



## INDONESIA

### Reforms have started but atrocities continue

Many reforms have been initiated but not pursued in the last years but the additionally required shift in political approach remains missing. Neither have police reforms, the prohibition of torture according to international standards, or rule of military in many regions been ended, nor have the shadows of the past like the killing of millions in various massacres and political raids been addressed. In this environment the floor is open for more suffering due to executive control, ignorance of the rights of the poor who often become victims of torture, and exploitative oppression of ethnic groups.

#### 1. Munir paid the ultimate price in his bid to expose the defective justice system

Thalib Munir, much respected, renowned Indonesian human rights defender fought all through his adult life to demonstrate that the prevailing system of injustice is a product of militarization, impunity and the absence of the rule of law. The only rule that persisted was that of the ruler. The rulers backed by the power and wealth hungry military officers determined every aspect of life of people. Subservience was the only expected response. This culture of subservience generated its own rules of behaviour, discipline and a system of justice.

Munir's<sup>1</sup> call for the cessation of the dominance of the military, the end of the culture of impunity, justice to the hundreds of thousands victims tortured, killed or disappeared was too threatening. It would have lead, in the eyes of the authority, to destabilization and the emergence of people's power, which would have turned tables on them, and which would have been too unnerving for many in the military and political leadership. Those who benefited from the dysfunctional justice system colluded in getting rid of him in a most despicable manner.



The killers benefited from the pathetic nature of the prosecution system in the country, which has a demoralizing record of trials that have been carried out, impartial, rapid and effective. Under these circumstances the system would have never been able

to unearth the so called 'mystery' behind the death of Munir, or to identify the perpetrators to be punished. Three years after his death, there have not been any significant breakthroughs, thus revealing the very defects that he tried to expose. At every

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<sup>1</sup> Picture with courtesy of KontraS, Indonesia



turn in the trial, there have been major stumbling blocks. For instance the lack of witness and victim protection laws, allowed the killers to threaten the widow of Munir with death, More contribution came from the lack of collusion between the National Intelligence Bureau (BIN), the police and the Attorney General; or the shoddy investigations conducted by the investigation units. The hypocrisy of the President who appointed a fact finding team, but whose findings have neither been published nor given to the investigation unit for further action or the judiciary taking the path of least resistance by awarding a minimum sentence for a pre-meditated murder are more examples; a murder which was not even recognized so due to pressure from various groups. In fact due to the sentencing of the only suspected murderer with a minimum punishment, all subsequent actions were cleverly pre-empted.

In fact the trial of Munir is the living example of what a juridical mess the Indonesia of today is. It reverberates with dysfunctions, apparent inalienable defects within the police, the prosecutor general or the judiciary. The attempts at the reform of these institutions have been cursory and half-hearted.

### ***Response from the victims***

Suciwati, the wife of the slain human rights defender Munir, with the support of friends, colleagues and the families of the victims of disappeared took up the challenge. This bold initiative by her has enkindled the hearts of many who never dreamt of a people's struggle for justice. The courage of these persons has been fanned with the support from all corners of the international community. The Asian Human Rights Commission in addition to the personal visits to the members of the family has been closely following the developments.

In all AHRC statements and updates regarding the case, the AHRC has been highlighting the link between the current impediments in the court case and the long tradition of impunity, which has not allowed the emergence of a tradition of effective and impartial investigation. In the publications, the AHRC explained through its statements that the reluctance on the part of the Prosecutor General or the related institutions and persons cannot be dissociated from a tradition where there was no need for a serious judicial process. There was no incentive for effective investigations as the crimes committed by the state are not to be investigated. Due to this there was a real flow in the development of the justice institutions. Such traditions cannot easily be discarded or made futile unless and until it is reinforced by the presence of a strong democratic space. Indonesia is yet to nurture the emerging democracy with the freedom of expression, opinion and association. If the country persists in condemning the much “maligned bogey” called communism, it will never be able to divest itself of the past or take steps in the direction of democracy. The concerted attacks on PAPERNAS and the refusal by the police to investigate such attacks are an indication of the hang over which does not auger well for the future.



## **2. Torture a symbol of the breakdown of the rule of law**

Despite the repeated requests by the CAT committee, the civil society organisations both local and international, the government has stubbornly resisted the criminalisation of torture. Much of the resistance is associated with the revision of the Penal Code. A revision of the Indonesian Penal Code has been discussed for over twenty years without any timeframe being set either by the President or the House of Representatives. In the draft of the Penal Code, the definition of torture reflects largely that which is stipulated in the Convention against Torture (CAT). However there is a serious flaw due to the failure on the part of the state to affirm the uniqueness of torture as is found in the last Government report of 2005 submitted to the CAT Committee, whereby maltreatment or assault is confused with the act of torture.

Indonesia in its last report also mentions that

“...has also completed several other legislative measures in prohibiting torture. Among others are through the amendments of the 1945. Constitution (Article 28 D); 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.”

Judging from all the stipulated legislations It is apparent that Indonesia is unable to differentiate between rights, obligation, and prohibition. The aforementioned mentioned laws are concerned with the rights and obligations of the citizens and the state. There is no single article in abovementioned laws which state the prohibition with the attached sanction as well. There is no law which stipulates that torture (in general circumstance, not in a way of crimes against humanity) is punishable under the existing Indonesian laws.

Despite repeated calls by the local and the international community to pass domestic laws that meet the requirements for such legislative provisions to be present as the result of the ratification of CAT by the state, Indonesia has adamantly refused to comply. The state owes these legal amendments to its people and the international community. There are a few laws drawn up haphazardly with no proper procedures, which have little efficacy in practice. In the draft of the penal code, there is a recommendation for a minimum of five years and a maximum of 20 years imprisonment for acts of torture. However when compared with the punishment accorded to premeditated murder and torture there is an enormous gap with the belittling of the crime of torture. It is hard to imagine that a punishment that reflects the gravity of the crime of torture will be decided given the reticence on the part of the government to recognise its criminality. Besides, the heavy dependence on the use of torture by the prosecution system, would deter them from coming with harsher penalties to the prosecutors.

### ***Torture: Denial of justice to victims of torture***

The deliberate refusal by the state to pass domestic legislation that corresponds to the exigencies of CAT has had the serious effect of denying justice to the victims of torture, whilst granting impunity to the perpetrators. Over the years the Asian Legal Resource



Centre (ALRC) and its sister organization the Asian Human Rights Commission (AHRC), have been collecting information on numerous cases of torture inflicted both by the members of the military and the police. The information concerning all cases has been sent to the Attorney General and the National Human Rights Commission of Indonesia (Komnas HAM) for immediate intervention. However, in none of these cases has there been any redress provided to the victims.

### ***Torture: Why***

Scanning through the cases of torture that have been received by us, it is hard not to be surprised by the plurality of purposes for which torture has been used. In some cases it is hard to determine the main reason for torture. The stereo-type where it is related to forced confession is relatively less. It can vary from a forced confession as in the case of Tibo in Sulawesi who was executed two years ago, to a form of punishment, getting bribes or to exert power to subdue persons. It appears that in cases of robbery/theft or abuse of drugs, torture is used as a punishment – being interpreted as ‘teaching good lesson’, or to get bribes. In these cases the threats of torture or further torture is held to get the suspects to make financial payment. The victims also appear to be more inclined to settle with a payment often to avoid further torture and harassment.

### ***Torture: Mechanism for redress***

There is no specific effective, reliable and independent complaint system to investigate allegations of torture by the police. In the internal system of the police there is PROPAM, a mechanism for reporting various kinds of abuses committed by members of the police. Cases can range from bribery to torture. An individual who wants to complain about such abuses can file a complaint to the PROPAM division, which exists in most police offices.

The deliberate confusion created by the misleading definition of torture has resulted in the non-establishment of a mechanism for reporting, investigation and punishment that reflects the gravity of the crime, thereby rendering it impossible to obtain redress for the victims. The PROPAM mechanism that is currently available is neither preventive nor remedial and is not specific to each case of torture.

