

# INDONESIA

## BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

52<sup>nd</sup> session July 2012

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# INTRODUCTION

In July 2012, the United Nations (UN) Committee on the Elimination of all Forms of Discrimination against Women (the Committee) will examine Indonesia's sixth and seventh combined periodic report, which was submitted by the Indonesian government on 7 January 2011. This examination provides an opportunity to review Indonesia's progress since its last review 2007 in abiding both in law and practice by the provisions of the UN Convention on the Elimination of all Forms of Discrimination against Women (the Convention). Amnesty International welcomes the steps taken by the Government of Indonesia to fulfil its treaty obligations as a state party to the Convention, including the submission of its combined sixth and seventh periodic report to the Committee.

Although the Indonesian government has taken positive steps to fulfil its pledge to combat violence against women and eliminate prejudice against women, Amnesty International is concerned that women and girls in Indonesia continue to face barriers in fully exercising their human rights in law, policy and practice. In this briefing Amnesty International highlights five areas of concern. They include gender stereotyping and traditional, religious and cultural practices which are harmful to women; discriminatory access to sexual and reproductive health rights; abuses towards women and girl domestic workers in Indonesia as well as migrant domestic workers; gender-based violence and the criminal justice system; and access to justice, truth and reparation for past violations in areas of armed conflicts. However it is important to note that the concerns listed here are not exhaustive.

In this briefing Amnesty International provides information on the implementation by Indonesia of the Convention, and will set out ways in which the Indonesian government could better comply with its obligations under the Convention. This documentation draws on Amnesty International's ongoing research programme on Indonesia, which involves regular contact with local and international non-governmental organizations, victims and their families, lawyers, government officials, and other individuals. It also relies on daily media monitoring, and extensive reading of academic and other reliable publications on Indonesia.

Amnesty International submits the following information for consideration by the Committee in advance of its examination of Indonesia's combined sixth and seventh periodic report under Article 18 of the Convention.

# 1. GENDER STEREOTYPING AND PRACTICES WHICH ARE HARMFUL TO WOMEN (ARTICLES 2, 5, 12 AND 16)

Gender stereotyping in the area of family relations is prevalent in Indonesia and women and girls are under pressure to adopt attitudes which reflect narrow stereotypes of a woman's sexuality. This situation, which is often supported and unchallenged by discriminatory laws and policies, exposes women and girls to discrimination and abuses of their human rights. It also impairs their ability to make decisions freely about their lives.

## 1.1 FEMALE GENITAL MUTILATION (ARTICLES 2(F), 5(A), AND 12)

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning "female circumcision" (*sunat perempuan*).<sup>1</sup> The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as "the act of scratching the skin covering the front of the clitoris, without hurting the clitoris". The procedure includes "a scratch on the skin covering the front of clitoris (frenulum clitoris) using the head of a single use sterile needle" (Article 4.2 (g)). According to this regulation, the act of "female circumcision" can only be conducted with the request and consent of the person circumcised, parents, and/or guardians (Article 3.1).<sup>2</sup>

This regulation violates a number of Indonesian laws<sup>3</sup> and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women.

A 2003 study conducted by the Population Council in Jakarta with the support from the Ministry for Women's Empowerment concluded that "extensive medicalization of [female circumcision] has already occurred in some parts of the country and is underway in others".<sup>4</sup>

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<sup>1</sup> Minister of Health of the Republic of Indonesia Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision, 15 November 2010, enacted in Jakarta on 28 December 2010.

<sup>2</sup> Commentary based on an unofficial translation, on file with Amnesty International.

<sup>3</sup> For example Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Presidential Decree No. 36/1990 concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 39/1999 on Human Rights; Law No. 23/2002 on Child Protection; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health.

<sup>4</sup> Population Council, *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions*

This conclusion was supported by a 2009 Indonesia-wide survey on female genital mutilation, published by the Institute of Population and Gender Studies, Yarsi University, Jakarta, which found that “medicalization” of female genital mutilation “continues to this day without showing any tendency of a downward trend”.<sup>5</sup> The 2009 study, which examined the practice of female genital mutilation by health institutions (general hospitals, women and children’s hospitals, and maternity clinics) and health professional organizations, found that 18 per cent performed female genital mutilation.<sup>6</sup> Of those, 56 per cent said that the procedure was “symbolic” and did not remove any part of the genitalia and the remaining 44 per cent admitted to removing parts of the female genitalia.<sup>7</sup>

During research carried out in March 2010,<sup>8</sup> Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl’s “cleanliness” (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls’ urge towards “sexual activity” during adulthood. Some women described the procedure as being merely a “symbolic scratch”, while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that there would be some bleeding as a result.

**Amnesty International considers that the Indonesian authorities should:**

- Immediately repeal the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 concerning female circumcision; and
  - Put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include:
    1. The enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation;
    2. The publicising and dissemination of the 2006 government circular, No.
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*to Uphold Women’s Health Rights*, Jakarta, September 2003, p39.

<sup>5</sup> Uddin, Prof Dr. Jurnalís et al, *Female Circumcision: A Social, Cultural, Health and Religious Perspective*, Institute of Population and Gender Studies, Yarsi University, Jakarta (Jakarta: Yarsi University Press, 2010), (Uddin et al, 2010), p162.

<sup>6</sup> Uddin et al, 2010, Supra No5, pp3-4.

<sup>7</sup> Uddin et al, 2010, Supra No5, pp8-10.

<sup>8</sup> Amnesty International, *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010), (*Left without a choice*). A copy of this report was submitted to the pre-session working group of the Committee in September 2011.

HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation on women; and

3. The implementation of public awareness-raising campaigns at community levels and within health institutions to change the cultural perceptions associated with female genital mutilation.

## 1.2 GENDER STEREOTYPES TOWARDS MARRIAGE AND CHILDBEARING (ARTICLES 5(A) AND 16)

Women's role and status in Indonesia are mainly perceived in relation to marriage and motherhood: all women should be married and have children, and any woman having a child should be married.<sup>9</sup>

The stereotyping of women's – as well as men's – roles is codified in law. The Marriage Law (No. 1/1974) states that "the husband is the head of the family while the wife is the head of the household" (Article 31.3). "[T]he husband has the responsibility of protecting his wife and of providing her with all the necessities of life in a household in accordance with his capabilities" (Article 34.1), while the wife "has the responsibility of taking care of the household to the best of her ability" (Article 34.2).

The Marriage Law provides that the legal age of marriage in Indonesia is 16 for women, and 19 for men (Article 7). The Marriage Law authorizes polygamy.<sup>10</sup> According to Article 4.1 and 4.2, men may seek to have more than one wife provided that (a) their wife does not fulfil the obligations of a wife; (b) their wife has a health condition which cannot be treated; or (c) their wife has not borne a child (*isteri tidak dapat melahirkan keturunan*). Provisions pertaining to polygamy support gender stereotyped roles and differential treatment between women and men. For example, the pre-condition set in Article 4(c) supports a gender stereotypical view that women's primary function is to bear children.

This provision implies that it is a woman who is to blame should a married couple not have children – a medically unfounded assumption. It stigmatizes married women and girls who cannot have children, who choose to have no children or who want to delay pregnancy. Further, it reinforces the assumption that marriage should be undertaken for the purpose of procreation and thereby stigmatizes couples who are unable to become or decide against becoming parents, either temporarily or permanently.

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<sup>9</sup> See *Left without a choice*, Supra No8, p15.

<sup>10</sup> Polygamy is also referred to in other legal provisions. See for example government regulation No. 10/1983, which was later revised with government regulation No. 45/1990, which stipulates that a male state official can marry more than one woman only after receiving permission from his superiors. The regulation also stipulates that permission can only be granted if a state official's wife fulfils one of three criteria – namely she is incapable to serve in her duty as a wife; has an incurable disease; or is incapable of giving birth to a child. In The Jakarta Post, "Police Chief Responds To Polygamy Claims", 12 May 2010. Website: <http://www.thejakartapost.com/news/2010/05/12/police-chief-responds-polygamy-claims.html>, accessed on 11 May 2012.



Parliament has failed to prioritize the revision of the Marriage Law despite it being on the National Legislation Programme (Prolegnas) since 2006.

Gender stereotyping is one factor in the prevalence of early marriages in Indonesia. Although decreasing, marriage at a young age is still relatively widespread, especially in rural areas and slums.<sup>11</sup> A 2010 study by the Indonesian Ministry of Health found that 41.9 per cent of all first marriages involving women and girls occurred between the ages of 15-19 while 4.8 per cent between the ages of 10-14.<sup>12</sup> During interviews in March 2010, Amnesty International met many women and girls who married when they were still children,<sup>13</sup> sometimes as young as 13. Despite their young age, many had their first child shortly after being married. Early marriage leading to early pregnancy can greatly increase girls' risk of dying or experiencing serious and long term health problems as a result of pregnancy and childbirth.

There are also concerns that the religious courts in Indonesia continue to provide a dispensation as provided for in the Marriage Law allowing girls, usually those who become pregnant below the age of 16, to marry at the request of the parents/legal guardian (Article 7.2).<sup>14</sup> According to women's groups, judges in the religious courts rarely refer to Law No. 23/2002 on Child Protection when making decisions on application for dispensation. The law considers a child to be below the age of 18 (Article 1) and makes it the obligation and responsibility of a parent/legal guardian to prevent child marriages (Article 26.c).<sup>15</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Review and amend the Marriage Law (No. 1/1974) to eliminate provisions that discriminate against women, including age of marriage and polygamy, or perpetuate gender stereotypes;
- Ensure religious courts comply with Law No. 23/2002 on Child Protection and obligations under the Convention to prevent early marriages; and

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<sup>11</sup> See *Combined fourth and fifth periodic reports of States parties: Indonesia*, UN Doc. CEDAW/C/IDN/4-5, 27 July 2005, (*Combined fourth and fifth periodic reports of States parties: Indonesia*), para 163. See also World Health Organization (WHO), *Using Human Rights for Maternal and Neonatal Health – A tool for strengthening laws, policies and standards of care*, 2006, p8.

<sup>12</sup> See Indonesia Ministry of Health's Basic Health Research 2010 (*Riskada*), p159. Weblink: <http://www.riskedas.litbang.depkes.go.id/download/TabelRiskedas2010.pdf>.

<sup>13</sup> The Convention on the Rights of the Child defines as a child "every human being below the age of eighteen years" (Article 1).

<sup>14</sup> According to data collected by Aisiyiah (the women's wing of Muhammadiyah) from the Bantul Religious Court in Yogyakarta province, there were only ten requests for such age dispensations in 2000, but 115 such cases in 2010. See the Jakarta Globe, "The Thinker: Let's talk about sex", 17 May 2010. Weblink: <http://www.thejakartaglobe.com/columns/the-thinker-lets-talk-about-sex/375460>, accessed on 11 May 2012 and Rifka Annisa "Pernikahan Usia Muda dan Dampaknya", 1 December 2011. Weblink: <http://rifka-annisa.or.id/go/pernikahan-usia-muda-dan-dampaknya/>, accessed on 11 May 2012.

<sup>15</sup> Amnesty International telephone interview with NGO in Yogyakarta, May 2012.

- Conduct a public education campaign designed at eliminating gender stereotypes and raising awareness of the risks associated with early marriage.

