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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 2003

Addendum*

INDONESIA

[25 August 2005]

* For the initial report of Indonesia, see CAT/C/47/Add.3; for its consideration, see CAT/C/SR.492 and CAT/C/SR.495 and Official Records CAT/C/XXVII/Concl.3.

The annexes to the present report submitted by the Government of Indonesia can be consulted at the Secretariat.

The present report has been translated without editing.

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CONTENTS

I. INTRODUCTION

1. Indonesia, the 3rd largest democratic country in the world, with 230 million populations that makes it the 4th largest population, signed the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 October 1985 and ratified it on 28 October 1998 through Law No. 5/1998.

2. In accordance with Article 19 of the Convention, Indonesia submitted its initial report in February 2001 on the implementation of the Convention to the UN Secretary General and subsequently the Committee against Torture considered it during its 492nd and 495th meetings on 12 and 19 November 2001.

3. To demonstrate further its unwavering commitment to the implementation of the Convention, the Republic of Indonesia decided to submit its First Periodical Report or the second report in accordance with Article 19 of the Convention, which covers the developments mainly from 1999 until 2003. However, it also covered developments prior to 1999 particularly information related to the questions raised and information requested by the Committee in its concluding observation (CAT/C/XXVII/Concl.3), and significant developments until 2005.

4. The Government is of the view that information on Indonesia's political structure, legal and administrative framework and practical measures in the prohibition of torture has been described in details in the Initial Report hence it is not necessary to repeat it in this periodic report. In addition, the Initial Report has also attached important documents, which can always be used as reference in this Report i.e. the Constitution of 1945; MPR's Decree No. XVII/1998 on Human Rights; Law No. 39/1999 on Human Rights; The Penal Code of Indonesia; Government Regulation in lieu No. 1/1999 on Human Rights Court; Law No. 8/1981 on the Law of Criminal Procedure; Law No. 2/2002 on Indonesian Police; and Law No. 1/1979 on Extradition.

5. In this second report, the annexes include the 4th Amendment of the 1945 Constitution; Law No. 26 of 2000 on Human Rights Court; National Plan of Action on Human Rights 2004-2009; and the executive summary of the report of the Commission of Inquiry into Human Rights Violations (KPP HAM) in Papua/Irian Jaya.

6. One of the most important developments in the field of human rights in Indonesia since the Initial Report was the promulgation of Law Number 26/2000 on Human Rights Court, which guarantees that any violations of human rights will be brought to justice. The Presidential Decree No. 40/2004 on Human Rights Plan of Action for the period 2004-2009 which explicitly reflects Indonesia's commitment to materialize its efforts in respecting, promoting, fulfilling and protecting human rights to all Indonesian citizens is also essential. According to Law Number 26/2000, the right to be free from torture or its attempts is one of the major important components of human rights. Article 9 of the Law clearly stipulates that the Human Rights Court has the authority to adjudicate "*torture*" if it was carried out or used by officers to gain information or confession either from the suspect, or a third person; or to intimidate or force the suspect or a third person; or as an expression of discrimination in any form.

II. NEW MEASURES TAKEN AND PROGRESS MADE IN IMPLEMENTATION OF THE CONVENTION

II. A. GENERAL INFORMATION

7. Since Indonesia submitted its first report, there have been some changes in political structure. To name a few, the abolition of the Supreme Advisory Council (*Dewan Pertimbangan Agung-DPA*) in 2003 is one of those changes. In accordance with the fourth Amendment of the 1945 Constitution, the Supreme Advisory Council needs to be abolished, and consequently Law No. 3/1967 as amended by Law No. 4/1978 on the Supreme Advisory Council has been abolished as well. This is in conjunction with the reform spirit in Indonesia especially the establishment of good governance. By the abolition of this body, the Government expects greater amount of the efficiency and effectiveness of the state authorities.

8. Another change was the separation of the Police from the armed forces (TNI) in conjunction with the Decree No. VI/2000 of the People's Consultative Assembly (TAP MPR No. VI/MPR/2000) on the Detachment of the Police of the Republic of Indonesia from the Indonesian Armed Forces; and the Decree No. VII/MPR/2000 of the Assembly (TAP MPR No. VII/MPR/2000) on the Roles of the Indonesian Armed Forces (TNI) and the Police of the Republic of Indonesia.

9. Furthermore, the transfer of the judicial administration from the Department of Justice and Human Rights into the Supreme Court, as part of the legal reform, has made all aspects of judicial system in Indonesia under the Supreme Court. This new development has met the conditions set out in the Constitution of 1945 and its amendments, that the judicial authority must be free from the Government intervention in its exercise of justice. Article 11 of Law No. 4/2004 on Judicial Authority stipulates that the Supreme Court is the highest judicial authority in Indonesia. The legal basis for the Supreme Court itself is stipulated in Law No. 5/2004 on the Amendment of Law No. 14/1985 on the Supreme Court.

10. To strengthen the legal framework in Indonesia, the Government has established several new institutions; inter alia, the Constitutional Court, the National Law Commission, Judiciary Commission, Ombudsman Commission, Prosecutorial Commission, Police Commission, and the Eradication of Corruption Commission, to supervise the work of the legal-related institutions. The establishment of the afore-mentioned legal institutions is in line with Article 2 and Article 10 of Law No. 4/2004 on Judicial Authority, which stipulates that under the Supreme Court, there are several other judicial authorities with different area of interests.

11. The establishment of Judiciary Commission and of its arrangement is based on Law No. 22/2004 on Judiciary Commission.

12. Indonesia has established the Constitutional Court (*Mahkamah Konstitusi*) as the outcome of the amendment of Indonesian Constitution of 1945 in 2001 and by the Presidential Decree No 147/M/2003. This new court has five authorities, as stipulated by Law No. 24/2003 on Constitutional Court, which are:

(a) To review whether or not the laws are in accordance with the 1945 Constitution;

(b) To judge disputes on the competence of state institutions whose authority is rendered by the constitution;

(c) To dismiss political parties;

(d) To adjudicate disputes on the election result; and

(e) To decide on the Legislative opinion whether the President and/or Vice-President have been suspected to breach the laws such as the act of treason, corruption, bribery, or other grave crimes, or inappropriate acts, and/or inappropriate as President or Vice-President as stated in the Constitution of 1945 of the Republic of Indonesia.

