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**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
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COMMITTEE AGAINST TORTURE

Fortieth session

Geneva, 28 April – 16 May 2008

**THE REPUBLIC OF INDONESIA  
RESPONSE TO THE  
List of issues to be considered during the examination of  
the second periodic report of INDONESIA (CAT/C/72/Add.1)**

**Article 1**

**Question 1**

1. According to the information received by the Committee, Indonesia has not yet amended its penal legislation in order that its existing definition of torture fully conforms with the definition contained in Article 1 of the Convention. The definition of torture in Article 1 section 4 of Law 39/1999 on Human Rights is not applicable to criminal offences other than “gross violations of human rights” (§ 73 of the report), which the Human Rights Court is solely competent to consider (article 104 of Law 39/1999). Please clarify whether perpetrators of individual acts of torture which have not been classified as “gross violations of human rights” have been prosecuted under this definition and this legislation.

Although not precisely covered in the definition of torture as stated in the Convention, the Indonesian Penal Code in its Articles 351 – 358 recognizes and provides punishment for acts of maltreatment. They cover areas of minor abuse to major abuse with possible punishment carrying imprisonment terms of 2 (two) to 9 (nine) years. Crimes involving maltreatment are first processed in the ordinary courts, with the National Police as the investigators, the District Attorney as the prosecutor, and a judge of the District Court presiding.

The Indonesian government is currently revising the Penal Code which will incorporate the provisions on torture in order to comply with the Convention. Draft Article 404 on the Penal Code

states that: *“Every public authority or other individuals acting in their official capacity, or an individual acting on behalf of or with the consent of public officials, who commit an act inflicting severe pain or suffering both physically or mentally on another person for the purpose of obtaining information or a confession, such an individual will be punished for the act committed or which is suspected of having been committed. Also, intimidation or coercion by this official or a third party, or for any reason based on discrimination of any kind, carries a sentence of a minimum of 5 (five) years imprisonment and a maximum of 20 (twenty) years imprisonment”*.

- a) If so, please give examples of prosecutions, convictions and penalties applied by the Courts of General Jurisdiction as well as by the other courts of the Indonesian penal system.

Between 2000 and 2004, the Indonesian government brought to justice around 330 (three hundred and thirty) military (TNI) and National Police officials on charges of maltreatment. From 2005 to 2007, after the separation of the National Police from the military, the government put 362 personnel on trial for similar charges. Based on the decision of the Military Court, those 362 personnel were found guilty and imprisoned. Currently, they are serving prison terms in military prisons in Medan, Cimahi, Surabaya, and Makassar.

Cases of torture other than those provided for under law No. 39//1999 and Law. No. 26/2000, are dealt with under the Penal Code and Military Penal Code. The following are some examples of cases of maltreatment involving security and law enforcement officials that have been processed and received binding decisions:

1. Acts of maltreatment perpetrated by Praka Afriwan Hakim, Nrp. 3195007202117, a member of Battalion 303/13/1 of the Strategic Corps, was processed by the 11-09 Military Court of Bandung. The subject was found guilty and sentenced to a one-year imprisonment term based on the decision of the Court, under reference no. Put/11-K/PM-II-09/AD/I/05.
2. Acts of maltreatment committed by Second Lieutenant Suharta, Nrp 56770, member of the Presidential Security Group was similarly punished. He was sentenced to a year's imprisonment, based on court decision No. Put/11-K/PMT-II/AD/III/06, dated 15 March 2006.
3. Cases of abuse committed by the police in 2007: around 151 cases.

From the abovementioned cases, it is evident that military and law enforcement officials who commit crimes are subject to punishment in accordance with the existing martial laws. It is worth noting that if they commit general [non-military] criminal acts, they will be charged under the general provisions of the Penal Code.

- b) If persons have not been prosecuted under this definition, please provide the definition and legislative act under which perpetrators of acts of torture have been prosecuted and convicted and what were the penalties applied. Please indicate whether there has been any progress, or any timetable for adoption, of the draft Penal Code cited in paragraph 22 of the State report.

As mentioned earlier, there is currently no legislation in Indonesian law which covers the definition of torture as stated in Article 1 of the CAT. The crime most similar to the definition of torture within

the provisions of Indonesian law is the crime of abuse or maltreatment as mentioned in Articles 351 to 358 of the Penal Code, with punishment ranging from 2 (two) to 9 (nine) years imprisonment. If the person committing the crime is a military officer or national police personnel, he or she may be additionally punished with the following; dismissal, a non-remunerated suspension from all military duties, or other administrative sanctions.

There are legal provisions regarding the classification of torture, such as articles 422, 351, 353, 354, 355, 53 and 55 of the Penal Code. Article 422 of the Penal Code, for example, states that an official who is under investigation in a criminal case and who uses coercion to secure a confession or information will be punished with a maximum of four years' imprisonment.

Article 351 of the Penal Code states that:

- (a) Maltreatment will be punished with a maximum of two years and eight months in jail or a fine of 300 rupiah;
- (b) If the action causes serious injury, the offender will be punished with a maximum of five years imprisonment;
- (c) If it causes death, it will be punished with a maximum of seven years imprisonment;
- (d) Maltreatment is equal to intentional damage to health.

Article 353 of the Penal Code states that:

- "(a) Maltreatment committed with premeditation shall be punished with a maximum imprisonment of four years;
- (b) If the act results in serious physical injury, the offender shall be punished with a maximum imprisonment term of seven years;
- (c) If the act causes death, he shall be punished with a maximum imprisonment of nine years."

Article 354 of the Penal Code states that:

- "(a) A person who deliberately causes another to suffer serious physical injury, shall, being guilty of serious maltreatment, be punished with a maximum imprisonment term of eight years;
- (b) If such acts result in death, the offender shall be punished with a maximum imprisonment of 10 years."

Article 355 of the Penal Code states that:

- "(a) Serious maltreatment committed with premeditation shall be punished with a maximum of 12 years imprisonment;
- (b) If such acts result in death, the offender shall be punished with a maximum of 15 years imprisonment."

The provisions also contain references to any "attempts to commit a crime" (article 53) and the legal provisions for "those who intentionally provoke the execution of the act" (article 55).

Currently, the Indonesian government is revising its Penal Code, which covers the criminalization of torture as stated in Article 1 of the CAT. Since the revision covers comprehensive criminal charges in Indonesia, no deadline has been established. However, the draft is a top priority in the National Legislative Program.

## **Question 2**

2. Please also provide detailed information on all cases of torture investigated and prosecuted by the Human Rights Courts under Law 26/2000 as well as a number of indictments and convictions, and indicate the penalties applied to the convicted perpetrators. Please provide the legal or jurisprudential definition of “gross violations of human rights” (articles 1 (2) and 7 of the Law) as applied by the Courts and provide examples of the trials mentioned in § 107 of the report, including the sentences and penalties.

Article 7 of Law No. 26 of 2000 on the Human Rights Courts stipulates that gross violations of human rights also include genocide and crimes against humanity. The prosecution of perpetrators of gross violations of human rights is undertaken via the Human Rights Court. One example of gross violations of human rights is the Tanjung Priok case (1984). The results of the trial concluded that the perpetrators were not guilty of committing gross violations of human rights because there were no subordinates involved in committing the alleged gross violations of human rights. This decision is legally binding.

According to Law No. 26 of 2000, gross violations of human rights require several elements, including:

**Genocide:** Any action intended to destroy or exterminate in whole or in part a national group, race, ethnic group, and/or religion by killing members of the group; causing major physical and mental suffering, imposing measures intended to prevent births within the group, and forcibly transferring children of a particular group to another group.

**Crimes against humanity:** Any action perpetrated as part of any broad or systematic direct attack on civilians in the form of: murder; extermination; enslavement; enforced eviction or movement of civilians; arbitrary appropriation of the independence or other physical freedom in contravention of international laws; torture; rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilization or other similar forms of sexual assault; the terrorization of a particular group or association based on their political views, race, nationality, ethnic origin, culture, religion, sex or other basis, regarded universally as contravening international law; enforced disappearance of a person; or, crimes of apartheid.

Article 9 (crimes against humanity) of Law Number 26 of 2000 was used as the basis for prosecuting the case of gross human rights violation in East Timor in 1999 and in Tanjung Priok in 1984. The court ruled that the accused in both cases were proven not guilty of gross human rights violations. Currently, the verdict still has legal standing.

## Article 2

### Question 3

3. How are the basic legal safeguards for detained persons (access to a lawyer and doctor and right to inform a relative) implemented in the State Party from the outset of their detention? What legal provisions, if any, establish those guarantees? According to information before the Committee, the police may detain suspects without warrant and for a period up to 20 days (even more in some cases) without presenting them before a judge. Please provide detailed information on the *de facto* practice of detention of suspects by the police and TNI, including numbers and length of detention. Are persons detained by the police and TNI systematically registered and is there a central registry of detainees? Please provide information on the enforced disappearances (1) of a 16 year-old boy allegedly taken into custody in 2004 by the police, (2) of Mukhlis and Zulfikar, members of the local NGO Link for Community Development, and (3) of elementary school teachers Muhammad Amin Alwi and Hasballah, who were forcibly taken in 2004 by 10 armed men in military uniforms in Nagan Raya Regency.

Law Number 8 of 1981 on the Code of Criminal Procedure (KUHAP) contains safeguards for detainees for any crimes committed and carries a minimum sentence of five years.

Articles 50 to 68 of this law guarantees access to medical treatment, a personal doctor, lawyers, religious leaders, a claim for personal loss and the right to an open trial.

1. Every detention by the police should always be accompanied first with a warrant from an authorized investigator at the level of Chief of Unit for 20 days.
2. Detention should be in a State penitentiary located in a police station such as the National Police headquarters (Mabes Polri), the provincial police station (Polda), and regency or district police stations (Polres and Polsek).
3. The treatment of detainees in the penitentiary of the National Police station is regulated by the Chief of National Police Regulation Number 4/2005 on the Maintenance and Treatment of Detainees in the National Police Headquarters Penitentiary.

Article 262.1 of Law Number 31 of 1997 is one of the legal provisions available concerning military detainees. The law also mandates the head of the court to supervise and monitor detainees with the assistance of one judge or more who will also be working in a supervisory or observatory role.

The registration of detainees is processed in the detention centers using a registration book for detainees available at the district police station (Polsek), regency police station (Polres) and national police headquarters (Mabes Polri). This record is updated every day and on a monthly basis. The final data is then compiled into the database of the National Police headquarters.

By observing the description of the forced arrest case in the Nagan Raya Regency in 2004 toward 2 (two) members of Local Non Governmental Organization (NGO), Muklish and Zulfikar, and also 2 (two) teachers, Amin Alwi and Hasballah, who were suspected to be done by 10 (ten) persons in

military uniform, it is concluded that the data provided were unreliable as mentioned in Article 20, considering some things needed to be considered, among others were:

1. No names, rank, and/or unit/squad of the suspects were mentioned in the case.
2. The use of military uniforms during conflict period cannot be generalized as armed forces identity in Aceh, since Aceh Separatist Movement/Aceh Armed Forces (GAM/TNA) were also using similar military uniform during the conflict.
3. The Nagan Raya Regency were classified as a white area (area which inhabitants supported the Government of Indonesia) during the conflict, so that the pressure to the Nagan Raya people by the Aceh Separatist Movement/GAM was very strong by means of terror, intimidations, kidnappings, and murders.
4. During the conflict, in 2003 – 2004, there were genocide efforts by the Aceh Separatist Movement/GAM toward the teachers and those who dealt with education, with purpose of eliminating the concept of nationalism and the understanding of Indonesian historical struggle within Aceh younger generation.
5. The chronology of the forced arrest (kidnapping) toward the 2 (two) teachers were as follow: “On 6 January 2004 at 09.00 A.M., there was a kidnapping by 10 (ten) Aceh Separatist Movement personnel wearing military uniform and using 7 (seven) mixed long rifles toward 2 (two) teachers who were teaching in the Paya Udeung Elementary School of the Suenagan District, Nagan Raya Regency, at that time. The victims kidnapped were Hasballah (45 years old) and Muhammad Amin Alwi (35 years old). On 10 January 2004 at 06.30 P.M., both victims were released by the Aceh Separatist Movement (GAM)”.

#### **Question 4**

4. Please provide detailed information on all cases of torture prosecuted by the Military Courts applying the Military Penal Code as well as number of indictments and convictions, and indicate the sentences and penalties applied to the convicted perpetrators. Under article 9 section (a) of Law 31/1997, Military Courts have the jurisdiction to prosecute military personnel regarding any acts, including crimes of a non military nature. Please report on plans to modify such provision, bringing the law in compliance with the State party’s international obligations. Please explain on what specific charges the military personnel mentioned in §§ 38 and 39 of the report were prosecuted and what were the penalties for such acts.

From 2000 to 2004, there were 330 torture-related criminal cases involving military personnel. Between 2005 and 2007, and following the separation of the National Police from the Armed Forces (TNI), and while using the Military Penal Code for similar charges, 362 members of the Indonesian Armed Forces (TNI) personnel were brought to justice.

According to Article 65 of Law No. 34 of 2004 on the Indonesian Armed Forces, military personnel are subject to the authority of the military courts with regard to any violation of the Military Penal Code, and are subject to the authority of the ordinary courts when dealing with general criminal acts, this being in accordance with the stipulations in the law. Then in Article 74.1 of the law, the rule - as mentioned in Article 65 - is valid until a new law on the Military Court is enacted. Until such a law is adopted, the Indonesian Armed Forces must adhere to Law No. 31 of 1997 on the Military Judicature (using Military Penal Code).

Legal proceedings against 12 Indonesian Armed Forces (TNI) personnel (Serka Irwan Triyono, Sertu Suriadi, Serda Endang Hermawan, Koptu Tri Tjahjono, Kopda Dede Rohman, Praka Pudji Santoso, Prada Muhammad Yusuf, Prada Abdul Wahid, Prada Yunus Do Abas, Prada Iyan Cahyana, Prada Budianto, and Prada Iman Kuswana) in the case concerning the inhuman treatment of a civilian was brought before Military Court I-01 in Banda Aceh. All the perpetrators were charged under Article 351 (1), Article 55 (1) *alinea* 1 of the Criminal Act which states; “*collectively or single-handedly conducting an act of abuse*”, and article 352 (10 and article 55 (1) *alinea* 1 of the Criminal Act which states that “*collectively or single-handedly conducting acts of abuse which does not cause any physical illness or hindrance to work*” are punishable under the law. According to the court’s verdict, all suspects were proven not guilty and were thus released as suspects and all charges dismissed. Subsequently, the court ruled that all the suspects were to return to their military command post and be processed there in accordance with the military disciplinary laws.

The legal procedure with regard to three TNI personnel (First Sergeant Hariono-suspect 1, Pratu Alfian-suspect 2, Prada Sudariyanto-Suspect 3) concerning the case involving Hamdani Yahya, Maimun Ahmad and Rajali were submitted to Military Court I-01 in Banda Aceh. All the perpetrators were charged under article 351 (1) and article 55 (1) of the Penal Code which stipulates that acts; “*collectively or single-handedly conducting acts of abuse*” are punishable under the law. Based on the court’s verdict, the suspects were proven guilty of collectively conducting acts of abuse and were sentenced. The first suspect received a 4-month imprisonment term for the acts committed, while the second and third suspects received sentences of 4 months and 20 days imprisonment. They have served their terms in the Medan Military Penitentiary.

### Question 5

5. According to documentation before the Committee, torture is widely used by police forces and military forces, especially in Papua and Aceh provinces, reportedly against many detainees. Sources claim that a climate of persistent impunity for the security forces exists, especially in those provinces, where most cases reportedly have not been investigated or the perpetrators have not been prosecuted or convicted, or where the alleged cases of torture adjudicated have been prosecuted as disciplinary or ordinary criminal cases and resulted in lenient sentences. Please provide information on the steps taken to establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into all allegations of torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials, as recommended by the Committee (§ 10 (b)). In view of the state of emergency declared in Aceh in 2003 and 2004, please explain whether measures have been taken to uphold the absolute prohibition of torture there and, if so, how they are monitored and enforced.

In contrast with the documentation before the Committee, the findings of Mr. Manfred Nowak, the Special Rapporteur on Torture, during his visit to Papua, show that torture is not being widely used by the police and military forces in Papua. Furthermore, during Ms. Hina Jilani’s visit to the

province, the police and military authorities presented various complaints and discussed the prevention of torture and impunity with regard to the police and military personnel.

Law Number 31 of 1997 on the Military Court provides a legal basis for the presumption of innocence when an investigation into torture is being carried out. Any violation of this principle will be considered as a violation of the law.

Article 100.1 of the law states that the complaints mechanism is the basis through which the victims or those who have been mistreated by law enforcement officials can seek redress. It states that “every person who has become a victim or has experienced or witnessed and/or heard of a crime being carried out by someone as referred to in article 9 (1), has the right to report or file a complaint to the investigator (military police, commander or a person who is in the capacity to impose punishment, military sanctions, etc). Whether it is verbal or written, the investigator is obliged to follow up the complaint.