The Asian Legal Resource Centre in collaboration with the help of lawyers in Jakarta, conducted research, utilising questionnaires, in the months of July and August, on the issue of torture. One of the questions in the questionnaire was related to the awareness of the people and lawyers on the availability of a mechanism for redress in cases of torture. When inquired, some of the lawyers in the country referred to PROPAM. But this mechanism is for all offences committed by the police and is not specifically aimed at addressing complaints of torture. Except for cases of criminal offences, which are referred to the Criminal Investigation Division, the questionnaires revealed a sense of obscurity about the precise method of the functioning of PROPAM or the punishment meted out to the perpetrators. One lawyer rightfully remarked “we make the complaint and we do not know what happens next”. Thus there is no transparency regarding the procedure or the outcome of the investigation by PROPAM. Obscurity regarding its scope or its procedures makes it impossible to make a proper assessment or for people to count on its effectiveness. According to the experience of many of the lawyers and



human rights defenders, the punishments given often amounted to temporary dismissal, delaying promotions or other disciplinary measures which in no way reflect the gravity attached to the crime of torture.

Technically, hearings of cases where torture or other offences have been committed must take place in public. But de facto, either nobody is informed about the hearings or no one attends them, unless it concerns a high officer. The victims are not entitled to any compensation. Thus, to the ordinary citizens who have suffered torture at the hands of a state agent, the absurdity of going through this legal hassle, whereby the perpetrator is unlikely to be punished, the victim is not compensated or there is fear of further harassment by the perpetrator is apparent.

Even though there is provision for compensation, restitution and rehabilitation for the victims of gross human rights violations under Government Regulation No. 3 of 2002, it does not apply to individual cases of torture. Individual cases of torture as defined under Law No.26/2000, do not fall into the aforementioned category. On the other hand, if the use of torture can be proven to be widespread and systematic, then there is the possibility of Law No. 26/2000 being applied. But this possibility is vitiated by the absence of a mechanism that records and follows up on cases, from which emerging patterns can be traced.

### ***Torture: Failure of the Human Rights Court Law as a mechanism for redress***

In the Human Rights Court Law No. 26/2000, there is a provision to address torture, provided it can be shown to amount to a 'gross human rights violation'. This literally means that there is no redress for individual cases of torture. Since the conditions and the process tied to a crime being declared a gross human rights violation are so cumbersome, it is almost impossible for a case to be heard in court. The Human Rights Court Law is mandated to hear only cases of gross human rights violations as defined in Law No. 26/2000. For torture to be declared a gross human rights violation, certain conditions (e.g. widespread and systematic use, etc) need to be met. It is very difficult to make an assessment of the actual situation, given the failure on the part of the state to make an accurate account of the number of cases or the methods used in torture. Furthermore, an accurate assessment is also hindered by the reluctance on the part of the victims to report cases of torture (due to a variety of reasons). The Human Rights Court Law is the only mechanism that can provide compensation, but it is yet to establish its credibility amongst the victims of gross human rights violations. This demonstrates that the existing laws and mechanisms are thoroughly inadequate with regard to the prosecution of cases of torture.

The absence of a proper mechanism keeps the doors open for the continuing widespread use of torture by state institutions such as the police or the military. The Indonesian state is allowing torture to take place and the attempted explanation and justification given by the state is that quick responses are required to prevent mounting crimes. The state has failed to recognize that the trend of mounting crimes is due to the breakdown of the rule of law. It is due to its inability to prosecute and punish the perpetrators, based on proper investigations, that criminality has increased. The state seems to be following a path of



criminality to overcome mounting violence. Instead of employing well trained, skilled and qualified police officers to conduct investigations, the state is following the opposite path by allowing criminality within the forces that use torture to extract confessions. This form of investigation generates further violence and results in a distrust and fear of the state by its citizens.

### ***Torture: The role of Komnas HAM***

The National Human Rights Commission (Komnas HAM) is mandated in the country to conduct the necessary investigations in cases of alleged gross human rights violations. But the crux of the problem is that since Komnas HAM has not been able to address individual cases of torture or analysed the existing and the emerging patterns, it has not been able to assess its widespread and systematic characters and to declare it to be a gross human rights violation.. In other words how can Komnas HAM decide whether the use of torture is systematic and widespread without making a proper assessment of the recorded individual cases of torture. This situation is found to be a useful tool for the state to deny its widespread character and then blatantly ignore the responsibility to address the issue, which results in the denial of justice for victims.

For want of an effective and accessible mechanism, victims of torture report cases to Komnas HAM, which are then apparently forwarded to the police. In none of the cases that have been reported to the Asian Legal Resource Centre victims have to date received any redress from these institutions. While Komnas HAM is acceptably excused on the grounds that the lack of legislation or a special mandate prevents them from taking any concrete action, such as determining compensation, it has failed in its major responsibility in intervening with the attorney general to press for appropriate laws criminalizing torture and to educate the community and the police in all aspects related to the use of torture.

The previous administration of Komnas HAM was divided into thematic issues (civil and political rights and economic social and cultural rights). But now, the new administration of Komnas HAM is separated into monitoring, research and mediation divisions, as mentioned in the Human Rights Law. Furthermore, the method by which Komnas HAM receives complaints has not yet been decided by the new commissioner. With the limited resources it has at its disposal, speedy and effective action is hard to be imagined.

For additional information, the system by which complaints are received, under the previous commissioner, is shown below.

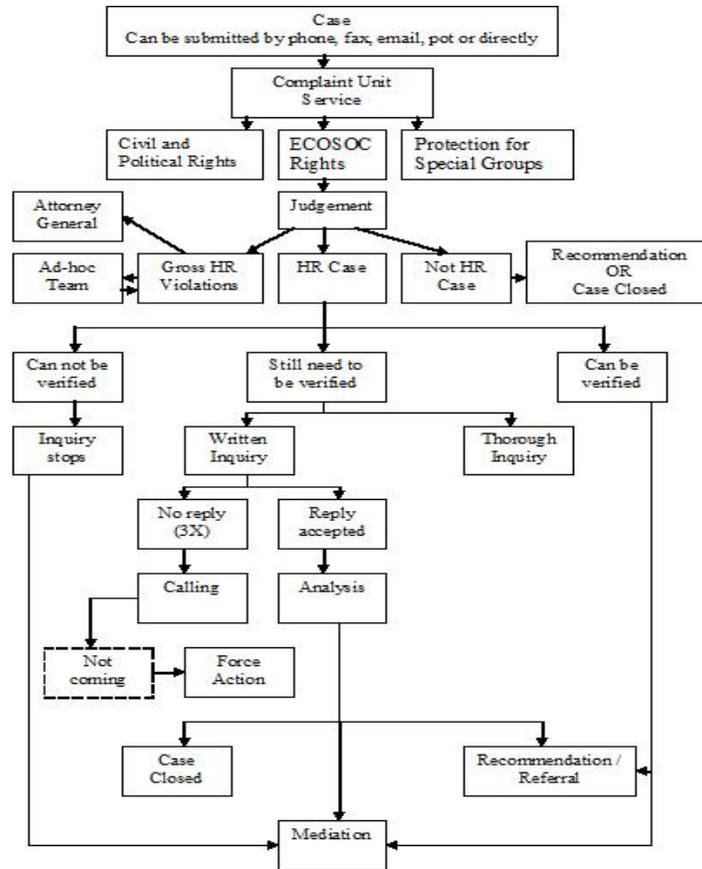


Figure 1 Complaints procedure under former Commissioner of KomnasHAM

### ***Torture: Long periods of detention leading to severe abuses and torture***

The existing law allows a person to be detained for 20 days with the possibility of a further 40 days. It is a blank cheque to the authorities. It permits all forms of abuses, including torture (both physical and psychological) and bribes. This period is so long that even scars caused as a result of torture can disappear. There have been reports of victims trying to commit suicide due to the unbearable situation of repeated torture.

This is evident in the case of Mr. Mas Udin, who was detained at the Cengkareng Police Precinct (Kepolisian RI, Sektor Cengkareng, Resort Jakarta Barat) since his arrest on May 28. There were several attempts by the staff of the Jakarta Legal Aid Institute to visit him at his detention cell but they were repeatedly denied entry by the police for various reasons. Their refusal is said to be due to an administration provision, which was not regulated in the Indonesian Criminal Procedure Law.

