INDONESIA

BRIEFING TO THE UN COMMITTEE AGAINST TORTURE

AMNESTY INTERNATIONAL

Amnesty International Publications

First published in 2008 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

AI Index: ASA 21/003/2008
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

AMNESTY
INTERNATIONAL

INDONESIA

BRIEFING TO THE UN COMMITTEE AGAINST TORTURE

AMNESTY INTERNATIONAL

CONTENTS

1. INTRODUCTION

In May 2008, the UN Committee against Torture (or the Committee) will examine Indonesia's second periodic report which was submitted by the Indonesian government on 23 September 2005[1]. This examination provides an opportunity to review Indonesia's progress since its last submission in 2001 in abiding both in law and practice by the provisions of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Convention Against Torture,* or the Convention).

The Indonesian government ratified the Convention in 1998 (Law No.5/1998[2]) as the country was slowly emerging out of authoritarian rule.[3] Indonesia has entered one declaration and one reservation to the Convention.[4] This second consideration by the UN Committee against Torture occurs at an opportune time. It coincides with the recent visits to Indonesia of the UN Special Representative on Human Rights Defenders, Hina Jilani, as well as of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, and with the end of the five year mandate of Susilo Bambang Yudhoyono (2004-2009), Indonesia's first directly elected President. Further, ten years after the fall of President Suharto, it provides an opportunity to assess Indonesia's real progress towards respecting human rights and the rule of law during the so-called *reformasi* period.

In recent years, Indonesia has repeatedly affirmed its commitment to human rights principles, and has undertaken important legal reforms to better protect persons on its territory from human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). Yet Amnesty International has documented many instances under the Presidency of Susilo Bambang Yudhoyono and of his predecessors where provisions of the Convention have been violated.

As of early 2008, old and new national laws continue to offer inadequate safeguards to deter the use of torture and other ill-treatment in all circumstances. Amnesty International receives on a regular basis reports indicating that state agents have been committing torture and other ill-treatment during arrests, interrogation and detention, sometimes leading to deaths. Further, conditions in detention facilities and prisons are of concern as they often do not meet the UN Standard Minimum Rules on the Treatment of Prisoners, and Indonesia continues to use forms of cruel, inhuman and degrading punishment such as the death penalty and caning.

This context of widespread use of torture and other ill-treatment is aggravated and supported by a pattern of impunity throughout the country which can be perceived by perpetrators as giving them licence to continue violating human rights. Victims have few reliable means of complaint, protection and redress, and in the isolated cases where perpetrators of torture have been brought to court, they usually go free or are sentenced to very light punishments.

In this submission Amnesty International will provide information on the implementation by Indonesia of the Convention, and will set out ways in which the Indonesian government could better comply with its obligations under the Convention. This documentation draws on years of Amnesty International field and desk research on Indonesia through regular contacts with local and international non governmental organizations, victims and their families, lawyers, government officials, and other individuals. It also relies on daily media monitoring, and extensive reading of academic and other reliable publications on Indonesia.

This briefing, although not exhaustive, will highlight the following aspects:

Insufficient provisions prohibiting acts of torture in the Criminal Code (Articles 1.1 , 2 and 4);

- Insufficient safeguards in the Criminal Procedure Code (Articles 2, 12, 13 and 15);
- The absence of legal provisions prohibiting '*non-refoulement*' (Article 3);
- Torture and other ill-treatment in detention (Articles 2, 10, 11, 12, 15 and 16);
- Cruel, inhuman or degrading punishments (Article 16);
- Accountability mechanisms (Articles 5, 6, 7, 8, 9, 12, 13, 14 and 16);
- The inadequate implementation of the Domestic Violence Law (Articles 2.1, 12, and 16).

2. INSUFFICIENT PROVISIONS PROHIBITING ACTS OF TORTURE IN THE CRIMINAL CODE

Despite Indonesia's commitment to human rights as set out in its National Plan of Action and in its Constitution,[5] a 'culture' of violence continues to be prevalent in the country. Amnesty International has received over the last few years numerous reports whereby security forces and police officials have used torture and other ill-treatment against suspects and detainees (or unconvicted prisoners)[6] during arrests, interrogation and incarceration. Although the organization acknowledges that there has been some progress in tackling the problem, for instance through legal reform, human rights trainings to police and military officials and efforts to strengthen accountability mechanisms, those measures have been far from sufficient. In particular, Indonesia's legal safeguards still fall short of ensuring adequate protection against acts of torture and other ill-treatment. Until now, the Law on Human Rights Court remains the sole legislation which specifically prohibits torture and this only as a crime against humanity (*see section 2.2*).

2.1 THE CRIMINAL CODE (ARTICLES 1.1, 2 AND 4)

Indonesia's Criminal Code has yet to incorporate a crime of torture based on the Convention's Article 1.1, thus failing also to meet its obligations under Article 4 of the Convention.[7]

Currently Indonesia's Criminal Code contains limited provisions that protect against torture; these include provisions related to 'maltreatment' (Articles 351, 353, 354, and 355) with penalties of between two and 15 years imprisonment, provisions related to 'attempt' or 'causing' others to commit a crime (Articles 53 and 54), and provisions on coercion during interrogation by state officials to force somebody to confess, or to persuade someone in order to give information with penalties of a maximum of four years imprisonment (Article 422). As noted by a member of the Committee Against Torture in November 2001 during its 27th session, Article 422 of the Criminal Code "*was overly restrictive because it excluded instances in which torture could be used as a means of punishment or a tool of discrimination*"[8]. It also "*did not include the possibility that torture might take place in detention*"[9].

This lack of sufficient legal provisions on 'acts of torture' creates a loophole which has devastating consequences. It does not give sufficient legal basis on which state agents can be brought to court for 'acts of torture' nor does it provide a sufficient legal deterrent to prevent state agents from committing acts of torture. This has contributed to the continued

and widespread use of torture by military and police officials during arrests, interrogation or detention, sometimes leaving victims and their families without the legal basis on which to claim their rights *(see sections 5.1 and 7).*

Apart from the Law on Human Rights Court (*see section 2.2)* which takes into consideration torture in the context of crimes against humanity, the prohibition of 'acts of torture' as defined in Article 1.1 of the Convention is absent from legal provisions.

The Indonesian government argued, in its initial report to the Committee, that Article 27.1 of the 1945 Constitution, by providing that all citizens have equal status before the law and government "*encompasses the meaning that every citizen of Indonesia has the same position before the law and has the right, which is guaranteed by the State not to be tortured*"[10]. The government also insisted that other legal provisions for the right to be free from torture such as Article 25 of MPR Decree No. XVII of 1998 on Human Rights,[11] Article 4 of Law No.39 of 1999 on Human Rights[12], as well Article 38G.2 and 28I.1[13] of the second amendment to the 1945 Constitution passed in August 2000, should be taken into consideration. However, these references are not sufficient and are sometimes 'too vague' to provide sufficient safeguards against acts of torture.[14]

Amnesty International acknowledges that the Criminal Code is currently under revision, and that the new draft includes a definition of acts of torture[15] as well as specific provisions criminalising acts of torture and other ill-treatment. In particular, the draft revised criminal code provides that: "*everyone who commits torture shall be sentenced [to] 2 years minimum and 15 years maximum imprisonment"* and that everyone who commits torture or other inhuman treatment including biological experiment shall be sentenced for minimum 3 years and maximum 15 years imprisonment.[16]

However, Amnesty International notes that this revision has been underway for more than three decades now,[17] and urges that that the incorporation of provisions on acts of torture within the Criminal Code should be accomplished as a matter of priority. Having considered Indonesia's initial report, the Committee recommended that the Indonesian government should "*amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law*" and that "*adequate penalties, reflecting the seriousness of the crime, should be adopted*".[18] Amnesty International regrets that seven years later this recommendation has yet to be implemented.

Amnesty International considers that the Indonesian authorities should:

- Incorporate within the draft revised Criminal Code the Convention's Article 1.1 definition of 'torture';
- Incorporate within the draft revised Criminal Code provisions prohibiting acts of torture, including as a discrete act and making these offences punishable by appropriate penalties that take into account their grave nature;
- Take measures to ensure that the draft revised Criminal Code is debated and ratified by parliament as a matter of priority and that it accords with the Convention as well as with other international human rights treaties to which Indonesia is a state party.

2.2 THE LAW ON HUMAN RIGHTS COURTS (ARTICLES 1.1, 2, AND 4)

Although the Law on Human Rights Courts (law 26/2000) is a step forward in ending impunity and bringing perpetrators of gross human rights violations to justice in Indonesia, this law has so far proved incapable of efficiently carrying out this task (*see section 6.2),* partly due to weaknesses in the legislation.[19]

The Law on Human Rights Court is the first and so far sole legislation in Indonesia to include torture as a crime. It criminalises torture in specific circumstances: when it is part of a broad or systematic direct attack on civilians, and thus constitutes a "crime against humanity" (Article 9.f).[20] It is defined as "*deliberately and illegally causing gross pain or suffering, physical or mental, of a detainee or a person under surveillance*".[21] Torture as a crime against humanity (Article 9.f) carries a minimum prison sentence of five years, and a maximum sentence of 15 years imprisonment (Article 39).

Whereas the inclusion of torture as a crime in Indonesian law constitutes progress, Amnesty International, like the Committee, is concerned that the definition of torture used in this legislation is too restrictive compared to Article 1 of the Convention. In its concluding observations in 2001, the Committee noted that "*the definition of torture in Law 2000/26 is not fully consistent with article 1 of the convention*"[22] and recommended that the penal legislation should be amended "*so that torture and other cruel, inhuman or degrading treatment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention*".[23]

Secondly Amnesty International is concerned that only acts of torture in the context of 'crimes against humanity' are taken into consideration, leaving many, including virtually all torture cases now occurring in Indonesia, outside the jurisdiction of the Human Rights Court and thus of the whole justice system as torture *per se* is not specifically prohibited in the Criminal Code. It creates a loophole in the criminal justice system whereby when alleged cases of torture are not considered crimes against humanity, victims and their families have no real legal remedies (*see section 7.3.2*).

Thirdly, Amnesty International is concerned that acts of deliberate cruel, inhuman or degrading treatment or punishment are by and large disregarded by the Law.

Amnesty International considers that the Indonesian authorities should:

- Amend the definition of torture in the Law on Human Rights Court so as to bring it into line with the Article 1.1, as well as prohibit the use of discrete acts of torture;
- Include other acts of cruel, inhuman or degrading treatment or punishment in the jurisdiction of the Court.

3. LACK OF SUFFICIENT LEGAL SAFEGUARDS IN THE CRIMINAL PROCEDURE CODE

Although the existing Criminal Procedure Code provides several safeguards for the rights of suspects and defendants at different stages of investigation and trial, there are a number of areas where it does not meet international standards, including those provided by the Convention. Likewise, the draft Criminal Procedure Code which has been under revision for a number of years, although it contains notable improvements compared to the current Code, remains inconsistent with international standards and leaves suspects and defendants, particularly those in detention, vulnerable to human rights violations including torture and other ill-treatment.[24]

3.1 PROHIBITION OF TORTURE IN ALL CIRCUMSTANCES (ARTICLES 2, 12, 13 AND 15)

Although Article 2.2 of the Convention prohibits torture in all circumstances, legal provisions in the existing and draft revised Criminal Procedure Codes do not extend far enough to combat and prevent the use of torture and other ill-treatment in all circumstances.[25]

The existing Criminal Procedure Code - as well as the draft revised Criminal Procedure Code[26] - contain some provisions to ensure that suspects and defendants can freely provide information during arrest, detention and trial. During questioning at the investigation and trial stage, suspects and defendants have the right to provide information freely to the investigator or judge (Article 52).[27] Any information given by a suspect or witness to an investigator must be provided without any pressure by anyone in any form (Article 117.1).[28] A suspect or defendant must not be burdened with the duty of providing evidence (Article 66).[29] During trial, judges are required to ensure that no action is taken and no questions are asked that result in the defendant or a witness being unable to answer freely: failure to do so results in the annulment of the judge's verdict (Articles 153.2.b & 4).[30] Questions constituting entrapment may not be asked (Article 166).[31]

However, there are no provisions in the Criminal Procedure Code - as well as the draft revised Criminal Procedure Code - which state clearly that torture and other ill-treatment should be prohibited in all circumstances. This is worrying in a context where Amnesty International has received numerous reports over the last few years alleging that security forces and police officials have used torture and ill-treatment against suspects and detainees during arrests, interrogation and incarceration (*see section 5.1*).

The use of torture and other ill-treatment by police officials appears to take place mostly to extract confessions, and in some cases information, from suspects. Amnesty International has recorded many instances whereby suspects have been tortured or ill-treated during interrogation *(see case below (a)).* Yet, the existing and revised draft Criminal Procedure Codes are silent on the use that may be made in judicial proceedings of statements obtained as a result of torture and/or ill-treatment.

Contrary to Article 15 of the Convention, there is no provision either in the existing or draft revised Criminal Procedure Codes, which clearly excludes the use of evidence which has been obtained as a result of torture. It is left to the discretion of the judge as to whether or not evidence allegedly obtained under torture is admitted, and if it is admitted, what weight to give to it.[32] The judge does not have the authority to order an investigation by an impartial authority into an allegation that evidence or testimony was obtained under torture or ill-treatment.

(a) The case of Nelson Rumbiak and 22 other men

In June 2006, reports indicated that 16 men who were charged in relation to the violent events which caused the death of three police officers and an air-force officer in Abepura, Papua on 15-16 March 2006 were subjected to torture and other ill-treatment during interrogation in order to force them to confess before the court that they were guilty of the crimes of which they were accused.

One detainee reported that a senior police officer threatened to shoot him if he did not disclose certain information. The defendants also reported that, two hours before their trial, they were kicked with boots and beaten on their heads and bodies with rifle butts and rubber-batons by police officials in order to compel them to admit that they had committed the crimes with which they were charged. Those who refused to state they were guilty of the charges during the trial also underwent similar torture and ill-treatment on their return to the police detention centre. Some of the detainees reported that they had no contact with the lawyer who was assigned to them before the trial started in May 2006 and so were unaware of their rights and unfamiliar with the legal procedures. Furthermore, reports indicate that during the trial judges may have undermined the principle of presumption of innocence and the right of the defendants to examine the witnesses against them. The 16 men were convicted in August 2006 to between five and 15 years' imprisonment.

One of the 16 men, **Nelson Rumbiak**, was reportedly beaten by police officers after revealing in court that he had been intimidated and otherwise ill-treated in police custody. On 23 August, Nelson Rumbiak and **Ferdinando Pakage** (m), who had already been sentenced to six and 15 years' imprisonment respectively, were asked to testify before the Jayapura district court against three of seven other men accused of having taken part in the violent events of March 2006 and whose trial was still in progress.

Nelson Rumbiak and Ferdinando Pakage told the court that statements they had made earlier against the three accused were false, and that they had been coerced into making these statements by police. One of the men who was standing trial, **Aris Mandowen**, told the court that he too had suffered similar treatment at the hands of police. On the basis of these

statements, the prosecutor agreed to call additional witnesses to testify about the alleged ill-treatment by police at the next court hearing on 28 August. However, the police officer whom Nelson Rumbiak had alleged was responsible for ill-treating him was not called to testify, leading to a dispute between Nelson Rumbiak's lawyers and the judge.

On their return to Abepura prison, the three accused men and Nelson Rumbiak were confronted by dozens of police officers outside the front gate of the prison. The police reportedly started beating Nelson Rumbiak's head with a rattan stick. When he fell to the ground, several police officers kicked him in the ribs and stamped on his body. Several police officers then chased the three accused men into the prison, and threatened to beat prison officers who were trying to keep the police officers out of the prison.

