



Comments' of

**THE INDONESIAN NATIONAL HUMAN RIGHTS COMMISSION
ON
INDONESIA'S COMPLIANCE
WITH THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

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I. Introduction

1. The Indonesian National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*), popularly known and referred to by its acronym "*Komnas HAM*", provides this submission to the United Nations Human Rights Committee (hereafter the Committee) with regard to the Indonesia's implementation of the International Covenant on Civil and Political Rights (ICCPR).
2. This submission does not provide a complete assessment of Indonesia's compliance with the ICCPR, but only focus on the relevant recent and current areas of Komnas HAM's work.

II. Komnas HAM's Role to Monitor Indonesia's Compliance with ICCPR

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

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

(article 75 Law 39/999 Concerning Human Rights)

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

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

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

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

4. Under its statutory function, Komnas HAM can conduct a human rights monitoring including to conduct an inquiry of the implementation of human rights and also to monitor the implementation of the international human rights in which Indonesia is party, in this case the International Covenant on Civil and Political Rights (ICCPR).

III. Komnas HAM's Comment on List of issues in relation to the initial report of Indonesia (CCPR/C/IDN/1), adopted by the Committee at its 107th session (11–28 March 2013)

Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

3. As mentioned in the previous submission, Komnas HAM is aware that the Government Regulation No. 3 of 2002 makes the remedies available for victims of gross violations of human rights in the forms of restitution, compensation, and rehabilitation. The Commission, however, is of the view that the Government Regulation No. 3 of 2002 is not effective based on the following reasons:
 - a) the discontinued investigation process by the Attorney General with regard to cases with indication of gross human rights violations although the inquiry of these cases had been completed by Komnas HAM for a long time. The cases are: a). the Trisakti 1998, Semanggi I 1998 and Semanggi II 1999 incidents (TSS 1998-1999); b). the May Riot 1998 incident, c). the Wasior 2001-2002 incident and the Wamena 2003 incident); d). the case of the Enforced Disappearances 1997-1998; e). The case of Talangsari 1989 ; f). The summary execution-style killings 1982- 1985 (penembakan misterius-petrus/mysterious shootings); g.). The Case of 1965-1966 Tragedy.
 - b) In 2006 the DPR made recommendation for the President to establish an ad hoc Human Rights Court to hear the case of the Enforced Disappearances and to provide rehabilitation and compensation to the victims. The President, however, has not yet established the ad hoc Human Rights Court nor provided the rehabilitation and compensation to the victims. It should be mentioned also that the Attorney General has not yet started the investigation and the prosecution of the case.
4. On the issue of cooperation between Komnas HAM and state's institution, it can be said that Komnas HAM gained limited support and cooperation from the government to realize its functions, not merely on the issue of resources but also on the response of the government to the human rights cases which have not been followed up by some of the government agencies (e.g. The Attorney General, DPR – House of Representative). In this regard, as mentioned above, the discontinued investigation process by the Attorney General with regard to cases with indication of gross human rights violations although the inquiry of these cases had been completed by Komnas HAM for a long time should be mentioned, among others in more detail:
 - a) The Case of Wasior-Wamena: Komnas HAM had completed the projustitia inquiries of the Wasior 2001-2002 incidents and the Wamena 2003 incidents (both in Papua) in 2004. The result of the inquiry had been submitted to the Attorney General office through a letter No. 290/TUA/IX/2004 dated 3 September 2004. However, the Attorney General had returned the documents through a letter No. R-209/A/F.6/11/2004 dated 30 November 2004, which stated that the result of Komnas HAM inquiry was not complete. In response, Komnas HAM had returned the inquiry findings to the Attorney General through a letter No. 376/TUA/XII/2004 dated 29 December 2004, which firmly stated that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient

to meet the conditions for a gross violation of human rights to be followed up by investigation”. Until the writing of this submission, the Attorney General has not yet started the investigation on this case.