As the family and their appointed lawyer had been continuously denied access to see the victim, it became impossible for his condition to be ascertained. (See [UA-243-2007](http://www.ahrchk.net/ua/mainfile.php/2007/2523/)<sup>2</sup>:

<sup>2</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2523/>



INDONESIA: Police deny visit of family members and legal access to arrestee). His family was not allowed to see the arrestee until he was eventually tortured to death. This further confirms the position that denial of access to members of the family or legal representation provides the space for torture. This is clearly evident in the following case.

Following Teguh Uripno's arrest at around 11:00 am on April 20, 2007, his family immediately went to the Serpong police station. When they arrived at the police station, they were prevented from seeing the victim so they returned the following morning, April 21. However, once again they were not allowed to see the victim. No sufficient reason was given to them by the police as to why they were not allowed to meet him.

At around 3:30 pm on April 21, police representatives went to the house of the victim's family and informed them that he had died while being taken to a local hospital. The family immediately went to the hospital and upon arrival they found marks of severe beating on his body. Medical reports indicate his body showed several torture marks, his arm was broken, he had a fractured skull and severe bruising. (See [UA-169-2007](#)<sup>3</sup>: INDONESIA: Man beaten to death by sector police in Tangerang).

### ***Torture: Illegal arrest is the prelude to torture***

On 24 June 2007, the AHRC received information regarding the illegal arrest and torture of Hendrick Sikumbang by the police officers of Pekanbaru police office on 14 June 2007. The methods used in the arrest were more characteristic of abduction than an arrest. The police brutally tortured Mr. Sikumbang after putting him in a vehicle and drove around the city instead of going to the police station or the court. The membrane of his eardrum was cracked as a result of the torture and he still suffers from the severe injuries that he received to his body. Please see [UA-205-2007](#)<sup>4</sup> for more detailed information.

The available reports indicate a specific pattern whereby illegal arrests are followed by torture. In the afore-mentioned cases of torture, leading to the deaths of Teguh Uripno and Hendrik Sikumbang, it can be asserted that illegal arrests had been deliberately carried out with the intention of torturing either as a punishment, to extract confession or to get money from the suspects.

On April 11, 2007, at around 3:30 a.m., around 30 unidentified men claiming to be Medan District Police Officers forced their way into Ms. Supiah's (the victim's sister's) home, demanding to see Mr. Suherman, the victim. When Ms. Supiah replied that Mr. Suherman was not at home, the attackers held him and his family at gunpoint while they proceeded to ransack his home. They seized two mobile phones without producing a search warrant. They then forced Ms. Supiah to take them to her brother's home. Barging into Mr. Suherman's home, they promptly arrested him, and again without a search warrant, ransacked his home in a similar fashion.

Ms. Juliana, the victim's wife, and their children were then taken to the Medan Sub-District Police Station where the Police questioned them. Mr. Suherman was taken in the

<sup>3</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2402/>

<sup>4</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2459/>



opposite direction to a yet unknown location. At around 6 a.m, Juliana was informed that her husband's dead body had been found. Autopsy reports later showed that Mr. Suherman had been shot in the chest. He also suffered bullet wounds to the left side of the navel and hip. Shockingly, Juliana was not allowed to identify her husband's body, which is a standard police procedure.

It has also been noted that in some cases, illegal detention and torture are carried out in places other than at the official place of detention. This phenomenon lends support to the view that illegal arrests and detention are deliberately used to enable torture in unofficial places, in order to prevent the identification of the location when complaints are lodged.

([UA-146-2007](#)<sup>5</sup>: INDONESIA: Medan District Police again bring the Rule-of-Law into dispute with the brutal murder of an innocent man)

### ***Torture: Medical reports***

There is no regulation concerning medical reports: no rights and no obligations. Thus there is no person specially assigned or a specific procedure to deal with granting medical certificates in case of torture, except in cases of cell deaths of suspicious deaths. In the case of the latter a post mortem is requested by the police. Such reports can be used as evidence in the litigation.

In cases where family members of the victims would like the attention of a medical doctor, it is simply not possible, as access to places of detention is severely restricted. Restrictions applied to places of detention prevent the possibility of having an accurate picture of how widespread the practice is.

According to the information we have received, Mrs. Ni Ketut Suratni (57), was arrested by East Denpasar Police Sector in Bali on 3 January 2007 when she was shopping in market, suspected of counterfeiting money valued at Rp.50,000 (USD 6) that she paid at the market. The victim was severely hit and kicked by two police officers, Bripka I Made Wiguna and Brigadier Erwin Suprayoga during the police interrogation.

On the night of January 11, the victim was examined by public medical doctors at the police hospital for a “visum et repertum”, a medical report for an injury case that was then issued by the public medical doctors. However, the medical report did not clearly identify the injuries on the victim as having been caused by beating.

The victim's lawyers then submitted a request for another medical examination for “visum et repertum” by independent doctors as the previous medical report had been issued by doctors from the police hospital. The second examination for the report has not been conducted yet. ([UA-020-2007](#)<sup>6</sup>: INDONESIA: Woman severely injured by brutal assault while in detention by police in East Denpasar)

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<sup>5</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2367/>

<sup>6</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2175/>



It has also been reported that in most of the cases of torture, when medical practitioners are approached for medical reports, there is a reluctance to produce accurate medical reports. Or else the issuing of the medical reports is purposely delayed as was the case with Mr. Hendrik Sikumbang, who was illegally arrested and tortured by Yusril, a former member of West Sumatera Police Regional office, who is currently stationed at Pekanbaru police office. As a result of beating by the police, Sikumbang suffered severe bruises and scars on the head, face and neck. Moreover, Sikumbang's ear was bleeding so profusely that according to Dr. Yan Edward, an otologist, the membrane in Sikumbang's ear had cracked, resulting in hearing loss. To date, the medical report on this case is still being processed.

On 15 June 2007, Sikumbang filed a formal complaint to West Sumatera Regional Police office about the torture by the police. However no action has been taken by them. The delay in procuring the medical certificate constrains the victim from pressing for justice in this case. ([UA-205-2007](#)<sup>7</sup>: INDONESIA: Man illegally arrested and tortured by Pekanbaru police)

Most of the lawyers acknowledge that their clients are tortured or induced to pay money to escape torture, but are unable to assert with certainty the gravity of the problem.

Besides, being aware of their long incarceration of 20 days or a possible maximum of another 40 days with the torturers, the suspects tend to succumb to torture as something inevitable and when they are released after one or two months, due to a sense of shame many of the victims do not want it to be divulged. They tend to suffer silently. In particular in cases where the victim of torture has committed a breach of law for example by an act of theft, the sense of guilt makes most victims accept their treatment and such frequent cases are hardly reported to any institution.

### ***Torture: Forced confessions***

In the event that a person had already given a testimony in the investigation phase, the person will be asked again at the court and whether s/he wants to change their testimony or not. If the testimony which was testified at the court is different from that which was given at the investigation phase, the judge will use the one that was given at court. Sometimes, the judge may also ask why the testimony is different, and if s/he says that s/he is being pressured by the investigator, and a cross examination will be conducted in the court between the witness and the investigator.

However the reality is in stark contrast to what has been explained above. When the case of the Fabianus Tibo (60), Dominggus Da Silva (42) and Don Marinus Riwu (48), who were later executed in 2006, was heard in Poso, Sulawesi, they complained to the judge of severe torture during the interrogation. This plea was not even heard by the presiding judge. Since there are hardly any instances of cases of torture being considered by the judges, victims actually refrain from making any complaints. This is as good as saying that the forced confessions produce the quickest and the cheapest results.

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<sup>7</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2459/>



## ***Torture: Prevention***

There are a number of steps to be adopted by the Indonesian state if torture is to be prevented which is crucial for fair trial, to guarantee the right not to be tortured, overcome impunity and for the establishment of the rule of law in the country.

