



**Comments' of**

**THE INDONESIAN NATIONAL HUMAN RIGHTS COMMISSION  
ON  
INDONESIA'S COMPLIANCE  
WITH THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,  
INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT**

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## **I. Introduction**

1. The Indonesian National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*), popularly known and referred to by its acronym "*Komnas HAM*"), provides this submission to the United Nations Committee against Torture (hereafter the Committee) with regard to the Indonesia's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT).

## **II. Komnas HAM's Role to Monitor Indonesia's Compliance with CAT**

2. The Indonesian National Commission on Human Rights (hereafter called: Komnas HAM) is an independent institutions, equal with another states institutions. Under the Law 39/1999 Concerning Human Rights Komnas HAM has objective to:

- a. develop conditions conducive to the execution of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Human Rights; and,
- b. improve the protection and upholding of human rights in the interests of the personal development of Indonesian people as a whole and their ability to participate in several aspects of life.

(article 75 Law 39/999 Concerning Human Rights)

3. To achieve the aims, Article 76 states that the National Commission on Human Rights functions to study, research, disseminate, monitor and mediate human rights issues. Article 89 of the Law 39/1999 further states that:

- (1) To carry out the functions to study and research, with realize aims as referred to in Article 76, the National Commission on Human Rights has the authority to:
  - a. study and examine international human rights instruments with the aim of providing recommendations concerning their possible accession and ratification;
  - b. study and examine legislation in order to provide recommendations concerning drawing up, amending and revoking of legislation concerning human rights;
  - c. publish study and examination reports;
  - d. carry out literature studies, field studies, and comparative studies with other countries;
  - e. discuss issues related to protecting, upholding and promoting human rights; and,
  - f. conduct cooperative research and examination into human rights with organizations, institutions or other parties, at regional, national and international levels.
- (2) To carry out its function as disseminator as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:

- a. disseminate information concerning human rights to the Indonesian public;
  - b. take steps to raise public awareness about human rights through formal and non-formal education institutes and other bodies;
  - c. cooperate with organizations, institutions or other parties at national, regional and international level with regard human rights;
- (3) To carry out its monitoring function as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:
- a. monitor the implementation of human rights and compile reports of the output of this monitoring;
  - b. investigate and examine incidents occurring in society which either by their nature or scope likely constitute violations of human rights;
  - c. call on complainants, victims and accused to request and hear their statements;
  - d. call on witnesses to request and hear their witness statements, and in the case of prosecution witness to request submission of necessary evidence;
  - e. survey incident locations and other locations as deemed necessary;
  - f. call on related parties to give written statements or to submit necessary authenticated documents as required upon approval of the Head of Court;
  - g. examine houses, yards, buildings, and other places that certain parties reside in or own, upon approval of the Head of Court;
  - h. on approval of the Head of Court, provide input into particular cases currently undergoing judicial process if the case involves violation of human rights of public issue and court investigation, and the input of the National Commission on Human Rights shall be made known to the parties by the judge;

4. Thus, Komnas HAM has statutory functions which are: dissemination of national and international human rights concepts, conducting research on various United Nations human rights instruments with a view to recommending their ratification thereof or accession thereto, monitoring and conducting inquiry on the implementation of human rights and submitting views, advices and recommendations to the authorities concerned for the implementation of human rights and conducting regional and international cooperation for the promotion and protection of human rights.

5. Under its statutory function, Komnas HAM can conduct a human rights monitoring including to conduct an inquiry the implementation of human rights, including to monitor the implementation of the international human rights in which Indonesia is party, in this case Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT).

**III. Introduction Komnas HAM's Comment on the List of Issues to be Considered during the Examination of the Second Periodic Report of INDONESIA (CAT/C/IDN/Q/2), February 2008):**

**Article 1 (Comment on List of Issue 1 and 2)**

6. Komnas HAM notes that an effort has been done to amend the law of the Criminal Code that prohibits torture as stated in CAT. This process, however has been going very slowly. It should be noted the Law Number 39/1999 concerning Human Rights contains a provision on torture, Its definition of torture conforms to CAT. Article 1 (4) states “[t]orture means all deliberate acts that cause deep pain and suffering, both physical or emotional, inflicted on an individual person to obtain information or knowledge from that person or from a third party, by punishing an individual for an act carried out or suspected to have been carried out by an individual or third party, or by threatening or coercing an individual or third party, or for reasons based on discriminative considerations, should this pain or suffering arise as a result of provocation by, with the approval of, or with the knowledge of any person or public official whosoever”. Article 4 of the Law Number 39/1999 states that torture is non-derogable rights. Nevertheless, the Law does not provide any effective mechanism of enforcement dealing with individual complaint.

7. As mentioned in paragraph 3 of this submission, Komnas HAM does have statutory function to monitor the implementation of human rights including the right not to be tortured. Nevertheless, this function has a limitation. In dealing with individual complaint, including complaint on torture, Komnas HAM is only mandated to make a recommendation to institution concerned (such as the police) without any legal power to force the institution concerned to implement the recommendation.

