

REPORT

THE PRACTICE OF TORTURE IN ACEH AND PAPUA 1998-2007

with an annex on the situation of human rights in Timor Leste



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FOREWORD

In May 1998 the Indonesian people rose up and overthrew their military dictator of more than 30 years. It was, without doubt, an extraordinary achievement, secured by the Indonesian people themselves without the complication of foreign assistance. The military backed Suharto New Order regime had been solidly entrenched and its president prided himself on being the grand old man of Asia Pacific politics. Yet it disappeared almost overnight. Indonesia embarked on a process of *reformasi*, literally not mere reform but reformation, the complete restructuring of society.

Overthrowing the Suharto regime, as difficult as that was, has proved far easier than accomplishing *reformasi*. Bringing reformation to Indonesia was never going to be easy. Indonesia has the fourth largest population in the world. Its 240 million people are both highly concentrated and widely dispersed. Half of them, around 120 million people, live on the relatively small island of Java. The other half, another 120 million people, are spread through Indonesia's other 6000 inhabited islands, running 5000 km east to west and 1770 km north to south. By any standard, the challenge of *reformasi* was enormous and enormously complex.

More than that, the political and military opponents of *reformasi* were powerful and entrenched. Suharto was gone but the military that had underpinned his rule was not. On the contrary the generals were well embedded in the political and economic systems. They controlled large parts of the economy through a special form of military-industrial complex and large parts of the land and people through force of arms. The military had ruled Indonesia with an iron fist since 1965 and was not going to retire easily to unfamiliar life in the barracks. In discussing one area of human rights, freedom from torture, this report to the Committee Against Torture shows how entrenched the military have been and how hard the work of *reformasi* is.

The military's determination to resist *reformasi* was evident in its first significant defeat, the ending of the occupation of East Timor. Indonesia's first post Suharto president, BJ Habibie, was compromised by his past association with Suharto – he was Suharto's last vice president. His presidency was not a success and he was eventually rejected by the electorate. Nonetheless, he should be remembered and honoured for having set in train the process that led to the ending of the occupation of East Timor. But there was a warning here too. The military demonstrated its determination to refuse to submit to democratic civilian control. It embarked on a program of murder, displacement and destruction. East Timor gained its independence but the East Timorese people paid heavily for exercising their human right to self determination.

Humiliated first by the Indonesian people and then by the East Timorese, the military took to undermining *reformasi*, provoking and exacerbating inter communal violence and then responding to violence with more repression. There is clear evidence that the violence that erupted in several parts of the archipelago, especially in Sulawesi, between 1990 and 2002 was not the product of religious extremists alone, though they played a major part. There was also military involvement. And there is clear evidence that the military were responsible for severe and widespread violations of human rights.

The violence and the violations were most serious at the extremities of the nation, in West Papua in the east and Aceh in the west. The two situations were very different.

Aceh is strongly Islamic. It considers itself the birthplace of Indonesian Islam. It has rich oil reserves and is responsible for the production of a large share of Indonesia's foreign trade and national income. It had had armed secessionist movements on and off for the entire period since independence, soon after World War II. The stated goal of the latest armed secessionist movement, GAM, was the establishment of an independent Islamic State in Aceh, under Shari'a law. The people of Aceh had long maintained and proclaimed their wish to be independent of Indonesia, without success.

West Papua is also rich in mineral resources but the province as a whole is very poor. West Papuans are ethnically Melanesian and a large number of them are Christians. West Papua had been incorporated into Indonesia in the 1960s with no meaningful consultation with the Papuan people. Some small groups of armed Papuans have had skirmishes with the Indonesian military regularly since then but there has never been a serious armed uprising there. The people show their strong attachment to the symbols of Papuan identity, in particular the Morning Star Flag, but basically they just want to be left alone in their own territory.

In spite of the great differences, the two areas have shared at least one common experience: the people of both wanted to live in accordance with their own laws and customs and as a result were subjected to severe military action with gross human rights violations. However, the situations have diverged greatly in the last three years.

President Susilo Bambang Yudhoyono became president of Indonesia in 2004. He had been a general in the army and was highly regarded. If anyone could bring the military under control, it was thought, he could. This report on torture shows both achievement and failure in his leadership to date.

As a minister in the previous Megawati administration, President Yudhoyono had led the government negotiators who had sought to make peace with GAM in Aceh. Those negotiations led to a short ceasefire that collapsed, it is thought, due to military opposition to peace. When the tsunami of 26 December 2004 devastated Aceh, he seized the opportunity presented by tragedy and brought decades of fighting to an end. This report reflects the change that resulted. The instances of torture it details come overwhelmingly from the period of the conflict. The end of the war has not ended military misconduct and human rights violation in Aceh but it has brought far more peace and security to the people there than they have known for decades.

In West Papua, however, the Yudhoyono government has brought little change. Again, this report shows that. The instances of torture by military and police officers have changed little for many years. They reflect a consistent pattern of gross violation of human rights. The military repress with violence every expression of Papuan sentiment, even the peaceful display of the Morning Star Flag. Papua remains the last part of Indonesia where the military, with the support of the police, has absolute freedom to do whatever it likes whenever it likes.

Part of the problem with the military is that there is no accountability. Human rights violations, both gross and individual, have been routine in Indonesia and remain daily occurrences in parts of the nation, especially in West Papua. Yet there are few instances of military personnel being tried and even fewer of them being convicted and punished. Those few instances concern junior personnel, not the senior officers who at least know or ought to know what is happening and who often bear direct responsibility for ordering and controlling the violence. The extreme violence in East Timor in 1999, for example, has not led to the conviction and punishment of one military person, officer or soldier. There can be no expectation that military violations of human rights will be ended in Indonesia until impunity is ended and individual members of the military are held accountable for their actions.

President Yudhoyono is already regarded as the best president Indonesia has had for decades, perhaps ever. That is good for Indonesia but, really, no great achievement when we consider how poorly Indonesia's peoples have been served by their presidents. Whether he will be a great president, however, is another matter. For greatness, he must show determination to bring the military under lawful civilian control. His initiatives in Aceh must be matched by progress in West Papua. He must succeed in requiring that human rights are protected, promoted and fulfilled throughout the 6000 islands. We all hope for his success. We hope that this is the last report to the Committee Against Torture that has to detail so many instances of human rights violation.

Chris Sidoti

GLOSSARY

BABINSA: *Badan Pembina Desa, Military Community Assistance Program*, military officer/intelligence who is assigned to assist the community, placed in a village and plays a key role to govern the village. The Babinsa is also assigned to become an “ear and eye” of the Indonesia Armed Forces at a village level throughout Indonesia, in the structure of territorial command.

BAIS: *Badan Intelijen Strategis, Strategic Intelligence Body*, an intelligence body under the Indonesian Armed Forces.

BAP: *Berita Acara Pemeriksaan, Police Investigation Report*, which includes the minutes of the police interrogation of the suspect.

BIN: *Badan Intelijen Negara, State Intelligence Body*, an intelligence body under the President.

BKO: *Bawah Kendali Operasi*, the designation of auxiliary forces from outside region and nominally placed under local command.

BRIMOB: *Brigade Mobil, Mobile Brigade*, a special rapid deployment unit within the Police Force.

CAT: **Committee against Torture**

CAVR: *Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste, Commission for Reception, Truth and Reconciliation in East Timor*.

DM: *Darurat Militer, Military Emergency*.

DPR: *Dewan Perwakilan Rakyat, The House of Representatives*.

DS: *Darurat Sipil, Civilian Emergency*.

DOM: *Daerah Operasi Militer, Military Operation Zone*, a designation given to Aceh during anti-insurgency operations so called Operasi Jaring Merah or “Operation Red Net” carried out from 1989 – 1998. The Military also launched similar operation in Papua during 1982 to 1998.

GAM: *Gerakan Aceh Merdeka, Free Aceh Movement*, the most common name for the armed separatist movement that began in Aceh in 1976.

GBHN: *Garis-Garis Besar Haluan Negara, Broad Guidelines of State Policy*.

HAM: *Hak Asasi Manusia, Human Rights*.

IJB/Irjabar: *Irian Jaya Barat, West Irian Jaya*.

KEPPRES: *Keputusan Presiden, Presidential Decree*.

KKR: *Komisi Kebenaran dan Rekonsiliasi, Truth and Reconciliation Commission*.

KODAM: *Komando Daerah Militer, Regional Military Command*. The Chief of Kodam called Panglima Kodam or Pangdam.

KODIM: *Komando Distrik Militer, District Military Command*. The Chief of Kodim called Komandan Kodim (Commander of the Kodim) or Dandim.

KOMNAS HAM: *Komisi Nasional Hak Asasi Manusia, National Commission for Human Rights*.

KOPASSUS: *Komando Pasukan Khusus, Special Forces under the Army.* The Chief of Kopassus called Komandan Jendral (General Commander) or Danjen.

KORAMIL: *Komando Rayon Militer, Sub district Military Command.* The Chief of Koramil called Komandan Koramil (Commander of the Koramil) or Danramil.

KOREM: *Komando Resort Militer, Resort Military Command,* sub-regional military command. The Chief of the Korem called Komandan Korem (Commander of the Korem) or Danrem.

KOSTRAD: *Komando Strategis Angkatan Darat, Army Strategic Reserve Command.* The Chief of Kostrad called Panglima Kostrad or Pangkostrad.

KOTER: *Komando Teritorial, Territorial Command.*

KUHAP: *Kitab Undang-Undang Hukum Acara Pidana, Indonesian Criminal Procedure Code.*

KUHP: *Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code.*

LP: *Lembaga Pemasyarakatan, Prison.*

MPR: *Majelis Permusyawaratan Rakyat, People's Consultative Assembly.*

NAD: *Nanggroe Aceh Darrussalam, Aceh Province.*

OPM: *Organisasi Papua Merdeka, Free Papua Organization.*

OTSUS: *Otonomi Khusus, Special Autonomy.*

PDMD: *Penguasa Darurat Mililiter Daerah, Authority of the Region Military Emergency.*

PDSB: *Penguasa Darurat Sipil Daerah, Authority of the Region Civilian Emergency.*

PERDA: *Peraturan Daerah, By-law.*

PERPU: *Peraturan Pemerintah Pengganti Undang-Undang, Government Regulation in lieu of Law.*

POLDA: *Kepolisian Daerah, Regional Police, Provincial Level Police.* The Chief of the Polda is called Kapolda.

POLRES: *Kepolisian Resort, Resort Police, District Level Police.* The Chief of the Polres is called Kapolres.

POLSEK: *Kepolisian Sektor, Sector Police, Sub-district Level Police.* The Chief of the Polsek is called Kapolsek.

POLRI: *Kepolisian Republik Indonesia, Indonesia Police Forces.*

POM: *Polisi Militer, Military Police.*

SATPOL PP: *Satuan Polisi Pamong Praja, Police Unit under the local government.*

SGI: *Satuan Gabungan Intelijen, Special Task Force Intelligence Unit,* consists of police, army, Kopassus, BAIS and BIN.

TAP MPR: *Ketetapan Majelis Permusyawaratan Rakyat, Decree of the People's Consultative Assembly.*

TBO: *Tenaga Bantuan Operasi, Assistant for (Military) Operation.*

TNI: *Tentara Nasional Indonesia, the Indonesia National Military, Indonesia Armed Forces.* The Chief of the TNI is called Panglima TNI.

UU: *Undang-Undang, Law.*

ONE • Introduction

This shadow report was written expressly for the Committee Against Torture, in light of its May 2008 session, where the Government of Indonesia is scheduled to report on its practical implementation of obligations mandated in the Convention Against Torture. A copy of this report will be presented to Prof. Manfred Nowak, Special rapporteur on torture, in light of his forthcoming visit to Indonesia in 2007.

This report will only focus on two areas within Indonesia; that is Aceh and Papua. The reasons for this limitation are that: [1] the institutions which have prepared this report only have competency to comment on Papua and Aceh, [2] Aceh and Papua both have experienced extended periods of political conflict and also have been designated as Operational Military Zone (DOM) [3] both of these provinces have been given special status in Indonesia, through the new law No. 11/2006 on the Governance of Aceh and through law number 21/2001 regarding Special Autonomy for Papua. On this basis it is hoped that other organisations in Indonesia will further report on crimes of torture on a large and systematic scale in other provinces in Indonesia.

However, as an annex, this paper also draws on a special case study of East Timor, which in the past was called the 27th province of Indonesia, and is now the independent nation of Timor Leste. This case study is included to provide insight into the use of torture from Indonesian authorities between 1975-1999 which has recently been extensively documented by the Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR).

This report delimits the time frame under consideration to the period of 1998-2006 which is referred to as the time of 'reformasi' (reformation) in Indonesia, and is also the period in which the government of Indonesia ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) pursuant to Law Number 5 of 1998 and the International Covenant on Civil and Political Rights pursuant to Law Number 12 of 2005.

The report is divided into eight sections: [I] Introduction [II] Success and failure of the Government of Indonesia to implement Committee's recommendation in 2002 [III] Criticisms of the Government of Indonesia's response to the Concluding Observation in relation to the GOI's Initial Report [IV] Criticisms of the Government of Indonesia's Supplementary Report 2005 [V] Torture Report in Aceh, [VI] Torture Report in Papua, [VII] Conclusion [VIII] Recommendations, Annex A: Comparison with the findings of the CAVR report regarding Timor Leste

1.1 | Explanation of torture and other inhumane acts

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹ It is a right for all people to be free from torture. This right against torture is within the category of *non-derogable rights*, and must be respected in all situations including situations of emergency or war.²

The right against torture is categorized as *jus cogens*, which posits it as the highest norm within international law.³ Those who commit torture are classed as acting against humanity (*hostis humani generis*), as was applied

¹ Article 5 Universal Declaration of Human Rights, 10 December 1948.

² See *common article 3* Geneva Convention 1949 and article 2 section (2) Convention Against Torture.

³ See *the Prosecutor v Anto Furundzija*, Case IT-95-17/1-T, Judgement 10 December 1998, Trial Chamber II, Judge Florence Mumba (Presiding), Judge Antonio Cassese, Judge Richard May. See also *Siderman Blake v Argentine*, the United States Court of Appeals for the Ninth Circuit, 965 F.2d 699; 1992 U.S. App., In discussing the claim of torture the Appeal Court decided that torture is within norm of *jus cogens norms*.

to crimes of the sea and slave trading in the past.⁴ Further, crimes of torture on a large scale can be categorised as *crimes against humanity*.⁵

Article 1 section 1 of the Convention defines torture as any “act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Indonesia became a signatory to the Convention, after the Indonesian Government ratified the Convention in 1998.⁶ The Convention was adopted into Indonesian law through law number 5/1998⁷ which means that the Convention has already become part of the law of Indonesia and must be implemented to the fullest extent.

1.2 | Signature and Ratification of the Convention

An indication of a nation’s commitment to the implementation of the Convention can be seen from the attitude of the Government at the time of signature and ratification of the Convention. The Indonesian Government signed the Convention on 23 October 1985⁸, which was in the time of the New Order regime under the government of President Soeharto.

Once a nation has signed the convention, this in itself indicates that the country has a desire to, or willingness to make an effort to follow the signature with ratification of the convention.⁹ This is also an effort to indicate to the international community that the signatory nation has a desire to put the Convention into practice.¹⁰

⁴ See *Filartiga v Pena Irala* case, 630 F.2d 876 (2d Cir. 1980), 30 June 1980, on remand, 577 F.Supp. 860 (E.D.N.Y. 1984), 10 January 1984.

⁵ See *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte*. In his judgement, Judge Lord Browne-Wilkinson argued that “Ever since 1945, torture on a large scale has featured as one of the crimes against humanity.” [See, for example, the crimes of torture under the Statutes of the International Criminal Tribunal for the Former Yugoslavia, Article 2(b), 5(f), and the International Criminal Tribunal for Rwanda, Article 3(f) and 4(a) and (e)]. Moreover, the Republic of Chile accepted before your Lordships that the international law prohibiting torture has the character of *jus cogens* or a peremptory norm, ie one of those rules of international law which have a particular status. In *Furundzija*’s case at para 153, the tribunal said: The *jus cogens* nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed. International law provides that offences *jus cogens* may be punished by any state because the offenders are ‘common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution’: *Demjanjuk v Petrovsky* (1985) 603 F Supp 1468, 776 F 2d 571”. Judge Lord Hope of Craighead argued, “The Statute of the International Tribunal for ... Yugoslavia ... includes torture in art 5 as one of the crimes against humanity. In para 48 of his Report to the United Nations, the Secretary-General explained that crimes against humanity refer to inhuman acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population. Similar observations appear in the Secretary-General’s Report of 1994 on the Rwanda conflict. Article 3 of the Statute of the International Tribunal for Rwanda included torture as one of the crimes against humanity ‘when committed as part of a widespread or systematic attack against any civilian population’ on national, political, ethnic or other grounds. Article 7 of the Rome Statute contains a similar limitation to acts of widespread or systematic torture”.

⁶ Office of the UNHCHR, Status of Ratifications of the Principal International Human Rights Treaties as of 2 November 2004, available at <http://www.ohchr.org/english/law/cat-ratify.htm>

⁷ Law No. 5/1998 on Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁸ Convention Against Torture, Status of Ratification, available at <http://www.ohchr.org/english/law/cat-ratify.htm>

⁹ Douglass W. Cassel, “International Human Rights Law lecture on September 10, 2002”, Northwestern University School of Law, Chicago.

¹⁰ *Idem*.

Because of this, since 1985, the time when Indonesia signed the Convention, Indonesia has had a moral obligation to adhere to the Convention despite the fact that it has not yet been ratified.

But in reality there were a number of cases of torture with massive numbers of victims carried out by the Indonesian security apparatus in an organised and systematic manner in the period between 1985 and 1998, from the time the Indonesian Government signed the Convention Against Torture until they became an actual party to the Convention. These cases include, among others, the cases of “petrus” or mysterious shootings (1983 – 1986)¹¹, the case of the Jaring Merah (Red Net) Operation in Aceh (1989 – 1998)¹², the case of Kedung Ombo (1985)¹³, the case of Talangsari Lampung (1989)¹⁴, case of Santa Cruz (November 1991)¹⁵, case of Marsinah (1993)¹⁶, case of Timika¹⁷, case of July 27 (1996)¹⁸, case of Waropko, Merauke

¹¹ Mysterious Shooters or Petrus are a method that was used by the apparatus on the pretext of eradicating crime. They were carried out between 1983 and 1986 aimed at hoodlums and former convicts who had previously helped the Government to pronounce Golkar as the winner of the 1981 election. Hundreds of these civilians and volunteers were killed by sniper bullets.

¹² The ‘Jaring Merah’ (Red Net) Operation in Aceh carried out from 1989 to 1998 aimed to eliminate GAM in four districts of Aceh being Pidie, North Aceh, East Aceh and Greater Aceh. During this operation around 15,000 non-organic military personnel including Kopassus (Indonesia Special Forces) were deployed in Aceh. They established many strategic and tactical unit posts (which called *pos sattivis*) which were used for the capture and interrogation of people suspected of being members of GAM, or sympathising with GAM. The military were assisted by the police and civilians recruited as military assistance staff (*cuak*). Whilst Operation Jaring Merah continued many civilian victims were subjected to extraordinary torture in the various *pos sattivis*.

¹³ The Kedung Ombo case began with the flooding of 37 villages, 7 subdistricts in 3 districts of Sragen, Boyolali and Grobogan Central Java as a result of the Government’s development of the Kedung Ombo Dam funded by the World Bank. As many as 5268 families lost their land as a result of the establishment of this dam. The communities in the places that refused the development of the dam were captured and detained by the apparatus. They were tortured whilst detained.

¹⁴ The Talangsari case in Lampung was the case of an attack of the Military Resort Command 043 Garuda Hitam apparatuses led by Colonel A.M. Hendropriyono, Regional Police of Lampung (Polda Lampung) and the local Government (Pemda Lampung) on the Islamic board school in Cihedeung, Dukuh Talangsari III, in the village of Rajavasa Lama, subdistrict Way Jepara, Central Lampung on 7 February 1989. The apparatuses carried out captures, detention, torture and killing of the Tangsari community who were stigmatized as followers of radical Islam. The leader of the people (named Warsidi) was also pointed as a Group Disturbing Security (Gerakan Pengacau Keamanan) and accused of establishing an Islamic state. This case increased the distrust of the Government towards the rejection by the community of the principles of Pancasila. The victims who died as a result of the attacks were noted at 246 people; hundreds were detained and tortured. Those indicted before the Court were accused of subversion according to the section of the law on Subversion No.11/PNPS/1963.

¹⁵ The Santa Cruz case which occurred in November 1991 was carried out by the Indonesian military apparatus against the civilian community who were making a sacred visit to the Santa Cruz cemetery in Dili, East Timor. It is estimated that as many as 271 people died, 278 were injured, 103 admitted to hospital and 270 people reported missing, presumed dead.

¹⁶ The Marsinah case was a case of the death of an activist working for PT. Catur Putra Surya (CPS) Porong – Sidoarjo, East Java, named Marsinah as a result of brutal maltreatment that was thought to have been carried out by the apparatus of the District Military Command 0816 Sidoarjo in the District Military Command Office 0816. After the death of Marsinah, the military apparatus and police made a scenario as if the killing of Marsinah was arranged by the leaders of PT CPS. The leaders of PT.CPS were then captured and detained by police apparatus, accused of planning the murder of Marsinah. Whilst in detention the leaders of PT.CPS, amongst others Yudi Susanto, the Chief Director, and Mutiari, the Head of Personnel, were brutally tortured. Yudi Susanto, as well as being beaten was forced to drink the urine of police apparatus and lick the toilet floor. Mutiari was subjected to physical and psychological torture until the fetus she was carrying aborted.

¹⁷ This case was well-known as Munninghoff’s report as this was reported by Most Rev. H.F.M. Munninghoff, Bishop of Jayapura, on 1 August 1995 to the Indonesian’s Bishops’ Conference entitled “The Report on Human Rights Violations against the Locals around Timika, District of Fak-fak, Irian Jaya” (*Laporan Pelanggaran Hak Asasi Manusia Terhadap Penduduk Lokal di Wilayah Sekitar Timika, Kabupaten Fak-fak, Irian Jaya*). This is the case of torture and extrajudicial killings committed by the security guard of Freeport Indonesia Company against the civilians who lived around the mining operation site.

¹⁸ The 27 July case is a case of an attack on the central office of the PDI on Diponegoro Street in Central Jakarta on the 27th of July 1996 by unknown persons, who are suspected of being military apparatus. This case began with an

(1995)¹⁹, case of the hostage crisis in Loretz National Park, Mapnduma (1996)²⁰, and the Activist Kidnapping case (1997 – 1998)²¹.

Acts of torture that were undertaken by apparatus referred to above are not isolated incidents or cases of individual creativity; rather they became official policy of the Indonesian Government. This was proudly acknowledged by President Soeharto, who, in his memoir “Soeharto: My Thoughts, Words and Deeds”, acknowledged that he himself had authorised the use of shock therapy as one of the methods to be used to overcome security problems and criminal cases, similarly there was a systematic use of “petrus” or mysterious shooters in Indonesia between the years of 1983 – 1986.²²

The use of torture by the Indonesian security apparatus in the period between 1985 – 1998 should have been prohibited, because Indonesia had already signed the Convention Against Torture. As a consequence, Indonesia was already bound, by the operation of Customary International Law, to abide by the Convention as adequately as possible. It could be further asserted that in fact, before Indonesia signed the convention in 1985, under the rules of international law, Indonesia was already bound by Customary International Law as torture is classified as a serious violation of Human Rights that has its base in the law referred to above based on the practice of other countries and on the opinion of legal experts concerning torture cases.

On 9 December 1975, the UN General Assembly passed Resolution 3452 (XXX) on the Declaration on Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although this declaration is not a treaty binding on the member states, as a member of the UN Indonesia has a responsibility to respect the resolution, especially a Resolution that is passed by the UN General Assembly.

Irrespective of the past status of the crime of torture, after ratifying the Convention, Indonesia was bound by the Convention and was required to make all efforts to fulfill its obligations as mandated by the Convention, including: all efforts to protect the community from torture by the state authorities. However, in ratifying the

unequal leadership battle in the PDI office between Megawati and Soerjadi, who was supported by the Government. Soerjadi had the full support of Soeharto because Soeharto was afraid that Megawati would achieve victory at the 1997 elections. Hundreds of Megawati’s supporters who took control of the office are suspected of having fallen victims to torture, disappearances and killings by the military apparatus. The trial on this case did not ever affect the military and the intellectual actors who were behind the attack. In fact Soerjadi also escaped any legal accusations.

¹⁹ This was the case of arbitrary arrest, detention and torture of five civilians committed by the Strategic Armed Forces 432 and the Special Forces Maleo 15 following the incident of shooting on 14 November 1995 in Komen river, Waropko, that killed Blasius Weripang a member of Infantry Battalion 751 Company C and wounded Jumat Muntu, a civilian. The army claimed that the OPM did the shooting and accused the six civilians as the perpetrators, including **Mr Baselius Arimjab Apay, Mr Hendrikus Kowip, Mr Kasimirius Iwop, Mr Benediktus Kua Wamba, Mr Benediktus Beraip, Mr Marius Kamelus Awinman**. They were brought to trial and sentenced from 2-7 year imprisonment. This case was investigated and reported by the Legal Aid Foundation of Jayapura October 1996 entitled “*Insiden Waropko, Laporan Hasil Investigasi Kasus Pelanggaran Hak Azasi Manusia di Desa Waropko, Kecamatan Waropko, Kabupaten Merauke, Irian Jaya*”

²⁰ This case attracted quite intensive international media coverage as some of the 13 hostages were foreign researchers. The army deployed a military operation to set free the hostages but the impact was on the civilians living around the hostage spot. They were targetted by a massive military operation as they were accused of being part of the group who held the hostages: 3 civilians killed, 7 women raped, 16 people tortured. ELSHAM Papua, a Jayapura-based NGO, investigated this case and reported it to KOMNAS HAM in August 1999 entitled “Military Operation to Free Hostages and Human Rights Violations in the Central Range of Irian Jaya”.

²¹ The Activist Kidnapping case occurred in the period between 1997 – 1998. There was a youth group that was critical of Soeharto’s Government. Around 13 activists are still missing to this day. Several activists who are now safe have stated that they were also kidnapped by the Kopassus (Indonesia Special Force) Mawar Team who at that time were under the leadership of TNI Lieutenant General Prabowo Subianto, the son-in-law of Soeharto. The activists were kidnapped and taken to a place that was marked as the Kopassus Head Office in Cijantung. Whilst they were being held captive, the activists experienced terror, intimidation and torture at the hands of the Kopassus apparatuses.

²² Ramadhan K.H., Soeharto: Pikiran, Ucapan dan Tindakan Saya (Soeharto: My Thoughts, Words and Deeds), Lamtoro Gung, 1989, p. 364.

Convention, the Indonesian Government added a **declaration** and made **reservations** in respect of the Convention as follows:

Declaration: “The Government of the Republic of Indonesia declares that the provisions of paragraph 1, 2, and 3 of article 20 of the Convention will have to be implemented in strict compliance with the principles of the sovereignty and territorial integrity of the states”.

Reservation: The Government of the Republic of Indonesia does not consider itself bound by the provision on article 30, paragraph 1, and takes the position that disputes relating to the interpretation and application of the convention which cannot be settled through the channel provided for in paragraph 1 of the said articles, may be referred to the ICJ only with the consent of all parties to the disputes”.

The Indonesian Government, regarding the declaration of article 20 of the convention, explained that “First of all, the Government of Indonesia did not make any reservation to article 20 of the Convention, despite the fact that paragraph 1 of Article 28 of the Convention does allow state parties to do so, to the effect that it does not recognize the competence of the Committee provided for in Article 20. However, my government declares that the provisions of paragraph 1, 2 and 3 of Article 20 will have to be implemented in strict compliance with the principles of the sovereignty and territorial integrity of state parties. Secondly, the said declaration is highly relevant issues for Indonesia in view of the fact that our country is open to the threat of territorial disintegration and that separatist movements to further their own political agenda frequently abuse the notion of human rights. Therefore, although safeguards are needed in this context, I must stress that our declaration was not intended either to suggest that strengthening respect for human rights would undermine our national stability and territorial integrity, or that our recognition of the competence of the Committee as provided for article 20 of the Convention was in doubt”.

The Declaration in relation to article 20 taken by the Indonesian Government indicates that the Government did not have a firm conviction to the implementation of the Convention, this is mentioned because the sentences referring to “**principles of sovereignty**” and “**territorial integrity**”, are fixed principles that cannot be undermined.

With the “**Principles of sovereignty**” becoming the Government’s condition in the declaration, the Government of Indonesia intended to place the principle of national sovereignty “Negara Kesatuan Republik Indonesia” (NKRI) (United Republic of Indonesia), Pancasila and the 1945 Constitution as superior. These principles of sovereignty over-ride universal principles. It follows as a consequence, that the Indonesian Government will pay more respect to national law than international law, in spite of the fact that international law has already been adopted as part of the national law. Thus, if there is a conflict between national law and international law, national law will be regarded as superior to international law. Interconnected with this is the fact that whilst the Convention Against Torture has already been adopted into the national law through law No.5/1998, this law is non-self executing, requiring regulations to follow the law. This tension can be seen in the decisions of Judges in Indonesia who, almost without exception, do not use the above mentioned law as the basis of their decisions; if there is a case of torture carried out by the apparatus, the judges will use KUHP (the Indonesian Penal Code).

It follows then that the words “**and territorial integrity**” mean that the Indonesian Government will do whatever it takes to protect territorial integrity which is the basis of the concept of the NKRI, in spite of the fact that this may involve the use of violent methods. In the Government’s explanation regarding the Declaration, “...Secondly, the said declaration is a highly relevant issues for Indonesia in view of the fact that our country is open to the threat of territorial disintegration and that separatist movements, to further their own political agenda, frequently abuse the notion of human rights. Therefore, although safeguards are needed in this context, I must stress that our declaration was not intended either to suggest that strengthening respect for human rights would undermine our national stability and territorial integrity...” there is a clear indication that the Indonesian Government will above all protect the integrity discussed above as it has until now in Aceh, and other areas of conflict in Indonesia. In cases of torture in Aceh and Papua, the Government

has utilised the stigma of “separatist groups who wish to split from Indonesia” as a justification for the use of torture by apparatus, against people who are accused of taking part in the struggle for this cause.

The Declaration made in connection with article 20(1) of the Convention by the Indonesian Government, indicates that if the Committee receives credible information that clearly indicates that there is a strong suspicion that torture has been carried out in a systematic fashion and practiced in Indonesian territory, the Indonesian Government will work with the Committee to conduct an inquiry and make a Government report **only if this information is not in conflict with the principles of Indonesian sovereignty and its territorial integrity**. If the information is inconsistent with the principles of sovereignty and territorial integrity, no matter how valid the information received may be, the Government of Indonesia will resist working with the Committee.

The Declaration relating to article 20(2) of the Convention, made by the Government of Indonesia indicates that if the Committee tasks its members to carry out a confidential inquiry, then the Indonesian Government will work with the Committee only if the matters referred to do not conflict with the principles of Indonesian sovereignty and territorial integrity. In other words, the problem for the confidential inquiry and members of the Committee who carry out this confidential inquiry, is that they must respect the sovereignty of Indonesia and its territorial integrity.

The Declaration in connection with article 20(3) of the Convention made by the Indonesian Government indicates that the Indonesian Government will work with the Committee only if their visit to Indonesia will not embarrass the Indonesian Government or not cause the Indonesian Government to lose credibility in the eyes of the Indonesian and International communities.

The reservation to article 30(1) of the Convention taken by the Indonesian Government indicates that the Indonesian Government will agree to take disputes regarding interpretation or application of the Convention that cannot be finalised via negotiation or arbitration, to the International Court of Justice, only with the agreement of all parties to the dispute. This could be interpreted as meaning that the Indonesian Government will refuse to take these problems to the International Court of Justice because these matters will embarrass the Government in the eyes of their own community and the international community.²³

Indonesia, as a party to the Convention, may make a declaration of intention in relation to article 21(1) of the Convention which states: “A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration.”

The Government of Indonesia has never made such a declaration recognising the competence of the Committee to receive and consider communications if another member state makes a protest to Indonesia alleging that Indonesian has breached its responsibilities under the Convention. This means that Indonesia still does not fully intend to give effect to Convention in its entirety.

In relation to the serious violations of Human Rights in Aceh and Papua, other member states could not send communications to the Committee, because the pre-requisite for receipt by the Commission must be a declaration from Indonesia acknowledging the competence of the Committee to hear the matter. Because

²³ See the explanation of the Government of Indonesia on the Initial Report par. 2, 3, 7, which said that according to the Pancasila (5 principles) as the Philosophical basis of the Indonesian State – considered as the very basic legal ground for all laws and regulations in Indonesia – the fourth principle of Pancasila indicated that Pancasila democracy calls for decision making through deliberations, or “*musyawarah*”, to reach consensus, or “*mufakat*”. The establishment of the Commission on Truth and Friendship (CTF) between Indonesia and East Timor to solve the gross human rights abuses in East Timor “with polite and respectful manner” is an example that Indonesia prefers to solve the dispute with “deliberation to reach consensus”, rather than bringing the dispute to the International Court of Justice.

Indonesia has still not made such a declaration, other member states who claim that Indonesia has not fulfilled its responsibilities under the Convention, can only send information to the Special Rapporteur on Torture.

Article 22(1) of the Convention states that “A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration”.

But Indonesia has also not made a declaration that acknowledges the competence of the Committee to receive and consider communications from an individual or on behalf of an individual. This prevents victims from having the opportunity to make claims that Indonesia has violated the Convention.

1.3 | Responsibility of the government of Indonesia after ratification

After ratifying the Convention, the Indonesian government was required to take responsibility for practical implementation of obligations mandated in the Convention²⁴, these being:

- The Government of Indonesia must take legislative, administrative, legal and other necessary steps to prevent torture. In addition, measures should also be taken to harmonise the laws in Indonesia with the Convention, that is to remove all regulations which conflict with the Convention and include the definition of torture from the Convention in the Criminal Code and other regulations;
- The Government of Indonesian cannot use the justifications of war, threat of war, internal political instability, or other emergency situations, as basis for allowing the use of torture in Indonesia;
- Superior orders cannot be used to legitimise torture. The Government of Indonesia must strengthen these intentions through domestic regulations and laws, and make serious efforts to enforce those regulations;
- The Government of Indonesia cannot expel, return or extradite a person to another country, if there is reasonably strong suspicion of danger that the person will experience torture;
- The Government of Indonesia must regulate the act of torture as a criminal act according to the criminal law of Indonesia. Similarly crimes must include attempted torture and committing acts which assist or participate in torture;
- The Government of Indonesia must regulate that acts of torture are punished appropriately with the grave nature of the crime;
- The Government of Indonesia must take the necessary steps in ensuring its jurisdiction in relation to all types of torture which occurs within its jurisdiction or where the perpetrator or victim (if appropriate) is a citizen of Indonesia.
- If there is certainty and there is an investigation in Indonesia in relation to foreigners suspected of committing torture, then the Government of Indonesia must detain that person, or take other legal steps to guarantee their presence. The Government of Indonesia has the responsibility to protect the rights of the foreign suspects in contacting the representatives of their country. The Government of Indonesia can extradite a foreigner suspected of torture, or if not then they can process the case through the Indonesian justice system;
- The Government of Indonesia must guarantee a fair trial for those suspected of torture;
- The Government of Indonesia must include crimes of torture as crimes which can be extradited in every extradition agreement which is made between Indonesia and other countries. If there is no extradition arrangement, then the government of Indonesia must use the Convention as a basis for extradition;
- The Government of Indonesia and other governments who have ratified the Convention must each provide assistance to the fullest extent possible to resolve cases of torture;
- The Government of Indonesia must guarantee that education and information about the prohibition on all forms of torture is included in lessons for legal officers, those within civil and military fields, health workers, public officials and others who work with detention, interrogation or who deal with those who are arrested, detained or imprisoned;

²⁴ See articles 2-16 of the Convention.

- The Government of Indonesia must keep under systematic review regulations regarding interrogation, instructions, methods, customs and regulations for detention which are done towards people who are arrested, detained or imprisoned in every jurisdiction, with the intention to prevent occurrence of torture.
- The Government of Indonesia must guarantee that in instances where the authorities must carry out an investigation, they are carried out quickly and without bias, and where there is sufficiently strong reasons to believe that torture has occurred it is dealt with by the authorised legal authorities;
- The Government of Indonesia must guarantee that every person who says that they have been tortured in Indonesia, has the right to bring a legal action, and their case will be investigated fairly by the authorities;
- The Government of Indonesia must also guarantee that people who bring a legal action and those who are witnesses are protected from bad or intimidating acts by the perpetrators, as resulting from the indictment or testimony they provide;
- The Government of Indonesia must guarantee that within the legal system, victims of torture can be compensated and have the right to compensation that is fair and appropriate, including providing the means for rehabilitation. If the victim dies as a result of the torture, the next of kin has the right to obtain compensation.
- The Government of Indonesia must guarantee that every statement which is provided as a result of torture will not be used as evidence;
- The Government of Indonesia must prohibit the occurrence of acts or punishments which are harsh, not humane, or degrade human values, which are not included in the acts of torture articulated in article 1 of the Convention.

In addition to the responsibilities detailed above, as a signatory, Indonesia also has the duty to report on the implementation of this Convention to the Committee.

The following sections of the report provide a report of what has occurred in Aceh and Papua to assist in making an assessment of what the Government of Indonesia has done in relation to the duties outlined above. This analysis includes a critical response to the success and failure of the Government of Indonesia to implement the Committee's recommendation in 2002, the Government of Indonesia's response to the Concluding Observation²⁵ and the supplementary report in 2005²⁶.

²⁵ Committee Against Torture, 27th session, Consideration of Reports Submitted by State parties under article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, CAT/C/XXVII Concl.3, November 22, 2001, known as Concluding Observation/Comments.
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1853a70025ce7646c1256b11004f0a2b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1853a70025ce7646c1256b11004f0a2b?Opendocument)

²⁶ Committee Against Torture, Supplementary Report,
<http://indonesia.ahrchk.net/docs/IndonesianCATReport2005.pdf>

T W O • The Success and Failure of the Government of Indonesia to implement the Committee's recommendations in 2002

In response to the Committee's concern and recommendations, the Government of Indonesia has given explanations to the Committee in its Supplementary Report submitted on 23 September 2005 (CAT/C/72/Add.1). See our analysis in section 3 and 4 concerning the Government of Indonesia's response and its Supplementary Report.

In this section, we will analyze the success and failure of the Government of Indonesia to implement the Committee's recommendation in 2002 as follows:

- (a) **Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted;**

The Indonesian Government's initial report in 2001 to the Committee stated that Indonesia had taken effective legislative, administrative and judicial steps with the intent of preventing the incidence of torture in all parts of Indonesia. The Government went on to explain that there were a number of laws and regulations that refer to torture as a criminal act:

- ∞ Article 25 TAP MPR (the Decree of the People's Consultative Assembly) No. 17/1998 about Human Rights which defines torture as an act which injures the values of humanity.
- ∞ Article 1 section 4 of Law No. 39/1999 on Human Rights states that "torture is any activity which is undertaken intentionally so as to cause someone severe pain or suffering, whether physical or mental, in order to obtain a confession or information from that person 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".
- ∞ Article 422 of the KUHP (the Indonesia Penal Code) states that: "Any State official who in a criminal case uses coercion, whether to force somebody to confess, or to persuade someone in order to give information, will be put in jail for a maximum of four years."
- ∞ Article 9 (f) of Law Number 26/2000 on Human Rights Court defines torture as follows: "deliberately and illegally acts causing gross pain or suffering, physical or mental, of a detainee or a person under surveillance".

As indicated above, Indonesia does have a set of regulations which state that torture is a criminal act, but the weakness within the regulations referred to above is that the Indonesian Government has not yet brought the definition of torture in line with article 1 (1) of the Convention Against Torture as can be seen in article 25 of TAP MPR No. 17/1998; article 1 (4) of Law No. 39/1999 regarding Human Rights; article 422 of the Indonesia Criminal Code (KUHP) and article 9 (f) of Law No. 26/2000 about the Human Rights Court. **In other words, the Government of Indonesia has not yet integrated torture into Indonesian law, especially into the Indonesia Criminal Code which is fundamental to the criminal justice system in Indonesia.**

The differences between the definitions provide different consequences in whether an action constitutes torture or not. The differences can also result in inappropriately light sentences being handed down to offenders, such as those convicted pursuant to article 422 of the Criminal Code (KUHP) which provides that the maximum sentence for torture is 4 years imprisonment.

Further, in Indonesia there is still not a uniform definition of torture, so that the definition provided in the Criminal Code is different to that contained in Law No. 39/1999 on Human Rights and Law No. 26/2000 on the Human Rights Court. The consequence of this has been that the crime of torture can only be tried in circumstances where the crime can be categorised as a serious violation against human rights within the context of Genocide or Crimes Against Humanity. There are still no cases in which the crimes have been

categorised as being gross violations of human rights, and therefore offenders have only been able to be prosecuted in accordance with article 422 KUHP, which only allows for a very light penalty.

