

Responses to The List of Issues in relation to the Initial Report of ICCPR- Indonesia

With a focus on Torture Issues

Prepared by :

WORKING GROUP ON THE ADVOCACY AGAINST TORTURE (WGAT)

2013

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Torture Issues

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I. Introduction

1. This document is submitted as an alternative report to the combined initial and first periodic report of the Republic of Indonesia about the fulfillment of the International Covenant on Civil and Political Rights (“the Covenant”). The present report takes into consideration the questions submitted by the Human Rights Committee in the List of Issues¹ with a specific focus on the questions related to torture and other cruel, inhuman or degrading treatment or punishment (“ill-treatment”). It provides recommendations to the State for each issue addressed.
2. This alternative report was drafted by the Working Group on the Advocacy Against Torture (WGAT). The WGAT was set up in 2007 and is composed of 15 national and local NGOs working for the elimination of torture. Some members focus their work on policy making processes, while others concentrate on public litigation as well as monitoring of human rights issues.
3. This alternative report was drafted on the basis of various materials and sources received from each of the WGAT’s members. The information was collected from monitoring and advocacy activities conducted by each of the member organizations.
4. The WGAT wishes to mention that it submitted an alternative report and a follow-up note in 2008 and 2010 respectively to the Committee Against Torture in the framework of the examination of the second periodic report of the Government of Indonesia. Up until today, the government has yet to improve the level of implementation of the recommendations formulated by the Committee.

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

Issue 1: Please also provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant.

5. There are several regulations on compensation, restitution and rehabilitation. Those are, inter alia, articles 34 and 35 of Law No. 26/2000 on Human Rights Courts². Other regulations are Law No. 13/2006 on Witnesses and Victims Protection and Government Regulation No. 44/2008 on Granting Compensation, Restitution and Assistance to the Witnesses and Victims.
6. The Witness and Victim Protection Agency (LPSK), established by Law No. 13/2006, has the mandate to provide protection and fulfill the witness and victim’s rights (including the right to compensation of the victims of gross human rights violations and the right on the restitution of the victims of criminal act).

¹ Document CCPR/C/IDN/Q/1.

² Law No. 26/ 2000 on Human Rights Courts: Article 34 concerns the Protection of Witnesses and Victims and Article 35 concerns compensation, restitution and rehabilitation

7. The Witness and Victim Protection Agency (LPSK) has not completely been efficient for victims since its establishment. For example, in the case of Urut Sewu in Kebumen the victims were suspects so that LPSK was unable to grant protection for the victims. The lack of carefulness also lead to the end of medical service assistance to the victim of the tragedy of 1965. It happened to Nani Nurani, whom the assistance was ended without clear reasons. Another weakness of LPSK is the time-consuming decision making process to accept a request of protection and aid by a victim; the victim must wait for the Plenary Session of LPSK instead of receiving immediate assistance³.

Issue 3: Furthermore, what measures have been put in place to ensure that Komnas HAM can challenge decisions of the Attorney General not to prosecute cases of human rights violation that KOMNAS HAM has recommended for prosecution?

8. As of June 2013, the Attorney General (Kejaksaan Agung) has not proceeded with several inquiry reports of KOMNAS HAM in relation to human rights violations cases despite KOMNAS HAM recommendations. While KOMNAS HAM considered the results of these investigations as completed, the Attorney General considered that they have yet to be (there are at least 6 reports of past human rights violations that have not been proceeded by the Attorney General, such as the Incident of Trisakti, Semanggi I and Semanggi II (1998), Incident of May 1998, enforced disappearances after 1997-1998, Talangari Incident of 1989, Incident of 1965, Incident of Mysterious Shooting).
9. In 2009, the House of Representatives issued four recommendations to the President in an attempt to complete with the cases of enforces disappeared persons in 1997-1998 (the case of the suspected abduction of 23 student activists by Indonesian security forces in 1997 and 1998, in the last months of former President Suharto's rule. Nine of the activists were later released alive, one was found dead, and 13 have never been found. In 1999 a military court convicted 11 military personnel of kidnapping the activists who were later found alive, but the court did not examine the issue of enforced disappearances of the other 13 cases). These recommendations were as followed 1) Recommend to the President to create an ad hoc human rights court. Until today the ad hoc Human Rights Court has yet to be established since the Attorney General has not followed up on the recommendation of KOMNAS HAM in this case. Moreover, the establishment of an ad hoc Human Rights Court shall also require a Presidential Decree as regulated in Law No. 26/2000; 2) Recommend to the President and the government institutions, as well as relevant stakeholders to discover the whereabouts of the 13 student activists, who remain missing 3) Recommend to the government to rehabilitate and provide compensation for the families of the disappeared; 4) Recommend to the government to immediately ratify the International Convention For the Protection of All Persons from Enforced Disappearance. As of June 2013, these recommendations have not been implemented, except for the ratification process of the International Convention for The Protection of All Persons from Enforced Disappearances (ICEPD).
10. As of June 2013, an ICEPD ratification plan has been prepared by the Ministry of Law and Human Rights on behalf of the Government of Indonesia. However, the

³ Based on LPSK Regulation No. 3/ 2010, there are no clear information when the plenary meeting has to be held. Article 9 of the Regulation mentions that Plenary Session will be led by the Agency Head and preceeded by an invitation. However, often in practice, members of the Agency are not taking part in the Plenary (because of unclear schedule), so meetings often retreat to quorum.

Government has not yet submitted to the House of Representative the draft of the ratification plan.

11. In the year of 2012, the President established a small team under the coordination of the Coordinating Minister for Political, Legal and Security Affairs to look into the best way to provide solutions to past human rights violations, but until June 2013 the aforementioned team has not communicated any result.

III. Right to Life (Article 6)

Issue 10: Please provide data on the number of deaths and their causes in the State party's prisons and places of detention. Please also provide information on the specific measures that are being taken to prevent deaths in prison. What measures have been taken to investigate, and where appropriate, prosecute and punish acts of prison personnel or inter-prisoner violence that have led to deaths in prisons and detention facilities? Please provide data on the number of prison personnel that have been disciplined or prosecuted for cases related to deaths in prisons or detention facilities.

12. According to the document "Recapitulation of Causes of Prisoner's and Detainee's death in Prisons and Detention Places in Indonesia 2012" (*Rekapitulasi Sebab Kematian Narapidana dan Tahanan Seluruh Wilayah Indonesia tahun 2012*) published by the Directorate General of Corrections, in 2010, the number of deaths was 791; in 2011 (January-August), the number of deaths was 352 and, in 2012 (January-September), the number of deaths was 440. According to the said report, deaths in detention were related to health problems (heart attack, respiratory problems) or internal violence in prisons. The number of deaths due to HIV/AIDS was the highest with 204 cases in 2010, 105 of cases in 2011, and a decrease of 73 of cases in 2012.
13. According to the said document, mortality of detainees and prisoners in prison and detention places in Indonesia has decreased from year 2010, 2011 and 2012 (see annex 3). WGAT is concerned that no autopsy was conducted in cases of suspicious deaths. This is for example the case of the Sijunjung case (in annex 2), where the victims died in detention. Authorities reported that they committed suicide in detention.

