

**ALTERNATIVE FOLLOW UP REPORT ON THE PROGRESS OF THE
IMPLEMENTATION OF THE RECOMMENDATIONS MADE BY THE
COMMITTEE AGAINST TORTURE TO INDONESIA**

**TOWARD ONE YEAR OF IMPLEMENTATION OF THE
RECOMMENDATIONS OF THE COMMITTEE
AGAINST TORTURE BY INDONESIA**

WGAT

**WORKING GROUP ON THE ADVOCACY
AGAINST TORTURE**

Jakarta, March 2010

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Jakarta, March 2010

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ABBREVIATIONS

| | |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AG | Attorney General |
| AJMI | Aceh Judicial Monitoring Institute |
| AKKBB | Aliansi Kebangsaan Kebebasan Beragama dan Berkeyakinan (National Alliance for the Right to Freedom of Religion) |
| APBN | Anggaran Pendapatan Belanja Negara (State Budget of Revenues and Expenditures) |
| APF | Asia Pacific Forum |
| BAP | Berita Acara Pemeriksaan (Investigative Dossier) |
| BIN | Badan Intelijen Nasional (National Intelligence Service) |
| BNP2TKI | <i>Badan Nasional Perlindungan dan Penempatan Tenaga Kerja Indonesia</i> (National Authority for the Placement and Protection of Indonesian Overseas Workers) |
| CAT | Committee against Torture |
| DPR | House of Representative |
| FGM | Female Genital Mutilation |
| FMS | Forum Mediko Sharia |
| GoI | Government of Indonesia |
| IMWs | Indonesian Migrant Workers |
| IOM | International Organisation for Migration |
| KCPN | Komponen Cadangan Pertahanan Negara (Reserve Forces for State Defense) |
| KOMNAS HAM | National Commission on Human Rights |
| KOMNAS PEREMPUAN | National Commission on Violence against Women |
| KOMPOLNAS | Komisi Kepolisian Nasional (National Police Commission) |
| KUHAP | Kitab Undang-Undang Hukum Acara Pidana (Criminal Procedure Code) |
| KUHP | Kitab Undang-Undang Hukum Pidana (Criminal Code) |
| LBH-Aceh | Lembaga Bantuan Hukum-Aceh |
| LPSK | Witness and Victim Protection Body |
| MoFA | Ministry of Foreign Affairs |
| MUI | Majelis Ulama Indonesia (Indonesian Ulema Council's) |
| NGOs | Non-Governmental Organisations |
| NHRI | National Human Rights Institution |
| NPM | National Preventive Mechanism |
| OHCHR | Office of the High Commissioner for Human Rights |
| OPCAT | Optional Protocol to the UN Convention against Torture |
| POLDA | Regional Police |
| POLRES | Resort Police |
| POLRI | Kepolisian Republik Indonesia (Indonesian National Police) |
| PPT | Pusat Pelayanan Terpadu (Integrated Service Centre) |
| PROLEGNAS | Program Legislasi Nasional (National Legislation Programme) |
| RANHAM | National Action Plan on Human Rights |
| RPK | Ruang Pelayanan Khusus (Special Service Room) |
| TRC | Truth and Reconciliation Commission |
| WGAT | Working Group on the Advocacy against Torture |

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1. INTRODUCTION

1. On 16 May 2008, the Committee against Torture (hereinafter “Committee”) issued its Concluding Observation on the Second Periodic Report of the Government of Indonesia (hereinafter “GoI”), which was submitted and discussed in the 40th session of the Committee in May 2008. There were twenty-seven recommendations for actions to be taken by the GoI in order to improve its performance in the protection of persons and the prevention of the practice of torture in the country. Out of twenty-seven recommendations, there were six recommendations which shall be implemented and reported back to the Committee after one year. These were recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25.¹
2. This alternative follow-up report comprises the alternative account on the implementation of several recommendations addressed by the Committee to the GoI, with a particular focus on those contained in paragraph 43 of the Concluding Observations (CAT/C/IDN/CO/2). The present report was drafted by representatives of Indonesian civil society that joined the Working Group on Advocacy against Torture (hereinafter “WGAT”), whose first shadow report was submitted to the Committee for the review of Indonesia in May 2008.²
3. The GoI was requested by the Committee to send information by May 2009 on recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25. However, since the GoI never transmitted this information, the Committee sent a letter reminding its obligations to the GoI in November 2009.³
4. Overview of the implementation of the recommendations (*extracts from OMCT follow-up mission report, February 2009*):
 - The Government does not consider torture as a priority requiring its action. And the fact that 2009 was a year of national elections (Parliamentarian in April and Presidential in July) should not be considered as a good reason justifying inaction.
 - The recommendations of the Committee are not the base for Government’s action to combat torture issues. Any action of this kind is rather based on the national human rights action plan 2004-2009. It was stressed that the next human rights action plan or *National Plan of Action on Human Rights (RANHAM) 2010* should reflect the Committee’s recommendations (as well as other recent recommendations by other UN bodies and mechanisms). The implementation of the recommendations by relevant governmental departments mainly depends on their diffusion and explanation by the Ministry of Foreign Affairs (MoFA). This finally came out almost one year after the examination of Indonesia by the Committee against Torture: recommendations have been included in a compilation of UN recommendations by the MoFA. This compilation is a good idea but it considerably slowed down the process. Therefore, when some of the recommendations are being implemented, this is part of a national policy that was decided before the examination by the Committee.

¹ Concluding Observation of the Committee against Torture: Indonesia, CAT/C/IDN/CO/2, 16 May 2008, paragraph 43.

² The 2008 shadow report was registered as official information submitted to the Committee and is available on OHCHR website at: <http://www2.ohchr.org/english/bodies/cat/docs/ngos/WGAAT.doc>.

³ The letter is available at: <http://www2.ohchr.org/english/bodies/cat/docs/followup/ReminderIndonesia40.pdf>.

- Many of the recommendations are being implemented by other actors such as National Human Rights Institution (NHRI), Non-Governmental Organisations (NGOs) and international organisations. This is particularly the case for the dissemination of information, sensitisation and awareness-raising of selected public, training of relevant professionals and protection and rehabilitation of the victims.

2. RECOMMENDATIONS REQUESTED TO HAVE UPDATED INFORMATION WITHIN ONE YEAR (PARAGRAPH 43)

2.1. Paragraph 10: Widespread torture and ill-treatment and insufficient safeguard during police detention

PARAGRAPH 10:

As a matter of urgency, the State Party should:

- 1) Take immediate steps to prevent acts of torture and ill treatment throughout the country;
- 2) Announce a zero-tolerance policy on any ill-treatment or torture by State officials;
- 3) Implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention;
- 4) Reinforce its training programmes for all law enforcement personnel on the absolute prohibition of torture;
- 5) Keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

5. Not much progress can be reported in regard to this recommendation. Although KABARESKRIM (the Head of Criminal Investigation Agency) has issued Decree No. 1/2008 on the Investigation Control Officer (*Perwira Pengawas Penyidikan*)⁴ who is designated to oversee the investigation process (including interrogation of criminal suspects) at the lowest level of the police unit (sub-district level police), the enforcement of this policy has not been effective. The National Police Commission (*Komisi Kepolisian Nasional, KOMPOLNAS*) noted that in 2008, complaint against the investigating unit (296 out of 344 complaints) was on top rank, in fact higher than in the previous year.⁵ Most of the letters of complaint were about the abuse of power of the investigating police unit.⁶
6. Institutional reform of the National Police has been taking place since 1998 with the assistance of NGOs, and has been facilitated by the IOM Police Reform Project (Capacity Building - POLRI)⁷. WGAT has contributed to the development of a draft for the regulation of the Indonesian National Police (*Kepolisian Republik Indonesia, POLRI*), particularly on the provisions against torture. On 09 June 2009, the police held a general meeting with stakeholders, including representatives from civil society, to discuss the regulation in question. However, up to the present, this regulation has not been signed by the Chief of Police.
7. According to the Committee, the 61-day police custody period as provided by the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana, KUHAP*) is too long and thus, should be reduced to better protect persons and prevent the practice of torture. However, this recommendation was not taken into consideration in developing a draft of the new KUHAP. In the draft, police custody is the same as in the current KUHAP, providing that police custody can be as long as 61 days.⁸ This is one of the consequences of the lack of translation and dissemination of the Committee's

⁴ The Decree was issued to follow up the Decree of the Chief of Police (SK Kapolri) on the Investigation Control Officer, as a "response" to Kompolnas' Recommendation in 2007.

⁵ The Regional Police of Metro Jaya (Jakarta District Centre) received the highest number, with 72 complaints. 64 of these complained about the way the investigation unit functioned. Only 29 of these were responded to; 20 are in process, 8 were found unproven and only one was proven to be a misdemeanour.

⁶ Phone interview with Erlын Indarti, member of the National Police Commission (Kompolnas).

⁷ This programme will eventually train a total of 200,000 police personnel throughout Indonesia regarding community policing and human rights.

⁸ Draft of the Criminal Procedure Code, July 2008.

recommendations to relevant Government agencies, including to the Government's team preparing the draft of the new KUHAP.

2.2. Paragraph 15: Review on the introduction of corporal punishment through bylaws, particularly in Aceh

PARAGRAPH 15:

The State Party should:

- 1) Review all its national and local criminal legislations especially the 2005 Aceh Criminal Code, which authorizes the use of corporal punishment as a criminal sanction, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention;
- 2) Ensure that the members of Wilayatuh Hisbah exercise a defined jurisdiction, are properly trained and operate in conformity with the provisions of the Convention, especially the prohibition of torture and ill-treatment, and that their acts are subject to review by ordinary judicial authorities;
- 3) Supervise the actions of Wilayatuh Hisbah;
- 4) Ensure that fundamental legal safeguards apply to all persons who are accused of violating matters within its concern;
- 5) Ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other guarantees of due process, so that all suspects have the possibility of defending themselves and of lodging complaints about abusive treatment in violation of national law and the Convention;
- 6) Review all regulations, through the relevant institution, including governmental and judicial mechanisms at all levels, in order to ensure that they are in conformity with the Constitution and with ratified legal international instruments, in particular, the Convention.