1. amend the existing domestic law criminalising torture. Torture needs to be declared a punishable crime with punishments that reflect its gravity.
2. establish an effective, reliable and independent complaint system to undertake effective investigations and if proven guilty after a fair trial to have the perpetrators to be punished
3. Provide compensation to the victims of torture and ensure their rehabilitation. It must include trauma counselling to the victims and the members of the families in case they suffer trauma.
4. Introduce the much needed police reform. There is a de-jure separation of the two institutions. But de-facto in certain cases the police functions under the control of the military. Furthermore, it has become difficult for the police to overcome its militaristic culture. No serious effort has been made to reform the police despite the creation of the Police Reform Commission. The reform process that was started years ago has come to a halt, and furthermore, the discussion on how the police has to be reformed and what the shortcomings are in its operational procedures that allow human rights abuses such as torture to repeatedly take place is not taking place publicly. Instead of engaging a wide range of civil society stake holders, such as NGOs, in the debate, the reform is left largely to the police itself. It can not be expected that under these circumstances, the reform will limit police power and add safeguards to protect the rights of suspects, perpetrators and other civilians from the police force. An opening process that revives the police reform debate and action is strongly needed.
5. Witness and Victim Protection Laws  
The reluctance on the part of the victims and the witnesses to come forward to make complaints of torture comes from the fact that there is no law against which torture can be prosecuted and secondly the fear of further victimization, since there is no witness or victim protection law. Even though the law was passed a year ago, there is reluctance to appoint the committee that is responsible for its implementation. Every citizen must have the guarantee that when her/his rights are violated by the state, there is a mechanism for reporting them without any fear of threats from the alleged perpetrators.
6. This guarantee is quite important given the fact that in cases of violations of rights by the state, for anyone who represents the state, the relationship is a-symmetrical. It is an individual vs. a state case. One is without any power while the other is with absolute power. In such a relationship of inequality, the victim needs all the guarantees that a complaint is recognized, impartially investigated, perpetrators punished and the grieved party amply compensated/rehabilitated without any



semblance of the grieved party discriminated or threatened. In the absence of such a guarantee, all credibility in the institutions is lost and the justice system itself collapses, paving the way for anarchy

Even though the law on Victim and Witness Protection was been passed in 2006, its effective implementation depends on the creation of the Witness Protection Agency and the appointment of its members. As is the case in many laws and their enforcement, it is hard to know when this will come into effect, despite the legal requirement in Article 45 of Law 13 of 2006 which requires that the Agency be created within one year of the passing of the bill. The understanding is that the selection committee would present 21 names to the President out of a list of 200, who then would propose 14 to the House of Representatives for 7 persons to be nominated to the Agency. There does not seem to be any urgency on the part of the state to get this constituted. This is typical of the haphazardness with which the laws are passed or enforced.

7. Reduce the length of the pre-trial detention.
8. Access to the places of detention and prisons. There is no law regulating provision in which everyone has access to the places of detention or even prison, but according to Indonesian Procedure Code and Law No. 12 Year 1995 regarding Correctional Institutions, a prisoner has the right to be visited by his/her family, lawyer, and other persons. However, also this right remains without clear enforcement regulations and practice.

Komnas HAM must be mandated to places of detention and prisons both to ascertain the level and type of torture taking place in these places and also a preventive measure. Furthermore, they should be authorised to make investigations and submit the same with their recommendations for compensation, to the Prosecutor General for prosecution.

9. Dissemination/Education. The government is required to disseminate widely the obligations that are tied to the ratification of the CAT and its implications to the judges, the law enforcement officers, medical personnel and the general public.

Through the survey that was conducted, it became clear that in the perception of the general public or even among the law enforcement officers is that torture is not a serious crime. Some would even go to the extent of tacitly approving it. Till recently, a number of TV channels were in the habit of televising torture inflicted by the police without much negative reactions.

Televising of the cases of torture has never been identified as a serious offence by any of the state organs or institutions or even by Komnas HAM. How can a state apparatus such as the police publicly commit an act of torture and have it publicized over the TV, when it has given a commitment to the international community to stop torture and precisely to refrain from using it as a punishment or drive fear into the minds, particularly the children



Komnas HAM in its report of 2006 admits a large scale use of torture by the members of the armed forces despite the various dissemination sessions conducted to them during the year. The report adds that it is the lack of understanding of Indonesia's obligation to apply the Convention which has been ratified by the Law No 5 Year 1998.

**Table 1: List of summaries of torture cases received in the last three years**

No	Number UA / Title	Information
1	<a href="#">UA-227-2007</a> , 19 July 2007  Man arbitrarily arrested and falsely charged after torture by Benteng police	<p><b>Name of the victim:</b> Sumadi (34), residing at Jl. Baru Luk RT. 04/02. Bakti Jaya District of Cisauk, Tangerang</p> <p><b>Name of alleged perpetrators:</b>                      1. Maryono, a member of the Intelligence and Protection Unit of the Metro Jaya police station (Direktorat Intelkam Polda Metro Jaya) in Jakarta                      2. Deli and Boy, subordinates of Maryono and work for the Metro Jaya Police Station in Jakarta                      3. Unidentified policemen from Benteng Police Station in Tangerang</p> <p>City</p> <p><b>Date of incident:</b> 4 July 2007</p> <p><b>Places of incident:</b> In the street outside the Tangerang State Courthouse; In a public transportation on the way to Benteng Police Station; Inside the Benteng Police Station</p>
2	<a href="#">UA-205-2007</a> , 25 June 2007  Man illegally arrested and tortured by Pekanbaru police	<p><b>Name of the victim:</b> Hendrik Sikumbang, a resident of Padang City</p> <p><b>Name of alleged perpetrators:</b> Yusril and other unidentified police officers attached to Pekanbaru Police Station</p> <p><b>Date of incident:</b> 14 June 2007</p> <p><b>Place of incident:</b> In the Kijang car with blue colour</p>
3	<a href="#">UA-201-2007</a> , 22 June 2007	<p><b>Name of the victim:</b> Kurniawan (Iwan), 23 years old</p> <p><b>Alleged perpetrators:</b> Unidentified police officers of Tegal police headquarters, Central Java</p>



	<p>Young man tortured in police station at Tegal, Central Java</p>	<p><b>Date of incident:</b> 3 May 2007 until recently; the torture is allegedly stopped</p> <p><b>Place of incident:</b> Detention room of Tegal police headquarters, Central Java</p>
<p>4</p>	<p><a href="#">UA-169-2007</a>, 23 May 2007</p> <p>Man beaten to death by sector police in Tangerang</p>	<p><b>Name of the victim:</b> Teguh Uripno, a resident of Tangerang district</p> <p><b>Alleged perpetrators:</b> First Brigadier Police' Syarifudin and Arifin and other seven unnamed police officers, all attached to the Serpong Sector Police</p> <p><b>Date of incident:</b> 20 to 21 April 2007</p> <p><b>Place of incident:</b> Serpong Sector Police Headquarters, Tangerang district</p>
<p>5</p>	<p><a href="#">UA-146-2007</a>, 4 May 2007</p> <p>Medan District Police again bring the Rule-of-Law into dispute with the brutal murder of an innocent man</p>	<p><b>Name of victim:</b> Mr. Suherman</p> <p><b>Name of alleged perpetrators:</b> 30 yet unidentified men claiming to be Officers of the Medan District Police.</p> <p><b>Date of incident:</b> 11th April 2007</p> <p><b>Place of incident:</b> Mr. Suherman's residence: Trikora 26, Tegal Sari, Medan, Northern Sumatera. Undisclosed location where the murder took place.</p>
<p>6</p>	<p><a href="#">UA-121-2007</a>, 12 April 2007</p> <p>Alleged severe torture of six teenage youth by police over petty quarrel</p>	<p><b>Name of victims:</b>                  1) Mr. Odi Modokh, 2) Mr. Arnoldus Janggur, 3) Mr. Albertus Benda, 4) Mr. Marseinus Janggur, 5) Mr. Dohol Janggur, 6) Mr. Beni Herwanto (All of them are detained at the Manggarai Resort Police Station as of 12 April 2007)</p> <p><b>Alleged perpetrators:</b>                  1. Mr. Eko Chayora, officer attached to the Manggarai Resort Police Station, Nusa Tenggara district, South-Eastern Indonesia                  2. One officer responsible for victim 1's unlawful arrest and torture, attached to the Manggarai Resort Police Station (can be identified by</p>



