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مجلس حقوق الإنسان  
الدورة السابعة  
البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، السيد مانفريد نوفاك

إضافة

البعثة التي قام بها إلى إندونيسيا\*

\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير ذاته فيرد في مرفق هذا الموجز ويجري تعميمه باللغة التي قُدم بها فقط. ويعمم التذييل بالصورة التي ورد بها.

## موجز

قام المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة بزيارة لإندونيسيا في الفترة من ١٠ إلى ٢٣ تشرين الثاني/نوفمبر ٢٠٠٧. ويعبر عن تقديره للحكومة لما أبدته من تعاون معه. ويتضمن هذا التقرير دراسة عن الجوانب القانونية والوقائية المتعلقة بحالة التعذيب وسوء المعاملة في إندونيسيا.

ويحيط المقرر الخاص علماً بالتزام الحكومة الراهنة بتعزيز وحماية حقوق الإنسان وبالتقدم الكبير الناتج عن ذلك منذ انتهاء عهد سوهارتو في عام ١٩٩٨. والمقرر الخاص واع كذلك باتساع رقعة هذا البلد وهو اتساع يترتب عليه تباين في الأوضاع الاقتصادية والثقافية والدينية.

وتنعكس التفاوتات الإقليمية أيضاً فيما يخص حالة التعذيب وسوء المعاملة في أماكن الاحتجاز. وعلى حين يخلص المقرر الخاص إلى أن التعذيب في مراكز الشرطة ممارسة روتينية في جاكرتا وغيرها من مدن جاوا الكبرى، بما في ذلك يوغياكارتا، فإن الحالة في ما يتعلق بالتعذيب وسوء المعاملة أثناء الاحتجاز لدى الشرطة هي أفضل في المناطق الريفية. ويُبلغ المقرر الخاص بعدد من حالات سوء المعاملة في أماكن الاحتجاز السابق للمحاكمة وفي السجون على حد سواء. ويستخدم بانتظام في عدة سجون التعذيب الجسدي مما يشكل انتهاكاً لقانون حقوق الإنسان.

وتفي زنانات الشرطة في معظم الحالات بالمعايير الدولية للاحتجاز القصير الأجل، لكنها ليست مهيأة لبقاء الأشخاص فترات طويلة فيها. والاحتجاز في مثل هذه الظروف لمدة تصل إلى ٦١ يوماً، كما يجري في إندونيسيا، هو بمثابة المعاملة اللاإنسانية والمهينة. وشروط الاحتجاز في السجون تختلف أيضاً باختلاف الأقاليم. وقد كانت السجون التي زارها المقرر الخاص في جاكرتا شديدة الاكتظاظ بتزلائها مما يفرض على صعوبات من حيث الشروط الصحية والأمن ويهيئ الأرضية الخصبة للفساد. أما بقية السجون خارج مدينة جاكرتا فتتميز بمستويات مقبولة من حيث الحيز المتاح لكل سجين وتتسم عموماً بطابع تحرري في الإدارة. إلا أن المقرر الخاص أبدى قلقه بشأن الاستخدام المعتاد لزنانات "الحجر" (شبيهة بزنانات العقاب) بالنسبة للوافدين الجدد من المحتجزين. ومعظم هذه الزنانات لا تتوفر فيها المعايير الدولية والاحتجاز لمدة طويلة في هذه الزنانات يشكل معاملة لا إنسانية ومهينة. بالإضافة إلى ذلك تلقى المقرر الخاص شكاوى فيما يخص القيود التي تُفرض على الرعاية الطبية ونوعية الأغذية التي تقدم.

وفيما يتعلق بالإطار القانوني للبلد، يأسف المقرر الخاص لعدم قيام إندونيسيا بمنع التعذيب قانوناً بموجب تشريعاتها الجنائية. فالقوانين الإندونيسية لا تتضمن منعاً صريحاً للتعذيب. وانعدام هذا الحظر مقروناً بغياب الضمانات الإجرائية المناهضة للتعذيب وعدم استقلالية آلية الرصد والآليات الفعالة لتقديم الشكاوى يسفر عن نظام للإفلات من العقاب شبه الكلي.

وفي ضوء ما تقدم يوصي المقرر الخاص حكومة إندونيسيا بأن تنفذ تنفيذاً كاملاً التزاماتها بموجب قانون حقوق الإنسان الدولي. ويحث بوجه خاص الحكومة على تجريم التعذيب وإدانتها العلنية ومكافحة الإفلات من العقوبة؛ وأن تمنع استخدام العنف المشطّ أثناء الإجراءات التي تقوم بها الشرطة أو يقوم بها الأفراد العسكريون،

وأن تكفل عدم التمييز على صعيد نظام العدالة الجنائية، بتوخي أمور منها مكافحة الفساد. وناشد المقرر الخاص، بالإضافة إلى ذلك، الحكومة أن تصدق على البروتوكول الاختياري لاتفاقية مكافحة التعذيب وأن تنشئ آلية وقائية وطنية تناط بها ولاية الرصد المستقل وغير المعلن لأماكن الاحتجاز؛ وأن تُدرج في تشريعاتها ضمانات للوقاية من التعذيب وتضمن تنفيذ هذه التشريعات. ويشجع المقرر الخاص الحكومة على مواصلة جهودها الرامية إلى تحسين أوضاع الاحتجاز بغية توفير الرعاية الصحية بوجه خاص. بالإضافة إلى ذلك يوصي بإيلاء اهتمام خاص لمكافحة ومنع العنف ضد المرأة والأطفال وبرفع سن المسؤولية الجنائية.

ويناشد المقرر الخاص المجتمع الدولي مساعدة حكومة إندونيسيا في سعيها لمكافحة التعذيب بتوفير الدعم المالي والتقني لها.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER  
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT  
MISSION TO INDONESIA (10-23 NOVEMBER 2007)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Abbreviations .....		6
Introduction .....	1 - 8	7
I. LEGAL FRAMEWORK .....	9 - 17	9
A. International level .....	9 - 10	9
B. Domestic level .....	11 - 17	9
1. Constitutional protection of human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment .....	11 - 12	9
2. Prohibition of torture and criminal accountability of perpetrators of torture under national law .....	13 - 16	10
3. Sharia provisions in Aceh's Criminal Code .....	17	11
II. TORTURE AND ILL-TREATMENT .....	18 - 49	11
A. Torture and ill-treatment in places of detention .....	18 - 25	11
B. Conditions in places of detention .....	26 - 38	13
C. Excessive violence during police and military operations .....	39	15
D. Minors .....	40 - 42	16
E. Women .....	43 - 48	16
F. Death penalty .....	49	18
III. IMPUNITY AND LACK OF PREVENTION .....	50 - 62	18
A. Impunity .....	51 - 59	18
B. Lack of prevention .....	60 - 62	20

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
IV. CONCLUSIONS AND RECOMMENDATIONS .....	63 - 92	23
A. Conclusions .....	63 - 71	23
B. Recommendations .....	72 - 92	25

**Appendices**

1. Places of detention - individual cases .....		28
2. Note verbale .....		55

### Abbreviations

Komnas HAM	National Human Rights Commission
Komnas Perempuan	National Commission on Violence against Women
KUHAP	Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana)
KUHP	Criminal Code
Polda	Provincial Police
Polres	District Police
Polsek	Sub-District Police
Probam	Police unit (Profesi dan Pengamanan, Professionalism and Security) responsible for investigations with regard to violations of internal police regulations and offences by police officers
Provost	Department for internal investigations

## Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council, Manfred Nowak, undertook a visit to Indonesia from 10 to 23 November 2007, at the invitation of the Government.

2. The purpose of the visit was twofold: to assess the situation of torture and ill-treatment in the country, and to offer assistance to the Government in its efforts to improve the administration of justice, including the police and prison sectors. The invitation of the Government to the Special Rapporteur illustrates the willingness of Indonesia to open itself up to independent and objective scrutiny of its human rights situation. He notes that Indonesia has come a long way in overcoming the legacy of the Suharto era and that certain reforms have been implemented after the visit of a previous Special Rapporteur on torture to Indonesia in 1991 in terms of illegal detention and the handling of internal conflicts.<sup>1</sup> He encourages the Government to implement the recommendations contained in this report with a view to further improving the situation regarding torture and ill-treatment.

3. The Special Rapporteur held meetings with the Speaker of Parliament, the Minister for Foreign Affairs, the Minister of Law and Human Rights and the Attorney-General. In addition, the Special Rapporteur met with the Director-General for Corrections and the Director-General for Human Rights; officials from the Ministry of Home Affairs, from the Coordinating Ministry for Political, Legal and Security Affairs and from the Social Affairs Ministry; and senior commanders from the Headquarters of the Armed Forces, and from the National Police.

4. Besides meeting with the Government, the Special Rapporteur met with representatives of the National Human Rights Commission (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan) and non-governmental organizations (NGOs). In addition, the Special Rapporteur held meetings with the United Nations Country Team, the diplomatic community, and representatives of the International Committee of the Red Cross (ICRC). Furthermore, the Special Rapporteur participated in a seminar on Indonesia's anticipated accession to the Optional Protocol to the Convention against Torture (OPCAT), jointly organized by the Association for the Prevention of Torture (APT) and ELSAM (Institute for Policy Research and Advocacy) in cooperation with the Government.

5. He visited prisons, police posts, military detention facilities and a social care centre in Jakarta, Central Java, Papua, Sulawesi and Bali<sup>2</sup> (see also appendix).

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<sup>1</sup> See E/CN.4/1992/17/Add.1.

<sup>2</sup> Jakarta:

- Social Rehabilitation Centre Pasar Rebo
- Pondok Bambu pretrial detention facility for women and minors
- Cipinang Prison
- Polres Jakarta Metropolitan Timur
- Polres Jakarta South

6. The Special Rapporteur wishes to thank the Ministry for Foreign Affairs and other authorities for their cooperation. As with any anti-torture monitoring mechanism, the Special Rapporteur's fact-finding is fully effective only if he enjoys unrestricted freedom of inquiry, including by conducting visits to places of detention without prior announcement and interviewing detainees in private. In this context, the Special Rapporteur regrets that the efforts of Government officials to monitor his movements throughout the country restricted his ability to carry out unannounced visits to places of detention. He further regrets that in a small number of instances (Police Headquarters Jakarta, Poltabes Yogyakarta, Military Prison Abepura), his unimpeded access to places of detention was compromised, including his ability to carry out private interviews with detainees, in contravention of his terms of reference. While overall access was by and large granted, such interferences carry the risk of distorting an objective assessment of the day-to-day practices in places of detention.

7. The Special Rapporteur further expresses his gratitude to the United Nations Resident Coordinator a.i. in Jakarta and the entire United Nations team for the excellent assistance prior to and throughout the mission, including human rights officers, interpreters and drivers; Dr. Duarte Vieira, forensic doctor; and Ms. Isabelle Tschan and Mr. Roland Schmidt of the

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Papua:

- Abepura Prison
- Military detention facility in Abepura
- Wamena Prison
- Polres Jayawijaya, Wamena
- Polsek Wamena Kota, Wamena
- Wamena airport Polres
- Jayapura Polda
- Abepura Polsek
- Kurulu Polsek

Sulawesi:

- Makassar Prison
- Makassar Military detention facility
- Makassar Polda

Bali:

- Polsek Sidemen
- Polres Gianyar

Central Java:

- Yogyakarta Prison (Lapas Wirogunan)
- Juvenile prison Kutoarjo
- Lapas Batu (Nusa Kambangan)
- Pasir Putih Maximum Security Prison (Nusa Kambangan)
- Yogyakarta POLTABES



Ludwig Boltzmann Institute of Human Rights in Vienna. In particular, he wishes to thank the two excellent interpreters for accepting to perform functions well beyond their normal duties.

8. On 28 January 2008, a preliminary version of this report was sent to the Government. On 4 March 2008 the Government indicated that it will not provide any comments except for the Note Verbal to be found in appendix 2.

## **I. LEGAL FRAMEWORK**

### **A. International level**

9. Indonesia is party to the major United Nations human rights treaties outlawing torture and other forms of cruel, inhuman or degrading treatment or punishment, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, Indonesia is party to the Geneva Conventions of 1949 but not the Additional Protocols. According to section 7 (2) of Indonesia's Law 39/1999 on Human Rights, the provisions of international human rights treaties ratified or acceded form part of the domestic law.

10. Indonesia has not recognized the competence of the Committee against Torture to receive communications from other States parties as well as from or on behalf of individuals under articles 21 and 22 of the Convention against Torture, respectively. Indonesia submitted a reservation under article 30 of the Convention, meaning that Indonesia is not bound to settle any disputes between States parties before the International Court of Justice. Indonesia has also not signed OPCAT, but is committed to its ratification, as outlined in Indonesia's National Human Rights Action Plan (2004-2009), during the course of 2008. Indonesia is not party to the Optional Protocols of the ICCPR and to the Convention for the Protection of All Persons from Enforced Disappearances. Furthermore, the country has not ratified the Rome Statute, however, it has publicly stated that it intends to do so in 2008.

### **B. Domestic level**

#### **1. Constitutional protection of human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

11. Indonesia's Constitution, as amended in 2002, guarantees a broad set of economic, social and cultural as well as civil and political rights. Chapter XA, entitled "Human Rights" lists inter alia the right to life (art. 28A), the right to education (art. 28C), and the freedom of belief (art. 28E). It furthermore provides for the right not to be discriminated against upon any grounds (art. 28I (2)). Article 28I (4) stresses that it is the State's, especially the Government's, responsibility to protect, advance, uphold and fulfil human rights.

12. With regard to the protection of the physical and mental integrity of a person, article 28G (2) stipulates that “each person has the right to be free from torture or inhuman and degrading treatment ...”. Acknowledging the absolute and non-derogable character of the prohibition of torture, article 28I (1) explicitly states that “the rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance”.

## **2. Prohibition of torture and criminal accountability of perpetrators of torture under national law**

### **Criminal Code**

13. Indonesia’s Criminal Code (KUHP) of 1982 does not contain a definition of torture. Its Chapter XX only refers to “maltreatment”, with articles 351 to 358 providing for prison sentences up to 15 years depending on the impact on (e.g. “physical injury” and “intentional injury to the health”), and the sex and physical condition of the victim. However, the concept of maltreatment as enshrined in KUHP lacks several elements of the torture definition under article 1 CAT, such as the elements of purpose, mental pain or suffering, and agency (i.e. inflicted or instigated by a public official or with his or her consent or acquiescence). Torture must also be punished with adequate sanctions if it does not lead to any physical injuries. The decisive criterion for torture as a crime is not whether any injuries were sustained but the intention of infliction of severe pain or suffering, whether physical or mental, on a powerless person (above all a detainee) for a specific purpose, such as extraction of information or a confession. Similarly, article 442 of the Criminal Code, stating that “any official who in a criminal case makes use of means of coercion either to extract a confession or to provoke a statement, shall be punished by a maximum imprisonment of four years” is not in compliance with requirements under CAT. Although a revision of KUHP was initiated more than a decade ago, and several drafts - some incorporating a definition of torture - have been circulating, no amendments have been adopted to this date.

### **Laws on Human Rights 39/1999 and Human Rights Courts 26/2000**

14. Law 39/1999 on Human Rights refers to the prohibition of torture in its articles 1, 4, 33, 34 and 66. Article 1 (4) defines torture as “any activity which is undertaken intentionally so as to cause someone severe pain or suffering, whether physical or mental, in order to obtain a confession or information from that person or a third person, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. Article 4 refers to the right not to be tortured as a non-derogable right, and article 66 (1) specifically refers to the right of every child not to be subject to torture. Article 9 of Law 26/2000 on Human Rights Courts states that torture is a “crime against humanity, if perpetrated as a part of a broad or systematic direct attack on civilians”.