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

Issue 12: Please provide an update on the specific steps that have been taken to revise the current Criminal Code so that it prohibits torture and it includes a definition of torture that complies with article 7 of the Covenant and article 1 of the Convention against Torture. Please provide information on the measures taken to combat the alleged widespread torture and ill treatment of detainees, and poor conditions in prisons that are allegedly exacerbated by overcrowding because most prisons and detention facilities operate at almost double capacity.

14. Indonesia has ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment since 1998. 15 (fifteen) years after ratification,

torture is still practiced by police officers, prison officers, officers from other places of detention (for example, training centers for migrant workers, migrant workers detention centers, drugs rehabilitation centers, and social homes), and the military⁴ across Indonesia. The perpetrators are often free from punishment because, among others, the lack of definition and criminalization of torture. The definition of torture as stated in Article 1 of the Convention against Torture has not been incorporated into domestic law due the long delayed legislation process of the Draft Criminal Code. It has neither been incorporated into a special law.

15. The existing Criminal Code (KUHP) only recognizes the term of “maltreatment” punishable by maximum imprisonment of two years and eight months, or five years if it resulted in a serious physical injury, or seven years if it resulted in death.⁵ Such punishments provided in KUHP for maltreatment do not reflect the very element of torture, in which its prohibition has been recognized as an international norm of jus cogens⁶.
16. This practice has been confirmed by findings from trial monitoring conducted by ELSAM and research conducted by LBH Jakarta. The examples of which are the Sijunjung case and Erick Alamsyah case. In West Sumatra in 2011 (annex 2), the trial against the perpetrator was only carried out after public denunciation by media, civil society, and KOMNAS HAM and LPSK.
17. Since early 2013, discussions on the draft of the new criminal code are ongoing in Parliament. While the draft of the new criminal code provides a definition of torture⁷, civil society has made a critical note because other contents of the draft are contrary to the principles and norms of human rights.⁸
18. The Chief of Indonesian National Police (Perkap) enacted Police Regulation Number 8/2009 on Implementation of Human Rights Standards and Principles in Carrying Out Police Tasks, applicable to the Police (and all related police special units, such as the anti-terrorism unit Special Detachment 88 – known as Densus 88.) While the said regulation includes the prohibition of torture and ill-treatment, it does not clearly specify the act of torture. This Police Regulation has been viewed as a positive step at the time. However, it has failed to adequately respond to the practice of torture by the police in Indonesia, notably because of its weak implementation and socialization in the field.

⁴ Based on a 2012 Report on the Situation of Human Rights in Indonesia “*Tahun Peningkatan Kekerasan dan Pengabaian Hak Asasi Manusia*”, ELSAM 2012.

⁵ Criminal Code (KUHP) art 351.

⁶ Alternative Follow Up Report on The Progress of the Implementation of the recommendation made by the Committee Against Torture to Indonesia; WGAT Report, March 2010

⁷ Criminal Code Draft version 2012 article 404 on Torture reads “Every public official or other persons acting in an official capacity or at the investigation of or with the acquiescence of a public official, who committed any act which inflict severe pain or suffering, whether physical or mental, on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, is punishable with imprisonment of at least five years and a maximum of 20 years.”

⁸Refers to <http://www.elsam.or.id/?act=view&id=2384&cat=c/101>

19. Based on the cases that ELSAM and LBH Jakarta has monitored, interrogations rooms of police offices are not all equipped with audio and video taping. But in some place, as in the area of Police Resort of North Jakarta, there is a CCTV in the investigation room, but it does not work.

According to LBH annual report and LBH research on the prevention and the abolition of torture during 2010-2012, the police were the main perpetrators of torture⁹. The table below shows the number of torture cases committed by the police received by LBH Jakarta in 2010, 2011 and 2012 (the complete description of the case attached in the Annex 1).

Torture cases reported to the LBH Jakarta

Year	Number	Perpetrator
2010	7 cases	Police
2011	2 cases	Police
2012	5 cases	Police

(Source: Report by LBH Jakarta)

20. The report of LBH Jakarta “Research on Measuring the Reality and Perception of Torture in Indonesia of 2010”, which was conducted in five areas in Indonesia such as Jakarta, Makassar, Surabaya, Banda Aceh and Lhokseumawe, showed that the highest prevalence of torture occurred at the level of **investigation** and **pre trial detention** with various percentages above 53% to 97.9%. Prevalence of torture was quite low at **punishment level**, with the highest rate at 44% in Lhokseumawe.
21. Since the past decade (2002-2012), 56 terrorist suspects were shot to death during Indonesian Police (Special Detachment 88) operations. There is no scrutiny mechanism for police officials on the authority to arrest or to detain terrorist suspect. From 2010-2012 28 wrongful arrests were documented. Those people charged under terrorism are without enough preliminary evidence. There are many terrorist suspects arrested without warrant. Sometimes, police simply make the warrant after arresting terrorist suspects¹⁰.
22. Data on detainees and convicts in Indonesia can be accessed through the following updated website <http://smslap.ditjenpas.go.id> administered by the Directorate General of Correction. Every day it is reported that both the correction centers and detention centers are in overcapacity up to 150% from the available space. There has been no clear program to overcome this problem by the Ministry of Law and Human Rights, although it was supposed to design a policy to overcome this situation.

⁹ This can be seen in the End of Year Note issued by LBH Jakarta in 2010, 2011, and 2012.

¹⁰ Data from Taufik Andrie, Research Director from the Institute for International Peace Building in Jakarta, presented in a Workshop on the Situation of Security Laws in Asean, ICJ-ELSAM-LIBERTAS, October 2012.

23. OMCT published an urgent appeal in May 2013 on the conditions of detention of Mr. Matan Klembiap, a 41-year-old Papuan, detained in Abepura prison since February 2013. OMCT had been informed about his poor health, resulting from the torture he suffered during his arrest and the interrogation process by the police, and the lack of medical treatment provided by the competent authorities since his detention¹¹.
24. Overcapacity is also a reality in places of detention of the police. However, no data was available to compare the number of detainees in the police facilities with the detention centers managed by the Directorate General of Corrections. The restricted information about the overcapacity in place of detention of the police shows a lack of willingness by the Indonesian police to communicate on the human rights situation of detainees under police custody.