13. The President of the Republic of Indonesia has also established National Law Commission (*Komisi Hukum Nasional*) in February 2000 to advise him on general legal matters, and to design plans in law reform with the assistance of members of other legal communities.

14. The President has also established the Ombudsman Commission (*Komisi Ombudsman*) on 20 March 2000 with mandates to receive, investigate, and follow up reports from public concerning the protection of their rights and the services rendered by the Government.

15. Based on the fourth Amendment of the Constitution of 1945, Indonesia has also established Regional Consultative Council (*Dewan Perwakilan Daerah/*DPD) whose members were elected from each province through a general election. The DPD shall convene a meeting at least once in a year, and it may submit to the House of Representatives (DPR) draft bills on regional autonomy; relations between central government and regional government; the establishment, enlargement and amalgamation of regions; the management of natural and other economic resources; and other matters related to the financial balance between the center and the regions. The DPD may participate in any debates on autonomy deliberations, and supervise the implementation of laws regarding regional autonomy.

16. In the initial report, it was reported that Indonesia consisted of 27 provinces however in line with the reform era; currently Indonesia consists of 32 provinces, each of which has its own higher court.

17. Indonesian Government has consistently given a priority to the respect for and the implementation of human rights. In 2004, Indonesia introduced its second Plan of Action on Human Rights (for the period of 2004-2009) through the Presidential Decree number 40/2004. The President of the Republic of Indonesia formally launched the Plan of Action on 25 August 2004 in Jakarta.

18. The main objective of the Plan is to ensure the enhancement of, respect for, promotion, fulfillment, and protection of human rights in Indonesia, taking into account the religious, customary and cultural values of Indonesian people based on the Constitution of 1945 of the Republic of Indonesia. As the first National Plan of Action (for the period 1998-2003), the second Plan of Action has established a timetable for the attainment of concrete goals in

education about human rights issues. The first National Plan of Action on Human Rights 1998-2003 was formally launched on 25 June 1998, exactly five years after the adoption of the Vienna Declaration and Programme of Action.

19. In the implementation of the Indonesian Plan of Action, special attention has been given to the trainings for the following entities: police personnel, prison officials, lawyers; judges; prosecutors; teachers and curriculum planners; the armed forces; international civil servants; development officers and peacekeepers; non-governmental organizations; the media; government officials; members of parliament; and other groups that are in a particular position to affect and effect the realization of human rights. In addition, the Government has also been conducting similar programs in informal institutions, such as social and religious ones. The purpose of this action was to improve the knowledge or understanding of the entities on specific human rights principles.

II. B. COMPLIANCE TO ARTICLES OF THE CONVENTION

Article 1. The definition of torture

20. For Indonesia, torture as stipulated in Article 1 section 4 of Law No. 39/1999 on Human Rights, as also stated in the initial report, is defined, “Torture is every act conducted intentionally, which causes severe pain or suffering, whether physical or mental, in order to obtain confession or information from somebody or a third person, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

21. Law No. 39/1999 on Human Rights provides broader and more comprehensive scope within its definition regarding torture. It stipulates that torture should be conducted not only by public authorities, but also by individuals. Hence, Indonesia’s definition on torture is more advanced than the Convention provided.

22. The aforementioned definition is also incorporated within Indonesia’s new draft of National Penal Code (“Draft Penal Code”), which will enter into force at the earliest moment possible. This Draft of National Penal Code is also a sign on Indonesia’s advancement and improvement in maintaining and ensuring the rule of law in Indonesia. It is not something that is very new, but as a form of adjustment and improvement for today’s Penal Code, and is a realization on the reform on the law field.

23. In addition, the Law No. 26/2000 on Human Rights Court, Chapter III of the Scope of Jurisdiction, Article 9 paragraph (f), stipulates the explanation of torture as “*intentionally and unlawfully acts, cause severe pain and suffering, both physically and mentally to a detainee or someone under supervision*”. The draft of Penal Code provides a more comprehensive elaboration regarding torture.

24. In conclusion, Indonesian legislations guarantee and mention the definition of torture, which is in line with the Convention’s definition.

Article 2. Legislative measures in prohibiting torture

25. There have been new developments in the legal frameworks since the first report on the prevention and prohibition of torture. The Draft Penal Code, for example, contains the term of sentence of the act of torture. It stipulates, "*Everyone who commits tortures shall be sentenced 3 years minimum and 15 years maximum imprisonments*." In addition, the Draft also stipulates that everyone who commits torture or other inhuman treatment including biological experiment shall be sentenced for minimum 3 years and maximum 15 years maximum imprisonment.

26. Indonesia has also completed several other legislative measures in prohibiting torture. Among others are through the amendments of the 1945 Constitution (Article 28 I); promulgation of Law No. 39/1999 on Human Rights (Articles 33, 34, 67, 69, 71, 72, 74, 101, and 104); Law No. 26/2000 on Human Rights Courts; Law No. 3/1997 on Juvenile Justice, and Law No. 23/2004 on Domestic Violence.

27. Other existing legislative measures are Law No. 23/2002 on the Child Protection; Law No. 13/2003 on Labors; Law No. 39/2004 on the Placement and Protection of Migrant Workers; the Decision of Minister of Manpower and Transmigration No. 157/MEN/2003 on Indonesian Labor Insurance; and Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children.

28. As stated in paragraph 18 of this report, the Draft Penal Code incorporates torture in Chapter IX on Criminalization of Human Rights, especially the Second Part on Crimes against Humanity (Article 391), and the Third Part on Crimes of War and Arms Conflict (Articles 392-397). Article 391 of the draft states that every person who commits one of the widespread and systematic gross violations of human rights (including torture), shall be sentenced to for 3 years minimum or 15 years maximum imprisonment, with an understanding that the acts are aimed directly at the civilians. Article 392 stipulates that every person who commits gross violations of the 12 August 1945 Geneva Convention and torture or inhuman or degrading treatment, including biological experiment shall be punished with three years minimum, or 15 years maximum imprisonments.

29. Freedom from any forms of torture is one of human rights, which cannot be reduced or revoked under any circumstances nor by anyone (*non-derogable rights*), as stipulated in Article 4 of Law No. 39/1999 on Human Rights.