The monitoring system for police investigations of crimes committed by civilians is handled by the internal monitoring section in the Indonesian police headquarters, and consists of a unit provost and police personnel at the district and provincial police levels and from the National Police headquarters. Monitoring is also carried out by civil society, which is now liberal and vibrant, and free to file its complaints through the Ombudsman’s Office, through the press (media), Parliament, the National Human Rights Commission and the National Police Commission. This will prevent and limit abuse by police personnel. In this regard, the monitoring process will be carried out in a layered manner, starting with the disciplinary rule, and carried out using the National Police Code of Ethics as well as the ordinary court system.

Law Number 31 of 1997 on Military Courts was used as part of the efforts to uphold the absolute prohibition of torture by military personnel during the state of emergency in 2003 and 2004 in Aceh. This has also served as the legal basis in all jurisdictions of the military court regardless of the circumstances, be it in times of peace or during a state of emergency. In every military operation, whether in Indonesia or abroad, although well equipped with human rights and humanitarian law material, aside from the standard operating procedures (including rule of engagement) every military personnel will be given a technical briefing and training on human rights, to prevent violation of human rights.

## **Question 6**

6. According to the State Party report (para 8), since 2000, the Police have been separated from the Armed Forces (TNI). In principle, this would permit not only police independence from the military, but also accountability before the courts. However, the Criminal Procedure Code was also reportedly amended to prohibit prosecution of any criminal case not already subject to an official police investigation or inquiry, including cases against police officers. As a result, it is alleged that police are able to stall or end investigative or disciplinary cases against their officers. Please provide information on cases in which police been brought before non-military courts and found responsible for torture or ill-treatment.



After the separation of the National Police from the TNI in 2004, the National Police reformed itself by implementing a more transparent and accountable system. It was decided it would not cover up the wrongdoings or violations committed by its personnel. The law enforcement process was also to be conducted without prejudice. In today's Indonesia, the conduct of the National Police is also monitored by civil society, including NGOs and the National Commission for Human Rights (Komnas), the National Commission on Women, the media, and Parliament.

### Question 7

7. According to information before the Committee, in Aceh punishments for certain offences include flogging, or 'caning' carried out in public by persons who wear hoods. Reports have identified at least 15 such cases in 2006 and 88 cases in 2005. Does the State Party plan to adopt *de facto* and *de jure* measures to prevent such breaches of the Convention in its territory? Please provide statistical information on the sex and age of persons flogged, whether other punishments were meted out to such persons, and whether they have a capacity to register complaints against such abuses. Does the State party ensure its international standards prohibiting breaches of the convention apply to all local or federal parts of the State territory, and if so, what measures have been taken to combat such abuses? Please provide detailed statistical data on corporal punishment applied in any territory under the jurisdiction of the State Party (including offences for which such measures are applied, types of punishment, sentences, sex and age and number of convicted persons, etc.), including but not limited to Aceh.

While the statistical data is being compiled, the Indonesian government is nevertheless fully committed to implementing any international human rights norms to which Indonesia is a party. These norms will also be applied all across Indonesia. The Minister of Home Affairs issued a circular letter to all local governments to ensure the harmonization of local regulations with national legislation, including international human rights instruments to which Indonesia is party. There has been a prompt response to this trend.

In general, corporal punishment was in the past, applied as a disciplinary measure. This is especially relevant given that corporal punishment was used as part of police and military trainings. To reflect a change in position, the new provisions on torture in the draft of the revised Penal Code show that in the future, there will be clear distinction between torture and disciplinary measures.

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With regards to information on corporal punishments, to date there are no cases of the use of such punishments in other provinces other than those used in the Province of Nanggroe Aceh Darussalam.

According to the information provided by the Shariah (Religious) Office of the city of Banda Aceh (NAD), corporal punishments (i.e. flogging) were applied to 22 people accused of violation of Qanuns (local regulations) on gambling (Maisir), drinking (Khamar) and adultery (Khalwat), during the period of 2005-2007. It is worth mentioning that although a total of 22 people were sentenced to receive this type of corporal punishment, in fact over the period of two years, the sentence was only carried out in one case involving 2 people violating the qanun on adultery in 2007.

It should also be stressed that in the same year as many as 366 couples were sentenced to the same offence but the use of flogging was not applied to them, except in the single case mentioned above.

In another case involving the same punishment for gambling (Qanun No. 13/2003 on Alcoholic drinks), out of 7 people being sentenced to flogging in 2005, one of them involving an under age boy. The boy received the same sentenced but it was not carried out on account of his being underage.

Contrary to many perceptions on the use of corporal punishments in Aceh, the application of flogging as a form of corporal punishment, is in fact very rare and is applied in very limited and extreme circumstances.

### **Question 8**

8. Please clarify the precise jurisdiction of the Wilayatul Hisbah, the morality or religious police, the laws under which they are authorized and the evidentiary standards utilized in criminal and other cases. Also, please clarify how those recruited into such groups are trained, notably on the prohibitions on torture or cruel, inhuman or degrading treatment in conformity with the Convention. How do officials in the Wilayatul Hisbah relate, de jure, to ordinary police and are their actions subject to review by ordinary judicial authorities?

Since its inception, the Province of Nanggroe Aceh Darussalam (NAD) has implemented Shari'ah law throughout its jurisdiction in order to apply Islamic values within the Wilayatul Hisbah (WH), the Religious Police, and as part of the law enforcement procedure in that province. The Wilayatul Hisbah has authority to do the following:

1. Supervise public adherence to Shari'ah law;
2. Inform, advise upon, prevent and prohibit any alleged violations of Shari'ah law.

An officer of the WH is called a Muhtasib, and carries out various functions, namely:

1. Receiving complaints from the public as regards violations of Shari'ah law;
2. Requesting that the alleged person(s) desist from violating the law;
3. Requesting identity papers from any person(s) suspected of violating the law;
4. Prohibiting any activity that violates the law.

To become a Muhtasib (an officer of WH), certain qualifications and standards must be met, namely, the person:

- Must be an Indonesian citizen;
- Must be true to the philosophies of Sharia'ah law, the Pancasila (State Ideology) and the UUD of 1945 (Constitution);

- Should be able and eloquent in performing his duties as an Imam (Leader) in the communal daily prayer;
- Should possess good, honest, fair and steadfast morals;
- Must have graduated from one of the Muhtasib schools.

In performing their duties, the first laws to which WH refer are the national and provincial laws (called Qanun in NAD). They read as follows:

- Law No. 24 of 1956 on the Establishment of the province of Aceh as an autonomous region and the revisions of the law regarding the establishment of the North Sumatra province; Law No. 8 of 1981 on the Criminal Code of Conduct (KUHAP).
- Governor of NAD Decree No. 01 of 2004 on the Establishment of the Organization and Conduct of WH;
- NAD province Qanun No. 10 of 2002 on the Sharia'ah Court;
- NAD Province Qanun No. 11 of 2002 on the Implementation of Sharia'ah in the field of Aqidah (Morality), Ibadah (Religious Duties) and Syiar (Teaching of Islam).
- NAD Province Qanun No. 12 of 2002 on Alcoholic drinks and the like.
- NAD Province Qanun No. 13 of 2002 on Maisir (Gambling)
- Qanun of the NAD Province No. 14 of 2002 on Khalwat (Adultery)

The evidentiary standards used by the WH in criminal cases and other court cases should conform with the provisions of the aforementioned Qanuns with regard to the Criminal Code (KUHAP).

The Government of Indonesia holds the view that the establishment of WH should only be regarded as a practical means of enforcing Sharia'ah law in accordance with the local regulations issued by the Government of NAD province. Therefore, in order to assist with supervision and to prevent any human rights violations, as well as serving as a guide to the WH in their Shari'ah law enforcement activities, the NAD police established a unit called the Satuan Polisi Syariat Islam (Islamic Law Police Unit).

### **Question 9**

9. What measures have been taken to prevent and combat trafficking in the State Party? Please provide the relevant statistical data on the issue, especially the number of complaints, investigations, indictments, and conviction related to trafficking. According to information before the Committee, a new law on trafficking has been recently adopted. Please provide detailed information on it and indicate what the expected results of such legislative measure are and what implementing actions have already been taken.

The Indonesian Government is strongly committed to combating trafficking in persons and to that end has developed national strategies aimed at combatting trafficking in persons as established in the human rights and criminal justice systems in Indonesia, as follows:

## **Data collection efforts**

It is not easy to come by accurate data on cases concerning trafficking in persons in Indonesia. This is not only because of its clandestine nature but also due to the lack of uniformity in data collection methodology among the relevant government agencies as well as other relevant non-governmental institutions.

Up to this moment, there is no official data recording the number of victims of trafficking in Indonesia. Based on a single compilation of academic records for the draft material on the laws relating to the Eradication of Trade-Related Crimes, it is estimated that there are about 700,000 to 1,000,000 women and children victims of trafficking in Indonesia.

The legal division of the Indonesian National Police has published records of the cases of trafficking in persons that have been investigated by the police. They provide the following information: in 2004: 76 cases; in 2005: 71 cases; in 2006: 84 cases; and in 2007: 123 cases.

## **Strengthening relevant legislation in the efforts to combat trafficking in persons**

By recognizing the crime of trafficking in persons as a gross violation of human rights which can take various forms both at the national and international levels, the government has undertaken measures with a national as well as an international dimension in order to offer protection at all levels. Added to this is the imposition of a strong punishment not just on the perpetrators but also on the mediators. Article 11 of Law No. 21 of 2007 on Combating Trafficking in Persons states that those who aid and abet the perpetrators of trafficking in persons will be given the same punishment as the masterminds.

In this connection, there are as many as 14 legal documents relating to Law No. 21 of 2007 and the adjoined Presidential Decree on this matter that are aimed at strengthening the legal basis for combating trafficking in persons, particularly of women and children, as well as for eliminating the forced labor of domestic helpers and girl children domestic helpers. The Law on Domestic Violence, the Law on Manpower and the Law on Combating Trafficking in Persons all apply to cases of violence perpetrated on domestic helpers and girl-children domestic helpers abroad. The perpetrators will be charged with a minimum of 3 years and a maximum of 15 years imprisonment as well as a nominal fine of 120 million rupiah to 600 million rupiah.

Article 2 sub-sections 2, 3, 4, 5 and 6 of Law No. 21 of 2007 states that in the case of trafficking in persons with physical and mental violence, the punishment for the perpetrators will be increased by one-third of the maximum charge. Article 18 states that those who are forced against their will to assist the perpetrators in trafficking will not be punished. However, further evidence is needed before the charge can be dropped. To this end, the Police have established a special task force called the Flower Operation to investigate cases of trafficking in persons. In arresting perpetrators of trafficking in persons, the Indonesian Police is deemed the sole authority capable of handing over the perpetrators since Indonesia has not concluded any bilateral extradition agreements.

In line with Article 45 of Law No. 21 of 2007, 304 Special Women's desks have been created in police stations at the provincial and regency levels. The desks have been mandated to deal with victims of violence in a comprehensive and coordinated manner. At the desk, there is a special task force of policewomen with in-depth training and a comprehensive understanding of gender issues and violence against women. By virtue of Decree No. 10 of 2007 of the Chief of Police, the desk has also become better structured as it is now part of the formal bureau of the Indonesian National Police.

Article 45 (2) of the abovementioned Law provides special instructions with regard to investigations concerning children and this information has been disseminated among various police stations at the district level. Article 46 of the Law also allows for the establishment of an Integrated Service Center. So far, there are 36 centers operating in Indonesia, particularly in notorious pockets of trafficking; one of these is at the Police Hospital at Kramat Jati. The Police have also provided a hotline on 021-7256085, where the Directorate I of the criminal investigation unit (Bareskrim) will deal with any complaints directly.

A number of Laws, Regulations and Policies have been put in place for the prevention and handling of trafficking in persons, namely:

- Law No. 23/2002 on the Protection of Children
- Law No. 23/2003 on the Eradication of Domestic Violence
- Law No. 39/2004 on the Placement and Protection of Migrant Workers Abroad
- Law No. 13/2006 on the Protection of Witnesses and Victims
- Law No. 21/2007 on the Eradication of Trafficking in Persons
- Presidential Decree No. 87/2002 on the Plan of Action for the Eradication of Child Commercial Sexual Exploitation (PESKA).
- Presidential Decree No. 88/2002 on the National Action Plan for the Eradication of Trafficking in Women and Children
- Regulation of the Chief of the National Police No. 10/2007 on the Working Procedure of the Women and Children Service Unit.
- As for the operational level regulations, the Government is currently preparing a Draft Government Regulation (PP) on "the Mechanism and Procedure for the Handling of Victims of Trafficking", Government Regulation (PP) No. 9/2008, and a Draft Presidential Decree on the Formation of a Working Group on the Eradication of Trafficking in Persons (scheduled to be passed in March 2008).

A number of measures undertaken to date by the Government include:

- Raising social awareness with regard to the policy on combating trafficking in persons in order to increase general knowledge and awareness as to the existence of trafficking in persons, and to familiarize the public at large with the regulations relating to these issues in order to encourage preventive action at the community level.
- Maintaining communication and providing information and education in order to sensitize groups most likely to become victims of trafficking, as well as their families.

- Increasing international cooperation in the efforts to prevent trafficking in persons from Indonesia in such a way as to help Indonesian victims of trafficking abroad so that they can be sent home safely.
- Formulating policies on the procedure for the repatriation of victims of trafficking in persons and involving all related institutions in this process. Related institutions are indeed expected to contribute to the process of repatriation of the victims to their country of origin and their reintegration back into their families.
- Providing trauma centers and social protection homes to women and children who have become victims of trafficking in persons in 22 sensitive locations or transit/stop-over areas.
- Returning the victims to their families.
- Undertaking the mapping of sensitive areas, transit/stop-over areas, and destination areas where trafficking in persons occurs.
- Improving the coordination between the government, non-governmental organizations, the private sector, universities, as well as all echelons of society in the efforts to eradicate trafficking in persons.
- Setting up rooms for the Special Services (RPK) and examining procedures for women and children in the Women and Children's Service Unit (UPPA) within the National Police.
- Creating a special unit on Trafficking in Persons within the Criminal Investigation Board (Bareskrim) and the Security Intelligence Board/Baintelkam of the National Police.
- Engaging in regional and international cooperation on communication, training, prevention, and eradication with the various actors or entities concerned by trafficking in persons, such as the International Organization for Migration (IOM), the European Union and ILEA (International Law Enforcement Academy) of the United States.
- Strengthening the methodology within the National Police for collecting data and for recording the cases of trafficking in persons which have been investigated (in 2004: 76 cases; in 2005: 71 cases; in 2006: 84 cases; in 2007: 123 cases).
- Creating the toll-free Children's Friend Hotline Service (TESA 129) in order to increase the level of information and to address the variety of problems faced by children using a child-friendly mechanism.

### *Coping with trafficking in persons associated with overseas employment programs*

In line with its unique situation, Indonesia has been working on a comprehensive policy and strategy for dealing with trafficking in persons which would involve the relevant sectors, such as the manpower agencies in charge of the placement of Indonesian workers abroad. Reform of the labor sector was instigated through the issuance of Presidential Instruction No. 2/2006, followed by the establishment of the National Agency for the Placement and Protection of Indonesian Workers, or BNP2TKI. One of the concrete measures taken by the BNP2TKI was to close down 86 training centers for Indonesian workers due to their lack of capacity to provide sufficient training facilities, including training material and devices, instructors, and trainings periods. To date, there are 260 training centers countrywide, the highest number being concentrated around Jakarta, Bogor, Tangerang and Bekasi (Jabotabek).

**Provinces of origin of victims of trafficking**

In Indonesia, after East Java and West Java, West Kalimantan is the third most frequent region of provenance for trafficking in persons.

**Strengthening the role of Indonesian diplomatic and consular missions abroad**

In line with the mandate created by Presidential Instruction No. 6/2006, the Ministry of Foreign Affairs has established a Citizens' Advisory Service under the coordination of the various Indonesian consular and diplomatic Missions abroad, particularly in the countries of destination. At the moment, there are six Citizens' Advisory Services established in Singapore, Brunei Darussalam, Jordan, Qatar, South Korea, and Syria. The DFA will be establishing Citizens' Advisory Services in a further six countries over the course of 2008.

In order to further strengthen the Government's capacity to protect its nationals abroad, the DFA has established a special Directorate to deal with the protection of Indonesian citizens, including migrant workers, and legal entities overseas, and to provide them with assistance. In the efforts to reduce the number of human rights violations against Indonesian migrant workers (especially women migrant workers), a number of measures have been undertaken, as follows:

- Indonesian Offices overseas (embassies and consulates), working in cooperation with the relevant authorities in the accredited destination countries, are taking various steps to look into these problems, bringing together data on cases of abuse and human rights violations in order to inform the Capital, and to obtain further instructions on how to resolve the problems when they occur. They can also advise the relevant authorities at home as well as the BNP2TKI and the Department of Manpower and Transmigration and can draw up a list of "troubled" agencies and employers to be blacklisted. The Directorate then recommends that those agents violating the laws be sanctioned and brought to justice.
- Finding legal representatives to assist with the resolution of these cases, in particular those relating to Indonesian citizens facing law enforcement procedures in the accredited countries, as well as to fight for the rights of Indonesian migrant (female) workers.
- Providing shelter and counseling.
- Providing the basic/fundamental needs of Indonesian citizens, including migrant workers during their time in the shelters.
- Cooperating with the ILO, the DFA (the Directorate) as well as the Training and Education centers, formulating a module concerning the protection of migrant (female) workers overseas as well as strategies on how to deal with their psychological concerns as they arise. This module has been included in the education curriculum for the training and education of diplomatic and consular officers, including labor attachés at the Centre for Training and Education of the DFA.
- In order to provide prompt legal assistance to Indonesians, including migrant workers, who face legal problems overseas, particularly those facing death sentences and life imprisonment terms, as well as to ensure that their legal procedures are well monitored, Indonesian embassies and consulates are consistently encouraged to approach the governments of the

accredited countries in order to submit consular notifications in accordance with Article 36 of the Vienna Convention on Consular Relations 1963.