Nelson Rumbiak was taken by prison officers to Abepura hospital for treatment for the injuries he had sustained in the attack. However, doctors were unable to examine him fully as police and intelligence officers, as well as military personnel, entered the hospital and attempted to gain access to him, following which he was returned to prison. The seven accused men initially refused to appear in court, because of concerns for their safety.

The Jayapura police disciplinary committee found one police officer, Novril, responsible for the attack on Nelson Rubiak, and sentenced him to 21 days of imprisonment.[33]

Amnesty International considers that the Indonesian authorities should:

- Incorporate within the draft revised Criminal Procedure Code explicit prohibition of the use of torture or other cruel, inhuman or degrading treatment against suspects or defendants in all circumstances;
- Incorporate within the draft revised Criminal Procedure Code the explicit prohibition of the admissibility in any proceedings of evidence elicited as a result of torture or other ill-treatment, except in proceedings brought against the alleged perpetrator as evidence of the torture or ill-treatment;
- Carry out effective and impartial investigations into allegations of evidence extracted under torture, including into the case of Nelson Rumbiak and 22 other men;
- Take measures to ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right an effective remedy. Complainants and witnesses must be protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given;
- Take measures to ensure that the draft revised Criminal Procedure Code is discussed and ratified by parliament as a matter of priority and that it accords with international standards, including those set out below.

3.2 THE PRE-TRIAL PROCEDURE (ARTICLES 2.1, 12)

The pre-trial procedure established in the existing Criminal Procedure Code, amongst other things, to hear pre-trial challenges to the legality of arrest, detention and investigation does not provide the district courts with explicit authority to inquire into the conditions of detention and the treatment of suspects in detention.[34] This is regarded as one of its

weaknesses and one reason that it is not often utilised by suspects and their families to challenge the legality of the pre-trial process.

Amnesty International regrets that the new office of the Judicial Commissioner envisaged under the draft revised Criminal Procedure Code to deal with pre-trial issues including challenges to the legality of arrest, detention and investigation,[35] does not have explicit authority to inquire into the conditions of detention and the treatment of suspects in detention either. The organisation recommends that provisions for the pre-trial procedure are amended to ensure that the relevant authorities can make inquiries into allegations of torture and other ill-treatment while suspects are in pre-trial detention. It is particularly pressing in light of the reported abuses during pre-trial detention *(see section 3.1.1(a))*, and the lack of systematic mechanism in place to investigate allegations of torture and ill-treatment (*see section 7.1*).

Amnesty International considers that the Indonesian authorities should:

- Ensure that the pre-trial procedure in the draft revised Criminal Procedure Code contains provisions granting the relevant authorities both the authority and the obligation to inquire into complaints or information on the ill-treatment of suspects in detention. If the inquiry, or the detainee's own statement, gives reason to believe that torture or ill-treatment has been committed, the relevant authority should be required to initiate an effective investigation and take concrete steps to protect the detainee against any further ill-treatment, including, if released, to ensure the person's protection from revenge;
- Put in place clear procedures for those alleging torture or ill-treatment to make their claims and for their complaints to be investigated promptly and impartially, in a separate hearing, before evidence is admitted at trial. Those suspected of torture or other ill-treatment should be prosecuted in fair proceedings, while victims should be awarded full reparations.

3.3 RIGHT TO CHALLENGE THE LEGALITY OF DETENTION AND TO BE BROUGHT PROMPTLY BEFORE A JUDGE OR OTHER JUDICIAL OFFICER (ARTICLE 2.1)

The Committee has on several occasions emphasised the importance of prompt access to judicial review as a safeguard against torture and other ill-treatment.[36] The existing and the draft revised Criminal Procedure Codes do not provide that the authorities bring all persons arrested or detained before a judge or other judicial officer without delay. In the absence of such a requirement, a person may be detained for months without being afforded a review of the legality of their detention.

In fact, Amnesty International is concerned that under the existing Criminal Procedure Code – as well as under the draft revised Criminal Procedure Code[37] - there is a potential risk of considerable delay before a person in detention is brought before a judge or other judicial authority. A suspect may be arrested and held by police for 1 day (Articles 18 and 19). Subsequently, in the interest of investigation, an investigator, usually a police officer may detain the suspect for up to 20 days with an extension granted by the Chief Attorney General for up to a further 40 days (Article 24.1 & 2). In the interest of prosecution, the suspect may

then be detained for an additional 20 days with an extension granted by the head of the district court for a further 30 days (Article 25.1 & 2). The extension by the judge does not require that he sees the suspect. This means that it is a total of 111 days before a detainee has to be brought before a judge under the Law.

In addition, under Article 29 of the current Criminal Procedure Code, detention can be extended further for suspects who (a) have a serious physical or mental disorder, proven by the letter of a medical doctor, or (b) who are charged for a crime which carries a sentence of nine years or more. The investigation process can lead to an additional 60 days detention (this is a total of 120 days), and the prosecution to an additional 60 days detention (this is a total of 110 days). That means under these circumstances, a suspect may be detained for up to 231 days without being brought before a judge under the Law. Amnesty International welcomes the fact that the provisions of Article 29 have been removed from the draft revised Criminal Procedure Code. However it remains concerned that under the existing Criminal Procedure Code suspects may be subject to prolonged detention.

There is nothing in the existing and draft revised Criminal Procedure Codes to suggest that investigators, prosecutors and judges are obliged to hear, or even see, a detainee or his or her legal representative before deciding whether or not to order the extension of his or her detention. It appears that decisions can be made on the basis of the information in the file. If a suspect or defendant wishes to be heard, then he or she must take steps to challenge their detention either with the investigator or his or her superior.[38]

Like the UN Working Group on Arbitrary Detention[39], Amnesty International considers that the length of detention prior to presenting a detainee before a judge should be modified so as to ensure that the accused is brought before a judge without delay.

Amnesty International considers that the Indonesian authorities should:

- Ensure that the draft revised Criminal Procedure Code requires that any person arrested and detained on a criminal charge be brought in person before a judge or other judicial authority promptly, be able to challenge the legality of the detention, and be able to complain about torture/ill-treatment.

3.4 ACCESS TO LEGAL COUNSEL (ARTICLE 2.1)

According to international law and standards everyone has the right to legal counsel of their choice during detention, and in all stages of criminal proceedings.[40] Access to legal counsel is fundamental to ensure that suspects are not subject to torture and other ill-treatment following arrest. According to the UN Special Rapporteur on Torture, "*legal provisions should ensure that detainees are given access to counsel within 24 hours of detention. Security personnel who do not honour this provision should be punished*".[41]

The right to be assisted by counsel and to contact counsel is guaranteed in the Criminal Procedure Code (Articles 54 and 57.1) as well as in the draft revised Criminal Procedure Code (Articles 52 and 54.1). In the existing code (Articles 69 and 70.1), if a suspect has been arrested or detained, legal counsel has the right to be present and to speak with their

client, from the moment of arrest or detention, at all stages of the proceedings and at any time in the interest of the case.

Amnesty International is concerned, however, that in the draft revised Criminal Procedure Code, the right of legal counsel to contact and talk to a suspect or defendant is limited to working days (Article 65.1). It is not clear whether the ability of suspects or defendants to initiate contact with their legal counsel is limited in the same way. Amnesty International is concerned that, as a result of this restriction, people who are arrested or detained on weekends or a public holiday, may not be able to make prompt contact with their lawyer. This would be of particular concern if a suspect, because of the timing of his or her arrest, was subject to interrogation before they were able to avail themselves of the right to be assisted by counsel.

In the existing Criminal Procedure Code, the role of counsel is limited during the interrogation of their client by an investigator. Counsel has no right to intervene: they may only watch and listen to the examination (Article 115.1) or only watch if the case involves a crime against the security of the state (Article 115.2). Amnesty International is concerned that this restriction limits the right of suspects to be assisted by counsel during interrogations, as well as places limitations on the ability of lawyers to intervene if the interrogation turns coercive. Positively, the draft revised Criminal Procedure Code has removed the restriction that counsel may only watch but not listen to the examination of their client in the case of crimes against the security of the state, however the organisation remains concerned that the general provision on the role of counsel during interrogation remains the same (Article 107).

Amnesty International considers that the Indonesian authorities should:

- Ensure that the draft revised Criminal Procedure Code provides that any person who is arrested should have immediate access to legal counsel and that counsel should be present during all interrogations;
- Ensure that the draft revised Criminal Procedure Code does not restrict the role of legal counsel in interrogations in a way which limits the right of a suspect to be assisted by counsel. In particular there should be no limitation on the ability of legal counsel to intervene if an interrogation becomes coercive.

3.5 ARRESTS AND DETENTIONS DURING STATES OF EMERGENCY (ARTICLE 2)

Arrests, which normally can be carried out only by police under the existing and draft revised Criminal Procedure Codes, may be carried out by the military during a military emergency under Law 23/1959 on States of Emergency. Under Law 23/1959 the military has the authority to detain suspects for up to 70 days. Law 23/1959 contains no provisions to safeguard the rights of detainees, except that arrests shall be carried out with a warrant (Article 32.4). The safeguards contained in the draft Criminal Procedure Code are interpreted by the military not to apply because the arrest is not made pursuant to the provisions of the Criminal Procedure Code.[42] This legal loophole leaves detainees arrested by the military in a very vulnerable position, without an enforceable right to access legal assistance; to inform their families of their whereabouts and be visited by them; and without any avenue for challenging the legality of their detention. The safeguards contained in the Criminal Procedure Code are rendered irrelevant at a time, and in circumstances, where suspects are

at particular risk of human rights violations, including torture and other ill-treatment thus frustrating the intent and purpose of the legislation.

Amnesty International is deeply concerned by this loophole, which has led to serious human rights violations, including torture and other-ill-treatment, in the past.[43]

Amnesty International considers that the Indonesian authorities should:

- Ensure that the draft revised Criminal Procedure Code explicitly states that the provisions which set out the rights of suspects and accused and the procedures designed to give effect to those rights, apply in all circumstances, including to people arrested and detained during emergencies, whether that be under Law 23/1959 or otherwise;
- Ensure that no emergency or other laws are allowed to overrule or set aside the above provisions.

4. THE ABSENCE OF LEGAL PROVISIONS PROHIBITING 'REFOULEMENT' (ARTICLE 3)

Although Indonesia is bound by Article 3.1 of the Convention, it has yet to incorporate within its national legislation and extradition treaties,[44] specific provisions prohibiting the expulsion, return or extradition of individuals to another state where they would be at risk of severe human rights violations including torture (the principle of non-refoulement).

Amnesty International has received testimonies indicating that the Indonesian government may have taken part in so-called 'secret rendition' as part of the US led global War on Terror whereby individuals had been transferred to other countries where they were at risk of torture and cruel, inhuman or degrading treatment or punishment. In a report entitled "*USA/JORDAN/YEMEN Torture and secret detention: Testimony of the 'disappeared' in the 'war on terror'*" (AI Index: 51/108/2005), Amnesty International highlighted the case of Salah Nasser Salim, a Yemeni national living in Indonesia who was tortured on arrival in Jordan after he had been expelled from Indonesia (*see case below (b)*).

(b) The case of Salah Nasser Salim 'Ali

Salah Nasser Salim 'Ali (m), 27 years old, was living in the Indonesian capital of Jakarta with his Indonesian wife Aisha when he was detained on 19 August 2003. Police in plain clothes detained him while he was shopping in Tanah Abang, Jakarta and took him to the main immigration centre in the Kuningan area of Jakarta. He said that he was held there for four days handcuffed, blindfolded and without food. His requests to make telephone calls to his family were refused. He later discovered that his wife had been calling the centre continually to find out what had happened to him. On 22 August she was told that he was being held by immigration authorities and was asked to pay some money to secure his release. After the initial four days of detention, during which his passport expired, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Thailand and Jordan.

Salah Nasser Salim 'Ali was not returned to Yemen in 2003 as Indonesian authorities had said he would be. Instead, he was detained on arrival at Amman airport in Jordan. His personal belongings were handed to Jordanian security forces and he was told he would be taken to a hotel. The hotel, however, turned out to be the detention facilities of the Jordanian intelligence service, where he says he was tortured repeatedly for four days. He says that he was routinely beaten by Jordanian officials, spat on, verbally abused and threatened with

sexual abuse and electric shocks. He also describes in detail being subjected to the torture technique known as *falaqa* (beatings with sticks on the soles of the feet). He states that two guards tied him so that he was suspended upside down, hands and feet tied, whilst the guards beat his feet. On other occasions during the four days he says that he was surrounded by 15 guards in a circle. The guards would make him run around in the circle until he was exhausted. At this point the guards would run after him, beating him with a stick. When he was so tired that he could run no longer, the guards lay him down in the centre and all took turns to beat him. He also says the guards attempted to abuse him sexually. On one occasion they tried to force him to sit on a bottle so that it would penetrate his anus. It was only when he threatened to hit the guards with the bottle that they backed off. Salah Nasser Salim 'Ali says that he was only interrogated at the beginning of his detention in Jordan and then only asked questions about his presence in Afghanistan. At no point was he told why he had been detained, offered contact with lawyers or allowed to make telephone calls.

Salah Nasser Salim 'Ali says he was blindfolded and shackled by US guards, then transported in a small military plane to a secret location. There, for between six and eight months, he was held in solitary confinement.

Again, he was shackled and blindfolded and put on a small military aircraft, then a helicopter, before arriving at the next, unknown place of detention. Salah Nasser Salim 'Ali describes it as a modern purpose-built detention facility run by US officials, probably underground.

In May 2005, without explanation, Salah Nasser Salim 'Ali was released from secret detention and flown to Yemen, where he remained in prison, still without charge. Yemeni officials said he was being detained at the request of US authorities.

In February 2006, Salah Nasser Salim was tried and convicted on forgery charges. He was eventually released the following month on account of the time he had already spent in prison.

Amnesty International considers that the Indonesian authorities should:

- Carry out effective and impartial investigations into alleged cases of rendition which may have led to torture and ill-treatment, including the case of Salah Nasser Salim 'Ali;
- Incorporate in its national laws and extradition treaties specific provisions banning 'refoulement'.

5. TORTURE AND OTHER ILL-TREATMENT DURING DETENTION

Amnesty International notes with satisfaction the fact that the UN Special Rapporteur on torture was given open access to 24 Indonesian detention facilities across the archipelago during his visit to Indonesia in November 2007. Given the lack of independent reporting of conditions in police lock-ups, detention centres and prisons in Indonesia this is a welcome step.[45] As a follow-up to the visit of the Special Rapporteur on torture, Amnesty International urges the Indonesian government to acknowledge the value of independent reporting of detention conditions and accordingly ratify the Optional protocol to the UN Convention against Torture. This establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

5.1 BEATINGS AND OTHER ILL-TREATMENT (ARTICLE 2.1, 10, 11, 12, 15 AND 16)

5.1.1 A CULTURE OF VIOLENCE

Amnesty International is concerned at the lack of legal safeguards preventing police abuse during pre-trial detention (*see section 3),* and the extent to which such safeguards as do exist are not implemented in practice. Amnesty International has documented many cases, for example, where suspects have been arrested without warrants; where their families have not been advised of their arrest or detention; where suspects have been denied access to legal counsel and told that they do not require a lawyer, or have been threatened if they asked to contact one; and where suspects have been forced to sign confessions under threat of violence; or otherwise subjected to torture or other ill-treatment. All of these acts are in violation of the existing legal provisions and yet they occur, often without any adequate response from the authorities.