8. There has not been much progress in responding to these recommendations. On the contrary, in the past few years (2000-2008)⁹ there has been a serious increase in the number of bylaws that do not comply with human rights standards. The increase is also due to the power given to the local government to produce regulations which basically include subjects that do not fall under the jurisdiction of national policies so as to accommodate the particular nature of each area. For example, in early 2009, the local government of Aceh introduced *Sharia* law in the compilation of *Jinayah* (criminal case), thereby introducing the use of corporal punishment (*hudud*) in the form of flogging in public for those who committed such crimes as *Khalwat* (illicit relations between a male and a female), *Jarimah* (criminal act), *Maisir* (gambling), *Ikhtilath* (illicit relations between a group composed of males and females), and *Zina* (adultery). This obviously shows that the Government's commitment to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "Convention") is not implemented at the local level, and thus the law making process at the local level fails to comply with the standards provided in the Convention. Further, no action has been taken by the national government to review or to reform such bylaws that are being forced on the people.
9. In September 2008, the Ministry of Law and Human Rights declared to have annulled 947 bylaws throughout the country. However, such bylaws are only those governing retribution, while 'discriminatory bylaws' such as the Regional Regulation of Nanggroe Aceh Darussalam No. 5/2000 on the Implementation of Sharia Law and the Regional Regulation of South Sulawesi No. 6/2005 on Muslim Clothing, continue to be enforced. Such bylaws do not only violate rights protected under the Convention but are also contradictory with the Constitution of Indonesia and the existing national legal framework, such as Law No. 10/2004 on the Establishment of Laws (article 6), which provides that "*the making of regulations shall consider the diverse conditions in Indonesia and shall not be made based on one particular belief*". The making of bylaws often infringes human rights standards as provided in international treaties ratified by the GoI, such as CEDAW, CRC, CAT, CERD, ICESCR, and ICCPR.

⁹ See Annex, "Bylaws that are not in accordance with the Convention".

10. The aforementioned ‘discriminatory bylaws’ are attached to this report. Most of these bylaws are based on Sharia law.

2.3. Paragraph 19: Violence against *Ahmadiyah* and people who belong to other minority groups

PARAGRAPH 19:

The State Party should:

- 1) Ensure the protection of members of groups especially at risk of ill-treatment, by prosecuting and punishing all acts of violence and abuse against those individuals;
- 2) Ensure implementation of positive measures of prevention and protection;
- 3) Ensure prompt, impartial and effective investigation into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts;
- 4) Publicly condemn hate speech and crimes and other violent acts of racial discrimination and related violence, and work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing to such violence;
- 5) Ensure that officials are held accountable for action or inaction that breaches the convention;
- 6) Give prompt consideration to expanding recruitment of persons belonging to ethnic and religious minorities into law enforcement, and respond favourably to the request of the Special Rapporteur on freedom of religion to visit the country.

11. Ever since the issuance of these recommendations in May 2008, incidents of violence against *Ahmadiyah* community have yet decreased. On the contrary, series of incidents of violence persistently inflicted against *Ahmadiyah* members have been reported in a number of places. There have been at least 30 incidents of violence against *Ahmadiyah* community during 2008-2009, including physical attacks, physical threats, intimidations, and forced transfers to other places, which have occurred in some provinces in Indonesia.¹⁰ As a result, a number of *Ahmadiyah* mosques were completely demolished and property destroyed.
12. Komnas Perempuan, in its recent analysis, notes that there are 23 policies which have been used as reference by the community to initiate violent attacks and discrimination against *Ahmadiyah* community, including against women and children.¹¹
13. In addition, the proliferation of incitement against this group has continued to grow across provinces. Religious leaders at national and local levels have reportedly incited against this group through public statements. Such statements were based on the Indonesian Ulema Council’s (*Majelis Ulama Indonesia, MUI*) fatwa declaring *Ahmadiyah* as deviant and thus shall be prohibited.¹² Violence against *Ahmadiyah* community in many occasions occurred before, or with the consent of, public officers or law enforcement officers. So far, no significant measure has been taken by these state apparatus to eliminate the incidents of violence and to protect the group from violence.
14. On 01 June 2008, there was a massive attack against human rights defenders members of the National Alliance for the Right to Freedom of Religion (*Aliansi Kebangsaan Kebebasan Beragama dan Berkeyakinan, AKKBB*) and against *Ahmadiyah* members when they together conducted a rally campaigning for the right to freedom of religion for

¹⁰ Centre for Religious and Cross-cultural Studies (CRCS), Gadjah Mada University, Annual Reports on Religious Life in Indonesia 2008 and 2009, available at <http://www.crcs.ugm.ac.id>.

¹¹ Komnas Perempuan, “Komnas Perempuan dalam Liputan Media Massa 2007-2009”, p. 6, available at <http://www.komnasperempuan.or.id>.

¹² MUI’s Fatwa No.: 11/Munas VII/MUI/15/2005 on *Ahmadiyah*. Prior to this, in 1980, MUI, through its fatwa No. 05/Kep/Munas/MUI/1980, had also issued a fatwa labelling *Ahmadiyah* as a “non Islamic group, deviant and misled”.

Ahmadiyah people. Seventy people were injured, some of whom were women.

15. The court proceedings against those responsible for the attack were carried out under continuous pressure, intimidation and threat of violence from hardline Islamist groups supporting the perpetrators. No intellectual actor who aided and abetted the crimes was brought to the court and no trial was held for those who incited the hatred against this group, although this action can be prosecuted as provided in the Criminal Code (*Kitab Undang-Undang Hukum Pidana, KUHP*). Only a few direct perpetrators were brought before the court and punished with very light sentences.
16. On 09 June 2008, due to mounting pressure from the public regarding the attack against human rights defenders and activists on 01 June 2008, the Attorney General and the Ministry of Home Affairs issued a joint decree, which formally banned *Ahmadiyah* community and halted its religious activities as the sect was considered deviant by mainstream Islamist groups in the country. This decree was also perceived by hardline Islamist groups to justify their further actions to launch violent attacks against *Ahmadiyah* members and to crack down on all *Ahmadiyah* mosques outside Jakarta, such as in West Java.¹³ These hardline Islamist groups urged the Government to issue a presidential decree prohibiting the sect and penalizing its members under the blasphemy provision as provided in Law No. 1/PNPS/1965.

2.4. Paragraph 20: Trafficking of persons and violence against migrant workers

PARAGRAPH 20:

The State Party should:

- 1) Take all necessary measures to implement current laws combating trafficking;
- 2) Provide protection for victims and their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate;
- 3) Create adequate conditions for victims to exercise their right to make complaints, and conduct prompt, impartial, and effective investigation into all allegations of trafficking;
- 4) Ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes;
- 5) Strongly encourage the strengthening of the role of Indonesian diplomatic and consular missions abroad;
- 6) Ensure independent monitoring of Terminal 3 of the Jakarta International Airport.

17. The GoI has enacted legislations to eliminate the practice of trafficking of persons, such as Law No. 21/2007 on Combating Criminal Acts of Trafficking in Persons. This law is strengthened by Government Regulation No. 9/2008 on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons, Law No. 23/2002 on Child Protection, and Law No. 23/2004 on the Elimination of Domestic Violence. Criminalization of trafficking in persons is also provided in KUHP. However, the aforementioned legislations are not properly enforced nor upheld by the rule of law and the protection and fulfilment of victims' rights. Up to the present, many trafficking cases reported to the police have not yet been acted on.¹⁴

¹³ One of *Ahmadiyah* mosques attacked by a mob is Al-Istiqmah Mosque in Sadasari Village, Argapura, Majalengka, West Java on 23 December 2007. They also burnt its carpet. In this incident, the mob also attacked five houses belonging to *Ahmadiyah* members. The police who were standing by could not do much to control the mob due to its large size. *Source:* <http://www.liputan6.com/daerah/?id=154157>; <http://news.okezone.com/read/2007/12/29/1/71424/1/polisi-masih-sisir-pelaku-pengrusakan-masjid-ahmadiyah>.

¹⁴ Division of Advocacy Migrant CARE received three acceptance letters regarding complaints on trafficking, namely: (1) No. Pol. TBL/229/IX/2007/Siaga I (BARESKRIM MABES POLRI), (2) No. 14/K/I/2008/RESTRO JAKTIM (POLRES JAKARTA TIMUR), and (3) No. Pol.TBL/24/II/2008/

18. Up to the present, some migrant workers are often locked up, sexually harassed and trafficked to other countries. Violence against migrant workers in their work place persistently occurs, such as the case of **YY** (32), a female migrant worker from Cianjur, who was placed in Saudi Arabia and **SM** (28), a female migrant worker from Cirebon, West Java, who was placed in Oman. (see details in the following paragraphs)
19. In early March 2008, **YY** was raped by her employer's brother. She reported this to her employer (**HS AI S**) but she got no response. When she tried to escape and unfortunately failed, her employer's brother slapped her until her face was swollen. Towards the end of March 2008, the employer's brother raped her again, and she got pregnant. In June 2008, the employer prostituted her to another man. But luckily, the man felt pity for her. He gave her 2000 Real and let her go without raping her. On 05 August 2008, **YY** arrived in Jakarta with no salary in her pocket for 2 years of work. She reported her experience to the Department of Labour and Transmigration (she met Suyanto, a PAP [Pre-Departure Preparation] staff) but she got no response. In October 2008, with the assistance of Migrant Care, she filed a complaint to the National Authority for the Placement and Protection of Indonesian Overseas Workers (*Badan Nasional Perlindungan dan Penempatan Tenaga Kerja Indonesia, BNP2TKI*).¹⁵
20. During her six months of work, **SM** was ill-treated by her female employer. Not only was she beaten and humiliated, but she was also raped by her male employer, **AB**, on 06 and 14 April 2009. On 11 September 2008, her female employer found out that she was six months pregnant and beat her up. She was paid for one year only, out of one year and ten months of work. With Migrant Care's assistance, she and her family filed a complaint to the BNP2TKI.¹⁶
21. Some migrant workers experience sexual harassment committed by some public officers in the special terminal (building for the registration of migrant workers) at the airport when they are back from abroad. A migrant worker named **HT**, who had just arrive d from Singapore, was locked up in this building for 2 nights and 2 days (04-06 May 2008). A check for 1000 SIN\$ (708 USD), which he brought along with him, was confiscated by an officer from BNP2TKI and LBH KOMPPAR-RI (*Komisi Penyelamat Penyalahgunaan Aset Negara - Republik Indonesia*).
22. Some measures taken by the GoI have also worsened the situation of migrant workers, such as the decision to promote measures that were not based on victims' perspective of justice, such as in the case of the violence against four Indonesian domestic workers in Saudi Arabia in 2007¹⁷ in which the Government promoted and facilitated reconciliation. As a result, the legal proceedings of the case were halted and those responsible for the crimes were not brought to justice. In a similar vein, up to the present, there has not been any legal prosecution undertaken by the Government or its diplomatic mission in Malaysia on the practice of violence against, and sexual harassment of, undocumented migrant workers, that have reportedly been committed by RELA (civilian militia), special civilian forces established by the Government of Malaysia.¹⁸

Siaga III (BARESKRIM MABES POLRI). There has not been any follow up action since the complaints were submitted.

