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INTERNATIONAL HUMAN RIGHTS LAW

INDONESIAN HUMAN RIGHTS & ITS VIOLATIONS

(By Pallavi Kapur)

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ABSTRACT

World’s largest archipelago nation at the meeting point of Indian Ocean to the Pacific Ocean. Having land borders with three countries; East Timor, Papua New Guinea and Malaysia with world’s only two triple split nation islands with the capital and the most populous city, Jakarta located on the Java Island. The history of Indonesia has witnessed dramatic changes not just geographically but also politically. With having Human Rights introduced after the fall of Suharto in 1998, both in law and in the constitution. Indonesia has the potential to become a model emerging democracy that respects human rights nationally and supports universal human rights standards across the world. Achieving this will require President Joko Widodo to take a firm stand to protect the human rights of Indonesia’s marginalised groups – including religious minorities, migrant workers, women, and Papuans – and to fight the culture of impunity which has sheltered members of Indonesia’s security forces for decades. Indonesia is currently one of the many countries which is failing to comprehensively use Human Rights as coherent medium providing protection of their citizen. With the help of this paper we are going to closely look at the history of the geographical, political and social formation of Indonesia as a country and how it lacks human rights implementation as a democracy and the kinds of human rights violations that have taken place before and after the establishment of Human Rights. Along with this we will give a close look to the government provisions and policies that have created unrest in the country among various minority sections such as the LGBTQ community, women and children. The present paper throws light upon the above mentioned situation and various other factors such as various cases which relates violation of human rights in the said country highlighting the need for Indonesia to comply with its human rights obligations.
INTRODUCTION

Human rights situation in Indonesia

Since the early 21st century, importance of Human Rights have been acknowledged as a universal criteria by the majority of nation states. Universal Declaration of Human Rights (UDHR), 1948 adopted as the main paradigm in most of United Nations mechanism.

The urgent need for Human Rights was immediately followed by ratifying two primary instruments; of International Human Rights namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights by many of UN member countries. This ratification carries a responsibility of the nation state to ensure protection of the Human Rights to its citizen. However, many studies show that there are more countries committing excessive violations of rights in comparison to countries providing protection and acknowledgment of these rights. Several sample cases show the gap between proper recognition and comprehension of its policies. There are still many countries extensively failing in providing Human Rights as coherent medium to ensure protection of their citizens. It is a situation where principles of Human Rights are only reduced into diplomatic agenda of many states.

Indonesian Commitment and Compliance to International Human Rights Law Integration between Human Rights and Legal Mechanism and the International Human Rights is the primary agenda of promotion and protection of Human Rights Defenders in Indonesia.

Indonesia has backed 7 key international Human Rights Law namely:

i. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR),
Indonesia officially ratified ICCPR in 2005 as this covenant is the most basic Human Rights law instrument in the united nation. It was mainly adopted to ensure religious freedom in the country.

ii. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR),
In order to ensure right to food and national stability ICESCR helps in bringing in the national policies in ensuring basic Human Rights.
iii. **INTERNATIONAL CONVENTIONAL ON ERADICATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD).**  
ICERD or the International Convention on the Elimination of All Forms of Racial Discrimination was approved and opened for signature by the United Nations on 21 December 1965. This convention entered into force on 4 January 1969. **Conventional of Eradication of Discrimination against Women (CEDAW).**  
The Government of Indonesia sanctioned The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1984, and submitted four periodic reports to the CEDAW Committee showing its progress in implementing the treaty. But a long way to go for stronger implementation.

iv. **UN CONVENTION AGAINST TORTURE (CAT).**  
It has been 20 years since the ratification of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) even then Indonesian police continue to be the most common offenders of torture.  
In 2017, the AHRC documented numerous cases of torture and ill-treatment conducted by the police. Such instances will be discussed in the paper.

v. **CONVENTION RIGHTS OF THE CHILD (CRC).**  
25 years since the ratification of UNCRC in Indonesia and although major developments have been made in protection of Child Rights. Certain laws and policies continue to hamper the rights.

vi. **INTERNATIONAL CONVENTION ON PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILY.**  
The Indonesian parliament adopted the international treaty in 2012. It is one of the nine core treaties of the international human rights system.

It is important for us, to understand these primary International Human Rights Law instruments that have been consented by the Government of Indonesia which are automatically acknowledged as a part of Indonesian positive law as mentioned in Act 39/1999 on Human Rights Article 7 (2) as follows: “International Law on Human Rights ratified by Republic of Indonesia become national law.”
However, there is an impression that ratification of International Human Rights legal instruments is mere theoretical in action as the government is not fully committed to implement them in the country. Even thought, in addition, the Government of Indonesia has been actively involved as members of UN Human Rights Council.

