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Minister for Justice and Human Rights
Republic of Indonesia
Mr Patrialis Akbar
Jl. H.R. Rasuna Said Kav No. 4-5
Kuningan
Jakarta Selatan 12950
Indonesia

2 November 2009

Dear Minister,

**RE: CRIMINAL DEFAMATION PROCEEDINGS AGAINST INDONESIAN HUMAN RIGHTS DEFENDER,
USMAN HAMID**

The undersigned members of the Indonesia NGO Forum and Watch Indonesia from Germany would like to take this opportunity to welcome you in your new position and bring to your attention some of our recent concerns regarding the situation of human rights defenders in Indonesia.

The NGO Forum is an informal network of UK-based organisations that work on issues ranging from human rights and development to the environment and humanitarian relief in Indonesia and Timor-Leste. This letter does not necessarily reflect the views of any other organisations that participate in the Forum.

We would like to bring to your urgent attention the case of a prominent human rights defender in Indonesia, Usman Hamid, the Coordinator of the Commission for Disappeared and Victims of Violence (better known by its acronym, KontraS). Mr Hamid is the subject of criminal defamation proceedings due to his involvement in the campaign for justice for his late colleague, Munir Said Thalib (known as Munir), who was murdered by poisoning on 7 September 2004.

We urge you to ensure that the criminal proceedings which have started against Mr Hamid do not lead in law or in fact to a reversal of the rule of law in Indonesia whereby human rights defenders face attacks on their important work, including criminal defamation suits, while those responsible for gross human rights violations, particularly at levels of command responsibility, escape accountability.

President Susilo Bambang Yudhoyono referred to the Munir case as 'a test of our history' in the context of Indonesia's democratic reform process and appointed Mr Hamid in December 2004 to the independent Fact-Finding Team he set up to investigate Munir's murder. Although two people have now been convicted of involvement in Munir's death, credible allegations have been made that those responsible for the murder at the highest levels are still at large.

Muchdi Purwoprandjono (known as Muchdi), a former deputy of the state intelligence agency, was acquitted of charges of soliciting and assisting in the murder of Munir on 31 December 2008. But his trial was criticized by local and international human rights groups as violating international standards of

fairness and due process. In a report submitted to the UN Special Rapporteur on the situation of Human Rights Defenders in 2009, the Action Committee in Solidarity with Munir, KASUM, said Muchdi's trial was "marked by the systematic retraction of prior sworn statements by key witnesses, and by the presence of organized groups seeking to influence the trial". It concluded that "the Indonesian justice system is not yet able to effectively prosecute senior officials with powerful connections, due to weak prosecution capacity and witness intimidation" and that Muchdi's acquittal "was a setback...for the enforcement of human rights and the protection of other human rights defenders more broadly".

Following his acquittal, Muchdi announced that he would file criminal defamation suits, which formally carry a maximum sentence of over five years imprisonment,¹ against Mr Hamid and three other human rights defenders, including Munir's widow Suciwati, who gave testimony during the trial. To date, Muchdi has filed a complaint to the police only about Mr Hamid, possibly in part because according to media reports he strongly criticised the verdict outside the court and asserted that Muchdi was a murderer. On 3 September 2009, Mr Hamid received a summons and on 9 September 2009, he reported to the Jakarta Police Headquarters. The police investigation on his case is pending.

The rule of law is essential for any democracy. International law recognizes limitations to the right to freedom of expression as provided for in Article 19 of the International Covenant on Civil and Political Rights, which Indonesia ratified in 2006. But these restrictions must be demonstrably necessary for and proportionate to certain permissible purposes. The permissible purposes for such restrictions include respect of the rights or reputations of others. However, it is well established under international law that public officials must tolerate more, rather than less, criticism than private individuals. Indonesia's criminalization of defamation, carrying as it does the possibility of imprisonment formally for over five years of human rights defenders and others, is a disproportionate restriction of the right to freedom of expression.

We are concerned that the Indonesian legal system is being used to intimidate human rights defenders instead of being used to ensure that they are able to carry out their important work in line with the United Nations General Assembly Declaration on Human Rights Defenders and their right to freedom of expression guaranteed by the Indonesian Constitution.

In addition to Mr Hamid, at least six other Indonesian human rights defenders, Emerson Yuntho and Illian Deta Arta Sari, from Indonesia Corruption Watch; Gatot from The Commission of National Solidarity (KSN, Komisi Solidaritas Nasional); Suryani from Glasnot Ponorogo; Dadang Iskandar from Gunung Kidul Corruption Watch; and Itce Julinar from Angkasa Pura Trade Union currently face criminal defamation charges as a result of their work.

The investigation instigated by Muchdi marks the second time Usman Hamid is facing criminal defamation charges in his campaign for justice for Munir. These public attacks on Mr Hamid five years after the death of Munir send another chilling reminder to human rights defenders in Indonesia that their work is under threat and that impunity for those who are responsible for past human rights violations, including torture, murder, and enforced disappearances of human rights defenders, persists after a decade of reform.

Following her visit to Indonesia in June 2007, the UN Special Representative of the Secretary-General on the situation of Human Rights Defenders, Hina Jilani, said she was "disturbed at the large number of prosecution [sic] of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights". She recommended that "legislation and procedures be instituted to prevent such prosecutions". She further recommended a number of other measures that would lead to greater protection for human rights defenders.

Ms Jilani expressed particular interest in the Munir case. She reminded the Government that "this case

¹ See Articles 311.1 of Indonesia's Criminal Code: "Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted, shall, if he does not produce said proof and the charges has been made against his better judgment, being guilty of calomny, be punished by a maximum imprisonment of four years" and Article 316: "The punishments laid down in the foregoing articles of this chapter may be enhanced with one third, if the defamation is committed against an official, during or on the subject of the legal exercise of his office". That means criminal defamation carries formally the possibility of up to five years and a few months imprisonment (four years enhanced by one third).

is generally seen as a test of the Government's will to protect defenders in the country" and that "any lapses in the conclusion of this case would make all human rights defenders throughout the country insecure." She called on the Government to release the report of the Fact-Finding team into Munir's murder and act on its recommendations.

We would like to ask you to use your authority in the appropriate way to:

- Ensure that Mr Hamid and other human rights defenders in Indonesia are not targeted through criminal defamation suits because of their legitimate human rights work;
- Ensure that further police investigations take place to identify those responsible at the highest level for Munir's murder and publish the report of the Fact-Finding Team into Munir's murder as a key step towards establishing the truth about the murder;
- Take measures to ensure that those responsible for past human rights violations against human rights defenders in Indonesia, including torture, murder and extra-judicial executions, are brought to justice;
- Ensure that provisions in the Criminal Code, which allow formally for over five years imprisonment for acts of defamation, are repealed, and that the newly revised Criminal Code does not contain provisions punishing with terms of imprisonment individuals who publicly criticize public officials;
- Support the creation of special mechanisms to ensure the protection of human rights defenders in Indonesia.

Yours sincerely

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