15. While in principle welcoming the fact that these laws refer to torture, the Special Rapporteur observes that the Law on Human Rights 39/1999 does not provide any effective mechanisms for dealing with individual complaints. This is due to the fact that the application of Law 26/2000 on Human Rights Courts is restricted to cases involving “gross violations of human rights”, which were consistently interpreted as “crimes against humanity”<sup>3</sup> requiring “a broad and systematic attack against civilians ... in form of torture ...”<sup>4</sup>. Due to this interpretation of the term “gross”, which in the Special Rapporteur’s opinion does not reflect the prevailing opinion under international law, individual cases cannot be tried by Human Rights Courts.

16. Legal provisions relating to complaints, investigations of torture allegations and safeguards are discussed in section III below.

### **3. Sharia provisions in Aceh’s Criminal Code**

17. The Special Rapporteur is concerned about penalties provided for by Sharia law, such as public flogging, incorporated into the 2005 Aceh Criminal Code following the special autonomy status agreed in the Helsinki Memorandum of Understanding. These local regulations criminalize the consumption of alcohol, closed proximity between unwed couples, and gambling, and penalize them by flogging. Corporal punishment constitutes degrading and inhuman treatment in violation of article 7 ICCPR and article 16 CAT and should therefore be abolished. These morality offences under Sharia law are normally tried in public hearings, at which the audience can shout at the defendant, which renders the presumption of innocence meaningless. Moreover, punishments are carried out in public and are often televised.

## **II. TORTURE AND ILL-TREATMENT**

### **A. Torture and ill-treatment in places of detention**

#### **Penitentiary institutions**

18. The Special Rapporteur has received a limited number of allegations of ill-treatment in both pretrial detention houses and prisons, notably allegations corroborated by forensic medical evidence as well as confirmed by open acknowledgements of prison officials that corporal punishment is executed in a number of facilities. It is worth noting that in Pasir Putih maximum security prison there was not one allegation of abuse.

19. The Special Rapporteur found allegations and evidence of several cases of beatings by guards, often in relation to attempts to escape and violations of prison rules. In several prisons, such as Makassar, Pondok Bambu (Jakarta), the beatings appeared to take place publicly, in front of other detainees. Furthermore, allegations of beatings were voiced in the prisons of Wamena and Abepura (both Papua) as well as Cipinang (Jakarta) and Yogyakarta. The Special Rapporteur is particularly concerned that he found evidence of regular corporal punishment of minors in

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<sup>3</sup> Law 26/2000 Establishing the Ad Hoc Human Rights Court, art. 7.

<sup>4</sup> Law 26/2000 Establishing the Ad Hoc Human Rights Court, art. 9.

Kutoarjo juvenile prison, which was even admitted by the prison authorities. Whereas in Abepura, according to the prison director, one prison guard had been subjected to disciplinary sanctions in the recent past, in none of the cases a perpetrator was shown to have been brought to criminal justice.

### **Police custody**

20. Contrasting with the situation in prisons, the Special Rapporteur received a considerable number of allegations of torture and ill-treatment perpetrated by the police, either during arrest or in custody. Reflecting the general heterogeneity of the country, abuses by the police appear to be more common in the densely populated cities, which are also plagued by urban crime and drug-related offences, rather than in the remote and rural areas. In light of the information received in private interviews with individuals who were or/and had been in police custody, the corroborating results of independent forensic medical examinations of injuries, he concludes that torture is routine practice in Jakarta and other metropolitan areas of Java, including Yogyakarta. The Special Rapporteur sees this assessment furthermore underpinned by the palpable level of fear among detainees, which, in those places resulted in reluctance to talk to him. At some police stations, e.g. in Poltabes Yogyakarta, Polres Wamena and Polres Jakarta East, severe beatings were ongoing as the Special Rapporteur conducted his visit.

21. The types of abuse reported to the Special Rapporteur and corroborated by forensic medical analysis include beatings with fists, rattan or wooden sticks, chains, cables, iron bars and hammers, kicking with heavy boots, electrocution and shots into the legs. Some detainees alleged that heavy implements (chairs, desks, and car jacks) had been placed on their legs for a prolonged period of time. The injuries sustained in a vast number of cases remain without any treatment, putting the health of the detainee further at risk.

22. The overwhelming majority of the detainees interviewed indicated that the ill-treatment was used primarily to extract confessions or, in the cases of drug-related crimes, to receive information on drug suppliers. In a number of cases detainees were offered to be spared in return for the payment of a substantial amount of money. Those interlocutors who had been already tried reported in unison that their coerced confessions had been used during the court proceedings and that objections they had raised were not considered by the judge, prosecutor or even their own legal aid clerk. Furthermore, they were not aware of any complaints mechanism to which they could address their grievances expecting any kind of outcome.

23. The Special Rapporteur notes with concern the very long duration of police custody. While the Criminal Procedure Code authorizes a maximum length of 61 days only in very specific circumstances, the imposition of such a long period is applied as a standard procedure. Consequently, detainees remain under exclusive police authority for a period exceeding many times the maximum period permitted under international law, making abuses more likely, and furthermore renders the detection of torture significantly more difficult since visible traces are likely to have disappeared once the detainee is released or transferred.

24. The Special Rapporteur was informed that the ongoing transfers of prisoners from overcrowded facilities to Pasir Putih prison are conducted by the police. Prisoners reported that they had been handcuffed to each other, bound to the floor of planes and blindfolded for a long

period. The Special Rapporteur would like to recall that any excessive violence, if applied in a situation of powerlessness, amounts to torture. Furthermore, these transfers had been conducted without any prior notice of the detainees, including persons condemned to death who were made to believe that execution might be imminent.

### **Military detention facilities**

25. The Special Rapporteur also visited military detention facilities in which he received allegations that newly arrived persons are routinely forced to do exercises such as somersaults in the courtyard of the institution while all other detainees watch. All newly arrived persons have their heads shaved and have to spend a week in a single, empty, dark cell to which the doors are always closed. Such practices must be considered as degrading treatment.

## **B. Conditions of detention**

### **Penitentiary institutions**

26. Among those penitentiary institutions visited by the Special Rapporteur, the conditions of detention varied considerably throughout the country, again reflecting the regional differences in Indonesia. While facilities in the urban areas were confronted with prison populations exceeding threefold their capacity, i.e. in Cipinang and Pondok Bambu, other prisons outside of Java provided acceptable levels of space for each prisoner.

27. In those places where there is overcrowding, this clearly has repercussions in terms of hygiene and security. It is of concern that for example in Cipinang prison poor newly arrived persons have to camp in huge halls for several months before being transferred to a proper cell, which may constitute inhuman treatment. Cipinang prison is also a showcase for discrimination in the prison system, resulting from omnipresent corruption with relatively clean and comfortable cells for those who can pay, whereas poor detainees have to sleep in heavily overcrowded halls or cells, on mats they brought from home, on the ground. Although sanitary facilities are available, the detainees in these halls have to queue, sometimes for prolonged periods, to be able to take a shower. The Special Rapporteur has received several allegations about inter-prisoner violence in these situations of overcrowding.

28. In Cipinang prison, conditions in overcrowded punishment cells amounted to inhuman treatment (see appendix). The Special Rapporteur found that detention facilities and prisons have “orientation programmes” in which newly arrived inmates are placed in conditions of “quarantine” - often for several days in small, dark and dirty cells, as observed in Wamena prison - that are clearly incompatible with international standards.

29. Whereas in all prisons nurses and occasionally doctors provide day-to-day medical treatment, serious cases generally remain untreated or receive attention at a very late stage if the detainee cannot provide the necessary funds. As a consequence, seriously ill persons are not hospitalized and receive inadequate medication, in violation of international standards. In Makassar prison, the Special Rapporteur came across several mentally ill prisoners who were kept separated from the general prison population and held in the punishment cells, in spite of

their evident need for proper psychiatric treatment. It was reported to the Special Rapporteur that HIV/AIDS is a major problem. Another serious concern relates to high death tolls in places of detention, i.e. Cipinang (see appendix), which are difficult to explain even when bearing in mind the high HIV/AIDS rate.

30. The Special Rapporteur received numerous complaints about the quality and quantity of food. Generally, basic food consisting of rice, sometimes supplemented by eggs and rarely by some fish, is provided twice a day. Other supplies depend on the family or on work taken over for richer co-prisoners.

31. In violation of international standards, pretrial detainees and convicted prisoners are not separated in several of the prisons visited by the Special Rapporteur, such as the Pondok Bambu Prison (Jakarta) and the Juvenile Detention Centre Kutoarjo (Central Java).

32. Another issue of concern is the hierarchy among prisoners - some being employed to guard the others (*Palkams*), with privileges attached to such roles where all sorts of services can be traded, including of a sexual nature. In this regard the Special Rapporteur would like to recall that inter-prisoner violence can amount to torture or ill-treatment if the State fails to act with due diligence to prevent it.

33. The Special Rapporteur would like to note some good practices as well. Article 4 of Law 12/1995 on Corrections requires staff to respect the human rights of inmates. The penitentiary system is based on the idea of reintegration,<sup>5</sup> which was reflected in the relative openness of detention places (i.e. in most places prisoners spent much of the daytime outside of their cells and could receive visits of relatives and friends several times a week); keeping contact with the outside world is a major component of successful rehabilitation and reintegration of detainees and also an important potential safeguard against ill-treatment. This openness was particularly apparent in prisons in Papua, including for those charged with political offences. However, the prisons on the island of Nusa Kambangan, due to their isolated location, arguably hindered reintegration, since visits are extremely complicated and costly. Many of the prisons were very spacious, clean and well maintained, and occupied below maximum capacity. The Special Rapporteur also commends the system for treating young adults (persons between 18 and 21) as a distinct category and holding them separately from adults when possible.

### **Police custody**

34. The regional discrepancies are also reflected in the conditions of detention in police custody. Although the infrastructure of the cells in police stations was generally in line with international standards, the facilities were not adapted for the prolonged periods of up to several months that people usually spend in police custody. Some cells were overcrowded and some facilities lacked fresh air, natural light and adequate sanitary facilities. Detention for up to 61 days in these conditions amounts to degrading and inhuman treatment.

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<sup>5</sup> See for example Law 12/1995 on Corrections, which states that reintegration is an essential aim of the penitentiary system.

35. The Special Rapporteur received several complaints about the quantity and quality of food. In many cases, detainees indicated that they received only one portion of very basic food for up to four persons. He was informed that some detainees, once they were transferred to the authority of the prosecutor, stopped receiving food altogether, even though they remained in police custody. The officer in charge at Polres Abepura admitted that if the prosecutor did not provide the funds for buying food for the detainees, they were not provided any.

36. Lack of access to medical care was another major concern, in some cases exacerbated by the fact that detainees had sustained injuries during arrest and during interrogation and were in urgent need of medical attention.

### **Corruption and lack of resources**

37. The Special Rapporteur received numerous and consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that at every stage, starting from the police and the judiciary to the detention centres and prisons, corruption is a quasi-institutionalized practice. This is of particular concern in detention situations, where it can lead to significant discrimination in terms of conditions, notably access to food, sanitary facilities, health care and the possibility to receive visitors. At the same time, corruption also has an impact on how a prisoner is treated; some detainees alleged that they have to pay in order not to be subjected to beatings upon arrival in prison and during police interrogation.

38. The Special Rapporteur recognizes that insufficient conditions in detention facilities, such as the lack of adequate food and access to health care, are aggravated by the lack of resources faced by some institutions/authorities. Well aware of the complexity of the reasons for corruption, the Special Rapporteur notes that the eradication of corruption which might result in discriminative practices and ill-treatment is dependent on adequate salaries and working conditions for police officers and prison guards.<sup>6</sup>

### **C. Excessive violence during police and military operations**

39. The Special Rapporteur has received consistent allegations about the use of excessive force by security forces.<sup>7</sup> It is reported that in particular in Papua, mobile paramilitary police units (Brigade Mobil or Brimob) have routinely been engaging in largely indiscriminate village “sweeping” operations in search of alleged independence activists and their supporters, or raids on university boarding houses, using excessive force. Recently, allegations have been made about incidents in border areas, where the military is strengthening its presence. The Special Rapporteur considers that these consistent allegations from a number of credible sources, combined with the quasi-total impunity, are of serious concern. He notes that the heavy

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<sup>6</sup> Indonesia is ranked 143rd on the Corruption Perception Index 2007 issued by Transparency International. This index ranks 180 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys.

<sup>7</sup> See e.g. *Human Rights Watch: Out of Sight. Endemic Abuse and Impunity in Papua's Central Highlands*. Vol. 19, No. 10 c. July 2007; also *International Crisis Group: Jihaddism in Indonesia: Poso on the Edge*, Asia Report No. 127, 24 January 2007.

restrictions placed on travel within Papua restricts effective information flow, which is fundamental to the protection of human rights.

#### **D. Minors**

40. The Special Rapporteur is extremely concerned that criminal responsibility in Indonesia starts at the age of 8 and that therefore small children are put in detention facilities and prisons, very often mixed with much older children and adults. In more general terms, the fact that children and adults often mix in places of detention is a violation of international standards.

41. Whereas he welcomes Law 3/1997 on Juvenile Courts and also notes that some progress has been made in sentencing fewer minors to prison terms, he would like to recall the findings of the Committee on the Rights of the Child, which expressed concern “at the very large number of children sentenced to jail even for petty crimes”.<sup>8</sup>

42. Corporal punishment of children is unlawful under article 66 of the Law on Human Rights 26/2000 which states: “Every child has the right not to be subjected to acts of oppression, torture, or inhuman legal punishment ...” In addition, articles 13 and 16 of Law 23/2002 on Protection of Children contain some relevant provisions outlawing violence, abuse, inhuman punishment under law, torture and other forms of ill-treatment against children. However, in the Special Rapporteur’s assessment, minors and children are at high risk of corporal punishment and ill-treatment not only in their families and schools,<sup>9</sup> but also when they are in detention. At the juvenile detention centres in Pondok Bambu prison (Jakarta), and in Yogyakarta prison, many of the minors alleged that they had been beaten either by policemen or by co-detainees during police custody, often with the knowledge of the officers. At Kutoarjo juvenile prison, detainees consistently reported regular beatings, often in public, to intimidate the other juveniles. The prison authorities openly admitted the regular use of corporal punishment for disciplinary purposes.

#### **E. Women**

43. Whereas the Special Rapporteur welcomes that there are certain laws aimed at preventing and outlawing torture and violence against women,<sup>10</sup> he is concerned at some shortcomings in

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<sup>8</sup> CRC/C/15/Add.223, para. 76.

<sup>9</sup> See also the concluding observations of the Committee on the Rights of the Child, which held that “The Committee is deeply concerned that corporal punishment in the family and in schools is widespread, culturally accepted and still lawful.” (Ibid, para. 43).

<sup>10</sup> For example Law 23/2004 defines and outlaws different forms of domestic violence and provides penalties of up to 15 years imprisonment and a maximum fine of 9 million rupiah for perpetrators of such crimes. See also Law 12/1996 concerning the Imprisonment of Women and Children.



their implementation. Some detention facilities do not have enough female staff, as required by international standards. However, he commends that pregnant women are often temporarily released from custody to be able to deliver their baby, and that women in police custody as well as in prisons can live together with their babies and are allowed to maintain very close contact with their elder children.<sup>11</sup>

44. Regarding domestic violence, the Special Rapporteur welcomes the adoption of the 2004 law banning violence in the household and establishing complaints channels. However, he was informed that many obstacles still hamper the implementation of this law, such as the lack of awareness among law enforcement agencies and the public of the need to address domestic violence, and the insufficient number of appropriate police units to deal with such complaints.

45. Confirming earlier received allegations, the Special Rapporteur came across a situation in which police were actually mediating a rape case by supporting the payment of a fine as a settlement of the case. Although the Special Rapporteur appreciates the traditional methods of justice by means of mediation and conflict settlement, he wishes to underline that such punishments are not commensurate with the gravity of the crime and are not in accordance with the State's obligation to protect women from private sexual violence. He also notes with concern reports that in some incidences rape cases are resolved by forcing the rapist to marry the victim.<sup>12</sup>

46. The Special Rapporteur is concerned that women are disproportionately affected by corporal punishment provided for by the Aceh Criminal Code, which is based on Sharia law. Besides public flogging, punishments include cutting the women's dresses in public and forced shaving of their heads, which constitute inhuman and degrading treatment. Moreover, the fact that these punishments are carried out in public generates stigmatization and social sanctioning lasting beyond the execution of the punishment, as women sentenced to such public punishments are labelled as immoral by their husbands, families and communities. This social exclusion can equally amount to inhuman and degrading treatment.

