

TORTURE DRAMATICALLY INCREASED!

2012 Report on Torture

I. Introduction

On June 26 every year, human rights community and organizations worldwide commemorate “World Day Against Torture”. KontraS uses this momentum, as usual to evaluate the situation of torture in Indonesia within the year.¹ In 2012, KontraS continues to use the assessment framework used by the Committee Against Torture and the mechanism under the UN Human Rights Council (either by Special Rapporteur Against Torture as well as through the Universal Periodic Review session which was Cycle II on 23 May 2012) in evaluating the situation of torture.

In the current monitoring period (July 2011 – June 2012), KontraS recorded 86 incidents of alleged torture and 243 victims which shows a sharp increase compared to the previous period (July 2010 – June 2011) with 28 incidents of alleged torture and 49 victims.² Meanwhile, in the alleged perpetrator categories, the report of this period recorded 14 incidents involving Police officers, 60 incidents involving TNI (military) officers, and 12 incidents involving prison guards. There’s a substantial area where a relatively large number of tortures allegedly happened. This area is Papua, which is indeed having problems with its security status and intensity of violence within the year.

In addition to presenting information on the data of alleged torture, KontraS also described the development of relevant state policies related to torture, be it the policies that could facilitate the practice of torture, and those which could prevent or reduce the occurrence of torture. Hopefully, this report will help people to understand the current situation of torture in Indonesia and find solutions to prevent, or at least reduce it in the future.

II. Policies which Facilitate and Reduce Torture

II.1. The Absence of Criminalization on the Crime of Torture and The Appropriate Punishment for the Perpetrators

One of the major issues concerning the harmonization of Indonesia's human rights obligations under the Convention Against Torture is a lack of criminalization on the crime of torture. It is also recognized by the Government of Indonesia in the response to the sessions of human rights reporting at the international level. As the pretext, the government always assert that Indonesia is still waiting for the amendment or revision of the Penal Code.³ Whereas the plan to revise the Penal Code has been transpired in the

¹ Last year report titled: “Torture: A Heinous Act Which Is Not Seriously Considered”, <http://kontras.org/pers/teks/Lap%20Torture%202011.pdf>.

² With the limited resources, KontraS could not monitor all regions in Indonesia

³ Report of the Human Rights Council on Its Eighth Session, 1 September 2008, A/HRC/8/52, para. 355. Indonesia penal provisions which are proposed in the pretext of criminalizing torture is criminal

last 20 years. Last year for example, military personnel convicted in the case of torturing a Papuan which was publicized through social media networks 'Youtube', were only sentenced between 8 to 10 months in prison on the basis of "violation of disciplinary action, guilty of intentionally violating orders or superior service."⁴ Yet what they did was really horrible: two Papuans were helplessly beaten and kicked continuously, their genitals wounded by burning wood.

Revision/Amendment draft of the Criminal Code and Criminal Procedure Code have been submitted to the national legislation program (Prolegnas) 2010-2014, but until now there has not been a discussion in parliament. In Cycle II UPR session on May 23, 2012, Foreign Minister Marty Natalegawa was still confident that the Criminal Code changes will be implemented on schedule.⁵ Given that an extensive change is required to amend the Criminal Code and Criminal Procedure Code—considering both legal systems are still a legacy of the colonial era—KontraS doubts that the Parliament will successfully finalize it optimally in the 2009-2014.

