Observations and Recommendations of the International Partnership Mission to Indonesia

Between November 9-13, 2015 an international delegation of representatives of ten media and freedom of expression organisations travelled to Indonesia at the invitation of the Alliance of Independent Journalists to conduct fact-finding and advocacy related to the state of media in the country. The International Partnership Mission to Indonesia (IPMI) also followed up on concerns raised following its first mission a year earlier. During the five days of the mission, it travelled to Makassar (South Sulawesi), Jayapura (Papua) and the capital, Jakarta, where it met with government officials, journalists and civil society representatives.

This report highlights the findings and recommendations of the mission, drawing on developments since the IPMI's 2014 recommendations.

The persistent challenges for local and foreign journalists reporting in sensitive regions such as Papua and West Papua were a key area of concern during the 2015 visit.

In June 2015 the IPMI welcomed the historic announcement by President Joko Widodo of the lifting of restrictions on foreign journalists seeking to enter Papua. Prior to the announcement, members of the media wishing to enter Papua had to obtain permissions from an array of government offices. Permissions were seldom granted, and a number of journalists entered on tourist visas, some of whom faced subsequent arrest and deportation.

The November 2015 visit by the IPMI revealed that challenges for foreign press remain. The process for obtaining access to the restive region remains opaque, with a pattern of resistance and non-compliance from the president's subordinates, mainly members of the police and military apparatus opposed to loosening restrictions for foreign observers.

Foreign journalists who obtained clearance to work in Papua have faced continued obstacles to free reporting including surveillance and threats against their sources. Alarmingly, in some cases arrests of sources have taken place.

In a wide-ranging meeting with the IPMI delegation in Jakarta, Coordinating Minister for Political, Legal and Security Affairs Luhut Binsar Panjaitan re-committed, on behalf of the Widodo administration, to ensuring open access to Papua for foreign journalists.

Fransiscus Mote, spokesman for the Papuan governor's office, also committed to ensuring open access for foreign journalists seeking to cover Papua in a separate meeting with the delegation in Jayapura.

The delegation also heard about serious challenges facing local journalists, including reports that intelligence agents had embedded themselves in local Papuan media outlets. Furthermore, local journalists, often paid poorly, are pressured into working for the intelligence agencies and assisting in surveillance efforts. Journalists the mission met with also highlighted ongoing police abuse against members of the media.

We recommend that:

- The president of Indonesia should issue an *inpres* (a formal presidential instruction) to follow up on his verbal announcement on the lifting of restrictions. The *inpres* should clearly instruct all relevant government agencies, ministries, and the security apparatus to immediately comply with the order.

- The Widodo administration should create a reporting mechanism through which members of the media can report violations of the *inpres*. A system should be in place for reviewing and investigating such reports.

- There should be an immediate end to any detentions and arrests of foreign journalists for their work in reporting from Papua or other sensitive regions. Detention, in particular for lengthy periods before trial, is an inappropriate and disproportional response to journalists alleged or found to have committed visa violations.

- Papuan authorities should investigate attacks on local journalists and bring the perpetrators to account.

- The Widodo Administration should investigate claims that agents of the police and military intelligence are embedding their members within media organisations in Papua, and should ensure any such practices are immediately ceased.

Legal and regulatory challenges remain in the country, despite opportunities for reform.

The IPMI is disappointed to note that there has been little progress over the past year in addressing deficiencies in Indonesia's legal and regulatory framework which unduly restricts freedom of expression.

Among the major problems is Indonesia's Penal Code, which maintains criminal penalties for defamation, including jail terms. International standards hold that defamation should be treated as a civil, rather than a criminal, matter and there is a global trend towards decriminalisation. In democratic countries which still have criminal defamation laws on the books, these laws are rarely enforced. In States which have decriminalised defamation, there has been no evidence of any increase in defamatory speech, indicating that criminal defamation laws are unnecessary, and therefore are not justified according to Article 19(3) of the International Covenant on Civil and Political Rights, which Indonesia has ratified. It is particularly troubling that Indonesian journalists have been regular targets of criminal defamation prosecutions, and that some are facing jail terms for their work.

