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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January-12 February 1999)

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CONTENTS

Introduction

1. The Working Group on Arbitrary Detention, established by the Commission on Human Rights in its resolution 1991/42 and whose mandate was defined in Commission resolution 1997/50, visited Indonesia from 31 January to 12 February 1999, at the invitation of the Government of Indonesia. The delegation was composed of the Vice-Chairman of the Working Group, Mr. Louis Joinet (head of delegation) and Mr. Roberto Garretón, and two staff members of the Office of the United Nations High Commissioner for Human Rights.

2. For a number of years, the Commission on Human Rights had encouraged the Indonesian authorities to extend an invitation to the Working Group to visit the country and in particular East Timor.[1] On 30 September 1994, in a decision concerning the case of Mr. Jose Alexandre "Xanana" Gusmao, the Working Group requested the Government of Indonesia to allow it to visit Indonesia and East Timor, to enable it effectively to discharge its mandate. On 1 September 1995, the Government replied that it was not then in a position to reply positively to the Group's request and that it had, instead, invited the High Commissioner for Human Rights to visit Indonesia and East Timor, in the context of the statement made by the Chairperson of the United Nations Commission on Human Rights on 1 March 1995.

3. At the end of the fifty-fourth session of the Commission on Human Rights, the Chairperson issued a statement on the situation of human rights in East Timor,[2] welcoming the decision of the Government of Indonesia to invite the Working Group to visit East Timor prior to the fifty-fifth session of the Commission. On 13 October 1998, the Government addressed a formal invitation to the Working Group to visit Indonesia and particularly East Timor.

4. Throughout the visit, the cooperation of the Indonesian authorities was exemplary and marked by a spirit of remarkable transparency. Both in Jakarta, in Denpasar (Bali) and in East Timor, the authorities granted uninhibited access to prisons, police lockups and, where requested, military facilities. The delegation was able to interview freely both common law and political prisoners chosen at random from lists previously made available to the Group by local and international non-governmental organizations. The delegation wishes to record its appreciation to the authorities for the cooperation and logistical support it received throughout the visit. It further wishes to thank the Office of the Resident Coordinator of the United Nations Development Programme in Jakarta for its assistance.

5. In Jakarta, the delegation visited Salemba prison, Tanggeran women's prison, Cipinang prison, and the lockups at Metro Polda Jaya central police station. In East Timor, it visited Becora and Balide prisons in Dili, the prison in Baucau, the police lockups in Dili, and a former detention facility of the armed forces in Baucau. Finally, in Denpasar (Bali), it visited the facilities of the central police station. At Cipinang prison in Jakarta, the delegation was able to talk at length with Xanana Gusmao, the detained leader of the East Timor independence movement; at Cipinang prison and Tanggeran women's prison, it had access to all the political prisoners it had requested to interview. At the above-mentioned detention facilities, the delegation interviewed numerous common law and political prisoners.

6. The delegation further held numerous consultations with government authorities. In Jakarta, it met with the Minister for Foreign Affairs, the Minister of Defence and Chief of the Armed Forces, the Minister of Justice, the Minister of the Interior, the Deputy Attorney General, the Chief of the Indonesian Police, the Deputy Chief Justice and other judges of the Supreme Court, and judges of the Jakarta High Court, the Secretary-General of the National Commission on Human Rights (KOMNAS HAM), and members of the Law Reform Group of the University of Indonesia. It further consulted with the representative of the International Committee of the Red Cross (ICRC) in Indonesia.

7. In Denpasar (Bali), the delegation met with the Governor of Bali, the Deputy Commander of the Uduayama Regional Military Command, as well as with judges of the Badung First Court. In East Timor, it met with the Governor of the province, the Chief of the District Military Command, the Chief of the East Timor Police, and the East Timor representative of KOMNAS HAM. Regrettably, the Group was unable to meet with Mgr. Carlos Ximenes Belo, Bishop of Dili, as no reply to a request for an interview had been received by the end of the Group's visit. The Working Group regrets that a meeting with the Secretary-General of Churches in Dili could not take place.

8. The Group attached considerable importance to discussion and consultations with representatives of non-governmental organizations and with lawyers, both from Jakarta and from other Indonesian provinces. In Jakarta, it met with representatives of the Legal Aid Foundation of Indonesia (YLBHI), the National Commission on Violence against Women, the Action Committee for the Release of Political Prisoners, the Commission for Disappearances and Victims of Violence (KONTRAS), the Institute for Social Advocacy (ELSAM), the Indonesian Human Rights and Legal Aid Association (PBHI) and the Institute for the Defence of Human Rights. It met separately with the lawyers of Xanana Gusmao, as well as with human rights lawyers and NGO representatives from Aceh and Irian Jaya provinces, and representatives of the Protestant Church in Irian Jaya.

9. In Dili (East Timor), the Working Group delegation held discussions with the director of the Foundation for Law, Justice and Human Rights (YAYASAN HAK), the director of the Diocesan Justice and Peace Commission (Commissao Iustitia et Pax), and the chairman of the East Timor Action for Development and Progress Foundation (ETADEP). In Baucau, it met with local representatives of the Diocesan Justice and Peace Commission.

10. The media coverage throughout the Working Group's mission demonstrates the extent of the progress made in Indonesia with respect to freedom of the press and protection of the right to freedom of expression and opinion.

I. RECENT POLITICAL CHANGES IN INDONESIA AND THEIR IMPACT ON HUMAN RIGHTS ISSUES

11. Indonesia witnessed major political changes in 1998. Under the pressure of the deepening economic crisis and growing popular unrest, President Soeharto resigned on 21 May 1998 and J.B. Habibie was sworn in as the new President. The country has since witnessed a period of political transition during which wide-ranging political, institutional and legal

reforms are being discussed and/or implemented. Measures which are designed to improve the situation of human rights figure prominently among the reforms which are under way. The most important are listed hereunder.