This failure in both law and practice has encouraged a culture of violence leading to torture and other ill-treatment of detainees (*see case below (c)*). Over the last few years, Amnesty International has received many reports of individuals who have been tortured or otherwise ill-treated, sometimes resulting in death *(see section 7.1.2)* during arrest and interrogation. According to a survey conducted by a local non-governmental organization, over 81 per cent of persons arrested between January 2003 and April 2005 in Salemba detention centre, Cipinang prison and Pondok Bambu prison, all in Jakarta, were tortured or ill-treated. About 64 per cent were tortured or ill-treated during interrogation, 43 per cent during arrest and 25 per cent during subsequent detention.

The UN Special Rapporteur on torture has noted that prisoners seem to be more vulnerable to abuses while in police custody than in prison. He indicated that when his team arrived at police stations, beatings were sometimes ongoing. The following type of abuses seem to be the most common: beatings with fists, rattan/wooden sticks, chains, cables, iron bars, and hammers; kicking with heavy boots, electrocution, and shots into the legs.[46] Torture or ill-treatment appears to be usually used to extract confessions or information (*see section 3.1).*

Amnesty International has received unconfirmed reports of torture and other ill-treatment including beatings and sexual abuse of some prisoners during their transfer from one prison to another. During transfers, prisoners were reportedly denied access to medical care and communication with the outside world.

Up to 60 foreign prisoners, from Nigeria, Senegal, Lesotho, Italia, India, Malawi, Pakistan, Brazil, Zambia, UK, France, Nepal, Myanmar, Sierra-Leone, Swaziland, the USA, Angola, Zimbabwe, Angola, Swaziland, including individuals being sentenced to death, have reported that on 21 June 2007, they were taken from various prisons in Java including Cipinang Narcotic Prison, Cipinang Central Prison and Tangerang Baru Prison to Pasir Putih prison in Nusa Kambangan without being given prior notice of their transfer. The men were reportedly taken naked one by one from their rooms and were not allowed to bring their personal belongings with them. Their hands were handcuffed and chained together, their legs were chained, and their eyes were covered with a black mask. The prisoners were then taken to the National Police Headquarters (Mabes police) where on 22 June they were left in an open air field with their faces still covered, their hands and legs chained, laying on the cold ground. The armed state officials reportedly refused to allow them go to the toilet or talk to each other. Some prisoners were beaten, and many collapsed due to breathing difficulties and dehydration. According to the prisoners' report, police officials videoed some prisoners' private organs on their camera phones. The prisoners also report that they were not given adequate food and drinking water during the transfer, and that they were not provided with medical assistance.

The UN Special Rapporteur on torture noted that incidents of abuse in prisons appeared to have been the exception rather than the rule although he found allegations and evidence of several cases of beatings by guards.[47] Amnesty International is also concerned at reports indicating that new prisoners are beaten up by other prisoners as a matter of routine unless they can pay to avoid the ritual.[48]

(c) The case of two gay men

On 22-23 January 2007 two gay men, whose names Amnesty International is withholding to ensure their safety, were reportedly beaten, kicked and verbally abused by neighbours and then were arbitrarily arrested by police, and taken to Banda Raya police post, Aceh province where they were subjected to sexual abuse and other forms of torture and ill-treatment. It appears that the men were targeted solely because of their sexual orientation. In early April according to unofficial information from the police, four members of the police force were reportedly arrested for their part in the alleged torture of the two men.

According to the testimony of Tomy (not his real name, aged 32), he and his partner were disturbed by two intruders who forced their way into their room late in the evening of 22 January. The intruders then started to beat and kick them in the face and body. Tomy and his partner were then forced to go outside where they were confronted with a group of 10-15 people who kicked and beat them, using homophobic language. Their assailants then forced them to vacate the room.

The sarong that Tomy's partner was wearing was used to tie them together and they were then made to squat on the ground, while their attackers deliberated on what to do next. They eventually decided to inform the local police authorities, who arrived on the scene at about 1.30am on 23 January. The police took them to Banda Raya police station where they subjected them to further abuse. Tomy claims that around six or seven police officers beat him in the stomach, legs and feet. The police also allegedly forced him and his partner to strip naked and perform oral sex and other sex acts in front of them. At one point, a police officer allegedly pushed his rifle against Tomy's anus.

Tomy and his partner were then taken outside into a courtyard and were made to squat on the ground in their underwear. Police officers sprayed them with cold water from a hosepipe for around 15 minutes. When his partner asked for permission to go to the toilet, a police officer allegedly forced him to urinate on Tomy's head.

Tomy and his partner were then allowed to dress and were detained until the morning in a small, cramped police cell with other suspects. While in police detention, Tomy was instructed by the officers to introduce himself to the detainee who already occupied the cell. When Tomy stated that he was gay, the other detainee slapped him and then an officer entered the cell and severely beat and kicked him. Other officers joined in. According to Tomy, he was treated with complete contempt by all the officers he encountered during his detention. One officer allegedly punched Tomy hard in the stomach when Tomy insisted that it was for the courts, not the police, to decide whether he was guilty or not. Tomy requested several times to contact his family to inform them of what had happened; each time, his request was denied.

At around 9am on 23 January, the police began to interrogate Tomy. This ended when he was forced to sign a statement promising not to engage in further 'homosexual acts'. He was then allowed to speak to two colleagues from his workplace and other activists who had come to the police station to inquire after them. Tomy and his partner were released later the same day. They were asked by their friends if they wanted to file a formal complaint, but as they were physically and mentally exhausted at that time, both men decided not to pursue the case.

Tomy later said: "*That night I still could not sleep; I cried every time I remembered what the crowd and police did to me. I felt my dignity as a human had been trampled.*"

According to unofficial information, four members of the police force were arrested in early April for their part in this incident. By the middle of March 2008 the case was still under police investigation, but progress had been slow. It is still unclear whether the four detained police officers have been charged, and if so, with what crimes. The investigation is reportedly being hampered by a lack of witnesses, and a lack of adequate mechanisms to ensure witness protection.

Amnesty International considers that the Indonesian authorities should:

- Ensure that legal, administrative and other safeguards against torture and ill-treatment are strictly enforced ;
- Ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment in accordance with Article 10 of the Convention against torture.[49] This prohibition shall be included in the rules or instructions issued in regard to the duties and functions of any such person;
- Take special measures to ensure that guards and police officials are fully aware that discrimination, including on the basis of sexual orientation, is prohibited as grounds for ill-treating persons under any circumstances ;
- Keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture in accordance with Article 11 of the Convention against Torture ;
- Carry out effective, prompt and impartial investigations into allegations of torture and ill-treatment in custody, including through providing effective and sufficient measures for the protection of victims and witnesses;
- Take appropriate measure to prevent inter-prisoner violence.

5.2 CONDITIONS OF DETENTION - HEALTH CONCERNS (ARTICLES 2, 11 AND 16)

Although Amnesty International has not carried out specific research into health conditions in detention centres and prison facilities, it has noted specific health concerns with respect to detention conditions in Indonesia due to overcrowding, poor sanitation, lack of food and insufficient medical care in police custody, detention centres and prisons. These conditions, singly or in combination, may constitute cruel, inhuman or degrading treatment or punishment. They thus violate Article 16 of the Convention, as well as the relevant rules within the UN Standard Minimum Rules for the Treatment of Prisoners.

5.2.1 OVERCROWDING

Overcrowding is a serious problem in Indonesian detention centres and prisons, particularly in Java, which renders prisoners more vulnerable to sexual abuse and other ill-treatment. Although there is no agreed universal standard for cell size, it is essential to ensure that prisoners are never kept in severely overcrowded conditions, or subjected to extremes of heat or cold. Prisoners should also be protected from the damp and from the risk of fires, floods and earthquake.

In March 2006, local media reported that Salemba Penitentiary in Central Jakarta which has a maximum capacity of 826 prisoners housed 4,562 prisoners, and that the main Cipinang prison, which has a maximum capacity of 1,789, housed 4,257 prisoners.[50] The Ministry of Justice and Human Rights acknowledged at the time that overcrowding was a serious problem, particularly for security reasons, but little seemed to have been done to counter this

situation. A year later, in April 2007, Pondok Bambu Penitentiary, East Jakarta reportedly had more than three times the number of prisoners for which it was originally built. The number of prisoners (which comprises both women and juveniles) reached 1,623 whereas its maximum capacity is evaluated at 500.[51] The prison officers' response to this situation was apparently to encourage transfer of prisoners to other prisons in the country.[52]

5.2.2 POOR HYGIENE AND SANITATION

Places of custody need to maintain proper standards of sanitation and hygiene to avoid disease. Inadequate sanitary facilities can constitute ill-treatment in some circumstances. Standards for sanitation, hygiene, clothing and beds are set out in the Standard Minimum Rules.[53]

Corruption is reportedly endemic in the prison system with "fees" being extracted from prisoners to pay for everything including better bedding facilities or better food.[54] Amnesty International has often been told by former prisoners or family of victims that corruption is widespread, and can make life easier for those prisoners who can afford it. It is of particular concern as it means that most prisoners do not have access to basic facilities such as clean water, adequate food or adequate bedding facilities unless they can pay for it. This system of discrimination means too many prisoners are denied fair and equal access to basic facilities such as adequate food, clean water or bedding facilities *(see case below (d))*. [55]

(d) The case of Ignatius Mahendra

A former prisoner of conscience, [56] **Ignatuis Mahendra** (then 21 years old) was held in Wirogunan Prison in Yogyakarta from February 2003 until August 2005.

He was placed in a 'dry' cell with three other prisoners with no access to water for the first month of his detention. The cell was approximately 3m x 1.7m with the only light coming through from a hole the size of a fist.[57] The prisoners could not wash and if they wanted to go to the toilet they had to clean it with drinking water or with left over soup. In this cell, prisoners were not given any bedding facilities. Ignatius Mahendra had to sleep on the floor for about five days. After that he used a newspaper on which to sleep on. The cell doors only opened when food was brought in, then it was closed again. He was in this cell for a month. Then he was moved to a block on his own and he could not communicate with other prisoners.

During his stay in prison, Ignatuis Mahendra recalls the following:

Water: the drinking water he used to get was not fully boiled thus allowing bacteria to grow and there was a lot of mosquito larva in the water putting prisoners at risk of malaria or dengue. Ignatuis Mahendra reports that they did not have enough water to shower. They had to pay Rp 5.000 (0.55 US Dollar) every week in order to get a full bath of water to wash.[58] On one occasion when the water pump was broken, each detainee had to pay Rp 50.000 (5.5 US Dollar) to replace it.

* ***Food*****:** the food was not properly cooked and prisoners had to compete to get it. If a detainee was late he would get nothing. Rations were reduced in size. Every food item had a price.

* ***Bedding facilities*****:** There were no bedding facilities so he had to ask his family and friends outside the prison to provide them.

* ***Health:*** For all health problems, prisoners were given the same pill, and there were no regular health check ups.

* ***Beatings:*** In February 2003, Ignatuis Mahendra was beaten up by other prisoners, and threatened to be beaten up by the prison officer himself due to his former political activities.[59] In January 2004, he was threatened to be beaten up with a padlock if he organized a discussion with other prisoners. On 6 December 2004, he was beaten up by a prison officer.

* ***Visits:*** During his detention, some of his friends and family members from outside Yogyakarta were prevented from visiting him.

5.2.3 HEALTH ISSUES

Lack of adequate access to medical care, and failure to ensure that infectious or contagious diseases are not transmitted across a prison population due to overcrowding or an absence of appropriately segregated facilities, may amount to ill-treatment.[60]

In 2007, the Department of Health acknowledged that HIV/AIDS and tuberculosis in prison facilities was a major problem.[61] The main causes of the high rate of HIV infection seem to be injecting drug use and unprotected sex. Drug use is a major health problem in Indonesian prisons. In Jakarta, it is reported that there were 351 drug-related deaths in 2006 out of a population of 19,000 inmates.[1] Prisoners appear to be able to continue to use drugs with tacit support of corrupt wardens and prison guards during their stay. The use of drugs and the sharing of needles put prisoners at serious risk of contracting infections such as HIV and hepatitis.

In June 2007, the head of Gunung Sari Correctional Institute, Makassar, Sulawesi province, reported that 40 out of 700 prisoners tested positive for HIV. According to the local media, the number of HIV/AIDS cases in prisons in South Sulawesi province increased sharply between December 2006 and March 2007, from 1,232 cases to 1,441 cases –an additional 209 cases in only four months. [62]

Women are also at risk. Fourteen out of the 415 women prisoners incarcerated at Tangerang Women's Penitentiary were found to be infected with HIV in January 2007. Two died from AIDS-related illnesses -- one in January and the other in March 2007. According to reports the remaining twelve women who have HIV are now separated from the other prisoners and receiving intensive treatment at the prison's clinic.[63]Although Amnesty International welcomes the provision of intensive treatment for prisoners with HIV, prisoners should not be segregated on account of their HIV status. Prison authorities should instead take all

necessary measures to prevent infection, including the provision of clean injection equipment, condoms, HIV prevention information and voluntary testing. According to a prison official at Tangerang Women's Penitentiary, the overcrowding[64] in the prison led to other detainees becoming infected with HIV. Overcrowding in itself, however, is not a cause of detainees contracting HIV in prisons. The cause is more likely to be a result of sexual activity and sharing needles in drug use, which may become exacerbated in overcrowded conditions.

In May 2007, the Director General of correctional institutions at the Ministry of Justice and Human Rights indicated that 72.5 percent of deaths in 2006 in prison facilities were caused by infections including high fever, tuberculosis, pneumonia, hepatitis, diarrhoea and thrush, all of which were related to HIV/AIDS.[65] Poor nutrition and sanitation are likely to be additional triggering factors for these infections. The Department of Health announced in November 2007 that places of detention have become priority places to combat HIV/AIDS and tuberculosis including through ensuring patients have regular check-ups, receive directly administered anti-tuberculosis medication and are separated from others to avoid infection.[66]

This overall situation of prisons is even more of concern as often prisoners are not given access to appropriate medical care in a timely manner. Amnesty International has received many reports that prisoners have been denied access to adequate medicine or medical care. During his visit to Indonesia last November, the UN Special Rapporteur on torture found several prisoners in need of medical examination and treatment.[67] This situation is of particular concern given the gravity of some of the health issues that prisoners face (*see above*). This lack of medical care may be partly related to the lack of sufficient funding dedicated to medical care within the prison system. According to a recent media report, the Indonesian government only spends Rp500 (roughly 0.05 US dollar) per prisoner for medical costs.[68]

The lack of overall financial support to prison authorities leaves prisoners vulnerable to abuse. According to the Human Rights Committee, certain minimum conditions of detention must be respected regardless of a State party's level of development. These include minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, provision of a separate bed and provision of food of nutritional value adequate for health and strength. According to the committee, these requirements should always be observed, "*even if economic or budgetary considerations may make compliance with these obligations difficult*." [69] It is in the interest of the Indonesian government to ensure that all prisoners are granted adequate access to health care and remain healthy, including so that it does not lead to additional health hazards when prisoners return to their local community.