30. Those legislative and administrative measures clearly reflect the Government's initiatives and efforts in fighting against the act of torture and other cruel, inhuman, or degrading treatment or punishment.

Article 3. Prohibition of refoulement or extradition of a person to another State where he/she might be tortured

31. In addition to information contained in the initial report with regard to this particular Article, Indonesia would like to provide new information with regard to extradition, as stated in the following paragraphs.

32. Indonesia has already had five Extradition Treaties with five countries namely Malaysia, the Philippines, Thailand, Australia and the Republic of Korea and one agreement, similar in nature with an Extradition Treaty, with Hong Kong (Special Administrative Region) for Surrender of Fugitive Offenders on 5 May 1997, (Indonesia has ratified it with Law No. 1/2001).

33. Albeit those treaties do not contain specific provisions of the prohibition of the extradition of someone who might be subject to torture in her/his country, the Government of Indonesia has always proposed a provision so that extradition request shall not be granted if there is a substantial reason that a person will be subject to torture or cruel, inhuman or degrading treatment or punishment in another country.

34. For example, Article 9 section 1 paragraph (e) of the Extradition Treaty between Indonesia and Australia stipulates, “Extradition shall not be granted where the requested State has substantial reason for believing that the person whose extradition is requested will be subjected or to torture or to cruel, inhuman, or degrading treatment or punishment.”

35. In addition, Article 4 paragraph 4 of Extradition Treaty between Indonesia and the Republic of Korea stipulates,” Extradition shall not be granted under this treaty when the requested State Party has well founded-reason to suppose that the request for extradition has been presented with a view to prosecuting or punishing the person sought by reason of race, religion, nationality, sex or political opinion or that that person’s position may be prejudiced for any of those reason.”

Article 4. Criminalization of torture or attempts to commit torture, and the punishment for torture

36. The Government of Indonesia has made its utmost to ensure that torture is an act of crime and the perpetrator shall be punished with appropriate penalties. According to Indonesian penal code, an attempt to commit crimes is punishable. Since 1999 there have been new developments in this regard including the introduction of Law No. 26/2000 on Human Rights Court to ensure that perpetrators of gross violations of human rights violations, including persecution, maltreatment, and torture, will be brought to justice. Article 39 of the Law states that every person who commits or suspected of having committed, or attempts to, participates in, or accomplice torture, shall be punished by a 5 to 15 years imprisonment.

37. The draft law of the Penal Code includes torture as a criminal act, as stipulated in Article 399, saying: “every public authority by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity inflicting pain or suffering both mentally and physically for such purposes as obtaining from her/him or a third person information or a confession, punishing him for an act she/he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind will be sentenced for 3 years minimum or 12 years maximum imprisonment”.

38. Several torture-related cases have been tried as follows. In 2003, the Military Court 01/Banda Aceh tried 12 military personnel of the Infantry Battalion ("Yonif") 301/Prabu Kiansantang, Sumedang. They were accused of committing the act of torture on a civilian population, when they were conducting a military patrol in Dewantara village, district of North Aceh. The Military Court, however, acquitted those twelve officers.

39. During a military patrol on 27 May 2003, three military personnel i.e., First Sergeant Haryono of 29 years old, Private First Class (Pratu) Alfian of 28 years old, and Private Second Class (Prada) Sudaryanto of 29 years old, all members of Yonif 144 South Sumatera were accused of afflicting torture on three civilians. The victims are Mr. Hamdani Yahya, a 54 year old, chief of Lawung village; and two other villagers Mr. Maimun Ahmad, 40 years old; and Mr. Rajali, 51 years old. After investigating the case, the Military Court concluded that the three officers were proven guilty, sentenced to four months imprisonment, and fined.

Article 5. Scope of law/national jurisdiction

40. Indonesia's initial report already mentioned national jurisdiction (paragraphs 95 through 97).

41. Law No. 26/2000 on Human Rights Court guarantees the scope of the law in preventing torture. In addition, Article 5 of the said Law stipulates that the Human Rights Court has the authority to investigate and adjudicate gross violations of human rights committed outside Indonesian territory by Indonesian citizens. Draft Penal Code also incorporates such norm as guaranteed by aforementioned Law No. 26/2000, for which the norm is called as "universal jurisdiction". Indonesian statutory Penal Provisions are applicable to any person who commits criminal act outside Indonesian territory in accordance with international law and treaties to which Indonesia have adopted.

Article 6. Arresting and detaining of suspects committing torture

42. Arresting and detaining a person suspected of committing torture is regulated in Law No. 26/2000 on Human Rights Court. Pertaining to the arrest of a suspect, Article 11 of the said Law stipulates that the Attorney General, as the competent authority, have the right to authorize the arrest of a person suspected for having committed grave violations of human rights. Then it shall be followed by further investigation providing the availability of adequate data from the preliminary investigation of the matters; and the arrest can only be effective for one day.

43. The Law also stipulates the provisions on the detention of the suspect. Article 12 of the Law states: "(1) the Attorney General, as the competent authority, shall have the authority to detain or to prolong the detention of a person suspected of having committed grave violations of human rights in order to allow further investigation; (2) Judge of Ad-Hoc Human Rights Court has the right to order the detention for further investigation during the court proceedings."

44. While Article 13 states: "(1) a detention for the purpose of further investigation can be carried out for the maximum duration of 90 days; (2) the duration of detention as stated in paragraph (1) can be prolonged for the maximum of another 90 days by the Head Judge of Ad Hoc Human Rights Court within its Jurisdiction; (3) should the investigation as stated in paragraph (2) not be completed, the detention shall be extended for another 60 days."

45. In addition, Article 14 states, "detention for the purpose of prosecution shall be conducted for the maximum of 30 days and shall be extended to 20 days, and should the process then not be completed, the extension of another 20 more days can be imposed".

46. Furthermore, Articles 15 to 17 state that the detention for the purpose of investigation in court, in the first and second appeal might be imposed for 90 days, 60 days, and another 60 days respectively.

Article 7. Trial or extradition of someone suspected of torture

47. The Government of Indonesia has already taken some concrete measures by conducting a fair trial, in order for the perpetrators of torture to be held responsible.