Issue 13: Please provide information on the steps taken to grant access to prisons and detention facilities by independent monitoring bodies following the refusal by the government in 2009 to grant access to the International Committee of the Red Cross (ICRC) to inspect prisons and detention facilities in the State party. Please respond to allegations that the State party requested the ICRC to close its field offices in Aceh and Papua provinces. Please confirm whether an independent monitoring mechanism has been designated to monitor the conditions of imprisonment and detention and the situation of prisoners and detainees, with powers to conduct unannounced

25. As of June 2013, Indonesia does not have an independent mechanism that conducts monitoring activities to places of detention. This is because Indonesia has not yet ratified the OPCAT although it was included in the National Action Plan for Human Rights (RANHAM) 2011-2014. With regard to the ratification process of OPCAT, the Ministry of Law and Human Rights is currently drafting the ratification law and academic manuscript.
26. Civil society can visit places of detention that fall under the jurisdiction of the Directorate General of Corrections through a direct agreement (MoU) with the said Directorate. However, these visits have to be announced and cannot be impromptu visits. Places of detention that fall under the jurisdiction of the police and TNI (Indonesian Army) are still hard to access for civil society.
27. State institutions that can monitor places of detention are the National Commission for Human Rights (Komnas HAM), the National Commission on Violence against Women, and the Ombudsman. However, a visit can only be done if there is a complaint addressed to them. None of these institutions can carry out impromptu visits to places of detention.
28. At the request of the Military and the Police, the Ministry of Foreign Affairs refused, in 2009, the ICRC access to prisons and detention facilities. The WGAT considers that prisons visits by the ICRC could be very helpful for the improvement of sanitation and health conditions in prisons, just like other international organizations that have helped build a health monitoring system for the prevention of HIV/AIDS and other contagious illness.

¹¹ See OMCT urgent appeal IDN 270513 available on www.omct.org

Issue14: Please respond to allegations that torture and ill treatment of detainees is widespread especially at the moment of apprehension and during pre-trial detention, and that it is mostly used to extract confessions. What measures have been put in place to ensure that evidence obtained under torture is inadmissible and is excluded in court? Please provide data on the activities of the Internal Affairs Division and the National Police Commission, which are mandated to investigate complaints against police officers. Specifically, please provide data on: (a) the number of complaints received against police officers; (c) investigations carried out; (d) prosecutions, convictions and types of penalties imposed; and (e) compensation awarded to the victims of torture or ill-treatment

29. Referring to previous paragraphs of the present alternative report, the practice of torture is still ongoing and likely to increase. From January to November 2011, ELSAM documented 19 cases of torture and ill-treatment¹², while it documented 83 similar cases from December 2011 to November 2012¹³. From the monitoring activities conducted by ELSAM, most of the torture victims were offenders of petty crimes such as mobile phones theft, charity box theft, motor vehicle theft, and fights¹⁴.
30. NGOs have submitted complaints about torture practice to various institutions, starting from criminal reports at the Police Service Center, complaints to the Propam of the Indonesian Police Force, as well as to the National Police Commission. However, the response to these reports was very slow, particularly in revealing the practice of torture. Reparation for the victims was barely received (see annex 1).
31. The practice has showed that most of the time not all perpetrators of torture were brought before trial. When it happened, it was mostly because of public pressure (such as from the media, the Komnas HAM, the LPSK and the civil society). Perpetrators of torture brought to trial were convicted under the provision of maltreatment under the Criminal Code.
32. Examples of cases that received attention from the media are, among others, the Sijunjung case (Faisal Budri) in late 2011, Erik Alamsyah in 2012 – both cases took place in West Sumatra, and the case of Charles Mali in East Nusa Tenggara in 2011. In the case of Erik Alamsyah and Sijunjung, the perpetrators, police officers, were sentenced to 1 to 2 years. While in the case of Charles Mali, the perpetrators, 22 persons military, were prosecuted in Military Court and sentenced to 11 months of imprisonment (see Annex 2).
33. Among other forms of ill treatment against detainees that are of concern is extortion in detention facilities both under the police and under the Directorate General of Corrections. The practice consist of officers asking some of their trusted detainees to collect money for room rent, visits and other fees from other detainees, if a detainee or a convict wants to get something.

¹² Report on the Human Rights Situation of 2011, Towards the Lowest Point of Human Rights Protection; Institute for Policy Research and Advocay (ELSAM), January 2012.

¹³ 2012 Report on the Situation of Human Rights in Indonesia.

“TahunPeningkatanKekerasandanPengabaianHakAsasiManusia”, ELSAM 2012.

¹⁴ 2012 Report on the Situation of Human Rights in Indonesia“TahunPeningkatanKekerasandanPengabaianHakAsasiManusia”; ELSAM 2012.

Issue 15: Please provide information on measures taken to prohibit the widespread use of corporal punishment in the State party. What measures are being taken to repeal local legislation such as the Criminal Code of 2005 in Aceh, which introduced corporal punishment for certain offences, and whose enforcement is entrusted to the “morality police” (*WilayatulHisbah*) who execute these punishments in public by using methods such as flogging?

34. In 2009, the Aceh Province passed Law No.11/ 2006 (of the Government of Aceh), which provides for corporal punishment such as flogging and stoning for criminal offenders. The Balai Syura Ureung Inong Aceh¹⁵ recorded that the practice of flogging has been committed since 2002 in Aceh for offenses against *qanun* governing outfits, *qanun khalwat* prohibiting a man and a woman from being alone together in a quiet place¹⁶; *qanun maisir* prohibiting the consumption of alcohol; and *qanun khamar* prohibiting gambling. The flogging is done in public.
35. The poor, particularly women, are vulnerable to flogging. In the law, lashing is not the only punishment possible. Other sanctions include fines in forms of money and valuable objects such as gold. As a result, people from higher social strata can easily avoid lashing. Furthermore, the justice system is very vulnerable to extortion and bribery.
36. The fact that flogging is often applied for small offenses such as violation of the Islamic dressing code, selling food during fasting months, and being alone in a quiet place with a man, has made women more vulnerable to this form of punishment. Furthermore, the sharia regulation (*Qanun*) does not provide for legal aid for those who are charged with lashing.

“On 1 October 2010, two female street vendors, Rukiah (22) and Murni (17), both residents of Baitussalam Aceh Besar, were lashed in front of hundreds of people at the front yard of the Al Munawarah Mosque, two to three times, because they sold food during Ramadan”¹⁷.

37. The implementation of shariah law by Wilayatul Hisbah (WH) is also discriminatory and tends to use means that are inhuman and gender bias.

“Putri Ermelia, a resident of Langsa Aceh, committed suicide after she was accused of prostitution and arrested by the WH. However, the truth about the accusation has remained unclear”¹⁸.

Issue 16: Please respond to reports that pre-trial detainees and convicted prisoners are not segregated in several of the State party’s prisons such as in the Pondok Bambu prison (Jakarta) and the Juvenile Detention Centre of Kutoarjo (Central Java). Please also respond to allegations of lack of segregation between juveniles and adult prisoners and between

¹⁵ Balai Syura Ureung Inong Aceh is a civil society organization, which gives reinforcement to the Aceh women post conflicts. One of the mandates is to ensure that there will be women representation in the decisionmaking process and conflict settlement in Aceh peacefully through dialogues. Web: <http://bsuia.wordpress.com/sejarah-bsuia/>.