47. The Special Rapporteur visited Pasar Rebo Social Rehabilitation Centre (Dan Pelayanan Sosial) in Jakarta. He did not receive any serious complaints regarding the conditions or allegations of violence and commends that the detained women receive vocational training. However, the Special Rapporteur is concerned that since the women are held outside the criminal legal framework, there are no legal safeguards in place; there is no independent assessment of who should be detained and no right to habeas corpus for the detainees. According to the information received, facilities such as Pasar Rebo exist only for women, which raises concerns that this may constitute discrimination against women.

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<sup>11</sup> In Wamena prison, one male detainee was also allowed to live together with his young son in prison.

<sup>12</sup> Komnas Perempuan. Unpublished report, October 2007.

48. The Special Rapporteur was impressed by the work done by the National Commission on Violence against Women.<sup>13</sup> He considers exemplary their efforts in trying to gather data, thoroughly assessing a given situation and using this analysis to shape policies, even if further work needs to be done to address underreporting and geographic imbalances in reporting.

#### **F. Death penalty**

49. Given the lack of legal safeguards and doubts in a number of instances as to how confessions might have been obtained, the Special Rapporteur recommends that the death penalty not be applied. He also regrets the secrecy with which executions are handled and the lack of information of the condemned prisoners and the public.

### **III. IMPUNITY AND LACK OF PREVENTION**

50. The Special Rapporteur observes that while due to the vastness of Indonesia and the time constraints during his visit he was unable to extend his fact-finding to all parts of the country, there are two overarching issues that he found to apply everywhere, which are critical to effectively combating torture and which need urgent attention by the authorities. The first concerns the lack of adequate mechanisms to investigate allegations of torture and the quasi-total impunity of security personnel, especially of the police and military, for current as well as past violations. Secondly, no effective prevention framework has been put in place to ensure that every person's right to his/her physical and mental integrity is respected, leaving the detainees at the mercy of prison and police authorities.

#### **A. Impunity**

##### **Investigation of acts of torture**

51. The police's Criminal Investigation Department is in charge of investigating crimes, including those committed by police officers, but since the Criminal Code does not contain a definition of torture, its effectiveness is limited.

52. Also, the police unit Probam<sup>14</sup> is responsible for investigations with regard to violations of internal police regulations and offences by police officers. Although this is a general mechanism which is not specifically aimed at addressing torture cases, individuals can file complaints with regard to torture with Probam, which exists in most police offices. According to anecdotal evidence, disciplinary sanctions imposed by Probam in most cases amount to temporary dismissal, postponements of promotion or other disciplinary measures which by no means reflect the gravity of the crime of torture.

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<sup>13</sup> The National Commission on Violence against Women (Komnas Perempuan) was established in 1998 with a mandate to monitor and document all forms of violence against women.

<sup>14</sup> Profesi dan Pengamanan, Professionalism and Security.

53. The newly established National Police Commission (KOMPOLNAS) is composed of members of the Government, police and some civil society representatives. The Commission receives complaints from the public concerning police performance, but does not report publicly on these activities.

54. All of these bodies do not operate transparently, and the Special Rapporteur has not found any evidence to suggest that they function as effective anti-torture mechanisms.

### **Prosecution of alleged perpetrators of torture**

55. There are several avenues for the prosecution of perpetrators of human rights violations. The first is the court of general jurisdiction that applies the Penal Code (KUHP), which is hampered by the lack of a definition of torture, as discussed above. In this regard, the Special Rapporteur is concerned that article 51 of the Penal Code permits invoking official orders as a justification for acts, which may constitute a violation of article 2 (3) of the Convention against Torture.

56. The second avenue is the human rights court created under Law 26/2000 to prosecute cases of genocide and crimes against humanity based on Human Rights Law 39/1999. According to these laws, the National Human Rights Commission has the authority to receive complaints and conduct preliminary inquiries into allegations of gross human rights violations and to hand them over to the Attorney-General's office for further action. However, the Special Rapporteur notes that in most of the cases transmitted the Attorney-General decided not to prosecute the case.<sup>15</sup>

57. According to article 104 of the Law on Human Rights Courts, ad hoc courts can be established for gross human rights violations that occurred before the adoption of the law on 23 November 2000. Such courts were established in six cases so far, but only three of these cases were concluded (on East Timor, Tanjung Priok and Abepura) and not a single State official has been found guilty. For example, in the Abepura case the National Human Rights Commission named 25 suspects; the Attorney General's office charged two of them and the courts acquitted them despite of evidence that unlawful violence had been committed, justifying its decision by reference to Standard Operating Procedures.<sup>16</sup>

58. Cases against members of the military fall under the jurisdiction of military courts, which apply the KUHP and the Military Penal Code. Nobody has ever been convicted for torture by a military court. 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.

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<sup>15</sup> See Chapter IV of the Annual Report 2006 of the National Human Rights Commission of Indonesia. See also the concluding observations of the CAT Committee, (A/57/44, para. 8 (c)).

<sup>16</sup> See e.g. *Human Rights Watch: Out of Sight. Endemic Abuse and Impunity in Papua's Central Highlands*. Vol. 19, No. 10 c. July 2007, p. 67.

59. Whereas Law 27/2004 provides the legal basis for the establishment of the Indonesian Truth and Reconciliation Commission, the Government has not created the commission so far, although its statute provides that it must be formed within six months of the enactment of the law. On 7 December 2006, the Constitutional Court ruled that Law No 27/2004 regarding the Truth and Reconciliation Commission does not have a sound legal foundation and is inconsistent with the Constitution,<sup>17</sup> which delayed the establishment of a Truth and Reconciliation Commission in Aceh,<sup>18</sup> which has yet to be established.

## B. Lack of prevention

### Safeguards

Issue	Situation observed	Recommendations
Length of police custody	<ul style="list-style-type: none"> <li>• Maximum period of police custody of 61 days<sup>19</sup> is applied as a standard routine</li> <li>• Cells are not adapted for prolonged custody; detention may amount to inhuman and degrading treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce the length of police custody to maximum 48 hours in accordance with international standards</li> </ul>
Right to legal assistance <sup>20</sup> from moment of arrest/detention at all stages of examination; <sup>21</sup> right to speak at any time for the defence of his case <sup>22</sup>	<ul style="list-style-type: none"> <li>• Only few detainees had legal assistance</li> <li>• Numerous complaints regarding bias of legal aid counsels</li> </ul>	<ul style="list-style-type: none"> <li>• Prompt access to lawyers can be a very effective safeguard against ill-treatment; Special Rapporteur recommends establishment of effective and independent legal assistance network</li> </ul>

<sup>17</sup> Constitutional Court decision No. 006/PUU-IV/2006, Thursday, 7 December 2006. The KKR (the Truth and Reconciliation Commission) Law conflicts with Constitution 1945, see <http://www.mahkamahkonstitusi.go.id/berita.php?newscode=248>.

<sup>18</sup> It should have been created pursuant to point 2.3 of the Helsinki Memorandum of Understanding.

<sup>19</sup> KUHAP, arts. 16-31.

<sup>20</sup> KUHAP, art. 69.

<sup>21</sup> KUHAP, art. 69.

<sup>22</sup> KUHAP, art. 70 (1).

Issue	Situation observed	Recommendations
Custody registers	<ul style="list-style-type: none"> <li>• Registers are either inexistent or lack most important information</li> <li>• Not all persons deprived of their liberty are registered</li> <li>• Insufficient registers blur accountability and render external scrutiny more difficult. Torture cases are easier to be hidden</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure the proper maintenance of custody registers</li> </ul>
Evidence obtained under torture	<ul style="list-style-type: none"> <li>• Many allegations of confessions under torture, which were admissible during court proceedings</li> <li>• Reports about non-action of judges, prosecutors and other members of the judiciary vis-à-vis allegations of torture</li> </ul>	<ul style="list-style-type: none"> <li>• Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession</li> <li>• Serious consideration should be given to video and audio taping of interrogations, including of all persons present</li> <li>• The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress.</li> </ul>
Habeas corpus	<ul style="list-style-type: none"> <li>• Whereas the Criminal Procedure Code contains a provision allowing to challenge the validity of detention, the Special Rapporteur has received numerous indications that this procedure is not used in practice</li> <li>• Women held in Social Welfare Centres have no access to judicial review of their detention</li> </ul>	<ul style="list-style-type: none"> <li>• All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings</li> </ul>

Issue	Situation observed	Recommendations
Forensic medical expertise	<ul style="list-style-type: none"> <li>• No forensic examinations are carried out in cases of allegations of abuse</li> <li>• No medical examinations are carried out after transfer of detainees</li> <li>• Autopsies are not mandatory in cases of death in custody</li> </ul>	<ul style="list-style-type: none"> <li>• Examination by an independent forensic expert should be carried out following the receipt of any allegation of torture or ill-treatment</li> <li>• All detainees, especially after arrival and transfers, shall regularly be examined by an independent medical doctor</li> <li>• Make autopsies obligatory following any death in custody</li> </ul>
Complaints mechanisms	<ul style="list-style-type: none"> <li>• There is no effective and independent complaints mechanism</li> <li>• Torture survivors have no possibility to address their complaints anywhere</li> </ul>	<ul style="list-style-type: none"> <li>• Establish independent, effective and accessible complaints mechanisms</li> <li>• Complaints should be followed up by independent and thorough investigation</li> <li>• Complainants must be protected from any reprisals</li> </ul>
Reparation	<ul style="list-style-type: none"> <li>• Legislation does not provide for any right to reparation for torture survivors</li> </ul>	<ul style="list-style-type: none"> <li>• Incorporate the right to reparation into the domestic law and ensure its enforceability</li> </ul>
Monitoring	<ul style="list-style-type: none"> <li>• No independent and effective monitoring body</li> <li>• Visits conducted by the National Human Rights Commission are announced and do not cover the entire country</li> </ul>	<ul style="list-style-type: none"> <li>• Accede to OPCAT and establish a truly independent NPM carrying out unannounced visits to all places of detention</li> <li>• Strengthen the National Commissions on Human Rights and Violence against Women to become effective and independent players in the fight against torture</li> </ul>

## Monitoring and inspection

60. The Special Rapporteur observes that no functioning monitoring mechanisms are in place in Indonesia. The ICRC has access to some detainees, NGOs can make visits in prisons, and the National Human Rights Commission has been conducting announced visits to police stations. However, there is no independent and effective mechanism which would have the power to conduct unannounced visits to all places of detention throughout the country. In this respect the Special Rapporteur commends the National Human Rights Action Plan (2004-2009), which foresees the ratification of the Optional Protocol to the Convention against Torture in 2008. This instrument requires the establishment of a National Preventive Mechanism (NPM) vested with the mandate to conduct independent monitoring based on unannounced visits to all places where persons are deprived of their liberty. He considers that accession to this important instrument and its effective implementation would constitute a major step towards preventing torture and ill-treatment in the future.

61. The Special Rapporteur notes that the National Human Rights Commission signed a Memorandum of Understanding with the police granting it free access to all police detention facilities. However, its visits so far were in reaction to complaints, and the Commission has not conducted any unannounced visits to places of detention and/or private interviews with detainees.<sup>23</sup> The National Commission on Violence against Women monitors the situation of violence against women in the country, but undertakes visits to places of detention only on an ad hoc basis.

62. Statistical data are a crucial tool for monitoring the criminal justice system and vital for identifying trends and developments and devising corresponding policies. The Special Rapporteur has received only some official statistics which makes it more difficult to make an assessment of the situation of torture in the criminal justice context.

## IV. CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

63. The Special Rapporteur commends the Government for the positive steps taken since the end of the Suharto era, notably its accession to international human rights instruments, a number of legislative reforms and good practices that he observed, in particular in the penitentiary system, putting emphasis on reintegration and favouring contacts with families and the community. However, several issues of concern remain.

64. Whereas in some police stations he did not receive any allegations of ill-treatment, in other facilities, in particular in urban areas, torture and ill-treatment is used routinely to extract confessions or in the context of drug charges to reveal dealers/suppliers. In three police stations, the Special Rapporteur arrived while beatings were taking place, and in several places he found persistent medical evidence of several types of ill-treatment, which are in line with reports by

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<sup>23</sup> See also Annual Report 2006, National Human Rights Commission of Indonesia, pp. 70-71.

prisoners and various other credible sources received prior and during his visit. In prisons, only a very limited number of torture cases were reported; however, corporal punishment is regularly practiced in a number of detention facilities.

65. Several elements, such as the lack of a definition and prohibition of torture in accordance with the Convention against Torture, the lack of legal safeguards with regard to detention, the lack of criminal prosecution and the absence of an independent monitoring mechanism create an environment which is conducive to torture and ill-treatment.

66. The existence of torture is also facilitated by the lack of awareness and (appropriate) action of other stakeholders in the criminal law system, such as members of the medical profession, judges and lawyers. Furthermore, traces of ill-treatment during police interrogation can be easily hidden due to the excessive length of 61 days of police custody.

67. The Special Rapporteur is of the opinion that conditions in prisons in most cases live up to international standards. However, the conditions in heavily overcrowded cells and detention halls in prisons visited on Java amount to inhuman and degrading treatment. The quantity and quality of food, as well as the restricted or late access to medical services, in particular for serious cases, is a concern in practically all places he visited.

68. Conditions in police custody in most cases meet international standards for short-term detention of not more than a few days. The cells in police lock-ups are, however, not equipped for long-term detention. The fact that under Indonesian law and practice persons can be detained for several weeks up to 61 days in premises which are meant to hold detainees for only a few days also amounts to inhuman and degrading treatment.

69. At all stages of the criminal justice cycle corruption is involved, all too often accompanied by discriminatory practices. Corruption in prisons, practised by officials and prisoners, frequently with the consent of the prison authorities, leads to unequal access to essential goods and constitutes a violation of international norms.

70. The Special Rapporteur is very concerned that minors and children are at greater risk of corporal punishment and ill-treatment than adults in situations where they are deprived of their liberty. He is also concerned about the absence of a specialized juvenile justice system.

71. The Special Rapporteur has found that impunity with regard to perpetrators of torture and ill-treatment in past conflicts is almost total.<sup>24</sup> This situation applies both to the present situation and the systematic practice of torture under the Suharto regime in the past. In particular, lack of accountability is of concern with regard to all acts of political violence committed over the years, starting from 1965, including in relation to conflicts such as in East Timor, Aceh and others, where torture and acts of violence were widely used. Bringing perpetrators of torture and ill-treatment to justice for the serious crimes they have committed is the strongest signal that torture and ill-treatment is absolutely unacceptable.

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<sup>24</sup> See also the concluding observations of the Committee against Torture (A/57/44, para. 8 (a)).



## B. Recommendations

72. In the spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with the assistance of the international community (i.e. the United Nations and other actors), take decisive steps to implement the following recommendations:

### Impunity

73. Torture should be defined and criminalized as a matter of priority and as a concrete demonstration of Indonesia's commitment to combat the problem, in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture.

74. The declaration should be made with respect to article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.

75. The Government should ensure that corporal punishment, independently of the physical suffering it causes, is explicitly criminalized in all parts of the country.

76. Officials at the highest level should condemn torture and announce a zero-tolerance policy vis-à-vis any ill-treatment by State officials. The Government should adopt an anti-torture action plan which foresees awareness-raising programmes and training for all stakeholders, including the National Human Rights Commission and civil society representatives, in order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture.

77. All allegations of torture and ill-treatment should be promptly and thoroughly investigated ex-officio by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.