- b) The Case of Trisakti, Semanggi I and Semanggi II incidents: The result of the inquiry concluded that gross human rights violations had occurred in these incidents. The documents of the inquiry had been submitted to the Attorney General in June 2002 which had been returned several times. For the last time, Komnas HAM had returned the documents to the Attorney General through a letter No. 10/TUA/I/2005 dated 6 January 2005. The letter highlighted that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”. The follow-up of the case had not known for certain since the Attorney General still considered that the House of Representatives of the Republic of Indonesia had determined that the Trisakti, Semanggi I and Semanggi II incidents were not gross human rights violations. With regard to the Attorney General opinion, Komnas HAM had sent a letter on 19 March 2003 to the Chairpersons of the House of Representatives of the Republic of Indonesia to review its previous decision. Komnas HAM had also met with the Chairpersons of the House of Representatives of the Republic of Indonesia on 29 October 2003 to discuss the matter. During the hearing with Third Commission of the House of Representatives on 30 November 2004, Komnas HAM had once again inquired on the follow-up of Komnas HAM request. However, due to the lack of a carry-over process from the 1999 – 2004 working period to the 2004 – 2009 working period of the members of the House of Representatives of the Republic of Indonesia, the Chairperson of Third Commission of the House of Representatives of the Republic of Indonesia had suggested Komnas HAM to re-submit the problem to the Chairperson of the House of Representatives of the Republic of Indonesia. Therefore, Komnas HAM had sent another letter to the Chairperson of the House of Representatives of the Republic of Indonesia No. 363/TUA/XII/2004 dated 9 December 2004. As a follow-up, the Third Commission of the House of Representatives of the Republic of Indonesia had concluded its study on the matter and had recommended the Plenary Session of the House of Representatives of the Republic of Indonesia to review its decision regarding Trisakti, Semanggi I and Semanggi II incidents. In 27 February 2006, Komnas HAM had sent a letter to the Chairpersons of the House of Representatives of the Republic of Indonesia to discuss the follow-up of the Wasior and Wamena incidents and the Trisakti, Semanggi I and Semanggi II¹ incidents which documents of inquiries had been completed by Komnas HAM but have yet follow-up with investigations by the Attorney General. Moreover, Komnas HAM also had sent a letter to the Chairpersons of the House of Representatives on 13 March 2006 to recommend the President to establish an Ad Hoc Human Rights Courts for these three incidents. Pending the end of 2006, the Attorney General as well as the House of Representatives of the Republic of Indonesia have yet done anything to follow-up the results of the inquiries conducted by Komnas HAM with regard to Wasior and Wamena incidents and the Trisakti, Semanggi I and Semanggi II incidents.

¹ In this regard, Komnas HAM also discussing a follow up of other case which was May Riot 1998.

- c) Other cases: Komnas HAM has also completed the inquiry of five other cases.² The Attorney General has not conducted an investigation and prosecution to all of the five cases. The Attorney General returned the report of the five cases based on the argument that the results of the inquiry the five cases are not complete.
5. The discontinuation of those cases reflects the resistance to eliminate impunity in Indonesia. Thus, again, Komnas HAM recall there is an urgent need to make accountable persons who commits violation of ICCPR rights as Komnas HAM observed that the State did not shown genuine willingness to uphold human rights, especially in prosecuting perpetrators of gross human rights violations. The pattern of thought that legal or moral prosecution is part of retaliation politics, especially in the military, indicated that impunity of human rights violations was still existed. This can be seen through the discontinuation of investigation and the unwillingness of the President to implement the DPR recommendations mentioned above also the refusal of several members of state apparatus to cooperate with Komnas HAM regarding the implementation of projustitia inquiry on alleged gross human rights violations.

² Overall, Komnas HAM has conducted inquiries on ten cases, according to time the inquiry conducted by Komnas HAM:

(a) The case of Timor Timur 1999. The report of the inquiry was submitted to the Attorney General on 31 January 2000. In 2006, the judicial process of the case had been completed in the cassation level. One defendant was found guilty.