**REALITY OF PROTECTION OF HUMAN RIGHTS**

Even after numerous steps being taken by the government. It failed to protect the human rights defenders in the country, while restricting the rights such as; freedom of expression, peaceful assembly and association, etc. The abuse of arbitrary power by applying criminal law provisions and reducing legitimate expression has caused the failure in human rights implementation. Security forces committing human rights violations with large immunity, using excessive force during policing and security operations. The violence increasing in Papua, involving both peaceful and violent reactions to racist verbal attacks and violence against Papuans.¹

I. **POLICE AND SECURITY FORCES**

There have been recordings and videos made as proof of the ill-treatment and brutality done by the police while exerting excessive force. Such actions have been verified as authentic videos, where it showed the police kicking and beating men who were clearly not resisting. These actions further have been confirmed by witnesses, victims, and victims’ families.

The police have also held the protesters arbitrarily and refused to communicate detaining such protesters for at least several days without proper warrants. In response to this, there has been massive public outcry about the ill-treatment done by the police in and outside the police premises and custody. There have been claims of human rights violations done by such arbitrary police officers where 16 police officers have been held responsible for human rights violations being committed during the protests. They were held accountable, however, it was through non-transparent, internal disciplinary mechanisms rather than criminal prosecutions. Nine people were killed in Jakarta and one in Pontianak, many of them from gunshot wounds during the May protests. The police claimed that none of its officers used live ammunition. No police was arrested nor were any suspects identified.²

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¹Amnesty International, Overview Indonesia

²Amnesty International, Indonesia, 2019
II. **FREEDOM OF EXPRESSION AND ASSOCIATION**

Indonesian students have protested against the new law which weakens the Corruption Eradication Commission. This protest was held nation as, these changes included in the drafting of the criminal code. The petition demanded the government to prosecute corporations involving the forest fires, stop militarization in West Papua, investigating past gross human rights abuses, and stopping criminalizing activists. Two students were killed in Kendari, South East Sulawesi, and hundreds were injured.

While, police arrested a documentary filmmaker Dandhy Laksono after he posted a tweet about violence in Jayapura and Wamena, Papua. He was charged with violating the online hate speech law.³

III. **WOMEN’S RIGHTS**

There have been a number of changes in the plight of women when it comes to their basic human rights. Some instances show development in the behaviour of the society in which they perceive women and some just make you feel that there have no improvements whatsoever. The case where the Supreme Court acquitted a 15-year-old girl who had been convicted by the lower courts for aborting her pregnancy resulting after being raped by her brother is one such sign of improvement. Along with that, the president signed a decree pardoning Baiq Nuril, after the Supreme Court upheld the decisions convicting her of defamation for recording her superior sexually harassing her in a phone call, which went viral.

This indicates improvement in the Women’s Rights but there is a need for a more supportive and humane legal and systemic protection for victims of sexual violence. Even though parliament has considered the Sexual Violence Eradication bill over the course of the year, but did not pass it into law.

The Jokowi government failed to stop abusive, unscientific “virginity tests” of women who apply to join the military, or to institute measures to curb female genital mutilation, which continues to be used in rites of passage in some areas. Parliament also failed to pass a draft bill on sexual violence.⁴

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³ Human Rights Watch, Indonesia, World Report 2020: Events of 2019
⁴ https://www.hrw.org/world-report/2020/country-chapters/indonesia
IV. SEXUAL ORIENTATION AND GENDER IDENTITY

Indonesia has not considered the rights of the LGBTQIA+ community in the country. It is among the most controversial provisions of the criminal code which punishes extramarital sex by up to one year in jail.

While, the provision does not specifically mention same-sex conduct, same-sex relationships but taking away the recognition of such sexes and genders is equally alarming. The Papua uprising and these rushed legislative amendments triggered the biggest nationwide protests in 20 years against Jokowi’s ruling coalition, prompting Jokowi to have parliament delay voting on the draft criminal code and three other bills until 2020.  

V. RIGHTS OF THE REFUGEES

On 25 June 2020, a boat carrying 94 Rohingya refugees entered North Aceh after local people urged the authorities and protested to let the refugees be brought to the shore. The boat was spotted by local fishermen who reported the findings to local authorities. The survivors were brought to a local mosque.

The international laws imposes a duty upon the country to give shelter and protect the rights of those who arrive at their shore. Indonesia is not a party to the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol. However, the principle of non-refoulement is also protected under general international human rights law, as well as customary international law, which is binding on all states without exception. The ASEAN Human Rights Declaration also enshrines the right to “seek and receive asylum.” Moreover, the ban on collective expulsions is implicit in Article 13 of the International Covenant on Civil and Political Rights, to which Indonesia is a state party.