### Safeguards and prevention<sup>25</sup>

78. As a matter of urgent priority, the period of police custody should be reduced to a time limit in line with international standards (maximum of 48 hours); after this period the detainees should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.

79. All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.

80. Judges and prosecutors should routinely ask persons arriving from police custody how they have been treated, and if they suspect that they have been subjected to

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<sup>25</sup> For more specific comments see above, the table in section III.

ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant.

81. The maintenance of custody registers should be scrupulously ensured.
82. Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present.
83. Accessible and effective complaints mechanisms should be established. These should be accessible from all over the country and from all places of detention; complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected against any reprisals. The agencies in charge of conducting investigations, inter alia Proham, should receive targeted training.
84. The Government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention.
85. The Government of Indonesia should support the National Commission on Human Rights and the National Commission on Violence against Women in their endeavours to become effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.

#### **Excessive violence**

86. The Special Rapporteur recalls that excessive violence during military and police actions can amount to cruel, inhuman or degrading treatment. The Government of Indonesia should take all steps necessary to stop the use of excessive violence during police and military operations, above all in conflict areas such as Papua and Central Sulawesi.

#### **Conditions of detention**

87. The Government of Indonesia should continue efforts to improve detention conditions, in particular with a view to providing health care, treat rather than punish persons with mental disabilities, and improve the quantity and quality of food. The Government, in all detention contexts, should ensure the separation of minors from adults and of pretrial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.
88. The Government of Indonesia should ensure that the criminal justice system is non-discriminatory at every stage, combat corruption, which disproportionately affects

**the poor, the vulnerable and minorities, and take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.**

#### **Death penalty**

**89. The death penalty should be abolished. While it is still applied, the secrecy surrounding the death penalty and executions should stop immediately.**

#### **Children**

**90. The age of criminal responsibility should be raised as a matter of priority. Through further reform of the juvenile justice system, Indonesia should take immediate measures to ensure that deprivation of liberty of minors is used only as a last resort and for the shortest possible period of time and in appropriate conditions. Children in detention should be strictly separated from adults.**

#### **Women**

**91. In consultation with the Commission on Violence against Women, the Government should establish effective mechanisms to enforce the prohibition of violence against women, including in the family and wider community, above all through further awareness-raising within the law-enforcement organs.**

#### **Recommendation to the international community**

**92. The Special Rapporteur requests the international community to support the efforts of Indonesia in reforming its criminal law system. In particular, all measures to establish well-resourced and independent national preventive mechanisms in compliance with international standards that cover the entire territory of Indonesia should be treated as a priority and supported with generous financial assistance.**

## **Appendix I**

### **PLACES OF DETENTION - INDIVIDUAL CASES**

#### **Introduction**

1. The following accounts are based on allegations by detainees interviewed by the Special Rapporteur. Detainees who requested anonymity are indicated below as “Detainee” or “Prisoner”. The Special Rapporteur sought to conduct unannounced visits to detention facilities, but in some cases it appeared that the authorities expected him when he arrived. In general, he was able to hold private interviews with detainees.

2. The Indonesian correctional service under the Ministry of Justice manages around 350 detention facilities (16 juvenile prisons, 6 drug prisons) with an official capacity of 75,000. In December 2007 there were about 134,000 inmates, of which approximately 60,000 were in pre-trial detention. About 35 per cent of the persons are in detention on charges related to drug crimes. 113 persons are charged with terrorist activities and about 100 convicts are on death row. The correctional service reported that in light of the problem of overcrowding they aim at increasing the use of conditional release. Prison directors earn up to 350 \$US a month. The salary of a prison guard is less than 100 \$US a month.

#### **SOCIAL REHABILITATION CENTRE PASAR REBO (JAKARTA)**

(Visited on 11 November 2007)

3. The Social Rehabilitation consists of a large compound with small houses where 110 women between the age of 18 and 46, most of them accused of being former sex workers, are detained. Up to 15 women are detained together in a small house with up to five rooms. The houses are clean, and equipped with a TV and bunk beds; access to water is granted without restrictions. There are 48 staff members; more than 50 per cent of them are women. The Special Rapporteur was received by a representative of the facility’s management.

4. The women can be held for up to six months - depending on their medical condition and behaviour - without any right of habeas corpus, for the purpose of rehabilitation, i.e. forced re-education in accordance with religious values under the authority of the Ministry for Social Affairs. About 10 per cent of the women have been at the centre before. All of them were arrested in the street by the “Satpol PP”, held for two hours in their premises to register their data, and then transferred to the Centre. Upon arrival their case file is assessed by a social worker team on the basis of a set of criteria including a blood test/vagina test, the place of origin, and sexually transmitted diseases. Women who have HIV/AIDS are referred to a different place. They receive vocational training in sewing, cooking, embroidery and cosmetics.

5. The women are not allowed to leave the compound. During the night they are locked in their rooms. They may leave the rooms between 6 am and 7.30 pm (at the latest depending on prayer times). Smoking is prohibited and may be punished by postponing release. They must pray five times a day.

6. Family visits are allowed twice a week for 90 minutes. Women are separated from their children and allowed to see them only during visiting hours. If nobody else can take care of the children, they are taken to a shelter. To give birth women can go to a special facility.

7. Violation of the rules of the centre is punished with an increase in working hours (housework, gardening, cooking). If after this punishment a woman continues to violate the rules, “the other persons of her house will talk to her” (“peer therapy”) and may decide to isolate her. There is no official complaints mechanism, but the detainees can complain to the instructors about the guards. The Special Rapporteur was informed about one case of attempted escape, where the woman was caught, taken to an office, slapped and had her hair cut.

8. According to the information received, facilities as Pasar Rebo exist only for women, what raises concerns about their potential instrumentalization as a means for discriminating women. The Special Rapporteur is concerned that the women detained at the Social Rehabilitation Centre do not have access to judicial review of their detention, which constitutes a violation of their right to habeas corpus.

9. **Female detainee**, aged 40, from Sumatra. She had been at the centre for about three and a half months. She was arrested on the street at 2 am together with others by the Satpol who arrived in civilian cars and pulled her and the others into the car. She thinks that the conditions in the centre are acceptable and reports that access to medical care is granted. Whereas social workers do not use violence, some of them shout at them if they misbehave.

10. **Female detainee**, aged 30, from Tangerang, mother of two children of 3 and 6 years. She had delivered a baby on 29 June 2007 and was arrested on 2 July 2007, when she was on the way to a clinic with her child. The police saw her, recognized her as a “former” and immediately proceeded to arrest her and took her to Satpol premises, where she met her parents who did not want her to go to the rehabilitation centre. It is the seventh time that she is at the centre. Her baby died in mid-October. In general the guards treat them well if they stick to the rules. If they violate the rules, the guards adopt a rougher style of conversation and shout. The women are sometimes forced to stand in the sun for up to 30 minutes or do cleaning or kitchen work. Upon arrival the guards sometimes “test” the women. They knock on the door and offer money to her. If she accepts she has shown that she is a “bad girl”.

11. **Female detainee**, aged 26, from Depo, detained in Malahayati Block, had been in the shelter for two months and expected to be released after a total of six months. The actual release date depends on the evaluation results of the “case conference” involving the director of the shelter, her supervisor as well as members of her family. She was arrested on suspicion of working as a prostitute in a café during a police inspection, because she had been unable to present an ID. After the arrest she was immediately transferred to the shelter. Not long before her arrest, she had divorced from her husband and suffered psychological problems as a result of which she vandalized her family’s flat and sold their furniture without informing them. Subsequently, her family supported the transfer to the shelter since they considered their daughter had become “crazy”.

**PONDOK BAMBU PRE-TRIAL PRISON (JAKARTA)**  
(Visited on 13 November 2007)

12. The Special Rapporteur was received by the prison director, Mr. Suharman. The prison has a capacity of 504 and on the day of the visit the total number of detainees was 1,582, of which 886 women (out of whom 44 under 18; 65 between 18 and 21; and 464 older than 21), 696 men (60 of them convicted), 387 boys between 14 and 18, and 159 young adults (18 to 21). The heavy overcrowding of the cells results in problematic hygienic conditions. A large percentage of the detainees are charged with drug-related crimes. The majority are in pre-trial detention or convicts who wait for the result of their appeal. Convicted prisoners are occupied with cleaning and kitchen work and other tasks. In the courtyard all the inmates can intermingle. There are 260 staff members (155 men, 105 women).

13. The institution consists of five blocks (A, B, C, D, E); A and E are used for female detainees and B for boys. There is a quarantine with four cells (each about 4 by 5 metres), one for newcomers, one for punishment, two for sick inmates. According to information received detainees are held there for a maximum of 14 days; however it appears that some stay there for longer. Detainees have to pay 20 000 IDR (about 2 \$US ) to receive a visitor. Several detainees indicated that they had been offered to be freed against payment.

14. The facility has a well-equipped clinic run by three general practitioners, one dentist and seven nurses. Basic medicine was available. It was reported that in 2007, one person died from a heart attack, one from tuberculosis and two from HIV/AIDS. Autopsies are performed at the central hospital; but only upon the family's request. According to the prison management, each newly arrived person undergoes a medical examination. However this information was not confirmed by any of the prisoners. As soon as a person has injuries resulting from torture requiring medical treatment, the prison authorities return the person back to the police and (in some cases) ask them to take charge of the medical treatment. Such cases are not submitted to the Police Commission or any other body in charge of investigating possible cases of torture.

15. On the day of the visit there were 14 boys in the newcomers' cell; the youngest was 14 years old. They were not informed of how long they would have to stay in this cell. The officers shaved their heads upon arrival. The boys complained about lack of food. 12 out of the 14 boys reported having been beaten or burned with cigarettes at the police (8 of them by co-detainees) where they were detained between one and two months. There are no vocational activities and detainees are only occasionally allowed to leave their cells. Violation of prison rules are punished with detention in the quarantine for one or two weeks. If a person continues to misbehave after 14 days, he is put into a new block instead of returning to the previous one. Seven of the detainees alleged that they were beaten with wood and rattan sticks and sometimes with cables for punishment purposes in the prison. The beatings normally took place in front of the cell. Access to water was restricted.

16. **Detainee**, aged 18, has cigarette burns on his feet that reportedly were inflicted by other inmates at Polsek 715, Tanah Abang, Jkt Pusat., because he was not able to pay the "room rent" at the police. He was detained for 28 days at the Polsek. He did not file a complaint.

17. **Detainee**, aged 20, accused of theft, was arrested in September 2007 and repeatedly beaten by the police with a rattan stick during the first week at the interrogation room on the upper floor of Polsek Bayankara Semper, Jkt Utara. He did not have bruises any more.

18. **Detainee**, aged 16, from Palembang, South Sumatra, was arrested by the police in East Jakarta on 5 May 2007. During the arrest he was kicked and beaten with bamboo sticks in order to make him confess. From 5 May to 29 June 2007 he was kept in police custody at Polsek Ciracas, East Jakarta, and then transferred to Pandok Bambu prison. He was convicted on the basis of a confession he made under torture.

19. **Detainee**, aged 24, from Pandang, Sumatra, has been detained in Pondok Bambu for two months. Prior to that, he was held in police custody at Polres Jakarta South. Detainees at the Polres have to pay 20,000 IDR (about 2 \$US) per visit.

20. **Detainee**, aged 13, from North Jakarta, was arrested by the police on charges of sexual harassment of a 15-year-old girl. He was detained at the Kelapa Gading police station, then taken to 702 Polres Tanjung PRKK and finally transferred to Pondok Bambu Prison. He was beaten with an iron bar and whipped by prison guards upon arrival. The beatings took place in the post at the backside of block C.

21. **Female detainee**, aged 30, from Java West, in Pondok Bambu Prison for one year after having been held in police custody in Jakarta for three months. She had been detained in the isolation and punishment cell since Saturday 8 November 2007, because an ecstasy pill had been found in her belongings. In addition, on 9 November 2007, she was punched in the face and beaten on her legs with a small iron bar by two prison guards in the guard's office in block E (post of security). Furthermore, the guards put a table on her legs and sat on it for 30 minutes. Whereas she was supposed to be in the punishment cell for a total of one week, she was told that she could leave earlier if she paid the warden.

22. **Ms. Rina**, aged 24, from Padang, West Sumatra, was arrested by police officers on 18 July 2007 after having stolen a mobile phone and money two weeks earlier in order to be able to buy drugs. The officers took Ms. Rina directly to the theft victim's house in order to broker a "peace deal", meaning that Ms. Rina could avoid further judicial proceedings by paying the amount of 7,700,000 IDR (about 820 \$US) directly to the victim. However, Ms. Rina rejected this settlement since she considered the amount excessive. Subsequently, she was transferred to South Jakarta Polres, where she was interrogated. During the questioning which lasted for about one hour, the owner of the phone was also present and repeatedly insulted her. Ms. Rina was then temporarily detained in a cell on the third floor, which she had to share with one other woman and seven men, before being interrogated for a second time on the same day. Subsequently, she was transferred to another cell with seven to ten other women, including one younger than 18 years old. Food of poor quality was provided to them twice a day. Family visits were allowed Mondays and Thursdays from 9 a.m. to 12 a.m., for visits on other days one needed to pay. Furthermore, every cell had to pay 250 000 IDR (about 27 \$US) in rent and so-called "peace settlements", a fee for not being harassed. In addition, each of them had to pay 30 000 IDR (about 3 \$US) per month for electricity and laundry. The payment was made either to the head of the cell, who would forward the money to the officers or directly to the officers. Those detainees who refused to pay were either beaten up by the officers or had to ask the

persons who visited them to provide the money. If detainees did not receive any visits, they were obliged to work for other inmates in return for them settling their “debts”. After two months, Ms. Rina was transferred to Block A in Pondok Bambu. She had no complaints about ill-treatment there.

23. **Achmad Alfian**, aged 20, was arrested by officers of Polsek Tanabang in July 2006 while buying drugs. Although he did not resist, he was handcuffed and beaten with the butt of a gun on his head. He was then transferred to the Polsek. During the ensuing interrogation he was beaten with a rubber stick all over his body, but particularly on his head and back in order to force him to confess to being a drug seller. Mr. Alfian refused and was charged. Furthermore, he had to pay 500 000 IDR (about 53 \$US) for being put in a cell which was supposed to be of better quality than the others. In September 2006, Mr. Alfian was transferred to Pondok Bambu pre-trial detention facility. He constantly feels dizzy and has headaches.

**ABEPURA PRISON (PAPUA)**  
(Visited on 15 November 2007)

24. The Special Rapporteur was received by Lieutenant Colonel Yarangga and by several journalists despite the fact that this was an unannounced visit. The prison has a capacity of 230 detainees. On the day of the visit 277 persons were being held at the prison, out of whom 10 were women (2 convicted and 8 pre-trial). 111 of the male detainees were convicted, 106 were in pre-trial detention. In addition, 50 detainees normally in the drug section, which was under renovation, were held there. Cells were open from 6 a.m. until 1.30 p.m. and from 3 p.m. to 5.30 p.m. All male detainees, including minors, could intermingle in the courtyard during the day. There were two punishment cells where persons could be held for up to six days. Five prisoners were convicted of treason: Filep Karma, Yusak Pakage as well as Gustaf Ayomi, Jean Hese gem and Herry Ass, all three from Makassar.

25. Nurses were present all day at the prison and a doctor visits every Friday. Two deaths in custody were reported in the last two years, one from TB (he was released just before) and one from an overdose. Five detainees are reportedly infected with HIV.

26. The Director of the Prison informs the Special Rapporteur that in the beginning of November 2007, Dance Ibo, a detainee, told his family about beatings by an officer named Kris Wamuar. The family complained to the prison director, who questioned the officer. The latter admitted to the beatings and was suspended from his position, but is still serving elsewhere in the prison.

27. On 15 November 2007 it was reported to the director that a convict had beaten a pre-trial detainee.

28. According to the prisoners, there used to be regular beatings of new arrivals. However the current director stopped this practice. It was reported that a former prisoner from Papua New Guinea attempted to escape three months earlier. After his re-arrest he was so heavily beaten that his leg broke; he was not taken to a hospital. Many detainees and prisoners complained about the food, which consisted mainly of dry rice. In general, the Special Rapporteur was positively impressed by the liberal spirit in the prison.