### 1.3 GENDER-BASED DISCRIMINATION AND DECENTRALIZATION

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education, and family affairs. Some of these laws and regulations do not conform to international law and standards, nor do they respect provisions in Indonesia’s Constitution and Human Rights Act (No. 39/1999). A 2009 study published by the National Commission on Violence against Women (Komnas Perempuan) recorded over 60 local regulations which discriminate against women.<sup>16</sup>

#### 1.3.1 DRESS CODES (ARTICLE 5)

The National Commission on Violence against Women in Indonesia has identified 21 regional regulations on dress codes which “directly discriminate against women” in intent or impact.<sup>17</sup> The Commission found that dress codes also discriminate against minority groups.<sup>18</sup>

According to the Commission, supposed dress codes infractions are wrongly cited to excuse crime, perpetuating “the impunity of the criminals because women victims are considered the responsible party in the sexual violence they experience.”<sup>19</sup> In a 2010 interview the Head of West Aceh district, where a bylaw restricts dress for Muslim women, claimed that “when women don’t dress according to [Shari’a] law, they’re asking to get raped”.<sup>20</sup> Punishments for women who do not conform to dress codes range from disciplinary sanctions for civil servants to social sanctions, including public shaming. Government officials may refuse to provide public services to those considered not to conform.<sup>21</sup> In Aceh province, the Shari’a police (called *Wilayatul Hisbah*), and in some cases members of the public, conduct raids to ensure women comply; non-compliance can lead to warnings or temporary detention.<sup>22</sup> In May 2012 local newspapers reported that 62 women in Bireuen were detained for wearing “tight

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<sup>16</sup> National Commission on Violence against Women (Komnas Perempuan), *In the name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia*, 2009, (Komnas Perempuan, *In the Name of Regional Autonomy*).

<sup>17</sup> Komnas Perempuan, *In the Name of Regional Autonomy*, Supra No16, p19.

<sup>18</sup> Komnas Perempuan, *In the Name of Regional Autonomy*, Supra No16, pp33-35.

<sup>19</sup> Komnas Perempuan, *In the Name of Regional Autonomy*, Supra No16, p33.

<sup>20</sup> The Jakarta Globe, “West Aceh District Chief Says Shariah Law Needed or There Will Be Hell to Pay”, 18 August 2010. Weblink: <http://www.thejakartaglobe.com/news/west-aceh-district-chief-says-shariah-law-needed-or-there-will-be-hell-to-pay/391699>, accessed 11 May 2012.

<sup>21</sup> Komnas Perempuan, *In the Name of Regional Autonomy*, Supra No16, pp30-31.

<sup>22</sup> Article 23, Qanun 11/2002 on the Implementation of Islamic Shari’a in Aceh province. Article 14(3) authorizes the Wilayatul Hisbah to first to warn/ advise a suspected offender and in the event their behavior does not change, Article 14(4) authorizes the Wilayatul Hisbah to hand them over to the police or other investigating authority.

clothing”.<sup>23</sup>

Dress codes can be a manifestation of underlying discriminatory attitudes and reflect a desire to control women’s sexuality, objectifying women and denying their personal autonomy. Amnesty International is concerned that statements by government representatives perpetuate such discriminatory attitudes. For example, in March 2012 National Parliamentary speaker Marzuki Alie announced plans for rules banning female politicians and staff members from wearing mini skirts. News reports quoted him as saying “there have been a lot of rape cases and other immoral acts recently and this is because women aren't wearing appropriate clothes” and “You know what men are like. Provocative clothing will make them do things”.<sup>24</sup> The Indonesian government has an obligation to respect, protect and ensure every individual’s right to express their beliefs or personal convictions or identity. It must create an environment in which every person can make that choice free from coercion.

**Amnesty International considers that the Indonesian authorities should:**

- Repeal laws imposing requirements that individuals dress or do not dress in a certain way; and
- Take effective measures to protect women from violence, threats, or coercion by law enforcement officials in order to compel them to wear particular forms of dress.

**1.3.2 THE IMPLEMENTATION OF SHARI'A LAW IN ACEH**

In Aceh a bylaw on *khalwat*, which was passed in 2003 (No. 14/2003),<sup>25</sup> prohibits being alone with someone of the opposite sex who was not a marriage partner or relative, with caning as punishment.<sup>26</sup> In April 2012 a woman and man were each caned nine times in

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<sup>23</sup> The Jakarta Post, “62 women in tight clothing detained in Bireuen”, 9 May 2012. Weblink: <http://www.thejakartapost.com/news/2012/05/09/62-women-tight-clothing-detained-bireuen.html>, accessed 11 May 2012.

<sup>24</sup> See Agence France-Presse, “Indonesia to ban female MPs from wearing miniskirts”, 6 March 2012. Later that month, the Minister of Religious Affairs, who is part of the National Pornography Prevention and Management Task Force charged with enforcing the 2008 Pornography Law (No. 44/2008), proposed a law regulating women’s skirts during a meeting with lawmakers. The task force has been asked to identify criteria for what constitutes “pornography”. See The Jakarta Globe, “Indonesia’s Anti-Pornography Task Force Considers Short-Skirt Ban”, 29 March 2012. Weblink: <http://www.thejakartaglobe.com/home/indonesias-anti-pornography-task-force-considers-short-skirt-ban/507784>, accessed 11 May 2012.

<sup>25</sup> Although these bylaws should not longer be applicable since the passing of the Law on the Governing of Aceh (LoGA) in 2006, the National Commission on Violence against Women (Komnas Perempuan) has documented that some Islamic bylaws which were passed in the early 2000 are still in application. “Although later the Law No. 18 Year 2001 [on the Special Autonomy for the Aceh Special Region] was declared naught (after the enactment of Law No.11 Year 2006), the qanuns [bylaws] issued on the basis of Law No.18 continue to be in effect till the present day”, in Komnas Perempuan, *In the name of Regional Autonomy*, Supra No16.

<sup>26</sup> In the bylaw on *khalwat*, *khalwat* is defined as: “the conduct of being together in isolation between

Langsa, East Aceh district, after being found guilty by the local Shari'a Court.<sup>27</sup> Caning constitutes cruel, inhuman and degrading treatment and may amount to torture.

In September 2009, the Aceh regional parliament passed the Aceh Criminal Code (*Qanun Hukum Jinayat*), which criminalized a number of acts, including unmarried adults who are alone in isolation (*khalwat*); consensual sexual relationships involving a married person (adultery, known as *zina*); intimate relationships between unmarried people such as kissing (known as *ikhtilath*), and homosexuality (including lesbianism). Amnesty International and other non-governmental organizations have expressed serious concerns about the Code, in particular about provisions which provide for stoning to death for adultery and caning of up to 100 lashes for homosexuality. The Code has yet to be implemented, and is currently being revised by the Aceh regional parliament.

Women and girls are often disproportionately affected by these laws, due to gender stereotyped views on sexuality, for example, because pregnancy outside marriage can be interpreted as proof that a woman has committed a crime.

Further, Shari'a bylaws in Aceh have had a chilling effect on human rights activists defending women's rights there. Many expressed fears that they would be targeted by religious groups and the community at large, without adequate protection from local authorities, if they advocated openly on issues surrounding dress codes, *khalwat*, and caning.<sup>28</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Undertake a review of all local regulations and bylaws throughout Indonesia that discriminate against women in law, policy and practice, including to ensure that they are in full conformity with Indonesia's obligations under the Convention;
- Take immediate measures to ensure that the Aceh Shari'a bylaws, which contain caning as a punishment and which are discriminatory towards women, such as the bylaw on *khalwat* and the Aceh Criminal Code (*Qanun Hukum Jinayat*), are repealed immediately; and
- Take effective measures to ensure that all national and local government officials and lawmakers are sensitized to Indonesia's obligations under the Convention to ensure that the decentralization process does not result in Indonesia breaching its obligations under the Convention.

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two *mukallaf* [adults] or more of different sex who are not *muhrim* [a close relative] or without marriage ties". Any Muslim in Aceh who is found guilty of *khalwat* may be sentenced to three to nine lashes or a fine of between 2.5 to 10 million Rp (between 276 and 1,159.20 USD). See Amnesty International, *Indonesian government must repeal caning bylaws in Aceh*, 22 May 2011.

<sup>27</sup> See Serambi Indonesia, "11 Pelanggar Syariat Dihukum Cambuk", 20 April 2012. Weblink: <http://aceh.tribunnews.com/2012/04/20/11-pelanggar-syariat-dihukum-cambuk>, accessed 11 May 2012.

<sup>28</sup> Amnesty International interviews with human rights activists, Aceh, May 2012.

## 2. SEXUAL AND REPRODUCTIVE HEALTH RIGHTS (ARTICLES 5, 10, 12 AND 16)

Women and girls across Indonesia continue to face serious obstacles in law, policy and practice, to fulfilling their sexual and reproductive rights, barriers which are rooted in gender discrimination. These barriers constitute violations of Indonesia's international human rights obligations to respect, protect and fulfil women's and girls' right to health, in particular sexual and reproductive health.<sup>29</sup> The failure to ensure that women and girls can realize their sexual and reproductive rights free from discrimination, coercion and criminalization is undermining Indonesia's ability to achieve the UN Millennium Development Goals (MDGs), and in particular MDG 3 on gender equality and MDG 5 on improving maternal health.

### 2.1 DISCRIMINATION AGAINST UNMARRIED WOMEN AND GIRLS (ARTICLES 5(A), 10 AND 12)

Both the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) provide that access to sexual and reproductive health services may only be given to legally married couples, thus excluding all unmarried people from these services. Government midwives and doctors interviewed by Amnesty International in March 2010 confirmed that they normally do not provide reproductive health services, including contraception and family planning, to unmarried women and girls.<sup>30</sup>

District health officers and other government officials told Amnesty International in March 2010 that contraception and family planning services are intended solely for married people in accordance with laws and policies.

This situation leaves unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases, and human rights abuses. For example, unmarried adolescents who become pregnant are often forced to stop schooling. Instead of risking rejection by the wider community, some women and girls may decide – or be forced – to marry when they become pregnant, or else to seek an unsafe abortion which puts them at risk of serious health problems and maternal mortality.<sup>31</sup>

For unmarried women and girls who want to continue pregnancy, it remains unclear how they can access reproductive health services during pregnancy and at the time of the birth, without getting married first. Amnesty International's research suggests that the fear of

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<sup>29</sup> See *Left without a choice*, Supra No8.

<sup>30</sup> See *Left without a choice*, Supra No8, pp24-26.

<sup>31</sup> See *Left without a choice*, Supra No8, p25.

stigmatization can discourage pregnant unmarried women and girls, especially if they are from poor and marginalized communities, from seeking antenatal and postnatal services.

Unmarried women and girls who are rape victims may also not receive access to reproductive health services, either because they do not know they are entitled to these services or due to the fear of stigmatization.

Unmarried girls who become pregnant face the threat of expulsion from school or discriminatory treatment. In September-November 2010, there were moves to introduce virginity testing as part of female students' eligibility to study,<sup>32</sup> and more recently there were some attempts to restrict the ability for some pregnant students from taking national exams in East Java and East Nusa Tenggara.<sup>33</sup> Such tests and exclusions are not only intrusive and degrading, but plainly discriminatory, as nowhere are men and boys subjected to any equivalent form of "moral" testing.

**Amnesty International considers that the Indonesian authorities should:**

- Ensure that no education facilities discriminate against women and girls, including by ensuring that they do not set any criteria, such as pregnancy, that could result in women and girls being barred from education; and
- Ensure that all degrading and discriminatory procedures such as virginity testing are prohibited.