In addition, Amnesty International notes with concern that, according to the UN Special Rapporteur on torture, conditions in police custody facilities are usually worse than in prisons. There is often limited ventilation, no natural daylight and no possibility to exercise although detainees may be held in this pre-trial detention centres for months.[70]

Amnesty International considers that the Indonesian authorities should:

- Ensure that conditions in police lock-ups, detention centers and prisons are consistent with the requirements of international law and standards, in particular the UN Standard Minimum Rules for the Treatment of Prisoners,

including access to adequate food and water, sanitary facilities and medical care;
- Ensure that adequate financial resources are allocated to meet the UN Standard Minimum Rules;
- Take urgent measures to ensure that all prisoners have access to regular health check-ups and are provided with adequate medical care in accordance with their specific needs;
- Take steps to ensure that infectious or contagious diseases are not transmitted across prison populations, including the use of appropriate segregation facilities and provision of medication;
- Ensure that all necessary measures are put in place to prevent HIV infection among prisoners, including providing prisoners with clean injection equipment, condoms, HIV prevention information, medical treatment and voluntary testing.
- Review the adequacy of prison health services and increase where necessary the level of medical and nursing staff available to prisoners;
- Take steps to put in place measures, including non-custodial measures such as community service or alternative methods of punishment without resorting to cruel, inhuman or degrading treatment, in order inter alia to combat overcrowding;
- Publicly condemn corruption, investigate and prosecute all cases of extortion from and exploitation of prisoners by staff, and ensure that all prison staff and police officials are provided with fair salaries and benefits.

5.3 WOMEN AND CHILDREN (ARTICLES 2, 11 AND 16)

Separation of prisoners according to their sex, age, criminal record, legal reason for their detention and necessities of their treatment is essential to prevent violence and other abuses. This is particularly true for women and children who are at particular risk of sexual abuse and other forms of torture and ill-treatment while in custody. The Committee has often emphasised the need for women to be held separately from men and for children to be held separately from adults.[71]

In Indonesia, there are only 16 prisons for children with only one of them dedicated to girls.[72] Juvenile detention centres reportedly look very much like adult prisons and suffer similar problems including lack of adequate sanitary facilities with access to clean water and financial means to provide decent meals. For instance, 126 children are currently held in Blitar East Java Juvenile detention centre, in cells each measuring approximately seven meters by four meters and occupied by six or seven prisoners. It is reported that children who are considered difficult are placed in isolation and that there are only two sources of running water in the detention centre – both of which are filthy. There are occasional outbreaks of skin problems as a result of poor sanitation. According to media reports, the head of the detention centre acknowledged these problems but said that they were doing what they could on a very limited budget to address them.[73]

With more than 3,000 children between the ages of eight and 17 currently in detention,[74] the 16 special Juvenile detention centres cannot house all children in detention in Indonesia. Amnesty International is aware of children being held in pre-trial detention in adult facilities

in violation of international law and standards. **Muhammad Azwar, also known as Raju,** is an eight year old boy who was detained with convicted criminals following court orders for almost a month in an adult prison in Medan, Sumatra province. Raju was tried when he was only seven years old for a fight with another child at school in August 2005. Raju did not receive legal counsel until the sixth trial hearing.[75] This exemplifies violations of provisions of the Children's Act which state that the detention of children should only be used as a last resort[76], and that children should have access to legal aid throughout the legal process.[77] Local NGOs in East Java have also reported that most juveniles from Surabaya go to Surabaya adult facilities where they are vulnerable to abuse.[78]

Amnesty International has also observed cases where women have been held in pre-trial detention in police stations together with male detainees in cells which did not meet the UN Standard Minimum Rules. In particular, there were inadequate bedding facilities, lack of basic hygiene standards and overcrowding. [79]

In January 2007, the State Minister of Women's Empowerment Meutia Hatta asked the Department of Justice and Human Rights to allocate five percent of its budget to establish new prisons for women and children. Amnesty International welcomes this move and hopes that due attention will be given to the particular needs of children and women in detention.

Amnesty International considers that the Indonesian authorities should:

- Ensure that detention facilities and prisons for juvenile and women are managed in accordance with the UN Standards Minimum Rules;
- Ensure that children in detention are separated at all times from adults, including during pre-trial and trial proceedings, as are women from men, except where this would not be in the best interests of the child;
- Ensure that the specific needs of women and children are taken into consideration at all stages of detention and imprisonment.

6. CRUEL, INHUMAN OR DEGRADING PUNISHMENTS (ARTICLE 16)

6.1 DEATH PENALTY

Amnesty International considers the death penalty to be the ultimate cruel, inhuman and degrading punishment, as well as a violation of the right to life. The organization believes that the death penalty should be abolished both in law and practice in all countries and in all circumstances. In December 2007, the UN General Assembly voted for a global moratorium on executions. Amnesty International welcomes this resolution, and calls on all countries which still use the death penalty, including Indonesia, to establish an immediate moratorium on executions as a first step towards abolishing capital punishment. The Committee itself has often welcomed the abolition by states parties of the death penalty and moves towards such abolition.[80]

To Amnesty International's knowledge, at least 112 people are believed to be under sentence of death in Indonesia. Eleven of these were convicted and sentenced to death in 2007. At least one man was executed in 2007: **Ayub Bulubili** [81]. It was the first execution recorded by Amnesty International in Indonesia since September 2006. The organisation notes that there may be more people at risk of executions in Indonesia but it remains difficult to provide more accurate figures. This is due primarily to the government of Indonesia's reluctance to release detailed figures on those under sentence of death. Amnesty International urges the government to release such figures, and to ensure that disaggregated figures are released showing the name, number and age of those sentenced to death, the current status of their appeal and their place of detention.

The death penalty is provided for in Indonesian law for several crimes.[82] Two recently adopted laws, the Law on Human Rights Courts (Law 26/2000)[83] and the Law on Combating Criminal Acts of Terrorism (Law 15/2003) also contain provisions for the death penalty.

Executions in Indonesia are carried out by firing squad. The person under sentence of death has the choice of standing or sitting and of using a blindfold or cover for their head. Firing squads consist of 12 people each, six of whom are supplied with live ammunition and six whose guns are loaded with blanks. The squad fires from a distance of between five and 10 metres.

In Indonesia, as in all criminal justice systems, the application of the death penalty may lead to an irreversible miscarriage of justice. This concern is compounded by widely acknowledged problems within the Indonesian justice system *(see sections 3 and 5.1).* There is evidence that trials leading to the imposition of the death penalty have, in some cases, failed to

uphold international standards of fairness.[84] Among the violations reported to Amnesty International are the lack of access to lawyers, lack of access to interpreters and use of torture to extract confessions (*see case below 6.1(e)).*

Further, persons under sentence of death are often imprisoned for a prolonged period of time. For example, Amnesty International has recorded the case of one man who was sentenced to death 38 years ago, and who is still in detention.

(e) The case of Saka bin Juma

Saka bin Juma, an illiterate farm-worker and father of six, was sentenced to death for the premeditated murder of a family of three in November 1994. Following his arrest, he was taken to Reteh Police Sector (Polsek), Indragiri Hilir District, Riau, where he was allegedly tortured. On one occasion he was reportedly immersed in water for a period of around two hours. He described his treatment to an Indonesian newspaper, *"[At the police station] they beat me with sticks and whips to make me confess. They also burned my feet with matches. I still have the scars. Eventually, after 10 days, I couldn't take any more and told them I did it. I was in so much pain and knew I shouldn't have confessed but there was no alternative. I would have died and as it turns out, I am to be executed anyway. I should have let the police finish me off. I didn't have a lawyer in the courts as I didn't have any money and I don't understand things like that anyway".*[85] Saka bin Juma did not have access to legal representation during the police investigation or prior to his trial. He was given legal representation only when the trial started, denying him the right to legal advice during questioning and time to adequately prepare a defence. He was sentenced to death in Tembilahan District Court, Riau, on 17 May 1995. It is believed that he did not appeal his sentence, and there is concern that he may not have understood his right to do so. Saka bin Juma has claimed that he is not guilty of the murders, and that his confession was elicited through torture.[86] His request for Presidential pardon was refused in 2002. According to Amnesty International's current information, he is still detained in Pekanbaru, Riau province, at risk of execution.

Amnesty International considers that the Indonesian authorities should:

- Commute immediately all sentences to death to terms of imprisonment, and halt executions in line with the UN resolution calling for a worldwide moratorium on death penalty;
- Ensure that all relevant articles in Indonesian legislation containing provisions for the death penalty are amended so that the death penalty is no longer used as a form of punishment;
- Release comprehensive information on the number of prisoners currently under sentence of death in Indonesia, the date of sentencing, and the status of appeals against sentences; and information on the procedures for informing prisoners and their families when their execution is imminent;
- Conduct effective and impartial investigations into allegations of evidence extracted under torture for those who have been sentenced to death, including into the case of Saka bin Juma.

6.2 CANING

Although Amnesty International has not undertaken research on caning (or whipping) in Indonesia, it is aware that caning is being used in Aceh as a punishment meted out by Islamic courts for offences such as gambling, theft and adultery. At least 31 men and four women convicted of gambling were caned under local *Sharia* (Islamic law) in Aceh in 2005,[87] and at least eight people (five men and three women) convicted for gambling or adultery were caned in 2006[88]. Caning amounts to cruel, inhuman or degrading punishment and may amount to torture. Victims of caning experience pain, fear and humiliation, and caning can cause long-term or permanent injuries. Both the Human Rights Committee[89] and the Committee against Torture[90] have called for the abolition of judicial corporal punishments in various countries.

Amnesty International considers that the Indonesian authorities should:

- Immediately abolish caning both in law and practice.

7. ACCOUNTABILITY MECHANISMS (ARTICLES 5, 6, 7, 8, 9, 12, 13, 14 AND 16)

Despite the binding provisions of Articles 12, 13 and 14 of the Convention, which provide provisions on the right to access effective complaints mechanisms, independent investigation into allegations of torture and ill-treatment, the right to fair and adequate compensation for victims and their families as well as full rehabilitation among other reparations, [91] Amnesty International has recorded many instances whereby there have been no investigations into cases of torture and other ill-treatment, and where victims have been reluctant to submit a complaint to the relevant authorities. In a small number of cases of human rights violations, including torture and other ill-treatment, committed by the police force, there have been only internal investigations (*see section 5.1.2(c)*) or officers have been subject to internal disciplinary proceedings (*see section 3.1.1 (a)*). In cases of gross human rights violations, despite the creation of human rights courts, suspected perpetrators of such violations have often gone unpunished and victims left without justice or reparations (*see sections 7.3.2 and 7.3.3).* Amnesty International is also concerned by the use of military courts in the context of insurgency operations (e.g. Aceh) which are not impartial or independent.

7.1 TORTURE AND ILL-TREATMENT OF PERSONS ARRESTED FOR ORDINARY CRIMES (ARTICLES 12 AND 13)

7.1.1 INTERNAL COMPLAINT AND INVESTIGATION MECHANISMS

Victims can submit complaints about allegations of torture and ill-treatment to the police or military themselves or to the recently created National Police Commission in instances where police personnel are alleged to have carried out the abuse. However, Amnesty International is concerned that these internal mechanisms lack independence and impartiality, and may put victims and witnesses at further risk of abuses.

The National Police Commission which was created in 2005 lacks the mandate, independence and resources to be an effective complaints mechanism:

- ***The mandate***: As set out in the National Police Act (Law 2/2002), its main functions are: (1) to assist the President in setting policy direction for the National Police institution, and (2) to give advice to the President about possible reform within the institution (Article 38). Although it may receive complaints about police abuse and submit them to the President as part of his

duties (Article 38.2.c), it is not within its mandate to be an independent complaints mechanisms which can conduct investigations and submit cases for prosecution.

- ***Independence***: The National Police Commission largely remains a political body, whose chairperson is nominated by the President of Indonesia. A third of its members are ministers and it is not clear what degree of independence the National Police Commission has from the National Police force as its office sits at the National Police headquarters in Jakarta.
- ***Resources***: The Commission has yet to receive independent financial support to operate.[92] Further, the commission, which consists of nine members, is of a relatively small size given the size of the country and of its population. The National Police Commission has only one office, which is in Jakarta, and no office outside the capital, making it almost impossible for complaints to be effectively made outside Java.

Victims, including those in detention facilities, may report cases of abuse to the military, the police or any other relevant authority.[93] However in most cases the victims may be reluctant to report acts of ill-treatment committed by the very same institution which perpetrated them. It is thus essential to have alongside internal mechanisms an independent/external complaints mechanism, which has at its disposal an effective means of ensuring victim and witnesses' protection. Indonesia has yet to put in place a satisfactory independent complaints mechanism that victims, their families and lawyers, and NGOs can access everywhere in the archipelago to submit complaints of abuses by police, prison guards or the military.

The police or the military can technically investigate cases of 'maltreatment' or coercion during interrogation by state officials as provided for in the Criminal Procedure Code.[94] However Amnesty International is concerned that these investigations lack independence and impartiality. In order for the investigations and for any outcome, including prosecutions to be effective and be regarded as credible, persons belonging to the military or police who are alleged to have committed crimes under Indonesia's national law and violations of international law should be brought to trial in civilian courts in proceedings which meet international standards of fairness (*see section 7.3.1*). Although Amnesty International is not opposed to internal investigations or disciplinary measures, they should not replace or exclude independent/external investigations, to ensure compliance with the Convention's provisions, especially Articles 4.2, 12, 13 and 14.

7.1.2 EXTERNAL MECHANISMS

Komnas HAM, the National Human Rights Commission created by Presidential Decree No. 50 in 1993, is the main external complaints mechanism.[95] At the time of its inception, critics were concerned that Komnas HAM had been founded as a means of deflecting international political pressure regarding human rights violations in Indonesia. This lack of commitment on the part of the Indonesian Government to protecting and promoting human rights is reflected in Komnas HAM's weak mandate and by the fact of subsequent attempts by the authorities to erode further the power of the institution.[96] Although Komnas HAM has to some extent managed to gain some legitimacy both within Indonesia and abroad, its independence and capacity for action remain severely limited.[97]

Komnas HAM's mandate is laid out in Presidential Decree No. 50: it is to "*monitor and investigate the implementation of human rights and present views, considerations and suggestions to state institutions on the implementation of human rights*" (Article 5c). The Human Rights Act clarifies that Komnas HAM "*functions to study, research, disseminate, monitor and mediate human rights issues*" (Article 16). In particular, Komnas HAM is charged with and authorized to: investigate and examine incidents occurring in society which either by their nature or scope are likely to constitute violations of human rights (Article 89.3b) and submit recommendations concerning cases of human rights violations to the Government or the House of Representatives for their follow-up (Article 89.4.d & e). Komnas HAM's has offices in different parts of the archipelago, including in Java (Jakarta), Papua, West Sumatra, West Kalimantan, Sulawesi, and Aceh.[98]

Despite its formal mandate as a complaints mechanism, in practice Komnas HAM cannot conduct preliminary inquiries into every allegation of torture and ill-treatment because of its limited resources and weak mandate. This has meant that Indonesia lacks an effective, independent and impartial mechanism to receive complaints and conduct investigations into allegations of torture or other ill-treatment by police or military personnel, as well as other human rights violations, which are not categorised as a "gross human rights violation" (i.e. (i.e. crimes against humanity or genocide) under Indonesian law. In 2004, police officers used violence against students from the Indonesian Muslim University of Makassar, Sulawesi island. However, in an illustration of the weakness in practice of Komnas HAM, the preliminary inquiry undertaken by Komnas HAM was halted mid way as the case was not considered to be a "gross human rights violation". Instead, the complaint was transmitted directly to the police for further action although police officials themselves were accused of being the perpetrators in this case. This type of referral is of concern to Amnesty International as it may encourage impunity as well as put victims and witnesses at further risk of human rights violations, and weakens the legitimacy of Komnas HAM as an independent complaints mechanism in the eyes of victims.

