

SHADOW REPORT

Prepared for the UN Committee against Torture in connection to its review of Indonesia's Second Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Prepared by

*INDONESIAN WORKING GROUP
ON THE ADVOCACY AGAINST TORTURE (WGAT)*

In consultation with the Association for the Prevention of Torture (APT) and the World Organisation against Torture (OMCT)

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An overview of the Working Group

The Working Group on the Advocacy against Torture (WGAT) was set up in 2007 as a follow up to the workshop on the engagement of NGOs with UN mechanisms working on torture, including the Committee against Torture. The Working Group comprises of 33 NGOs both at national and local level working on the advocacy for the elimination of torture. Some members focus their work on policy making process, while others concentrate on public litigation, as well as monitoring of human rights issues.

The Institute for Policy Research and Advocacy (ELSAM; www.elsam.or.id) is the coordinator of the Working Group, and the members are: Serikat Tani NTB, PIAR NTT, LPH YAPHI, LBH APIK Aceh, LBH Banda Aceh (www.lbhna.org), ELS-HAM Papua (www.elshampapua.org), PBHI (www.pbhi.or.id), LBH Medan (www.medan.lbh.or.id), ELPAGAR, LBH Semarang (www.semarang.lbh.or.id), LBH P2I, Indonesia Human Rights Working Group (HRWG), Commission for Disappearances and Victims of Violence (KontraS; www.kontras.org), KRHN (www.reformasihukum.org), Legal Aid Institution (LBH Jakarta; www.bantuanhukum.org), IMPARSIAL (www.imparsial.org), YLBHI (www.ylbhi.or.id), LBH Pers (www.lbhpers.org), RAHIMA (www.rahima.or.id), KPI (www.koalisiperempuan.or.id), YPHA (www.ypha.or.id), LBH APIK Jakarta (www.lbh-apik.or.id), Solidaritas Perempuan (www.solidaritas-perempuan.org), LAHA, ALDP Papua, IKON Bali, LPS-HAM, KontraS Papua, Komunitas Survivor Abepura, Arus Pelangi (http://asia.geocities.com/arus_pelangi/), Migrant Care (www.migrantcare.net), and Jesuit Refugee Service (Aceh office; www.jrs.or.id).

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The preparation of the shadow report

The following report is presented to the Committee against Torture (CAT) by the Working Group on the Advocacy against Torture (WGAT) with the support of the World Organisation against Torture (OMCT) and the Association for the Prevention of Torture (APT). This Working Group is a continuation of the previous Anti-Torture Coalition established in 2001, with an addition of new members from various regions in Indonesia.

Indonesian NGOs have engaged with the CAT since 2001, when, in cooperation with the APT, an alternative report was submitted in response to the Government's Initial Report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT or the Convention). National NGOs continued to monitor the implementation of Government's obligations under the UNCAT and, in 2003, the Institute for Policy

Research and Advocacy (ELSAM) published a report on the implementation of various recommendations issued by the CAT as a response to the Government's Initial Report.¹

The preparation of this report started in July 2007, through a series of projects. It first began with the workshop on the CAT and other UN anti-torture mechanisms organized by ELSAM, APT, and OMCT. In that workshop, participants agreed to work together on a shadow report to be submitted to the CAT and a commitment to set up a Working Group on the Advocacy against Torture was declared. The workshop was also aimed at developing a common framework among NGOs and other civil society organisations involved.

In November 2007, a background document with a proposed List of Issues was submitted to the CAT. Furthermore, the WGAT actively participated in series of events on the occasion of the visit of the UN Special Rapporteur on Torture (SRT), Mr Manfred Nowak, in Indonesia in November 2007. Some members of the WGAT had the opportunity to exchange with the Rapporteur on the practice of torture in Indonesia today.

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¹ CAT/C/47/Add.3, 16 July 2001, available at <http://tb.ohchr.org/default.aspx>

ABBREVIATIONS

APBD	Local Government Income and Expenditure
AGO	Attorney General's Office
BAP	Investigative Dossier
BAPAS	Correctional House
CAT	Committee against Torture
DPR	House of Representative
ELSAM	Institute for Policy Research and Advocacy
KOMNAS HAM	National Commission on Human Rights
KOMNAS PEREMPUAN	National Commission on Violence against Women
KUHAP	Kitab Undang-Undang Hukum Acara Pidana (Criminal Procedure Code)
KUHP	Kitab Undang-Undang Hukum Pidana (Penal Code)
KORAMIL	Military Sub-District Commands
KPAI	Commission for the Protection of Indonesian Children
LAPAS	Correctional Institution
LBH JAKARTA	Legal Aid Institute
LPSK	Witnesses and Victims Protection Institution
OPCAT	Optional Protocol to the UN Convention against Torture
PEM PROV	Province Government
POLRES	Resort Police
POLSEK	Sector Police
PPNS	Investigator of Government Civil Employee
RUTAN	Detention House
SATPOL PP	Municipal Police Unit
TNI	Tentara Nasional Indonesia (Indonesia National Army)
UNCAT	United Nations Convention against Torture
WGAT	Working Group on the Advocacy against Torture

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1. INTRODUCTION

1.1. Indonesia's history of engagement with the CAT

The Government of Indonesia signed the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT or Convention) on 23 October 1985. It took thirteen years before the Government finally ratified the Convention in 1998, through the adoption of the Law No 5 Year 1998. The act only consists of two general articles, namely on the affirmation of the ratification and the validation of the act.

Upon ratifying the Convention, the Government made a declaration under Article 20, but failed to make a similar declaration under Articles 21 and 22, thus denying the competence of the CAT to adjudicate inter-State or individual complaints. It also made a reservation under Article 30(1). As a Party to the Convention, the Government of Indonesia was bound by the obligation to submit initial report on the implementation of the Convention, a year after ratification. The initial report was finally submitted in 2001, two years after the time limit. In 2001, the Committee issued a set of conclusions based on its deliberation of the Indonesian Government's report submitted in 2001, and made 17 important recommendations related to State's obligations under the UNCAT. The recommendations comprised of a number of important measures, which included developing a sound legal framework for the prevention of torture. It also contained necessary measure to be taken, i.e. developing institution to promote the eradication of torture.

The second periodic report was submitted in 2005 and will be examined in May 2008. The WGAT wishes to commend the Government of Indonesia for submitting its 2nd report, a sign of the value it attaches to the interactive dialogue with UN human rights treaty bodies.

This report is expected to increase the Committee's ability to assess the Government's performance in the implementation of the Convention. This is believed to help the Committee to have a thorough picture of the current level of compliance of the Government with the requirements of the Convention.

1.2. Methodology used for the shadow report

In formulating this report, the WGAT collected information on torture incidents in various regions in Indonesia. This report covers not only torture issues in general, but also issues and violations that are experienced by women and children in a specific manner. If we look back at the NGO's report presented in 2001, no specific information on women and children issues was integrated in the report. The decision to integrate women and children issues was based on the fact that women and children are more likely to be abused in certain settings due to their vulnerability. They often experience such abuses and acts of violence in their home and community, aside from public settings.

Most cases presented in this report are advocated by members, some comprise primary data which is supported by secondary data that consist of clippings of electronic and printed media. In order to ensure the validity of data presented, the WGAT has also undertaken data verification in several provinces in Indonesia, namely in Papua, Poso, Bali, and Jakarta. This activity was conducted from

December 2007 to January 2008 through private interviews with approximately 15 people, including with respondents, namely those witnessing the account, third parties or victims of the incidents. Data obtained is presented in this report, and aimed at providing alternative information in comparison with the Government's report to the Committee.

Some of the victims interviewed shared their experience while they were detained at the police station for investigation. Some others were brought before the court and subjected to prosecution before they finally were charged for a certain period of time in prison. There are three institutions recognised under the correctional service, namely 'Rutan' (*Detention House*) a term to refer detention places before the court imposes criminal sanction over the convict, and 'LAPAS' (*Lembaga Pemasyarakatan*) which commonly is known as prison, a correctional service, to refer detention places where convicts serve their sentences for a certain period of times imprisonment, and BAPAS (*Badan Pemasyarakatan*), a term to refer to an institution which is responsible in providing supervision and guidance for prisoners getting parole, remission and prisoners who will finish serving their sentences.

Therefore, many accounts come from those experienced as detainees in the police stations, in the court while waiting for the trial, and in the prison after being condemned to serve their sentence in the prison (correctional institution). Sample is taken up to November 2007 in order to reflect the most current trends of the practice of torture in the country.

1.3. Structure of the report

This report is structured in a way that will help the Committee as well as other general public to understand the actual practice of torture in Indonesia. It also provides some information on the analysis of the implementation of the Convention by the Government of Indonesia. The update on the implementation of the Committee's recommendations in 2001 is also presented in order to help readers to grasp the extent to which the condition is developed; or whether the practice of torture has intensified or decreased.

The following chapters provide a critical account of the Government's obligations based on the provisions provided by the Convention. This cluster includes a chapter that looks at the implementation of Articles 2 & 4 of the Convention. It provides rich information on the criminal legal system, promotes the prevention of torture and suggests adequate redress mechanisms for the victims.

A number of cases are included in this chapter, covering a wide range of torture practices. The information contained in the report also includes an analysis of the implementation of the Convention towards women and children. It is indeed noticeable that women and children suffer from particular forms of ill-treatment, including torture, having distinct consequences according to the sex and the age of the victims. Another substantial issue covered in this cluster is an observation on the conditions of detention. These cases are very important to consider, especially with cases taken from areas with continuous tight security policy such as Papua and Poso, where the presence of military institutions and personnel is widespread.

The last part of the report consists of a list of recommendations for the improvement of the Government's performance in the future, and the eradication of torture practice in general.

2. CONCLUDING OBSERVATIONS AND THEIR IMPLEMENTATION

In 2001, the Committee issued a series of conclusions following the review of the Government of Indonesia's report submitted in 2001. In its conclusion, the Committee issued 17 important recommendations related to state's obligations under the CAT. This particular section will explain the extent to which the Government of Indonesia – seven years after the recommendations were issued – has made any progress in taking the Committee's recommendation into actuality.

Out of the 17 recommendations, few are already implemented: the UN Special Rapporteur on Torture was invited to visit the country in 2007 and a human rights ad hoc court for the East Timor cases was established. Yet, this court has generated criticism for its partiality and for the poor legal standards which are applied in the trials conducted.

COMMITTEE'S RECOMMENDATIONS	NOTE ON THE IMPLEMENTATION
(l) Invite the Special Rapporteur on Torture to visit its territories.	This recommendation was implemented by inviting the Special Rapporteur on Torture for a visit in 2007.
(m) Fully cooperate with UNTAET, in particular by providing mutual assistance in investigations or court proceedings in accordance with the Memorandum of Understanding signed in April 2000, including affording the members of its serious crimes unit full access to relevant files, authorizing mutual visits to Indonesia and East-Timor, and transferring suspects for trials in East-Timor.	The government has not fully supported the UNTAET work, particularly with regard to the request from serious crimes unit (SCU) in transferring suspects to East Timor for trials.
(e) Ensure that the proposed Ad Hoc Human Rights Court for East-Timor will have the capacity to consider the many human rights abuses, which were alleged to have occurred there during the period between 1 January and 25 October 1999.	The Ad Hoc Human Rights Court for East Timor cases was set up in 2002 and has finished hearing all cases submitted. However, the results have given way to public criticism both from national and international communities, particularly with regard to the lack of adequate standards. Out of 18 defendants brought before the court, all of them were finally acquitted. Further detail on this issue is explained in section 4.4. Prosecuting alleged authors of acts of torture, p. 27 of this report.

Recommendations to prevent and punish torture with adequate sentences have not been implemented fully:

COMMITTEE'S RECOMMENDATIONS	NOTE ON THE IMPLEMENTATION
<i>Related to the improvement of legal framework for prevention:</i>	
(a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in Article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted.	The amendment of the KUHP has tried to incorporate torture as a crime. However, up to the present the draft has yet to be submitted to the House of Representative (the DPR). Looking at current development in the DPR, it is unlikely that the draft get top priority to be deliberated in the nearest future. Policy related to the election will get the highest priority. On the contrary, other penal provisions in several acts other than the KUHP justify and endorse the practice of torture, such as provided by the Law against terrorism which justifies the use of 'incommunicado' detention.
(h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any proceedings, except against the torturer.	Under the current draft of KUHAP which has been final, there is no precise provision can be referred to, with regard to the duration of pre-trial detention to be applied over a suspect. Therefore, there is no change of the current provision on the length of pre-trial detention. Similarly, up to the present, there is no sound legal foundation to prohibit the use of statements or confessions obtained under torture. With regard to the Witness and Victim Protection Act, the Government recently enacted the Law No. 13 Year 2006 to address this issue. However, the law is not yet applicable as implementing regulations have not been adopted.
(j) Ensure that human rights defenders are protected from harassments, threats, and other attacks.	Sound domestic legal safeguards to protect human rights defenders have not yet been developed. The only legal safeguard available is provided by human rights legislations, especially after the ratification of the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Related to institutional reforms:

(d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas HAM), and ensure that its reports to the Attorney General are published in a timely fashion.

There are endless institutional disagreements over the standards and procedures in investigating gross violations of human rights between Komnas HAM and Attorney's General Office which significantly cause delay of justice. Many cases submitted by the Komnas HAM are neglected or abandoned without any final decision what so ever.

(b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials.

No particular arrangement is developed to improve the mechanism of remedy for the victims. Current mechanism under the Criminal Procedure Code (KUHAP) cannot ensure that law enforcement officials are impartial, especially when the accused are police, or other law enforcement officials.

(g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency.

The reform continues as part of a broader initiative aimed at developing an integrated justice system. Police has been separately managed, from the military. Yet, as the institution has been militarized for years, the separation does not guarantee a quick and comprehensive reform of the institution

An independent commission is set up to oversee this institution. The commission comprises 8 members, six of them are representatives from civil society, and two of them are government representatives. Police Commission is responsible for improving police accountability by, amongst others, receiving complaints from the victims for the crimes committed by the police. However, this mechanism is not fully effective as the lack of adequate mechanism of punishment. Further, this has yet to be followed with substantial changes in the curriculum of the Police Academy.

(k) Reinforce human rights education to provide guidelines and training regarding, in particular, the prohibition of torture, for law-enforcement officials, judges, and medical personnel.

Another part of this report explains some initiatives to integrate human rights in the education of law enforcement official as well as the military institution and the Police Academy.

However, precise information of the reform, which is taking place internally in those institutions cannot be accessed by public; therefore, the report cannot comprehensively contribute whether or not those

programs are in accordance with human rights standards provided by the Convention.

Recommendation related to the improvement of accountability mechanism:

(c) Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture, will be appropriately prosecuted.

Up to the present, major cases related to torture failed to hold torturers accountable.

(f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past may be investigated and, where appropriate, prosecuted in Indonesian courts.

The problem of past abuses has not been resolved. The Government continues to face strong demand of reparation and the revealing of the truth from victims and their families. The establishment of TRC was halted with the annulment of the Law No. 27 Year 2004 by the Constitutional Court. Although the Court has recommended the Government to promulgate a new law on the matter which complies with universal human rights standards, the government has not been able to implement the decision and propose a new act to replace the previous one.

In addition, a few recommendations from the Committee were mostly ignored:

COMMITTEE'S RECOMMENDATIONS	NOTE ON THE IMPLEMENTATION
(p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and locomotion of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation.	Government's Report emphasized more on developments in the field of policy making. Yet, it failed to present sound empirical data on what happened on the ground. The absence of such data can be due to various reasons, including the lack of participation from related stakeholders, such as NGOs, and other government agencies which work directly with people at the lowest level.
(i) Ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing	On the contrary, under the policy on war against terrorism, the Government had deliberately transferred or extradited suspects of terrorism to

that that person would be in danger of being subjected to torture, in accordance with Article 3. Guantanamo Bay, where the danger of torture is imminent.

(o) Make the declarations provided for in Articles 21 and 22 of the Convention. As explained in another part of this paper, there has not been any attempt to make declarations as provided by both articles.

3. DEFINING AND CRIMINALIZING TORTURE (ART. 1 AND 4 UNCAT)

The current KUHP provides no specific provision on “torture” as defined by Article 1(1) of the UNCAT, and only prohibits acts of “maltreatment”. Related provisions under the Law No. 39 Year 1999 on Human Rights Law and the Law No. 26 year 2000 on Human Rights Court Act are not applicable in practice to all cases of torture, but only to acts of torture that would qualify as “crimes against humanity”.

Since 1973, the Government of Indonesia has embarked upon an important process to revise the existing KUHP. However, the reform process is still far from over. Up to now, a first draft, which integrates a definition of torture, has been finalized. However, the draft has yet to be submitted to the House of Representative (*Dewan Perwakilan Rakyat, DPR*) in 2008. Therefore, the draft cannot be used as an indicator in order to illustrate that most of the recommendations to overhaul the criminal legal framework have been met as mentioned in the Government’s report (paras. 23, 25, 28, 37 and 41).

3.1. KUHP (Article 422)

Article 422 of the (current) KUHP provides that, *“any official, who in a criminal case proceeding makes use of means of coercion, either to extract a confession, or to obtain information, shall be punished by a maximum of imprisonment to four years”*. This definition clearly is far from resembling the definition of ‘torture’ provided in the Article 1 of the Convention as asserted by the Government of Indonesia in its Initial Report paragraph 21. Several elements in the definition of torture are not incorporated in the article 422; for example, the article limits itself only to “coercion”, whereas torture can be inflicted not only by coercion but also by intimidation or any act that can cause severe pain or suffering, whether physical or mental. Additionally, it limits the scope of torture within the case proceeding, therefore cannot applied for other circumstances. The limitation includes the exclusion of any act of torture which inflicted for other purposes, such as a form of punishment.

3.2. Draft KUHP (Article 404)

Referring to Committee’s List of Issues §§ 1(b) and 15, the amendment of the KUHP – which has been discussed for more than 20 years and has, at the time of writing, made no progress in Parliament – seeks to criminalise acts of torture under the “Crimes of Human Rights” section. The draft KUHP includes the following definition of torture:

Article 404 of the draft KUHP:

“Any public official or other person acting in an official capacity or any person acting by or at the instigation of or with the acquiescence of a public official, who committed an act by which suffering or severe pain, either physically or mentally is inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he has committed or is suspected of having committed or for the purpose to

intimidate or force the persons or based on any racial discrimination of any kind, shall be sentenced for a 3 years minimum and 15 years maximum imprisonment".²

The Elucidation³ of the article provides:

"The provision in this article provides that the criminal act is regarded as Torture. This crime has been one of the international crimes recognised through the International Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 10 December 1984. Indonesia, as a member of the United Nations has ratified the Convention through the Law No. 5 Year 1998; therefore, the aforementioned crime stated in the KUHP shall be classified as a crime.

Act prohibited under this Code is an inhuman treatment causing severe pain over a person both physically and mentally.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

The definition provided by the draft KUHP intends to integrate, in the national law, the elements of the definition of torture as stipulated in Article 1(1) the UNCAT with a minor difference, namely the using of "at the instigation or acquiescence" instead of "at the instigation of or *with the consent* or acquiescence".⁴

3.3. Law No. 39 Year 1999 on Human Rights

Article 1 section 4 of the Law No. 39 Year 1999 provides that, *"torture is any action intentionally committed to bring great pain or agony, either physically or spiritually, to a person in order to obtain confession or information from him or other person, by punishing him for an action which was committed or allegedly committed by him or other person, or threaten or force him or other person, or for a reason which is based on any form of discrimination, if such pain or agony is brought by, on an allegation of, with the consent, or knowledge of any person or public officer"*.

Referring to Committee's List of Issues⁵ § 1, the scope of Law No. 39 Year 1999 is limited to acts of torture tantamount to gross violations of human rights that could qualify as crimes against humanity and genocide. Therefore, punishment of acts of torture committed outside the context of gross violations of human rights cannot be implemented due to the absence, in the current KUHP, of a specific provision on torture. The absence of such provision has made a right to all effective legal mechanism as guaranteed by article 7 of the Law No. 39 Year 1999 cannot be exercised for pursuing any remedies.⁶

² Article 404 of the draft KUHP , November 2005.

³ Paragraph E in the appendix of Law No. 10 Year 2004 on the Formulation of Laws provides that a law has to add an elucidation. Elucidation, aimed at providing interpretation to norms stipulated in the body of the law, shall only include descriptions and not vagueness. Elucidation cannot be used as a basis of law in formulating lower legislations.

⁴ See the attachment of the Law No. 5 Year 1998 on the Ratification of the Convention against Torture.

⁵ See CAT/C/IDN/Q/2, 11 December 2007.

⁶ Article 7 of the Law No. 39 Year 1999 on Human Rights.

3.4. Law No. 26 Year 2000 on Human Rights Court

Referring to Committee's List of Issues §§ 1(a), 2, and 20, the practice of torture is also considered as a crime under the Law No. 26 Year 2000 on Human Rights Court. However, the scope of the provision is very limited as acts of torture committed ought to qualify as gross violations of human rights (Article 9). This provision cannot be applied to bring persons suspected of having committed torture in general, even when the acts were clearly inflicted in the context of gross and systematic violations of human rights. Most cases of this nature ended with the acquittal of those responsible for the crime. Examples of these cases are the case of gross violations of human rights in Abepura, Tanjung Priok 1986, and East Timor prior to and after the popular consultation in 1999.