Other strategy needs to be considered by formulating a separate Anti Torture Bill in order to operationalize various provisions of the Convention Against Torture which includes not only the definition and punishment for the crime of torture, but also about the illegality of the evidence, testimony, or confessions derived from torture, and recovery rights for victims. As a comparison, the Anti-Torture Act of 2009 in the Philippines (Republic Act No. 9745, 10 November 2009) applied specifically to implement some provisions of the Convention Against.⁶

II.2. The Continual Practice of Death Penalty

One of the issues related to torture which also became a focus for Indonesia is the practice of death penalty.⁷ KontraS also support the abolition of death penalty in Indonesia with the goal of doing a moratorium executions. The latest execution was carried out on November 2008 against three convicted terrorists on the First Bali

persecution (Article 351-358 of the Criminal Code). According to the CAT Committee it's inadequate punishment for an effort to criminalize torture. The only one that fits the definition of torture contained in Law no. 26/2000 Section 9 (f) of the Human Rights Court. Unfortunately, this provision applies only to the practice of torture that occurred in a "systematic or widespread" which is part of a crime against humanity. See Concluding observations of the Committee against Torture: Indonesia, July 2, 2008, UN Doc. CAT/C/IDN/CO/2, para. 13.

⁴ KontraS Report 2011, "Torture: A Heinous Act Which Is Not Seriously Considered", p. 15.

⁵ Universal Periodic Review Cycle 2 session for Indonesia on 23 May 2012, A/HRC/WG.6/13/L.5, para. 43, p. 7.

⁶ Legal products in the Philippines have not only adopted the definition of torture under the Convention Against Torture (Article 1), but also details the various forms or methods of prohibition of torture, according to the severity of punishment gradient acts of torture committed, guarantees a quick and independent investigation (outside the institution actors), and the rehabilitation and restoration of victims' rights. The full text can be accessed at: http://www.congress.gov.ph/download/billtext_14/hbt05709.pdf.

⁷ See Report of the Official Visit to Indonesia, the UN Special Rapporteur Against Torture Manfred Nowak, 10 March 2008, UN Doc. A/HRC/7/3/Add.7, para. 89, p. 27. Agenda request Indonesia to abolish the death penalty has also appeared on the Universal Periodic Review Session Cycle 2 for Indonesia on 23 May 2012, A/HRC/WG.6/13/L.5.

Bombing (Amrozi, Imam Samudra, and Mukhlas). This means that Indonesia has been practicing *de facto* moratorium on execution for the 4th year. However, KontraS has received some information that there is a possibility that another execution will be carried out against Namaona Denis (a citizen of Malawi), Muhammad Abdul Hafez (a Pakistani), and Marcho Archer Cordova Moreira (a Brazilian). Each one has pursued all legal channels, including the presidential pardon, without getting any leniency.⁸ During the period of July 2011 and June 2012, there are six new death row inmates:

- Ade Saputra, was sentenced to death by Padang District Court on a murder case;
- Misnari and Miarto, were sentenced to death by Probolinggo District Court on the same murder case;
- Tran Thi Bich Hanh (a Vietnamese), was sentenced to death by Boyolali District Court for drug trafficking;
- Efran Feri Ferdiansyah and his wife Milna, were sentenced to death by Prabumulih District Court on a murder case.

Aside from that, the Supreme Court also retains the death penalty against Andrew Chan and Myuran Sukumaran (both Australian) on a drugs trafficking case also known as the “Bali Nine” case. As a modest positive progress, the Supreme Court commute the death sentence to life imprisonment for other Australian “Bali Nine” (Si Yi Chen, Tan Duc Thanh Nguyen, Matthew Norman, and Scott Anthony Rush).

KontraS believes that implementing *de facto* moratorium towards full abolition will strengthen Indonesia’s efforts to assist citizens who are facing the threat of execution abroad. It seems that the government—through the Ministry of Foreign Affairs—was mortified when Ruyati binti Sartubi, a maid servant migrant worker, was executed by Saudi Arabia government while the Indonesian government representatives in that country knew nothing about it. After that affair, the Government of Indonesia began to actively look after the other Indonesian migrant workers who suffer the similar fate abroad.