¹⁵ Documentation of Migrant Care, 2008.

¹⁶ *Ibid.*

¹⁷ *Arab News* (06 August 2007) reported that four Indonesian migrant domestic workers were grossly assaulted by their own employers; two of them died (Siti Tarwiyah and Susmiyati); and the others (Tari Bt Tarsim and Ruminih), were dangerously wounded. This case was advocated by Migrant Care until the GoI facilitated a reconciliation.

¹⁸ A case of violence along with rape committed by the Malaysian Diraja Police and RELA on Indonesian pregnant female migrant workers; destruction of the Indonesian students' dormitory; and

23. In 2008, 522 Indonesian Migrant Workers (IMWs) were reported to have died. Of these deaths, about 481 occurred in Malaysia, 30 in the Middle East, 10 in Hong Kong, Korea and Taiwan, and 5 in Singapore. This number shows a dramatic increase from the previous year. According to Migrant Care analysis, the deaths in Malaysia were mostly caused by inadequate standards of work conditions and security.¹⁹
24. The GoI has not yet implemented the recommendation of the Committee to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as provided in paragraph 40 of the Committee's Concluding Observations. However, the GoI has pledged to ratify the Convention within two years. The fact that all (14) destination countries of IMWs have not ratified the Convention is one of the reasons for delaying ratification, although it is not the main reason.²⁰

2.5. Paragraph 21: Harassment and violence against human rights defenders

PARAGRAPH 21:

The State Party should:

- 1) Take all necessary steps to ensure that all persons including those monitoring human rights are protected from any intimidation or violence as a result of their activities;
- 2) Guarantee the exercise of human rights;
- 3) Ensure the prompt, impartial, and effective investigation of such acts.

25. On 31 December 2008, a panel of judges of the District Court of South Jakarta acquitted Muchdi P.R, former Deputy V of the National Intelligence Service (*Badan Intelijen Nasional, BIN*), who was accused of the murder of Munir Said Thalib, an Indonesian human rights activist who was murdered on a flight from Jakarta to Amsterdam on 6 September 2004. This acquittal has made any attempt to reveal a political conspiracy behind the murder, which might involve BIN, faced the wall. Whereas, during the trial, it was revealed that Pollycarpus Budiarto²¹ was assigned by BIN to be the aviation security to identify terrorist action in the flight where the crime was committed.
26. Even after the issuance of the report of the UN Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Ms. Hina Jilani, in regard to her visit to Indonesia in June 2007²², violence against human rights defenders, such as peasants, labourers, rights activists, and journalists have persistently occurred in various areas in the country.²³
27. The practice of summary killings of human rights defenders is prevalent in Papua, such as the case of Opinus Tabuni (38 years old), a member of Papua *Adat* Council who was shot dead by unidentified persons allegedly related to, or have relations with, the army. Tabuni

the arbitrary arrest of an Indonesian diplomat's wife in the end of 2007, were never resolved by the Malaysian Government. In fact, they were ignored.

¹⁹ Documentation of Migrant Care, 2008.

²⁰ See: <http://thejakartaglobe.com/home/indonesia-to-ratify-uns-convention-on-migrant-rights-within-2-years-minister/345004>.

²¹ Pollycarpus was charged for his involvement in the assassination of Munir at a trial prior to Muchdi's. Nonetheless, in 2006, the judges declared him not guilty of murder, and only found him guilty of the forgery of the fake Letter of Order of Garuda No: IS/1177/04 dated 04 September 2004. *Source*: Supreme Court Decision of Indonesia, dated 03 October 2006, No.1185 K/Pid/2006, had annulled the High Court decision, dated 27 March 2006, No: 16/PID/2006/PT.DKI

²² This report was based on her mission to Indonesia from 5 to 12 June 2007 at the invitation of the GoI, as stated in the Commission on Human Rights' resolutions 2000/61 and 2003/64 and the Human Rights Council's decision 1/102. See A/HRC/7/28/Add.2, par. 1.

²³ "Warga Minta Tersangka Perusak Kantor Kejati Dibebaskan", *Waspada Online*, 10 November 2008.

was shot dead when he attended the celebration of the international day of indigenous people on 09 August 2008 in Wamena.²⁴ Instead of working to identify the suspects of the crime, the police preferred to concentrate on identifying those responsible for hoisting the 'Bintang Kejora' flag (Papua Free Organisation's Morning Star flag), the symbol associated with the pro-independent movement for self-determination in Papua, along with the Indonesian Red-White Flag, the UN Flag, and a white flag on which was written "SOS, Papuan People are in Danger". A day after Tabuni was shot, seven members of the Papua *Adat* Council, namely Forkorus Yaboisembut (Chairperson), Leonard Imbiri (Secretary), Sayid Fadhal Alhamid (Deputy), Lemok Mabel (Head of Territory VI La-Pago-Balim), Yulianus Hisage (Event Coordinator), Dominikus Sorabut (Event Organiser) and Adolof Hisage (Event Organiser) were interrogated as witnesses by the police under article 106 of KUHP on crimes against the state (treason).²⁵ The police also accused the Papua *Adat* Council of organizing an illegal event in Wamena on 09 August 2008. In 2008, more than 50 people were detained in connection with hoisting the 'Bintang Kejora' flag in several districts, such as in Manokwari, Timika, Jayapura, Wamena, and Fakfak. At least ten of them have been prosecuted in court.²⁶

28. Human rights advocacy carried out by a number of civil society groups has been regarded as a separatist movement. The most recent case involves the arrest of Bukthar Tabuni and Sebi Sembom from the International Parliament for West Papua. Both were detained at the Papua Regional Police Office (POLDA) in December 2008 for crimes against the state (treason) as provided in articles 106²⁷, 107²⁸, and 108²⁹ of the KUHP, and incitement to treason in article 160 KUHP.³⁰
29. In 2008, there was an increase in the number of militia groups in Papua. These groups were established for various purposes, among others, to counter civil society's advocacy for rights as well as a critical perspective of the Government's policy over Papua, and to support the political interests of some local elite politicians for the general elections at the local level, following the division of Papua Province into several regencies. For examples, a group named Barisan Merah Putih was established to serve the first-mentioned purpose, while Tim Ohan in Merauke was established to serve the latter. The increasing roles and powers of these groups have seriously threatened the work of human rights defenders in this area, and increase the death risk among human rights defenders.
30. In Aceh, threats against human rights defenders not only take the form of surveillance, but also criminalization of their work by using some KUHP provisions, such as that experienced by eight staffs of Legal Aid-Aceh (LBH Aceh). On 14 August 2008, they were tried under article 160 of KUHP for public incitement and were sentenced to three months in prison with six months probation. The criminalization of a human rights defender also occurred in the case of Hendra Budiman, director of the Aceh Judicial Monitoring Institute (AJMI), who was charged under article 406 of the Criminal Code for destruction of property. Such sentences are decided under fallacious or invented grounds.

²⁴ "Bintang Kejora, Nasionalisme Minus Substansi", *Kompas*, 22 August 2008.

²⁵ Documentation of Imparsial, 2008.

²⁶ *Ibid.*

²⁷ Treason in the form of an attempt undertaken with the intent to bring the territory of the state wholly or partially under foreign domination or to separate a part thereof.

²⁸ Treason in the form of an attempt to carry out a *coup d'etat*.

²⁹ Treason in the form of an armed rebellion against the Government.

³⁰ See "Jaksa Minta Buchtar Tetap Dihukum: Didampingi 16 PH, Buchtar Kembali Berpakaian Army", *Cinderawasih Post*, 06 March 2009.

31. The GoI also failed to protect human rights defenders from violent attacks by hardline or fundamentalist Islamist groups, as well as other fundamentalist religious groups as explained earlier in the case of violence against *Ahmadiyah* community and people who belong to other minority groups.
32. Up to the present, there is no legal framework that specifically recognizes the existence of human rights defenders and their role in the promotion and protection of human rights. The absence of such a legal framework has also resulted in the absence of protective mechanisms for human rights defenders in their work. Instead of encouraging the development of a sound legal framework for human rights defenders, the Government continues to use the ‘elastic provision’ in the Criminal Code to criminalize them, particularly article 160 on incitement to treason; article 310 on criminal insult, article 335 on ill-treatment, and articles 106 and 110 on treason. Similarly, the House of Representatives (*Dewan Perwakilan Rakyat, DPR*) far from encouraging the development of a sound protection for human rights defenders. The DPR likewise supports a number of draft laws which potentially hamper the work of human rights defenders, as shown in the deliberation process for draft laws, as follows:
 - Amendment of the Law on Mass Organisations, which was recently submitted to the House by the Ministry of Home Affairs. The draft is expected to replace the previous legal framework on mass organisations as provided in Law No. 8/1985. Through this draft law, the Government introduced the establishment of a commission on mass organisations which is authorized to oversee all activities as well as the financial issues of mass organisations that are formally registered, and further recommend to the Government whether it should ban these organisations or not.
 - Draft of the Law on Reserve Forces for State Defense (*Komponen Cadangan Pertahanan Negara, KCPN*), which allows the inclusion of militia groups among the reserve forces for state defense. This is alarming as in many cases militia groups are used to repress human rights defenders.
 - Draft of State Secret Law, through which the Government is authorized to limit information given to the public as well as allowed to impose the death penalty on those suspected of spilling such information to other parties.

2.6. Paragraph 25: Lack of effective investigation and prosecution by the Attorney-General

PARAGRAPH 25:

The State Party should:

- 1) *Reform the Attorney General’s Office to ensure that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality;*
- 2) *Establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment;*
- 3) *Publish, without delay, the reports of Komnas HAM investigations..*

33. The Attorney General (AG) remains reluctant to carry out investigations into human rights violations cases, such as enforced disappearances case, Wasior-Wamena case, and Trisakti, Semanggi I and Semanggi II cases, regardless the fact that Komnas HAM, in its inquiry reports, has recommended further legal proceedings to be taken by the AG.³¹ In addition, as stated by *KontraS*, “the Attorney General did not have original initiative in

³¹ For case update, see para. 58.

the issue of justice for past human rights violations although these cases have been politically decided by the House of Representatives' plenary meeting. An example is the enforced disappearances of thirteen activists. Not only does it express old excuses, the Attorney General does not present any clever arguments either³².