Regulations regarding torture in Indonesia are not implemented seriously by law enforcement officials. Torture in Aceh and Papua has been committed by the military, police and paramilitary forces. Torture is regarded as one of their most effective methods, and is conducted repeatedly and systematically. But to date, those perpetrators of torture who have been charged and who have faced court, are only those of very low rank. Furthermore, the sentence delivered to perpetrators of torture is a far cry from that sought by the victim in order to feel that justice has been served. A torture case proceeding to court has generally only occurred when there has been a very strong reaction by the community to the acts perpetrated. When there is not sufficient pressure from the community the offender may simply be released without being subject to legal processes.

Numerous cases of torture which occurred between 1998-2001, including the cases of Gedung KNPI, Idi Cut, Simpang KKA, Tengku Bantayyah and others, have shown that perpetrators are afforded impunity. If there is any attempt to pursue justice, it is generally only for severe cases that have attracted public attention. Additionally, only those of low rank have been sentenced and the sentences have been light, generally only one third of the maximum punishment.

In Papua, between 1998- 2001 there had not been any persons brought to court charged with torture.

The military, police and paramilitaries have continued to take violent action, including torture against civil society in Aceh and Papua since 1998. Part of the reason for why this conduct is ongoing until now is because perpetrators are afforded impunity in respect to acts committed in Aceh and Papua.

The Indonesian government included in its report a number of cases that were intended to demonstrate compliance with the Convention in Aceh. The example provided was that of January 1999, where 23 military personnel were sentenced to between one and four years imprisonment and discharged from the military for torture of Acehnese detainees.²⁷ The crimes perpetrated by the accused were very serious and involved beating five detainees to death.²⁸ The serious nature of the crimes was not reflected in the charges brought; being article 422 of the Penal Code which provides for a maximum sentence of 4 years for an official using coercive measures to obtain a confession. By applying article 422 of the Penal Code as the primary charge, and then sentencing the perpetrators to between 1 and 4 years imprisonment, distorted the provisions provided for by the Penal Code. The offenders in this case of torture resulting in death should have in fact been prosecuted under article 338 relating to murder, with a maximum sentence of 15 years imprisonment.

- (b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment and torture by police and other officials and, where the findings warrant it, to prosecute and punish perpetrators, including senior officials.**

The Indonesian Government does not have systematic interrogation rules, instructions, methods and practices. Administration is a significant problem in Indonesia, being not only weak, but also thwarted by corrupt government administration. As a result, there are many cases of detention that are not reported, let alone cases of torture.

The provisions of the Penal Code – the fundamental foundation of the actions of state apparatus are frequently violated. For example, the regulations state that there must be a warrant for arrest and detention and that this must be provided to the detainee/family of the detainee; however this is rarely practiced. The failure to provide this warrant frequently causes confusion for the families of detainees if the detainee is detained by the authorities without prior notice. When the family seeks to make inquiries at the police station, they are given the run-around by the police, sometimes extorted for illegal payments, or even worse, end up in detention themselves.

²⁷ Initial Report par. 62.

²⁸ Amnesty International, Indonesia: Briefing for ASEM Foreign Minister Meeting, March 1999.

- (c) **Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture will be appropriately prosecuted;**

In its report to the Committee²⁹, the Indonesian government sought to demonstrate that all acts of torture are crimes in Indonesia and must be punished. Furthermore, the Indonesian government explained that proof of this could be found in:

- Article 39 of the Law No. 39/1999 on Human Rights states that those convicted of torture “will be punished with imprisonment for 15 years, and at least 5 years”.
- Article 422 of the Penal Code states that: “Any State official who in a criminal case uses coercion, whether to force somebody to confess, or to persuade someone in order to give obtain information, will be imprisoned for a maximum of four years.”

However, in practice Indonesia continues to afford impunity to the state security apparatus. Indonesia is yet to include types of human rights violations, including torture, as crimes in the Penal Code. As a result, cases of human rights violations can only be prosecuted under ordinary criminal law, which are afforded inappropriately light punishments. Article 422 of the Penal Code is regarded as the article outlawing torture, yet it allows for a maximum sentence of only four years against the offender. Irrespective of this, offenders in cases of torture tried under article 422 of the Penal Code generally receive very light sentences of around one third of the maximum four-year sentence.

With respect to torture cases in Aceh, only a small number of rights violators ever appear in court. These cases are generally regarded as ordinary criminal cases or disciplinary matters and are tried in a military court, which provides significant opportunity for the offender to escape legal sanction. In Papua, justice has not been served for those within the police and military apparatus who perpetrated torture. As noted in part 6 of the report, many cases of torture were documented as being carried out in Papua between 1998- 2001 by the TNI and Brimob Papua.

Article 39 of Law No 26/2000 regarding the Human Rights Court, stipulates that sentences for military personnel who carry out torture, can only be applied if the offender is charged with serious human rights violations and put before the Human Rights Court or an Ad-Hoc Human Rights Trial. Since the law on human rights trials came into effect, only one case has been tried, that is the trials regarding allegations of gross human rights violations in East Timor which acquitted all of the accused except one civilian – Eurico Guterres – as the militia leader who gave support to Indonesia. Cases of torture in Aceh have never been regarded as gross human rights violations, and so article 39 of Law No. 26/2000 has never been invoked.

With respect to torture cases in Aceh, Indonesia has clearly violated Article 2 (3) of the Convention. In his statement apologising to the people of Aceh, General Wiranto said that no members of state authorities would be tried for their acts in Aceh because they were simply carrying out their duties.³⁰ Further, the People’s Consultative Assembly in its Decree No. X/MPR/2001 ordered the President to try perpetrators of human rights violations in Aceh, and the People’s Consultative Assembly Decree No. VI/MPR/2002 specifically orders the President to establish a fact-finding team to investigate gross violations of human rights in Aceh. However human rights trials for Aceh have never been held.³¹

The case involving a massacre of Tengku Bantaqiyah and his followers by military personnel on 23 July 1999 only tried those with a rank equivalent of Captain and exonerated those officers with a middle to high rank who were involved in this incident, including the Commander of the Military Resort Command (*Korem*) Lilawangsa Colonel Syafnil Armen.³² This is a clear violation by Indonesia of Article 2 (3) of the Convention.

²⁹ See Initial Report 2001 par. 75-84.

³⁰ Human Rights Watch, “The War in Aceh”, Vol. 13 No. 4 (C), August 2001, p. 8.

³¹ Kompas, “Pengadilan HAM Ad-Hoc belum pernah terwujud di Aceh” (the Ad-Hoc Human Rights Court never been held in Aceh) , September 20, 2002, <http://www.kompas.com/kompas-cetak/0209/20/nasional/peng07.htm>

³² The perpetrator from a high rank military/police was then promoted to a higher rank as an honor from the authority for combatting rebels—although using torture is the duty of the military/police. Colonel Syafnil Armen who allegedly ordered the massacre of Tengku Bantaqiyah and his followers right now enjoys his position as the

Also in Papua, the acts of torture committed by the military and police between 1998- 2001 have rarely been taken to the court; however, the court proceedings have been questionable. For example, in the Abepura case of 2000, which could be classified as a gross violation of human rights, the police officers who perpetrated torture were only given an administrative punishment.

- (d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas HAM), and ensure that all its reports to the Attorney General are published in a timely fashion;**

See our report in section 3 page 46-47 and 50 for more detail. The Government of Indonesia has failed to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas HAM), and also failed to ensure that all its reports to the Attorney General are published in a timely fashion.

- (e) Ensure that the proposed ad hoc human rights court for East Timor will have the capacity to consider the many human rights abuses which were alleged to have occurred there during the period between 1 January and 25 October 1999;**

The Government of Indonesia has failed to bring the perpetrators of gross violations of human rights in East Timor before justice. Although the Government had set up an ad hoc human rights court, all the perpetrators have been acquitted by the court, except one civilian: Eurico Guterres³³.

Instead, the Government of Indonesia and the Government of Timor Leste set up a truth and friendship committee (*Komisi Kebenaran dan Persahabatan or KKP*), which does not have a power to prosecute the perpetrators. The KKP “has limited parameters to establish the truth and bring about reconciliation. The UN however has distanced itself from the process because it is concerned about the possible outcome, particularly in relation to amnesties. So far, the Commission has been a failure as the Indonesian refuse to admit what was done in East Timor during the occupation”³⁴.

- (f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past are investigated and, where appropriate, prosecuted in Indonesian courts;**

The Government of Indonesia has failed to implement this recommendation. See torture cases in Aceh in section 5 and East Timor cases in Annex A.

- (g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency;**

Police reform has been in place since 2000 when the police force was formally separated from the Indonesian Military (*Angkatan Bersenjata Republik Indonesia or ABRI*). But after seven years of being separated from the military, the police institution has not become a civil institution. Police force and its personnel are still far from respecting humanistic values - including the adherence to human rights - since it still retains its military and violent demeanor. Police brutality consistently occurred in many places in Indonesia, including in Aceh and Papua, and also in other regions.

The militaristic nature of the police institution, which was inherited from the past, becomes one of the crucial factors which sustain police brutal manners in a transitional period. In addition, there is an absence of fundamental change in police cultural-structure. We can see this in the preservation of Mobile Brigade (*Brigade Mobil or Brimob*) as a combat force. Another example of this is the image of police officers as knights

Chief of the Intelligence Body of the Indonesian Armed Forces (Badan Intelijen Strategis or BAIS) with his rank as Major General.

³³ *Report to the Secretary-General of the Commission of Experts* which states very clearly that Indonesia has failed to do a decent job. See footnote no. 244 of this report.

³⁴ Report on Human Rights Fact-Finding Mission to East Timor 23 April-27 April 2007 by All-Party Parliamentary Human Rights, United Kingdoms, p. 14 (presented in London mid-July 2007).

or warriors born to defeat the enemy of the state and society³⁵ as rooted in its doctrine of *Tri Brata-Catur Prasetya*, which originated from the context of revolution. These factors have influenced the institution, especially to brutal police personnels.

Facts on the implementation of excessive violence demonstrate how police brutality becomes the most effective method which is then customized internally by the Indonesian National Police in dealing with law enforcement and when coping with demonstrations. Police brutality also becomes an interesting behavior as shown on highly-rated television programmes and newspapers. It is likely that the indecent manners of the police become legitimated and justified amongst the society.

Police brutality takes place in structural cases (agricultural conflict and industrial disputes), political cases (dissident, anti-militarist demonstrations), criminal cases (drug abuse, rape, theft), and popular cases of terrorism. Not surprisingly,, police brutality does not occur in cases involving high-profile entrepreneurs or former politicians and their family.

On the particular issue of terrorism, in the last five years police officers hold the justification to perform brutal acts to the civilian, due to the international anti-terrorism campaign, i.e. conducting arbitrary and non-procedural arrest and detainment of specific groups accused of having networks with international terrorists.

The emergence of a militaristic culture within the police force and the continuous police brutality reflects the exact character of the ruling regime. This happens since the role of the police as a state instrument is the manifestation of the act of the regime.

In a transitional era, the position of Chief of Indonesian National Police is directly under the President. This illustrates a strong relation between the authority and police deviance³⁶, including the excessive use of force by police institution. The structure puts police force, along with their brutal conducts, as part of the ruling regime. Police tasks are more focused on the effort to support and justify the authority, instead of civil servants who protect the people. This structure opens the possibility for the authority to politicize the police institution.

Police officers are state apparatus with the obligation to protect the people in the process of law enforcement, without using excessive force. Meanwhile, in Indonesia, police officers act ruthlessly as civil servants, and violate the law and human rights. Consequently, there are no appropriate punishments for the perpetrator and this contributes to overall impunity in Indonesia.

In the past, particularly in the New Order era, police brutality was accepted as part of the authoritarian regime. This violent conduct functioned as one of the authority's methods to curb civilian freedom. Although roles of police officers were minimized by the military, in certain events – especially in coping with critical parts of society or law enforcement – police brutality emerged as the justification of the authority. Therefore, police brutality is not measured as a crime that must be punished and altered by the authority.

In a transitional period, police brutality emerges as a part of the selective, capitalistic, *draconian* and corrupt nature of the regime. The selective character occurs when the regime claims to acknowledge human rights and democratic values but at the same time it denies excessive use of force and human rights violations by its officers. In this period, the authority does give freedom to the civilian people, but in certain areas it behaves

³⁵ Refer to Tri Brata-Catur Prasetya doctrine and the interpretation in Tri Brata-Catur Prasetya book (history, perspective and its prospects), Police General (retired) Kunarto, editor, especially in the writing by Prof Djoko Soetono, "*Arti Tri Brata untuk Revolusi Indonesia*" ("The Meaning of Tri Brata for Indonesian Revolution"), Jakarta: PT Cipta Manunggal, 1997, p. 35.

³⁶VCD on Banjarnegara police internal gathering that contains briefings from Chief of Banyumas Police Kombes Achmad Afflus Maparesa and Chief of Banjarnegara Resort Police Ajun Komisariss Besar Widiyanto Pusoko advising police officers and families to choose presidential candidate Megawati-Hasyim Muzadi in Presidential Election 2004, is a proof on hints upon authority involvement (in this case, President Megawati Soekarnoputri) in mobilizing the police institution to win the election. Before that, one of the wives of Bintara police officer in Tulungagung, East Java, confessed that the wives were recommended to choose PDI Perjuangan in Legislative Election and Megawati in Presidential Election. This campaign was first given by the wife of Chief of Tulungagung Police in Bhayangkari, Wives Gathering, See *Tempo Magazine*, edition August 2-8, 2004.

selectively by stagnantly allowing brutal acts by police officers. For instance, through insolent procedures in dealing with terrorism cases, strict control over the human rights activists in Aceh and Papua and improper course of action in coping with students' demonstrations. See our report on Aceh in section 5 and Papua in section 6 for more details.

Within the capitalistic nature of the ruling regime, the police brutality corresponds to the interests of the authority and financier. The capitalist supremacy expanded during the New Order period gave enormous power to extractive industries which eventually contributed to excessive use of force by police officers. The offensive shooting of farmers in Bulukumba, South Sulawesi was one example of emerging interests between authority and big financiers.³⁷

Furthermore, domestic and international terrorism, coupled with peoples pressure on the government to resolve the problems, place police brutality as an integrated part of the *draconian* character of the state. In the name of security, human rights and freedom, values have to be set aside to retain political stability threatened by terrorism. Consequently, police brutality can be seen in the ruthless arrest of Moslem activists, for example in the case of Abu Fida in Surabaya on August 2004, see our report in section 4 footnotes no. 63.

Subsequently, the brutal treatments of police officers also collaborate with corrupt power. In order to protect corrupt entrepreneurs from public pressure hoping for a fair trial, vicious actions from the officers have become the chosen method to deal with demonstrations. For example, brutal actions by police officers in handling demonstrations against the chairman of the House of Representatives (DPR), for Akbar Tanjung to be punished and given fair trial. Akbar Tanjung was allegedly involved in the corruption of IDR 40 billion (around US\$ 4,000,000) of the *Bulog* non-budgetary funds. His trial was expected to be away from any political interests in the name of the supremacy of law and free from filthy politician manipulation.³⁸

Police brutality in a transitional period reflects the nature of the police institution and ruling regime in using excessive use of force in law enforcement processes. Lack of correction from the authority regarding police brutality shows how the ruling regime allows and approves violent manners. Even when there are attempts to give punishment, the penalty still emphasizes administrative-indisciplinary aspects. Under this kind of regime, the future of law and human rights enforcement remains uncertain.

- (h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any legal proceedings, except against the torturer;**

The Government of Indonesia does not yet reduce the length of pre-trial detention in its Criminal Procedure Code. Further, it applies prolonged detention for the suspect of a terrorist act.³⁹

The Government of Indonesia has maintained that complainants and witnesses will be afforded protection on the basis that Indonesia has instituted the following regulations:

³⁷ Deprivation of people's land and violation of human rights in Bulukumba is the implication of various legalization upon pressure from PP London Sumatera in conquering people's land by the authority and local police officers since 1980. *Laporan Solidaritas Nasional untuk Bulukumba* (Report by National Solidarity for Bulukumba), 2003.

³⁸ Police brutality on February 12, 2005, only aimed at the crowd demanding that Akbar Tanjung should receive a fair trial for the sake of law supremacy, freed from filthy politicians. There are also supporters for Akbar Tanjung, but they did not receive any brutal actions. On a first level, in Central Jakarta District Court, and on the second level, in High Court Jakarta, Akbar Tanjung was affirmed as a suspect with three years in prison; while a controversial Supreme Court controversial on February 12, 2004 declared that Akbar Tanjung was not guilty. *Kompas*, February 13, 2004; *Suara Merdeka*, February 13, 2004, and *Suara Merdeka*, February 5, 2004.

³⁹ See Government Regulation in lieu of Law (Perpu) No. 1/ 2002 which then passed by the Government and the House of Representative as Law No. 15/2003 on the Elimination of Terrorism Criminal Act article 25, in contradiction with the Indonesia Criminal Procedure Code (KUHAP), stipulated that for the investigation and prosecution, the investigator is given authority to detain the suspect for a maximum period of 6 (six) months. Also in Article 28, where the investigator can detain anyone who is suspected of committing a terrorist criminal act based on *initial proof which is adequate* for a maximum period of 7 x 24 hours.

- Government Regulation No. 27/1983 on the Implementation of the Law of Criminal Procedure provides for the possibility of complaint to the competent authorities.
- Article 19 of Law No. 26/2000 on Human Rights Court refers to steps that should be taken to conduct an investigation.
- Chapter V of Law No. 26/2000 in general refers to the protection of victims and witnesses of torture, and article 34 makes clear reference to the protection of victims and witnesses as follows: Article 34, paragraph (1), “All victims and witnesses of serious human rights violations have the right to protection from physical and psychological threat, interference, harassment and violence by any party”, and article 34, paragraph (2) states the kind of protection referred in to in paragraph (1) is “the responsibility of the law enforcement and security apparatus at no cost.” Article 34 paragraph (3) states that “details of procedures for protection of victims and witnesses will be determined in Government Regulation.”⁴⁰

But in reality, both victims of torture who make complaints and witnesses, face extreme difficulties and do not receive legal protection. The reason for this is that often the perpetrators are members of the security apparatus, and as the state system still largely upholds impunity in relation to state officials, it remains extremely difficult to make complaints against state authorities. In addition, the legal system in Indonesia is known to be very corrupt, which means that state authorities who process such complaints are likely to ask for bribes, and there are no guarantees that victims who make complaints and witnesses, will be given protection.

Furthermore, the legal basis for protection put forward by the government in Law No. 26/2000 on human rights courts, is not applied in practice in Aceh or Papua in relation to torture as to date there has not been one single case of torture in Aceh or Papua that has been processed according to this law. The Government has not set up a human rights tribunal for cases of torture or other gross violations of human rights in Aceh or Papua, and therefore, to argue compliance with the Convention on the basis of this law, is irrelevant.

- (i) **Ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture, in accordance with article 3;**

See the case of Hambali and Umar Al-Faruq, the suspects of a terrorist act in section 4.. It shows that the Government of Indonesia has failed to implement this recommendation.

- (j) **Ensure that human rights defenders are protected from harassment, threats and other attacks;**

Human rights defenders in Indonesia continue to be targeted, especially if they live in conflict areas such as Aceh and Papua. Imparsial noted that the case of Human Rights Defenders has increased both quantitatively and qualitatively.

The Special Representative of the UN Secretary General on the Protection of Human Rights Defender, Ms. Hina Jilani has just visited Indonesia on the 5th –12th of June 2007 and in her press statement concluding her visit to Indonesia⁴¹, she notes that the prospects for the promotion of human rights had been considerably improved in the recent past. However, she also notes that many of the measures that relate to human rights in general may create awareness on the role of human rights defenders and facilitate their work, but they do not address the serious issue of their protection. No concrete initiatives have yet been taken to enact laws, to create institutions and to institute procedures that deal directly with the protection of human rights defenders or with accountability for any harm or arbitrary action against them.

The Special Representative strongly recommends the setting up of mechanisms to investigate complaints of violations committed against human rights defenders when they are conducting activities for advocacy and

⁴⁰ See Initial Report par. 111.

⁴¹ See the full text of the Press Statement of the Special Representative of the Secretary General on the Situation of Human Rights Defenders, Ms Hina Jilani, concluding her visit to Indonesia, <http://www.un.or.id/press.asp?Act=1&FileID=20070612-1&lang=1>

monitoring, or are reporting human rights violations. She also urges the government to review administrative procedures in order to remove restrictive regulations that impede the right of defenders to freedom of assembly and of association. She further recommends that procedures be instituted to prevent the prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights. For this purpose, it is important also to sensitize the judicial and prosecutorial officials as well as the police so that human rights activities are not criminalized.

The Special Representative is deeply concerned by the testimonies that she has heard indicating the continuing activities of the police, the military and other security and intelligence agencies that are aimed at harassment and intimidation of defenders or at restricting their access to victims and to sites of human rights violations. She found this trend more pronounced in Papua.

- (k) Reinforce human rights education to provide guidelines and training, regarding in particular the prohibition of torture, for law enforcement officials, judges, and medical personnel;**

The Indonesian government, in its report to the Committee, indicated that members of police, military and judges are given regular education and are encouraged to attend courses on human rights. Furthermore, the government explained that members of the police, including the Mobile Brigade (Brimob), in particular those serving in conflict areas such as Aceh and Papua have undergone full training in human rights.⁴² But the actual situation on the ground indicates that there are still numerous incidents of torture committed by members of the military, police and Brimob irrespective of the fact that they have received training in human rights. In fact, the intensity and nature of torture in Aceh was intensified during the period ending 2001. Many examples cited in section 5 of this report show that torture is used under the pretext of defending the interests of the people and the state from the undermining influence of GAM (the Free Aceh Movement).

- (l) Invite the Special Rapporteur on torture to visit its territories;**

The Government of Indonesia invited the Special Rapporteur on Torture to visit Indonesia in 2007.

- (m) Fully cooperate with UNTAET, in particular by providing assistance in investigations or court proceedings in accordance with the memorandum of understanding signed in April 2000, including affording the members of the Serious Crimes Unit full access to relevant files, authorizing visits to Indonesia and East Timor, and transferring suspects for trials in East Timor;**

The Government of Indonesia has failed to implement this recommendation. See our report in Annex A on East Timor.

- (n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country;**

The Indonesian government reported that the legal system in Indonesia provides rehabilitation and compensation to victims based on the following statutes⁴³:

- a. Articles 1365 and 1367 of Indonesian Civil Law (KUH Perdata) afford the possibility of compensation in any case.
- b. Article 35, paragraphs (1), (2) and (3) of Law No. 26/2000 on Human Rights Court states that all victims of human rights abuses and their heirs are entitled to rehabilitation and compensation; determination of rehabilitation and compensation must be made in the decision handed down by the human rights court.

In reality, the path that must be taken by victims of torture and their families to achieve justice, rehabilitation and compensation is very long. Although the law does provide provisions for victims and their families to

⁴² Initial Report par. 100-105.

⁴³ See Initial Report par. 112.

make claims for compensation as stated by the Government in its report to the Committee, before they are able to receive compensation, the victims must be able to prove to the courts that the offender is actually guilty of torture. The legal process starts with the court of first hearing and goes through to an appeal. This requirement in itself is relatively simple in comparison to the complicated procedures for filing a case that involves a member of the state apparatus. The situation is even more difficult if the accused is a member of the military, as the complainant must deal with highly complicated procedures for military courts. Only once the accused is proven guilty, the victim or victim's family can submit a claim for compensation to the court as indicated by the Government in its report to the Committee. In the case of Aceh and Papua, the difficulties in seeking compensation are further complicated by the fact that the Government has in practice ruled out the possibility of trying perpetrators of torture in Aceh and Papua, and therefore has extinguished the possibility of victims ever receiving compensation or rehabilitation.

The Government's reference to Law No. 26/2000 on Human Rights Court is also not relevant in the case of Aceh and Papua as a human rights tribunal for Aceh between 1998- 2001 has not been set up and perpetrators of rights violations in Aceh and Papua have never faced charges of gross violations of human rights, and have only been tried for violations of ordinary criminal law.

(o) Make the declarations provided for in articles 21 and 22 of the Convention;

The Government of Indonesia has not yet made the declarations provided for in articles 21 and 22 of the Convention.

(p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation;

The Government of Indonesia has not yet provided statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of detention. See the Supplementary Report.

(q) Widely disseminate the Committee's conclusions and recommendations throughout the country, in all appropriate languages.

The Government of Indonesia does not yet disseminate the Committee's conclusions and recommendations throughout the country, either in original version or in Indonesian language. Therefore, the people of Indonesia, including the perpetrators, the victims, the journalists, and the members of the parliament do not know and are not familiar with the Committee and its conclusions and recommendations.

THREE • Criticisms of the Government of Indonesia’s response to the Concluding Observation in relation to the GOI Initial Report.

The Committee Against Torture issued a Concluding Observation⁴⁴ in relation to the initial report of the Government of Indonesia in 2001. In its Concluding Observation, the Committee indicated that it was concerned about “the large number of allegations of acts of torture and ill-treatment committed by the members of the police forces, especially the mobile police units (Brimob), the army (TNI), and paramilitary groups reportedly linked to authorities, and in areas of armed conflict (Aceh, Papua, Maluku, etc.)”⁴⁵ In addition, the Committee also asked the government why the initial report by the government did not report on the situation with respect to the incidence of torture in conflict areas such as Aceh.

The government of Indonesia’s response to the Concluding Observation was provided in the Supplementary Report of 2005, in paragraphs 107 to 127. The government’s explanation in the Supplementary Report 2005 is contested, as indicated in the following comments and explanations:

Paragraph 107 of the Supplementary Report in general denies that torture has been committed by members of the police, in particular Mobile Brigade, military and paramilitary groups that are reportedly connected to elite groups, particularly in areas of armed conflict (Aceh, Papua, Maluku). In paragraph 107, the government states that it has consistently applied a policy that those involved in the excessive use of violence, including torture and inhumane treatment, face legal sanction through the regular justice system, court martial or human rights tribunals. The government also indicated that it has already instituted a legal process with respect to perpetrators of crimes in the conflict areas mentioned. The government stressed that although many allegations have been received, these allegations have not been accompanied with sufficient information or evidence to take them forward.

In relation to the government’s position put forward in paragraph 107, we contest that there are numerous incidents of torture by members of the police, in particular Brimob, military and paramilitary groups. The following table outlines several examples of torture committed by state authorities in the period of 1998 to 2006:

Table 1. Examples of cases of torture committed by state authorities⁴⁶

No	Case	Perpetrator	Type of crime	Action taken by the government
1	East Timor case, 1999. See Annex A of this report for more details.	Military, military police	Torture, murder and arson (“scorched earth” tactics) in Timor Leste that were perpetrated by militia supported by military and police.	Establishment of the Ad-Hoc Human Rights Trial, however all of the accused were acquitted with the exception of one civilian, Eurico Gutteres.
2	Abepura case, 2000. See section 6 of this report for more details. Source: The Inquiry Report of the National Human Rights Commission’s Inquiry Team of Abepura, Kompas Daily,	Police	Torture perpetrated by the police when conducting “sweeping” operations at dormitories of	The National Commission on Human Rights established a fact finding team which recommended the prosecution of 32

⁴⁴ Committee Against Torture, 27th session, Consideration of Reports Submitted by States parties under article 19.

⁴⁵ Idem, section D Subject of Concerns point 7 (a).

⁴⁶ Database HRD Imparsial 1998-2006.

	September 2005.		students.	members of the security forces, however only 2 senior police officers were tried and the human rights trial acquitted the two accused. The perpetrators of torture received no administrative sanctions and did not face criminal procedures.
3	<p>Case of Bulukumba Peasants, 2003:</p> <p>The police authorities conducting “sweeping” operations in several villages in connection with protest action by peasants in Bulukumba against PT. London Sumatra in relation to a dispute over land ownership. The police arrested several men who were residents of Bulukumba suspected of being involved in a protest action on 21 July 2003 (known by pseudonyms Sadilah and Rudih). Before the detainees had a chance to defend themselves, the police began hitting them, causing the detainees to bleed profusely from the nose and eyes. On the way to Bulukumba police station, Sadilah was trampled on, punched and struck with a rifle. During three days in detention, Sadilah was hit using hands and wooden sticks, kicked and his skin was burnt with cigarette butts, and he was not able to eat as his hands had been tied since being put in the cell. Rudi suffered similar treatment. After three nights in detention, it was determined that Rudi and Sadilah did not take part in the demonstration and the two were released. The police threatened Rudi and Sadilah to keep silent about their detention. As of the end of August 2003, two peasants had died, 24 had been detained and four were undergoing medical treatment. During detention, most suffered torture in the form of beatings and</p>	Police officer in Bulukumba together with security guards/thugs hired by the company	The police conducted torture against peasants who were suspected of being involved in land reclamation, in the form of arbitrary arrest, kicking and punching while in detention, denial of food, burning with cigarettes, hitting with wooden sticks, and others acts.	The government has not sought to prosecute the police involved in torture.

	<p>other kinds of mistreatment.</p> <p>Sources: Fajar Daily, Makasar, 20 September 2003; Kontra News No 9/IX/2003; National Solidarity Report for Bulukumba, 4 August 2003; The chronology report of Kontra and the victims' testimony to the investigation team on 17 August 2003, in Bunto Biraeng village. Testimony of "Nr"; Chronology of Kontra; Imparsial report about the human rights situation in Indonesia 2004.</p>			
4	<p>Aceh military emergency case: arbitrary arrest of 15 human rights defenders including Muhammad MTA, Iwan Irama Putra and Nursida.</p> <p>Source: ORPHAD, Banda Aceh; Database HRD Imparsial 2004.</p>	Police (Mobile Brigade/Brimob)	The human rights defenders were stigmatized as GAM (Free Aceh Movement) sympathisers. They were subject to arbitrary arrest, torture in the form of electric shocks, beating and kicking.	No legal sanction or punishment against the members of security apparatus that carried out the torture.
5	<p>Aceh civil emergency case: Arbitrary arrest and torture by the security apparatus against Yulidartini, Irmawati, Krisna, Anisa Narda and Naisnayah, activists from Perempuan Merdeka. Vandalism of Perempuan Merdeka office on 19 August 2004 on the basis that the organisation was hiding GAM members.</p> <p>Source: Perempuan Merdeka – Banda Aceh; Database HRD Imparsial 2004.</p>	TNI Infantry Battalion 400/Raider	The victims suffered torture in the form of electric shocks and slapping.	No legal sanction or punishment against the members of security apparatus that carried out the torture.
6	<p>Case of Bengkulu Peasants: Ahadi Bin Bakarun, activist with Serikat Tani Bengkulu (Bengkulu Peasant Association) died on 11 March 2005 as a result of abuse at Padang Ula Tanding Police Station, Bengkulu. The victim was struggling to reclaim land from PTPN. The victim's family was intimidated by police.</p> <p>Source: Serikat Tani Bengkulu, Database HRD Imparsial 2005.</p>	Members of the police force serving with Padang Ula Tanding Sector, Bengkulu	The victims were detained and abused which resulted in his death. The police claimed that the victim committed suicide.	The government has taken no legal action against the perpetrators of torture.
7	<p>Abepura case of 16 May 2006: Torture of 24 people accused of</p>	Police (Mobile Brigade/Brimob)	Physical torture by shooting the	No investigation of the police officers

	<p>involvement in protest action against security forces that resulted in the killing of 4 police officers and one Air Force intelligence officer.</p> <p>Source: Report of the Ecumenical Council of Churches in Papua - Laporan Persekutuan Gereja-Gereja di Tanah Papua (PGGP) September 2006.</p>		<p>foot/feet of accused, beating and kicking the accused to an extent that it caused permanent physical disability.</p>	<p>involved in committing torture.</p>
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From the table above, there is clear evidence that torture by the security apparatus still occurs, particularly in conflict areas. It is also clear that the incidents are de facto occurrences, with perpetrators and victims, and that these claims are not fabricated by the victim or other parties. It is also evident from the above that the government has not taken due legal action against the perpetrators of torture.

It is true that there has been some kind of commitment from the government to undertake reform in the defense and security sector by means of division of the military and police, creation of a guide book on human rights for members of the police and military, and various training activities in human rights. However, the culture of violence in the two institutions cannot be undone in a short period of time. Given the culture of submission to superiors in Indonesia and the hierarchical nature of the security forces, any improvement requires that senior officers change their attitudes and behaviour in order to provide an example to their subordinates. The entrenched practice of impunity in Indonesia, as evidenced by the failure to prosecute General Wiranto and other alleged perpetrators at the Ad-Hoc Human Rights Trial for East Timor and the exoneration of the accused in the human rights trial for the 2000 Abepura case, shows that it is fair to say that impunity remains common practice in Indonesia, in particular for senior military and police officers as they have constantly managed to escape legal sanction.

Paragraph 108 of the Supplementary Report: The government's statement in paragraph 108 of the Supplementary Report which said that the allegation of the excessive use of force employed against demonstrators or for investigation was, by and large, found to be inaccurate, is challenged on the basis of the acts of the police in the cases involving peasants in Manggarai and UMI Makassar (see table 2). Although Law No. 9/1998 regarding Freedom of Expression in Public sphere regulates action in response to demonstrations, the government has not adopted these provisions in practice. The government, in this instance, the police forces, has not yet applied the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁴⁷, so that in practice many use methods of violence which can be excessive in response to demonstrations.

Table 2. Examples of Violence by Security Apparatus in Dealing with Demonstrations

No	Case	Perpetrator	Type of violence	Action by government
1	<p>Case of Manggarai Peasants: 120 peasants peacefully assembled at the office of Ruteng Police Resort to negotiate with police to release seven peasants who were detained at Ruteng Police Resort. During the course of negotiations, there was sudden burst of gunfire toward peasants who were alighting from a car. This led to a clash between the</p>	<p>Ruteng Police Resort, East Nusa Tenggara.</p>	<p>Shooting causing serious injury and death, severe physical abuse, beating and kicking.</p>	<p>Official transfer and administrative sanctions.</p>

⁴⁷ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

	<p>peasants and police, and the police began shooting indiscriminately toward the peasants. The peasants ran to seek safety and several sought to hide in a ditch. The police then shot the peasants hiding in the ditch. Vitalis Jarus and his father Frans Atur died due to bullet wounds sustained while hiding in the ditch. More than ten people collapsed after being pursued by police. Stefanus Mogur (60) was shot from behind and the bullet entered his stomach. Noticing that he was still alive, the police slapped, kicked and abused the man, and only after this, took him to the emergency room at the hospital. However, Stefanus died at the emergency room. Doni Amput was killed after being shot in front of Bhayangkari Kindergarten. The total number killed was six people, with another 29 severely injured, including some with permanent disabilities, and seven people were lightly injured.</p> <p>Source: Mirsal Robert and J. Embu Eman, "Gugat! Darah Petani Kopi Manggarai, Ledalero, Maumere", (Appeal! The Blood of the Manggarai's Coffee Peasants), 2004; Case Report of Manggarai, the investigation report of Serikat Petani Manggarai (Manggarai Peasant Association/SPM) and local NGOs in Manggarai and Kiang, 2003; Case report of Manggarai, the investigation report of JPIC-OFM, 2003</p>			
2	<p>Case of UMI Makassar 1 May 2004: The police raided the campus of Indonesia Moslem University of Makassar following an anti-militarism demonstration by students and demands for the release of Ustadz Abu Bakar Baashir. The reason for the raid was that students had taken hostage a police officer. As a result of the brutal raid by the police, 3 people suffered gunshot wounds, with 2 people in critical condition, 54 people suffered severe injuries (mainly cuts to the head) and another 300 people were lightly</p>	<p>Makassar police, including officers from three levels (Polda/Regional Police, Polres/District Police and Polsek/Subdistrict Police)</p>	<p>Physical abuse of the victims using batons. The target was mainly the victim's head and as a result, many suffered from cuts.</p>	<p>The government only transferred senior police officers without following through with criminal charges.</p> <p>The members of the police involved in the raid, abuse and torture of the students incurred only administrative sanctions and light</p>

	injured. Sources : Imparsial's Case Report of the Human Rights Abuses in Indonesia Moslem University of Makasar; Tribun Timur Daily, 2 May 2004 and Tempo Newspaper, 4 November 2004			punishments such as 21 days detention without criminal charges being laid.
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From our research we have also found that the enforcement of laws against police who commit violence, including torture, is generally limited to administrative sanctions. On the basis of this monitoring by Imparsial it can be concluded that the consequences for police who commit acts of violence are not comparable to the crimes committed.

Table: Sanction given to police who use excessive force/ violence.

No	Perpetrator	Action which was committed	Punishment and source of information.
1	AKBP Drs. Bonifasius Tampoi, Kapolres Manggarai (the Head of the Manggarai Police Resort/District)	Case related in land dispute in di Manggarai, 9-10 March 2004. Violence was carried out by police when they dispersed a demonstration of farmers resulting in the death of 6 people and serious injury of 29 which it was recorded they all lived, and 7 people who were not seriously injured.	Removed from duties and punishment with a written reprimand. Source: www.tvri.co.id/berita/lihatberita.php?jenis=beritadacrah&berita=6141
2	Irjen (Inspector General) Police Yusuf Manggabarani, Kapolda Sulsel (Head of Regional Police)	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Removed from duties and transferred to Indonesia Police Headquarters in Jakarta as demotion. Source: Kompas Cyber Media, Saturday, 02 Mei 2004.
3	Kombes Drs. H Jose Rizal	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Removed from duties, given a written reprimand from institution and transferred as a demotion. Source: Kompas, 15 Mei 2004.
5	AKP SA Parambungan	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head),	Removed from duties, special detention for 12 days, harsh written reprimand from the institution. Source: Media Indonesia, 11 Mei 2004.

		and more than 300 suffered less serious injuries.	
6	Iptu Yeri Santos Mangiri	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Relieved from duties and sentenced to 17 days detention. Source: Media Indonesia, 11 Mei 2004.
7	Iptu Drs. If Erwanto	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Relieved from duties and sentenced to 17 days detention. Source: Media Indonesia, 11 Mei 2004
8	Ipda Aldi Subartono	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Relieved from duties and sentenced to 17 days detention. Source: Media Indonesia, 11 Mei 2004.
9	AKP Sonny Mallambudi	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Removed from duties, deferment education for 6 months, and special detention for 7 days. Source: www.tvri.co.id/berita/lihatberita.php?jenis=beritadaerah&berita=6141
10	AKP Abdullah Gassing	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Deferment of education for 6 months and written reprimand. Source: www.tvri.co.id/berita/lihatberita.php?jenis=beritadaerah&berita=6141
11	AKBP Eko Supriyanto	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Relieved from duties. Source: www.detiknews.com , 13 Mei 2004

12	Iptu Haryadi	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Deferment of education for 6 months and written reprimand. Source: www.tvri.co.id/berita/lihatberita.php?jenis=beritadaerah&berita=6141
13	Bripda Dian Hardiawan	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004
14	Bripda Fahrur Rasyid	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004.

15	Bripda Judi Aprianto	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004.
16	Bripda Marten Kendek	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004.
17	Bripda M Arwin Arif	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004.

18	Bripda Arnold Manggabarani	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detention for 21 days in a room of the military police Polda Sulsel, deferment of proposed promotion for one period (four years) and transfer as demotion. Source: <i>Kompas</i> , 08 Mei 2004.
19	Briptu Nurhasyim	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Fired from the police and detained for 21 days. Source: www.fajar.co.id , 07 Mei 2004.
20	Briptu Umar Zulkarnaen	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detained for 21 days and transfer as demotion. Source: www.fajar.co.id , 07 Mei 2004.

21	Bripda Othniel Saldy Penik	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detained for 21 days and transfer as demotion. Source: www.fajar.co.id , 07 Mei 2004.
22	Bripda Rahmat Hidayat	UMI Makassar case of 1 May 2004. Violence committed by police at a student demonstration at UMI Makassar. At least 3 people were shot and 2 of those were in a critical condition, 54 suffered serious injuries (mainly cuts to the head), and more than 300 suffered less serious injuries.	Detained for 21 days, deferred for suggested promotion for one period and transferred as a demotion. Source: www.fajar.co.id , 07 Mei 2004.
23	Aipda Parnaungan Simatupang	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kopol Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840

24	Bripda Ahmad bin Waljuhri	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kumpul Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840
25	Bripda Asep Syaiful	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kumpul Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840
26	Bripda Agus Gunawan	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kumpul Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840
27	Bripda Sutupo	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kumpul Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840
28	Bripda Roy D Samudera	TPST Bojong case of 22 November 2004. In this case the violence was committed by police reacting to a demonstration of Bokong people which were protesting against their area becoming a rubbish tip.	The head of the panel of judges Kumpul Rastra Gunawan in a hearing regarding the professional ethics code, in Mapolwil Bogor, on 9 December 2004 decided to recommend demotion. Source: http://search.jawapos.com/index.php?act=detail_s&f_search=tpst%20bojong&id=147840

Source: Imparsial and Alternative Policy Imparsial database about Police Brutality in the time of transition (2005).