		<p>Victim 1)</p> <p><b>Date of incident:</b> 29 and 30 January 2007</p> <p><b>Place of incident:</b> Manggarai Resort Police Station in Nusa Tenggara district</p>
7	<p><a href="#">UA-086-2007</a>, 16 March 2007</p> <p>Brigadier officer assaults hospitalised teenage boy</p>	<p><b>Name of victim:</b> Mr. Aditya Panji Akbar, 18 year-old</p> <p><b>Name of alleged perpetrators:</b> Brigadier Officer Simarmata of the Medan City Police</p> <p><b>Date of incident:</b> 11 January 2007 at around 6:10pm</p> <p><b>Place of incident:</b> Mental Health Ward of the Bhayangkara (Police) Hospital, Medan City, Northern Sumatra</p>
8	<p><a href="#">UA-068-2007</a>, 28 February 2007</p> <p>Alleged brutal torture and sexual abuse by the Banda Raya police</p>	<p><b>Name of victims:</b></p> <ol style="list-style-type: none"> <li>1) Mr. Hartayo, aged 32, local NGO worker at the Matahari Foundation in Aceh</li> <li>2) Bobby; Mr. Hartayo's partner</li> </ol> <p><b>Alleged perpetrators:</b></p> <ol style="list-style-type: none"> <li>1) Officers attached to the Banda Raya police station in Banda Aceh</li> <li>2) 16 yet unidentified civilian attackers in Banda Aceh</li> <li>3) Employee of "Pesona" Café locating below Mr. Hartayo's boarding-house in Banda Aceh</li> </ol> <p><b>Date of incident:</b> 22-23 January 2007</p> <p><b>Place of incident:</b> Mr. Hartayo's boarding-house residence in Banda Aceh; Banda Raya police station in Banda Aceh</p>
9	<p><a href="#">UA-020-2007</a>, 23 January 2007</p> <p>Woman severely injured by brutal assault while in</p>	<p><b>Name of the victim:</b> Mrs. Ni Ketut Suratni (57), the resident of Jln. Sulatri No. 29 Kesiman Petilan Village, East Denpasar, Bali</p> <p><b>Name of alleged perpetrators:</b></p> <ol style="list-style-type: none"> <li>1. Chief Brigadier I MADE WIGUNA, Police ID: 68010139</li> <li>2. Brigadier ERWIN SUPRAYOGA, Police ID: 76100156</li> </ol>



	detention by police in East Denpasar	<p><b>Place of the incident:</b> East Denpasar Police Sector in Bali</p> <p><b>Period of detention:</b> From 3 January 2007 to date</p>
10	<p><a href="#">UA-022-2007</a>, 23 January 2007</p> <p>Alleged brutal murder of a 14 year-old boy by Jakarta police</p>	<p><b>Name of victim:</b> Irfan; 14 years-old, worked as a "jockey"</p> <p><b>Name of alleged perpetrators:</b> Nine officers of the Municipal Administrative Police Unit (SATPOL PP)</p> <p><b>Date of incident:</b> At around 7:00am on 8 January 2007</p> <p><b>Place of incident:</b> Pakubowono Street, Southern Jakarta, Indonesia</p>
11	<p><a href="#">UA-320-2006</a>, 27 September 2006</p> <p>Assault of a mother of four-year-old daughter by the Jakarta police</p>	<p><b>Name of victim:</b> Ms. Sugihart; 31-year-old impoverished mother of four-year-old child, and a "Jockey" (See explanation below).</p> <p>Explanation: Jakarta City Administrative and Police authorities introduced a new regulation in attempts to reduce the heavy traffic congestion in the city-centre, which states that private cars are required to carry a minimum of at least three passengers when traveling on the major urban thoroughfares during peak traffic-hours. However, many drivers in Jakarta openly contested this regulation by hiring "jockeys"; young men and women who can be hired for a fee of a few thousand Rupiah (less than 1 USD) by drivers as a third passenger, thus enabling them to travel during peak traffic-hours, without having to pay the penalty fines for violation of this traffic regulation.</p> <p><b>Alleged perpetrators:</b> Five officers of the Municipal Administrative Police Unit (SATPOL PP).</p> <p><b>Date of incident:</b> 5 September 2006</p> <p><b>Place of incident:</b> Menteng District Office, Central Jakarta, Indonesia</p>
12	<p><a href="#">UA-312-2006</a>, 20 September 2006</p>	<p>CASE 1:  <b>Name of Victim:</b> Mr. Rudi Sebastian  <b>Alleged Perpetrators:</b> Four officers of the Garut Correctional Institution:</p>



	<p>Police and corrections officers torture detainees</p> <p>Updates:</p> <p><a href="#">UP-215-2006</a>, 30 November 2006 / Police officer found guilty on the count of torture, receives light disciplinary sentence</p>	<p>Ahmad Syarif, Nana, Catur, Oki</p> <p><b>Date of Incident:</b> 16 August 2006</p> <p><b>Place of Incident:</b> The Garut Correctional Institution (Lembaga Pemasyarakatan Garut) in Garut district of West Java</p> <p>CASE 2:  <b>Name of Victim:</b> Kurniawan, the driver of a public transportation car (Sopir Angkutan Kota)</p> <p><b>Alleged Perpetrators:</b></p> <ol style="list-style-type: none"> <li>1. Officers of the Jati Asih Police (responsible for arbitrary arrest and detention)</li> <li>2. Brigadier BN and Brigadier Y attached to the Jati Asih Sector Police Headquarters, Bekasi Province (prime suspects for torture)</li> </ol> <p><b>Date of Incident:</b> 8 September 2006</p> <p><b>Place of Incident:</b> Jati Asih Sector Police Headquarters, Bekasi Province.</p>
13	<p><a href="#">UA-276-2006</a>, 25 August 2006</p> <p>Police torture man severely, resulting in his death</p>	<p><b>Name of victim:</b> Denny Leuwol, 30, citizen of Haria hamlet, Saparua, Central Maluku</p> <p><b>Alleged perpetrators:</b> three officers of Maluku Provincial Police (initials AT, RR, QW) and one civilian (OL)</p> <p><b>Place of incident:</b> Benteng Police Pos Headquarter.</p> <p><b>Date of incident:</b> August 19, 2006</p>
14	<p><a href="#">UA-262-2006</a>, 7 August 2006</p> <p>Illegal detention and shooting incident of two men by the Bangsalsari Sector Police in East</p>	<p><b>Name of the victims:</b> Samo and Mattasan (siblings), farmers by occupation</p> <p><b>Alleged perpetrators:</b> Officers of Bangsalsari Sector Police, Jember, East Java (one of Butar Butar, two unknown)</p> <p><b>Period of illegal detention:</b> Arbitrarily arrested in August 2002 and illegally detained about two months without any charges; shot by the police</p>



	Java	in their legs 6 days after their arrest
15	<p><a href="#">UA-063-2006</a>, 15 February 2006</p> <p>Alleged extra-judicial killing of a man by the Resort Police of West Jakarta</p>	<p><b>Name of victim:</b> Dayus, aged 48, entrepreneur, residing in Jl. Pisangan Baru Tengah IV no. 17, Jatinegara, East Jakarta, Indonesia</p> <p><b>Alleged perpetrators:</b> The officers attached to the drugs unit of Resort Police of West Jakarta</p> <p><b>Place of incident:</b> The Resort Police of West Jakarta</p> <p><b>Period of incident:</b> 24 to 29 January 2006</p>
16	<p><a href="#">UA-056B-2006</a>, 8 February 2006</p> <p>A man allegedly tortured to death by the Belu police</p> <p>Updates:  <a href="#">UP-087-2006</a>, 20 April 2006 / Perpetrators of torture and murder must be properly prosecuted and punished</p>	<p><b>Name of victim:</b> Yupiter Manek (alias Igung)</p> <p><b>Alleged perpetrators:</b> Officers attached to the Resort Police Belu</p> <p><b>Date of incident:</b> Between 18 and 22 December 2005</p> <p><b>Place of incident:</b> Resort Police Belu, East Nusa Tenggara, Indonesia</p>
17	<p><a href="#">UA-020-2006</a>, 12 January 2006</p> <p>Torture of two villagers by police in South Sumatera over permission letters to buy cows</p>	<p><b>Name of victims:</b> Arafik Bin Amri (25), Hendri Bin Suandi (20) and Hendra Gunawan (25)</p> <p><b>Name of alleged perpetrators:</b> Briptu Bram Fahlevi, Briptu Rahmat Dedi Kurniawan, Bripda Meki Daniel Ortega, Bripda Niko Apero Atma, Bripda Hendy Afrizal, Bripda Okky Sakti, Bripda Herwindo, Bripda Andi Triana, the police officers in Sector Police Office of Buay Runjung, South Sumatera</p> <p><b>Place of incident:</b> Sector Police Office of Buay Runjung, South Sumatera</p>