II.3. The Practice of Flogging

The international human rights bodies have repeatedly warned Indonesia regarding the practice of flogging—which is only applied in Aceh—as a corporal punishment which is not in accordance with the Convention Against Torture (Article 16) and the International Covenant of Civil and Political Rights (Article 7).⁹ Meanwhile, KontraS monitoring

⁸ The Jakarta Globe, Indonesia to Execute Two Foreigners on Death Row Soon, 15 June 2012, <http://www.thejakartaglobe.com/home/indonesia-to-execute-two-foreigners-on-death-row-soon/524478>.
[Thejakartapost.com](http://www.thejakartapost.com), Tangerang to execute 3 on death-row, 20 June 2012, <http://www.thejakartapost.com/news/2012/06/20/tangerang-execute-3-death-row.html>.

⁹ Committee against Torture, concluding observations of the Indonesia’s second periodic report, 2 Juli 2008 UN Doc. CAT/C/IDN/CO/2, para. 15, p. 5. Manfred Nowak, report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment mission to Indonesia, UN Doc. A/HRC/7/3/Add.7, 10 March 2008, para. 17, p. 11.

indicates that in the period of June 2011 – June 2012 there were 47 persons sentenced to flogging as described in the following table.

The Practice of Flogging in Aceh (June 2011 – June 2012)

	Place / Date of Flogging	Number of Persons being Flogged	Number of Flogs	The Violated Rules	Verdict
1	Merdeka Square, Langsa, 10/6/2011	12 Persons	6 lashes for each person	Qanun Syariah (Syariah bylaw) No. 13 Year 2003 on <i>Maisir</i> (Gambling)	Letter of Verdict from Langsa Syariah Court.
2	In front of Kuala Simpang District Attorney Office, Aceh Tamiang, 15/12/2011	5 Persons	Between 6-10 lashes	n.a.	Legal verdict from Kuala Simpang Syariah Court.
3	Merdeka Square, Langsa, 9/3/2012	5 Persons	6 lashes for each person	Qanun Syariah (Syariah bylaw) No. 13 Year 2003 on <i>Maisir</i> (Gambling)	Langsa Syariah Court's verdict for each offender, 07/JN/2012/MS-number 11/JN/2012/MS-number 12/JN/2012/MS 13/JN/2012/MS-Langsa.
4	Merdeka Square, Langsa, 27/4/2012	14 Persons	6 lashes for each person	Qanun Syariah (Syariah bylaw) No. 13 Year 2003 on <i>Maisir</i> (Gambling)	Syariah Court
5	Merdeka Square, Langsa, 20/4/2012	7 Persons	6 lashes	Qanun Syariah (Syariah bylaw) No. 13 Year 2003 on <i>Maisir</i> (Gambling)	Langsa Syariah Court's verdict
6	Merdeka Square, Langsa, 20/4/2012	2 Persons	12 lashes	Qanun Syariah (Syariah bylaw) No. 13 Year 2003 on <i>Maisir</i> (Gambling)	Langsa Syariah Court's verdict
7	Merdeka Square, Langsa, 20/4/2012	2 Persons	9 lashes	Qanun Syariah (Syariah bylaw) No. 14 Year 2003 on <i>Khalwat</i>	Langsa Syariah Court's verdict

Source: KontraS Monitoring

II.4. The Ongoing Reliance on the Internal Accountability Mechanism

The practice of torture is still becoming an issue of impunity until now, because the punishment mechanism is still heavily relying on the internal mechanism. Within the military (TNI) for example, there were no signs of a Military Court System Amendment Bill will be discussed in parliament. Though the mandate of this change is regulated by Law No. 34/2004 on the Indonesian National Armed Forces (Article 65) and the matter has almost been discussed to be passed by the House for the 2004-2009 period

The similar situation also happens within the National Police, in accountability mechanisms are also still dependent on the internal mechanism, especially in the Division of Profession and Security (Propam). Yet according to the Convention against Torture (Article 13) there should be an investigation into allegations of torture carried out by an independent body which should be done as soon as possible.