8. The Law 26/2000 on Human Rights Court contains a provision on torture (Article 9 of the Law Number 26/2000). The definition of torture in this provision conforms to CAT. This provision, however, states that torture is a part of ‘crimes against humanity’, which should be perpetrated systematically or widespread as part of attack directed against any civilian.

9. The Law 26/2000 states that Komnas HAM is the only institution to conduct the inquiry on the alleged cases of crimes against humanity.<sup>1</sup> Up to the writing of this

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<sup>1</sup> Under the Law 26/2000, the Human Rights Court has jurisdiction on crimes which are crimes against humanity and genocide.

submission, Komnas HAM has completed inquiries on seven cases in which torture allegedly were perpetrated. The detailed information regarding those cases as follows:<sup>2</sup>

**(1) The Case of Timor Timur (East Timor/Timor Leste)**

10. The inquiries conducted by Komnas HAM concluded that torture as part of crimes against humanity were committed. The alleged perpetrator were the police, the military and the militia. The victims were civilian who can be identified as students and members of CNRT. The report of the inquiry said that torture were committed as a means of terrorizing civilian.<sup>3</sup>

11. The result of Komnas HAM inquiry on gross human rights violations of East Timor incidents in 1999 had been submitted to the Attorney General in 2001/2000. The case had been investigated and determined 18 defendants. They had been put into trial. In 2006, the judicial process of the case had been completed in the cassation level. The decision on the cessation level freed almost all of the defendant. Only one of the defendant, who is a member of militia/Eurico Guterres, is found guilty and sentenced 5 years imprisonment.<sup>4</sup>

12. It should be noted that, although, the report of Komnas HAM concluded that the act of torture was committed, on the case of Timor Timur, none of the defendant were accused of committing and/or responsible for torture.

**(2) The Case of Tanjung Priok**

13. The report of Komnas HAM on Tanjung Priok concluded that torture was committed as crimes against humanity. Allegedly torture was perpetrated by the military and the

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<sup>2</sup> Overall, Komnas HAM has conducted inquiries on seven cases, according to time the inquiry conducted by Komnas HAM:

(a) The case of Timor Timur 1999. The report of the inquiry was submitted to the Attorney General on 31 January 2000;

(b) The case of Tanjung Priok 1984. The report of the inquiry was submitted to the Attorney General on 7 July 2000;

(c) The Case of Peristiwa Irian/Papua 2000 (widely known as the case of Abepura 2000) Komnas HAM. The report of the inquiry was submitted to the Attorney General on 17 May 2001;

(d) The Case of May Riot 1998. The report of the inquiry was submitted to the Attorney General on 19 September 2003. The Attorney General has not started to conduct the investigation and prosecution.

(e) The Case of Trisaksi, Semanggi I dan Semanggi II. The report of the inquiry was submitted to the Attorney General on 29 April 2002. The Attorney General has not yet started to conduct the investigation and prosecution;

(f) The case of Wasior (Juni 2001-Oktober 2002)-Wamena (2003). Komnas HAM conducted the inquiry in 2003. The result of the inquiry was sent to the Attorney general on 3 September 2004. The Attorney General has not started to conduct the investigation and prosecution;

(g) The case of Enforced Disappearances within the period 1997-1998. The result of the inquiry was submitted to the Attorney General on 3 September 2006. The Attorney General has not started to conduct the investigation and prosecution.

Komnas HAM is now in the process of conducting an inquiry on the case of Talangsari 1989.

<sup>3</sup> See Annex 3

<sup>4</sup> Recently, based on the decision of Supreme Court in the review level, Eurico Guterres was also acquitted.

police. The torture took place at the District Military Command (Kodim) of Central Jakarta , Laksusda V Jaya, Pomdam V Jaya and Military Detention House (RTM) Cimanggis. The method of torture were inflicting of physical pain or suffering by act of physical violence by hitting with the gun and kicking.<sup>5</sup>

14. The result of Komnas HAM inquiry on gross human rights violations of Tanjung Priok incidents in 1998 had been submitted to the Attorney General in 2001. The case had been investigated and determined 14 defendants. They had been put into trial. In 2006, the judicial process of the case had been completed in the cassation level. All of the defendant were acquitted.

15. On the case of Tanjung Priok, only one of the defendant, Pranowo [the Chief of Regional Military Command V Jaya (*Kapomdam V Jaya*)] was accused should be responsible for the act of torture based on the definition of torture stated in article 9 Law 26/2000. The first level Court decided that the defendant, Pranowo, is found not guilty and acquitted. This decision was affirmed by the Supreme Court.