(b) The case of Tanjung Priok 1984. The report of the inquiry was submitted to the Attorney General on 7 July 2000; In 2006. The judicial process of the case had been completed in the cassation level. All of the defendant were acquitted

(c) The Case of Peristiwa Irian/Papua 2000 (widely known as the case of Abepura 2000) Komnas HAM. The report of the inquiry was submitted to the Attorney General on 17 May 2001. This case had been investigated, which determined two defendants, Jayapura Police Commander Superintendent, Drs. Daud Sihombing, and Brigadier General Johny Wainal Usman. The two defendants had been tried in human rights courts. Only Daud who was accused of responsible for torture. The Human Rights Court in Makassar had decided to free Daud Sihombing on 8 September 2005 and Jhony Waenal Usman on 9 September 2005

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

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

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

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

(h) the case of Talangsari 1989. The result of the inquiry was submitted to the Attorney General on 16 September 2008. The Attorney General has not started to conduct the investigation and prosecution.

(i) The case The summary execution-style killings 1982- 1985 (penembakan misterius-petrus/mysterious shootings). The result of the inquiry was submitted to the Attorney General on 20 July 2012. The Attorney General has not started to conduct the investigation and prosecution

(j) The case of 1965-1966 tragedy. The result of the inquiry was submitted to the Attorney General on 20 July 2012. The Attorney General has not started to conduct the investigation and prosecution

6. It should be noted that The Law No. 26 of 2000 on Human Rights Court contains several weaknesses and deficiency that has deterred the cooperation between Komnas HAM and the State's institution that then also deterred the judicial process of resolving gross human rights violation. Thus, amendment of this Law is an urgent need.

Counter-terrorism measures and respect of Covenant guarantees

7. As mentioned in the previous submission, Komnas HAM pays special attention to the work of the Indonesian National Police in handling the case of terrorism. It should be mentioned that Komnas HAM specifically monitored the work of the police in combating terrorism in the period of 2009-2013 in the province of Aceh, Central Java, Jakarta and North Sumatera, Poso and Palu, Central Sulawesi. Komnas HAM found that several human rights violations allegedly were committed by the police, among others: a). Arbitrary arrest and detention; *Killing*; c). unprocedural search and seizure act (not inline to the Criminal Procedures (Kitab Undang-undang Hukum Pidana/KUHAP); d) torture, e. orchestrated legal assistance; f) the act of intelligent causing physical and mental terror to the society; g) violations to the right to worship; h). the right to information of the family on the whereabouts of detainees's.
8. Thus, as mentioned before, Komnas HAM observed that the Police was not using careful procedure which may lead to human rights violations, among others are the violations of liberty and security of persons of the civilian populations who are not involved in terrorism and the uncareful procedure in handling the persons allegedly involved in terrorism.
9. Again, Komnas HAM urges Indonesia to conduct a comprehensive evaluation regarding the work of the Police in handling the case of terrorism in order to be in line with human rights. Komnas HAM is of the view that a comprehensive approach, including a preventive measures and dialogue, should be used in handling and combating terrorism while also look at the possibility to amend the Law on Combating Terrorism.

Right to life (art. 6)

10. As mentioned in paragraph 6, Komnas HAM monitored the work of the police on handling terrorism in the period of 2009-2013. The result of this monitoring works indicates that the personnel of the police allegedly killed the terrorist suspect in the course of apprehending them. It reflect in the recent situation in which within the period of November 2012- Februari 2013 at least 8 people of terrorist suspect were killed in Poso, Central Sulawesi; Dompu, West Nusa Tenggara and Makasar, South Sulawesi. Recently, on 6 June 2013, a terrorist suspect (Nudin) was killed in Poso, Central Sulawesi. Komnas HAM noted that since the establishment of The National Police's *Densus 88* counterterrorism unit, many terrorist suspect were killed in the course in apprehending them. In this regard, Komnas HAM is of the view that in some cases the situation of the apprehension can not be considered dangerous to the life of the police personnel and the civilian.