¹⁷ www.detik.com.

¹⁸ Documented by the Aceh based Indonesian Women’s Coallition – Claura Evanty, Local Secretary of the Indonesian Women’s Coalition in Aceh.

accused and convicted persons in the State party. What measures are being taken to ensure such segregation is complied with in all places of deprivation of liberty in the State party?

While children are no longer detained at the Pondok Bambu Detention Center, they were detained in the same cell block with adult male detainees at the Salemba Detention Center. Law No. 11/ 2012 regarding Criminal Justice System for Children requires separation between children and adults in detention facilities. According to the law, children must be placed in temporary detention houses or an education facility for children that must be completely separated from the administration of Detention or Correction Facilities. However, the said law has yet to be established¹⁹.

38. Although Indonesia consists of 34 provinces, 410 regencies, and 98 municipalities, the number of detention facilities for children is only 19.²⁰ The limited number of detention facilities for children is not accompanied by any effort to tackle the root causes²¹ that drives children to commit an offense.

39. Data from the National Police Headquarter shows the growing number of children committing crimes in 2007-2009

Year	Boy	Girl	Total
2007	2.785	360	3.145
2008	2.797	483	3.280
2009	3.200	1.013	4.213

Source:
Children Profile of 2011, Ministry of Women Empowerment and Child Protection, 2012

40. According to Ms. Harkristuti Harkrisnowo, General Director of Human Rights at the Ministry of Justice and Human Rights, the majority of children in conflict with the law were deprived of liberty due to the absence of legal counsels.²² A study conducted by LBH Jakarta in 2012 shows that during arrest, interrogation and detention, children

¹⁹ This regulation specified that it will be established after 2 years of issuance.

²⁰ The 19 juvenile detention facilities all over Indonesia, are as follows: Gianyar Juvenile Detention Facility, Bali Province; (2) Male Juvenile Detention Facility, Banten Province; (3) Female Juvenile Detention Facility, Tangerang; (4) MuaraBulian Juvenile Detention Facility, Jambi Province; (5) Bandung Juvenile Detention Facility, West Java Province; (6) Kutoarjo Juvenile Detention Facility, Central Java Province; (7) Blitar Juvenile Detention Facility, East Java Province; (8) Pontianak Juvenile Detention Facility, West Kalimantan Province; (10) Bandar Lampung Juvenile Detention Facility, Lampung Province; (11) Kota Bumi Juvenile Detention Facility, Lampung Province, (12) Medan Juvenile Detention Facility, (13) TanjungPati Juvenile Detention Facility, West Sumatera Province; (14) Pekanbaru Juvenile Detention Facility, Riau Province; (15) Palembang Juvenile Detention Facility, South Sulawesi Province; (16) Tomohon Juvenile Detention Facility, North Sulawesi Province; (17) Pare-Pare Juvenile Detention Facility, South Sulawesi; (18) Mataram Juvenile Detention Facility, West Nusa Tenggara Province; and (19) Kupang Juvenile Detention Facility, East Nusa Tenggara. See <http://smslap.ditjenpas.go.id/>

²¹ Some roots causes contributing to crimes committed by juvenile are, among others, the education cost that has become more expensive, the high level of poverty, easy access to pornography that is not accompanied with sex and reproductive health education, insufficient public space for children to play and express themselves, public spaces were shifted to commercial spaces.

²² According to a 2011 study conducted by UNICEF and the Criminology Study Center at the University of Indonesia, out of 85% cases involving children through the justice system, 80% of them were put in prison. According to a study conducted by LBH Jakarta, 71% cases involving children were not solved by using diversion mechanisms (such as dialogue). See Restaria F. Hutabarat, et.al., *Memudarnya Batas Kejahatan dan Penegakan Hukum: Situasi Pelanggaran Hak Anak dalam Peradilan Pidana*, LBH Jakarta, Jakarta, 2012

experienced torture. Torture against children during detention is possible notably due to the length of detention.²³

41. The total detention duration during the investigation process for children in conflict with law is a maximum of 200 days. The said duration is deemed too long for the children.
42. Recently, Indonesia has adopted Law No 11/ 2012 on the Children Justice System replacing Law No 3/1997. There are three issues considered as a progress in Law No 11/ 2012, which is 1) the age of criminal responsibility which has been increased to 14 years old, while the previous law specifies that the age limit of children to be incriminated is 8 years old, 2) it introduces “diversion” which means the case settlement outside criminal court, 3) it regulates the restorative justice. However, the implementation of Law No 11/ 2012 is still at the personal initiative of law enforcement officer, and has yet to be fully implemented. Until today, the government regulation of the said Law is still in the process of discussion at the Ministry of Law and Human Rights. Therefore, the applied regulation remains Law No 3/1997.
43. As a consequence of this situation, the number of children detainees and convicts will keep growing high as shown in the data from the Directorate General of Corrections of 2011 below.

Status	Boy	Girl	Total
Prisoners	3.038	274	3.312
Detainees	49.238	2.162	51.400
Total	52.276	2.436	54.712

Source:
Children Profile of 2011, Ministry of Women Empowerment and Child Protection, 2012

44. Moreover, the overcapacity of detention facilities for children is one of the consequences when children have to face criminal justice. According to data from the Directorate General of Corrections, the overcapacity of detention facilities for children can be seen in the following table²⁴:

Name of detention facility	Number of detainees/convicts	of Capacity	% Overcapacity
Tangerang Male juvenile detention center	241	220	110
Martapura Juvenile detention center	930	180	517
PekanBaruJuvenile Detention center	207	194	107
Medan Juvenile Detention Center	588	250	235

Several factors that hamper access to justice for children in conflict with the law are lack of capacity and number of law enforcement and lawyers. In addition, the facilities and infrastructures are limited as well.

²³ According to a study conducted by LBH Jakarta, 58% of children in conflict with the law were detained more than 60 days. Referring to the Law No. 3/ 1997 on Juvenile Court, the duration for detention of children in all stages is maximum 200 days.

²⁴ <http://smslap.ditjenpas.go.id/>, accessed on 22 May 2013.

45. Therefore, it is necessary to develop a specific integrated juvenile justice system (*lex specialis*) that includes both material law and formal law in order for juvenile justice system to be *sui generis*.²⁵ The use of diversion and restorative justice mechanisms should become a model to deal with children in conflict with the law in the future.²⁶ The Law No. 11/ 2012 on Juvenile Justice System has accommodated diversion and restorative justice mechanisms, although there are some critical points, since detention of children is still being used in the juvenile justice system. Moreover, the length of detention for children in conflict with the law in every stage of criminal justice processes is still too long for children for it takes up to 110 days²⁷. Furthermore, there has not been any provision governing that any child arrested shall be physically brought before a juvenile judge in order for the judge to know the condition of the child and to assess whether the child needs to be detained or not.