### (3) The Case Papua/Irian Jaya

16. This case widely known as a case of Abepura. Komnas HAM conducted an inquiry on this case and concluded that torture, as crimes against humanity, was committed. Allegedly the act of torture was committed by the police against civilian who can be identified as student and common people including children. The number of victim was 106 consisted of 9 women and 96 men (the more detailed see annex). The act of torture allegedly caused death of two of victim who died in Mapolres Jayapura (the detailed see annex) and caused permanent disability of one of the victim (detailed information see annex). The act of torture took place at victim's house (at Abepura Sub-district and South Jayapura Sub-district), on the way to or on the truck up to his detention at sub district Police (Polsek) Abepura and Police Precinct Jayapura.<sup>6</sup>

17. The report of Komnas HAM stated that, the method of torture in this case were :

- (a) Inflicting of severe pain or suffering:
  - (i) Inflicting of physical pain or suffering by act of physical violence: beating with rattan and wood, hitting with gun and kicking using military boots.
  - (ii) Inflicting of physical pain or suffering using special devices/instruments and/or substances : burnt with cigarret on the hands of the victims.
  - (iii) Inflicting of physical pain or suffering using water by throwing water over victim's wound.
  - (iv) Inflicting physical pain or suffering by forced consumption of solids and liquids by forcing the victim to lick the dropped blood on the floor, to drink water mixed with blood, and eat their own hairs (after their hairs cut off by the police).

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<sup>5</sup> See Annex 3

<sup>6</sup> See Annex 3

(b) Inflicting of mental pain or suffering which were intimidation and threats causing fear.<sup>7</sup>

18. The result of Komnas HAM inquiry on gross human rights violation of Abepura incidents in December 2000 had been submitted to the Attorney General in 2001. This case had been investigated, which determined two defendants, Jayapura Police Commander Superintendent, Drs. Daud Sihombing, and Brigadier General Johny Wainal Usman. The two defendants had been tried in human rights courts. Only Daud who was accused of responsible for torture.<sup>8</sup> The Human Rights Court in Makassar had decided to free Daud Sihombing on 8 September 2005 and Johny Waenal Usman on 9 September 2005. In the trial process one judge, Kabul Supriyadi gave his dissenting opinion on the court decisions. With regard to the court decisions, the Attorney General has requested a cassation to the Supreme Court. The decision was affirmed by the Supreme Court.

#### (4) **The Case of Papua** (*well known as Wasior-Wamena*)

19. Komnas HAM conducted the inquiry on this case and concluded that crimes against humanity was committed. Torture as crimes against humanity was committed and allegedly perpetrated by the police. The number of the victim for the case of Wasior was 39 civilian and 1 dead. The number of the victim for the case of Wamena was 38 civilians.

20. In the case of Wasior, the act of torture took place in the house of the victims, on the way when the victim were brought to Makodim 1702/JWJ and in the detention of Makodim 1702/JWJ.<sup>9</sup>

21. Komnas HAM had completed the projustitia inquiries of the Wasior 2001-2002 incidents and the Wamena 2003 incidents (both in Papua) in 2004. The result of the inquiry had been submitted to the Attorney General office through a letter No. 290/TUA/IX/2004 dated 3 September 2004. However, the Attorney General had returned the documents through a letter No. R-209/A/F.6/11/2004 dated 30 November 2004, which stated that the result of Komnas HAM inquiry was not complete. In response, Komnas HAM had returned the inquiry findings to the Attorney General through a letter No. 376/TUA/XII/2004 dated 29 December 2004, which firmly stated that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”. Until the writing of this submission, the Attorney General has not yet started the investigation of this case.

#### (5) **The Enforced Disappearances Incident in 1997-1998**

22. This is a case on enforced disappearances of activists within the period of 1997-1998. Komnas HAM conducted an inquiry on this case. Komnas HAM found substantial preliminary evidence of the occurrence of gross human rights violation of the enforced disappearance incidents in 1997-1998 in the forms of murder, arbitrary deprivation of

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<sup>7</sup> See Annex 3

<sup>8</sup> Daud Sihombing was charged of responsible for murder and arbitrary deprivation of liberty, while Johny Wainal Usman was charged of responsible for murder and persecution.

<sup>9</sup> See Annex 3

physical liberty, torture, ill-treatment and enforced disappearance of civilians. Moreover, the actions were part of direct attack on civilians, which was series of actions taken against civilians in follow up to policy of an authority. Since the actions were also widespread and systematic in nature, the forms of the actions could be categorized as crimes against humanity.<sup>10</sup> The report stated that the crimes against humanity was alledgely perpetrated by the military.

23. The number of the victim of the act of torture were 13 activists. The torture took place in Cijantung, Jakarta. Based on the inquiry, The method of torture took several forms, as follows:<sup>11</sup>

- (a) Inflicting of severe pain or suffering :
  - (i) Inflicting of physical pain or suffering by act of physical violence: beating and falanga (hung up side down);
  - (ii) Inflicting of physical pain or suffering using special devices/instruments and/or substances which is using electric shiocks ;
  - (iii) Inflicting of physical pain or suffering using water: soaking of cold water/dirty water over the victim ;
  - (iv) Inflicting physical pain or suffering by forcing to take up painful position: keeping victim tightly tied up and forcing the victim to sleep over a block of ice.
- (b) Inflicting of mental pain or suffering :
  - (i) Intimidation and threats causing fear using guns;
  - (ii) Blindfolding