In addition, Indonesia also has not known a vetting mechanism, the mechanism to prevent the promotion of a public official who became perpetrators of torture (both of which make a direct, order, or allow). Yet at the international level many countries implemented a policy not to accept the perpetrators of torture, whether it's in prohibiting entry into the country or not to include these actors in a particular collaboration. This can indeed be applied considering that torture is one of the international crimes and thus imposes it to a universal jurisdiction.

KontraS encourages the independent external oversight bodies against the allegations of torture began to identify the names of the responsible perpetrators. Although the independent body has no law enforcement function, the least they could implement vetting. Among the state agencies that have a mandate as an external supervisor which may be able to do the vetting is the National Human Rights Commission (Komnas HAM), Ombudsman, or the National Police Commission (Kopolnas).

II.5. Ratification of the State Intelligence Law

Within July 2011 - June 2012 period, a new law which potentially opens up an extent to use of torture, Law No.17/2011 on National Intelligence. Article 31 and Article 34 of this Law directly gives special authorization to the intelligence apparatus to extract information. Extracting information will be applied to the targets associated with the interests and activities that threaten national security, especially terrorism and separatism, which is known widely to have grown in several regions in Indonesia.

Intelligence apparatus with all its authority should never be allowed to obtain authority resembling the authority of law enforcement officers, especially police officers. Although Article 34 paragraph 1 (c) stipulates that the provisions of extracting information without conducting arrests and/or detention and involves the cooperation of law enforcement, in which law enforcement officers shall assist the process of extracting information conducted by the National Intelligence Agency [Article 34, paragraph 1 (d) and paragraph 2].

The method of extracting information given to National Intelligence Agency (BIN) could not be measured even if the clause 'without ever conducting arrests and/or detention' is

written explicitly in the Law. The phrase 'extracting information' still requires proof and acknowledgment of the target subject. Those who were accused of being the target subjects would likely undergo methods of extracting information which implementations has never been known until now. The practice of torture as a result of the implementation of validated methods of interrogation in a law would be difficult to avoid.

II.6. The International Convention for the Protection of All Persons from Enforced Disappearances (CEPD) Ratification Plan

One of the positive policies to prevent or reduce the practice of torture is a plan of the Government of Indonesia to ratify the International Convention for the Protection of All Persons from Enforced disappearances (CPED). One positive step has occurred when the Government of Indonesia, through the Minister of Foreign Affairs Marty Natalegawa signed the Convention on 27 September 2010 at United Nations Headquarters, New York, United States. Thus Indonesia is just one step away from ratification/accession. If the commitment of the Government of Indonesia to ratify the convention is firm, Indonesia should be able to become the State Party to this Convention in 2012. This can be seen from the statement of Foreign Minister Marty Natalegawa in the presence of the High Level Segment forum of the 19th Session of the UN Human Rights Council on February 28, 2012 in Geneva, Switzerland. Marty Natalegawa stated that:

*“This year we expect to make significant progress in the ratification process of some important instruments. These include the two optional protocols to the Convention on the Rights of the Child, as well as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance”.*¹⁰

Meanwhile, some process outside the forum of international diplomacy also support the speedy ratification of the Convention. *First*, on 28 September 2009, the House of Representatives (2004-2009) issued four recommendations of the Special Committee Activist Disappearance 1997/8, one of which "recommends to the Government to immediately ratify the Convention against Enforced Disappearances as a form of commitment and support to stop the practice of Disappearance in Indonesia ". It seems that the recommendations by the Parliament became the driving force of the Convention signatories in September 2010.