		<b>Date of incident:</b> 23 November 2005
18	<p><a href="#">UA-239-2005</a>, 16 December 2005</p> <p>Custodial torture of ten men by Central Sulawesi Provincial Police</p> <p>Updates:</p> <p><a href="#">UP-120-2006</a>, 8 June 2006 / Torture victims in Central Sulawesi sentenced to nine years imprisonment</p>	<p><b>Victims:</b> Sahidu (30), Hasanudin (40), Bambang (21), Lei (35), Nanga (17), Masuna (48), Kahar (21), Raya (29), Asani (45) and Olimin (21), all of whom are farmers from Salena Dusun, Kelurahan Buluri, Kota Palu Central Sulawesi Province</p> <p><b>Alleged perpetrators:</b> Police officers in the Central Sulawesi Provincial Police Office, one of whom is Brigadier (Bripda) Max</p> <p><b>Place of incident:</b> Central Sulawesi Provincial Police custody, Jl. Sam Ratulangi Palu, Central Sulawesi</p> <p><b>Date of incident:</b> 27 October 2005 until UA issued</p>
19	<p><a href="#">UA-228-2005</a>, 6 December 2005</p> <p>Army personnel attack three hamlets, injuring five residents and destroying village property</p> <p>Updates:</p> <p><a href="#">UP-018-2006</a>, 2 February 2006 / Three soldiers received lenient sentences while other perpetrators are still at large regarding an attack on three hamlets in South Sulawesi</p>	<p><b>Name of victims:</b> Civilian villagers of three hamlets (Dusun Karama, Dusun Bonto Badong, Dusun Ujung Moncong) Desa Banri Manurung, Kecamatan Bangkala Kabupaten Jeneponto, South Sulawesi and Police Brig. Syafrie</p> <p><b>Alleged perpetrators:</b> Army personnel from the 700th Raider Infantry Battalion and other people from outside the villages</p> <p><b>Date and place of incident:</b> 29 November 2005 in Karama, Bonto Gaddong and Ujung Moncong hamlets in Bandri Manurung village, Jeneponto regency, 80 km south of the provincial capital of Makassar, Sulawesi</p>
20	<p><a href="#">UA-213-2005</a>, 18 November 2005</p>	<p><b>Name of the victim:</b> Bagus Ariyanto (51)</p> <p><b>Alleged perpetrators:</b> Army officers attached to the Detachment Supplies and Transportation Jaya Raya 44-12, TNI AD (Denhar 44-12, TNI AD),</p>



	<p>A man died of brutal torture following his release from military custody in Central Jakarta</p>	<p>Jakarta Indonesia - 10 persons are military officers, 1 person is a civilian employed in this office.</p> <p><b>Date and place of incident:</b> 15 to 16 October 2005 at the Army Station of Detachment Supplies and Transportation Jaya Raya (Denbekang Jaya Raya)</p>
<p>21</p>	<p><a href="#">UA-210-2005</a>, 16 November 2005</p> <p>A 28-year-old man tortured and detained over mistaken identity by Resort Police Belitung Timur</p>	<p><b>Name of the victim:</b> Fitriyanto (Sanep), 28-years-old. He is a driver of a motorcycle taxi (Tukang Ojek)</p> <p><b>Alleged perpetrators:</b> Some police officers of Resort Police Office Belitung Timur (Mapolres Belitung Timur), Bangka Belitung, Indonesia</p> <p><b>Date of incident:</b> 12 September 2005</p> <p><b>Place of incident:</b> Resort Police Office Belitung Timur (Mapolres Belitung Timur)</p>
<p>22</p>	<p><a href="#">UA-148-2005</a>, 22 August 2005</p> <p>Lack of effective remedies for 23-year-old torture victim</p> <p>Updates:</p> <p><a href="#">UP-121-2005</a>, 19 October 2005 / Only one torture perpetrator charged with maltreatment while the others are still at large in Kupang</p>	<p><b>Name of the victim:</b> Elfrianus (Alfred) Ulu, 23, student at the Maritime Academy of Kupang, capital of East Nusa Tenggara Province, Indonesia.</p> <p><b>Alleged Perpetrators:</b> Yupiter M. Bolla; Ferdinand S. Kiuk; Benyamin Lede Kana; Nelson Hatu Riwu; Yusuf Stefanus Dalla, all prison officials of the Penfui Correctional Institution, Kupang</p> <p><b>Place of the Incident:</b> Penfui Correctional Institution, Kupang</p> <p><b>Date of the Incident:</b> 5-8 March 2005</p>



<p>23</p>	<p><a href="#">UA-140-2005</a>, 10 August 2005</p> <p>Arbitrary arrest, detention and torture of four persons during the "investigation" into the 28 May-terrorist bombing in Poso, Sulawesi</p>	<p><b>Victims:</b> Jumaedi (25), Jumeri (23), Mastur Saputra (25), Sutikno (23), farmers from Pandajaya Village, South Pamona Subdistrict (Kecamatan), Poso District (Kabupaten), Central Sulawesi Province</p> <p><b>Alleged perpetrators:</b> Police Commissioner Rikynaldo, CH Sik, Vice Chief of the Poso District Police (Polres Poso) Officers of the Police Mobile Brigade (Brimob) of the Central Sulawesi Provincial Police, the Anti-Terror Detachment 88 of the National Police, the 'Buru Segap' units of the Central Sulawesi Provincial Police and the Poso District Police, as well as officers of the Police Intelligence Service (Intelkam) of the Central Sulawesi Provincial Police and the Poso District Police</p> <p><b>Places of incidents:</b> 1. Pandajaya Village, South Pamona Subdistrict, Poso District, Central Sulawesi Province;                  2. Hotel Mulia – Pendolo, Pendolo Village, South Pamona Subdistrict, Poso District, Central Sulawesi Province;                  3. Poso Lake, Pendolo Village, South Pamona Subdistrict, Poso District, Central Sulawesi Province;                  4. Subdistrict Police Station Pendolo;                  5. District Police Station of Poso</p> <p><b>Date of incidents:</b> 1 - 10 June 2005</p>
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### 3. The undermining of emerging democracy

The mosque and some members of the minority Ahmadiyah Islamic community in Tasikmalaya were attacked by the mobs from three Islamic sects on 25<sup>th</sup> June 2007.

The attackers were the people allegedly connected to the Islamic Defenders Front (Front Pembela Islam of FPI), Taliban, and GERAK (an anti-communist movement). When complained to the police, they intervened to prevent continuing attacks but did nothing to investigate the complaint or prosecute the perpetrators.

The Asian Human Rights Commission (AHRC) has been informed of three separate cases of alleged attacks, intimidation and forced disassembly of religious meetings in Surakarta, Central Java. The first case reported involves a seminar conducted by the Interaction of Solidarity between Elements of Society (INSAN-EMAS) working along with the Indonesian Foundation for Legal Service (LPH YAPHI) to promote non violence in society and to prevent attacks on places of worship. A seminar on "Strengthening the Foundation of Civil Society without Violence" was organized on 21<sup>st</sup> June 2007. The event planners received a phone call wanting the event to be cancelled on grounds that one speaker is a sinner and the other a Marxist. The following day the head of sector police for Colomadu, Kridho Baskara, came to the Taman Sari restaurant and asked the owner to cancel the seminar and he barred any food from being served. Later the arrival



of the police disrupted the proceedings and the meeting had to be cancelled. A formal complaint made to the Karanganyar Police Department was never inquired into.