11. Regarding the use of force during protest and on 24 December 2011 in Sape, Bima, West Nusa Tenggara, Komnas HAM may recall that the incident caused the death of 3 people, while many people injured including children. The investigation conducted by Komnas HAM gave result that the police was not following their procedure in dealing with the protesters. It is appreciated that the license of PT Sumber Mineral Nusantara was finally revoked by local administration. While measures of investigation and prosecution have been taken, Komnas HAM notes that the incident could have been prevented if the police took measures of coordination and communication with local administration and community figures to prevent the incident as recommended by Komnas HAM on 7 November 2011.
12. As mentioned in the previous submission, the death penalty has not yet been abolished from the Indonesian legal system. Until the end of 2012, Indonesia still has at least 11 legislations which imposes death penalty, among others are the Law on Narcotics, the Law on Psychotropic Substances, the Law on Eradication of Terrorism, and the Law on Criminal Acts of Corruption. In this regard, it should be noted that the Human Rights Committee states:” *[w]hile it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the ‘most serious crimes’.. It should noted also that “the Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure”* (see HRC General Comment 6, 1982).
13. Komnas HAM conducted a short study on death penalty in Indonesia in 2008. The main finding is that Indonesia is not limiting the use of the death penalty for only the most serious crimes as the Indonesian domestic laws imposes death penalty to the crimes which are not considered as the most serious crimes under international law. In the periode 1997-2008, five new laws impose death penalty, they are : a). The Law Number 5/1997 on Psicotropica ; b). the Law Number 22/1997 on Narcotics ; c). the Law Number 31/1999 on Combating Corruption ; d). the Law Number 26/2000 on Human Rights Court ; e). the Law Number 15/2003 on Combating Terrorism.
14. The study also noted that Indonesia does not have a willingness to establish a moratorium on executions which is confirmed by the recent executions. The first execution in Indonesia since 9 November 2008³ was done in March 2013 when Adami Wilson, a 48-year old Malawian national who was convicted for drug trafficking in 2004 was executed by firing squad in Jakarta. Then, in May 2013 Suryadi Swabhuana, Jurit, dan Ibrahim --who were convicted of murder—were executed in Nusakambangan, Central Java by firing squad.
15. The finding of a research on capital punishment of Komnas HAM which was conducted in 2012 shows that there was approximately 116 convicts to death during 2010, and 106 out of 116 convicts to death within 2000 - 2010. Those data indicate that the number of capital sentences increased significantly within the last ten years. The ratification of the ICCPR in 2005 does not significantly change the situation as there are still 42 people

³ Amrozi, Imam Samudra, and Ali Gufron who were convicted for terrorism were executed on 9 November 2008.

were given death sentence within the period of 2006-2010. Most of them were convicted of murder, followed by narcotics and psychotropic crime and also terrorism. It illustrates that the Indonesian Government does not have a willingness to abolish capital punishment.

16. In September 2010 – Desember 2011 Komnas HAM conducted a monitoring situation of persons who were given death sentence in 13 correctional centers across Indonesia consists of correctional centers Level I and Level II. The Level I are Medan, Palembang and Tangerang, while the Level II are Padang, Pekanbaru, and Jambi. There are several findings from that monitoring which are listed below:

- The persons who were given death sentence mostly placed in the Level I, although there are also death convicts who are placed in the Level II. They are not segregated from convicts of other crime. This findings show that those situation violates the Director general of penitentiaries Regulation, which states that death convicts should be put in the Penitentiary Level I and to be allocated in segregated room from convicts of other crime. The reason within this decision because the Penitentiary Level I has maximum security level.
- There are three main indications of violations on the right of the death convicts;; a) the right to freely testify b) the right not to be tortured; c) the right to legal assistance; and d) the right to free assistance of an interpreter.

17. Again, Komnas HAM underlines that the right to life is a non-derogable right at any conditions and by anyone as governed in the 1945 Indonesian Constitution as well as the Act No. 39/1999 on Human Rights. It should be noted that many countries in the world have banned death penalty in their legal system, or have limited death penalty only for particular cases such as war and other state emergency. Thus, Komnas HAM recommends:

- a. Indonesia should take measures to progressively abolish the death penalty in its legal system.
- b. Indonesia should impose the death penalty only for the most serious crimes.
- c. Indonesia should establish moratorium on executions.
- d. Indonesia should ratify Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Prohibition of torture and cruel, inhuman or degrading treatment; liberty and security of person, treatment of persons deprived of their liberty, independence of the judiciary and fair trial (arts. 7, 9, 10 and 14)

18. Komnas HAM notes that an effort has been done to amend the law of the Criminal Code so that it prohibits torture as stated in CAT. Although this process has been going very slowly, the draft of the Penal Code is now in process of deliberation in the Indonesian parliament. The draft criminalize torture as stated in Article 404. This definition however is not precisely conforms to CAT.