34. As stated in article Law No. 26/2000 on Human Rights Courts, it is for the AG to follow-up Komnas HAM's recommendations and to start investigations into human rights violations cases. The failure of the AGO to carrying out such investigations will bring human rights implementation into stagnation of justice.

³² KontraS, *Press Release*, 27 January 2009.

3. FURTHER INFORMATION ON SEVERAL OTHER RECOMMENDATIONS

35. In addition to the points of recommendation provided in paragraph 43, which require a response from the GoI within one year, this alternative report also presents below some additional information on the status of the implementation of several other recommendations which are considered important by the WGAT because they refer to essential provisions of the Convention.

3.1. Paragraph 13: Definition of torture and appropriate penalties for acts of torture

RECOMMENDATIONS UNDER PARAGRAPH 13:

The State Party, without delay, should:

- 1) Include a definition of torture in its current penal legislation in full conformity with article 1 of the Convention;
- 2) Ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature.

36. In its Concluding Observations, the Committee expressed its concern on the fact that the definition of torture as stated in Article 1 of the Convention has not been incorporated into domestic law due to the long-delayed legislation process of the Draft of the Criminal Code (KUHP), or into a special law that makes it punishable. The definition of torture that conforms with the definition used in the Convention can only be found in Law No. 39/1999, in which it is non-punishable, and Law No. 26/2000, which is only applicable for gross violations of human rights.³³ In some torture cases, law enforcement apparatus often charged the perpetrators under the article of ‘maltreatment’ in KUHP, which only inflicts a maximum imprisonment of two years and eight months³⁴, or five years if it resulted in a serious physical injury³⁵, or seven years if it resulted in death.³⁶ Such punishments provided in KUHP for maltreatment do not reflect the very element of torture, in which its prohibition has been recognised as an international norm of *jus cogens*.³⁷
37. Without undermining the key element of the definition of torture under the CAT³⁸, the new KUHP draft has indeed provides the definition of torture in article 406 with a maximum imprisonment of between five to twenty years. However, the draft has not yet been adopted although it had been incorporated into the National Legislation Programme (*Program Legislasi Nasional, Prolegnas*) since 2005. Meanwhile, there has not been any sign that the Government would enact a special law that could make torture punishable in accordance with the Convention, taking into consideration the principle of *lex specialis*.

³³ Law No. 26/2000 on Human Rights Courts, art. 9(f).

³⁴ Criminal Code (KUHP), art. 351(2).

³⁵ *Ibid.*, art. 351(3)

³⁶ *Ibid.*, art. 351(3).

³⁷ E. de Wet, “The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and Customary Law”, *15 EJIL* 97 (2004) at, p. 97.

³⁸ Law No. 5/1998 on the Ratification of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

3.2. Paragraph 14: Coerced confessions

RECOMMENDATIONS UNDER PARAGRAPH 14:

The State Party is required to:

- 1) Take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee.
- 2) Ensure that statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention.
- 3) Review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment.
- 4) Take appropriate remedial measures.
- 5) Inform the Committee of its findings.

38. Cases of wrongful arrest, which involve coerced confessions and torture, reoccurred against three men from Jombang, East Java. In October 2007, IK, DEP and SG were arrested on a murder charge after a dead body identified by the police as MA was found in a sugar cane field in September 2007.³⁹ Later the body was re-identified as FS. It was not until late August 2008 that the police eventually arrested VIH for the murder of MA,⁴⁰ followed by the arrest of RH, who was alleged to have murdered FS, in October 2008. A serious error in police investigation has led to wrongful arrests and convictions. IK (34) from Kalang Semading village, Perak district, Jombang province and DEP (17) were sentenced to seventeen and twelve years of imprisonment respectively.⁴¹ In the meantime, the case of SG (28) from Kalangsemanding village, Perak district, Jombang province, was still being tried when the wrongful arrest was revealed.⁴² IK was arrested and given the status of a suspect on 20 October 2007 without his relatives being notified.⁴³ While DEP was arrested in late October 2007⁴⁴ after he had been given money in the amount of 20,000 IDR and told to escape by the Police.⁴⁵

39. In SG's trial, IK, as a witness, testified that he had been beaten up with a diesel rubber and forced to confess to MA's murder and that the investigative dossier (*Berita Acara Pemeriksaan, BAP*) that he signed had not been made in accordance with his confession to the police officers at the Bandar Kedungmulyo sub-district police station and the Jombang district police station, East Java.⁴⁶ DEP testified that he had been beaten up and

³⁹ See *Tempo Daily*, "Kakak Ipar Rangka Tahu Rencana Pembunuhan Fauzin", 22 October 2008, available at http://www.korantempo.com/korantempo/cetak/2008/10/22/Berita_Utama_-_Jatim/krn.20081022.145568.id.html.

⁴⁰ The case was revealed after VIH, a serial killer, had been captured by the police on a mutilation case, and he then confessed that he was the one who killed MA.

⁴¹ IK and SG were convicted by the Jombang District Court in its decisions No. 48-49/Pid.B/ 2008/PN JMB on 08 May 2008.

⁴² See <http://www.thejakartapost.com/news/2008/10/08/jombang-district-court-reopens-controversial-murder-case.html>; and also <http://www.jawapos.co.id/halaman/index.php?act=detail&nid=25664>.

⁴³ IK was arrested in his residence which was also a barber shop, "Ayu Barber Shop", by five men who introduced themselves as police officers from the Bandar Kedungmulyo District Police Station. The five men, who came without an official arrest warrant or identity, claimed to be on an assignment to investigate a murder case that took place in a sugarcane field in Bran Bandar Kedungmulyo village and suspected that IK was involved in the murder case. They then asked IK to go with them to the police station for an interrogation; they even did not allow IK to change his cloth. See http://www.rambukota.com/showNews.php?id_news=815&cat=14.

⁴⁴ See http://www.korantempo.com/korantempo/cetak/2008/10/22/Berita_Utama_-_Jatim/krn.20081022.145568.id.html.

⁴⁵ See Gatra magazine No. 43, distributed on Thursday, 04 September 2008, <http://www.gatra.com/2008-09-10/artikel.php?id=118270>.

⁴⁶ DEP also confessed to *Cinderawasih Post* that he and IK were frequently beaten up during the interrogation. Source: <http://www.cenderawasihpos.com/detail.php?id=18213&ses>.

threatened at gunpoint, which made him, against his will, accept everything that the investigator said.⁴⁷

40. IK's relatives also admitted that during IK's trial, they were oftentimes asked for money up to the amount of 20 million IDR by the public prosecutor (allegedly committed by EDR) with the promise that the charges would be commuted.⁴⁸ This allegation was denied by the Chief of Jombang District Prosecutor's Office. There has not been any follow-up action on this allegation of bribery.⁴⁹
41. After serving their sentences for thirteen months, in December 2008, IK and DEP were released.⁵⁰ Meanwhile, SG's case was finally decided to be postponed on 25 November 2008⁵¹, after he had undergone 199 days of detention and experienced torture and other forms of ill-treatment during the interrogation.
42. After their release, a lawyer, O.C. Kaligis, gave a 'rehabilitation gift' of 5 million IDR (equal to 450 USD), to each of them.⁵² On its part, the Regional Police Station of East Java, in its official apology to IK, DEP, and SG, gave 'pity money' of 20 million IDR to IK and DEP and of 10 million IDR to SG.⁵³ However, the Chief of the Public Relations Division of the Regional Police Station of East Java denied that the money was given as an acknowledgment that the police had made a mistake in wrongfully arresting IK and his two friends and locking them up in jail.⁵⁴
43. On 24 January 2009, the Regional Police Station of East Java also announced that they have punished thirteen perpetrators involved in the investigation process of the matter involving IK, DEP and SG with disciplinary sanctions by restricting them from any investigation process. Eleven of the thirteen perpetrators were not allowed to perform their services in the region perpetually. Of the two higher ranking officers, one was an ex-Chief of the Sub-District Police Station of Bandar Kedungmulyo and the other was a former member of the investigation unit of the District Police Station of Jombang. These two were punished with only one year of restriction from direct involvement in any investigation process; the reason behind the light sanction was that they had not been directly involved with the investigation process in the case of IK and his friends. The disciplinary sanctions were enforced on the grounds of wrongful identification and arrest; however, the torture case was not mentioned at all.⁵⁵

⁴⁷ DEP described all these in a letter sent to his mother, SR. See: <http://www.gatra.com/2008-09-10/artikel.php?id=118270>.

⁴⁸ See *Gatra Magazine* No. 43 distributed on Thursday, 04 September 2008, <http://www.gatra.com/2008-09-10/artikel.php?id=118270>.

⁴⁹ See: <http://www.vhrmedia.com/vhr-corner/komunitas,Kasus-Salah-Tangkap-Jombang-Kelu-arga-Kemat-Mengaku-Sering-Dimintai-Uang-568.html>.

⁵⁰ See: <http://www.kompas.com/read/xml/2008/12/05/07184551/13.bulan.menanti.datangnya.bulan>.

⁵¹ On 24 November 2009, the Panel of Judges of the District Court of Jombang, which tried the case, finally granted SG's plea for suspension of sentence or to put him under city arrest. See <http://www.kompas.com/read/xml/2008/11/24/19001992/sugik.akhirnya.bebas>.

⁵² See: <http://www.kompas.com/read/xml/2008/12/05/07184551/13.bulan.menanti.datangnya.bulan>. See also: <http://www.kaltimpost.co.id/?mib=berita.detail&id=9930>.

⁵³ See: http://nasional.vivanews.com/news/read/24348-13_polisi_dihukum_minta_maaf_pada_kemat_cs.

⁵⁴ See: <http://news.okezone.com/read/2009/01/22/1/185444/1/salah-tangkap-kemat-cs-terima-rp50-juta>.

⁵⁵ See: http://republika.co.id/koran/0/27837/Penyidik_Kemat_dkk_Dilarang_Menyidik_Selamanya; <http://www.thejakartapost.com/news/2008/12/26/fourteen-police-trial-over-murder-case.html>.