Issue 17: Please respond to reports that although the law criminalizes rape, the incidence of rape is high and that courts bestow minimum sentences on persons convicted of rape. Please provide information on specific measures that are being taken to ensure that sentences for rape deter others from committing this crime.

46. In 2011, violence against women in Indonesia was dominated by the number of rape cases. 400.939 cases were documented, among which 70.115 cases were committed at home. The rapists were fathers, parents, siblings and relatives. 22.285 cases of rape took place in public places, including in public transportations. Moreover, the State has committed similar crime by allowing 1.561 cases of rape uninvestigated (Report of the National Commission on Violence against Women of 2011). At the beginning of 2013 the number of rape was quite high and mostly happened to girls under the age of 18.
47. In an annual report published by the Indonesian Women Coalition for Justice and Democracy, it is showed that rapes often take place at home. This is due to inadequate standard of housing in Indonesia (the houses are too small with no separate bedrooms). Poverty hampers people from obtaining an adequate standard of housing and as a result, women and girls remain vulnerable to harassment and sexual violence in their own homes.
- In addition to that, rape is considered as a taboo in the society and makes it therefore difficult for women and girls to report.
48. Law enforcement personnel such as the Police, Prosecutors, and Judges did not perform their work in a well manner, particularly in punishing rapists. As a result, there was no deterrent effect. When rape is not immediately revealed and resolved by the police, it will always be a trend among the perpetrators. The perspective of law enforcement personnel was still gender bias. Of all cases of rape, most of them were decided as consensual²⁸.
49. Sanctions for rapists are also very low and do not satisfy the victims. This is due to the provision regarding rape under the Criminal Code that has not been amended in accordance with existing regulations and policies in Indonesia.

Article 285 regarding rape

²⁵ The Law No. 3 /1997 on Juvenile Court and the Law No. 11/ 2012 on Juvenile Criminal Justice System are still applying the provision of the Criminal Procedure Code as juvenile criminal procedure.

²⁶ The Law No. 3/1997 on Juvenile Court and the Law No. 11/ 2012 on Juvenile Criminal Justice System are still applying the provision of the Criminal Procedure Code as juvenile criminal procedure.

²⁷ Comparing to the former regulation which takes up to 200 days, the newer regulation takes up 110 days is still considered too long for the children.

²⁸ Report from LBH Apik Jakarta of 2006-2010.

Any person using violence or a threat to force a woman to have intercourse with him outside marriage shall be charged of rape and punishable by maximum 12 years imprisonment.

Rape is defined as an act "...using violence or threat to force a woman who is not his wife to have sexual intercourse with him..." The elements in this offense are, among others: using violence or threat; to force a woman who is not his wife; to have sexual intercourse. In the current social context, the formulation is obviously outdated, since rape has rapidly changed in terms of modus operandi and models.

Issue 18: Please respond to reports that violence against women, including domestic violence remains a problem that is exacerbated by under-reporting and poor documentation by State authorities. Furthermore, please respond to reports that the law does not prohibit female genital mutilation (FGM), and that in November 2010 the Ministry of Health issued a decree that prohibits "grave types of FGM" but explicitly permits doctors, midwives and licensed nurses to conduct FGM. Please explain how the medicalization of the practice of FGM is compatible with the rights provided under the Covenant.

50. Female circumcision is still being practiced in many places in Indonesia. A research conducted by the Ministry of Health and the Ministry of Women Empowerment and Child Protection seven years ago showed that 68 percent of female circumcision in South Sulawesi and Banten, for instance, was still performed by non-medical personnel. The research was the reason why the Minister of Health issued a prohibition against female circumcision in 2006 (Circular Letter of the Directorate General of Community Health, Ministry of Health Number HK. 00.07.1.31047a of 20 April 2006 on the Prohibition of Female Circumcision).
51. However, two years later, the Indonesian Ulema Council (MUI) issued a resolution refusing the prohibition formulated by the Minister of Health on the ground that female circumcision is part of shariah and, in 2010, the Indonesian Ulema Council (MUI) urged the Ministry of Health to issue decree PMK No. 163/ 2010 allowing female circumcision.
52. In some parts of Indonesia, such as West Sumatra, West Java, Madura, West Nusa Tenggara, and South Sulawesi, the practice of female circumcision remains a tradition. The practice is tightly related to a religious teaching, particularly Islam. As a consequence of the PMK No. 1636, every hospital, even private maternity clinic, performs female circumcision on the ground that it is safer and more hygienic if it is performed in a medical manner.

Issue 19: Please respond to reports that the law permits the police to detain accused persons for an initial period of 20 days which can be extended to 60 days, and that prosecutors may further detain a suspect for a further 30 days and can only seek an extension from the courts if they intend to extend the detention for a further 20 days. Please state how this is compatible with the Covenant.

53. The Criminal Procedure Code allows investigators and prosecutors to extend detention if the investigation has not been completed, and if investigators as well as prosecutors have not finalized the document of the case. Investigators are allowed to detain a person for maximum 20 days that can be extended to maximum 40 days. Prosecutors can detain a person for maximum 20 days that can be extended for maximum 30 days. Judges can detain a person for maximum 30 days that can be extended to 60 days. And the Criminal Procedure Code mentions that the provision does not rule out the possibility of releasing a detainee before the detention time expires, if the investigation

has been completed. If the detention time expires and the case has not been completed, the defendant must be exempted by law. However, in practice, we can still find arbitrary detention, without any arrest or detention warrant (see annexes 1 and 2).

54. The total number of days for detention, from the investigation stage up to the trial at the Supreme Court, is 400 days. If the time limit expires and the examination has not been completed, the suspect/ defendant shall be exempted by law.
55. The time of detention in Indonesia is lengthy and can facilitate the occurrence of torture. And it also violates the principles of a prompt, inexpensive, and simple trial.
56. There was still a number of detainees, whose detention time have expired, and yet were still being detained due to uncompleted paper works from the office of prosecutors.

Issue 20: Please state the measures that the State party is taking to ensure that suspects have access to lawyers and legal aid. Please respond to reports of corruption in the provision of legal aid services, including an allegation that the speed of cases funded under the legal aid scheme depends on the payment of a bribe.