12. The long-standing ban on independent political parties has been lifted (there are now 139 registered political parties compared with three before the change), as has the ban on independent trade unions (there are now 12 compared with one before the change). Close to 200 political prisoners and prisoners of conscience, including 52 from East Timor, have benefited from an amnesty, had charges against them dropped or have otherwise been released.

13. On 25 June 1998, the new Government announced the adoption of the "National Plan of Action on Human Rights - 1998-2003". To implement the programme of activities of the Plan, the National Committee on Human Rights, composed of government officials and community representatives, was established by Presidential Decree No. 129 of 15 August 1998. The National Plan of Action consists of four main pillars:

(i) The ratification of international human rights instruments;

(ii) The dissemination of information and education on human rights;

(iii) The implementation of priority human rights issues, especially the protection of non-derogable rights;

(iv) The implementation of international human rights instruments already ratified.

14. As part of the first pillar, the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment was ratified on 28 September 1998 (Act No. 5/1998). The Government has completed the draft law for the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, which is to be presented to Parliament shortly. In 1999, the Government will also prepare for the ratification of the International Covenant on Economic, Social and Cultural Rights, whereas the ratification of the International Covenant on Civil and Political Rights is under examination.

15. In August 1998, the Government of Indonesia and the Office of the United Nations High Commissioner for Human Rights concluded a memorandum of understanding on technical cooperation in the field of human rights, based upon the needs and priorities of the Government.

16. The Government has revoked the status of "special military operation zones" (Daerah Operasi Militer (DOM)) for the provinces of Aceh (August 1998), Irian Jaya (October 1998) and East Timor, this status being replaced by another concept (see para. 44 below). As a result, some 1,300 combat troops have been removed from these areas and, according to the Government, counter-insurgency military operations have been suspended. There have been further repeated statements by the Government that the Anti-Subversion Law of 1963, under which many prisoners (including the oldest ones) and prisoners of conscience had been convicted, would be abrogated. Meanwhile, its application has been suspended.

17. Other legislative reforms with a potential positive bearing on the protection and promotion of human rights have been initiated by the new Government. In November 1998, the People's Representative Assembly adopted Decree XVII/MPR/1998, which emphasizes the need to adopt legislation which would put the work of the National Commission on Human Rights on a firm legal basis and guarantee its independence. A wide-ranging reform of the judiciary is under discussion; if adopted, it would ensure the independence of the judiciary from the executive branch and in particular the Ministry of Justice. On another issue, it is envisaged to separate clearly the powers of the police from the powers of the military; at present, the police operate under the authority of the military. Finally, a new draft penal code is in the final stages of discussion; its adoption would constitute a significant development.

18. The Working Group believes that the Commission on Human Rights will appreciate the promising reforms undertaken by the Government in the field of human rights. But, as will be shown hereafter, the Group is conscious of the difficulties which the implementation of these reforms face or will face in practice. Many of the reforms necessitate initiatives and reforms at the legislative and institutional levels, the abrogation of certain rules which the authorities admit are incompatible with international human rights standards, and directives and instructions to the authorities with a view to ending impunity.

19. The common tenor of comments conveyed to the delegation by judges, representatives of NGOs, the legal profession and civil society was that legislation governing arrest and detention in Indonesia, with the exception of laws on State security, is satisfactory on most points, but that it is frequently not applied in practice.

20. President Habibie has made the solution of the long-standing conflict in East Timor one of his priorities. Since June 1998, a number of political prisoners from East Timor have been either pardoned or amnestied, and a greater freedom of speech and expression is evident in the territory. The status of "special military operations zone" was revoked in the summer of 1998, and the Government has withdrawn some troops from the territory. However, without international verification of the withdrawal process, it continues to be difficult to assess whether there has been a genuine reduction in troops.

21. The Working Group has noted the extent to which the political changes in Indonesia have had a positive impact on the tripartite talks on East Timor involving Indonesia, Portugal and the United Nations Secretary-General. On 18 June 1998, the Minister for Foreign Affairs of Indonesia, Mr. Ali Alatas informed the Secretary-General that his Government was prepared to grant East Timor a special status with a wide degree of autonomy within the Indonesian State. In January 1999, President Habibie and Mr. Alatas announced that the Government was prepared to release East Timor into independence as early as the year 2000 if, on the basis of consultations with the parties concerned, this was indeed the desire of the East Timorese population. In East Timor, these announcements were received with caution if not with scepticism by the supporters of the independence movement (FRETILIN); they have received a hostile reception from the pro-integrationist forces.

22. Others have advocated an extended autonomy for the province during a transitional period, with independence a subsequent option. At the time of the adoption of the present report, the Working Group noted with satisfaction the conclusion of the overall Agreement between the Governments of Indonesia and Portugal on the question of East Timor, of 5 May 1999, and the supplementary agreements of the same date between the United Nations and the Governments of Indonesia and Portugal on the modalities for the popular consultations of the East Timorese through a direct ballot and regarding security questions (see document A/53/951-S/1999/513, annexes I-III).

II. THE APPLICABLE LEGISLATION AND LEGAL GUARANTEES CONCERNING INDIVIDUALS DEPRIVED OF THEIR LIBERTY

23. These guarantees are based on civil law legislation as laid down particularly in the Code of Criminal Procedure (KUHAP). In certain circumstances, the assignment of competence to military tribunals as well as laws and measures governing states of emergencies can derogate from these guarantees.

A. Institutional and civil law guarantees

1. Institutional guarantees of the judiciary and the right to a fair and impartial trial

24. This right is in principle guaranteed by the independence of the judiciary. This independence, however, is not explicitly spelled out in the Indonesian Constitution, whose chapter IX entitled “The judiciary power” only stipulates that “The judiciary power shall be exercised by a Supreme Court and such other courts of law as are provided for by law”, especially inasmuch as organization, status and competence are concerned (art. 24). For the rest it refers to the “Basic Judiciary Act” (Law No. 14/1970), which stipulates that judges are independent and free from all influence emanating from governmental authorities. The law however does not stipulate that they cannot be removed from office.