3.3. Paragraph 16: Violence against women, including sexual and domestic violence

RECOMMENDATIONS UNDER PARAGRAPH 16:

Without any further delay, the State Party should:

- 1) Ensure prompt, impartial and effective investigation of all allegations of rape and sexual violence, including those perpetrated in military conflict areas.
- 2) Prosecute and punish perpetrators with penalties appropriate to the grave nature of their acts.
- 3) Repeal all discriminatory laws against women, including article 185, paragraph 2, of the Code of Criminal Procedure.
- 4) Adopt all adequate measures to eradicate the persistent practice of female genital mutilation, including awareness-raising campaigns in cooperation with civil society organisations.
- 5) Adopt all necessary measures to implement Law No. 23/2004, which includes the training of law enforcement officials, especially in cooperation with civil society organisations, to allocate adequate funding and collect relevant information to prevent and combat domestic violence.

44. Based on the 2008 annual report of Komnas HAM, investigations on violence cases, including sexual violence cases in conflict and military operation areas such as in Aceh, Maluku, and Poso, as well as the 1998 ethnic-based riots, have not been a priority.⁵⁶ Up to the present, there has not been any adequate measure commissioned by the Government on the aforementioned cases.
45. With regard to female genital mutilation (FGM), the Directorate General of Community Health of the Ministry of Health of the Republic of Indonesia has actually issued and disseminated a circular letter prohibiting the practice of FGM since 2006.⁵⁷ However, the letter was then challenged by some Islamic fundamentalist groups. In February 2009, a group of pediatricians, who named themselves as “Forum Mediko Sharia (FMS)”, gathered in Palembang to declare their refusal to comply with the prohibition of FGM.⁵⁸ Moreover, the Indonesian Ulema Council (MUI) ruled against the prohibition of FGM through the issuance of a *fatwa* stating that FGM is necessary for Muslims and highly recommended for women.⁵⁹
46. Some midwives and hospitals are still practising FGM⁶⁰ without any sanction imposed on them by the Government. Up to the present, there has not been any measure to criminalize those performing FGM nor any attempt to propose alternative occupations.

⁵⁶ Interview with Nanen Danielle (staff of the National Commission on Violence against Women – Komnas Perempuan), carried out by Mike Verawati Tanka (Indonesian Women’s Coalition) on 09 June 2009 at the Headquarters of the National Police, Jakarta. “*Inquiries on cases in conflict areas such as in Poso, Aceh, Maluku, Papua, and the 1998 ethnic-based riots have actually been commissioned. However, the inquiries are limited only to fact-finding and identifying perpetrators or intellectual actors behind the conflicts; therefore, specific cases like violence and torture against women and children have not been prioritised; if any, it has been limited to case reporting without concrete measures to solve the cases*”.

⁵⁷ Circular Letter of the Department of Health of the Republic of Indonesia number HK 00.07.1.31047a, dated 20 April 2006 signed by the Director General of Community Health, Dr. Sri Astuti Soeparmanto, M.Sc (PH).

⁵⁸ “Dokter Anak Palembang Tolak Pelarangan Sunat Perempuan” (Pediatricians in Palembang Reject the Prohibition of Practicing Female Genital Mutilation), *Antara*, 13 February 2009, <http://www.suaramedia.com/kesehatan/dokter-palembang-tolak-larangan-sunat-perempuan.html>.

⁵⁹ See http://www.mui.or.id/mui_in/konsultasi.php?id=7.

⁶⁰ Source: <http://www.suaramedia.com/kesehatan/dokter-palembang-tolak-larangan-sunatperempuan.html>.

47. In order to complement Law No. 23/2004 on the Elimination of Violence in Household, the GoI issued Government Regulation No. 4/2006 on the Implementation and Restorative Cooperation for Victims of Violence in Household that regulates the mechanism for handling domestic violence through the establishment of an Integrated Service Centre (*Pusat Pelayanan Terpadu, PPT*) in every public hospital and a Special Service Room (*Ruang Pelayanan Khusus, RPK*) in every Resort Police (POLRES). Unfortunately, the RPK is not available at sub-district levels, therefore, it is difficult for victims, particularly those who live in remote areas, to report any acts of domestic violence against them.
48. Based on the data from Komnas Perempuan, up until early 2009, there has not been any significant change in the number of violent acts against women. It is estimated that the number of cases reported to Komnas Perempuan increased by 20%.⁶¹

3.4. Paragraph 17: Juvenile justice system

RECOMMENDATIONS UNDER PARAGRAPH 17:

Without any further delay, the State Party should:

- 1) *As a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with generally accepted international norms.*
- 2) *Abolish all corporal punishment of children.*
- 3) *Take the necessary measures to guarantee the proper functioning of a juvenile justice system including, among others, treating minors in a manner appropriate to their age.*

49. According to the data collected by UNICEF Indonesia in 2006-2008, thereabouts 4.000 new cases involving children in the justice system every year. The increase in the number of crimes committed by youngsters is mainly due to family's economic situation.⁶²
50. According to data from the Directorate General of Correctional Services of the Republic of Indonesia in 2008, there were 2.282 juvenile prisoners (2.161 male, 121 female) and 2.019 juvenile detainees (1.838 male, 302 female) all over Indonesia. The total number of children in conflict with the law, including prisoners and detainees, is 4.301. At present,

⁶¹ In 2008 (until 28 December), it was recorded that 275 women, for the first time, contacted and used the service of Mitra Perempuan Women's Crisis Centre (WCC) on the issue of violence against them. 5.82 percent of those women were still considered minors (under the age of 18). These women lived in Jakarta, Bogor, Tangerang, Bekasi, Depok and surrounding areas. The figure (275) did not include those whose cases were still ongoing from the previous years. The Jakarta-based WCC was the most-accessed service by women (63.64%), compared to the ones in Tangerang (22.18%), and Bogor (14.18%). Compared to the data from the previous year, there has not been a significant change in the current year's data (decreased by 2.85%), where in 2007, 283 women accessed the service. The data did not include those who called WCC's hotline service to get practical information on laws, NGOs, police, medical service, etc.

Statistics show that domestic violence is the most prevalent case faced by women (81.70%). The majority of the perpetrators are husbands (76.98%); ex-husbands (6.12%); parents, children, relatives (4.68%). In addition, 9.35% of the perpetrators are mates or close friends. The data also reveals the fact that victims' and perpetrators' social and economic status and their level of education vary. This fact refutes the opinion and myth that violence only happens to people with low social and economic status, low education level, unemployed, etc.

⁶² 70 percent of which were thievery due to economic difficulties: S. Allen, UNICEF Indonesia, "Analisa Situasi Sistem Peradilan Pidana Anak di Indonesia", Introduction, 2003. See www.unicef.org/indonesia/uni-jjs1_2final.pdf. Averagely, at least eleven youngsters commit crimes due to poverty every day: this data was presented by Dyah Sulastris Dewi, a juvenile Judge at the 1A Level District Court of Bandung during the establishment of a communication forum for children in conflict with the law. See http://www.poskota.co.id/news_baca.asp?id=39902&ik=5.

juvenile correctional institutions are only available in 16 big cities in Indonesia.⁶³ This fact shows that the juvenile justice system has not adequately protected children since the current justice system applies indistinctively to adults and children.

51. Despite the adoption of Law No. 3/1997 on Juvenile Justice introduced a specific juvenile justice procedure and a juvenile court, Indonesia does not yet count with a genuine juvenile justice system in full compliance with relevant international standards aimed at protecting children in conflict with the law from violence. More than 10 years after the entry into force of the Law, juvenile courts have not been established throughout the country. Although some changes have been experimented at the local level, this has resulted in children being tried in the same courts as adults, albeit under a special procedure. In addition, several provisions of KUHP⁶⁴ and KUHP⁶⁵ are still applied to children in conflict with the law.
52. The following table shows critical points provided in various legislations with regard to juvenile justice system.

| LEGAL INSTRUMENT | CRITICAL POINTS |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Criminal Code (KUHP) | <ul style="list-style-type: none"> Principles, norms and types of punishment for adults are still being applied to children in conflict with the law. |
| Criminal Procedure Code (KUHP) | <ul style="list-style-type: none"> Article 40 of Law No. 3/1997 on Juvenile Justice states that the applicable criminal procedures (KUHP) also apply to juvenile delinquency cases unless provided otherwise by Law No. 3/1997. |
| Law No. 12/1995 on Correctional | <ul style="list-style-type: none"> Provisions on the conditions and procedures of juvenile inmate's rights are to be further regulated by a Government Regulation. Up to the present, the Government Regulation that is supposed to regulate the conditions and procedures of juvenile inmates' rights has not been issued by the Government. |
| Law No. 2/2002 on Indonesian Police | <ul style="list-style-type: none"> In terms of juvenile-case handling, there is no specific provision on discretionary power.⁶⁶ There is no provision that specifically regulates the treatment and method to handle children presumed to be in conflict with the law. |
| Law No. 16/2004 on Public Prosecutor's Office | <ul style="list-style-type: none"> There is no specific legal basis on handling children in conflict with the law; in other words, there is no distinction between the treatment of adults and of children. While discretionary power can be found in article 35(c): The Attorney General has the duty and authority to discontinue a case for the sake of public interest (<i>deponering</i>). However, the authority to discontinue a case for the best interest of a child is not given to prosecutors who deal with cases involving children. |

⁶³ The data was presented by Mudjiati, Deputy Assistant of Gender Mainstreaming, Women Empowerment Ministry. See http://sumeks.co.id/index.php?option=com_content&task=view&id=2288&Itemid=36.

⁶⁴ Art. 67 of Law No. 3/1997 determines, in a verbally expressive way, that arts. 45-47 are no longer applicable. It means that legally, other articles in KUHP are still applicable, among many, the provisions on "punishments" (arts. 10-43), which include mode of sanctions (such as conditional punishment and release), "attempts" (arts. 53-54), "participation in punishable acts" (arts. 55-56), "conjunction of punishable acts", "exclusion of punishment", "lapse of the right to prosecute and of the punishment", etc.

⁶⁵ See arts. 43(2) and 54.

⁶⁶ The Police, which is the gateway to the criminal justice process, is supposed to have a legal authority (discretionary power), in which they have the authority to proceed with, or impede, a criminal case involving children. With regard to the principle of the best interest of the child, the absence of this particular power clearly shuts down the opportunity of the law-enforcement apparatus to handle a case in the best interest of the child.

| | |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Law No. 4/2004 on the Power of the Judiciary | <ul style="list-style-type: none"> ▪ The authority of a judge to discontinue a case involving children is not envisioned in Law No. 4/2004. |
| Law No. 13/2006 on Witnesses and Victims Protection | <ul style="list-style-type: none"> ▪ The Law does not envision a specific mechanism and procedure that can be applied to children. ▪ A child-friendly method is not provided. |

Up to the present, there has not been any effort to change the justice system towards a restorative one based on education.