At 28 March 2007, the National Liberation Unity Party (PAPERNAS) was scheduled to hold a demonstration against the Foreign Investment Bill in front of the Shangri-La Hotel, where President Susilo Bambang Yudhoyono was having a meeting about the Millennium Development Goal. However, since the morning, a group of about 100 persons from Front Pembela Islam/FPI (Islam Defender Front), Forum Betawi Rembug/FBR (Betawi Rembug Forum) and Front Anti Komunis Indonesia/FAKI (Indonesian Anti-Communist Front) tried to disturb the declaration of PAPERNAS. This resulted in both sides attacking each other resulting in some persons injured and a number of buses damaged. The police that were present at the occasion took no action to prevent the violence. When Papernas complained to the National Police investigations were promised and so far no inquires have been conducted.

The reports reaching the Asian Legal Resource Centre and its sister organization Asian Human Rights Commission, indicate the continuity of attacks on the minority sect Ahmadiyahs and the National Liberations Unity Party -PAPERNAS. Besides, the prevailing laws require that any religious community desirous of having a place of worship need to have 60per cent approval from the people who are living in the local area where they want to have such worship place. This in reality makes it impossible for the small communities to get a place of worship as it is impossible for them to secure the required percentage from the members of other religions.

The nascent democracy in the country is constantly threatened by all these above described anti-democratic movements. The democratic freedoms enshrined in the constitution are, as demonstrated by the inaction on the part of the state to intervene and safeguard, continued to be denied to its citizens, particularly to its vulnerable groups. The failure to investigate such complaints confirms the feeling that state agents are far from being committed to the democratic values or institutions. The families of the victims of '65 massacre and those that survived torture, imprisonment in '65 continue to be harassed and some of their rights denied.

What appears rather tragic is to hear of reports of religious, ethnic or language conflicts, as was the case in Sulawesi or the present case in W. Papua are being used to suppress the rights of minorities and justify the presence of the military. It is time that Indonesia realizes that presence of army in various parts of the country is not going to augur the nurturing of democracy that it wants to establish. It is only through the establishment of the rule of law, that the realization of the democratic ideals can be guaranteed.

#### **4. A pervasive culture of impunity**

A typical case for impunity for military officers is the rampage of in February 2006. Army personnel went on a rampage and attacked three hamlets, injuring five residents and destroying village property. But only three soldiers received lenient sentences while other perpetrators are still at large in South Sulawesi, see [UP-018-2006](#), dated 2 February 2006.



Impunity has been a significant barrier in Indonesia. It has become firmly entrenched since the 1965 Massacre, in which it is thought that hundreds of thousands were killed and as many as several million were affected, including through lengthy detention, torture and other rights abuses. Thousands of survivors continue to be stigmatised and discriminated against and are not deemed worthy of any form of redress. The events in '65 still have a persistent effect on Indonesia society, fomenting ongoing disharmony, distrust, acrimony and prejudices. The perpetrators remain untouched and enjoy power, wealth and the apparent esteem of the members of the upper echelons of society.

There was a glimmer of hope when a Reformation Era was announced in 1998, that the long tradition of impunity was to be replaced by one of justice for victims and punishment for perpetrators. However, this change has not yet come about, as is demonstrated by many ongoing violations accompanied by impunity, such as in the case of Pasuruan<sup>8</sup> in East Java where the marines went on a rampage killing four civilians and injuring several others in 2007. ([UA-175-2007](#): INDONESIA: At least 5 villagers allegedly shot dead by Navy force in Pasuruan, East Java).

The police and the Attorney General have not pursued the initial investigation. The suspicion is that the military institution may conduct internal hearings and hand out punishment that will not reflect the gravity of the violations in question. The members of the families of the victims are yet to be interviewed by the police. The police are generally reluctant to investigate crimes committed by the members of the armed forces, paving the way for the continuation of the culture of impunity.

Recent attempts by the public and some members of the House of Representatives to have a bill passed that would require the crimes committed by the military on civilians be investigated by the Prosecutor General instead of by the military courts, are yet to bear fruit. Military courts' proceedings are typically lacking in transparency and do not guarantee justice to civilians. Besides, during the hearings, the interests of the aggrieved party cannot be represented by lawyers. It is on these grounds that this bill has been mooted, in the hope that this will allow the impunity enjoyed by the armed forces to be eliminated. However, further campaigning is required in order to have the bill passed.

The afore-mentioned attack on the village of Pasuruan is the most recent in a long line of attacks on innocent civilians. The table at the end of this section provides a list of other attacks and killings that have taken place and the status of legal actions concerning these. In all these cases, justice has eluded the victims and their families until now.

The atrocities committed in a number of cities on the members of the Chinese community in May 1998 also remain without effective investigation or remedy. The identities of those behind this well-orchestrated attack on the Chinese remains unclear. Following

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<sup>8</sup> UA-175-2007: INDONESIA: At least 5 villagers allegedly shot dead by Navy force in Pasuruan, East Java

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2412/>

UP-135-2007: INDONESIA: Fair trial not guaranteed in the prosecution of killers of four villagers under military court

URL: <http://www.ahrchk.net/ua/mainfile.php/2007/2611/>



reports submitted to the UN's CEDAW and CERD committees, visits were made by the Rapporteur of the CEDAW Committee and a number of recommendations were made to the Indonesian government and the NGO community. During the May riots, more than 400 ethnically Chinese women were raped, humiliated in public or burned to death.

Also in 1998, students and civilians protesting against the National Security Bill were shot at either by the police or the military. At least 22 students were killed and hundreds were injured at Trisakti and Semanggi. The families of these victims still continue to press for investigations with regular demonstrations, in order both to have the names of the victims cleared and to put an end to the prevailing culture of impunity in the country.

According to the provisions of the current legislation, either the Attorney General has the option of proceeding in many of the cases with investigation and/or the parliament can decide to set up an ad-hoc human rights court to try past gross violations of human rights. For cases committed after 2000, such a parliamentary decree is not needed. Hence, if no further legislation is passed or existing legislation is amended, torture and crimes against humanity in the past will not be addressed in Indonesia, as political will and leaders who are not connected to past crimes are still lacking

The national human rights commission, Komnas HAM, is not doing enough, claiming that the inquiries into Trisakti and Semanggi have been completed and its findings been submitted to the Attorney General (AG) for further investigations and the potential recommendation to the President that the appointment of the Ad Hoc Human Rights Court should be conducted. The Attorney General however is blaming Komnas HAM for not completing proper investigations. The House of Representatives and the President are also not taking appropriate action and are simply accusing the AG and Komnas HAM of failings, without setting a time-frame for the investigations to be carried out and recommendations to be made. This has been going on for over four years at the expense of the victims and their families. Given its past performance, people are not convinced by promises made by the new members of Komnas HAM concerning inquiries into the gross human rights violations at Talang Sari where attacks on 7 February 1989 allegedly by the members of the military led to torture, disappearance and killing of more than a hundred civilians.

The perpetrators of these crimes still enjoy impunity, without fear of being brought to justice. No senior officers of the military involved in gross human rights violations have so far been prosecuted and convicted. This deeply ingrained impunity leaves the door open for future massacres.

### ***List of gross violations of human rights in Indonesia's past and present.***

<i>Time</i>	<i>Event</i>	<i>Short description</i>	<i>Komnas Ham status</i>	<i>Status with the Attorney General's</i>	<i>Human Rights Court</i>
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*Office*

*status*

1965	65 Massacre	After Suharto's coup millions of communist suspects such as party members were killed or detained for decades.	Not started	
1984	Tanjung Priok			Finished
1997/98	Student disappearance 97/98		Enquiries finished	rejected
1998	Trisakti & Semanggi		Enquiries finished	rejected
1998	May 98 riots		Enquiries finished	rejected
1989, Feb. 7	Talangsari	Soldiers from Garuda Htam Military Resort Command attack village Talangsari in Lampung with rifles. 246 people killed	Ad Hoc Team for enquiry established in Sep. 07 Enquiry ending expected at the End of November 07, Conclusion in December	
1999	East Timor 99			
2001	Abepura			
2003	Wasion		Enquiries finished	
2004	Wamena		Enquiries finished	
2007	Alastlogo		Enquiries finished	
			Conducted in military procedures.	



Investigation  
by the military  
police.  
Prosecution by  
the Military  
Oditur. By the  
time I am  
writing this,  
the case is still  
on the Military  
Oditur.

