

Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Universal Periodic Review mechanism established by the Human Rights Council in Resolution 5/1 of 18 June 2007

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Table of Contents

I. Background to internal displacement in Indonesia

II. Normative and institutional framework for the protection of the rights of IDPs

III. Achievements and challenges in upholding the rights of IDPs

IV. Protection and promotion of human rights of IDPs

-Obstacles to the freedom of movement, the right to property, the right to restitution for the property or to compensation for its loss

-Obstacles to the right to an adequate standard of living

-Obstacles to the right to the enjoyment of the highest attainable standard of physical and mental health

-Obstacles to the enjoyment of the right to life, liberty and security, safe access to food, water, shelter, medical services and sanitation, and restrictions to the rapid and unimpeded passage of relief consignments, equipment and personnel

V. Recommendations

The information included in this submission is taken from the following documents where it is fully referenced:

1. IDMC, 28 March 2011, *Maluku and North Maluku: Support still needed for thousands of people ten years after their displacement*
2. IDMC, 22 November 2010, *Kalimantan: New ethnic-related displacement while earlier IDPs struggle to make return sustainable*
3. IDMC, 13 October 2010, *Papua: Papuans displaced by military operations in the central highlands remain unassisted*
4. IDMC, 8 September 2010, *Aceh: IDPs and returnees still face significant recovery and reintegration needs*
5. IDMC, 20 March 2009, *In search of durable solutions for all* (Indonesia Country Profile)

I. Background to internal displacement in Indonesia

1. More than 1.4 million people in Indonesia were displaced throughout the country between 1999 and 2002 by violence between ethnic and religious groups competing for political and economic resources, in the context of an economic recession and a political reconfiguration that followed the ending of Suharto's "New Order". A further estimated 500,000 to 700,000 people were displaced by the conflict in Aceh between 1999 and 2004, while tens of thousands of people have since 2001 been forced from their homes by military operations in Papua, in the country's only continuing armed conflict. While most IDPs have since been able to return to their homes, durable solutions remain elusive for tens of thousands of them as they are prevented from enjoying basic rights to the same extent as people who were not displaced. The material and social assistance they have received has been inadequate to enable them to overcome their displacement; they face economic, social and political segregation, and their difficulties in asserting their land and property rights have not been addressed.

2. In some areas where reconciliation and peace-building efforts have been insufficient, episodes of violence between segregated ethnic or religious communities have continued to cause displacement. During 2010 and 2011, tens of thousands of people were temporarily displaced by inter-ethnic violence in East Kalimantan on the island of Borneo, and in Papua Province. In September 2011, inter-communal violence in Maluku province displaced at least 4,000 people in the capital, Ambon, some of them losing their home for the fourth time in twelve years. As of early 2011, IDMC estimated that between 170,000 and 180,000 people remained displaced in Indonesia or had failed to achieve durable solutions.

II. Normative and institutional framework for the protection of the rights of IDPs

3. In September 2001, the government issued a national policy¹ to address the problem of internal displacement in the country. The policy did not provide a normative framework for protecting the rights of IDPs but was instead essentially aimed at "solving the IDP problem" by ending assistance and sending the estimated 1.3 million displaced people back to their homes. But whereas the government had withdrawn the IDP status in most regions in exchange for assistance or compensation packages by 2004, the National Human Rights Commission (Komnas HAM) estimated that 342,000 people were still displaced. Responsibility for them was gradually transferred to provincial and district authorities, many of which discontinued assistance due to lack of funding and capacity.

4. Since 2008, the National Disaster Management Agency (BNPB) has been the national agency responsible for disaster management and policy formulation. It has responsibility for IDPs displaced by natural disasters and by "social conflicts". The Ministry of Social Affairs is responsible for logistical and relief assistance to IDPs during an emergency. Article 6 of Law Number 24 (2007) which established the BNPB stipulates that IDPs and communities affected by disaster are entitled to protection and the fulfilment of their rights "in a fair manner and complying to the minimum service standards"². Assistance and protection for IDPs is not only to be provided during the emergency but also before, through "mainstreaming of disaster risk reduction into development programmes", and after, by ensuring the "recovery from disaster impacts".