57. The right to legal aid is a constitutional right of all citizens granted by the 1945 Constitution, particularly by Article 1 paragraph (3), Article 27 paragraph (1) and Article 28D of the 1945 Constitution and by the Ruling of the Constitutional Court No. 006/PUU-II/2004. Furthermore, the right to legal aid is provided for in Articles 17, 18, 19 and 34 of the Law No. 39/1999 on Human Rights, the law No. 14/1970 on Judiciary Power, with its amendment of Law No. 34/1999, the Law No. 16/ 2011 on Legal Aid and Articles 54, 55, and 56 of the Law No. 8/ 1981 on the Criminal Procedure Code.
58. The Criminal Procedure Code is used as a reference for legal aid. The formulation of legal aid under the Criminal Procedure Code has some weaknesses as follows: 1) It is only provided for poor/underprivileged people who are sentenced to five years of imprisonment or more. As a result, poor people who are sentenced to less than 5 years of imprisonment lose their right to counsel; this happens in cases of criminalization against freedom of religion/belief, land dispute, labor dispute, etc.; 2). The Criminal Procedural Code mentions that there is an obligation for the defendant under sentence of 5 years or more, to be accompanied by a lawyer, but if this obligation is not implemented, there are no consequences for violating the procedural law. In many cases where the defendant is under sentence of 5 years imprisonment or more is not accompanied by a lawyer, the process in the court will still be conducted by judges and; 3). There are no sanctions against investigators who do not fulfill the right to legal aid.
59. On 31 October 2011, Indonesia adopted Law No. 16/ 2011 on Legal Aid, which provides legal aid on the form of access and fund to legal aid institutions. There has been a sub regulation to this law, which is Government Regulation No 42/ 2013 on the Requirements and Procedures of giving and distributing the legal aid - as well as Regulation of Ministry of Law and Human Rights No 3/ 2013 on the Verification and Accrediting Procedures of Legal Aid Institutions and Society Organizations. This sub-regulation has not yet been effectively implemented.
60. According to a report published by LBH Jakarta in 2012, efforts to provide legal aid has a significant impact for the poor with regard victim's reparation and punishment of perpetrators of torture. This is what happened in the case of Hasan Basri, a victim of false arrest, who experienced torture in custody (please refer to annex 1 in the list of

cases in 2012). He was released because his legal counsels could prove that the case was manipulated and the defendants were tortured.

61. There were also funds for legal aid in various state institutions, for instance in the Bank of Indonesia. In the implementation process, the use of funds is prone to misuse. For instance, the funds were used to advocate the bank's officials who are suspected of committing corruption in the case of BLBI.²⁹
62. Bribery in legal processes is still ongoing in Indonesia. Bribery in corruption cases also involved law enforcement personnel such as judges, prosecutors and the police. The State has taken legal actions to respond to this practice of bribery, particularly towards law enforcement personnel. However, the said legal actions were still insufficient, and bribery involving law enforcement spersonnel is still ongoing.

Issue 21: Please provide information on the progress made by the "Taskforce to Eradicate Judicial Mafia" following reports by an independent fact-finding team of investigators that established that corruption is widespread at all levels of the State party's system of administration of justice. Please provide statistical data on (a) the number of investigations that have been conducted; (b) the number of persons that have been prosecuted and convicted for corruption involving the judiciary; and (c) the number of persons that are subject to disciplinary action.

63. A Task Force for the Eradication of Judicial Mafia (Satgas PMH) was established in 2009 by the Presidential Decree No. 37/ 2009. The mandate of the Task Force was to conduct coordination, evaluation, correction and monitoring activities in order to eradicate judicial mafia.
64. For 2 years, the Task Force received 2869 reports starting from 6 August 2010. According to the reports, there were 410 cases of corruption involving the state police, 283 cases involving the judiciary, and 232 cases involving the office of prosecutors³⁰. The performance of the Task Force that was well appreciated was related to the impromptu visits to places of detention. However, on the other hand, the performance of the Task Force was also criticized by various social elements, for example social figures, civil society and also by the Commission III of the House of Representatives, particularly regarding to the exemption of corruptors. The Task Force was accused of not performing its tasks in a well manner. Therefore, the suggestion not to extend its mandate was growing. Finally, on 30 December 2011, the mandate for the Task Force was ended and some of its tasks, such as system improvement, receiving complaints and following them up were diverted to the UKP-PPP³¹.

²⁹<http://english.kompas.com/read/2009/06/12/2040428/Aulia.Says.His.Case.Thick.with.Political.Interests>

³⁰ Police is the most complained institution, 7 August 2010 can be seen at:

<http://nasional.kompas.com/read/2010/08/07/11412176/Kepolisian.Paling.Banyak.Dikeluhkan-3>

³¹ UKP-PPP (Task Force and the Presidential Delivery Unit For Development Monitoring and Oversight), is a presidential unit for Supervision and Control positioned under, and directly responsible to, the president. Its basic formation is based on Presidential Decree No. 54 in 2009. In performing its duties, UKP-PPP has a collaboration with the Vice-President and coordinates with and obtains information and technical support-ministries, non ministries, government agencies, local governments (LGs), and other relevant parties. Duties of UKP-PPP, according to Article 3 of Presidential Decree 54/2009, are "to assist the President in carrying out the supervision and control of the development so as to achieve national development targets with full settlement.

V. Recommendations

The WGAT would like to make the following recommendations to the State party:

1. Abide by its obligations under international law in relation to the absolute prohibition of torture and ill-treatment, including the absolute prohibition of non-refoulement, prohibition of enforced disappearance and incommunicado detention;
2. Reform practices and national laws (notably the draft Criminal code and Criminal procedure code) to prohibit any form of torture and ill-treatment and comply with the provisions of UNCAT in relation to the definition of torture, punishment by appropriate penalties and redress for victims and their families;
3. Ensures that the draft Criminal Code and the draft Criminal procedure code complies with human rights standards;
4. Include occupancy data of police detention facilities within the data from the Directorate General of Corrections and other criminal justice sub-systems;
5. Publish information on the number of deaths in police custody and the causes of death in each instance;
6. Ensure that all allegations of torture and ill-treatment as well as suspicious deaths in detention are promptly and thoroughly investigated, the result of which must be made public, in order to bring those responsible before a competent, independent and impartial tribunal with proper punishments;
7. Ensure that victims and their families are provided with adequate remedies, including compensation and rehabilitation;
8. Reinforce that information obtained by torture or ill-treatment, cannot, whatsoever, be invoked as evidence in proceedings;
9. Ensure that the police, including all special police units, the TNI, the judiciary, the medical personnel in detention facilities and all other relevant authorities receive adequate and regular training on the absolute prohibition of torture and ill-treatment;
10. Improve dissemination and socialisation of as well as training of the police (including all police special units) in Police Regulation 8/2009;
11. Ensure that the police and TNI make a clear commitment to ending impunity for torture and ill-treatment;
12. Ensure that all counter-terrorism measures comply with its international obligations, including the UNCAT and ICCPR;
13. Shorten the detention length in order to reduce the occurrence of torture during the initial examination.
14. Utilize non-custodial sentences and accord favourable bail terms to ease the prison population especially those charged with petty offences;
15. Protect detainees by allowing them prompt and regular access to a lawyer, doctor and to family members;
16. Ensure that the Department of General Corrections complies with the UN standards and principles on the treatment of prisoners and that all prisoners are provided with proper medical care and full access to medical care and treatment in adequate health facilities;
17. Grant access to Komnas Ham, the Ombudsman and the National Commission on Women's Rights and civil society to conduct monitoring activities in police and TNI detention facilities;
18. Accelerate the process of ratification of the OPCAT;
19. Invite the ICRC to reestablish monitoring activities in detention facilities in Indonesia, including in West Papua;
20. Ensure that the draft of the Criminal Procedure Code, which is still being deliberated at the House of Representative, includes a provision to regulate that reparation for victims of torture shall only require a court decision and/or a