Second, the plan ratification (approval) of this Convention are listed in the National Action Plan for Human Rights (RAN HAM) from 2011 to 2014 which passed through Presidential Decree No. 23 of 2011. In the 2011-2014 RAN HAM, ratification of the Convention was planned to be conducted in 2014, in contrast to what was conveyed by

¹⁰ Statement by H.E. Dr. R. M. Marty M. Natalegawa, Minister for Foreign Affairs, Republic of Indonesia, At the High Level Segment of the 19th Session of the Human Rights Council, Geneva, 28 February 2012, p. 6-7. The convincing statement of Indonesia Foreign Minister is a continuation of a similar commitment from the Government of Indonesia to the UN Human Rights Council. Statement of intent to ratify the Convention was originally presented explicitly by former Justice Minister, Hamid Awaluddin, on March 12, 2007 in a speech at the High Level Segment, 4th Session of the UN Human Rights Council. See <http://www2.ohchr.org/english/bodies/hrcouncil/4session/statements/%285%29Indonesia.pdf>.

Foreign Minister Marty Natalegawa in the High Level Segment forum of the 19th Session of the UN Human Rights Council.

II.7. Plan to Ratify the Optional Protocol of the Convention Against Torture

Other important international human rights instrument to ratify is the Optional Protocol of the Convention Against Torture.¹¹ Actually, this agenda is also included in RAN HAM 2011-2014 with a target of ratification in 2013. The plan to ratify the Optional Protocol should be accelerated given that within the past year, the substandard condition of prisons was revealed. A massive riot which includes burning occurred in mid-February 2012 at Kerobokan Prison in Bali, involving 1,000 inmates. The inadequate capacity of Kerobokan Prison allegedly triggered mass anger.¹²

III. Current Practices of Torture in Indonesia (July 2011 – June 2012)

Based on KontraS monitoring for July 2011-June 2012 period, there was a tremendous surge in allegations of torture. In the period of July 2010-June 2011, KontraS recorded 28 events of alleged torture with 49 victims,¹³ while within the period of July 2011-June 2012 there were 86 allegations of torture with 243 victims. Details can be seen in the following table:

Table of the Alleged Practice of Torture in Indonesia (Juli 2011 – June 2012)

Location	Perpetrator Category						Total	
	Police		TNI (Military)		Prison Guard		Victim	Incident
	Victim	Incident	Victim	Incident	Victim	Incident		
Aceh*			5	3			5	3
Papua	29	4	27	6	42	1	98	11
Jakarta	18	2	7	5	1	1	26	8
Banten			3	3			3	3
West Java	5	2	14	2	2	2	21	6
East Java	1	1	6	6	1	1	8	8
Central Java			6	3			6	3
NTB			1	1			1	1
NTT	1	1	1	1			2	2
North Sumatra			2	2	2	2	4	4
West Sumatra	7	1	8	6			15	7

¹¹ This Protocol regulates independent visiting mechanisms (either by a national or international body) to places of detention, imprisonment, or a place where people are restricted of individual freedom (such as health rehabilitation center) to prevent the occurrence of torture or degrading treatment or other cruel, inhuman, or degrading punishment.