24. Komnas HAM completed the inquiry and, based on the Law 26/2000, submitted the report of the inquiry to the Attorney General on 3 September 2006. The Attorney

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<sup>10</sup> In the enforced disappearance incidents in 1997-1998, at least 13 persons were reported as victims of enforced disappearance whose whereabouts are unknown pending the end of the working period of the Ad Hoc Team. They are: Yani Afrie, Sony, Herman Hendrawan, Dedi Hamdun, Noval Alkatiri, Ismail, Suyat, Petrus Bima Anugerah, Wiji Thukul, Ucok Munandar Siahaan, Hendra Hambali, Yadin Muhidin and Abdun Nasser. Ten other pro-democracy activists who were released are Mugiyanto, Aan Rusdianto, Nezar Patria, Faisol Riza, Raharja Waluyo Jati, Haryanto Taslam, Andi Arief, Pius Lustrilanang, Desmond J. Mahesa, and "St" (initial).

<sup>11</sup> Person(s) responsible for the crimes against humanity as mentioned above are:

- (a) Commander or superior who did not prevent, terminate, or deliver the perpetrators to the authorized officials for inquiry, investigation and prosecution;
- (b) b. Direct perpetrator(s) who caused the occurrence of the crimes and perpetrators who did the crime together with other person(s) (joint criminal enterprise).

5. According to the facts mentioned above, victims identified and crossexamination of evidence, the team concluded that 27 persons are responsible for the criminal acts in the enforced disappearance incidents in 1997-1998, namely:

- (a) 11 persons allegedly conducted the acts of crimes against humanity directly;
- (b) 10 persons alleged of command responsibility.
- (c) 6 persons alleged of joint criminal enterprise.

General then shall conduct the investigation and prosecution of this case. Nevertheless, until the writing of this submission, the Attorney General has not yet started the investigation.<sup>12</sup>

### **Article 2 (Comment on List of Issue 7, 8, and 9)**

25. Komnas HAM observed the implementation of corporal punishment, in a form of whip punishment, in several areas in Indonesia. The main area in Indonesia which implements this kind of punishment is Nanggroe Aceh Darussalam and Bulukamba in South Sulawesi. This punishment is based on the *Qanun* in Aceh and in Bulukamba is due to the Local Regulation (*Perda*). In Nanggroe Aceh Darussalam, the execution of this punishment is conducted by Wilayatul Hisbah, not by the police or the judiciary.

26. Based on its statutory function on monitoring, Komnas HAM conducted an investigation on the case of Trafficking in Singkawang.<sup>13</sup> The investigation found the case of trafficking of many children and women through contractual marriage and misuse of identity card.

27. With regard to trafficking through contractual marriage and misuse of identity card, Komnas HAM received a complaint on human trafficking in 2007 which is the case of Satini Romlah Binti Tarman Mamo. Satini's name was changed into Ellise binti Sulaiman with Passport number A 743400. Up to now Satini can not come back to Indonesia due to the contractual marriage. With regard to this, Komnas HAM sent a letter Number 735/SKPMT/XII/07 to Director-General for Protocol and Consular Affairs, Department of Foreign Affairs. Up to the writing of this submission, Komnas HAM has not received any response from the Department of Foreign Affairs. On 30 October 2007, Komnas HAM, however, received information that Satini now is in the shelter of the Indonesian Embassy in Taiwan.

28. Komnas HAM also received a case of Indah Dwi Wahyuni who allegedly was trafficked and transferred to Malaysia. Indah Dwi Wahyuni, firstly transferred to Jakarta from Jember and her identity and her name was changed. With regard to this case, Komnas HAM sent a letter number 028/SR/KHI/I/07 to The Chief of Police District (Kapolres) Jember. Up to the writing of this submission, Komnas HAM has not received any response on this matter. Komnas HAM, however, received information from her family that she is now in Malaysia.<sup>14</sup> Nevertheless, Komnas HAM, recently received an information that Indah was transferred to other place. The detailed of this new place is not accessible.

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<sup>12</sup> In this case there is a different opinion between Komnas HAM and The Attorney General. The Attorney general argued that a Human Rights Court shall be set up first in order the Attorney General to conduct the investigation and the prosecution of a case happened before the enactment of the Law 26/2000. Meanwhile Komnas HAM is in a view that an establishment of an ad hoc Human rights should be based on an inquiry done by Komnas HAM and an investigation done by the Attorney general. This view conforms to the decision of Constitutional Court Number 18/PUU-V/2007.

<sup>13</sup> Singkawang is a district in Kalimantan Island. Singkawang is in the border between Indonesia and Malaysia.

<sup>14</sup> Her detailed address is LOP 3289HIFIS Garden, Jl. Pinang 8 Rim Road 98000 Miri, Serawak

#### **Article 4 (Comment on List of Issue 15)**

29. Torture is prohibited based on the penal law in Indonesia. Besides prohibited by the penal law, torture and other cruel punishment are also against Pancasila, the state ideology, and also the constitution of the Indonesian Republic. The Law 39/1999 about Human Rights also guarantees the right to be free of torture. This law also defines torture somewhat similar with the one in the Convention against Torture (CAT).