¹ Policies on the Handling of Internally Displaced Persons/Refugees in Indonesia, GOI, September 2011

² National Disaster Plan for Indonesia (2010-2014), BNPB, p. 80

III. Achievements and challenges in upholding the rights of IDPs

5. The response of national and provincial governments to the internal displacement crisis that hit Indonesia between 1999 and 2004 made possible significant progresses in the reconstruction and recovery of the affected provinces and enabled nearly all IDPs to return or settle elsewhere in the country. However post-conflict programmes tended to neglect needs such as peace-building and reconciliation, and economic empowerment of affected communities. Limited funding and widespread corruption involving IDP funds reportedly constrained the provision of assistance to IDPs in almost all provinces. Many IDP groups did not receive the assistance they needed, or only part of it, and failed to successfully recover and achieve durable solutions. In 2011, the claims for financial support of thousands of families displaced from Maluku, North Maluku and other provinces are still unresolved.

6. After the ending of the 2001 IDP policy in 2004, people internally displaced by conflict largely ceased to be recognised as a category deserving specific attention, despite the fact that large numbers of them were still in need of assistance. In the wake of the December 2004 tsunami in Aceh, the government only considered as IDPs those displaced by the tsunami. In Papua, the government does not recognise people displaced by conflict in the province as IDPs, and so it fails to recognise its obligations towards them under international humanitarian and human rights law.

7. However, after 2004, the government continued to provide assistance to some internally displaced groups, mainly through programmes addressing both their needs and those of host communities. As “vulnerable poor”, “ex-IDPs” or “new citizens” (West Timor), a number of internally displaced groups continued to benefit from some degree of assistance. Between 2006 and 2009, the Ministry of Social Affairs collaborated with the International Catholic Migration Commission (ICMC) on programmes in Aceh, North Maluku and Central Sulawesi, where a number of IDPs with unmet needs were identified.

8. Between 2001 and 2006, the National Commission on Human Rights (Komnas HAM) was actively involved in the monitoring and protection of IDP rights in the country, mainly through its Sub-Commission on the Protection of Special Groups. In addition to investigation and assessing missions into specific IDP situations, Komnas HAM also conducted training courses on IDP rights in various provinces and disseminated the Guiding Principles on Internal Displacement. Following the replacement of all members of the Commission in 2007 and disbanding of the Sub-Commission on Special Group Protection, Komnas HAM ceased to carry out IDP-specific monitoring and advocacy, although it remained involved in some IDP matters. In November 2010, Komnas HAM was called in to mediate a dispute between IDP representatives and the Maluku provincial authorities about the number of beneficiaries of an IDP grant. This resulted in the formation of an IDP data verification team.

IV. Protection and promotion of human rights of IDPs

Obstacles to freedom of movement³, the right to property, the right to restitution for the property or to compensation for its loss⁴

9. In West Kalimantan, the murder of several displaced Madurese who had returned to Sambas to dispose of their property in 2002 prompted the provincial authorities to decide against a general

³ UDHR Article 13, ICCP, Article 12

⁴ UDHR, article 17; UNGP, Principle 29, para 2

return of IDPs. Instead, the government decided to resettle some 11,000 displaced families outside Pontianak where it provided housing and agricultural land. 13 years after the initial ethnic violence in West Kalimantan, Madurese IDPs are still not welcome back, in particular in Sambas and Bengkayang because of the hostility of Dayaks and Malays who have seized their property. While some IDPs have managed to sell their properties to restart their lives elsewhere it remains unclear what proportion has been sold and how many properties have been forcibly seized. The loss of land certificates during the conflict has further complicated the restitution and compensation process in the absence of government support. Most of the displaced did not retain proof of ownership and have since been trying to get adequate compensation for their losses. IDPs have been particularly frustrated by the failure of government representatives and the police to guarantee their property ownership rights or protect them from Dayak violence and threats.