(f) Recent cases of torture and other ill-treatment in Papua

Amnesty International has received reports indicating that at least nine individuals have been tortured and ill-treated by police or military in Papua between May and November 2007, and that at least six of them have died as a result. The torture and ill-treatment include beatings, threats, 'piercing' with needles and shooting at close range. Although Amnesty International cannot confirm these allegations, it is unaware of any independent and impartial investigations having being conducted into these deaths, although complaints in relation to some of these cases have either been submitted to the police or military, or to Komnas HAM.

Amnesty International is concerned at the lack of independent complaint and investigation mechanisms in place. This is aggravated in practice by the inadequate protection received by Komnas HAM staff. It is worth noting that the head of the Papuan branch of Komnas HAM, Albert Rumbekwan, received persistent threats during the same period that these alleged cases of torture and ill-treatment took place.[99] This climate of fear - even within Komnas HAM - coupled with the lack of a strong and independent complaints and investigation mechanism renders victims and their families unable or unwilling to make a complaint and get effective access to justice.

* On 26 September 2007, **Yane Waromi** (m), 19 years old was reportedly abducted from the street in Abepura by three men from the intelligence services**.** According to reports, the student at the Law Faculty of Cenderawasih University was detained for 18 hours in a private house in Jayapura during which he was tortured. He was reportedly threatened at gunpoint, and his body, including his fingers as well as his feet, wrists, elbows, knees, back and stomach were repeatedly pierced with needles ('*disuntik*'). Yane was forced to confess about the alleged pro-Papuan independence activities of his father, Edison Waromi. During this detention, the members of the intelligence services reportedly called Yane's mother to make her listen to her son being tortured, threatening to kill him unless his father ceased his alleged activities. Yane was forced into close proximity with a hot oven to be 'cooked'. Reports indicate that Yane eventually managed to escape. Although reports indicate that Yane has physically recovered from the incident, he is still traumatised by the experience and has not returned yet to university. One of his friends submitted a formal complaint about the incident to the Abepura police however the investigation has been halted because Yane is too scared to pursue the process**.**

Amnesty International considers that the Indonesian authorities should:

- Strengthen internal and external complaints mechanisms to ensure that victims of torture and other ill-treatment can safely access independent, efficient and impartial complaints mechanism with powers to bring about prosecutions;
- Institute procedures for the prompt and independent investigation of any cases of torture or ill-treatment, including those resulting in deaths (see case above (f)), to ensure that such cases are brought to the attention of relevant authorities by any means whatsoever;[100]
- Invest Komnas HAM with powers of an internal preventive mechanism in accordance with Part IV of the Optional Protocol to the Convention, or else establish a separate body with such powers in accordance with that Protocol.

7.1.3 PROTECTION OF VICTIMS AND WITNESSES

Some specific criminal legislation such as the Law regarding the Elimination of Violence in the Household (Law 23/2004) (*see section 8.2)* and the Law on Human Rights Courts (Law 26/2000) contain provisions on witness protection; however in the case of the latter they have proved ineffective in practice (*see section 7.3.2*).[101]

In July 2006, a general Witness and Victims Protection Act (Law 13/2006) was passed by national parliament. The law provides for the protection of witnesses and victims at different stages of the judicial process. Although this new legislation marks a positive step towards better protection of witnesses and victims, it continues to contain shortcomings which limit its applicability to certain individuals and groups. By using the same definition of a 'witness' as in the existing Criminal Procedure Code, it excludes from protection individuals who can provide information on 'non criminal' cases and 'experts', although both may be subject to various forms of threats. Concerns have also been expressed that although the law was passed over a year ago, it has yet to be operational in practice. The Witnesses and Victims Protection Institute (*Lembaga Perlindungan Saksi dan Korban*, LPSK), whose duty is to provide protection and assistance to witness and victims (Article 12), has yet to be

established and the Government Regulations on Compensation and Restitution for Witnesses and Victims and on the Assistance and Feasibility for Witnesses and Victims have yet to be adopted. Further, there is no effective legal framework for complainants to seek remedy.[102]

Amnesty International considers that the Indonesian authorities should:

- Establish the Witnesses and Victims Protection Institute as a matter of priority, and ensure that this unit is adequately staffed to provide support services such as counselling, information on the Indonesian judicial procedure, victims' rights and entitlements under Indonesian laws and in accordance with international standards ;
- Adopt government regulations on Compensation and Restitution for Witnesses and Victims and on Assistance and Feasibility for Witnesses and Victims as a matter of priority;
- Provide training to investigators, prosecutors and judges on dealing with victims/witnesses so they are able effectively to carry out their work in a protection-sensitive manner, and can avoid re-traumatisation of victims and witnesses.

7.2 GROSS HUMAN RIGHTS VIOLATIONS (ARTICLES 12, 13, AND 14)

7.2.1 THE HUMAN RIGHTS COMMISSION – KOMNAS HAM

Under Article 18 of the Law on Human Rights Courts, preliminary 'inquiries' [103] into cases of gross violations of human rights, including torture as a crime against humanity, may only be conducted by Komnas HAM, which may form an *ad hoc* team comprised of the National Commission on Human Rights and public constituents to carry out the inquiry. Amnesty International has expressed[104] its concerns that Komnas HAM is the sole body authorised to initiate and carry out this preliminary inquiry into alleged cases of gross human rights violations. The organization considers it necessary to clarify that the restriction on the conduct of inquiries concerning cases of gross human rights violations to Komnas HAM does not limit the ability of prosecutors to conduct such inquiries. A restriction on the ability of prosecutors to conduct inquiries could be inconsistent with their independence and contrary to the UN Guidelines on the Role of Prosecutors,[105] in that it limits their ability to select cases for investigation under Article 11.

7.2.2 THE ATTORNEY GENERAL

Article 21 and 23 of the Law on Human Rights Courts stipulate that the investigation (which excludes the authority to receive reports or complaints)[106] and prosecution of gross human rights violations, including torture as a crime against humanity, are to be undertaken by the Attorney General. Amnesty International is concerned that, because the Attorney General is a state minister and political official, there is a danger that decisions on whether to open an investigation and to prosecute could be, or be perceived to be, politically motivated if sufficient safeguards are not put in place to ensure that these decisions are made on the basis of neutral criteria, such as the sufficiency of admissible evidence.[107] In Amnesty

International's opinion it would be preferable if decisions on whether to investigate or prosecute were made by the relevant prosecutor, subject to review by the Attorney General under strictly objective, legal criteria, to be specified in the Criminal Procedure Code. Consideration should be given to the establishment of an internal advisory board to provide advice on such decisions to the Attorney General and prosecutors.

Amnesty International is also concerned that Komnas HAM has very limited powers once it has submitted its enquiry report to the Attorney General. Although Article 25 allows Komnas HAM to request at any time a written statement from the Attorney General concerning the progress of the investigation and prosecution of a case of gross human rights violations, including torture as a crime against humanity, Komnas HAM does not have the power to issue written orders requiring a person to appear before it (or *subpoena*). This severely hampers the Commission's capacity of action and has led in many cases to a freeze in pursuing alleged cases of gross human rights violations, including torture as a crime against humanity (*see below (g)).* Of the many cases that have been preliminarily investigated by Komnas HAM, including cases of torture and ill-treatment, many have never been brought before a human rights court or fully investigated by the Attorney General Office leaving perpetrators at large and victims without any reparations.[108]

(g) The Wasior and Wamena cases

In September 2004, Komnas HAM submitted inquiry reports to the Attorney General's office indicating that it had found initial evidence that suggested that security forces had committed crimes against humanity, including acts of torture in two separate incidents in Papua, in Wasior in June 2001[109] and Wamena in 2003[110]. The files in both cases were reportedly returned by the Attorney General's Office to Komnas HAM in late December because they were deemed to be incomplete. Amnesty International has been told that the files have since been resubmitted by Komnas HAM to the Attorney General. In April 2005 the Attorney General office had started their follow-up investigation into the Wasior case, but they could not advance the case because there was no budget to send a team to the field to conduct further investigations.[111] To date there have been no new developments into the case.

The lack of follow-up once Komnas HAM has conducted a preliminary inquiry can also be attributed to the lack of common interpretation of the Law on Human Rights Courts between the Attorney General office and Komnas HAM.[112] Komnas HAM has called for a review of the Law on Human Rights Court in the following areas: rules of procedure and evidence; mechanisms to resolve different conclusions being reached by the inquirer and the investigator; provisions related to the initiation of proposals to establish an ad-hoc human rights court; provisions conferring the inquirer with subpoena power and provisions providing adequate protection for victims and witnesses.

Amnesty International considers that the Indonesian authorities should:

- Revise the law on Human Rights Courts and other relevant legislation so that Komnas HAM is authorised to issue subpoenas in the process of its investigations, including preliminary inquiries;
- Revise the law on Human Rights Courts so that the Attorney General's office is granted sufficient powers to conduct its work effectively;
- Ensure that all alleged cases of torture and other ill-treatment, whether or not they may constitute crime against humanity as in the Wasior and Wamena case, are investigated promptly, independently and efficiently and that suspected perpetrators are prosecuted in proceedings that meet international standards of fairness.

7.3 ONGOING IMPUNITY (ARTICLES 5, 6, 7, 9, 12, 13 AND 14)

7.3.1 CIVILIAN AND MILITARY COURTS

Amnesty International is unaware if there have been cases in recent years where police or military officials have been found guilty in civilian (or criminal) courts for 'maltreatment' or 'coercion during interrogation' under the Criminal Code. The UN Special Rapporteur on torture has stated that in all his meetings with government officials, no one could cite a single case in which a public official was ever convicted by a criminal court of committing torture or other ill treatment.[113]

Cases of police abuse are rarely brought before civilian courts.[114] Most cases of police abuse seem to be handled through internal disciplinary mechanisms. These proceedings have resulted in warning letters, delayed promotions, or the imposition of short prison sentences. There are some cases (although rare) where torture or ill-treatment committed by members of the military have been investigated and tried by military courts. In the last military operations against the armed pro-independence movement (*Gerakan Aceh Merdeka*, GAM) in Aceh for example, the military took it upon itself to investigate a number of allegations of human rights violations, including acts of torture by its personnel and, in some cases, brought soldiers to trial before military tribunals.[115]

Cases which have been investigated by the military and in which trials of personnel of the security forces have taken place, while a positive step forward, represent only a fraction of the allegations of human rights violations, including torture and other ill-treatment, during the 2003/4 military campaign. Moreover, the investigation and trial of military officials by the military cannot be regarded as sufficiently impartial or independent. In order for the investigations and trials to be effective and to be regarded as credible, persons belonging to the military who are alleged to have committed crimes under Indonesia's national law, including torture and ill-treatment and infringements of international law should be brought to trial in civilian courts in proceedings which meet international standards of fairness.

According to the Minister of Defence the military cannot be subjected to the Criminal Code and prosecuted in civilian courts unless the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM), the Criminal Code and the Criminal Procedure Code are

amended.[116] Amnesty International notes that there are currently discussions in parliament about reforming the Law on Military Tribunals (Law 31/1997) so that members of the military who have violated the Criminal Code can be brought under the jurisdiction of civilian courts.[117] However, it notes with concern that the process of revision has been slow and that the Minister for Defence has called for a delay in the revision of the Law of at least three years.[118] Amnesty International believes that all cases of torture and deliberate acts of cruel, inhuman or degrading treatment perpetrated by the military should always be investigated and tried in civilian courts.

Amnesty International considers that the Indonesian authorities should:

- Take the necessary steps to ensure that all police and military personnel implicated in committing torture and other forms of ill-treatment are held accountable. Those individuals suspected of involvement in torture and other serious human rights violations including deliberate acts of cruel, inhuman or degrading treatment should be tried in civilian courts in proceedings which meet international standards of fairness.

7.3.2 THE HUMAN RIGHTS COURTS - THE ABEPURA CASE

The Abepura case was the first case of human rights violations committed after the adoption of the Law on Human Rights Courts to be investigated under this new legislation. Although a test case for the new legislation, Amnesty International is concerned at the long series of obstacles the investigation and trial proceedings faced. Not only was the Human Rights Commission hampered in its preliminary work, but victims and witnesses were intimidated during the investigation stage, victims and their families eventually did not receive any reparations in contradiction with Article 35 of the Law on Human Rights court,[119] and the perpetrators of human rights violations committed in 2000 in Abepura were not punished (*see below (h)).* This case is unfortunately symbolic of the current inefficiency of the Law on Human Rights court to hold to account perpetrators of gross human rights violations (*see section 7.3.3*).[120]

(h) The Abepura case

On the morning of 7 December 2000, police raided student hostels and other locations in Abepura, an area on the outskirts of Jayapura, the capital of Papua Province. The raids were carried out in apparent retaliation for an attack on Abepura Police Sector (Polsek) earlier that night, in which two police officers and a security guard were killed. The police fired shots during the raids on the hostels and beat and kicked students, many of whom were asleep when the raids began. During police operations one student was shot dead; two died as a result of torture; and around 100 people were arbitrarily detained. Many of those detained were tortured or otherwise ill-treated.

In large part because of the work of local human rights organizations in investigating and publicising the Abepura case, it drew national and international attention. Pressure resulted in the establishment of an investigation into the Abepura case. In January 2001 Komnas HAM announced that it would establish a Commission of Inquiry Papua/Irian Jaya (*Komisi Penyelidik Pelanggaran Hak Asasi Manusia Papua/Irian Jaya* – KPP HAM Papua/Irian Jaya)

with a view to bringing the case to justice in one of the permanent Human Rights Courts provided for under Law No.26/2000 on Human Rights Courts.

From the outset, the KPP-HAM Papua/Irian Jaya was obstructed in carrying out its investigation. In spite of the provision for Komnas HAM to initiate an initial inquiry into allegations of serious human rights violations under the Law on Human Rights Courts, the local office of the Ministry of Justice and Human Rights in Papua issued an official letter stating that the investigation was illegal and advising the Chief of Police for Papua not to cooperate with the investigators. Although the police did eventually agree to submit to questioning they refused to cooperate fully, prompting the investigation team to issue a public statement on 21 March 2001 in which it stated that the security forces were "not open in providing information and [were] even covering up facts"[121]. Albert Hasibuan, the head of the KPP-HAM also stated in a press interview that police questioning of witnesses following the KPP-HAM inquiry had left witnesses feeling scared and intimidated.[122]

Two Papuan members of the KPP-HAM investigation team were subjected to harassment. They were summoned twice for questioning in connection with defamation under Article 311 of the Criminal Code and Articles 154 and 155 of the Criminal Code which prohibited the "public expression of feelings of hostility, hatred or contempt towards the government",[123] although this was never pursued.

The KPP-HAM Papua/Irian Jaya investigation was completed in May 2001. The final report concluded that there was strong evidence of gross human rights violations, including torture, extrajudicial executions, persecution based on gender, race and religion and arbitrary detentions and restrictions on freedom of movement. The report named 25 members of the regular police and Brimob (Brigade Mobil) as possible suspects. They included senior officers within the regional police (Polda) and Brimob, including the chief and deputy chief of police for Papua. Moreover, the report recognized that the Abepura case was not an isolated incident, but part of a more general policy of repression in Papua, past and present.

The KPP-HAM report recommended that the Abepura case be investigated further and that the suspects be brought to trial in a Human Rights Court. The report was submitted to the Attorney General's office in May 2001. It was returned to Komnas HAM for further clarification and was then re-submitted on 16 August 2001.