48. Indonesia exercises its extradition practices based on Law No. 1/1979 on Extradition. According to the law, extradition might be conducted in the absence of an extradition treaty. In addition, there is an adage in extradition regime, which states "aut dedere aut judiciare" (to extradite or to punish) which means that if the requested State refuses to extradite the person sought, the requested State shall tries and punishes the said person in accordance with its national law. Whenever the exercise of extradition deemed necessary, Indonesia and its counterpart will conduct further arrangements bilaterally.

49. Article 19 paragraph 1 of Penal Code mentioned that the arrest could only be effective for 24 hours. The detention can only be applied to the person suspected or convicted to have committed a crime and/or an attempt to, or abetting a crime which subject to sentence of at least 5 (five) years or more. Such method is also in effect for crimes that are incorporated in special clauses as stipulated by Article 21, paragraph 4, paragraph (a) and (b) of the Penal Code.

50. There are two cases that can be used as examples for the implementation of aforementioned Articles, namely, "the Tanjung Priok" and "the Abepura" cases. On the Tanjung Priok case, the prosecutor stated that the accused knew, or based on given situation at that time, should have known that his troops had committed or had been committing a gross violation of human rights in the form of torture or some acts that intentionally and unlawfully conducted causing severe pain or suffering both physically and mentally by kicking, punching, exposing people under direct intense sunlight in prolonged period of time, and other forms of actions which fall right into torture definition. Those inhuman acts were conducted in front of the accused, yet he did not do anything to stop or prevent those acts from happening. The accused did not report members of his troop to higher authority for conducting such gross violation of human rights; neither did he surrender them for further process in justice. The ignorance of the accused in allowing the torture take place and not doing anything to prevent it, was categorized as crime as stipulated in Article 42 paragraph 1 paragraph a and b jis Article 7 paragraph b, Article 9 paragraph f, and Article 39 of Law No. 26/2000 on Human Rights Court; as well as Article 64 of the Penal Code.

51. In the Abepura case, this involved two suspects who knew or given the situation at that time, should know that their troops had committed or had been committing gross violations of human rights, particularly torture. They committed the violation by punching using firearm's grips, rattans and wooden sticks, burning using lighters, kicking using their boots, slapping, pouring dirty water, exposing the victims under intense direct sunlight in a prolonged period of time; all as physical abuses, and cursing and swearing people using inhuman expressions to the victims; as mental abuse. Both suspects did not attempt to stop and to prevent those gross violations, nor surrender their troops to authority to be processed by law. That action was fallen right into criminal acts category and subject to criminal sentences as stipulated in Article 42 paragraph 1 paragraph a and b jis Article 7 paragraph b, Article 9 paragraph f, Article 39 of Law No. 26/2000 on Human Rights Court.

Article 8. Classification of torture as an extraditable crime

52. Paragraphs 105-106 of the Initial Report submitted by Indonesia continue to apply.

53. Indonesia has concluded extradition treaties with five neighboring countries, namely, Malaysia (7 June 1974), the Philippines (10 February 1976), Thailand (29 June 1976), Australia (22 April 1992), and the Republic of Korea (28 November 2000). One agreement similar in nature with extradition treaty on Surrender of Fugitive Offenders has been concluded with Hong Kong (Special Administrative Region) on 5 May 1997 and has been ratified by Indonesia Law No. 1/2001. Those treaties have guaranteed that torture cases can be extradited. Those treaties are meant to prevent and suppress torture.

54. In addition, the Government is negotiating to conclude an extradition treaty with Singapore.

Article 9. Cooperation on legal matters between State parties

55. The Government of Indonesia has developed close cooperation with other countries on legal matters, as can be seen from the five extradition treaties. This cooperation will improve the efforts of the Government of Indonesia to develop an effective legal framework to combat transnational organized crimes.

56. Indonesia has concluded bilateral Mutual Legal Assistance Treaty with Australia on 27 October 1995 (Indonesia has ratified it with Law No. 1/1999), People's Republic of China on 24 July 2000, and the Republic of Korea on 30 March 2002.

57. Indonesia has also concluded Treaty on Mutual Legal Assistance in Criminal Matters among eight like-minded countries with Brunei Darussalam, Cambodia, Laos, Malaysia, the Philippines, Singapore, and Vietnam in November 2004. At the regional level, Indonesia, Brunei Darussalam, Malaysia, Singapore, Cambodia, Laos, the Philippines, and Vietnam have signed the Treaty on Mutual Legal Assistance in Criminal Matters on the 29 November 2004. In the Treaty, the Parties have agreed to provide mutual legal assistance for criminal matters, namely investigations, prosecutions, and resulting proceedings. Article 1 (2) of the Treaty accentuates that, mutual assistance to be rendered may include, among others:

(a) Gathering evidence or obtaining voluntary statements from persons;

(b) Providing arrangements for persons in giving evidence or in assisting in criminal matters;

(c) Effecting service of judicial documents;

(d) Executing searches and seizures.

58. In efforts of cooperation among law enforcement authorities, Indonesia has conducted training cooperation with Australia under Indonesia-Australia Specialized Training Project (IASTP).

59. Indonesia has also recently concluded the Draft Law on Mutual Legal Assistance that has been submitted to the National Legislation Programme (2004-2009), as one of the Government's draft law to be promulgated by the Indonesian Parliament.

Article 10. Education and information on the prohibition against torture

60. The Government of Indonesia has been pursuing its commitment to make use of educational system as a way of promotion and prohibition against torture at various levels. The curriculum of education from elementary school to university level has accommodated the teaching of human rights.

61. In addition to its curriculum, universities in Indonesia have also been conducting research activities and public service as their efforts to disseminate human rights, including torture and its preventions and prohibitions. Research activities that have been conducted, mainly focusing on violence, conflict, reporting procedures with regard to human rights, and gross violations of human rights. Whereas public service activities aim the dissemination of the values of the human rights to rural people, mainly regarding violence against children and its prevention.

62. The universities have also established center for human rights studies as one of their agencies. The establishment of 26 centers for human rights studies in various universities in Indonesia also carries an important role in the dissemination and teaching of respect for human rights.