### **Article 3**

#### **Question 10**

10. Regarding the provisions implementing article 3 of the Convention into domestic law, please clarify who are the competent authorities, what are the existing legal safeguards and the procedures for appeal, including whether these have suspensive effect, regarding the expulsion, return and extradition of persons to another state? Please provide detailed information on all decisions taken on extradition and other cases relevant to article 3 of the Convention as well as on the criteria for those decisions, including with regard to the case of Hambali and others associated with the 2002 Bali bombing.

In brief, under Law No. 9/1992 on Immigration, the Minister of Law and Human Rights is the competent authority responsible for the repatriation or expulsion of persons to or from Indonesia. In practice, the Immigration Office, which is under the Ministry, is the one that performs the tasks. However, in extradition cases, the Minister of Law is not the only competent authority to decide.

Law No. 1/1979 on Extradition serves as the legal safeguard in cases of extradition. Article 22 (2) of the law authorizes the Minister of Law to assess an extradition request and allows him to advise on or deny the request. However, the District Court (Pengadilan Negeri) is the one to actually examine and decide on extradition cases in Indonesia. Article 36 stipulates that written considerations from the Attorney-General, the Minister of Foreign Affairs, the Minister of Law and Human Rights and the Chief of the National Police must be presented to the President of Indonesia along with the ruling of the court before any final decision can be taken.

Indonesia signed its first extradition agreement in 1974 (with Malaysia). Since then, the President of the Republic of Indonesia has never denied any request to extradite a person based on the grounds stipulated in Article 3 of the Convention, as there has never been any strong reason to suspect that the person might be subjected to torture or cruel treatment.

With regard to Hambali and those involved in the Bali bombing in 2002, the Government has never proposed or received any extradition request. It should be noted that in the case of the Bali bombing, any cooperation between the Indonesian Government and another country was purely for investigative, never extradition, purposes.

#### **Question 11**

11. Please provide detailed information on whether the State party has engaged or participated in any form in the so-called extraordinary renditions; include in your answer whether any investigation on this issue has taken place by branches of the Government or state agencies. Are there pending cases on this issue?



The Indonesian government has never engaged or participated in any extraordinary rendition, especially if the latter could expose a person to torture, cruel, or degrading treatment.

Article 42 of Law No. 9/1992 on Immigration states that any expulsion or deportation may only take place if there is enough evidence that a person has carried out illegal activities, is assumed to be dangerous to public safety, or has not obeyed the law. Beyond these grounds, any decision to expel or deport a person must be agreed upon by all the relevant ministries/agencies through the inter-agency meeting mechanism.

At the present time, the Government sees no need to investigate extraordinary rendition as there are other international and bilateral mechanisms that are more in line with human rights principles.

There are no pending cases on this issue.

### **Question 12**

12. Please explain what measures have been considered by the State Party to determine its *non-refoulement* obligations under article 3 of the Convention with regard to the existing bilateral extradition treaties Indonesia has signed? Under those treaties, has extradition ever been denied on grounds that a persons would be in danger of being subject to torture if extradite to the requesting State? What post-return monitoring mechanisms have been put in place?

Extradition Treaties that have been signed and ratified by the Government of Indonesia state that those who aid and abet the perpetrators of trafficking in persons will be given the same punishment as the masterminds.

- a. with Malaysia, signed on January 7<sup>th</sup> 1974 in Jakarta and ratified by virtue of Law Number 9/1974.
- b. with Malaysia, signed on January 7<sup>th</sup> 1974 in Jakarta and ratified by virtue of Law Number 9/1974.
- c. with the Philippines, signed on February 10<sup>th</sup> 1976 in Jakarta and ratified by virtue of Law Number 10/2976.
- d. with Thailand, signed on June 29<sup>th</sup> 1976 in Bangkok and ratified by virtue of Law Number 2/1978.
- e. with Australia, signed on April 22<sup>nd</sup> 1992 and ratified by virtue of Law Number 8/1994.
- f. with Hong Kong, signed on November 28<sup>th</sup> 2000 in Jakarta and ratified by virtue of Law Number 42/2007.

Indonesia has taken several measures to comply with the *non-refoulement* obligation, which include:

- a) Providing standard principles and mandates in negotiations on the formulation of extradition treaties in order to establish mandatory refusal on grounds of discrimination (vide Article 14 Law Number 1/1979) if the request for extradition was made to charge or try someone on the basis of race, sex, religion, nationality, or political opinion. Aside from refusal on grounds of discrimination, Indonesia also implements mandatory refusal when the extradition request relating to an investigation, charges and inspection at a trial, or in the event that indictment of the person accused would result in his/her receiving a death penalty, except if the state requesting this provides guarantees that the death penalty would not be imposed on the felon (Article 13 Law Number 1/1979).
- b) In the bilateral extradition treaty signed with Singapore (yet to be ratified), a strong point was made in favor of denying a request for extradition (*non-refoulement*) where there were substantial grounds for believing that the request for extradition of the fugitive, although purporting to be made on account of an offence for which the extradition would otherwise be granted, is made for the purpose of prosecuting or punishing the person sought on account of that person's race, religion, nationality, ethnic origin, or political opinions, and if the State has substantial grounds for believing that the fugitive might, if returned, be prejudiced at his trial, or punished, detained, or restricted in his [personal liberty by reason of his race, religion, nationality, ethnic origin, or political opinions.

Indonesia has never dealt with any case as the one mentioned above.

Extradition, in principle is carried out against a person who is accused of committing a crime or has been sentenced. Extradition occurs if a guarantee is given that the felon is being tried based on the existing procedure in the country (rule of specialty). For the supervision mechanism post-repatriation, the Indonesian diplomatic mission would request that the State should act as a diplomatic channel during the process of extradition and should carry out the function of monitor (Article 22 (2) Law Number 1/ 1979)

#### **Article 4**

#### **Question 13**

13. According to information before the Committee, international conventions are not self-executing in Indonesian law, but article 7 (2) of Law 39 of 1999 on Human Rights states that international human rights laws ratified by Indonesia become national law (§ 53 of the initial report) and must be complied with (article 67 of this Law). Please clarify how this provision has been implemented and especially how the Convention has become part of the domestic legal system. Has it been applied directly by the courts? Please provide examples of judicial decisions. Does the Convention need to be further incorporated into domestic law? If so, which provisions still need to be incorporated? How is the national legislation harmonized with the Convention?

The definition of torture as mentioned in Article 1 (1) of CAT is contained in Indonesian law in Article 1 clause (4) of Law No. 39/1999 on Human Rights, states that: "Any action undertaken for the purpose of inflicting great pain or suffering, either physically or mentally on someone to gain a confession or information from them or a third party; or by punishing that individual or third party for an action done or presumed to have been done by them; or threatening or forcing an individual

or third party for reasons based on any kind of discrimination; if the pain or suffering resulting from the said action is caused at the instigation or with the agreement of, or known to an individual or public official, then this action falls within the definition of torture”.

Torture, within the context of gross violations of human rights, is regulated under Article 9 clause (f) of Law No. 26/2000 on Human Rights Courts. In the Explanatory Chapter of Article 9 clause (f) of the aforementioned law, torture is defined as “(any action carried out) purposely and against the law for the purpose of causing great pain or suffering, either physically or mentally, to a detainee or a person under supervision”. The characteristic of a gross violation of human rights as mentioned in Article 9 above is one where the actions are carried out as part of a widening or systematic attack purposely directed against civilians. The definition of attack as mentioned in the explanation of Article 9 of Law No. 26 of 2000 states that it is a series of actions carried out against civilians as a continuation of an executive policy or policies which is organized. The judicial process for gross violations of human rights can only take place in a human rights court.

### **Incorporation of the Convention into domestic law – Draft Law on Criminal Acts**

The definition of torture as a gross violation of human rights as stated in the Convention against Torture (CAT) is contained in the Draft Law on Criminal Acts which is currently being discussed in the House of Representatives. Regarding torture, Article 404 of the aforementioned draft law states that: “Any public official or other individual acting in an official capacity, or a third party acting on behalf of or known to a public official who [dropping criminal charge] inflicts extreme physical or mental pain on one or more individuals for the purpose of obtaining information or a confession relating to an act committed or suspected to have been committed, or to intimidate or force the person(s) mentioned above on the basis of any form of discrimination, will be charged under the criminal laws and punished with a prison sentence of a minimum of 5 (five) years and a maximum of 20 (twenty) years”.

The draft explanation to the aforementioned Article 404 states: *“The actions prohibited in this case are inhumane acts designed to cause great suffering, either physically or mentally. The actions prohibited do not include acts resulting from a punishment or verdict based on the effective regulation or law”*.

It is hoped that discussions on the aforementioned draft in the House of Representatives can soon be finalized and endorsed.

### **Question 14**

14. Please provide detailed information on current criminal provisions concerning offences such as attempted acts of torture, instigation or consent of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences. Please provide information on the number and the nature of the cases in which those legal provisions were applied as well as on the penalties imposed or the reasons for acquittal.

As mentioned previously, in the context of the criminal code, Indonesia has no provisions which define torture, nor does it have one which is in conformity with the definition stipulated in the Article 1 of the Convention. The crime which is most similar in this respect and within the context of Indonesian criminal law provisions is the crime of ill-treatment as stated in Articles 351 to 358 of the Criminal Code. The latter carries punishments ranging from 2 (two) to 9 (nine) years imprisonment terms. It is however quite hard to find a matching translation for word “penganiayaan” as this word in the Indonesian language (and within the context of Criminal Code) actually refers to several acts, including acts of torture, ill-treatment, maltreatment, and battering.

On the other hand, Indonesia does have a law which contains a provision that specifically prohibits the use of torture (“penyiksaan” in Indonesian language) on civilians, as stipulated in Article 39 of Law No. 26/2000 on the Human Rights Court with punishments ranging from 5 (five) to 15 (fifteen) years imprisonment. Any attempts, instigation, consent or orders to torture, instigated by a person in authority is also prohibited and the latter might face a similar term of punishment.

Furthermore, the Indonesian Criminal Code has a chapter entitled “Crimes committed by Authority figures” (Chapter XXVIII) and it contains provisions regarding the abuse of authority. Article 422 in the chapter prohibits authority figures (government officials) from using force to obtain a confession or information from a person, and there is a maximum punishment of four years imprisonment that is applicable in cases where these provisions are not respected.

Learning from its past history, the Government of Indonesia has devised a strong policy against acts of torture used on civilians. To this end, since 2000, and as part of the human rights awareness program, the Indonesian armed forces (TNI) have distributed manuals to all their members. This book contains information and guidance on how the soldiers could respect, protect and promote human rights as well as information on the punishment which is applicable in the case of violations of human rights. This manual also refers to the Convention against Torture (Law No.5/1998) as one of the sources of guidance. A similar manual has also been distributed among the Indonesian police force.

There is also a strict policy applicable to the members of the armed forces and national police with regard to violations involving civilians. If any member of the TNI or National Police personnel have been proven guilty of committing a crime (including human rights violations), the person will receive an additional punishment in the form of dismissal, dishonored suspension from all military duties, or other administrative actions which are in accordance with the degree of violation.

To illustrate this strong policy, the Government would like to cite a recent case in which the perpetrators of the crime were punished to the fullest in conformity with the applicable laws. The case is as follows:

The case concerns the murder of a civilian, Man Robert, by a member of the District Military Command (Kodim) 0309/Solok of West Sumatra. This incident involved 7 military officers who were later charged with torture and murder of Man Robert. The case was tried by the Military Court I-03 in Padang, West which decided the following:

- The Intelligence section head (Kasi Intel) Capt. Urip Sudarso, would serve two years in prison and was dismissed from service.
- Sgt. Major Ali Gusti Harahap, received a 10 year imprisonment term and was dismissed from service.
- Sgt. Major Rinaldi, would serve 8 years in prison and was dismissed from service.
- Chief Sgt. Zudiar, would serve 8 years in prison and was dismissed from service.
- Chief Sgt. Tengku Syahril, would serve 10 years in prison and was dismissed from service.
- Chief. Sgt. Efripen, would serve 10 years in prison and was dismissed from service
- Military District Commander (Dandim) 0903/Solok Lt. Col. Untung Sunanto, is presently still on trial in the Military Court.

The verdicts handed to these individuals are much higher than that which is stipulated as the norm in the Criminal Code which punishes crimes of ill-treatment leading to death with seven years imprisonment (Article 351). Although this case was tried in the military court, the legal considerations pertaining to this case were more in line with Article 39 of Law No. 26 of 2000 on the Human Rights Court, as previously mentioned.

The Government's rigorous policies against the abuse of civilians in this manner have had a positive effect in terms of the numbers of such cases dropping. Between 2000 and 2004, the Indonesian government has put 330 (three hundred and thirty) TNI and National Police personnel on trial for crimes relating to ill-treatment. From 2005 up until 2007, after the separation of the National Police from the TNI, the government put 362 TNI personnel on trial for the mistreatment of others. Based on the decision of the Military court, those 362 personnel were found guilty and punished with prison sentences. They have currently served their sentences in military jails in Medan, Cimahi, Surabaya, and Makassar. With respect to the police, there were 151 members of personnel on trial in 2007.

### **Question 15**

15. The long awaited draft penal code has not yet entered into force. Please explain this delay in its entry into force, considering that the State party's initial report claimed that it would "guarantee the promotion and protection of human rights". Please provide the exact definition of torture as well as the penalties for acts of torture of the draft code (§§ 25 and 37 of the report mention different penalties). Although the new Penal Code has not been adopted, have specific measures been taken to adapt the current penal legislation to the human rights obligations Indonesia has subscribed, including the provisions of the Convention? For example, does article 185, paragraph 2 of the Code of Criminal Procedure, require complaints be confirmed by two witnesses to prove rape still in force and applied?

The Draft of the Criminal Code is still under discussion in the House of Representative (DPR). The Government fully realizes there is a need for the House to ensure a thorough and full examination so

that the draft is in line with the universal principles of human rights as well as with all the provisions relating to the protection of human rights in Indonesia, including all the international human rights instruments to which Indonesia is party.

The Government agrees that the Draft would be better at guaranteeing the promotion and protection of human rights than the present Code. **The Government has attached the Draft of the Criminal Code in the annex for the Committee to peruse.**

Article 404 of the Draft contains the following elements on torture which is in close conformity with the CAT, and reads thus: “Every public official or other person acting in the capacity of a legitimate official or an individual acting on behalf of a public official or known to a public official, who commits an act causing distress or enormous pain, physically or mentally to another person with the purpose of obtaining information or a confession from this individual or third parties, will have criminal charges imposed as a result of the act(s) committed or suspected of having been committed by that individual. Furthermore, attempts to intimidate or use force on an individual using any form of discrimination is punishable with a prison sentence of a minimum of 5 (five) years and a maximum of 20 (twenty) years”.

#### **Question 16**

16. Does the State Party monitor sexual violence in conflict areas, as well as in the prisons or other places of detention, and if so, with what results? Have there been any prosecutions related to sexual violence, including rape, particularly in areas of armed conflict? Also, please provide information on the measures taken, if any, to prevent torture or ill-treatment of women in places of detention or confinement. Are women separated from men in all places of detention and prisons? Please provide statistical data on the number of complaints received and investigated and the measures taken to discipline or prosecute offenders.

The Government monitors cases of sexual violence in every detention facility, including those in conflict areas. In this regard, the Government would like to provide the following information:

- The directive on the monitoring of acts of sexual violence within conflict areas is included in Law No.31 of 1997 on the Military, as well as in the Human Rights manual distributed to all military soldiers, and in the Rule of Engagement distributed to every military unit.
- The monitoring of the Indonesian Armed Forces (TNI) members is undertaken by their Unit Commanders (Komandan Kesatuan), and by their assisting officers (Legal Officers, Military Police, and the Inspectorate) (Perwira Hukum, Polisi Militer, Inspektorat). The same procedure is applied within the National Police.
- The battalion commanders are always informed on a number of operational procedures, as are the Unit Commanders, even during daily assembly (apel harian).

In the case where sexual violence truly does occur; the Government will undertake several preventive measures, such as:

- Providing protection in the trauma centers and social protection centers
- Providing legal assistance
- Facilitating the efforts for psycho-social trauma rehabilitation
- Reuniting the victims (children/women) with their families or substitute families
- Separating the male detention facilities from the female facilities
- In the case of body searches carried out on women, it will be done by female police officers or in emergency situations, by members of the Bhayangkari (spouses of the members of the Police Association).