Paragraph 109 of the *Supplementary Report*: The government refused to acknowledge the use of paramilitaries in cases of torture. For information on this, see page 65-66 of this report for the period of Daerah Operasi Militer in Aceh about the use of ‘*cuak*’ (people who are recruited from civilians and used to reinforce military operations) and page 84, for the use of militias in the military operations in Aceh. We also refer to page 94-96 on the use of paramilitaries in Aceh after the MoU in Helsinki.

Paragraph 110 of the *Supplementary Report*: The government reported that there is already a law which protects Human Rights Defenders (HRD), and investigations have occurred such as in the case of Munir.

Although there has been an investigation into the death of Munir, and the government has made some steps to identify Munir’s killers, necessary further action has not been undertaken. The results of the investigation by Tim Pencari Fakta/TPF (The Inquiry Team) recommended to the President to order further investigations against high level officials in the state intelligence agency (BIN) and Garuda Indonesia Airlines staff in relation to Munir’s death. However, this was never done by the President. The President also had the authority to publicise the results of the investigation of the TPF, but the President did not do this. Until now, none of Munir’s killers have been punished in relation to his murder. A criminal process was only initiated against Garuda co-pilot Pollycarpus Budihari Priyanto, who was suspected of a conspiracy to kill Munir. Pollycarpus was found guilty and sentenced to 14 years in prison by the court at first instance and this was upheld on his first appeal, however, on final appeal to the Supreme Court, he was only found guilty of using a false letter and not of conspiracy to kill Munir.

Human rights defenders in Indonesia continue to be targeted, especially if they live in conflict areas such as Aceh and Papua. Imparsial noted that in 2005 there were around 165 human rights defenders who were subjected to violence every year, from both state and non-state actors. The range of the violence extends from criminalisation, intimidation, arrest and detention to abduction and murder. In 2006, there were at least 2 human rights defenders who died as a result of attacks: Reverend Irianto Kongkoli from Palu, who died when he was shot by unknown persons, presumably because of his work in bringing attention to injustices in Palu and Herliyanto, and a journalist for Delta Pos in East Java, who died on 29 April 2006. He was killed because of his writings which exposed cases of corruption committed by the local government.⁴⁸

The law against those who commit violent acts against human rights defenders has not been enforced to the full extent. Human rights defenders experience physical violence and also psychological violence often in the form of stigmatization from the government that they are “Communists”, “Separatists”, “GAM supporters”, “OPM supporters” and “Foreign agents” which is used to justify their oppression.

There has however been one positive development for human rights defenders, in that the Constitutional Court has ruled that article 3 of the criminal code which related to insulting the head of state actually violates the Constitution and must be struck out.⁴⁹ But there are still many articles in the Criminal Code and other laws which can be used to oppress human rights defenders. In addition, the national parliament and the government have introduced two bills on State Secrecy and Intelligence which have the potential of being damaging for human rights defenders. The bills have been prioritised for their legislative deliberation in 2007, in order to speed-up their enactment.

Paragraph 111 of *Supplementary Report*: See section 6 of this report on Papua, which provides information of the links between military and transnational corporations in human rights abuses. As indicated by the situation in Papua, perpetrators are often protected by the government and there is no will to bring perpetrators of human rights abuses to court.

⁴⁸ Imparsial database, Violence against HRD 2006.

⁴⁹ Constitutional Court, Wednesday 6 December 2006, Article related to insulting the President or Vice President conflicts with the 1945 Constitution. The Constitutional Court in its decision stated that articles 134, 136 Bis, and 137 of the Criminal Code on insults against the President or Vice President, conflict with the Constitution and must be struck out. The judges of the Constitutional Court considered the articles mentioned as not consistent with a democracy such as Indonesia, which is a country which has become a Republic and independent society. Furthermore, the articles have often been used for political purposes and to retain power.

Paragraph 112 of *Supplementary Report*: It is true that the law in Indonesia provides for the punishment of those who commit rape and sexual assault. But in practice, perpetrators are only punished lightly, especially, if the perpetrator is a military or police officer. Even the victims of these crimes who are women are often seen to be at fault, since they are accused of not taking sufficient care of their behaviour and enticing men to commit such crimes.

For example, in a rape case in Aceh which occurred during the military emergency period, the military court I-01 Kodam (Military Regional Command) Iskandar Muda in Lhokseumawe⁵⁰ sentenced the perpetrators, three TNI soldiers who were members of Infantry Battalion 411/Pandawa Salatiga, to between 2 years 6 month and 3 years and 6 month jail, for the rape of 4 women from the village of Alue Lhok, sub-district of Paya Bakong, regency of North Aceh.⁵¹ This decision by the military court I-01 should be criticised because of the leniency of the sentence. A case of rape such as this one should be punished severely as the TNI officers did not only violate the criminal code, but also article 3 of the Geneva Convention IV of 1949 on the Protection of civilians in a time of war. The Geneva Convention strongly forbids the act of rape against a person as acts which humiliate and degrade human dignity. The punishment was so lenient that it did not even reach 1/3 of the maximum punishment, being 12 years, and as such does not acknowledge the value and integrity of women. This decision also reflects badly on the ability to implement *l'esprit de corps* whose aim is to protect the people and carry out national duties.

Paragraph 113 of *Supplementary Report*: What was stated by the government is not correct because a large number of victims have suffered as a result of torture and ill-treatment and cases of torture are not rare. Our report includes many cases of torture in Aceh, Papua and East Timor which can be supported by testimonies and physical evidence including photos which indicates that the statement of the government is not correct.

Paragraph 114 of the *Supplementary Report*: The government has stated that it has ended impunity by bringing those suspected of torture, including high-ranking military and civil officials, to court.

However, the reality indicates that the government does not have the will to end impunity. The decisions of the judges in the cases of gross violations of human rights in East Timor, Tanjung Priok and Abepura, from the lowest to the Supreme Court, all have freed the accused. Further, the Generals who were responsible for the policies were not brought before the court, such as General Wiranto for the East Timor case and General Try Sutrisno for the Tanjung Priok case.

The attitude towards impunity is illustrated by comments referred to above, by the (former) Chief of Indonesia Armed Forces General Wiranto, where he said that no authorities would be judged in relation to the action in Aceh because they were only carrying out their duty. This statement was made in relation to cases of violations of human rights during the Military Operation Region (DOM) period 1989-1998 in Aceh.

Paragraph 115 of *Supplementary Report*: The government quotes article 50 of the KUHP (criminal procedure code) which states that all people are equal before the law and all people will be tried if they commit acts of torture. The quote of the government referring to article 50 of the KUHP is misleading. It said "whoever acts in accordance with the law is not criminalised".

Paragraph 116 of *Supplementary Report*: In establishing the Human Rights Court through Law number 26/2000 the work of Komnas HAM (National Human Rights Commission) is linked with the Prosecutor. Based on law number 39/1999 on Human Rights, the results of the preliminary investigation by Komnas HAM in relation to cases of violations of human rights, does not of itself have legal weight, but is handed over to the prosecutor, in this instance the Attorney General to take further action. The Komnas HAM results will become the basis for the investigation and indictment which is done by the Attorney General. But Law number 26/2000 does not give the power to Komnas HAM to conduct investigations of gross human rights violations which occurred before the emergence of the Ad- Hoc Human Rights Court, which was established by a decision of the President.

⁵⁰ Sentence was handed down on 19 July 2003.

⁵¹ Imparsial Press Release of 22 July 2003 about the cases of rape in Aceh by TNI and POLRI officers.

Komnas HAM was established in the Soeharto era based on Presidential Decree No. 50 on 7 June 1993.⁵² The Decree of the President was announced one week before the opening of the World Conference on Human Rights in Vienna- an action which caused foreign countries to suspect that the formation of Komnas HAM was intended to weaken international criticism of the Indonesian government in relation to human rights.⁵³

Five years after its establishment and not long after the fall of Soeharto in May 1998, the Government passed Law number 39/1999 on Human Rights. This law gave a wide mandate to Komnas HAM, including the power to study, research, disseminate, monitor and mediate human rights issues, although it provided that the results of the investigations by Komnas HAM were not legally binding and could only form the basis of recommendations to the Chief Prosecutor for action to be taken on the basis of the findings.⁵⁴

Article 89 section (3) b of Law number 39/1999 states that “to undertake the functions of Komnas HAM in monitoring as intended by article 76, Komnas HAM has the duty and authority to do preliminary investigations and examinations in relation to events which arise in the community which have characteristics thought to be a breach of human rights”. But, the law does not provide certainty about what can be done with the results of the Komnas investigation within the procedures regulated in Indonesia by the KUHAP (Indonesia Criminal Procedure Code). Based on the KUHAP, the results of the examinations and investigations will be followed up through the issuing of indictments. This results in a situation where the greatest power of Komnas HAM in relation to the results of its investigations is to be handed over to the Attorney General with recommendations for further action.

Only after the enactment of Law No. 26/2000, which was then based on article 18 of the law above, Komnas HAM was given the power to carry out investigations. But, the authority given to Komnas HAM is only to do examinations and investigations, which must then be handed over to the Attorney General for action to continue to a prosecution.⁵⁵

Based on law number 26/2000, the prosecutor, in this case the Attorney General, not only has the authority to prosecute⁵⁶ but also to carry out investigations on cases of gross violations of human rights.⁵⁷ This law expands the intention of KUHAP, which only gives the Prosecutor the authority to prosecute⁵⁸ and gives the police the authority to investigate.⁵⁹

⁵² Presidential Decree No.50/1993 was replaced by Law No. 39/1999. On the role of Komnas HAM to conduct an inquiry for the ad hoc Human Rights Court purposes, see Law No. 26/2000. Before it was replaced by Law No. 26/2000, the role of Komnas HAM was stated in Article 5: The activities of Indonesia’s National Human Rights Commission will be fourfold: expanding understanding of national and international concepts of human rights to the Indonesian people and the International Community, studying various United Nations instruments on human rights with a view toward giving recommendations on the possibility of accession and/or ratification, monitoring and investigating implementation of human rights as well as giving opinions, views and suggestions to government agencies on the implementation of human rights, establishing regional and international cooperation for the advancement and protection of human rights.

⁵³ Human Rights Watch: “The Limits of Openness: Human Rights in Indonesia and East Timor”, September 1994, p.123.

⁵⁴ Law No. 39/1999, Article 76 (1) reads as follows: “To achieve these aims, the National Commission on Human Rights functions to study, research, disseminate, monitor and mediate human rights issues.”

⁵⁵ Law No. 26/2000, Article 21 (1) reads as follows: “Investigation of cases of gross violations of human rights shall be undertaken by Attorney General.”

⁵⁶ Law No. 26/2000, Article 21 reads as follows: “Investigation of cases of gross violations of human rights shall be undertaken by the Attorney General.”

⁵⁷ Law No. 26/2000, Article 23 reads as follows: “Prosecution of gross violations of human rights shall be conducted by the Attorney General.”

⁵⁸ KUHAP, Article 6 reads as follows: “a) Prosecutor is an official granted authority by this law to act as public prosecutor and to execute the verdict of a court which has acquired permanent legal force. b) Public prosecutor is a prosecutor granted authority by this law to prosecute and carry out the verdict of the judge.

⁵⁹ KUHAP, Article 1(1) reads as follows: “Investigator is a state police official of the Republic of Indonesia or certain civil service official who is granted special authority by law to conduct an investigation.”

Combining the authority of the prosecutor to carry out investigations as well as prosecutions in the one position of the Attorney General is very dangerous. This combination of power is reminiscent of the experience in previous eras in Indonesia, where, in the governmental structure, the position of Attorney General was a political appointment which could be akin to a ministerial position. As a consequence of the position of Attorney General being a political appointment, he always consulted with and took direction from the President on whether or not there should be an investigation or prosecution of a case of gross violations of human rights, especially in cases concerning high level military, police and political personnel.

Paragraph 117 of the *Supplementary Report*: the draft KUHP's (Indonesia Penal Code) definition of torture is not relevant for explanation of the government because that draft has still not been approved to become law, so therefore it does not have any legal status.

Paragraph 118 and 125 *Supplementary Report*:

The operation of the *ad hoc* Human Rights Court for East Timor, was based on Law 26/2000 on Human Rights Courts which provided the possibility for courts to be established to try cases involving crimes against humanity and genocide. However when the court was established pursuant to Presidential Decree No. 53/2001 issued by the then President, Abdurrahman Wahid, it was given a very limited mandate. Initially the court was only given the competence to try cases which occurred after the East Timor Referendum, of 30 August 1999. This time frame was later amended⁶¹ to include only crimes which occurred over two months, April and September 1999, and in three districts in East Timor: Liquiça, Dili and Suai. Such a restriction severely undermined the ability of the court by limiting the cases and persons who could be tried.

Paragraph 120 of *Supplementary Report*: See our report on article 13 and 14 of the Convention.

Paragraph 121 and 123 *Supplementary Report*: See our report on article 2 and 3 of the Convention.

Paragraph 127 *Supplementary Report*: The mechanisms for reporting and making complaints continue to be compromised by government bureaucracy. Some new institutions have been formed by the Government with the hope that they will assist efforts to reform the system, including quickening the process for the community to make reports and lodge complaints. However these hopes are yet to be realized and the process is bogged down with bureaucracy, internal problems and competition between governmental institutions.

The formation of new institutions such as the National Police Commission does not provide external oversight as was hoped, because members of the National Police Commission are government officials including: Menko Polhukam (Coordinating Minister of Politics, Law and Security), Mendagri (Minister of Interior), Menhukham (Minister of Law and Human Rights) whom are not sufficiently independent to function as external oversight for the police force.

While the Judicial Commission (KY) and the Commission for Combating Corruption (KPK) are two commissions which have proved valuable in bringing attention to highlight the problem of judges, are working and making decisions in an effort to combat corruption in Indonesia. However, the work of the two commissions is regarded as controversial and damaging to the Government, so their authority is being slowly removed by the Government.

Vice President Jusuf Kalla stated that the efforts to address corruption by the Commission for Combating Corruption (KPK) has had a side effect, in that it has frightened officials from making decisions and as a result, the economy has been disturbed. Kalla added that "We support combating corruption but don't increase the level of fear to such a level that makes the economy collapse".⁶²

The Constitutional Court heard a test case on the law 30/2002 concerning the commission for combating criminal acts of corruption, specifically on article 53 which states that: "With this law the court for criminal

⁶¹ By Presidential Decree No. 96/2001, issued by the then President Megawati Sukarnoputri.

⁶² Tempointeraktif, Tuesday 5 December 2006, "Kalla: Combatting corruption makes officials nervous".

acts of corruption is formed with the duty and responsibility to examine and decide cases of criminal corruption for which the prosecution was filed by the Commission for Combating Corruption.⁶³ The court held that article 53 was in conflict with the Constitution, but the decision⁶⁴ clarified that the law would remain valid awaiting an amendment which must be completed within three years from the time the court decision was handed down.

The Judicial Commission was established pursuant to Law number 22/2004 with the duty to safeguard the strength of the judiciary. It was empowered to complete the selection process and short list nominees for members of Supreme Court judges which have quality, potential, understand law and are professional. The judicial commission was also given the authority to protect and strengthen the integrity of judges and the trust of society in the judicial system in Indonesia, such that the judges can protect their rights to make decisions on cases independently. Article 24B section (1) of the Constitution guarantees the independence of the Judicial Commission in acting to suggest appointments of Supreme Court judges and in discharging their authority in other areas in order to protect and strengthen the respect, overall integrity, and behaviour of judges. But through the operation of the Commission, the relationship between the Judicial Commission and the Supreme Court has soured. This has occurred because the Supreme Court regards that, in the process of selecting candidates for Supreme judges, the actions of the Judicial Commission have exceeded its authority, in saying that the majority of Supreme judges in the Supreme Court are problematic.⁶⁵

Even though Komnas HAM (National Commission on Human Rights) already has an interactive reporting system, but the system of reporting does not work well and the response from Komnas HAM is still low towards some types of reports and complaints of violations of human rights by the community. The reason for this is that Komnas HAM is very bureaucratic and it has complicated mechanisms to write reports and make complaints.

⁶³ Constitutional Court, Tuesday 19 December 2006, Article 53 of the law on Commission for Combatting Corruption would remain valid awaiting an amendment which must be completed within three years from the time of the court decision was handed down, at <http://www.mahkamahkonstitusi.go.id/berita.php?newscode=255>

⁶⁴ Court decision number V/2006.

⁶⁵ Tempointeraktif, Friday 27 January 2006, "Supreme Court responds to the request for the Judicial Commission for the selection to be redone".

FOUR • Criticism of the Supplementary Report of the Indonesian Government (2005) relating to the situation between 2001-2006

The Government of Indonesia released a *Supplementary Report* on 23 September 2005 (CAT/C/72/Add.1) which will be examined by the Committee Against Torture in 2008. We will provide a critical appraisal of the report of the Government of Indonesia as follows:

Article 1 | The Definition of Torture

The Government indicated that one of the implementations of the Convention is that article 1 section (4) Law No. 39 of 1999 about Human Rights and article 9 section (1) Law No. 26 of 2000 about Human Rights Court contains a definition of torture.

That is indeed correct, Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning the Human Rights Court do include a definition of torture, but it needs to be appreciated that both these laws only apply to cases which involve gross violations of human rights, as these are the only crimes which can be adjudicated by the Human Rights Court or the Ad-Hoc Human Rights Court. Therefore, the definition of torture provided in laws No.39/1999 and 26/2000 cannot be applied to cases of torture which cannot be classified as gross violations of human rights.

Between 1999 until 2006, there have been 3 sets of cases of gross violations of human rights which have been tried by the Human Rights or Ad-hoc court,⁶⁶ where all of those accused who were members of TNI or Polri, have not been sentenced. The only significant sentence has been that of East Timor militia leader, Eurico Gutteres, who was sentenced to 10 years imprisonment; while all other higher level indictees were found not guilty.

In cases of torture, the Government has only applied article 422 of the Criminal Code which only provides for a very light sentence.

The Government also stated that it included the definition of torture in the bill concerning the new criminal code. But it is necessary to acknowledge that the new criminal code has already been considered for a number of years and until now is still under consideration in the parliament. There are not yet signs of when these deliberations will finish and if and when it will be approved by the parliament and President.

Another problem is that the military and the police have their own law and procedure. Military personnel will be prosecuted under jurisdiction of the military court - not civil court - if he/she committed a crime, including torture. However, the definition of torture - as appears in the Indonesian Military Criminal Code (KUHP Militer) is taken over from the Indonesian Criminal Code - thus torture, is also not stipulated in the Indonesian Military Criminal Code. The trial process in the military court system is usually closed/unpublished due to "security reasons." Therefore, civil society, including the victims and family of the victims, cannot monitor the trial. The perpetrators - if punished – will not be punished with proper sentences.

For the police, administrative rules will be applied first, although the police have been under the jurisdiction of the civil courts since 2000. The process of administrative rules for police who commit crimes (including torture) is closed and cannot be monitored by the victim/family of the victim. The police will not bring its personnel who commit crime (including torture) to justice if he/she has been subject to administrative procedure. See Section 3, page 30, Table: Sanction given to police who used excessive force/ violence, and Section 6 on Abepura 2000 case.

Article 2 | Legislative Measures in Prohibiting Torture

It is correct that the Parliament and President have drafted a number of regulatory laws as mentioned in paragraph 26 and 27 of the Indonesian Government's Supplementary Report. But what is incorrectly stated is that those regulations apply in all cases of torture. For example laws No. 39/1999 on Human Rights and No.

⁶⁶ Trials relating to crimes in East Timor, Tanjung Priok and Abepura.

26/2000 on Human Rights Court, can only be applied in cases of gross violations. While laws No. 13/2003 about Labour Force, No. 39/2004 about Placement and Protection of Migrant Workers, law No. 23/2004 about Domestic Violence, the Minister of Manpower Decree No. 157/MEN/2003 about Work Force Insurance, and the Presidential Decree No. 87/2003 about the National Action Plan to Eliminate Exploitation of Women and Children, do not specifically mention torture, and in general the regulations mentioned cannot be applied in cases of torture. These regulations have never been used by the Government in relation to cases of torture.

Law No. 23/2002 regarding the Protection of Children has not been implemented effectively as there are still many cases of children who face criminal procedures provided for by the general code without regard to the special procedures which have been outlined. On at least two occasions in 2006, courts have applied the adult criminal procedure code in relation to cases involving children. Firstly the case of Muhammad Azwar alias Raju, aged 8, who was brought before the State Court Stabat at Pangkalan Brandan, Langkat District – North Sumatera.⁶⁷ During interrogation at the police station, the father of Raju was required to bring his child to the police station in Gebang precinct, Langkat District for investigation. During that interrogation Raju was not provided with a lawyer, or an official from the Office of Correctional Services for Children (Bapas). From the time of investigation until the court hearing, Raju was not detained, but he experienced significant amount of fear when he had to face the police, prosecutor and judge because they were speaking harshly at him.

The second court case involved four students aged 11 who were in class 5 of state primary school Gandusari II Trenggalek, East Java. The head judge of the state court of Trenggalek, who presided over the case (110/Pid.B/2006/PN.TL/Anak), ordered the detention of the children in the Trenggalek correctional institution. The detention was ordered on the basis of a request by the Trenggalek State Prosecutor which was made pursuant to article 44 of Law No.3 of 1997 about Children's Court.⁶⁸ It is clear that there is a contradiction between two laws regarding children; that is, Law No. 23/2003 on the Prosecution of Children and Law No. 3/1997 on the Children's Court. In addition, the court actors have violated Law No.23 of 2002 regarding Protection of Children and Law No.12 of 1996 concerning the Imprisonment of Women and Children.

The Government declared Perpu (the Government Regulation in lieu of Law) No. 1 in 2002 concerning Combating Criminal Acts of Terrorism which was implemented through Law No. 15 of 2003, which provided greater powers to the police, military and intelligence apparatus to arrest and detain suspects of terrorist acts; it also provided greater opportunity for torture to be carried out against those suspected of terrorism. This increase in powers and opportunity was on the basis that the security apparatus was given the power of arrest based only on unconfirmed intelligence. In addition the apparatus was given the authority to arrest and detain the suspect for 7 X 24 hours periods (article 28), which is far longer than the procedure provided for in the criminal procedure code which only provides one period of 24 hours. Where necessary the security apparatus was also given the authority to detain suspects for a period of 6 months (article 25 (2)). Such a long period of detention in the police custody seriously undermines any possibility to guarantee that the suspects will not be tortured by the authorities. The application of the law has shown that such fears are warranted. Cases have been reported of people being held in incommunicado detention and tortured on suspicion of committing acts of terrorism, one such case is that of Abu Fida.⁶⁹

Prior to the enactment of Law No. 15 of 2003 on the Eradication of the Terrorist Act, there were already laws prohibiting acts of terrorism. However the government wanted to increase the powers of the state in this

⁶⁷ Kompas, Wednesday 22 February 2006 "Raju masih kecil kok sudah dipenjara..."

⁶⁸ Tempo Interaktif, Monday 10 July 2006 "Sidang Terdakwa Anak-anak Digelar", <http://www.tempointeraktif.com/hg/nusa/jawamadura/2006/07/10/brk.20060710-79959.id.html>

⁶⁹ Muhammad Syaifuddin Umar, 38, alias Abu Fida is a suspect in a case involving terrorism, which involves protecting Dr. Azahari and Nurdin M. Top, who are suspects in the bombing of the JW Marriot hotel in Jakarta. The police arrested Abu Fida on 4 August 2004 in Surabaya. Abu Fida was detained incommunicado by East Java Police Region. On 11 August 2004, Abu Fida was taken to Dr. Soetomo General Hospital in Surabaya suffering from serious wounds (his right and left arm were covered with wounds from a sharp weapon, his face and left foot was swollen blue, his neck was wounded with lashes) and was experiencing extreme shock. The police denied the accusation of torture and said that they had released him on 10 August 2004 in Kediri – East Java. Source: Human Rights Report of Imparsial 2004 and Imparsial Report on Police Brutality in time of Transition, May 2005.

regard, which has been damaging for society. The Minister of Defense, the Chief of the Indonesia Armed Forces, the Head of National Intelligence Body and Coordinating Minister of Politics, Law and Security, stated that Indonesia felt it necessary to have an Internal Security Act (ISA) similar to that applied in the neighboring countries of Malaysia and Singapore.⁷⁰ Although finally, the idea to introduce legislation similar to ISA in Indonesia was quashed, the formation of the special anti-terrorism team, Detachment 88 under the Indonesian Police (POLRI), and the formation of a specific unit within the TNI charged with tackling terrorism, has already opened up an opportunity for torture against people suspected of committing terrorist acts.

Article 3 | Prohibition of Refoulement or Extradition of a Person to Another State Where He/She Might Be Tortured.

The government of Indonesia has already violated this article in cases involving suspicion of terrorism such as the cases of Hambali and Umar Al-Faruq.

Hambali (alias Riduan Isamuddin), an Indonesian citizen who was suspected of leading Mantiqi I within Jemaah Islamiyah, was arrested by police in Bangkok-Thailand on 11 August 2003. Hambali was then flown to a US military base in Bahram – Afghanistan, and was then detained in Guantanamo Bay under the jurisdiction of the United States.⁷¹

In the case of Hambali the outcome was that the Indonesian government allowed one of its own citizens to be extradited to an American jurisdiction, in a situation where the Indonesian government had a significant interest in trying Hambali in Indonesia. The acts Hambali was suspected of committing in Indonesia were far greater than the interests of the United States in the case. The Indonesian government did not make any serious efforts to request that Hambali be tried in Indonesia, whereas the government is obliged to take such action for the following three reasons. Firstly, because Hambali is an Indonesian citizen; second, Hambali is suspected of committing a series of crimes in Indonesia; and thirdly, because the government of Indonesia should have been aware that it would have been dangerous for Hambali's health to be detained by the government of the United States. This danger was well known considering that he would be detained at the US military base and Guantanamo prison and kept *incommunicado*.

Prior to the arrest of Hambali, the leader of Al-Qaeda, known as Umar Al-Faruq, who is suspected of having a number of nationalities in addition to Kuwaiti and Indonesian, was arrested at a mosque in Bogor on 5 June 2002 by Indonesian and American intelligence units. Al-Faruq was then flown in an American plane to a secret prison.⁷² In November 2005, the American Minister for Defense publicly announced that Al-Faruq and three other leaders of Al-Qaeda escaped from an American military prison in Baghram-Afghanistan. Al-Faruq was then announced dead after being shot by the English military in Iraq on 24 September 2006.⁷³

⁷⁰ Imparsial Press release 12 August 2003, "Wrong! Draconian concept of the Government in the form of the Internal Security Act (ISA) used to combat terrorism".

⁷¹ Tempo, "Bom-bom maut Hambali" (Deadly bombs of Hambali), 25-31 August 2003, and International Crisis Group, Terrorism in Indonesia: network of Nurdin Top, 5 May 2006.

⁷² The Government of Indonesia itself gave statements which were conflicting about the case of Al-Faruq, including the statement that Al-Faruq is an Indonesian citizen who is wanted by the American government in relation to American Terrorist laws well before the events of 11 September. Menko Polkam at that time, Susilo Bambang Yudhoyono said to journalists that, "The arrest and detention of Al-Faruq is a product of both the police and intelligence working together, with foreign intelligence agencies under the mandate of the war against terror." But the Minister for Foreign Affairs, Hassan Wirayuda said that the extradition of Al-Faruq to the United States was not connected with efforts against terrorism, rather connected to immigration violations. See Human Rights Watch, *The Name of Counter-terrorism: Human Rights Abuses Worldwide*, p. 17

⁷³ 'Suara Merdeka', 21 September 2002, Al Faruq was arrested because of the information from the Indonesia Intelligence Officers "Ditangkap Berkat Intelejen Indonesia", <http://www.suaramerdeka.com/harian/0209/21/nas10.htm>, Gatra, 17 October 2002, *Al Faruk Confession* in relation to Al Qaeda, <http://www.gatra.com/artikel.php?id=21545>, Gatra, 7 November 2002, Deplu still awaits the demand to bring in Al Faruq, http://www.gatra.com/versi_cetak.php?id=22166, Tempo Interaktif, 4 November 2005, Indonesia requests an explanation for the obfuscation of issues surrounding Al Faruq, <http://www.tempointeractive.com/hg/nasional/2005/11/04/brk,20051104-68863.id.html>, Republika, 11 November 2005, Al-Faruq and Azahari mystery,

The handling of the Al-Faruq case by the Indonesian government almost followed the same pattern as the Hambali case; the difference being that the Indonesian government actually extradited Al-Faruq to the United States. Again, the government of Indonesia had a greater authority to try him than the United States, as Al-Faruq is an Indonesian citizen, although he was suspected of having other nationalities. In addition Al-Faruq was suspected of committing crimes in Indonesia, so Indonesia had the right to bring him to justice. And finally, the Indonesian government acknowledged that there were no guarantees from the American government that Al-Faruq would be treated well in an American prison.⁷⁴

Article 4 | Criminalization of Torture or Attempts to Commit Torture, and the Punishment for Torture

In the Supplementary Report the Government pointed at examples of judicial processes in relation to acts of torture. In paragraph 38 of the report, the Government stated that actions have already been taken against those who violated article 4 of the Convention. However, the 12 members of the Infantry Battalion 301/Prabu Kiansantang, Sumedang – West Java, who were accused of committing torture against civilians in Dewantara – North Aceh, were in fact cleared by the military court in Banda Aceh.

Paragraph 39 of the government report also refers to the fact that 3 military officers from infantry Battalion 144 South Sumatra have been sentenced to 4 months jail on the basis of charges related to the torture of 3 civilians. It must be noted that the sentence handed down was extremely lenient and does not fulfill the minimal requirements for punishment of the crime of torture.

Article 5 | Scope of Law/National Jurisdiction

The Government also reported on the issue of national and universal jurisdiction based on Law 26/2000 on the Human Rights Court, which is only applicable to crimes of torture which are classified as gross violations of human rights, that is, genocide and crimes against humanity. In practice, despite the existence of Law No. 26/2000, there continue to be perpetrators of torture who remain within Indonesian's jurisdiction. In reality the government of Indonesia does not process such cases but rather protects the perpetrators of torture, including those which could be considered to fall within the category of crimes against humanity. For example, the leaders of the military with command responsibility, such as General Wiranto, former Chief of the Indonesian Armed Forces, should be held accountable for their involvement in the cases concerning the abduction of activists in Indonesia between 1997-1998, and gross violations of human rights in East Timor in 1999.

The operation of the ad-hoc human rights court for the Timor cases clearly indicates that perpetrators of torture will not face indictment for breaches of regulations against torture, as in those cases all the perpetrators were released, except the head of the militia, Eurico Guterres.

Article 6 | Arresting and Detaining of Suspects Committing Torture

It is correct that law No. 26/2000 provides for the arrest and subsequent detention of suspects of torture. But this law only applies to cases which reach the standard of gross violations of human rights. Generally, cases of torture in Indonesia cannot be classified as gross violations and therefore can only be indicted pursuant to

http://www.republika.co.id/kolom_detail.asp?id=220578&kat_id=16, and Antara, 27 September 2006, The head of BIN verifies the death of Umar Al Faruq, <http://www.antara.co.id/seenws/?id=43187>

⁷⁴ The Chief of Indonesian Police acknowledged to the internal meeting of the Indonesian Democratic Party of Struggle (PDI-P) that the Indonesian Police apparatuses who tried to meet Al-Faruq in prison failed to meet him due to the tight security in the US prisoner. However, before the meeting with the members of the Parliament, the Chief of Indonesian Police stated differently and said that the police had met Al-Faruq. Tempo Interaktif, "Kapoli Kembali Tegaskan Penyidik bertemu langsung dengan Al-Faruq", 11 November 2002, <http://www.tempointeraktif.com/hg/nasional/2002/11/11/brk.20021111-20.id.html>. According to TIME investigations quoting a US counterterrorism official, Al Faruq was subjected to three months of psychological interrogation tactics, including isolation and sleep deprivation. TIME, Confession of an Al-Qaeda Terrorist, 15 September, 2002. <http://www.time.com/time/world/article/0,8599,351169,00.html>.

article 422 of the criminal code, which provides for a very different process than that prescribed in law No. 26/2000. The maximum penalty provided for by article 422 is 4 years imprisonment, which does not meet the 5 year maximum sentence to allow for the arrest and subsequent detention of the suspect.

For those cases of torture which can be classified as gross violations of human rights there have been few which have been processed by the human rights and Ad-hoc courts, such as the cases related to Tanjung Priok and Abepura, but even in these more severe cases the accused were not arrested and detained. Through the decision of the judge, all accused were acquitted.⁷⁵

Article 7 | Trial or Extradition of Someone Suspected of Torture

Although the Prosecutor on the Tanjung Priok and Abepura case indicted that the perpetrators must be held responsible for torture as cited in the Supplementary Report par. 50 and 51 (see footnote no. 69). However, the Ad-hoc court which heard the Tanjung Priok case and the Human Rights court which heard the Abepura case acquitted all accused. Alongside the strong culture of impunity in Indonesia, the failure of the Prosecutor to submit strong indictments and to bring strong evidence and witnesses also influenced the trial.

Therefore the government report which states that it has fulfilled article 7 of the Convention is not correct.

Article 8 | Classification of Torture as an Extraditable Crime

In the extradition agreements referred to above (on page 50-51), torture is not included within the crimes for which extradition can be sought. This occurred because these extradition treaties were signed with foreign countries before the Convention Against Torture was ratified by Indonesia.

There has not been a documented case in which an alleged perpetrator of torture has escaped to a foreign country and has needed to be extradited back to Indonesia. Despite the many cases of torture which have occurred in Indonesia, prosecution of these cases is not a priority. It is for this reason that perpetrators have not needed to escape to another country.

Article 9 | Cooperation on Legal Matters Between State Parties

Transnational criminal cases and particularly those related to terrorism, are priorities requiring the attention by the Indonesian government. As discussed above on page 50-51, the authorities are provided with greater powers to deal with cases of suspected terrorists; and in these cases, there is a greater vulnerability that acts of torture will be perpetrated against suspects.

Article 10 | Education and Information on the Prohibition Against Torture

It is correct that the Government of Indonesian has started to develop human rights education from school to university level, as well as providing human rights education to the police, prosecutors, court actors and military personnel. Such efforts should be encouraged to continue as one strategy to address the culture of violence which has already taken root in the methods applied by the authorities—especially the police and the military. However as this culture already exists, it is not sufficient to only provide information about the human rights framework. Rather, sanctions must be enforced against those authorities who violate human

⁷⁵ See Supplementary Report par 50 and 51. In the Tanjung Priok case, the Prosecutor stated that the accused knew, or based on the 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. Therefore, the ignorance of the accused in allowing the torture to take place and not doing anything to prevent it, was categorized as a crime as stipulated in article (1) (a) and (b) article 7 (b), article 9 (f) and article 39 of Law 26/2000 on Human Rights Court as well as article 64 of the Penal Code. In the Abepura case, the Prosecutor stated that the accused who knew, or given the situation at that time, should have known, that their troops had committed or had been committing gross violations of human rights, particularly torture. The accused did not attempt to stop and to prevent those gross violations, nor surrender their troops to the authority in order to be processed by law. The action of the accused fell right into the category of criminal acts and was therefore, subject to criminal sentences as stipulated in article 42 (1) (a) and (b) article 7 (b), article 9 (f), article 39 of Law No. 26/2000 on Human Rights Court.

rights, especially in relation to superiors who order such actions or those who should take responsibility for the actions of their subordinates.

Article 11 | Methods and Practices of Custody to Prevent Torture

It is also correct that the Government of Indonesia has released a number of regulations regarding correctional institutions and places of detention, including regulations against those authorities who commit torture. Again, the problem stems from the practical implementation of these regulations.

There are still many cases of torture in detention which in some cases have resulted in the death of the suspect in police detention. As one example, Ahadi Bin Bakarun, a farmer who was part of the Bengkulu Peasant Association (Serikat Tani Bengkulu), died on 11 March 2005 as a result of torture carried out by police at the police headquarters in Padang Ula Tanding – Bengkulu.⁷⁶

Hasanudin Ribai (42 years old) died on 4 April 2005 in police detention in Resort Tulangbawang - Lampung after he was arrested for being in possession of a stolen motor bike.⁷⁷

The detention and torture of the students in the case relating to the clash in Abepura on 16 March 2006 illustrates that torture is an effective method which is often used by the security apparatus to force suspects to confess. See section 6 on Papua for more details.

Cases of corruption and bribery by the authorities are common in detention. This has meant that you must pay in order to live decently in a correctional institution. Demas Siahaan, a person who was accused of theft but was later found not guilty by a judge in Jakarta Central Court on the basis of insufficient evidence, explains that when she was arrested by the Polsek Metro Johar Baru, the police threatened her with a pistol in order to force a confession and also forced her to pay Rp 10.000.000- (around US\$ 1,000) as bail. Because she did not have money, Demas was thrown into jail in Pondok Bambu in East Jakarta. Demas said that the prison was not like a free hotel or “*Hotel Prodeo*”, and payment was required in order to avoid being tortured by the officials. In detention, Demas had to pay Rp 75.000 (around US\$ 7,5) for a cell which at full capacity slept 25 people; she was required to pay Rp 5.000 (around US 50 cents) per week for cooking and kerosene; and Rp 5.000 (around US 50 cents) per month for cleaning. These levies would increase around festival days, such as the 17 August (the Independence Day of Indonesia). If she was unable to pay, then the detention officers would force her to wash the clothes of the officers like a house servant. If she was still unable to pay, the officers would torture her by hitting and yelling at her. The authorities at the institution often requested the family of the detainees to pay money to visit the detainees, at least Rp 1.000 (around US 10 cents) per visitor. In addition, the detainee was required to pay Rp 5.000 (around US 50 cents) to the officer to call the detainee from his/her cell, and after the visit at least another Rp 10.000 (around US\$ 1) plus any food or cakes brought by the family. It was also common for the guards in the prison to request money for cigarettes of up to Rp 10.000 (around US\$ 1) from the detainee or the family. For those detainees who are wealthy and have the ability to pay more, they are treated well by the officials and are able to obtain better facilities.⁷⁸

Article 12 | Prompt and Impartial Investigation of Acts of Torture

It is correct that there are regulations in the Criminal Procedure Code regulating the processes required in the investigation of cases of torture. However, in cases which involve government authorities, these procedures are not adhered to. For example, in the case of TPST (Garbage Processing Units) Bojong, in which the police had tortured members of civil society, the offenders were only subject to administrative procedures as outlined in their code of ethics, rather than the Criminal Procedure Code which should have been applied. Such cases are

⁷⁶ Imparsial database 2005, information provided by the Serikat Tani Bengkulu, March 2005.

⁷⁷ Imparsial database about police brutality 2005, information provided by Harian Media Indonesia, 5 April 2005.

⁷⁸ Imparsial Interview with Demas Siahaan, occupier of a Rumah Singgah (Shelter) which was operated by JPIC-OFM, who became a victim of arrest and detention by the authorities: Police Sector of Metro Johar Baru Central Jakarta and Central Jakarta Attorney, detained in Pondok Bambu Eastern Jakarta from May until August 2006, and finally released by a court order from a judge in PN Jakarta Pusat in August 2006. She was acquitted through the judges decision on Monday, 11 December 2006.

not investigated through the judicial system, but subject to internal government review which can only result in administrative punishment such as demotion.⁷⁹

The government report refers to Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Court about the investigation of gross violations of human rights. Under these laws, the bodies responsible for the investigation of such abuses are the National Commission for Human Rights and the General Prosecutor, both of which are very bureaucratic and biased towards government interests. Many cases involving gross violations of human rights have been reported to Komnas HAM (National Commission of Human Rights), but Komnas HAM has been very slow to respond. Between 1998 and 2006, Komnas HAM was only able to support three cases of gross violations of human rights up to the stage of adjudication. This is compounded by the fact that Komnas HAM must also wait for investigations to be conducted by the Attorney General. Communities are re-victimised by a process which takes too long for the results to be finalized by Komnas HAM and the Attorney General. For example, the case of Abepura which occurred in 2000, was only heard by the court in 2004, and ironically, all accused were freed by the Human Rights Court.

The institutional impediments to investigate gross human rights violations were compounded in the decision of the government to mandate the Commission for Truth and Reconciliation (KKR), pursuant to law No. 27/2004 with conducting such investigations. This commission has not been formed by the government even though the statute provided that the body must be formed within 6 months of the enactment of the law. On 7 December 2006, in a test case regarding the law, the Constitutional Court ruled that the KKR law was in conflict with the Constitution and on that basis the Constitutional Court declared that the KKR law was not valid.⁸⁰

Article 13 | Right of the Victim to Submit a Complaint to the Competent Authorities

Although the Indonesian government has enacted a set of regulations about the rights of victims and their families to make complaints, including regulations about protecting witnesses and victims, in practice, victims often faced difficulties in reporting perpetrators. One of the difficulties experienced by victims is that they have the burden to provide evidence against a person who not only is a member of government but also the same person who arrested or detained them.

