subsequently charged with “spreading hatred” against the Indonesian government. He was charged under articles 154 and 155 of the KUHP for hanging banners in favor of an independence referendum and against the Indonesian military during a campus rally the previous August. He was convicted in March 2001 and sentenced to ten months in prison. With time served, he was released by October 2001. His arrest, trial and conviction triggered widespread condemnation against Wahid’s government, including from Human Rights Watch, for violating Nazar’s right to free expression.⁶⁶

Nazar was initially charged under article 10 of Law No. 9/1998 (on freedom of expression) for failing to notify the police of a rally held on January 9, 2003, in Lhokseumawe, Aceh. Nazar was also charged under article 510 of KUHP for causing public unrest. A spokesman for the Aceh provincial police clarified the charges, saying, “We arrested Nazar in connection with his campaign and speeches for a referendum for the province.”⁶⁷

Highlighting the importance of the arrest, Indonesia’s National Military Chief, General Endriartono Sutarto, defended the arrest by implying that Nazar’s activities had violated the tenuous ceasefire agreement which had been in place in Aceh since December 9, 2002. He claimed that SIRA’s activities favored the armed separatists, GAM (*Gerakan Aceh Merdeka*, Free Aceh Movement), warning that: “Those who incite the public to do things which violate the spirit of the [peace] agreement are acting against the law.”⁶⁸

The Cessation of Hostilities Agreement (COHA) between Indonesia and GAM signed on December 9, 2002, led to a cease-fire that opened up space for civil society to participate in building peace and monitoring the human rights situation in the province. Part of the COHA was an agreement to allow “civil society to express without hindrance their democratic rights.”⁶⁹

On February 28, 2003, the High Prosecutor’s office in Banda Aceh authorized an extension of Nazar’s detention for a further forty days. In an unusual development, the detention order also increased the allegations against Nazar by including the new charge of “spreading hatred” against the Indonesian government, under article 154 of KUHP.⁷⁰

As the police had already prepared the arrest warrant before raiding Nazar’s home on the night of February 12, 2003, the addition of extra charges appears to have been aimed at silencing key civil society leaders during the cease-fire.

⁶⁴ Muhammad Nazar is 30-years old and the head of SIRA (*Sentral Informasi Referendum Aceh*, Aceh Referendum Information Center) in Banda Aceh.

⁶⁵ SIRA document, “*Penangkapan Muhammad Nazar*,” SIRA, Banda Aceh; “Indonesian police arrest Aceh activist for leading rally,” Agence France-Presse, February 12, 2003.

⁶⁶ Human Rights Watch, “Indonesia: Release Aceh Activist,” November 21, 2000.

⁶⁷ “Aceh pro-independence activist arrested for holding illegal rally,” *The Jakarta Post*, February 13, 2003.

⁶⁸ “TNI chief defends detention of Achenese activist,” *The Jakarta Post*, February 13, 2003.

⁶⁹ “Cessation of Hostilities Agreement,” Article 2 (f), Geneva, December 9, 2002.

⁷⁰ Trial Document: “Extension of Detention Order, High Prosecutor’s Office,” Banda Aceh, February 28, 2003 (copy of Indonesian language original on file at Human Rights Watch).

Also disturbing was the news that on April 23, 2003, Nazar's defense lawyer, Johnson Panjaitan, the Secretary General of PBHI, was intimidated and harassed while in his hotel room in Banda Aceh by two Indonesian police intelligence officers, who claimed they were there as part of an anti-narcotics operation. The two men pointed a gun at Johnson and rifled through his documents and belongings. In the increasingly hostile environment in Aceh against civil society members, it is likely that this incident was directly related to Johnson's involvement in Nazar's case. The incident was reported to the police the next day, but no investigation appears to have taken place.⁷¹

In conjunction with Nazar's arrest, the police also issued a summons for several other civil society members in Aceh. Included in these was an arrest warrant for Kautsar bin Muhammad Yus,⁷² who has been named as a suspect for violating article 9 of Law 2/1998 and article 510 of KUHP for holding a public event or rally without permission from the police or designated government official. The charges also relate specifically to the January 9, 2003, rally held in Lhokseumawe.

Kautsar spent four months in detention in late 2001 on charges of "spreading hatred" against the government. He was detained in July 2001 for alleged actions during an anti-Exxon Mobil rally in the province. In November 2001, in an unusual move by an Acehnese court, he was acquitted of all charges and released.