10. Since 2004, most people displaced from Central Kalimantan have returned, although severe restrictions continue to be placed on their freedom of movement and other fundamental rights. Some regencies passed laws providing for the expulsion of returning Madurese people who failed to adhere to local customs. Some returnees have been reportedly barred from living in some neighbourhoods, denied access to employment opportunities or forced to pay compensation to recover their land or property from those who had seized it. The central government issued clear instructions that the ownership rights of Madurese should be guaranteed and their property protected. However, local officials have done little to protect the rights of IDPs and help them to obtain necessary legal documentation of ownership. In Dayak-majority rural areas, there has been a resurgence of traditional conflict resolution mechanisms in parallel with the formal justice system. Displaced Madurese seeking redress or compensation for lost property may therefore be obliged to use both the formal and non-formal justice systems. In both arenas it is hard for them to effectively represent themselves and to advance durable solutions to their displacement and property losses.

11. Most of the ethnic Javanese who fled Aceh's conflict between 1998 and 2004 sought refuge in neighbouring North Sumatra. In 2003, it was estimated that around 23,000 families, or roughly 115,000 people, were displaced there, half of them living in Langkat regency. Between 2002 and 2006 the government offered displaced families Rp. 8.75 million (\$970) in exchange for the termination of their IDP status. They were given the choice between returning to Aceh, relocating or staying in North Sumatra. Most chose to stay in North Sumatra with some managing to sell the land they owned in Aceh. Largely ignored by the 2005 Helsinki agreement which ended the Aceh conflict, many Javanese IDPs have since reportedly struggled to find durable solutions, receiving no compensation (other than the termination fund) for lost property or other losses suffered during the conflict. In June 2011, security forces attempted to forcibly evict some 700 families from their villages in Langkat regency, reportedly making excessive use of force and firearms. The displaced had been in dispute for years with the local government who accused them of encroaching on the protected forest area of the Leuser Mountain National Park (TNGL).

Obstacles to the right to an adequate standard of living⁵

12. At least 2,500 households in Maluku still lived in temporary settlements in 2010, while many more were struggling to achieve durable solutions more than ten years after their displacement. Obstacles to their recovery in return areas include ongoing disputes over their land and property, difficulties in recultivating long-term crops, of the inadequacy of assistance, their poor reintegration with host communities. They share with their non-displaced neighbours the inadequacy of water distribution systems, sanitation and health care facilities. The access of IDPs in resettlement sites to

⁵ UDHR Article 25(1) and ICESCR Article 11(1) as well as its impact on Articles 12, 13, and 6

potable and irrigation water and to sanitation facilities often remains limited. Often forced to live on the fringes of urban areas, they are sometimes required to travel long distances to access health care or schools, a cost many of them cannot afford. The unhygienic conditions they live in, the lack of health care facilities and staff, and their poverty all contribute to poor health indicators. Their lack of land ownership has left many vulnerable to eviction and with no incentive to make durable improvements to their homes

13. Many IDPs in Maluku have chosen to integrate in their area of displacement, or to move to urban centres where they believed access to basic services would be better. Living with family, friends or squatting in abandoned public buildings or other temporary shelters, many have also simply been ignored, failing to be recognised as IDPs and receiving no assistance. Living costs are often higher in urban areas due to high rents or limited access to potable water. In Ambon, the government provided potable water to IDPs living in informal settlements but this was stopped in 2008. Many IDPs have no option but to buy high-priced bottled water as without residency rights they have no access to piped water. Open defaecation is reported as commonplace due to lack of sanitation facilities.

14. Together with other groups of “conflict victims” such as widows, orphans or victims of rape, people displaced by the Aceh conflict between 1999 and 2004 have received almost no assistance at all. In the absence of a single agency designated to coordinate IDP monitoring and a lack of cooperation among the national and international agencies, the government failed to properly identify and support IDPs. Government bureaucracy and the difficulties in gathering the documents needed to establish one’s credentials as a “conflict victim” has been reported as one of the biggest barriers for IDPs to accessing assistance. By 2009, assistance provided by the Aceh Reintegration Agency (BRA), the body responsible for the coordination of post-conflict programming, had only benefited some 2,500 IDPs, or less than 0.5 per cent. In 2010, it was estimated that three-quarter of the estimated 600,000 people displaced by the conflict had managed to return home or settle elsewhere. In many cases, IDPs who had returned to their homes were found to face greater recovery challenges than those still displaced.