One recent example of this is in the case related to the clash in Abepura on 16 March 2006, which resulted in gross violations of human rights by the police, in the form of torture of the 24 accused persons at the Papua police station (Polda Papua). The victims of the torture, through their families, made a report for Komnas HAM (National Commission of Human Rights), which started a long process to resolve the case, including a process of verification. This verification process includes correspondence between Komnas HAM and the head of the police in Indonesia (Kapolri). After the families made these complaints on behalf of those in detention, the family and lawyers for the victims experienced intimidation from those accused of torture.⁸¹

In relation to the cases of gross violations of human rights which have been heard, such as the case involving abuses in Timor Leste, Tanjung Priok and Abepura 2000, the victims and families of the victims were continually threatened by the police and military; the same agencies who committed the crimes. This results in a situation where many victims and their families are not brave enough to appear in court to give evidence against the perpetrators. This is very damaging for the victims as the judge, based on a lack of witnesses and other proof, may decide to acquit the perpetrator.

Article 14 | Right of the Victim to Compensation

The rights of victims to compensation are only theoretical; as yet they have not been applied in Indonesia. The compensation system in Indonesia provides that it can only be given if the perpetrator has been proven guilty.

⁷⁹ Alternative Policy Imparsial, on police brutality in the period of transition, 2005.

⁸⁰ Constitutional Court decision No. 006/PUU-IV/2006, Thursday 7 December 2006, KKR (the Truth and Reconciliation Commission) Law conflicts with constitution 1945, <http://www.mahkamahkonstitusi.go.id/berita.php?newscode=248>

⁸¹ PGGP (Ecumenical Council of Churches in Papua) Report on the cases related to the clash of 16 March 2006 in Abepura.

In the majority of cases where the perpetrator is a police or military officer, no trial takes place, and therefore officers are not found guilty. In three cases involving gross violations of human rights, in East Timor⁸², Tanjung Priok and Abepura, the victims did not receive compensation because all of the alleged perpetrators were found not guilty.

In Indonesian law, compensation is not automatically awarded; rather, it must be requested to the court. The process can be joined with the criminal trial or requested independently through a civil suit. Both of these methods are not very effective for victims. To request compensation as part of a criminal case usually depends on the outcome of the criminal trial. If the defendant is found guilty, then compensation will be awarded; but the victim cannot request compensation while there are any ongoing appeals. If the appeal is granted, then the request for compensation will also be refused. For compensation to be granted through a civil suit the process is even longer because first the victim must await the outcome of the decision of the criminal trial. Almost no victims receive compensation because the intention of compensation is designed unfairly for victims and such procedures are very long and complicated.

In the case concerning the gross violations of human rights in Tanjung Priok, General Try Sutrisno, former Chief of Jayakarta Regional Military Command in 1984, one of those responsible for the torture and killing, participated in 'reconciliation' processes with some of the victims, and gave them money which was termed 'compensation'. The money provided as compensation was very small compared to the crimes which were perpetrated. Through the payment of 'compensation', Try Sutrisno pressured the victims to cease their legal action and give evidence in court that was favorable to the perpetrators. These favorable testimonies contributed to the finding of not guilty for all of the accused.

Article 15 | Statements Obtained Through the Use of Torture

Although Indonesia has regulations which prohibit the use of statements which have been obtained through torture, it is difficult for the victims of torture to prove to the court that their statement was coerced through torture.

In the majority of courts in Indonesia, the accused are brought to the hearing without a lawyer, and the accused do not know their rights when they are investigated by the police and prosecutor until the process reaches the court. As a result, many accused are forced to confess and their confession becomes part of the Statement of Investigation (BAP). At the court hearing, it is common for accused persons who are not represented by a lawyer to be pressured into giving a statement in accordance with the BAP. Generally, if accused persons or witnesses reject the information in the BAP, they are ignored by the judge, or worse, the Judge and Prosecutor threaten to add additional charges for providing a false statement and false oath pursuant to article 242 of the Criminal Code, which carries a maximum term of 7 years imprisonment for an accused person and 9 years for a witness.

Cases concerning members or suspected members of Free Aceh Movement provide many examples of the use of torture by the police to obtain confessions from people who did not commit the acts. However, those that have provided false confessions are pressured into not raising the issue so that the judge will find them guilty and as a consequence, they will be imprisoned.⁸³

Amnesty International has stated that the government of Indonesia has demonstrated that it has no desire to enforce regulations which could be used to bring court based justice for acts of torture, as provided by article 15 of the Convention Against Torture. Amnesty International has stated publicly that there are many cases where evidence or witness testimony could have been used as the basis to bring about acknowledgment (of torture) in a hearing, but the accused or witnesses were ignored by the judge.⁸⁴

⁸² As stated previously the East Timorese militia leader Eurico Guterres was the only accused to be found guilty after all appeals were concluded.

⁸³ See process of the Court for GAM members in this report in the period of Military Emergency in Aceh.

⁸⁴ Amnesty International: "Indonesia: Comments on the draft law on Human Rights Tribunal", June 2000 (AI-Index: ASA 21/025/2000).

Article 16 | Prohibition of Other Cruel, Inhuman, or Degrading Treatment or Punishment

The enactment of a number of laws which were made by the government to prevent acts which are inhuman and degrading is positive. But this would be further improved if the government authorities complied with these laws.

In a number of cases which have arisen, the government has actually committed acts which are degrading and against human dignity. One very poignant example is that of the arrest of the *three in one* jockeys⁸⁵ in Jakarta, who were beaten and had their heads shaved by the Polisi Pamong Praja Unit (Satpol PP)⁸⁶. These acts were carried out against a group of people arrested, including a female jockey called Sugiharti who was 31 years old. On 5 September 2006, Sugiharti was working as a jockey on Imam Bonjol Menteng Street, when she was informed by friends that her husband, Sugiyanto (30), was arrested by officers from Satpol PP in Taman Surapati. Sugiharti made efforts to find her husband. On a block of empty land in front of KPU, Sugiharti and her child Susan (3 years) along with 8 other jockeys were arrested and taken by Satpol PP to Menteng subdistrict office. There, Sugiharti was shouted at in an attempt to make her reveal the location of her husband. She was also threatened that her husband would be killed if he was caught. The Satpol PP officer doing the interrogation also committed other violent acts such as hitting and being disrespectful to the victim. Sugiharti's head was forcibly shaven and she continued to be held for 8 days in Panti Sosial Bina Insan Bangun Daya Kedoya West Jakarta.⁸⁷

The government has also not been successful in preventing the application of by-laws linked to Sharia Law which provide sanctions which are very damaging to women, including the Tangerang Bylaw (Perda) No. 8 of 2005 which prohibits prostitution. Article 4 section (1) in that by-law states that any person, who, through their attitude or behaviour, arouses suspicion that they may be thought to be a prostitute, is forbidden to be in a public street, field, hostel, hotel, rented room, rented house, coffee house, entertainment area, theatre, street corner, alley or other places in the district. That same article criminalises women from being in public places and public streets at prescribed hours in the night, without linking their presence to a suspicion of prostitution. The article criminalises women who are not thought to be prostitutes, and has been enforced against a number of women, one of which is Lilis Lindawati (36 years old). She is a female head of the house and works in a family business in Tangerang. Lilis was arrested by Pamong Praja Police Unit (Satpol PP) when returning from work on 28 February 2006 around 8 pm. She was then imprisoned for three days for being in violation of bylaw 8/2005.⁸⁸

This regulation is applied in a number of districts, such as in West Java, West and South Sumatera, South Kalimantan, South Sulawesi and Aceh, despite many protests from women's groups that the Regulation is

⁸⁵ Three in one jockey is a person who offers his/her service to be a third passenger of a car with only two passengers which will pass Jendral Sudirman, Gatot Subroto, MH. Thamrin and Gajah Mada Street – four of the Jakarta's most busy main roads. The local government passed the by-law which only allows cars with minimum of 3 passengers pass Jendral Sudirman, Gatot Subroto, MH. Thamrin and Gajah Mada Street during rush hours in order to reduce the traffic jam in the four business district areas. While many cars usually have 2 passengers inside, they need help from the jockey to be their third passenger to avoid sanction from the police. For his/her service, the jockey usually receives Rp 5,000,- Rp 10,000, (around US\$ 50 cents–US\$1) per ride. The local Government bans the practice of three in one jockey for violating the aesthetics view of Jakarta. The Government then ordered the Satpol PP (local Government police) to arrest and to detain the jockey.

⁸⁶ Satuan Polisi Pamong Praja or Satpol PP (abbreviation) is a police institution under the command of Governor/Regent. It was established by the Dutch Indies Supreme Court (*Hoogerrecheitshof*) during the Dutch colonization and still exists now. During the Dutch colonization, the police organization was expanded into three departments, *first*, municipal police (*Bestuur Politie*) as part of local government supported by village chief, night watchers and police agents assigned by municipal police officials. *Second*, general police officers (*Algemeene Politie*), a special task force who was responsible for undertaking police works. *Third*, armed police officers (*Gewapende Politie*). Satpol PP is part of Municipal Police under the Governor/the Regent, Police Brutality in Indonesia's Transitional Era, Imparsial Alternative Report May 2005.

⁸⁷ "The Over Acting acts of Satpol PP, Prison Officers and Police Officers", Kontras Press Release, Jakarta 21 September 2006, http://www.kontras.org/index.php?hal=siaran_pers&id=400

⁸⁸ Kompas, Saturday, 4 March 2006, "Women, Bylaws and Domestification".

discriminative and that many victims have been wrongly arrested and treated inhumanely and had their dignity injured. This regulation is also damaging because it gives opportunities to fundamentalist groups to become part of the security apparatus in order to carry out duties of arresting and torturing victims.

A number of laws and regulations provide legitimacy and power to groups such as Satpol PP, including; article 18 of law 32 of 2004 about the operation of the local government; Government Regulation (PP) No 26 of 2005 about the operation of Satpol PP; The Decree of the Ministry of Interior (Permendagri) No 35 of 2005 which regulates the policy for the use of official uniforms, equipment, and tools for the Satpol PP. These laws have become the basis for legitimising the violent acts by the Pamong Praja Police Unit (Satpol PP) because those regulations give authority to the Satpol PP to be armed and the opportunity to use violence. The arming of Satpol PP is done ostensibly to assist the police against radical movements in the districts which are connected to regional autonomy.

Pursuant to article 33 of the Decree of the Ministry of Interior (Permendagri) No 35/ 2005, Satpol PP is permitted to use rubber and rattan club, as well as fire arms such as long barreled guns and hand pistols, including revolvers which can contain bullets, tear gas and hollow bullets. The long barreled guns can be in the form of an air soft gun which can use bullets, hollow bullets, rubber bullets, and gas bullets. In some areas in Indonesia, including Makassar and Manado in Sulawesi, the Pamong Praja Police Unit have already been given the authority to use firearms. This introduces a great danger for the civilian community because the Pamong Praja Police Unit have already used their authority and committed brutal acts, while beating up the community.⁸⁹

⁸⁹ Suara Merdeka, Thursday 19 January 2006, "Satpol PP fire tear gas".

FIVE • Torture in Aceh

5.1 | Background: Historical Context

Aceh is located on the island of Sumatra, with more than 3.5 million inhabitants and many riches due to natural resources such as gas, oil, as well as non-fuel based such as coffee, palm oil and wood. 96% of Acehenese are Muslims, and Aceh is often referred to as “Negeri Serambi Mekkah” (“the Veranda of Meccca”),⁹⁰ which is a clear indication that the community in Aceh is very religious. The Acehenese demonstrated their strength during 1873 – 1942, when they united to defeat the colonising Dutch.⁹¹ After independence, the Acehenese agreed to merge with the Indonesian Government, on the condition that they would have full autonomy to govern Aceh itself.⁹²

However, the Indonesian Government did not fulfill its promise of full autonomy. The Government ignored the “uniqueness” of the Acehenese situation, proceeded to impose ‘top-down’ policy in Aceh. For example economic policies and the management of natural resources were dominated by Jakarta and Java-centric governmental administration rules were implemented. Islamic Law (Syariah) was not regarded as the binding law in Aceh and Acehenese leaders who struggled for freedom from Dutch colonial rule were not acknowledged by the Indonesian Government.

Since this period there has been an element of distrust from the Acehenese community toward the Indonesian Government. Various Acehenese leaders have launched resistance movements against the Indonesian Government. From 1953 – 1959 Daud Beureueh declared the Islamic Nation of Islam and joined the war movement known as DI/TII (Darul Islam/Tentara Islam Indonesia).

President Soekarno responded to the resistance of Daud Beureuh by promising special status to Aceh. But the efforts at peace between Aceh-Jakarta did not last long because after Soeharto took power, he revoked the special status that was bestowed by Soekarno. In fact, under Soeharto, Aceh was amalgamated into the province of Northern Sumatra which had a majority Christian population. The national government entered into contracts allowing foreign financial investment in Aceh via exploration and exploitation of oil and natural gas by PT EXXON, and it became clear that Aceh’s rich natural resources would belong to Jakarta and a handful of elite Acehenese.

The imbalance in social conditions, politics, the economy, and the Government’s arbitrary treatment of the Acehenese community motivated Hasan Tiro to rebel against the Government. Hasan Tiro then initiated the Gerakan Aceh Merdeka (GAM – Free Aceh Movement) on December 4, 1976 along with the military branch known as Angkatan Gerakan Aceh Merdeka (AGAM – Military Branch, Free Aceh Movement). The Indonesian Government responded militarily to the resistance.

During Soeharto’s regime, Aceh was classified as a Daerah Operasi Militer (DOM – Operational Military Area) from 1989 until August 1998 which provided the conditions for the government to carry out a military operation to quash GAM’s rebellion. The Government policy of conducting military operations in Aceh opened the door for torture to be inflicted on Aceh’s civilian population. Many of those accused of being members of GAM or sympathising with GAM, experienced torture outside the boundaries of humanity. Ironically, the Presidents that have followed Soeharto have continued the policy of Military Operations in Aceh. This militarisation of Aceh has led to an increase in torture over time.

⁹⁰ Tourism in Aceh Province, <http://acehnet.tripod.com/>

⁹¹ Mike Head, “Mass grave begin to reveal scale: Thousands killed in Aceh”, *World Socialist Web Site*, August 28, 1998, <http://www.wsws.com>

⁹² Riza Sihbudi et.al, “From central politics to GAM: Identification is the root of the problem and its solution”, Mizan publisher, January 2001, p.34.

Table. Mode of Solution of the Conflict in Aceh According to the Presidential Period in Indonesia ⁹³

Time Period	Political Policy	Political Compensation
Soekarno (Old Order) (1953-1963)	*Military Operation and * Asymmetric Negotiations (Perundingan)	*Special Status and amnesty
Soeharto (New Order) (1989-1998)	*Status of Aceh as a Operational Military Area with the title: "Operasi Jaring Merah" (Operation Red Net)	---
Habibie (Transitional Order) (1998-1999)	*Withdrew DOM status *Apologised *Enforcement of Human Rights *Military Operation	*Development Package: for example rebuilding of rail lines *UU No 44/ 1999 tentang "Organisation of the Special Territory of Aceh"
Abdurrahman Wahid (1999-2001)	*Negotiations that involved third party (Swiss's Henry Dunant Centre) * Presidential Decree No. 4/2001 * Military Operation	*Presidential Decree No 2/2000 on the Harbour and Free Trade in Sabang
Megawati Soekarnoputri (2001-2004)	* Presidential Decree No. 7/2001 * Presidential Decree No. 1/2002 *Military Operation with the status of Military Emergency	*Law No. 18/2001 on the Special Autonomy of NAD
Susilo Bambang Yudhoyono (2004-present)	*Military Operation with the status of Civilian Emergency *Helsinki Peace MoU *Intelligence Operation after the signing of the Helsinki Peace MoU	*Amnesty towards detention and convictions for GAM (Free Aceh Movement) *Law of the Governance of Aceh *GAM able to join (participate in the governor election) Nanggroe Aceh Darrussalam

Source: Database Imparsial.

5.2 | Cases of Torture in Aceh 1998 – 2006

As noted above, the political and economic importance of Aceh for Jakarta saw the continuation of the militaristic approach in the province. Such an approach led to a massive increase in the cases of torture in Aceh. Because of the relationship between militarization and torture we have divided the analysis of torture into the different periods of militarisation in Aceh as follows:

5.2.1 Period of 'Operational Military Area' 1989 - 1998

The Government of Indonesia under the leadership of President Soeharto had a policy of making Aceh a Daerah Operasi Militer (DOM – Operational Military Area) to eliminate GAM. This military operation was known by the name of Operasi Jaring Merah (Operation Red Net), and continued from 1989 until 1998. Whilst it continued to be declared a DOM, the government mobilized large numbers of non-organic troops from outside Aceh. It is thought that as many as 12,000 troops were mobilised by the Government over the ten years of Operasi Jaring Merah. The non-organic troops were supported by civilians who were recruited to assist the military operations (known by the name of "Cuak"). Their role included carrying out acts of torture against civilian population. As a measure of the importance of the military operation, a Tactical and Strategic Unit Post was established and consisted of 6 – 10 members of Kopassus. Aside from the development of the Posts, the military also built torture chambers in a number of places including:

- ∞ District Military Command Office 012 in Lampienung, Banda Aceh.
- ∞ District Military Command Office 011 in Lhokseumawe, North Aceh.

⁹³ Imparsial, Aceh is under Military Emergency, Alternative Policy, 2004, p. 2.

- ∞ District Military Command Office 0102 in Sigli, Pidie.
- ∞ District Military Command Office 0106 in Takengon, Central Aceh.
- ∞ District Military Command Office 0104 in Langsa, East Aceh.
- ∞ District Military Command Office Peureulak, East Aceh.
- ∞ Kopassus Office in Rancung, Krueng Geukeuh, North Aceh.
- ∞ Military Office Bukit Sintong in Lhoksukon, North Aceh.
- ∞ Markas Kompi Senapan (Firearms) B, Lhoknga, Aceh Besar.
- ∞ Lembaga Pemasyarakatan (Prison) Lhoknga, Aceh Besar.
- ∞ Brimob Office Polda Aceh, Jeulingke – Banda Aceh.
- ∞ Brimob Office Polda North Sumatra in Medan.
- ∞ Regional Military Command Jail Bukit Barisan in Medan, North Sumatra.
- ∞ Correctional Facility Gandhi, Medan – North Sumatra.⁹⁴

At the time of DOM, many members of Aceh's civil society who did not have a connection with the activities of the rebel movement were also captured, detained, tried and jailed. They experienced torture, inhumane treatment and experienced degrading treatment on the basis of accusations such as:

- ∞ Preparing humanitarian assistance for people who they did not know but who were suspected of becoming members or supporters of GAM.
- ∞ Having a family connection with persons who were charged as a member or supporter of GAM.
- ∞ Having a connection with persons who are accused of being a member of or supporter of GAM.
- ∞ Having people who are accused of being a member or supporter of GAM in their house.
- ∞ Suspicion of concealing weapons in their house.
- ∞ Giving advice to people accused of membership or support of GAM.
- ∞ Suspected of harbouring/protecting members or supporters of GAM who have escaped.
- ∞ Refusing to work to assist military action.
- ∞ Having a personal problem with operational support staff or a cuak.⁹⁵

Based on data received from Forum Peduli HAM (FPHAM) Aceh, a local Acehnese NGO, over the period of DOM, as many as 15,000 civilians were killed; 1958 were disappeared; 128 women and girls were raped; 81 people became victims of sexual assault; 597 houses were burnt; 16,375 people were disabled, including children, and as many as 23 mass graves have already been found containing hundreds of human skeletons⁹⁶.

The methods of torture used by the military and police were intended to terrify the Acehnese community. The military believed that torturing members of the community would be the most effective method of controlling the community, so that over time they could crush the community. Based on testimony of torture victims who succeeded in getting out of torture centers and recounted their experiences to Tim Cordova, a pattern of human rights violations by the military was established:

1. Male victims who were accused of membership or supporting GAM were detained or abducted by the military. Following this, the victims were immediately shot or taken to the Sattis post. At the Pos Sattis, the victims were tortured, killed or disappeared.
2. Female victims were held hostage until those accused of being members or supporters of GAM surrendered. The victims were also detained or abducted, and forced to give information about their families, for example their husband, father, child or other relative accused of membership or supporting GAM. Victims were taken to the Pos Sattis and experienced things including: being stripped naked, raped, tortured, sexually assaulted/humiliated or killed.⁹⁷

⁹⁴ Dyah Rahmani P., *Rumoh Gedong: The Scar of the Acehnese*, Cordova, Jakarta, 2001, pp. 15-17.

⁹⁵ *Idem*.

⁹⁶ MN. Djuli, "The Process of Ethnic Dilution in Aceh, p. 11.

⁹⁷ Dyah Rahmani, p. 41.

The Alternative Report prepared by the Coalition of NGOs to the Committee Against Torture mentions methods of torture that were used by the military and police apparatus in Aceh such as⁹⁸:

1. Victims were firmly tied and dragged with a rope
2. Bodies of victims were tied to a heavy stone or iron and drowned
3. Cutting fingers or arms then pouring liquid salt or acid into the wounds
4. Head skinned
5. Forced fasting for 9 days in a row
6. Electric shocks
7. Teeth shed
8. Rape
9. Repeated beating with wooden bars
10. Breaking bones/rib
11. Hanging upside down
12. Rape followed by whipping with wire
13. Stripped naked then left out all night
14. Stripped naked then paraded in public
15. Beating with a rayfish tail
16. Tied to a wall
17. Cutting genitalia
18. Stripped naked and forced to perform oral sex
19. Being submerged in faeces
20. Beaten with tyre pump
21. Buried half body
22. Shot on a stage before the public
23. Hung and beaten up

Apart from the methods listed above, the military directly publicised their campaign of systematic killing; Major General Djoko Pramono, Territorial Military Commander in Aceh in 1990, stated, "I have said to the community here: if you meet with a member of GPK (Gerakan Pengacau Keamanan – Movement for Disturbance of Security), you must kill them! There is no need for investigation. Shoot them or stab them! I also say to the community to arm themselves with sharp weapons, pistols or whatever. If you want to defeat GPK, kill them!"⁹⁹

After the fall of Soeharto, the Acehenese community campaigned loudly for the first time in public about the brutality that had been inflicted for many years. Soeharto's successor, Habibie, then withdrew DOM status in August 1998.¹⁰⁰ Upon the announcement of the withdrawal of DOM status, General Wiranto, the TNI Military Commander apologised to the community for all of the violations that had occurred. But neither the Government, nor the military and police made any effort to respond to the demands of the Acehenese community that those who had committed those acts be tried and made to pay compensation to the victims. There is no court for those considered to bear responsibility for the violations of Human Rights in Aceh. General Wiranto then stated that no apparatus would be tried in the case of Aceh because they were only doing their job.¹⁰¹

5.2.2 Period between end of 'Operational Military Area' start of 'Military Emergency' (1999 – 18 May 2003)

When President Habibie came to power, the Acehenese community demanded that DOM status be revoked, the withdrawal of non-organic troops (especially Special Armed Forces /Kopassus), that government apologise

⁹⁸ Indonesian Coalition NGOs, "Alternative Report on the Situation of Torture in the Republic of Indonesia submitted to Committee Against Torture of the United Nations", published by PIRD, October 2001, pp. 45-46.

⁹⁹ Based on Reuter's interview, November 25, 1990 as cited from MN. Djuli, p.3-4.

¹⁰⁰ Human Rights Watch, "The War in Aceh", Vol. 13 No. 4 (C), August 2001, p. 8.

¹⁰¹ Idem.

to the community, and a team of independent investigators be formed to investigate the serious violations of human rights during the DOM period. Habibie responded by giving political compensation in the form of a development package, which included the rebuilding of the railway in Aceh. But Habibie's government refused to try the perpetrators of Human Rights abuses in Aceh. Besides this, at the same time the Indonesian military was carrying out military operations seemingly without political consent, including operations code-named: "Operasi Wibawa" (Operation Authority), "Operasi Sadar Rencong"¹⁰² (Operation Aware of the Rencong), "Operasi Pasukan Penindak Rusuh Massal" (Operation troop action for massive disturbance) and "Operasi Cinta Meunasah"¹⁰³ (Operation Love Meunasah). Although the Government refused to acknowledge that there were military operations happening in Aceh, the events of the time indicate that the Government's approach was still primarily tied to military action.

The refusal of the Government to bring those who violated Human Rights to justice and the continuing military operations in Aceh, caused a great deal of anger in the Acehenese community and since that time many in the Acehenese community have quietly supported GAM in their struggle for Aceh's independence.

During the time of President Abdurrahman Wahid's (Gus Dur) leadership, the aspect at the forefront of political thought for the Acehenese was Gus Dur's political promise to hold a referendum within six months of taking office. Aside from this opportunity, Gus Dur's government also gave political compensation to the community in Aceh in the form of laws on Islamic Syariah, Special Autonomy status, and the restoration of Aceh's name, Nanggroe Aceh Darussalam (NAD).¹⁰⁴

Gus Dur's logic in ending the problems in Aceh can be ascertained from his visit to the United States in 1999, where he said that:

"we look after Indonesia's integrity in two ways. In one way, negotiating an agreement with the groups who can be taught to negotiate. On the other hand, I also will take a hard stance towards those who don't wish to be taught to negotiate or who act without reason"¹⁰⁵

It followed that during Gus Dur's rule, a path to resolving the conflict was negotiated through an agreement, facilitated by a third party, the Henry Dunant Center (HDC) – known as "Jeda Kemanusiaan" (Humanitarian Pause) which was reached on 12 May 2000. The agreement was effective for approximately three months, but later failed when it entered the demilitarisation phase. Military criticism of Gus Dur's policy was that it placed too much emphasis on the dialogue process, whilst ignoring the TNI position.¹⁰⁶

Gus Dur's attitude hardened, not because those in Aceh were not willing to 'lean to negotiate' but rather political events were weakening the political position of Abdurrahman Wahid. Wahid was facing a political rebellion from political challenge led by Megawati (PDI-P) and the military elite (TNI), and he was not receiving support from his previous power base, being members of the legislative who were from centre factions. Gus Dur conceded political power to the military in the form of Inpres (Presidential Decree) 4/2000 which gave a legal basis for the military operation in Aceh – which was introduced to the public as Operasi Terpadu (OP – Operation Integration) – in the hope that the military elite would support the ousting of the President's critics.

In the period of Megawati's Presidency, the political policy for resolution of the conflict in Aceh took a dualistic path; there was continued political support for the military operation with opportunities for negotiation, whilst there were also efforts to find a fully militaristic solution. At the beginning of her presidency, Megawati extended the political legitimacy of Inpres No.4/2000 which had been issued by her predecessor by issuing Inpres No.7/2001, which was in turn continued by Inpres No.1/2002. In addition,

¹⁰² Rencong is a special dagger from Aceh.

¹⁰³ Meunasah is a small Mosque in Aceh.

¹⁰⁴ Ministry of Foreign Affairs, "Presidential Instruction No. 4 of 2001 about comprehensive steps in the plan to resolve the Aceh problem," <http://www.dfa-deplu.go.id>

¹⁰⁵ Press Release KBRI-AS. <http://www.indonesiamedia.com/rubrik/localnews99december-kbri.htm>

¹⁰⁶ Mayjen TNI Williem T. DA Costa, www.mabasad.mil.id/artikel/artikel1/11903terpangil.htm

Megawati gave more power to the military elite who had supported her by permitting them to return to the Regional Military Command Iskandar Muda in Aceh.¹⁰⁷

In the time that followed, Megawati made efforts to re-start negotiations which gave rise to the Cessation of Hostilities Agreement (CoHA) which was signed on 9 December 2002 in Geneva. However, as had occurred previously, the CoHA agreement failed when it entered the demilitarisation phase. As a result, this phase proved crucial in the establishment of a full military operation as the solution to the Aceh conflict.

The Government's support of military policy in Aceh did not bode well for the implementation of the Convention Against Torture. As stated in the Alternative Report from the Coalition of NGOs, after the ratification of the Convention, in the period from September 1998 until December 1999, the Coalition of Indonesian NGOs recorded that in Aceh alone there were 802 persons who were victims of torture, while in 2000 there were 549 persons tortured.¹⁰⁸ In 2001, 768 victims were noted,¹⁰⁹ and in 2002, the total had reached 1860 victims of torture.¹¹⁰ Based on the KONTRAS database, the total figures for violence in Aceh from 1999 to 2003 that constituted a serious violation of Human Rights by the military (TNI AD), the Police including Mobile Brigade (Brimob), as well as the paramilitary were as follows:

Table: Violence data from 1999 – 2002 in Aceh

Year	Extra Judicial Execution	Torture	Capture / Detention	Forced Disappearance	Total
1999	421	802	293	101	1.617
2000	524	549	419	140	1.632
2001	1.014	768	578	110	2.470
2002	1.307	1.860	1.186	377	4.730
Total	3.266	4.024	2.476	728	10.449

Sumber: Database Kontras 2002

On the pretext of defending a unified Indonesia, the Government policy was to eradicate GAM, without regard to the Convention Against Torture. When searching for members of GAM, the military and police captured and detained civilians who were suspected of being members or having a connection with GAM. These people were forced to confess and to reveal secret GAM locations. Even though there was no proof that the individual detained had a connection with GAM, police and military commonly used torture as a tool to oppress the community and gather information. Sometimes the military and police also threatened those who were detained that if they refused to work with the military or police, their family would be killed or their house would be burnt down.

Several cases of the violence, including acts of torture by the apparatus, that took place in Aceh in the period from 1998 – 2003 under the guise of eradicating GAM, can be seen in the following table:

¹⁰⁷ News from the Radio Nederland, 4 January 2002.

¹⁰⁸ Indonesian NGOs Coalition, p.45.

¹⁰⁹ Commission for Disappearance and Victims of Violence (KONTRAS), "Human rights stagnates", 2001 Annual Report, p. 87.

¹¹⁰ Commission for Disappearance and Victims of Violence's (KONTRAS) Data Base, The Number of Victims in Aceh in 2002.

Table of Cases of Violence, including capture, detention, torture and killings in Aceh 1998-2003

No	Case Name	Case Description	Type of violence used by the apparatus	Legal remedy
1	KKA (Kertas Kraft Aceh/Kraft Paper of Aceh) Branch, Dewantara Subdistrict, Northern Aceh, 3 May 1999 ¹¹¹	<p>TNI apparatus shot people who were demonstrating in Kecamatan Dewantara, Northern Aceh.</p> <p>This tragic case stemmed from the arrogant attitude of the Rudal troops towards the citizens in that area. The Rudal detachment had previously come down to Cot Murong and beat citizens because they were accused of taking members of the military apparatus hostage.</p> <p>Citizens then came to the Military office to ask for the action to stop. However the Military office did not pay attention to the citizen's petition, instead they asked for assistance from the non-organic troops to get rid of the citizens.</p>	46 people were killed by shots fired by the military apparatus, including Saddam Husen who was 6 years old. Around 200 people were wounded.	President BJ. Habibie issued Presidential Decree No. 88/1999 on the Independent Commission Mission on Violent Measures in Aceh (KIPTKA).
2	KNPI (Indonesia Youth National Committee) Building, 9 January 1999 ¹¹²	Operation Authority (Operasi Wibawa) was set up to search for a number of security apparatus who had been reportedly abducted by unknown persons. They attacked civilians in the village of Kandang on 9 January 1999. As a result, 50 citizens were caught and two women were shot and killed on the spot. In searching for	50 people were captured and tortured. Five of these people died as a result of the torture by the authorities, 23 people suffered serious injury and 21 people suffered less serious injuries. The torture was conducted by TNI AD members from Yonif 121/MK; the torture was also inflicted by	Military Court in Banda Aceh. Major Bayu Najib, who carried out torture leading to the serious injuries and deaths of 5 people were sentenced to only 6 years in jail.

¹¹¹ Acehkita, The Examination of the KKA tragedy questioned, 4 May 2006, <http://www.acehkita.net/beritadetail.asp?Id=330>

¹¹² Otto Syamsuddin Ishak, Idi Cut Aceh Case: From Tragedy to Impunity, Cordova, Jakarta, September 2001, page 10-11.

		Ahmad Kandang who was suspected of being a member of GAM, they captured and detained people in Kandang who were suspected of involvement with GAM and took them to the KNPI Building in Lhokseumawe.	Major Inf Bayu Najib – Commander Yonif 133/JS, using cables and was copied by his subordinates, and the torture was also carried out by plain clothed military personnel.	
3	Idi Cut Case, 2-3 February 1999 ¹¹³	Forces from Military Office Idi Cut shot around 3000 – 5000 people who were on their way home from attending a religious talk in the village of Matang Uliem, Idi Cut, Subdistrict of Darul Aman – East Aceh.	Approximately 7 people were killed as a result of shootings; victims who were in agony were carried to the top of a truck and tortured until they died. Their corpses were then placed in a sack and thrown into the Arakundo river, weighed down so they would sink. 58 people were caught and detained at the Mapolres, East Aceh. They were tortured whilst detained. Anwar Yusuf, a volunteer with Forum Peduli HAM East Aceh was captured and interrogated by the Military at their office at Idi Cut. Anwar was then transferred to the District Military Command, East Aceh, then to the East Aceh Police Centre and released as there was no evidence against him. Whilst detained by the Military office apparatus, Anwar was beaten with a beam, a broom and a chair. He also had hot water thrown at him, was forced to do push-ups with his feet held down with wood and threatened with shooting. Dahlan (Tengku	President BJ. Habibie issued Presidential Decree No.88/199 on the Independent Commission Mission on Violent Measures in Aceh (KIPTKA).

¹¹³ Otto Syamsuddin Ishak, excerpt from page 13-32.

			<p>Panton Labu) a proselytizer in Idi Cut was captured by the police in East Aceh in his home. He was shot in the feet. Then the victim was taken to the hospital and his feet were amputated without his permission or the consent of his family. The victim was subject to criminal action pursuant to sections 106 – 160 KUHP (Indonesian Penal Code) for assault and incitement.</p>	
4	<p>Beutong Ateuh Case, 23 July 1999¹¹⁴</p>	<p>Attack of the Lilawangsa Military Command apparatus, non-organic military troops and soldiers supporting the operation on the Tengku Bantaqiyah pesantren (School for Koranic studies) in Beutong Ateuh, West Aceh. Tengku Bantaqiyah was accused of becoming a member of GAM, killing 2 police officers and 7 military officers, having a cache of weapons, having a marijuana crop, planting and selling marijuana and spreading an Islamic ideology that was regarded as deviant by the Government. Because of this the military undertook a secret operation to destroy Tengku Bantaqiyah and his followers. But none of the military's accusations against Tengku Bantaqiyah could be proven.</p>	<p>Victims were bombarded with shots. The victims who did not die immediately were put into a truck and tortured until they died, then their corpses were thrown to a ravine. In total up to 57 victims lost their lives.</p>	<p>24 military officers with the highest rank of Captain and one civilian (an assistant soldier or better known as <i>cuak</i>) were brought before the Connection Court in Banda Aceh on 17 May 2000. The Connection Court is a special court to try 2 kinds of perpetrators: civilian and military personnel in one case. They were proven to have carried out the killings and the torture that resulted in death. They received light sentences. But the military hierarchy that authorised the slaughter have escaped the law, including Syafnil Arnen who was at the time the official DANREM Lilawangsa with the rank of Colonel, and at that time the head of BAIS with the rank of Major-General.</p>

¹¹⁴ Dyah Rahmani P, Matinya Bantaqiyah: Menguak Tragedi Beutong Ateuh, Cordova, Jakarta, August 2001.

5	Bumi Flora Case, Dusun Pelita, Alur Rambut Village, Subdistrict of Banda Alam - East Aceh. ¹¹⁵	On Thursday, 9 August 2001 there was a shooting incident in Afdeling (Plantation) IV PT, Bumi Flora as a result of which it was reported that 31 people had died and 7 were injured. The victims who died, along with those who were injured all suffered from bullet wounds.	The incident began with the arrival of a group of people wearing striped soldiers' uniforms, wearing round hats and carrying firearms on the morning of 9 August 2001 at around 07.30 searching for GAM members. They asked the male citizens to come out of their houses and gather together. After the males gathered together they were then made to line up and asked to open their shirts and squat with their hands on their thighs. Without any questions or checks by uniformed persons, shots were fired. Around 08.00 the uniformed group left the area, after first delivering their apologies to the female citizens of Plantation IV PT, Bumi Flora. After the uniformed group had left the women of Plantation IV PT. Bumi Flora all searched for their husbands but a large number of them were already dead.	The District Government of East Aceh formed a Fact-Finding Team. The Fact-Finding Team was formed by a Bupati Decree East Aceh No. 808/094/2001. The intention and task behind the formation of the team was to conduct investigations and collect data regarding the victims and any eye-witnesses, following the incident that occurred in Plantation IV PT. Bumi Flora. On 9 August 2001. Police in the area had already carried out some investigations as related to the KUHP and KUHAP. Following this, the police had already made their statement of investigation (BAP) in relation to 18 witnesses. Consistent with section 18 of law number 26, 2000 dealing with the Human Rights Court, Komnas HAM decided to undertake an investigation with an ad hoc team, pursuant to the decision of the Head of the National Human Rights Commission Number:054/Komnas HAM/V/2002, dated 8 May 2002. The ad hoc team worked for three months but there have been no further actions until now.
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Torture of Human Rights Defenders in the post-DOM – pre-Military Emergency period

The government has tried to implement a policy to prohibit and or stop the activities of human rights activists because it was suspected that their actions supported GAM. One approach has been to arrest and detain activists under such suspicion. For example, Muhammad Nazar from SIRA was arrested on suspicion of attacking the government and was sentenced to 5 years imprisonment. While in police detention, Nazar was tortured and intimidated.¹¹⁶

¹¹⁵ Tempo Interaktif, Thursday 17 June 2004, Mass killings in Afdeling (Plantation) IV Bumi Flora, East Aceh.

¹¹⁶ Imparsial Database HRD 2003.

A number of Human Rights Defenders (HRD) were attacked and killed during this period, including Jaffar Siddik, an activist with International Forum for Aceh (IFA). Jaffar was reported missing by his family on 5 August 200 in Medan. His body was found on the border of Tanah Karo – Dairi, Northern Sumatera on 1 September 2000, covered in torture wounds and his face was no longer recognisable.¹¹⁷ Aside from Jaffar Siddik, several famous and vocal Aceh activists have also been tortured to death, including Sukardi (Rumpun Bambu Indonesia Foundation/YRBI) who died in January 2000 and was thought to have been tortured by the police until he died. Suprin Sulaiman (a lawyer with PB HAM Southern Aceh) and Tengku A. Kamal (Islamic school teacher and member of the monitoring team of Humanitarian Pause/Jeda Kemanusiaan, in South Aceh) both died in March 2000. It is thought that they were killed as a result of torture through severe beatings and being shot by Brimob in Southern Aceh. Rusli, Idris, Ernita and Bakhtiar (activists of Rehabilitation Action for Torture Victims in Aceh/RATA) died in December 2000 after being brutally tortured and shot in the head by several *Cuak* and military apparatus from Koramil Lhokseumawe. Tengku M. Yusuf Usman (NGO HAM Coalition Aceh) died in September 2001 as a result of torture and subsequent shooting by a group of unknown persons who are suspected of being members of GAM. Musliadi, the coordinator of the Young Students Movement (Gerakan Pemuda Pelajar) of West Aceh died on 3 December 2002 in Sunapet Bridge, Aceh after being kidnapped by unknown persons suspected of being Kopassus. Prof. Safwan Idris (Rektor IAIN Ar-Raniry Banda Aceh), Prof. Dayan Dawood (Rektor Universitas Syiah Kuala Banda Aceh) and DPR member Nashiruddin Daud who had criticised the Government policy in Aceh, were shot and killed by unknown persons. There are also a number of human rights defenders who have been disappeared, such as Fachrurazi from PEMRAKA who has been missing since January 2000, when he was captured by the Lyang regiment of Brimob who were deployed in Samalanga-Bireun. Mukhlis and Zulfikar, both staff of Link for Community Development (LCD) were abducted by military officers on 25 May 2003 and they have been missing since that time.¹¹⁸

Some humanitarian organisations including People Crisis Center (PCC) and LBH (Legal Aid Institute) Banda Aceh have been subjected to terror tactics by the authorities. On 19 January 2000, Brimob appeared without warning at the PCC office in Cot Ijue, Matang Geulumpang Dua, Jeumpa – Northern Aceh and destroyed the office. The head of the office, Rizanur, was tortured so that he had to be treated in the hospital. While two volunteers of PCC in Aceh Timur were also arrested and tortured by the police after the authorities accused PCC of hiding a bomb to support the Aceh referendum. Intimidation against PCC also occurred in Idi Rayeuk Aceh Timur. Ayub, a volunteer for PCC Idi Rayeuk, was arrested by the Idi Rayeuk Police Sector (Polsek). Upon arrival at the polsek office, Kopassus and Elang personnel said that Ayub must be handed over to the military. Ayub was then taken to the Elang unit headquarters and tortured for one week; stripped and beaten so that some of his bones were broken. On different occasions Brimob, Kostrad and Kopassus intimidated LBH Banda Aceh because they were suspected of supporting GAM.¹¹⁹

On 2 September 2000, Amrisaldin from Save Emergency for Aceh (SEFA) was arrested by Brimob when they were conducting a sweeping operation in Meukek, Aceh Selatan. Amri was arrested carrying a report of human rights violations by the military and police in a refugee camp in Aceh. In the polsek Meukek, Amri was tortured for 5 hours including being slapped, kicked in the head and stomach, they cut his head with a knife and threatened to burn him with a lit cigarette. The torture stopped when a number of Jakarta based organisations telephoned Meukek polsek and stated that they would report the torture of Amri.¹²⁰

5.2.3 Period of 'Military Emergency' 19 May 2003 – 19 May 2004

Peace efforts turned to war efforts when President Megawati announced on 19 May 2003 that Aceh would have the status as a place under military emergency (DM) and a military operation (OM) would

¹¹⁷ Imparsial Database HRD 1998 – 2003.