Article 27(3) of the Electronic Information and Transactions (ITE) Law, which prohibits the distribution of defamatory content, has been abused since 2014 to prosecute and convict over a hundred people simply for voicing opinions online. While the Mission welcomes the Ministry of Communication and Information Technology's decision to review the ITE Law, the proposed amendments, which would reduce prison sentences for publishing content deemed defamatory from six to four years, do not go far enough since imprisonment is never a legitimate response to defamation.

Digital speech remains under threat in Indonesia as a result of pervasive government surveillance. The nexus between privacy and freedom of expression, particularly online, has been well recognised, including by the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on Freedom of Opinion and Expression. Control over one's communications, including over who has access to them, is key to freedom of expression, and studies have shown that when people feel they have control over their communications they speak more earnestly and openly. In 2014, the Mission learned about Indonesia's use of FinFisher, a highly intrusive tool for conducting network surveillance. In July 2015, leaks from Hacking Team, another major purveyor of surveillance software, also included evidence of sales to Indonesia's intelligence services.

Ministerial Regulation No. 19 of 2014 on "negative content" authorises the government to block websites without a court order and requires Internet Service Providers (ISPs) to block content based on a database of "negative websites" established by Trust Positive, a filtering application managed by the Ministry of Communication and Informatics which administers a list of over 750,000 blocked websites. Systems that block entire websites are considered a restrictive and extreme measure, analogous to banning a newspaper or

broadcaster, and can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse. As such, transparency and rigorous oversight are necessary in order to ensure that this power is exercised in line with Indonesia's human rights obligations.

Indonesia's broadcasting landscape continues to be dominated by a few major players, many of which are overtly political. The broadcasting sphere also remains dominated by Jakarta-based stations, with insufficient space for voices from elsewhere.

In addition to these legal challenges, implementation of existing laws remains a problem. Five years after it came into force, implementation of Indonesia' right to information law, the Public Information Disclosure Act remains uneven across the country. In Papua, the mission heard that only 68% of public bodies had undertaken the very basic step of creating an information officer or PPID, despite that fact that the law makes this mandatory for all public bodies.

We recommend that:

- The Government of Indonesia should decriminalise defamation.

- The Government of Indonesia should remove Article 27(3) from the ITE Law.

- The Government of Indonesia should discontinue its use of invasive web surveillance tools.

- Ministerial Regulation No. 19 of 2014 should be repealed, and any subsequent rules dealing with blocking online content should be passed by the legislature, rather than as a ministerial regulation. Laws which allow for blocking websites should include clear definitions of prohibited content and allow for blocking only after judicial approval. They should also provide clear avenues for appeal and include robust transparency requirements.

- Indonesia's regulatory authorities should enforce rules on media diversity and on concentration of media ownership properly.

- Indonesia's government should take measures to ensure full implementation of the Public Information Disclosure Act.

Indonesia's existing climate of impunity continues to impact negatively on journalist safety and working conditions across the country. Attackers are empowered by the

knowledge that there are currently no formal accountability processes on investigations into attacks, intimidation and murder of journalists and media workers.

The delegation heard evidence that a pattern of violence directed at journalists and media workers is continuing and, in some areas, worsening, exacerbated by political, cultural and religious tensions. Journalists most at risk include those working in rural areas, as well as those in the regions of Makassar, Ambon, Maluku, Kalimantan, Papua and Aceh, where ongoing monitoring by regional branches of Alliansi Journalis Independen (AJI) continues to reveal violence and intimidation without adequate investigation by authorities.

The IPMI notes that police in some provinces, notably South Sulawesi, have been culpable in committing assaults against journalists. This remains a serious concern which needs to be addressed urgently by the Widodo administration.