Obstacles to the right to the enjoyment of the highest attainable standard of physical and mental health⁶

15. The conflict in Aceh had a great impact on the mental health of residents of affected areas, with the people forced from their homes often experiencing the highest level of violence. This resulted in severe mental health consequences such as depression, anxiety and post-traumatic stress disorder. Based on psychosocial needs assessments carried out in between December 2005 and November 2006, IOM estimated that a staggering 930,000 people experienced psychological trauma, or nearly one in four Acehnese. Those who fled were often those who experienced the most violent traumatic events including being forced to flee as a result of houses or building being burnt, being caught in a bombing or being shot at, or having property damaged or seized by armed groups. Psychosocial support has been largely inexistent or ineffectual.

Obstacles to the enjoyment of the right to life, liberty and security⁷, safe access to food, water, shelter, medical services and sanitation⁸, and restrictions to the rapid and unimpeded passage of relief consignments, equipment and personnel⁹

⁶ CESCER Article 12(1), CRC Article 21(1)

⁷ UDHR Article 3, ICCP Article 6.1, ICERD Article 5b, CRC Article 6

⁸ UDHR Article 25 (1), CESCER Article 11 (1), 12 (1), CRC Article 27 (3),

16. During 2010 and 2011, an unknown number of Papuans (estimates range from several hundreds to several thousands) have been reportedly displaced in the central highlands region of Puncak Jaya, where the government has been conducting counter-insurgency operations against rebels of the OPM (*Free Papua Movement*). They have fled the army's "sweeping operations", which are often accompanied by severe human rights violations including extra-judicial killing and torture. Most IDPs have taken shelter in the jungle, where they have very limited or no access to basic necessities of life including food, shelter, water and health care.

17. The government has reportedly not provided any specific assistance to displaced Papuans, and there have been reports of security forces preventing assistance from reaching the displaced, by denying or playing down the consequences of their operations or by seizing it for themselves. A number of church groups and local NGOs have been working to assist the displaced; but some have been harassed and intimidated by the security forces, as the government has considered them separatist and too close to the OPM. Restrictions on the access to the conflict-affected areas of independent monitors and agencies have also hampered assessments of IDPs' needs and the provision of humanitarian assistance. Since 2009, the government has banned a number of international organisations including ICRC, Cordaid and Peace Brigades International (PBI) from the Papuan provinces.

⁹ GC, Protocol I Article 70 2)

Recommendations to the Government of Indonesia:

- Adopt a comprehensive and integrated national policy on internal displacement. The IDP policy should be in line with the Guiding Principles on Internal Displacement, and should clarify strategies for addressing the protection and assistance needs of the displaced;
- Encourage the National Commission on Human Rights to re-establish an IDP focal point and to include the monitoring and protection of the rights of IDPs in its work plan;
- Resolve issues of financial claims for IDPs in all provinces, in particular in Maluku province;
- Ensure that displaced Madurese can return in safety and dignity to their place of origin in Central and West Kalimantan and that they are assisted to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, ensure displaced Madurese obtain appropriate compensation or another form of just reparation.
- Ensure that the eviction of displaced people who settled in the area of Gunung Leuser National Park (TNGL) in North Sumatra province is carried out in full accordance with the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement. In particular, ensure that any legal use of force respects the principles of necessity and proportionality and that those evicted are offered resettlement options, including alternative land of better or equal quality and housing.
- Take measures to ensure displaced households in return areas or in new settlements in Maluku have adequate access to clean water and sanitation facilities and that they are provided with legal security of tenure over their property;
- Ensure appropriate psychological support is provided to victims of the Aceh conflict, including in particular IDPs. Existing trauma counselling centre should be strengthened and their number increased so that victims in all districts but in particular in those most affected by the conflict can access them.
- Ensure free and unimpeded access for independent human rights observers and humanitarian agencies to areas of Papua's Central Highlands where counter-insurgency operations by the security forces against the Free Papua Movement (OPM) have reportedly regularly caused displacement;