The status of judges

25. To become a judge, a candidate must be at least 25 years of age, have a law degree, be a civil servant who has passed the civil service entrance examination, and have performed supplementary training for a period of nine months in a specialized training centre. Upon completion of this first period of training, which takes place under the auspices of the Ministry of Justice, the candidate is assigned to a tribunal for a probationary period of three years.

26. Once the judge has obtained tenure, he cannot exercise for more than five years in the same tribunal and can, furthermore, be transferred at any moment without his consent since he is also a civil servant; refusal would result in removal from office. As to the possibilities of promotion, a judge must serve at least 15 years in the lower courts before he or she can move to the appelate courts and, thereafter, must serve at least 10 years before being

able to postulate for a position in the Supreme Court. The retirement age is 60 for judges in the tribunals of first instance and 63 for judges of the appelate courts and the Supreme Court.

27. With the exception of the Supreme Court judges, who are nominated by the President of the Republic upon the proposal of Parliament, the nomination of all other judges is within the competence of the executive power (Ministry of Justice). If they commit acts of professional negligence, they can be brought before an internal disciplinary jurisdiction ("Council of Honour").

The status of the Prosecutor's Office

28. The Prosecutor's Office, which is not independent, is placed under the authority of the Attorney General, who is designated by the President. Its structure is hierarchical at all levels of jurisdiction. The training of prosecutors mirrors that of judges but is conducted separately. In the course of a prosecutor's career, it is not possible to be transferred from the Prosecutor's Office to a judge's function and vice versa.

29. There are two professional associations: one for judges, the other for prosecutors. In both cases membership is compulsory. Neither judges nor prosecutors can be members of a political party. As to the gender distribution of the judiciary, there are 40 per cent of women in tribunals of first instance and in the appellate courts. In the Supreme Court, 7 judges out of 51 are women.

30. The lack of independence of the judiciary from the executive, judges' civil servant status, and the lack of a guarantee of non-removal from office can only compromise the right to a fair and impartial trial. This is why it is all the more important for the Government to pursue the reforms it is considering in this area and to adopt them as a matter of urgency.

2. The criminal procedure guarantees applicable in cases of arrest and detention

31. Under the Code of Criminal Procedure (except for arrest in-the-act, KUHAP, art. 18, para. 2), only police officers, and not the armed forces, are competent to arrest individuals. When making an arrest the police investigator must present an "assignment letter" and be in possession of an arrest warrant, valid for 24 hours, which gives details about the identity of the individual concerned and the reasons for his arrest. A copy must be given to him and to his family. The individual concerned must be brought to the nearest police station, where a procès-verbal of the first interrogation is established. A register of entries and departures is in principle kept up-to-date at every police station, as the Group was able to verify.

32. Immediately upon arrest and thereafter, the individual concerned may request assistance from a legal advisor of his own choice (arts. 55 and 60) or from a lawyer designated by the State if he cannot pay for legal assistance. Such legal assistance is compulsory if the individual risks the death penalty or a sentence of five years or more. The individual must benefit from the

presumption of innocence (art. 6) and from the possibility of appeal and cassation (art. 67) (on the implementation of these provisions, see paras. 69-70 below).

33. Preventive detention, if considered necessary for the purposes of the police investigation, is regulated as follows (arts. 24-37). Upon expiration of the 24-hour period after arrest, the police investigators must provide the person concerned with a detention order, which remains in effect for 20 days. The order can be extended, if necessary, for a period of 40 days, with the authorization and under the supervision of the prosecutor, or at his own initiative after examining the file. After this first 60-day period - during which the detained person need not be presented before the prosecutor - another extension can be ordered, if considered necessary, for a period not exceeding 20 days. This second extension must be authorized by a judge. After transmittal of the file to the tribunal of first instance, the judge in charge of the case can grant another extension for 30 days. This may be followed, upon decision of the president of the tribunal, by a supplementary 60 days if considered necessary for the completion of file work and investigation of the case.

34. In the event of appeal, the court can order another extension of the detention order for a period of 30 days, followed, if necessary, by another period of 60 days upon decision of the President of the Court of Appeal. If the case goes to the Supreme Court on cassation, the detention can yet again be extended for 50 days by a collegiate body of that Court (the “Petty Bench”) and for another 60 days by decision of the President of the Supreme Court. If the accused has not been brought to trial after these 110 days, he must be released. The maximum length of detention before trial and judgement is therefore 400 days.

35. Throughout the investigation, the accused may call witnesses. At every stage, a decision prolonging detention must be notified to the accused. At any time during the procedure and especially on the occasion of a request for prolongation of detention, if the investigation is completed, the accused can:

Either be sent to appear before the court; in this case, the case file is forwarded to the prosecutor;

Or be purely and simply released if the offence has not been proved, if the charges are insufficient or if the detention was declared illegal following a habeas corpus request (“pre-trial hearing”);

Or be released conditionally or on bail (possibly on bail posted by a relative), so that he may appeal before the court at liberty. During the first 20 days of detention, the amount of bail is determined by the police and can be challenged before a judge.

3. <u>The habeas corpus procedure</u>

36. The so-called “pre-trial hearing” - a procedure which displays all the characteristics of habeas corpus - is regulated in detail by articles 77 to 83 of the Code of Criminal Procedure. It is conducted as follows.

37. At any time during the procedure, from the time of arrest, the detained individual (or his/her family or relatives) can present to a judge designated for this purpose by the President of the tribunal a request for an order declaring the arrest or detention (or the charges themselves) to be illegal (art. 79).