¹¹⁸ Frontline & Imparsial, Front line Indonesia: Murders, Death Threats and Other Forms of Intimidation of Human Rights Defenders 1998-2002, p. 45-63.

¹¹⁹ Idem.

¹²⁰ Idem.

commence.¹²¹As many as 40, 000 military personnel descended on Aceh to carry out the military operation. The decision of President Megawati to give DM status to Aceh was heavily backed by the TNI and according to the TNI it was an action that was “sufficiently shrewed on an emotional level.”¹²² Before the Tokyo meeting, Menkopolkam Susilo Bambang Yudhoyono (who now holds the position of President of Indonesia from 2004 – to at least 2009) stated:

“... it makes one especially proud, if while conducting an operation, you see that TNI soldiers who know their duties and service and they are ready to willingly give their lives for the people and the country. Because of that, support the soldiers in the battlefield with statements which can give them heart and motivate them to do their duty, service, and sacrifice. Avoid the use of polemic and rhetoric because polemic and rhetoric will only leave them a feeling that their duty, service and sacrifice is for nothing.”¹²³

During the time of President Megawati, the attempted ‘solution’ to the Aceh conflict was far from the mandate provided for by the TAP MPR RI No. IV/MPR/1999 (the Decree of the People’s Consultative Assembly) about GBHN (*Garis-Garis Besar Haluan Negara* or Broad Guidelines of State Policy) 1999-2004. In detailing the approach that should be implemented to resolve the conflict in Aceh the MPR (People’s Consultative Assembly) had stated that:

“... the resolution of the Aceh case must be handled in a manner which is just and humane, including the investigation and institution of fair justice processes for breaches of human rights, for the period of the District Military Operation and also the time period after the Operation.”¹²⁴

In sharp contrast, the policies and patterns of operation instituted in the period of President Megawati, through both phases of Military Emergency Status I and II in Aceh¹²⁵ not only continued to increase the suffering of the community and occurrence of human rights abuses but used the conflict as a way of securing power for the national government.

The Military Emergency Status meant that the civil authority was subordinate to military authority. In addition to the 40, 000 troops, the programme of militarisation of the local government also occurred through the use of 1,000 Babinsa (Badan Pembina Desa) throughout Aceh.¹²⁶ The Babinsa, who were comprised of Kodam and military units from East Java, had the duty to develop society. The Babinsa which came from Kodam V/Brawijaya (140 soldiers) and Kostrad (90 soldiers) were equipped with firearms and stationed at Kodims;¹²⁷ while the Babinsa which came from Kodam III/Siliwangi was comprised of 300 soldiers.¹²⁸ In the field, the Babinsa also formed part of the military operation.¹²⁹ For example, in the Aceh Jaya Kabupaten, the Babinsa formed part of the operational unit which was made up from Satgas Yonif-527/BY, Satgas Gabungan Intelijen (SGI) and Polri.¹³⁰

¹²¹ Presidential Decree No 28/2003.

¹²² TNI Major Williem T. DA Costa, www.mabesad.mil.id/artikel/artikel1/11903terpanggil.htm

¹²³ Mayjen TNI Williem T. DA Costa, www.mabesad.mil.id/artikel/artikel1/11903terpanggil.htm

¹²⁴ In chapter IV/b.

¹²⁵ Imparsial and KontraS stated that the extension of the operation of the Military Emergency was not done on the basis of the conditions in Aceh, rather based on the political power of the military. That policy meant that Aceh was brought into an ‘iron cage’. Joint press release, No 193/KP/IMP/XI/03, November 2003.

¹²⁶ The decision to revive the Babinsa was taken by KSAD Jenderal TNI Ryamizard Ryacudu, with the reasoning that they are not a tool for conducting satellite surveillance. Besides that, the world of intelligence in Indonesia is still badly coordinated, and is weak in its professionalism. The Babinsa can be positioned in a role of monitors. News programme, *Radio Nederland*, 24 October 2002.

¹²⁷ *Gatra.com*, 3 November 2003.

¹²⁸ *Pikiran Rakyat*, 8 November 2003.

¹²⁹ In East Timor, the Babinsa are the “eyes and ears” of the military operations. *Tapol, Occasional Report* No. 26, Oct 1998. Nevertheless, in Aceh a new institution arose, that is: Babinsa Tempur.

¹³⁰ Media Indonesia Online (MIOL), April 3, 2004.

As could be foreseen, the changes to the status of Aceh to impose the status of military emergency increased the number of violent acts in Aceh. The following table indicates the total number of victims of violence in Aceh after the military emergency status had been imposed.

Victims of acts of violence in Military Emergency phase I

(19 May– 19 November 2003)

No	Type of crime	Month I	Month II	Month III	Month IV	Month V	Month VI	Total
1	Disappearances	3	12	9	12	4	6	46
2	Killing	44	15	29	21	5	12	126
3	Torture	7	12	13	2	74	3	111
4	Arbitrary detention and torture	7	18	0	0	0	0	25
5	Rape	0	2	1	0	0	0	3
	Total	61	59	52	35	83	21	311

Source: Results compiled from Imparsial database.

The reports on human rights in 2004 by the Aceh Human Rights NGO Coalition indicated that the year after the implementation of the Military Emergency, there were many violent acts which affected 968 people. The majority of the victims, 456, were civilians, with 119 being killed; 176 tortured; 84 abducted or disappeared; 6 sexually assaulted; and as many as 71 being arbitrarily detained. The circumstances in which the violence was committed by the military was legitimised and even considered as appropriate. Such behaviour appeared to be condoned publicly by the Authority of the Regional Military Emergency (Penguasa Darurat Militer Daerah/PDMD) Major General TNI Bambang Darmono:

“For example, my soldier slugs a suspect across the face- that’s no problem. As long as he is able to function after the questioning. If it’s gross torture which causes someone to be incapacitated... that’s a no-no.”¹³¹

When the military operations were extended¹³², it had a corresponding increase in the humanitarian consequences for Aceh; resulting in a situation where the victims from the previous two periods, (DOM and post DOM) were at the same level of the period of the Military Emergency on its own.

Table of Civilian Killings 19 May 2003 – 19 May 2004

Status in Aceh	Killing	Seriously injured	Injured
Military Emergency I	396 people	55 people	104 people
Military Emergency II	183 people	68 people	71 people

¹³¹ “Sebagai contoh, tentara saya menghantam seorang tersangka di wajahnya. Itu tidak masalah. Selama dia mampu berfungsi setelah ditanyai. Jika itu adalah siksaan berat yang menyebabkan seseorang menjadi cacat... itu adalah tidak-tidak.” See: “*Aceh Under Martial Law: Inside the Secret War*,” Human Rights Watch Report, December 2003, Vol.15, No.10 (C), hal.27.

¹³² Chairperson of the People’s Consultative Assembly (MPR) Amien Rais stated that the public did not need to worry when the war in Aceh is prolonged. *Kompas*, 28 May 2003.

TOTAL	579 people	123 people	175 people
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Source: Information Centre of the Indonesia Armed Forces (Puspen TNI).

The criminal acts which occurred during the period of the military operation, repeated the types of criminal acts which were carried out in the previous period. The patterns of the crimes were relatively the same- killing, sexual assault and arbitrary detention accompanied by torture and disappearance. The difference being the intensity at which the military operation was carried out; as the crimes would decrease if the military was in a defensive position.

A common tactic which emerged was present in cases where people who were suspected of being a member or supporter of GAM, were arbitrarily detained by the police or military. When they were taken to headquarters they were forced to admit that they were GAM members or supporters and the police or military would take photos of them with GAM attributes such as a GAM flag or AK-47 gun in the police or military headquarters. The photos would then be used by the police or military as “clear evidence” of GAM membership.¹³³

In other instances, those detained would be targets for violence from the police or prison authorities and would be required to pay money to avoid torture in detention. Those detained would be enticed by the lure of better prison conditions if they would pay the authorities, as in general the prisons and places of detention in Aceh were well below standard. Many detainees suffered illness in detention because of the unhealthy atmosphere and the narrow confines of the cells. Detainees recounted their experience of being required to pay ‘rent’ to the police or prison authorities of at least Rp 500.000 (around US\$ 50). Many families were forced to sell their livestock and fields, or seek credit from their wider family or neighbours in order to pay the bribe. Despite families paying the bribe, in reality, many of those detainees were still tortured by the authorities.¹³⁴

Torture against Human Rights Defenders in the in period of Military Emergency

During the operation of the Military Emergency in Aceh, tens of human rights defenders became a target of the authorities, both the police and military. Many of those who were caught were then detained and experienced torture. By way of example, in Banda Aceh, the police caught the head of Yayasan Srikandi Cut Nur Asikin on 20 May 2003, one day after the commencement of the Military Emergency status. The police accused Nur Asikin of committing assaults against the government and of agitation. Nur Asikin was accused of being part of Panglima *Inong Bale* (Chief of the Women’s Free Aceh Movement Armed Forces) and the police produced false evidence, such as finding a GAM flag in a hotel owned by Nur Asikin. Nur Asikin was also accused of facilitating meetings in her hotel for high-ranking members of GAM. During her time in detention, Nur Asikin stated that she was tortured by the authorities and it was only when she was moved to the prison in Lhok Nga that the torture ceased. Cut Nur Asikin was sentenced to 11 years imprisonment and was ordered to be moved to the women prison in Tangerang – West Java.¹³⁵ However, while she was still detained at the Lhok Nga prison, the Tsunami hit and she was one of the detainees who died.¹³⁶

On 27 May 2003 at around 23.30, four staff from the NGO Human Rights Coalition; Halim al Bambi, Surip, Jumiran and Nandi, were arrested by the police in their office on Sudirman Street, Banda Aceh. The police then ransacked the office and examined their documents. A number of pieces of office equipment such as computers were damaged. The four activists were then released after being interrogated by the police.¹³⁷

Nuraini (a Volunteer with Kontras Aceh) was arrested on 19 June 2003 together with Nuraini’s father Zakaria (who was 72 years old) and their neighbour named Zulkifli, in the village of Lueng Dama, Pidie. A combined

¹³³ Imparsial interview with a number of detainees of prisons including Lhoknga prison – Greater Aceh, Lhokseumawe prison – Northern Aceh, Jantho prison – Greater Aceh and in Jantho Civil Court – Aceh Greater Aceh, 17-25 May 2004 at the end of the Military Emergency phase II and at the start of the period of the Civil Emergency. The name of the detainees is kept confidential in order to protect their safety.

¹³⁴ Idem.

¹³⁵ Imparsial Interview with Cut Nur Asikin in Lhok Nga prison, Greater Aceh, 15 May 2004.

¹³⁶ Imparsial report about Aceh about the period of the tsunami, visiting the location of the ruins of the women’s prison Lhok Nga on the 14 January 2005.

¹³⁷ Imparsial interview with Faisal Hadi, Director of the NGO human rights coalition, Banda Aceh, 18 May 2004.

unit of military and police personnel from Yonif-315/JRD, Koramil-5/Delima, Yonif-642 and Polsek Delima conducted the raid. They hit them and covered Nuraini's eyes, then they took them all to Polsek Delima headquarters. The authorities accused Nuraini's father of being a member of GAM and hiding a weapon in his house. Nuraini was released from police detention on 3 July after many telephone calls from Jakarta and abroad to confirm that Nuraini was being held. Nuraini's father's case continues to be processed within the criminal justice system and he is detained at the prison in Kedah Banda Aceh.¹³⁸

Muhammad Yusuf, the Director of PB HAM Aceh Timur and his staff member Nazaria, were arbitrarily detained by the East Aceh Polres (Police Resort/District). They accused Muhammad Yusuf of corruption from the time he was a government employee, and then became the director of PB HAM. Nazaria was accused of hiding her husband who was a member of GAM, even though Nazaria had divorced long before. Muhammad Yusuf and Nazaria were released after a few days detention. While in detention they experienced psychological abuse as they were shouted at and threatened by the authorities. Their telephones were also confiscated by the authorities. The authorities ransacked the PB HAM East Aceh office and tried to burn the office documents.¹³⁹ A few days after the capture of the PB HAM activists, the East Aceh Polres arrested Nursyamsiah and her staff member Fitriani from Pemberdayaan Harkat Inong Aceh (PHIA). They were interrogated about their activities. The police directed their accusations at them being a part of *inong bale* because the name of their organization PHIA also has the word "*Inong*" which means woman. Because there was no evidence that they were members of *inong bale*, the police released them. During the time they were detained, Nursyamsiah and Fitriani were also shouted at and Fitriani was slapped by the police.¹⁴⁰

Yusni Abdullah and Mahyeddin from PCC office Lhokseumawe were arrested on 15 December 2003 by the SGI (United Intelligence Unit) and accused of being members of GAM. They were arrested after a GAM member was arrested and had said that he had spent one night sleeping at the PCC office in Lhokseumawe. While detained, Yusni and Mahyeddin experienced torture on the basis of their connection to GAM. The authorities forced them to give information on those who established PCC. When they acknowledged that one of the PCC's notaries was Munir, S.H., the authorities became angrier and used this to back their accusations that they were members of GAM. The authorities wrongly thought that Munir, the PCC's notary, was Munir from KontraS Jakarta, who was accused as a member of GAM based in Jakarta. They also questioned them about the whereabouts of the Chief of the GAM in Northern Aceh, Sofyan Daud. When they answered that they did not know, the authorities threatened to kill them. They also requested money in the order of Rp 900.000 (around US\$ 90), with the justification that if they paid they would not be tortured but they refused, and the torture was again committed against them. Yusni was sentenced to one year in prison and Mahyeddin to one and half years. They were imprisoned in Lhokseumawe correctional institution, a prison which is densely populated and not healthy. During their detention they complained that they suffered from an illness in their lungs.¹⁴¹

Of the activists who were included in the suspects list (*daftar pencarian orang* - DPO) of the police and military, there were many who tried to find safety by leaving Aceh. Such activists included KontraS Aceh and LBH Banda Aceh because they criticized the police and military. Asiah from KontraS Aceh and Tarmizi from LBH Banda Aceh were pursued by the authorities, which forced them to be evacuated out of Aceh.

The pursuit of activists by the authorities did not only occur in Aceh. In Medan and Jakarta, the regional governments put out orders in each sub-district to report the presence of people from Aceh by showing their ID card. Muhammad MTA (25), an activist in Solidaritas Aceh Papua (SAP) who was staying in a dormitory of Aceh students in Bandung was arrested on 1 March 2004 by the Polresta (City Resort Police) West Bandung. The police were suspicious because Muhammad referred to Aceh ID Card when questioned by the police. The police then arrested him and took him to the office of the Polresta West Bandung. Upon arriving at Polresta, after being interrogated, Muhammad was accused of being part of GAM as adjutant officer. Some days later, Muhammad was taken to Mabes Polri (Indonesian Police Headquarter) in Jakarta and then handed

¹³⁸ Imparsial interview with Nuraini in Jakarta, August 2003.

¹³⁹ Imparsial interview with Muhammad Yusuf and Nazaria in the office of PB HAM Aceh Timur, Langsa, 18 May 2004.

¹⁴⁰ Imparsial interview with Nursyamsiah and Fitriani in the office of PHIA, Langsa – Aceh Timur, 18 May 2004.

¹⁴¹ Imparsial interview with Yusni Abdullah dan Mahyeddi in Lhokseumawe prison -Aceh Utara, 20 May 2004.

over to the Polda (Police Region) Aceh and detained in Jantho prison. Muhammad experienced torture at the time he was in Polres Bandung, Mabes Polri and Polda Aceh. While he was detained in Jantho prison, Muhammad did not experience torture but he did not get sufficient food or clothing. According to him, the officers at the prison continually requested money from him and other inmates.¹⁴²

The process of quick justice

Many criminal court cases arose from those who were detained by the police or military for being members of GAM or civilians who were thought to have links to GAM.¹⁴³

Legal Processes During the Military Emergency Period

Legal Processing by police	1,626 people
Referred to the office of the prosecutor (JPU)	1,361 people
Completed	1,096 people
Continuing in court	1,039 people
Sentenced by the court	801 people
Appealed	18 people
Released	163 people

Source: PDMD (the Authority of the Regional Emergency Military) report 26 January 2004

To process and adjudicate these cases, the Supreme Court (MA) had 30 judges who came from Aceh and Sumatera Utara. That total, according to the head of the Supreme Court, Bagir Manan, was consistent with the request of the High Court in Aceh.¹⁴⁴

The legal process afforded to GAM detainees was relatively short compared with those detained by the police outside of Aceh. With a total of more than 1,600 detainees, it equates to 20 people being arrested every day throughout the period of Military Emergency phase I. The Chief of the Prosecutor in Aceh, Teuku N. Lutfi stated that 50 prosecutors would be needed to process that number of cases, however only 9 prosecutors were available in Aceh. The prosecutors were has a limit of 21 days for the process of investigation of the accusation. However not all cases followed this pattern of quick justice, the legal process applied to the GAM negotiators - Sofyan SH bin Ibrahim Tiba, Nashiruddin bin Ahmad, Amni bin Ahmad Marzuki, Teuku Kamaruzzaman, SH bin Teuku Syahbuddin and Teungku Muhammad Usman Lampoh Awe was very long and they were held in police detention for months before they were brought to a hearing.¹⁴⁵

Court processes were also used as a threat by the military and police. The police and military could manipulate civilians in Aceh, who are usually peasants, labourers and traders with accusations of involvement as members of GAM and attacks against the state for which they are threatened with criminal punishment for life or 20 years imprisonment.¹⁴⁶

During the operation of Military Emergency, the detention and conviction of women also increased. Many women were taken before the criminal justice system with accusations of being an *inong bale* or female soldiers of GAM, GAM members or GAM supporters. During the process of arrest and detention in the police station or military headquarters they experienced torture and sexual assault. Some women stated that when they were arrested they were taken to the SGI station in Pidie, there they experienced torture and were sexually

¹⁴² Imparsial Interview with Muhammad MTA in Jantho Prison – Greater Aceh, 17 May 2004.

¹⁴³ *Sinar Harapan*, 27 January 2004.

¹⁴⁴ *Kompas*, 19 June 2003.

¹⁴⁵ In this it is certain that the GAM negotiators should have been released, because on the 2 May 2003 the Director of Detectives and Criminal Polda (Regional Police) NAD had already issued an Order Stopping the Investigatation (Surat Perintah Penghentian Penyidikan (SP3)) which was only received by the accused on the 23 July 2003. Nevertheless the Prosecutor stubbornly continued the trial in an effort to catch them through the articles in the Anti-Terrorism Law No. 15/2003 which had been encated in March 2003.

¹⁴⁶ See the Criminal Code article 106 and 107.

assaulted repeatedly, the authorities there also had a practice of spying of the women when there were asleep or bathing.¹⁴⁷ Many of those women who were detained or convicted died when the tsunami hit on 26 December 2004 destroying much of the Lhok Nga prison.¹⁴⁸

In accordance with Aceh's status which is under the authority of Regional Military Emergency Authority (PDMD), questions arose as to whether the process of justice which operated during this time was fair and whether people who were detained and convicted on suspicion of connection to GAM were availed of their rights, including having a lawyer to provide a defense. In practice the provision of legal assistance was very difficult due to the limitations on the legal assistance which could be given by the Legal Aid Institute in Banda Aceh (LBH Banda Aceh). This Institute was intimidated by the security apparatus and a number of the staff were forced to flee Aceh.¹⁴⁹

Detention facilities

The large scale detention carried out during the Military Emergency period had a significant impact on the prisons in the area. The number of prisons which were available in Aceh at Military Emergency I and II were not able to accommodate the increasing number of prisoners. At the start of the period of the Military Emergency, a concept was developed for a new type of prison. This idea was inspired from the experience of the military in using Buru Island¹⁵⁰ and the policy of the United States in establishing Guantanamo Bay in that PDMD planned to build a special prison on the island of Nasi¹⁵¹, and the island would also be a new military base. The prison was planned to accommodate up to 1,000 detainees within a larger perimeter of 20 hectares. The island was located in the cluster of Aceh islands and could be reached in 2 hours by speed boat. The Head of the Aceh Office of City and Settlement, Mawardi Nurdin stated that:

“to build a prison on Nasi island will costs approximately Rp 4.2 billion (around US\$ 420,000). But only Rp 2.9 billion (around US\$ 290,000) is now available to build the concrete fence and the kitchen complex. The development of Nasi island prison will be comprised of 3,240 m² of barracks and other buildings to provide facilities for the inmates. A bulldozer has already departed to Nasi island to level the earth.”¹⁵²

However a month later the Chief of the Indonesia Armed Forces (TNI) General Endriartono Sutarto, after a cabinet meeting in Jakarta on 23 July 2003, said that they would cancel the establishment of a prison just for GAM. Endriartono used the excuse of a lack of funds in his reasoning, that it would be more efficient to rehabilitate an existing prison rather than using Nasi Island.

The solution adopted by the government to overcome the growing prisoner problem was to send those prisoners who had received sentences of over three years to prisons in Jawa. In phase I, on Thursday, 22 January 2004, 54 GAM prisoners were sent by Hercules A-1321 plane from Sultan Iskandar Muda Airport of Aceh to Central Java. They were transferred to various prisons: 11 people to Pekalongan prison, 10 to Ambarawa

¹⁴⁷ Imparsial interview with female detainees and those already convicted in Lhok Nga prison – Greater Aceh on the 15 May 2004.

¹⁴⁸ Imparsial report on the Tsunami in Aceh and the impact for Aceh human rights defenders. Visiting the ruins Lhok Nga – Aceh Besar prison, 14 January 2005 which was three weeks after the tsunami.

¹⁴⁹ Interview with Ratna Dewi, S.H. and Syarifah Murlina, S.H., lawyers in the office of LBH Banda Aceh, 15 May 2004.

¹⁵⁰ Chief of the Staff for Public Affairs of the Indonesia Armed Forces (TNI) Lieutenant General Djamari Chaniago has denied that the development of Nasi island as a “Pulau Buru (Buru Island), an isolated island for the 1965 political prisoners”. So that, Nasi island, only was used to isolate detainees from the community before a decision from the court. *Suara Merdeka*, 9 June 2003.

¹⁵¹ In a Coordination Meeting of the Badan Pelaksana Harian Penguasa Darurat Militer Pusat (the Daily Implementation Body of the Central Authority of the Military Emergency) on 3 July 2003, on Nasi Island it was planned that a prison should be built with capacity for 1.300 people on a complex of 20 Ha. That prison was to contain 18 barracks, 2 isolation rooms, food hall, kitchen, farming and garden area within the security grounds of 200 Ha. <http://www.kimpraswil.go.id/infoStatistik/aceh/Rakor/3juli03.htm>

¹⁵² *Sinar Harapan*, 27 Januaruy 2004.

prison, 24 to Magelang prison. In phase II, on Sunday 25 January 2004, 89 prisoners departed with a Hercules no.A-1317 from Malikul Saleh to Adi Sutjipto, Yogyakarta. In continuing the dispersal 19 people were transferred to Kedung Pane prison, 32 to Permisan Nusakambangan prison, 20 people to Kembang Kuning Nusakambangan, and 27 people to Batu Nusakambangan prison. A total of 143 prisoners were transferred for sentences of between 3 and 17 years. There was a possibility that the total number of prisoners sent from Aceh increased, as according to the Head of Aceh law and human rights office, T Darwin, there were still 160 GAM prisoners who could be moved to Java.¹⁵³

5.2.4 Period of 'Civil Emergency'

At the start of 2004, Aceh still was in a state of Military Emergency with the Presidential Decree No 97/2003, which was designated the period of 18 November 2003 until 19 May 2004.¹⁵⁴ However, in the midst of the frantic atmosphere in the lead up to the elections on 18 May 2004, Megawati decreased the status in Aceh from a Military Emergency to a Civil Emergency pursuant to Presidential Decree (Kepres) No. 43/2004¹⁵⁵. Despite the change in status, the practices of military operations did not change, and security continued to be imposed through military operations in efforts to resolve the conflict in Aceh.

The Megawati government continued to push this approach and give priority by implementing security policy through military operations. The lack of change on the ground is evidenced by the fact that the same number of troops, as were used in the military emergency, remained and there was no reduction in the total number of troops in Aceh. Apart from that, the Civil Emergency policy continued along side the Human Rights Law No. 39 of 1999, as the guiding principle in the process of resolving the conflict. Regulations which limited civil rights which had been passed in the military emergency period continued and some of the policies were even strengthened by the return of the Civil Emergency Regional Authority and by Abdullah Puteh becoming the Governor of Nanggroe Aceh Darussalam. It was stated that "in accordance with the amending the Government Regulation in Lieu of Law (Perpu) Number 23/1959 on Emergency Situation, the declarations which were issued during the Regional Military Emergency Authority can continue to be implemented for 6 months".¹⁵⁶

¹⁵³ CESAR Aceh, Data on Aceh detainees and convicted persons who were moved to Java in 2004.

¹⁵⁴ At the beginning of her government, Megawati extended the political umbrella through Presidential Decree (Inpres) No 4/2000 to endure the continued legality of the military operation in Aceh, which was originally declared by Presiden Abdurahman Wahid, and continued by Megawati in issuing Inpres No 7/2001 and Inpres No 1/2002. In the following phase, Megawati made efforts to re-open negotiations which gave rise to the *Cessation of Hostilities Agreement (CoHA)* which was signed on 9 December 2002 in Geneva, but then failed when it entered the demilitarization phase. Efforts for peace became efforts for war, because Megawati issued a political policy stating that Aceh was under a State of Military Emergency which approved a military operation in Aceh for 6 months pursuant to Kepres No 28/2003, which started from 19 May 2003 to 19 November 2003, *Rekonstruksi negara melalui kebijakan darurat di Aceh, analisa kebijakan di Indonesia* by Imparsial team, 3 November 2004.

Further, the condition of the Military Emergency in Aceh did not cease TNI pressure which wanted to resolve the Aceh conflict through violence through military operations. It is difficult to find written evidence on this issue, however it can be seen in the political attitude of the high level officers in the TNI. For example, the conflict in the time of COHA was continually justified by high level TNI officers as a failure of peaceful methods through negotiation. Further, it can be seen in analyzing the data in relation to conflict between the TNI and GAM, at the time before COHA and during COHA, a decline in violence during the period of COHA is clearly evident. In the time before COHA there were 12-13 shooting exchanges each day, while during the time of the COHA, only about 2-3 cases of shootings per day. Furthermore, negotiation efforts in Japan did not yet occur; nevertheless, the TNI as a party, had already deployed forces to some of the primary harbours. On 8 May 2003, about 1,300 soldiers were gathered as a Rapid Response Force (*Pasukan Pemukul Reaksi Cepat/ PPRC*) which was already ready to depart from the quay in Ujung Surabaya, Kompas 8 May 2003.

¹⁵⁵ Kompas Daily, 14 May 2004, Aceh status became a Civil Emergency. See also the Presidential Decree No. 43/2004 at http://www.indonesia.go.id/produk_uu/produk2004/kp2004/kp43'04.htm

¹⁵⁶ Kompas Daily, Tuesday 25 May 2004.

List of regulations in the Civil Emergency phase 1

No	Name of Regulation	Date of regulation
1	Keppres No 43 of 2004 about the change in status of the security risk and military emergency to be decreased to the level of civil emergency.	18 May 2004
2	Declaration of PDSD Province NAD Number: 01/PDSD-NAD/2004 About the operation of a civil emergency in NAD province.	9 June 2004
3	Declaration of PDSD Province NAD Number: 02/PDSD-NAD/2004 about the prohibition of foreign sea vessels in Indonesian waters in NAD Province.	10 June 2004
4	Declaration of PDSD Province NAD Number: 04/PDSD-NAD/2004 about the prohibition of the foreigner (non-Indonesia citizen) entering NAD Province except Sabang.	14 June 2004
5	Declaration PDSD Province NAD Number 11/XII/2004 about the order to shoot in places where people raise the GAM Bulan Star flag on the GAM anniversary on 4 December	1 December 2004
6	Declaration of PDSD (Status of Civil Emergency) in NAD Province number 06.A/PDSD-NAD/X/2004 About regulating foreign tourists in Simeuleu Kabupaten	15 October 2004

Source: Database Imparsial.

Implications of the civil emergency status for civilians

Throughout the operation of the civil emergency status in Nanggroe Aceh Darussalam (NAD) province, cases of violence and human rights abuses continued to occur. The occurrence of cases of violence and violations of human rights is related to the weakness in government policy which does not provide clear limits on the aims of military operations and the disregard for human rights law as guidelines for resolving the conflict. While the military operations continued resolutely, there were also other efforts aimed at restoring security which covered the rule of law, restoration of the economy, stabilization of the government's functions, and humanitarian operations which were not implemented to their full potential.

In the context of the rule of law, the injustice displayed by court decisions through the military emergency period aggravated the disappointment of the Acehnese community in the Central government. An example of such a case was the sentence handed down to three military officers who raped 4 Acehnese women and were only sentenced to between 3 to 4 years detention. Based on the criminal code, for both civilians and military personnel, the sentence for those convicted of rape carries a maximum of 12 years. These sentences can be compared with the 5 year sentence handed down to Mohammad Nazar on the basis of his activities in demanding a referendum to be held in Aceh.

From a humanitarian perspective, the operations which forced populations to flee from their homes were not addressed by humanitarian operations which were humane to displaced people. Many of the displaced people suffered illness due to the minimal facilities provided by the government.¹⁵⁷ In addition, the government did not allow access for others to give assistance to the displaced people and also closed access for the displaced people to contact people not within the government.¹⁵⁸ These restrictions made it impossible to properly monitor the action of the governments in relation to the displaced people, including any possible corruption in relation to the funds which were allocated to be used for the displaced people.

While the government claims that the implementation of the military emergency phase II resulted in an increased feeling of safety for the community in relation to action by GAM, in reality there was no evidence of this.¹⁵⁹ On the contrary, what occurred was that the military operation was more dominant than any other

¹⁵⁷ Many displaced people suffered from diarrhea, malnutritions and others problems. See the data from Department of Social, Indonesian Red Cross (PMI) and Imparsial database about Refugees.

¹⁵⁸ A number of activists and former activists from the People Crisis Center (PCC) were arrested on suspicion of working together with GAM.

¹⁵⁹ Media Indonesia, 14 May 2004, Aceh enters a state of Civil Emergency.

attempts to promote security and this dominance of military operations did not provide the population with a sense of security. The military operation dominated the operations in Aceh and as such actually created an intensified armed conflict in Aceh; this armed conflict threatened civilians in Aceh. The threat to civilians can be shown by the acts of violence and human rights abuses which impacted on civilians throughout the Military Emergency phase II and continued into the Civil Emergency phase I as shown below:

**Civilian Victims between
19 May 2003 to 5 September 2004**

No	Status of the NAD Province	Deaths	Seriously injured	Injured
1	Military Emergency I	396 people	55 people	104 people
2	Military Emergency II	183 people	68 people	71 people
3	Civil Emergency I	83 people	17 people	52 people
	Total	662 people	140 people	227 people

Source: Puspren TNI (the Central Information of the Indonesia Armed Forces)

Attacks against human rights defenders in time of civil emergency

During the operation of the Civil Emergency, human rights defenders were not exempt from acts of violence. In 2004, about 20 human rights defenders, 8 women and 12 men, were victims of such violence. All the cases involved arbitrary arrest accompanied by torture and intimidation. In three cases, the human rights defender was tried in court. However, the trials did not meet fair trial standards and the accused were sentenced to imprisonment.¹⁶⁰

In the case of Bestari Raden, an environmental activist from Aliansi Masyarakat Adat Nusantara/the Alliance of the Indonesia's Indigenous People (AMAN), the military of the 0108 Military District Command (Kodim) Southeast Aceh arrested him for a few hours after the integrated team formed by the Department of Forestry visited that Kodim on 23 March 2004. Bestari was in Aceh to do a review of the Ladia Galaska area as a member of the Indonesian Forestry Department in Aceh Tenggara. During his interrogation in the office of Resort Police of Southern Aceh, the victim was tortured. Bestari was accused of being a leader of GAM Tapaktuan. Prior to his arrest, Bestari's house had been marked with an "X" by the security forces as an accusation of being connected to GAM. During the trial, Bestari was accused of being involved in the action of burning the *base camp* PT Medan Remaja Timber (MRT), a business which was entitled to the Forestry Managing Rights (Hak Pengelolaan Hutan) in Kubang Gajah, Indra Damai village, South Kluet sub district in 1999. He was also accused of conducting a sweeping operation with GAM members on the boundary of Lambeuso and Lhok Buya, West Aceh in 2001 and 2002. The witnesses who were presented in court gave testimony about events that they had not witnessed but about stories they had heard from other people. In defending himself against the accusation of participating in the burning of the base camp, Bestari explained that at the relevant time he was in Jakarta undergoing an operation on his intestine. Bestari was sentenced to 2 years and six months imprisonment.

An unfair trial was also experienced in the case of Iwan Irama Putra, an activist from IMPEL (Ikatan Mahasiswa Pelajar Linge/the Association of the Student of Linge). Iwan was arrested by Brimob at his house on the 22 February 2004. He was accused of being connected with GAM and was detained in the office of the Resort Police of Banda Aceh. While in detention, Iwan was beaten and intimidated. The case against him proceeded to court. During the hearing, the Prosecutor was not able to prove that Iwan Irama Putra was a GAM member. The evidence which was tabled included only a few documents about Committee for Campaign Against Imperialism, sheets of papers containing a list of communities in Central Aceh who were upset about the government not obeying the regulations, papers about the efforts to encourage foreign intervention in the Aceh conflict, a paper about the need for freedom in Aceh, and other newspaper clippings. Based on that evidence he was sentenced to 7 months jail.

¹⁶⁰ See the annex containing information on all acts of violence against human rights defenders in Indonesia for 2004 which includes cases of human rights defenders in Aceh who were victimized.

Hasbi, an activist from Flora Fauna Indonesia in Banda Aceh, was arrested by the Jantho – Greater Aceh police. Hasbi was released 3 days after being arrested as it was discovered that he was not the person they wanted. During his time in detention, Hasbi experienced torture which resulted in him experiencing trauma.¹⁶¹

Asnawi and Fahrizal, the coordinator and staff member of Perhimpunan Relawan Kemanusiaan Aceh/the Association of Acehnese Humanity Volunteers (PEMRAKA) were arbitrarily arrested and detained by the Polresta (Resort Police) Banda Aceh on 6 August 2004. They were accused of having connections with GAM. Further, the PEMRAKA office was marked by the police with a red X as a symbol that the building contained people who were suspected of being members of GAM.¹⁶²

Two weeks after the arrest of the PEMRAKA activists, the authorities returned to arrest other activists. This time, the victims were activists from Perempuan Merdeka (Independent Women). On 19 August 2004, the TNI from Yonif 400/Raider arrested and detained Yulidartini (25), together with four other Perempuan Merdeka staff members, Irmawati, Krisna, Anissa Narda and Naisnayah. Yulidartini was taken to the TNI Yonif 400/Raider UDKP post in Seulimum sub district, Greater Aceh. There the activist experienced physical torture including being beaten. Yulidartini was tortured with an electric current 3 times on her fingers and was slapped in the face so that her mouth bled. Yulidartini and her colleagues were then released after the military could not find any evidence that they were linked to GAM.¹⁶³

5.2.5 Period from the signing of the Helsinki MOU 15 August 2005 to present

On 26 December 2004, Aceh was hit by a massive earthquake and tsunami that caused the death of 311,029 people, with another 37,000 people missing and 66,622,249 homes destroyed.¹⁶⁴

The earthquake and tsunami brought about a change in government policy on Aceh and the relaxation of restrictions of access to the region by the international community. In order to rebuild Aceh, which had been flattened by the earthquake and tsunami, the government of Susilo Bambang Yudhoyono decided on 18 May 2005 to reinstate the “civil order” status in Aceh, a downgrading of the previous “civil emergency” status.¹⁶⁵

The Government of Indonesia received financial assistance from a number of different countries to assist in reconstruction. One of the conditions attached to this assistance was that there would be efforts by the government to bring about peace in Aceh, with the reasoning that reconstruction would not be possible in the absence of peace. Because of this, the government and the Free Aceh Movement (Gerakan Aceh Merdeka – GAM) returned to the negotiating table. Talks were facilitated by Crisis Management Initiative (CMI), which is headed by the former President of Finland, Marti Ahtisaari. The talks took place over five sessions and began on 27 January 2005 in Helsinki.¹⁶⁶

Although the central government changed its stance and entered into peace talks, initially the situation on the ground did not reflect this. The local government in Aceh continued to use “separatism” as legal rationale for the pursuit, arrest and detention of activists in Aceh. Chief of Aceh Regional Police, Inspector General Bachrumsyah Kasman, said there were indications that activists from the political front, Aceh Separatist Movement (Gerakan Separatist Aceh – GSA), were preparing to return to Aceh following the quake/tsunami

¹⁶¹ Imparsial HRD database 2004.

¹⁶² Idem.

¹⁶³ Imparsial interview with Yulidartini in Banda Aceh, 22 May 2005.

¹⁶⁴ Data from the Aceh Reconstruction and Rehabilitation Agency (Badan Rekonstruksi dan Rehabilitasi (BRR) Aceh) as of 19 June 2005 (6 months following the tsunami).

¹⁶⁵ Kompas, 16 May 2005, “Aceh Status Tertib Sipil Mulai 18 Mei 2005.”

¹⁶⁶ Crisis Management Initiative, Aceh Peace Process Negotiation, www.cmi.fi. The first round of negotiations was held from 27-29 January 2005, followed by the second round from 21-23 February 2005, the third from 12-16 April 2005, and then, the fourth from 26-31 May 2005. Between the fourth and fifth rounds of talks, CMI prepared a draft Memorandum of Understanding that was based on the outcomes of the fourth round of talks. The fifth round of talks were held from 12-17 July 2005 and the peace agreement was signed on 15 August 2005.

disaster. According to Bachrumsyah, these activists were thought to be working surreptitiously in organisations or NGOs, either local or international. Based on this, Bachrumsyah ordered the heads of all police resorts and sectors (*Kapolres* and *Kapolsek*) in Aceh to again refer to and study the names of people who were on the suspects list (*daftar pencarian orang* - DPO). If suspects on the list were identified, the chief of police ordered that criminal procedures immediately be initiated against the activists in question.¹⁶⁷

On 15 August 2005, peace negotiations between the government and GAM reached a climax with the signing of a Memorandum of Understanding (MOU) in Helsinki. Based on this agreement, each side had to adhere to a number of commitments, including commitments for the withdrawal of troops and disarmament. These commitments were met. In accordance with the MOU, GAM demobilised 3,000 fighters and surrendered 840 home-made weapons for destruction. The Government of Indonesia committed to withdrawing 18,000 non-organic¹⁶⁸ military personnel and 3,800 non-organic police officers from Aceh. Following this demobilisation, there are 14,700 Acehnese military personnel and 9,100 Acehnese police officers serving in Aceh.¹⁶⁹

Another item of the peace agreement, related to the establishment of a peace monitoring mission that would be mandated to oversee the implementation of commitments of the Indonesian Government and GAM to bring about peace.

Oversight of the Aceh peace process by the Aceh Monitoring Mission (AMM)

The Aceh Monitoring Mission (AMM) was a body created to oversee the implementation of the peace process in Aceh. The AMM comprised representatives of the European Union and ASEAN member nations. In accordance with article 5.2 of the MOU, AMM had the following tasks:

- a) monitor the demobilisation of GAM and decommissioning of its armaments,
- b) monitor the relocation of non-organic military forces and non-organic police troops,
- c) monitor the reintegration of active GAM members,
- d) monitor the human rights situation and provide assistance in this field,
- e) monitor the process of legislation change,
- f) rule on disputed amnesty cases,
- g) investigate and rule on complaints and alleged violations of the MoU,
- h) establish and maintain liaison and good cooperation with the parties.¹⁷⁰

Considering the ambitious demands placed on AMM, there was uncertainty that the Mission would be able to fulfill its mandate, particularly in view of the fact that it was only operational in 11 areas. There were high expectations of AMM among the community who had lost confidence as a result of the long-running conflict in Aceh. People looked to AMM as a kind of “non-permanent government” in Aceh. As a result of this, many community groups sought to involve AMM in a range of situations.