Under the Law on Human Rights Courts the Attorney General's office is required to set up an investigation, which must be completed within 240 days of receiving the completed KPP-HAM report.[124] However, the Attorney General's office only sent an investigation team to Papua in April 2002, close to the legal deadline for the investigation to be completed. When criticized for the delay, the head of the Attorney General's investigation team reportedly stated that the completed KPP-HAM report had only been received on 28 March 2002.[125] According to media reports, the team interviewed 52 witnesses, including five police officers.

The report from the Komnas HAM inquiry team listed 25 suspects, but only two of these were charged by the Attorney General's Office, with no adequate explanation. The suspects were accused of allowing the killing of three Papuan students and the torture of over a hundred others. They remained free and on active duty during the trial. Despite legislation requiring

trials at the Human Rights Court to last no longer than six months, this trial was subject to continual delays, and lasted a total of 16 months – thus creating further distress for the victims and witnesses.

In September 2005, the two senior Indonesian police officers were acquitted. The Human Rights Court ruled that the crimes committed in the Abepura case did not constitute crimes against humanity, and therefore that there was no need to prove the charges of command responsibility - because it was necessary for crimes against humanity to have been committed for the men to be tried for command responsibility for those crimes. On this basis the two men were acquitted of both charges. The victims were also denied rehabilitation and compensation. In January 2007, the Supreme Court confirmed the verdict. By February 2007, the two police officers had resumed their duties and had even been promoted.[126]

Amnesty International considers that the Indonesian authorities should:

- Ensure that those responsible for the human rights violations which were committed in 2000 in Abepura (see case above (h)) are promptly brought to justice in proceedings that meet international standards of fairness, and that victims and their families receive due reparations;
- Ensure that lawyers, prosecutors, and judges are fully aware of the rights to compensation, restitution and rehabilitation for victims of torture and other-ill-treatment, and their families;
- Revise the Law on Human Rights Courts to expand their remit to include serious human rights violations, whether or not they amount to crimes against humanity.

7.3.3 THE CASE-STUDY OF TIMOR-LESTE

Despite the establishment of two separate processes for investigating, prosecuting and trying crimes, including acts of torture and ill-treatment, committed during the period surrounding the vote for independence of August 1999 in Timor-Leste (formerly known as East Timor), impunity for those crimes is still widespread. This is partly due to the unwillingness of the Indonesian authorities to cooperate with the Timorese justice process, and to the inadequacies of the Indonesian *ad hoc* human rights court which was set up in Indonesia to deal specifically with these crimes. [127]

The Timorese justice process

Amnesty International has welcomed the UN Security Council's decision in resolution 1704 (2006) to deploy a team of experienced investigative personnel to resume the investigative functions of the former Serious Crimes Unit (SCU) with a view to completing investigations into outstanding cases of human rights violations committed in the country in 1999. However, it regrets that the SCU prosecutorial functions have not been revived and the Special Panels for Serious Crimes have not been re-established. Further, there is still no

extradition agreement between Indonesia and Timor-Leste nor any form of effective mutual legal assistance framework to enable the arrest and transfer of indictees currently at large. By November 2004, 290 out of the total 391 indicted persons, about three quarters of the total, were still in Indonesia.[128] In some cases, individuals who have been indicted for serious crimes, including torture and ill-treatment in Timor-Leste are still currently holding important functions in the military.[129]

The Indonesian government has publicly said that it will not cooperate with the Timor-Leste government in bringing to trial persons against whom indictments have been presented to the Special Panels, specifically with regard to the seven military officers and one civilian official charged with senior command responsibility for crimes against humanity in the indictment against General Wiranto and seven others, issued in February 2003. [130] The Indonesian Foreign Minister, Dr. Hassan Wirajuda, said at the time that his government would "simply ignore" the indictments, on the grounds that the UN had no mandate to try Indonesian citizens in Timor-Leste.

This, and the fact that three of the eight, including General Wiranto and General Zacky Anwar Makarim, have not been prosecuted in Indonesia is in violation of Articles 5, 6, 7 and 9 of the Convention.[131]

Indonesia's refusal to cooperate with the Timorese justice process has continued. In August 2005 Indonesia and Timor-Leste set up a Truth and Friendship Commission (CTF) in order to document the 1999 crimes and to promote reconciliation. However, Amnesty International is concerned that this Commission can recommend amnesties for serious crimes under international law, including crimes against humanity.[132] In July 2007, the UN Secretary-General instructed UN officials not to testify before the CTF because it could recommend amnesty for serious crimes. National and international observers have expressed concerns about the CTF's treatment of victims during hearings, and possible biased weighting of the testimonies of military officials, militia members and bureaucrats over victims' testimonies.[133]

The Indonesian justice process

On 22 September 1999 Komnas HAM used its powers under a government regulation expressly issued for the purpose to set up a special team, the National Commission of Inquiry on Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggaran HAM di Timor Timur*, KPP HAM). The Commission was set up to investigate human rights violations, including torture and ill-treatment, in Timor-Leste during the period from 1 January to 25 October 1999. The KPP HAM report, released in January 2000, recommended the prosecution of suspected perpetrators through Indonesian national institutions. The report contained substantial evidence of a widespread and systematic campaign of terror involving crimes against humanity. Findings such as these were controversial given the military's well-documented influence in Indonesian politics and are a reflection of Komnas HAM's ability to conduct preliminary inquiries into gross human rights violations.

In February 2000, the Attorney General announced that priority was to be given to the investigation of only five incidents out of the 670 cases documented by KPP HAM. The cases

selected by the Attorney General for investigation pertained solely to the killings of civilians. While many of the crimes committed in Timor-Leste did involve such killings, these were not the only crimes. Torture and other ill-treatment, including rape and other crimes of sexual violence, forcible transfer of population and destruction of property have also been documented. Not one incident of any of these other crimes has been investigated or prosecuted in Indonesia.

The representatives of the Judicial System Monitoring Program (JSMP) who observed the process in the *ad hoc* Human Rights Court identified some disturbing patterns. The first three trials were characterised by the consistently low quality of the prosecution's work. Lack of adequate training and skills was clearly one reason for this, but the situation was so striking as to raise questions about whether the prosecution teams were in fact trying in good faith to mount cases designed to secure convictions. Among the issues of particular concern were witness selection; the failure to introduce well-documented evidence regarding the incidents that the prosecution were authorized to investigate; and ineffective, incompetent and at times intimidating questioning of witnesses, especially victim-witnesses from Timor-Leste.[134]

Six of the 18 defendants tried by the *ad hoc* Human Rights Court were found guilty of crimes against humanity.[135] All but Eurico Guterres, a Timorese militiaman, were sentenced to terms of imprisonment below the specified minimum legal limit for these crimes - both of the two articles under Law 26/2000 with which all the defendants were charged, murder as a crime against humanity (Article 9a) and assault/persecution as a crime against humanity (Article 9h) carry a minimum prison sentence of 10 years. It is unclear on what legal basis the judges were able to ignore these provisions. All six who were convicted were eventually acquitted at different stages of the appeal process.[136]

Amnesty International considers that the Indonesian authorities should:

- Extradite for trial those charged by the Serious Crimes process in Timor-Leste, and remove from active duty those who have been indicted for serious crimes pending trial;
- Revise the terms of reference of the Truth and Friendship Commission to ensure that it no longer contains provisions allowing amnesties for serious crimes;
- Review the KPP-HAM report and issue additional indictments as appropriate;
- Review prosecutions before the ad hoc Human Rights Court and re-open them as appropriate.

7.3.4 OTHER INITIATIVES OF TRANSITIONAL JUSTICE

Many of the human rights violations, including acts of torture and ill-treatment which occurred under the rule of General Suharto and during the *reformasi* period (from 1998 onwards), have not been independently investigated and prosecuted leaving many perpetrators at large and victims without justice, truth or reparations (*see below (i)*).

In recent years, Indonesian authorities have tried to deal with past human rights violations by establishing transitional justice mechanisms. However, these initiatives have generally been in conflict with the need for accountability and justice. In particular, both the terms of

reference of the Truth and Friendship Commission *(see section 7.3.3*) and of the Law on the Truth and Reconciliation Commission (Law 27/2004) contain provisions allowing amnesties for perpetrators of serious human rights violations.

In December 2006, the Constitutional Court declared null and void the article in the Law on the Truth and Reconciliation Commission providing that reparations for victims of serious human rights violations would be awarded only when amnesty is granted to the perpetrator.[137] Considering that the annulment of that individual article would render the rest of the law unenforceable, the Court declared the Law in its entirety to be unconstitutional. This annulment has left victims of past human rights violations without a mechanism for reparations.[138]

A new draft law to establish a truth commission is currently under preparation at the Ministry for Justice and Human Rights. Amnesty International calls for the establishment of a new truth commission in accordance with the organization's "*Checklist for the establishment of an effective truth commission"*[139] as one step towards ensuring accountability for past crimes. The new law must not grant amnesty for torture or other crimes under international law. Furthermore, it must not limit the right of all victims to full and effective reparations.

The establishment of a truth commission must not, however, be the sole initiative to bring about truth and accountability. To ensure that there can be no impunity, the government must establish a comprehensive plan of action to investigate and prosecute all crimes of torture and other crimes under international law before competent, impartial and independent courts which guarantee the right to a fair trial and do not implement the death penalty.

Furthermore, a national program should be established to provide reparations (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in accordance with international standards) to all victims of torture and other crimes under international law. The process should be victim-focused by engaging victims and taking into account their views at all stages of the development and implementation of the program. The program should be funded by the government. To ensure the effectiveness of the program, victims should be able to challenge decisions taken about the program, for example the scope of beneficiaries, the forms of reparations available and other matters, including through judicial review before a competent, independent and impartial court. Furthermore, to the extent that the program does not provide full and effective reparations, victims should be able to seek other reparations measures before national courts.

(i) The case of Aceh

In Aceh, no perpetrators have ever been brought to trial for any of the thousands of cases of human rights violations, including torture and ill-treatment, believed to have taken place between 1989 and 1998 when the province was a military operations zone (*Darurat Operasi Militer*, DOM). Amnesty International knows of only two instances in which cases have been investigated and resulted in trials between 1998 and May 2003[140], and only few cases of human rights violations have been dealt with during the subsequent period of military and civilian emergency (May 2003- August 2005) *(see 7.3.1 civilian and military courts*).

Although the peace agreement between the Indonesian government and the armed pro-independence movement (*Gerakan Aceh Merdeka*, GAM) in August 2005 contained provisions for the establishment of an Acehnese branch of the Truth and Reconciliation Commission,[141] such a body has yet to be established. It is unclear whether the Constitutional Court decision of December 2006 (*see above, section 7.3.4*) affected the project of a truth commission in Aceh. Some organizations have argued that there is no need for a national branch to be set up first for the Acehnese branch to function.[142]

The Aceh Governance Bill, passed by Parliament in July 2006, provided for a Human Rights Court to be established in Aceh (in accordance with provisions set out in the peace agreement[143]) to try perpetrators of future violations. However, it contained no provisions to bring to justice perpetrators of past human rights violations, including torture and ill-treatment. Amnesty International is convinced that combating impunity for past human rights violations is an important factor in ensuring the success of the peace process. The lack of justice for victims of human rights violations, including torture and ill-treatment, is one of the elements which has fuelled the Acehnese conflict for years. Further delays in holding perpetrators of past human rights violations and abuses to account risk disrupting the current peace process.

Amnesty International considers that the Indonesian authorities should:

- Ensure that the new truth commission is established and functions according to international law and standards;
- Ensure that perpetrators of past human rights violations and abuses, including torture and ill-treatment in Aceh are held effectively to account;
- Establish reparations program to provide reparations (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of torture and other crimes under international law.

8. THE APPLICATION OF THE DOMESTIC VIOLENCE LAW: THE CASE OF WOMEN DOMESTIC WORKERS

The Committee has consistently expressed concerns over violence against women by non-state actors and called for measures to protect women against such violence.[144] In its report entitled "*Exploitation and abuse: the plight of women domestic workers*",[145] Amnesty International highlighted cases of physical, sexual and psychological violence against women and girl domestic workers in Indonesia. The UN Special Rapporteur on violence against women has stated that in certain circumstances, violence against women by private actors, including gender-based violence that is perpetrated against women and girls in the domestic sphere, should be considered a form of torture if it is severe and if the state fails to take appropriate steps to prevent and punish it.[146] Such cases of abuse against domestic workers are under-reported to the police, mirroring a pattern which is prevalent in cases of violence against women in Indonesia. Isolated from their family and friends, women domestic workers risk losing their jobs if they speak out, a risk most of them do not feel in a position to face. Their fear, coupled with the failure of government authorities to protect domestic workers' rights and to prevent, investigate and punish abuses committed against them leaves much of the violence and other abuses perpetrated against such women and girls in the shadows.

8.1 STATE FAILURE TO PROSECUTE CASES OF VIOLENCE AGAINST DOMESTIC WORKERS (ARTICLES 2.1 AND 16)

Successful prosecutions of domestic violence, which in the vast majority of cases is directed against women, and other forms of gender-based violence against women are relatively rare considering the scale of the phenomenon.[147] Many women are reluctant to file formal complaints. The few who do frequently retract their statements subsequently, so that most cases never reach the courts. Women domestic workers' reluctance to report incidents to the police is grounded in cultural, economic and educational factors.

First, women may be ashamed to disclose incidents, especially of sexual harassment or violence, to the police. One domestic worker interviewed explained that she did not go to the police because she thought they were all male. In Indonesia, it is still taboo to speak openly about sex, and attitudes women and girls should adopt about sexual relationships are carefully coded. Extra-marital relationships are criminalised in law. Article 254 of the Criminal code provides that any married man or woman who commits adultery or who takes direct part in a sexual act knowing that the partner is married is to be punished by a maximum imprisonment of nine months. This means that women domestic workers may be

reluctant to report sexual abuse if they are married themselves or if the perpetrator of the abuse was married him/herself at the time of the incident for fear of being themselves accused of breaking the law. Although discussions over the controversial pornography law have shown an increased divide within Indonesian society over these issues, a conservative attitude nurturing gender stereotypes whereby a woman must be confined to the private sphere and refrain from having sexual relationships before marriage still prevails, especially among the least educated. In this context, female domestic workers may feel too intimidated to disclose particularly intimate incidents to the police, a male dominated institution. Amnesty International notes that this reluctance by women domestic workers to testify may be overcome, or reduced, if there was more awareness about the recently established gender desks exclusively staffed by female police officers in police stations.[148]

Secondly, domestic workers may fear losing their jobs or not finding other jobs subsequently if they speak out. This is especially true if the case goes to court, as the process may take a long time and often discredits the worker not only in the eyes of her current employers, but also of any potential future ones. Additionally, the legal process can be time consuming, making it difficult for the domestic worker to continue working while going through court proceedings.

Lastly, victims may not be aware that domestic violence is a crime. Article 12 of the Law Regarding Elimination of Violence in the Household (Domestic Violence Act) (Law 23/2004) provides that the government is to "*organize communication, information, and education regarding violence in household; organize socialization and advocacy regarding violence in household; and organize gender-sensitive education and training on the issue of violence in household and shall establish gender sensitive service standard and accreditation*". However, much remains to be done to publicize the law and to implement its awareness-raising provisions. The Domestic Violence Act remains poorly known, even among judges, and domestic workers are among the last to be informed about their rights in this regard. An overwhelming majority of the domestic workers interviewed by Amnesty International delegates in February/March 2006 had not heard about the Domestic Violence Act and did not know it was applicable to their situations.