53. To date, the Government has not taken any measure to increase the minimum age of criminal responsibility for children, as the Committee has recommended. The minimum age of criminal responsibility applicable to children under Law No. 3/1997 is still 8 years old.
54. In addition to exhorting the Government to promptly implement the Committee's recommendations, the WGAT also recommends the Government to amend Law No. 3/1997 by adopting the following:
- A provision that raises the minimum age of criminal responsibility of children.
 - A reform of the sentences applied towards convicted children that prioritise alternative measures to detention and educational and restorative measures, including community-based rehabilitation.
 - A mechanism of diversion from the justice system.

3.5. Paragraph 23: Human Rights Courts and Ad hoc Human Rights Courts

PARAGRAPH 23:

The State Party should:

Consider amending the law on human rights courts.

55. From 2000 to 2008, only a few cases of gross violation of human rights were brought before human rights courts established under Law No. 26/2000 on Human Rights Courts (see details in the table below).

| CASE | CASE UPDATE |
|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tanjung Priok Case (1984) | <ul style="list-style-type: none"> ❖ All perpetrators were acquitted at the appeal level. ❖ There was no consideration for granting compensation for the victims at the appeal level and the Supreme Court rejected thirteen victims' appeals for compensation; therefore, ❖ No compensation was granted to the victims of this case. |
| The Case of the Involuntary Disappearance of thirteen activists (1998) | <ul style="list-style-type: none"> ❖ The National Commission on Human Rights (Komnas HAM) filed the investigation report on this case to the Office of the Attorney General, recommending further legal proceedings to be taken. ❖ Up to present, the case was blocked at the Attorney General's Office. |

| | |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Trisakti Semanggi I and Semanggi II Incidents (1998-1999) | <ul style="list-style-type: none"> ❖ In 2003, a military court was established to try the field perpetrators of the shooting of student activist Yun Hap, one of the victims. ❖ The defendant was prosecuted under the Criminal Code, despite the fact that the case was considered a gross violation of human rights and thus should actually be brought under the jurisdiction of a human rights court. ❖ The trial failed to pinpoint responsibility on high-ranking officers. ❖ The investigation carried out by Komnas HAM found circumstantial evidences of gross violations of human rights. Komnas HAM then lodged its report to the Attorney General's Office in order that the alleged perpetrators be prosecuted before a human rights court. ❖ The Attorney General's Office blocked the case and refused to make further investigation on these cases. |
| Timor Leste Incident (1999) | <ul style="list-style-type: none"> ❖ Six offenders were found guilty by the district court. ❖ The number was decreased to two by the court of appeals. ❖ Two offenders were found guilty by the Supreme Court. However, after reviewing the case, the same court released Eurico Guterres. |
| Abepura Incident (2000) | <ul style="list-style-type: none"> ❖ In 2004, the District Court of Makassar released two offenders, namely Brigadier General Johny Wainal Usman, S.H and Colonel/ High Commissioner (Pol) Drs. Daud Sihombing. |
| Wasior (2001) and Wamena (2003) Incidents | <ul style="list-style-type: none"> ❖ In July 2004, Komnas HAM submitted the result of its pre-investigation to the Attorney General for investigation. |

56. In all the trials aforementioned almost all of the defendants were found not guilty. All the army defendants were found not guilty whether by the district, appeal, or supreme courts.
57. The failure of human rights courts to deliver justice has led not only to the acquittal of all perpetrators but has also closed the opportunity of victims to seek reparation. According to the existing legal procedures, victims would be granted reparation only if the perpetrators were found guilty and served sentences by the court. Consequently, such a failure has hindered the attempt to deliver justice for the victims. Initial steps to amend the Law No. 26/2000 on Human Rights Courts have been taken by Komnas HAM since 2005. Komnas HAM has established a team to develop the amendment draft of the Law. The team has accomplished its mandate and the final draft has been completed; however, Komnas HAM has not officially adopted the draft, and thus it cannot be submitted to the House of Representatives.
58. Despite the initial steps taken by Komnas HAM, the Government as well as the House of Representatives have not put this amendment among their priorities as this amendment is not scheduled for deliberation in a House session in 2009.

3.6. Paragraph 28: *Non-refoulement* and risk of torture

RECOMMENDATIONS UNDER PARAGRAPH 28:

The State party should:

- 1) *Not expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.*
- 2) *Examine thoroughly the merits of each individual case.*
- 3) *Ensure that adequate judicial mechanisms for the review of the decision are in place and sufficient legal defence available for each person subject to extradition.*
- 4) *Ensure effective post-return monitoring arrangements.*
- 5) *Adopt appropriate legislation to incorporate into domestic law its obligation under article 3 of the Convention.*

59. There has not been any measure taken by the GoI to fully and effectively implement the principle of *non-refoulement*. The revised draft of KUHAP does not even include such a principle; therefore, there is no prohibition of *refoulement* against a defendant, suspect, or

convict where there are substantial grounds for believing that he would be in danger of being subjected to torture or ill treatment in the country where he is supposed to be sent.

3.7. Paragraph 30: Truth and Reconciliation Commission

RECOMMENDATIONS UNDER PARAGRAPH 30:

The State party should:

- 1) Consider carefully the mandate of the future Commission of Truth and Reconciliation.
- 2) Be empowered to investigate gross human rights violations and compensate victims while proscribing amnesties for perpetrators of acts of torture.

60. After the decision taken by the Constitutional Court of Indonesia on 07 December 2006, Law No. 27/2004 on the Truth and Reconciliation Commission (TRC) has lost its legally binding power (revoked). It is submitted that the revocation of the Law as a whole was necessary since the provision on amnesty (article 27), which was granted by the Court to be revoked, constitutes the main soul of the law. Thus, the revocation of the article will directly affect the whole of the Law. As emphasised in the Court's decision, "[...] the declaration that Article 27 of the KKR Law is inconsistent with 1945 Constitution and does not have binding force renders all the provisions of the KKR Law unenforceable".⁶⁷ Meanwhile, the efforts to prepare a new Law on TRC, which is in accordance with the decision of the Constitutional Court, have been moving too slowly. Currently, the draft of the new Law has been handed over to the President of the Republic of Indonesia, waiting to be submitted to the House of Representatives.
61. The initiative to prepare the new TRC Law was commissioned by the GoI in 2007 through the establishment of a team at the Directorate General of Human Rights, Ministry of Law and Human Rights, to formulate the academic draft of the new TRC Law. The draft has been published and has received many inputs from various civil society organisations. Yet, those inputs have not been officially accommodated in the academic draft.
62. In March 2009, the Directorate General of Human Rights prepared and published the new TRC Law, which contains 7 chapters and 27 articles. Even though the term "amnesty", which was the principal point in the judicial review, has been eliminated from the corpus of the TRC Law, the spirit of granting amnesty to perpetrators can still be found in the TRC's framework.⁶⁸ Reparation for victims is also still regarded as limited compensation, depending on the financial resources of the State.⁶⁹

⁶⁷ Constitutional Court of the Republic of Indonesia, Case No. Number 006/PUU-IV/2006, "Judicial Review of Law of the Republic of Indonesia Number 27 Year 2004 concerning the Commission for Truth and Reconciliation under the 1945 Constitution of the Republic of Indonesia", p. 24, available at http://www.mahkamahkonstitusi.go.id/index.php?page=sidang_eng.PutusanPerkara&id=7&aw=1&ak=11&kat=1.

⁶⁸ TRC Law Draft (Directorate General of Human Rights' version, March 2009), Chapter I, General Provisions, art. 1(2).

⁶⁹ TRC Law Draft (Directorate General of Human Rights' version, March 2009), Chapter I, General Provisions, art. 1(7).

3.8. Paragraph 31: Witness and victim protection

RECOMMENDATIONS UNDER PARAGRAPH 31:

The State party should, without delay:

Establish the Witness and Victim Protection Body, with all relevant measures required to implement Law No. 13/2006, including the allocation of necessary funding for the functioning of such a new system, the adequate training of law enforcement officials, especially in cooperation with civil society organisations, and having an appropriate gender balanced composition.

63. At present, Indonesia has established a witness protection body as part of the mandate of Law No. 13/2006 on Witnesses and Victims Protection. In July 2008, the President appointed 7 commissioners to be in charge of the body. However, the budget for the Witness and Victim Protection Body (*Lembaga Perlindungan Saksi dan Korban, LPSK*) was not disbursed until November 2008.
64. LPSK has been progressing very slowly in terms of institutional completeness and organisational preparedness due to the lack of support from the Government, with the delayed issuance and dissemination of the Presidential Decree on Organisational and Management Procedures of the LPSK, which was finally issued in December 2008.⁷⁰ However, such a condition did not prevent the LPSK to carry out its main mandate, that is to say, to provide protection and support to witnesses and victims of crimes. In 2009, it has received 74 reports and complaints regarding criminal cases, including 4 cases of torture and maltreatment.

3.9. Paragraph 32: Compensation and rehabilitation

RECOMMENDATIONS UNDER PARAGRAPH 32:

The State party should, without delay:

- 1) *Ensure that adequate compensation is provided to victims of torture and ill-treatment.*
- 2) *Provide appropriate rehabilitation programmes to all victims of torture, ill-treatment, trafficking, domestic and other sexual violence, including medical and psychological assistance.*

65. The current applicable Criminal Procedure Code (KUHAP), as the only reference for law enforcement apparatus which provides compensation and rehabilitation mechanisms, is incapable of reaching out to victims of torture due to its weak formulation.⁷¹ Although it has been rarely reported, aid or assistance for torture victims has not been provided in a default procedure; instead, it has only been provided on a charity basis in each institution whose members allegedly commit torture.⁷² Currently, there has not been any adequate regulation on a compensation procedure for torture victims.
66. In regards to the rehabilitation of victims of trafficking and of domestic and sexual violence, there have actually been some procedures in various sector-based regulations. However, due to the lack of organisational management and no common understanding

⁷⁰ Presidential Decree No. 82/2008 on Organisational and Management Procedures of the Witness and Victim Protection Body.

⁷¹ In articles 95 & 97 of KUHAP, suspects have the right to compensation and rehabilitation in cases of: (1) unlawful arrest, detention, search, or seizure; or (2) release by a court of law on grounds of insufficient evidence, or the allegation does not fall under the categories of criminal offenses or misdemeanours.

⁷² In the case of IK, DEP, and SG in sub-chapter 3.2, for instance, the money given by the Regional Police Station of East Java was not acknowledged as rehabilitation money; rather, it was called 'attention' money, negating that it was an acknowledgement of the wrongful arrest and torture.

among law enforcement apparatuses, their implementation is still inadequate. In practice, inadequate financial and human resources have been the main obstacles. Therefore, support for rehabilitation comes largely from civil society groups.