Referring to Committee's List of Issues § 20, In the case of Tanjung Priok 1986,⁷ the first level Court decided that the defendant, that is, Pranowo, the Chief of Regional Military Command V Jaya, was found not guilty of failing to stop the torture of Muslim activists held in custody after the incident. However, the panel of judges of the Appeal Court decided that acts of torture in the context of gross violations, such as inflicting severe pain or suffering on the victims, were not proven due to the fact that victims were still able to pray and do exercise. This decision was affirmed by the Supreme Court. The WGAT believes that the decision shows the failure of Indonesian justice system in upholding truth and justice. Worst, it preserves the culture of military impunity in Indonesia. Whereas, the inquiry undertaken by the National Commission on Human Rights (Komnas HAM) points out that there were indeed human rights violations in Tanjung Priok incident.

Other defendants in this case, Butar-Butar, the Former Chief of District Military Command 0502 North Jakarta and Sutrisno Mascung, the Commander of Platoon Yon Arhanudse 6, were found guilty by the first level Court. However, the decision was challenged by the Appeal Court which eventually decided to acquit all defendants. This decision was, once again, affirmed by the Supreme Court.

Despite sound evidence presented in the KOMNAS HAM Report,⁸ on 8 and 9 September 2005, human rights court in Makassar acquitted the defendants. Referring to Committee's List of Issues §§ 20 and 26, Makassar Court made the decision after hearing the case of gross violation of human rights in Abepura where the court acquitted the two defendants, Jayapura Police Commander Superintendent, Drs. Daud Sihombing, and Brigadier General Johnny Wainal Usman. The defendants were accused of the killing and torture against civilians, including pregnant women and young children in Abepura on 7 December 2000. The Court exonerated both accused officers. This decision shows that rules and legal mechanisms available in the text failed to be exercised in practice, namely to hold those committed torture responsible. It was affirmed by the Supreme Court.

Another example is the case of gross violations of human rights in East Timor, prior to and after the popular consultation in 1999. Out of 18 defendants from 12 investigative dossiers heard by the court, only one defendant – Eurico Guterres – was eventually found guilty and served a sentence. The

⁷ On 12 September 1984, Indonesian Armed Forces opened fire on Muslim protestors gathered in North Jakarta's Tanjung Priok harbour. Scores of protestors were shot. Numerous others were detained, and allegedly tortured, in connection with the demonstration.

⁸ See 2006 Komnas HAM Report, p. 95. Available at <http://www.komnasham.go.id>.

Supreme Court reinstated a 10-year jail term for his role in the atrocities. He had been found guilty by an ad hoc human rights court of crimes against humanity.

Similar to the other defendants, on April 4, 2008, the Supreme Court granted a request for a review submitted by Eurico Guterres. He was not proven guilty of human rights violations as charged because he was not proven to have structural command to coordinate attacks, even if he was the leader of the militia. Guterres was acquitted all the charges, his name rehabilitated and given compensation.

3.5. The anti-terror legislation

In 2002, the Government issued the Government Regulation in Lieu of Law No. 1 Year 2002 on Combating Criminal Acts of Terrorism. The regulation was further implemented through the Law No. 15 Year 2003 on the Eradication of Acts of Terrorism. The Law grants wider powers of arrest and detention against suspects of terrorist acts to the police, military and intelligence officers, which will eventually open wider risks of torture to be committed against those suspected of terrorism, among others, the possibility of pre-charge detention, without judicial oversight, for seven days,⁹ and the use of classified intelligence information by law enforcement agents during preliminary investigations.¹⁰

Article 26(3) of the Law stipulates that *"Interrogation process as defined in paragraph (2) is carried out in a closed manner no longer than 3 (three) days"*. Article 28 states that *"investigator is given the power of arrest and detention against suspects of terrorist acts based on the sufficient preliminary evidence as mentioned in Article 26(2) for the longest period of 7 x 24 hours"*. Such period is longer than the period provided by the Criminal Code Procedure that stipulates a period of 24 hours.¹¹ The WGAT strongly believes that pre-charge detention without judicial oversight for seven days as stipulated in Article 28 may amount to a violation of Article 16 of the Convention, namely ill-treatment.¹²

3.6. The lack of adequate sanctions (Art. 4(2) UNCAT)

Article 422 of the KUHP provides that, *"any official, who in a criminal case proceeding makes use of means of coercion, either to extract a confession, or to obtain information, shall be punished by a maximum of imprisonment to four years"*. Considering torture as a serious crime under international law, the WGAT strongly believes that four years imprisonment for torturer as provided in Article 422 of the KUHP is not severe enough. As has been indicated by the CAT on numerous occasions, six years of imprisonment shall be considered as the absolute minimum.

3.7. Criminal Legislation on violence against women

Before the adoption of the Law No. 23 Year 2004 on the Elimination of Violence in Household, cases of violence against women are prosecuted using the KUHP, which does not recognize the term

⁹ Article 28 of the Law No. 15 Year 2003 on the Eradication of Acts of Terrorism.

¹⁰ Article 26 (1) of the Law No. 15 Year 2003 on the Eradication of Acts of Terrorism.

¹¹ Article 19 (1) of the Criminal Code Procedure.

¹² See Concluding Observations on Spain (1997), UN. Doc. A/58/44, § 61 and Concluding Observations on Russian Federation (1997), UN. Doc. A/52/44, § 42.

“violence in the household”. Provisions used to criminalize cases of violence against women include, among others, Article 356 (maltreatment) and Articles 338 (murder), 285 (rape), and 289 (obscene act).

KUHP does not provide specific provisions on marital rape and other forms of violence that do not necessarily involve a sexual intercourse. All provisions used to settle violence cases against women only accommodate physical violence and disregard psychological and sexual abuses suffered by the victims. From several violence in household cases, victims experienced not only physical, but also psychological, sexual and economic abuses.

The draft KUHP¹³ indeed contains forms of violence, namely physical violence against women in the household (art 586), mental violence (art 587), and sexual violence (art 588-590), including sexual slavery and/or forced prostitution (art 589), and marital rape (article 588).

Additionally, the draft KUHP also contains ten additional provisions related to violence against women. They, among others, cover prohibition of pornography, criminalisation of rape and adultery, and trafficking against person in the context of sexual exploitation and forced prostitution. In sum, several articles spell out criminalisation against violence against women. However, although the scope of crimes related to the violence against women is broadening, critical reading of the draft of the KUHP suggests that most provisions potentially violate women’s rights, particularly under provisions of pornography and adultery.

Through Law No. 7 Year 1984, Indonesia ratified the Convention on the Elimination of All Form of Discrimination against Women (CEDAW), one of the core international human rights instruments aimed at protection of women from all forms of discrimination. Not until twenty years later, in 2004, the Government finally endorsed a specific regulation on the protection of women, fulfilling its obligation in implementing the ratified Convention. Law No. 23 Year 2004 on the Elimination of Violence in Household provides obligations of the Government to prevent the occurrence of violence in household, take action against the perpetrator of violence in household, and protect the victim of violence in the household.¹⁴ Two years after, the Government endorsed the Government Regulation No. 4 Year 2006 on the Implementation and Restorative Cooperation for Victims of Violence in Household. However, this policy has yet been properly implemented due to the lack of appropriate mechanism.

The protection of women’s rights has become a national priority. Therefore, in its second National Plan of Action on Human Rights (2004-2009), the Government has also included the objective for the protection of the rights of women by eliminating all forms of violence against women and commercial exploitation of sex workers.¹⁵

Article 1(1) of the Law No. 23 Year 2004 defines violence in the household as *“any act against anyone particularly a woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household”*.

¹³ The draft of RUU KUHP, November 2005.

¹⁴ Article 1 (2) of the Law No. 23 Year 2004 on the Elimination of Violence in the Household.

¹⁵ See Law No. 40 Year 2004 on the National Plan of Action on Human Rights 2004-2009, point (E)(5).

With regard to legal sanctions, the Law stipulates a distinction based upon the level of pain or suffering:¹⁶

- (i) imprisonment of no longer than five years if committing physical violence, mental violence and sexual violence in household, and negligence of household;
- (ii) imprisonment of no longer than ten years if inflicting pain or serious injury;
- (iii) imprisonment of no longer than fifteen years if causing death; and
- (iv) Imprisonment of no longer than four months if not causing pain or obstruction to perform work of the position or to earn daily livelihood or activity.

Referring to Committee's List of Issues § 9, in addition to the aforementioned legal framework, recent development in the protection of women against any violence includes the prohibition of trafficking in person. Law No. 21/ 2007 on the eradication of Acts of trafficking in persons covers a succinct definition on the crime of trafficking. The definition also comprises objectives and trafficking process. A number of underlying acts amount to trafficking includes sexual violence/ rape, sexual harassment, and forced-marriage aiming at trafficking in persons.

3.8. Legislation, including criminal law, on violence against children, particularly torture and other forms of ill-treatment

Referring to Committee's List of Issues § 34, there are several pieces of legislation specifically aim at protecting children¹⁷ from various forms of violence in different circumstances. Following are the more important ones: Law No. 3 Year 1997 on Juvenile Justice, Law No. 23 Year 2002 on Child Protection, Law No. 23 Year 2004 on the Elimination of Violence in Household, Law No. 21 Year 2007 on the Eradication of Human Trafficking, Presidential Decree No. 87 Year 2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children.¹⁸

More precisely, article 66(1) of the Law 26/2000 on Human Rights states that "Every child has the right not to be subjected to acts of oppression, torture or inhuman legal punishment..." and article 16(1) of the Law 23/2002 on Child Protection refers to the right of every child to be protected from abuse, torture or inhuman punishment under the law. The same Law 23/2002 also provides for criminal offences punishing acts of violence against children. In particular, Article 80 punishes "every person who commits an act of violence or threatens violence against, or tortures a child" with "a term of imprisonment of not more than 3 years and 6 months, and/or a maximum fine of IDR 72.000.000". Considering the seriousness of this type of violence on children as well as the terrible consequences on child's physical and mental development, the WGAT supported by OMC and APT, strongly believes that the penalties provided for in the Law are totally non dissuasive and inadequate.

The Law on Child Protection also established a National Commission for the Protection of Children "for the purpose of improving the effectiveness of the efforts to provide protection for children".¹⁹

In addition, on 2 April 2008, the Government submitted the recent draft Anti-Pornography and Porno-Action Law. Based on the 2005 draft,²⁰ some of which have been adopted in the draft of KUHP,

¹⁶ Article 44 of the Law No. 23 Year 2004 on the Elimination of Violence in Household.

¹⁷ In the same time, it may also concern other groups like women.

¹⁸ Also mentioned in the State Party's Report §§ 26 and 27. See also § 104.

¹⁹ Law No. 23 Year 2002 on Child Protection, Chapter XI, Articles 74-76.

under the provisions on crimes against morality (art 467 -479), pornography is inadequately defined. The definition is inadequate in twofold. First pornography is defined as any act which exploits sexual appeals of certain parts of the body or any behaviour associated with sexual intercourse. Further, the definition does not distinguish different circumstances in which such acts are committed; such as, in the case of child trafficking in which victim, under any form of coercion, is sexually exploited for commercial purposes. Instead of granted rehabilitation and compensation, under this provision, victims of trafficking will potentially be imposed with criminal sanctions.

With regard to child protection, the draft KUHP²¹ has three fundamental weaknesses that should be amended in compliance with the Convention and other relevant international instruments. *First*, the draft applies different standards of minimum age of a child. With regard to criminal responsibility, according to the draft, minimum age from which children can be criminally responsible is twelve years old. This minimum age is far below the international standard pointed out in the Convention on the Rights of the Child, that of, eighteen years old. While for the purpose of protecting child's rights, the draft of KUHP standard of minimum ages for children is inconsistent; such as, in the provision on rape, minimum age applied is 14 years old (article 489(1)(e), under the provision on obscene act with the same sex a minimum age applied is 18 years old (art 493), and for the crime of panhandling, a minimum age applied is 12 years old.

Second, the draft of KUHP does not explicitly prohibit corporal punishment as a form of disciplinary measures against children, and third, the draft of KUHP, particularly with regard to violence against children does not constitute any provisions that cover other types of inhuman, degrading treatment or punishment, such as female genital mutilations.

²⁰ Draft Law on Anti-Pornography and Porno-Action, 2005. Available at <http://www.legalitas.org>.

²¹ Draft KUHP (RUU KUHP), November 2005.

4. THE DUTY OF THE STATE TO INVESTIGATE AND PROSECUTE ACTS OF TORTURE AND THE RIGHTS OF THE VICTIMS TO COMPLAIN AND GET PROTECTION (ART. 5, 6, 7, 12 AND 13 UNCAT)

4.1. The duty to investigate (Art. 6 and 12 UNCAT)

4.1.1. The (current and future) Criminal Procedure Code

Referring to Committee's List of Issues § 14, the current Criminal Procedure Code does not contain any particular provisions to ensure prompt and adequate investigation over cases of torture. In most cases, torture is inflicted by law enforcement officials, including the police, whom are also in charge of the investigation.²²

4.1.2. The State practice

The National Commission on Human rights (KOMNAS HAM) has conducted a number of inquiries over cases of torture. However, these inquiries only cover allegations of acts qualifying as torture as crimes against humanity in accordance with Article 7 of the Law No. 26 Year 2000 on Human Rights Court.

Up to the present, eight inquiries have been completed and submitted to the Attorney General's Office (AGO). Out of the eight dossiers, only three were led to investigation and were processed by the human rights court. They, relate to, namely: (1) gross violations of human rights prior to and after the popular consultation in East Timor in 1999; (2) Tanjung Priok case 1986; and (3) the Abepura case in 2001. Regrettably, as was demonstrated above, most defendants of these cases were acquitted either at the first level court or at the Appeal Court or at the Supreme Court. For example, all defendants of the Tanjung Priok case, as well as Abepura case, whose indictments comprise of allegations of torture, were acquitted.

4.1.3 Implementation of Art. 12 UNCAT in cases where the victim is a woman

Based on the findings during his country visit to Jakarta in November 2007,²³ the Special Rapporteur came across a situation in which police was actually mediating a rape case by supporting the payment of a fine as a settlement of the case. Although the Special Rapporteur appreciates the traditional methods of justice by means of mediation and conflict settlement, he underlines that such punishments are not commensurate with the gravity of the crime and are not in accordance with the State's obligation to protect women from private sexual violence. He also notes with concern reports that in some incidences rape cases are resolved by forcing the rapist to marry the victim.²⁴

²² Article 4 of the Criminal Procedure Code.

²³ A/HRC/7/3/Add.7, 7 March 2008, para. 45.

²⁴ Komnas Perempuan. Unpublished report. October 2007.

4.1.4. The absence of prompt and impartial investigation of cases where the victim is a child

In practice, article 12 CAT has not yet been implemented: whatsoever the perpetrator (in the private sphere or an official) and the type of ill-treatment, very few cases of torture or other ill-treatments against children are duly investigated. The prime consequence is the impunity of the perpetrators and the causes are underreporting of cases and a total disinterest in children's sufferings.

The reason why torture and other cruel, inhuman or degrading treatment against children remain unpunished is first because they often are not reported due to the fact that most violence is hidden and both the child and the abuser may see nothing unusual or wrong in the child being subjected to violence. Indeed, violence against children is often socially accepted and viewed as a form of discipline, generally (see also section under Article 13 CAT) and therefore unpunished.

Furthermore, and to answer question asked in § 22 of the List of Issues, the poor law enforcement and widespread corruption within the legal system unfortunately lead to inadequate investigation into specific cases against children, and offenders often go unpunished.²⁵ The practice of "bargain" between the police officers, the perpetrator and the victim (generally represented by the family defending family's interest instead of the child victim) also lessens due prosecution and sentencing of the perpetrator.

The repressive treatment of street children by the police that may includes torture and other cruel, inhuman or degrading treatment or punishment (including arbitrary arrest and detention) is an issue of particular concern for the WGAT, OMCT and APT since it illustrates the large impunity of the perpetrators.²⁶ There has no legal sanction imposed for any law enforcement officials who committed such acts (see § 22 of the List of Issues). In this regard, in its Concluding Observations in 2004, the UN Committee on the Rights of the Child recommended Indonesia "to end the violence, arbitrary arrest and detention carried out by the State apparatus against street children; [and] to bring to justice those responsible for such violence."²⁷

4.2. The lack of complaints mechanisms (Art. 13 UNCAT)

There is no sound mechanism where victims of torture can turn to and lodge a complaint against their torturer and seek redress. Under the Indonesian criminal justice system, any complaints shall be submitted to the Police which is authorised to conduct both preliminary inquiry over the crimes and the investigation leading to legal proceeding before the court (Articles 4 and 6 of the Criminal Procedure Code).

This system has two major flaws. First, most cases of torture are committed by members of law enforcement bodies, such as the Police, to which complaints ought to be addressed; therefore, it is difficult to expect an impartial investigation. Another deficiency arises from the provision in the KUHP dealing with the way evidence ought to be gathered and presented before the court. As torture is

²⁵ UNICEF Indonesia: Fighting child abuse and violence.

²⁶ Making Children's Rights Work: Country profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam, p. 45. Available on ibcr web site at:

http://www.ibcr.org/Publications/CRC/CP_Asia_5Countries.pdf

²⁷ UN Committee on the Rights of the Child, Concluding Observations: Indonesia, CRC/C/15/Add.223, §§ 79 and 80.

often inflicted in the police station during the investigation, it is difficult for the victim to find witnesses to support the allegation. Other police officers are unlikely to testify against their colleague, while according to the provision of the Criminal Procedure Code the victim him/herself cannot be considered as witness (*unus testis nula testis*).

In addition, the victim can submit complaint to the National Police Commission, independent monitoring bodies, comprises of 8 members representing government as well as civil societies. The body was established in 2005 through a Presidential decree no 17/200. However, the commission do not have jurisdiction over the criminal allegation as it only authorised to receive suggestions and complaints with regard to police performance and based on the information, provided strategic recommendation for reform to the President.²⁸ If victim exercises this procedure, based on the Law No. 2 Year 2002 on the National Police, the case will then be referred to the Commission of the Code of Ethics. The commission has no jurisdiction over criminal proceedings but can investigate the case and take administrative sanction over the suspect, such as dismissal of the suspect from the National Police.

4.2.1. Specialised mechanisms dealing with violence against women

Referring to Committee's List of Issues § 23, Article 13 point (a) of Law No. 23 Year 2004 stipulates that domestic violence cases shall be handled by Special Service Room/Special Service Centre mechanisms at police stations. However, these two mechanisms are not available at the lowest level of the police, namely Police Sector. Moreover, financial problem has hampered the work of these mechanisms

Observation conducted by the National Commission on the violence against women suggests that the number of Special Service Room (RPK) has far from adequate to respond to the high number of cases of the violence against women. Today, the Special Service Rooms are only available at the Police resort office, while most cases occurred at the sub district levels. The sub district level is of the jurisdiction of Polsek where such rooms are not available.

According to Chief Commissioner Muliawati, the Special Service Rooms also provides women police officers who are trained to mastering particular approach in dealing with cases of violence against women and children. The training equips police officers with women friendly approach in dealing with such cases. In addition, under this scheme, the investigations over the cases are conducted in special room which is designed particularly for this purpose. According to the investigation unit of the National Police, there are around 237 units of Special Service Rooms located in various provinces. Many NGOs have agreed that this particular unit is very useful for women and children who have experienced violence.

4.2.2. Child victims' rights to complain and to get protection are not properly applied

Referring to Committee's List of Issues § 34, violence against children in Indonesia is largely underreported. There is no national system for receiving, monitoring and investigating complaints of

²⁸ Article 4 (c) of the Presidential Decree No. 17 Year 2005 on the National Police Commission.

child abuse and neglect. Very few cases of child abuse are reported to the police or other relevant bodies (even less when the author is a state agent).²⁹

Generally, children do not feel able to report acts of violence for fear of retribution from their abuser. They may not consider an act of violence to actually be violence at all, perhaps viewing it as justifiable and necessary punishment. Child victims may feel ashamed or guilty, believing that they deserve to be subjected to violence. They may therefore be unwilling to speak about it. This behaviour is in part due to prevailing cultural circumstances – e.g. a traditional community's refusal to acknowledge the existence of such incidents.³⁰ For example, family violence that may sometimes include cruel, inhuman and degrading treatment is culturally accepted and mostly not reported. In the very rare cases it is reported, it is generally considered a private matter by law enforcement officials and thus not investigated.³¹

Protection of child victims is also incomplete. The Law 13/2006 on Witnesses and Victims' Protection is limited to some instances and does not address cases where children may be particularly vulnerable like sexual violence and when there is relationship –usually a dependency of the child-between the child victim and the author of the violation (parents, relatives, community, other care givers, law enforcement officials, etc).

The Law 23/2002 on Child Protection addresses child victims' protection limitedly. Article 59 of the Law provides for a "special protection" to some categories of children. More precisely, article 64 ensures humane treatment of and special infrastructure and facilities to children in contact with the law (either offenders or victims) and provides for "physical, mental and social safety guarantees to victims". Moreover, the duties of the Commission for the Protection of Indonesian Children³² do not include receiving complaints from child victims.