Cases of violence and other abuses against domestic workers reported to the police rarely make it to court. Most are instead settled through "mediation" outside the scope of the legal system. Domestic workers and employers come to an agreement, usually financial, to resolve the matter in private and any criminal charges pending against the perpetrator are dropped. Amnesty International was told that these practices are facilitated to some degree by the higher social status and financial weight of employers compared to those of domestic workers. While employers are often in a strong position to bargain on a financial amount to settle the case and thereby avoid criminal punishment, domestic workers have little option but to accept what their employer offers. With corruption rife across the judiciary and police system, these practices mean impunity for perpetrators and lack of access to justice for victims, potentially fuelling a cycle of abuse whereby perpetrators go free and commit abuses again.

If a case goes to court, domestic workers may still face obstacles. There may be some reluctance among police, prosecutor's offices, judges and lawyers to tackle the case due to a

persistent belief that domestic violence remains a private issue which does not require state intervention. Many believe that the victim herself, rather than the perpetrator, is responsible for the violence she endured, having provoked such violence by not carrying out her work properly.[149] According to local NGOs these obstacles to victims' access to justice are further exacerbated by a lack of respect for domestic workers within the judiciary itself. Domestic workers are victims of their low status within Indonesian society. Poorly educated, low skilled, from poor backgrounds, conducting menial tasks and without career prospects, they are often considered and treated as second-class citizens. [150] Their lower status in Indonesian society is also explained by gender prejudices and stereotypes which exist in relation to their work. Domestic work is seen as less important than other types of work as women have been doing it without formal payment for centuries.[151]

Amnesty International considers that the Indonesian authorities should:

- Publicize the Domestic Violence Law and relevant services, such as the recently established gender desks in police stations, to domestic workers, their employers and recruitment agents, including through the media;
- Conduct training to ensure that legal practitioners, including judges and prosecutors, and police are fully briefed about the content and applicability of the Domestic Violence Law;
- Make police aware that their decision to pursue a criminal investigation should not be affected by whether or not compensation has been offered or accepted.

8.2 LIMITED PROTECTION FOR VICTIMS OF GENDER-BASED CRIMES (ARTICLES 2.1, 12 AND 16)

Until very recently, the absence under Indonesian law of protections for victims and witnesses during the investigation of a criminal offence and before, during, and after trial (*see section 7.1.3 above)*, has proved a substantial impediment to the effective investigation and prosecution of crimes involving violence against women. These crimes have been difficult to prosecute successfully in the past because, among other things, they often occur in private where no witnesses are present, and victims are often reluctant to report the crime or to testify in court for fear of reprisals and stigmatization.

Protections available to victims and witnesses have significantly increased in the wake of the passing of the Witness and Victims Protection Act, and of the Domestic Violence Act. The Domestic Violence Act details extensively the protections and services to be provided to victims of domestic violence. The Witness and Victims Protection Act and the Domestic Violence Act may be used in conjunction with one another.[152]

However, there are still deficiencies in the legislation in Indonesia in addressing the particular challenges of investigating gender-based crimes, including crimes involving sexual violence. These, in conjunction with limitations in the provisions of services, will negatively impact on the ability of a victim or witness to avail themselves of protection and services.

Amnesty International is concerned that the current draft of the revised Criminal Procedure Code requires that a victim or witness be present in court to make their testimony, in

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

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

The Domestic Violence Act provides that various services be offered to victims or witnesses of domestic violence, including that they be provided with health care and taken to a safe house or an alternative dwelling. Although government-sponsored and NGO-run crisis centres and shelters providing support and secure accommodation for domestic worker victims of violence are available in Jakarta and other major cities, they are not widely available in more isolated areas, especially outside Java. There are also only a limited number of hospitals which have expertise in dealing with violence against women, especially outside major cities. Health providers that Amnesty International met in Jakarta explained that currently treatment and counselling are available for free in some hospitals for victims of domestic violence. Although these are positive steps, Amnesty International is concerned that the limited provision of the services required by victims of domestic violence may mean that many domestic workers do not have access to these services. Domestic worker victims of domestic violence may also be impeded in accessing these services due to their geographical isolation, or may simply not know that the services exist.

Amnesty International considers that the Indonesian authorities should:

- Ensure that courts employ all relevant provisions available in the Witness Protection Act and the Domestic Violence Act to minimise the trauma and fear experienced by victims and witnesses, and to provide appropriate protection for victims and witnesses;
- Ensure that treatment and counselling services for women who are victims of gender-based violence are available in hospitals and other medical institutions throughout the country, and that these services are well publicised and accessible, including to domestic workers.

ANNEXE 1 – RELEVANT ARTICLES IN THE CONVENTION AGAINST TORTURE

Article 1

1. For the purposes of this Convention, the term "torture" means 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.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

ENDNOTES

1 Indonesia: Consideration of reports submitted by State Parties under Article 19 of the convention – Second periodic reports of State parties due in 2003, Addendum, UN Doc. CAT/C/Add.1, 25 August 2005 (Indonesia's second periodic report).

2 In "New Law needed to implement the UN Convention against Torture in Indonesia", Taufik Basari, http://www.article2.org/mainfile.php/0502/226.

3 General Suharto took control of Indonesia in 1965 and officially became president in 1968. He ruled the country until his resignation in 1998. During his presidency, freedoms of expression and assembly were severely curtailed, and human rights violations were committed on a large scale. See "Indonesia: Atrocities conducted under Suharto should not be forgotten", 28 January 2008, http://www.amnesty.org.uk/news_details.asp?NewsID=17626.

4 In its reservation, the Indonesian government stated that it "does not consider itself bound by the provision of 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 article, may be referred to the International Court of Justice only with the consent of all parties to the disputes".

5 See section XA "fundamental human rights".

6 In this document, the term prisoners is used as a generic term to refer to people held under any form of detention or imprisonment, including people held in pre-trial and administrative detention. Where necessary, there is a distinction between convicted prisoners (people imprisoned because they have been convicted of an offence) and unconviicted prisoners or detainees, including pre-trial detainees and people held in administrative detention.

7 See Annexe 1 which lists the relevant Convention's articles that are used in the present document to facilitate the general public's understanding.

8 Committee against Torture, "Summary record of the 492nd meeting - Indonesia", 16 November 2001, UN Doc. CAT/C/SR.492, 26 November 2001, para. 20.

9 Ibid., para. 12.

10 Committee Against Torture, Initial reports of States parties due in 1999: Indonesia, UN Doc. CAT/C/47/Add.3, 7 February 2001, para. 18.

11 "Every person has the right to be free from torture or treatment that insult human values"

12 "the right to life, the right not to be tortured, the right of individual freedom, mind, and soul, the right not to be enslaved, the right to be admitted … are non derogable rights which cannot be restricted in any situation by anybody".

13 Article 28G.2: "Everyone has the right to be free from torture or inhuman or degrading treatment and has the right to seek asylum in another country" and Article 28I.1 "the right to life, not to be tortured… are non derogable human rights".

14 "Summary record of the 492nd meeting - Indonesia", supra n. 6, para 12.

15 Indonesia's second periodic report para 37.

16 Ibid, paras 25 and 28.

17 The reform of the current Criminal Code was first initiated in 1973, and the current drafting team has been working on the revision since 1983 in "List of Issues submitted to the UN Committee against Torture", Indonesian NGO Working Group on the Advocacy against Torture, 27 August 2007.

18 Conclusions and Recommendations of the Committee against Torture: Indonesia, UN Doc. CAT/C/XXVII/Concl.3, 22 November 2001, para. 10(a).

19 See "Amnesty International's Comments on the Law on Human Rights Courts (Law No.26/2000)",

AI Index: ASA 21/005/2001.

20 "Crimes against humanity (…) include any action perpetrated as a part of a broad or systematic direct attack on civilians, in the form of (…) f. torture" (Article 9).

21 Indonesia's second periodic report, para 23.

22 Concluding Observations of the UN Committee Against Torture: Indonesia, Report of the Committee against Torture, UN Doc. A/57/44 (2002), para 44(a).

23 Ibid., para 45(a).

24 See "Comments on the draft revised Criminal Procedure Code" (AI Index: 21/005/2006). The comments are based on a draft of the revised Criminal Procedure Code obtained on 15 September 2005 from the Ministry of Justice and Law website.

25 See Annexe 1.

26 The legal provisions highlighted in this paragraph are kept in the same form in the draft revised Criminal Procedure Code, see Articles 50, 109.1, 61, 146.3 &5, and 159.

27 "In examinations conducted during the investigation and at trial, the suspect or defendant must have the right to freely give information to an investigator or judge" (Article 52). The elucidation states that a suspect or defendant must be kept away from the feeling of fear. Therefore the application of force or pressure against a suspect must be prevented.

28 "A suspect and/or witness must give evidence to the investigator without pressure from anyone or in any form" (Article 117.1).

29 "A defendant is not required to provide evidence" (Article 66).

30 "The judge as chair of the session must ensure nothing is done or no question is asked that results in the defendant or a witness not being free in giving his or her answer. Failure to comply results in the annulment of the decision for the sake of law". Articles.153.2.b & 4).

31 "Questions in the nature of a trap may not be asked to either the defendant or witness" (Article 166). The elucidation states that this is in line with the principle that a defendant or witness must be free to give his testimony at all levels of examination. In an examination, an investigator or prosecutor may not exert pressure in any way.

32 Under the existing Criminal Procedure Code (Article 183) as well as the draft revised Criminal Procedure Code (Article 178), a criminal charge is proven when the judge is convinced, based on at least two pieces of evidence, that the criminal act has really been committed and that it is the defendant who is guilty of perpetrating it.

33 US State Department of Human Rights, Country Report Indonesia, 7 March 2007, http://www.state.gov/g/drl/rls/hrrpt/2006/78774.htm.

34 Article 1.10 of the existing Criminal Procedure Code.

35 Article 72 of the draft revised Criminal Procedure Code.

36 See for instance concluding observations on Uganda, UN Doc. CAT/C/CR/34/UGAm 21 June 2005, paras. 6(b) and 10(f); Sri Lanka, UN Doc. CAT/C/LKA/CO/2, 15 December 2005, para. 8; and Nepal, UN Doc. CAT/C/NPL/CO/2, 13 April 2007, para. 14 (b). The right to be brought promptly before a judge or other officer authorized by law to exercise judicial power is also provided in Article 9(3) of the Covenant on Civil and Political Rights, to which Indonesia is a state party. In its General Comment on Article 9, the Human Rights Committee has stated that the time taken for this to occur should not exceed a few days. See Human Rights Committee, General Comment 8, Article 9 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 8 (1994), para. 2.

37 See "Comments on the draft revised Criminal Procedure Code" (AI Index: 21/005/2006), p5.

38 See Articles 123.1&3 of the existing Criminal Procedure Code, and Article 115 of the draft revised Criminal Procedure Code.

39 Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January - 12 February 1999), UN Doc. E/CN.4/2000/4/Add.2, para. 99.

40 ICCPR, Article 14(3), Basic Principles on the Role of Lawyers, 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, Principle 1 and Body of Principles, Principle 17(1).

41 Report of the UN Special Rapporteur on torture, UN Doc. A/56/156, 3 July 2001, para 39(f).

42 See "New human rights violations, old patterns of human rights abuses in Aceh" (AI Index: 21/033/2004), pp19-20.

43 See "New military operations, old patterns of human rights abuses in Aceh" (AI Index: 21/033/2004).

44 See Indonesia's second periodic report, paras 32-33.

45 There were 207 prisons and 190 detention centres in Indonesia as of early 2007. Detention centres are used for holding suspects before trial or, in some cases, convicted prisoners whose appeals are pending. See International Crisis Group, "Deradicalisation and Indonesian prisons", November 2007, p2.

46 Report of the Special Rapporteur on Torture, Mission to Indonesia, 7 March 2008, paras. 20-21-22.

47 Report of the Special Rapporteur, March 2008, para 19.

48 International Crisis Group, "Deradicalisation and Indonesian prisons", November 2007, p4.

49 See Annexe 1.

50 The Jakarta Post, 3 March 2006.

51 It is a small improvement compared to March 2006, where it was reported that Pondok Bambu's prison had 1,732 inmates. See the Jakarta Post, 3 March 2006.

52 The Jakarta Post, 3 March 2006. See also Report of the Special Rapporteur, March 2008, e.g. paras. 27-8, 38, 67.

53 See Rules 12, 13, 14, 15, 17 and 19 of the Standard Minimum Rules.

54 See The Jakarta Post, 28 April 2007, and International Crisis Group, "Deradicalisation and Indonesian prisons", November 2007, pp3-4.

55 See also report of the Special Rapporteur, March 2008, e.g. paras. 30, 35, 37.

56 See "Indonesia: Prisoners of Conscience Action 2004, Case sheet: Ignatuis Mahendra Kusuma Wardhana and Yoyok Eko Widodo", AI Index: ASA 21/016/2004, 1 May 2004.

57 Rule 11 of the Standard Minimum Rules states that where prisoners are required to live or work, the windows shall be large enough to read or work by natural light, and shall be so constructed that they allow the entrance of fresh air whether or not there is artificial ventilation.

58 In Indonesia, people usually use a bath full of water to wash themselves.

59 Ignatius Mahendra, the Chairperson of the Yogyakarta branch of the National Democratic Student's League (Liga Mahasiswa Nasional untuk Demokrasi, LMND), was found guilty of "insulting the President or Vice-president" after participating in a peaceful demonstration. He was sentenced to three years' imprisonment.

60 See in this context Rules 22, 24 and 25 of the Standard Minimum Rules.

61 Tempo, 2 November 2007.

62 Antara, 11 June 2007.

63 The Jakarta Post, 2 May 2007.

64 The prison which is designed to have only 300 women has 415 prisoners.

65 The Jakarta Post, 1 May 2007.

66 Tempo, 2 November 2007.

67 Report of the Special Rapporteur, Appendix 1, March 2008, paras. 34, 40.

68 The Jakarta Post, 5 May 2007.

69 See Albert Womah Mukong v. Cameroon, (application 458/1991), UN Doc. CCPR/C/51/D458/1991, 21 July 1994, para. 9(3). The Human Rights Committee refers to Rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules.

70 Report of the Special Rapporteur, March 2008, para. 34 and Appendix 1, paras. 45, 62, 132, 150.

71 See for instance in Reports of the Committee against Torture, UN Doc. A/59/44 (2003-4), para. 44 (regarding Cameroon), paras. 86-7 (re the Czech Republic), para. 134 (re New Zealand); UN Doc. A/61/44 (2005-6) para. 24(14) (re Austria), para. 25(14)(re Bosnia and Herzegovina), para 36(19) (re Togo).

72 Tempo, 17 January 2007.

73 The Jakarta Post, 2 August 2006.

74 The Jakarta Post, 1 August 2006.

75 The Jakarta Post, 25 February 2006

76 Article 16.3.

77 Article 17.2.

78 US State Department of Human Rights, Country Report Indonesia, 7 March 2007.

79 Visit to Java, Indonesia, by AI delegates in February 2006.

80 See for instance the Concluding observations of the Committee against Torture: Armenia, UN Doc. A/56/44 (2000), para. 35(b); Cyprus, UN Doc. A/58/44 (2003), para. 33(e); Estonia, UN Doc. CAT/C/CR/29/5, 23 December 2002, para. 4(b); Turkey, UN Doc. A/58/44 (2003), para. 120(a); Ukraine, UN Doc. A/57/44 (2002), para. 55(d).