29. **Gananathan Thusyantham**, aged 35, a Dutch citizen born in Sri Lanka, was arrested on 10 March 2007 by security personnel in a bank in Jayapura, suspected of forgery, and held by the local police for 50 days in a small and overcrowded cell with 25 detainees. The food was of bad quality so that he had to buy his own food. Also, it was very hot in the cell and there was not enough water. After 50 days he was taken to the High Court but no hearing took place. He was represented by a lawyer.

30. **Filep Karma**, a well-known political activist, was beaten with rattan sticks on his head during his arrest; then he was put in a truck and some police officers were standing on his back (main perpetrator: Vice Commander of the Police Robert Washington). He was interrogated day and night at the local police office in Abepura. Starting from 27 December 2004 he was in pre-trial detention at Abepura Prison. Overall, the prison conditions were acceptable but many officers used to get drunk and then beat up detainees. He often complained to the prison authorities about the treatment and ill-treatment of others and was therefore repeatedly beaten up by the guards Abraham Fingcrew and Kristomos Wamuar.

31. **Yusak Pakage**, another well-known political activist, was arrested by the police at his house on 1 December 2004. In 2006 he reportedly received threats from the National Police in Jakarta. On 18 August 2006, the Mobile Police reportedly killed his family. On 1 July 2007, one of the guards, Abraham Fingcrew, broke the lock of his cell and took him to his office, together with Cosmos and Simpson. On 3 July 2007 he was taken to several police stations in Jayapura (city police, mobile brigade, and military police) in preparation of a transfer to another prison. Refusing the transfer, he went on hunger strike and the chief of police, on 5 July 2007, ordered his transfer back to Abepura Prison. Due to his weak health he asked for medical examinations outside the prison, but the request was turned down. On 19 July 2007 he was taken to the prosecutor's office, where he was forced to sign a letter. He also reported that his brother was shot in the leg (see Polek Abepura).

32. **Selpins Bobii**, from East Timor, was arrested by the city police of Abepura on 16 March 2006 by four officers. When he was thrown into a truck, he lost his glasses. Then he was taken to the police station. He was beaten with fists and boots until he fainted. On the next day he was taken to the provincial police, where he stayed for two weeks, during which the officers poured hot water on him, beat him with an iron bar, wooden and rattan sticks, and subjected him to electric shocks with a black electroshock device.

33. **Hendra Ruver**, aged 27, was taken to Abepura Prison on 24 August 2004. He had asked permission from the officer to go outside the prison for one day to meet his family, but then stayed outside for one year and nine months because he was afraid to return to the prison. When he finally returned on 13 September 2007, he was severely beaten with fists and sticks by prison guards Hutabarat and Iriantopakombong. His parents complained to the director of the prison. He had already been beaten in September 2005 on his legs with iron sticks.

34. **Luis Tuti**, aged 26, from Papua Sarwi, had been detained in the prison since January 2006. In January 2007 he escaped. In March 2007 he had a motorcycle accident and sustained a serious injury on his right foot. In April 2007, Luis Tuti was re-arrested by the police and taken to Polres Jayapura where he was kept for three days. The first days he was beaten by the officer Eli Awi. Then he was transferred to Abepura Prison. On 13 May 2007, he was assaulted by a

prison guard and subsequently detained for one month in solitary confinement. During that time, he was not allowed to have visits from outside the prison; however other inmates could visit him. The wound on his foot was still infected and he had difficulties to walk. According to the forensic expert, he is in need of medical treatment.

35. **Heri Asso, Gustaf Ayomi and Jean Hasegem** had been arrested in Wamena in 2003. During the interrogation of Gustaf Ayomi in an office of the criminal investigation department at Polres Jayawijaya, Wamena, officers put a leg of a chair on his thigh and sat on the chair. While experiencing severe pain, Ayomi was forced to keep the upper part of his body in a stressful upright position. Additionally, he was beaten with a stick all over his body, but particularly on his head. The ill-treatment lasted for an entire week, after which he was put into a small cell. He was not able to stand or walk for an entire week. Hasegem was interrogated separately by different officers at Polres Jayawijaya, Wamena. During the interrogation he was kicked and punched while being tied to a chair. His interrogation also lasted for about one week. Afterwards he was locked up in a small cell with eight other detainees. Asso was injured during the arrest and had to spend one week in hospital. Afterwards, he was transferred to Polres Wamena as well.

36. During their trial proceedings before Wamena District Court, the group was represented by a State-appointed lawyer, who did not properly defend them. After the verdict, they were sent to Wamena prison. On 15 December 2004, a prison guard approached the group after lunch and invited them to a surprise Christmas party. They were taken to an office which members of the mobile police force entered to take the group, against their will, to the airport in order to transport them to Makassar prison. Their lawyers, families and friends had not been informed of the transfer. During the flight they were handcuffed. When they arrived at Makassar airport, officers chased them out of the plane by kicking them with their boots and hitting them with the butts of their rifles. Some of the detainees started bleeding. They had no complaints regarding Makassar prison. They received good vocational training. More than two years later, on 27 March 2007, Heri Asso, Gustaf Ayomi and Jean Hasegem were transferred from Makassar to Abepura. During the flight, they were again handcuffed; their feet were fixed with expanders and swelled up so that they were unable to stand or walk after the flight. Upon the Special Rapporteur's visit on 16 November the group was detained in building 17 of Abepura prison. They said that on 1 July 2007 members of the mobile police, the city police and the military police transported them to the main police station in Jayapura, supposedly in an attempt to forward them to another prison outside of Papua. They were kept in custody together with Mr. Cosmos and Mr. Simpson until 5 July. On the third day, the group started a hunger strike, following which the head of Polsek sent them back to the prison in Abepura. Due to their weak health the detainees asked for medical examinations outside the prison, but their request was turned down. On 19 July 2007 they were again picked up by the police this time by truck, and transported to the office of the prosecutor. The detainees emphasized that the transport was a terrifying experience, due to the speed and style of driving. At the office, they were forced to sign a document. As for the conditions of detention, the group reports that some guards regularly get drunk and enter the detainees' cell in order to extract money. All three voiced concern regarding the safety of their families, who had been repeatedly threatened in the past.

37. **Women's wing:** Ten women (eight of which are convicts) were detained in three different cells. Overall the conditions were acceptable; the cells were clean and the women were allowed to use mobile phones and had access to additional food, coffee, etc. Most of the women had mattresses which they brought from outside. Disciplinary measures for persons who violated

the rules were detention in solitary confinement for up to eight days and restriction of visits. Nine women and four babies were present. The babies were allowed to stay with their mothers up to two years, but needed to be fed by the families. The women reported that often there was not enough water. In principle, the families were allowed to visit them at any time, but most often one had to pay the officer on duty to be allowed to do so. Women are allowed to go out of the prison for one day, if they pay the guards. There were seven female officers.

38. **Female detainee**, was arrested in September 2007 by one of her relatives, who shouted at her and handcuffed her. He then took her to Polsek and the prosecutor immediately signed her transfer to the prison.

39. **Ms. Sunarti**, aged 42, from Makassar, was convicted to seven months in prison for gambling. She was arrested by six policemen on 14 March 2007. She was transferred to Polsek, where she stayed for one week, after which she was released because of her baby. On 8 May 2007 she was taken to the prison. She reported that some weeks ago when she asked an officer whether she could go home, she was insulted and beaten in front of her husband. When they tried to file a complaint, instead of launching an investigation, the police asked for documents that could prove their allegations.

40. **Minor's cell**: Four boys were detained in the cell; one of them aged 14, the others 17 and 18; all of them were very hesitant to speak to the Special Rapporteur. One of them had bad pain in his stomach. Although the nurse had given him medicine, his situation had not improved. He had not seen a doctor. According to the forensic doctor, he was in need of medical examination and treatment.

41. **Salmon**, aged 18, from Papua. He was arrested at the seaport of Jayapura by two policemen (KP3 LAUT). They had beaten him with their hands in his face during the arrest. He was held at the police station for 28 days, but not ill-treated any more. However, he was subjected to threats.

#### **MILITARY PRISON ABEPURA (PAPUA)**

(Visited on 15 November 2007)

42. Since the chief of the Military Detention Facility, 1st Lieutenant Yaman, was absent the Special Rapporteur interacted with the officer in charge, Colonel Marcus Paya, Commander of the Military Police. The day of the visit, 13 persons were detained in the facility, 6 men were held in the punishment cells. All of them were sentenced by the Military Court in Jayapura. for charges such as "indecentcy" or deserting. The longest sentence was 18 months, the lowest 8 months. The Special Rapporteur had to make several phone calls until he was granted access. But in violation of the terms of reference of the Special Rapporteur, Colonel Paya restricted the possibility of the Special Rapporteur to interview detainees in private. As a consequence, most detainees did not wish to speak to the Special Rapporteur. Others preferred to talk about their cases rather than about their treatment during detention.

43. The Special Rapporteur notes with strong regret that this facility had not been mentioned on the list of military prisons provided by the authorities in Jakarta.

**WAMENA PRISON (PAPUA)**  
(Visited on 16 November 2007)

44. The Special Rapporteur was received by the Director of the prison, Mr. Hendro Sekaryan. The total capacity of the institution is 114. On the day of the visit, the prison counted 111 detainees; 58 of them were convicts and 53 pre-trial detainees. Six of the latter were women. Two children (one boy and one girl) were staying respectively with their father and mother in the prison. Women are detained separately, but have to use the same courtyard as men when they want to leave their cell. The conditions in the prison are generally good.

45. The cell for newcomers is completely dark and hot and lacks ventilation. In principal, every new arrival is detained in this cell for three days and nights; however the length of detention in this cell seemed to be handled liberally. In addition, the Special Rapporteur received some reports that newcomers have to do push-ups, squats and other exercises in front of the other prisoners as a “welcome ceremony”. Some prisoners were reportedly beaten. Violation of the prison rules by detainees (e.g. attempts to escape and late return from their “errands”) was sometimes punished by beatings and several weeks in the newcomer’s cell, which amounts to inhuman and degrading treatment. The guard Herman Matuan was known for beating the detainees when he was drunk. Many prisoners complained about the quality of the food.

46. The medical unit had no equipment due to lack of funds. There was one mentally ill prisoner, whom the director would like to transfer to a psychiatric hospital. No death in detention had been reported in the last two years.

47. **Prisoner**, aged 31. His five-year-old boy stays with him in prison. He had to stay in the “welcome cell” for two days upon his arrival, which he perceived “as if he could not survive”.

48. **Prisoner**, aged 25, was arrested together with friends on 3 September 2007 in Wamena by nine officers from the Criminal Investigation Department (CID) and subsequently taken to Polres, where they stayed for 15 days. Upon arrival at the Polres, he and his friends were slapped by the previous head of the CID, Alex Bleskadit, in his room. One of his friends was reportedly beaten so strongly that his ear started bleeding. He informed the Special Rapporteur that due to the high number of new arrivals (20 persons) at the prison, he and his friends were not detained in the newcomers’ cell. He had no complaints about the conditions in prison; the prisoners are allowed to play football, listen to music etc.

49. **Meki Elopere**, aged 20, was beaten in Polres with an iron bar.

**POLRES JAYAWIJAYA, WAMENA (PAPUA)**  
(Visited on 16 and 17 November 2007)

50. The Special Rapporteur was received by the chief of police, Marolop Manik, and the chief of CID, Mr Erlangga (the latter had served at Polres Jayawijaya only for one week). The detention facility, located at the entry post, consists of two small cells (175x175 cm). The day of the visit, there were five detainees dressed in new uniforms which they had received that same morning. They had been informed beforehand about the visit of the Special Rapporteur.

51. **Fermenas Kogoya**, aged 37, had wounds in his face and reported that he had been beaten by the family of a girl who alleged that he had raped her on 14 November 2007. The police had taken him to the hospital first and then to the police station.

52. **Beremius Wanimbo**, aged 20, from Digimie Village, was arrested a few hours prior to the visit of the Special Rapporteur by members of the police pursuant to allegations of having raped a 13-year-old girl the night before and was subsequently taken to the Polres. There, he was confronted with the family of the rape victim, including the girl herself and a tribal chief. The police officers and the family proposed Mr. Wanimbo to solve the issue in a traditional, amicable way, meaning that he would be able to leave for an apology and the payment of 500,000 IDR (about 50\$US) to the family. When Mr. Wanimbo denied any wrongdoing, the officers stripped him to the waist and started to beat and kick him. Mr. Wanimbu was punched several times in the face and the chest. At one point also the chief of the family gave him a strong blow on his face. The beating stopped when the Special Rapporteur arrived at the Polres. Mr. Wanimbo was about to put on his clothes when the Special Rapporteur entered the room. During the interview he was crying and shaking, and his allegations were corroborated by forensic evidence. The officer mainly responsible for the beatings was Erwin Banamasa, who admitted to it in front of the Special Rapporteur, the Chief of CID and the chief of police.

53. Subsequently the Special Rapporteur accompanied Mr. Wanimbu to the local hospital (Unit Gawat Darurat) in order to ensure that first aid would be provided and the medical evidence recorded. The doctor in charge, Dr. Prapti Dewi Suhirman, reported that the police came frequently to demand medical reports on injured detainees, but these documents were made available only to the police and not to the victim. Mr. Wanimbo received treatment at the hospital, but was later handed back to the officers of the Public Service Post, where he had been tortured earlier.

54. The Special Rapporteur returned to the Polres on 17 November, in order to follow up. He was informed and shown documents indicating that disciplinary investigations were conducted by the Department for internal investigations, PROVOS, and concluded in the course of 16 November. The officers Erwin Banamasa, Maxon Yappo, Hermanus Karubaba and Nikolas Nelson Yerisetouw received a written warning and 21 days of disciplinary detention. Erwin Banamasa, who was the highest ranking officer, was additionally excluded from any training for one year. The criminal investigations based on article 352 (ill-treatment) were still ongoing. Banamasa complained to the Special Rapporteur that the ill-treatment of Wanimbo was a "light case", and that the proceedings against him were "exaggerated".

55. **Mr. Hermamante**, aged 31, from Timin, had been detained at the Polres for 16 days and indicated that a week earlier the cells had been overcrowded with up to 32 persons in the facility.

56. The Special Rapporteur trusts that the criminal investigation in relation to the abuse of Beremius Wanimbo will be conducted in an impartial and independent manner and be concluded without further delay. He wishes to be informed about the outcome of the criminal investigation.

**POLSEK KP 3, AIRPORT WAMENA (PAPUA)**

(Visited on 16 November 2007)

57. The Special Rapporteur was received by the Chief of the Polsek, Jantje-Berhitu (Bripka). The facility consisted of three cells. On the day of the visit, the five detainees present were dressed in new uniforms which they had received the same morning, reportedly because of the visit of the Special Rapporteur. The detainees also indicated that they had received better food than usually. No complaint related to ill-treatment was made. A journalist in detention complained that he had no right to appeal his detention to a court.

58. **Chanri Suripati**, aged 30, journalist, was arrested on 9 November 2007. He complained that he could not obtain a postponement of the detention.

59. **Detainee**, arrested by the police on 5 November 2007, was taken to Polres and interrogated by CID. He made no allegations of ill-treatment.

**POLSEK KURULU (PAPUA)**

(Visited on 17 November 2007)

60. The Special Rapporteur was received by Marsel Mebel (Kapolsek) and Syarifudih (Brigpol). The detention facility consisted of two cells which were empty at the time of the Special Rapporteur's visit. Generally, the officers explained that they tried to solve cases through community-based mediation and policing (Forum Kemitraan Polisi Masyarakat). No register was kept, but the officers maintained that the detention cells had not been used since August 2007 and that all detainees were being transferred immediately to Wamena. However, according to several graffiti and carvings on the walls of the cells, several persons had been detained for several days in this detention facility. The graffiti mentioned "suffering" and lack of food. One scribble apparently originated from a person held on 9 November 2007, which was in contradiction with the information provided by the officers. When confronted with the graffiti, Mr. Mebel explained that drunk persons were frequently kept in the cells for their own safety. However, since these persons were not considered "detainees" they were not noted in the register.

