

1. **Article 1, 2,4 CAT, under the Question no 1 – 18** of the government reply

1. *In respond to **question no 1***, the government asserts that torture is prosecuted under the provision of maltreatment as provided by article 351 – 358 of the Penal code. However; fundamentally, the definition of maltreatment itself is not in compliance with the definition of torture under article 1 of the Convention. Maltreatment as defined in article 351 of the Penal Code only covers physical injury, not mental pain or suffering. Further, article 351 makes no reference to the intentional infliction or instigation of pain and suffering committed by a public official or with his/her consent or acquiescence.
2. In addition, although the definition of torture is contained in the law no 39/1999 on Human Rights as cited by the government in its reply *p 18*, it is worth noting that this law does not contain any penal provisions and therefore cannot be expected to directly be applied to prosecute torture. The provisions of this law are mostly adopted from the UDHR, the wording of this law is of a form of declaration to guarantee human rights of the people.
3. All the cases cited in regard to **question no 1** (see p 2 of the government written reply) clearly show that punishment for torture cases brought to the military court under the martial law is very light compare to the sanction provided under the maltreatment provision (2-9 years). Yet, the most substantial question is, why is it that none was punishment for a number of important cases either those brought under common jurisdiction court, or human rights court? In particular, in several important cases like Abepura 2000 this tried under the human rights courts and ended up with complete acquittal of all the defendants. Abepura case in 2000 occurred as a result of violent search to student dormitories conducted by the BRIMOB (mobile brigade unit of the Police) after a number of civilians attack the police district station in Abepura. Those arrested were brought to Abepura police station and were tortured, one victim name **Arnol Mundu Soklayo** suffered from permanent disabilities due to severe torture inflicted. *For the detail please see p 27 of the Working group on the Advocacy against Torture (here and after **WGAT**)*
4. The government cites cases in explaining the extent to which torture is prosecuted under the military court. However, his raises substantial issues, particularly considering that all cases presented (see p 6 of the government report) are punished with very light sentence, or torturers are acquitted, (1) the extent to which military court is publicly accountable, and (2) whether or not judges serve for military court has been trained as to comprehend and able to implement the Convention in their ruling.
5. **Question 3 (article 2):**
The government provides the Committee with some legal provisions of the Penal Procedure Code (see p 5 of the government’s response); however, it is worth noting

that, as far as basic safeguard for the detainees concern, all legal texts available are hardly put into practice. This includes the rights for lawyers, medical treatment, and for a personal doctor. **Please compare to the WGAT report p 34-35**

6. under the article 2 , **question no 6** – *the accountability of the Police*
Although public can monitor the conduct of the National Police as mentioned in p 8 of the government written reply to the Committee, no effective accountability mechanism is in place, including the establishment of Police commission please consult WGAT report p 12 regarding the implementation of concluding observation issued by the Committee in 2001.

In addition, it is worth noting to cite the case presented in the WGAT report, on the names of **Risman Lakoro**, and **Budi Harjono** (p 33 WGAT report) both share their grievances in one of a national television, but no further investigation undertaken by the government. They left without any remedies up to the present. Their cases represent a huge number of unreported cases of torture in the country.

7. In responding to the **question no 15**, the government provides invalid information by asserting that the draft of the penal code is still under discussion of the House of Representatives (p 21 of the government reply). The draft has yet been submitted to the DPR, and has not in the list of priority of the schedule for deliberation of the House of Representatives for 2009. More importantly, the provision is not enforceable until the law is stipulated; *draft law can never be cited as a sound legal framework.*
8. In response to reply of **question no 16** (p22-23 of the government reply);
Although women are separated from men in the detention places, the very problem is the lack of safeguard mechanism for the detainee, which include inhuman condition of cells, and no safeguard measures taken to protect women or men detainees against inmates' violence. Further information on the 'real' condition of detention; *please see WGAT report p 59 -61*
9. The government statement under question no 17 is invalid, particularly with regard to the **Abepura case** (p 25 of the government reply). No one was found guilty in the trial; both defendants were acquitted since the first instance court. (*further detail on the result of all cases of torture heard by human rights court, please see table below*)

2. Torture prevention through systematic review of investigation rules, etc – art 11

1. **Question no 24**, regarding the prevention of torture by means of keeping under systematic reviews, rules of interrogation, instruction, method, and practices as provided in article 11 of the Convention, the government cited provision provided by law no 8 of 1981 on the Penal Procedure Code (see p 34). Yet, the very problem of

this is a huge gap of what is provided by the legal text and daily common practice by the Police and other investigation officers.

Having read the government reply to the committee, it is alarming that no significant progress has been taken place thus far, in demonstrating sound commitment into reality. The absent of **'imperative measures'** to prevent the situation from worsening, or to halt the widespread practice of torture. This attitude also clearly reflects the extent to which impunity is tolerated, which further persistent practice of torture. Therefore, I would like to underline some issues for the consideration of the Committee in its recommendation.