VI. INDIGENOUS PEOPLE RIGHTS

The rights of Indigenous people have been affected by a number of things namely, patchwork of weak laws, poor governance by the leaders and also failure of paper pulp companies and oil plantation to fulfil their human rights responsibilities. All of these factors have contributed in affecting the rights of Indigenous people to their livelihood, forests, water, food and culture.

5 Supra
6 Amnesty International Indonesia: Aceh community shows ‘best of humanity’ in pushing for Rohingya rescue, 25 June 2020
In 2004, West Kalimantan, Iban locals were pushed off their territory by an oil palm organization, PT Ledo Lestari, when bulldozers and other equipment rolled in to destroy their property. After 10 years, PT Ledo Lestari consented to arrangements with certain families to move their homes a couple of kilometers into the plantations yet didn't give any remuneration to the loss of their indigenous woods and livelihoods derived from it. Their community is currently situated inside the organization's oil palm estate, leaving them no land to develop food and continue their job. The woodland has been majorly wrecked, including plants they use for food and materials used to make mats and bins they used to offer to enhance family income.

In Jambi, Sumatra, the organization PT Sari Aditya Loka 1 didn't sufficiently consult with an indigenous gathering, the Orang Rimba, who were constrained off their territorial land, and didn't mitigate the damage and harm even after prior legal reforms had acquainted clear commitments with do as such. The organization till date hasn’t provided this Indigenous group with any meaningful remedies nor sorted out any important conferences nor agreed to give solutions for the Orang Rimba uprooted from their timberlands. Numerous Orang Rimba are currently destitute, living in plastic tents without occupation uphold, and in servile neediness.

HUMAN RIGHTS IN INDONESIA AND INTERNATIONAL RELATIONS

It is of great importance to know about the human rights situation in Indonesia along with the global scenario of human rights. One can say that, while the local processes aren’t very powerful and also slow, foreign contribution on the other hand is welcomed with open hands. The human rights promoters have got encouragement at this level. Be that as it may, the nation has gone through striking changes, with suggestions to the manner in which it is globally observed, to the sort of help it gets, and to the internal human rights situation. By and large, changes inside Indonesia are globally observed as an interesting improvement as a democratic process. Survivors and common society associations are profoundly commended. A large number of dollars, skill and information have been made accessible to encourage democratic change. The world, through innovation, is being opened for Indonesia. For the Indonesian government, this circumstance makes it more agreeable to discuss basic liberties, particularly with the international concern representatives abroad. Global actors, for

example, the U.S. government and the EU, have highlighted Indonesia as a central participant of the greatest Muslim popularity based nation. Indonesia has led to the accomplishment of 2 important goals within the ASEAN, namely the adoption of the ASEAN Charter and secondly, the establishment of the (AICHR) ASEAN Intergovernmental Commission on Human Rights.

It is notable to take into account that at the International level in the United Nations, Indonesians have received more recognition and some of them have even got elected to key posts, such as Mr. Makarim Winisono who got elected to be the president of the Human Rights Council (2005) Indonesia has taken an advanced take on Myanmar (Burma) and on Middle East issues. The nation has been perceived as an extraordinary monetary force and joined the G20, the expansion of G8, alongside Mexico, South Africa, Brazil, Argentina, India and different nations.

These universally acclaimed accomplishments overshadow human rights issues. The government’s understanding and managing of basic liberties and human rights still remains the same. At the point when the Indonesian president talked at the United Nations Post-Millennium Development Goals discussion, he proposed the possibility of international standard for religious slander. At the ASEAN gathering, Indonesia marked the ASEAN Human Rights Declaration, which contains many flawed provisions – on public security, cultural relativity, national interest, consensus principles, and non-interference. These arrangements undermine the Constitutional provisions and International human rights conventions. Because of the nation's developing role in world undertakings and to the financial development — the country made the transition from poor to middle income status, the world is now looking at Indonesia as a new key player. The pattern of foreign assistance has changed. Enormous organizations have moved their help from common society to government workplaces. Some unfamiliar NGOs working in Indonesia regularly produce refined reports without having a persuasive backing inside the nation, or with free coordinated effort with nearby substances. They end up by contending with neighborhood NGOs to pick up help from donors.

Abuse of impunity and the government shortcoming don't drive global consideration and attention. Truth be told, on account of Indonesia, following 16 years of political change, some
worldwide elements are taking a gander at the Indonesian government as a central participant to manage others' 'most noticeably terrible' circumstance, similar to Burma.

In the case of Indonesia, it is very clear that the rights of people are still ignored and neglected, both internally and internationally.