63. Various training programs have been provided for social workers, in charge of services and social rehabilitation throughout all provinces of Indonesia. The trainings, which were aimed at preventing cruel, inhuman, or degrading treatment or punishment, involved the whole stakeholders including Government Officers (at Headquarters and provincial levels) and civil society i.e. Non Governmental Organizations (NGO), Academicians, and Mass Media.

64. For health-care officials, training on prohibition of torture is convened at two institutions in the Department of Health, namely, training at the Polytechnic Freshmen and Leadership training for the officials. According to the Decision of the Minister of Health No. HK. 03.2.4.1.444.1, Chapter IV F, the training for the freshmen during the orientation program shall not be administered through harsh student initiation (perpeloncoan) but through introduction and orientation to the Study Program. Leadership Training for health-care officials, based on the Decision of the Head of State Administration Institution No. 540/XIII/10/6/2001 concerning the Guidelines for Tertiary Leadership Education and Training, aims at prohibiting torture through self-realization, acquaintance with others and their environment.

65. In order to prevent torture and promote human rights in general, various programs have also been made for military personnel. Those programs include the teachings of human rights and humanitarian law in Indonesian Military Academy (Akademi TNI) and Higher Military Official School. Other programs are, among other, to participate in training of Human Rights Law in Sweden, and Humanitarian Law in San Remo, Italy; preparing teaching program; publishing pocket book for military officers; making film on Instruction of Humanitarian Law; and translating a book entitled "Fight it Right" (hint book on conducting military operations).

66. In addition, the Department of Defense has made curriculum on Basic Education for National Defense (Pendidikan Pendahuluan Bela Negara), which includes the Convention against Torture under the topic of Civic Education (Pendidikan Kewarganegaraan). The aforementioned Department has also taken part in controlling the creation of training materials for military officers on Rules of Procedures in Treating Prisoners of War, Refugees, and Internally Displaced Persons; Rules of Procedures for Military Officers committed to Military Operations excluding War; Pocket Book, Cards, and Basic Rules of Procedures concerning Operation of Prior Matters in implementation of human rights.

67. The Government of Indonesia conducted human rights training to approximately 20,000 police officers across the nations in 2002.

68. In addition to the Government's initiative to publicize the Convention, the National Committee on Human Rights (Komnas HAM) has also published leaflets as a medium to publicize the Convention, to diffuse the information regarding norms and values contained in the Convention.

Article 11. Methods and practices of custody to prevent torture

69. In order to prevent torture at the custody, Indonesia has enacted several Laws, in addition to the Laws mentioned in the paragraph 116 of Indonesia's initial report. Among others, Law No. 12/1995 on the Correctional Institution, Article 5 and 47 paragraph 3, which provides some principles in the Correctional Officials Obligation as stipulated in the Standard Minimum rules of aforementioned Law. Government Regulation No. 31/1999 on Guidance for Prisoners in prison; Government Regulation No. 32/1999 on Terms and Procedures on the Implementation of Prisoners' Rights in Prisons; and Government Regulation No. 58/1999 on the Terms and Procedures on the Implementation of Authority, Task and Responsibility of the Officers in Prison.

70. In addition, the Correctional Institution has applied 10 principles of rehabilitation (pemasyarakatan) which, among others, include the provision of counseling to educate the offenders and of the means and equipment for rehabilitative, corrective, and educative support resources in the custody of offenders. Since 2003, the Directorate General of Penitentiary, Department of Law and Human Rights, has distributed pocket books for the sentenced persons and prisoners concerning their rights, obligations, and prohibited acts. Another book has also been published for the correction officer to implement respect and protection of human rights in rehabilitation center and prisons. When torture occurs in prison, prisoners or other persons shall report to the head of penitentiary that will pass the case to the police.

71. The Police Commission is in the process of establishment, for which this Commission shall supervise systematic review-investigation for officers who are in charge of arrest, detention, or imprisonment.

Article 12. Prompt and impartial investigation of acts of torture

72. Paragraphs 117-119 of Indonesia's initial report continue to apply. Paragraph 117, which mentions Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP), specified in all cases, including in the act of torture.

73. According to Law No. 39/1999 on Human Rights, Komnas HAM has the authority to conduct pro-justicia inquiry and assessment to a particular event within society, which based on its nature and scope, can be considered as to involve gross violations of human rights (including torture). The conclusion of such inquiry shall be handed over to the Attorney General for further investigation and prosecution. Komnas HAM has also the right to seek information from the Attorney General on the progress of the process of investigation and prosecution. From the outcome of the inquiry of Komnas HAM, shall it concluded as not be any form of gross violations of human rights, the outcome or conclusion shall be submitted to the Police to be further taken care of. With regard to Article 9 of Law No. 26/2000 on Human rights Court, the Komnas HAM will discuss with the Attorney General aimed at determining whether the case can be categorized as gross violations of human rights.

74. On the other side, the office of the attorney is urged to establish cooperation with other institution in conducting their tasks to investigate any cases within their jurisdiction, as stipulated in Article 33 of Law No. 16/2004 on the Attorney of The Republic of Indonesia, which states, "In conducting its tasks and duties, the office of the attorney establish cooperation with other law enforcement offices and agencies, other state's offices and agencies, or other relevant agencies."

75. For example, in the case of violence that were conducted by police officers against students of University Muslim of Indonesia (Universitas Muslim Indonesia - UMI) in Makassar in 2004, the outcome of the inquiry of Komnas HAM concluded that such case was not a form of gross violations of human rights, therefore the outcome was submitted to the police for further action.

76. The other authority, who has the mandate to investigate gross violations of human rights, is the Truth and Reconciliation Commission (TRC) as stipulated in Law No. 27/2004 on Truth and Reconciliation Commission.

77. The National Commission on Human Rights shall conduct prompt and impartial investigation after receiving a complaint from the victim and render the result of the preliminary investigation within seven working days (Articles 17-20 of the Law No. 26 of 2000 on HRC).

78. These are some examples of the implementation of this Article. The Government of Indonesia has conducted due process of Law to some Police officers in Abepura, Papua, who were accused to commit torture to students and civilians, following the attack at the Abepura's Police Station in (20 km from Jayapura) on 7 December 2000.