Although numerous incidents occurred in the community, including cases of torture and other forms of violence, AMM was uncertain of what should be done in response to such situations. If the person reporting the case was a member or former member of conflicting parties (meaning the Indonesian military or GAM), then AMM was able to immediately respond. However, if the case was reported by a member of civil society, there was no assurance that AMM would respond properly to the complaint.¹⁷¹ Many of the cases involving civil society were not taken up or addressed properly by AMM. There are also examples in which AMM's

¹⁶⁷ Serambi Aceh Daily, 22 May 2005.

¹⁶⁸ Non-organic troops means that the troops are coming from outside Aceh and placed in Aceh under the coordination of the organic troops (Police/Military which stationed in Aceh) with an aim to support the organic troops.

¹⁶⁹ Imparsial team, *The Dynamics of Aceh during the period of MoU Helsinki, compilation of Monitoring for the period August 2005 – April 2006*, Imparsial, Jakarta, September 2006.

¹⁷⁰ Memorandum of Understanding RI-GAM point 5 regarding the Aceh Monitoring Mission.

¹⁷¹ This information was obtained in discussions during a meeting of Imparsial's network with HRD Aceh in Meulaboh, 14 -15 November 2005.

attempts to investigate violent incidents were blocked by police on the basis that this was beyond the authority of AMM.

During the reintegration process, there were numerous violations undertaken by police/military against civil society, but these were not properly dealt with by AMM.¹⁷² This was irrespective of the fact that AMM had the task of monitoring the human rights situation and providing assistance to the community in the event of violations by the authorities.

Action taken by AMM in response to violations of the law following the signing of the MOU

Offender	Victim	Legal action
Indonesian military/police	Civilian	Offender handed over to military police.
Indonesian military/police	Ex-GAM	AMM made assessment of the violation of the MOU. Offender handed over to military police for legal action.
Ex-GAM	Indonesian military/police	AMM made assessment of the violation of the MOU. Denial of amnesty for ex-GAM member.
		AMM resolved dispute between two conflicting parties.
Ex-GAM	Civilian	Legal action taken by organic police officers.
		Resolution of conflict according to traditional ways/consultation with AMM serving as mediator.

The legal processing of the criminal offenders was not overseen by AMM. Offenders, in particular members of the military and police, were handed over to military police and the status of follow-up legal action is unknown.

Discovery of skulls or skeletons of victims of torture perpetrated by state authorities

Evidence of torture by state authorities in Aceh was found following the withdrawal of non-organic military personnel. Communities undertook searches and exhumed graves at former military command posts. Acehkita.com recorded that since August 2005, 9 skulls have been found in places that were previously used as military command posts. In general, the remains have been able to be identified due to identifying characteristics of the deceased or the clothes they were wearing when they disappeared or were detained. In most cases, these people were victims killed during the time of military and civil emergency in Aceh.

The first skeletons were found in the village of Lhok Merbo, Muara Batu sub district, North Aceh on 20 November 2005. Members of the local community discovered two skulls suspected of belonging to siblings, M. Ihsan (21 years of age) and Yasin (18 years of age) who were detained during the time of military emergency in Aceh. Following their detention, their whereabouts were unknown until the discovery of their graves at the former military post. Members of Lhok Merbo village had long suspected that there were bodies buried at the military post. However, as the area was still occupied by soldiers, the village people were not brave enough to act on their suspicions. Only after the withdrawal of military personnel from Aceh, together with the decommissioning of GAM weapons, the village people were willing to dig up the suspected gravesites.¹⁷³

¹⁷² It is noted that the AMM was not able to follow up a number of incidents, such as the beating of a junior high school student by a Brimob member in Lhokseumawe, reports of displaced people in Pidie, and others. In fact, communities got the impression that AMM had refused to follow up their cases for various reasons.

¹⁷³ Acehkita.com, 9 March 2006, "Sembilan Tengkorak ditemukan di Bekas Pos Aparat" (Nine skulls were found at the former military post).

The discovery of human remains at the former military command post in Lhok Merbo village set off a wave of similar actions in other areas as communities conducted searches and diggings at former military posts. As of 30 January 2006, 23 diggings had been conducted with 38 suspected victims of disappearances during the period of military emergency in Aceh found. Of the 38 bodies discovered, 34 are men, one woman and 3 children. A number of bodies were found with hands tied, decapitated or wrapped in sacks. Not all of the remains were identified as GAM members. In fact, the majority were civilians who had no connection with GAM.¹⁷⁴

Speaking in relation to action by communities to dig up graves at former military posts, Commander of Iskandar Muda Regional Military Command, Major General Supaidin AS, said that any exhumation must be conducted with permission from the courts and police authorities, and undertaken in the presence of state authorities in order to prevent manipulation (of evidence). Supiadin said that although the remains had been discovered at military posts, it was not a foregone conclusion that they were killed by the military. There was a possibility that once detained persons had been released from military posts, they could have been seized by irresponsible parties. Yet, if it was the case that the people had been killed by military personnel, then in accordance with the provisions of the MOU between the Government of Indonesia and GAM, human rights violations that took place prior to the signing of the MOU had to be forgotten and erased from the record.¹⁷⁵

Militia

In addition to police, military and intelligence personnel, the conflict in Aceh also involved militia. The militias have been in place since the era of military operation area (DOM), but the number of militia increased during the military emergency. Members of militia were recruited in villages all across Aceh. There were not provided with weapons on a permanent basis, but were actively involved in operations conducted by military and police. Militias were trained in the use of arms and explosives. Some militia members were even trained at Special Armed Forces Headquarters in Cijantung.¹⁷⁶ When carrying out their duties, militia members carried weapons and wore uniforms similar to those used by members of regular army. Since the signing of the peace agreement, the number of militia in Aceh is estimated to be in excess of 200,000 people.¹⁷⁷

Members of militia held regular meetings with the TNI. According to Hasbi Yunus of the Front Aceh Jaya, in military operations their duties and methods included:¹⁷⁸

- ∞ reporting GAM locations to TNI
- ∞ collecting information on GAM families
- ∞ forcing GAM families to hand over family members involved in GAM for periods of 10 days
- ∞ if families refused or failed to comply, then the family was forced out of the village

The Regent of Central Aceh, Mustafa Tamy, indicated that people implemented a system involving a “layered defence” that was a manifestation of their spontaneous spirit of resistance. In West Aceh, the Regent, Nasrudin, said that 500 civil servants had undergone military training in the use of M-16, AK-47 and SS-1. This training was supported by the Commander Military Resort 012 Teuku Umar, Infantry Colonel Geerhan Lantara¹⁷⁹ who said, “Military training is open to all when it comes to a question of national defence.”¹⁸⁰

¹⁷⁴ Kontras Aceh Press Release, “The results of monitoring and investigations of Kontras Aceh in relation to the discovery of graves in the former TNI post, victims is suspected of being tortured before being killed,” January 2006.

¹⁷⁵ Acehkita.com, Friday 15 November 2005, interview with Commander Iskandar Muda Major General Supiadin AS following the return of 1.368 TNI soldiers from Krueng Geukeuh Port, Aceh Utara.

¹⁷⁶ Witness account from a militia member who request confidentiality.

¹⁷⁷ Imparsial team, *The report of the Aceh monitoring during the time of the MoU 15 August – 15 October 2005*, October 2005.

¹⁷⁸ *Tempo*, 26 January 2004.

¹⁷⁹ Geerhan Lantara was involved in the Santa Cruz massacre in November 1991. <http://yayasanhak.minihub.org/mot/Gerhan%20Lantara.htm>. His position right now is Kasdam (Head of the Staff) of Papua’s Trikora Regional Military Command with his rank as a Brigadier General.

¹⁸⁰ *Tempo*, 26 January 2004.

After the tsunami in Aceh, militias were given additional tasks by the military and police authorities to monitor humanitarian workers who set up posts for humanitarian assistance in Aceh. Several humanitarian workers in Lhokseumawe, North Aceh, said that police and military used militia as spies who would pretend to be checking authorisation to set up humanitarian relief posts. If they found anything suspicious, members of militia would visit the posts and ask for the paperwork authorising activities, and ask to see the identification cards of the humanitarian workers. Militia would also detain suspicious people and hand them over to police or military authorities.¹⁸¹

Following the peace agreement between the Indonesian Government and GAM, the militia continued to be maintained by the government. In fact, the numbers of militia have increased. The government maintains that they are “defenders of the nation” and not militia. There was an incident involving an attack on an activist and the destruction of the Sentral Informasi Referendum Aceh (SIRA) office in Blangpidie, Aceh Barat Daya, by a militia led by Amirudin. The name of the militia group is not known; it is known in the community simply as “Front.” The victim of the attack is a senior member of SIRA who suffered injuries after being beaten repeatedly. The windows of the office were broken after being hit with stones, a typewriter was broken and important files were lost. No legal action has been taken against the perpetrators of this attack.¹⁸²

Incidents of torture after the Helsinki MoU¹⁸³

a. Peudawa Incident

A combined unit of Police Resort Aceh Timur and Police Sector Peudawa, East Aceh, conducted an inspection of motor vehicle registration and licenses in front of the Peudawa Police Resort office on 6 March 2006. Violence by the police caused the death of Agussalim (28 years of age). It is suspected the victim died after refusing to stop for inspection. The police attempted to force the victim to stop and beat the victim with the butts of their weapons. As a result of the beating, the victim fell from his motorbike and the police continued to beat him until he died.

The death of Agussalim incited a reaction among members of Meunasah Krueng village and another seven surrounding villages who went to the Peudawa Police Resort office to protest. An angry group of people burnt tires in front of the police office in protest of the violent action of the police. Receiving no response from the police, the protestors were further incited, and began to destroy and burn the police station. The District Military Command (*Kodim*) 0104 Aceh Timur came to back up the police. The police tried to break up the protest by firing warning shots, but this was not effective. In fact, when the police sought to fire warning shots to disperse the demonstrators, two people were wounded by stray bullets. These people were M. Irfan who was injured in his lower right arm, and Nurdin who suffered injuries caused by a bullet passing in his left cheek and out behind his ear, as well as a broken arm.

The police detained six people who were suspected to have provoked the protestors. These people were released as soon as they made a statement that they would not repeat their actions. The chief of police in Aceh, Police Inspector General Bachrumsyah Kasman, promised to take stern action against the police officers who caused the death of Agussalim due to torture.

b. Indra Makmur Incident

The Indra Makmur incident began with the shooting of Subagio bin Baruddin by First Brigadier Syafrizal, a police officer stationed at Indra Makmur Police Resort causing injury to the victim’s leg. This shooting took place on 15 April 2006 after the victim returned from tapping rubber.

According to the Chief of East Aceh Police Resort, Police Commissioner Hasbi MS, the shooting occurred when the police were carrying out an operation in search of people suspected of illegal trade in rubber. As a

¹⁸¹ Interview by Imparsial with Fadilah, a woman activist in Lhokseumawe on 22 May 2005.

¹⁸² Imparsial team, *The report of Monitoring in Aceh in the time of the peace agreement February – April 2006*.

¹⁸³ Overview of incident abstracted from *The report on Monitoring from Imparsial Team during the time of the Peace Agreement August 2005 – April 2006*.

large crowd was gathering, the officer, First Brigadier Syafrizal, fired a warning shot that hit the victim in his leg.

This version of events by the police authorities is markedly different to evidence found in the field by Imparsial. Witness accounts indicate that the victim on his return from tapping rubber was intercepted by First Brigadier Syahrizal who asked him for Rp. 50,000 to fix his motorcycle. As the victim did not have that amount of money, Syahrizal became angry and immediately shot the victim in the leg. Following the shooting, Syahrizal continued intimidating the victim and threatened him not to tell his superior officers or other people about the incident.

News of the police shooting of a civilian quickly spread among the community, and that evening at around 21.00, people gathered at the Indra Makmur police station demanding that First Brigadier Syahrizal be held to account.

After the crowd dispersed and returned to their respective villages at around 03.00, a number of back-up personnel arrived from East Aceh Police Resort in trucks and tanks and immediately began sweeping operations in Seunebok – Bayu, East Aceh. During the searches, police officers discharged their weapons, creating fear in the community. Police officers also detained and beat people who happened to be on the road. The police burnt a rubber warehouse owned by a resident of the village and a motorbike with registration number BK 5420 BU. A total of 38 people were detained by the police and were taken to East Aceh Police Resort where they suffered torture, including beating, kicking and intimidation. Police Commissioner Hasbi MS of East Aceh Police Resort made a statement that a certain group masterminded the mass action.

c. Paya Bakong Incident

Muslim (former GAM member) and two others named Rasyidin (former GAM member) and Police First Brigadier M. Satria (police officer, AMM member) were injured as a result of shooting by TNI Yonif III Battalion E BKO Paya Bakong in Keude Paya Bakong Village, Matangkuli sub district – North Aceh on Monday 3 July 2006. The TNI Yonif III Battalion E opened fire when a number of people went to the military post to seek the release of Umar, a resident of Serba Jaman Village, Tanah Luas sub district – North Aceh, who was being detained at the facility. Umar was arrested and beaten by military officers the previous day without clear reason. Muslim was shot in his chest, and Rasyidin and Police First Brigadier M. Satria were shot in the buttocks.

AMM condemned the shooting and said that it would fully investigate the incident.

Government policies that are thought to be causing the re-emergence of torture in Aceh:

The Indonesian Government has indeed been seeking to implement the MOU by undertaking steps such as withdrawing troops and debating the bill on Governance of Aceh (the bill on Governance of Aceh was passed by the parliament on 11 July 2006 and enacted into Law No. 11/2006 by the President on 3 August 2006).

However, as a result of some actions by the government, there are policies emerging which may endanger the people of Aceh, including the possibility of a new increase in cases of torture in Aceh. Examples of these policies include:

Reinstatement of the military territorial command structure

To support government policies in the “war against terrorism”, the government, through Defence Minister Juwono Sudarsono, announced that it would re-instate the territorial command system in all areas of Indonesia, including Aceh. The territorial command system is expected to help the police in addressing the threat of terrorism.¹⁸⁴

¹⁸⁴ Kompas, Tuesday, 11 October 2006.

The reinstatement of the territorial command system will put the military in a position to serve as the “eyes and ears” of the police. The territorial command system is also intended to assist in early warning of terrorist actions and therefore, assist in securing and protecting the country.

The Chief of Police, General Sutanto, has stated: “The military community assistance programme (Babinsa) will help police to carry out preventive actions in combating terrorism. In addition, the military will be able to assist the community so as to ensure they are not influenced by activities that threaten the unity and integrity of the nation.”¹⁸⁵

The reinstatement of the territorial command system is a return to the kind of security measures implemented during the Soeharto era. The military will be posted in all areas of Aceh down to the village level. This will further deepen the suffering of the Acehenese people given that it was military personnel who committed violence in Aceh without any just legal process to sanction them. It is feared that the restoration of the territorial command system will bring about a repeat of the litany of violence toward civil society, including torture by state authorities, which frequently occurred during the period of military operation area in Aceh and subsequently.

Ambiguity in efforts toward law enforcement with respect to those responsible for human rights violations in Aceh

a. Military courts

Point 1.4.5 of the MOU states clearly that all civil crimes perpetrated by military authorities in Aceh will be tried in a civilian court in Aceh. However, implementation of this provision is pending, awaiting the outcome of debate on the draft law on military courts. Debate on this law has stalled as the government has rejected the draft presented by parliament stipulating that members of the military who commit crimes should be tried in a regular (civilian) court of law.

However, the People’s Consultative Assembly’s decree number VII/MPR/2000, paragraph 3 section (4) point (a), states: “TNI personnel are subject to the authority of a military court for violations of military law and subject to the authority of regular civilian courts for violation of criminal law”, which clearly orders that military personnel subject themselves to the authority of regular courts should they perpetrate criminal acts. This is reinforced by Law No. 4/2004 regarding the Authority of Courts, which stipulates that all courts are under the authority of the Supreme Court. This law reforms the current system under which military courts have the authority to try all criminal acts perpetrated by military personnel or the equivalent. In light of this, the Law on Military Courts and the Military Penal Code should be annulled and revised to bring it into line with the new legislation.

Until there is agreement on regulations under the Law on Military Courts to ensure that military personnel who violate criminal law will be prosecuted in regular courts, military personnel who violate the law will only be tried by military courts, which are rife with manipulation and the practice of impunity.

b. Human Rights Tribunal

Point 2 of the MOU regarding human rights, and in particular point 2.2, indicates that a Human Rights Tribunal for Aceh will be established.

However in practice, the Law on the Governance of Aceh, which was agreed by the parliament on 11 July 2006 and passed into Law No. 11/2006 by the President on 3 August 2006, includes an article regarding human rights tribunal that states that a human rights tribunal for Aceh will be established at the latest, one year after the Law on the Governance of Aceh is enacted. Article 259 does not make clear whether this Tribunal will hear cases of violations of human rights prior to the signing of the peace agreement, or whether its authority will not be retroactive.

¹⁸⁵ Idem.

This ambiguity is contrary to the interests of the people. To date, the government has consistently rejected demands by the people of Aceh for perpetrators of violations of human rights to face justice. The ambiguity on this fact makes it almost certain that there will be no process of justice with regard to human rights violations committed during the period of military rule through to one year following the implementation of the Law on Governance of Aceh.

c. Truth and Reconciliation Commission

Point 2.3 of the MOU regarding a Truth and Reconciliation Commission states that such a commission will be set up in Aceh by the Indonesian Truth and Reconciliation Commission with a mandate to design and implement efforts for reconciliation.

Article 260 of the Law on Governance of Aceh states that the Truth and Reconciliation Commission in Aceh will take effect one year at the latest after the Law is enacted.

This article indicates that the Truth and Reconciliation Commission in Aceh will refer to the Indonesian Truth and Reconciliation Commission. However, the Constitutional Court on 7 December 2006 ruled that Law No 27/2004 regarding the Truth and Reconciliation Commission does not have a sound legal foundation and is inconsistent with the Constitution. Because of this, there is no legal foundation for the establishment of the Truth and Reconciliation Commission in Aceh. Such sound foundations are necessary as the people have high expectations of methods to address past human rights violations they suffered.

SIX • Torture in Papua

6.1 | Background: Historical Context

The term Papua used in this report refers to the Western part of the New Guinea Island which covers the area as large as 421,981 square km and lies between coordinates 130°-141° E and 2,25° N – 9° S. The Eastern side shares borders with Papua New Guinea, the Northern side is adjacent to the Pacific Ocean, the Southern side is adjacent to the Arafura sea, and the West side is adjacent to Maluku province. The population of Papua, according to the Central Bureau of Statistics 2003¹⁸⁶, is 2,469,785 inhabitants, consisting of 1,294,572 men and 1,175,213 women with a population growth of 3.18% per year. The comparison between the indigenous and the migrants is about 52% to 48%, so it is almost equal.

Article 1 of the Law No.21/2001 names this area as the Province of Papua which was formerly called the Province of Irian Jaya. Administratively, since 10th November 2004 by the decision of the Constitutional Court no. 018/PUU-I/2003, this area consists of two provinces: West Papua and Papua which includes 29 districts and 2 municipalities.

Historically, this area was colonized by the Netherlands and through the Act of Free Choice on 14th July – 2nd August 1969, which was organized by the United Nations¹⁸⁷, the General Council of the United Nations in the 2504 (XXIV) Resolution declared this area a part of Indonesian territory. As all process of this transfer of power did not involve full participation of the indigenous people of Papua which was, at the time, approximately 800.000 inhabitants, the Special Representative of the UN Secretary General, Fernando Ortiz Sanz, described it ‘at all times a tight political control’. As a consequence, Article 22 of the New York Agreement 1962 was not fulfilled completely¹⁸⁸.

As a result of the Act of Free Choice, various protests and even rebellious acts occurred in Manokwari, Enarotali and Waghete as noted by Ortiz Sanz in his reports¹⁸⁹. It showed that there was a significant defiance by people who were demanding Papua’s independence. These demonstrations of resistance resulted in adoption of a policy of strict military control in this area. Moreover this control was even embedded into the concept of autonomy that was granted to this province since the beginning of the integration. This notion was explicitly expressed in the speech of the minister for internal affairs before the Provincial House of Representatives of Gotong Royong (DPR Gotong Royong) in Jayapura, whereas autonomy is emphasized as:

“Autonomy is not only limited by the existence of harmony and balance between abilities and rights and responsibilities, but as a matter of fact it is also the implementation of administrative and political democracy. Just as is the case with democracy, autonomy also absolutely needs the following prerequisites: [1] being always State-centric; and [2] Nation-centric; [3] possessing political and moral integrity; and [4] sufficient creative power¹⁹⁰.”

Since the beginning of its integration into Indonesia, a policy of tight political control was applied to this territory with the area being designated a Military Operation Zone (DOM) between 1982 and ending in 1998 when the New Order regime was toppled by the university students lead, reformation movement. The status of DOM gave consequences of large deployment of the army, intelligence apparatus and police force

¹⁸⁶ See Papua In Figure, year 2003, Jayapura: Papua Central Bureau of Statistics (BPS)

¹⁸⁷ See Report of the UN Secretary General to the UN General Assembly A/7723, 6 November 1969 para. 6

¹⁸⁸ See document A/7723, 6 November 1969 para 251. Besides, the date of the Act of Free Choice itself was considered as violation of the New York Agreement because it was conducted in advance of the settled time decided by the parties.

¹⁸⁹ See document A/7723, 6 November 1969 para. 250

¹⁹⁰ West Irian: Implementation of The Act of Free Choice July 14-August 20, 1969. Official Report on the Implementation of the Act of Free Choice by the Minister of Home Affairs of the Republic of Indonesia/ Chairman of the West Irian Sector/ Chairman of the Government Team for the Implementation of the Act of Free Choice to the Special Session of the Provincial House of Representatives and the Provincial Government of West Irian at Djajapura on August 5, 1969, p. 17.

compared to the level of the Papua population density. The objective of exerting strict political control through the use of large scale deployment of security services was to suppress the Papua rebel movement, known as *Organisasi Papua Merdeka* or OPM (Free Papua Organization).

This policy resulted in repression, which led to a physical clash and violence towards civil society in various places in Papua, especially in the borderline and remote areas in Papua, which is considered a dangerous area by Indonesian security services. Various acts by these security services led to systematic and widespread human rights violations¹⁹¹.

The strict control by the Central Government of this area, combined with the geographical remoteness and with a development policy which focused on economic growth, has resulted in Papua being ranked the second from last Indonesian province for human development, according to the UNDP's Human Development Index of 2004.

Papua's Special Autonomy status which was formulated in the Law No. 21/2001 was expected to improve this situation of under-development; but over the past six years since the Law was passed, there have been no fundamental changes in the living condition of the Papuan people.

6.2 | Cases of Torture During the Period of 1998-2007

The following section provides a chronological illustration of cases of torture which have occurred in Papua, which have been documented by the churches, civil society and community organisations, and the National Commission for Human Rights (Komnas HAM). All the cases included in this report have been verified by these organisations and have been documented publicly.

6.2.1 Cases of torture during 1998

a. Cases of Paniai District¹⁹²

During 1998, District of Paniai was one of the areas in Papua under the status of *Daerah Operasi Militer* (DOM/ Military Operation Zone). This status meant that the security services were deployed intensively in this particular area to impose the laws associated with DOM. The following cases illustrate the atmosphere created by this status and the behaviour of the security apparatus' personnel. The following cases occurred in the villages around Lake of Paniai, Lake of Tage and Lake of Tigi, including Epouto, Enarotali, Madi, Pugo, Waghete, Waidide, Kopaidagi, Egepakigida, Ugidimi and Bibida.

Case of Epouto: 24-29 January 1998

Soldiers from Infantry Battalion 712 Rajawali (Wira-9) gathered together and interrogated citizens including: the Village Head of Epouto, Village Head of Wotai and prominent persons within the community who provided assistance to **Tadeus Johny Yogi** (who was labeled as the head of OPM in Paniai)¹⁹³. This interrogation used violent and degrading methods such as submerging them in a trench and pouring cold water over them.

Case of Waghete (District of Paniai): 11-13 February 1998

¹⁹¹ See the Report of the Investigative Commission on Human Rights Violations of Irian Jaya/ Papua (*Komisí Penyelidik Pelanggaran HAM Irian Jaya/ Papua*) of 2001 page. 28.

¹⁹² This case was reported by three Church leaders in Jayapura, including Most Rev. Leo L. Ladjar OFM (Bishop of Jayapura), Rev. Benny Giay (JPIC office of CAMA) and Rev. Hermann Saud (Chair of the Synod of the Evangelical Church in Papua) to the Chief Commander of the Army, Maj. Gen. Amir Sembiring, on 21 October 1998, entitled *Laporan Situasi Hak-hak Azasi Manusia di Wilayah Paniai dan Tigi, Irian Jaya* (the report on the human rights situation in Paniai and Tigi), Jayapura, October 1998. Available at www.hampapua.org/skp/index2.html

¹⁹³ In 1985 Tadeus Johny Yogi surrendered to the army through KORAMIL Enarotali under the then Commander Hanafi. However, he was not prosecuted but was released instead. As a result, this OPM leader caused disturbance including kidnapping women to be his wives. The army then had the justification to launch operations to take him down.

In the process of searching for Yogi, the army of Infantry Battalion 712 Rajawali (Wira-9) came across three civilians: **Mr Rufus Giyai, Mr Mikael Pekey and Mr Fidelis Bukega**. The army accused them of being members of Yogi's group because their names were included on a list of villagers, including the deceased. On the following day, those who were included on the list were rounded up by the army at Waghete KORAMIL.

After being interrogated 150 civilians were given orders to carry wood, yams, vegetables, chickens and other products to the KORAMIL. Further, the civilians were forced to carry work tools and ordered to level the land, build trenches and tend to the grass in KORAMIL yard.

On 26 February 1998 Mr Yonas Takimai, a health worker from Egepakigida village and some other civilians were forced to follow the military to Waghete KORAMIL. Villagers went to the Koramil to ask for an explanation from the head of the Waghete, Captain Inf. Wendessy. However, they were ordered to carry gravel to the KORAMIL and work in the grounds of the KORAMIL and POLSEK.

Case of Bibida and Ugidimi (District Paniai): 2-5 May 1998

At about 24.00hrs the army ordered the civilians from the Bibida village to gather in the grounds of the Bibida Catholic Church. The army requested money from the head of the Bibida and Ugidimi village, (Rp. 200.000)¹⁹⁴, tortured 15 civilians by forcing them to do *push ups* and demanded and received chickens from the civilians (Rp. 30.000).

On 24 June 1998 three soldiers under the Commander E.J. Sondakh burned the security post in Bibida and Ugidimi villages. They then stated that Yogi's group had committed the burning, and ordered the villagers to provide money and chicken to rebuild the security post in a short space of time. The army forcibly took Rp. 200.000 and 6 chickens from the people.

Case of Madi Village: 23-25 May 1998

Around 12 p.m., a group of 9 soldiers from Rajawali launched house-to-house searches arguing that they were looking for Tadeus Johny Yogi. This OPM leader was not found so the army fired their guns into the air and ordered the villagers to gather around. The commander then asked them, "Who was on guard last night?" 8 men raised their hands and immediately the commander slapped them in the head. This was witnessed by the Head of Sub-District of East Paniai. The Commander shot his pistol to the ground 5-6 times before he dismissed the crowd to look for Yogi.

On the following day around 6 p.m. the army came again to Madi and rounded up the villagers. The commander accused them of hiding Yogi in one of the houses for two nights. Even though the villagers disputed this, the commander did not accept their explanation. He dismissed the crowd.

Around 9 p.m. the army again collected the people and punished them. In two rounds, dozens of men from Madi and Ipakiye Villages were beaten with a merbau bar, forced to get into the swamp in freezing temperatures, forced to do push-ups and were stomped on with combat boots. They stated that they intended to do the same thing to women and children but later cancelled this action. Then the army went back to Uwibutu Post Command. As they were leaving, the villagers collected money to the amount of Rp. 500.000, as a bail to try to prevent further ill-treatment against them.

Case of Kopaidagi and Pugo villages (District Paniai): 3-4 June 1998

7 soldiers from Rajawali Unit gathered together civilians from Kopaidagi and Pugo villages. They accused the people of not guarding the security post and on that basis they beat the youth of the village with wood and iron bars. They issued threats and required the villagers to provide 2 chickens and money in the order of Rp. 150.000 to the soldiers.

Case of Waidide village (District Paniai): 5 June 1998

Three soldiers came to Waidide village. They forced the people to gather together and accused them of committing offences such as not assisting the army to capture Yogi, not making a security post, and not cleaning the roads. On this basis the army ill-treated the villagers and threatened to throw them into the Pugo River. In response, the people provided 6 chickens and money to the amount of Rp. 500.000 to the soldiers.

¹⁹⁴ Even though the exchange rate US\$1.00 = approx. IDR 10,000, the value of the money for the villagers remained invaluable as this was a matter of property rights.

b. Case of Yigi (District Jayawijaya): March 1998

Mr Amin Kogeya (18 years old) was targeted by the military to become an Assistant for Operations (*Tenaga Bantuan Operasil* TBO) to the military. He refused to become “a face for the armed forces” and as a result he was tortured until he was seriously ill and died.

Case of Yigi: 24 February 1998

Mr Yairus N (31 years old), a primary school teacher was interrogated, kicked and tortured with a piece of wood until he was unconscious, he was then thrown in muddy water, ridiculed and abused by the military.

c. Flag raising case of Biak: 6 July 1998¹⁹⁵

The anti riot forces were made up of units from TNI and Polri attacked civilians at the place where the Morning Star (*Bintang Kejora*)¹⁹⁶ flag was flying at the back of local government clinic in Biak city. In addition to shooting at the demonstrators, the security forces also shot at and mistreated civilians who were around the area of the incident who were sleeping, minding their own business or watching the events unfold.

Police and military forces carried out these acts of torture and ill-treatment in reaction to the local people raising the Morning star flag in Biak city, Biak District, in July 1998. The flag was flying from 2 July till 6 July 1998 at the harbor’s water tower, attracting locals’ attention and leading to communal singing and dancing in front of the tower. Between 500 and 1,000 people took part in the peaceful demonstration which was broken up violently by military and police forces on 6 July 1998. People living nearby the water tower were forcibly taken to the harbor where they and demonstrators had to lie on their backs while members of security forces stomped on their bodies and beat them. The torture and ill-treatment occurred from 8am till 4pm. Eight people were reported dead as a result of this torture. Mr Nico Smas (23) died on 12 August after suffering serious injuries caused by security forces stamping on his body, kicking and beating him with a rifle butt on 6 July. In addition, four people were reported seriously injured and 33 people were wounded as a result of shootings and beatings by the police and military forces on 6 July: Mr Benyamin Ronsumbre was shot in the thigh and was then beaten; Mr Filep Karma (39) was shot in both legs and then beaten and kicked his head; Mr Yohan Mofu was beaten with rifle butts until he was unconscious; Mr Bernard Gedy was beaten with a bayonet and rifle butts; Mr Benyamin Rumainum was beaten with rifle butts; Mr Demetrius Fainsem was shot in his stomach and afterwards forced to walk while being beaten.

150 people were arbitrarily arrested and tortured or ill-treated during police detention. Mr Neles Sroyer (38), Mr Agustinus Sada (49) and Mr Selsius Raweyai (46) were amongst dozens of men who were arrested in the harbour area. They were ordered to strip off their shirts and to crawl to the interrogation area where their fingerprints were taken. Then they were ordered to lie down with their eyes open toward the sun. They were not allowed to close their eyes while the security personnel including Brimob, the navy, the army of Kodim 1708 and Korem 173 kicked them with their combat boots, rifle butts, and wooden bars, and also trod on their stomachs. These young people were then detained in the police station in Biak. During their detention, the police kicked and beat them with 5x5 cm iron bars and aluminum sticks. This ill-treatment continued from 9-12 p.m. As a result of the ill-treatment the detainees were not able to eat because their mouths were so swollen. The detainees were also pushed to lie down on the floor inside the detention cell where the police had already poured water on it.

d. Oksibil case (District of Pegunungan Bintang): 7 August 1998¹⁹⁷

¹⁹⁵ *Nama tanpa pusara, Pusara tanpa Nama, Laporan Pelanggaran HAM di Biak, Irian Jaya*, Jayapura: Lembaga Studi dan Advokasi Hak Asasi Manusia (ELSHAM) Irian Jaya, Juli 1999.

¹⁹⁶ The Morning Star flag symbolises Papuan aspirations for independence. This flag was raised for the first time when *Nieuw Guinea Raad* (New Guinea Parliament) was established on 1 December 1961 by the Dutch Colonial Administration and thus it reflects Papuan nationalism. That is why the government takes a harsh measure towards such a movement.

¹⁹⁷ This case was reported by three Church leaders in Jayapura, including Most Rev. Leo L. Ladjar OFM (Bishop of Jayapura), Rev. Benny Giay (JPIC office of CAMA) and Rev. Hermann Saud (Chair of the Synod of the Evangelical Church in Papua) to the Chief Commander of the Army, Maj. Gen. Amir Sembiring, on 1 Juli 1999, entitled *Laporan Laporan Dampak Kehadiran Aparat Keamanan bagi Situasi Kemasyarakatan dan HAM di Wilayah Pegunungan Bintang, Jayapura, Juli 1999* (The Report on the Impact of the Presence of the Security Forces to the Social and Human Rights Situation in the Area of Star Mountains). Available at www.hampapua.org/skp/index2.html

The situation which occurred in Pegunungan Bintang was relatively the same as that of Paniai. The army tried to exert control over the people's lives as they conducted a military operation to tackle the OPM resistance under the leadership of Karel Uropkulin. In Pegunungan Bintang a Battalion of 726 as well as KOPASSUS were deployed. These different units did not get along well and their rivalries lead to the abuse of the local people.

Albert Kalakmabin explained that on the morning of 7 August 1998 he was summoned by the military to the guard post. He was beaten and interrogated until he confessed that a letter which he brought was not written by Mr Karel Uropkulin (OPM) but by KOPASSUS Tribuana in Oksibil. The Parish Priest of Oksibil witnessed that Albert Kalakmabin's face was bruised.

6.2.2 Cases of torture during 1999

a. Flag raising case of Sorong: 5 July 1999

The authorities dispersed a mass demonstration at which the Morning Star flag was raised in the city park in Sorong. The authorities beat people who were present, 22 were arbitrarily arrested and two people had their legs broken and were left unconscious as a result of ill-treatment.

b. Paniai area¹⁹⁸

Even though the status of DOM was lifted following the reformation era in May 1998, the army continued to arbitrarily exert strict control over a number of villages by imposing the following rules: [1] that all people (except teachers) clean around the army guard post every Wednesday [2] to stay on guard during the night, [3] to provide food for the army who are on guard in their villages. These rules also implied collective punishment whenever any village failed to fulfill the rules. The villages under this rule were Pugo I, Pugo II, Pugo III, Papato, Timida, Madi, Uwibutu, Kopo, and Ipakiye.

6.2.3. Cases of torture during 2000

a. Nabire case (District of Nabire): 29 February 2000¹⁹⁹

The people of Nabire reacted quickly to the announcement by Theys Eluay on 12 November 1999 in Sentani to all Papuan people that they should raise the Papuan flag on 1 December 1999. The people of Nabire immediately planned a flag-raising ceremony. These processes were arranged by the people under the coordination of the Association of Traditional Peoples (LMA – Lembaga Masyarakat Adat) in Nabire, with the head, Ohar Manase Sayori, who had attended Theys' meeting. The process was discussed with the DPRD level II Nabire and they obtained permission for the ceremony from the head, Maulid Hidayat. Once that permission was obtained, the people raised the Papuan flag.

Unlike other areas in Papua, the Papuan flag which was raised in Nabire on 1 December 1999 and continues to fly to this day. It is thought that the people of Nabire were determined to comply with Theys' call to fly the flag from 1 December 1999 until 1 May 2000.

In parallel with the increasingly explicit expression of the aspiration for Papuan independence, the "Satgas Papua" (Papuan independence forces) phenomena also increased in the Papuan urban areas of: Sorong, Manokwari, Biak, Jayapura, Timika, Merauke, Wamena, and Nabire. The emergence of the Satgas was in fact related to efforts to protect the Team of 100 before and after the meeting with President BJ Habibie on 26 February 1999. The Satgas activities continued during the flag-raising ceremonies of 1 December 1999. However, because the organisation of the Satgas itself is rather fluid, the conditions for membership, position

¹⁹⁸ *Sketsa Sejarah Perlawanan dan Penderitaan Masyarakat Paniai di sekitar Tiga Danau Besar, Kabupaten Paniai, Papua* (A Historical Sketch of the Paniai's Resistance and Suffering at Tiga Danau Besar in Paniai Regency, Papua), Jayapura: Sekretariat Keadilan dan Perdamaian Keuskupan Jayapura, November 2000. This report was submitted to then the Chief Commander of the Army in Jayapura, Maj. Gen. Tony A. Rompis. Available at www.hampapua.org/skp/index2.html

¹⁹⁹ *Laporan Situasional Nabire, Peristiwa 28 Februari 2000 serta sebelum dan sesudahnya, Jayapura: Sekretariat Keadilan dan Perdamaian Keuskupan Jayapura, Juni 2000.* This report was presented to Acting Governor of Papua, the Speaker of the Provincial Parliament, the Chief of Police of Papua, and the Chief Commander of the Army of Papua. Available at www.hampapua.org/skp/index2.html

or role in the Papuan struggle, main aims, tasks, length of tour of duty were rather unclear. The fluid nature of the organisation thus rendered every Papuan able to identify themselves as a member of 'Satgas' for their own private interests. On the other hand, external forces could easily ascribe any kind of activity or action by the Papuan people as a 'Satgas Papua Action.' This stigmatisation was manipulated by members of the security forces. In Nabire, the Satgas Papua inter alia, confiscated spirits in the port, shops and other areas.

It was in the above described atmosphere that the violent incidents occurred on 28 February 2000 when two people, Menase Erari (33) and Maximus Bunay (27) were shot dead by Brimob. The Brimob conducted a crack-down on Satgas Papua and met with strong resistance from them. During this situation, Brimob arbitrarily arrested and detained many people including Yance Pekei.

Mr Yance Pekei (21, male) was arrested by Brimob at the front of the Sport Hall in Kotalama, Nabire, as he was trying to return home to his house in Kalibobo, together with a friend of his, **Mr Silas Dogopia**. On 29 February, in the early morning, he was blocked by a Brimob regiment and was ordered to throw away his bow and arrows, which he was carrying. He obeyed the order and was then ordered to spread out onto the asphalt road. After that, he was handcuffed and taken by a Kijang police patrol vehicle to the Mapolres. He was detained and interrogated and tortured by four policemen. According to his testimony, he was asked, "Where are you coming from?" to which he replied, "from the flag." Then he was asked, "How much do you get paid for guarding the flag?" to which he replied, "Nothing," and then they said to him, "Rp. 2.5 million huh?" Yance replied, "The Papuan struggle is long and there is no payment for it." The police accused him of lying and he was beaten around the right ear. They continued, "Sayori gives you food, right?" to which he replied, "it's the people who give me food." During the interrogation he was beaten in the head with a rifle butt and in the chest with a block of wood, if he replied, "no." Then he was asked, "What is your nationality?" to which he replied, "I am a Papuan." Then he was asked, "Are you not an Indonesian?" to which he replied, "My father is a Papuan and my mother is a Papuan, my land is Papuan. I am Papuan." Yance was then ordered to lie on the floor and he was trodden on the chest by a number of members of Brimob wearing combat boots. The police tied plastic around the middle finger of his right hand and set it alight. They also burned his right shoulder. The torture continued with electric shock treatment to his left hand. Then he was ordered to choose one of the instruments of torture placed before him on the table. Yance chose the pistol. The police asked, "Why?" to which he replied, "So that I am dead and become a hero." The Brimob put the barrel of the pistol into his mouth, but they did not shoot.

As a result of the torture, Yance fainted and was taken to the Nabire General Hospital by the police on the night of 3 March 2000. The police said that they had found the victim at the Oyehee market which is located opposite the Papuan flag pole. After receiving treatment for one night, the victim asked to return home because he did not feel safe in the hospital.