In cases relating to security/military officers whose responsibility it is to protect members of society, each of the convicted officers have thus received additional punishments, i.e. expulsion (are removed) from military service on the grounds that their actions demonstrate their incompetence as members of the Indonesian Armed Forces (TNI).

### **Monitoring the Police**

In order to undertake monitoring functions within the conflict areas as part of the efforts to prevent acts of mistreatments of women by police officers, the Government has assigned Provost Units to strictly monitor every National Police member in the field. In addition, Security Units, such as Propam of the National Police and on-field Intelligence Units, also monitor any mistreatments of women and files reports on any violence committed by the high ranking officers (superiors).

In order to afford more security to women, the Government always provides separate detention facilities for both men and women, by placing them in separate buildings and in separate rooms. Any body searches to be carried out on women must be undertaken by special officers, such as female police officers or in emergency situations, by members of the Bhayangkari (spouses of members of the police association).

### **Question 17**

17. In paragraph 39, the State Party reports on a case in which members of a military patrol were accused of torture against three civilians, and provides a description of the prosecution and punishment meted out by the Military Court. Please clarify under what law the case was prosecuted and the perpetrators convicted? The Court found the three officers guilty and sentenced them to four months imprisonment and a fine. Please comment on how this punishment is in accordance with the gravity of the crime of torture as set forth in article 4 of the convention<sup>1</sup>. Similarly, the Committee understands that those convicted in the 2000 Abepura case were given administrative punishments.

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<sup>1</sup> **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984**

**Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Please clarify how these comport with the obligations under the Convention. What happened after the convicted persons completed their punishment? Were they permitted to return to their posts or transferred elsewhere? Please, provide detailed information on the sentence applied to the law enforcement officers of Belu, in East Nusa Tenggara, who tortured and murder Yupiter Manek in December 2005. Is it correct that the perpetrators were sentenced from 21 to 14 days imprisonment? How does such a sentence conform to the obligation of the State party, under article 4 of the Convention?

The Government uses Law No. 31 of 1997 on the Military Court for the adjudication of the aforementioned case and as the legal basis for the prosecution of defendants; meanwhile, the substantive law can be found in the Penal Code particularly in Article 351 (1) in conjunction with the previous Article 55 (1) of the Penal Code which states that “in groups or when committed alone ill-treatment (maltreatment)” is illegal.

Steps taken by the provincial police of Irian Jaya before the Abepura incident took place were as follows:

1. Preventive measures were undertaken by applying a persuasive approach by inviting the community, religious, traditional, and youth leaders as well as Traditional Community Institution leaders and members of *Satgas Papua* (the Papua Coordinating Committee) to dialog, with the aim of encouraging people not to violate the law.

The district police had advised the Community Self Security and Orderliness Campaign (Kamtibmas) to distribute leaflets, conduct disseminations sessions, and inform of the Chief of provincial police’s announcements through mass media and television.

2. Although the Jayapura District Police had repeatedly applied a persuasive approach, several things still occurred:
  - a. Violations of the rule of law.
  - b. Anarchy and human rights violations.
  - c. Efforts to declare independence by all means

The abovementioned violations were committed by:

- a. *Satgas Papua* (the Papua Security Unit).
- b. *Satgas Memberamo Tami* (the Membaramo Tami Security Unit).
- c. TPN and other separatist movements.

**3. The chronology of the Abepura case is described below:**

The incident commenced after an attack on one of the members of the Abepura sub-district police on 7 December 2000 at around 01.30 AM by the abovementioned parties pretending to be civilians who wanted to submit reports to the guard post. Soon after they arrived, they attacked sub-district police officers on duty and caused the death of 1 (one) victim (Serma Pol Anumerta Petrus Epha), another was seriously injured (Sertu Pol Darmo), and 2 (two) others suffered minor injuries (Serma Pol Yayak Sugiarto and Serka Misak Karemi).



Then, one of the attackers grabbed a “Mouser type” armed weapon belonging to the Abepura sub-district police, which to date remains in the hands of the attackers.

The attackers then committed the following acts:

- Damaged the surrounding shops by breaking the windows;
- Setting the ‘Restu Ibu’ clothing store on fire;
- Setting fire to 1 (one) restaurant;
- Setting fire to 1 (one) watch shop/barbershop.

When the Mobile Brigade of the Police (Brimob) arrived to secure the location, they were also attacked and this resulted in the death of 1 (one) police personnel (Bharada Irawan) and another was seriously injured (Bharatu Heru). Both were shot by the attackers.

While at this location, the mobile brigade released 3 (three) warning shots, however, the attackers ignored them and continued attacking the mobile brigade personnel. Inevitably, one attacker was killed in the dispute (Elkius Suhuniap).

4. Steps taken by the Irian Jaya Provincial Police and its subordinates during the Abepura incident include:
  - a. Personnel of the mobile brigade pursued the attackers;
  - b. In a life threatening situation, the mobile brigade personnel had defended themselves;
  - c. While inevitable physical contact occurred between the mobile brigade and the attackers, 18 (eighteen) individuals were arrested for weapons possession, including; bows and arrows, spears, short machetes, and adzes.
5. On 9 December 2000, in the Wutung Village of Jayapura, the attackers slaughtered members of the community. This resulted in 6 (six) casualties (Ahmad Jafar, Zakkarias, Hendrikus Sineri, Udin, Sukarji, and Nurdianto). The Jayapura District Police made those victims VERs and gave them to the family of each of the deceased. In the meantime, the captured attackers were investigated.
6. Steps taken by the Irian Jaya provincial police and its subordinates after the incident occurred:
  - a. They held a coordination meeting on 9 December 2000 at the Provincial House of Representatives office, which was attended by the provincial leaders (Muspida Tk.I).
  - b. They held a coordination meeting on 12 December 2000 in the Vice Governor’s office to discuss how to resolve the incident.
  - c. The Irian Jaya Provincial Police and its subordinates continued its investigative process with respect to the 7 December 2000 attacks.
  - d. The Irian Jaya provincial police and its subordinates continued undertaking preventive and persuasive measures.
  - e. The Police conducted raids in order to search for weapons and other implements. This was also done to create security and orderliness in the community.
  - f. For the personnel who violated procedure during the Abepura incident, necessary measures were taken in accordance with applicable regulation.

Based on the verdict of the I-01 Military Court of Banda Aceh, 3 (three) members of the Indonesian Armed Forces (TNI) (namely First Sergeant Hariono – the first defendant, Pratu Alfian – the second defendant, and Prada Sudariyanto – the third defendant, who maltreated Hamdani Yahya, Maimun Ahmad, and Rajali. The three officers were found guilty of committing minor acts of maltreatment perpetrated as a group within the precepts of Article 351 of the Criminal Code (KUHP), and consequently, they were given a 4-month imprisonment term, a 4 months and 20 days imprisonment sentence, and a 4 months and 20 days imprisonment sentence, respectively. In light of the completion of their prison terms at the Medan Military penitentiary, they were allowed to return to their battalion units.

*The case of Abepura in 2000 was tried in the Human Rights Court in Makassar, South Sulawesi in 2006. The court charged 16 people - who were found guilty - seven of whom were civilians while nine others were TNI soldiers. All the soldiers were sentenced to prison terms ranging from six months to 14 months in prison.*

*The law enforcement personnel from the legal division of the District Police in Belu, East Nusa Tenggara, who abused and murdered Yupiter Manek in December 2005 have already been prosecuted. The judicial process ended and now the parties interested in the case are awaiting more complete information.*

#### **Question 18**

18. How has Law 23/2004 on the Elimination of Domestic Violence been implemented and what have been the practical results of its entry into force? How many complaints under this law have been presented? Please, indicate which measures have been adopted to sensitize and train law enforcement personnel and other relevant staff to recognize, and to ensure that they take preventive measures, as appropriate, and prosecute those responsible.

To strengthen the protection of women in the country, particularly with regard to the prevention of domestic violence, the Government enacted Law No. 23 of 2004 on Domestic Violence (KDRT) which carries heavy penalties. To this end, this law has been effectively applied by the police force throughout the country, and it is meant to replace the application of the articles of the Penal Code (KUHP). The Law on Domestic Violence, the Law on Manpower and the Law on Combating Trafficking in Persons are also used for cases of violence against domestic helpers and girl-child domestic helpers abroad. The perpetrators will be charged with a minimum of 3 years and a maximum of 15 years imprisonment as well as a nominal fine of 120 million Rupiah to 600 million Rupiah.

In addition, in order to anticipate cases where domestic violence has already occurred, the Government has created the Service and Protection Units for victims and witnesses. Furthermore, they created a Special Service Room (RPK) and have established in the Police Force, an Investigation Procedures mechanism for women and children at the Women and Children Service Units (UPPA).

1) In order to receive the estimated numbers (percentage) on domestic violence, the State Ministry of Women's Empowerment together with the National Social Economy Survey (Susenas) in

2006 and the Central Bureau for Statistics (BPS), gathered data on domestic violence using a Survey by Susenas 2006. It uncovered the following:

- 63% of the population knows about domestic violence practiced on women;
- The level of education revealed a positive connection with regard to the knowledge of domestic violence against women. Those having a lower level of education showed a lack of knowledge on this issue;
- The prevalence of violence against women was 3.1% and that of children was at 7.6%;
- 70 % of the violence took place at home;
- The impetus for domestic violence against women depended on the economic situation of the family as well as the behavior of the perpetrators, while the rationale for violence against children related to their disobedience and mischievous behaviors.
- Domestic violence suffered by women took the form of physical and mental violence, followed by abandonment and sexual violence.
- Most of the victims of domestic violence (75%) never reported it, while the rest (25%) told their families or reported such incidents to public figures or non-governmental organizations;
- The most common result of domestic violence was depression;
- Most cases of domestic violence showed they were committed by partners/spouses on women, while those perpetuated on children were committed by their parents.

2) Data acquired from the National Commission on Women in 2007;

According to the National Commission on Women, reported cases of violence against women showed levels of increase, and the highest number was in 2006 in which there were 22,517 cases reported with the following results unveiled:

- Domestic violence 74%
- Community violence 23%
- Victims: wives 83%, children 5%, dating partners 4%, and domestic workers 1%
- Perpetrators: government officials 69%, i.e. civil servants 68%, Indonesian Armed Forces (TNI)/National Police 21%. Moreover, 75% of the cases concerned domestic violence.

## **Article 5**

### **Question 19**

19. Please indicate any legislative or other measures taken to implement each provision of article 5 of the Convention. Under the legislation in force, are acts of torture considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or victim? Please provide any relevant examples.

Within the Indonesian Penal Code, torture is considered as one of the forms of abuse and maltreatment for which it is the object of punishment. It is also classified as minor to major abuse with a maximum imprisonment term spanning between 2 years and 9 years.

Furthermore, the Indonesian penal code establishes the principle of territory as well as of national criminal jurisdiction. The delineation of these types of jurisdiction enables law enforcement officers to prosecute as well as to bring to justice any individual (national and non-nationals) who commit crimes on Indonesian territory, as well as Indonesian nationals who commit criminal acts in foreign countries. Under the territorial principle, every case of torture committed on the Indonesian territory will be prosecuted by the Indonesian legal authorities.

### Articles 6, 7, 8 and 9

#### Question 20

20. When Indonesia refuses to extradite to another country a person suspected of acts of torture, will a criminal case be opened in Indonesia? Have there been any such cases in the practice? The report cites, in §§ 50 and 51 of the report<sup>2</sup>, the “Tanjung Priok” and the “Abepura” cases. Please provide detailed information on the exact prosecution charges and the penalties applied in those cases and how they conform to the principle “*aut dedere aut judicare*”.

As already mentioned earlier, the Indonesian penal code establishes the principle of territory as well as of national criminal jurisdiction. These types of jurisdiction therefore enable law enforcement officers to bring to justice and prosecute any individual (national and non-nationals) who commit crimes on Indonesian territory, as well as Indonesian nationals who commit criminal acts in foreign countries. Under the territorial principle, every case of torture committed on Indonesian territory will be prosecuted by the Indonesian legal authorities.

Concerning the relationship between Abepura and the Tanjung Priok case, the Government holds the view that it is irrelevant to associate the two cases with the principle of *aut dedere aut judicare* as the cases in question did not involve any non-nationals either as perpetrators or as victims. The principle of *aut dedere aut judicare* is therefore not only extraneous, but also not applicable for the situation or cases in question.

Furthermore, the Government would also like to take this opportunity to inform this august Committee of further relevant information, in particular, with regard to the Abepura case - which has duly been dealt with by other UN human rights mechanism to which the Government has provided a formal written response. With this in mind and taking into account the principle of non-multiple dealing with cases and communications containing allegations of human rights violations, the Government would request that the Committee coordinate closely with other relevant human rights mechanism and vice versa in order to prevent the same case(s) being brought to and dealt with in a manner which contradicts and violates the aforementioned principle.

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<sup>2</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

#### Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person

The Government in this regard, would like to recall at this point, the Human Rights Council's Resolution 5/1 on Institutional Building of the Human Rights Council. The Resolution adopted on 18 June 2007, in particular, on the admissibility criteria for communications, stipulates that 'A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that, *inter alia* (f) it does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights **already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights**'.

In this regard and in line with the spirit of the founding Resolution 60/251, Indonesia, as an active member of the Human Rights Council, is fully committed to the entering into constructive and genuine dialogue and cooperation with UN Human Rights Mechanisms based on the spirit of good faith and mutual respect. We also uphold the principles as contained in the institutional building principles of resolution 5/1 of 18 June 2007, including those which are relevant to the treatment of human rights communications and their admissibility criteria.

## Article 10

### Question 21

21. Please provide detailed information on training programmes for the persons enumerated in article 10 of the Convention and, in particular, on the training of judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect physical and psychological *sequelae* of torture. Regarding the prevention of torture and ill-treatment, what specific training has been provided to the Police and the TNI? Is there gender-sensitive training? Is there any training into the absolute nature of *non refoulement* of article 3<sup>3</sup> as well as on the non derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment?

The Government has provided human rights trainings, education and dissemination sessions to all law enforcement officials as well as security officers within the Armed Forces, National Police and relevant governmental departments/institutions. The human rights trainings which have taken place include:

1. Providing basic knowledge on human rights and on the ratified international human rights instruments and including them in the educational curriculum at every educational level of the

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<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

#### Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Armed Forces (various levels of training are provided to the various military ranks, such as the school for perspective military officers namely the Academy for all levels of military officers (sekolah calon tamtama), sekolah calon bintara, sekolah calon perwira, as well as the other informal education/training within the context of military education (courses for high ranking military officers, courses for the auditors, judges, and other vocational courses).

2. Providing medical personnel within the military (doctors and psychiatrist) with the necessary trainings and military-based character building strategies from a human rights perspective;
3. Providing members of the armed forces with trainings on human rights on a periodical basis as well as on an ad hoc basis, especially for those who are set to commence field missions;
4. Providing necessary software for human rights education and dissemination (such as human rights guide books, lembar ROE and other information booklets);
5. Undertaking educational cooperation with the National Police and various universities based on a memorandum of understanding. Such training covers various kinds of thematic issues which could support the implementation of human rights, such as those relating to medical studies (forensic, orthopedic, psychiatry, etc.), Masters in psychology, Masters in criminology, Masters in law, police studies, in which each study is related to human rights or humanitarian strategies;
6. Undertaking training collaborations between the National Police and foreign institutions such as:
  - a. Training on Crime Scene Investigations, the Narcotics Unit, the instructor development courses, Transnational Sex Crimes, Post-blast investigation courses, computer crime investigation courses, held in cooperation with the ICITAP of the United States of America.
  - b. Trainings on community policing and human rights, which covers people smuggling/trafficking in persons, management support, held in cooperation with the IOM of Europe.
  - c. Training on civilian police activities, expert placement in tackling drug abuse, and studies in Japan, in cooperation with JICA from Japan.
  - d. Training for Crisis Response Team (CRT), Senior Crisis Management (SCM), as well as for Preventing Investigative Acts of Terrorism (PIAT), held in cooperation with DS-ATA from the United States of America.
  - e. Training on Crime Scene Investigations, Transnational Sex crimes, and the Narcotic Unit, held in cooperation with the ILEA of the United States of America.
  - f. Training on the fundamental rights established in the working place, launching the guide book on police actions with regard to law enforcement and regulation within industrial relations.
  - g. Training on professional education for law enforcement, multi-jurisdiction experience, and international standards of legal education in cooperation with JCLEC of the United Nations of America.
  - h. To ensure growing respect for the promotion and protection of human rights in Indonesia, the Department of Defense has implemented a number of measures in accordance with the

country's strategic vision and mission with the objective of protecting territorial sovereignty and national safety. The aforementioned measures are carried out among others by providing capacity building strategies for officials and military officers in order to improve their knowledge and understanding, of human rights, *inter alia* through:

- i. Dissemination sessions on international humanitarian law for various levels of government officials in the Department of Defense, in cooperation with the ICRC from 22 – 26 January 2007;
- j. Holding the first workshop on the military justice system from 27 – 29 March 2006, which was attended by approximately 44 legal officers from the Armed Forces.
- k. Holding the second workshop on the military justice system in 3 (three) places: i.e. in Medan from 22 – 26 January 2007, in Denpasar from 19 – 23 February 2007, and in Makassar from 5 – 9 March 2007, which included the participation by 40 law officers from the Armed Forces.
- l. Performing a follow-up to the military, judicial workshop by compiling comparative studies from Norway and Canada from 12 – 14 March 2007, which involved the participation of every legal officer who had completed the second military judicature workshop;
- m. Convening a workshop on humanitarian law within the Department of Defense and the Armed Forces from 21 – 14 March 2007, which involved the participation of officials from echelons III and IV who represented each directorate general of the Department of Defense and the legal section of the Air Forces;
- n. Holding dissemination sessions on the National Action Plan on Human Rights within the Department of Defense on 11 December 2007, which included the participation of officials from echelons III and IV who represented each Directorate-General within the Department of Defense, the legal aid and Education centre of the Armed Forces (Babinkum), Otjen of the Armed Forces, the legal office with the Military Resort Command (Kumdam Jaya), Directorate of law of the Army, the Navy, and the Air Force;
- o. On the technical level, some efforts undertaken by the Department of Defense in cooperation with the Indonesian Armed Forces include:
  - (i) Enacting the Decree of the Minister of Defense No.KEP/02/M/II/2002 of 13 February 2002 on the Implementation of Humanitarian Law and Human Rights in the context of affirming the implementation of state defense strategies in accordance with the Geneva Convention of 12 August 1949 on International Customs and Human Rights.
  - (ii) Implementing the humanitarian and human rights laws through education and training, by developing education and training curricula in various military sectors and conducting a revision of the military education curriculum in law and human rights areas.
  - (iii) Revising the doctrines of defense. Furthermore, the Indonesia Armed Forces are also to function in accordance with the rule of law by making laws on human rights as well as on internal and integrated military discipline.
  - (iv) Within the field of military operations, implementing humanitarian and human rights laws – working on staff relations on the strategic and tactical level before further

affirming the involvement regulations as mentioned in the appendix of the operation plan/order, and monitoring the implementation of investigative measures for every violation.