Nazar's trial started at the Banda Aceh District Court on April 17, 2003. At the time of writing he remained in detention while the future of his trial remained uncertain amidst the renewed military offensive against GAM.⁷³

Other cases

Ignas Kleruk Mau

Ignas Kleruk is a student at Gajah Mada University in Yogyakarta, Central Java, and an activist with the National Student League for Democracy (*Liga Mahasiswa Nasional untuk Demokrasi* or LMND). He has been accused of insulting President Megawati by destroying an effigy of her in Surabaya, East Java, at a May 2002 anniversary demonstration marking the fall of Soeharto in May 1998.⁷⁴

Frans Kurniawan

Frans Kurniawan is the head of the Manado branch of the PRD in Sulawesi. He is accused of insulting the president and vice-president of Indonesia by setting alight a poster of President Megawati and Vice-President Hamzah Haz in the courtyard in front of the Manado Governor's office on September 24, 2002.

At the time of writing he was awaiting the judge's verdict after trial. He remains in police custody in Manado.⁷⁵

Andi Abdul Karim

Andi Abdul Karim is a 23-year-old Makassar Islamic University Student in Makassar, Sulawesi. He has been charged under article 134 of KUHP for insulting the president and vice-president of Indonesia.

According to reports in a local newspaper, the indictment charges that on October 28, 2002, Andi was involved in a demonstration in front of the South Sulawesi Provincial Parliament building and the Governor's office in Makassar. Several students were involved in the demonstration, which had been organized to protest against the

⁷¹ Human Rights Watch email communication with PBHI, April 30, 2003.

⁷² Kautsar bin Muhammad Yus is chairperson of FDPRA (Aceh People's Democratic Resistance Front).

⁷³ "Nazar, SIRA leader goes on trial," *Tempo Interaktif*, April 17, 2003; "Tension and demonstration mark Aceh activist's trial," *The Jakarta Post*, April 22, 2003.

⁷⁴ Human Rights Watch interview with ELSAM staff, Jakarta, November 14, 2003; "Bakar Patung Megawati Terjerat Pasal Haatzai Artikelen," www.hukumonline.com, January 6, 2003; "Menghina Mega, Memenjarakan Tapol," *Kompas*, August 31, 2002.

⁷⁵ Human Rights Watch telephone interview with Helda Tirayoh, Director, LBH Manado, April 28, 2003.

president and vice-president to demand that education be carried out in a manner which was “cheap, scientific and democratic.”⁷⁶

Andi was accused of carrying a poster of Megawati and Hamzah Haz, which he then allegedly incited two other demonstrators to burn by stating that Megawati and Hamzah were not suitable to be the president and vice-president of the Republic.

Andi was being represented at his trial by a team of lawyers from the Ujung Pandang Legal Aid Body.⁷⁷ At the time of writing his case was ongoing.

Susyanti Kamil, An’am Jaya, Sahabuddin, Ansar Suherman, Hariansyah, Muhammad Akman, Hariansyah
Susyanti Kamil, An’am Jaya, Sahabuddin, Ansar Suherman, and Muhammad Akman were arrested on January 25, 2003, by the police in Sulawesi Tenggara Province.

They were arrested for insulting the president and vice-president by stamping on and then burning a poster of Megawati and Hamzah Haz at a demonstration two days earlier. Initial reports indicate that Hariansyah and one other had already been taken into detention on January 24 for failing to notify the police of the demonstration, as required under Indonesian Law No. 9/1998.

The demonstration had been organized by a coalition of Indonesian organizations known as the Governing Front of the Poor (*Front Pemerintah Rakyat Miskin*, FPRM) in Kendari Town, Kendari Sub-district.

All six protestors were initially detained at Kendari Police Resort (*Polres Kendari*) and later transferred to Kendari Prison on March 19, 2003. They are believed to have been charged with insulting the president and vice-president under article 134 of KUHP and for spreading hatred against the government under articles 154 and 155 of KUHP.⁷⁸

Yoyok⁷⁹ and Mahendra⁸⁰

Yoyok and Mahendra were separately arrested by the Sleman regional police on January 7, 2003 for insulting President Megawati and Vice-President Hamzah Haz at an anti-government demonstration in Yogyakarta, Central Java. The demonstration had been aimed specifically at the president and vice-president of Indonesia in protest at the price hikes in early January.

Yoyok and Mahendra were accused of burning a poster of Megawati and Hamzah Haz at the demonstration and were charged under article 134 of KUHP.