## 2.2 RESTRICTIONS ON MARRIED WOMEN AND GIRLS' REPRODUCTIVE CHOICES (ARTICLES 5, 12 AND 16)

According to the 2007 Indonesian Demographic and Health Survey, levels of unmet need for family planning and contraception information and services among married women and girls remain high, especially among those living in poverty.<sup>34</sup> There are significant restrictions on

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<sup>32</sup> The Jakarta Globe, "Students at Indonesian Vocational School Forced to Take Pregnancy Tests", 11 November 2010. Weblink: <http://www.thejakartaglobe.com/home/students-at-indonesian-vocational-school-forced-to-take-pregnancy-tests/406004>, accessed 11 May 2012. The Jakarta Post, "Councilors mull virginity as criteria for enrolment", 22 September 2010. Weblink: <http://www.thejakartapost.com/news/2010/09/22/councilors-mull-virginity-criteria-enrollment.html>, accessed 11 May 2012. Antara "Virginity test proposal in Jambi opposed by various parties", 27 September 2010. Weblink: <http://www.antaraneews.com/en/news/1285599822/virginity-test-proposal-in-jambi-opposed-by-various-parties>, accessed 11 May 2012. See also Agence Franc-Press "Indonesia Rejects Proposal to Subject Girls to Virginity Tests", 28 September 2010.

<sup>33</sup> The Jakarta Globe, "Pregnant Student Exam 'Ban' Provokes Outrage", 14 April 2012. Weblink: <http://www.thejakartaglobe.com/education/pregnant-student-exam-ban-provokes-outrage/511288>, accessed 11 May 2012. See also The Jakarta Post, "NTT high schools keep pregnant students away from national exam", 17 April 2012. Weblink: <http://www.thejakartapost.com/news/2012/04/17/ntt-high-schools-keep-pregnant-pupils-away-national-exam.html>, accessed 11 May 2012.

<sup>34</sup> According to Indonesia Demographic and Health Survey – 2007, 12.7 per cent of married women from the lowest wealth quintile had an unmet need for family planning (both for spacing and for limiting)

married women's and girls' access to family planning services and information. This is in part due to the requirement for the husband's consent: in the Population and Family Development Law, decisions about family planning should be taken jointly between married couples.<sup>35</sup> Interviews with health workers confirmed that the husband's consent was necessary to access some methods of contraception (for example, Intrauterine Device, IUD).

Beyond the interpretation of the Population and Family Development Law which requires the husband's consent, Amnesty International's research also found that health workers often restricted access to contraceptives for married women and girls if they had not yet had children. Amnesty International's interviews with health workers suggest that they fear that they would be blamed if a woman was not going to have children after having been given a contraceptive method. A midwife interviewed in Aceh explained that although she did not think contraception devices could cause infertility, she preferred not to provide childless married women with access to modern contraception methods because she did not want to challenge the cultural beliefs commonly held by the local community and be held accountable for subsequent childlessness.

### 2.3 INFORMATION ON SEXUAL AND REPRODUCTIVE RIGHTS (ARTICLES 5, 10 AND 12)

The government has in place various information programmes<sup>36</sup> on reproductive health for

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against between 7.3 per cent and 8.9 per cent for the other wealth quintiles, See *Indonesia Demographic and Health Survey – 2007* carried out by Statistics Indonesia (Badan Pusat Statistik, BPS), December 2008, p93.

<sup>35</sup> It was already the case in the former Population Law (No. 10/1992). The explanatory comments of Article 19 stated that the husband and wife have a common responsibility to negotiate an agreement about timing and spacing of children and the choices they will make.

<sup>36</sup> In 1996, the Ministry for Health issued the Essential Reproductive Health Services (*Pelayanan Kesehatan Reproduksi Esensial*, PKRE) in order to prepare adolescent reproductive health services, which includes services on reproductive health, including family planning, maternal health, adolescent health and HIV/AIDS within community health centres (*Puskesmas, Pusat Kesehatan Masyarakat*). In 1998, the Ministry of Health issued a management guideline on essential reproductive health services for the Community Health Centres and a policy to extend information and reproductive health education to adolescents. From 2000, the National Family Planning Coordination Board was in charge of the Protecting Adolescent Couples Programme (BKR), the Centre of Reproductive Health Information and Counselling for Adolescents (*Pusat Informasi & Konselling Kesehatan Reproduksi Remaja*, PIK – KRR), and Family AIDS Awareness. From 2001, the Ministry of Education introduced reproductive health education in schools. See Asian-Pacific Resource and Research Centre for Women (ARROW), *A Report of Indonesia field Test Analysis and Rights and Realities: Monitoring Reports on the Status of Indonesian women's Sexual and Reproductive Health and Rights*, 2006, p136. See also *Combined fourth and fifth periodic reports of States parties: Indonesia*, Supra No11, paras 129, 135 and 139; Ministry of Health, Ministry for Women's Empowerment, Ministry of Education, Ministry of Social Affairs, National Family Planning Coordination Board, UNFPA, WHO, *Kebijakan dan Strategi Nasional Kesehatan Reproduksi di Indonesia* [Policy and National Strategy on Reproductive Health], Jakarta, 2005; and Bab 2 A.2 "Panduan Pengelolaan Pusat Informasi & Konseling Kesehatan Reproduksi Remaja (PIK-KRR)", Badan Koordinasi Keluarga Berencana Nasional, Jakarta, 2008, p12.

adolescents;<sup>37</sup> however, there are substantial gaps in what is covered by these programmes. These gaps to some extent reflect cultural attitudes and legal restrictions on access to reproductive health services for unmarried people, and on providing information on sexuality and reproduction. In particular, there appears to be great reluctance to include information on contraceptives, such as condoms, as part of reproductive health programmes targeting unmarried adolescents for fear of being seen as promoting “free sex”. Although some schools provide information on reproductive health to adolescents, the impact of these programmes remains limited. Access to government programmes on sex education is made more difficult for adolescents who have left the education system, although there are also limits to the information provided to adolescents within the education system.

Local non-governmental organizations (NGOs) who provide information on sexual and reproductive health to unmarried adolescents have expressed concerns that government reproductive health programmes are not tailored to the needs of adolescents. Such programmes explain the reproductive systems of men and women but fail to deal with adolescents’ need for information about sexual relationships and prevention of unwanted pregnancy, including through the use of contraceptives.<sup>38</sup>

Indonesia’s Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) contains legal provisions which criminalize supplying information to people relating to the prevention and interruption of pregnancy (see Articles 534, 535 and also 283).<sup>39</sup> Punishments range between two and nine months’ imprisonment. Furthermore, Article 299 of the Criminal Code provides for up to four years’ imprisonment for any person who gives treatment to a woman which contributes to the termination of her pregnancy or which makes her believe that it is intended to induce termination of pregnancy (this could be applied to, for example, emergency contraception).

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<sup>37</sup> The World Health Organization and the Ministry for Health in Indonesia define “adolescents” as those between the age of 10 and 19 years old. However, the Department of Population and Family Planning in Indonesia defines adolescents as those aged between 10 and 24 years. Furthermore, the 2007 Young Adult Reproductive Health Survey relies on interviews with “never married” adolescents between 10 and 24 years old, with a focus on 15-24 year olds, Statistics Indonesia (*Badan Pusat Statistik*, BPS), National Family Planning Coordinating Board, Ministry of Health, and Macro International, *2007 Young Adult Reproductive Health Survey*, December 2008.

<sup>38</sup> Amnesty International interview with non-governmental organization, Yogyakarta, 5 March 2010.

<sup>39</sup> Article 534 states that “[a]ny person who either openly exhibits means for preventing pregnancy, or without being requested offers, by disseminating in writing, shows where such means or services for the prevention of pregnancy are available, shall be punished by a maximum light imprisonment of two months”. Article 535 states that “[a]ny person who either openly exhibits means for the termination (*menggugurkan*) of pregnancy, or openly or without being requested offers or shows where such means or services for the disturbance of pregnancy are available, shall be punished by a maximum light imprisonment of three months”. Article 283 states that any person who offers, hands over permanently or temporarily shows to a minor who he knows or reasonably suspects not yet to have reached the age of seventeen years, either a piece of writing, a portrait or an article offending against decency, or a means to prevent or to terminate (*mencegah atau menggugurkan*) pregnancy, shall be sentenced to a maximum of 9 months’ imprisonment.



Although Amnesty International is not aware of individuals being sentenced to terms of imprisonment for having violated these legal provisions, the fact that they remain part of Indonesian law has a chilling effect on information providers. Some of the sexual and reproductive rights activists interviewed by Amnesty International in March 2010 expressed concerns about the Pornography Law (No. 44/2008) and said that they felt at particular risk of being arrested for providing information on modern contraceptives such as condoms. The law defines pornography broadly. It encompasses material that “contravenes norms of community morality”, and provides for punishment of between four and 15 years of imprisonment for those who produce, disseminate, fund or use such material.<sup>40</sup> Activists told Amnesty International that they feared that this law could prevent them from disseminating information on sex education free from the threat of criminalization.

**Amnesty International considers that the Indonesian authorities should:**

- Review and amend the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) to bring them in line with international human rights law and standards. In particular legal provisions which discriminate on the grounds of marital status (for example access to family planning services and reproductive health services) should be amended and requirements for a husband’s consent should be removed;
- Repeal legal provisions criminalizing the dissemination of information on the prevention of pregnancy in the Criminal Code, and revise the Pornography Law (No. 44/2008) to ensure that it is fully consistent with international human rights standards;
- Publicly support the work of human rights activists, who are promoting and providing sexual and reproductive health information and services (for example contraceptives) and ensure that they are able to do their work free from the threat of criminalization;
- Ensure that a comprehensive reproductive health education programme is included in the national school curriculum, and that students who are pregnant are not dismissed from school. Materials should be developed in a way so that adolescents, regardless of their level of education or marital status, can fully access information on the prevention of unwanted early pregnancies and sexually transmitted diseases, including HIV/AIDs. Materials should be developed in a way which is non-discriminatory and which do not reinforce the stereotyping of women’s and men’s roles; and
- Take measures to ensure that state officials, health workers and other service providers provide women and girls, regardless of their marital status, age-appropriate information and services on reproductive health programmes. Monitoring mechanisms should be in place to ensure that reproductive health programmes are implemented free from discrimination.

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<sup>40</sup> The Pornography Law (No. 44/2008) defines pornography as “picture, sketch, illustration, photo, writings, vocalizations, sounds, moving picture, animations, cartoon, conversation, body movements or other form of messages that are communicated or transmitted via media communications and/or public shows that is indecent or sexually exploitative or contravenes norms of community morality”.

## 2.4 UNSAFE ABORTION AND THE THREAT OF CRIMINALIZATION (ARTICLES 5 AND 12)

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion, or a health worker providing one, may be sentenced to up to four or 10 years' imprisonment respectively. As a result of this law, abortions in Indonesia are often performed clandestinely in unsafe conditions. According to official government figures, unsafe abortions account for between five and 11 per cent of maternal deaths in Indonesia.<sup>41</sup>

Under the new Health Law passed in 2009, there are only two exceptions under Indonesian Law in which a woman may legally seek and health workers perform an abortion: if the health of the mother or foetus is endangered or in the case of pregnancy resulting from rape. A woman who is pregnant as a result of rape, or a woman experiencing life-threatening complications as a result of pregnancy, has to meet several criteria to access abortion services.<sup>42</sup> Some of these criteria can be very difficult to meet in practice, especially for women and girls who live in remote areas or who have limited access to health care services generally due to distance and/or other socio-economic and cultural factors.