19. It should be noted the Law Number 39/1999 concerning Human Rights contains a provision on torture, Its definition of torture conforms to CAT. Article 1 (4) states “[t]orture means all deliberate acts that cause deep pain and suffering, both physical or

emotional, inflicted on an individual person to obtain information or knowledge from that person or from a third party, by punishing an individual for an act carried out or suspected to have been carried out by an individual or third party, or by threatening or coercing an individual or third party, or for reasons based on discriminative considerations, should this pain or suffering arise as a result of provocation by, with the approval of, or with the knowledge of any person or public official whosoever”. Article 4 of the Law Number 39/1999 states that torture is non-derogable rights. Nevertheless, the Law does not provide any effective mechanism of enforcement dealing with individual complaint.

20. As mentioned in paragraf 3 of this submission, Komnas HAM does have statutory function to monitor the implementation of human rights including the right not to be tortured. Nevertheless, this function has a limitation. In dealing with individual complaint, including complaint on torture, Komnas HAM is only mandated to make a recommendation to institution concerned (such as the police) without any legal power to force the institution concerned to implement the recommendation.
21. It should be remarked that in 2006 Komnas HAM has made a Memorandum of Understanding with National Police to cooperate in handling human rights cases in Indonesia. In January 2008 Komnas HAM has also met with the Directorate General of Correction Institutions and the meeting has concluded the mechanism between two parties related to case that submitted to Komnas HAM. In this regard, Komnas HAM will be able to visit any correction institutions in Indonesia. It should noted, however, that, up to now, Komnas HAM does not have an access to conduct unannounced visits to all detention center.
22. The Law 26/2000 on Human Rights Court contains a provision on torture (Article 9 of the Law Number 26/2000). The definition of torture in this provision conforms to CAT. This provision, however, states that torture is a part of ‘crimes against humanity’, which should be perpetrated systematically or widespread as part of attack directed against any civilian. The Law 26/2000 states that Komnas HAM is the only institution to conduct the inquiry on the alleged cases of crimes against humanity.⁴ Up to the writing of this submission, Komnas HAM has completed inquiries on ten cases in which torture allegedly were perpetrated.⁵

⁴ Under the Law 26/2000, the Human Rights Court has jurisdiction on crimes which are crimes against humanity and genocide.

⁵ The cases, among others, and the detailed information as follows:

(a) The Case of Timor Timur (East Timor/Timor Leste)

- The inquiries conducted by Komnas HAM concluded that torture as part of crimes against humanity were committed. The alledge perpetrator were the police, the military and the militia. The victims were civilian who can be identified as students and members of CNRT. The report of the inquiry said that torture were comitted as a means of terrorizing civilian.⁵
- It should be noted that, although, the report of Komnas HAM concluded that the act of torture was committed, on the case of Timor Timur, none of the defendant were accused of committing and/or responsible for torture.

(b)The Case of Tanjung Priok

- The report of Komnas HAM on Tanjung Priok concluded that torture was comitted as crimes against humanity. Alledgely torture was perpetrated by the military and the police. The torture took place at the District Military Command (Kodim) of Central Jakarta , Laksusda V Jaya, Pomdam V Jaya and Military Detention House (RTM) Cimanggis. The method of torture were inflicting of physical pain or suffering by act of physical violence by hitting with the gun and kicking.⁵
- The result of Komnas HAM inquiry on gross human rights violations of Tanjung Priok incidents in 1998 had been submitted to the Attorney General in 2001. The case had been investigated and determined 14 defendants.

They had been put into trial. In 2006, the judicial process of the case had been completed in the cassation level. All of the defendant were acquitted. On the case of Tanjung Priok, only one of the defendant, Pranowo [the Chief of Regional Military Command V Jaya (*Kapomdam V Jaya*)] was accused should be responsible for the act of torture based on the definition of torture stated in article 9 Law 26/2000. The first level Court decided that the defendant, Pranowo, is found not guilty and acquitted. This decision was affirmed by the Supreme Court.