**POLSEK "HOM HOM", WAMENA KOTA (PAPUA)**

(Visited on 17 November 2007)

61. The Special Rapporteur was received by First Inspector Mr. Hajeri. The cells were empty. Mr. Hajeri explained that since the cells were not sufficiently clean, detainees had been transferred to Polres Jayawijaya, Wamena, for the preceding six months. The register of detainees, which included a number of inconsistencies, indicated that the last person had been detained there in May 2007. However, graffiti in the cells indicated that persons were locked up in the cells in June and July 2007. Confronted with this, Mr. Hajeri explained that drunk persons would be detained for one day or one night and that they were not considered as detainees. The alleged corresponding register however only contained the date of the arrest and did not include any information on the date of release, undermining safeguards against ill-treatment.

**POLSEK ABEPURA (PAPUA)**

(Visited on 17 November 2007)

62. The Special Rapporteur was able to enter the detention facility only after a considerable period of waiting and discussions, but was finally received by Bominus Rumaropen (head of the Polsek). There were 11 detainees, two of whom were hidden in a separate interrogation room behind locked doors. The Special Rapporteur could only talk to them after insisting that the doors be opened. The youngest detainee was 13 years old. The facility consisted of three very dark cells (about 2m x8 m) lit by a lamp and little natural light coming in through small holes in the wall. The detainees had to sleep on mattresses they brought from home.

63. The Special Rapporteur met a detainee he had interviewed in Polres Wamena (see above): **Fermenas Kogoya**, who repeated his earlier story and reported that no violence was used against him. He was worried that in Abepura he would receive no food since his family was in Wamena and therefore not able to bring him food.

64. **Yusus Jamera**, aged 22, from Jayapura, was arrested in Abepura on 16 October 2007 by his uncle who works in a detention house. He was then transferred to Polsek on the same day. During interrogation he was reportedly beaten with hands and wooden and iron sticks, on the lower back and the head, by an officer called Samalu until he confessed. Since then he had not experienced any more violence, but he complained about the insufficient quantity of food and water and explained that two or three detainees have to share one meal.

65. The two detainees who were hidden from the Special Rapporteur were convicted prisoners who were sent back from Abepura Prison to this police station for reasons which remain unclear. The police chief indicated that he had already tried to send them back. One of the detainees was the brother of Yusak Pakage, who was sentenced for the murder of a policeman during the riots of 15 March 2006 to 15 years' imprisonment (and was interviewed by the Special Rapporteur in Wamena prison; see above). He informed the Special Rapporteur that he was arrested one day after these riots and, since he did not confess, was shot in the leg at short range.

66. **Habel Gombo**, aged 20, from Dock 5 in Jayapura, was arrested on 6 November 2007. He was caught by the public after he tried to rob a lady at the market in Abepura and was subsequently taken to the police post at the market. Upon arrival there, three police officers punched him in the face and the upper body and beat him with a rubber stick on his head and back. In the course of the beatings his left cheek started bleeding. The robbed woman was present all the time of the beating and shouted insults. The injury on this cheek was examined by the Special Rapporteur's forensic expert who concluded that the wound corroborated Mr. Gombo's statement. On the same day Mr. Gombo was transferred to Polsek Abepura. Once he arrived there, three police officers, among them the commander on duty, jumped on his feet with their heavy combat boots. Mr. Gombo had not been interrogated and he did not know for how long he would have to stay at the Polsek or whether or when his case would be forwarded to the prosecutor.

**POLDA JAYAPURA (PAPUA)**  
(Visited on 17 November 2007)

67. The Special Rapporteur was received by the Deputy Chief of the Criminal Investigation Department, Piet Waine, and the Chief of the Unit on Special Crime in CID, Irianto John. 13 detainees were in the cells when the Special Rapporteur arrived. Some walls had been painted and the whole facility cleaned prior to the visit of the Special Rapporteur. Several of the detainees mentioned that they did not receive any food because they were under the authority of the prosecutor. The management explained that as soon as the detention of a person was authorized by the prosecutor, the responsibility to provide food or at least to reimburse the police station shifted to the prosecutor. Since the prosecutor had not paid, the detainees under the authority of the prosecutor did not receive food. The Special Rapporteur asked the management that one prisoner who was guarded by the police station on behalf of Abepura Prison should immediately be transferred back.

68. In the women's cell, there were six women and one 14-year-old boy who was exceptionally allowed to stay with his mother. All detained women had children. The women were detained in late August 2007 in two separate cases. They were allowed to leave the cell once a week. Since there was no toilet in the cell they had to call the guards when they wanted to relieve themselves. In general, this worked well, but sometimes the guards did not come to open the doors immediately, which meant that the women had to use plastic containers. They were allowed to receive visitors. One woman complained about headaches and, according to the doctor, received appropriate treatment.

69. **Four women** were detainees under police authority; they were interrogated after their arrest on 29 and 30 August 2007 and reported that no violence had been used. They had not seen a judge and were not informed about any developments of their case. They had attempted to be released on bail in order to be able to look after their children, but were not successful.

70. The remaining **two women** (detainees under the prosecutor's authority) were charged with drug related crimes. They reported that they had been beaten and slapped during their arrest for one hour by the police to extract confessions and information about the drug providers (which they refused to report to the police). They reportedly sustained bruises on arms and some scars, which were not visible any more. They complained that since they were detained under the prosecutor's authority, they were not provided with food.

71. **Detainee**, charged with drug related crimes, complained about threats and beatings during detention.

72. **Detainee**, complained about being forced to jump and squat in front of others, which he perceived as being humiliating.

73. **Detainee**, aged 40, accused of a drug crime, was arrested on 27 August 2007 by seven drug police officers under the command of Iptu Alawah in his room in Jayapura. Upon his arrest he was handcuffed, forced to sit and beaten and kicked by them. They reportedly also stepped on his body and legs. He further complained about the lack of food.



74. **Mr. Muslimin**, aged 35, from Ujune Pandane, was arrested on allegations of selling alcohol and violating health provisions. Members of the police entered his house on the evening of 29 August 2007 and collected his driving licence. Subsequently, the police searched his house without having presented a warrant and demolished most of his furniture. Mr. Muslimin, together with another man and six women from his neighbourhood, was taken to the Polda, where he was interrogated for the first and only time. Since then, he had not been interviewed by an officer and his case had not been processed. A request for a release on bail had been denied. Mr. Muslimin experienced the unclear status of his case as “mental torture” since he had been in detention for three months without knowing what would happen next.

75. **Sabar Olif Iwanggin**, aged 34, from Asal, human rights lawyer by profession, was arrested on 18 October 2007 on charges of distributing a text message via his cell phone defaming the President of the Republic. During a meeting with Aloysius Renwarin, some 30 officers of the anti-terrorism unit Detachment 88, the criminal investigation police of POLDA and the Anti-Terror Special Force Unit of the National Police surrounded the building and arrested Sabar Olif. He was taken to Polda where he was interrogated from 3.30 p.m. until 5 a.m. the next morning by Polda officers. During the interrogation water was served; however, he felt extremely tired and depressed. On 20 October, at 10 a.m., the interrogation continued, this time conducted by officers of Detachment 88 who questioned him on his relation with the Free Papua Movement, OPM, and his involvement in the Abepura case as a human rights lawyer. Mr. Olif had no complaints about any ill-treatment; however, he was not allowed to meet with his lawyer and too tired to sign his own statement. On 26 October, Sabar Olif was transferred to Jakarta on a commercial flight during which he was not handcuffed. The transfer to Jakarta had not been announced, neither he nor his lawyer were informed in advance. He was in detention in Jakarta police headquarters from 27 October to 11 November, where he was interrogated two times. Sabar Olif’s main concern was that he had no idea of how long he would remain in detention. His case had not yet been forwarded to the prosecutor and his detention had been prolonged repeatedly. Sabar Olif perceived his treatment as discriminatory and related to his engagement as a human rights lawyer.

### **MAKASSAR CENTRAL PRISON FOR CONVICTS (SULAWESI)**

(Visited on 18 November 2007)

76. The Special Rapporteur was received by the chief of the facility, Mr. Yudotomo, and Mr. Ridwan. The capacity of the prison was 1,000. On the day of the visit there were 511 convicts, out of whom 52 were women detained in a separate block lacking space for exercising. The detainees who supervised the others were wearing blue T-shirts. Visits were possible three times a week.

77. The Special Rapporteur received consistent allegations of corporal punishment in the form of beatings if the prisoners broke the rules. The ill-treatment reportedly took place in the officers’ room or at the front where other detainees and prison staff could watch.

78. The quarantine had several cells which were used for mentally ill detainees and for disciplinary purposes. However, the persons interviewed all insisted that they had moved to these cells voluntarily, although it turned out later that some of the detainees there had tried to escape and had been put in the isolation cells in spring 2007. One person complained about back pains, but was examined by the prison doctor and received medicine.

79. The prison had a special cell for new arrivals which was very dirty. Generally, persons were reportedly detained in these cells between one and two weeks. The day of the visit of the Special Rapporteur one person from Ambon was being held there.

80. **R.**, aged 25, from Makassar, was arrested on 25 May 2006 by the drug police. He was kicked in the stomach and hit on the face in the street for one hour, when he refused to tell where his drugs came from. He was then transferred to POLSEC Mamadjanj, where the beatings continued and he was hit with wooden sticks and hands all night until he told the names of the drug sellers. On 4 July 2006, he was transferred to the State Detention House and on 22 November 2006 to the prison. He complained that no drug treatment was available, but also reported that voluntary HIV testing and free HIV treatment was provided. Payments needed to be made for bringing in a TV and other “services”. He also mentioned with astonishment that release on parole is free of charge in other countries.

**MILITARY (MASMIL) DETENTION CENTRE, MAKASSAR (SULAWESI)**  
(Visited on 18 November 2007)

81. Although this was an unannounced visit, the Special Rapporteur was welcomed by photo journalists at the gate of the Masmil. The head of the military detention centres unit from the Armed Forces Headquarters in Jakarta, Colonel Wahjono, had arrived from Jakarta for the visit of the Special Rapporteur, which the Special Rapporteur interpreted as confirming that his movements throughout the country were monitored by Indonesian authorities. At the airport of Makassar, the Special Rapporteur identified a plain-clothes officer of the regional military command (Mr. Ramli, Nr. 21940002670572) who admitted after initial hesitation that he had been ordered to report to his superiors on the Special Rapporteur’s arrival at and departure from the island. Major Daud (Navy) was in charge of the convicted prisoners; Captain Basuki was in charge of the pre-trial detainees.

82. The day of the visit the administration counted 51 convicts and 7 pre-trial detainees, who were detained in a separate wing. According to the information received the food was of bad quality. Newly arrived persons were routinely forced to do exercises such as somersaults in the courtyard of the institution while all other detainees were watching. All new arrivals had their heads shaved and had to spend a week in a dark single cell the doors of which were always closed. Detention in such conditions amounts to degrading and inhuman treatment. The detainees were very afraid and hesitant to speak to the Special Rapporteur. The Special Rapporteur further came across one detainee who was detained as a punishment for having married without seeking the permission of his superior.

**POLDA MAKASSAR (SULAWESI)**  
(Visited on 18 November 2007)

83. The Special Rapporteur was received by Mr. P. Harrono, officer in charge. All officers present and detainees made it clear that the visit of the Special Rapporteur had been previously announced. 38 detainees were detained in one big cell, the youngest person was 17. The smaller cells were not in use. Detainees had only limited access to fresh air and the hygienic conditions were not satisfactory. It was reported that the quality of the food was bad and there was not

sufficient drinking water. Detainees reportedly had to pay a fee of 10,000 IDR (about 1 \$US) in “rent” to the police. If they did not pay, they reportedly risked being locked up in small single cells.

84. **Martin**, aged 47, had been detained at the Polda for 23 days. He reported that in early November 2007 a detainee had been beaten by an officer. Two other detainees (Martin and a co-inmate) called the chief of disciplinary police by telephone and reported the incident. Consequently, Martin was detained in a single cell for four days as a punishment.

**POLSEK SIDEMEN (BALI)**  
(Visited on 19 November 2007)

85. Because so many of the detention facilities the Special Rapporteur had visited in Papua and Sulawesi had clearly been awaiting him, he decided not to visit the prison and main police stations in Bali. He rather carried out unannounced visits to smaller police stations away from Kuta. At the Polsek Sedemen, the Special Rapporteur was received by Ngh. Karya, Head of Polsek, and Nyomad Sari, Head of the Criminal Investigation Department, who all cooperated fully with the Special Rapporteur. There were no detainees in the only cell.

86. **Iwayan Riko al Segol**, aged 32, had allegedly committed suicide on 18 November 2007, the day before the Special Rapporteur’s visit. The police presented the Special Rapporteur with photos showing him hanging from the roof of an open cell (bars on the ceiling) with both feet touching the ground. According to Officer Gede Sental who found the body, he had seen Mr Riko still alive on Sunday (18 November 2007) at 5.30 a.m. At his next check at 6.30 a.m. the same morning he found Mr. Riko suspended from the ceiling. He immediately called a doctor (Dr. Yehezkiel from nearby Pukemas Sidemen), who arrived at 6.45 a.m. and certified his death, but did not conduct any medical examinations regarding the cause of death. He did not remove the sarong (traditional Indonesian piece of clothing) with which he had strangled himself. The body had been buried the same day because the family allegedly did not wish an autopsy to be performed.

87. The Special Rapporteur and the forensic doctor had serious doubts whether the suicide could have been performed by Mr. Riko without having used a chair, as was explained by the police officers. He went to the hospital and spoke to the doctor who had found the dead body the day before. The doctor and his superior confirmed that the doctor had not performed any medical examinations or an autopsy. The Special Rapporteur recommends that autopsies should be mandatory in all cases of death in detention.

**POLRES GIANYAR (BALI)**  
(Visited on 19 November 2007)

88. The Special Rapporteur was received by Dedy Dhia Dharma, head of Polres, who reported that he regularly inspects detention places without announcement, but has not received any complaints since he was appointed in early 2007. Local NGOs (Garansy, Gappar, Baraf) regularly visit detainees. The cells were located on the fifth floor, with daylight and good ventilation, but not particularly clean. Visits were allowed every day from 2.30 p.m. to 3.30 p.m., on weekends from 11 a.m. to 1 p.m. There were eight detainees in one cell.

89. **Anak Agung Gede Oka**, aged 38, was arrested on 15 November 2007 at Peta village by the police, and was taken to Polsek Gyanyar, where he was interrogated. He stayed there until 17 November and was then transferred to the Polres. He had no complaints about the police station; he received food twice a day. There was no violence and the doctor examined them. He mainly suffered from the fact that he was unable to pay the school fee of his 10-year-old child.

90. **Wayan Denia**, aged 57, from Bali, was arrested on 10 November 2007 at his home by the police for a minor offence. He was taken to Polres where he was interrogated in an office in which he had to stay until the early morning of 12 November 2007. Only then was he taken to the cell. He was informed that he had the right to a lawyer; but could not afford one. He complained about the lack of drinking water.

#### **JUVENILE DETENTION CENTRE KUTOARJO (JAVA)**

(Visited on 20 November 2007)

91. The prison had a population of 82 detainees (71 convicted, 10 pre-trial, 1 girl), and a capacity of 116. The youngest detainee was 10 years old. The only girl was detained in a separate cell. Staff comprised 55 men and 14 women. The cells were grouped around a large courtyard. Their size was about 1,6m x 4 m (including the toilet). Around seven boys sleep in each cell. Families can visit, but are not allowed to stay longer than 30 minutes. The Special Rapporteur received numerous allegations of corporal punishment, including beatings with fists, rattan sticks and brooms as well as degrading exercises (“duck walk” in front of other detainees). The punishment takes place either in the guards’ room or in the courtyard in the presence of the other detainees. Normally the boys try to hide traces of beatings in order to avoid trouble, however a doctor who comes once a month has noticed traces of the beatings and asked the guards to stop it. Furthermore, the boys can be detained in closed punishment cells for up to three days as a form of disciplinary measure. Confronted with these allegations, the Deputy Director, RS Suwardi, admitted that beatings are a common practice if detainees break the rules. The beating is decided spontaneously and without reference to any rules.