4.2.3. Turning to international bodies: the declarations under Art. 21 and 22 UNCAT

Pursuant to this Convention, the state parties may at any time declare to recognise the competence of the Committee to receive and consider communication from state party of the convention, claiming that other state party is not fulfilling its obligation under the Convention (Art. 21) and the competence of the Committee to receive and consider communication from or on behalf of individuals who claim to be victims of violation by state parties of the provisions of the Convention (Art. 22).

Up to the present the government of Indonesia has not made any considerations to make these declarations. Such commitment is not on the list of the human rights national plan of action, as well as other related official documents.

²⁹ Making Children's Rights Work: Country profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam, p. 44. Available on ibcr web site at:

http://www.ibcr.org/Publications/CRC/CP_Asia_5Countries.pdf

³⁰ UNICEF Indonesia: Fighting child abuse and violence (add full reference please)

³¹ Making Children's Rights Work: Country profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam, p.44. Available on ibcr web site at:

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³² Chapter XI of the Law 23/2002 on Child Protection, article 76.

4.3. The protection of witnesses and victims of torture³³

In 2006, the government stipulated the Law No. 13 Year 2006 on Witnesses and Victims Protection. Rights stipulated in Article 5 (1)³⁴ are only provided for witnesses and victims in certain cases in accordance with the decision made by the Witnesses and Victims Protection Institution (*Lembaga Perlindungan Saksi dan Korban, LPSK*), among others, corruption cases, drugs abuse cases, terrorism, and other offences that cause Witnesses and Victims to be in a difficult position which may seriously endanger their lives.

The Law itself, however, shows major weaknesses. For example, Article 10 (3) stipulates that Witnesses, Victims, and people who provide information without a good intention can be prosecuted on criminal or civil code. Such provision, unquestionable, can leave enough space for interpretation in favour of the perpetrators. With regard to the access to protection, Article 28 of the Law stipulates that the conditions for protection are based on the importance of the information from the witness or victim; the level of threat; the result of medical team's or psychologist's analysis on Witnesses and/or Victims; and the criminal record on offences which have been committed by Witnesses and/or Victims.

In light of serious human rights violations, the Law only provides the right to compensation and restitution³⁵, whereas according to the Government Regulation No. 3 Year 2002 on the Compensation, Restitution, and Rehabilitation for Victims of Gross Violations of Human Rights, victims are entitled to compensation, restitution, and rehabilitation.³⁶

Due to the fact that the Witnesses and Victims Protection Institution has not yet been established, the Law is not yet considered to be effective. However, the process of electing members of this institution is currently on its way. According to Article 12 of the Law, the Institution has the responsibility in providing protection and assistance to the victims and witnesses as provided in this Law. Referring to Committee's List of Issues § 32, the Government has to endorse two Regulations on Compensation and Restitution for Witnesses and Victims and on the Assistance and Feasibility for Witnesses and Victims, so that the Law can immediately be put into effect. However, there is no effective legal framework for the complainants to seek remedy.

At the present, the selection process of the members of this newly established Committee on the Protection of Witness and Victims is taking place. But the process is halted, waiting for further deliberation from the House of Representative (the DPR).

³³ For information on child victims, see section 3.2.2. above.

³⁴ Witnesses and victims are entitled to: the right to obtain protection of their personal, family and property safety, against any threat which is related to the testimony which they will give, are giving, or have given; the right to participate in selecting and determining the form of protection and security assistance; the right to give information without any pressure; the right to obtain a translator; the right to be free from any misleading questions; the right to be informed about the development of court proceedings; the right to be informed about court's verdict; the right to be informed about the release of the offender; the right to obtain a new identity; the right to obtain relocation; the right to obtain reimbursement for transport expenses as necessary; the right to obtain legal advice; and/or the right to obtain living expenses temporarily until the protection is terminated.

³⁵ Article 7(1) of the Law No. 13 Year 2006 on Witnesses and Victims Protection.

³⁶ Article 2 of the Government Regulation No. 3 Year 2002 on the Compensation, Restitution, and Rehabilitation for Victims of Gross Violations of Human Rights.

4.4. Prosecuting alleged authors of acts of torture (Art. 7 UNCAT): the impunity lives on

Referring to Committee's List of Issues § 20, In the case of Tanjung Priok 1986,³⁷ the first level Court decided that the defendant, that is, Pranowo, the Chief of Regional Military Command V Jaya, was found not guilty of failing to stop the torture of Muslim activists held in custody after the incident. However, the panel of judges of the Appeal Court decided that acts of torture in the context of gross violations, such as inflicting severe pain or suffering on the victims, were not proven due to the fact that victims were still able to pray and do exercise. This decision was affirmed by the Supreme Court. The WGAT believes that the decision shows the failure of Indonesian justice system in upholding truth and justice. Worst, it preserves the culture of military impunity in Indonesia. Whereas, the inquiry undertaken by the National Commission on Human Rights (Komnas HAM) points out that there were indeed human rights violations in Tanjung Priok incident.

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Similar to the other defendants, on April 4, 2008, the Supreme Court granted a request for a review submitted by Eurico Guterres. He was not proven guilty of human rights violations as charged because he was not proven to have structural command to coordinate attacks, even if he was the leader of the militia. Guterres was acquitted all the charges, his name rehabilitated and given compensation.

³⁷ On 12 September 1984, Indonesian Armed Forces opened fire on Muslim protestors gathered in North Jakarta's Tanjung Priok harbour. Scores of protestors were shot. Numerous others were detained, and allegedly tortured, in connection with the demonstration.

³⁸ See 2006 Komnas HAM Report, p. 95. Available at <http://www.komnasham.go.id>.

4.4.1. Exclusion of defences (Art. 2(2)(3) UNCAT)

Under its present form, the draft KUHP does not contain sound provision on the exclusion of defense as provided for the crimes against humanity under the Law on Human Rights Court.

As we saw earlier, a provision on torture was incorporated in the draft KUHP, under the Chapter of Crimes of Human Rights (Article 404). However, no exclusion of defense clause is provided; on the contrary, the chapter comprises of a provision (article 401) that runs contrary to art. 2(2) of the Convention, by providing that a subordinate who commit crimes covered in that chapter (crimes of human rights) pursuant to his/her superior order cannot be held liable if the order is, according to his/her good faith, has been legally given and the execution of the order is within his/her authority as subordinate.

4.4.2. Universal jurisdiction (Art. 5 UNCAT)

Referring to Committee's List of Issues § 19, the recognition of universal jurisdiction came for the first time with the ratification of Convention against Torture through the Law No. 5 Year 1998, as provided by Article 5 of the Convention. However, there have not been any regulations stipulated to implement this principle.

On the contrary, there is major misperception from the Government with regard to this principle as stated in paragraph 41 of Indonesia's Second Periodic Report. The Government stipulates that the Human Rights Court has the authority to investigate and adjudicate gross violations of human rights committed outside Indonesian territory by Indonesian citizens. However, thus far, Indonesia has never exercised universal jurisdiction to torture cases. The concept of universal jurisdiction goes beyond that. Under the concept of universal jurisdiction, if an alleged torturer finds himself in Indonesia, the Indonesian authorities should arrest him even if he is not Indonesian and if the victims are not Indonesian.

5. COMPENSATION AND REHABILITATION OF VICTIMS OF TORTURE (ART. 14 UNCAT)

Referring to Committee's List of Issues § 32, there are no particular regulations which provide a legal framework for victims of torture to claim redress. Current provisions only cover remedy for torture inflicted as part of crimes against humanity, as provided by the Government Regulation No. 3 Year 2002 on the Compensation, Restitution, and Rehabilitation. The provisions have not yet been implemented. The constraint faced by victims also arise from the provisions provided by the Law No 26 Year 2000 on Human Rights Court, in which any claims for reparations would only be able to be processed if the perpetrators have been convicted, and when the decision is legally binding. The problem stems from the fact that most cases brought before this particular court ended up with acquittal rather than upholding justice.

Besides, the provisions cannot be fully implemented as they have no clear procedure, as to when and where to file the claims.³⁹ Based on these provisions, compensation and restitution would only be granted through court decision. This implies that no decision would be issued unless perpetrators were found guilty and served a sentence.

Government Regulation No. 3 Year 2002 was enacted to implement the obligation to provide remedy for victims of gross violations of human rights as mandated by Article 35 of the Law No 26 Year 2000 on Human Rights Court. The Decree is very important in regard to:

1. Definition, type of reparation, calculation of loss, and procedure to claim for compensation, restitution and rehabilitation for victims of gross violation of human rights.
2. Institutions which hold authority in the calculation of loss. The regulations mention that institutions concerned are, namely the Attorney General as an implementation institution for reparation delivered by human rights court, and the Ministry of Finance, which relates to the payment and calculation of loss.
3. State budget designates for establishing such mechanisms and procedures of providing compensation.

Government Regulation No. 2 Year 2002 on the Protection of Witnesses and Victims for Serious Human Rights Violations does not clearly stipulate complaint procedure up to the fulfilment of remedy.

In addition, Article 1 of the Government Regulation No. 3 Year 2002 regulates on the individual responsibility for fulfilling compensation, restitution and rehabilitation. The article mentions that state's responsibility to compensate victims can only be fulfilled if perpetrators are not capable to provide adequate compensation. Besides, Article 3 states that compensation, restitution and rehabilitation would only be given after have been decided by the court, and the decision is legally binding.

³⁹ This regulation does not explicitly point which Government institutions are responsible for implementing these articles. See, Government Regulation No. 2 Year 2002 on the Protection of Witnesses and Victims for Serious Human Rights Violations.

Referring to Committee's List of Issues § 32, it must be possible to seek remedies from the state, not just against the individual perpetrator(s). In torture cases where, by definition, the acts involve some action or acquiescence on the part of the state, the liability of the state must not be subsidiary to the liability of the individual. Equally, state liability must not be limited, for example by requiring that *"state can only be responsible to compensate victims if perpetrators are not capable to provide adequate compensation"*. States must ensure that victims' access to remedies is effective in practice. States must not place unjustifiable hurdles in the way of victims attempting to exercise their right to a remedy.⁴⁰

Either Government Regulation No. 3 Year 2002 or the Criminal Procedure Code cannot be effectively implemented as they require a decision from a human rights court for a compensation claim to be initiated, and ultimately granted. Both neglect the right of victims to have access to an effective remedy and reparation. Reparation should not be subjected to conditions.

At the implementation level, reparation for victims of torture in situations of gross violations of human rights, referred to by the Government in its Report, cannot be effectively realised. Cases reported to the Committee in the Government's Report are: (1) the Tanjung Priok case [State's Report paras. 93-94]; in which the Court failed to award reparation for victims. In its decision, the first level Court granted a claim for compensation, but the decision was then annulled by the Appeal Court, a decision later confirmed by the Supreme Court; (2) the Abepura case [State's Report para. 94]; where victims claimed compensation, but saw their petition rejected, which resulted in the victims not getting any compensation; (3) cases which were submitted to the Attorney General's Office but have yet to be prosecuted, such as Wasior-Wamena case [State's Report paras. 79-80], Talangsari case (1986), and forced disappearance case (1997/1998). No compensation was given in the case of East Timor.

Both KUHP and the Criminal Procedure Code do not have particular provisions on remedies for victims of torture. Pre-trial detention, which is ruled by Article 77 of the KUHP, does not include a mechanism to claim for remedy in case torture incident occurred. Remedy is only available for cases related to mischarge which at the end was acquitted by Court's decision. (Article 95 & 97 of the Criminal Procedure Code)

The Criminal Procedure Code actually regulates mechanism for compensation and rehabilitation for illegitimate legal proceedings in the Court both for law enforcement officers who wrongfully accused and the victims. Under this mechanism, compensation can be claimed by filing of a civil lawsuit after the Court has rendered its judgement over the case or by joining the claim with the criminal proceedings. However, the mechanism does not effectively work as, up to the present, the KUHP does not criminalise torture.

⁴⁰ See Redress, *"Bringing the International Prohibition of Torture Home: National Implementation Guide for the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"*, January 2006, p. 82. Available at <http://www.redress.org/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf>

5.1. Implementation of Article 14 to women victims

As the problem of trafficking of women and children has rapidly increased during the period under review, some NGOs with the support from the International organisations such as International Organisation on Migration (IOM) and International Catholic Migration Commission (ICMC), have provided shelter/rehabilitation centre for victims of violence, particularly that of trafficked women and children. For example, IOM has supported the establishment of integrative Service Centre in several provincial state hospitals in Indonesia, such as RS Polri Soekamto, Kramat Jati Jakarta, RS POLRI Surabaya, East Java, RSUD (Provincial Hospital) Medan, North Sumatra, and Pontianak, West Kalimantan.

These particular units provide special treatment for victims of trafficking who have been sent back from the receiving countries. The service includes medical and psychological recoveries which are delivered by medical experts, ranging from psychiatrist, gynaecologist, psychologist, internist, etc.

Additionally, some other local NGOs such as Rifka Annisa Jombang, East Java, Genta, East Java, Bahtera Foundation, Bandung, East Java, and many others, also provide similar service for trafficked persons under various special units, such as women crisis centre, shelter, safe house, drop in center. Most units receive victims who have been sent back by the receiving countries.

5.2. Compensation and rehabilitation of child victims

Compensation and rehabilitation of child victims is not appropriately considered in the Law 23/2002 on Child Protection. The only time rehabilitation is mentioned is towards child victims of criminal offences (which might include acts of torture and other ill-treatments) for whom the government and the community should cover the rehabilitation either institutional or not. Legal provisions clearly do not reach the level of protection required by article 13 of the Convention.

Beyond the large gap in the compensation and rehabilitation system of child victims, children who are victims of exploitation, whether in harmful child labour, in commercial sexual exploitation or as victims of trafficking are often stigmatized, penalised and criminalised, both by law enforcement agencies and the formal society at large.⁴¹ These children are therefore especially vulnerable to going through the formal justice system, either by forcibly getting rounded up and arrested and treated as criminals to a crime, or as victims and witnesses of criminal syndicates and other groups of adults who exploit children.⁴²

⁴¹ Referring to Committee's List of Issues § 34.

⁴² UNICEF Indonesia, paper on Child Protection.

6. PREVENTING TORTURE (ART. 2 UNCAT)

The obligation to prevent torture calls for multi-dimensional approach that covers not only the policy reform to ensure the present of effective criminal legal system, but also a sound management of detention facilities. The management of detention facilities should include the improvement of the record-keeping system in detention facilities, the provision of medical examination for the detainees, the improvement of the detainees' access to medical service and legal assistance. Aside from these, the obligation to prevent torture also requires that an effective monitoring system be put in place to oversee detention facilities as well as the compliant of law enforcement officers to relevant legal standards.

With regard to the normative framework, the current KUHAP does not provide a sound protection from ill-treatment for suspects during criminal legal proceedings. On the contrary, some provisions may well encourage the practice of torture against criminal suspects detained either at the police station for the investigation or at the state detention house for the pre-trial detention.

The Criminal Procedure Code contains substantial flaws in two respects. The flaws are:

- (1) The provisions on the length of detention which potentially put detainees at risk of torture; and
- (2) The absence of clear provision to ensure that each investigation over the suspects shall be conducted in the presence of a lawyer.

Under the KUHAP, a criminal suspect may be a subject to a maximum of 460 days of detention before charges are pressed as provided by the article. This covers detention at the investigation level, prosecution level, and pre-trial detention level. The lengths of these phases of detention certainly increase the risk for suspects to be exposed to torture or other forms of ill treatment.

There is no provision which obliges the police not to conduct investigation over suspects without the presence of lawyers. In many cases, the police will invoke time constraints to persuade a criminal suspect to undergo an investigation without the presence of lawyers.

The risk of being subjected to torture is even higher as there is no effective accountability mechanism or other oversight mechanism in place. There is no oversight mechanism working effectively to address the complaint of torture, if any. They do not have any jurisdiction over criminal allegation such as the National Police Commission or the Commission of professional code of ethic.

The draft of Criminal Procedure Code introduces the establishment of Commissary Judge who has jurisdiction over the violations of the rights of criminal suspects (Article 111 (1i), (3). However, the draft may have to wait a few more years before being adopted, as the House of Representative has not made it a priority for this coming year.

6.1. The exclusion of statements obtained through torture (Art. 15 UNCAT)

Referring to Committee's List of Issues § 33, both the current and draft KUHAP have no clear provision excluding the admissibility of evidence or testimony obtained as a result of torture in the

Court. It is left to the discretion of the judge as to whether or not evidence allegedly obtained under torture is admitted

Following are two cases related to the admissibility of testimony obtained by use of torture:

- **Mr. Risman Lakoro** is a victim of torture inflicted by the investigators at Polres Tilamuta-Limboto, Gorontalo. He argued that he did not kill his son. However, due to severe acts of torture against him, he finally admitted that he had killed his son, Alta.⁴³ District Court of Limboto sentenced Mr. Lakoro and his wife to three years of imprisonment because they were found guilty of violating Articles 170 and 351(3) of the KUHP. They served their sentences starting from 2002 until 2005.⁴⁴ Based on the information from the media, during the investigation process, Mr. Lakoro and his wife experienced various acts of torture. His left hand was tweezed, which resulted in him being permanently disabled. Further, the police put his thumb under a table and sit on it. Similar to what has happened to his husband, Rostin Mahadji's back was beaten with rattan and ruler. For three months, the police tortured Mr. Lakoro and his wife. One of the perpetrators was upgraded after the events.⁴⁵
- Similarly, **Mr. Budi Hardjono** was also accused of killing his father, Mr. Ali Harta Winata, on 17 December 2002. The police had tortured and forced him to confess that he had killed his father. He experienced physical and mental torture during his detention at Polres Bekasi. He was also forced to admit the story made up by the police in order to protect his mother's life who was threatened to be killed if he denied the story.⁴⁶ Although he proved to be innocent, the police did not rehabilitate his name, even after the real murderer admitted that he had killed Mr. Hardjono's father.⁴⁷ He finally was released after the court ruled that evidence presented by the prosecutor was not sufficient to support the indictment and therefore he should be acquitted from any charge. Up to the present, there has no appropriate measure been taken to provide any remedy for him as well as to bring the torturers to justice. Similar to Mr. Lakoro's case, one of the perpetrators was upgraded after the events.⁴⁸

6.2. The need for an effective and fair criminal justice system

As accentuated by the Convention, one of the main pillars in the prevention and punishment of torture is the existence of an effective criminal legal system, which depends on several government institutions. Some of the institutions include the National Police, which has the power to conduct preliminary inquiry and investigation (Law No 2 Year 2002); the Prosecutor Office, which carries out prosecution (Law No. 16 Year 2004); the Court, which is responsible to hear and to decide criminal offences (Law No. 4 Year 2004); and the advocate as legal advisor and lawyer for the defendant as well as the victim (Law No 18 Year 2003).⁴⁹ The obligation to provide legal assistance is also

⁴³ See video streaming at <http://www.kickandy.com/kickvideo.asp> or <http://www.kickandy.com/topik.asp?id=91>.

⁴⁴ See <http://www.rri-online.com/modules.php?name=Artikel&sid=32283>.

⁴⁵ See <http://www.gatra.com/artikel.php?id=106077>.

⁴⁶ See <http://www.kompas.com/kompas-cetak/0607/05/utama/2787170.htm>.

⁴⁷ See <http://www.kickandy.com/topik.asp?id=91> and <http://www.sinarharapan.co.id/berita/0607/07/taj01.html>.

⁴⁸ See <http://kompas.com/kompas-cetak/0607/07/metro/2790720.htm>.

⁴⁹ The obligation to provide legal assistance is provided in a number of regulations, such as the Law No. 8 Year 1981 on the Criminal Procedure Code, and the Law No. 4 Year 2004 on the Power of the Judiciary.

provided for in other legislations, such as the Criminal Procedure Code, Law No. 4 Year 2004 on the Power of the Judiciary, and Law No. 12 Year 1995 on the Correctional Institution.

In addition, to prevent torture and other cruel, inhuman and degrading treatment against women and children, national criminal legal system also provide particular procedures to deal with women and children, either as witnesses of torture cases or as victims. For example, the juvenile justice system should provide particular procedure in hearing the case related to children either as the victims or as the accused (Law No. 3 Year 1997).

6.2.1. The Criminal Procedure Code and Police custody

Referring to Committee's List of Issues § 3, criminal legal proceeding, particularly the Criminal Procedure Code, regulates in detail each step taken in examining a criminal case. Duration of custody, following the arrest of a suspect may vary, depending on the criminal procedures governed. For example, custody following the arrest of a suspect in the case of common crimes is 1 X 24 hours, while custody for crimes of drug abusers is 2 X 24 hours, and for terrorism cases, the duration to detain a suspect is far longer, 7 X 24 hours.⁵⁰ After being declared as a suspect and detained, the accused was then moved to the police custody for a maximum of 20 days. The detention can be extended up to a maximum of 40 days (Article 24 of the Criminal Procedure Code).

Article 54 of the Criminal Procedure Code provides the right to legal representation immediately upon arrest and at each stage of examination. In practice, without asking whether the suspect is incapable of appointing his/her own lawyer, the police directly appoints a lawyer to represent the suspect. Commonly, the appointed lawyer is a good friend of the police, thus does not have the courage to criticise the detaining authority.