79. In addition, Komnas HAM also concluded the preliminary investigation for several cases that can be categorized as gross human rights violations such as Wasior (2001-2002) and Wamena (2003) cases in Papua province. The Wasior case occurred when a number of police officers conducting search in Wasior to find the murder of a Mobile Brigade member. During the search there have been many criminal acts conducted including torture, which caused the death of the victims.

80. In Wamena case, torture happened when a number of military officers conducting search and chase to the perpetrators of Wamena military district arsenal break-in. During the search and chase the there was many criminal act including torture was conducted which caused the death of the victims. The results of the preliminary investigation of both cases had been handed over to the Attorney General to be followed up with investigation and prosecution in the human rights court.

81. In this regard, Commission on Human Rights (KOMNAS HAM) has conducted an investigation into the case in 2001 and found evidence that the Police in Papua committed crimes against humanity. As stipulated by Law No. 26/2000, KOMNAS HAM submitted the dossier to the Attorney General who has the responsibility to prosecute this case. The Attorney General filed the case to the Human Rights Court in Makassar because Papua court is under the jurisdiction of the Makasar District Court (Law No. 26/2000). The local court in Makassar tried the case on 7 May 2004.

Article 13. Right of the victim to submit a complaint to the competent authorities

82. Indonesia grants full protection for victim and witnesses of criminal acts. This regulation has been stipulated in the 1945 Constitution (the 4th Amendment) and other provisions. Article 28G of the 1945 Constitution stipulates, “Each person has the right to recognition, security, protection, and certainty under the law that shall be just, and equal before the law.” Furthermore, Article 34 of the Law No. 26/2000 on Human Rights Court provides compensation for the victim or his/her hers.

83. In addition, Law No. 26/2000 on Human Rights Court stipulates in, inter alia, in Article 34 on the provision of the protection to victim and witnesses in serious human rights violations, including the rights of physical and mental protection from threats, terror, and violence. Law enforcement and security apparatus should conduct the protection at no cost. Article 22 of the Law stipulates the provision for services in counseling, rendering information on the rights of the victim to obtain police protection and court order, that include harboring victim to “safe house” or alternative residence; Article 23 provides counseling assistance i.e., accompanying victim at the stage of investigation, prosecution, and court proceeding; Article 25 provides protection and assistance for advocacy.

84. Government Regulation No. 2/2002 on the Protection of Victim and Witnesses for Serious Human Rights Violations is also explicitly stipulated in Articles 2-5, asserting that victim and witnesses have the rights to the protection from physical and mental threats, the secrecy of victim and witness’s identity, and giving testimony during the examination in abstentia.

85. Moreover, Government Regulation No. 23/2003 on the Protection of Witnesses stipulates protection for the victim (Article 16); healthcare assistance for the victim (Article 21); counseling services (Article 22); and protection and assistance for advocacy (Article 25). Moreover, Law No. 23/2004 concerning the Elimination of Domestic Violence covers the principles of protection of victim, respect for human rights, gender equality and equity, and non-discrimination.

86. In the effort of enhancing protection of victim and witness, the Parliament is in the process of discussing draft Law on the Protection of Victim and Witnesses.

87. In addition to the provision of Law No 26/2000 and Government Regulation No. 2/2002, the Article 95 and 96 of the KUHAP also gives provision on compensation and rehabilitation.

Article 14. Right of the victim to compensation

88. The rights of the victims to compensation is guaranteed by Law No. 26/2000 on Human Rights Court, in particular Article 35 which stipulates compensation, restitution, and rehabilitation for the victim of gross violations of human rights.

89. The rights to compensation are also guaranteed by the government regulation (PP) No. 3/2002 on compensation, restitution, and rehabilitations to the victims of Human Rights abuses. Article 1 (3) of the said regulation stipulates that a victim is a person or a group who physically, mentally or emotionally suffer economic deprivation or negligence and basic human rights deprivation as a result of gross violations of human rights. Victims also include their families whom are the heirs. Article 2 (2) of the said regulation also stipulates that the provision of compensation, restitution and/or rehabilitation as mentioned in Article 2 (1) shall be rendered in a proper, prompt and feasible manner. Social rehabilitation and services for the victim of torture is provided specifically at the Trauma Centers and Social Protection Houses.

90. Law No. 6/1974 regarding Provisions on social welfare and Law No. 4/1997 regarding child's welfare in particular on the issue of rehabilitation.

91. Presidential Decree No. 36/1990 regarding the ratification of the International Covenant on the right of the child, Presidential Decree No. 129/1998 on the National Action Plan on Human Rights regarding the care of victims of violent acts.

92. In addition, Law No. 27/2004 on the Commission of Truth and Reconciliation in particular of Article 20 and 23 that include compensation to victims or their families whom are the heirs of the victims. Article 20 stipulates that the Compensation, Restitution, and Rehabilitation Sub-Commission shall have the authority to make suggestions to the Commission concerning compensation, restitution, and rehabilitation that are general in nature that would restore the rights and dignity of victims and/or their families whom are the heirs of the victims. Article 21 of the Law elaborates that the compensation, restitution, and rehabilitation shall be conferred within a period of three years from the date the decision was made by the Commission.

93. The implementation of the above-mentioned Article, is for example the cases of Butar-butar (former Commander of Military Zone/Kodim 0502 of North Jakarta) and Sutrisno Mascung, (the Platoon Commander), both were suspects in the Tanjung Priok Case who were found guilty in the first level court. As a result, the Government of Indonesia was ordered to render compensation to the victims. Recently the case is being heard in the appealed court. (Based on Articles 3, 4, 5 of the Government Regulation/PP No. 3/2002 on Compensation, Restitution, and Rehabilitation for the victims of serous human rights violation).

94. In the case of Abepura, the issue of compensation to the victims may be eligible to be considered by the court.

Article 15. Statements obtained by the use of torture

95. Paragraphs 123-125 of the Initial Report submitted by Indonesia continue to apply.

96. In addition, the Law of Criminal Procedure (KUHAP) does not explicitly regulate the provisions as stipulated in Article 15 of the Convention, except Article 117 that only regulates obtaining information without the use of force, however, does not elaborate on the definition of force.