30. The prohibition of the act of torture conducted by public officials is stated in the penal law Article 442, which says: "A public official in a penal case, who uses the means of force to obtain confession or information, is penalized with four years imprisonment." The prohibition of torture in Article 442 uses the definition which is close to the one defined in CAT, even though it is not sufficient enough. This is because it has not covered the act of "instigation" or "consent" or "acquiescence" from public officials or person acting in an official capacity.

31. In order to cope with this limitation, at the moment the Draft Law of the Penal Code that prohibits torture as stated in CAT is being prepared. In the Draft Law, Article 300 states "every public official by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity inflicting pain or suffering both mentally and physically for such purposes as obtaining from her/him or a third person information or a confession, punishing him will be sentenced for 3 years minimum or 12 years maximum imprisonment".

#### **Article 11 (Comment on List of Issue 24)**

32. The monitoring of places of detention, especially Correctional Institutions (*Lapas*) and State Detention Place (*Rutan*), is conducted by the Human Rights Commission of Indonesia (Komnas HAM) as a part of its monitoring function. This monitoring was done from April to May 2007, in several *Lapas* and *Rutan* in Indonesia, which were located in South Sulawesi, North Sulawesi and Riau.

33. In South Sulawesi, the monitored *Lapas* and *Rutan* were *Lapas* Maros, *Rutan* Pangkajene, and *Lapas* and also *Rutan* Makasar. Meanwhile, in North Sulawesi, it was *Lapas* Manado. In Riau, there were *Lapas* Bangkinang, *Lapas* Pekanbaru, and *Lapas* Tanjung Pinang.

34. Komnas HAM has not yet conducted the specific monitoring as suggested in Article 11 of the Convention against Torture (CAT) that obliged the State to do these steps: "to monitor systematically the rules about interrogation, instruction, method, habits and also rules to arrest someone or the treatment for those who got arrested, detained or imprisoned in each jurisdiction area in order to avoid torture cases." The monitoring to act upon Article 11 has not been effectively carried out by Komnas HAM.

35. From the monitoring of these detention places, either *Lapas* or *Rutan*, Komnas HAM noted several conditions:

- (a) The number occupants were exceeding the capacity of the *Lapas* or *Rutan* and this has caused the condition of the facilities to be quite dreadful;

(b) A lot of the detainees experienced some delay in receiving the letter to prolong the detention time by the State Court, especially in cases where the Public Prosecutor is getting an appeal;

(c) The jurisdictional decision of the execution for the detainees is often late; therefore, the detainees, who were supposed to have the status of convicted prisoners, lost their rights as prisoners;

(d) In the execution case by the Public Prosecutor which is delayed, the Prosecutor often asks for the date of the execution to be coordinated with the original execution date. The Place of Detention (*Rutan*) accepts this request but with several notes on this fact;

(e) Related to detainees received from the police, the Correctional Institutions (*Lapas*) often accept them in these conditions: (i) the detainees are transferred at night time, so the officers in that *Lapas* do not have to do any medical check-up on the detainees; and (ii) in several cases the detainees which are being transferred have shoot wounds.

36. The result of monitoring of several places of detention that has been described above, especially in *Lapas* and *Rutan*, shows explicitly how detainees are treated in ways which are still below the normative standard, subsequently the systematic prevention against torture has not been fully conducted according the Convention against Torture (CAT).

37. Besides this, what has been explained above has not yet covered the places of detention in police stations. How these police officers treat the detainees in these places of detention has also been reported as act of violence. Nevertheless, Komnas HAM has not conducted a systematic monitoring to confirm these reports accepted from members of the society. The steps for this are being prepared by Komnas HAM at the moment

38. In 2006, Komnas HAM had received complaints regarding the rights of prisoners and detainees, particularly with regard to unfairness that might occurred in the process of extending imprisonment period, conducted by the investigator, prosecutor and judges, which considered as violation to article 29 paragraph (2) and (3) of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP). Therefore, Komnas HAM had conducted monitoring of several correctional institutions and detention places in Medan (Binjai), Jakarta, Batam, Banda Aceh (Jantho), Bandung, Manado, Cirebon, Purwokerto, Cilacap (Nusa Kambangan) and Yogyakarta.

39. The objectives of the monitoring are as follows:

(a) To fulfil the human rights of the people going through judicial process, particularly imprisonment.

(b) To uphold the law according to the legislation which apply the principle of law supremacy.

(c) To indicate human rights violations of person(s) due to imprisonment without legal court decision.

(d) To find measures to prevent imprisonment without legal bases.

(e) To formulate guidelines for law enforcement officers to perform their duties according to the prevailing legislation.

40. Several findings of the monitoring are, among other, as follows:

(a) An alleged person lost his right for cassation due to the delay in the submission of all legal documents of the District Court and High Court, which had hindered the person to prepare the necessary documents for cassation.

(b) The Attorney General and the alleged person have yet received the decision of the Supreme Court, which has delayed the execution of the punishment of the alleged person. As the result, the alleged person lost his right to remission, visitation from family members, and other rights.