Investigations into journalist killings which have been carried out in the past should not be dropped, since these unresolved crimes continue to influence journalist safety and freedom of expression. To date, at least seven journalist killings remain unresolved in Indonesia since 1996, including:

- **Fuad Muhammad Syafruddin** (Udin), journalist at the daily *Bernas* newspaper in Yogyakarta, August 13, 1996;
- **Naimullah**, journalist of Sinar Pagi, West Kalimantan, July 25, 1997;
- **Muhammad Jamaludin**, journalist of TVRI Aceh, June 17, 2003;
- **Ersa Siregara**, journalist of RCTI, December 29, 2003;
- **Herliyanto**, journalist of Delta Pos Magazine, April 29, 2006
- **Adriansyah Matrais Wibisono**, journalist of local TV in Merauke, July 29, 2010;
- **Alfred Mirulewan**, journalist of Pelangi Magazine, Maluku, December 18, 2010.

Another unsolved killing, of Agus Mulyawan, a journalist for Asia Press, took place in 1999 in what is now East Timor, though there are indications that members of the Indonesian military may have information about his death.

Following the Anak Agung Prabangsa murder in Bali in 2009, co-operation between media, police and local government resulted in the prosecution not only of the killers but also of the mastermind behind the murder. This success demonstrates the potential for positive cooperation between the media, government agencies and civil society in dealing with journalist murders.

We recommend that:

- The Coordinating Minister for Politics, Law and Security, Luhut Pandjaitan, review the unsolved journalist killings raised by the mission and establish a task force to investigate progress by the police units concerned and issue reports on the progression of these cases. In particular, the IPMI calls for the reopening of investigations into the 1996 murder of Fuad Muhammad Syafruddin, known as "Udin", and for resources to be dedicated to identifying and prosecuting his killers.

- Both Minister Luhut and the National Police review records of violence and intimidation of regional and rural journalists in Makassar, Ambon, Maluku, Kalimantan, Papua and Aceh and present a plan to promote journalist safety nationwide.

- The Government of Indonesia demonstrate its commitment to journalists' safety and combating impunity, and officially recognise nationally November 2, International Day to End Impunity for Crimes Against Journalists, as called for under UN General Assembly Resolution 68/163 on the Safety of Journalists and the Issue of Impunity. This should include a national event marking the day in collaboration with journalists and media advocacy groups.

- The National Police establish a formal procedure for investigating allegations of police violence against the media, with investigating officers appointed from outside the jurisdiction in question and the institution of disciplinary procedures and criminal cases where appropriate.

We reaffirm our previous recommendations that:

- The Government of Indonesia work with civil society and journalists to establish a comprehensive national mechanism to promote journalist safety and end impunity. This mechanism should be anchored with an existing national State institution, in accordance with the framework of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

- The Government of Indonesia extend an official invitation to the UN Special Rapporteur on Freedom of Expression and Opinion, David Kaye, to visit the country, in order to further assess the situation.

- Indonesia's National Police incorporate modules on the importance of freedom of expression and media rights into its core police training documents.

- Indonesia's media companies promote safe working conditions for their staff, including freelancers and contractors, and provide due training and oversight for their assignments. Media companies should also recognise their obligations to work with relevant parties, including journalists, government and civil society to collaboratively strengthen mechanisms to promote journalist safety and end impunity. In the advent of the establishment of a comprehensive national mechanism, media companies have a leading role to play in this regard.

CONTACTS

Jose Antonio Belo
South East Asian Journalist Unions (SEAJU)
tempo.semanal@gmail.com

Kulachada Chaipipat
Southeast Asian Press Alliance (SEAPA)
kcchacha@gmail.com

Céline Cornereau
Media Legal Defence Initiative
celine.cornereau@mediadefence.org

Sumit Galhotra
Committee to Protect Journalists
sgalhotra@cpj.org

Esben Q. Harboe
International Media Support (IMS)
eh@mediasupport.org

Andrew Heslop
World Association of Newspapers and News Publishers (WAN-IFRA)
andrew.heslop@wan-ifra.org

Michael Karanicolas
Centre for Law and Democracy
michael@law-democracy.org

Edward Pittman
Open Society Foundations Program on Independent Journalism
edward.pittman@opensocietyfoundations.org

Oliver Spencer-Shrestha
ARTICLE 19
oliver@article19.org

Jane Worthington
International Federation of Journalists (IFJ)
jane.worthington@ifj-asia.org