38. The judge must, within three days, set a date on which the request will be examined. After having heard the applicant and the investigating authorities, he must give his decision at the very latest within seven days. His decision is not subject to appeal. If the judge declares the detention to be illegal (or the charges unfounded) the person concerned must immediately be released by the authority under whose jurisdiction he is being detained. It should be noted that the "pretrial hearing" procedure is not envisaged if the case is examined by a military jurisdiction.

4. The trial stage

39. The procedure is oral, adversarial ("cross examination"), and public. The accused can be legally represented (this is compulsory as noted above, if he risks the death penalty or a sentence exceeding 15 years). He can - as can the Prosecutor - call witnesses, including military ones, subject to authorization by the president of the court. Before the Court of Appeal, there is no oral hearing and matters are decided on the basis of written submissions. In the event of cassation, the Supreme Court only decides on legal issues.

B. States of emergency and other matters concerning national security

40. Under article 12 of the Constitution, the President of the Republic "declares the state of emergency. The conditions for such a declaration and the measures to deal with the emergency shall be governed by law". The application of this principle encounters numerous difficulties in practice, given the multitude of special laws adopted at any given period in the history of Indonesia and never abrogated, and their apparent interference with, or incompatibility with, other norms in the Code of Criminal Procedure concerning national security.

1. Emergency laws and measures

States of Emergency (Law No. 12/1951)

41. This is the oldest emergency law, going back to the period when Indonesia was fighting for its independence. Never formally abrogated, it would appear that it was invoked during the first half of 1997, during ethnic troubles and riots in West Kalimantan and, for a certain period, in East Timor. It prohibits in particular the possession, use or transport of explosives or arms. According to some allegations, it was at times invoked in cases where the detained person carried a pocket knife. The Group was told that the application of this law, which apparently should only have extended to acts committed by persons having entered the territory illegally, was subsequently, irregularly, extended to the entire population.

The Anti-Subversion Law (Presidential Decree 11/1963)

42. This law allows the detention of a person for a period of one year without warrant. Detention can be renewed - in practice without any limit. Application of this law has been suspended but its abrogation, which had been announced by President Habibie, has not yet taken place, in particular because of controversy over the extent of abrogation. For example, it is envisaged by some that certain articles of this law should be incorporated in the draft criminal code currently under discussion, especially those articles concerning acts against State security or the ideology of the State (Pancasila[3]) or acts of espionage and sabotage. The proponents of pure and simple abrogation of the law consider that if these provisions were to be incorporated in the new Criminal Code, it would be necessary, on the one hand, for these offences to be defined much more restrictively than in the current Anti-Subversion Law and, on the other hand, for the applicable procedure for prosecuting these offences to be governed by the Code of Criminal Procedure.

The special military operation zones (Daerah Operasi Militer (DOM))

43. The proclamation of these zones, whose objective is said to be to "preserve security in a dangerous area", does not appear to have any legal basis. Certain military authorities invoke, without any other clarification, "the duty of the armed forces to preserve the national unity". Others argue that Law No. 16/1960 governing the provision of assistance to the army to the regional authorities and Law No. 28/1997 on assistance to the police provide an indirect legal basis for the proclamation of these zones. In practice, the proclamation of such a zone, which is made without any legal formality, results from a decision of the Minister of Defence which is relayed to the military commander of the regional military zone. The decision is not published in the Official Journal and the length of time during which it will apply is not specified. The population only learns about it through hearsay or by witnessing the progressive arrival and stationing of special military units. This DOM status applied in the provinces of Aceh, Irian Jaya and East Timor.

44. Where the DOM status applied, the police, in principle, kept their legal prerogatives but, de facto, it was the army that made the majority of arrests. At present, in principle, if the case is one of common delinquency, it is transferred within 24 hours to the police and the procedure thereafter followed civil law rules. If, however, the case concerns an individual accused of being linked to "subversion", the investigation was conducted by a special investigation service of the armed forces (KOPASSUS). Following a directive of the Minister of Justice, DOM status was recently replaced by that of "Critical Control Area" (Pengavalair Daerah Rawan); this has the object of giving priority to pacification operations, through development and rehabilitation, but the status of Critical Control Area does not clarify the role of the armed forces in the event of arrest.

45. Currently, anti-guerrilla units only intervene in the event of trouble or riots and thus are no longer stationed permanently in the areas concerned. On the other hand, the armed forces can detain individuals suspected of having

links with the guerrilla but who have not committed homicide or murder. According to a military officer interviewed by the Group, this is “to ensure the protection and re-educate them”.

46. In this context that the Group was apprised of cases in which, without notification of the measure to the police, a prosecutor or a tribunal, individuals had been interned for the duration of their rehabilitation - approximately two to three months - at military barracks, for example “Rumah Merah” in Baucau, a facility the Group visited which was formerly used by special units of the army. Depending on their attitude, detainees could be placed in isolation or could benefit from family visits. The process of rehabilitation was recorded on an interrogation form. On this form, the interned person recognized his actions, regretted his activities for or sympathies with the independence movement and was strongly solicited to provide information about his previous activities. If the rehabilitation was considered successful, he was handed over to his family or even incorporated in a special unit. If the rehabilitation failed, the individual concerned was handed over to the police and criminal procedures initiated. According to the authorities, the degree of success of such rehabilitation measures is in the order of 80 per cent. The Group does not have sufficient information to evaluate whether the above-mentioned practices have been completely discontinued.

The special units (KOPASSUS)

47. These “military elite units” operated primarily in the DOMs, as well as in the context of combating subversion. Furthermore, until the recent past, these units operated to ensure pacification by rehabilitation in three specialized centres in Dili, Baucau (“Rumah Merah” mentioned in para. 46 above) and Kalinera. In principle, these units should only have carried out arrests in the context of their cooperation with the police.

Creation of paramilitary groups

48. During its visit to “Rumah Merah”, the Working Group was able to inspect facilities made available to one of these paramilitary groups. These comprised a room used for accommodation, where equipment such as bullet-proof vests and weapons were also stored. The officer in charge of the barracks showed the delegation a cupboard used to store returned arms. According to the authorities, the equipment of paramilitary groups is not a case of individual distribution of arms but concerns “groups of people carefully selected, who are trained by the armed forces and who return the arms once the operation has been completed”.