## 5. Plight of the human rights defenders

There have been series of attacks and threats on the lives of human rights defenders from West Papua who have met with the UN Human Rights Defenders Special Representative (see the appeal that was issued by us: [UA-209-2007](#)<sup>9</sup> and the [update](#) on this case). The last reported attack was on the Chairperson of the Papuan Representative office of the National Human Rights Commission (Komnas HAM), Mr. Albert Rumbekwan on 24<sup>th</sup> of September 2007 and the Catholic priest Catholic Priest Yohanes Djonga Pr a few days earlier.

It is important to note that these persons are under threat or attack allegedly by the members of the armed forces subsequent to their meeting with Ms. Hina Jilani, Special Representative of UN Secretary General on the situation of human rights defenders. It is understood that these complaints have so far not been effectively investigated. The commitment of Indonesia to human rights is dramatically portrayed by the refusal of President Susilo Bambang Yudhoyono to meet Ms. Hina Jilani. This raises a number of questions regarding the commitment of the Indonesian government to the promotion and the protection of human rights.

Despite the fact that the Indonesian government has indicated its commitment to the upholding of human rights through the ratification of a number of conventions and covenants, the people in the country find themselves not only denied of their rights, but also without mechanisms for redress. If civil society actors are threatened and their complaints to UN rapporteurs and the police are simply dismissed as "mental illusions" by members of the police, then what avenues for lodging complaints about violations can the public expect? This is the main concern that is being raised in this report. The refusal by the Indonesian government to pass appropriate legislation corresponding to international standards with regard to civil, political, economic, social and cultural rights, notably protection from torture and the right to redress for victims will be discussed. Additionally, the related culture of impunity that is still prevalent will be covered, without which the present climate of hypocrisy with regard to rights in Indonesia cannot be understood.

<sup>9</sup> URL <http://www.ahrchk.net/ua/mainfile.php/2007/2465/>



Despite the enormous pressure exerted by the local and international civil society organizations, the prosecution is dragging its feet regarding the murder of Munir. Judging from the various reports that are emerging, despite the secrecy surrounding the legal procedures, it is becoming clear that the highest intelligence bodies are involved in the murder of Munir.

## **6. Are human rights taboo in West Papua**

West Papua is under the strict supervision of the Indonesian army which, while suppressing any dissent, is keen on exploiting its vast natural resources in collusion with multinational corporations. This has led to a plethora of human rights violations, which are shielded from the eyes of the members of the international community. While the residents of the region are denied the right to participation in decision making processes or governance, they are also being robbed of their vast natural resources. The high handed manner in which these rights are stifled by the military has in a number of cases led to the death of persons, like Theys Eluay, concerning which there is still no form of justice. While it is impossible to document the exact number of victims of disappearances or killings since journalists or fact-finders themselves are being targeted, a large number of persons are estimated to have either disappeared or been killed in addition to significant civilian displacement due to military campaigns.

Additionally a large number of cases of starvation have been reported. The distances involved in communications and the restrictions imposed on the island do not allow any flow of information. The government-sponsored transmigration program and spontaneous migrants in search of better economic benefits have created serious tensions. Most of the economic benefits are being enjoyed by immigrants.

In this context it is imperative that Indonesia come up with measurable strategies to address all the rights that the state has promised to its citizens, and put a halt to serious human rights violations. The control exercised by the military must be replaced by a civilian administration where locals can play a greater role in governance.

### ***How the right to life is threatened***

A few months ago, the World Health Organization estimated that the number of suicides in Indonesia reaches 50,000 per year, which is roughly equal to 136 per day. Despite its population of 230 million, this is indeed an alarming rate. Economic deprivation is one of the main contributing factors for many to end their life in such a manner.

The World Health Organization has reported other contributing factors include the widening socioeconomic gap between wealthy families and those living in need, increased mobility as people move from one region to another in search of work, and evictions from their homes. It is believed that these numbers possibly could be much higher than the actual situation, as some suicides are likely to be reported as accidents.



The numbers of suicides are extremely high due to unbearable socioeconomic conditions. This year, the World Bank estimated that at least 70 million Indonesians are living under the poverty line, far exceeding the figures reported by the Indonesian Central Bureau of Statistics. Furthermore, more than half of those living under the poverty line are unemployed. There is a noticeable lack of government presence, while the people are facing dire circumstances.

The majority of these people are living in the cities, sadly, under the presence of regional government officers. Most of these people occupy the slums in the city. For example, in Jakarta, the famous Ciliwung River, which flows through the capital, provides refuge for many that live along its banks. Alternatively, others seek refuge under bridges, at the side of railways, near the bus terminus, or empty spaces close to crossroads.

It is a reverie, a hope for a better future, which leads many to move from their rural homeland to a big city. Many feel that in the rural areas, they cannot earn enough money to survive from cultivating their farms and tending their animals. In reality, the government has neglected these rural villagers and has failed to provide sufficient opportunities for them.

Once they have moved to the city to seek their dreams they then discover that in reality, things are very different. The right to education is entitled to all Indonesians under the constitution, yet many in the rural areas lack the sufficient education. Hence, they soon find they are under-qualified to find a job in the cities and are unable to finance their daily needs. Thus the government has failed to provide the basic rights for its people.

The failure of the government to fulfill the people their basic rights has a domino effect. Once people from the rural areas are unable to find a job in the city, they soon turn to begging in the streets and for some, turn to criminal activities. Families arriving from rural areas often resort to using their children to beg. In the worst case scenario, a daughter may become involved in the murky side of prostitution or even trafficking.

Yet Article 27, paragraph 2 of the Constitution clearly stresses that every citizen is entitled to an occupation and an existence fit for a human being. Does this only apply to certain groups in society? Furthermore, Article 28B paragraph 2, states that each child has the right to live, grow up, and develop as well as the right to protection from violence or discrimination. In such poor conditions, it is the children who suffer the most. The World Food Programme in 2007 estimated that at least 13 million children in Indonesia suffer from starvation due to a lack of food, which can be linked to the dire conditions the children live in.

Living in slum areas, (classified as unregistered areas) means that other basic rights are denied; the right to housing and the right to health. Article 28H paragraph 1 stresses that each person has the right to a life of well being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care. But in reality, how many people can really enjoy these basic rights which are guaranteed in their Constitution? In North Jakarta, Teluk Gong, near to Kalijodo Bridge, two roads have been built. The road on the right side of the river is new and still smooth. At the end of



the road one can find a large deluxe apartment building. Meanwhile, the road on the left side is a road full of rocks and pebbles, with rudimentary forms of shelter amongst the bushes. In 2001, the developer started to build the apartment block, people living in similar forms of shelter were evicted and forced to move to live on the opposite side of the river, next to the canal bank. However, there is no water supply and half of the residents do not have electricity. The local government officer has burned down their houses and they have been evicted more than thirty times since 2001, yet they have nowhere else to live.

It is publicly known that poor people have great difficulty in getting treatment in hospital, particularly in government hospitals. Government bureaucracy impedes these poor persons from getting their basic right to healthcare, as they are required to show they possess a “Card for Poor Families” before they can receive treatment and medical prescriptions. Yet many are unable to get this documentation in the first place and so are unable to receive healthcare. There is no moral or legal basis can to justify such ludicrous rationale. Despite numerous promises from parliament members and government officials that poor people will be able to have easy access to healthcare, the reality is quite the opposite. The only exception so far has occurred in Jembrana, Bali.

Jembrana, one of the municipalities in the Province of Bali has successfully provided free education for students from elementary to high school. Moreover, the local government has been able to provide free medical assistance to its people. All Jembrana residents directly obtain a Jembrana Health Insurance Card. Simply by showing this JHI Card, residents can receive a range of basic medical assistance, from hospital to polyclinic, from general doctors to dentists, and both private and government hospitals. Moreover, poor people do not have to pay medical fees if they have to be hospitalized in a local government hospital. The local government is subsidizing the local state budget to compensate for all residents' health insurance. Despite claims that this is possible only because Bali is a wealthier area because of the tourism industry, Jembrana has managed to do this relying largely upon its farm and fishery commerce.

The aforementioned paragraphs explain the Indonesian government's lack of protection and promotion of human rights. The government has neglected the basic human rights of its citizens. The incessant ignorance by the government to fulfil its obligation will only lamentably lead to the demise of the Indonesian people and subsequently, the government.