(c) The Case Papua/Irian Jaya

- This case widely known as a case of Abepura. Komnas HAM conducted an inquiry on this case and concluded that torture, as crimes against humanity, was committed. Allegedly the act of torture was committed by the police against civilian who can be identified as student and common people including children. The number of victim was 106 consisted of 9 women and 96 men (the more detailed see annex). The act of torture allegedly caused death of two of victim who died in Mapolres Jayapura (the detailed see annex) and caused permanent disability of one of the victim (detailed information see annex). The act of torture took place at victim's house (at Abepura Sub-district and South Jayapura Sub-district), on the way to or on the truck up to his detention at sub district Police (Polsek) Abepura and Police Precinct Jayapura.⁵ The report of Komnas HAM stated that, the method of torture in this case were :
 - (a) Inflicting of severe pain or suffering:
 - (i) Inflicting of physical pain or suffering by act of physical violence: beating with rattan and wood, hitting with gun and kicking using military boots.
 - (ii) Inflicting of physical pain or suffering using special devices/instruments and/or substances : burnt with cigarret on the hands of the victims.
 - (iii) Inflicting of physical pain or suffering using water by throwing water over victim's wound.
 - (iv) Inflicting physical pain or suffering by forced consumption of solids and liquids by forcing the victim to lick the dropped blood on the floor, to drink water mixed with blood, and eat their own hairs (after their hairs cut off by the police).
 - (b) Inflicting of mental pain or suffering which were intimidation and threats causing fear.⁵
- The result of Komnas HAM inquiry on gross human rights violation of Abepura incidents in December 2000 had been submitted to the Attorney General in 2001. This case had been investigated, which determined two defendants, Jayapura Police Commander Superintendent, Drs. Daud Sihombing, and Brigadier General Johny Wainal Usman. The two defendants had been tried in human rights courts. Only Daud who was accused of responsible for torture. The Human Rights Court in Makassar had decided to free Daud Sihombing on 8 September 2005 and Jhony Waenal Usman on 9 September 2005. In the trial process one judge, Kabul Supriyadi gave his dissenting opinion on the court decisions. With regard to the court decisions, the Attorney General has requested a cassation to the Supreme Court. The decision was affirmed by the Supreme Court.

(d)The Case of Papua (well known as Wasior-Wamena)

- Komnas HAM conducted the inquiry on this case and concluded that crimes against humanity was committed. Torture as crimes against humanity was committed and allegedly perpetrated by the police. The number of the victim for the case of Wasior was 39 civilian and 1 dead. The number of the victim for the case of Wamena was 38 civilians. In the case of Wasior, the act of torture took place in the house of the victims, on the way when the victim were brought to Makodim 1702/JWJ and in the detention of Makodim 1702/JWJ.⁵
- Komnas HAM had completed the projustitia inquiries of the Wasior 2001-2002 incidents and the Wamena 2003 incidents (both in Papua) in 2004. The result of the inquiry had been submitted to the Attorney General office through a letter No. 290/TUA/IX/2004 dated 3 September 2004. However, the Attorney General had returned the documents through a letter No. R-209/A/F.6/11/2004 dated 30 November 2004, which stated that the result of Komnas HAM inquiry was not complete. In response, Komnas HAM had returned the inquiry findings to the Attorney General through a letter No. 376/TUA/XII/2004 dated 29 December 2004, which firmly stated that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as "not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation". Until the writing of this submission, the Attorney General has not yet started the investigation of this case.