For example, a poor man, UDN, who was accused of stealing and killing, was tortured by the police in order to obtain his confession. At first, during the examination process at the police station, UDN could not be seen by his lawyer. When his case was brought to the public prosecutor and Jakarta Barat District Court, UDN could finally can be seen and interviewed by a local TV station, Metro TV, and several local newspapers. During the interview, UDN explained that he experienced torture and other cruel treatments inflicted by the police in order to obtain information for the investigative dossier (*Berita Acara Pemeriksaan, BAP*).

Further, according to the Criminal Procedure Code, a suspect has the right to initiate pre-trial proceedings to have the arrest or detention declared illegal and to claim compensation. This must be decided by the Judge within seven days.⁵¹ There is no right to challenge the circumstances in which a person is held or the treatment he/she received during the detention. It is only the legality of the arrest and consequent detention that can be challenged in pre-trial proceedings.

⁵⁰ Based on the Article 19 of the Law No. 8 Year 1981 on the Criminal Procedure Code, Article 67 (2) of the Law No. 22 Year 1997 on Narcotics, Article 28 of the Government Regulation in Lieu of Law No. 1 Year 2002 on Combating Criminal Acts of Terrorism. The regulation was further implemented through the Law No. 15 Year 2003 on the Eradication of Acts of Terrorism.

⁵¹ Articles 1 (10), 77-83, 95-97 of the Criminal Procedure Code.

Before the adoption of the Law No. 23 Year 2004 on the Elimination of Violence in Household, cases of violence against women were prosecuted using the KUHP, which did not recognize the term "violence in household". This law has enabled victims of domestic violence to bring their cases before the court, and provide opportunities for the victims to get necessary remedies.

Provisions used to criminalize cases of violence against women were, among others, article 356 (maltreatment) 338 (murder), 285 (rape), and 289 (obscene act). However, the KUHP does not provide specific provisions on marital rape and other forms of violence that do not necessarily involve a sexual intercourse. All provisions used to settle violence cases against women only accommodate physical violence and disregard psychological and sexual abuses suffered by the victims. In several cases of domestic violence, victims experienced not only physical, but also psychological, sexual and economic abuses.

In order to improve the protection and respect for victims of domestic violence, all cases related to domestic violence shall be handled by Special Service Room/ Special Service Centre mechanisms at police stations as provided by Article 13 point (a) of Law no 23 Year 2004. Through this unit, police investigators (usually are women) are specifically equipped with investigation method which is gender sensitive, especially to deal with the victims. However, these two mechanisms are not available at the lowest level of the police, namely Police Sector. Moreover, financial problems have hampered the work of these mechanisms.

The WGAT strongly believes that the draft KUHP has yet to include important safeguard necessary to ensure that no individual is unjustly punished, arbitrarily detained, or subjected to torture or other form of ill treatments.

Referring to Committee's List of Issues § 24, the Criminal Procedure Code also introduces a control mechanism through the appointment of special judges in district courts, commonly referred as "Hakim Wasmat" (supervisory judges), who may receive complaints from inmates. However, this mechanism cannot be implemented due to high level of resistance from other judges at the district court level as well as wardens of the detention service.⁵²

6.2.2. Abusing detaining powers: the case of the Municipal Police Unit (SATPOL PP)

The creation of the Municipal Police Unit (Satpol PP) in Jakarta is based on the Local Government Decree No 11 Year 1988, which was recently amended by the Local Government Decree No 8 Year 2007 on Public Order. Article 5 (c) of the Government Regulation No. 32 Year 2004 on the Guidelines for Municipal Police Unit authorises the Municipal Police Unit "to take non judicial repressive measures against citizens or other legal entities that breach the Local Government Decree and the Decision of the Local Government".

The Government seems to justify and to consider the presence of the Municipal Police Unit as the "guardian" of the city. According to the Regulation, the only apparatus of *Pemprov* DKI that can be

⁵² See "Menunggu Perubahan dari Balik Jeruji, Studi Awal Penerapan Konsep Pemasyarakatan", Mappi FH UI, KRHN and LBH Jakarta, Publisher: Partnership for Governance Reform, Jakarta, 2007. It points out that legal technical weakness is closely related to the poor implementation of WASMAT's role and supervisory prosecutor's role as stipulated in the Criminal Procedure Code with regard to the enforcement of court decisions.

assigned for the obligation to create Public Order in DKI is only Satpol PP and PPNS (Investigator of Government Civil Employee).

Pursuant to Article 18 of the Government Regulation No. 32 Year 2004, the Municipal Police Unit has the power to use firearms. This provision legitimates the unlawful treatments and abuses undertaken by the Municipal Police Unit. These acts are not investigated, perpetrators are not identified and victims have no access to an effective remedy or redress.

Further, the Local Government Income and Expenditure (APBD) budget allocated for the Municipal Police Unit is very big. For the last three years, law enforcement budget in APBD Jakarta was significantly increased. In 2005, DKI Jakarta local government allocated 144,9 billion rupiahs and in 2007 it increased to 303,2 billion rupiahs.⁵³

In the case of a raid against suspected sex-workers, they were entrapped before being finally arrested.

Idawati, a 40 years old woman, caught when she was standing at an intersection in Pasar Baru Jakarta. For the past 5 years, she has worked as a sex worker. She was detained in September 2007 for almost three months. She was recently released and continued working as a sex worker.

*"It's already late in the evening when someone suddenly asked me what I was up to. I said that I was waiting for my brother. When I saw my brother was coming, a man with a motorcycle honked the motorcycle horn. I resisted but they forcibly dragged me. I almost hit my "becak" (traditional three wheel cab) but they continued to run after me and dragged me."*⁵⁴

Victims of the raid were arrested and brought to the Resort Military Command (Koramil) by an Elf 300 car with iron bars window. After arriving at the Municipal Police Unit's office, victims were registered and sent to the social rehabilitation centres. Some victims experienced violence; they were beaten and had their head shaven before being finally sent to the rehabilitation centre.

*The incident of raid occurred on 5 September 2006, when Sugiarti, a 31-year-old woman, a three-in-one jockey, was looking for her husband. Her husband reportedly was arrested for working as a 'three-in-one jockey' in Menteng. When she arrived, the raid was still taking place in that area. The police car stopped and two of the Municipal Police Unit officers approached and arrested her because they failed to arrest her husband. Sugiarti is one of the victims who had her head shaven."*⁵⁵

⁵³ See LBH Jakarta Report, "*Memerangi Rakyat Miskin Jakarta*", 2007, p. 16.

⁵⁴ Investigation by Mike Tangka, 5 January 2008.

⁵⁵ See *op.cit.*, pp. 30-31.

6.2.3. Indonesia's failure to prevent torture and other CIDTP against children

a. General failure to prevent torture and other CIDTP against children

Referring to Committee's List of Issues § 34, one cannot say that Indonesia has taken all measures to prevent acts of torture as set in Article 2 of the Convention. There is no effective national system for the protection of children and for the prevention of all violence towards them. As a result, children suffer from torture or other cruel inhuman or degrading treatment or punishment in various settings by many perpetrators

The government's action is far from preventing torture or other cruel, inhuman or degrading treatment, repressive treatment of some categories of children (children in conflict with the law and street children). On the contrary, the excessive use of force by state agents against children is not rare.

In addition, referring to Committee's List of Issues § 34, the large extent of private violence, including domestic violence and corporal punishment against children in Indonesia shows the unwillingness of the State to protect children from daily violence that may amount to cruel, inhuman or degrading treatment if we consider the significant impact of such treatment on their physical and psychological development. The same concern can be applied to violence at school.

The Law 23/2002 on Child Protection, in Part X on Special Protection, provides for some preventing measures (monitoring, reporting, dissemination of the law, involvement of relevant agencies, etc.). However, they are not consistent and the system is not thought comprehensively and coherently within the best interest of the child.

b. Gaps in the juvenile justice system

Children who face the legal process are more vulnerable to be abused. Both physical and mental violence takes place at all levels of the proceeding; it begins at the phase of interrogation by the police until the implementation of the court decision by the correctional service. This violence clearly comes from the breach of the duty to safeguard the rights of children who are in conflict with the law and detained.

Despite the fact that the adoption of the Law No. 3 Year 1997 on Juvenile Justice introduced a specific juvenile justice procedure and a juvenile court, Indonesia does not yet completely have a genuine juvenile justice system in compliance with relevant international standards aimed at fully protecting children in conflict with the penal law from violence.⁵⁶

Indeed, more than 10 years after the entry into force of the Law, all juvenile courts have not been established yet and children are tried in the same courts as adults although under a special

⁵⁶ Particularly the UN Convention on the Rights of the Child (mostly articles 37 and 40), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

procedure for juveniles.⁵⁷ As an exception, the South Jakarta district court provides three special rooms for juvenile court. Juvenile cases are heard by judges who hold license from the Supreme Court to proceed juvenile cases. Up to the present, there are six judges held the license at the South Jakarta district court.⁵⁸

c. Preventing torture and other CIDTP by respecting particular judicial safeguards of children: Children accused of or convicted for having infringed the penal law are not duly treated by the Indonesian justice

- The minimum age of criminal responsibility is too low

Referring to Committee's List of Issues § 34, Law No. 3 Year 1997 on Juvenile Justice sets the minimum age of criminal responsibility at eight years old.⁵⁹ As for the WGAT supported by OMCT and APT, the age of 8 years old is clearly too young to consider a child to be criminally responsible and therefore apply criminal sanctions.⁶⁰ The draft of KUHP actually offers a higher minimum age of criminal responsibility, that of, 12 years old (art 113 of the draft KUHP). However, as the draft has yet been stipulated, it cannot be enforced.

The need to increase the minimum age of criminal responsibility has repeatedly voiced out, such as in 2004 the UN Committee on the Rights of the Child recommended Indonesia to raise the minimum age for criminal responsibility.⁶¹ Similar concern has also pointed out, in the report of the UN Special Rapporteur on Torture following its visits in Indonesia in November 2007.

- The right to have one's family informed is not fully respected

With regard to the right of a child to inform his/her family or a legal counsel of the criminal procedures against him/her, article 18 (3) and article 21 of the Criminal Procedure Code highlight that any *"letter shall be cc to the families"*. However, such guarantee cannot be enjoyed in practice. Parents usually are never informed officially on the legal problem experienced by their children. While being investigated at the police station, children often are not allowed to communicate with their family.⁶²

⁵⁷ Making Children's Rights Work: Country profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam, p. 48. Available on ibcr web site at:

http://www.ibcr.org/Publications/CRC/CP_Asia_5Countries.pdf

⁵⁸ TEMPO *Interaktif*, Monday, 11 February 2008 | 13:33 WIB

⁵⁹ The definition of a child as stipulated in article 1(1) of the Law 3/1997 is *"a person, in the case of juvenile delinquency, who has attained the age of 8 years but yet attained the age of 18 years and has never been married"*. Article 1(2) defines the "juvenile delinquency" as (a) a child who commits a crime, and (b) a child who commits an action that is considered forbidden for a child, both by the law and the norms which are applied in the society.

⁶⁰ In this regard, see UN Committee on the Rights of the Child, General Comment n°10 (2007) Children's rights in juvenile justice, CRC/C/GC/10, §§ 30-35 and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), article 4.

⁶¹ UN Committee on the Rights of the Child, Concluding Observations: Indonesia, CRC/C/15/Add.223, §§ 77 and 78(a). "The Committee reiterates its serious concern that the minimum age of criminal responsibility, set at eight years, is too low. (...) The Committee recommends that the State party: (a) Raise the minimum age of criminal responsibility to an internationally acceptable level".

⁶² In ES case, while being investigated at the police station for about three days, he was not allowed to communicate with their family.

- Investigation time period and pre-trial detention

During the interrogation process, the investigator has to complete the investigation in a very short period of time.⁶³ The period of detention for such stage is different than stipulated in the Criminal Procedure Code. The Law on Juvenile Justice provides for a shorter period of detention (20 days and can be extended for other 10 days) compared to the Criminal Procedure Code (20 days and can be extended for other 40 days). The Investigation process should be completed before the period of detention has finished. Otherwise, the suspect or defendant should be released.

- Particular rules taking into account the status of the child during the trial

Article 153 (3) and (4) of the Criminal Procedure Code highlights that a child who is considered a suspect shall be tried in a closed session. The breach of this condition shall make any judgement in the hearing lost its legally binding power. The trial is led by a single judge without wearing a 'toga' (judge uniform at the courtroom).⁶⁴ Further, articles 45, 46, and 47 of the KUHP point out that judges shall truly take into account the mental condition of the child when delivering judgement and charging a sentence.

Referring to Committee's List of Issues §§ 34 and 35, there is no particular room at the Juvenile Court for pending trial detention. The Law also stipulates that the trial shall be done in a very short period of time (15 days and can be extended for another 30 days).

- Existing legal sanctions against a child offender

The law contains provisions that privileges non-custodial sentences for children.

Indeed, as a principle, a child cannot be penalised. A child shall be sent back to his/her parents or guardians, under the condition, that the child is under the age of 16 years, or has yet reached 21 years but has yet got married.⁶⁵ However, three forms of sanction of children exist, namely disciplinary school (tut school), fine and warning, and arrest or deprivation of liberty to certain period from 4 hour to 14 days.⁶⁶

In addition, a child cannot serve a sentence. However, in a criminal case where judges' view that a child who committed a crime is actually capable of telling the good from bad, he/she can still be punished for a sentence. The sentence imposed shall be one third of the actual sentence. For the crimes which are normally punished by the death penalty, the sanction shall be replaced with a maximum of 15 years imprisonment.⁶⁷ A child can be sent to children educational house (*Rumah Pendidikan Anak*), if the child is under the age of 18 years.

⁶³ This is in conflict with Article 37 (b) of the Convention on the Rights of the Child.

⁶⁴ Special court for children is available only in Bandung.

⁶⁵ A child in this category is considered 'not yet mature' as provided by the LN 1931 No 54 for the Indonesia Native Citizens, and Article 330 BW, R. Sugandhi, p. 52.

⁶⁶ Jan Rummelink, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia*, Gramedia, Jakarta, 2004, p. 540.

⁶⁷ Sugandi, *Ibid.*, p. 53.

Nevertheless, additional sentence in a form of elimination of certain rights cannot be applied to children.

6.3. Basic safeguards for detainees

6.3.1. Judicial guarantees

Indonesia provides the guarantee of legal assistance in its 1945 Constitution, law, and its implementing arrangements. Article 27 (1) of the 1945 Constitution stipulates, *"All citizens shall be equal before the law and the government, and shall be required to respect the law and the government, with no exceptions"*.

Article 28D (1) of the 1945 Constitution stipulates, *"Every person shall have the right of recognition, guarantees, protection, and certainty before a just law, and of equal treatment before the law"*. Article 28(l) (1) of the 1945 Constitution provides, *"The rights to life, freedom from torture, [...], and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances"*.

Meanwhile, Articles 50-68 of the Criminal Procedure Code also spells out the rights of a crime suspect, including the right to legal assistance. Article 54 of the Criminal Procedure Code provides the right to legal representation immediately upon arrest and at each stage of examination. If a suspect or an accused is *"incapable of"* having his/her own lawyer, or a suspect or an accused shall be punished by a capital punishment or an imprisonment of fifteen years or more, the competent authority is obliged to appoint a lawyer for the suspect or accused.⁶⁸ In practice, such obligation is often disregarded by the authority.

Article 22 of Law No. 18 Year 2003 on Advocates and Article 7(h) of the Indonesian Advocates Code of Ethics state that, *"Advocate has the obligation to provide free legal assistance (pro deo) to poor people"*.

The right to legal assistance is also provided in Articles 17, 18, 19 and 34 of Law No. 39 Year 1999 on Human Rights and Article 35 of Law No. 14 Year 1970 on Judicial Power (with its alteration in Law No. 35 Year 1999) which stipulates, *"everyone, who is involved in a criminal case, is entitled to legal assistance"*.

During examination at the police station, a suspect or an accused, who is subjected to torture, is often not notified that he/she can be assisted by a lawyer or is not informed that a lawyer has been appointed to provide legal assistance. Usually, a suspect or an accused is forced to sign a statement stating that he/she will go through the examination process alone without any assistance from a lawyer.

Regrettably, Criminal Procedure Code does not set a time limit in conducting interrogation of crime suspects. However, this rule shall be interpreted in accordance with Article 9 (3) of the International Covenant on Civil and Political Right, which stipulates, *"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial*

⁶⁸ Article 56 of the Criminal Procedure Code.

power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”.

An examination can be carried out for 24 hours non-stop or conducted from midnight to dawn in the absence of the lawyer. By also considering the extensive power had by the investigator, therefore, determination of time limit in conducting interrogation is very important. The interrogation process, within a day, has to be limited to a maximum of eight hours, starting from 08:00 AM-16:00 PM, with one-hour break. The WGAT strongly believes that such limitation can minimise the occurrence of violence and torture against a suspect or an accused.⁶⁹

Special attention needs to be given to cases of terrorism. Article 26 (3) of Law No. 15 Year 2003 on the Establishment of Government Regulation in Lieu of Law No. 1 Year 2002 on Combating Criminal Acts of Terrorism stipulates, *“Examination process as defined in paragraph (2) is carried out in a closed manner no longer than 3 (three) days”*. There is no doubt that this provision can be used as a justification of torture.

6.3.2. Access to medical exams and services

Medical services available in every detention facilities are very insufficient. During the first examination, health diagnosis of newly arrived prisoners is carried out by a *“tamping”*⁷⁰, who is in charge in a clinic, not a doctor.

Health care provided for detainees is very minimal. Sick detainees, who require special treatment for wounds as a result of torture, are only provided with medicines from the police doctor. On the contrary, rich detainees, with permission from local chief of police, can ask to be hospitalized in the police hospital.⁷¹ In a case where a detainee is already wounded before being brought to the police station, no medical treatment is provided.⁷²

The spreading of diseases in detention houses (RUTAN) and correctional institutions (LAPAS), for example, HIV/AIDS and hepatitis, is not anticipated promptly. Many prisoners, suspected of contagious diseases, died due to the lack of prompt and proper medical care and treatment. In Rutan Salemba and Lapas Pemuda II-Tangerang, some victims said that prisoners who have contagious disease and serious illness are left to die in their cells.⁷³ This incident has occurred many

⁶⁹ Statements given by a victim in December 2007 in Salemba Prison, whose name and identity shall be kept in secret due to security reasons.

⁷⁰ *Tamping* is a term in to call a detainee who is appointed by the warden to help organising other detainees, and who uses that power to get benefits from his fellow inmates (money, cigarette, and food).

⁷¹ Statements given by victims, whose names and identities shall be kept in secret due to security reason.

⁷² Based on direct observation at Polsek Metro Cengkareng. Police officials do not provide medical treatment for a theft, who is wounded on the head and face as a result of the beating inflicted by the police.

⁷³ Statement given by a victim, in December 2007 in Jakarta, whose name and identity shall be kept secret for security reason, also statement from another victim, in November 2007 in Banten.

times, yet, national legislations stipulate the necessity of advanced treatment in a hospital for prisoners who have serious illnesses.⁷⁴

6.3.3. Contacts with the outside world (including lawyers and relatives)

Family visits, which is scheduled regularly by the administration at police level, are only authorized against the payment of 50.000 IDR (5.5 USD) for every visit. If relatives refuse to pay, the detainees will be beaten by the “foreman”, who is ordered to collect and give the money to the police. If not, the foreman will also be beaten by the police.

The relationship between a lawyer and a suspect is stipulated in Articles 70-73 of the Criminal Procedure Code. A lawyer is given the right to contact, speak to, send, and receive letters from a suspect at every stage of examination without being heard by the investigator, prosecutor, or detaining authority.⁷⁵

In reality, especially in police stations, a lawyer can only meet with and speak to a suspect in an open room, such as in a visiting room or living room.⁷⁶ There have been cases where police has rejected the arrival of a lawyer who was appointed by the family.⁷⁷

In detention facilities, just as in police stations, a lawyer can only meet with and speak to a suspect in an open room, namely in the registration room. Based on the interviews with several victims in three different detention places and the experience of few lawyers, availability of a special room for lawyer, as stipulated in Article 47 jo. Article 23 (4) of the Decision of the Minister of Law and Human Rights No. M.01-PR.01.01 Year 2003 dated 10 April 2003 regarding the *Pola Bangunan Unit Pelaksana Teknis Pemasyarakatan*, is likely to be found. Further, the right to meet their family, lawyer, and other people is not free. Usually, prisoners are obliged to pay an amount of money, ranging from 5.000 IDR (five thousand rupiahs) to 10.000 IDR (ten thousand rupiahs) at every entrance. Rutan Salemba, Lapas Pemuda II-Tangerang and Lapas Krobokan-Bali also put this “illegal levy” into practice.

6.3.4. Basic safeguards applicable to women detainees

There are no provisions of the Criminal Procedure Code specifically designed to provide protection to women in custody and detention. Contrary to international standards, there is no requirement that female staff must be present during the interrogation of female detainees or that only female staff can be permitted to conduct physical searches of female suspects or defendants.

With regard to women’s specific needs, Articles 7 and 20 of Government Regulation No. 32 Year 1999 on Terms and Procedures on the Implementation of Prisoners’ Rights in Prisons and its Elucidation stipulate that every prisoner and child prisoner shall receive physical treatment, including

⁷⁴ Articles 15-18 of the Government Regulation No. 32 Year 1999 on Terms and Procedures on the Implementation of Prisoners’ Rights in Prisons and its Elucidation.