(c) The delay in the execution of death penalty of the alleged person, although he has been imprisoned for 36 years in Batu Correctional Institution in Nusa Kambangan. Meanwhile, his second request of clemency since 1995 has yet received response from the President.

(d) Lack of coordination between the correctional institutions and/or detention places with the District Court, the High Court and the Supreme Court.

41. In 2005 Komnas HAM also conducted a visit to correctional facility class II A in Pontianak and Mempawah, Kalimantan. The objective was to monitor the treatment towards detainees in correctional facility class II A in Pontianak and Mempawah. The monitoring had found that basic needs and facilities of detainees were not fulfilled (small and unclean cell rooms, overcrowded, inadequate sanitation facilities, insufficient food and limited health facilities).

#### **Article 12 (Comment on List of Issue 25 and 26)**

42. Komnas HAM receives complaints with regard to the case of torture and other violence done by the police in many regions, among others in Madura, Central Sulawesi and (Takala Wajo) South Sulawesi, Jember and Tuban (East Java), Semarang (central Java), etc, in which also involves a drug case (occurred in Polda Metro Jaya Jakarta). The Commission also receives a complaint with regard to a case of death in police custody happened in Police district of Cimahi (2006). The Commission also received a complaint in which the military police (POM) involved (in Banten/West Java).

43. It should be remarked that in 2006 Komnas HAM has made a Memorandum of Understanding with National Police to cooperate in handling human rights cases in Indonesia. Recently, in January 2008 Komnas HAM has also met with the Directorate General of Correction Institutions and the meeting has concluded the mechanism between two parties related to case that submitted to Komnas HAM. In this regard, Komnas HAM will be able to visit any correction institutions in Indonesia. Unfortunately, those two agreements did not specifically mentioned the acts of torture.

44. Komnas HAM had completed the projustitia inquiries of the Wasior 2001-2002 incidents and the Wamena 2003 incidents (both in Papua) in 2004. The result of the inquiry had been submitted to the Attorney General office through a letter No. 290/TUA/IX/2004 dated 3 September 2004. However, the Attorney General had returned the documents through a letter No. R-209/A/F.6/11/2004 dated 30 November 2004, which

stated that the result of Komnas HAM inquiry was not complete. In response, Komnas HAM had returned the inquiry findings to the Attorney General through a letter No. 376/TUA/XII/2004 dated 29 December 2004, which firmly stated that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”. Until the writing of this submission, the Attorney General has not yet started the investigation on this case.

45. With regard to Trisakti, Semanggi I and Semanggi II incidents, the result of the inquiry concluded that gross human rights violations had occurred in these incidents. The documents of the inquiry had been submitted to the Attorney General in June 2002 which had been returned several times. For the last time, Komnas HAM had returned the documents to the Attorney General through a letter No. 10/TUA/I/2005 dated 6 January 2005. The letter highlighted that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”. The follow-up of the case had not known for certain since the Attorney General still considered that the House of Representatives of the Republic of Indonesia had determined that the Trisakti, Semanggi I and Semanggi II incidents were not gross human rights violations.

46. With regard to the Attorney General opinion, Komnas HAM had sent a letter on 19 March 2003 to the Chairpersons of the House of Representatives of the Republic of Indonesia to review its previous decision. Komnas HAM had also met with the Chairpersons of the House of Representatives of the Republic of Indonesia on 29 October 2003 to discuss the matter. During the hearing with Third Commission of the House of Representatives on 30 November 2004, Komnas HAM had once again inquired on the follow-up of Komnas HAM request. However, due to the lack of a carry-over process from the 1999 – 2004 working period to the 2004 – 2009 working period of the members of the House of Representatives of the Republic of Indonesia, the Chairperson of Third Commission of the House of Representatives of the Republic of Indonesia had suggested Komnas HAM to re-submit the problem to the Chairperson of the House of Representatives of the Republic of Indonesia. Therefore, Komnas HAM had sent another letter to the Chairperson of the House of Representatives of the Republic of Indonesia No. 363/TUA/XII/2004 dated 9 December 2004. As a follow-up, the Third Commission of the House of Representatives of the Republic of Indonesia had concluded its study on the matter and had recommended the Plenary Session of the House of Representatives of the Republic of Indonesia to review its decision regarding Trisakti, Semanggi I and Semanggi II incidents. In 27 February 2006, Komnas HAM had sent a letter to the Chairpersons of the House of Representatives of the Republic of Indonesia to discuss the follow-up of the Wasior and Wamena incidents and the Trisakti, Semanggi I and Semanggi II<sup>15</sup> incidents which documents of inquiries had been completed by Komnas HAM but have yet follow-up with investigations by the Attorney General. Moreover, Komnas HAM also had sent a letter to the Chairpersons of the House of Representatives on 13 March 2006 to recommend the President to establish an Ad Hoc Human Rights Courts for these three incidents.

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<sup>15</sup> In this regard, Komnas HAM also discussing a follow up of other case which was May Riot 1998.