49. The Working Group is seriously concerned about the development of such militia, which operate under conditions that engage State responsibility, notably if they participate in operations in the course of which arrests are made. The illegal activities of such groups gravely compromise the future of East Timor; once negotiations for a peaceful settlement of the conflict are under way, the difficult and thorny problem of reconciliation of the parties involved will become acute.

2. The provisions of the Criminal Code relating to national security

50. These provisions are contained in four chapters of Book II of the Criminal Code and concern:

Crimes against the security of the State (chap. I, arts. 104-129);

Crimes against the dignity of the President and Vice-President (chap. II, arts. 130-139);

Crimes against public order (chap. V, arts. 154-181);

Crimes against public authority (chap. VIII, arts. 207-241).

Most of these provisions are, especially inasmuch as the intentional element of the crime is concerned, drafted in such general and vague terms that they can be used arbitrarily to restrict the freedoms of opinion, expression, assembly and association. They can be used notably to target the press, peaceful political opposition activities and trade unions, as they were frequently under the former regimes.

51. In this context, articles 154 to 157 (some provisions of which date back to the colonial period) which criminalize acts that give “expression to feelings of hostility, hatred or contempt against the Government of Indonesia” (art. 154) deserve particular mention. Another such provision is article 137 (relating to the crime of “lèse-majesté”), which targets insults against the President and the Vice-President. These provisions were frequently used to neutralize or intimidate any political opposition or members of trade unions. The majority of persons arrested and tried under these chapters of the Criminal Code under the regime of President Soeharto have now been released. However, these provisions remain in force and carry grave risks of arbitrary detentions, as long as they have not been abrogated or their content amended to make them compatible with international standards guaranteeing the freedoms of opinion and expression.

C. Regulations and laws relating to amnesty

52. Article 14 of the Constitution confers upon the President of the Republic the right to grant mercy, amnesty and pardon. The exercise of these prerogatives is regulated by two framework laws:

Law No. 1/1950, which gives the President the right of individual pardon, which he exercises on his own;

Law No. 11/1954 (Law of Presidential Amnesty) which enables him, on a case-by-case basis, to grant reduction or remission of sentence. The decision to do so is taken by the President, on the advice of the Prosecutor-General and after consultation with an inter-ministerial committee. His decree is, in principle, published. It constitutes a measure of pardon more than an amnesty in the strict sense.

53. The Working Group welcomes the important amnesty measures announced by President Habibie. Nonetheless, it has received a number of criticisms concerning the following issues:

The inadequate transparency of these measures (the decrees are rarely published) does not permit verification of the number of the beneficiaries (240 according to a Minister, 200 according to an official document), nor their identification;

According to information received from a variety of sources, a number of individuals released after serving their sentence or from detention are officially portrayed as having benefited from an amnesty;

The absence of legal or judicial criteria for granting amnesty has resulted in cases of discrimination. The Group was told, for example, of the release of all the Islamic militants involved in the events of Lampung [4] and who had all been sentenced to heavy prison terms, sometimes to life imprisonment, whereas other prisoners sentenced to lighter terms (for example, certain members of the PRD) remain in prison.

III. DYSFUNCTIONS IN THE OPERATION OF THE LEGAL SYSTEM ENCOUNTERED BY THE WORKING GROUP

Cases of arbitrary detention and their causes

54. In accordance with its methods of work, the Working Group considers "arbitrary" any deprivation of liberty which falls within one of the three categories mentioned hereunder. Indonesia is not a party to the International Covenant on Civil and Political Rights, however the Government is examining the possibility of ratifying it. The Group has, accordingly, considered it useful to underline issues which would raise problems of incompatibility with provisions of the Covenant, so that the Government may take these observations into account in the process of adapting domestic laws to the provisions of the Covenant.

Category I

55. Under Category I of the Working Group's methods of work, deprivation of liberty is considered arbitrary when it is impossible to invoke any legal basis justifying the deprivation of liberty.

56. The Group interviewed several members of the People's Democratic Party (Partai Rakyat Demokratik) (PRD) who had been detained without warrant, without access to lawyers, without being brought before a judge or judicial officer and without trial or judgment from 12 March 1998 to the end of April 1998. They were detained in a public area in a Jakarta hospital on 12 March and taken to an unknown location - which they believe to have been the camp of the special forces command (KOPASSUS) at Cinjantung, Jakarta - situated approximately an hour's drive from the place of arrest, where they were held incommunicado in underground cells.

57. These individuals - Raharjo Waluyo Djati, Faisol Reza, Nezar Patria and Aan Rusdianto - informed the Group that throughout their detention, they were not told the legal basis for their arrest, were denied access to a lawyer and to relatives, and were not brought before a judge or other officer authorized by law to exercise judicial power. They were released without charge, trial or judgment and returned to their families. A group of approximately one dozen other political activists apprehended in similar circumstances have "disappeared". The Group considers that on the basis of the information before it, there was no legal basis that would have justified the detention of the above-mentioned individuals. This is corroborated by the fact that, subsequently, 11 members of KOPASSUS were charged and are facing trial for their role in the abduction of these and, apparently, the disappeared, individuals, a measure which the Group welcomes.