⁷⁵ Articles 70 (1) and 71 (1) of the Criminal Procedure Code. See also Article 73 of the Criminal Procedure Code.

⁷⁶ Based on the experience of lawyers, who are intended to provide further legal advice at Polres Metro Jakarta Utara and Polres Metro Jakarta Pusat.

⁷⁷ Based on direct observation carried out at Polsek Metro Cengkareng.

exercise and recreation, clothing, and bedding and bathing equipments.⁷⁸ Every woman prisoner shall have 2 (two) uniforms, 1 (one) work outfit, 1 (one) woman's praying veil, 2 (two) woman's bras, 2 (two) woman's under wears, 1 (one) unit of sanitary napkin, and 1 (one) pair of sandals.

Every prisoner and child prisoner who is sick, pregnant or nursing shall be provided with additional food⁷⁹ as recommended by a doctor. Further, the child of a woman prisoner, who is brought along into or was born in the prison, shall be provided with additional food as recommended by a doctor, at the longest until he/she reaches the age of 2.⁸⁰

6.3.5. Safeguards applicable to child detainees

- The use of detention as a measure of last resort and for the shortest appropriate period of time

In his report following his visit to Indonesia in November 2007, although the UN Special Rapporteur on Torture welcome the law 3/1997 on Juvenile Justice and some progress made in sentencing fewer minors to prison terms, he reiterated the recent concern expressed by the UN Committee on the rights of the Child that a "very large number of children [was] sentenced to jail even for petty crimes."⁸¹

- The separation of detained children from adults

Referring to Committee's List of Issues § 35, if children are found guilty, the law provides for they should be kept separately from the adults.⁸² However, in practice, they are often placed together with adults, a situation which put them in a very critical situation of being victims of various forms of violence. (Additional information on this issue is available under the section on conditions of detention-article16).

6.4. The need for independent oversight mechanisms

Up to the present, there is not any oversight mechanism in place to monitor the condition of places of detentions facilities. Some institutions, as explained below, do perform the function; however, they do not perform it regularly, and focus on certain places of detention, rather than covering the entire regions.

6.4.1. The role and work of Komnas HAM

As stated in Article 76 of Law No. 39 Year 1999 on Human Rights, one of Komnas HAM functions is in the field of monitoring. To carry out this function, Komnas HAM has two mandates: (1) to conduct survey of the locations of incidents and other locations which are deemed necessary (Article

⁷⁸ Article 7 (1) of the Government Regulation No. 32 Year 1999 on Terms and Procedures on the Implementation of Prisoners' Rights in Prisons and its Elucidation.

⁷⁹ 300 calories per day for pregnant woman, and 800-1000 calories per day for nursing mother.

⁸⁰ Article 20 (1) and (3) of the Government Regulation No. 32 Year 1999 on Terms and Procedures on the Implementation of Prisoners' Rights in Prisons and its Elucidation.

⁸¹ A/HRC/7/3/Add.7, § 41.

⁸² Article 45 of the Law No. 12 Year 1995 on Correctional.

89(3)(e)); and (2) to examine sites such as houses, yards, building and other places occupied or owned by certain parties with the agreement of the Chair of the Court (Article 89(3)(g)).

On the basis of Law No. 39/1999 (Human Rights Act), the Komnas HAM has signed a Memorandum of Understanding (MoU) with the National Police where the Police grants free access to all detention facilities under police jurisdiction to the Komnas HAM officers, and commits to act upon recommendations made by the visiting team. The MoU with the Indonesian National Police also aims at improving the cooperation in the area of human rights education. In order to streamline this MoU at national and district levels, Komnas HAM has undertaken socialisation processes since 2005.⁸³

Referring to Committee's List of Issues § 24, up to the present, the visits undertaken by Komnas HAM have been announced. The visiting team has to make some arrangements with the authorities in charge before it can carry out the visit. It has also held interviews with persons deprived of liberty during those visits, but these have generally been undertaken in presence of wardens.

6.4.2. The role and work of Komnas Perempuan

Komnas Perempuan was created in 2005 by the Presidential Decree No. 181 Year 1998. Part of its mandate is to monitor the implementation of the *UN Convention against Torture*.

Komnas Perempuan has conducted visits to places of detention, in the framework of a general programme aimed at monitoring violence against women in Aceh. This work was mostly done in conjunction with grass-roots level organisations, which have assisted with both the information gathering and data analysis. In Aceh, Komnas Perempuan could not have access to detention centres without the agreement of the local government and were allowed to meet only with female detainees.

So far, Komnas Perempuan has not visited places of detention outside Aceh. It does not foresee the development and carrying out of an ambitious detention monitoring program in the near future, in light of the serious resources constraints it is faced with.

6.4.3. The role and work of KPAI

Referring to Committee's List of Issues § 35, the Commission on the Protection of Indonesian Children (*Komisi Perlindungan Anak Indonesia, KPAI*) is an independent body created in 2004 by the Presidential Decree No. 77 Year 2003 and Article 74 of the Law No. 23 Year 2002 on Child Protection. The creation of this body is aimed at improving the affectivity of child protection in Indonesia. However, in practice, this body is considered to be ineffective due to its weak mandates and resources.

KPAI has two main duties, namely:

- (1) to conduct socialization of all the laws and regulations involved in the field of child protection, collect data and information, receive community complaints, and conduct studies, monitoring, evaluation and supervision in respect of the protection of children's rights, and

⁸³ See Komnas HAM 2005 Annual Report, p. 12.

- (2) to submit reports, advice, input and considerations to the President in respect of the protection of children's rights.

6.4.4. Visits by other non-governmental actors

The concern for the issue of torture, especially those inflicted by the police, has not been supplemented by the availability of comprehensive data. The print as well as electronic media has publicized, albeit sporadically, the acts of torture committed by the police. There is yet sufficiently compiled information that would provide us with a clearer picture of such acts; its extent, intensity, and patterns. This lack of data has made policy advocacy difficult.

Referring to Committee's List of Issues § 24, Jakarta Legal Aid Institute (LBH Jakarta) in 2005 has published a research report on acts of torture against people deprived from their liberty in Jakarta and neighbouring regions. The respondents are those who were arrested by the police in Jakarta region in the period from 2003 to April 2005. A total number of 639 people were selected from Salemba Prison, Cipinang Prison and Pondok Bambu Prison, using an incidental sampling method. However, it should be noted that this visit was only for a particular purpose, namely a general survey, not for monitoring places of deprivation of liberty on a regular basis. Indeed, no access has ever been granted to non-governmental organizations to conduct regular visits to such places.

Although the wardens have facilitated this research, they remained in the vicinity at the time the interviews were conducted, observing the developments. This clearly affects the respondents' relaxedness and openness. It was apparent that the respondents were very cautious in disclosing their experience as a detainee.

The team had to conduct the interviews in the place directed by the warden, which was usually at the administrative office where supervisors carry out their daily routines. This again affects the respondents' openness being in the room as the supervisors. An immediate change of behavior was apparent when they were first taken in to the offices.⁸⁴

Once again, in 2008, LBH Jakarta was given a permission by DKI Jakarta and Banten Regional Offices, Ministry of Law and Human Rights, to conduct another survey on torture practices in Pondok Bambu Prison Class II A, Salemba Prison Class I, Cipinang Prison Class I and Tangerang Prison Class II A. In conducting this survey, the team distributed questioners to prisoners to be further filled in voluntarily.

6.4.5. Visits by international bodies (ex.: ICRC, SRT)

Besides Komnas HAM, the International Committee of the Red Cross (ICRC) has actively undertaken visits to places of detention in Indonesia. In 2006, the ICRC visited over 500 detainees (in more than 60 places of detention), held in connection with situations of internal violence.⁸⁵ It continued to give support to the prison authorities in their efforts to improve conditions for all detainees, through technical assessments, awareness raising and advice.

⁸⁴ See, *"Those Who Were Arrested and Tortured"*, Report on the Study of the Five Districts of Jakarta, LBH Jakarta, 2005.

⁸⁵ Please visit www.icrc.org.

After waiting for almost fourteen years, the Government of Indonesia finally extended a standing invitation to the UN Special Rapporteur on Torture to visit the country. The Special Rapporteur has had the opportunity to visit various detention facilities throughout the country, namely in Jakarta, Papua, Sulawesi, Bali, and Central Java.

In his report to the Human Rights Council last March, the Special Rapporteur regretted that the efforts of Government officials to monitor his movements throughout the country restricted his ability to carry out unannounced visits to places of detention. He further regrets that in a small number of instances (Police Headquarters Jakarta, Poltabes Yogyakarta, Military Prison Abepura), his unimpeded access to places of detention was compromised, including his ability to carry out private interviews with detainees, in contravention of his terms of reference.⁸⁶

6.4.6. Indonesia & the OPCAT

Referring to Committee's List of Issues § 42, the Government, through the Ministry of Foreign Affairs had expressed its willingness to sign the Protocol Optional to the Convention against Torture (OPCAT) during the "UN Treaty Event" scheduled for 25-27 September and 1-2 October 2007 in New York City, but failed to deliver.

The Government explicitly stated in its second National Action Plan on Human Rights 2004-2009 that the ratification of the OPCAT is scheduled for 2008. However, so far, progress has been slow and it is now highly unlikely that ratification will be secured within this timeframe.

⁸⁶ See Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Mission to Indonesia, A/HRC/7/3/Add.7, 7 March 2008, para. 6.

7. THE FAILURE TO REVIEW ARREST PROCEDURES AND INTERROGATION METHODS TO AVOID TORTURE (ART. 11 UNCAT)

7.1 National Police

Decision Letter of the Chief of Indonesian National Police (KAPOLRI) No. Pol.: Skep/1205/IX/2000 dated 11 September 2000 regarding the Revision on the Compilation of Implementation and Technical Instructions, Chapter III Article 8c 3e point 6 stipulates, *“During the examination, it is prohibited to use any form of violence or pressure”*.

Recalling the Committee’s recommendation to reform the police institution in order to strengthen the independence of the police from the military, as an independent civilian law enforcement agency,⁸⁷ the Government established the National Police Commission through the Presidential Decree No. 17 Year 2005. The Commission has two main duties: (1) assisting the President in determining the policy direction of the National Police, and (2) providing suggestion and consideration for the President in terms of the appointment and dismissal of the Head of the National Police.⁸⁸ This mechanism is not fully effective as there is a lack of adequate punishment. Based on the Law No. 2 Year 2002 on the National Police, control over misconducts and other deeds violating the professional ethic of the police will be proceeded by the Commission of the Code of Ethics.

7.2 Excessive use of power resulted in torture

The Police have the authority to arrest and detain a person. The deliberateness of police in committing torture through coercion against persons suspected of crimes, aimed at obtaining information often happened during the arrest and detention.⁸⁹ The police, not in their uniform and without warrant, beat up and snapped at the suspects in order to get their confession on the crimes.

From the findings, it can be concluded that victims have experienced various forms of violence, among others, beating, pot-shot, covering eyes with duct tape, dragging, kicking metatarsal, burning with cigarette, pointing a gunshot, forcing to stand overnight, threatening, extorting, electrocuting, etc.⁹⁰

Every type of torture; physical, psychological and sexual, is experienced by most of the victims. Almost all of the respondents were subjected to more than two types of torture, but what differentiates them is the intensity, the duration and variety of forms of the ill-treatment.

7.3. Victims of torture

Low-income communities, government critics, and drug dealers and users are often subjected to torture. In practice, people who have lots of money can bribe public officials so that they will not be

⁸⁷ CAT/C/47/Add.3, 16 July 2001, para. 10 (g).

⁸⁸ Article 3 of the Presidential Decree No. 17 Year 2005 on the National Police Commission.

⁸⁹ In-depth interview with 12 respondents in Jakarta and 8 respondents in Denpasar, December 2007.

⁹⁰ See annex.

tortured.⁹¹ In addition, torture is also used as a repressive tool to suppress government critics, who are considered as enemies of the government.⁹² In the same vein, drug dealers and users were deemed as society's dregs.⁹³

The Government has provided misleading information in its report, notably in paragraph 113, that stipulates, "...the high number of persons reported to be suffering from after-effects of torture and other forms of ill-treatment, is not true..." Based on a survey to 412 respondents in various detention places undertaken by LBH Jakarta in January-February 2008, it is found that up to date, acts of torture and other ill-treatments remain commonplace.⁹⁴

Therefore, statement in paragraph 113 of the State's Second Periodic Report is clearly contestable. Based on the 2008 survey conducted by LBH Jakarta, from 367 respondents who were interrogated at the police stations, 83.65% claimed that they were abused both during the arrest and the interrogation process for the purpose of investigative dossier (BAP). Such violence was inflicted by the police in order to obtain confession and information from a suspect by using various techniques of torture, such as beating the face, hitting ears, electrocuting, dragging, pot-shot, etc.⁹⁵

Human Rights Centre at Indonesian Islamic University (UII), Jogjakarta, recorded thirty-one violence cases committed by police in Jogjakarta since 1999-2003.⁹⁶ Physical and mental violence inflicted by police official is aimed at obtaining information and confession on the crimes accused and causing fear and deterrent effect for criminals.

Children who are arrested by law enforcement officials or street children who are the target of repressive raids also suffer from torture and other cruel, inhuman and degrading treatment by law enforcement agents. Illegal arrest and custody of a child is not rare. Indeed, children do not benefit from a special protecting system as their status would require. Like for adults, the investigation of cases involving suspected children is usually followed by violence both physically and mentally (harassment, be treated as an adult, etc.).⁹⁷ Therefore, children are forced to admit their deed as mentioned in the BAP (investigative dossier), although it may sound unrealistic chronology.⁹⁸ Following are illustrating cases were children as young as 11 years old have been forced to confess:

⁹¹ In-depth interview with a victim, whose name and identity shall be kept in secret due to security reason. He states that low-income communities often subjected to torture, particularly in cases of obscene act, theft, and gambling. Up to date, torture cases against corruptors (people who have lots of money) have yet to be found.

⁹² Statements given by a victim, whose name and identity shall be kept in secret due to security reason. He affirms that torture, directed to people who participated in a protest against kerosene conversion, was inflicted by police members of Polsek Jakarta Utara.

⁹³ Statements given by a victim, whose name and identity shall be kept in secret due to security reason. He states that drug dealers and users were tortured and treated like animal by the police. Their belongings were also confiscated.

⁹⁴ See, LBH Jakarta, 2008, "*Mengungkap Kejahatan dengan Kejahatan*", a survey of torture at police detentions in Jakarta and Tangerang.

⁹⁵ For more details, see background, methodology and findings in the Report on Torture Survey at Police Stations in Jakarta and Neighbouring Regions, LBH Jakarta, 2008. In its findings, LBH Jakarta notes that from January 2007 until February 2008, torture practices remain commonplace.

⁹⁶ See "*Kekerasan Polisi terhadap Tersangka/Saksi Paska Ratifikasi Konvensi Anti Penyiksaan dan UU Hak Asasi Manusia*", www.pushamuii.org/index.php?lang=id&page=kasus&id=1

⁹⁷ See case of PDA.

⁹⁸ Violation to Article 40(2) of the Convention on the Rights of the Child.

⁹⁸ See case of PDA.

ES, a 14 years old boy was suspected of killing a girl. The case occurred in Krian Sidoardjo, East. After arrived at the local Police Resort Station, ES was questioned while he was beaten by three police officials (Seken, Nanang, and Supri). They hit ES on his ears and stomach repeatedly, while his both hands were tied to the ceiling of the room. These abuses finally forced him to confess that he committed the crime.⁹⁹

PDA, an 11 years old boy was accused to harass his classmate. According to his parent, a police official of local Police Sector (Polsek) spat PDA's face when he came to the station for obligatory report. They also asked him to draw a vagina.¹⁰⁰

MS, a 13 years old boy was accused of stealing a mobile phone. The police arrested him and put a handcuff on his hands. He experience physical torture, such as beating and kicking during the interrogation the police station. He was placed together with adults during the custody. A leader of his cell ("Palkam") has made him bald, with the acquiescence of the authorised official, on the pretext that it is commonly done to the inmates.¹⁰¹

There is no either child specialised or general human rights mechanism that regularly and independently monitor police station and report about this harsh violence against children. This situation contributes to the impunity of the perpetrators.

7.4. Torturers

The following analysis is based on the data verification undertaken by the WGAT in Bali and Jakarta. This activity was conducted from December 2007 to January 2008 through private interviews with approximately 15 respondents; one of them is witness of torture, while fourteen others are victims.

Approximately 29,16% of 107 respondents experienced violence during the arrest on the crime scene; 16,62% of 61 respondents were abused in the police car, along the way up to the police station; and above all, 40,05% of 147 respondents claimed that they experienced violence at police stations.¹⁰²

Torture is often inflicted by the police during the examination process. In Jakarta, there are several police stations known to be locations where torture takes place, namely at Polres Metro Jakarta Utara, Polres Metro Jakarta Pusat, Polsek Metro Cengkareng, and Polsek Metro Jatinegara. In Denpasar-Bali, there are several locations often used by the police for torture, namely Sentral Parkir near Kuta Raya, boarding house in Pesona Permata Real Estate in Tunjung Sari Raya, Kompyang

⁹⁹ Discussion with Agung Nugroho, Coordinator of Program and Advocacy Division at the Surabaya Crisis Centre, 26 January 2008. ES was accused of killing and harassing a girl, but no statement of *visum et repertum* pointed to ES, and ES refused that he committed such crimes. He finally made a confession under continuous pressure and serious threat from the police during the investigation. Besides, ES brother, Imam Syafii, died because of the charge on him. See, documentation, Surabaya Children Crisis Center (SCCC).

¹⁰⁰ Based on the chronology of the case, PDA and his friends kissed a girl at the same age. But in the BAP (investigative dossier by the Police), some of his friends were charged of committing adultery. See, Documentation: Surabaya Children Crisis Centre (SCCC).

¹⁰¹ MS is a son of a newspaper delivery man. MS is suspected as a victim of organ (kidney) trafficking.

¹⁰² For more details, see Report on Torture Survey at Police Stations in Jakarta and Neighbouring Regions, LBH Jakarta, 2008.

Sujana Square a.k.a. Buyung Square and Bungalow 501 in Sanur. Polsek Denpasar Timur and Polsek Denpasar Selatan are also known as locations of torture. Many cases of torture and ill-treatment have reportedly occurred in these places, particularly during interrogation by the police.

7.5. Human Rights Defenders

In its Conclusions and Recommendations on Indonesia's Initial Report, the Committee against Torture urges the Government of Indonesia to ensure that human rights defenders are protected from harassments, threats, and other attacks.¹⁰³

Referring to Committee's List of Issues § 37, it appears that the state apparatus, which is expected to protect human rights defenders from violence, torture, and other ill-treatments, the real perpetrator. The Special Representative of the UN Secretary General on the Protection of Human Rights Defenders, Ms. Hina Jilani, in her statements concluding her visit to Indonesia, notes that even though human rights conditions in Indonesia are improving, violence against human rights defenders committed by apparatus still occurs in Papua.¹⁰⁴

Although torture against human rights defenders is not as massive as in the era of the New Order, yet, practice of torture against human rights defenders is still committed by state apparatus, especially in conflict areas, such as Poso¹⁰⁵, and other regions considered being plagued with separatist movements, such as Aceh and Papua.

Human rights defenders who advocate the rights of marginal groups, such as migrant workers and peasants¹⁰⁶, are particularly vulnerable of being subjected to torture. Meanwhile, in big cities like Jakarta, torture is often committed against students¹⁰⁷, who participate in protests, and journalists¹⁰⁸, who write and expose cases of corruption and abuse of power.

¹⁰³ Paragraph 10 point (j), CAT/C/XXVII Concl.3., 22 November 2001.

¹⁰⁴ See Shadow Report on the practice of torture in Aceh and Papua 1998-2007 submitted in July 2007 by Office for Justice and Peace of Jayapura, Imparsial-Jakarta, Progressio-Timor Leste, the Synod of Christian Evangelical Church in Papua and Franciscans International on pages 26-27 and the full text of the press statement of the Special Representative of the UN Secretary-General on the Situation of Human Rights Defenders, concluding her visit to Indonesia at <http://www.un.or.id/press.asp?Act=1&FileID=20070612-1&lang=1>

¹⁰⁵ Database Imparsial, violence against Human Rights Defenders occurred in 2005: violence against human rights defenders from LPS-HAM Poso, namely Jumaedi, Jumeri, Mastur Saputra and Sutikno, who were arrested by Detachment 88, Brimob and Serse Polda Central Sulawesi on 1 June 2005 and tortured at police station. Victims are suspected as terrorists and arrested pursuant to Anti-Terrorism Law No. 15 Year 2003. Having insufficient evidence, victims were released.

¹⁰⁶ See Shadow Report on the practice of torture in Aceh and Papua 1998-2007, Imparsial and SKP, 2007, page 33 on the case of Ahadi bin Bakarun, member of Serikat Tani Bengkulu (Bengkulu Peasant Association), who was murdered in police detention.

¹⁰⁷ Database Imparsial, violence against Human Rights Defenders occurred in 2005: torture against Bram and six other activists.