(e)The Enforced Disappearances Incident in 1997-1998

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

23. Komnas HAM observed the implementation of corporal punishment, in a form of whip punishment, in several areas in Indonesia. The main area in Indonesia which implements this kind of punishment is Nanggroe Aceh Darussalam and Bulukamba in South Sulawesi. This punishment is based on the *Qanun* in Aceh and in Bulukamba is due to the Local Regulation (*Perda*). In Nanggroe Aceh Darussalam, the execution of this punishment is conducted by Wilayatul Hisbah, not by the police or the judiciary.
24. The law system in Indonesia has not make ease for torture victims (in the definition in CAT) to propose a compensation or rehabilitation both in the matter of administrative and law. *KUHAP* (The Law of Criminal Procedure) only provides the procedure for compensation or rehabilitation for victims who are arrested by mistake, which is through pre-trial and for the victims of miss-punishment, is through the procedure of Judicial Review. For those who have passed this process, they can propose for the rehabilitation and compensation. This has been regulated in *KUHAP* (The Law of Criminal Procedure).
25. There are several things which have not been regulated in the penal law in Indonesia, such as the status of information and evidences obtained from the torture. Is the status admissible or not? *KUHAP* (The Law of Criminal Procedure) does not regulate this explicitly. Therefore, recurrently the confession or information obtained from the act of torture can be accepted by court. As an example is the case of torture and murder of Marsinah, the labor activist, and many other cases. Thus, Komnas HAM urges that the attempt to amend *KUHAP* –that now is in progress-- should ensure that evidence obtained under torture is inadmissible.
26. As mentioned in the previous submission, Komnas HAM received 5,444 number of complaints between January and November 2012. As happened in the last three years,

actions were part of direct attack on civilians, which was series of actions taken against civilians in follow up to policy of an authority. Since the actions were also widespread and systematic in nature, the forms of the actions could be categorized as crimes against humanity.⁵ The report stated that the crimes against humanity was allegedly perpetrated by the military.

- The number of the victim of the act of torture were 13 activists. The torture took place in Cijantung, Jakarta. Based on the inquiry, The method of torture took several forms, as follows:⁵
 - a. Inflicting of severe pain or suffering :
 - (i) Inflicting of physical pain or suffering by act of physical violence: beating and falanga (hung up side down);
 - (ii) Inflicting of physical pain or suffering using special devices/instruments and/or substances which is using electric shiocks ;
 - (iii) Inflicting of physical pain or suffering using water: soaking of cold water/dirty water over the victim ;
 - (iv) Inflicting physical pain or suffering by forcing to take up painful position: keeping victim tightly tied up and forcing the victim to sleep over a block of ice.
 - Inflicting of mental pain or suffering :
 - (i) Intimidation and threats causing fear using guns;
 - (ii) Blindfolding
- Komnas HAM completed the inquiry and, based on the Law 26/2000, submitted the report of the inquiry to the Attorney General on 3 September 2006. The Attorney General then shall conduct the investigation and prosecution of this case. Nevertheless, until the writing of this submission, the Attorney General has not yet started the investigation.⁵

the Indonesian National Police is on the top with 1,635 reported cases comprises of, among others are: a). the arbitrary arrest and detention (134 cases), case of shooting and violence committed by police (104 cases), and torture (39 cases)/

27. It is highly appreciated that the Ministry of Law and Human Rights (specifically the Directorate General of Human Rights) is in the step to draft an academic paper and draft a bill of the ratification of OPCAT. In this regard, it should be noted that Komnas HAM conducted two workshops in Yogyakarta, Central Java, on 15 May 2007 and Pontianak, West Kalimantan, on 13 February 2007. The workshops were aimed to get an input on the ratification on OPCAT. The workshops were attended by the police, judges, prosecutors, NGOs, the officers of the Correctional Institution (Lapas) and also academicians. The two workshops made several conclusions, as follows:
 - (a) Recognized OPCAT is an effort to strengthen the preventive mechanism which is based on a regular visit to detention center to protect persons who deprived his/her liberty;
 - (b) Recognized the objective of the OPCAT as to establish a system of the regular visit of the international and national body to the detention center to prevent the occurrence of torture, and other cruel, inhuman or degrading treatment and punishment;
 - (c) Recognized that to achieve the objective of the OPCAT, thus a Sub-Committee on the Prevention should be established;
28. Although some of the participant disagreed, basically the two workshops recommended Indonesia to accede the OPCAT with a condition the national legislation harmonized with the Convention and there is a preparation to establish a National Preventive Mechanism (NPM), as mentioned by Mr. Nowak, mandated to conduct independent and unannounced monitoring of places of detention and to introduce in its legislation safeguards against torture and ensure that they are implemented.
29. In this regard, again, Komnas HAM recalls the recommendation of the Special Rapporteur on Torture, Mr. Manfred Nowak who also called upon the Government of Indonesia to expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention. Komnas HAM also underlined Nowak's recommendation which stated that the The Government of Indonesia should support the National Commission on Human Rights and the National Commission on Violence against Women in their endeavours to become effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.
30. Thus, also inline with its statutory function, again, Komnas HAM declares its readiness to become effective player in the fight against torture, particularly to become effective player in the National Effective Mechanism (NPM).