3.10. Paragraph 33: Legal aid

RECOMMENDATIONS UNDER PARAGRAPH 33:

The State party should:

- 1) *Take measures to provide an effective free legal aid system, in particular for persons at risk or belonging to groups made vulnerable.*
- 2) *Ensure that the system is adequately resourced to guarantee that all victims of acts of torture and ill-treatment can exercise their rights under the Convention.*

67. Some developments occurred in Indonesia after the Committee's recommendations were issued. They are the following:

- The issuance of Government Regulation No. 83/2008 on Rules and Procedures for Providing Free Legal Aid, as a mandate of Law No. 18/2003 on Advocates. Article 4(1) of the Law delegates the obligation to provide legal aid to advocates, advocate associations, or legal aid institutions.⁷³ In other words, State's responsibility to provide legal aid freely is given to other parties.
- The total allocation for the improvement of the legal aid programme under State Budget of Revenues and Expenditures (*Anggaran Pendapatan Belanja Negara, APBN*) is 414.178 billion IDR (approximately equivalent to 41.417 million USD), which is distributed to 4 institutions, namely, the Supreme Court (5.628 billion IDR or approximately equivalent to 562.800 USD), the Public Prosecutor's Office (3 billion IDR), the General Elections Commission (7.55 billion IDR or approximately equivalent to 705.500 USD), and the Ministry of Law and Human Rights (398 billion IDR or approximately equivalent to 39.800 million USD).⁷⁴ Of the 4 institutions, referring to the Circular Letter of the Directorate General of Public and State Administration Judicatures number D.Um.08.10.10 05/12/2008 on the Guidelines for the Implementation of Legal Aid Services for Underprivileged People, only the Supreme Court that has seriously allocated its fund to provide legal aid services, while other institutions were only focusing on internal capacity building and social empowerment programmes. In other words, the actual amount that was used to provide legal aid services was only 5.628 billion IDR.
- Meanwhile, the budget allocation under APBN in 2009 for the improvement of legal aid services, which was included in the budget for security sector, has been increased to the amount of 1.1 billion IDR.⁷⁵ The budget allocation was distributed to several institutions such as the Supreme Court, the Public Prosecutor's Office, and the Ministry of Law and Human Rights.

68. The number of legal aid advocates in Indonesia, up to January 2009, was 18.000 people. This number is obviously inadequate compared to the number of people alleged to have committed drug-related crimes. In 2008, for instance, there were 44.694 suspects for this

⁷³ Art. 4(1) of Government Regulation No. 83/2008 on the Rules and Procedures of Providing Free Legal Aid, states that "*In order to get free legal aid, justice seekers must submit a written request to the advocate or through their advocate organisations or legal aid institutions*".

⁷⁴ Financial Notes of 2007 and 2008 APBN. See: www.depkeu.go.id.

⁷⁵ See the additional document to the Financial Note of 2009 APBN.

particular crime.⁷⁶ This obviously means that there is a need to increase the number of legal aid advocates.

69. Not every suspect is entitled to legal aid, only those who are facing a maximum imprisonment of five years or more are entitled to it.⁷⁷
70. During field observations in 4 district courts in Jakarta, namely, the District Court of Central Jakarta, the District Court of South Jakarta, the District Court of East Jakarta, and the District Court of North Jakarta, it was found that the defendants' right to legal aid services was still negated. For instance, there was the absence of counsel for defendants facing a maximum imprisonment of five years or more. Similar negation also happened to children in conflict with the law.⁷⁸

3.11. Paragraph 39: Ratification of the Optional Protocol

RECOMMENDATIONS UNDER PARAGRAPH 39:

In view of Indonesia's commitment to ratify the Optional Protocol of the Convention by 2009, as indicated in its second national Human Rights Action Plan, the Committee encourages the State Party to actively consider the establishment of a National Preventive Mechanism.

71. Up to the present, the GoI has not ratified the Optional Protocol to the Convention against Torture (OPCAT), despite the fact that it has been included in the second National Action Plan on Human Rights 2004-2009 (RANHAM).⁷⁹
72. In regard to the establishment of a National Prevention Mechanism (NPM), Komnas HAM leads an alliance consists of various stakeholders, namely the Directorate General of Correctional Service, Police, Immigration, Komnas Perempuan, and civil society groups, including the WGAT, with the support of the Asia Pacific Forum (APF) and the Office of the High Commissioner for Human Rights (OHCHR).
73. In various forums held by the alliance, Government institutions had a tendency to object to the key mandate of the NPM's to conduct visits to prisons without prior notice.⁸⁰

3.12. Paragraph 41: Dissemination of the Committee's recommendations and all related documents

RECOMMENDATIONS UNDER PARAGRAPH 41:

The State Party should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, through official websites and the media, in particular to groups made vulnerable.

74. During the WGAT-OMCT mission (25-29 February 2009) to follow-up the Committee's recommendations (CAT/C/IDN/CO/2) in Jakarta, it was found that some state institutions, such as the Directorate General of Correctional Service, the Criminal

⁷⁶ Data collection of drug-related crime published by the National Narcotics Board, January 2009.

⁷⁷ Art. 56(1) KUHAP. According to the new draft of KUHAP, every suspect or defendant is entitled to legal assistance at every level of the investigation process (art. 52). Yet, up to the present, the draft has not been issued.

⁷⁸ Field observations conducted by Edy Halomoan Gurning during the period of December 2008-February 2009.

⁷⁹ Presidential Decree No. 40/2004 on the National Action Plan on Human Rights 2004-2009.

⁸⁰ Proceedings of the Workshop on the Establishment of the NPM, Alila Hotel, 09-11 February 2009.

Investigation Section of the National Police of the Republic of Indonesia, the Witness and Victim Protection Body, and the National Commission on Child Protection, were not well-informed about the Committee's recommendations, and have not yet received a translated version of the Committee's Concluding Observation from the Ministry of Foreign Affairs. Likewise, the International Organisation for Migration (IOM), a civil society organisation that monitors police reform, has not yet received the document.

75. All documents requested to be disseminated by the Committee had not reached victim groups or other vulnerable groups, since only a very limited number had been printed.
76. The Concluding Observation and other related documents could not even be found on the official website of the Ministry of Foreign Affairs, whether in English or in Bahasa Indonesia.

4. CONCLUSIONS and RECOMMENDATIONS

Notwithstanding the fact that the Committee against Torture has sent a letter reminding the Government of Indonesia to further provide information on recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25, the Government of Indonesia shows very little effort to take concrete measures aimed at addressing the concerns expressed by the Committee nor to prioritise the prevention of torture issue in its human rights agenda. Having said that, it can be concluded that:

- **Recommendation 10**: There still has no effort from the Government to speed up the process of institutional reform of the National Police, despite the fact that it has been taking place since 1998. Such a reform is deemed necessary and important as to prevent torture and ill-treatment practices which often committed by police.
- **Recommendation 15**: The fact that 947 bylaws have been annulled due to their inconsistency with the Constitution does not by design attest that the Government has taken concrete measure to address the Committee's concerns since such bylaws are only those governing retribution, not the ones that are discriminatory.
- **Recommendation 19**: Acts of violence and abuses against *Ahmadiyah* community have yet decreased. There are 23 policies that have been used as reference by the community to initiate violent attacks and discrimination against *Ahmadiyah* community, including against women and children.
- **Recommendation 20**: Protection for Indonesian migrant workers cannot be provided in an optimal fashion due to the hesitance of the Government to immediately ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the national level, the enactment of legislations to eliminate the practice of trafficking of persons is proven to be ineffective since they are not properly enforced.
- **Recommendation 21**: The absence of a legal framework that specifically recognizes the existence of human rights defenders and their role in the promotion and protection of human rights has resulted in continuation of harassment and violence against human rights defenders. The failure to bring the perpetrators to justice, such as in the case of Munir, signals the denial of protection and justice to human rights defenders.
- **Recommendation 25**: To date, despite Komnas HAM's preliminary inquiries have concluded that gross human rights violations had occurred in the cases of enforced disappearances of thirteen activists, Wasior-Wamena, and Trisakti, Semanggi I and Semanggi II, the Attorney General has taken no action in pursuing the matter further. The reluctance on the part of the Attorney General to carrying out such investigations will bring human rights implementation into stagnation of justice.

Thus, the Working Group on the Advocacy against Torture (WGAT) urges:

- The Committee to consider at its 44th session (to be held in May 2010) sending a second reminder to the Government of Indonesia given that two years would have elapsed since the recommendations were issued and that no reply has been received (including after the first reminder).

- The Government of Indonesia to:
 - speed up the process of institutional reform of the National Police;
 - annul all bylaws that are discriminatory and in contradiction to human rights standards;
 - enforce legislations that were enacted to provide protection for Indonesian migrant workers and ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - develop sound domestic legal safeguards to protect human rights defenders and re-open the investigation into Munir case;
 - prioritise the settlement of past human rights violations cases and recommends the Attorney General to carry out investigation into such cases, which are currently halted in the investigation stage.
 - ratify the Optional Protocol to the Convention against Torture (OPCAT).