To access legal abortion services in the event of pregnancies that are life-threatening for the woman or the foetus, the Health Law requires the consent of the husband (Article 76(d)). For married women and girls, this access criterion risks denying them access to health- and life-preserving medical care for reasons that are medically unjustifiable. Unmarried women and girls are denied access in a way that is clearly discriminatory.

Legal abortion provisions for rape victims are only permitted within the first six weeks of pregnancy.<sup>43</sup> This limited timeframe means that most rape victims may not be able to access safe abortion provisions within the required timeframe as they may not know they are pregnant by then.

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<sup>41</sup> Official government figures vary. Recent figures indicate that abortion accounts for five per cent of maternal deaths in Indonesia, see Ministry of National Development Planning (BAPPENAS), *A roadmap to accelerate achievement of the MDGs in Indonesia*, 2010, p123. However, previous figures indicate that abortion accounts for 11 per cent of maternal deaths in the country, see National Development Planning Agency, *Report on the Achievement of Millennium Development Goals Indonesia 2007, 2007*, p52. Website: <http://www.undp.or.id/pubs/docs/MDG%20Report%202007.pdf>, accessed on 11 May 2012.

<sup>42</sup> Articles 75 and 76 of the Health Law provide that abortions can only be performed legally in these two cases in the following circumstances: (i) Following the intervention of a health adviser (*konseling dan/atau penasehatan*) before and after the medical intervention, who is competent and has the authority to do so; (ii) before the end of the six week period from the date of the first day of the woman's period, except in cases of medical emergencies; (iii) by a health worker who has the skills and a certificate delivered by the Minister of Health which acknowledges his/her authority; (iv) with the woman's consent; (v) with the permission of the husband, except for victims of rape; and (vi) Provided the services meet the requirements set out by the Minister of Health. Women must pass five selection criteria out of six to access abortion services.

<sup>43</sup> Article 76(a) of the 2009 Health Law.

Following the passage of the 2009 Health Law a government regulation was supposed to be issued to provide further guidelines for doctors and health workers on providing abortion services in the event of pregnancies that are life-threatening and for rape victims.<sup>44</sup> While Amnesty International is aware that the Indonesian authorities are working on the implementing regulation, it has yet to be issued, almost three years after the law was passed, leaving many doctors and health workers uncertain if they can provide these services.

There is a lack of awareness among women and girls from poor and marginalized communities of the provisions pertaining to rape in the Health Law, and of legal exceptions to the criminalization of abortion generally. Moreover health workers interviewed by Amnesty International in March 2010 were only aware of one condition in which abortion was legally permitted, that is, where there were complications related to the woman's or the foetus' health. They were generally not aware of the exception with respect to victims of rape. Most local government officials interviewed by Amnesty International were also unaware of this new provision.<sup>45</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Decriminalize abortion in all circumstances in order to combat the high number of clandestine unsafe abortions. In cases where women and girls have an unwanted pregnancy as a result of rape, or where a pregnancy poses a threat to the woman's life or health, ensure they have access to safe abortion services in practice;
- Revise the Health Law, and in particular:
  1. Repeal legal provisions pertaining to a husband's consent for any health intervention;
  2. Extend the time limit regarding access to legal abortion services for rape victims; and
  3. Revise legal provisions in the Health Law to ensure that women who suffer from complications arising from an abortion have the explicit right to receive post-abortion care regardless of whether the abortion was legal or not.
- Ensure that any woman who has a complication related to an abortion procedure receives timely emergency care;
- Ensure that women and girls have access to information about legal abortion services; and

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<sup>44</sup> Article 74(2) (4) of the 2009 Health Law states that "Further regulations regarding the indication of medical emergencies and rape, as referred to in subsection (2) and subsection (3) will be governed by a Government Regulation".

<sup>45</sup> Amnesty International also found a lack of knowledge of exceptions in the Health Law for victims of rape to access abortion services during forums with local government officials in North Sumatra and South Sulawesi in 2011.

- Health workers should provide age-appropriate information on legal safe abortion services regardless of their personal or religious convictions. Monitoring mechanisms should be in place to ensure health workers provide these services in practice.

## 3. WOMEN AND GIRL DOMESTIC WORKERS (ARTICLES 5, 6, 10, 11, 12 AND 15)

In its briefing to the Committee in 2007, Amnesty International highlighted the lack of protection of women and girl domestic workers from gender-based violence and discrimination in the field of employment, health and education.<sup>46</sup> Five years later many of these concerns remain, leaving domestic workers vulnerable to exploitation and abuse and Indonesia failing to meet its obligations.

### 3.1 DOMESTIC WORKERS IN INDONESIA

A major problem is the lack of information about domestic workers and their situation in Indonesia. A 2002 International Labour Organization (ILO) study concluded that there are about 2.6 million domestic workers in Indonesia;<sup>47</sup> however, an assessment conducted by the Domestic Workers Advocacy Network, Jala-PRT, found that there were a total of 10.7 million domestic workers in Indonesia in 2009.<sup>48</sup> According to the 2002 ILO study, the vast majority of domestic workers are women and girls, and approximately one third of these are girls below the age of 18.<sup>49</sup> The Indonesia Population and Housing nationwide census conducted in

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<sup>46</sup> Amnesty International, *Indonesia: Briefing to the UN Committee on the Elimination of Discrimination against Women: Women and girls domestic workers* (Index: ASA 21/007/2007) and Amnesty International, *Exploitation and abuse: the plight of women domestic workers* (Index: ASA 21/001/2007), (*Exploitation and abuse*).

<sup>47</sup> ILO, *Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak Di Indonesia*, [Flowers on the Rock: Phenomenon of Child Domestic Workers in Indonesia], (ILO, *Bunga-bunga di Atas Padas*), 2004.

<sup>48</sup> See Suarasurabaya.net, "Solidaritas PRT Cuci Kotoran Republik" 15 February 2012, Weblink: <http://kelanakota.suarasurabaya.net/?id=469666193eff4183b578342fc3ac4a6a2012103247>, accessed 14 May 2012.

<sup>49</sup> The percentage of male domestic workers remains marginal. According to the ILO estimate, they comprise less than five percent of the total number of domestic workers in Indonesia. The ILO survey was conducted in 2002 by the University of Indonesia and the ILO International Programme on the Elimination of Child Labour (IPEC). The ILO estimates are based on an extrapolation method, in ILO, *Bunga-bunga di Atas Padas*, Supra No47, p54.

2010 did not include any specific questions attempting to obtain data on domestic workers within each household.<sup>50</sup>

The lack of comprehensive figures on the number of domestic workers currently working in Indonesia, and of disaggregated data on their gender, age, origin, socio-economic background and conditions in which they work, makes determination of the extent of the problem of their abuse and exploitation, and in turn policies needed to address it, difficult.

### 3.1.1 LACK OF LEGAL PROTECTION AS WORKERS (ARTICLES 5(A), 11 AND 15; GENERAL RECOMMENDATION 19)

Domestic workers in Indonesia are not protected by legislation safeguarding workers' rights, leaving them vulnerable to economic exploitation and the denial of their rights to fair conditions of work, health and education.

Existing domestic legislation – in particular the 2003 Manpower Act (Law No. 13/2003) – discriminates against domestic workers, because it does not afford them the same protection which other workers receive under its provisions, for example reasonable limitation on working hours, remuneration adequate to secure a life with dignity, and standards providing for rest and holidays. This lack of legal protection disproportionately affects women and girls as the vast majority of domestic workers in Indonesia are female.

There have been positive moves towards better legal protection for domestic workers, including a draft Domestic Workers Protection Law, which was placed on the legislative agenda in 2010.<sup>51</sup> However, to date there has been limited progress on debating and passing the draft law. In January 2012 the Parliamentary Commission on Health, Manpower and Population Affairs (Komisi IX), which is overseeing the drafting process, formed a working group to review the draft law article by article and to consult with civil society organizations.

The draft legislation contains several positive elements. It includes provisions prohibiting the employment of child domestic workers below 15 years old (Article 7); provides for written employment agreements (Article 16); conditions for termination of employment (Article 23), and the right to join a trade union (Article 28g). Violations of certain provisions in the draft law may be subject to administrative and criminal sanctions (Articles 43–49).<sup>52</sup>

Although Amnesty International welcomes discussions on the draft legislation in the House of People's Representatives, it is concerned that the draft as it stands does not meet obligations under the Convention. Several provisions are also less favourable than those provided for in the 2003 Manpower Act, perpetuating existing discrimination against domestic workers.

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<sup>50</sup> Email correspondence, 8 July 2010; and Amnesty International interviews, Jakarta, 9 and 12 March 2010.

<sup>51</sup> See *Combined sixth and seventh periodic reports of States parties: Indonesia*, UN Doc. CEDAW/C/IDM/6-7, 7 January 2011, (*Combined sixth and seventh periodic reports of States parties: Indonesia*), para 108.

<sup>52</sup> Based on a draft of the law received by Amnesty International in November 2011. On File with Amnesty International.

Provisions relating to sick pay, clearly defined daily and weekly rest periods, and a clearly defined holiday allowance are not included in the draft legislation.<sup>53</sup> Furthermore, there are no provisions relating to the specific needs of women – for example the protection of female workers prior to and after pregnancy – although the overwhelming majority of domestic workers in Indonesia are women and girls.<sup>54</sup> Unless the draft is amended to comply with Indonesia's obligations under the Convention and enacted at the earliest opportunity, domestic workers in Indonesia will remain vulnerable to exploitation and abuse.

### 3.1.2 GENDER-BASED VIOLENCE AND LACK OF ACCESS TO EDUCATION AND INFORMATION ON SEXUAL AND REPRODUCTIVE HEALTH RIGHTS (ARTICLES 10 AND 12)

Women and girl domestic workers are vulnerable to gender-based violence including rape and sexual harassment, due to the isolation in which they live, together with their low social status.<sup>55</sup> Although violence against domestic workers is criminalized in the 2004 Domestic Violence Law, many domestic workers are still unaware of this law in part due to their lack of education and access to information. Furthermore, fear of losing their job means many domestic workers may be unwilling to make a complaint.

Women and girl domestic workers in Indonesia typically leave school early. This has a significant impact on their future education and employment opportunities. It also means that they have even less access to information on sexuality and reproduction than those who complete their schooling (See 2.3 Information on sexual and reproductive rights). In March 2010 Amnesty International met many adolescent domestic workers who stopped schooling when they were under 15, limiting their access to public sources of information on sexual and reproductive rights. Access to this kind of information is further restricted for domestic workers because they live at their employers' houses, and are often not married. They may not be able to move freely outside the house, or be able to freely access sources of public

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<sup>53</sup> While Article 16 (2) of the draft provides that terms and conditions of work must include accumulated hours of work; weekly rest; leave entitlements; time off during working hours and holiday allowances, these are not sufficiently defined. In contrast, Article 79 of the Manpower Act provides periods of rest and leave to include: "The period of rest between working hours at least half an hour after working for 4 (four) hours consecutively and this period shall not be inclusive of working hours; The weekly rest is 1 (one) day after 6 (six) workdays in a week or 2 (two) days after 5 (five) workdays in a week; and The yearly period of rest is 12 (twelve) workdays after the workers/labourer works for 12 (twelve) months consecutively".

<sup>54</sup> In contrast, under the Manpower Act, female workers are entitled to maternity leave, starting one and a half months prior to delivery and lasting one and half months after the birth, which is a total of 12 weeks maternity leave (Article 82.1). Furthermore, a female worker who has a miscarriage is entitled to a period of rest of one and a half months or a period of rest as stated in the medical statement issued by the obstetrician or midwife (Article 82.2). A female worker who is entitled to leave under Article 82 shall receive her wage in full (Article 84).