92. **Detainee**, aged 18, was arrested on 24 November 2003. He cannot count how often he has been beaten by the prison guards, typically with fists and sticks to punish him after fights with other boys. Prisoners can go to school within the facility. His family visits him once a month. Before his detention in the Juvenile Centre he was held in custody for a month in Polres Remband, North Beach. He was heavily beaten for a whole week with wooden and rattan sticks by police officers.

93. **Two boys, aged 17 and 18**, report that they were beaten by prison guards after a fight with other detainees some two months ago.

#### **BATU PRISON ON NUSA KAMBANGAN (JAVA)**

(Visited on 20 November 2007)

94. The Special Rapporteur was received by the Deputy Director Djaja Tjahjana (Kabid Pembinaan Napi) in the prison, which was fairly new and high security. There were 191 prisoners, out of whom nine were on death row, including the three persons charged with the Bali bombings of 2002, which caused the death of 202 persons in the vacation resort of Kuta.

Most of the persons on death row intermingle freely with the other prisoners. The three “Bali bombers” and three detainees punished for an attempted escape were held in solitary confinement cells. There were eight individual cells with two rooms each (prisoners could retreat to the back rooms and have fresh air in the front part). One of the condemned was obviously mentally ill, and another prisoner was taking care of him.

95. While two of the “Bali bombers” refused to speak with the Special Rapporteur, the third one, Mr. Ambrosi, was willing to conduct a short interview. He reported that he had been severely tortured during his interrogations but that he did not wish to give any details. He also insisted that he did not wish to have his death sentence commuted to imprisonment. He was ready to be executed and did not express any remorse.

## 20 PASIR PUTIH MAXIMUM SECURITY PRISON, NUSA KAMBANGAN

(Visited on November 2007)

96. The prison was opened in June 2007 and had a capacity of 336 persons. It was the top maximum security prison in the country, built with the assistance of the United States and the European Union at an extremely isolated location. When the Special Rapporteur visited, 251 prisoners, among them 88 foreigners, were held there. 43 detainees, all of whom were allowed to intermingle freely with other prisoners, were on death row. The overwhelming majority of prisoners on death row were sentenced for drug related crimes. The Special Rapporteur notes with satisfaction that he has not received one single allegation regarding ill-treatment in Pasir Putih. The main complaints pertained to the isolated location of the facility and problems related to the fact that construction was still ongoing.

97. The Special Rapporteur received information that two persons had died at the prison since June 2007 because of insufficient medical treatment. The prison director, Harun Sulianto, admitted that there were some shortcomings with regard to access to health service and indicated that the recruitment of a doctor was under way. He was also aware of every single health problem and promised to ensure that two diabetes cases (Benni Sabri and Taufani Rab) would receive proper treatment. One time the prison had been flooded. For this reason, the cell doors were not closed any more since then. Some reported that the police who guarded the prison entered on one occasion, but retreated when the prisoners protested.

98. Further complaints concerned the transfer to the prison in July 2007, of which prisoners or their lawyers or family members had not been informed beforehand. During the transfer detainees were handcuffed together, chained to the floor and blindfolded for 14 hours. According to the prisoners, this treatment resembled that inflicted by the CIA during rendition flights.

99. **Nikolas Ganich**, aged 63, Dutch citizen, was arrested on 11 November 2005 in Banten Province by the police and sentenced to death for a drug related crime. He was slapped by the police and threatened with being shot during interrogation. For six months he was in police custody before being moved to a number of prisons. Among all the prisons he has been to, he considers Cipinang and Tangerang the worst, inter alia because of the inter-prisoner violence. The main problem with Pasir Putih is that prisoners cannot even call their families, which is possible everywhere else. The food is not very good, but those who have money can buy better food.

100. **Jean Wickara**, aged 29, from Swaziland, was arrested in September 2002 by the police in Jakarta and taken to Polres Central Jakarta, where he was severely punched and kicked and his head smashed against the wall until he made a confession. He sustained serious internal injuries, but did not receive any medical treatment. Four days after the arrest he was transferred to Polda. Mr. Wickara had a lawyer, but he was not able to help him. He received a 16-year sentence although there was no evidence except his confession. Mr. Wickara voiced no complaints about Pasir Putih, except for the bad quality of the food.

101. **Angkiem Soei**, aged 55, Dutch citizen, was arrested in 2002 in Jakarta and taken to a hotel, where he was blindfolded and beaten many times to force him to sign a confession. He was held in police custody for several months at POSTPOL Senopati and later transferred to Polda. He suffers from the bad food and the isolation.

102. **Hilary Chimezie**, aged 40, Nigerian citizen, was arrested on 29 August 2002 by police in Jakarta. He then spent four months at Polda before his case went on trial for the first time, after which he was returned to Polda and held there for another four months. During his time in police custody he was severely beaten with a hammer, as a result of which his leg was broken. He still has difficulties walking. He was also beaten on the chest. He did not receive any medical treatment. At one point his lawyer was beaten as well, after which he withdrew from the case. He then received a State-appointed lawyer. He has no complaints about the prison.

103. **Rodrigo Muxfeldt Gularte**, Brazilian citizen, arrested in August 2004 by airport police in Jakarta. He was not tortured, but the transfer from Jakarta to Pasir Putih was brutal. The prisoners had their hands and feet taped together and handcuffed to other prisoners. While they were sitting on the floor of the plane, they were beaten.

104. **Anthony Osborne alias Michael Smith**, aged 32, Nigerian citizen, confirms the allegations of the harsh transfer. He stayed in several bad prisons, such as Salemba, Tangerang, but the worst was Cipinang.

105. **Ekpeje Samuel**, Nigerian citizen, informed the Special Rapporteur that he is sentenced to death based on a confession made under torture.

106. **Thomas Daniel**, Angolan citizen, was sick and suffered from depression. He reported that he did not receive the medical treatment he needed and that the guards discriminate him because of his condition (e.g. not allowing him to receive visits).

107. **Camjai Konothavorn**, aged 50, Thai citizen, was arrested on 20 August 1987 for drug offences. Soon afterwards he was sentenced to death, which was eventually commuted to life imprisonment. He was transferred from Cipinang to Pasir Putih in June 2007. Mr. Konothavorn did not voice any complaints and is satisfied with the conditions of detention, particularly in comparison to Cipinang prison. Mr. Konothavorn, who is fully repenting, has asked for a reduction of his sentence to 20 years.

108. **Adami Wilson**, aged 34, Nigerian citizen and Indonesian resident since 1991, was arrested in 2003 by officers of Polda Jakarta and charged under article 55 with drug related offences. During the interrogation, the officers blindfolded Mr. Wilson, put a gun into his mouth and threatened to kill him unless he confessed or paid the amount of 100 million IDR (about

10,600 \$US) for his release. Mr. Wilson eventually confessed and was sentenced to death in 2004. During the trial proceedings he informed the lawyer assigned to him about the ill-treatment he experienced. However, in his assessment the defence lawyer cooperated with the judge and the prosecutor in order to extract money from him. In 2005 Mr. Wilson tried to appeal the sentence. He did not receive any legal aid and the appeal was unsuccessful.

109. **Mr. Zulfiqaraw**, aged 40, from Lahore, Pakistan, was arrested at Jakarta Airport in November 2004 on allegations of drug related offences. While he was abroad the police raided his apartment in Jakarta which he shared with a friend who possessed drugs. Despite the friend's confession and assurances that Mr. Zulfiqaraw was not involved in any drug related matter, the police took Mr. Zulfiqaraw from the airport to a private house, where he was tortured for three days. He was frequently punched, kicked and threatened with being shot unless he would confess. Nobody knew his whereabouts. After three days his health deteriorated so much that he had to be taken to the police hospital, where he was treated for 17 days. Subsequently, he was transferred to Polda Jakarta where he spent two and a half months in official police custody. The prosecutor in charge, Mr. Hutagaol, offered to drop any charges for a payment of 400 million IDR (about 42,700 \$US). Mr. Zulfiqaraw perceived his ensuing trial as strikingly unfair and biased against him since he is a foreigner. No convincing evidence was presented; during the trial session his judge fell asleep. He did not receive any legal aid although he was not able to finance a lawyer; his embassy was wrongly informed and failed to support him. He was sentenced to death. In March 2005 he was transferred to Tangerang prison, and a few months prior to the interview he was moved to Pasir Putih.

110. **Gurdip Singh**, aged 38, from India, was sentenced to death in relation to the above-mentioned case. He was the flatmate of Mr. Zulfiqaraw and confirmed that Mr. Zulfiqaraw was not involved in any drug related matter; however, his statement was not taken into account during the trial proceedings.

111. **Mansyur Hamada**, aged 72, was arrested by officers of Polda Jakarta in January 2004 for possessing 100 grammes of heroin. He was offered to be freed for the payment of 25 million IDR (2,670 \$US) but did not have enough money. During his custody at Polda Jakarta he was beaten up for three days. His hands were cuffed behind his back and the officers beat him with their fists as well as with their shoes until he could not see any more. 40 days later, Mr. Hamada suffered a heart attack. In March 2004 Mr. Hamada was transferred to Cipinang prison, and in July 2004 he was sentenced to capital punishment. During the trial, Mr. Hamada stated that he was tortured; however, neither the judge nor the prosecutor took note of his allegations. A few months prior to the interview he was transferred to Pasir Putih. When the Special Rapporteur visited the prison, Mr. Hamada was suffering from glaucoma. During the debriefing, the prison director informed the Special Rapporteur that an operation had been scheduled for the next days.

112. **Indra Tamang**, aged 27, from Nepal, was sentenced to death in 2001 for drug related offences. In 2002 he appealed unsuccessfully against the verdict. He perceived his trial as unfair since he did not speak Indonesian sufficiently well in order to understand the court documents and did not have a lawyer.

113. **Abdul Hafeez**, aged 37, from Pakistan, was arrested in 2001 and sentenced to death in 2002 for drug related offences. During police custody he was ill-treated. The prosecutor,

Mr. Ferry-Silalaht, offered to free him for the payment of 300 million IDR (about 32,000 \$US), which he could not afford.

114. **Ahmad Yani**, aged 33, and **Mr. Munzir**, aged 36, from Aceh Besar, complained to the Special Rapporteur that the location and isolation of Pasir Putih made it virtually impossible to receive any visitors and that they therefore would like to be transferred to a prison in Aceh.

**YOGYAKARTA PRISON (JAVA)**  
(Visited on 21 November 2007)

115. On the day of the visit of the Special Rapporteur, the facility had a prison population of 401 of which 269 convicted (251 male, 18 female) and 132 pre-trial (127 male, 5 female) detainees. Furthermore, there were eight children in the prison. 147 of the detainees were imprisoned in relation to drug related crimes. There were 225 staff members. The Special Rapporteur was received by the prison director and the head of prison security, Agus Suryaaman.

116. The women's wing is composed of three big cells (pre-trial detainees, detainees charged with drug trafficking, convicted prisoners). The women are allowed to go to hospital for medical treatment. The visiting hours are restricted to 15 minutes twice a week.

117. The minors' section is located in bloc A 4, which also contains punishment cells (A 3), cells for adult criminals (A 2) and terrorists (A 1). Most children say they were beaten up by the police and again upon arrival at the prison, where they were forced to do humiliating squatting and similar exercises in front of others.

118. Conversations with the management confirm that prison officials send detainees back to the police if they carry marks of torture or ill-treatment. According to the officials, about three detainees a year arrive from the police with bullet wounds; every two months a detainee with serious injuries is transferred from the police to the prison. A doctor is present at the prison every day during office hours; a nurse is available for 24 hours. Every new arrival goes through a medical check.

119. The so-called "orientation programme" for new arrivals means that they are detained in the quarantine for at least one week. Corporal punishment appears to be a routine practice in this prison. The prison authorities admit that it is conducted from time to time. In accordance with detainees' indications, the Special Rapporteur found instruments used for the ill-treatment in the office of KaKPLP (Head of prison security) where the beatings allegedly take place. The officer Widodo is named as one of the main perpetrators. Agus Suryaman, head of prison security, informed the Special Rapporteur that the sticks were seized from detainees and kept so that they would not be able to use them. However, the majority of allegations concerned ill-treatment by police forces during arrest, interrogation or custody.

120. **Detainee**, aged 19, accused of raping a girl, was put into an adult cell with the aim of having him tortured by his cellmates by the police at POLTABES Yogyakarta. The co-detainees burned cigarettes and hot plastic on his skin, leaving visible marks. They also put a burning substance on his penis, and forced him to eat chilli.



121. **Eko**, aged 28, law student from Blora, Central Java, was arrested by six police officers at his home on 23 December 2006 based on the order of the head of the drug unit of Polres Sleman. He was kicked and punched by the officers and then taken to the Polres where he was interrogated in the office of Mr. Kurniawan. During interrogation he was electrocuted, got hammer blows on his fingers and was beaten by four police officers for one hour. The police officers also banged a chair on his body and put it on his toes. Following this treatment, he confessed, and Mr. Kurniawan offered him to drop some charges in exchange for money. He did not receive any medical treatment for his wounds and scars but the other detainees gave him some medicine. He was kept in Polres police custody for two months and then transferred to the prison LP Cebongan where he spent six months. At the Polres visitors had to pay 10 000 IDR (1 \$US) to see him. The Prosecutor at the District Court offered mitigation in exchange of money. The Prosecutor was informed about the ill-treatment and the confession under torture, but this did not affect the outcome of the trial. In August 2007 he was transferred to the prison of Yogyakarta, which is much better than Cebongan, which is overcrowded; there is violence between prisoners and all detainees are intimidated.

122. **Bramantyo Dedy**, aged 29, from Magelang, Central Java, was arrested on the evening of 16 August 2005 in the border area between Yogyakarta and Magelang while he and a friend were driving home. At a traffic light, police officers stopped the car, dragged him out at gun point and put him on the floor. The police seized a few ecstasy pills which he had with him for his own consumption. Although he followed the orders of the officers, he was nevertheless shot three times from close range into his right foot by Officer Apeng. Furthermore his other foot was broken. The police's explanation for the shooting was that Mr. Dedy tried to resist. He was taken to a hospital where he got some basic treatment for which he had to pay himself. He was constantly surveyed by the police in hospital. After three days, although not fully recovered, he was transferred to Polres Sleman where he was interrogated and put in an ordinary cell. The CID officer stepped on his feet again. After two months he was transferred to Cebongan. In July 2006 he was transferred to the prison in Yogyakarta. In September 2006 he was sentenced to four years and three months of imprisonment. Since his lawyer invoked that he was subjected to torture he got a lighter sentence.

123. At the moment of the Special Rapporteur's visit, Mr. Dedy was detained in the punishment cell A3-2. Prior to that he had been detained in the rehabilitation cell for sick prisoners, but four months earlier it had been discovered that he possessed a mobile phone and he was moved to the cell as a punishment. Subsequently he was beaten two times by Budi Pramono in the office of the Prison Security (KPLP). When he was beaten for the second time, another prison employee was in the room continuing his typing work. The first time he received three or four strokes with a rattan stick, the second time he was hit six times. According to Mr. Dedy the beating of detainees for breaking the prison rules is a common practice and frequently implemented.

#### **POLTABES YOGYAKARTA (JAVA)**

(Visited on 21 November 2007)

124. POLTABES Yogyakarta is the police headquarters of the city of Yogyakarta and comprises eight cells (approx. 2,5m x 4 m) grouped around a courtyard. The detention facilities are located in a separate building and guarded by members of the SAMAPTA unit. When the Special Rapporteur arrived, there were 48 detainees held there. The Special Rapporteur was not

granted access to the cells for a prolonged time. The officers in charge of the cells were among others, officers Agung, Albert, Isrowiyah, Familiasyrah, Amin Kashrtadi and A. Prasetyo. Even during his interviews, he could not speak to the detainees without being watched by police officers. The atmosphere was extremely hostile.