58. In Baucau, East Timor, the delegation visited the Armed Forces local intelligence headquarters known as the "Red House" ("Rumah Merah", see para. 48 above). The officer in charge of the facility did not hide the fact that while "Rumah Merah" was now only used as an intelligence facility, it had been used until mid-1998 as a detention centre for East Timorese rebels. According to the officer, rebels apprehended by the military would be "guided and investigated". If crimes were involved, they would be handed over to the police, accompanied by a report; those detainees would subsequently be charged. If not, they would be kept at "Rumah Merah" for periods of between one and three months for purposes of "rehabilitation", in the circumstances described in paragraph 44 above. The Deputy Regional Commander for the Uduayama Regional Military Command and the Regional Military Commander for East Timor confirmed that the facilities at Rumah Merah had been used for the purposes of "rehabilitation" of individuals suspected of supporting the Timorese guerrilla. The delegation was shown the interrogation and discharge forms concerning a Timorese man who had been apprehended and investigated on suspicion of links with a local rebel group. Neither form mentions any legal provisions under which he might have been justifiably arrested and charged. He was discharged and returned to his family after having been detained for more than 80 days. It follows from these observations that, firstly, this method is geared more towards incitement to denunciation than to rehabilitation and that, secondly, the detention of these individuals who have never been charged under the Indonesian Criminal Code nor tried, is manifestly devoid of any legal basis.

59. The Working Group therefore considers that such detention for "rehabilitation purposes" must be deemed to constitute arbitrary detention within the meaning of Category I of its methods of work.

Category II

60. Included in this category are cases of deprivation of liberty resulting from prosecution or conviction for activities which amount to the peaceful exercise of the right to freedom of opinion and other fundamental rights protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.[5]

61. At Cipinang and Tanggeran prisons in Jakarta, the Group interviewed eight detained members of the People's Democratic Party (PRD) and the Center

for the Struggle of Indonesian Workers (Pusat Perjuangan Buruh Indonesia (PPBI)). Fourteen members of these and two other organizations[6] were arrested between July and September 1996 and initially accused of involvement in riots which shook Jakarta in July 1996 in response to a raid on the offices of the Indonesian Democratic Party (PDI). The PRD prisoners were charged under the Anti-Subversion Law of 1963 and article 154 of the Penal Code. After no evidence linking these prisoners to the riots could be found, they were accused of involvement in peaceful activities. It should be added that, after their arrest, most of them were detained incommunicado for at least several days and were denied immediate access to legal assistance; they were not shown arrest warrants. At their trial, the court refused to admit many of the witnesses they had called in their defence, and the legal representatives of some of them were denied the right to cross-examine prosecution witnesses. All of the accused were called to testify against each other and not informed of their right to refuse to do so.

62. The sentences against the PRD activists, eight of whom remain in detention,[7] were amongst the heaviest pronounced against prisoners of conscience in Indonesia in a long time. Based on its interviews with these detainees, the Working Group considers that they were convicted and incarcerated for the peaceful expression of their political views and that, in addition, they were not accorded a fair trial.

Detention of individuals participating in symbolic flag-raising ceremonies in Irian Jaya

63. In Jakarta, the Group met with representatives of the Protestant Church in Irian Jaya, as well as with NGO representatives from this province. It was informed that a group of people were arrested in late summer and early autumn 1998 for their role in symbolic flag-raising ceremonies which took place at Wamena, in the province of Irian Jaya, from 6 to 8 July 1998. Similar events took place outside the parliament building in Jayapura, as well as on the island of Biak and in Sorong. Thereafter, 10 individuals were arrested in Wamena on 6 and 7 August 1998 and were all charged under article 106 of the Criminal Code (Crimes against the security of the State).[8] The charges against them include planning the ceremony, manufacturing the West Papuan flag and banners, raising the flag and being present during the - peaceful - flag-raising ceremony. Most were not shown a warrant until 24 hours after their arrest; all were refused access to lawyers during interrogation in pre-trial detention. Their trials started in December 1998.

64. Another group of individuals faces trial on Biak, following a flag-raising ceremony in July 1998 which was dispersed by the security forces. From 2 to 6 July 1998, public demonstrations took place at the Community Health Centre near Biak Port. Led by Filip Jakob Samuel Karma, an employee of the regional government, people gathered to demand independence for the province. In the early morning of 6 July 1998, troops opened fire on hundreds of unarmed demonstrators and took over 100 individuals into custody, most of whom were released shortly thereafter. The individuals currently facing trial were arrested without warrants. All of them were charged under article 106 of the Criminal Code and many face subsidiary charges under article 154 of the Criminal Code. [9] Military forces were involved in the arrest of these individuals, many of whom were interrogated without legal representation.

65. On the basis of the information conveyed to it, the Working Group considers that the majority of individuals facing charges in connection with the above-mentioned symbolic flag-raising ceremonies were arrested for having mostly peacefully exercised their beliefs, and that their detention is arbitrary within the meaning of category II of the Group's methods of work.

Category III

66. According to the Group's methods of work, detention is considered arbitrary under this category if there is serious non-observance of some or all international norms relating to the right to a fair trial. The following examples encountered by the Working Group during its visit are not exhaustive.

Right to be tried by an independent and impartial tribunal

67. At Cipinang prison in Jakarta, the Group interviewed four prisoners - Asep Suryaman (aged 73), I Bungkus (aged 71), Nataneal Marsudi (aged 71), and Abdul Latief (aged 72) - who have been in prison since they were detained between October 1965 and September 1971 and, with the exception of Abdul Latief, have been sentenced to death. They are part of a group of 10 elderly men detained for their alleged links with the Indonesian Communist Party (PKI) or involvement in an alleged coup attempt against then President Soekarno which was blamed on the PKI.[10] According to the information given to the delegation, the trials of the above-mentioned four detainees, whether before a civil or a military tribunal, did not meet international standards for a fair trial. Thus, Mr. Marsudi, arrested on 1 October 1965, was not tried until July 1976. Throughout the entire period, he remained without legal assistance and he met his representative for the first time during the hearing before the military tribunal. Similarly, Mr. Suryaman, detained in 1971, did not meet with a legal representative until the start of his trial before the District Court of Jakarta in 1975.

68. While some of the PKI members had clearly been involved in the use of violence, others clearly had not. The Working Group does not have sufficient evidence to make a definite determination for all PKI detainees it interviewed, but it considers that all those still detained who did not commit violent or criminal acts are detained under category II of its methods of work. In any event, all are detained under category III, as they were not accorded a fair trial, which confers upon their deprivation of liberty an arbitrary character.