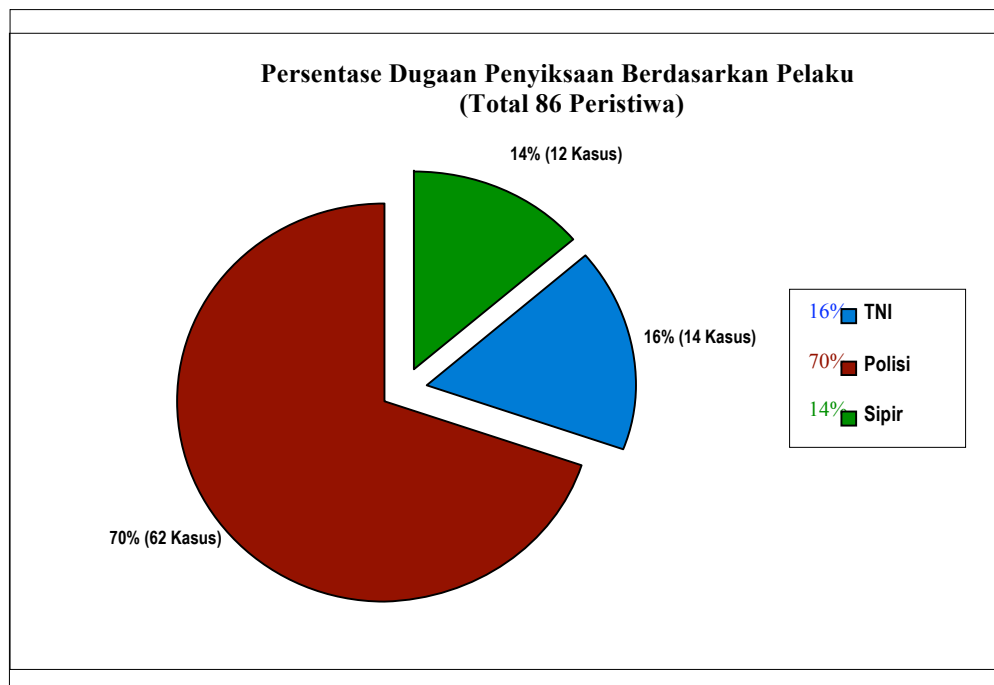
¹² Detik.com, *Kronologi Rusuh di LP Kerobokan* (Riot in Kerobokan Prison), 22 February 2012, <http://news.detik.com/read/2012/02/22/093516/1848549/10/kronologi-rusuh-di-lp-kerobokan>.

¹³ Last year report titled: "Torture: A Heinous Act Which Is Not Seriously Considered", *opcit*, p. 4.

Riau			16	6			16	6
Jambi			2	2	6	1	8	3
South Sumatra			1	1			1	1
Lampung			1	1	4	1	5	2
Central Sulawesi			1	1			1	1
North Sulawesi	1	1	3	3			4	4
South Sulawesi			2	2	1	1	3	3
South Kalimantan	1	1					1	1
West Kalimantan					1	1	1	1
Central Kalimantan			1	1			1	1
East Kalimantan			1	1			1	1
Riau Islands	1	1	8	2			9	3
Maluku			2	2	1	1	3	3
Total	64	14	118	60	61	12	243	86

Source: KontraS Monitoring.

* The data of Aceh does not include flogging.



Several hypotheses could be drawn from the Tables above. *First*, the number of victims and the alleged use of torture in Papua is so prominent compared with other regions. The number of allegations of torture in Papua is strongly correlated with the heated political

situation and the increasing intensity of violence in general in there for the past year. The victims generally are indigenous Papuans and they were considered to be victims of false arrest and arbitrary detention by security forces. An example which can illustrate this is the alleged torture that occurred in the detention and arrest of 15 civilians who were suspected to have murdered 5 people (including one TNI member) in Kampung Tanjakan Nafri, August 2, 2011.¹⁴ An independent report showed that they were tortured by a joint team of military and police on August 31, 2012. The police denied they were conducting arrests and arbitrary detention.¹⁵ However, the next day after a visit from the Baptist Church leaders and members of the Human Rights Commission of Papua, 13 prisoners were released and two remained in detention (Panius Kogoya and Ekimar Kogoya).¹⁶ There was no follow-up related to the issues of torture and the plight of victims who had to endure physical and mental suffering.

Torture, arrests and arbitrary detention are relatively still prevalent to be committed by security forces against indigenous Papuan as a 'quick' response on particular incidents of violence directed against security forces personnel (police or military). It marks the existence of a labeling practice towards indigenous Papuans to be easily associated with armed civilian groups such as the OPM (Free Papua Organization). When the practice of torture associated with a discriminatory behavior by the security forces is still underway, efforts to promote peace and dialogue between the central government with the Papuans would be difficult to transpire.