PDI-P supporters, as well as SPI and PRD members attended in large numbers the trial which was presided over by Judge FX Jiwo Santosa at the Sleman, Yogyakarta District Court.

The prosecution asked for a three-year sentence for the two defendants. The judge issued his decision on April 28, 2003, and found both Mahendra and Yoyok guilty of insulting the president. In what appears to be an

⁷⁶ “Mahasiswa UIM Didakwa Menghina Presiden,” *Fajar Online: Harian Pagi Makassar*, April 10, 2003.

⁷⁷ “Pembakar Poster Presiden Minta Bantuan LBH,” *Fajar Online: Harian Pagi Makassar*, December 13, 2002; “Mahasiswa UIM DiDakwa Menghina Presiden,” *Fajar Online: Harian Pagi Makassar*, April 10, 2003.

⁷⁸ Amnesty International Indonesia UA, 92/03, April 7, 2003; “Dua aktivis GPK Diamankan,” *Kendari Pos Online*, January 25, 2003; “Six activists arrested for insulting top leaders in Kendari, SE Sulawesi,” *The Jakarta Post*, January 27, 2003; “Empat Pembakar Foto Presiden Jadi Buronan,” *Tempo Interaktif*, January 27, 2003; “Penjara buat Para Aktivis Politik,” *Kompas*, March 1, 2003.

⁷⁹ Yoyok is a 23-year-old activist and member of SPI (*Serikat Pengamen Indonesia*, Indonesian United Busker’s).

⁸⁰ Mahendra is the 24-year-old Head of the Yogyakarta branch of LMND (*Liga Mahasiswa Nasional untuk Demokrasi*, the National Student League for Democracy).

unprecedented heavy post-Soeharto era judgment, he sentenced them each to three years of imprisonment, to include time served.⁸¹

Supratman

Supratman is a senior editor of the daily Jakarta newspaper *Rakyat Merdeka*. He is accused of insulting President Megawati and violating articles 134 and 137 of KUHP.⁸²

Although the official indictment has not yet been issued by prosecutors, it is believed that the charges will relate to a series of articles that *Rakyat Merdeka* ran throughout January 2003, comparing Megawati to a man called Soemanto. Soemanto is an Indonesian man who was arrested in Java in December 2002. He gained widespread notoriety by confessing to the crime of cannibalism and specifically for the killing and eating of one of his neighbors.

Rakyat Merdeka ran a series of headlines in January 2003 implying that the president was crueller than Soemanto for raising the prices of electricity, fuel and telephones earlier in the year.

Megawati announced her plans to sue the newspaper over the headlines at an editors lunch she hosted in Jakarta on March 22, 2003. At the lunch she said that the headlines comparing her to Soemanto had made her lose sleep.⁸³

Nanang Sugisuroso and Sofandi Sofar

Nanang Sugisuroso and Sofandi Sofar were accused of spreading hatred against the government and were charged under article 156 of KUHP in July 2002.

In November 2002, they were tried and found guilty of the charges in the Medan District Court, presided over by Judge Abd. Aziz Syarif. Judge Syarif sentenced them both to two years imprisonment. Both defendants were released pending appeal. The defense has so far been unable to file an appeal, because the judge retired and left for Jakarta before he had issued a written decision in the case.⁸⁴

Firman

Firman is a student from UHAMKA university in Jakarta. He was arrested for insulting the president at a January 2003 demonstration in the capital. He has subsequently been released by the police but is still regularly being questioned. He may still face formal charges once the police have completed their investigation.⁸⁵

⁸¹ Human Rights Watch email communications with LBH Yogyakarta, May 2003; “*Dituduh Menghina Presiden dan Wapres, Dua Aktivis Ditangkap*,” *Kompas*, January 8, 2003; “*Wakil DPRD Jenguk Dua Aktivis di Tahanan*,” *Kompas*, January 11, 2003; “*Saksi Ahli Beratkan 2 Pembakar Foto Mega-Hamzah*,” www.detik.com, March 12, 2003; “*Dua Terdakwa Kian Tersudut*,” www.detik.com, March 19, 2003; “*Terdakwa Pembakar Gambar Mega Dikeroyok*,” *Kompas*, April 4, 2003; “*Pembakar Gambar Presiden Dianiaya*,” *Kedaulatan Rakyat*, April 9, 2003; “*Pembakar Gambar Presiden Dituntut 3 Tahun*,” *Kedaulatan Rakyat*, April 19, 2003; “*Pembakar Gambar Presiden RI: Dihukum Tiga Tahun Penjara*,” *Kedaulatan Rakyat*, April 29, 2003; “*Indonesians Given Jail Time for Burning Leaders’ Pictures*,” Associated Press, April 28, 2003.