69. During its meeting with the Minister of Justice, the Group made reference to the resolution of the Commission on Human Rights which requests it to monitor in particular the situation of long-serving prisoners, and asked that, in the context of amnesty decisions taken by President Habibie, priority be given to the release of the above-mentioned 10 PKI prisoners, imprisoned, in some cases, for over 30 years. The Group subsequently learned that the 10 prisoners convicted in connection with the 1965 coup attempt and still detained were released on 25 March 1999, following a presidential pardon. By letter dated 21 May 1999 addressed to the Permanent Mission of Indonesia to

the United Nations Office at Geneva, the Working Group expressed its appreciation to the Government of Indonesia for the prisoners' release.

70. The Group interviewed several prisoners at Tanggeran women's prison in Jakarta and at Becora prison in Dili who claimed that they had not appealed their sentences because they had been made to understand by the judge either that it would be futile or that the sentence would be increased on appeal. One woman detained at Tanggeran prison, who had been sentenced to two years' imprisonment, claimed that she had been told that she could appeal if she paid a certain amount of money to the court. Whereas her co-defendants paid this sum and had their sentences reduced on appeal, she and her husband were unable to do so and had their sentences confirmed. Such practices, which are patently illegal, are also incompatible with the principle of impartiality and independence of the judiciary.

Right to be presumed innocent until found guilty as charged

71. Dita Indah Sari, a member of the PRD/PPBI who is currently serving a five-year sentence at Tanggeran women's prison, informed the Group that throughout her 11-month pre-trial detention, the presumption of innocence in her and her co-defendants' case was severely compromised by public statements of the authorities about her, as well as propaganda against her in the media before and during the trial. This assessment was shared by another PRD member detained at another prison (Cipinang).

Right to remain at liberty pending prosecution and adjudication

72. According to the Deputy Attorney-General, the vast majority of individuals charged with criminal offences are detained pending trial. The percentage of those who remain free, even on bail, is “minimal” on the admission of the authorities themselves. Release on bail is decided upon by the authority by which the individual is detained - the police during the initial stage, the prosecutor at the subsequent stage and the judge at the final stage. The amount of bail is set by the authority detaining the individual and thus by the police at the initial stage which, apparently, often exposes police officers and other authorities to the temptation of corruption. These practices are incompatible with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, pursuant to which detention pending trial should be the exception and not the rule.

Right to be brought promptly before a judge or other officer authorized by law to exercise judicial power

73. An individual may be detained for the purposes of the preliminary inquiry for a period of up to 60 days without there being any legal obligation to present this individual before a prosecutor; similarly, it is not a legal obligation to present this person before a judge during the 170 subsequent days (see paras. 33-34 above). The competent authority must, however, notify the detained person of the prolongation of his/her detention (art. 21, paras. 1-3 of the Code of Criminal Procedure). In the course of its visit, the Working Group was informed by a number of detainees at Metro Polda Jaya

(the central police station in Jakarta) and at Becora prison, Dili, that they had not been apprised of the prolongation of their pre-trial detention by the police or by the public prosecutor.

74. The Working Group considers that the length of the permissible delay before presenting the accused before a prosecutor or a judge represents a violation of the rights enshrined in article 9, paragraph 3, of the International Covenant on Civil and Political Rights and that the relevant provisions of the Indonesian Code of Criminal Procedure should be modified accordingly.

Right to legal assistance

75. This is, under the terms of article 11, paragraph 1, of the Universal Declaration of Human Rights, one the guarantees necessary for the defence of the accused and a right explicitly protected by article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights.

76. Under article 54 of the Code of Criminal Procedure, every detained person has the right to obtain legal assistance. This assistance is compulsory in the following instances: under article 56, paragraph 1, of the Code of Criminal Procedure, the judicial authorities must appoint a legal representative in cases in which the accused risks the death penalty or a sentence exceeding 15 years, as well as for those who are destitute and cannot afford to pay for legal representation and risk a prison term of five years or more.

77. Many of the detainees interviewed by the delegation confirmed that, de facto, they had not been informed about their right to legal representation. The Group noted that, indeed, many of them - and not only common law prisoners - were uncertain about the meaning of the very term “lawyer”. Many indicated that they had had no legal representation during interrogation and the preliminary investigation, nor during pre-trial detention. Several others indicated that even after they had been taken to the magistrate's court and had requested legal assistance, the authorities denied them access to a lawyer. One of the PRD detainees at Cipinang prison, Mr. Pranowo, claimed that when he had requested legal assistance he had been told that “he did not need any lawyer”. Two other detainees interviewed at Baucau prison, East Timor, claimed that they had been unrepresented throughout their respective trials. The Working Group considers that legal assistance must be made available in such cases.

78. In his meeting with the Group, Xanana Gusmao emphasized the serious violations of the right to a fair trial of which he had been a victim. He recalled that in his defence statement he had indicated: that his representative, Mr. Sudjono, had been appointed by the Military Intelligence Agency; that he wished to be represented by the Legal Aid Foundation of Indonesia (YLBHI); that his letter conferring power of attorney upon YLBHI had been intercepted by the military authorities and that he was forced to withdraw it and to sign a letter appointing Mr. Sudjono as his legal representative instead, in violation of articles 54 and 60 of the Code of Criminal Procedure.

79. Lawyers for Mr. Gusmao confirmed to the Group that no lawyer was allowed access to him during his interrogation. Although his family had authorized YLBHI to represent him during interrogation, the authorities denied YLBHI access to him at that stage.

Right to call witnesses on one's own behalf and to cross-examine witnesses of the prosecution

80. This right is guaranteed by article 165, paragraph 2, of the Code of Criminal Procedure and by article 14, paragraph 3 (e), of the International Covenant on Civil and Political Rights.