During his detention in the Polres, the victim claimed that he met with **Mr Aten Dimi** who was being subjected to even worse torture. This detainee could not receive visitors from NGOs or the TPF DPRD Irja (the fact-finding team of the Provincial Parliament).

b. Madi village case (District Paniai): 21 May 2000

The military conducted an operation in which they fired bullets along the street from Etenedimi to the Uwibutu posts, in Madi. After that the authorities summoned 2 civilians, one who was in the Madi village authority and civil defence unit 'hansip', they were ordered to be submerged into a fish pond from 7 pm until morning.

c. Abepura Case (Jayapura Municipality): 7 December 2000²⁰⁰

Following the attack on the police station in Abepura by an unidentified group, the police launched a police operation to counter the attackers. The following events took place as part of this operation:

²⁰⁰ This particular case was reported by the UN Special Rapporteur on Torture (E/CN.4/2003/68/Add 1. para 654) and the UN Special Rapporteur on Extrajudicial Killings (E/CN.4/2003/3/Add. 1 para 313) to the 59th UN Commission on Human Rights. This case was investigated by an inquiry commission under the mandate of KOMNAS HAM that submitted its report in May 2001. Based on this report, the Attorney General brought the case to the Permanent Human Rights Court held in Makassar, South Sulawesi, which had jurisdiction over Eastern Indonesia, including Papua. However, two police commanders as inditees were released free on 8-9 September 2005.

In Ninmin dormitory

At 02.00 a.m. a Brimob unit lead by Bripka Hans Fairnap stormed the Ninmin dormitory. Brimob damaged the dormitory firing bullets in the walls and breaking the windows. Those inside the dormitory were ordered outside, beaten with rifle butts and with wooden sticks then stomped on. They were then taken by truck to the Mapolres Jayapura. The group of those detained included 23 people (14 men, 9 women and including one child aged 7 years old).

At Jayapura police station

When the detainees arrived at Jayapura Police station and got off from the truck, the police immediately beat them one by one on their heads and their backs with plastic sticks, rifle butts, spade and wooden instruments. This group was split into two according to their gender. While the female police took the identities of the women's group, they beat these women all over their bodies and burnt their hands with cigarette butts. They shouted at these women, "You, women like rats, you swept out our colleagues in Wamena".

Around 5.30 a.m. the mens group was taken to the detention cell while the police beat and kicked them. Inside this cell, the police continued to beat and kick them so the wall of the cell was painted with the victim's blood. Some of them were then forced to clean up this wall with water and were also forced to drink the water. The police cut **Mr Eki Gwijangge's** hair and forced him to eat it under the bayonet point on his neck. They had been interrogated at the Detective section at Jayapura Police Station before they were transferred to the cell that contained other detainees, including **Mr Iten Oswald Joseph**, a Swiss journalist. In this cell, they witnessed how **Mr Ory Ndoronggi (19)** and **Mr Johny Karunggu (20)** died due to the torture they suffered.

Case in Kampung Wamena Abepantai

At 05.30 a.m., one team of Brimob led by Bripka Zawal Halim surrounded the residents of Kobakma Memberamo and Wamena Barat at Abe beach. Brimob took out their guns and ordered 75 families to gather in the yard of the GIDI Church; they then separated the men from the women. The group of men were beaten with rifle butts; stomped on with military boots, and subjected to the firing of weapons to frighten them. In the end 4 people were taken to Mapolresta.

At the Yapen Waropen dormitory

At around 05.30 a.m a Brimob unit of 15 personnel led by Iptu Suryo Sudarmadi came to the Yapen Waropen dormitory while firing their weapons in the area of the dormitory. All of the residents were forced to flee, one person was shot in the head, 4 people were captured, beaten with rifle butts, kicked, dragged, thrown into a truck and taken to the Mapolresta.

Community residence of suku Lani and Wamena Barat in Jl. Baru Kotaraja: 8 December

At 08.00 a.m. one Brimob team lead by Iptu Suryo Sudarmadi arrived at the residence of the suku Lani and Wamena Barat while shooting their weapons in the air. About 48 people were captured and ill-treated with batons, boots and rifle butts. A group of women and two children aged one and half year and two years old, and their mother who was pregnant, were ordered to crawl from their home to the main road. A number of residents were awoken and tortured. The authorities wrecked the inside of homes and took the wallets of the residents. Then the residents were taken to the Mapolresta Jayapura.

At Mapolsek Abepura: 8 December 2000

The victims who were taken from the Yawa, IMI and Abepantai dormitories were tortured using electric cable, military boots, rifle butts and blunt wooden instruments. As a result of the torture described, one of the victims, Arnold Mundo Soklayo, was totally paralyzed.

6.2.4 Cases of torture 2001

In the early morning of 13 June 2001, a violent incident in Wasior resulted in the killing of five members of Brimob and one civilian in the base camp of CV. Vatika Papua Perkasa (VVP), a timber company in Wondiboi Village, Sub-district of Wasior. The security forces accused OPM of the attack and of stealing 6 weapons from those Brimob officers that were killed. The police from Manokwari launched an operation in the Sub-district of Wasior to search the bodies and to look for the perpetrators not only in Wondiboi Village but also in the surrounding villages, including Tandia, Sendrawoi, Yopanggar, Windesi, Yomakan, Wondamawi I and Isei.

During this operation, the police arrested, detained and tortured the civilians who were considered suspects in Wasior Police Station and Manokwari Police Station.

a. Wondiboi, Wasior case (District Teluk Wondama): 14 June 2001

16 people who wanted to view the bodies of 5 people who were killed by a group of unknown civilians, were arrested, beaten and ill treated. They were forced to crawl on their chests and were then taken away to Manokwari by boat. These 16 people, including 3 women were: **Mr Yulianus Bokwai** (32), **Mr Markus Urus** (23), **Mr Nehemia Urus** (30), **Mr Yakob Bokwai** (24), **Mr Welly Bokwai** (36), **Mr Yohanes Nusowi** (40), **Mr Abner Sibuni** (25), **Mr John Enuap** (35), **Mr Yous Yoweni** (18), **Mr Denny Yoweni** (17), **Mr Henok Krey** (32), **Mr Peki Kubiari** (38), **Ms Kleopas Rumadas** (38), **Ms Alfred Asmuruf** (29), **Ms Martha Bokwai** (30) and **Ms Martha Marani** (23).

Mr Derek Rumbobiar (50) a primary teacher from YPK Wondiboi and his wife were tortured by Brimob. His wife was dragged on the beach for 10 meters. They were suspected of being connected with an attack in Wondoboi.

Four office workers in the employ of CV. Vatika Papua Perkasa; **Mr Yulius Webori** (38), **Mr Frans Yoweni** (40), **Mr Markus Webori** (40), **Mr Isaskar Weyai** (37) and **Mr Toha** (39) from Jawa were subject to ill-treatment resulting in abrasions and bruises by 6 Brimob personnel. They were also suspected of being connected with the attack in Wondoboi.

Mr Yoseph Yoweni (59), a primary school teacher in YPK Wondoboi was arrested when he was attempting to travel to Manokwari to visit his family. He was beaten with military boots and rifle butts all over his body, this beating caused blood to come from his eye sockets.

In Isui and Rasiei village (District of Teluk Wondama): 19 June 2001

Brimob tortured 5 people until they were powerless and then their bodies were soaked in diesel.

In Yopanggar village (District of Teluk Wondama): 27 June 2001

In a security operation pursuing **Mr Daniel Yairus Ramar** one team of Brimob came to the Yopanggar village. They gathered and interrogated the residents in the house of the village leader. For reasons unknown to the residents, the authorities shot three residents and tortured a small child of the village head. **Ms Endemina Numayomi** (15) was shot in her right hand's palm, **Ms Ester Rumsayor** (28) and **Mr Michael Numayomi** (7) were killed by gunshots. **Ms Nona Kabiai** (3) and **Mr Corneles Sumuay** (50) were injured.

Ransiki case (District of Manokwari): 3 July 2001

In a sweeping operation Brimob tortured 9 civilians including **Mr Sefnat Kawei** (18) a school student, **Mr Timor Irio** (50) Ransiki village head, **Mr Martinus Rumere** (22) disabled, and **Mr Lukas Bonggoibo** who experienced severe torture. They were beaten, shot and dragged along the road which resulted in **Mr Martinus Rumere** suffering from a life-long disability.

At around 16.00 Brimob captured **Mr Philipus Refideso** (40) the head of the Kuri suku, and resident of Desa Kuri I Sarbe Kec. Babo was assaulted while he waited for a taxi to Manokwari, then he was taken to the house of Kapolsek Ransiki, **Letda Eli Tubin**. He was beaten and stomped on. He was turned on his back and his left hand and arm were stabbed with a bayonet in a pattern making the letter X. He was accused of being a provocateur in the Wasior case.

Kecamatan Windesi case: 4 September 2001

The Werianggi village head, **Mr Johan Calvin Werianggi**, was taken to the road from the sub district of Windesi in the direction of his village. He was mistreated and killed by Brimob. After three days his body was found close to the Windesi lake.

In Wasior (District of Teluk Wondama): 27 October 2001

A primary school teacher in YPK Tandia, **Mr Yan Ataribaba** (42), was ill-treated by the authorities which resulted in his bruising and swelling to his eyes, mouth and body.

6.2.5 Cases of torture during 2003

Wamena case: 4 April 2003²⁰¹

Following the theft of 29 weapons from the military arsenal of District Military Command 1702 in Wamena, a number of TNI units conducted an operation around the surrounding villages for about three months, including Sinakma, Bilume-Assologaima, Wouma, Honai Lama, Napua, Walaik, Moragame, Ibele, Ilekma, Kwiyawage, Hilume, Kikumo, and Walesi. During this operation, KOMNAS HAM reported that 9 civilians were killed. Many innocent civilians were arrested and tortured in District Military Command 1702 in Wamena, including 23 people and 7 children. Some 3,000 to 4,000 people from 13 villages were internally displaced as the army had burnt down health clinics, traditional houses (honai), churches and the pastors' houses. The displaced people fled to the Sub-district of Tiom and of Sinak and while displaced, 36 people died due to starvation and diseases.

a. Mr Yapenas Murib

Yapenas Murib and Kanius Murib were arrested on 10 April 2003 by the army and were taken to KODIM 1702/JWJ Wamena. On the following day, **Mr Benyamin Matuan**, a witness, saw the army tied up Yapenas on his neck with two ties on the way to Ilekma Village. One soldier dragged him at the front and another one at the back. A witness, **Mr Yosa Murib**, saw Yapenas was taken by the army to Ilekma but on the following day (16 April 2003), he and other witnesses found him dead in the hospital of Wamena with a bruised neck and a dried bleeding nose.

b. Mr Wawan Itlay

Wawan Itlay was arrested by the army and detained from 18-19 April 2003 in KODIM. During the interrogation he was kicked in his legs by **Mr Daniel Yelipele**.

c. Mr Boni Kalolik

On 7 April 2003 in Jalan Habema Km.7, five soldiers beat Boni Kalolik and repeatedly kicked him in his face, stomach, and other parts of his body. The soldiers also beat him with wooden instruments and pinched his nipples with pincers before he was taken to KODIM for questioning. During the interrogation he sat on the floor while a soldier who was questioning him put his left leg on Boni's shoulder and his right leg on Boni's mouth and twisted it. The army also poured cold water on him while beating him. Boni only had a meal one day later after he was forced to clean the command station.

d. Mr Welius Yelipele

Mr Welius Yelipele was arrested and questioned on 4 April 2003 in KODIM. During the interrogation, he was slapped in his face about four times and was forced to confess that he was involved in cutting off the power.

e. Mr Tinus Matuan

The army arrived in Napua Village on 4 April 2003 to arrest **Mr Tinus Matuan**. He was forced to strip off his shirt and trousers and then was handcuffed. He was repeatedly beaten with a 5 x 5 cm wooden bar with such force that the bar was broken three times.

Tinus was detained in Kantor Kecamatan Hubikosi when the army put a bamboo stick between his legs and pushed him to sit down on it. He was beaten, threatened with a bayonet; his ears were burned with a cigarette butt. The soldiers stepped on his thumbs with combat boots and when Tinus wanted to sleep they poured water on the floor and tied up his legs with shoelaces. The soldiers locked Tinus up inside the toilet wearing only his underwear. They forced Tinus to confess that he knew **Mr Kelly Kwalik, Mr Yustinus Murib and Mr Titus Murib**—all of them OPM leaders. He was then transferred to KODIM detention along with Kotikik Hilapok, Boni Kalolik, dan Pumaika Lani. While he was in the detention, he heard the voice of Yapenas Murib begging for clemency and witnessed that Kanius Murib had water poured over him.

f. Mr Denus Gwijangge

²⁰¹ See *Laporan Penyelidikan Tim Ad-Hoc Penyelidikan Pelanggaran HAM yang Berat di Papua*, Jakarta: Komisi Nasional Hak Asasi Manusia, Juli 2004. (The Report of the Ad-Hoc Investigation Team on Gross Human Rights Violation in Papua). This report was submitted by Komnas HAM to the Attorney General to prosecute but it has been delayed to date.

Denus Gwijangge was arrested in Ilekma Village after the incident. When arrested, he was kicked with combat boots in his stomach until he was unconscious. The army forced him to confess that he was involved in the theft. He was brought to KODIM 1702/JWY and was ordered to strip off his shirt and trousers. Then he was taken into a cell, had dirty water poured over him and was forced to drink the water. Three soldiers came in and hit him in his ribs and back with a wooden stick so that he was bruised and bleeding. During this detention, Denus was forced to strip off his clothes and was repeatedly beaten in his ribs, back, face and head. He witnessed other detainees who were experiencing similar ill-treatment, including Ni Gwijangge who was forced to squat with a wooden bar squeezed between his legs while a soldier sat on his back beating him. Due to this torture he had blood in his vomit, faeces, and urine.

g. Mr Alberth Asso alias Mr Kurniawan Asso

On the morning of 23 April 2003 in Walaik Village, Alberth was beaten by a group of 7 armed soldiers in his face: eyes, chin, nose and mouth. He was arrested and was accused of being involved in the theft.

h. Mr Yaprai Murib

The army arbitrarily arrested Yaprai Murib on 11 April 2003 in his home in Honai Lama Village and brought him to KODIM in Wamena. While the army questioned him regarding whether he was involved in the burglary, he was beaten with a 5x10 cm wooden bar, had cold water poured over him, and his eyes were tied up with black cloth. He answered that he was not involved. He was moved to another cell where cold water was again poured over him. In the evening the army brought in Numbungga Telenggen. From a distance Yaprai witnessed that **Mr Denus Gwijangge** was beaten all over his body by a soldier and was forced to strip off his clothes.

i. Mr Numbungga Telenggen

On 4 April 2003, Numbungga Telenggen was arrested by a group of 4 armed soldiers and was taken to a military guard post at Senogolik Primary School before being transferred to KODIM. Once he arrived at KODIM, he was beaten with a wooden bar, threatened with a gun pointed to his ears, and his eyes were tied up with black cloth. His hands, legs and neck were jointly tied and he was ordered to roll on the wet floor.

j. Mr Enos Lokobal

Enos was arrested in Ibele Village on 10 April 2003 at noon by a group of 10 Kopassus and one intelligent agent, Leo Logo. He was taken and detained in KODIM's detention centre. At midday on 11 April 2003, he was questioned with his hands in handcuffs and cold water was poured over him by two Kopassus personnel. He was repeatedly kicked on his back and on his stomach with combat boots until he fell unconscious. When he regained consciousness, he was ordered to write down the chronology of the theft. As he refused to do so, the Kopassus personnel beat him with rifle butt, kicked his jaw and forehead with combat boots. They also hit his back with a rifle butt until he fell unconscious again. Enos continued to refuse to confess so the Kopassus continued to beat him with a 5x10 cm wooden bar, kick all parts of his body, cut his thumb and ankle, put his leg under a chair and step on it.

He was detained for 5 days before being transferred to the Police detention in Wamena on 15 April 2003. On 19 April 2003, two Brimob members came to the cell and kicked Enos in his shins twice, ribs and jaw so that he fell unconscious. The Brimob officers instructed him to lie down on the floor while one of them sat down on his legs and another one sat down on his stomach. They put a bottle inside his mouth and pushed on it. Then the Brimob officers also forced him to smoke and inhaled it. They burnt his armpits with cigarette butts. These Brimob officers continued the abuse, forcing him to take off his pants then pinched his penis with clips, burnt his right knee and his penis with cigarette butt.

k. Mr Midel Asso

Midel Asso was arrested on 26 April 2003 in Pikama Village. The army kicked his mouth and pointed a bayonet to his chest and chin. Midel was repeatedly forced to confess that he was involved in the theft and then he was kicked in his face and legs.

l. Mr Agus Yelipele

A group of army came to Middle Asso's house in Walaik Village in Wamena and instructed all people in the house to get out and to stand up. They were then divided into two groups: the family and Agus. He was questioned whether he was involved in the theft and Agus said 'no'. Suddenly, he was slapped on his face. The

army kicked his legs and repeatedly tapped his chest with a bayonet. He was also questioned in relation to his involvement in Satgas Papua, TPN/OPM and the Morning Star flag raising.

m. Mr Asmadi Tabuni

On the morning of 21 April 2003, Asmadi was arrested by the army. A soldier covered his eyes with his shirt and kicked his stomach while questioning whether Asmadi was involved in the arsenal theft.

n. Mr David Doga

On 8 April 2003, David was arrested and hit in his temple and chin by a group of three soldiers. They also stomped on David's shoulders. David was ordered to lay down on the floor and to stretch his hands side by side. One soldier then stepped on his legs and the other one pointed a bayonet to David's neck and chest while asking his involvement in the theft. Whenever he said no, he was beaten and kicked. He witnessed when the army kicked his son, Laurens Doga, on his testicles until they were smashed. This treatment continued for 4 hours. Before the army left the village, they warned the villagers to report anybody who brought in weapons or otherwise they would burn down the village.

o. Mr Pastor Kias Komba

A group of 11 soldiers came to Perabaga Village in Pyramid-Wamena on 21 April 2003. They asked the Pastor whether he knew anybody who was in possession of guns. When he said no, he was kicked on his genitals and told "stupid pastor, useless to call the name of God".

p. Mr Oten Hiluka

When Oten was arrested in May 2003 in Ibele Village, he was beaten with a rifle butt and repeatedly kicked by a soldier until he fell down. He was then forced to face downward from the night until the morning of the following day.

q. Mr Yusak Hiluka

Yusak was kicked in his back by two soldiers in May 2003 in Ibele Village when he was arrested. He was then repeatedly beaten with rifle butts and combat boots. Along with Pastor Bernardus, Wim Hiluka, Edi Hiluka, Pinus Elokpere, and Marthen Elopere, he was forced to face downwards. He witnessed how the army personnel kicked Linus Hiluka on his forehead and jaw.

r. Mr Anius Tabuni

Anius was arrested in Napua. A soldier held his hands and another one held his neck. Then they kicked his bottom so he fell down and stepped on him. They also hit him in his mouth so that his teeth were broken and his mouth was bleeding. He was forced to confess that he was involved in the theft.

s. Mr Elkius Tabuni

Early in the morning on 11 April 2003 Elkius was beaten by the army. He was beaten in the face so that his nose bled. He was forced to reveal the hiding place of Yustinus Murib, an OPM leader.

t. Mr Barni Gwijangge

Barni Gwijangge was arrested in Ilekma Village and he was beaten on his cheeks and waist approximately three times. The army also kicked his back. He witnessed a soldier arriving with Yapenas Murib whose hands were tied.

u. Mr Kainus Kogoya alias Eka Tabuni

On 11 April 2003 in Ilekma Village, a soldier ordered Kainus to strip off his clothes except his underwear and then he beat him in his stomach with rifle butt, kicked his back so that Kainus fell down immediately. This incident lasted for about one hour before he was released. On the way home, he witnessed Denus Gwijangge staggering and was ordered by a soldier to get onto a truck.

v. Mr Radius Hesegem

In May 2003 Radius Hesegem was beaten by a soldier all over his body with a rifle butt. The soldier also pointed his pistol to his eyes, ears, and chin. He also put a grenade inside Radius' mouth. Due to this ill-treatment, Radius turned blind.

w. Ms Name Hubby, Ms Martha Wantik and Ms Wenewaraki Hilapok

On 8 April 2003 in Hulekama Village, the army watched these women when they urinated, under the pretext that the women would not run away.

x. Ms Lusi Komba

Lusi Komba was only 15 years of age, a junior high school student of SMP II Assologaima-Perabaga. She was kicked by an army soldier who fired his gun to the ground not less than 20 cm from her feet.

y. Ms Tina Elopere

In Hama Kampong, the army came to look for Rony Hese gem, Tina's husband, who was accused as a suspect in the theft. Tina was beaten with rifle butt and a wooden bar and was repeatedly kicked with combat boots by two army soldiers. Then four army soldiers tore down her clothes with bayonets so she was only in her underwear. It was raining heavily but the soldiers still poured cold water on her. She witnessed the ill-treatment of Yosina Meage and her son, Ordi Hese gem (7).

z. Ms Yosina Meage and Mr Ordi Hese gem

A group of three army soldiers came to Yosina asking for her husband, **Rony Hese gem**. She explained that she did not know where he was. As a result, they beat her. They also threatened her at gunpoint, putting a gun in her mouth and to her ears. They beat her with an arm-sized wooden bar and rifle butts before they tore off her clothes with bayonets until she was only in her underwear. She witnessed that Tina Elopere also experienced similar treatment.

One of the soldiers put his gun into Ordi's mouth (7 years old), held the pistol to Ordi's ears and his bayonet to Ordi's shoulders before he tore down Ordi's clothes with the bayonet so that Ordi was only in his underwear.

6.2.6 Cases of torture during 2004

Case of torture of a sex worker in Jayapura: 24 November 2004

Ms Magdalena Marani (a sex worker) was tortured until she died, during an interrogation by 6 policemen in Polresta Jayapura. She was tortured because she was suspected of stealing the wallet of a police officer.

6.2.7 Cases of torture during 2005

a. Merauke case (District of Merauke)²⁰²: Mr Rafael Kapura and Mr Barthol Yolmen

Mr Rafael Kapura (25)

On 25 April 2005 around 3.30 p.m., he was arrested in the house of Mr Daniel Mekiuw in Bupul XII Village by a group of four members of KOSTRAD 643/WNS from Kalimantan that were deployed in Merauke area and was brought to the army guard post in the village. The army then searched his bag and found a number of leaflets including a bulletin of West Papua Indigenous Association²⁰³, a leaflet from *Otoritas Nasional Papua Barat* and a leaflet on the statement of the US Congressman from American Samoa on West Papua.

The army interrogated him and forced him to strip off his clothes and then tied his hands with plastic rope. The army asked him some questions, such as "Why do you want to attack the army post? Are you an OPM member? Who are your colleagues?" Rafael answered, "No". However, he explained to the army that a member of OPM from WPIA in Papua New Guinea would visit Papua on 27 July 2005 to collect the information on the statistics of indigenous Papuans. To prepare this, a team would come first around May 2005. This information was interpreted by the army as the time to attack their post so that they accused Rafael as an OPM leader.

Rafael was then transferred to Muting post. The army asked him about guns and when he failed to give the right answers, he was beaten on his head and punched on his temples. The army then tied his neck with plastic rope and whenever he gave any wrong answers they strangled him. Once the rope was released, Rafael was numb and was not able to answer the questions of the army. As a result they immediately beat and punched

²⁰² This case is documented by *Sekretariat Keadilan dan Perdamaian Keuskupan Agung Merauke* (the Office for Justice and Peace of the Catholic Archdiocese of Merauke) on 10 May 2005.

²⁰³ This organisation is used to deal with the Papuan refugees in Papua New Guinea.

him until he fainted. When he gained his consciousness, the army continued the interrogation and forced him to confess who had guns. To avoid further ill-treatment, Rafael told a lie and mentioned a few names, including **Mr Willem Yawa**, **Mr Bartol Yolmen**, **Mr Yustus Wali**, **Mr Yusak Bokowi** and **Mr Siprianus**. He also lied when he stated that Edi Waromi was the master mind of the planned attack on 27 July 2005; Aloysius Mahuze in Boset Village had 17 guns (only 3 in good condition), few assembled guns and around 1,500 bullets.

On 26 April 2005 around 6 p.m. Rafael was transferred to the police station at Bupul Village and on the following day (27 April 2005) was transferred again to Kali Wanggo army guard post before the army took him to the KOSTRAD guard post at Merauke City for further interrogation. On the following day (28 April 2005) he was brought back to Kali Wanggo post where he was interrogated about the guns. The army threatened him stating that if the guns were found, he would take the lesson from what the army did in Aceh with GAM members. The army would give him a spade to dig up a hole for his own grave, close his eyes with black cloth, ask him to pray, force him to get into the hole and shoot him dead.

On the following day (29 April 2005), an intelligence agent named Andi came to Rafael telling him that as a Catholic, he would not dare to even touch him as he already promised to a Catholic priest in Merauke to protect him. On 30 April 2005, the army again threatened him by pointing a gun to his face and were ready to fire at him, so that he was so shocked and lied by stating that Bartol had a gun. On the following day, a member of the military police, Yoseph, came to him and handcuffed him. He burnt Rafael's left hand with cigarette butts. He also bit Rafael's nose and ears until they were bleeding while other members punched and beat his head. Rafael fainted and was brought to Merauke City on a truck while he was bleeding.

Mr Barthol Yolmen (24)

On 27 April 2005, a joint team of army units came to Barthol's house around 8 p.m. in Mangga Dua Village, Merauke City, when Barthol was sleeping. The joint team arrested and took him to the KOSTRAD post in Merauke City. He was interrogated about guns but was released around 11 p.m.

On 1 May 2005, a group of 4 soldiers came to Barthol's home and arrested him. He was brought to the KOSTRAD post where Rafael was already waiting for him. When the army asked Barthol whether he knew Rafael, he said yes. However, he was wondering why Rafael was there. He became so confused when Rafael told him that he hid a gun and even by describing its shape to the army. As a first reaction, Barthol denied this confession but he then realised that Rafael was under strong pressure of the army so he confessed that he had a gun at home.

The army then handcuffed him, wrapped his body with a black jacket and forced him to come with them to his home to show where he hid the gun. When they arrived at the backyard of Barthol's home, two soldiers told him to show up to his family. However, he took this opportunity to kick these soldiers and run away to Atanasius' house next door while shouting, "They were killing me! They were killing me!" He managed to reveal his face from the jacket. However, the army came in and dragged him out while beating him all over his body until he fell down. The army then dragged him with his face hitting the road so he was bleeding and fainted. They threw him into the truck and stomped on him on the way to the post. When they arrived in the post, they threw him to the ground and beat him with rifle butts on his chin. His face was badly bruised and mixed with blood.

On 2 May 2005 around 2 a.m., Barthol and Rafael were taken to Kali Wanggo post where the army continue beating and punching them while they were handcuffed. On 5 May 2005, two army officers from KODAM came to them and asked Rafael about all things related to Otorita Papua Barat. Rafael confessed and agreed what they said so their handcuffs were released. On the following day (6 May 2005) around 10 p.m., the KOSTRAD members took them to the KOSTRAD post in Merauke City to clean their bodies before continuing to the Merauke Police Station. However, the police did not accept the detainees so they referred the detainees to the doctor for medical records. On the following day (7 May 2005), they were released when the police declared that they did not have sufficient preliminary evidence to detain them.

b. Kimbim case (District of Jayawijaya)²⁰⁴: Mr Peto Perius Wenda

In the Wamena area, the capital district of Jayawijaya, the roads are not particularly good or well-maintained. The connection between Wamena and Pyramid is sometimes poor. On 29 July 2005, five young men conducted road work to try and repair the road in Pyramid Village. When public transport passed by these men asked for payment for their work of around Rp. 10,000-15,000 for each bus. The drivers of these buses did not accept this request so they reported this to the nearest army guard post, Kostrad Batallion 411 in Kimbim.

Peto came down from his village of Yungkaloma for shopping in Pyramid. On the way home, he passed the place where the men were doing the road work. They offered a cigarette to him so they smoked together. When a bus passed by, they stopped it and asked for money. The driver gave him Rp. 5,000 but they did not accept it well so that they forced him to give more. The driver could not do anything else rather than pay more but he then complained to the nearest army guard post.

The army was immediately deployed to the location and the young men run away. Peto and his colleague, **Mr Ginggame Tabuni**, stayed as they thought they were innocent. However, the army beat them and forced them to lie down and then brought them to the guard post. Before arriving at the Post a soldier sent a message that his team already captured members of OPM.

In the guard post, the army repeatedly beat Peto and Ginggame with an iron bar, riffle butts and combat boots. Moreover, the army stripped them and forced them to crawl on their chests while they were beaten up. The army then tied up their hands and threw them into a fish pond nearby while they were stark naked. When their bonds were released, Peto tried to fight which drew the attention of the army. Ginggame used this opportunity to escape.

The army stretched Peto's arms and legs and tied them to the wooden bar like a crucifix with a plastic rope. They then continued to beat him with riffle butts and iron bars and they also kicked him. They forced him to lay face downward while some of the soldiers put dry grass from his back head to his bottom, poured kerosine and lit fire on it. The army continued to beat and kick him while they urinated on him and one soldier bit Peto's right arm until it was bleeding and sucked it. He then hit Peto's forehead with a bayonett handle and stabbed his stomach with an arrow.

While the army hit the victim, they stated, "You were an OPM leader so you must be tortured. You collected money to buy weapons, didn't you. You are such a deceitful group huh." Most villagers, member of Koramil Assologaima, and the Local Police witnessed this incident but they were not able to stop these acts.

After torturing him, the army asked the police in Wamena to take him to the police station in Wamena. 4 policemen came to Kimbim and transferred the victim to Wamena. Where he was in the police detention centre, the police gave him clothes and meals. On 31 July 2005 he was released after the police asked him to tell them the truth.

Since then the army launched house-to-house searches in Kimbim which made the young men flee to the bush for safety.

6.2.8 Cases of torture during 2006

Abepura case (Jayapura Municipality): 16 March 2006

Arising from ongoing demonstrations demanding the closure of the gold and copper mine PT Freeport Indonesia, a demonstration in Abepura was organised by a group of university students. The demonstration started on 15 March 2006 with a blockade on the main road between Abepura-Sentani and continued until 16 March 2006. This blockade attracted sympathy from thousands of people so that it became a mass demonstration.

²⁰⁴ This case is documented by *Sekretariat Keadilan dan Perdamaian Keuskupan Jayapura* (the Office for Justice and Peace of the Catholic Diocese of Jayapura).

The protest turned into a violent clash with the security forces, leaving four police officers and one air force personnel dead, while 21 members of civil society and 9 members of the police were injured. After the clash, the police, in particular the Mobile Brigade Police Forces (BRIMOB), acted indiscriminately for several days in pursuing and attacking civil society living between Kotaraja and Waena or passing through these areas. The main targets were student dormitories and other student locations. The security forces fired bullets at students on the Campus of Cenderawasih University and when raiding their dormitories. 18 student dormitories were reportedly targeted and destroyed. In addition, the police forces expressed the full force of their anger towards members of civil society who passed by their barracks in Kotaraja through destructive acts and mistreatment. The street in front of the Brimob post in Kotaraja was blocked by its members who stopped the traffic and pulled Papuans out of every vehicle, some of whom were pulled out by their hair across the street and brought to the Brimob barracks.

On the evening of 16 March, **Othen Dapyal** (25) and eight other detainees were repeatedly beaten and kicked by police officers at **Polda Papua**. The police poured water into the detainees' cells leaving them in wet conditions for the night. The following days more men were detained at Polda Papua, all of them were regularly beaten with rubber sticks, chairs, wooden bars, their faces were punched, kicked with police boots and their skin was burned with cigarettes. Amongst the detainees being tortured and ill-treated at POLDA Papua were **Thomas Ukago** (22) **Patrisius Aronggear** (30), **Markus Kayame** (47), **Mon Jefri Obaja Pawika** (21), **Elyas Tamaka** (19), **Penius Wakerkwa** (20), **Luis Geddis** (25), **Moses Lokobal** (31), **Besiur Mirin** (21), **Alex Wayangkau** (21), **Elkana Lokobal** (21), **Nelson Rumbiak** (20), **Sepik Jitmau** (19), **Mohammad Kaitam** (20), **Echo Berotabui** (24), **Piter Buinei** (21), **Mathias Dimara** (19), **Sem Wandik** (21) and **Steven Wandik** (23).

At **Polresta Jayapura** police officers used electric shocks in order to force **Elyas Tamaka** (19), **Elkana Lokobal** (21) and others to confess their involvement in the riots. Also under police interrogation at Polresta Jayapura, **Selvius Bobii** (25) was beaten with a chair, kicked in the stomach and slapped in his face. Afterwards when he was brought to his cell three police officers kicked his chest, head and face, punched his solar plexus (stomach) until Selvius Bobii lost his consciousness. Other detainees who experienced ill-treatment at Polresta Jayapura were **Othen Dapyal** (25), **Penius Wakerkwa** (20), **Thomas Ukago** (22), **Luis Gedi** (25), **Moses Lokobal** (31), **Musa Asso** (28), **Alex Wayangkau** (21) and **Ferdinandus Pakage** (19). Amongst the police officers responsible for the ill-treatment at Polresta Jayapura were **Brigadir Alamses**, **Brigadir Budi** and **Senior Commissioner Paulus Waterpauw**. Similar acts of ill-treatment were experienced at **Polsek Abepura** by **Besiur Mirin** (21), **Nelson Rumbiak** (20), **Markus Kayame** (47), **Sepik Jitmau** (19), **Mohammad Kaitam** (20), **Piter Buinei** (21), **Mathias Dimara** (19) and others. Responsible for ill-treatment at Polsek Abepura were **Briptu Marthen Ebe**, **Ricko Kuwok**, **Jufri** and other police officers. **Mon Jefri Obaja Pawika** (21), **Moses Lokobal** (31) and others were amongst those beaten, stabbed and ill-treated at **Brimob Headquarters**.

On 18 March, **Jeni Hisage** (22) died in the Abepura hospital due to serious injuries caused by security forces stabbing him in his back, left arm and stomach. **Ms Katarina Ohee** (9), **Mr Ishak Usmani** (27), **Ms Sulika** (39) and **Ms Ratna Sari** (12) were reported wounded by police bullets. Dozens of people were beaten and 51 people arbitrarily arrested. When those arrested were transported by police trucks to different police stations, they were kicked and beaten. On the way to the police station four Brimob officers forced **Ms Ancelina Temkon** (50) to inform them about the whereabouts of her son Arnold Omba, a student allegedly involved in the riots. Ancelina Temkon was repeatedly hit in the face with a pistol, her hands were burned with cigarettes and the Brimob officers threatened to kill her placing a pistol to her head. The detained citizens were reportedly tortured and ill-treated during their detention at **Polsekta Abepura** (Police Station of Abepura), **Polresta Jayapura** (Police Station of Jayapura City), **Polda Papua** (Police Station of Papua Province) and at **Markas BRIMOB Papua**.

On 1 May, 10pm, a plastic bag was put over **Aris Mandowen's** (21) head. He was beaten, kicked and driven away in a car. A pistol was put to his head forcing him to confess to the killing of the military airforce member during the riots. When the car stopped Aris Mandowen was forced out of the car, his face was hit with hard objects and he was forced to kiss the police officers' shoes. The kicking and beating continued until Aris Mandowen was vomiting blood. Back in the car he was forced to eat used tissues and bite on shoes; several minutes afterwards Aris Mandowen fainted.

Torture and ill-treatment at Polda Papua also occurred forcing the detainees to sign confession statements for their alleged involvements in the riots even though they denied being involved. On 16 March, 11pm, the

Deputy Chief of the Jayapura Police Station (Wakapolresta) **Adjunct Senior Commissioner Aris Purbaya** shot **Ferdinandus Pakage** (19) into his right leg when Ferdinandus rejected his involvement in the killing of one police officer. The Head of the Detective and Crime Section, **Senior Commissioner Paulus Waterpauw**, put a pistol into the mouth of **Selvius Bobii** (25) threatening to kill him if he did not inform the police about the students movement network. From 24 March till 6 May Selvius Bobii was held incommunicado. **Second Brigadier Amir**, **Senior Brigadier Andi Bauwling**, **Second Sergeant Taufik**, **Second Sergeant Alex Suripati** and **Second Sergeant Iwan** were amongst the police officers responsible for the ill-treatment of detainees at Polda Papua.

Ill-treatment and intimidation by police officers also continued during the time of the court hearings related to the riots on 16 March. On 24 May, **Selvius Bobii** and 15 other defendants were ill-treated in the custody of Jayapura State Court for almost two hours before the court session began. The defendants were kicked with boots and beaten with rifle butts and rubber batons in order to force a confession before the court regarding their involvement in the killing of the security forces. Those who refused to accept the charges were allegedly beaten and kicked after the trial. On 28 August, the detainee **Nelson Rumbiak** was beaten by police officers after revealing in court that he had been ill-treated in police custody. The beating of Nelson Rumbiak occurred at 6.30 pm after he and three other convicted men had revealed in court that they were intimidated and beaten in police custody. Nelson Rumbiak's head was beaten with a cane-stick by Novril, a police officer from Dalmas Polresta Jayapura, and when he fell to the ground, several other police officers kicked him in the ribs and stomped on his body. The police then chased Nelson Rumbiak and the three other accused men into the prison and threatened to beat prison officers who tried to keep the police officers out of the prison.

Nelson Rumbiak was brought for examination to Abepura hospital, but as members of the police, intelligence and also military tried to gain access to him, his family and church members decided to take Nelson Rumbiak back to prison.

The following 24 people were detained in Polresta Jayapura and Polda Papua in Jayapura:

No.	Name	Age	Gender	Occupation
1.	Selvius Bobii	25	Male	University Student
2.	Luis Gedi	27	Male	Private sector
3	Ferdinand Luis Pakage	19	Male	Parking Guard
4	Penius Wakerkwa	21	Male	University Student
5.	Othen Dapyal	25	Male	University Student
6.	Thomas Ukago	22	Male	University Student
7.	Elkana Lokobal	21	Male	High School Student
8.	Elyas Tamaka	30	Male	University Student
9.	Patrisius Aronggear	30	Male	University Student
10.	Markus Kayame	47	Male	Civil servant of the Office Kotaraja
11.	Moses Lokobal	31	Male	Private sector
12.	Musa Asso	28	Male	Private sector
13.	Mon Jefri Obaja Pawika	21	Male	University Student
14.	Mathias Michael Dimara	19	Male	Newspaper seller
15.	Cornelius Rumbiak alias Nelson Rumbiak	20	Male	High School Student
16.	Bisiur Mising/Bensiur Mirin	21	Male	University Student
17.	Alex C. Wayangkau	21	Male	University Student
18.	Yasya Echo Merano Berotabui	25	Male	University Student
19.	Piter Stefanus Buinei	21	Male	University Student
20.	Sedrik Jitmau alias Ricky Jitmau	19	Male	High school student
21.	Muhammad Kaitam alias Ahmad	20	Male	High school student

22.	Aris Mandowen	21	Male	Private sector
23.	Steven Wandik	23	Male	Peasant
24.	Sem Wandik	21	Male	University Student

6.2.9. Cases of torture during 2007

Kurima case (District of Yahukimo)²⁰⁵: Mr Yulius Meage

Mr Yulius Meage (18) works for **First Sergeant Panji Suwito Putro** (35), a soldier of KORAMIL Kurima. He was arrested by a group of two soldiers from KORAMIL Kurima on 13 May 2007 around 7.30 pm. He was charged with stealing Panji's money. He was then taken to KORAMIL post when **Private Eduardus Kimbirop**, a soldier of KORAMIL Kurima, immediately dragged him to a fish pond and pushed his head into it. He was then tied up to a flag pole at the front of the Post for about one hour while the members of the Battalion 756 of Wamena and members of KORAMIL Kurima repeatedly punched him.

Yulius was forced to confess that he stole money, as much as IDR 2,370,000 but he confessed that the amount was only IDR 320,000. Despite confessing three times, he continued to be beaten up, kicked with combat boots, and water was poured over his head by the army officers. He was then released and was taken to Panji's home accompanied by Sergeant Panji and Private Eduardus.

Yulius was tied with a plastic rope to a chair while being interrogated and forced to confess again. When he refused to do so, the soldiers lit the candle. Sergeant Panji forcibly stripped off Yulius' pants and forced him to stick out his tongue. Sergeant Panji then burnt Yulius penis and also his tongue and when Yulius tried to pull out his tongue Sergeant Panji threatened him. Sergeant Panji then used pincers to pinch Yulius' testicles and his feet's toes.

When Panji finished with his interrogation, he told Yulius to sleep on a triplex while his hands and legs were tied up. However, he managed to escape back home.

6.3 | Pattern of Cases

1. No prosecutions

With the exception of the Abepura case of 7 December 2000, all of the aforementioned cases were not prosecuted even though these reports were submitted to the relevant authorities at both local and national level. Therefore, the alleged perpetrators remain unpunished.

The Abepura case of 2000, for example, was the first case that was brought to the Permanent Human Rights Court in Makassar under the Law No. 26/2000 on Human Rights Court. However, the two suspects who were police officers were acquitted and were even promoted.