## **Question 22**

22. According to information before the Committee, there is “endemic and systematic corruption within the administration of justice, in particular, within the judiciary”, “the incidence of corruption, collusion, and nepotism in the Public Prosecution Service is high” and there is “no law applicable to the organization of the legal profession”. Considering Indonesia’s current transition to a democratic regime committed to uphold the rule of law and human rights, please provide information on the measures taken to combat and prevent corruption in the judiciary and in the Public Prosecution Service as well as to regulate the legal profession. Please provide examples of cases tried, and their results.

The Attorney-General’s office already has regulations in place with regard to the Attorney’s Code of Conduct (Code of Ethics) as regulated by the General Attorney Regulation No. Per-067/A/JA/07/2007 on the Attorney Code of Conduct dated 12 July 2007. This regulates the Attorney’s obligations to respect and protect human rights and the right to fundamental freedoms as stated in the universally accepted rule of law and human rights instruments (Article 3 (k)) of the said regulation. This rule has been fully applied by the Attorney-General’s office.

The Attorney-General has embarked on restructuring its internal organization which is in line with the spirit of reform and which is a process that is ongoing throughout the country. For this reason, there have been several cases of violations of the law and the Attorney’s code of ethics has subsequently been investigated, for example:

In the blackmailing case perpetrated by Cecep Sunarya and Burju Roni (attorneys from DKI Jakarta), it involved the Jamsostek (insurance) fund case. They were prosecuted and they were also dismissed from service.

From the abovementioned case as well as other cases involving law enforcement officers and security personnel who have had legal proceedings brought against them, it is the Government’s view that it is important to underline the fallacy of TOTAL IMPUNITY which some quarters have accused Indonesia of allowing. The Indonesian government welcomes cooperation with the Committee on the CAT which is based on the spirit of good faith and constructive dialogue. Indonesia has proven itself to be a country which has come a long way from its previous authoritarian rule to a democratic system. Indonesia is furthermore a country that is committed to enforcing the rule of law and the respect for human rights. Cases of violations occurring in Indonesia today do not represent prevailing national policy but are mere demonstrations of individual cases of human rights violations by law enforcement and security personnel. These incidents should - will and have - accordingly been brought to justice in accordance with the applicable existing domestic laws.



**Question 23**

23. What specific measures have been taken to train the police, prosecutors and judges to prevent, detect, prohibit and prosecute those responsible for the specific issues of sexual violence against adults or children? Has the State party considered the establishment of special police stations or units to address such matters?

The Indonesian government has issued a number of policies and measures to train law enforcement officials, such as:

- a) Training on human rights and gender rights have been undertaken in forums for discussions with experts, educators, experts on law, held by the National Police itself or in cooperating with other parties such as ICITAP, IOM, JICA, and various universities.
- b) From 2004 – 2006, investigative trainings was provided to the offices of the Regional Police and Regional Attorney (Regional Prosecutor Office) in collaboration with the IOM (International Organization for Migration). The training focused on improving the investigative capabilities and capacities in handling victims of trafficking in persons who have been exploited economically or sexually.
- c) Training for human rights speakers within the National Police in cooperation with the National Committee.
- d) Providing visual training materials in the form of VCDs on human rights related matters, namely trafficking in persons and the use of violence, sponsored by the IOM and ICITAP.
- e) Performing cooperative event relating to the issue of sexual violence with other institutions or countries.

In order to strengthen the protection efforts in addressing the issue of sexual violence against adults or children, the National Police created the Women and Children Service Units (UUPA), whose facilities consist of Special Service Rooms (RPK), counseling rooms, and interview rooms. These facilities are available in the National Police headquarters as well as the police administrative units at the regency level, with the following working relations:

- i. Headquarter level : the PPA Unit under Dir I Kam Tran Bareskrim
- ii. Provincial level : the PPA Unit under the Sat I Dit Reskrim
- iii. Regency level : the PPA Unit under the Kasat Reskrim

Furthermore, the Law on Domestic Violence, the Law on Manpower and the Law on Combating Trafficking in Persons all apply to cases of violence perpetuated on domestic helpers and girl-children domestic helpers abroad. The perpetrators will be charged with a minimum of 3 years and a maximum of 15 years imprisonment as well as a nominal fine of 120 million rupiah to 600 million rupiah.

In the efforts to ensure the implementation of the Government's policy on the protection of children against ill-treatment and violence, in particular by their parents, the Government has put in place heavy sanctions which will be imposed on parents who commit such acts of violence, applicable through the enactment of Law No. 23/2002 on Child Protection and Law No. 23/2004 on the Elimination of Domestic Violence.

The Law on Child Protection (in Article 80) stipulates that the perpetrators of violence against children will be penalized for a maximum of three years and 6 months imprisonment and an additional one-third or one-quarter of this sentence, if the perpetrators are their own parents.

The Minister of State for the Empowerment of Women is personally heading the public campaign entitled "*Stop Violence against Children*", which is being carried out nationally, starting in Central Java, East Java, West Nusa Tenggara and East Sumba, East Nusa Tenggara, Maluku and South Sulawesi. This strategy is continually being strengthened through efforts which include the formulation of a draft National Plan of Action for the Elimination of Violence against Children. The formulation of this draft (called draft RAN-PKTA) is carried out through consultations with children in 18 provinces, which have been further endorsed under Presidential Decree. The areas targeted by this strategy include: homes and families, schools, the judiciary system, and other formal environments in several sectors, such as the following:

## **Article 11**

### **Question 24**

24. Please provide information regarding the interrogation rules, instructions and methods currently existing in Indonesia. Please explain the mechanisms in place for the inspection of prisons, police station and other places of detention. Has an independent authority been established, as recommended in § 10 (b) of the Committee's Recommendations, to receive complaints from inmates in prisons and what is the procedure to deal with such complaints. Is any non-government organization able to conduct periodic visits to places of deprivation of liberty? Has Komnas Ham or another governmental organization been provided with the authority to conduct such visits and take appropriate follow up action?

The interrogation process for investigations within the National Police system is carried out in accordance with Law No. 8 of 1981. The interrogation process is carried out thus:

- During the interrogation, the suspect has every right to be accompanied by a lawyer. In case the suspect is being prosecuted with a possible verdict leading to an imprisonment term exceeding 5 years, he/she must be accompanied by a lawyer.
- The suspect is free to give information or details.
- The suspect can refuse to be interrogated if in bad health.
- The suspect is not burdened by authentication.

Policies and methods regulating how interrogations by investigators, attorneys, and judges within the military courts are performed are both regulated by Law No. 31 of 1997 on the Military

Judiciary. The principle of ‘innocent until proven guilty’ is applied to any suspect/defendant. The information given by suspect or witness to the investigator must be given without any pressure from any party in any form (Article 108 Clause (1) of Law No. 31 of 1997). Any question which is meant to trap or influence or contradict military honor in general (kehormatan prajurit) is not prohibited (Article 170 of Law No. 31 of 1997).

Under the monitoring system of the National Committee for the Protection of Children, and in accordance with the letter of decision (SK) of the Minister for Social Affairs No.09/HUK/2007 dated 5 March 2007 on the Affirmation of the Commissary Council of the National Committee on the Protection of Children 2006 – 2009, the Department of Social Affairs is trying to solve crimes against children with a “Child Friendly” method. The monitoring of detainee centers is temporarily being performed by the military police commanders and inspectorate generals within each unit command.

The monitoring of military penitentiary centers is performed by the Head of the military penitentiary centers and the Inspector Generals. To date, Indonesia has not ratified, and therefore is not party to the Optional Protocol of the CAT. As a result, independent monitoring mechanisms for penitentiaries have not yet been created. For a long time now, NGOs, NHRI (Komnas HAM, Commission on Women) as well as the ICRC have been able to visit penitentiaries; not only periodically, but have also been able to hold assistance activities such as those established for child convicts in child penitentiaries. Even temporary military detention centers and penitentiaries can be accessed by anyone, including NGOs, by following certain procedures put in place by the Military Police Commanders or the heads of the Military Courts.

## Article 12

### Question 25

25. <sup>1</sup>While noting the inquiries mentioned in §§ 72 *et seq.* and § 127 of the report<sup>2</sup>, the Committee understands that the National Committee on Human Rights (Komnas HAM) has encountered difficulties in the discharge of its mandate. Please provide statistical data on its activities, especially complaints received related to the Convention, inquiries completed and their outcome, and whether they were discontinued or handed over to the Attorney General for further investigation and prosecution. How does Komnas HAM challenge a decision by the Attorney General not to publish its report or prosecute a case? How has the Government followed up in response to the findings of Komnas HAM in the cases of Trisakti, and Semanggi I and II? Please provide information on the outcome of the cases mentioned in the report: (1) violence against students of the Universitas Muslim Indonesia in Makassar, (2) killings in Wasior in 2001-2002, and (3) in Wamena in 2003 in Papua province. What measures have been taken to reinforce the independence of this institution, in line with the Paris Principles, as recommended by the Committee in its Conclusions and Recommendations (§ 10 (d)<sup>3</sup>)? What other measures have been implemented to ensure its objectivity, effectiveness and public accountability? Can Komnas HAM recommend compensation, and can it take cases to court, if Attorney General does not prosecute them?

Based on Law No 39 of 1999 on Human Rights, Komnas HAM has the authority to conduct pro-justicia investigations on cases of serious human rights violations. The recommendations stemming from the inquiry will then be handed over to the Supreme Court for further investigation. Komnas HAM also has the right to seek information from the Attorney-General regarding the progress of the investigation being undertaken. From the result of the investigations by Komnas HAM, the case will later be handed over to the police for further investigation. In accordance with Article 9 of Law No.26/2000 on Human Rights Court, Komnas HAM and the Attorney-General will discuss whether or not a case can be categorized as a gross violation of human rights.

According to its mandate, Komnas HAM has the function of publishing its studies and research findings (reports) without any outside intervention. To date, there is no objection either from the Attorney-General or other parties to the publications. Meanwhile, in relation to the judging process of a case, Komnas HAM will submit any objection it has to the Government, and also give its recommendations to the House of Representatives for further follow up.

The cases of Trisakti, Semanggi I and Semanggi II occurred prior to the enactment of the Law on Human Rights Court. As the law now stipulates, the establishment of an Ad Hoc Human Rights Court to try cases of serious human rights violations took place before the enactment of the said Law. This amendment means that such cases should be based on the request made by House of Representatives (DPR) which later submits its recommendation to the President. Upon the approval of the President, the Ad Hoc Human Rights Court can then be established under a Presidential Decree.

In this respect, the Special Ad Hoc Committee of the DPR met on 15 January 2001 to deliberate the three cases in question. The House of Representatives recommended that the cases could not be considered as gross violations of human rights but more as cases of excessive reactions of the security personnel in dealing with demonstrators at an event which turned violent. From this assessment, the DPR considered that the establishment of an Ad Hoc Human Rights Court was not needed since these cases could be brought to ordinary and Military Courts.

Nevertheless, in order to follow up on the recommendations of the Komnas HAM, the Government has launched an investigation into and questioned 74 witnesses. The trial of the Trisakti case was held on 23 June 2003 at the Military High Court in Jakarta. The court pronounced the defendants; First Inspector Erick Kadir Sully and 10 (ten) other personnel, guilty as charged and they received imprisonment terms ranging from 1.5 (one and a half) to 3 (three years). With respect to the Semanggi case, the prosecution case against Chief Private Buhary Sastra Tua Putty is currently still in process at the II-08 Military Court of Jakarta.

Article 33 of Law No.16/2004 stipulates that “In conducting its tasks and duties, the office of the Attorney-General ensures there is cooperation with other law enforcement offices and agencies, other State’s offices and agencies, or other relevant agencies”. In the case of violence against students of the Indonesian Muslim University (UMI) in Makassar, the Komnas HAM concluded that the case was not a gross violation of human rights. Therefore, the case was handed over to the Police for further action.

Turning to the Wasior and Wamena cases, the Komnas HAM concluded that both the Wasior case (2001 – 2002) and the Wamena case (2003) involved gross violations of human rights. The report of the Komnas HAM was further processed by the Attorney-General and later tried in the Human Rights Court in Makassar (Law No.26 of 2000), which ruled that the 9 (nine) police officers were guilty while two others were innocent. Meanwhile, the disciplinary court found 17 police officers guilty of committing undisciplined acts and disciplinary sanctions were thereafter imposed on them in the form of UKP delays, demotion, and transfers to certain other locations.

Initially, Komnas HAM was established through Presidential Decree No. 50/1993. In line with the process of reform and democratization in Indonesia, the mandate of Komnas HAM was further strengthened by Law No. 39/1999 on Human Rights which aims to ensure and strengthen its independence in accordance with the Paris Principles. Under the said Law, members of the Commission are appointed by Parliament and incorporate various factors: The four core functions of Komnas HAM are research and analysis; dissemination; monitoring; and mediating. The operational budget of Komnas HAM is provided for in the State budget. In carrying out its duties, Komnas HAM has collaborated and coordinated with other relevant institutions including NGOs and other civil societies. In an effort to strengthen its capacity and role especially in monitoring and reporting, as well as in investigating any alleged human rights violations, particularly at the regional levels, Komnas HAM has established a number of regional offices. It should also be noted that until recently, regional offices of Komnas HAM only existed in Papua, West Sumatra, West Kalimantan, Sulawesi (Palu), and Nangroe Aceh Darussalam (NAD). To uphold the Paris Principles, the Government of Indonesia has also set up a number of national institutions to deal with various human rights issues such as Komnas Perempuan (Commission on Women), Komisi Perlindungan Anak (Commission on the Protection of Children) as well other similar commissions with the aim of strengthening and ensuring the implementation of existing national human rights legislations. They also have the role of monitoring, investigating and reporting on cases of human rights violations in accordance with existing applicable national legislation and regulations.

In carrying out its duties and authority, Komnas HAM is an independent institution; Law No.26/2000 on Human Rights Court clearly states that Komnas HAM is assigned as an independent investigating/pro-justicia institution for cases of serious human rights violations. To make their work more effective, since 2004, Komnas HAM has three sub-commissions divided into various human rights categories applicable in a society where the protection of human rights is in need of special attention This includes notably; the sub-commission on civil and political rights, the sub-commission on economic, social and cultural rights; and the sub-commission on special groups. At the same time, in order to reinforce its public accountability, Komnas HAM always cooperates with various civil societies, institutions and other relevant stakeholders when it is conducting its research and analysis in the human rights' field nationally, regionally and internationally. The same practices are also carried out in disseminating awareness on human rights, publishing its research and study, commenting and recommending that the Government ratify a human rights convention. It also allows for the amendment, formulation and enactment of new regulations; and lastly, it plays a key role in mediation.

In accordance with its duty and authority, Komnas HAM can provide advice and recommendations, and also propose compensation for victims of human rights violations. Furthermore, for cases which are not followed up by the Attorney-General's Office, Komnas HAM can submit its dissatisfaction to the Government as well as to the Parliament.

### **Question 26**

26. What has been the result of the complaints against the Brimob police in the Abepura case of 2006, in which 24 people were allegedly tortured in connection with a protest that resulted in killing four police officers and an intelligence officer? Was an investigation ever undertaken into the actions of the police officers alleged to have been involved in the torture of the 24 people? What has been the result?