- decision from code of conduct hearing in respective institutions. The burden of proof for torture shall not be borne by the victims of torture but by the perpetrators who allegedly committed torture.
21. End the practice of illegal detention facilities/prisons outside the authority of the Ministry of Law and Human Rights to facilitate supervision and prevention of torture and other cruel, inhuman or degrading treatment;
 22. Encourage the government to harmonize its legislations, especially in Aceh, in accordance with human rights instruments;
 23. Develop a specific integrated juvenile justice system (*lex specialis*) that includes both material and formal laws in order for the juvenile justice system to be *sui generis*;
 24. Ensure that children are effectively separated from adults in detention facilities;
 25. Amend the Criminal Code and the Criminal Procedure Code with regard to violence against women, domestic violence, rape, marital rape, molestation, pornography, and other crimes against women and children. To this end, the Government of Indonesia shall hold a high commitment to amend both the Criminal Procedure Code and the Criminal Code.
 26. Launch public awareness campaigns on the gravity and consequences of Female Genital Mutilations (FGM);
 27. Withdraw the Ministry of Health decree PMK No. 163/ 2010 allowing female circumcision;
 28. Live up to the provision of article 5 of the UN Convention on the Elimination of all Forms of Discrimination against Women and to eliminate cultural traditional practices that perpetuate discrimination on and gender stereotyping of women;
 29. Include in the Draft of the Criminal Procedure Code, which is now being deliberated by the House of Representatives, the right to legal aid for suspects/defendants from vulnerable groups such as children, women, indigenous people, disable people who face less than 5 (five) years sentence. The Draft of the Criminal Procedure Code should also provide for the consequences of deprivation of the right to legal aid, as well as in the Law No. 11/ 2011 on Legal Aid, it has to expand the beneficiaries of legal aid to go beyond suspects/defendants but also for witnesses/victims of crimes, because a witness or a victim of a crime is also vulnerable to torture and ill-treatment from law enforcement personnel and from public officials;
 30. Withdraw restrictions on access to West Papua for foreign journalists and international human rights and humanitarian organizations;
 31. Effectively follow-up on UN Treaty Bodies recommendations, including the 2008 UNCAT recommendations;
 32. Extend an open invitation to all UN Special Rapporteurs and guarantee them free access to the province of West Papua and Maluku;

ANNEX 1: DATABASE OF TORTURE FROM LBH JAKARTA FOR THE YEARS OF 2010, 2011, 2012

CASES of 2010

No	Description	Action Taken	Progress
1.	RS experienced assaults as provided for in Article 352 of the Criminal Code. RS was flushed with beers, urinated, kicked, and burnt with cigarettes. RS was a victim of false arrest and the perpetrators were police officers at the South Jakarta Precinct.	<ul style="list-style-type: none"> - Reported the incident as a violation of code of conducts to the Propam of the Regional Police on 2 February 2010; - Reported the torture to the Regional Police of Jakarta; 	No follow up from the police. Until today, the progress is still unclear.
2.	Mul experienced torture committed by Ade Rosa, Eva Agustina, and Jack, investigators at the uni II sat III, Jatlintas, Ditreskirum of the Regional Police of Jakarta.	<ul style="list-style-type: none"> - Reported the incident to the Regional Police with regard to the crime; - Reported the incident to the Propam with regard to the violation of code of conduct - Wrote an SP2HP letter with regard to the crime; - There has not been any follow up regarding the case from the investigators. 	No follow up from the police. Until today, the progress is still unclear.
3	On 20 May, 2010, a resident was shot by a member of Mobile Brigade. The member of Mobile Brigade was then beaten up by some unknown people. DW was then accused of taking part in the beating. DW was tortured during interrogation process at the Regional Police of Jakarta. The perpetrators are members of the Mobile Brigade of Central Jakarta and Regional Police of Jakarta;	<ul style="list-style-type: none"> - Submitted a request to the Director of General Criminal Unit for a copy of the Police Investigation Report to DW; - Sent a protest letter on the violation of code of conduct and torture; - Made a report to the Propam of the Regional Police 	No punishment against the perpetrators of torture.
4	HF was arrested and tortured and accused for vandalism against Bellar Minus school due to religious hate. HF deny the accusation and	<ul style="list-style-type: none"> -Conducted a protest against the torture and made a request for a new 	No punishment against the perpetrators of torture. 18

	scene when the vandalism took place. The perpetrators who committed the torture were members of Bekasi Police Precinct.		
5	ES was a driver working at the Embassy of Ukraine. He had been assaulted by Anatoli, an official at the Embassy of Ukraine. ES was then reported to the police and accused of committing assaults due to self defense and was finally arrested at the Regional Police of Jakarta.	Sent a letter of protest to the Embassy of Ukraine.	Punishment against the victim of torture.
6	Jm was accused of stealing and reported. The police then arrested him, Damar, and Debry. During the arrest, the police shot Nus and Damar for 3 times for no reason. There were two bullets inside JM's foot that left some marks. The police also committed torture against JS when he was detained at the South Jakarta Police Precinct. JS left a wife and a child who no longer have a breadwinner. The perpetrators are members of the South Jakarta Police Precinct.	- Conducted a protest against the arbitrary shootings and torture, as well as sending a request to take out the remaining projectiles to the Chief of the Regional of Police of Jakarta.	No significant progress.
7	SR (14 years) was accused of stealing and tortured to confess the accusation. He was finally forced to admit the crime the he did not commit, he was detained together with adult detainees. After being detained for 5 days, the real thief was arrested.	- Reported and coordinated with the National Commission for Child Protection, KPAI, and the KOMPOLNAS; - Reported the incident to the Propam of the Regional Police of Jakarta; - Conducted a press conference; - Reported the incident to the Commission III of the House of Representatives, the Chief of the National Police sent a team from ITWASUM of the Police headquarter; - Pre trial.	- Accompanied the victim of torture and the court released SR, but no reparation has been made to him by the law enforcement personnel.