¹⁰⁸ Database Imparsial, violence against Human Rights Defenders occurred in 2005: torture occurred on 14 October 2005 against a journalist, Dasman Boy from Pos Metro Padang, who was covering corruption case in Bungus, Teluk Kabung, Padang. Victim was beaten by Sertu Usman, member of TNI AD from Korem 032 Wirabraja and six criminals.

Torture committed by state apparatus in transition era has a slightly different pattern, especially with regard to the perpetrator and location of torture.¹⁰⁹ Hitting, kicking, threatening, calling names, and even shooting are the most common patterns of torture at the police station. If such actions result in the death of the victim, the police will say that the victim has committed suicide or tried to escape and did something that may have endangered the police officials so that the police had to take the victim down.

Until now, the Government has not enacted regulation with regard to the protection of human rights defenders. On the contrary, the Government has drafted a number of regulatory laws that threaten the freedom of human rights defenders, namely draft Law on Intelligent and draft Law on State Secret. In 2008, it is likely that the House of Representative will give priority to the two law drafts.

7.6. Particular information on torture in conflict areas

Torture practices, committed by police officials in conflict areas, such as in Aceh and Papua, are more brutal compared to those committed in non-conflict areas. In conflict areas, the rioters are labelled as separatist and this is often used as a justification for the police officials to commit torture. Moreover, torture committed by military members has patterns different from those used by the police. In general, acts of torture committed by the military will be more brutal than those committed by police officials. For example, on 19 August 2004, members of Battalion Infantry 400/Raider committed torture. They arrested and detained Yulidartini and four other human rights defenders from Independent Women (Perempuan Merdeka) in Aceh. Yulidartini was tortured by being electrocuted and slapped on the face until her mouth bled.

More over, particular circumstances of armed conflict in many cases have affected the function of the judiciary, which further decrease the possibility to held perpetrators accountable. In this regard, areas of conflict are worth observing.

The report concentrates on two persistent conflict areas, which aptly represent this condition, namely Papua, and Poso. Although both conflicts are of a different nature, they share great deal in common with regard to tight security policy applied and predominant military present at these areas.

7.6.1. Poso

Violence and conflict in Poso started in 1998. A number of observers and media divided this into "volumes"¹¹⁰. It is said that the violent conflict in Poso is now in its fifth volume. In this discussion, the division is based on the character of the violence. There are two characteristics of violence in the conflict in Poso¹¹¹. The first type is violent conflict which occurs openly. During this time, the conflict and violence are massive and organized and it applies to certain group identity that can be recognized by the other group. The second type of violence is violence which occurred in a closed

¹⁰⁹ See Shadow Report on the practice of torture in Aceh and Papua 1998-2007. Compare the methods of torture in Aceh (for example Yulidartini case in Aceh on page 92) and Papua (for example the case of 24 civilians who were tortured after the clash of the 16th of March 2006) with non-conflict areas.

¹¹⁰ See Sinansari eci, *Rusuh Poso Rujuk Malino*, Cahaya Timur Publisher, July 2002. See also Tahmidy Lasahido, et al, *SUARA dari POSO, Kerusuhan, Konflik dan Resolusi*, (YAPIKKA, Jakarta, 2003). In this book the episodes of violence are described in Part I.

¹¹¹ Haris Azhar, *Masyarakat Poso: Diantara Permusuhan dan Harapan Perdamaian dalam ____* (ed.) *Negara Adalah Kita* (Praxis: Jakarta, 2006), see also Haris Azhar and Syamsul Alam Agus, *Poso Wilayah yang Dikonflikkan*.

manner. During this period, the violence only involved a small number of people; there are no apparent mass mobilizations and terrors. The signing of Malino Agreement for Poso in 2001 divided these 2 types of conflict. The similarities between the two violent conflicts were the involvement of security forces in direct actions (through individuals, units or troops) or indirect actions (e.g. omission) and the release of suspects before being prosecuted for violence. Furthermore, civilian victims of both types of conflict were mainly women and children.

Apart from focusing on rehabilitation, the government also created a security recovery program. After the Malino Declaration, the government conducted a *Sintuwu Maroso* operation that involved thousands of police and military. Every operation required billions of rupiah. Strangely, every time a *Sintuwu Maroso* operation was about to end, a new set of violence occurred forcing the extension of security operations by maintaining or increasing the number of troops. Billions of rupiah had to be spent.

In many ways, security forces and the law enforcers have failed to provide a sense of security and build trust in Poso. In 2003, out of 92 criminal cases in Poso Regency, including those related to riots, only 7 cases went to the attorney general's office and to court. In 2003 there were many cases of violence: 10 of them were mysterious shootings and 8 were bomb explosions. At the same time, torture and inhumane and cruel treatment in 2002-2004, caused the death of 55 people and the injury of 114 more. In 2005, 28 incidents occurred and 30 people died while 91 were injured¹¹². In some cases it appears that the police and the military were the ones who committed the offense in the form of assault, shootings, theft/looting, rape and wrongful arrests.¹¹³

In the beginning of 2007, violence re-occurred in Poso. On 22 January 2007 in Gebang Rejo sub district, Poso City, an attack was inflicted by the police using combat weapons against civil society acting on behalf on law enforcement operation related to the rumour of terrorism. This is a new pattern in the never-ending violence in Poso. The incident occurred between the community, labelled as armed and listed in *Daftar Pencarian Orang* (DPO or search list), and the security forces (Police). The incident has increased the suffering and trauma for Poso community, which wishes for peace.

Previously, a few incidents occurred. On 29 October 2006, Rev. Irianto Kongkoli was shot by an unknown person. After that, Indonesian Police Headquarters charged 29 civilians from Poso as the suspects for various cases of violence and terror during and after conflict in Poso. Through a security recovery operation, the night before Idul Fitri on 22 October 2006, the police attacked civilians in Gebang Rejo with their combat weapon. One civilian was shot dead, 3 others suffered from gunshot wounds. Three medical staffs of Poso General Hospital, who were there to evacuate the civilian victims, were arrested and tortured by the police at Polres (resort police) Poso. Because of that, one civilian who was supposed to receive medical treatment died from his wounds.

On 11 January 2007, an operation controlled by Police Headquarters and Central Sulawesi Regional Police shot two civilians dead, one of whom was not a target of the police operation. The attacks by the police took place in residential areas and caused trauma for children and women in Poso. Hundreds of residents fled their homes because the police continued to commit torture, terror and intimidation against any residents who were caught during sweeps of the Poso urban area.

¹¹² This number does not include violence against women committed by security forces (TNI/Polri) in Poso.

¹¹³ Based on the database of KONTRAS & LPS-HAM.

The condition of the victims who were killed or injured in the police attack showed that the police used excessive force in their efforts to arrest people who they thought were involved in a series of terrorist acts in Poso. Dangerous ammunitions, such as *hollow point bullets*, were used by Detachment 88 to apprehend suspects.

The police operation on 11 January 2007 also failed to arrest the targets of the operation, who were those listed as terrorist suspects in Poso. The operation continued on 22 January 2007, deploying 700 joint personnel, and attacking a densely populated residential area in Gebang Rejo sub-district, which the police suspected as a hideout for the terrorist suspects.

The operation in Gebang Rejo, Poso City, lasted for 10 hours and killed 13 civilians who were not the target of the operation. 23 other civilians were arrested and tortured.¹¹⁴ The arbitrary arrests during the operation were followed up by physical torture and ill-treatment using rifle butts, kicking, electrocution and detention during examinations at the police station in Poso and in Central Sulawesi Regional Police office in Palu.

Since the peace accord was signed for Poso in December 2001, open conflict between different ethnic and religious groups in Poso no longer occurs. The people of Poso are tired of conflict, even though provocateurs are still swarming the area.

7.6.2 West Papua

Papua has long been subjected to tight security, and the presence of military personnel has always been widespread. Violence has repeatedly occurred against civilian population, particularly few tribal groups associated with separatist movement. Several areas are also subjected to a tighter security policy than others, such as the hilly Jayawijaya. Resistance groups are continuously seen as serious threat against the national integrity of the nation; therefore continuous surveillance by military institution and special unit under the Police are justified in the eyes of the authorities. This context, has directly or indirectly contributed to the massive human rights violations in this province.¹¹⁵ Among others, are, the incident 16 March 2006, Filep Karma case and Yusak Package case (2004).¹¹⁶

Despite any policy reform in governance taken at the national level, the situation in Papua, with regard to the tight security policy and its implication on the increase in violence against civilian have yet changed. Torture as well as violence – in a broader sense – against civilian population has continued to occur.

Local NGO such as Legal Aid Institution (LBH) Papua has recorded some cases on arbitrary arrest and arbitrary detention committed by military forces. This was followed by series of intimidation and violence against civilians who were suspected of supporting or were members of separatist movement group. Torture is commonly practised to extract information or confession. The supremacy of military personnel has made it difficult for any civilian to be respected and to have good bargaining power. In this regard, many cases which led to casualties were often caused by

¹¹⁴ Based on the database of KONTRAS & LPS-HAM.

¹¹⁵ Gross violation of human rights occurred such as in the case of Abepura (2000), Wasior (2001), Eus, dll.

¹¹⁶ See annex.

minor misunderstanding where military personnel were offended by people's deed. Additionally, military personnel as well as the police often immediately relates those people to certain faction of the secessionist group (Free Papua Movement – OPM) even if their deeds fall under minor offences and not crimes against state.

This report presents seven cases which have been able to be verified. The cases are:

1. KONSTRAD 643 Wanara Sakti against Rafael Kapura, Sipri and Bartolomius Yolmen case¹¹⁷
2. Yane Waromi case¹¹⁸
3. Perius Wenda and Kikame Tabuni case¹¹⁹
4. Yulius Meage case¹²⁰
5. Rudy Pangawak and Jekpot case¹²¹
6. Jhob Tabuni case¹²²
7. Frans Hisage case¹²³

Victims of torture

Most victims of torture cases presented in this report are local people. Out of 15 victims, 12 among them are male and one victim is female, while 2 others are children.

Torturers

Out of seven cases reported in this writing, six can be attributed to military personnel, while torturer of the other case still has not been identified. However, it is believed that the torturer relates to intelligent service unit. Six military institutions related to the torture are as follow:

- Konstrad 411 Bala Dhika
- Konstrad 643 Wanara Sakti
- TNI member of Koramil Bolakme
- TNI/Battalion 756 at Kurima Military resort command – Yahukimo
- TNI member of military station in Lereh Sentani
- Member of the investigation unit of Jayawijaya Police Resort

With regard to Committee's List of Issues § 5, we can observe that the aforementioned cases show that most torturers belong to the military. Without aiming to draw over implication of the general condition in Papua, the cases show the extent to which military personnel can easily intervene in criminal law proceedings. In this context, the detainee or suspects of criminal offences are more vulnerable to torture. This possibility is more evident, when such crimes are committed against military personnel or their family. Torture and violence against civilians as shown by Yulius Meaga case, are a form of punishment over the suspects or the criminals. Similar cases are believed to be

¹¹⁷ Investigative report on human rights violation by LBH Papua.

¹¹⁸ Documentation of GKI Sinode.

¹¹⁹ Investigative report on human rights by LBH Papua.

¹²⁰ Theo Hesegem, Jaringan Advokasi Penegakan Hukum dan HAM.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Documentation of ELSHAM Papua.

common incidents among Papuan and so far have not been reported. Supremacy of military personnel over civilians can also be seen from the case of two other cases, namely torture inflicted by TNI personnel of Kostrad 411 Bala Dhika, where some local youth asking for money to renovate public road.¹²⁴ (Insert particular cases in footnotes) and the case of torture inflicted by military personnel of Lereh Military station.¹²⁵

Methods of torture

From a number of cases verified in this report, torture is committed in various forms, among others, beating, pot-shot, covering eyes with duct tape, dragging, kicking metatarsal, burning with cigarette, pointing a gunshot, forcing to stand overnight, threatening, extorting, electrocuting, etc.

Purposes of torture

In cases related to separatism issue, such as the case of Rafael Kapura, Sipri and Bartolimus Yolmen, and Yane Waromi, torture was committed to obtain confession that they were members to the OPM (Free Papua Movement), information on the activities of the OPM and plans made by members of this organisation.

For the case of stealing suspected to be committed by Yulius Meage and rape cases suspected to be committed by Frans Hisage, torture was aimed at obtaining confession from the suspects. While in other cases, torture was committed to obtain specific information and it is also related to military personnel arrogance.

Access to medical facilities

Out of the 15 victims, only 2 were recorded to have direct medical treatment at the health clinic, namely Rudy Pangawak and Jepo. Rudy died after admitted to the health clinic owned by the company, and the body was then sent for autopsy at RS dok II Jayapura¹²⁶. However, the result of the autopsy remained unclear. In other cases, medical treatment was given on the cost of the family or other third party, such as in the case of Rafael Kapura and Bartolimus Yolmen, who were admitted to the hospital after the family was willing to pay the expenses. They were sent to the hospital only after Priest Jus and Guntur Ohoiwutun (Legal Aid- Merauke Post) provided guarantee for the detainees upon receiving a temporary release from the authority concerned. For other victims, only modest medical treatments were given or cured by traditional medicine.

Accountability for the torture cases

For Torture cases related to the OPM (Free Papua Movement), such as Rafael and Yeni Waroni, there are no information on the accountability measures taken against the torturers. While for other cases, only a case of torture committed at the TNI station in Lereh Sentani is found where the torturer was arrested and investigated. However, the result of the investigation remained unclear, and no update is available to inform whether the torturer was tried and convicted or not.

¹²⁴ See annex.

¹²⁵ See annex.

¹²⁶ See, Cenderawasih Pos, 03 November 2007.

Few other cases were settled through mediation between the victims and the torturers, yet victims were left without compensation. Cases of torture in Bolakme and Kostrad 411 Bala Dhika follow this path. In Bolakme case, the Chief of the Military resort command invited victims and the tribe leader to meet with the torturer, i.e. the military personnel. However, no compensation was given, although the tribe leader had asked the military personnel to pay for "Adat" fine. But the military Chief refused to pay the fine.¹²⁷

In other cases, the settlement by paying 'adat' fine was also applied in the case of torture inflicted by member of Kostrad 411 Bala Dhika. Perius Wenda experienced torture, at Asologima on 25 July 2005. His family and the families of the other five victims settled the case in 'Adat' law in Jiluk Kampong. They demanded that the torturers pay for 15 pigs as Adat fine. Although the torturers paid the amount, they then asked back Perius Wenda's family to pay for 1.5 million rupiahs. The payment was to compensate them, as they believed that they did not torture the victims.¹²⁸

¹²⁷ Theo Hesegem, Investigative report on the human rights violations in Bolakme district Asologaima, Jaringan Advokasi Penegakan Hukum dan HAM, 2005.

¹²⁸ Theo Hesegem, *The Settlement of Perius Wenda case*, Jaringan Advokasi Penegakan Hukum dan HAM, 2005.

8. EXTRADITION AGREEMENTS (ART. 3 AND 8 UNCAT)

Article 28G (2) of the Fourth Amendment of the 1945 Constitution stipulates, “*Each person has the right to be free from torture or inhuman and degrading treatment and shall be entitled to obtain political asylum from another country*”. Two rights guaranteed in Article 28G (2), namely the right not to be tortured and the right to obtain political asylum, implicitly recognise the principle of non-refoulement. However, there is no explicit legislation which prohibits expelling, returning, or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Referring to Committee’s List of Issues § 10, an example can be drawn from Umar Al-Faruq case. Based on media information, on 5 June 2002, Umar Al-Faruq, a terrorist suspect, was caught by the Indonesian Intelligence Services. After being interrogated, Umar Al-Faruq was directly taken to Halim Perdana Kusuma airport to be further transmitted to a detention cell in Bagram, a US military base located in Kabul, Afganistan.

Apart from the global fight against terrorism and the pressure from world community on Indonesia, Umar Al-Faruq case shows three important issues to be criticised, namely; *First*, there is no legal basis to extradite Umar Al-Faruq due to no extradition agreement between Indonesia and the United States. *Second*, pursuant to the Criminal Procedure Code, the one who has the power to arrest is the police, not the intelligence services. *Third*, Indonesia, undoubtedly, has violated *non-refoulement* principles as stipulated in Article 3 of the Convention, where it is foreseeable that Umar Al-Faruq will be subjected to torture if extradited.

The State report does not provide any information on expulsions undertaken outside the context of extraditions. The WGTA has no information on the procedures applied in the context of expulsion of foreigners to ensure that no one will be expelled or returned to a place where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Referring to Committee’s List of Issues §§ 10 and 12, Law No. 1 Year 1979 on Extradition is the legal umbrella to hold extradition treaties with other countries. Yet, seven extradition treaties, made prior to and after the entry into force of Law No. 1 Year 1979 – except the extradition treaty with Australia – only acknowledge the principle of *non-refoulement* pursuant to Article 33 (1) of the 1951 Refugee Convention.¹²⁹ On top of this, the latest extradition treaty with Singapore, signed in 2007, does not contain the principle of *non-refoulement*.

Paragraph 33 of the State Report claims, “...*Indonesia has always proposed a provision so that extradition request shall not be granted if there is a substantial reason that a person will be subject to torture or cruel, inhuman or degrading treatment or punishment in another country*”. The Government is supposed to take assertive measures by insisting and ultimately making sure that *non-refoulement* provision is included in any extradition treaty.

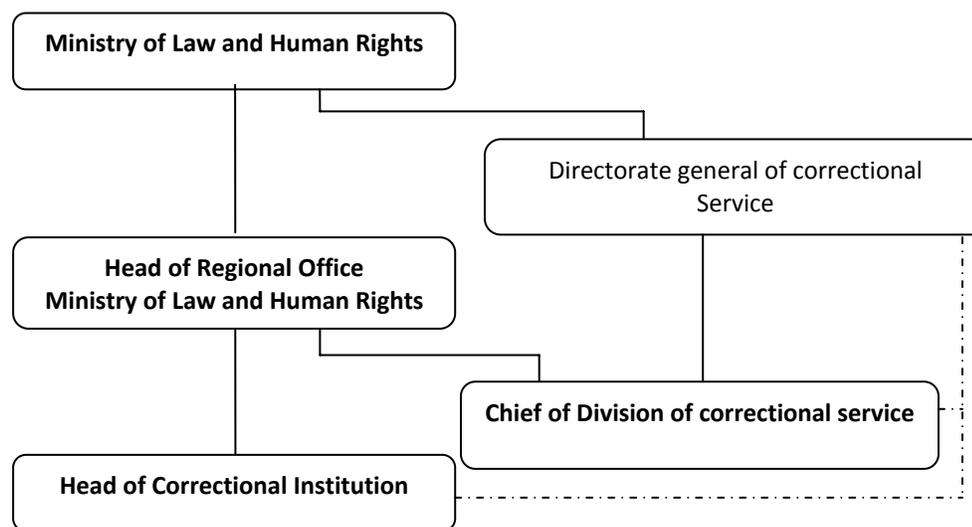
¹²⁹ Article 33 (1) of the 1951 Refugee Convention stipulates, “*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*”.

9. CONDITIONS OF DETENTION AND TREATMENT OF DETAINEES (ART. 16 UNCAT)

Currently, there are 223 Lapas, 143 Rutan, and 70 throughout 33 provinces in Indonesia.¹³⁰ During 2007, over capacity¹³¹, riots¹³², illegal levy¹³³, prostitution¹³⁴, drugs circulation¹³⁵, and minimum fulfillment of the rights of the detainees were the main problems faced by both correctional institutions and detention houses.¹³⁶

This very complex problem of detention service, among others, is due to the efficacy of current bureaucratic structure. At the present, detention service is managed by Directorate General of corrections, under the Ministry of Law and Human Rights. Such structure creates excessive bureaucracy, which made it impossible for the directorate general to have direct control over the detention places. For example, under current structure, problems faced by local detention facilities cannot directly be addressed by the Directorate General of corrections, but have to wait a recommendation issued at the Ministerial level. This has made the reform of detention haste and slow. The WGAT strongly believes that these problems can be resolved if there is an autonomous body or a Directorate General that has full power to restore detention conditions in Indonesia.

Current Organizational Structure



¹³⁰ For the differences between Lapas, Rutan, Bapas, see, section 1.2. Methodology used for the shadow report, p. 8 of this report.

¹³¹ See <http://www.depkmham.go.id/xdepkmhamweb/xunit/xditjenpemasy/statistik.htm>. See also Kompas Daily, 07 April 2007, "Napi Masih Dianggap Sampah; Ketua Komisi III DPR Minta Hamid Awaludin Berikan Perhatian".

¹³² See <http://www.vhrmedia.com/vhr-news/bingkai-detail.php?.g=news&.s=bingkai&.e=40>

¹³³ See <http://www.tempointeraktif.com/hg/jakarta/2007/05/13/brk,20070513-99964,id.html>

¹³⁴ Prostitution usually takes place in a special room inside the prison managed by a prisoner. "Rent money" mainly paid to the warden with a division of 70:30. Several correctional institutions in Jakarta, namely LP Cipinang, Rutan Salemba, and LP Tangerang, provide this kind of service. See

<http://www.detiknews.com/index.php/detik.read/tahun/2007/bulan/12/tgl/06/time/085725/idnews/862775/idkanal/10>

¹³⁵ See Kompas Daily, 10 September 2007, "Kepala Pengamanan LP Ditahar".