2. No compensation

The fact that the perpetrators are not punished renders the victims unable to pursue any lawful remedies for the suffering they endured from the ill-treatment. The authorities that received the complaints did not provide medical treatment or any other form of compensation to ease the suffering of the victims. This situation seems to galvanise the antipathy towards the government and particularly the security services.

3. Damaging social capital

The impact of torture does not only affect the victims but also their social life as many of the victims became isolated. Moreover, the practice of torture also ruins social capital at the village level because the atmosphere of fear becomes embedded in the collective memory of the people, thus creating serious obstacles in the further development of their lives.

²⁰⁵ This case was reported by *Jaringan Advokasi Penegakan Hukum dan HAM Balim Wamena Pegunungan Tengah Papua* (The Advocacy Network of Law and Human Rights Enforcement of Balim, Wamena, Central Highlands), to the Commander of KODIM in Wamena, in May 2007.

4. Common practice of the security services

In all cases, members of security services including the army and the police are the most commonly alleged perpetrators. The methods of torture seems similar, including: beating with blunt instruments, the use of electric shock, targeting particular organs of human beings, humiliation at the front of the public, interrupting normal sleeping patterns, etc. Therefore, important questions need to be raised about the underlying reasons for the similarities in the practice of torture and its prevalence.

5. Degrading treatment

In all cases, it is obvious that there is a mentality of being superior among the members of security services over the indigenous Papuans so that they act as if they have the right to do whatever they want towards Papuans. Papuans are treated inhumanely and degraded beyond any legal standards and moral norms.

6. Stigma of separatists

In most cases, the stigma of being a separatist is the most common justification for torture. As separatist stigma relates to politics, it indicates some strong relationship between the practice of torture and the government policy towards West Papua.

SEVEN • Conclusion

1. The Government of Indonesia is still not fulfilling its international obligations to implement the Convention Against Torture.

The Government of Indonesia has used “the weakness” of article 28 section (1) of the Convention Against Torture (which stipulates that each state may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20) as justification to its ratification to the article 20 sections (1) (2) (3) of the Convention, and declared that the Convention will be implemented in Indonesia in firmly holding onto the respect for the principles of sovereignty and national integrity. The Government of Indonesia also declared that it is a highly relevant issue for Indonesia in view of the fact that Indonesia is open to the threat of territorial disintegration and that separatist movements to further their own political agenda frequently abuse the notion of human rights. The Government of Indonesia stressed that its declaration was not intended either to suggest that strengthening respect for human rights would undermine its national stability and territorial integrity.

Further, the government of Indonesia also made reservations in regards to article 30 Section (1) which is not connected with the above article, and states that the government of Indonesia only will agree to take a process before the International court if all the opposing parties agree to it.

Further, the Indonesian government has not yet authorised the declaration which acknowledges the competency of the Committee Against Torture as intended by article 21 section (1) to receive complaints and communications from other signatory countries, and article 22 section (1) to receive complaints and communications from individuals.

Those three things which have been mentioned above indicate that the good intention of the government of Indonesia to carry out its responsibility based on the Convention is still doubtful.

2. The Convention Against Torture is not effective as a part of the legal system in Indonesia, including Aceh and Papua.

Although the government of Indonesia has already ratified the Convention Against Torture, the government is not yet harmonising or integrating the Convention Against Torture, especially the definition of torture, into the Indonesian criminal code (KUHP) and the Indonesian Military Criminal Code (KUHP Militer). This results in a situation where the Convention Against Torture is not yet effective in becoming part of the legal system in Indonesia.

3. Torture is deliberately and systematically employed by Indonesian police and military in Aceh and Papua.

Based on the section 5 and 6 of this report about the practice of torture in Aceh and Papua, it is clear that the pattern and method of torture committed by the police and military authorities in two conflict areas is similar. Torture can be seen in all military and police offices and headquarters in those two districts. Further torture is also experienced in places of detention or prisons in Aceh and Papua. Because of that it can be concluded that torture is a deliberately used system and method which is very effective for the police and military to get confessions or explanations from victims, both in Aceh and in Papua.

Because of that, it can be concluded that the use of torture is long standing in the police and military and is committed in a systematic and widespread manner and the victims are civilians in Aceh and Papua. Because of that, the government of Indonesia **must take the responsibility to ensure criminal prosecution for acts of torture which occur in Aceh and Papua, some of which can already be classified as *crimes against humanity*.**

4. The Government of Indonesia, by intention and/or omission, still tolerates the practice of torture and does not yet punish all the members of the security forces that commit it.

Based on section 5 and 6 of this report on the practice of torture in Aceh and Papua, it is already clear that the government of Indonesia is not yet serious about implementing the Convention Against Torture, as there still

is an increasingly high level of practice of torture in the two conflict areas mentioned since the ratification of the Convention. Further in the majority of cases in Aceh and Papua, torture is deliberately used by the authorities as an effective method to force victims to 'confess' and/or to 'give information.'

The perpetrators of torture against communities in Aceh and Papua are the military (TNI), especially TNI AD, including Special Forces (Kopassus) and non organic troops, the police including the paramilitary units of the mobile police unity (Brimob); and civilians who are recruited to assist in police and military operations (*cuak*, *milisi*).

Although in practice torture in Aceh and in Papua is regularly and systematically used, the Government has not made serious efforts to take legal actions against the perpetrators of torture. They are protected by a cover of impunity and this provides certainty that they will continue to commit the crimes which they have previously committed.

Further, the leaders which order the action are allowed to slip through criminal prosecution, and instead can be promoted or increased in rank. For example, Syafnil Armen, who in the case of Tengku Bantaqiyah in Aceh had the rank of Colonel and occupied the office of Commandant Korem Lilawangsa, at this time has already risen to the position of Major General of the TNI and holds a position as the head of the Strategy Intelligence Body (Badan Intelejen Strategis or BAIS) of the TNI.

In Papua, Dr. Johnny Wainal Usman, the Head of the Brigade Mobil (BRIMOB) Polda Papua, had the rank of Komisaris Besar Polisi (Kombespol), which was responsible for gross violations of human rights in Abepura – Papua, was found not guilty by the human rights court. His rank was increased to Brigadier General of Police and at this time has the position as the Vice-Head of the district police in Sumatera Utara, to which he moved after being the Vice-Head of the Korps Brimob Mabes Polri.

E I G H T • Recommendations

We give the following recommendations to the Committee Against Torture:

1. Urge the Government of Indonesia to make a declaration as intended by article 21 section (1) and article 22 section (1) Convention Against Torture to acknowledge the competency of the Committee Against Torture;
2. Urge the Government of Indonesia to harmonise the Indonesian law by including the definition of torture in Indonesian law, especially in the criminal code KUHP and other Indonesian laws, and truly implement the duties of Indonesia as intended by the Convention Against Torture;
3. Urge the Government of Indonesia to enforce the law in relation to torture cases which occur in Indonesia, especially in Aceh and Papua, including giving compensation and rehabilitation to victims of torture;
4. Urge the Government of Indonesia to bring to trial and convict the perpetrators of torture, including leaders who are responsible or who order the carrying out of torture, and also ensure that perpetrators of torture are not promoted;
5. Urge the government of Indonesia to seek immediate justice for the victims of torture cited in this report.

ANNEX A

Timor Leste

A case study: Torture by the Indonesian security apparatus in Timor Leste, the occupied territory of Indonesia between 1975- 1999.

Timor Leste has not been occupied by Indonesia since 1999 and therefore is not subject to investigation by the Special Rapporteur for torture in his planned visit in 2007. Nevertheless, the period of occupation of Timor Leste²⁰⁶ by Indonesia between 1975 and 1999 provides relevant supporting evidence of the patterns of behaviour of the Indonesian security forces. It is largely due to Timor Leste gaining independence that has enabled comprehensive and systematic investigations into violations committed in Timor Leste including those committed by the Indonesian state. The most complete study into violations has recently been completed by the Commission for Reception, Truth and Reconciliation for Timor Leste which conducted its research over four years.²⁰⁷ Much of the usefulness of this research is derived from the large period of time studied, 1974-1999, which enabled large samples to be analysed and patterns of conduct to be identified.²⁰⁸ Therefore, unlike the body of this report, this case study will examine the issue of torture by Indonesian security forces in Timor Leste between 1975- 1999 with a view to providing evidence on the use and prevalence of torture in security operations. Special consideration will be given to the use of torture by Indonesian security forces in 1999, as at this time Indonesia was a signatory to CAT and it is a period included in the body of the report.

Between 1975 and 1999 acts of torture²⁰⁹ committed by the Indonesian security forces in East Timor were common. ‘The occurrence of these violations was too often condoned, ignored or even perpetrated by those in command in each stage of the conflict. Impunity for the perpetration of arbitrary detention, torture and ill-treatment was standard.’²¹⁰ Since 1999 Indonesia has not made genuine attempts to prosecute or cooperate with prosecutions of those thought to be most responsible for grave human rights abuses committed in Timor Leste, including acts of torture. Indeed a number of those believed to be responsible for such crimes have continued their careers within the Indonesian security apparatus, some even being moved or promoted to sensitive political and security areas within Indonesia.

1. Systematic use of torture

The CAVR analysed almost 8,000 narrative statements collected from all 13 districts of Timor Leste, representing about 1% of the population. Approximately 8,436 acts of torture were recorded, which comprised 18.5% of all non fatal violations reported to the Commission.²¹¹ It was also found that most

²⁰⁶ Prior to 1999 it was known as East Timor.

²⁰⁷ 6.3.3. 100. The overall statement-taking process implemented by the Commission was unprecedented in scale compared with all previous human rights documentation projects carried out in Timor-Leste.

²⁰⁸ CAVR was mandated to inquire into and establish the truth regarding human rights violations which took place in the context of the political conflicts in Timor-Leste between 25 April 1974 and 25 October 1999 2.2.1 (Regulation 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, Section 2.2.)

²⁰⁹ Definition of torture by CAVR- 7.4.14-14. Under international law, ‘torture’ involves the intentional infliction of severe pain or suffering, usually for the purpose of punishment, intimidation, coercion, obtaining information or a confession or for any reason based on discrimination of any kind. Although this definition also requires the involvement of the state in perpetrating the act of torture, the Commission is of the view that, in the light of authorities from other international bodies, under customary law acts carried out by non-state actors without the acquiescence of the State may also constitute torture.

²¹⁰ The information contained in this report is from Chega! The report of the Commission for Reception, Truth and Reconciliation in Timor Leste unless otherwise stated.

²¹¹ Chapter 7.4.22 As the Commission was not a court it did not make a finding on the legal nature of the victim’s experience. Unless the treatment was clearly in one category or another, the Commission did not classify the treatment under either category but set out the specific acts of physical or emotional abuse suffered by the victim.

torture and ill-treatment occurred while in detention; of the torture violations documented by the Commission, 83.6% (9,303/11,123) were suffered by victims who had experienced detention during the conflict.²¹²

Ratio of reported tortures per detention attributed to the **Indonesian military and police** by phase, 1974-1999.²¹³

Year	Detentions	Torture	Ratio of Detentions to Torture
1975-1984	10,867	3,237	3.4
1985-1998	5,465	2,921	1.9
1999	1,417	972	1.5
Total	17,749	7,130	2.5

2. *Perpetrators of torture*

The Indonesian security forces were named as the direct perpetrator in 64% of reported torture cases and 55% of reported ill-treatment cases. However the Indonesian security apparatus, especially in 1999, worked with civilian militia groups in carrying out operations including detentions. The Indonesian military and police together with their auxiliaries were named as directly involved in 82.2% (20,867/25383) of arbitrary detentions and 82.4% (16,135/19,578) cases of torture and ill-treatment.²¹⁴ Different institutions within the security apparatus played prominent roles at different times. Early in the occupation members of combat battalions and officers were involved in most cases of torture, particularly intelligence officers. Between 1985 and 1987, Kopasandha/Kopassus was involved directly in many cases of torture. In the late 1990s the involvement of the police in torturing detainees increased and peaked in 1999.²¹⁵

3. *Patterns in use of torture*²¹⁶

The Commission's statistical evidence is consistent with the hypothesis that the detention practices of the Indonesian military shifted from a focus on both individual and group victims in the early occupation years of 1977-84 to a more targeted strategy focused on individual detainees from 1985 to 1999. The Commission's statistical evidence also suggests a positive correlation between acts of torture committed against group victims and individual victims over time. The pattern of reported detentions and torture over time was strongly positively correlated. Over time violence became increasingly coordinated and the magnitude of reported acts of torture increased over time (between the late 1970s and mid-1980s) relative to the number of reported detentions. The Commission's statistical evidence also suggests that over time (and particularly after 1984) the practice of arbitrary detention became more targeted and was used more regularly in combination with acts of torture.²¹⁷

In cases where the victim did not specify the particular forms of abuse and simply described his or her experience as "torture", this description was accepted for statistical purposes- Chapter 7.4.20- 20.

²¹² 6.1.1.16.

²¹³ 7.4.522.

²¹⁴ 7.4.33.

²¹⁵ 7.4.808.81.

²¹⁶ 6.3.1.98- This analysis does not include overall estimations of the total extent, pattern, and trend of non fatal violations, as the analysis is based on a convenience sample of narrative statements collected by the Commission. However, the analysis presents the statistical patterns of non-fatal violations reported to the Commission and notes hypotheses which the data support. In addition we compare the statistical patterns and trends observed in the Commission's data on non-fatal violations to data collected contemporaneously by Amnesty International and also data collected by the East Timorese NGO Fokupers immediately after the UN-sponsored Popular Consultation. 6.3.1.99- This section summarises the main findings of the Commission's descriptive statistical analysis.

²¹⁷ 6.1.3.99.

²¹⁹ 7.4.506.

4. Was torture state policy?

In addition to the high incidence of torture and involvement by the military and police, especially in detention, the Commission found evidence of policy and practice which encouraged the use of 'detention and special interrogation methods'. One such piece of evidence was a counter-insurgency manual prepared by the Indonesian army for its soldiers marked "Secret". Falintil had captured the manual from Indonesian barracks. The Commission has obtained a document signed by Col. A. Sahala Rajagukguk, then the commanding military officer in East Timor, stating:

Hopefully, interrogation accompanied by the use of violence will not take place except in certain circumstances when the person being interrogated is having difficulty telling the truth [is evasive]...If it proves necessary to use violence, make sure that there are no people around [TBO, Hansip, Ratih, people]...Avoid taking photographs showing torture in progress [while being given electric shocks, stripped naked, etc].²¹⁹

The Commission also found evidence of coordination in using torture at a provincial level. Evidence from those who provided statements showed that detainees were frequently held in a variety of places and interrogated by different units. This process of moving between institutions was described by José Manuel da Silva Fernandes when describing his detention and torture. He indicated that different institutions interrogated and tortured him and used the term "bon" (receipt) or "saya bon dulu" (I put myself on the list), meaning one institution would borrow detainees from another so that they could interrogate or torture them.²²⁰

Another detainee who was tortured by Kopassas members at the SGI²²¹ headquarters recounted his experience during his detention for one year. In his view he was tortured to get a confession and those officers who used torture would be given benefits such as promotions or bonus:

First they destroyed me physically. For example in the matter of food, it wasn't a usual [amount] but was small portions for one year. I underwent a difficult time. I was also interrogated: "How many times did you meet with Falintil? What kind of support did you give to Falintil?" During the interrogation I was beaten with weapons, my feet were pinned under a chair, I was electrocuted. I felt like I was dying. They tied my body with ropes and my eyes were blindfolded with a cloth. Then I was thrown into a car and I didn't know where I was taken. I could only feel [where I was] and listen. For four hours I was taken around the city of Dili. After they were satisfied and tired, I was brought back to SGI Colmera.

After this, he was moved to the Comarca in Balide, where he was left without clothes. He was detained along with about 20 to 30 people in one cell. When they wanted to interrogate him, he was taken back to the SGI Colmera headquarters and then returned to the Comarca after the interrogation. Aquilino explains that during interrogation, officers simply wanted a confession: *During interrogation they didn't want to know about what I had done wrong. Instead Kopassas invented mistakes and forced us to admit to them. For example, that we sent ammunition, supermi [instant noodles], batteries [to the Resistance fighters]. They said: "If you admit it then you will be tried and then soon you will get out." That was against my conscience so I didn't do what they wanted. They were using the system: whoever succeeded in killing or torturing people would get a promotion in rank or a bonus.*²²²

²²⁰ 7.4.569. The Commission did not receive a response to the general request for information from the Indonesian government sent to the president of Indonesia. Chapter 1.113 No Indonesian military or government officials appeared for questioning by the Commission. A number of Indonesian human rights workers and historians did provide oral and written submissions to the Commission. Chapter 1.112.

²²¹ SGI was the abbreviation for *Satuan Tugas Intelijen* which can be translated as 'Intelligence Task Force'.

²²² Emphasis added. 7.4- 507: Arrest and interrogation in Dili late 1983 Aquilino Fraga Guterres (Etu Uko) was a clandestine member involved in sending information about the situation in Timor Leste abroad.

The commission found that members of the Indonesian security forces and their auxiliaries committed, encouraged and condoned widespread and systematic torture and ill-treatment of victims during the period of Indonesian occupation of Timor-Leste. In some cases torture led to death, sometimes as a direct result of the torture applied to the victim and sometimes as a result of wounds sustained during torture being left untreated.²²³ The Commission was able to conclude that: ‘there was clearly no limit on what police and military officers could do to obtain information. Torture and other cruel and inhumane treatment, in whatever form, were so common as to have been considered a systematic part of the detention and interrogation process.’²²⁴

5. *Who was targeted?*

In analysing the data collected by the Commission it was found that victims of detentions and torture and ill-treatment were mainly members of the Resistance and the clandestine movement, as well as students and other real or suspected supporters of independence. Many people only indirectly involved in the struggle for independence were also detained and tortured. Family members and friends of alleged insurgents and clandestine members were detained, often in an effort to isolate alleged members of the armed or clandestine Resistance from their support networks and so force them to surrender. Relatives and associates were also detained, tortured and ill-treated to extract information from them on the whereabouts and activities of their suspected family member or associate.²²⁵

Men

Relative to the overall East Timorese population, middle-aged males experienced the highest rates of non-fatal violations such as detention, torture and ill-treatment.

Often victims were tortured during interrogation by the police to force a confession for a possible trial. For example:

José Manuel da Silva Fernandes, one of the organisers of the demonstration at the Mass at Tacitolu by Pope John Paul II, who was detained several days afterwards, told the Commission that the group of activists hiding at the Bishop’s house were taken to the Sub-Regional Police Headquarters (Polwil) and then were separated from each other. José Manuel was taken to the Korem and detained there for three months, during which he was subjected to continued torture. José Manuel told the Commission that interrogation for the first two weeks was aimed at extracting a basic confession. In this period he was beaten, kicked, attacked with rifle butts, stabbed with the point of a knife, burnt with cigarettes, immersed in a tank of excrement and stepped on and threatened with loaded guns.

After the confession was obtained, his interrogators sought to “verify” the forced confession by applying two forms of electric shock. The first was applied with a charger for which a handle was turned, the second administered in a specially-designed metal chair in which the near-naked prisoner was shackled by the wrists and ankles and then had electrodes attached to the body. José Manuel describes that this would sometimes last up to 15 minutes and could be administered three times a day. Five Kopassus soldiers assisted the torture under the direction of the Kopassus Colonel T449.

José Manuel reported also that during his time in detention Brigadier-General T485, the commander of Kolakops, beat him with a stick and T449 hit him in the face. During an interrogation he was told not to sit on a chair, but to squat on the floor because he was an animal. He was then beaten across the knees and head, often more than ten times. In the Korem, officers from different institutions interrogated and tortured him.²²⁶

²²³ 79.

²²⁴ 7.4.569.

²²⁵ 7.4.30.

²²⁶ 7.4.565- 567.

Women

Overall, women comprised 13.9% of victims in cases of arbitrary detention, 12.3% in cases of torture.²²⁷ Sexually-based violations were almost exclusively targeted against women, with 90.2% of the 853 cases of reported sexually-based violations being experienced by women.²²⁸ In particular, 61.0% (520/853) of documented sexually-based violations were attributed to the Indonesian military and police acting alone, 22.0% (188/853) to East Timorese auxiliaries acting alone and 10.3% (88/853) to both forces acting together.²²⁹

Sexual violence and torture was carried out toward women after uprisings and also to get information about family members.

Maria²³⁰'s husband joined Hansip and civilians in the village of Mehara in the flight into the forest on 8 August. ABRI arrested Maria on 10 August 1983 in Mehara, two days after the levantamento. She was taken directly to the Lospalos Kodim 1629 (Lautém). While at the Kodim, she was interrogated by the Indonesian military on the whereabouts of her husband, again and again. She was kept in a dark cell. Her parents were also imprisoned and interrogated for 15 days in the Tutuala Koramil. Her youngest child, just seven months old, was brought to the Lospalos Kodim, and hung upside down by the feet for several hours. This child was targeted because it was the child of her current husband. (Maria's other three children were from her first husband.) During the three years she was imprisoned at the Kodim, she said she was raped repeatedly and miscarried three times. She did not want the children to be born because each baby in her womb was the result of ABRI rape and she did not know who the fathers were. In 1986 they released her from the Kodim, but she was still not completely free. She had to report once a week to the military. The Commission heard that in 1988 she was forced to search for her husband in the forest with members of Infantry Battalion 745 behind her. When she found her husband, he was shot dead by the soldiers. Her reporting conditions then ended. Maria died before the writing of this CAVR report.²³¹

Children

The Commission found that 5.2% (577/11,135) of torture cases were against children.²³² The average age of those detained²³³ was 12²³⁴ and three-quarters of children torture victims were aged between 12-17.²³⁵ Children were tortured for various purposes. The following three examples highlight some of the practices of the Indonesian security apparatus toward children.

Children were tortured as part of collective punishment directed at whole communities. For example residents of Porlamano, Mehara (Tutuala, Lautém) reported that in 1983, after Hansip and youths ran off to the forest, members of Infantry Battalion 641 detained and tortured their wives, children and female relatives at the military post. Another village reported that, in the same year, soldiers from Infantry Battalions 745, 321, 641

²²⁷ 7.4. Gender 29. In considering these statistics it should be noted that only 21% of the statements provided to the Commission were given by women.

²²⁸ 6.1.1.18.

²²⁹ 6.3.3.

²³⁰ Not her real name.

²³¹ 7.4.487.

²³² Persons aged 17 or under.

²³³ In the Commission's quantitative analysis of narrative reports of arbitrary detention, 45.1% (38,910/86,263) of cases record the age of the victim. There were 1,426 clear cases of arbitrary detention of a minor.

²³⁴ And the median 14.

²³⁵ 7.8.198.

and Airborne Infantry Battalion 100 forced children aged 15 and older to gather in an open field where they were tortured and submerged in water.²³⁶

In October 1990, international human rights organisations reported over 100 arrests of which many were secondary school students detained for short periods, and tortured. The methods of torture used included electric shocks, burnt by lit cigarettes, and severe beatings. The arrests followed the assault of an Indonesian soldier by East Timorese youths, the taunting of an Indonesian official at a junior high school, and the appearance of anti-Indonesian graffiti on the walls of the Externato School.²³⁷

Detention and torture were also used by the Indonesian authorities to recruit informants and paramilitaries. Lucas da Silva reported that in 1986, when he was 17 years old, he was among a group of four detained by two special forces members, one of whom was called C21, a Sergeant-Major (Serka). They were detained and tortured at the house of the neighbourhood chief in Venilale (Baucau). The four were taken to Uatuhaco (Venilale, Baucau) where they were questioned while being choked with a chain and given electric shocks. In the end, they were forced to become informants, and after three years, were recruited to Tim Sera, an early militia group.²³⁸

6. Torture in 1999

In November 1999, three UN Special Rapporteurs, including the Special Rapporteur on the question of torture, conducted a joint mission to the Timor Leste²⁴⁰ their report *Situation of Human Rights in East Timor* (UN No. A/54/660) issued on December 10, 1999 provides a valuable information on violations which occurred in 1999 including torture. The following information should be read in addition to that report.

According to the CAVR research arbitrary arrest, detention and torture reached its highest peak in 1999 since the late 1970s. As seen in the table below, cases of torture are widespread, with acts of torture being reported in every district across the country.²⁴¹

<u>District</u>	<u>Detention</u>	<u>Torture</u>	<u>Ill-treatment</u>
Lautém	32	23	19
Viqueque	114	105	22
Baucau	20	10	10
Manatuto	51	33	20
Manufahi	79	72	94
Aileu	104	67	64
Ermera	249	264	266
Liquiça	257	211	182
Dili	195	119	92
Ainaro	90	74	53
Covalima	569	377	367
Oecusse	419	417	488
Bobonaro	497	412	283

²³⁶ 7.8.213.

²³⁷ 7.8.226.

²³⁸ 7.8.224.

²⁴⁰ The other two were the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on violence against women, its causes and consequences.

²⁴¹ 7.4.8.651 - Again it is important to note that these figures are based on 8,000 narrative statements collected from all 13 districts of Timor Leste, representing about 1% of the population.

The CAVR found that the patterns of arbitrary detention and torture in 1999 differed from previous years in a number of ways, such as the length of time that people were held in detention was significantly shorter than in earlier periods.²⁴² With detentions sometimes being only a few hours long but during which those detained suffered torture, beatings or other forms of ill-treatment, as well as threats to induce them to support the autonomy option. The purpose of the detention was often to intimidate pro-independence supporters, not hold them for long periods, and the places used to hold people were improvised detention centers not made for holding many people long-term.

Different to previous years, where the police and military had been generally directly responsible for the acts of torture in 1999, the acts were often committed by militias, who were operating with the assistance of the military. When analysing the statistical data gathered by the CAVR, it was found that the 'statistical patterns suggest prior planning and operational coordination between both forces in their use of arbitrary detention.'²⁴³

The evidence presented in a report annexed to the CAVR report, concluded that the evidence demonstrates beyond any reasonable doubt that the militia groups were conceived, created, and authorized by Indonesian authorities. It also shows that support for the militias was not provided simply by a handful of 'rogue elements' in the TNI, but constituted official policy, and had the backing of some of the highest ranking and most powerful officials in the country.²⁴⁴

7. Impunity in Indonesia for torture committed in Timor Leste

Rather than bringing to account the senior TNI officers implicated in atrocities in Timor-Leste, Indonesia has promoted many of the TNI officers who have been indicted by the SCU. Some of these officers then went on to command further human rights atrocities in other provinces. For example, in 1999 Major General Adam Damiri oversaw all Indonesian military operations in Timor-Leste. In 2003 the SCU filed an indictment against Damiri charging him with five counts of crimes against humanity for murder, persecution, and deportation or forcible transfer of the civilian population. Damiri was charged with both individual criminal responsibility and command responsibility. Despite his role in this violence, in December 1999 had been Damiri promoted to the position of operational assistant to the armed forces chief of staff in Jakarta. Damiri subsequently became the senior officer responsible for prosecuting the war in Aceh.²⁴⁵ Another notable promotion was Brigadier General Mahidin Simbolon, widely believed to have been a key figure in the setting up and running of the militias in Timor-Leste, who was subsequently promoted to the rank of Major General and became the military commander for Papua (another Indonesian Province where there are documented human rights abuses being perpetrated by the TNI).²⁴⁶

In 2004, the leading Indonesian political party, Golkar, selected former General Wiranto (Chief of Staff of the armed forces in 1999) as its candidate for the Indonesian presidential elections.²⁴⁷ He was selected as a presidential candidate despite the fact that the KPP-HAM report had found he was "jointly responsible for the murders and arson in East Timor after the referendum,"²⁴⁸ and the SCU had issued an indictment against him in 2003 for crimes against humanity.²⁴⁹

²⁴² 7.4.8.652.

²⁴³ 7.4.8.661.

²⁴⁴ Geoff Rob pg 6.

²⁴⁵ "Indonesia: Transfer Convicted General from Aceh", *HRW Press Release*, 5 August 2003, <http://hrw.org/english/docs/2003/08/05/indone6284.htm> (last accessed 17 August 2006).

²⁴⁶ "Justice Denied for East Timor", *HRW Report*, 20 December 2002, <http://www.hrw.org/backgrounder/asia/timor/etimor1202bg.htm>, (last accessed 17 August 2006).

²⁴⁷ Because Golkar did not win a majority in the Indonesian parliamentary elections in 2004 Wiranto did not compete in the run-off for the Presidential elections.

²⁴⁸ *KPP-HAM Report*, opcit.

²⁴⁹ The charges include murder, arson, destruction of property and forced relocation. Indonesia's Foreign Minister, Hasan Wirajuda, said the government would "simply ignore" the SCU indictments.

A total of 87 Indonesian officials indicted for Crimes Against Humanity and torture are unable to be tried by the SPSC in Timor Leste because they are in Indonesia at large.²⁵⁰ Despite previous agreements and requests for cooperation by the UN, Indonesia refuses to facilitate the extradition or even questioning of these suspects.

Indonesia, pursuant to Indonesian Law No. 26/2000 on Human Rights Courts, established the Ad Hoc Tribunal for East Timor in August 2001 to investigate and try those suspected of committing violations in East Timor [Timor-Leste] between April and September 1999. The Indonesian authorities investigated only some of the crimes recommended for prosecution by KPP HAM. This meant that a number of high level military leaders, alleged by KPP HAM to bear primary responsibility for crimes committed in 1999, have escaped investigation and indictment. The limited and flawed trials conducted by the Ad Hoc Court in Jakarta acquitted all Indonesian officials who were tried.²⁵¹ In 2005 the UN mandated Commission of Experts found that the 'prosecutions before the Ad Hoc Court were manifestly inadequate, primarily due to a lack of commitment on the part of the prosecution, as well as to the lack of expertise, experience and training in the subject-matter, deficient investigations and inadequate presentation of inculpatory material at trial.'²⁵²

"Indonesia: Indicted General Unfit for Presidential Bid", *Human Rights Watch (HRW) Press Release*, 22 April 2004 <http://hrw.org/english/docs/2004/04/22/indone8481.htm>, (last accessed 17 August 2006)

²⁵⁰ See Annex A for a list of the officials.

²⁵¹ Of the 18 persons tried the only person to be convicted was Euricco Guetterres, the leader of one of the East Timor militias. All others were acquitted in the first instance or on appeal.

²⁵² United Nations, *Report to the Secretary-General of the Commission of Experts to Review the Prosecutions of Serious Violations of Human Rights in Timor- Leste (then East Timor) in 1999*, 26 May 2005, Executive summary, para 17 at <http://www.etan.org/etanpdf/pdf3/N0542617.pdf>.

ANNEX B

List of Indonesian Officials indicted for Crimes Against Humanity Torture²⁵³ by the Special Panels for Serious Crimes in relation to their actions in 1999 in Timor Leste. None of these officials have appeared before court in relation to alleged torture²⁵⁴ committed and the Indonesian government continues to refuse to cooperate with the UN or the court in extraditing them. All indictees are thought to be residing in Indonesia.

Indonesian Officials indicted for Crimes Against Humanity Torture presumed to be at large in Indonesia

<u>Name</u>	<u>Position in 1999</u>
Bambang Indra	Commander TNI, Koramil Lolotoe Sub-district
Mahalan Agus Salim	Commander TNI SGI post in Marco (Bobonaro)
Haerola (Last Name Unknown)	Commander TNI, BTT Post Purugua (Bobonaro)
Lt Agus Yuli	Commander TNI Rajawali, Hera
Lt. Sutrisno	Head of Intelligence TNI at Kodim 1636
Assis Fontes	SGI Sergeant Major TNI at Kodim 1636
Syaful Anwar,	1st Infantry Deputy Commander (Indonesian Special Forces) Kopassus
Burhanuddin Siagian	Lieutenant Colonel TNI, Commander Kodim 1636, Maliana
Bambang G. Supryanto	Lieutenant Colonel TNI, Commander Kodim 1636, Maliana
Sutrisno	Lieutenant TNI, Chief of Intelligence section, Kodim 1636, Maliana
M. Yusuf	Lieutenant TNI Chief of Operation Kodim 1636, Maliana
Domingos do Santos	Sergeant TNI Intelligence section Kodim 1636, Maliana
Julião Lopes	Sergeant TNI Intelligence section Kodim 1636, Maliana
Mau Muti,	Sergeant TNI Intelligence section Kodim 1636, Maliana
Manuel Lopes	Sergeant TNI Intelligence section Kodim 1636 Maliana
Frederico M. Pires	Sergeant TNI Intelligence section Kodim 1636 Maliana
Alvaro Mali	Sergeant TNI Intelligence section Kodim 1636 Maliana
Francisco Fernandes	Sergeant TNI Intelligence section Kodim 1636-01 Maliana
José Simão	Sergeant TNI Intelligence section Kodim 1636 Maliana
Miguel Soares	Sergeant TNI Intelligence section Kodim 1636 Maliana
Romeo da Silva	Corporal TNI Intelligence Section Kodim 1636 Maliana Police Major (Kapolres) Bobonaro District
Rue Bere Tali	Corporal TNI, Intelligence Section Kodim 1636 Maliana
Tito Leto Bere	Soldier TNI, Cailaco Sub-district
Yohanes Leodasi	Soldier TNI, Cailaco Sub-district
Guilhermi Atusuri	Soldier TNI, Cailaco Sub-district
Manuel Mau Bere	Soldier TNI, Cailaco Sub-district
Silvano Siga Mau	Soldier TNI, Cailaco Sub-district
Manuel Bere Lete	Soldier TNI Cailaco Sub-district

²⁵³ The majority are charged with multiple counts of Crimes Against Humanity. In addition to counts relating to torture they are charged with offenses such as Crimes Against Humanity, murder, rape, severe deprivation of liberty, persecution, deportation. This list does not include the tens of militia members also indicted, who worked with and were supported by Indonesian officials. It is estimated by UN officials that less than half of the serious crimes committed in 1999 have been investigated. This table is compiled from the indictments of the Special Panel for Serious Crimes. Full text of most indictments can be found at www.jsmp.minihub.org.

²⁵⁴ Four of the eighty eight officers named have been tried and acquitted of the charge of crime against humanity murder by the ad hoc court in Jakarta. These individuals were not tried for torture and there are a number of arguments that the trials in Jakarta were so flawed as to not prevent re-trial on the basis of '*nullum crimen sine lege*'. See recommendation of Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999 26 May 2005; para 516.

Gustavão Soares	Soldier TNI, Cailaco Sub-district
Arlindo Bere Dasi	Soldier TNI Cailaco Sub-district
Agustinho Lopes	Soldier TNI, Cailaco Sub-district
Manuel Lopes	Soldier TNI
Erminghindo L Soares	Soldier TNI
Agustinho Manu Bere	Soldier TNI
Frederico Pires	Soldier TNI
Leonito Cardoso	Soldier TNI
Anito Lau	Soldier TNI Laktos Post Fohorem
Antonio Pinto (aka Antonio B or Mautersa)	Soldier TNI
Mário Malekat	Soldier TNI
José Soares	Soldier TNI
Joaquim Gudinho	Soldier TNI
Second Sergeant Hilario	Soldier TNI
Simão Nahak	Soldier TNI
Raul Halek	Soldier TNI
Rizal	Soldier SGI, Maliana
José Bere Laka	TNI Intelligence section Kodim 1636 Maliana
Head Sergeant Andreas Prawin	Soldier TNI Intelligence section, village guidance officer Carau-Balo (Viqueque, Viqueque)
District Military Commands	
Lieutenant Colonel Achmad Mas Agus	Commander Kodim 1635 (Covalima) between January and 4 September 1999 and 7 September to 4 October 1999
Lieutenant Colonel Lilik Koeshardianto*	Commander Kodim 1635 (Covalima) between 4 September and 7 September 1999
Burhanuddin Siagian	Commander Kodim 1636, Maliana
Richard Hutadjulu	Lieutenant Colonel, Kodim Commander Baucau district
Lieutenant Sugito*	Commander Koramil 1635-01 (Suai)
Lieutenant Widodo	Commander Koramil 1635-02 (Tilomar)
Lieutenant Ari aka Commandante Ari	Commander Koramil 1635-03 Battalion 143 (Fohorem)
First Sergeant Melky	Kodim Operational Commander
Sutrisno	Officer in Charge Kodim 1636
Captain Achmad Syamsuddin	Chief of Staff (Kasdim) Kodim 1635
Karel Polla	Captain, Chief of staff and Deputy Kodim commander Baucau district
Sergent Major Harun Tateny	Commander Koramil 1635-05
Sergent. Major Supoyo	Commander Koramil 1635-0? (Salele)
Lt Untung	Commander Koramil, Metinaro
Lieutenant Colonel Muhammad Nur	Commander Kodim 1637
Lieutenant Colonel Djoko Soeharsoyo	Commander Kodim 1630 (until 15 August 1999)
Lieutenant Colonel Gustaf Heru	Commander Kodim 1630 (from 15 August 1999)
1st Lieutenant Minton	Commander Kopassus Kodim 1630
Napoleon dos Santos	Company Commander Beilaco, Raimea
Simão Tasion	Company Commander Beco 1
1st Lieutenant Yusuf Tandi	Head Intelligence section Kodim 1630

Irwan (Last Name Unknown)	1st Sergeant, Intelligence section, Kodim 1628
Faustino do Santos	1st Sergeant, Intelligence section, Kodim 1628
Tom Carduso aka Tomás Maurade	2nd Sergeant, Intelligence Section. Kodim 1628
Manuel Ariate	2nd Sergeant, Intelligence Section, Kodim 1628
Agustinho Soares	1st Corporal, Intelligence Section, Kodim 1628
Adelino Freitas	1st Private, Intelligence Section Kodim 1628
Jeronimo Soares	1st Private, Intelligence Section, Kodim 1628
Igidio Sarmento	Deputy Commander of PPI sector A, 1st Private Kodim 1628
Domingos Filipe	2nd Private Intelligence Section Kodim 1628, Member Team Saka
Domingos Alaguia	Member Kodim 1628
Joanico C. Belo	Commander Team Saka, Commander PPI Sector A, 1st Sergeant Kopassus
Julio Borges	Deputy Commander Laktos TNI Post

Police

Lieutenant Colonel Gatot Subiaktoro*	Commander Polres (Kapolres) Covalima
Clementino da Costa	Police Sergeant Polres Maliana

Other Indonesian Officials

Cristiano Ximenes	Indonesian Civil Servant
Guilherme Dos Santos	District Administrator in Bobonaro District
Colonel Herman Sedyono*	District Administrator Covalima, Officer TNI
Lino Barreto	Civil Servant Chief of Operations and Mahidi militia
Martinho Fernandes	District Administrator, Commander Makikit militia, head of the Forum for Justice and Democracy, Viqueque and honorary member of Kopassus
Emiliano Joaquim Gomes	2nd assistant to the District Administrator, Deputy Commander Makikit militia, Deputy head Forum for Justice and Democracy, Viqueque and honorary member of Kopassus
Americo Seran	Village guidance officer (Babinsa) Lohorai, Matai TNI

ANNEX C

Types of torture reported to the Commission:²⁵⁵

- ∞ Beating with fists or with implements such as a wooden club or a branch, an iron bar, a rifle butt, chains, a hammer, a belt, electric cables.
- ∞ Kicking, usually while wearing military or police boots, including around the head and face.
- ∞ Whipping, Punching or slapping.
- ∞ Cutting with a knife or razor blade.
- ∞ Placing the victim's toes under the leg of a chair or table and then having one or more people sit on it.
- ∞ Burning the victims flesh, including the victim's genitalia with cigarettes or a gas lighter.
- ∞ Applying electric shocks to different parts of the victim's body, including the victim's genitalia.
- ∞ Firmly tying someone's hands and feet or tying the victim and hanging him or her from a tree or roof.
- ∞ Using water in various ways, including holding a person's head under water; keeping a victim in a water tank for a prolonged period, sometimes up to three days; soaking and softening a victim's skin in water before beating the victim; placing the victim in a drum.
- ∞ Filled with water and rolling it; pouring very hot or very cold water over the victim; pouring very dirty water or sewage over the victim.
- ∞ Sexual harassment, sexual forms of torture and ill-treatment or rape while in detention. Women were the main victims of this kind of abuse.
- ∞ Cutting off a victim's ear to mark the victim.
- ∞ Tying the victim behind a car and forcing him or her to run behind it or be dragged across the ground.
- ∞ Placing lizards with sharp teeth and claws (*lafaek rai maran*) in the water tank with the victim and then goading it to bite the softened skin on different parts of the victim's body including the victim's genitalia.
- ∞ Pulling out of fingernails and toenails with pliers.
- ∞ Running over a victim with a motor-bike.
- ∞ Forcing a victim to drink a soldier's urine or eat non-food items such as live small lizards or a pair of socks.
- ∞ Leaving the victim in the hot sun for extended periods.
- ∞ Humiliating detainees in front of their communities, for example by making them stand or walk through the town naked.
- ∞ Threatening the victim or the victim's family with death or harming a member of the victim's family in front of them.

²⁵⁵ CAVR report Chapter 7.4: Detention, Torture and Ill-Treatment).