<sup>55</sup> See *Combined sixth and seventh periodic reports of States parties: Indonesia*, Supra No51, para 102. See generally *Exploitation and abuse*, Supra No46. See also the case of Latifah, *Left without a choice*, Supra No8, p39.

information within the house (for example television and radio).<sup>56</sup>

It is essential that information about the domestic violence law, as well as sexual and reproductive health, is available to enable victims of sexual abuse to seek medical services and other forms of support. Domestic workers should also have full access to information and services on family planning, forced marriage, early marriage, pregnancy and the prevention of HIV/AIDS and other sexually transmitted diseases.

### 3.1.3 IMPACT OF THE FAILURE TO PROTECT WORKERS' RIGHTS (ARTICLES 11 AND 12)

The lack of legal protection as workers has a significant impact on their enjoyment of their human rights.

Amnesty International's 2007 report on domestic workers documented how domestic workers often work very long hours and are allowed little or no rest.<sup>57</sup> Those interviewed as part of this research worked an average of 70 hours a week, but many worked a lot more. Over the course of the research conducted in March 2010, Amnesty International also met domestic workers who worked very long hours with no break. Domestic workers who look after young children are particularly vulnerable to working long hours as they are asked to look after children at night, especially if they are sick, despite working long hours during the day.<sup>58</sup>

Provisions in the Manpower Act which guarantee specific protection for women workers do not apply to domestic workers, meaning that their treatment – for example during pregnancy and at the time of birth – depends solely on the goodwill of their employer. Interviews with domestic workers conducted by Amnesty International in March 2010 found that domestic workers who are pregnant risk losing their job as a result of their pregnancy, without any form of compensation. Others may be forced to work long hours without adequate time to rest if they want to keep their job.<sup>59</sup> Some of the domestic workers told Amnesty International that they were forced to work even if they did not feel well or they felt the work they were doing was too heavy for their condition and put their health and pregnancy at risk.<sup>60</sup>

These findings are in line with those of Amnesty International's 2007 report which found that while some domestic workers were provided adequate time to rest when they were ill, others had to continue working when they were feeling unwell.<sup>61</sup> Overall Amnesty International

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<sup>56</sup> See *Left without a choice*, Supra No8, pp39-40; and *Exploitation and abuse*, Supra No46, p40.

<sup>57</sup> See *Exploitation and abuse*, Supra No46.

<sup>58</sup> See for example the case of Lenny, *Left without a choice*, Supra No8, pp40-41.

<sup>59</sup> See *Exploitation and abuse*, Supra No46.

<sup>60</sup> See *Left without a Choice*, Supra No8, Chapter 5: The Case Study of Domestic Workers as a Vulnerable Group.

<sup>61</sup> Some felt that they were viewed with suspicion when they were sick and although they wanted to rest they were obliged to continue working. In addition, very few domestic workers were trained on how to use potentially hazardous materials despite reports indicating that domestic workers are at serious risk of injuries in the household. See *Exploitation and abuse*, Supra No46.

found that women domestic workers usually left their job early during pregnancy rather than work, sometimes in harsh conditions. Many domestic workers told Amnesty International that a domestic worker who becomes pregnant would either lose her job or no longer be paid if she decided to take maternity leave.

**Amnesty International considers that the Indonesian authorities should:**

- Pass specific legislation regulating the labour rights of domestic workers in accordance with international law and standards, and in particular:
  1. Provisions contained in the legislation should not be less favourable than what is provided for in the Manpower Act;
  2. The draft Domestic Workers Protection Law should be amended to explicitly include legal provisions pertaining to the specific needs of women, in particular during and after pregnancy, including requirements specified under article 11.2 of the Convention, such as the prohibition of dismissal or other sanctions on the grounds of pregnancy, provision of special protection to women during pregnancy and introduction of maternity leave without loss of employment. Where employers are known to have breached these obligations, they should be sanctioned in the same manner as other employers; and
  3. The draft Domestic Workers Protection Law should ensure that domestic workers enjoy freedom of movement and of communication and access to information.
- Ratify the ILO Domestic Workers Convention (No. 189) and ILO Maternity Protection Convention (No.183) and incorporate their provisions into domestic law and implement them in policy and practice;
- Immediately undertake a thorough survey assessing the number of domestic workers in every Indonesian province. This survey should gather data on their gender, age, origin, socio-economic background and conditions of living and employment. All data collected should be treated confidentially with appropriate standards of data protection;
- Publicize the Domestic Violence Law and relevant services among domestic workers, their employers and recruitment agents, including through the media; and
- Ensure domestic workers have access to information and health care with respect to sexual and reproductive rights.

**3.2 MIGRANT DOMESTIC WORKERS (ARTICLES 6 AND 11; GENERAL RECOMMENDATION 26)**

Amnesty International welcomes Indonesia's ratification on 31 May 2012 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The organization also welcomes efforts to improve the protection of migrant workers by establishing a Migrant Workers Task Force in July 2011.

According to the ILO, an estimated 700,000 Indonesian migrant workers migrate abroad



officially for work. About 75 per cent of documented migrants are women, who are mostly employed as domestic workers, with the main countries of destination in Asia and the Gulf. The ILO acknowledged that the need of migrant domestic workers “for adequate legal protection in Indonesia and abroad, has not yet been sufficiently addressed by the Indonesian government. As a result, domestic workers are exposed to institutionalized trafficking and forced labour practices throughout the entire migration cycle.”<sup>62</sup>

Under Law No. 39/2004 (Placement and Protection of Indonesian Workers Abroad), Indonesian migrant workers must go through licensed recruitment agencies to secure employment abroad (Article 12). After migrants sign a placement agreement, they are obligated to attend pre-departure orientation training at centres managed by the agencies. Migrants are trained in the relevant language and culture, cooking, cleaning, childcare, and care for the elderly.

Credible sources indicate that several of these training facilities are poor and inadequate, restrictions of freedom of movement are common (for example, requiring cash or property certificate as deposit in order to leave the facilities), and length of stay is arbitrary, normally ranging from three to seven months.<sup>63</sup> Little effort is made by the trainers to inform migrants of their rights and how to access assistance, as well as complaints and compensation mechanisms. Moreover, there is concern that trainees may be working, under the guise of “training”, without remuneration.<sup>64</sup>

Before departure, migrant domestic workers are often required to sign documents, including their employment contract, but not permitted to read or retain a copy. Recruitment agents also deceive migrants about their terms and conditions of work, including minimum wage and

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<sup>62</sup> ILO, “Combating Forced Labour and Trafficking of Indonesian Migrant Workers”. Weblink: [http://www.ilo.org/jakarta/whatwedo/projects/WCMS\\_116048/lang--en/index.htm](http://www.ilo.org/jakarta/whatwedo/projects/WCMS_116048/lang--en/index.htm), accessed on 11 May 2012.

<sup>63</sup> Amnesty International, *Trapped: The exploitation of migrant workers in Malaysia* (Index: ASA 28/002/2010), (*Trapped: The exploitation of migrant workers in Malaysia*); BSR, *Step Up: Improving recruitment of migrant workers in Indonesia*, July 2011; CARAM Asia, *Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia*, 2011, (CARAM Asia, *Reality Check!*), pp16-23; HOME, *Shadow Report to the 49th Session of CEDAW (Singapore)*, July 2011, HOME, *Shadow Report to the 49th Session of CEDAW (Singapore)*; Human Rights Watch, *Slow Reform: Protection of migrant domestic workers in Asia and the Middle East*, April 2010; Indonesian Migrant Workers Union (IMWU), “Exploitation on Indonesian Domestic Workers on the Rise” (press statement), 26 December 2010; Hong Kong Coalition of Indonesian Migrant Workers Organization (KOTKIHO), *Fees for Nothing: Exploitation of Indonesian Migrant Workers in Hong Kong*, August 2009, (KOTKIHO, *Fees for Nothing*); and Peggy W.Y. Lee and Carole J. Petersen, *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, May 2006, (Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*).

<sup>64</sup> Based on Amnesty International interviews with 15 Indonesian migrant domestic workers in Hong Kong 30 May-21 June 2012, and survey conducted by IMWU from July to September 2011 of 930 Indonesian migrant domestic workers in Hong Kong. See also Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*, Supra No63.

entitlement to rest days, and many migrants end up trafficked as a result.<sup>65</sup>

Serious indebtedness is common among migrant domestic workers due to excessive recruitment fees. They often pay above the maximum fee recruitment agencies can charge under Indonesian law.<sup>66</sup> As such, it is not uncommon for migrant domestic workers to hand over the vast majority of their salary to their recruiter for the initial six to 15 months of their contract, leaving them with very little to live on. The debts often force workers to accept exploitation and abuse in the workplace.<sup>67</sup>

For example in Hong Kong, Indonesian migrant domestic workers are compelled to repay recruitment fees averaging from HK\$21,000-30,000 (US\$2,700-3,900). As these fees exceed the legal maximum in Hong Kong,<sup>68</sup> placement agencies often compel domestic workers to sign a document for a fake loan and instruct their employer to transfer most of the monthly salary to a finance company.<sup>69</sup>

It is only upon arrival in the country of destination that most migrant domestic workers discover the true nature of their work. They may also face confiscation of their identity documents; contractual discrepancies (lower wages, no rest days); inadequate food and accommodation; psychological abuse; physical and sexual violence and threats of violence; and physical confinement. By the time the migrants discover the truth, it is often too late for them to do anything about it because they are already heavily indebted and must start paying

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<sup>65</sup> Based on Amnesty International interviews 30 May-21 June 2012, and survey conducted by IMWU from July to September 2011 of 930 Indonesian migrant domestic workers in Hong Kong. See also: CARAM Asia, *Reality Check!* Supra No63, pp16-23; HOME, *Shadow Report to the 49th Session of CEDAW (Singapore)*, July 2011, (HOME, *Shadow Report (Singapore)*), Supra No63; and Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*, Supra No63.

<sup>66</sup> There is a separate Indonesian legislation on maximum allowable recruitment fee for major destinations. See CARAM Asia, *Reality Check!* Supra No63, p19.

<sup>67</sup> Based on Amnesty International interviews, 30 May-21 June 2012. See also *Trapped: The exploitation of migrant workers in Malaysia*, Supra No63; CARAM Asia, *Reality Check!* Supra No63, pp16-23; HOME, *Shadow Report (Singapore)*, Supra No63; and Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*, Supra No63.

<sup>68</sup> According to the Employment Agency Regulations, Cap. 57A, Laws of Hong Kong (1974) Regulation 10 (Part II of Schedule 2): "Employment The maximum commission which may be received by an employment agency shall be-

(a) from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month's wages received by such person after he has been placed in employment by the employment agency. No more than 10 per cent of the first month's salary may be charged as an agency fee."