Second, the practice of torture generally occurred in situations where the victim is so helpless against the perpetrators; which is a common situation in the closed detention room.¹⁷ The situation would be even worse when the victim is an ordinary citizen-who was suspected of a crime-representing the structure of the lower class. This also occurred in Indonesia where most of the alleged victims of torture are criminal suspects or convicts who came from the plebeian (the enemy of public opinion such as terrorists, drug dealers, separatist, and others) and often were not accompanied by a legal representative. Until now, KontraS monitoring have not found the alleged perpetrators of torture for suspected corruption who were generally served as state official or wealthy businessmen.

This model of torture practice was experienced by Jumhani (35 years old), a seller of fried food on the streets of Cilegon, Banten. On May 30, 2012 when he was going to get on the train at Rangkasbitung Station to his home in Lebak, he was seized by two police

¹⁴ Almost all of those arrested and detained are members of the Baptist Church congregation, including an 8 years old child. View a summary comparison report of investigation conducted by the Commission on Human Rights activists in Papua and the Church in Papua, Report on wrongful arrest of 15 civilians Wahno n-Varia, W Papua, <http://suarabaptis.blogspot.com/2011/09/report-on-wrongful-arrest-of-15.html>.

¹⁵ Tabloidjubi.com, *Polisi Tolak Tudingan Salah Tangkap 15 Warga Sipil* (Police Denied Wrongful Arrest of 15 Civilians), <http://tabloidjubi.com/modules-menu/jayapura/14162-polisi-tolak-tudingan-salah-tangkap-15-warga-sipil>.

¹⁶ Panius Kogoya was later convicted in the murder and sentenced to 3 years imprisonment in Nafri prison. While Ekimar Kogoya was released.

¹⁷ Manfred Nowak, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, UN Doc. A/HRC/13/39/Add.5, 5 February 2010, p. 14.

officers in plainclothes. He was taken to a car and blindfolded; he was beaten and electrocuted by an ear clip with a cord. During the torture he was told to pretend to be a pickpocket. Because he could not endure the torture, Jumhari was forced to confess. His earnings (about 1 million rupiah), mobile phones, and identity card were confiscated. Not only that, Jumhani was detained at the Serang District Police Headquarters for nine days, and was not allowed to inform his whereabouts to his family.¹⁸ After that he was released from custody. At the moment, Jumhani is still waiting for the internal process in the police after he filed a complaint against the treatment he endured to the Division of Profession and Security (Propam) of Banten Regional Police.¹⁹

IV. Recommendation

Of the above situations, KontraS recommends to:

- The Government and Parliament to hasten the discussions on the Criminal Code Amendment draft or prepare a separate bill against torture. It is intended to respond to the urgent need for regulation on efforts to criminalize acts of torture;
- Relevant state institutions such as the Military (TNI), Police, and Ministry of Justice and Human Rights (which oversees the prison system and prisoners in Indonesia) should implement an internal vetting mechanism for officials, officers, or officers who do, order, or fail to prevent the practice of torture;
- The State's independent external oversight bodies, such as the National Human Rights Commission, Ombudsman, or National Police Commission (KOMPOLNAS) could also implement a vetting mechanism in order to restrict the latitude of torture perpetrators;
- Government in any way should be able to stop the practice of torture that occurred in Papua considering that the sharp increase of torture practice in the region will aggravate the situation in Papua which is currently problematic;
- Government and Parliament to immediately ratify the Convention on the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture;
- Government and Parliament to review the various state policies which facilitate the practice of torture and other cruel, inhuman, or degrading treatment.

¹⁸ Kompas.com, *Saya Dipaksa Ngaku sebagai Pencopet* (I Was Forced to Confess as a Pickpocket), 13 June 2012, <http://megapolitan.kompas.com/read/2012/06/13/06504850/Saya.Dipaksa.Ngaku.sebagai.Pencopet>.

¹⁹ KontraS, Urgent Appeal to Respond to the Case of Arbitrary Arrest and Detention of Jumhani by Members of Serang Police District, 15 June 2012, http://kontras.org/index.php?hal=siaran_pers&id=1533.