⁸² Human Rights Watch email communication with LBH Jakarta, May 1, 2003.

⁸³ “*Polisi Mengkriminalisasi Kritik Dari Pers*,” *Tempo Interaktif*, February 20, 2003; “*President to sue daily for defamation*,” *The Jakarta Post*, March 22, 2003; “*Tabloid Trouble*,” *South China Morning Post*, March 26, 2003; “*Editor on Trial over Akbar caricature*,” ABC NewsOnline, March 7, 2003.

⁸⁴ Human Rights Watch email communication with Nanang Sugisuroso and Sofandi Sofar’s defense lawyer, April 9, 2003.

⁸⁵ Human Rights Watch email communication with Firman’s defense lawyer, April 23, 2003.

V. CONCLUSION

Yoyok and Mahendra are serving a three-year sentence for burning a poster of President Megawati at a non-violent demonstration in Indonesia. That they and others have spent time in Indonesia's jails simply for the peaceful expression of their right to free expression in the post-Soeharto era highlights the gap between what is perceived to be a country on the road to respecting fundamental rights and the reality on the ground.

These cases also demonstrate the weakness of Indonesia's judiciary and its susceptibility to political interference. Indonesia's courts have not only failed to protect the basic rights of its citizens in these cases, but shown that Indonesia's "third branch" of government remains a long way from playing its role in a rights-respecting society. The judges in these cases have clearly failed to appreciate, or even acknowledge, the human rights implications that arise from the application of laws that severely restrict basic political rights.

This is not just the view of an international human rights organization. During one of the trials detailed above, the defense argued that "the judicial institution has even become an effective 'killing machine.'"⁸⁶

The failure of the judiciary to act as a brake on the more venal inclinations of the executive branch makes the need for repeal of these laws even more urgent. It is not possible to argue that such facially repressive laws pose only a hypothetical threat that can be addressed through the restraint of the executive or the jurisprudence of the judiciary. This progeny of colonialism and homegrown dictatorship must be relegated to the dustbin of history as soon as possible.

VI. RECOMMENDATIONS

To the government of the Republic of Indonesia:

- Immediately and unconditionally release all persons detained or imprisoned for the peaceful expression of their political views.
- Drop any outstanding charges against individuals awaiting trial for their non-violent political activities.
- Make a public commitment to ensuring that there will be no further arrests of individuals engaged in the peaceful expression of their beliefs.
- Propose the repeal of articles 134, 136, and 137 criminalizing insulting the president or vice-president and anyone who "disseminates, demonstrates openly or puts up a writing or portrait containing an insult against the president or vice-president" and articles 154, 155, and 156 criminalizing "public expression of feelings of hostility, hatred or contempt toward the government" and prohibiting "the expression of such feelings or views through the public media."
- Repeal any regulations or decrees that have been used to detain or imprison people for the peaceful expression of their political views.
- Act immediately upon the commitment in the five-year National Action Plan on Human Rights to sign and ratify the International Covenant on Civil and Political Rights, which would provide further legal guarantees for the protection of freedom of expression in Indonesia.

To Indonesia's People's Representative Assembly (*Dewan Perwakilan Rakyat* or DPR):

- Repeal articles 134, 136, and 137 criminalizing insulting the president or vice-president and anyone who "disseminates, demonstrates openly or puts up a writing or portrait containing an insult against the president or vice-president" and articles 154, 155, and 156 criminalizing "public expression of

⁸⁶ Trial Document: "Defense Submission for Kias Tomo," October 30, 2002 (copy of Indonesian language original on file at Human Rights Watch).

feelings of hostility, hatred or contempt toward the government” and prohibiting “the expression of such feelings or views through the public media.”

- Pass legislation nullifying any regulations or decrees that have been used to detain or imprison people for the peaceful expression of their political views.
- Urge the government to sign and then ratify the International Covenant on Civil and Political Rights, which would provide further legal guarantees for the protection of freedom of expression in Indonesia.

To the Indonesian judiciary:

- Throw out all prosecutions for the peaceful expression of political views on the grounds that they are inconsistent with international law and norms.