ANNEX: Bylaws that are not in accordance with the Convention

| Province | Regency | Form/Content |
|----------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nanggroe Aceh | | Regional Regulation No. 05/2000 on the Implementation of Islamic Sharia Law. |
| | | Regional Regulation No. 03/2000 on the Establishment of an Organisational and Working System of the Ulama Consultative Assembly of Nanggroe Aceh Darussalam (NAD) Province. |
| | | Regional Regulation No. 33/2001 on the Organisational and Working System of the Islamic Sharia Law Division of the NAD Province. |
| | | Regional Regulation No. 11/2002 on the Implementation of Islamic Sharia Law with regard to Islamic Religious Services and Religious Dissemination. |
| | | Regional Sharia Regulation (Qanun) No. 09/2003 on the Working Relations between the MPU, the Executive and Legislative branches, and other Institutions. |
| | | Regional Sharia Regulation (Qanun) No. 09/2003 on Close Proximity (Khalwat). |
| | | Regional Sharia Law (Qanun) No. 13/2003 on Gambling. |
| | | Regional Sharia Law (Qanun) No. 10 on Islamic Sharia Justice System. |
| | | Regional Sharia Law (Qanun) No. 12 on Liquor and Its Kind. |
| | | NAD Governor's Instruction No. 02/INTR/2001 on the Implementation of Salary Alms for Every Public Servant of the NAD Provincial Government. |
| West Sumatra | Padang | Mayor's Circular Letter on the Imposition of the Obligation to Wear Islamic Outfit for Every Student. |
| | | Local Regulation No. 06/2003 on Comprehensive Koran Literacy for Regular and Islamic Elementary School Students. |
| | | Mayor's Instruction no. 451.422/Binsos-III/2005 on 07 March 2005 on the Obligation to Wear a Headscarf and Islamic Outfit (for Muslims) and Suggestions (for non-Muslims). |
| | | Local Regulation No. 11/2005 on Public Order and the Peace of the People. |
| | Bukit Tinggi | Local Regulation No. 20/2003 on the Amendment of Local Regulation no. 09/2000 on the Control of, and Action on, Social Illnesses. |
| | | Local Regulation No. 09/2000 on the Control of, and Action on, Social Illnesses. |
| | | Local Regulation No. 20/2003 on the Control of, and Action on, Social Illnesses. |
| | Padang Panjang | Local Regulation No. 03/2004 on the Prevention, Eradication and Suppression of Social Illnesses. |
| | Pasaman | Local Regulation No. 22/2003 on the Obligation to Wear Islamic Outfit for Students and Employees. |
| | Padang Pariaman | Local Regulation No. 2/2004 on the Prevention and Eradication of Religious Wrongdoings. |
| Solok | Local Regulation No. 13/2003 on the Management of Profession Alms and Any Kind of Charitable Contribution. | |
| | Local Regulation No. 10/2001 on Quranic Literacy for Pupils, Students and Brides and Grooms-to-be. | |

| Province | Regency | Form/Content |
|---------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| | | Local Regulation No. 06/2002 on Islamic Outfit. |
| | Lima Puluh Kota Regency | Local Regulation No. 06/2002 on Mandatory Islamic Outfit. |
| | | Local Regulation No. 06/2003 Quranic Literacy for Pupils, Students and Brides and Grooms-to-be. |
| | Sawah Lunto | Local Regulation No. 01/2003 on Quranic Literacy for Pupils, Students, Employees and Brides and Grooms-to-be. |
| | | Local Regulation No. 02/2003 on Islamic Outfit. |
| | South Coast | Local Regulation No. 08/2004 on Quranic Literacy and Religious Prayers for Muslim students and Brides and Grooms-to-be. |
| | West Sumatra Province | Provincial Regulation No. 11/2001 on the Eradication and Prevention of Religious Wrongdoings. |
| Agam Regency | (Draft) Local Regulation (2004) on Comprehensive Quranic Literacy. | |
| | (Draft) Local Regulation (2004) on Islamic Outfit. | |
| South Sumatra | South Sumatra Province | Local Regulation No. 13/2002 on the Prohibition of Religious Wrongdoings. |
| | Palembang | Local Regulation No. 02/2004 on the Abolition of Prostitution. |
| | Lahat | Local Regulation No. 03/2002 on the Prohibition of Prostitution and Inappropriate Sexual Behaviour. |
| North Sumatra | Medan | Local Regulation No. 06/2003 on the Prohibition of Vagrant, Beggar and Prostitution. |
| Riau | Batam | Local Regulation No. 06/2002 on Public Order in Batam. |
| Bengkulu | | Local Regulation No. 24/2000 on the Prohibition of Prostitution. |
| | | Mayor's Instruction No. 03/2004 on Religious Activity Programmes of Enhancing the Quality of Faith. |
| Lampung | Way Kanan | Local Regulation No. 07/2001 on the Prohibition of Prostitution and Inappropriate Sexual Behaviour. |
| | Bandar Lampung | Local Regulation No. 15/2002 on the Prohibition of Prostitution and Inappropriate Sexual Behaviour. |
| | South Lampung | Local Regulation No. 04/2004 on the Prohibition of Prostitution and Inappropriate Sexual Behaviour, Gambling and Religious Wrongdoings. |
| | Tulang Bawang | Local Regulation No. 05/2004 on the Prohibition of the Production, Distribution and Sale of Alcohol Beverages. |
| West Java | Indramayu | Local Regulation No. 07/1999 on Prostitution. |
| | | Local Regulation No. 04/2001 on the Amendment of the First Local Regulation No. 07/1999 on Prostitution. |
| | | Local Regulation No. 30/2001 on the Prohibition of Distribution and Sale of Alcohol Beverages. |
| | Bekasi | Municipal Regulation (2006) on the Procedure of Building Places of Worship in Bekasi. |
| | Garut | Local Regulation No. 06/2000 on Decency. |
| | | Regent's Circular Letter (2000) on the Imposition of the Obligation to Wear a Headscarf for Regional Government Female Officials. |
| | Cianjur | Circular Letter No. 025/3643 on the Appeal to Wear Islamic Outfit (Muslim/Muslimah) during Working Days. |
| | | Regent's Decree No. 36/2001 on the Formation of the Institute for Research and Development of Islamic Sharia. |
| | | Circular Letter of the Regent No. 451/271/ASSDA.I/9/2001 on |

| Province | Regency | Form/Content |
|------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | the Movement of Officials Apparatus to Perform Good Moral and Develop Islamic Sharia. |
| | | Local Regulation No. 21/2000 on the Prohibition of Fornication. |
| | | Local Regulation No. 07/1999 on Prostitution. |
| | Tasikmalaya | Regent's Circular Letter No. 451/SE/04/Sos/2001 on the Enhancement of the Quality of Faith and Piety Constituting Appeal to Wear a Headscarf for Moslem Female Students from Elementary to Senior High School, Any Educational Institution and University. |
| | | Regent's Circular Letter No. 421.2/Kep.326A/Sos/2001 on the Conditions to Enrol in Regular and Islamic Secondary Schools in Tasikmalaya. |
| | | (Draft) Local Regulation on Alcohol Control and Monitoring. |
| | Pandeglang | Local Regulation No. 03/2001 on Strategic Planning of the Tasikmalaya Regency in 2001-2005. |
| | | Regent's Decree No. 25/2002 on the Implementation of Working Days and Islamic Outfit for Women. |
| | Tangerang | Regent's Decree No. 09/2004 on School Uniform for Secondary and High Schools, which has a tendency to impose the obligation to wear a headscarf. |
| | | Local Regulation No. 07/2005 on the Prohibition of Distribution and Sale of Alcohol Beverages. |
| | | Local Regulation No. 08/2005 on the Prohibition of Prostitution. |
| East Java | Pamekasan | Regent's Circular Letter No. 450/2002 on the Obligation to Wear a Headscarf for Muslim Women Government Officials; Closing Activities during Azan; Additional Credit Hours for Islamic Study and the Obligation to Wear Islamic Outfit for Male Government Officials Every Friday. |
| | | Local Regulation No. 18/2001 on the Prohibition of Distribution and Sale of Alcohol Beverages. |
| | Jember | Local Regulation No. 14/2001 on Combating Prostitution. |
| | | Regent's Decree No. 188.45/39/012/2007 on the Shut Down of Integrated Dumpsite (TPST) for Sex Workers and the Abolition of Prostitution in Jember. |
| | Gresik | Local Regulation No. 07/2002 on the Prohibition of Prostitution. |
| | | Local Regulation No. 15/2002 on the Prohibition of Distribution and Sale of Alcohol Beverages. |
| Pasuruan | Local Regulation No. 10/2001 on the Abolition of Prostitution in Pasuruan. | |
| Central Java | Jepara | Local Regulation on the Prohibition of Alcohol Beverages. |
| | Bantul | Local Regulation No. 05/2007 on the Prohibition of Prostitution in Bantul. |
| | Magelang | Mayor's Decree No. 421/2001 on a General Stipulation of Islamic Curricula in Magelang. |
| Special Region of Jogjakarta | | Regent's Decree No. 1/2001 on the Eradication of Social Illnesses. |
| South Sulawesi | Bulukumba | Local Regulation No. 03/2002 on the Prohibition, Control, Restrain and Sale of Alcohol Beverages. |
| | | Local Regulation No. 06/2003 on Quranic Literacy for Pupils, Students and Brides and Grooms-to-be. |
| | | Local Regulation No. 02/2003 on the Management of Profession Alms and Any Kind of Charitable Contribution. |

| Province | Regency | Form/Content |
|---------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | Local Regulation No. 04/2003 on Islamic Outfit. |
| | | Local Regulation No. 06/2005 on Sabbatical Friday. |
| | Maros | Regent's Circular Letter on 21 October 2002 on the Obligation to Wear a Headscarf for Muslim Women Government Officials; Closing Activities during Azan; Additional Credit Hours for Islamic Study and the Obligation to Wear Islamic Outfit for Male Government Officials Every Friday. |
| | | Local Regulation No. 15/2005 on Reading and Writing the Koran. |
| | Enrekang | Local Regulation No. 06/2005 on Islamic Outfit. |
| | Gowa | Local Regulation No. 07/2003 on the Eradication of Koran Illiteracy as an Obligatory Requirement to Pass in Elementary School and Being Accepted in the Secondary Level. |
| | Pangkep | (Draft) Local Regulation (2005) on Islamic Sharia Law. |
| | Sinjai | Local Regulation on Female Islamic Outfit. |
| Gorontalo | | Local Regulation No. 10/2003 on the Prevention of Religious Wrongdoings. |
| South Kalimantan | Banjarmasin | Local Regulation No. 08/2005 on Sabbatical Friday. |
| | | Local Regulation No. 04/2004 on Comprehensive Quranic Literacy for Pupils of Elementary School to High School Level. |
| | | (Draft) of Local Regulation (2005) on the Prohibition of River Bathing. |
| West Kalimantan | Sambas | Local Regulation No. 3/2004 on the Prohibition of Prostitution and Pornography. |
| | | Local Regulation No. 4/2004 on the Prohibition of Gambling in the Region. |
| West Nusa Tenggara | Mataram | Local Regulation on the Abolition of Religious Wrongdoings. |
| | | (Draft) Local Regulation (2003) on the Prevention of Religious Wrongdoings. |
| | Bima | (Draft) Local Regulation (2005) on the Prohibition of Illegal Sexual Intercourse. |
| | NTB Province | (Draft) Local Regulation on the Obligation to Wear a Headscarf. |
| East Nusa Tenggara | Kupang | Local Regulation No. 39/1999 on the Restriction of Places of Prostitution. |
| West Papua | Manokwari | (Draft) Local Regulation on the Bible in Manokwari. |
| DKI Jakarta | | Local Regulation No. 08/2008 on Public Order in Jakarta. |