81 For details see Amnesty International Urgent Action, UA/96/07, ASA 21/005/2007, 23 April 2007, and follow-up.

82 Specifically, the death penalty is provided for in the following provisions of the Indonesian Criminal Code: Article 104 (The attempt with intent to deprive the President or Vice-president of his life or liberty or to render him unfit to govern); 111 (collusion with a foreign power resulting in war); 123 (entering military service in a country at war with Indonesia); 124 (assisting the enemy); 127 (fraud in delivery of military materials in time of war); 140 (premeditated murder of the head of a friendly state); 340 (murder with deliberate intent and premeditation); 365 (theft resulting in murder); and 444 (piracy resulting in the death of a person). The following laws also contain provisions which allow for a maximum sentence of death: Emergency Law no. 12/1951; The Military Criminal Code (Kitab Undang-undang Hukum Pidana Militer, KUHPM); Law no. 5/1997 on Psychotropic Drugs; Law no. 22/1997 on Narcotics; Law no. 26/2000 on Human Rights Courts; and Law no. 15/2003 on Combating Criminal Acts of Terrorism.

83 Under the legislation, crimes which carry the maximum penalty of death are: genocide; killing; extermination; enforced eviction or movement of citizens; imprisonment or other severe deprivation of physical liberty and apartheid.

84 See Amnesty International, "Indonesia: A briefing on the death penalty", AI Index: ASA 21/040/2004.

85 "A day with a death row prisoner", The Jakarta Post, 17 September 2000.

86 FaktaHAM, No. 9/Yr 1/2000, Komnas HAM, 27 September 2000.

87 See AFP 24 June 2005, Asian Political News 22 August 2005, The Jakarta Post 1 November 2005 and The Jakarta Post 3 December 2005.

88 See Xinhuanet 14 February 2006 and Reuters 30 July 2006.

89 For example, Report of the Human Rights Committee, UN Doc. A/50/40 (1995), para. 441, 467 (referring to Sri Lanka); George Osbourne (represented by S. Lehrfreund of the London law firm Simons Muirhead and Burton) v. Jamaica, Communication No. 759/1997, UN Doc. CCPR/C/68/D/759/1997, 13 April 2000, especially paras. 3.3-3.4.

90 The Committee against Torture issued its first clear call for the abolition of corporal punishment in 1997 (Report of the Committee against Torture, UN Doc. A/52/44, para. 250, recommending "the prompt abolition of corporal punishment in so far as it is legally still possible" under the Namibian prisons and Criminal Procedure Acts.

91 See Annexe 1.

92 Its funds and infrastructures are still being provided by the national Police headquarters. See "Strengthening the function of the National Police Commission", Indonesian Working Group on Security Sector Reform, August 2007.

93 When acts of torture occur in prison facilities, prisoners can make a complaint to the head of penitentiary who then passes on the report to the police. See Indonesia's second periodic report, para 70.

94 See Articles 1.2 and 1.4 of the Criminal Procedure Code, and Article 89, which provides that in the case of civilian/military courts (koneksitas court), "the investigation of the criminal case must be carried out by a permanent team consisting of the investigator, the military police or Indonesian Armed Forces and the military auditor or high military auditor in line with their respective authorities based on existing laws for the investigation of the criminal case". See also Chapter 4 of the law on Military Tribunals.

95 For violence against women or violence against children, individual complaints can also in theory be submitted to the Commission on Violence against Women (Komnas Perempuan) or to the Children's Commission (Komisi Perlindungan Anak Indonesia, KPAI), however like Komnas HAM they have a weak mandate.

96 See Amnesty International, "New military operations, old patterns of human rights abuses in Aceh" (AI Index: 21/033/2004), p24.

97 Komnas HAM received an A status accreditation by the International Coordination Committee of National Human Rights Institutions both in 2001 and 2007. However, in its report to the Human rights Council submitted in November 2007, Komnas HAM insisted that there were still many fundamental weaknesses that restricted its independence and functions including that its duties, responsibilities and organizational structure were established through Presidential decree instead of Commission regulations to ensure the necessary independence and autonomy such a commission needs from political powers. See "Submission with regard to the UPR mechanism", Komnas HAM, 20 November 2007, para 11, and Human Rights Council, "Compilation prepared by the office of the high commissioner for human rights: Indonesia", UN Doc. A/HRC/WG.6/1/IDN/2, 28 February 2008, para 4.

98 Indonesian state report to the UPR mechanism, please add UN citation. February 2008, para c.

99 See "Indonesia: Fear of safety: Albert Rumbekwan", AI Index: ASA 21/008/2007, 3 August 2007, http://asiapacific.amnesty.org/library/Index/ENGASA210082007?open&of=ENG-IDN.

100 In one country (Spain), the Committee against Torture called on the authorities "to institute procedures for the automatic investigation of any case of torture or ill-treatment brought to their attention by any means whatsoever, even when the victims do not lodge complaints through the prescribed legal channels". See Report of the Committee against Torture, UN Doc. A/53/54 (1998), para. 136.

101 See for example Amnesty International, "Indonesia & Timor-Leste, Justice for Timor-Leste: The Way Forward", AI Index ASA 21/006/2004 and the Report to the Secretary-General of the Commission of Experts to Review the Prosecutions of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999, UN Doc. S/2005/458, 26 May 2005. (The Commission concluded that the existing protection regime for victims and witnesses in Indonesia was manifestly inadequate and recommended: Codification of a comprehensive range of protective measures in accordance with internationally accepted standards and include them in the Code of Criminal Procedure; Establishment of an adequately staffed Victims and Witnesses Unit to provide support services such as counselling, information on the Indonesian judicial procedure, victims' rights and entitlements under Indonesian laws; Ensuring that victims/witnesses are placed in a secured environment before and after testifying in court; Providing training to investigators, prosecutors and judges on dealing with victims/witnesses; Installation of facilities in the court-rooms to comply with any legislation on protective measures.

102 See "List of Issues submitted to the UN Committee against Torture", Indonesian NGO Working Group on the Advocacy against Torture, 27 August 2007, pp5-6.

103 The Law on Human Rights Court distinguishes 'inquiry' from 'investigation'. Inquiries are set to identify possible gross human rights violation, and are followed up by an investigation (Article 1.5).

104 See, "Indonesia: Amnesty International's Comments on the Law on Human Rights Courts (Law No.26/2000)", AI Index: ASA 21/005/2001, 9 February 2001.

105 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.

106 It is under the authority of Komnas HAM to receive reports or complaints (Article 19.b).

107 Although political influence is not easily proven, Amnesty International has noticed in a number of cases brought forward under the Law on Human Rights Court, at the very least, an extraordinary lack of commitment by senior officials in the Attorney General's Office to ensuring the success of these cases. See for example, Amnesty International & the Judicial System Monitoring Programme (JSMP), "Indonesia & Timor-Leste: Justice for Timor-Leste: The Way Forward" (AI Index: ASA 21/006/2004), pp30-31, or case below (g) the Wasior and Wamena cases.

108 See the Trisakti 1998 incident, Semanggi I 1998 incident, Semanggi II 1999 incident, the May 1998 riot incident, and the Wasior and Wamena incidents.

109 In a report entitled "Indonesia: Grave human rights violations in Wasior, Papua" (AI Index: ASA 21/032/2002),109 Amnesty International provided a summary of human rights violations, including extrajudicial executions, torture and arbitrary detentions, which took place during the course of an operation by members of the Police Mobile Brigade (Brigade Mobil, Brimob) in Wasior Sub-district, Manokwari District, Papua Province from April to October 2001. During this operation, it is estimated that over 140 people were detained, tortured or otherwise ill-treated. One person died in custody as a result of torture while at least seven people are believed to have been extra-judicially executed. Twenty-seven people were sentenced to terms of imprisonment after unfair trials. Hundreds of people from villages in the area were internally displaced as a result of the operation and dozens of houses destroyed.

110 See Amnesty International, "Indonesia: On the fourth anniversary of the Abepura raids, impunity remains entrenched in Papua"

Index Number: ASA 21/052/2004.

111 Kompas, 1 April 2005.

112 Tempo, 1 November 2007.

113 Report of the Special Rapporteur, March 2008, paras. 57-8

114 Some of the few cases where police officials have been brought before civilian courts are detailed in the US State Department, Human Rights Reports of 2006 and 2007.

115 In March 2004, the head of the military prosecution office in Banda Aceh stated that 120 soldiers had been tried in military tribunals in Banda Aceh and Lhokseumawe in 90 separate cases since the beginning of the military emergency. According to the official, the majority of the cases were for theft, violence, rape and extortion. Two months later, in May 2004, the Commander of the Armed Forces stated that 511 violations had been recorded since May 2003. Of these, it is claimed that suspects in 429 cases had been brought before military courts and that 57 soldiers had been convicted and sentenced to terms of imprisonment. See Amnesty International, "New military operations, old patterns of human rights abuses in Aceh" (AI Index: 21/033/2004), p. 23. See also Indonesia's second periodic report, paras. 38 and 39.

116 The Jakarta Post, 11 December 2006. See also "The Human rights Courts and other mechanisms to combat impunity in Indonesia", Fergus Kerrigan and Paul Dalton, Danish Institute for Human Rights.

117 To Amnesty International's understanding, this reform process is what the Special Rapporteur on Torture refers to in his report: "However, since 2006, efforts have been made, with the support of the

President, to bring criminal cases within the remit of civilian courts even when members of the army are charged", March 2008, para. 58.

118 Jakarta Post, 10 April 2007.

119 "Every victim of a violation of human rights violations, shall receive compensation, restitution, and rehabilitation".

120 In July 2005, an appeals court overturned the decision by the ad-hoc Human Rights Court in Jakarta to convict 12 military officials of charges arising from the detention, torture and killing of Muslim protestors in Tanjung Priok, Jakarta, in 1984. No one has been held to account for these crimes. See Human Rights Watch, "Indonesia: Acquittals Show Continuing Military Impunity", 12 July 2005.

121 Press Release, KPP HAM Papua/Irian Jaya, 21 March 2001, Regarding Recent Developments in Witness Questioning.

122 The Jakarta Post, 24 March 2001.

123 In July 2007, the Constitutional Court declared unconstitutional articles 154 and 155 of the Criminal Code. See "Indonesia: Bold decision good for freedom of expression", Human Rights Watch, July 2007.

124 Law 26/2000 on Human Rights Courts Article 22 (1), (2) and (3).

125 "Tersangka Abepura Belum Bisa Ditentukan", Timika Pos, 9 April 2002.

126 "West Papuan visitor speak about recent and current problems in the province", TAPOL, 23 February 2007.

127 See Amnesty International & the Judicial System Monitoring Programme (JSMP), "Indonesia & Timor-Leste: Justice for Timor-Leste: The Way Forward" (AI Index: ASA 21/006/2004).

128 United Nations Integrated Mission in Timor-Leste, "Report on human rights developments in Timor-Leste, August 2006 – August 2007", p. 27.

129 Colonel Burhanuddin Siagian was recently nominated as military commander in the city of Jayapura, Papua province. Although he has been indicted twice for crimes against humanity in Timor-Leste, and was named as a suspect in Indonesia's own commission of investigation into the human rights violations which occurred in Timor at the time, he has never faced trial. See "Indonesia: Fear of safety: Albert Rumbekwan", AI Index: ASA 21/008/2007, 3 August 2007.

130 Deputy General Prosecutor for Serious Crimes Against Wiranto, Zacky Anwar Makarim, Kiki Syahnakri, Adam Rachmat Damiri, Suhartono Suratman, Mohammad Noer Muis, Yayat Sudrajat and Abilio Jose Osorio Soares.

131 See Annexe 1.

132 Under its terms of reference (Article 14.c.i) the commission can "recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth".

133 See "Too much friendship, too little truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste", International Center for Transitional Justice, January 2008 http://www.ictj.org/images/content/7/7/772.pdf.

134 See Amnesty International & the Judicial System Monitoring Programme (JSMP), "Indonesia & Timor-Leste: Justice for Timor-Leste: The Way Forward" (AI Index: ASA 21/006/2004), pp. 38-49.

135 Those convicted and sentenced to three years' imprisonment were the Regional Military Commander, Major General Adam Damiri, the former Governor, Abilio Jose Osorio Soares, and the former Police Chief for Dili District, Lieutenant Colonel Hulman Gultom. The Military Commander for East Timor, Brigadier General Mohammad Noer Muis and the District Military Commander for Dili, Lieutenant Colonel Soedjarwo, were sentenced to five years imprisonment each.

136 Eurico Guterres who was sentenced to 10 years imprisonment for crimes against humanity, was jailed in March 2006 after his conviction was upheld by the Supreme Court. However, in a subsequent decision, the Supreme Court overturned his conviction in April 2008. On 7 April 2008, he was freed from prison. See Reuters 5 and 8 April 2008.

137 Article 27 of Law 27/2004 provided: "Compensation and rehabilitation… may be awarded when a request for amnesty is granted."

138 Constitutional Court of Indonesia, Decision on the Petition for Judicial Review on the Law of the Republic of Indonesia number 27 year 2004 concerning the Truth and Reconciliation Commission against the 1945 Constitution of the Republic of Indonesia, Number 006/PUU-IV-2006, 8 December 2006.

139 Amnesty International, "Truth, Justice and Reparations: Establishing an effective truth commission", (AI Index: POL/30/009/2007), June 2007. The document elaborates the requirements that are essential for the work of any investigative body entrusted with the task of clarifying past human rights violations and abuses. They include: competence, independence and impartiality; civil society participation; broad mandate and investigative powers; exclusion of amnesties or similar measures of impunity for crimes under international law; fair procedures; protection of victims and witnesses; and public final report.

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

141 "A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures", Article 2.3 of the Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement, http://www.cmi.fi/files/Aceh_MoU.pdf.

142 See "Considering victims, the Aceh Peace Process from a Transitional Justice Perspective", International Center for Transitional Justice, January 2008, http://www.ictj.org/images/content/7/7/771.pdf.

143 See "A Human Rights Court will be established in Aceh", Article 2.2.

144 See the Reports of the Committee against Torture, e.g. UN Doc. A/53/44 (1998), para. 56 (re Argentina); UN Doc. A/54/44 (1998-9), para. 133 (re Venezuela); UN Doc. A/56/44 (2000-2001), para. 82(j) (re Georgia), para. 88(d) (re Greece); UN Doc. A/57/44 (2002), para. 58(m) (re Ukraine), paras. 65(c) and 66(h) (re Zambia); UN Doc. A/59/44 (2003-4), para. 39(g) (re Cameroon); UN Doc. A/60/44 (2004-5), paras. 83(o) and 84(o) (re Albania); 108(o) and 109(i) (re Bahrain); UN Doc. A/61/44 (2005-6), para. 26(12) (DRC), para. 34(22) (re Qatar), para. 36(2) (re Togo)

145 17 February 2007, AI Index: ASA 21/001/2007.

146 The inference is that such violence meets all of the requirements of the definition of torture, including a prohibited purpose such as discrimination or punishment. See, for example, Radhika Coomaraswamy, UN Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/1996/53, 6 February 1996, paras. 42-50.

147 17 February 2007, AI Index: ASA 21/001/2007.

148 There are now 304 Special Women's desks established in police stations the provincial and regency levels. In "Indonesia submission to UPR mechanism", February 2008, p. 14.

149 See Legal Aid Foundation Apik website, at http://www.lbh-apik.or.id/gd-legislative%20advocacy.htm.

150 The vast majority of domestic workers in Indonesia come from Indonesia itself. All the domestic workers Amnesty International interviewed during its research mission in February/March 2006 were Indonesian citizens.

151 See section 2.1, "Social and Cultural Context" in Amnesty International, "Exploitation and abuse: the plight of women domestic workers" AI Index ASA 021/001/2007.

152 Should they contradict each other, the law more specific to the crime will take precedence.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

AMNESTY
INTERNATIONAL