Freedom of religion and belief, freedom of opinion and expression, freedom of assembly and participation in the conduct of public affairs (arts. 18, 19, 20, 21 and 25) and Rights of persons belonging to minorities (art. 27)

31. As mentioned in the previous submission, the right to religion is ensured in Indonesian Constitution as well as the Law No. 39 of 1999 on Human Rights and recognized as a non-derogable right. Komnas HAM, however, concerned that the Law No. 1 of 1965 still exists. It should be noted also the existence of the Joint Regulations between Ministry of Religious Affairs and Ministry of State Affairs No. 9 Year 2006 and No. 8 Year 2006 on 'Regulation of Duties of Regional Head and Deputy in Maintaining Religious Harmony, Empowering the Forum of Religious Harmony, and Constructing Places of Worship' resulting in several human rights problem. The intrusion of the right to personal freedom, such as freedom of religion and to worship according to his/her religion or belief experienced by, among others, the Ahmadiyah adherents and other groups (shia, traditional belief). Komnas HAM also observed that the prolonged discrimination experienced by particular religious adherents to practice their religion or belief. The decription below gives more detailed information on the situation :
- Komnas HAM conducted an investigation on the cases of Ahmadiyah based on the statutory function of Komnas HAM in monitoring. In 2005, Ahmadiyah adherents had experienced several acts of violence with the attack to Mubarak campus, Parung, West Java on 9 and 15 July 2005, the attack of Ahmadiyah adherents in Cianjur, West Java on 19 September 2005, and the attack of Ahmadiyah adherents in Ketapang, Lombok in October 2005. As the consequences of the State obligations according to article 71 of the Law 39/1999, all religions of the Indonesian people should be protected and treated equally by the State, including the adherents of Ahmadiyah. In response to those attacks, Komnas HAM considered that the Government should actively provide: a). protection guarantee to the victims; b). firm actions to anarchy behaviours; c). guarantee of protection for all Indonesian citizen wherever they stay.
 - Similar acts of violence also occurred to Ahmadiyah adherents in Al Mubarak Campus, Parung (Bogor, West Java) on 9 July 2005 which caused many injured victims and destruction of campus facilities and vehicles.
 - Then also, the attack to Ahmadiyah adherent on 6 Febuari 2011 in Umbulan Village, Cikeusik, Pandeglang, Banten, which caused the death of 3 people, 5 people were injured and destruction of facilities. It should be noted that, the attack of Ahamdiyah adherents still continues until 2013 in which it happened recently in Tasikmalaya, West Java.
 - Komnas HAM concluded that, in the case of the attack of Ahmadiyah adherents in Lombok and other places above, there are lack of measures of prevention and prosecution to the perpetrators by the law enforcement officers which reflects the unwillingness and inability of the State to guarantee the rights of its citizen to freedom of religion and to worship according to one's religion or belief
32. Komnas HAM received complaints on the issue of freedom of religion, during the period of 2007-2012 that cover several main type of violations : a). inability to build places of worship and the destructions of the places; b). discrimination experienced by religious minority groups ; c). defamation; d). violences against religious minority groups.

33. Thus, again, Komnas HAM is of the view that Indonesia should review existing laws and policies and also –if necessary- revoke or amend the laws to ensure their compatibility with the right to freedom of religion or belief in order to be in line with Indonesia’s Constitution and its international human rights obligations.

Jakarta, 14 June 2013
The Indonesian National Human Rights Commission
The Sub Commission on Human Rights Research and Study
Coordinator,

A handwritten signature in blue ink, appearing to read 'Roichatul Aswidah', is written over a horizontal line. The signature is enclosed in a light blue rectangular box.

Roichatul Aswidah