<sup>69</sup> Based on Amnesty International interviews, 30 May-21 June 2012. See also KOTKIHO, *Fees for Nothing*, Supra No63 and Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*, Supra No63.

off their loan to their recruiter.<sup>70</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Amend Law No. 39/2004 (Placement and Protection of Indonesian Workers Abroad) to include the government's obligations to migrant workers, ensure the protection of all parties, and inclusion of a gender perspective. Specifically ensure migrant workers, including domestic workers, are not required to go through recruitment and placement agencies for securing foreign employment, and allow for direct hiring;
- The recruitment and placement process should be transparent and there should be a maximum fee that Indonesian agencies can charge migrant domestic workers based on tripartite (government, recruitment association and migrant/domestic workers trade union) consultation. Recruitment agencies should be prevented from making additional charges above this amount (such as training fees or mandatory insurance);
- Strengthen the monitoring of the recruitment and training of domestic workers, and impose adequate penalties for those who violate the law. Ensure that the policy formulation, implementation, monitoring and evaluation of the training process is on a tripartite (government, recruitment association and migrant/domestic workers trade union) basis;
- Ensure that the prohibition of illegally exacted forced or compulsory labour is strictly enforced in law with penalties that are adequate and strictly enforced, in accordance with its obligation under Article 25 of the ILO Forced Labour Convention (No. 29);
- Incorporate the provisions of the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families into domestic law and implement it in policy and practice; and
- Ratify and fully implement the ILO Domestic Workers Convention (No. 189), incorporate its provisions into domestic law and implement it in policy and practice.

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<sup>70</sup> Based on Amnesty International interviews, 30 May-21 June 2012. See also: *Trapped: The exploitation of migrant workers in Malaysia*, Supra No63; CARAM Asia, *Reality Check!* Supra No63, pp16-23; HOME, *Shadow Report (Singapore)*, Supra No63; and Lee and Petersen, *Forced Labour and debt bondage in Hong Kong*, Supra No63.

## 4. GENDER-BASED VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM (ARTICLE 2; GENERAL RECOMMENDATION 19)

Amnesty International welcomes steps taken by the Indonesian government to fulfil its pledge to combat violence against women including steps to implement Law No. 23/2004 on Domestic Violence, the setting up of Women and Children Service Units at police stations as well as the Ministerial Regulation No.1/2010 on the Minimum Service Standard on Integrated Service for Women and Children Victims of Violence issued by the Ministry of Women's Empowerment and Child Protection.<sup>71</sup>

However violence against women remains prevalent throughout the country. In 2011 the National Commission on Violence against Women documented 119,107 cases of violence against women.<sup>72</sup> Monitoring carried out by the Commission over a 13-year period (1998-2011) demonstrated that nearly a quarter of the cases of violence against women in that period were cases of sexual violence. Out of a total of 400,939 reported cases of violence against women, 93,960 involved sexual violence. Rape cases made up 50 per cent of the total of disaggregated cases of sexual violence.<sup>73</sup>

### 4.1 GENDER-BASED VIOLENCE AND THE LAW

Women and girls who are victims of sexual violence in Indonesia continue to face a range of obstacles in law and practice when they report to the police. The definitions referring to "rape" and "sexual violence" contained in the Domestic Violence Law and the Criminal Code lack clarity. The definitions are narrow and not consistent across the two pieces of legislation,

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<sup>71</sup> The Minimum Service Standard sets out five types of services for women and children victims of violence: complaint handling; health service; social rehabilitation; legal aid and law enforcement; and repatriation and social reintegration.

<sup>72</sup> National Commission on Violence against Women (Komnas Perempuan) Press Release, "Catatan Tahunan (CATAHU) Komnas Perempuan Tahun 2011: Stagnansi Sistem Hukum Menggantung Asa Perempuan Korban, 7 March 2012. Weblink: <http://www.komnasperempuan.or.id/2012/03/stagnansi-sistem-hukum-menggantung-asa-perempuan-korban/>, accessed on 11 May 2012.

<sup>73</sup> National Commission on Violence against Women (Komnas Perempuan) Press Release, "16 Days of Activism Against Gender Violence "Sexual Violence: IDENTIFICATION and HANDLING" 24 November 2011. Weblink: <http://www.komnasperempuan.or.id/en/2011/11/press-release16-days-of-activism-against-gender-violence-%E2%80%9Csexual-violence-identification-and-handling%E2%80%9D/>, accessed on 11 May 2012.

which leads to a level of uncertainty about what is and is not a criminal offence.

Although the 2004 Domestic Violence Law criminalizes sexual violence in the context of the home, and provides for up to 12 years' imprisonment in cases where a husband perpetrates sexual violence against his wife – or vice versa (Articles 46 and 53) – the definition adopted is not sufficiently comprehensive. In the Domestic Violence Law, sexual violence is defined as “forcing sexual intercourse carried out against an individual living within the scope of the household” and “forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose” (Article 8).

The Criminal Code adopts a similar definition of rape, which is defined as any person using force or threat of force on a woman to have sexual intercourse with him out of marriage (Article 285). A person guilty of violating this Article may face up to 12 years' imprisonment.

International law requires that definitions of rape should not just focus on force or threat of force, but also breaches of the right to sexual autonomy as is, for example, the definition used in the Elements of Crimes of the Rome Statute of the International Criminal Court (ICC).<sup>74</sup> The ICC definition of rape defines both victim and perpetrator in a gender-neutral way, and refers to penetration of any part of the victim's body with any object or any other part of the perpetrator's body by force or threat of force or otherwise without consent.

Amnesty International is also concerned that marital rape has yet to be criminalized in the Criminal Code, and the Domestic Violence Law refers to sexual violence (*kekerasan seksual*) but not specifically to rape (*perkosaan*).

Furthermore, there are problems with the application of the Domestic Violence Law. For example, a 2009 study from Indonesian non-governmental organization Rifka Annisa, highlighted that police officials tend to require a civil marriage certificate from a victim of domestic violence who reports violence by her partner, which excludes in practice women and girls who are not married or who do not have a civil marriage certificate (for example unofficial marriages which are conducted at the community level, *nikah siri*).<sup>75</sup>

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<sup>74</sup> The definition of rape in the Elements of Crimes contain the following aspects: (1) “The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body”, and (2) “The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”. In *Report of the Preparatory Commission for the International Criminal Court* Elements of Crimes Article 8 (2) (e) (vi)–1, UN Doc. PCNICC/2000/1/Add.2, 2 November 2000.

<sup>75</sup> See Rifka Annisa Study, *Pemantauan Implementasi Undang-Undang Penghapusan Dalam Rumah Tangga di enam Propinsi Di Indonesia*, 2009, pp42–49).

**Amnesty International considers that the Indonesian authorities should:**

- Amend the Domestic Violence Law and the Criminal Code to be consistent with international human rights law and standards and to conform with comprehensive definitions of sexual violence, such as the definition of rape used in the Elements of Crimes of the Rome Statute of the International Criminal Court;
- Amend the Criminal Code to ensure that marital rape is criminalized; and
- Ensure that police conduct prompt, impartial and effective investigations into all allegations of domestic violence, prosecute and punish perpetrators, regardless of the marital or other status of the complainants/ victim, and ensure victims receive reparations. Ensure that police are aware of the fact that a marriage certificate is not necessary to prove that domestic violence has occurred.

## 4.2 WOMEN'S POLICE DESKS

In 2007 the Indonesian Chief of Police issued a regulation for the setting up of Women and Children Service Units (*Unit Pelayanan Perempuan dan Anak*, UPPA) or “women’s desks” at regional, city and district police stations.<sup>76</sup> Amnesty International understands that the police run more than 300 Women and Children Service Units throughout Indonesia<sup>77</sup> where female officers receive reports from women and child victims of sexual assault and/or trafficking and where victims find temporary shelter. The Women and Children Service Units are situated under the Criminal Investigation Department.

Nonetheless, Women and Children Service Units’ impact remains limited. Unlike at the regional levels, the district police levels still face a severe lack of qualified personnel and resources. Women’s groups have informed Amnesty International that some of these “women’s desks” are located in open areas within a police station in the same vicinity as criminal suspects and other victims. Some victims also face barriers in accessing the Women and Children Service Units’ as they have to first go through the Police Central Service Unit (*Sentral Pelayanan Kepolisian or SKP*) at the front of the police station, usually staffed by men.<sup>78</sup>

**Amnesty International considers that the Indonesian authorities should:**

- Ensure that the Women and Children Service Units are publicized, adequately resourced, located in an area where women feel safe to approach them and that they are available throughout the country; and

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<sup>76</sup> Regulation No.10/2007 of the Indonesian Chief of Police on the Organisation and Administration of Women and Children Service Units within the Indonesia National Police.

<sup>77</sup> See *Combined sixth and seventh periodic reports of States parties: Indonesia*, UN Doc. CEDAW/C/IDM/6-7, 7 January 2011, (*Combined sixth and seventh periodic reports of States parties: Indonesia*), para 49.

<sup>78</sup> Amnesty International Interviews, Makassar, April – May 2011.

- Ensure that all other police units offer comprehensive services to female victims of crime.

### 4.3 GENDER-SENSITIVE CRIMINAL PROCEDURES FOR CRIMES OF GENDER-BASED VIOLENCE

Legal Protection available to victims and witnesses have significantly increased in the wake of the passing of a Witness and Victims Protection Act (Law No. 13/2006), and of the Domestic Violence Law. The Domestic Violence Law details extensively the protections and services to be provided to victims of domestic violence. The Witness and Victims Protection Act and the Domestic Violence Law may be used in conjunction with one another.<sup>79</sup>

However, there are still deficiencies in the legislation in Indonesia in addressing the particular challenges of investigating gender-based crimes, including crimes involving sexual violence.

Despite a longstanding commitment, the Indonesian parliament has yet to debate and pass a revised Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) and a revised Criminal Code. Until then the old Codes remain in force.

Amnesty International is concerned that the current Criminal Procedure Code requires that a victim or witness be present in court to make their testimony, in contradiction with the provisions in the Witness and Victims Protection Act. The Witness and Victims Protection Act will remain applicable despite this incongruity; but it is critical that the Criminal Procedure Code be amended to avoid any contradiction and confusion between the two laws. In particular, the revised Criminal Procedure Code must follow the Witness and Victims Protection Act in permitting victims or witnesses, where a court has determined that this is necessary for their protection or for other valid reasons, including in cases of sexual violence, to give their evidence *in camera* or via video or audio-link in a manner that fully respects the right of the accused to a fair trial.

In addition, the Criminal Procedure Code lacks sufficient provisions designed to address the challenges of investigating gender-based crimes, including crimes involving sexual violence. For example, the revision of the Criminal Procedure Code must include provisions banning courts from drawing inferences about the credibility, character or predisposition to the sexual availability of a victim based on prior or subsequent sexual conduct of the victim. The revision must also include provisions that regulate the admission of evidence regarding the consent or lack thereof of the victim in a crime of sexual violence. A closed hearing to consider the admissibility or relevance of such evidence should be available as of right.<sup>80</sup>

The Criminal Procedure Code provides that a judge can only impose a criminal sentence on someone if s/he has two elements of proof. These can either be a testimony from a witness (including victim), the defendant, an expert, a letter, or a sign/ indication (*petunjuk*) (Articles

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<sup>79</sup> Should they contradict each other, the most specific law relevant to that crime will take precedence.

<sup>80</sup> Amnesty International, *Indonesia: Briefing to the UN Committee against Torture* (Index: ASA 21/003/2008), (*Indonesia: Briefing to the UN Committee against Torture*), pp48-9.

183–184). In practise most cases will require evidence of semen through medical records (*visum et repertum*). According to the National Commission on Violence against Women such legal provisions make it practically impossible for women victims of rape and other forms of sexual violence to obtain justice through the courts.<sup>81</sup> The Domestic Violence Law also requires at least two elements of proof in cases of sexual violence (Articles 54 and 55), based on the list of elements of proof in Article 184 of the Criminal Code.<sup>82</sup>

The requirement that a victim's testimony be corroborated can be extremely difficult to satisfy in cases involving sexual violence, which often occur in private without witnesses.