¹³⁶ See Kompas Daily, 04 April 2007, "Kondisi Lapas Pemuda Buruk, Terjadi Pelanggaran HAM, 49 Orang Meninggal".

The Director-General of Human Rights Protection, at the Ministry of Law and Human Rights, Ms. Harkristuti Harkrisnowo, states that the fulfilment of basic rights of prisoners in Indonesia is far from ideal. This is caused by a poor understanding of the development service offered and an insufficient state budget to provide basic facilities for the prisoners. She also affirms that rights to health, foods, and religion, are not in an optimal fashion.¹³⁷ In 2004, the Penitentiary authority launched a program aimed at minimize illegal levy inside the UPT, however, this problem has yet to be solved.¹³⁸

In general, condition of places of detention at police stations, correctional institutions and detention houses in Indonesia, notably in Jakarta and Bali, are very poor. Almost all detention facilities face common problem: over capacity. The number of detainees usually exceeds the capacity of the cells which have no air ventilations and proper toilets.

9.1. Police Station

During the examination process, a suspect has to be registered and temporary detained in a detention house or its affiliate. The police will take fingerprints and photos, medical check-up, and frisk the suspect in order to prevent the entry of illegal objects into the cells. In several cases, children are placed together with adults in detention cells (Polsek Denpasar Timur).

Food of nutritional value adequate for health and strength is not provided in most of detention facilities. For example, at Polres Metro Jakarta Pusat, detainees are served with rice, vegetable, boiled Tempe and salted fish two times a day. No drinking water is available to every detainee.

At Polres Metro Jakarta Utara, a 3 x 7 meter cell is occupied by thirteen detainees. Similarly, at Polres Metro Jakarta Pusat, a 2.5 x 2 meter cell is occupied by fourteen to twenty detainees and a 1.5 x 1 meter cell has to be occupied by two to three detainees. Air ventilations are very limited in each cell.

9.2. Prosecutor's Office

Article 138 (1) of the Criminal Procedure Code stipulates that after receiving the results of the investigation from an investigator, the prosecutor should examine it immediately and within seven days it is mandatory for the prosecutor to give an information to the investigator as to whether the dossier is complete or not. If the dossier is not yet complete, the prosecutor will return it to the investigator with instructions for it to be completed and within 14 days the investigator should return the complete dossier to the prosecutor.¹³⁹

At the prosecutor's office, detention room is used as a transit room for detainees who will be transferred to state detention houses. The police will hand over the case file to the public prosecutor¹⁴⁰ around 10:00 AM-15:00 PM.

¹³⁷ See <http://www.vhrmedia.com/vhr-news/bingkai-detail.php?g=news&s=bingkai&e=40>

¹³⁸ Please see Circular of the Director General of Penitentiary No. E.PR.06.10-70 Year 2004 on Free Money Circulation.

¹³⁹ See Article 138 (2) of the Criminal Procedure Code.

¹⁴⁰ See Article 8 (3) of Law No. 8 Year 1981 on Criminal Code Procedure (hereinafter, KUHP).

Prosecutor's Offices in Jakarta Pusat and Jakarta Utara have 6 x 2.5 meter rooms functioning as detention rooms, which are occupied by hundreds of detainees.¹⁴¹

9.3. Court Halls

There are three rooms available in a court, namely for adults, children and women. However, all rooms have no toilet. In Jakarta Utara District Court, a 4 x 4 meter room, often used by defendants awaiting trial, has to be occupied by approximately twenty-five people. In Jakarta Pusat District Court, detainees can go outside of the detention room just by paying 50.000 IDR (fifty thousand rupiahs).¹⁴²

9.4. Detention houses/correctional institutions

There are several legislations enacted with regard to the treatment of prisoners. They are:

- Law No. 12 Year 1995 on Correctional;
- Government Regulation No. 32 Year 1999 on Terms and Procedures on the Implementation of Prisoners' Rights in Prisons;
- Government Regulation No. 58 Year 1999 on Terms and Procedures on the Implementation of Authority, Task and Responsibility of the Officers in Prison; and
- Other legislations related to standard minimum for the fulfilment of basic needs for prisoners.

Article 6 of the UN Standard Minimum Rules for Treatment of Prisoners (hereinafter, SMR) has determined the internationally accepted principle in treating prisoners, namely non-discrimination principle on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Law No. 12 Year 1995 on Correctional provides basic principle in providing its services for prisoners, namely by upholding the values of humanity. It also guarantees the recognition and treatment of basic human rights that cannot be alleviated.¹⁴³

Information provided in paragraph 70 of the State Report is contestable. The Government claims, *"Since 2003, the Directorate General of Penitentiary, Department of Law and Human Rights, has distributed pocket books for the sentenced persons and prisoners concerning their rights, obligations, and prohibited acts"*. During the observations carried out in 2005-2007 to detention houses and correctional institutions in Jakarta and Bali, no pocket books were found. If any, the pocket books were likely circulated before the period of the research.¹⁴⁴

¹⁴¹ Statements given by a victim, in December 2007, in Jakarta, whose name and identity shall be kept in secret due to security reason.

¹⁴² Statements given by a victim, whose name and identity shall be kept in secret due to security reason.

¹⁴³ Consideration point (a) and (c) of Law No. 12 Year 1995 on Correctional explain that development service by upholding the principle of humanely treatment for the prisoners is of most important to be implemented. Thereby, distinction between the rich and the poor and room selling practice can be considered as inhuman treatment.

¹⁴⁴ Based on data collection of LBH Jakarta during their survey on the condition of detention from 2005-2007

9.4.1. Registration¹⁴⁵

After being registered, prisoners will be transferred to detention houses or correctional institutions functioning as detention houses. Registration is carried out by a *tamping*¹⁴⁶, prisoner who is asked to help daily registration. Based on the findings, during registration process, prisoners are required to undress and to squat near the registration room. Sometimes the registrar will hit the new prisoners on the head with a ruler. Instead of being informed of their basic rights, prisoners are only told to give information about their identification and physical characteristics and are required to obey all rules given.¹⁴⁷

9.4.2. Cell¹⁴⁸

In Rutan Salemba and Lapas Pemuda, physical condition of detention cells is very poor. The process of placement depends on the amount of money prisoners have. Based on the findings, registration process will be followed by room transactions. In certain cases, namely drugs and corruption, prisoners who refuse to buy a room, will be terrorised by the “foreman”.

Prisoners, who have no family and are not involved in specific cases like drug and corruption cases, will be put in a shelter cell. They will not be placed in specific blocks based on categorisation required. The number of prisoners living in the shelter cell is disproportionate to the dimension of the room. As a result, many prisoners experience insomnia and paralysis.¹⁴⁹ To this condition, the Government shows no intention in improving the current management policy of detention facilities.

9.4.3. Hygiene¹⁵⁰

Lapas Pemuda II-Tangerang has very limited toilets. All cells are very dirty, sleazy, and have no adequate toilets. Prisoners, who need to go the toilet, have to wait until the cells are opened. The central locking system used has limited the right of the prisoners to enjoy clean toilets. If they need to go to the toilet at night, they have to defecate and urinate inside the cell.

In Rutan Salemba, small kitchens in every corner of the cells have caused an unhealthy condition.¹⁵¹

9.4.4. Discipline and punishment¹⁵²

Pursuant to Article 47 (2) (a) and (4) of the Law No. 12 Year 1995 on the Correctional Institution, prisoners and child offenders who break the security and order within the correctional institution shall

¹⁴⁵ Article 7 of the SMR.

¹⁴⁶ *Tamping* is a term for a detainee who is appointed by the warden to help organising other detainees, including asking money, cigarette, and food from the detainees.

¹⁴⁷ Condition of registration in Rutan Salemba and Lapas Pemuda II Tangerang.

¹⁴⁸ Articles 9, 10, 11, 12 and 13 of the SMR.

¹⁴⁹ Nine victims, whose names and identities shall be kept in secret due to security reason, explain the practice of room selling and the use of shelter cell for new detainees. 20 meter x 10 meter cell is occupied by approximately a hundred and thirty detainees. 4 meter x 6 meter cell is occupied by twenty-eight detainees.

¹⁵⁰ Articles 14 and 15 of the SMR.

¹⁵¹ Statement given by a victim who directly observed the physical condition in Rutan Salemba and Lapas Pemuda II-Tangerang.

¹⁵² Articles 31 and 32 SMR.

be put in a solitary confinement (*tutupan sunyi*) for a maximum of six days. If the prisoners and child offenders commit the same offences or try to escape, they shall be put in a solitary confinement for a maximum of 2 x 6 days.

Disciplinary punishment is imposed on prisoners who cause troubles inside the cell. They will then be placed in a solitary confinement.¹⁵³ Solitary confinement in Rutan Salemba is bigger than the one in Lapas Krobokan-Bali, which can only be occupied by two people. However, the solitary confinement in Rutan Salemba has no toilet. Therefore, prisoners have to defecate and urinate inside the cell and then throw the dirt outside. Sometimes, food and drink served are placed near the dirt.

In Lapas Krobokan-Bali, prisoners can be kept in the confinement for one week to six months.¹⁵⁴ Toilet is provided in the confinement, yet, no adequate bathing and shower installations are provided for every prisoner. If they want to take a shower, they will only be sprayed with water, just like animals.

9.4.5. Categorisation¹⁵⁵

Similar to Lapas Krobokan-Bali and Lapas Paledang-Bogor, Rutan Salemba and Lapas Pemuda II-Tangerang make no separation between prisoners. In all detention places aforementioned, prisoners are not kept in separate cells. There are only two categorisations: prisoners who have money and those who become a "threat" to others. In fact, in Lapas Pemuda II-Tangerang, persons imprisoned by reason of criminal offence are not kept separate from other prisoners.

On the contrary, categorisation is made on the ground of race and territory. In Rutan Salemba, Ambonese and Palembangnese are those who have most power. This categorisation often causes riots because of fighting over economic areas and competing to become security guards for rich prisoners.

9.5. Detention of children: poor conditions of detention facilitating the occurrence of acts of torture or other cruel, inhuman or degrading treatment or punishment in juvenile correctional institutions

In Indonesia, detention cells are divided in several categorisations, namely for men, boys, women, and girls. However, detention places in certain regions do not have special cells for children and women.

Millions of children are deprived of their liberty¹⁵⁶ in Indonesia either in the criminal context or for protection purpose, in the 17 juveniles correctional institutions (where almost all children are boys) and care arrangements. Living conditions in those premises are generally very disturbing for children and leave them at greater risk of violence and abuse. Indeed, a Child Consultation on Violence

¹⁵³ Statements given by a victim, whose name and identity shall be kept in secret due to security reason.

¹⁵⁴ Statements given by victims, whose names and identities shall be kept in secret due to security reason.

¹⁵⁵ Articles 67, 68 and 69 of the SMR.

¹⁵⁶ According to article 11 (b) of the UN Rules for the Juveniles Deprived of their Liberty: "The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."

against Children, convened in 2005¹⁵⁷, affirms that violence against children usually happens in orphanages, shelters for migrant workers, detention houses, and correctional institutions. Such violence is often inflicted by police, warden, institution officer, housemaster, and senior children by reason of disciplinary punishment.

Type of violence	Forms of violence
Physical	Hit, locked-up, thrown with wood, burnt with cigarette, tweezed with chair, kicked, arrested by the Municipal Police Unit (Satpol PP)
Mental	Yelled at, insulted, threatened
Sexual	Sodomised, raped, assaulted, forcibly kissed

The rate of imprisonment for children has decreased during the recent year but still remain very high. The majority of detained children are sentenced for a period shorter than a year. Therefore, imprisonment of many children could be avoided. Also considering the violence suffered by detained children, avoiding imprisonment of children and privileging alternative measures to detention is a major means to prevent children from torture and other cruel, inhuman or degrading treatment.

a. Lack of separation between adults and child detainees and resulting violence

According to the report by the UN Special Rapporteur on Torture, children, even as young as 8 years old in some cases, are often mixed either with older children or with adults (usually young adults, between 18 and 25) due to overcrowding problem. Additionally, as many provinces do not have any juvenile detention, children usually are detained in the same detention place as adult, but their cell is separated. It clearly comes up the report by the Special Rapporteur that “children are at greater risk of corporal punishment and ill-treatment than adults in situations where they are deprived of their liberty”.

One prominent case occurred in 2006, where Muhammad Azwar alias Raju, aged 8, was prosecuted before Stabat District Court in Pangkalan Brandan, Langkat District, North Sumatera. Raju was accused of maltreating his friend at school. On 19 January 2006, the Judge issued an order to detain Raju at Pangkalan Brandan Detention Centre. Over fourteen days, Raju was detained together with 286 adult detainees, whereas, the capacity of the detention centre is only for 120 persons.¹⁵⁸ This situation increased the risk for him to become victim of multiple abuses, including ill-treatment and sexual violence.

b. Overcrowding

Up to 2008, there are seventeen juvenile correctional institutions in Indonesia. Some of them have over capacity problem:

¹⁵⁷ “Violence against Children in the Eyes of Indonesian Children”, KPP, YPHA, WVI, Save the Children, YKAI, Plan, UNICEF, and CCF, Jakarta, 2005.

¹⁵⁸ See KontraS Human Rights Report 2006, “HAM Belum Jadi Etika Politik”, August 2007, pp. 334-335.

- *LPA Anak Tangerang*. It accommodates 343 boys at the age of 12-26 years old (children as young as 12 are detained with young adults), yet, its capacity is only for 220 children. As a result, a 1 x 1.5 meter cell has to be occupied by three children without beds.¹⁵⁹
- *Rutan Pondok Bambu*. It can accommodate 504 children. Currently, this detention house is occupied by 854 woman detainees and 364 boys at the age of 14-22 years old.¹⁶⁰
- *Rutan Kebon Waru*. A 5 x 10 meter cell is occupied by 22 children. Up to date, this detention house is occupied by 1,482 people, outnumbering its capacity of 780 people.¹⁶¹

c. Failure to observe children's specific needs in detention

The living conditions are rudimentary. There is sometimes no bed. There are very few rehabilitation opportunities and almost no education and training.

9.6. Detention of women

9.6.1. *Panti Bina Insan Bangun Daya (PBIS)*

In Indonesia, several institutions have detaining powers. One of them is *Panti Bina Insan Bangun Daya (PBIS)*, an institution under the Department of Mental Spiritual Affairs and Social Welfare, Jakarta, which was established to accommodate victims of raid by the Municipal Police Unit (Satpol PP). This place is more similar to a prison than a rehabilitation centre.¹⁶² Raid victims can be kept for a long period, even for months.¹⁶³

Panti Sosial Bina Insan Bangun Daya (PSBIBD) was established pursuant to Governor Decision No. 163 Year 2002. PSBIBD functions as observation, consultation, motivation, selection, identification, registration, assessment, and mental, social, religious, and physical developments centre. It is required to provide social welfare services for people with social welfare problems.¹⁶⁴ There are three PSBIBD shelters in Jakarta, namely PSBIBD I in Kedoya, PSBIBD II in Ceger Cipayung, and PSBIBD III in Pondok Bambu.

PSBIBD I in Kedoya and PSBIBD II in Ceger Cipayung function as temporary shelters. PSBIBD I in Kedoya is used as a place to accommodate raid victims around Central and South Jakarta, while PSBIBD II in Ceger Cipayung is used to accommodate raid victims from North and East Jakarta.¹⁶⁵ PSBIBD III in Pondok Bambu is slightly different. It is specialised to accommodate mentally ill people. The physical appearance of the buildings, with iron bars and doors, is more similar to a prison than a shelter.¹⁶⁶

¹⁵⁹ See www.kompas.com/kompas-cetak/0310/08/nasional/61124.htm

¹⁶⁰ *Ibid.*

¹⁶¹ See www.kompas.com/kompas-cetak/0411/26/muda/1400764.htm

¹⁶² Based on the observation carried out to Panti Bina Insan Swadaya I in Kedoya and Panti Bina Insan III in Pondok Bambu, January 2008. See also the coverage of *Voice Human Right (VHR)*, 3 October 2006.

¹⁶³ Statements given by a victim, whose name and identity shall be kept in secret due to security reason.

¹⁶⁴ See radio release of Voice of Human Rights (VHR), 3 October 2006 at <http://www.vhrmedia.net/home/index.php?id=view&aid=2552&lang=>

¹⁶⁵ Statement given by Bambang, an officer at Social and Mental Agency, January 2008.

¹⁶⁶ *Ibid.* Statements given by victims whose names and identities shall be kept in secret due to security reason. Based also on the observation undertaken to PSBIBD I in Kedoya and PSBIBD in Pondok Bambu.

9.6.2. Rehabilitation Centres

Indonesia has many detention houses and rehabilitation centres in its several regions, which are used as places to detain street children, sex workers, street vendors, and mentally ill persons. Most of those detained in such places are women and children.

Kalideres Cengkareng Centre

In early March 2006, Siti Rahmani, a Psychology student from Islam Negeri Jakarta University conducted a field work in Cengkareng for her final assignment in obtaining her degree. Kalideres Centre has 6 wards occupied by 100 people in each ward. With regard to women's sanitary and health condition and sexual integrity, none of the women wears underwear. Most of them testified that they are often harassed and sometimes raped by the male guards. As a return, they will be offered a cigarette or a cup of coffee.

Kedoya Rehabilitation Centres

As poverty is seen as a social illness of the society, especially for big cities like Jakarta, the government set up social rehabilitation centres such as the one in Kedoya West Jakarta which functions as a rehabilitation place for poor people by the government. In reality, these places are used as detention places for poor people. The arrest and detention is conducted on the basis of disturbing public order. Three sexual workers who were once arrested in Kedoya Centre pointed out that at first they were promised to be guided and provided with trainings, such as sewing and making handicrafts. Yet, such promise only last for the first three months. They also said that they were served with bad meals, sexually harassed and raped. Worse, street children who are detained in this centre often experienced sexual harassment and are forced to use drugs. If some of them are drug addicts, they will be tortured, maltreated, beaten and forced to sexually serve the officers. In addition, sick people will not be treated properly. They will not be visited by doctor or medical personnel. Unfortunately, no serious attention is given to the aforementioned conditions by the local government or by the Komnas HAM, even though many complaints have been submitted.

10. EDUCATION AND DISSEMINATION OF INFORMATION (ART. 10 UNCAT)

Information provided in the State Report regarding the implementation of Article 10 of the Convention is very normative. The Government should provide a comprehensive information by listing human rights education programmes that have been taught, if any, for police officials, military members (TNI), or state officials/civil servants. These programmes should be included in both formal and informal education curriculum, notably in Police Academy,¹⁶⁷ Military Academy, and higher school for civil servants, such as the Institute for Public Administration (IPDN).¹⁶⁸

The Government claims that it has integrated teachings of human rights and humanitarian law in Military Academy. Through the Department of Defense, it has also made curriculum on Basic Education for National Defense.¹⁶⁹ The Government provides no information related to the substance of training/education curriculum, training method, and the length of training.

Referring to Committee's List of Issues § 21, no training into the absolute nature of *non refoulement* of Article 3 as well as on the non derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment is available. For instance, the 2005 handbook on human rights for cadets in police academy¹⁷⁰ did not include any information about the absolute prohibition of torture and other forms of ill-treatment.

Since 2006 several human rights trainings for the Police Academy in Semarang were conducted by NGO or centres for human rights studies at various universities in Indonesia, such as Human Rights Centre at Indonesian Islamic University (UII), Jogjakarta. These programmes have not included information about the absolute prohibition of torture and other forms of ill-treatment. These training programmes are general human rights training and do not include practical instruction about interrogation techniques, use of force, mass demonstration control, and response to cases of domestic violence against women.

¹⁶⁷ In 2006, Hendra Saputra, 21 years old, a police cadet, became the victim of violence committed by five of his seniors. All defendants were acquitted and proved not guilty in committing maltreatment. See <http://www.seputar-indonesia.com/ediscetak/jawa-tengah-diy/hendra-mundur-dari-akpol-3.html>

¹⁶⁸ Acts of violence also happened in the Institute for Public Administration (IPDN). In 2007, Cliff Muntu, 21 years old, died due to acts of violence committed by five of his seniors. See <http://www.antara.co.id/arc/2007/4/4/lima-praja-senior-ipdn-akui-aniaya-cliff-muntu/>

¹⁶⁹ Paragraphs 65, 66, and 67 of the State Report, CAT/C/72/Add.1.

¹⁷⁰ A handbook, "*Buku Naskah Sekolah tentang Hak Asasi Manusia untuk DIKTUK BA POLRI (SISWA)*", was published by the Education and Training Institute of the Indonesian National Police (Lemdiklat Polri) and IOM-Indonesia, 2005.

11. PRACTICE OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 1, 4, 12, AND 16 CAT)

11.1. Torture (and other forms of ill-treatment) against women

11.1.1. Domestic violence

Referring to Committee's List of Issues § 18, Law No. 23 Year 2004 on Domestic Violence has yet been implemented propitiously. This is caused by the lack of procedural provisions in its implementing arrangement, namely the Government Regulation No. 4 Year 2006 on the Implementation and Restorative Cooperation for Victims of Violence in Household. Up to the present, justice institution has yet put forward its initiative in adopting circular letter, which commonly used as a main reference for judges in running a trial of domestic violence cases.