In the Abepura case, which was triggered by the demonstration involving thousands of people, caused unrest between the demonstrators and security personnel because the demonstrators committed anarchy. As a result, 4 security personnel were killed, and some demonstrators were injured due to the incident. The investigation carried out by the Komnas HAM found that there were no security personnel committed human rights violations.

### **Question 27**

27. According to the State report (§§ 76 and 92<sup>4</sup>), the Truth and Reconciliation Commission, established by Law No. 27/2004, has the mandate to investigate gross human rights violations and to compensate victims. Please provide information, including statistical data, on its activities, especially how many investigations have been completed, and their outcome, as well as on any compensation, restitution or rehabilitation granted to victims.

The Constitutional Court has repealed Law No. 27/2004 on Commission of Truth and Reconciliation. To this effect, the law is no longer applicable and can not be used as the legal basis for investigating gross human rights violations nor to compensate victims, especially with regard to the stipulations of the mandates in the said Law. It is therefore the Government's intention to draft new laws on the TRC as soon as possible, and which would replace the one which was revoked by the Constitutional Court and thereafter provide a sound legal basis for the establishment of a Truth and Reconciliation Commission in Indonesia.

### **Question 28**

28. Please provide updated detailed information on the results of the *Ad Hoc* Human Rights Courts for Timor-Leste, especially the number of investigations, prosecutions and convictions, including the penalties applied. Have the temporal and geographical limitation to the jurisdiction of the Court been eliminated? If not, please explain why. According to information before the Committee, intimidation of Timorese witnesses appearing before the *Ad Hoc* Human Rights Courts for Timor-Leste was common, including in the courtrooms. What special protection mechanisms have been granted to Timorese witnesses? Considering that Timorese witnesses have refused to go to Jakarta on grounds of lack of security, what means have been used to collect their testimony in

Timor-Leste? With what results? How many UN staff (or former UN staff members) have been requested to present their testimony to the Court and how many have testified in fact?

After the investigation was conducted, the Ad Hoc Human Rights Court for the East Timor case presented their verdicts to the perpetrators in which the latter were found guilty of committing gross violations of human rights. Their trials were held at the Regency Court and then at the Regional Court from 9 March 2002 to 5 August 2003. Among the defendants found guilty were; a high-ranking official of the National Police and 3 (three) mid-ranking National Police officers. At the same time, all the Indonesian Armed Forces personnel involved were acquitted of committing gross violations of human rights.

The investigations, prosecution, and verdicts relating to several cases, such as the attack on Manuel Carascalao's residence (19 April 1998); on the Liquisa Church (8 April 1999); on Bishop Bello's residence; on the Dilli Dioceses; and on the Suai Church, were carried out to determine whether the suspects were guilty of committing gross violations of human rights.

The Indonesian courts have carried out one of their many functions by bringing to justice those who were responsible for gross human rights violations in East Timor in 1999. Therefore, the geographical and time limitations of the Human Rights Court in East Timor are not accurate.

Indonesia grants full protection to those who witness criminal acts. This policy is clearly stipulated in the 1945 Constitution (the 4th Amendment) and other provisions. Article 28G of the Constitution states that "Each person has the right to recognition, security, protection and certainty under the law, and shall be considered justly and equal before the law". Furthermore, Law No.26/2000 on Human Rights Court stipulates, *inter-alia*, in Article 34 on the provision for the protection of victims and witnesses in cases of serious human rights violations, including the rights of physical and mental protection from threats, terror and violence, law enforcement and the security apparatus should provide protection at no cost.

In order to help witnesses give free and direct testimonies, the Indonesian government has promised to assure that witnesses have full security while on Indonesian territory. At the time, the Court even allowed witnesses from Timor Leste who are unwilling to appear in court to give information and their testimonies through direct teleconference for the trial which was held in Jakarta. Furthermore, the trials were also open to the public and could be attended by anyone, including foreign observers and United Nations envoys.

Even though many witnesses were willing to use the teleconferencing facility, there were several others who for unknown reasons, were not willing to utilize it.

## Question 29

29. Please also indicate what have been the practical results of cooperation with the Serious Crimes Unit and the Special Panels Courts in Timor-Leste, as full cooperation was recommended in

§ 10 (m)<sup>5</sup> of the Committee's recommendations? What measures have been taken to find and extradite to Timor-Leste the Indonesian officials indicted for crimes against humanity to be prosecuted before the Special Panel Courts of Timor-Leste? How many of those indicted suspects have been extradited to Timor-Leste?

The Government wishes to underline that this issue has been brought to the attention of the Committee which has been dealt with it under the framework of the bilateral Commission on Truth and Friendship between Indonesia and Timor Leste. However, it is another matter entirely if the Committee wishes to seek the Government's responses to certain issues or cases that the Committee deems relevant and pertain to its work and mandate. However, since the Government does not recognize the competence of the Committee to deal with individual cases, the Government subsequently does not consider itself in a position to provide the responses requested above.

30. According to numerous well documented public reports, gross and systematic human rights violation occurred in Timor-Leste before 1999. Please indicate the measures taken to investigate those human rights violations?

See the Government's response above. In addition, the Government would like to provide the following information on the establishment of the Commission on Truth and Friendship between Indonesia and Timor-Leste:

1. The leaders of Indonesia and Timor-Leste established the Commission on Truth and Friendship (CTF) on 14 December 2004 in order to bring closure to the reported cases of violations of human rights which took place prior to and immediately following the 1999 popular consultations in Timor-Leste.
2. The terms of reference of the Commission were jointly adopted on 9 March 2005. The establishment of this Commission is based on the commitment of the two Governments to find a conclusive resolution to any residual problems from the past and in order to deepen and expand bilateral relations both at the government and people-to-people levels. One of such important residual issues relates to the reported violations of human rights in Timor-Leste in 1999.
3. The CTF constitutes a new and unique experience whereby two countries, with a recent shared history, have agreed with courage and vision to look at the past and see it as a lesson, and in order to embrace the future with optimism. In the implementation of its mandate (as set out by the terms of reference), the CTF is currently finalizing its fact-finding and truth seeking process. At this stage, the CTF is in the process of compiling and verifying facts directly with individuals and parties who have knowledge and experience regarding various aspects relating to events which took place in East Timor in 1999. The CTF's methods of work are as follows:
4. Examining all reports and documents produced through formal legal processes both in Indonesia and Timor Leste (i.e. Ad-Hoc Human Rights Courts in Indonesia and Serious Crime Unit of the Timor Leste); documents from the Ad Hoc Human Rights Investigation teams in Indonesia as well as from the CAVR of Timor Leste.
5. Carrying out fact-finding procedures (statement takings, hearings, interviewing and submissions). As part of this process, the CTF requested and heard statements from many sources (victims,



alleged perpetrators, including those from military/armed forces as well as from civilians. Further, the CTF has also extended invitations to several former UN officials, in particular those from the UNAMET (involved in the process of popular vote in the former East Timor in 1999). Regrettably, the invitations have not yet been positively responded to. Therefore, it is worth underlining that the presence of those who have both the aforementioned knowledge and experience on the related issues, is very essential to ensuring the fulfillment of the mandates of the Commission.

6. It is thus expected that by the end of May 2008, the final report of the Commission can be submitted to the Governments of both countries. We are hopeful that the report would help reveal the final truth, and provide the two Governments with sound solutions in order to promote reconciliations and friendships between the two nations, while at the same time, taking into account the need to obtain reparations for victims as well as rehabilitations for those who have been accused of human rights violations but not proven guilty. Furthermore, the report should also help in the efforts to legalize reforms as well as good governance in both countries.

### Article 13

#### Question 31

31. Please provide data regarding results of complaints and investigations of torture and other forms of cruel, inhuman or degrading treatment or punishment, especially during detention by police forces or TNI, as well as in prisons and other place of deprivation of liberty (§§ 82 to 87 of the report<sup>6</sup>), as recommended in § 10 (p)<sup>7</sup> of the Committee's Recommendations. Please disaggregate the data by, *inter alia*, gender, ethnic group, geographical region, type and location of detention.

The relevant data requested by the Committee is now at the stage where it is being compiled and will later be submitted as an annex to this written response. The compilation of such data is done in conformity with the applicable domestic legislations.

### Article 14

#### Question 32

32. What measures have been taken to address the urgent need for compensation and rehabilitation of victims of torture in Indonesia, in order to implement the recommendation of § 10 (n) of the Committee's Conclusions and Recommendations? Please provide statistical data regarding compensation and rehabilitation for victims of torture (§§ 88 to 94 of the report). Please provide information on the procedures in place to obtain rehabilitation and compensation for victims of torture and their families and if those procedures are also available to non-nationals. What rehabilitation programmes currently exist for victims of torture in Indonesia?

The rights of the victims to receive compensation are guaranteed by Law No.26 of 2000 and Article 35 in particular, which states that victims of gross violations of human rights deserve compensation, restitution, and rehabilitation. The right to compensation is also guaranteed by

Presidential Decree No.2 of 2002. Article 1 of the decree stipulates that a victim is a person or a group who physically, mentally or emotionally suffers from negligence or economic and basic human rights deprivation as a result of gross violations of human rights. The aforementioned victims also include members of their families. Article 2 (2) of the same decree states that the provision for compensation, restitution and/or rehabilitation as mentioned in Article 2 (1) shall be rendered in a proper, prompt and feasible manner.

Article 34 of Law No.26/2000 on Human Rights Court provides for the protection of victims and witnesses in cases of serious human rights violations, including the rights to physical and mental protection from threats, terror and violence. The law enforcement and security apparatus should provide this protection at no cost. Article 22 of the Law incorporates a provision for services such as counseling, providing information on the rights of the victim to obtain police protection and court orders, as well as protecting victims in a "safe house" or in an alternative residence.

In this regard, the Government provides victims of torture who report to the police or who are referred to by the police, hospitals, non-governmental organizations, etc, with rehabilitation and psycho-social protection facilities as well as reintegration into their families and society. The duration of the treatment within the facilities depends on the victims' condition.

### **Article 15**

#### **Question 33**

33. How is the provision in article 15 of the Convention prohibiting the use of any statement obtained as a result of torture as evidence in any proceedings, except against the alleged torturer, implemented in practice in the State Party? Please provide examples of any judicial cases where the courts have declared statements inadmissible on the ground that they were obtained coercively.

Article 422 of the Penal Code (KUHP) states that "Any official who in a criminal case makes use of any means of coercion either to wrench a confession or provoke a statement, shall be punished with a maximum imprisonment of four years". Article 117 of the Law on Criminal procedure (KUHAP) also states that "*(1) the testimony of a suspect and or a witness to an investigation shall be given without pressure from anyone whomsoever and/or in any form whatsoever; (2) a suspect who testifies on what he has actually done in connection to the offence for which he is suspected, the investigator shall record it in the minutes as carefully as possible in the words used by the suspect himself*".

In addition, Articles 184 and 185 of KUHAP stipulates that the judge shall be reminded of his duty to pay attention to any information or statement obtained from a witness, and ensure that it is attained in a free, honest, and objective manner.

From the information, statement, or testimony given by a suspect and/or a witness under pressure/torture to the investigators, the panel of judges shall ask the investigators involved whether or not during the investigation conducted, torture was used. If the testimony is found to have been elicited under pressure, then the information shall not be considered valid and the suspect must be acquitted.

## Article 16

### Question 34

34. According to information before the Committee, violence against children, including corporal punishment as well as neglect and abuse, especially sexual abuse and exploitation and trafficking, are persistent in the State Party. The criminal responsibility at eight years old and detention with adults as well as East Timorese children separated from their families are also factors favouring ill-treatment of children. Please, provide information on the measures taken to effectively protect children from mal-treatment, especially in childcare institutions and detention centers. What have been the practical effects of Law 23/2002 on Child Protection (§ 27 of the report)<sup>8</sup>? What are the objectives and results achieved so far by the Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children?

Child protection in Indonesia has become a huge concern for the Government. Article 1 paragraph 15, Law No.23/2002 on Child Protection stipulates that “*Special protection* is the protection accorded to children during a state of emergency, children in the [process of law, children from isolated and minority groups, children being economically and/or sexually exploited, children being trafficked, children who are victims of illicit drug trafficking, children who are kidnapped, children who are victims of physical and/or mental violence, and children who are victims of mistreatment and negligence”. Article 80 stipulates that the perpetrators of violence against children will be imposed with penalties of a maximum of three years and 6 months imprisonment and an additional one third more of this sentence if the perpetrators are the parents.

The Government has enacted a decree on the needs of separating adult and child detainees as well as male and female detainees. However, considering the fact that not every Indonesian penitentiary has separate female and children facilities, they can be separately detained within the adult/male detention blocks. Until recently, the Government embarked on the developments of 16 special children penitentiaries which are separated from the adult prisons; by formulating model courts which are child friendly; as well as under a pilot project, formulating strategies on restorative justice in central Java and West Nusa Tenggara.

Besides this, the Government working in collaboration with the Department of Social Affairs has stated that further character building held in rehabilitation houses is needed for children who have undergone trial proceeding but have not been detained.

The Government had ratified the Convention on the Rights of the Child in 1999 under Presidential Decree No.36 of 1990 which was later further affirmed with the enactment of Law No.23 of 2002 on Child Protection. To improve the effectiveness of child protection, based on Article 74 Law No.23 of 2002, the Commission for Child Protection (KPAI) was established. The commission is also an independent monitoring body for child protection.

Next, in order to provide maximum protection, the Government has established a series of legal measures including; enacting Law No.20 of 2003 on the National Education System, Law No.13 of 2003 on Employments, and Law No.23 of 2004 on Domestic Violence, and other regulations concerning trafficking in persons, especially women and children, and child pornography-related

matters, as well as Presidential decrees relating to child protection, such as Presidential Decree No.77 of 2004 on Founding the Commission for Child Protection (KPAI), Presidential Decree No.87 of 2002 on the National Action Plan on the Eradication of Child Commercial Sexual Exploitation, Trafficking in Women and Children, Presidential Decree No.59 of 2002 on the National Action Plan on the Eradication of the Worst Types of Child Employment.

Presidential Decree No.87 of 2002 was enacted with the purpose of protecting against and preventing child commercial sexual exploitation in Indonesia, and prosecuting perpetrators responsible for this crime.

The abovementioned decree and the Joined Decree (SKB) No.3 between the State Minister for the Women Empowerment and the Chief of National Police which ended in 2007 are part of the revision and evaluation process which is to be adjusted to fall in line with Presidential Decree No. 9 of 2008 on the Methods and Procedure of the Integrated Service for the Victims and Witnesses of Trafficking.

The abovementioned legal measures have been disseminated to all provinces and regencies. The Government has also enacted the Law on Anti-Trafficking in Persons (Law No 21/2007), and in addition, some provinces have enacted several regional regulations which are in accordance with the aforementioned Law.

Furthermore, the number of child sex workers in Indonesia was previously estimated at around 70.000<sup>9</sup> The Government is fully aware of the fact that child prostitution belongs to the worst form of child labor and Indonesia is firmly committed to eliminating the worst forms of child labor by 2016, four years before the world target of 2020.<sup>10</sup>

To this end, and in association with the ILO, the Government has undertaken efforts to strengthen the following programs:

a. The Program to reduce the number of child domestic workers<sup>11</sup>, among others, through the formulation of a Bill on Domestic Workers designed to give a legal foundation to the protection of children who have to work as domestic workers, and to eradicate work in this field for those under fifteen. Domestic workers aged between 15 and 18 can work provided they receive alternative education, a day off a week, and work for a maximum of four hours per day.

At this stage and while awaiting the adoption of the aforementioned bill, the Government continues to strengthen the dissemination of information<sup>12</sup> at the regional level. It thus aims to promote the creation of the local regulations (Perda) which are compatible with the norms to be formalized within the aforementioned bill. The dissemination process commenced in the provinces of Riau Islands, Central Java, the Special region of Yogyakarta, West Kalimantan and West Nusa Tenggara. In this context, three regions, namely the Special region of Yogyakarta, the city of Kerawang and the Special region of Jakarta have successfully completed the formulation of the said local regulations.

b. The program for the eradication of trafficking in children for labor and child sexual exploitation;

- c. The program for the prevention of the trade in narcotics, psychotropic and other addictive substances to children;
- d. The program for the abolishment of the use of child workers on off-shores thermals in North Sumatera, child workers in shoe factories and child workers in the people coal mines in Bangka and Belitung.

**Question 35**

35. According to information before the Committee, 85% of all juveniles coming before the courts are sentenced to terms of imprisonment and most of them are not segregated from adults during pre-trial detention and sentencing period due to the lack of space in detention facilities as well as to the lack of implementing legislation. Apparently children are often ill-treated during their detention, including through humiliation in public. What measures is the State Party taking to prevent such practices? Has the Independent Commission for the Protection of Children been established, as provided by the Child Protection Law No. 23/2002? What specific measures have been taken to [omit: sensitize] train the police, prosecutors and judges on the specific issues of juvenile delinquency and justice?

In relation to the procedure for the investigation and prosecution of children, the Government has employed several policies with the aim of providing better protection to children who are suspects or defendants, or who have been proven guilty of committing a crime. Among these policies include: providing separate child and adult facilities; holding separate trials which are closed to the public; appointing judges who ensure special attention is given to children; ensuring the court is presided by a judge except in certain instances where a panel of judges is created; not wearing outfits usually worn in adult courts; and inviting social advisors from the Bureau for Children and Social Assistance to give reports to the child court.