47. Pending the end of 2006, the Attorney General as well as the House of Representatives of the Republic of Indonesia have yet done anything to follow-up the results of the inquiries conducted by Komnas HAM with regard to Wasior and Wamena incidents and the Trisakti, Semanggi I and Semanggi II incidents.

48. Thus, it can be said that Komnas HAM also gained limited support and cooperation from the government to realize its functions, not merely on the issue of resources but also on the response of the government to the human rights cases that not been followed up by some of the government agencies (e.g. The Attorney General, DPR – House of Representative). In this regard, the discontinued investigation process by the Attorney General with regard to cases with indication of gross human rights violations although the inquiry of these cases had been completed by Komnas HAM for a long time should be mentioned. This discontinuation of these cases reflects the resistance to eliminate impunity in Indonesia.

49. Open conflict between security officers and demonstrators occurred in a mass demonstration demanding the closing of P.T. Freeport on 16 March 2006. As the result, five police and military officers died (four police officers from the Papua Police District and one military officer from the Air Forces of the Indonesian National Military). Moreover, four members of the Indonesian Police were heavily injured while 24 others and four demonstrators were injured. With regard to the incidents, security officers had arrested several members of the community accused of involvement in the act of violence. The security officers were also continuing the search for perpetrators to be legally processed.

50. As a response to the incidents, Komnas HAM had visited the area on 21-24 March 2006, involving the Representative of Komnas HAM in Papua. In the visit, Komnas HAM also conducted a meeting with the Papua Police District with the objectives as follows:

- (a) To ensure that the perpetrators will be processed through prevailing legal system.
- (b) The search of the perpetrators should respect the principles of human rights since the process could create fear in the community which is a violation to the right to personal safety.
- (c) The Papua Police District should facilitate the implementation of Komnas HAM in the monitoring process of the incidents.

51. Moreover, Komnas HAM monitored the condition of the members of the community accused of being involved in the Abepura incident. They were detained in Papua Police District in Jayapura. According to the Papua Police District information, the Papua Police District has detained 15 accused perpetrators of the Abepura incidents until 22 March 2006. Komnas HAM had emphasized the importance of respecting the human rights of the detainees to the Papua Police District by avoiding the use of torture on the detainees. To this request, the Papua Police District had stated that they did not torture any of the detainees.

#### **Article 14 (Comment on list of Issue 32)**

52. The law system in Indonesia has not make ease for torture victims (in the definition in CAT) to propose a compensation or rehabilitation both in the matter of administrative and law. *KUHAP* (The Law of Criminal Procedure) only provides the procedure for compensation or rehabilitation for victims who are arrested by mistake, which is through Pre-Court. And for the victims of miss-punishment, is through the procedure of Judicial Review. For those who have passed this process, they can propose for the rehabilitation and compensation. This has been regulated in *KUHAP* (The Law of Criminal Procedure).

#### **Article 15 (Comment on the List of Issue 33)**

53. There are several things which have not been regulated in the penal law in Indonesia and they are the status of information and evidences obtained from the torture. Is the status admissible or not? *KUHAP* (The Law of Criminal Procedure) does not regulate this explicitly; therefore, recurrently the confession or information obtained from the act of torture can be accepted by court. As an example is the case of torture and murder of Marsinah, the labor activist, and many other cases.

#### **Article 16 (Comment on List of Issues 36, 37, and 38)**

54. Komnas HAM received 128 cases of migrant workers in 2007. Most of them (42 cases) is cases of unpaid wages, 27 cases is cases on unable to come back to Indonesia, 13 cases of violence, 5 cases on rape, and also 1 cases facing death penalty. With regard to these complaints, Komnas HAM sent a letter to Department of Foreign Affairs, BNP2TKI, Department of Man Power and Department of Transmigration and also the Police.<sup>16</sup>

55. In this regard, Komnas HAM appreciated the invitation of the Indonesian Government to the United Nations Special Rapporteur for the Rights of Migrant Workers, Jorge Bustamante in December 2006. The Commission, however, considered that the Indonesian government policies toward migrant workers have yet taking the worker's side. The Commission observed, these workers, especially women workers are often ill-treated during departure, transit, work places and return). Cases of document forgery, violations of work contracts, unpaid wages, fraud, persecution, physical abuse and sexual harassment often occurred. The Commission underlined that the Terminal III at the International Soekarno-Hatta Airport as the departure and arrival gateway for the migrant workers. In this regard, the Commission underlined the call of migrant workers for the Government to close this terminal since many acts of enforced payment, ill-treatment, fraud, and sexual harassment occurred in this terminal. The Commission noted that until the end of 2006, the Government has yet found any solution to this matter. In this regard, the Commission might recall the report of the Special Rapporteur for the Rights of Migrant Workers which states that many Indonesia migrant workers have experienced human rights violations. These violations were mostly faced by women and children migrant workers. They were raped, forced to become prostitutes and experiencing other types of violence. Some other violations they experienced were long hours of working without breaks, unscheduled payment of wages and even unpaid wages, as well as mental abuses.