The National Commission on Violence against Women recorded that in 2007, there were 25.522 cases of violence against women, which were handled by 215 institutions, including, the law enforcement agencies, hospitals, and civil society organizations. The figure consistently increased, from 7.787 cases in 2003.¹⁷¹

In 2006, out of the 22,512 cases registered, 74% had occurred in the household.¹⁷² A similar trend concerned the cases registered in 2007.

11.1.2. Circumcision against girls

In Indonesia, circumcision against women/girls is considered as a tradition, which is closely associated with religion. In practice, the circumcision can be carried out by medical officer, medicine man, or circumcision expert. Circumcision against women/girls is usually done to children at the age of 0-18 years old, depending on the local practices. In Java and Madura, 70% of the circumcision practices are done to children at the age of less than a year old and 30% are done to those at the age of 7-9 years old.¹⁷³

In 2005, Population and Policy Research Centre of Gajah Mada University, Jogjakarta, has carried out a survey to 140 Maduranese mothers who circumcised their little girls and who lived in Jogjakarta. The survey shows that circumcision against little girls was done when they were still a baby on the ground of tradition.¹⁷⁴ Circumcision against women/girls remains a tradition in several regions in Indonesia, namely Aceh, North Sumatra, Jambi, Lampung, West Borneo, South Sulawesi,

¹⁷¹ Executive Summary of the 2007 Report, National Commission on Violence against Women. Available at <http://www.komnasperempuan.or.id/metadot/index.pl?id=0>

¹⁷² National Commission on Violence against Women, *Critical issues related to the implementation of the CEDAW Convention in Indonesia*, 19 July 2007.

¹⁷³ See <http://www.pdpersi.co.id/?show=detailnews&kode=1002&tbl=biaswanita>

¹⁷⁴ See Sumarni dkk., *Sunat Perempuan di Bawah Bayang-Bayang Tradisi*, 2005, Population and Policy Research Centre, p. 32.

NTB, Jakarta, West Java, Central Java (Kudus, Pati, Solo, Sragen, and Jogjakarta), East Java (East Coast), and Madura.¹⁷⁵

Preventive measure of such practice has been taken by Mother and Child Health Unit (*Bina Kesehatan Ibu dan Anak, BKIA*), which is under the Directorate General of Community Health. Official circular No. HK.00.07.1.3.1047a was issued and addressed to all medical officers not to carry out cutting or other forms of gashing to woman's genital organ. However, this circular is not legally binding due to its legal status that is not included in the hierarchy of legislations.

Furthermore, on 20 April 2006, Directorate General of Community Health, Department of Health has also issued a policy (circular letter) for professional organisations (Indonesian Doctors Union, IDI); (Indonesian Pediatricians Union, IDAI); (Indonesian Midwives Union, IBI); (Indonesian Society of Obstetrics & Gynecology Association, POGI), (Indonesian National Nurses Association, PPNI), and (The Indonesian Society for Perinatology, PERINASIA) and other institutions under the Department of Health, which affirms the prohibition for medical officers to carry out circumcision against women and girls.¹⁷⁶ Up to date, this policy has not yet been socialised.

11.1.3. Corporal punishment

Several regional governments, in particular in Aceh, have established and implemented a series of regulations that aim to apply Syariah Law. The Indonesian Women Coalition (*Koalisi Perempuan Indonesia, KPI*) alleges that there are 158 local regulations which permit among other corporal punishments against women, such as flogging for wearing tight clothes, not covering their bodies, or not wearing veils in public.¹⁷⁷ For the last two years, there were at least 5 (five) cases of flogging against women reported.

In other regions, for example, in Serang-Banten, Circular Letter of the Regent No. 451.1/ 481/ Community Building, dated 29 January 2002, concerning the Appeal to Wear Muslim Outfit for Civil Servants and Elementary, Junior and High School Students,¹⁷⁸ was enacted with regard to the adoption of Regional Regulation No. 27 Year 2001 on the Islamic Vision of Serang Regency.

These regulations were adopted in order to accommodate the vision of autonomy government on the ground of Islamic Syariah formalisation, for instance, "*Akhlaqul Karimah*" (Tangerang) and "*Gerbang Marhamah*" (Cianjur). Most of these regulations are in conflict with national and international legal principles, as can be seen in Article 4 of Tangerang Local Regulation No. 8 Year 2005, which includes the word "suspiciously", which is in contradiction to the principle of presumption of innocence.¹⁷⁹

¹⁷⁵ *Ibid.*, p. 3.

¹⁷⁶ See http://www.tempointeraktif.com/hg/ragam/2006/10/11/brk_20061011-85780.id.html

¹⁷⁷ See 2008 Early Year Record, Koalisi Perempuan Indonesia. Available at www.koalisperempuan.or.id.

¹⁷⁸ *Ibid.*, p. XX.

¹⁷⁹ Female labours who have night shift and employees who work in Jakarta feel uncomfortable with this situation, as experienced by Angga, a female employee, who, because of her fear of being raided, asked a reference letter from her office so that she can feel safe if she goes home late. See Kompas Daily, 8 March 2006, p. 26.

Below is an example of the implementation of unconstitutional local regulation, namely Tangerang Local Regulation No. 8 Year 2005.¹⁸⁰

Twenty-eight women were arrested on the ground of being "suspected" as prostitutes. The trial of these women was held in Tangerang city hall coincided with the celebration of Tangerang Anniversary. It means that the trial was held outside the courtroom. There are few officials presented at that time, including Mayor Wahidin Halim, Governor Ratu Atut Chosiyah, Chairman of DPRD Tangerang, Advisory Board of the civil servants, and common people.¹⁸¹

11.1.4. Trafficking

Referring to Committee's List of Issues § 9, official record published by the National Action Plan Committee on the Elimination of Trafficking against Women and Children notes the increase in number of victims of trafficking is about 17% to 23% per year. A compilation prepared by ACILS (American Center for International Labor Solidarity) /ICMC (International Catholic Migration Commission) on human trafficking in 2005 identifies at least 130 human trafficking cases involving 198 perpetrators and 715 persons reported to be trafficked. From such numbers, only 62 perpetrators were prosecuted, while almost 89% of the victims experienced abuses and torture since they were taken until finally were sent to the destination place.¹⁸² Yet, the Criminal Investigation Bureau of the Indonesian National Police Headquarter denied this fact.

There are more than 1.000 people trafficked every year. In 2006 alone, there were more than 6.000 migrant workers who were trafficked. Trafficking victims often experience bad treatments at the time they arrive at their working place. They are also subjected to treatment that may amount to torture during the placement process by the Indonesian Labour Provider Company (*Perusahaan Jasa Tenaga Kerja Indonesia, PJTKI*).

Victims from Blitar, East Java, testified that they are often placed temporarily in a shelter run by a private agent, before finally distributed to the receivers. The shelter where they were inhumanely treated is similar to a prison and has no clean sanitation.¹⁸³ Approximately 10-20 people were placed in a room, where they were physically and mentally abused; unpaid; given no proper food; and raped by the agents. However, these cases are rarely revealed due to the lack of accurate data of the existing provider agencies. Moreover, most provider agencies are illegal as they do not meet official requirements necessary to establish a labour provider company. Up to the present, Labour Department cannot provide precise information on the number of illegal agencies. In 2005, there were 404 labour provider companies and the figure is increasing up to 9% every year.

¹⁸⁰ This regulation was adopted on 21 November 2005; yet, the implementation has just carried out on 27 February 2006, which was begun with raid conducted by the Municipal Police Unit (Satpol PP). See Syiriah Magazine, April 2006 (Documentation, LBH APIK Jakarta).

¹⁸¹ The trial was held because the prostitutes were accused of committing minor crimes. The Judge (Barmen Sinurat) and Prosecutor (Ari Bintang, SH) acknowledged that the trial, which was held outside a courtroom, has violated the Criminal Procedure Code, notably Chapter XVI on Prompt Examination. (Investigation Report, LBH APIK Jakarta, 2006)

¹⁸² See Book on Human Trafficking in 15 Regions in Indonesia, *"When They are Sold"*, International Catholic Migration Commission (ICMC) Indonesia dan American Center for International Labor Solidarity (ACILS), 2006, pp. 21-27. Available at www.stoptrafficking.or.id.

¹⁸³ This information is obtained from victim's counsellor from Women to Support Multiculturalism.

11.1.5. Women Migrant Workers

Legal instruments, which particularly govern the placement of migrant workers abroad, have not yet provided protection for them during their stay in a shelter or their working place. Law No. 39 Year 2004 on Placement and Protection of Indonesian Workers Abroad does not provide the rights of the migrant workers, yet, only emphasises recruitment and placement patterns to go abroad. Presidential Instruction No. 6 Year 2006 on Policies on Reformation System of Placement and Protection of Indonesian Workers is aimed at establishing working group and inter-department coordination pattern. Protection of migrant workers has yet to be considered as an urgent agenda.

MoU between the Government of Indonesia and Malaysia, which was signed by the Minister of Manpower (Erman Suparno) and a representative from Malaysia (Dato Seri Mohammad Radzi) on 13 May 2006, in Bali, emphasises more on the administrative obligations of the migrant workers in order to obey immigration policy in Malaysia. In fact, the rights of the migrant workers considerably depend on the kindness of the employers.¹⁸⁴

The Labour Department notes that almost every year more than 1.000 Indonesian workers go abroad to work as migrant workers. The main destinations are Malaysia, Saudi Arabia, Hong Kong, Singapore, Taiwan, Macau and Japan.

Based on the information obtained from a migrant worker, waiting period in shelter is based on the destination country. Migrant workers, who will be placed in the Middle East, will have shorter waiting period (3-4 months) and larger freedom of communication¹⁸⁵ than those that will be placed in Asia (9 months to 2 years).¹⁸⁶

Referring to Committee's List of Issues § 36, physical and mental tortures are often committed since the process of registration. The condition of the shelter, which is supposed to be a transit place, is very poor. Used as the ground of waiting before departure or for those incapable of paying the departure cost,¹⁸⁷ the shelter is often used to lock the workers up, take them as a hostage, and detain them. Shelters are sometimes owned not only by PJTKI, but also by the sponsors.¹⁸⁸

According to DM, one bedroom house in Lubang Buaya, was rent by the sponsor (PT Duta Putra Banten) to accommodate people that will be placed abroad. The room was occupied by 6-7 people. DM was kept there for 4 months.¹⁸⁹

Worse, during their stay in the shelter, migrant workers are often employed as house cleaners or baby sitters by PJTKI/sponsor.¹⁹⁰ Whereas, Article 41 (2) of Law No. 39 Year 2004 on Placement

¹⁸⁴ See the MoU between Indonesia and Malaysia concerning recruitment and placement of Indonesian migrant workers.

¹⁸⁵ *Ibid.* Limitation of the right to communicate is experienced by MR, a victim, whose name and identity shall be kept in secret due to security reason.

¹⁸⁶ Statement given by ELN, a witness whose name and identity shall be kept in secret due to security reason, in a discussion at Migrant Care, in December 2007.

¹⁸⁷ Statements given by a victim, whose name and identity shall be kept in secret due to security reason.

¹⁸⁸ Statement given by DM, a witness, whose name and identity shall be kept in secret due to security reason.

¹⁸⁹ Discussion at Migrant Care, 12 December 2007.

and Protection of Indonesian Workers Abroad requires the sponsor to provide education and training programmes with regard to the work that shall be carried out in the destination country.

Based on information gathered from Indonesian Migrant Workers Union (SBMI) Migrant Care, IOM Surabaya, Women to Support Multiculturalism (WSM) and Shelter Genta Surabaya, most women who work as housemaids abroad (in Saudi Arabia, Malaysia, Hongkong and Japan) experienced different forms of abuse. They often kicked, beaten, poured with hot water, kept in a dark room, flogged, thrown, sexually harassed, and raped by their employers.

11.2. Violence against children amounting to torture or other cruel, inhuman or degrading treatment or punishment

The Government often disregards the implementation, monitoring and evaluation, law enforcement, and budgeting measures that of most important in ensuring that relevant regulations are made effective.

During 2001-2006, the Institute for Children Protection, Jogjakarta, has handled 249 cases of violence against children. This figure is much lower than cases occurred in Jakarta and neighbouring regions, as many as 1.124 cases (2006, *Indonesian Commission on Child Protection*). In Jogjakarta, cases of violence against children, including sexual harassment, are amounted to 7.414 cases (*Jogjakarta Social Service*, 2006).¹⁹¹

Social Department claims that in 2004, around 48.526 children suffered from various forms of violence and the number increased to 182.406 within two years.¹⁹²

11.2.1. Violence in school and education settings

The Child Consultation on Violence against Children, convened in 2005¹⁹³ in 18 provinces, points out that just as at home, children are also subjected to violence at school. In general, such violence is committed by their close people such as teacher, headmaster, counsellor, sport teacher, school security guard, class supervisor, senior, class leader, etc.

According to the Indonesian Commission on Child Protection (*Komisi Perlindungan Anak Indonesia, KPAI*), there are 780.000 cases of violence against children at school. This figure is ever increasing significantly every year.¹⁹⁴ Meanwhile, National Commission on Child Protection (*Komnas Anak*) claims that in 2006, there were 192 cases on violence against children at school, which then increased up to 226 cases in the January-April 2007.¹⁹⁵

¹⁹⁰ As experienced by DM, a witness, whose name and identity shall be kept in secret due to security reason. DM and her friend, RHY, who work at PT Reka Wahana Mulya in Condet, will be verbally abused, beaten, kicked, and unfed, if they refuse to do things ordered.

¹⁹¹ See Kompas Daily, Wednesday, 21 March 2007.

¹⁹² See Kompas Daily, Wednesday, 21 August 2007.

¹⁹³ See *"Kekerasan terhadap Anak di Mata Anak Indonesia"*, KPP, YPHA, WVI, Save the Children, YKAI, Plan, Unicef, dan CCF, Jakarta, 2005.

¹⁹⁴ See <http://www.tempointeraktif.com/hg/nasional/2006/03/23/brk,20060323-75423.id.html>

¹⁹⁵ See http://www.republika.co.id/koran_detail.asp?id=293028

In 2007, an incident of "mass pinch" happened at SDN 07 Pagi Batuampar. The incident was started when the victim, Ern, a 9-year-old girl, was playing with one of her friends, KRL. Both of them were standing on a school table. The class supervisor, WN¹⁹⁶, saw the two children and ordered them to come down from the table. They ignored the order which made WN very upset. She then ordered the other pupils in the class to pinch ERN. As a result, she suffered from bruises on her body. Because of the pain and trauma, ERN was unwilling to go to school for three days.¹⁹⁷

11.2.2. Violence against street children: excessive use of force by the Municipal Police Unit (SATPOL PP)

Based on a survey undertaken in 2007 by Jakarta Centre for Street Children (JCSC), children working or living in the street are regularly victims of repressive treatment, including raids, by the police. There are several patterns of violence often used by the Municipal Police Unit (Satpol PP) against street children, amongst others hitting, kicking, burning, harassing sexually, dragging, burning with cigarette, blackmailing, detaining, tufting, and shaving their hair. Most of those acts clearly amount to cruel, inhuman or degrading treatment or punishment and even torture sometimes.

Most of street children, who are registered in February 2007 by the JCSC, usually experience violence and torture during the arrest and detainment in Panti Kedoya and Panti Cipayung.

Irfan Maulana, a 14-year-old boy, a three-in-one jockey. Irfan died on December 8th, 2007, after being caught during a Municipal Police Unit raid in Pakubuwono, Kebayoran Baru. He had been soliciting rides in the three-in-one zone. His body was taken to a community health centre. He had not been carrying identification and was transferred to the hospital in Central Jakarta as a "John Doe". Police have questioned the nine officers who carried out the raid. Deputy Head of the Municipal Police Unit, R. Sitindjak, said his subordinates had not assaulted the boy, who had likely died of an epileptic fit. It is an explanation that Irfan's mother finds difficult to understand because she was not aware her son suffers epilepsy. However, two teenage jockeys said they saw three public officers beating Irfan. The 13-year-old and the 17-year-old made a public appearance in an interview with the media few days after the incident, wearing ski masks to conceal their identities. The 17-year-old witness said he could identify one of the officers who assaulted Irfan as he frequently picked on the jockeys in the area. "He wears glasses and has bucked teeth. His name is Nanang," he said. Agus, a chief comr. said if evidence of assault was found, the officers would be named suspects.¹⁹⁸ Up to the present, the case is still unsolved. Polsek Kebayoran Baru shows no cooperation to reveal the case and left those responsible for the crimes unpunished.¹⁹⁹ This is an example illustrating thousands similar cases.

¹⁹⁶ Statement given by ERN father, in December 2007.

¹⁹⁷ See http://www.beritajakarta.com/V_Ind/berita_detail.asp?idwil=0&nNewsId=26554

¹⁹⁸ See

<http://www.thejakartapost.com/news/2007/01/19/jockey-didn039t-die-beating-rscm.html>;

<http://www.thejakartapost.com/news/2007/01/13/police-investigate-teenage-jockey039s-death.html>;

<http://www.thejakartapost.com/news/2007/01/18/dead-jockey039s-friends-come-forward-testify.html>

¹⁹⁹ Please visit <http://jcsc-indonesia.blogspot.com/search/label/alm.%20Irfan%20Maulana%20%2814%29>

Following is a phenomenal case of raids against street children, carried out by the Municipal Police Unit:

DS, a 14 years old girl, a street singer at Ratu Plaza (a mall located in Southern Jakarta), 2005, date: unrecorded.

I was sitting when I saw my friend ran over. As I was afraid, I then also ran as fast as I can, but the wall had stopped me and I finally surrendered myself to one of the Municipal Police Unit officers. He held my hand tightly and it was painful, maybe he was afraid that I would run off to escape from him.²⁰⁰

²⁰⁰ Discussion with DS, January 2008, at Sanggar akar.

11. CONCLUSION AND RECOMMENDATIONS

Out of the 17 recommendations issued by the CAT in 2001, only a few were implemented, such as inviting Special Rapporteur on torture to visit the country in 2007 and the establishment of human rights ad hoc court for the East Timor cases. Yet, the result of this court generated criticism for its partiality and poor legal standard applied in the trial.

Having explained thoroughly on the practice of torture in the above chapters, there are conclusions and recommendations that could be drawn into, as follows:

Safeguards and prevention:

- Urge the Government to speed up the process of revising the KUHP, notably with regard to punishment for public officials who deliberately inflict or order torture or fail to prevent torture.
- Urge the Government to revise several legislations that are closely related to torture prevention, namely Law No. 4 Year 2004 on the Power of the Judiciary, Law No. 2 Year 2002 on Indonesian Police, Law No. 16 Year 2004 on Public Prosecutor's Office and Law No. 18 Year 2003 on Advocates.
- Urge the Government to conduct harmonisation of regulation at the national level so as to eliminate any policy endorsing torture.
- Urge the Government to adequately criminalise torture in its domestic legislations, particularly in the KUHP.
- Urge the Government to integrate non-refoulement principle as mandated by Article 3 CAT in every extradition agreement with other countries.
- Urge Government to review all existing extradition agreements as to be in compliance with the Convention.
- Urge the government take immediate measure necessary to eliminate these stations, and strengthen the police to deliver their functions effectively.
- Urge the Government to follow through on its commitment to ratify the OPCAT
- Urge the Government to strengthen the capacity of Komnas HAM to be active on torture prevention.
- Urge the Government to revise provisions on reparation/redress in the Criminal Procedure Code with regard to the fulfillment of victims' rights.
- Urge the Government to disperse military posts in Papua.

Conditions of detention:

- Urge the Government to revise Law No. 12 Year 1995 on the Correctional Institution by listing places of detention, including social rehabilitation center, psychiatric institution, military detention, intelligence detention, and children educational house.
- Urge the Government to immediately establish visit mechanisms to places of detentions at police station, prosecutor's office, court, detention house, rehabilitation centres and correctional institution.
- Urge the Government to improve detention conditions, especially with regard to food serving, medical treatment and cell condition.

Compensation and rehabilitation:

- Urge the Government have to make revision on the policy on reparation/redress is prerequisite in fulfilling victims' rights.
- Urge the Government to establish special mechanisms of a commission for reparation should be made either by establishing a new commission or by attaching the function at a designated government institution such as LPSK.

Women and children:

- Urge the Government to raise the minimum age for criminal responsibility.
- Urge the Government and other related state institutions to support the policy issued by health department to criminalise and to prohibit the practice of circumcision for girls or babies
- Urge the Government to conduct public education on the risk of circumcision on girls and human rights implications of such practices.
- Urge the Government to improve the understanding of religious leader, and local community leaders as well as legal enforcement officials on the problem of circumcision.
- Urge the Government to enact implementation decree/circular on domestic violence and provide for Special Service Room/Special Service Centre mechanisms at the lowest level of police stations, namely at Polsek.
- Urge the Government to immediately implement Law No. 21 Year 2007 on Eradication of Human Trafficking.
- Urge the Government to revise Law No. 39 Year 2004 on Placement and Protection of Indonesian Workers Abroad so as to include provisions and safeguards for the protection of women domestic workers from violence.
- Urge the Government to review all unconstitutional local regulations that discriminate against women and that provide for their unchecked arrest and detention as well as inhuman and degrading punishment.
- Amend the draft KUHP provisions regarding pornography and adultery so as to avoid disproportionate and arbitrary punishment of women.