The Indonesian government also employs a different policy with regards to the verdicts given to child perpetrators, such as: the detention period for children is less than the detention period for adults; imprisonment is only given to children of 12 years and above, whereas children ranging from ages 8 – 12 years old are only given warning letters by the judge. The Law on Child Protection and Law No.39 of 1999 on Human Rights, Article 66 clause 2 in particular, specifically state that “death sentences or life sentences cannot be given to child perpetrators”. Article 26 Law on the Child Judicature affirms that verdicts for crimes carrying possible death or life sentences can only be given to children with maximum sentences of no more than 10 years. If the child perpetrator is below the age of 12 years old, then the sentences given must be suited to their ages.

The Government is undertaking efforts to bolster the role of the Penitentiary Agency (Bapas) in order to strengthen the civil society’s studies/evaluations to further help judges in their efforts to examine cases involving children. The Government is also embarking on the developments of 16 special child penitentiaries which are separated from adults prisons; establishing model courts which are child friendly; as well as formulating restorative justice in Central Java and West Nusa Tenggara as part of a pilot project. These efforts are also supported by the establishment of law enforcement networks (police, attorneys, judges, penitentiary boards, and legal aid foundations which have the

support of the Bureau for Women's Empowerment acting as coordinator) in eight provinces at the early stage, in order to ensure protection for children facing legal problems.

In order to increase the effectiveness of child protection implementation, the Indonesian government has created the Commission for the Protection of Indonesian Children through Presidential Decree No. 35/2004 (first period) and Presidential Decree No. 105/2007 for 2007-2010 period. Moreover, in order to improve the protection of children, the Government established child protection institutions and the Regional Commission on the Protection of Indonesian Children (KPAID) in 7 provinces and 9 regencies / municipalities.

With the help of the National Police, the Government has been able to give special education to all the personnel of the National Police in form of RPK/PPA training. The Government also continues to disseminate information to the services and social rehabilitation facilities which have been provided for legally-troubled children, as well as to dynamic open air activities group involving social workers, law enforcement officers, and non-governmental organizations who deal with problematic children.

In addition, the Government, in collaboration with the UNICEF, has reinforced training of law enforcement officials in Central Java, East Java, Papua, Maluku, and West Sulawesi.

### **Question 36**

36. According to information before the Committee, Indonesians migrant workers, especially female domestic helpers, have been abused by Indonesians recruiting companies and/or have been put in situations that impact negatively on the enjoyment of their human rights while abroad, including debt bondage and forced labour, which often leads to intimidation, torture or other ill-treatment and labour related abuses, including sexual abuse. Please provide information on ANY implementation of the recommendations of report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24/Add.3), especially regarding the monitoring and regulating of recruitment companies, the imposition of adequate penalties for the violation of regulations by those companies, the awareness raising campaigns on the situation and rights of migrants workers and the education campaigns for workers and recruiters, the creation of legal aid, the mechanisms to receive complaints and to prosecute perpetrators for human rights violations as well as the training of Indonesians consulates abroad to identify and prevent such abuses and to protect the rights, of migrant workers to be free from such abuses. What have been the practical effects of Law 13/2003 on Labors and Law 39/2004 on the Placement and Protection of Migrant Workers (§ 27 of the Report)?

In order to protect Indonesian migrant workers, the Government has passed Law No.13/2003 on Manpower, Law No.39/2004 concerning the Placement and Protection of Migrant Workers followed by the establishment of a new coordinating body, namely: the National Board for the Placement and Protection of Migrant Workers (BNP2TKI) through Presidential Decree No.81/2006. This was further strengthened by the issuance of the Presidential Instruction No.6/2006 on the Reform of the Policy concerning the Protection and Placement of Indonesian Workers Abroad. In addition, a National Professional Certification Board was established to provide Indonesian workers with

standards of competence which can be accepted nationally and internationally. Consistent with this goal, the Government is paying particular attention to the professionalism of the private employment agencies in their provision of pre-departure training for the prospective migrant workers. As part of the tough measures now in place, the Government has dissolved 86 centers throughout the country, due to their lack of capacity to provide sufficient training facilities.

To further strengthen the protection of its nationals abroad, the Ministry of Foreign Affairs (MFA) has established a new directorate to deal with the protection of Indonesian citizens as well as legal entities overseas whose main task is to provide assistance and protection to Indonesians including migrant workers overseas. In line with the mandate of Presidential Instruction No.6/2006, the Ministry of Foreign Affairs (MFA) has established a citizens' advisory service in coordination with various Indonesian diplomatic and consular missions abroad, particularly in the countries of destination. Also a number of measures have been undertaken such as finding legal representatives to assist on the cases; provide shelters and counseling, and to request that the ILO provide a module concerning the protection of migrant workers.

In dealing with cases where Indonesian migrant workers have suffered abuse and are sent home from their placement country, the Government has provided shelters as well as rehabilitation or trauma centers for those workers before they are sent to their homes.

### **Question 37**

37. According to information before the Committee, human rights defenders conducting peaceful and legitimate activities of advocacy, monitoring and/or reporting human rights violations have been harassed as well as prevented by the police, military and intelligence agencies from exercising their freedom to assemble, demonstrate or associate freely as well as their freedom of movement. What measures has Indonesia taken to protect and prevent such harassment and violations specifically in accord with the recommendations of the Special Representative of the Secretary General on human rights defenders? What measures recommended by the Special Representative of the Secretary General on human rights defenders have been implemented? What mechanisms are in place, and have been used, to investigate those acts from public entities? Please provide data on complaints, investigations, prosecutions and conviction related to such acts. Detailed information on the latest stage of the investigation and prosecution of the murder of Munir Said Thalib should be provided. Additionally, please provide information on the attacks on human rights defenders from west Papua including the chairperson of the Papuan representation office of Komnas Ham, Albert Rumbekwan on 24 September 2007, following the visit of the Special Representative on Human rights Defenders; What is the status of any investigation or prosecution in connection with it.

The role of human rights defenders is one of the main components of the democratic and reform process in Indonesia. The existing laws guarantee that everyone is equal before the law. Therefore any attacks on human rights defenders will certainly be processed within the applicable legal framework. For example, the death of Mr. Munir in 2004 was thoroughly investigated and at the

time, the Government established an independent fact-finding team to resolve the case in order to ensure that those responsible were brought to justice.

In order to enable human rights defenders to hold peaceful demonstration, the police have over time been improving their conduct in order to justly handle demonstrations. Law No. 9/1998 on the Rights for Freedom of Expression in Public, along with the police manual on handling demonstrations stipulates measures to deal with public demonstrations. In order to avoid unprecedented incidents, the police is currently imposing different strategies for handling demonstrations, i.e., by placing police officers who are able to negotiate (mostly women) at the forefront. The police are only allowed to use water canons and wooden sticks as the last resort and only when deemed necessary. The use of both weapons should be in accordance with the Standing Operational Procedure as indicated by the law and the head of Indonesian National Police Decree No.16/2006.

Reports of abuse on human rights defenders directed at superiors or other authorized parties will be processed through relevant investigations. If the public entities are proven guilty of committing such abuse on human rights defenders, they will be processed in accordance with the existing laws, either using the Code of Conduct disciplinary mechanisms or the general judicature.

With regard to the latest developments on the legal procedure concerning the Munir case, the Government would like to provide the following information:

The Attorney-General's office conducted a judicial review (PK) via a Supreme Court ruling; No.1185/K/Pid/2006, dated October 3 2006, in reference to the verdict given to Pollycarpus Budihari Priyanto which basically states that the aforementioned person was guilty of using "forged documents " and thus, was sentenced to two years imprisonment.

During the judicial review, the State Prosecutor requested that the Chief Justice of the Supreme Court accept the following:

- The retraction of the Supreme Court Decision No. 1185 K/Pid/2006, dated 3 October 2006.
- The adjudication and further processing of the said case.
- Reaching a decision whereby Pollycarpus Budihari Priyanto should be found guilty of premeditated murder and sentenced to life imprisonment. The cost of the case should also be paid to the amount of Rp.5.000,-.

The result of the Supreme Court judicial review is as follows:

- That Pollycarpus Budihari Priyanto was found guilty of the premeditated murder of Munir and of falsifying his travel documents.
- He was sentenced to 20 (twenty) year's imprisonment. The sentence has been executed.



#### The case of Indra Setiawan

- The State prosecutor had requested that Indra Setiawan be sentenced to one and a half years (1.5 years) for assisting Pollycarpus in the murder of Munir.
- The verdict of the Central Jakarta Court stated that the aforementioned was guilty of assisting in the murder of Munir and sentenced to 1 (one) year imprisonment, less the time served.
- The aforementioned suspect has lodged an appeal which is currently being processed.

#### The case of Rohainil Aini

- The State prosecutor requested that Rohainil Aini be sentenced to 1 (one) year in prison on charges of falsifying documents.
- The verdict of the Central Jakarta Court was to decide that R. Aini was not guilty and was thus acquitted.
- The State prosecutor has appealed the verdict.

#### **Question 38**

38. Please provide information on violence against the Ahmadiyah community, especially in Lombok and West Java, in September and October 2005, including on the investigation of alleged police inaction to provide security to the victims. Where there any prosecution and conviction? Please, also provide detailed information on the investigation on the incidents in the Malukus and inter-communal violence between Muslims and Christians in the Poso region of Central Sulawesi Province.

The violence or attacks against the Ahmadiyah community or directed against their religious places of worship were not carried out as part of Government policy. The conflict occurred between the Muslim community in general and the Ahmadiyah community in Lombok and West Java. Local security officers had tried to reconcile and calm both parties; however, the root causes were not entirely resolved. As a result, the Muslim community suddenly attacked the Ahmadiyah community who lived quite far from the local security personnel. The attack damaged homes and religious centers.

As a neutral party, before and after the incident, the Lombok security personnel - besides performing the necessary security measures - also requested assistance from other the security unit in the West Nusa Tenggara Regional Police in the form of 1 SSK Brimobda and 1 SSK Dalmas.

In order to enforce the rule of law, the security personnel captured the perpetrators who committed the acts of damage and arson on other people's property. These among others included:

- Musidi, 40 years old, from Jelanteng Village of the Lingsar District, West Lombok Regency, West Nusa Tenggara.
- Junaedi, 30 years old, from West Orong Village of the Lingsar District, West Lombok Regency, West Nusa Tenggara.

- Supri, 20 years old, from South Orong Village of the Lingsar District, West Lombok Regency, West Nusa Tenggara.

To protect the Ahmadiyah community, the West Nusa Tenggara regional government evacuated 31 families (125 persons) who were victims of the incident to the Majeluk Transito dormitories in Mataram and to the office for Social Affairs located in Jl. Langko, Mataram, West Nusa Tenggara province.

### **The case of Ahmadiyah in West Java:**

This incident occurred in West Java and had the same characteristics as that which took place in Lombok, i.e., it was incited by conflict. Security personnel, in cooperation with local government, moved the Ahmadiyah community to a safe location after they suffered an attack during a gathering in the Mubarak Campus in Bogor, in July 2005.

To secure the situation and reconcile the disputing parties, the security personnel patrolled and secured areas where the Ahmadiyah community lived and where their assets were located. Meanwhile, the Ahmadiyah community was encouraged to refrain from their usual activities in order not to provoke the surrounding Muslim community to commit acts of vengeful anarchy.

### **The result of investigation in Maluku:**

Disputes between the Muslim and Christian communities are currently decreasing, and both communities are not easily provoked to indulge in major dispute even if provoked by bombings and shootings by troublemaking opportunists. Maluku in general, and Ambon in particular, are more and more conducive, although leftover problems from the conflict such as refugees, land ownerships issues, lack of job opportunities, poverty, and other social problems might cause another conflict to arise.

### **Result of the investigation in Poso:**

The conflict in Poso also had the same characteristics as that of Maluku. Due to the hard work of the security personnel, by early 2007 several prominent cases which were still considered mysterious in motive include, among others:

- Large-scale bombings in the Poso central market, the Tentena market, and the Maesa Market in Palu.
- Mysterious shootings of Susianti, Priest Irianto Kongkoli, Attorney Ferry Silalahi, Bripda Agus Sulaiman, etc.
- The shooting of the Chief of Municipal Police of Poso in February 2006.
- The decapitations of 3 (three) girl students and the Chief of Pideapa Village.
- Armed robberies in jewellery stores in Palu and Tomini, and of the Regional Government Office of Poso.
- A number of small-scale bombings.
- A number of motor vehicle thefts.
- Other murders.

- Other cases of residential arson.

Those involved in the riots have been prosecuted in the district court, and most were found guilty and sentenced to 5 (five) to 15 (fifteen) years of imprisonment.

**Question 39**

39. According to the special representative on internally displaced persons, the police and military forces have often used excessive and disproportionate force against ethnic and religious groups or persons, in particular in Aceh, Papua, the Maluku and West Timor provinces. Please provide information on the specific measures taken to combat and prevent such actions by TNI and the police forces on the ground, including training and education programmes. Please explain whether and how such allegations are investigated and prosecuted, and by which authorities. Are suspects routinely suspended from their duties during investigations? Please provide any concrete examples of such cases.

The Government of Indonesia has been pursuing its commitment to use its educational system as a way of promoting and prohibiting torture at various levels, including for military and police personnel. Those programs include teachings human rights and humanitarian law within the Indonesian Military Academy and Higher Military Officials School as well as in the Indonesian Police Academy and its higher education.

In addition, the Department of Defense has created a curriculum on Basic Education for National Defense under which Civic Education forms a component and also includes courses on the Convention against Torture. The Department has also taken part in controlling the creation of training materials for military officers using the Rules of Procedures in Treating Prisoners of War; Refugees and Internally Displaced Persons; Rules of Procedures for Military Officers committed to Military Operations excluding War; Manuals, cards, and basic rules of procedures concerning the operation of prior matters in the implementation of human rights.

In performing their duties especially in conflict areas such as Aceh, Papua, Maluku, and West Timor, security personnel do not consider ethnic, religious, and racial differences within the conflict areas. In order to reduce conflicts of interest, the personnel assigned to the conflict area mostly consist of members with different beliefs or religions to those of the conflicting parties. For example, most security personnel in Maluku or Poso embrace Hinduism.

At present, the Indonesian security personnel, both police officers and military personnel, have been able to form a different perspective as democracy grows in the country. Education and trainings needs to help increase human rights understanding and reduce in-field violence, especially as part of two inseparable curricula taught within the police and military forces. Before joining a military assignment, personnel are provided with knowledge of the local culture, equipped with manuals, and strictly monitored by their superiors. Should any violence by certain parties occur, it will be legally processed in accordance with the laws, and if they

overstep certain limits, the perpetrators can be prosecuted. This is one of the societal control mechanisms guaranteed by the law.

Meanwhile, in order to help with recovery in terms of post-conflict trauma, the Government’s Department of Social Affairs provides assistance to families who have been victims to help them overcome trauma, put them on the course towards recovery, and overcome malnutrition problems.

Furthermore, in order to overcome some of the problems faced by refugees of Timorese origin who are currently living in West Timor, the Indonesian government provided 8,000 simple homes between 2006 and 2007. This proves that the Indonesian government pays special attention to the wellbeing of the refugees.

Following the Tsunami earthquake on Dec 26 2004, which affected Aceh and Nias, and killed around 132,000 people and left 37 people missing, the Indonesian government declared the tsunami in Aceh a national disaster and appointed the National Coordinating Board for Disaster Management (BAKORNAS PBP) to implement an emergency response strategy. The Minister for Social Welfare was appointed as coordinator of the emergency response phase and an operation’s centre was established in Banda Aceh.

The Agency of the Rehabilitation and Reconstruction for the Region and Community of Aceh and Nias (BRR) was established through Government Regulation in Lieu of Law No. 2/2005. This emergency regulation became Law No. 10/2005. The **BRR** has a vision to build a dignified, prosperous and democratic Aceh and Nias.

The amount of funding required to redevelop Aceh and Nias was estimated at IDR 60 trillion. This amount was to be obtained from, among others, through a moratorium on the Indonesian government's debt of IDR 21 trillion, which would be allocated over a four-year budget period. The remainder was to come from various commitments made by NGOs, donor countries, multilateral and private individual donors from around Indonesia and from the international community.

Progress BRR as of April 2007	
<b>Houses built</b>	<b>64.965 Units</b>
<b>lands/farms</b>	<b>75.483 acre</b>
<b>Roads</b>	<b>1.553 km</b>
<b>Ports</b>	<b>11 units</b>
<b>Airports</b>	<b>7 units</b>

<b>Teachers</b>	<b>17.115 trained</b>
<b>Schools</b>	<b>782 units</b>
<b>Health Facilities</b>	<b>359 units</b>

Sources Pusdatin – BRR 2007

Furthermore, the TNI also played a very critical and pertinent role in the reconstruction process in Aceh by undertaking a number of infrastructure rebuilding efforts, as well as other non-physical remedies which helped displaced families and individuals. Some of these reconstruction efforts include: building new roads, bridges and water pipes along hundreds of kilometers all over the Province such as from Lhok Nga to Kreung Reudung in Banda Aceh, Bailey bridge in Kreung Raba, Kreung Reudung/Masjid, Kreung Lhok Kaca and Kreung Peuleut, as well as many more other construction projects.