✓ **Resistance and deadlock**

The government often tends to overlook many important aspects of human rights protection. The more the government performs unduly and maintain impunity, the more people strive to ensure that justice for their rights which are being violated. With increasing number of violations, the number of victims have also increased and thus leads to solidarity amongst them. The feeling of disappointment towards government officials and judicial decisions seems to be widespread. Individuals resort to lawful systems, massive campaigns and strikes, including social media crusades, depend on worldwide pressure, and can rely on a modest bunch of columnists. Culprits' and the State's contra-backing, and government's perspectives lead to gridlocks, which disseminate widespread desperation among individuals.  

The human rights law and other related laws give grievance mechanisms, which victims use to report their cases or circumstances, unfortunately, these mechanisms have shortfalls to act properly. Courts, in numerous districts, have similar poor performance. Then again, NGOs, common society associations, and survivors have scarce means to protect themselves and often lacks solid proofs. Satisfactory outcomes are not many. The most successful case was the trial of crime against humanity in East Timor (Timor Leste), but in the end the wrongdoers were acquitted.

(International Center for Transitional Justice; Commission for the Disappeared and Victims of Violence, 2011, p. 49-50)

The public intervention took form by organising various kinds of symbolic campaigns, massive strikes. Different artists were involved in solidarity events and social issues were highlighted by art groups from different regions, they voiced their social problems and injustices which they faced. Social media was seen as a tool which was used to spread awareness and demand changes. Instagram, Facebook, Twitter were used to spread slogans and awareness and online sites such as Change.org were used to file petitions, thus social media offered a platform to raise their concerns. Jakarta is noted as the world’s most active

city in terms of tweets posted. The reach and power of social media eases the way for people to engage in campaigning.

The labour groups and the stakeholders organised massive demonstrations for issues relating to natural resources and issues concerning the fishermen, farmers and indigenous people. These campaigns were organised with the aim of attracting government’s attention in view of negligence shown by official institutions and also poor mediation which was performed by them on social problems faced by the poor. All of this resulted in frustration and disregard for the government which further led to use of force by some individuals; some individuals reclaimed a disputed land, blocked ships of fish companies in traditional water zones and also conducted strikes in many industrial establishments. All such actions gave a reason to the government to arrest such individuals, they further criminalised their actions were considered to be provocative in public space and thus some persons got arrested and were subjected to harmful treatment.

Human rights can be said to be the language of freedom which claims for justice, truth and remedies. Even though human rights are not on headlines, but they are still a very important issue of interest for people around the world. It's the language and the exercise of numerous individuals, particularly the individuals who were affected by extensive and constant maltreatments. It is the language of freedoms and claims for justice, truth & remedies. In spite of the fact that individuals everywhere know about their privileges, there is skepticism when human rights mechanisms do not present an earnest & quick response to the circumstances. Then again, we can see how various alternatives have been taken by victims to survive and maintain the hope for justice to prevail.

✓ Key International Actors

In January, Indonesia started its two-year term on the United Nations Security Council, picking peacekeeping as the topic of its May presidency yet generally declining on delicate issues, including the continuous humanitarian and human rights emergency in Venezuela.

At the UN Human Rights Council in Geneva, and in the UN General Assembly's Third Committee in New York, Indonesia was among the Muslim-dominant part nations that didn't
sign a statement supporting China's strategies in Xinjiang that overlooked far reaching restraint of regions of Muslims. The Xinjiang issue has been a key trial of whether individuals from the Organization of Islamic Conference (OIC), including Indonesia, will press China to end its foundational maltreatments against Muslims. The 57-nation OIC has generally stayed quiet.

In the month of August, Indonesia and Australia signed an agreement for free trade. Prime Minister Scot Morrison witnessed the signing along with president Jokowai in Jakarta. Both countries are among the world’s top 20 economies.

On June 23, heads of the Association of Southeast Asian Nations (ASEAN), including Jokowi, met in Bangkok, however didn't approach Myanmar to give a way to citizenship to Rohingya Muslims, including somewhere in the range of 730,000 who fled Rakhine State to get away from an ethnic purging effort composed by Myanmar's military in 2017 and who presently live in Bangladesh or are looking for shelter in other ASEAN nations. The European Union-Indonesia human rights dialogue occurred in November in Brussels; the European Union raised concerns on certain arrangements in the draft criminal code, including capital punishment.

**CONCLUSION**

*Indonesia is a culturally dense nation which makes it a prime focus for the country to ensure and protect the Human Rights of all the people of the country. The paper has highlighted the challenge of impunity for human rights violations in present Indonesia, and has also thrown light upon the role of civil society organisations at both national and international levels in order to resist the perpetuation of human rights abuses.*

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- Amnesty International Indonesia: Aceh community shows ‘best of humanity’ in pushing for Rohingya rescue, 25 June 2020