Although Amnesty International agrees that a defendant should only be convicted of a criminal offence if it has been proven *beyond reasonable doubt* that he or she committed the offence, a formal requirement that any conviction must be based on at least two pieces of valid evidence is likely to operate in a discriminatory way in cases involving sexual violence. If a judge is satisfied of a defendant's guilt *beyond reasonable doubt* on the basis of one element of proof, there should be no formal bar to conviction.

#### **Amnesty International considers that the Indonesian authorities should:**

- Ensure that courts employ all relevant provisions available in the Witness and Victims Protection Act and the Domestic Violence Law to minimize the trauma and fear experienced by victims and witnesses, and to provide appropriate protection for victims and witnesses, including allowing victims or witnesses to give evidence *in camera* or via video or audio link where this is necessary for their protection or to avoid re-traumatization;
- The Criminal Procedure Code should ban courts from drawing inferences about the credibility, character or predisposition to sexual availability of a victim based on the prior or subsequent sexual conduct of the victim. This should be based on best practice such as Rules 70 and 71 of the ICC Rules of Evidence and Procedure; and
- Given the discriminatory implications of the requirement of corroboration in cases of sexual violence, the Criminal Code should expressly provide that, while a court must not convict a defendant unless satisfied of his or her guilt beyond reasonable doubt, corroboration is not required for any crime, particularly crimes of sexual violence.

#### **4.4 SEXUAL ABUSE OF WOMEN DURING ARREST AND DETENTION**

In a 2009 report entitled *Unfinished Business: Police Accountability in Indonesia*,<sup>83</sup> Amnesty International highlighted ongoing reports about human rights violations by the police against criminal suspects, particularly those living in poor and marginalised communities. Amnesty

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<sup>81</sup> National Commission on Violence Against Women (Komnas Perempuan), "Indonesia's Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Issues for Discussion with the Committee Against Torture", April 2008, p2.

<sup>82</sup> See *Left without a choice*, Supra No8, p62.

<sup>83</sup> See Amnesty International, *Unfinished Business: Police Accountability in Indonesia* (Index: ASA 21/013/2009), (*Unfinished Business*).



International also documented the lack of effective internal and external accountability mechanisms in Indonesia.

Amnesty International's research found that female sex workers are at particular risk of gender-based violence, including sexual harassment and sexual assault, by police officers. Female sex workers reported that they have to pay monthly protection fees to various police officials including staff members of the traffic police, internal affairs department, and the criminal investigation department. However these bribes did not protect them from other abuses by police.<sup>84</sup>

There have also been reports of sexual abuse of women detainees in police detention. In Papua province, three police officers forced a woman detainee to perform oral sex on them at the Jayapura police detention centre over a three-month period from November 2010 to January 2011. The three officers were reportedly only given disciplinary punishments of 21 days' detention and a delay of their promotions.<sup>85</sup> The National Commission on Violence against Women reported that while the victim was being detained in the Jayapura police detention centre, police officers would often sleep in the cells of female detainees and sexually abuse them while they slept. Specific toilets for women were also not provided as the same location. As a result, female detainees were forced to use the men's toilet, leaving female prisoners vulnerable to sexual violence.<sup>86</sup>

There are no provisions in the Criminal Procedure Code that are specifically designed to provide protection to women in custody and detention. Contrary to international standards,<sup>87</sup> there is no requirement that female staff must be present during the interrogation of female detainees or that only female staff be permitted to conduct physical searches of female suspects or defendants. Although Amnesty International understands that in practice male and female detainees are held separately, there is no formal requirement in the Criminal Procedure Code that they be segregated in this way.<sup>88</sup> These limited legal safeguards put women at further risk of abuses by police officers and other male detainees.

Amnesty International has received many reports about the difficulty of lodging complaints about police misconduct. Victims of police abuse usually do not know where to lodge a

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<sup>84</sup> *Unfinished Business*, Supra No83, pp30-31.

<sup>85</sup> Jakarta Globe, "Papua Cops Get 21 Days In Forced Sex Case", 28 February 2011. Weblink: <http://www.thejakartaglobe.com/indonesia/papua-cops-get-21-days-in-forced-sex-case/425529>, accessed 11 May 2012.

<sup>86</sup> National Commission on Violence Against Women (Komnas Perempuan), "Visit to Female Prisoners who are Victims of Sexual Violence in Papua", 5 August 2011. Weblink: <http://www.komnasperempuan.or.id/en/2011/08/visit-to-female-prisoners-who-are-victims-of-sexual-violence-in-papua/>, accessed on 11 May 2012.

<sup>87</sup> Human Rights Committee, General Comment 16, Article 17 (Thirty-second session, 1988), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 142 (1994), para 8.

<sup>88</sup> Amnesty International, *Indonesia: Comments on the draft revised Criminal Procedure Code* (Index: ASA 21/005/2006), p14.

complaint and if they attempt to do so, they may be subjected to further abuse, intimidation and harassment. Investigations into reports of police abuses are rare. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences amounting to human rights violations and are often not known to the public. Furthermore, external police oversight bodies do not have the adequate powers to bring to justice those responsible for human rights abuses.

**Amnesty International considers that the Indonesian authorities should:**

- Ensure that female detainees are always held separately from male detainees in prisons, police stations and all other places of detention, that these facilities are adequately resourced so women do not have to share male facilities such as toilets, and that detention facilities for women are staffed by women officers;
- Ensure that female staff are present throughout the interrogation of female detainees and are solely responsible for conducting searches of female suspects and detainees;
- Ensure that women can make allegations of misconduct against police officers, including of sexual violence, intimidation or harassment, and that these are promptly, independently and impartially investigated. In particular, suspected criminal offences involving human rights violations must be dealt with through the criminal justice system, rather than only internally and only as disciplinary breaches; and
- Review the current accountability system to deal with suspected human rights violations by police officials and set up an independent police complaints mechanism that can receive and deal with complaints from the public. This mechanism should have the power to submit its findings to the Public Prosecutor.

## 5. WOMEN AND CONFLICT: JUSTICE TRUTH AND REPARATION FOR PAST VIOLATIONS AGAINST WOMEN (ARTICLES 2 AND 12)

The Indonesian government has made little progress in delivering justice, truth and reparation for past human rights violations which occurred under the rule of Suharto and during the *reformasi* period (from 1998) including during the events of 1965-66,<sup>89</sup> the 1998 May riots,<sup>90</sup> and the conflicts in Aceh, Papua and Timor-Leste. These crimes included unlawful killings, rape and other crimes of sexual violence, enforced disappearance, torture and other ill-treatment. Amnesty International notes that the Indonesian government did not respond to questions posed by the Committee regarding steps taken to provide access to justice, reparation and rehabilitation to women victims/ survivors of sexual violence during past conflicts in its responses to the list of issues in 2011.<sup>91</sup>

Human rights violations, including rape and other crimes of sexual violence, committed by Indonesian security forces during past conflicts have been well documented by Amnesty International and other organizations.<sup>92</sup> The culture of silence that surrounds sexual and

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<sup>89</sup> Government officials were allegedly involved in the systematic persecution of members of the Indonesian Communist Party (PKI) and suspected communist sympathizers following the abortive 1965 coup. Women experienced arbitrary arrest and detention, torture, rape, sexual slavery and other crimes of sexual violence during this period and after. See National Commission on Violence against Women (Komnas Perempuan), *Gender Based Crimes against Humanity: Listening to the Voice of Women Survivors of 1965*, 2007.

<sup>90</sup> Over a three-day period in May 1998, the anti-government riots that led to President Suharto's resignation claimed the lives of more than 1,000 people. A Joint Fact-finding Team established by the government found widespread sexual violence took place during the riots and the majority of the victims were women of Chinese descent. See International Center for Transitional Justice (ICTJ) and KontraS (The Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, April 2011.

<sup>91</sup> See *List of issues and questions with regard to the consideration of periodic reports: Indonesia*, UN Doc. CEDAW/C/IDN/Q/6-7, 1 November 2011, para 21; and *Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic report: Indonesia*, UN Doc. CEDAW/C/IDN/Q/6-7/Add.1, 19 January 2012, paras 111-116.

<sup>92</sup> See for example, in Aceh, National Commission on Violence against Women (Komnas Perempuan), *Pengalaman Perempuan Aceh Mencari dan Meniti Keadilan*, January 2007; Amnesty International, *Indonesia: The impact of impunity on women in Aceh* (Index: ASA 21/060/2000); Amnesty International, *Indonesia: A cycle of violence for Aceh's children* (Index: ASA 21/059/2000); Amnesty International,

gender-based violence, stemming from gender stereotypes, feelings of shame, social stigma, the low status of women in society, as well as the difficulty in talking about these violations, means that many cases remain unreported.<sup>93</sup> Many women and girls were not provided with medical, psychological, sexual and reproductive, and mental health services or treatment either during the conflict or after the conflict ended.

Women and girls not only suffered as direct victims of human rights violations, but indirectly as family members of those who were killed and disappeared. Many were forced to assume the role of economic provider and primary caregiver for the family, and this has had long-lasting consequences for women and their families, for example in terms of access to education and healthcare. Women and girls whose family members were disappeared experience an ongoing human rights violation as the fate and whereabouts of their loved ones remains unknown.

## 5.1 NATIONAL INITIATIVES TOWARDS JUSTICE, TRUTH AND REPARATION

At the national level, the Indonesian authorities have attempted to establish a range of mechanisms to try to deal with past human rights violations. However, weaknesses in legislation, failures in implementation, and a lack of political will mean that for many victims justice, truth and reparation for past crimes remain elusive. These failures have left women and girls and their experiences of conflict further marginalized, and must be addressed as a matter of priority.

The Law on Human Rights Courts (No. 26/2000), established to try cases of gross human rights violations, has so far proved incapable of efficiently carrying out this task, in part due to weaknesses in the legislation. The law has very limited scope and has yet to be properly implemented.<sup>94</sup> Furthermore, it has jurisdiction only over acts of genocide and crimes against

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*Indonesia: "Shock therapy": Restoring order in Aceh 1989-1993* (Index: ASA 21/007/1993). In Papua, Amnesty International, *Indonesia: Grave human rights violations in Wasior, Papua* (Index: ASA 21/032/2002); Amnesty International, *Indonesia: Impunity and human rights violations in Papua* (Index: ASA 21/015/2002). In Timor-Leste the Commission for Reception, Truth and Reconciliation (CAVR) report, *Chega!*, 2005. See also Amnesty International, *Indonesia: Women in Indonesia and East Timor: standing against repression*, (Index: ASA 21/051/1995).

<sup>93</sup> A 2007 report on Aceh by the National Commission on Violence against Women (Komnas Perempuan) which found 103 cases of violence against women from the period of the military operations zone up until after the signing of the 2008 Helsinki MOU acknowledged that these cases represented only a fraction of the cases of violence against women there. See National Commission on Violence against Women (Komnas Perempuan), *Pengalaman Perempuan Aceh Mencari dan Meniti Keadilan*, January 2007, p5. Similarly, the final report of the Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação, CAVR), concluded that although it recorded 853 instances of sexual violations, they represented "only a portion of the total number of victims who did not give statements because of social or personal pressures or an inability to talk about their experiences due to ongoing trauma connected to the violations". See CAVR report, *Chega!*, 2005, Chapter 7: Sexual violence.

<sup>94</sup> Article 45 of Law 26/2000 on Human Rights Courts requires the government to establish four permanent human rights courts in Makassar, Surabaya, Jakarta and Medan. However, to date, only two of

humanity, and thus war crimes and other crimes under international law fall outside its remit.<sup>95</sup> Of the few cases that have been brought before the Human Rights Court, Amnesty International is not aware of any which related to crimes of sexual violence.