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<sup>16</sup> See Annex 4

56. Komnas HAM observed that the intimidation and terror that occurred to Mr. Albert Rumbekwan (the local commissioner at Papua) as serious problem that can be categorized as violence to human rights defenders. Komnas HAM, therefore, has taken steps by contacting and coordinating with the National and Local Police Headquarters to provide protection to Mr. Rumbekwan. Komnas HAM followed up the case by investigation and kept it monitored.

57. Komnas HAM conducted an investigation on the cases of Ahmadiyah based on the statutory function of Komnas HAM in monitoring. In 2005, Ahmadiyah adherents had experienced several acts of violence with the attack to Mubarak campus, Parung, West Java on 9 and 15 July 2005, the attack of Ahmadiyah adherents in Cianjur, West Java on 19 September 2005, and the attack of Ahmadiyah adherents in Ketapang, Lombok in October 2005. As the consequences of the State obligations according to article 71 of the Law 39/1999, all religions of the Indonesian people should be protected and treated equally by the State, including the adherents of Ahmadiyah.

58. In response to those attacks, Komnas HAM considered that the Government should actively provide:

- (a) protection guarantee to the victims;
- (b) firm actions to anarchy behaviours;
- (c) guarantee of protection for all Indonesian citizen wherever they stay.

59. Komnas HAM concluded that, the attack of Ahmadiyah adherents in Lombok without prevention and prosecution actions to the perpetrators by the law enforcement officers was an example of the unwillingness and inability of the State to guarantee the rights of its citizen to freedom of religion and to worship according to one's religion or belief. Similar acts of violence also occurred to Ahmadiyah adherents in Al Mubarak Campus, Parung (Bogor, West Java) on 9 July 2005 which caused many injured victims and destruction of campus facilities and vehicles.

60. Although the mass communal conflicts in Poso had stopped since 2002, the impact of these conflicts were still shown in 2006 because the Government has yet solved these cases through the legal system. Acts of violence still occurred such as shooting, bombing, mutilation or individual robbery. As the response to these acts of violence, the Indonesian Police has intensively conducted investigation in Poso and has determined 29 persons in the wanted list (Daftar Pencarian Orang or DPO).

61. In October 2006, during the search of the persons in the wanted list, a civilian had died and several others were injured of gun-shoots by the police. To investigate and monitor the possibilities of human rights violations in the search process of the police in Poso, Komnas HAM had visited Poso in November 2006 and had sent a letter to the Chief of the Indonesian Police to demand the respect of human rights in the police investigation process. The monitoring continues to 2007.

### **Comment on Other issue (the accession of the OPCAT)**

62. Komnas HAM conducted two workshops in Yogyakarta, Central Java, on 15 May 2007 and Pontianak, West Kalimantan, on 13 February 2007. The workshops were aimed to get an input on the ratification on Optional Protocol of the Convention. The workshops were attended by the police, judges, prosecutors, NGOs, the officers of the Correctional Institution (Lapas) and also academicians. The two workshops made several conclusions, as follows:

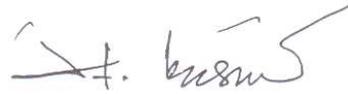
- (d) Recognized Optional Protocol to CAT is an effort to strengthen the preventive mechanism which is based on a regular visit to detention center to protect persons who deprived his/her liberty;
- (e) Recognized the objective of the OPCAT as to establish a system of the regular visit of the international and national body to the detention center to prevent the occurrence of torture, and other cruel, inhuman or degrading treatment and punishment;
- (f) Recognized that to achieve the objective of the OPCAT, thus a Sub-Committee on the Prevention should be established;

63. Although some of the participant disagreed, basically the two workshops recommended Indonesia to accede the OPCAT with a condition the national legislation harmonized with the Convention and there is a preparation to establish a National Preventive Mechanism (NPM), as mentioned by Mr. Nowak, mandated to conduct independent and unannounced monitoring of places of detention and to introduce in its legislation safeguards against torture and ensure that they are implemented.

64. In this regard, Komnas HAM recalls the recommendation of the Special Rapporteur on Torture, Mr. Manfred Nowak who also called upon the Government of Indonesia to expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention. Komnas HAM also underlined Nowak's recommendation which stated that The Government of Indonesia should support the National Commission on Human Rights and the National Commission on Violence against Women in their endeavours to become effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.

65. Thus, also inline with its statutory function, Komnas HAM declares its readiness to become effective player in the fight against torture, particularly to become effective player in the National Effective Mechanism (NPM).

**Jakarta, 17 April 2008**  
**The Indonesian National Human Rights Commission**  
**Chairperson,**

A handwritten signature in black ink, appearing to read 'Ifdhal Kasim', with a stylized flourish at the end.

**Ifdhal Kasim**

**List of Annexes**

- (a) [Act Number 39/1999 on Human Rights.](#)
- (b) [Act Number 26/2000 on Human Rights Tribunal.](#)
- (c) [Torture in Projustitia Report](#)
- (d) [Migrant Workers Complaint was Received by Komnas HAM in 2007](#)