CASES of 2011

NO	Description	Action Taken	Progress
1	<p>NurRamadhan was found unconscious with wounds all over his body at Bajing aisle. He was brought to a hospital for a treatment. When he was conscious, he told about the violence he had experienced and mentioned the name of the perpetrator. The perpetrator was then reported to the sub-district police station of Kemayoran for a follow up.</p>	<p>Reported the incident to the sub-district police station of kemayoran, Central Jakarta.</p>	<p>No progress regarding the report. The perpetrator was not punished.</p>
2	<p>On 26 December, 2011, around 3 o'clock in the morning, a group of unknown people carrying guns came to her house and took her husband, Yusli (23 years old), into a blue minivan, she found out later that her husband was taken by law enforcement personnel from the sub-district police station of Cisauk (Tangerang).</p> <p>On the day after, SitiMaryamah and Yendi (the victim's sister) sought for her husband to the nearest sub-district police stations, including the sub-district police station of Cisauk and was told that there had not been an arrest of the victim. However, on that day at around 5 pm, SitiMaryamah received a phone call from the Head of Rumpin sub-district that her husband was dead and his body was in at the Police Hospital of KramatJati. The Head of Rumpin sub-district told her that he received the information from a caller with an unknown number. When they came to the hospital, the family witnessed Yusli's body full of the following wounds: wounds on his bleeding head. 3 Scratches of 10 cm each on his right chest; a wound that looked like a gunshot wound on his left chest right at his heart; bruises on his forehead; his lower face was full of scratches like wounds caused by asphalt.</p>	<p>Reported the torture and murder to the Tangerang Police Precinct.</p> <p>Reported a violation of code of conduct to the police Propam.</p> <p>Established a correspondent with the police.</p> <p>Lodged a complaint to the Commision III of the House of Representatives.</p> <p>Asked international organizations to conduct a monitoring.</p>	<p>3 perpetrators of torture from the sub-district police were sentenced to prison, however there was no reparation made for the family of the victim</p>

CASES of 2012

NO	Description	Action Taken	Progress
1	<p>HasanBasri, a motorcycle taxi driver, was arrested by the Central Jakarta Police Precinct and was accused of stealing. During the arrest, he was tortured, his head and his body were beaten up, his eyes were blindfolded, he was intimidated during interrogation and did not receive legal assistance during the interrogation as a suspect as provided for in Article 56 of the Criminal Procedure Code.</p>	<p>Reported the incident to Propam of the National Police Headquarter Reported the incident to the National Commission on Human Rights. Reported the incident to the Kompolnas.</p>	<p>HasanBasri was released by the Cout due to false arrest. The Propam did not follow up the complaint. The Kompolnas did not follow up the complaint. Until now, the National Police and the office of prosecutors did not make any reparation for the victim of torture.</p>
2	<p>Nur Farida illegitimately married to Sugianto, a police officer at the Kemayoran sub-district police station on 10 May 2010 at HutanPanjang. A problem emerged between Nur Farida and her husband, Sugianto, and Sugianto committed violence against his wife. Nur Farida was pushed, kicked, beaten up, and her head was banged on a wood/pole, this was done in the street.</p>	<p>Reported the incident to the Propam Reported the offense that violated Article 351 of the Criminal Code.</p>	<p>The Propam has decided that it was a disciplinary violation and delayed his promotion for 1 year and placed him in a special place for 21 (twenty one) days; There was no significant progress on the criminal report from the Central Jakarta Precinct.</p>
3	<p>EndihKusnadi was arrested on 12 May 2011 by members of the Regional Police of Jakarta on the accusation of possessing drugs. The police was not accompanied by any warrant both for the arrest and the search. EndihKusnadi was then taken by a car to the Headquarter of the Regional Police of Jakarta. He was tortured there, he was beaten up and insulted, as a result, his body was bruised and his arm was broken.</p>	<p>Lodged a complaint to the Propam of the Regional Police of Jakarta No. SPSP2/525/II/2012/Renmin on 20 February 2011; Establishe a correspondent with the Head of Profession and Security Division at the National Police Headquarter on the follow up of the complaint.</p>	<p>There has not been any significant development and follow up regarding the complaint lodged to the Propam.</p>
4	<p>An act of Police brutality took place in Cianjur, West Java on 25 and 27 September 2012. The police forcibly dismissed a protest about the</p>	<p>Reported the incident to the Propam of the West Java Regional Police. Reported the incident to the Kompolnas.</p>	<p>The West Java Propam Division, through a letter had punished</p>

	<p>movie “Innocence of Muslims” at the Loktian Roundabout, Cinajur, West Java. In the incident, the police committed torture, and severely injured 4 students, while dozens experienced trauma, some student’s vehicles were destroyed.</p>		<p>the members of police who committed torture without involving the victims. The Kopolnas did not perform its duty.</p>
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ANNEX 2: COURT TRIAL MONITORING of TORTURE CASE³²

1. The Case of Erik Alamsyah

Erik Alamsyah was a detainee (for theft) at the Bukittinggi District Police who died in detention on 30 March, 2012. As a result of Erik's death, 6 officers from Bukittinggi sub-district Police station were made suspects. In its report on Erick's case, Komnas HAM mentions that Erick was dead from torture committed at the Bukittinggi sub-district Police station.

The legal proceeding against the perpetrators involved in Erik's death was relatively speedy. Erik's death was on 30 March 2012, and on 3 April 2012, West Sumatra Provincial Police established 6 members of the Bukittinggi sub-district Police station as suspects and detained them. Four of the perpetrators were sentenced to 10 months imprisonment, while two others were sentenced to 1 year imprisonment.

The legal proceeding has failed to imprison the perpetrators due to the light sentence and also failed to send a message to other members of the police that torture committed in detention facility will be punished in a proportional manner. In their ruling, the panel of judges argued that the torture was committed by the defendants to perform their task to reveal the stealing [committed by Erik and his fellows] and therefore considered it as a mitigating factor for the defendants.

In their ruling, the Panel of Judges overturned the request for restitution or remedy made by the victim against the Defendants because the letter was not accompanied by any proof of loss suffered by the victim or his family authorized by a public official in charge of it as provided for in the Article 22 paragraph (2) of the Government Regulation of the Republic of Indonesia No. 44 of 2008 on compensation, restitution, and assistance for witnesses and victims.

³² Source: Court Trial Monitoring of Torture Case by ELSAM and LBH Padang

2. The Sijunjung Case

Faisal (14 years old) and Budri (18 years) were siblings; they had been detained by the Sijunjung sub-district police station in West Sumatera on the accusation of stealing. They were dead on 28 December 2011. The police saw an act of negligence on the part of the Sijunjung sub-district police station causing Faisal and Budri to commit suicide in their cell.

As a result of the incident, 9 members of the police were investigated by the Propam of the West Sumatera Regional Police on 5 January 2012, and 4 among them were established as suspects to be brought to trial at the Muaro District Court in Sijunjung Regency. The trial proceeding itself was started on 13 November, 2012. The lengthy time of the proceeding was due to a different perception between the prosecutors and the police regarding the indictment.

The indictment referred to the article regarding to assault (article 351 of the Criminal Code) and used article 80 paragraph 3 of the Law No. 23 of 2002 on Child Protection.

There were some irregularities in the trial process, for instance, the conclusion made by the prosecutors was related to the weaknesses in the trial process, particularly regarding the indictment and the evidence verification process. There were many facts remained unexplored because the trial only focused on the violence and not the death of the two victims.

The judge ruled sentences of 1 year and 6 months and 2 years.