To International Donors and Governments with close bilateral ties to Indonesia:

- Raise concerns about regressive policies curtailing free expression in meetings with President Megawati and government officials.
- Regularly monitor trials and meet with defendants.
- Support comprehensive training for all members of the judiciary in international human rights standards and applicable international law.
- Support comprehensive training for all members of the police force in international human rights standards and applicable international law.

To the United Nations High Commissioner for Human Rights:

- Ensure that the invited Special Rapporteur on Freedom of Expression is allowed unhindered access to all political prisoners across Indonesia.
- Include in any Office of the High Commissioner for Human Rights (OHCHR) technical assistance program to Indonesia comprehensive training for members of the judiciary and police force in international human rights standards and applicable human rights law.

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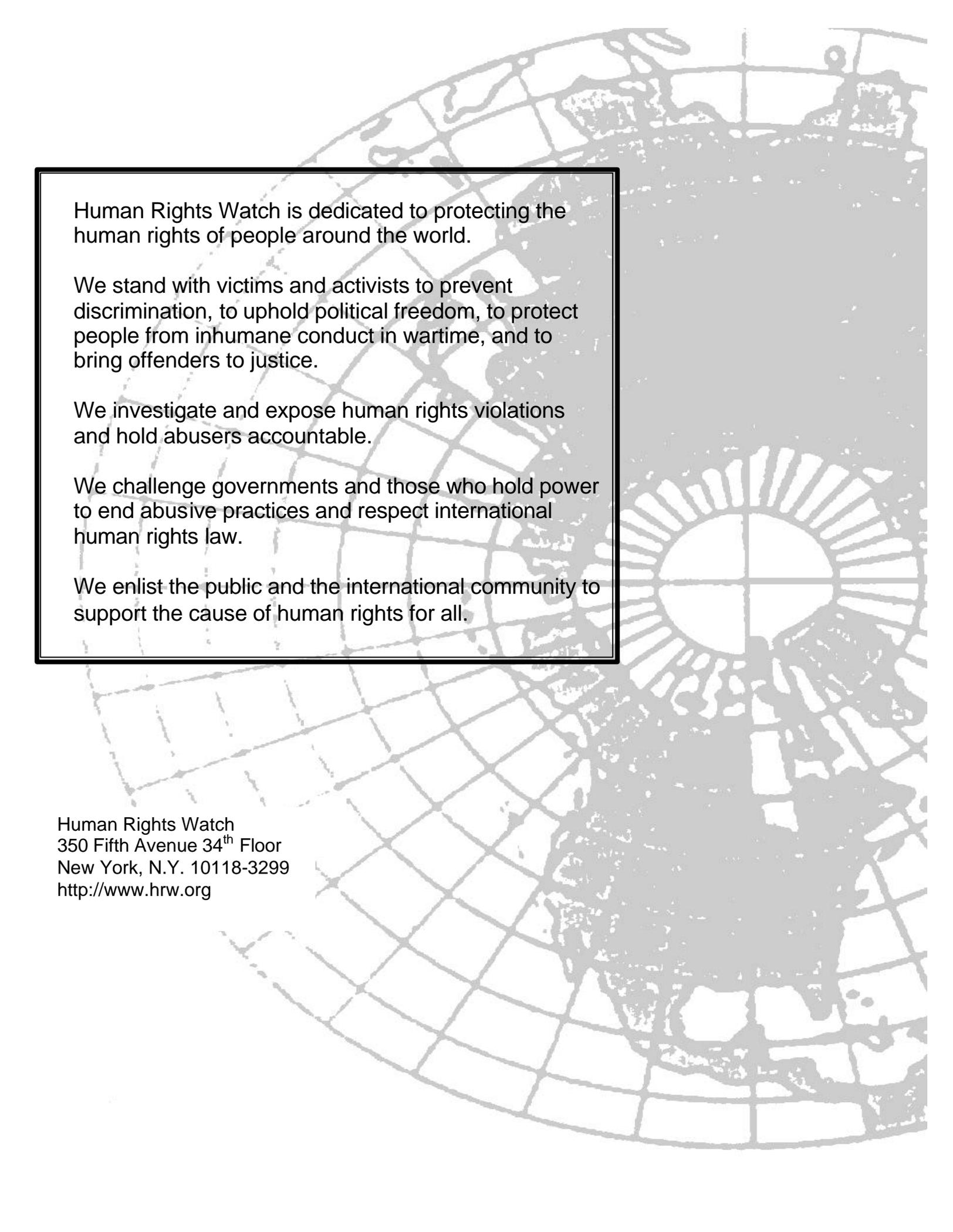
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