125. The Special Rapporteur notes with concern the palpable level of fear among the detainees and their reluctance to speak with him. At least three detainees had clearly visible traces of beatings with bruises all over their bodies, on their heads, bloodshot eyes and deep eye sockets. Two others had sustained wounds on their legs from shots at close range. Although the Special Rapporteur repeatedly explained that, in accordance with his terms of reference, he was authorized to conduct interviews in private, the officers present observed him during interviews and repeatedly entered the yard where he was speaking to detainees (Officers Rizky Tri and Ngadino).

126. Several of the detainees indicated that the food was insufficient and of bad quality.

127. On his way to the debriefing meeting with the authorities, the Special Rapporteur found **Mr. Zulfikar**, aged 20, accused of a drug related crime, who had just been tortured in office No. 50. He had been beaten with a stick and a white plastic pipe by four police officers named Briptu Arika (Reskrim); Briptu Safari S.Y. (SAT NARKOBA); Briptu Agmeg Jatmiko (SAT NARKOBA); and Briptu Opar S. (SAT NARKOBA), which left very clear and distinguishable marks on his arm. The Head of the Narcotics Unit (Andri Triasfoetra, SIK) tried to deny the Special Rapporteur access, arguing that his mandate does not cover persons outside detention places (i.e. under interrogation).

128. The findings of the forensic expert (who recorded the evidence) as well as Mr. Zulfikar's girlfriend, whom the Special Rapporteur interviewed, confirmed that Mr. Zulfikar had been tortured. She had been arrested together with him and put in the room next to the office where Mr. Zulfikar was ill-treated. She reported that she had heard his screams. She was extremely afraid of the police officers and cried repeatedly when interviewed by the Special Rapporteur. Although Mr. Zulfikar and his girlfriend were both extremely afraid of reprisals for speaking with the Special Rapporteur and begged for protection, the request of the Special Rapporteur to release them was not complied with. However the Special Rapporteur received the assurances of H. Zainal Arifin (Komisaris Polisi) that there would be no repercussions for any of the detainees interviewed by the Special Rapporteur.

129. The Special Rapporteur recommends that independent investigations of all those responsible for the torture of Mr. Zulfikar and other detainees be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators and those senior officers who were under a duty to investigate as soon as there were reasonable grounds to believe that acts of torture had been committed).

#### **CIPINANG PRISON JAKARTA** (Visited on 22 November 2007)

130. Cipinang prison is the biggest detention facility in Indonesia. When visited by the Special Rapporteur there were 1,358 convicted prisoners, 2,087 pre-trial detainees and 14 detainees on

day release. With a total of 3,459 detainees, the prison, which has a capacity for 1,500, is severely overcrowded. Besides the administration building, the facility comprises three separate, rather new detention buildings as well as a part retained from the former prison building.

131. The Special Rapporteur was particularly concerned by the 14 punishment cells. In these cells, which originally had been designed for one person, five detainees were held. Due to the lack of space detainees could not sleep at the same time. In order to remedy this situation hammocks were used.

132. The cells were very hot and humid. The only source of light was a little window, leaving the main part of the cell in the dark. Despite the information received from prison officials that detention in punishment cells would not exceed 14 days, the Special Rapporteur found that most detainees had spent several months there. He considers detention in these punishment cells as inhuman and urged the authorities to tackle this issue without any delay. Furthermore, he received credible allegations of beatings as a means of punishment, which was mainly inflicted by the prison wardens with rattan sticks in the KPLP office. These allegations were corroborated by forensic medical evidence.

133. The new arrivals were detained in Block C. While those few new arrivals affluent enough to pay bribes were transferred directly to a cell, the vast majority of detainees had to spend several months in a hall, similar to a sports hall, also called "Aula". In those halls, amidst approximately 300 other detainees, the detainees not only lacked any privacy, but also had to sleep on the floor, or on a mattress (provided by the detainees themselves), and were exposed to a high risk of inter-prisoner violence.

134. Before his visit the Special Rapporteur had received numerous allegations regarding endemic corruption in Cipinang Prison. His interviews with detainees in Cipinang confirmed these allegations. Money has to be handed over for virtually every basic amenity, particularly for the provision of food, proper medical care, cell space and visits. The pervasiveness of corruption was tellingly summarized by one detainee, who described Cipinang as being a company, rather than a State prison.

135. **Hendra Apriyanda**, aged 33, was arrested on 9 August 2007 by the police in South Jakarta and taken to Polsek Tebet where he was interrogated. During the interrogation, which took place in the evening, he was beaten with fists and electrocuted until he confessed. Two months later he was transferred to Cipinang Prison. Together with 300 persons, he had spent almost two months in the "Aula" hall. He informed the Special Rapporteur about instances of corruption and its effects, inter alia facilitating the transfer to better places or cells at an earlier stage. Money also spared detainees from spending time in punishment cells.

136. **Bruno Danny**, aged 28, from Nigeria, detained in Linkugam Wing 2a. He lived in a kind of luxury flat and was to be released soon. He had been arrested in 2001 by the police in Hotel Meteng 2. After the arrest he was shot in the leg and then taken to the hospital for basic treatment. He spent two months at the Polres Central 71 and was then transferred to LP Salemba where he was detained for eight months. Convicted for drug dealing, he was sent to the Tangerang prison for six months and was eventually returned to Cipinang II in 2004, where he stayed until his recent transfer to Cipinang I. He reported ill-treatment in Cipinang II.

137. **Saka**, aged 55, was convicted for murder, but his death sentence was commuted to life imprisonment (upon recommendation of Komnas Ham). He has been detained in Cipinang Prison for 13 years. After his arrest, he had been severely beaten by the police at Polsek Riau in Sumatra. He further said that his confession, which was used during the trial, was obtained by ill-treatment. He had a lawyer, but had been unable to speak to him. He told the court that the confession had been made following ill-treatment; however this assertion was not taken into consideration. He had not seen his family again and was not in contact with them. The Special Rapporteur recommends his early release.

138. **Janus**, aged 63, from South Sulawesi was arrested on 9 June 2007 in South Jakarta district. During the first three days in custody at Polres South Jakarta, he was interrogated for several hours and repeatedly beaten in order to make him sign a confession. Among others, Mr. Janus was hit with an iron bar and a wooden baton. At one point an officer beat him with the sole of his sandal on his ear, causing it to bleed. He was not informed about the possibility to contact a lawyer or to receive legal aid. The protocol of the interrogation, typed by an officer called "Aris", stated that he was arrested on 12 June, excluding the first two days during which he was ill-treated. On 4 August 2007 he was transferred to Cipinang prison where he had been detained in the area for new arrivals, Block C2, also called Aula until the day of the visit. Mr. Janus complained about the rampant corruption in the prison. While those without money had to sleep on the floor in the Aula, detainees with money received a cell on the upper floors, which "cost" 200,000 IDR (about 21 \$US) to be paid to the "Palkam", another detainee, who acts as the "unofficial head of security" and the prolonged arm of the prison authorities. In Mr. Janus opinion, approximately 35 per cent of all detainees on the ground floor of the Aula do not have mattresses to sleep on.

139. **Suhenry**, aged 34, from Aceh, was arrested by five officers of Polres South Jakarta District in November 2006 in connection with a drug related crime. In the course of the first three days he was repeatedly interrogated by two officers in an ordinary office room on the second floor with the aim of identifying his supplier. When Mr. Suhenry refused to indicate his name they pressed his hand on the desk and beat his palm and fingers with a hammer. Furthermore, they used electroshock devices to electrocute him and punched him all over the body. At one point, the officers offered to let him escape, however, Mr. Suhenry stayed since he believed that this was a trick in order to shoot him during what would be later presented as an attempt to flee. The officers also put a plastic bag over his head, but Mr. Suhenry managed to bite a hole in it enabling him to breath. Eventually, Mr. Suhenry confessed in order to end the torture. After his interrogation, Mr. Suhenry spent two months in a cell with other detainees. He met the prosecutor once for two hours. From Polres he was subsequently transferred to Cipinang, where he spent 20 days in the Aula.

**POLRES JAKARTA EAST (METROPOLITAN JAKARTA TIMUR)**  
(Visited on 22 November 2007)

140. The Special Rapporteur was received by Mr. Jackson (Officer in charge), Mr. Kabag, Ms Dedeh. The officers on duty and in charge of the cells were Mr. Abdul Mukti (AIPTU), Mr. Syafarindun, AIPDA, Ms. I. Made (Brigadir), Y. Jako and Y. Yasin. The detention facilities were located on the fifth floor and consisted of ten relatively clean cells (about 5m x 3m), where 45 drug related and 28 ordinary criminal suspects were held. There was general reluctance to speak with the Special Rapporteur among the detainees. Those who dared to do so requested

confidentiality. It became clear that the majority of the detainees had been subjected to beatings during their interrogations, which allegedly took place outside the police station in non-official facilities. The detainees held in relation with drug crimes indicated that the aim of these beatings was to find out their dealers' names. There were at least three detainees with clearly visible traces of very recent beatings, which were corroborated by medical evidence. In one cell the Special Rapporteur found a sleeping juvenile, who had been brought to the cell only a few hours earlier, and whose face was completely swollen. Most of the detainees had been in custody for several weeks. According to the police registration blackboards, the person longest in detention had been there for 75 days.

141. After having inspected the cells, the Special Rapporteur ran into **Mohammed Tasroni**, aged 17, from Jakarta, who was handcuffed to a chair in an office belonging to the drug unit on the fourth floor. Mr. Tasroni was in the process of being interrogated by Mr. Sudartianta (No. 65080313) and had very strong swellings on this face as well as other traces of recent beatings all over his body.

142. Mr. Tasroni reported that he had been arrested a few hours earlier near the Jatinegara Train Station, East Jakarta. There, he had met an old acquaintance whom he had not seen for a very long time and who asked to provide him with a dose of marijuana. After Mr. Tasroni had arranged for the drugs and handed them over to the former, it turned out that he was actually an undercover police officer working for the pursuit and attack team ("Buser") of the Criminal Investigation Department. Mr. Tasroni was arrested by several plain-clothes police officers and taken to a private house, which appeared to be an empty office building, in a civilian Kijang car. Once in the house, the officers started to punch and kick Mr. Tasroni all over his body and on his face. He was also heavily beaten on his back. Mr. Tasroni was told the beating would not stop unless he would reveal the identity of his drug dealer. The beating was inflicted in the presence and with the participation of Mr. Bambang (AKP), the chief of Unit III/Baya of the Narcotics Unit. Mr. Tasroni's allegations were corroborated by evidence taken by the forensic expert accompanying the Special Rapporteur.

143. After the beating, Mr. Tasroni was taken to POLRES East Jakarta and handed over to Mr. Sudartianta, who further interrogated him.

144. When the Special Rapporteur entered the office room, Mr. Sudartianta initially attempted to deny him access to the room, trying to intimidate Mr. Tasroni and claiming that the injuries were inflicted by a mob. Mr. Tasroni was so afraid that he himself claimed to be only a visitor - a statement that due to the fact that he was handcuffed was not credible. Neither Mr. Sudartianta, nor the other officers present, who were watching TV and continuing their office work, initiated an investigation into the physical condition of Mr. Tasroni. The police was not able to produce any arrest protocols or other documents relating to the case. The Special Rapporteur received information that Mr. Bambang (AKP) was a direct superior to Mr. Sudartianta.

145. Mr. Tasroni furthermore reported that he had been arrested several weeks before, but his parents had been able to secure his release by paying 5 million IDR (about 535 \$US).

146. The Special Rapporteur recommends that independent investigations into the torture of Mr. Tasroni and other detainees be carried out and that those responsible for those acts be

brought to justice (i.e. the alleged perpetrators and those senior officers who are under the duty to investigate as soon as there are reasonable grounds to believe that acts of torture had been committed).

**POLRES JAKARTA SOUTH (METROPOLITAN JAKARTA SELATAN)**

(Visited on 22 November 2007)

147. The facility is the police's headquarters for South Jakarta, an area with about two million inhabitants. The Special Rapporteur was received by the Deputy Head of the Criminal Investigation Branch, Mr. Mulyatno SH.MM, AKBP. Individuals in custody were held in 12 cells (6m x3 m each) on an upper floor of the main building. Upon arrival of the Special Rapporteur, there were 101 detainees. Among them were 10 women who were detained in a separate cell. Another cell was used by only three individuals alleged to have violated anti-corruption provisions. Those detainees had been able to bring many of their belongings into the cell and were therefore able to enjoy a comparably well-furnished room.

148. The Special Rapporteur regrets that although he explained that under his terms of reference he was authorized to conduct interviews confidentially, a few officers repeatedly looked into the cell wing. Nevertheless, he received credible information on a confidential basis that torture and other forms of ill-treatment were routinely practiced during arrest and detention at Polres South Jakarta. Detainees reported beatings, including with iron sticks, particularly during interrogations.

149. A number of persons reported that they had been in custody for more than 40 days (the longest since 1 October 2007). Furthermore, according to the registration blackboard of the cell for individuals charged with corruption, these detainees had been in the cell since December 2006. The Special Rapporteur received many complaints by detainees about the quality and quantity of food. Drinking water was not provided by the police but had to be bought in containers by the detainees themselves. Furthermore, detainees were obliged to pay about 100 \$US a week as "rent" for their cell. Those who were not able to pay their share were dependent on contributions by fellow detainees. The Special Rapporteur was assured by the officials that medical services were in principle available. However, at least one detainee with untreated torture wounds was clearly in need of expeditious intervention by a doctor. Detainees were allowed to receive visitors only against payment. All of the women had children, and were able to receive visits twice a week. One woman had a baby of 15 months, but preferred not to have it with her in custody.

150. Mr. Mulyatno Deputy, Head of Polres, informed the Special Rapporteur about one case of beating by an officer during interrogation. The officer was reportedly sanctioned with seven days of disciplinary detention. After having left the detention wing, the Special Rapporteur found coincidentally another room, resembling more a dirty recreation room with a pool table for the staff than a cell, in which eight persons, including two women, were being held. The person longest detained had been in the room for four days. Although nobody complained about physical ill-treatment, the detainees voiced their dissatisfaction with the conditions of their detention. There were no beds and detainees had to sleep on the floor or on one of the three benches. Men had to urinate in an adjoining room since they were not allowed to leave the cell if necessary. Hence, there was a strong malodour, exacerbated by the lack of ventilation.

## **Appendix II**

### **NOTE VERBALE**

1. By note dated 14 February 2008, the Government requested that the following diplomatic note be incorporated as part of the annexed document of the final report of the Special Rapporteur on Torture.
2. By note verbal sent to the office of the United Nations Development Programme Indonesia on 16 November, the Ministry of Foreign Affairs of the Republic of Indonesia, with reference to the visit by the United Nations Special Rapporteur on Torture, drew attention to “the inadequate proficiency in English of one of the interpreters who facilitated the visit”.
3. The Ministry requested “the Office that certified and professional interpreters be assigned to assist the UN Special Rapporteur in the discharge of his mandate in Indonesia”. The Ministry further informed the Office “that Indonesia is strongly committed to the Institutional Building process of the Human Rights Council, including the review of the Special Procedures of the Council. In this regard, Indonesia is of the view that the Experience in cooperating in good faith with a number of Special Rapporteurs should be shared with other member states as well as observer states of the Human Rights Council. It is hoped that such sharing will encourage countries in extending their cooperation to Special Rapporteurs in an effective and proper manner. It is in this context that Indonesia would like to see that the work of the Special Procedures be strengthened and made more relevant to situations on the ground.”
4. The Ministry also informed the Office “that it will later request the Secretariat of the Human Rights Council to include this note among the Council’s official documents.”

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