97. Article 422 of the Penal Code and Article 117 of Law on Criminal Procedure provide the issue mentioned in paragraph 90 above as well. Article 422 of Penal Code (KUHP) states that "Any official who, in criminal case, makes use of means of coercion either to wrench off a confession or to provoke a statement, shall be punished by a maximum imprisonment of four years."

98. Furthermore, Article 117 of the Law on Criminal Procedure (KUHAP) states that "(1) the testimony of a suspect and or a witness to an investigator shall be given without pressure from anyone whom so ever and/or in any form whatsoever; (2) a suspect who testifies about what he has actually done in connection with the offense of which he is suspected, the investigator shall record it in the minutes as carefully as possible in the words used by the suspect himself."

99. In addition, Articles 184 and 185 of the Law on Criminal Procedure (KUHAP) stipulate on the information of the witness.

100. According to the Elucidation of Article 185 paragraph 6 of the said law, the judge shall be reminded of his duty to pay attention on the information or statement obtained from a witness in a free, honest, and objective manner.

101. Due to the information, statement, or testimony given by a suspect and/or a witness under pressure/torture before the investigators, the penal of judges shall ask the investigators involved on whether they conducted the investigation based on torture. If the testimony was found to be made under pressure, then the information shall not be considered valid and the suspect must be acquitted.

Article 16. Prohibition of other cruel, inhuman, or degrading treatment or punishment

102. Paragraph 126 of the Initial Report submitted by Indonesia continues to apply.

103. However there were already some improvements and developments in Indonesian legal framework that apply to Article 16 of CAT. Among others, Article 1, paragraph 1 of the Law No. 23/2004 on the Elimination of Domestic Violence, which stipulates that "violence is any acts against individual, particularly woman, that cause physical, sexual, and mental pains, and/or family negligence including threat to commit the act of force and unlawful deprivation of liberty in domestic spears". Furthermore, Article 1, paragraph 2 stipulates, "elimination of domestic violence is guaranteed by State to prevent domestic violence, to prosecute perpetrators of domestic violence, and to protect the victims of domestic violence".

104. Article 1, paragraph 15, Law No. 23/2002 on the Child Protection stipulates that "Special protection is the protection accorded to child in the state of emergency, child in the process of Law, child from isolated and minority group, child being economically and/or sexually exploited, child being trafficked, child being victim of drug illicit, child being victim of kidnap, child being victim of physical and/or mental violence, and child being victim of mistreatment and negligence."

105. Article 35 of the Law No. 13/2003 on Labor, stipulates that whoever employs workers shall provide protection from the recruitment process until the placement of the employee. Furthermore, employers and labor agencies shall provide protections to workers in welfare, safety, and health matters both in physical and in mental terms. In addition, Article 86 of the said Law guarantee the workers regarding their rights to work safety and health, free from any kind of harassment and immoral acts, and treatments that comply with humanity, human dignity and other humanitarian values.

106. Draft Penal Code contains forms of violence, namely physical, mental, and sexual violence, including sexual slavery as stated in Articles 568-571.

III. RESPONSE TO THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

107. With regard to the Committee's concern on allegations of acts of torture and ill-treatment committed by the members of the police force, army, and paramilitary groups in areas of armed conflicts (Aceh, Papua, Maluku), the Government has been pursuing a consistent policy of the Government that whoever is responsible for the excessive use of force, including torture and ill-treatment will certainly be brought to justice either through civilian court, military court or human rights court. In fact, trials have taken place on the alleged acts of the forces in those armed-conflict areas mentioned above. However, there is a need to emphasize that too general allegation without concrete information and/or preliminary evidence makes the legal process extremely difficult to pursue.

108. The allegation of the excessive use of force employed against demonstrators or for investigation was, by and large, found to be inaccurate. The police have been improving its conduct from time to time in order to justly handle demonstrations. Law No. 9/98 on the Rights for Freedom of Expression in Public, along with the police pocket book on handling demonstration stipulates measures to deal with demonstration. In order to avoid the unprecedented incidents, the police are currently imposing different strategy of handling the demonstration i.e., by placing the Police officers who are able to negotiate. The police are allowed to bring weapons but the weapons can only be used as the last resort during demonstrations. The police are also allowed to use wooden sticks as and when deemed necessary. The use of both weapons should be in accordance with the Standing Operational Procedure. The Police Commission shall supervise the work of the Police, which is now in the process of formation. The Indonesian Chief of Police also see to the acts of every police officer and will impose a punishment if the police is found misbehaved.

109. The response to the allegation of the acts of paramilitary groups, who are considered perpetrators of torture and ill-treatment, and are supported by the military, is similar with the statement passed on point 1 above.

110. With regard to the allegation of numerous attacks directed against human rights defenders, the existing Laws guarantee that everyone is equal before the law and nobody is immune. Therefore, any attacks on human rights defenders will certainly be processed. For example, the death of Mr. Munir in 2004 has been thoroughly investigated and the Government has already established an independent fact-finding team to resolve the case by ensuring those responsible shall be brought to justice.

111. The allegation on the human rights abuses committed by military personnel employed by businesses needs to be clarified. If the allegation is proven to be true with sufficient evidence, both the businesses and the military personnel shall be brought to justice.

112. Allegations of inadequate protection against rape and other forms of sexual violence, which are frequently alleged to be used as forms of torture and ill-treatment, are not true. Both rape and other sexual violence are punishable by Indonesian law, not to mention if they involve torture and ill-treatment.

113. The concern regarding the high number of persons reported to be suffering from after-effects of torture and other forms of ill-treatment, is not true (somewhat misleading/not fully correct). The notion of “high number” is relative and can only complicate situation in kind, while in fact the torture cases are significantly rare.

114. On the allegation of impunity, the Government has shown proof to bring impunity to an end by trying the alleged perpetrators before the court, including high-ranking officials both military and civilians. The military officers who were accused to commit violations of human rights in conflict areas like Aceh have been processed accordingly.

115. The failure of Indonesia to conduct prompt investigation in accordance with Articles 12 and 13 of the Convention, the Government should like to reiterate that every person is equal before the law and all persons will be brought to justice if they are involved in the act of torture as also stated in Article 50 of the Penal Code.

116. The insufficiency of guarantees of the independence of the National Commission on Human Rights has been rectified by Law Number 39 of 1999 on Human Rights and Law No. 26/2000 on Human Rights Court.