In 2004, the Indonesian Parliament passed the Law on a Truth and Reconciliation Commission (No. 27/2004), which provided for the establishment of a national truth commission with powers to receive complaints, investigate grave human rights violations which occurred in the past and to make recommendations for compensation and/or rehabilitation for victims. In 2006 the Indonesian Constitutional Court struck down the law, after it ruled that provisions for reparation for victims only after they agreed to an amnesty for the perpetrator were unconstitutional.<sup>96</sup> A new law has been drafted and is scheduled for discussion in Parliament in 2011-2014; however, to date there has been no progress on this.

There remains no national reparations programme, and Indonesia has to-date failed to provide reparation to victims of human rights violations committed by its forces or agents in Timor-Leste, who were responsible for widespread gender-based violence against Timorese women, including rape, sexual slavery, sexual torture and other crimes of sexual violence.<sup>97</sup> Under International law the Indonesian government has an obligation to provide full and effective reparation to victims.<sup>98</sup> Measures should include restitution, compensation,

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the four courts have been set up. Human rights courts have also yet to be established in Aceh and Papua as required by the 2006 Law on Governing Aceh and the 2001 Papuan Special Autonomy Law.

<sup>95</sup> See Amnesty International, *Comments on the Law on Human Rights Courts (Law No.26/2000)* (Index: ASA 21/005/2001). In the few cases that have been tried before the Human Rights Court, all those accused were either found not guilty or else were acquitted on appeal.

<sup>96</sup> Constitutional Court of Indonesia, Decision on the Petition for Judicial Review on the Law of the Republic of Indonesia number 27 year 2004 concerning the Truth and Reconciliation Commission against the 1945 Constitution of the Republic of Indonesia, Number 006/PUU-IV-2006, 8 December 2006. Article 27 of the Law on a Truth and Reconciliation Commission had provided that: "Compensation and rehabilitation... may be awarded when a request for amnesty is granted."

<sup>97</sup> See CAVR report, *Chega!*, 2005, Chapter 7: Sexual violence. The report found that "women became the victims of specific forms of violations, which related to their low status and the sexual stereotypes imposed on them", para 2. It also found that the Indonesian security forces use rape as a form of "proxy violence" when Indonesian security forces and auxiliaries targeted women who were family members of pro-independence activists, para 37. Victims of sexual violence faced multiple layers of discrimination, as they were often stigmatized, isolated from their families and communities and limited access to health care, in particular reproductive health care (see generally section 7.7.5: The impact of sexual violations on victims). See also Amnesty International, *Remembering the Past: Recommendations to effectively establish the "National Reparations Programme" and "Public Memory Institute"* (Index: ASA 57/001/2012).

<sup>98</sup> See, for example, the International Law Commission's Draft articles on the Responsibility of States for Internationally Wrongful Acts, 2001. Article 1, "[e]very internationally wrongful act of a State entails the international responsibility of that State"; and Article 31 (1), "[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act". See also UN Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross

rehabilitation, satisfaction and guarantees of non-repetition which are recognized and defined in the UN Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>99</sup> They should have a transformative potential, as recognized by the Special Rapporteur on violence against women, its causes and consequences, to ensure that they do not perpetuate pre-existing discrimination.<sup>100</sup> Such measures should be devised in consultation with victims and should take in to account the different experiences of women and men, girls and boys, who experience conflict differently.

**Amnesty International considers that the Indonesian authorities should:**

- Establish a national programme to provide reparations (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights violations. The programme should be devised in consultation with victims and should take in to account the different experiences of women and men, girls and boys, who experience conflict differently;
- Provide full and effective reparations to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility. In particular, support through donation the establishment of a trust fund to provide a comprehensive reparation programme for victims of past crimes;
- Debate, enact and implement at the earliest opportunity a new law on truth commissions in line with international law and standards, ensuring that crimes against women can be addressed adequately;
- Ensure that all past human rights violations, including crimes of sexual violence, can be effectively investigated and prosecuted. To this end the Indonesian authorities should revise the Law on Human Rights Courts to expand its remit to include war crimes and other crimes under international law and ratify the Rome Statute of the ICC at the earliest opportunity, incorporate its provisions into domestic law and implement it in policy and practice; and
- Ensure a comprehensive mechanism is in place in order to determine the legal situation of disappeared persons, in particular those whose fate has not been clarified. This should entitle relatives or dependants of the disappeared, among other things, to financial assistance and social benefits according to their needs. To this end the Indonesian authorities should immediately ratify the UN Convention for the Protection of All Persons

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Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN document A/RES/60/147, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>99</sup> Principles 18-23, United Nations Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>100</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo to the Human Rights Council, UN Doc A/HRC/14/22, 2010, para 85.

from Enforced Disappearance at the earliest opportunity, incorporate its provisions into domestic law and implement it in policy and practice.

## 5.2 THE CASE-STUDY OF ACEH

In Aceh, Amnesty International is not aware of any trials for the thousands of cases of human rights violations, including rape and other crimes of sexual violence, believed to have taken place between 1989 and 1998 when the province was a military operations zone (*Darurat Operasi Militer*, DOM). Amnesty International knows of only two instances in Aceh in which cases have been investigated and resulted in trials between 1998 and May 2003,<sup>101</sup> and only few cases of human rights violations have been dealt with during the subsequent period of military and civilian emergency (May 2003–August 2005).<sup>102</sup> Attempts to bring perpetrators of rape and other crimes of sexual violence to justice have been grossly inadequate. The only known trials for sexual violence during this period resulted in the conviction of three low-ranking military officers for the rape of four women in North Aceh. They were sentenced by a military court to between two and a half and three and a half years' imprisonment out of a maximum of 12 years.<sup>103</sup>

The 2005 peace agreement between the Indonesian government and the armed pro-independence movement (The Free Aceh Movement, *Gerakan Aceh Merdeka*, GAM)<sup>104</sup> did not specifically refer to women – either with regard to their participation in the peace process or their post-conflict needs. Although the agreement and the subsequent 2006 Law on Governing Aceh (LoGA, Law No. 11/2006), contained provisions for the establishment of an Acehnese branch of the Truth and Reconciliation Commission, such a body has yet to be established. It remains unclear whether the Constitutional Court decision of December 2006 affected the project of a truth commission in Aceh, as the LoGA states that the Acehnese truth commission “shall constitute an inseparable part of the [national] Truth and Reconciliation Commission”.<sup>105</sup> Some organizations have argued that there is no need for a national branch to be set up first for the Acehnese branch to function.<sup>106</sup> Non-governmental

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<sup>101</sup> Five soldiers were sentenced by a military tribunal to between two and six-and-a-half years' imprisonment for beating to death five detainees in Lhokseumawe, North Aceh in early 1999. Twenty-four members of the military and one civilian were sentenced by a joint civilian/military court (*koneksitas* court) to terms of imprisonment of between eight-and-a-half and 10 years for their involvement in the unlawful killing of a Muslim cleric, Teungku Bantaqiah and over 50 of his followers in West Aceh in July 1999.

<sup>102</sup> See Amnesty International, *Indonesia: Briefing to the UN Committee against Torture*, Supra No80, Chapter 7.3.1: Civilian and military courts.

<sup>103</sup> Lesley McCulloch, *Aceh: Then and Now*, Minority Rights Group International, 2005, p21. Weblink: [www.minorityrights.org/download.php?id=136](http://www.minorityrights.org/download.php?id=136), accessed on 17 May 2012. See also Jakarta Post “Soldiers sentenced in Aceh rape cases”, 20 July 2003. Weblink: <http://www.thejakartapost.com/news/2003/07/20/soldiers-sentenced-aceh-rape-cases.html>, accessed 18 June 2012.

<sup>104</sup> Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, signed in Helsinki, Finland 15 August 2005.

<sup>105</sup> See Article 229(2) of the Law No. 11/2006 on the Governing of Aceh.

<sup>106</sup> See International Centre for Transitional Justice (ICTJ), *Considering victims, the Aceh Peace Process*

organizations in Aceh have submitted a draft law to the Aceh regional parliament for consideration, and as of early May 2012, consultation was underway between Parliament and civil society groups.<sup>107</sup> This uncertainty is unnecessarily delaying women's access to truth, justice and reparations, perpetuating the trauma caused during the conflict, for some victims over a decade ago.<sup>108</sup>

A post-conflict reintegration programme in Aceh implemented by the Aceh Reintegration Agency (*Badan Reintegrasi Aceh*, BRA) as part of the peace agreement provided for "economic facilitation"<sup>109</sup> for affected parties, including "all civilians who suffered a demonstrable loss".<sup>110</sup>

Victims of sexual violence during the conflict were not specifically and explicitly included in the BRA assistance programme and many have not received any funds or medical treatment and assistance. According to Acehnese civil society groups, women have been reluctant to access the BRA scheme because applications are not confidential, it requires approval from local government and security officials, and victim verification mechanisms are not gender-sensitive. This can lead to re-traumatization, stigmatization and feelings of shame. Women victims/ survivors interviewed in May 2012 explained to Amnesty International that short-term financial assistance had been ineffective in helping them to rebuild their lives and that full reparations, including a long-term programme to develop sustainable livelihoods, access to employment opportunities, education and counselling services, were needed.

The LoGA, passed by Parliament in July 2006, provided for a Human Rights Court to be established in Aceh (in accordance with provisions set out in the peace agreement<sup>111</sup>) to try perpetrators of future violations (Article 178(3)). However, it contained no provisions to bring to justice perpetrators of past human rights violations, making it ineffective in providing accountability for past crimes. Existing judicial mechanisms, such as the Law on Human Rights Courts (No. 26/2000) and the Criminal Court, remain the main mechanisms to carry out criminal investigations and prosecutions into past crimes in Aceh.

#### **Amnesty International considers that the Indonesian authorities should:**

- Ensure that a truth commission is established in Aceh at the earliest opportunity. The truth commission should be in line with international law and standards, ensuring that crimes
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*from a Transitional Justice Perspective*, January 2008.

<sup>107</sup> Amnesty International e-mail correspondence, May 2012.

<sup>108</sup> The conflict in Aceh lasted between the periods of 1976 to 2005. Human rights violations were more acute between 1989 and 1998 when the province was a military operations zone (*Darurat Operasi Militer*, DOM) and during the civilian and military emergency between May 2003 and August 2005.

<sup>109</sup> Article 3.2.3 of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki MoU), August 15, 2005.

<sup>110</sup> Article 3.2.5c of the Helsinki MoU.

<sup>111</sup> Article 2.2 of the Helsinki MOU states that: "A Human Rights Court will be established in Aceh".



against women can be addressed adequately;

- Investigate all crimes alleged to have been committed by Indonesian security forces and prosecute, whenever there is sufficient admissible evidence, those suspected of the crimes before national courts which meet international standards of fairness and which do not impose the death penalty. Ensure that the justice system investigates and prosecutes all cases of sexual violence and has the full capacity and resources to promptly, impartially and effectively do so;
- Immediately develop and implement a programme for women and girl victims of sexual violence in conflict and beyond, which should identify and respond to the needs of the survivors. The programme should be developed with the involvement of the survivors and non-governmental organizations that represent and/or work with them. It should include provisions guaranteeing, to those who seek it, access to health care, psychological assistance and other support. Information supplied by survivors should be treated confidentially so as to avoid re-traumatization and further suffering; and
- Provide full, effective and transformative reparations to victims of human rights violations committed in Aceh and take specific measures to ensure that women can access effective reparation, including measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women.

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