1. There is an urgency to urge the government to take **'imperative measure'** as to prevent and eliminate the widespread practice. This include, the obligation to make sure that the government creatively develop realistic strategy with regard to the penal code reform, either to do partial amendment or ensure that provisions of torture can be integrated in the current penal code without waiting for the long overdue deliberation of the overall penal code.
2. To ensure that prompt and impartial accountability mechanism is established for the cases related to torture in various gross violations of human rights, which up to the present are neglected by the Attorney general office, despite sound preliminary evidence provided by the KOMNAS HAM. They are, Wasior Wamena Case, Talang Sari case, the case of the disappearance and Trisakti Semanggi case.
3. To ensure the government to strengthen the mandate and authority of the National Commission on Human rights to play important role in breaking the circle of impunity under its jurisdiction, that of, to be able to conduct un-announce visit to the detention places.
4. Urge the government to be committed in implementing its pledge to ratify the optional protocol on the Convention against torture (OPCAT), as to encourage the establishment of sound and reliable domestic mechanism to improve the condition of detention, including to improve the safeguard for detainees.
5. Affirming the finding of Special Rapporteur's visit to Indonesia in November 2007 with regard to the practice of torture during the interrogation and in the police custody, it is urgent to encourage the government to establish sound accountability mechanism especially for the police, either to set up complaint mechanism or through other form of accountability mechanism. Such mechanism shall demonstrate effective deterrent effect.

Overall result of cases of torture brought before the human rights court/ ad hoc court:

1. East Timorese case:

No	CASE	POSITION	VERDICT		
			First instance court	Appeal court	Supreme court
1	Abilio Jose Osorio Soares	Former Governor of East Timor	Guilty, 3 years imprisonment	Guilty, 3 years imprisonment	Acquitted
2	Timbul Silaen (Brigadir General)	Former Chief of Regional Police Force (Kapolda) East Timor	Acquitted		Acquitted
3	Herman Sedyono (Lieutenant Colonel)	Former Head of District (Bupati) Kovalima	Acquitted	-	-
4	Lilieko Koeshadiyanto (Lieutenant Colonel)	Former Commander of Suai District Military Command	Acquitted		
5	Gatot Subyaktoro (Captain)	Former Chief of Resort Police (Kapolres) Kovalima	Acquitted		
6	Achmad Syamsudin (Captain)	Former Chief of Staff of Suai District Military Command	Acquitted		
7	Sugito (Lieutenant)	Former Commander Suai Military Sector Command	Acquitted		
8	Endar Prianto (Lieutenant Colonel)	Former Commander of Dili District Military Command (until 8 August 1999)	Acquitted		
9	Soejarwo (Lieutenant Colonel)	Former Commander of Dili District Military Command (Since 9 August 1999)	Guilty, 5 years imprisonment	Not guilty, Acquitted	
10	Hulman Gultom	Former Chief of Resort Police (Kapolres) Dilli	Guilty, 3 years imprisonment	Not guilty, acquitted	
11	Asep Kuswani (Lieutenant Colonel)	Former Commander of Liquisa District Military Command	Acquitted		
12	Adios Salova	Former Chief of Resort Police (Kapolres) Liquica	Acquitted		
13	Leonito Martens	Former Head of District Liquica	Acquitted		
14	Yayat Sudrajat (Colonel)	Former Tribuana Military Unit Chief	Acquitted		
15	Adam Damiri (Major General)	Former Chief of the Udayana Regional Military Command	Guilty, 3 years imprisonment		
16	Tono Suratman (Brigadier General)	Former East Timor Military Commander (until 12 August 1999)	Acquitted	Acquitted	
17	Nur Moeis (Brigadier General)	Former East Timor Military Commander (Since 13 August 1999)	Guilty, 5 years imprisonment	Not guilty, Acquitted	
18	Eurico Guterres	Former Vice Commander of PPI and former of Commander of Aitarak	Guilty, 10 years imprisonment	Guilty, 5 years imprisonment	Acquitted

2. Tanjung Priok case: heard by the human rights court ad hoc Jakarta

No	CASE	POSITION	VERDICT		
			First instance court	Appeal court	Supreme court
1	Sutrisno Mascung		Guilty, 3 years imprisonment	Not guilty, Acquitted	-
	1. Asrosri 2. Siswoyo 3. Abdul Halim 4. Zulfatah 5. Sumitro 6. Sofyan hadi 7. Prayogi 8. Winarko 9. Idrus 10. Muchson		Guilty, each got 2 years imprisonment, and are required to pay compensation for the victims	Not guilty, Acquitted	-
2	Rudolf Adolf Butar-butar	Commander of District Military Command (Kodim) 0502 North Jakarta	Guilty, 10 years imprisonment and compensation for the victims	Not Guilty, Acquitted	
3	Pranowo	Chief Military Police of Regional Military Command (Kodam) V Jaya - Jakarta	Not guilty, Acquitted		-
4	Sriyanto	Chief of Operation section unit of the district military command 0502 North Jakarta	Not guilty, Acquitted		

3. Abepura case: heard in the human rights court in Makassar:

No	CASE	POSITION	VERDICT		
			First instance court	Appeal court	Supreme court
1	Johny Wainal Usman	Commander of Mobile Brigade (BRIMOB) Abepura	Not guilty, Acquitted		
2	Daud Sihombing	Chief of Police resort district (Polres) Abepura	Not guilty Acquitted		