117. With regard to the concern of the Committee on the inadequacy of the definition of torture, the Government is now preparing a Draft Penal Code, which contains the definition of torture. The so-called new definition has been stated in Article 399 of the Draft Penal Code.

118. The geographical and time limitations of the Human Rights Court on East Timor, is not accurate. The court has conducted its function to bring those who are responsible for the gross human violations in East Timor in 1999 to justice.

119. The concern of the Committee on the retroactive law does not make sense at all. In fact, the Constitutional Court in its verdict in 2005 decided that Law number 26 of 2000, with regard to the retroactivity of the case, does not contravene the 1945 Constitution.

120. The concern on the lack of adequate protection of witnesses has been answered by the existence of the Government Regulation No. 2/2002 on the Protections of Victims and Witnesses and Draft Penal Code on the victim and witness protection.

121. The length and terms of police custody is in accordance with the Law of Procedure Articles 24-29 wherein the custody is not intended for too long a period. If there is a breach of this provision, the case will be brought to justice as shown in the case of Ambon and Poso. However, there is an exception in case of the fight against terrorism.

122. Answers to the allegations of torture by the military were given in point 1. The absence of *habeas corpus* for the military is not true in that the military also has its own *habeas corpus*. According to Law No. 31/1997, there are two different procedures in arresting someone convicted in felony. If the suspect is a member of the military, then he or she shall be arrested in accordance with the military procedures, by the Military Police, whereas if the suspect is a civilian, the police under civil procedures shall arrest him or her. However, there indeed are some difficulties, in particular in regions that apply Martial Law. The implementation of *habeas corpus* became somewhat vague since the military will be the only authority in these regions. For example, Article 18 paragraph 2 of the Penal Code stipulates that if someone was caught in the act for felony, any authority can arrest the suspect, but the detainment should not exceed one day period, whereas in the regions that apply Martial Law, the detainment can be prolonged up until 20 days in maximum.

123. The response on the insufficient legal protection in the situation that no person can be expelled, returned, or extradited to another states, can be found in the Indonesia's compliance status to Article 3 of CAT, as stated in this report.

124. Explanations on the lack of response on communications of the Special Rapporteur have been given.

125. The inadequate cooperation with the serious crimes unit of the UNTAET is not relevant at all. The Indonesian Government, (through the Attorney General) has extended its utmost level of cooperation with the UNTAET.

126. The statistics and other information regarding torture will be provided in due time.

127. To promote effective complaint and reporting mechanisms as per the principles enshrined in the Convention, the Government has made some good efforts as seen in its related institutions, namely, the formation of Police Commission, the functioning of interactive reporting system in the National Commission on Human Rights (Komnas-HAM), and the formation of Judicial Commission in the Supreme Justice (Kejaksaan Agung). In addition, the National Commission on Human Rights (Komnas-HAM) has adopted interactive reporting system, which could be viewed in their website. Therefore, the public can make reports and complaints on the issues related to human rights and torture from their places of origin through the website. In the judicative branch, the Supreme Justice (Kejaksaan Agung) has also formed Judicial Commission, which articulates public reports regarding performance on account of the performance of the judges. Those complaint mechanisms are deemed as necessary media in that people at home and abroad can report and provide suggestions to the Government regarding matters related to human rights and particularly on torture.

IV. DIFFICULTIES IN THE IMPLEMENTATION OF THE CONVENTION

128. In addition to the difficulties as incorporated in the initial report in paragraph 128, there are several new difficulties in the implementation of the Convention.

129. Despite Indonesia's strong commitment to protecting and promoting human rights, as shown *inter alia* by the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government encounters several difficult situations as contained within the following paragraphs.

130. The on-going process of the dissemination of the Convention, which has not yet reached the whole community and territory especially in the rural and remote area, is also a handicap. However, the Government is committed to do its utmost so that the whole community and territory will be reached as soon as possible.

131. For prosecutors there is no specific definition on torture, cruel and other inhuman treatment or punishment covering not only the acts against torture but also cruel, inhuman or degrading treatment or punishment, makes it difficult for prosecutorial criminal proceedings.

132. The lack of understanding and skills of the public officials, especially in the law enforcement sector, including lawyers and judges, on torture, cruel, inhuman, or degrading treatment, and punishments covered by the Convention, makes it difficult to fully implement the Convention.

133. The lack of practical publications on torture, treatment and punishments covered by the Convention, also makes it difficult to teach those issues in educational institutions.

V. CONCLUSION

134. It can be concluded that since the reform era in 1999, the steadfast and unwavering commitment of Indonesia to the promotion and protection of human rights are of paramount importance in guaranteeing the implementation of international conventions that have been ratified, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

135. The Periodic Report on the constitutional, legislative, and regulatory measures which has been made by the Indonesian Government in conjunction with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment conclude the followings:

(a) Since the first report, there are some undeniable facts that show the seriousness and strong commitment of the Indonesian Government to implement the Convention, as part of the commitment of Indonesia on the promotion and protection of human rights as explicitly stipulated in the National Plan of Action of 2004-2009 where the report is one of its priorities;

(b) There have been tremendous developments in harmonizing laws in Indonesia which has clearly shown the strong commitment of the Government of Indonesia to implement the Convention such as by enacting Law No. 26/2000 on Human Rights Court; Government Regulation (PP) No. 3/2002 on Compensation, Restitution and Rehabilitations to the Victim of Human Rights Abuse, to mention a few.

136. The focus of the Government of Indonesia to guarantee that torture is prohibited under Indonesian laws shall not be considered in any way that Indonesia does not have a strong commitment in preventing the act of torture. As a civil law system the existence of laws and regulation is of paramount importance in ensuring that torture is a crime in Indonesia. Under the present law, torture has been categorized as a gross violation of human rights which will be processed by Law Number 26 of 2000 on Human Rights Court. However the draft penal code also regulates a lesser category of “torture” which will be processed under the criminal procedure.

VI. LIST OF ANNEXES

1. The fourth Amendment of the 1945 Constitution.

2. Law No. 39/1999 on Human Rights.

3. Law No. 26 of 2000 on Human Rights Courts.

4. National Plan of Action on Human Rights of 2004-2009.