In terms of psychological efforts, the TNI have also been closely involved in helping local people including the internally displaced. A great deal has also been done as well as support offered to the local population in order to help revive the spirit of the affected people, through numerous forums for dialogs and programs via television, radio and live events.

### **Other issues**

#### **Question 40**

40. Please provide information on the legislative, administrative and other measures the State Party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice. Please indicate which specific measures have been adopted following the Bali bombing? Are there any special measures in force in Aceh, Papua, Malukas, or any other provinces? In this respect, the Committee would like to recall United Nations Security Council Resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) all of which reiterate that States must “ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.” Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints. Please confirm that there are no secret detention facilities in the State party.

As a country victimized by terrorism, there are three major bombings taken place in the last five years that killed hundreds of innocents, Indonesians as well as foreigners. Yet Indonesia managed to uphold due process of law in accordance with the universal human rights norms. There has been no

indefinite detention, as otherwise prescribed and exercised by some countries. The principle of *habeas corpus* remains intact. The rights of the alleged perpetrators are guaranteed in accordance with the law. In our fight against terrorism there should, and must, be no contest between democracy, human rights and security. Indeed, human rights and good governance can reinforce our immunity from the disease of terrorism. Under the spirit of good governance one of the main tools used by our national police to deal with the threat is the policy of “community policing” which is being gradually strengthened through international cooperation in a number of areas.

In spite of limited resources, we are strengthening our drive to prevent and deter acts of terror in our country. Our law enforcement and security apparatus is steadily earning the trust and confidence of our people. While we are enhancing our capacity for law enforcement, we are also addressing the root causes of terrorism, such as backwardness, poverty, injustice, extremism, radicalism, and a culture of violence in a few circles. We are deeply intent on preventing and combating terrorism in order to defend our nation and society and to ensure peace, order and security all over the country. We also feel called upon to contribute to peace and security in our region and in the world at large by cooperating with other nations in the fight against terrorism.

In addressing and responding to the threat of terrorist acts, the National Police, within its internal reforms, has undertaken community policing programs since 2005. The program was formalized through Decree of the Chief of National Police under reference No.737/X/2005, dated 13 October 2005, which contains an annex entitled: “Strategy and policy for the implementation of the model for community policing with regard to conducting national police duties”. This decree provides comprehensive guidance for the community’s understanding and perception of the policy and strategies of the National Police for Community Policing. Community policing is considered as one of the most effective methods of creating and maintaining the safety of a community. It differs from the old method which tended to put greater emphasis on the role played by the security officers, and gives priority to the role and participation of the community in preserving the security of their neighborhood. As part of the efforts to develop and strengthen the application of community policing, the National Police continues to support in-depth discussions and search for best practices as well as lessons learnt in the daily dealings in the multifaceted Indonesian community.

In order to prevent and criminalize acts of terrorism as well as gross violation of human rights, the Indonesian government has issued a regulation that hardly influences the promotion of human rights in general, which is Government Regulation No. 28/2006, of July 28<sup>th</sup> 2006 on the Revision of Government Regulation No. 32/1999 on the Prerequisites and Customs Implementation of the Rights of the Citizen Undergoing Imprisonment.

The regulation covers the remission awarding process for the convicted person who has been given an imprisonment verdict because of acts of terrorism, illegal narcotics and psychotropic related activities, corruption, crimes against national security, crimes against humanity and other transnational organized crimes. Remission will be given under certain conditions such as: if a convict behaves well and has undergone one third of his/her punishment, for example, if someone receives a 15 years imprisonment sentence, he/she will receive remission after undergoing 5 years of service. This policy is a bit different from the previous one, where remission is only given if someone has undergone 6 months imprisonment.

The reason behind this change of policy is to prevent acts of terrorism (and other severe crimes) from being repeated, with the ideology that this new policy will make the convict wait for a longer period in order to be freed from the detention center.

In dealing with cases of terrorism, the Government of Indonesia always considers the relevant regulations and takes notice of the rights of the suspects, while applying the following steps:

- 1) Measures to address acts of terrorisms, can be described below:
  - a. The implementation of management crisis for integrated actions in cases where terrorism occurs.
  - b. The participation of forensic professionals is requested.
  - c. The revelation and pursuit of terrorists.
  - d. Investigation and intelligence synergy.
  - e. International cooperation, which covers investigation, intelligence, mutual legal assistance, and capacity building.
  - f. Enhancing the speed and precision of the legal process.
  
- 2) Preventive Measures include as described below:
  - a. The strengthening of legal grounds as the basis for proactive measures to deal with activities of radical groups or terrorists before any attack occurs.
  - b. The improvement of integrated intelligent operations such as BIN, BAIS, and BIK, by:
    - i. Uncovering terrorist networks and organization.
    - ii. Continually recording tracks of militants who are suspected to be potential terrorists.
    - iii. Finding terrorist plans and preventing them from occurring.
  - c. The improvement of open security profile:
    - i. Security personnel's readiness to secure objects
    - ii. Tools and equipment readiness.
    - iii. Enhancing patrols.
  - d. Support from the Indonesian armed forces squad, by assisting them in their detection efforts and early prevention.
  - e. International cooperation in form of intelligence exchanges and mutual legal assistance
  - f. Efforts in controlling and supervising identity and travel document:
    - (i) Identification cards and travel documents.
    - (ii) Production, distribution, storage and use of explosive devices.
    - (iii) Use of armed weapons and ammunition in the armed forces team, national police, government institutions and community groups.
    - (iv) People and goods trafficking at the entry and exit points of the border territories.
    - (v) Trafficking of funds.

The Indonesian government does not have any secret detention facility within its territory.

#### **Question 41**

41. Is the State party considering making the declaration under articles 21 and 22<sup>13</sup>, recognizing the competence of the Committee to receive and consider communications?

At this stage, the Government is not in a position to consider making declarations under Article 21 and 22 as the matter has to be determined and decided by Parliament.

#### **Question 42**

42. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

The plan to ratify the OP of the CAT has been included in the National Plan of Action of 2004-2009 (under Presidential Decree No. 40/2004). Intensive discussions have been carried out within relevant governmental agencies and civil society (NGOs and Komnas HAM who have been extensively involved in this process).

In this regard, it is important to underscore the importance of undergoing a process whereby all legislations, administrative practices are studied in detail, as well as raising awareness of OP-CAT for as many and as broad a constituency as possible in order to ensure that the instrument, as soon as it is ratified, can be fully applied.

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<sup>1</sup> CAT/C/72/Add.1 23-Sep-05

72. Paragraphs 117-119 of Indonesia's initial report continue to apply. Paragraph 117, which mentions Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP), apply to all cases, including acts of torture.

73. According to Law No. 39/1999 on Human Rights, Komnas HAM has the authority to conduct pro-justicia inquiry and assessment of a particular event which occurred within the society, and which based on its nature and scope, can be considered to involve gross violations of human rights (including torture). The conclusion of such an inquiry shall be handed over to the Attorney-General (AG) for further investigation and prosecution. Komnas HAM also has the right to seek information from the Attorney-General on the progress of the process of investigation and prosecution. From the outcome of the inquiry of Komnas HAM, it shall be decided if there is any form of gross violations of human rights. The outcome or conclusion shall then be submitted to the police who would be expected to proceed further with the case. With regard to Article 9 of Law No. 26/2000 on Human rights Court, the Komnas HAM will discuss with the Attorney-General in order to determine whether the case can be categorized as a gross violation of human rights.

74. On the other hand, the office of the AG is urged to establish cooperative ties with other institutions in conducting its tasks such as investigating any cases within its jurisdiction, as stipulated in Article 33 of Law No. 16/2004 on the Attorney of the Republic of Indonesia, which states, "In conducting its tasks and duties, the office of the Attorney-General must establish cooperative links with other law enforcement offices and agencies, other state's offices and agencies, or other relevant agencies."

75. For example, in the case of violence that was carried out by police officers on students of the Muslim University of Indonesia (Universitas Muslim Indonesia - UMI) in Makassar in 2004, the outcome of the inquiry of Komnas HAM concluded that such a case was not a form of gross violations of human rights, therefore the outcome was submitted to the police for further action.



76. The other authority, as stipulated in Law No. 27/2004 on Truth and Reconciliation Commission, and which has the mandate of investigating cases of gross violations of human rights, is the Truth and Reconciliation Commission (TRC). However law No. 27.2004 has been made annulled by the Constitutional Court.

77. The National Commission on Human Rights shall conduct prompt and impartial investigations after receiving a complaint from the victim and present the results of the preliminary investigation within seven working days (Articles 17-20 of the Law No. 26 of 2000 on the HRC).

78. These are some examples of the implementation of this article. The Government of Indonesia has applied due process of law with regard to the case concerning certain police officers in Abepura, Papua, who were accused of torturing students and civilians. This was the incident which followed the attack at the Abepura's police station (20 km from Jayapura) on 7 December 2000.

79. In addition, Komnas HAM also concluded preliminary investigations of several cases which have been categorized as gross human rights violations such as was the case in Wasior (2001-2002) and Wamena (2003) in the Papua province. The Wasior case occurred when a number of police officers conducting a search in Wasior found the body of a murdered Mobile Brigade officer. During the search, many criminal acts were carried including torture, which caused the death of the victims.

80. In the Wamena case, torture occurred when a number of military officers conducting a search, chased the perpetrators of a Wamena military district break-in. During the search many criminal acts occurred, including torture which caused the death of the victims. The results of the preliminary investigation of both cases were handed over to the Attorney General to be followed up with investigation and prosecution in the human rights court.

81. In this regard, the Commission on Human Rights (KOMNAS HAM) conducted an investigation into the case in 2001 and found evidence that the Police in Papua committed crimes against humanity. As stipulated in Law No. 26/2000, KOMNAS HAM submitted the dossier to the Attorney-General who has the responsibility of prosecuting the case. The Attorney-General forwarded the case to the Human Rights Court in Makassar because the court in Papua was under the jurisdiction of the Makassar District Court (Law No. 26/2000). The local court in Makassar tried the case on 7 May 2004.

## <sup>2</sup> CAT/C/72/Add.1 23-Sep-05

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**CAT Concluding Observations : Indonesia. 01/11/2002. A/57/44,paras.36-46. (Concluding Observations/ Comments)**

10. The Committee recommends that the State party:

(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 all its reports to the Attorney-General are published in a timely fashion;

<sup>4</sup> CAT/C/72/Add.1 23-Sep-05

76. The other authority, as stipulated in Law No. 27/2004 on Truth and Reconciliation Commission having the mandate to investigate gross violations of human rights, is the Truth and Reconciliation Commission (TRC).

92. In addition, Law No. 27/2004 on the Commission of Truth and Reconciliation, in particular, Articles 20 and 23, include provisions for the compensation of the victims or their families if they are the heirs of the victims. Article 20 stipulates that the Compensation, Restitution, and Rehabilitation Sub-Commission shall have the authority to make suggestions to the Commission concerning compensation, restitution, and rehabilitation in a general nature which would help restore the rights and dignity of the victims and/or their families who are heirs of the victims. Article 21 of the law further elaborates that the compensation, restitution, and rehabilitation shall be conferred within a period of three years from the date the decision was made by the Commission.

<sup>5</sup> CAT Concluding Observations: Indonesia. 01/11/2002. A/57/44,paras.36-46. (Concluding Observations/ Comments)

10. The Committee recommends that the State party: m) Fully cooperate with the UNTAET, in particular, by providing assistance for the investigative or court proceedings in accordance with the memorandum of understanding signed in April 2000. This includes affording the members of the Serious Crimes Unit full access to relevant files, authorizing visits to Indonesia and East Timor, and transferring suspects for trial in East Timor;

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<sup>6</sup> CAT/C/72/Add.1 23-Sep-05

82. Indonesia grants full protection to victims and witnesses of criminal acts. This regulation was stipulated in the 1945 Constitution (the 4th Amendment) and other legal provisions. Article 28G of the 1945 Constitution stipulates that "Each person has the right to recognition, security, protection, and certainty under the law that shall be just, and that they shall be equal before the law." Furthermore, Article 34 of Law No. 26/2000 on Human Rights Court provides compensation for the victim(s) or his/her heirs.

83. In addition, Law No. 26/2000 on Human Rights Court stipulates in, inter alia as in Article 34, the provision of protection for the victim and witnesses in serious human rights violations will include the right to physical and mental protection from threats, terror, and violence. The law enforcement and security apparatus should provide this protection at no cost. Article 22 of the law on the provision of services, includes; counseling, rendering information on the rights of the victim to obtain police protection, including harboring the victim in a "safe house" or alternative residence; Article 23 provides counseling assistance i.e., accompanying the victim at every stage of investigation, prosecution, and court proceedings; Article 25 provides protection and assistance for advocacy.

84. Government Regulation No. 2/2002 on the Protection of Victim and Witnesses for Serious Human Rights Violations also explicitly stipulates in Articles 2-5, and asserts that the victim and witnesses have the right to protection from physical and mental threats, further, to the secrecy of the identity of the victim and the witness' identity, and giving testimony during the examination in absentia.

85. Moreover, Government Regulation No. 23/2003 on the Protection of Witnesses decides on the protection of the victim (Article 16); healthcare assistance for the victim (Article 21); counseling services (Article 22); and protection and assistance for advocacy (Article 25). Furthermore, Law No. 23/2004 concerns the Elimination of Domestic Violence and covers the principles of protection of the victim, respect for human rights, gender equality and equity, and non-discrimination.

86. In the effort to enhance protection of the victim and the witnesses, Parliament is in the process of discussing draft laws on the Protection of the Victim and Witnesses.

87. In addition to the provision of Law No 26/2000 and Government Regulation No. 2/2002, Article 95 and 96 of the KUHAP also gives provision for compensation and rehabilitation.

<sup>7</sup> CAT Concluding Observations: Indonesia. 01/11/2002. A/57/44, paras.36-46. (Concluding Observations/ Comments)

10. The Committee recommends that the State party:(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 location 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;

<sup>7</sup> CAT Concluding Observations : Indonesia. 01/11/2002. A/57/44, paras.36-46. (Concluding Observations/ Comments)

10. The Committee recommends that the State party: (n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country;

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<sup>8</sup> CAT/C/72/Add.1 23-Sep-05

27. Other existing legislative measures are Law No. 23/2002 on the Child Protection; Law No. 13/2003 on Labor; Law No. 39/2004 on the Placement and Protection of Migrant Workers; the Decision of the Minister of Manpower and Transmigration No. 157/MEN/2003 on Indonesian Labor Insurance; and Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children.

<sup>9</sup> According to the 9 August 2006 edition of the Tempo Daily, the Director of the ILO in Jakarta, Alan Boulton, stated that based on research by the ILO, there were around 70 thousands child sex workers in Indonesia who are under 15 years old. Bali followed by Nusa Tenggara, are the cities with the highest numbers.

<sup>10</sup> Notwithstanding the fact that very few best practices have been achieved in the efforts to eradicate child labor in Indonesia, the local government in Kutai-East Kalimantan has successfully launched in its region, a child worker free zone. It is hoped that other regions in the country will undertake similar efforts. In this vein, the Government is now strengthening the **Program of the Hopeful Family (PHP or in Indonesia Program Keluarga Harapan/PKH)** as part of its efforts to develop a social protection system. PHP is a program which grants conditional cash transfers to poor families. In return, the families are required to send their children to school to benefit from facilities already created by the Department of National Education. Health facilities as regulated by the Department of Health Poor families are provided to parents with under age school children and/or pregnant mothers.

Aside from aiming to reduce spending by poor households, PHP also aims to abolish the persistent vicious circle of poverty between generations. Therefore, it is hoped that the next generation will get better education and health care, thereafter leading to better jobs. The PHP was launched in mid-2007 and has provided assistance to around 500 thousand households in seven provinces. In 2008, this program will be increased to meet the needs of 1.5 million poor households. The program is in fact in line with the goal to eradicate child labor as well with the attainment of MDGs in relation to education, health, and gender equality.

<sup>11</sup> On 26 June 2007, a National Seminar on “Prevention and Addressing Trafficking as well as Forced Labour of Domestic Workers and Child Domestic Workers”, was held in the State Ministry for the Empowerment of Women. This seminar was conducted by a number of NGOs network groups, i.e. Gema Rumpun Perempuan, Jarak, and Rumpun Tjoet Njak Dien of Yogyakarta, and supported by the State Ministry of Women’s Empowerment, the European Union’s and the ILO’s Office in Jakarta.

<sup>12</sup> The Ministry for the Empowerment of Women, in association with the ILO in Jakarta have since 2006 been formulating a module on domestic child workers. The module will be circulated for free and in a sustained manner among the governmental apparatus, women activists, child workers, and general society.

<sup>13</sup> **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 Article 15**

**Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

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(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### *Article 22*

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

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2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
  3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
  4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
  5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
    - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
    - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
  6. The Committee shall hold closed meetings when examining communications under this article.
  7. The Committee shall forward its views to the State Party concerned and to the individual.
  8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.