81. Both in Jakarta and in East Timor, the Group obtained testimony from several detainees to the effect that, on the one hand, they had been unable to call witnesses to testify on their behalf as they had requested, or that, on the other hand, they or their legal representatives had been denied the right to question or cross-examine witnesses for the prosecution. Several of the PRD detainees interviewed at Cipinang prison claimed that they had requested numerous witnesses to testify on their behalf but that the court had either declined to hear defence witnesses or had only accepted to hear a small number. Thus, Mr. Suroso claimed that he had called 10 witnesses on his behalf, of whom five had been refused; Mr. Pranowo contended that he had called nine witnesses, none of whom had been allowed; Mr. Kurniawan indicated that five out of eight witnesses he had called to testify on his behalf had been refused. Similar statements were made by detainees interviewed by the delegation at the prisons of Baucau, East Timor, and Becora prison, Dili, East Timor.

82. Mr. Kurniawan also indicated that his legal representatives had been denied the opportunity to cross-examine the numerous witnesses called by the prosecution. The Group further heard testimony to the effect that defence lawyers are at times denied access to court documents before the start of the trial and thus have great difficulties in preparing their clients' defence, contrary to the guarantees in articles 143, paragraph 4, and 144, paragraph 3, of the Code of Criminal Procedure. Taken together, such practices are incompatible with the rights in article 14, paragraph 3 (b) and (e), of the International Covenant on Civil and Political Rights.

Right not to testify against oneself

83. This right is guaranteed by article 117, paragraph 1, of the Code of Criminal Procedure and article 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights.

84. The Group heard testimony from several detainees to the effect that individuals are frequently convicted on the basis of uncorroborated confessions. In several cases, detainees indicated that they had been forced to sign self-incriminating statements or that statements had been obtained from them under duress, through ill-treatment or psychological pressure. Thus, prisoners interviewed at Salemba, Cipinang, Baucau and Becora prisons, as well as at Metro Polda Jaya police station and Dili police station, affirmed that they had been beaten or otherwise ill-treated at a police station or in a military barracks (in some instances, the Group was able to

note the existence of marks and injuries), with a view to soliciting information about the alleged offence or obtaining a confession.

85. Evidence and allegations of ill-treatment in detention or confessions obtained under duress are all too frequently ignored by the courts. It is the opinion of the Working Group that cases in which information is solicited through use of force against or ill-treatment of the accused and later admitted as evidence during the trial must be subsumed under category III of its methods of work.

IV. CONCLUSIONS

86. During its visit, the Working Group was able to evaluate the beginnings of the democratization movement in Indonesia, even if much progress remains to be made. Symptomatic of this process is the release of the former PKI prisoners on 25 March 1999.

87. The events of May 1998, which put an end to an authoritarian regime that had been in power for more than 30 years, resulted in many positive developments for the enjoyment of fundamental freedoms and human rights. Freedom of the press has made considerable progress, as have freedom of assembly and association, the development of political parties, etc. Nonetheless, the litmus test will be the general elections of 7 June 1999, which will be governed by electoral laws that have been vastly improved, even though, in the opinion of several individuals interviewed by the Group, they still contain loopholes which might facilitate electoral fraud. In general, and in particular in the first few months after the change in government, the Indonesian people harboured great expectations. With the passing of time, some of these expectations have been reduced, partly owing to the severe economic crisis that has affected Indonesia.

88. Among the positive measures the Working Group wishes to set out are the following:

The release of many political prisoners, notably those belonging to the former PKI. The measure announced by the Government on 25 March 1999 was recommended with insistence by the Group during its visit;

Decreasing resort to use of the Anti-Subversion Law and other legislative texts which, for many years, facilitated arbitrary deprivation of liberty;

The elimination of the generalized practice of prolonged detention for political motives.

89. On the other hand, the incidence of violence accompanying repressive activities has hardly diminished (for example, in Aceh, Irian Jaya and East Timor). Arrests continue to be characterized by numerous flaws that result in detentions being arbitrary within the meaning of one of the three categories under the Group's working methods.

90. The Group would like to clarify the scope of its criticisms. In their quasi-totality, situations of arbitrary detention listed in the present report have three causes:

(a) The majority of the situations are the responsibility of the former regime. This underlines the necessity and urgency of intensifying, without any discrimination, the policy of releasing prisoners initiated by President Habibie.

(b) Other situations result from deficiencies in the legislation itself (for example, the absence of a legal obligation to present an arrested person promptly before a judicial authority). This underlines the urgent need to revise several provisions of the Code of Criminal Procedure and to abrogate the existing emergency laws and measures.

(c) The third cause of arbitrary detention arises not from deficiencies in the law (since on many points, such as presumption of innocence, adversarial proceedings, habeas corpus, etc., the criminal procedure is satisfactory), but from deficiencies of the authorities and judicial officers who must apply the law, be they police officers, prosecutors, judges or even lawyers. Such deficiencies may relate to routine matters (lack of notification of prolongation of detention) or to serious breaches of professional ethics or of the duty of impartiality (for example, corruption). This underlines the importance of education in this area and the necessity for exemplary and severe sanctions, which should be administered in all proven cases.

91. The new Government has initiated negotiations, under the auspices of the United Nations, with a view to finding a solution to the problems of East Timor. This process is in full development. Although numerous political prisoners have been released, repressive measures continue, notably in the so-called Critical Control Areas, or by virtue of the “re-education” of opponents of the regime which, as mentioned above, must be characterized as arbitrary detention. The new penitentiary regime accorded to Xanana Gusmao and his recognition as a legitimate representative of a significant sector of the East Timorese people is a promising indicator of the Government's desire to find an equitable solution to the problems of East Timor.

92. The visit of the Working Group to East Timor was disillusioning in as far as the working conditions of the local non-governmental organizations are concerned, which often do not even allow them to transmit reliable and corroborated information. It is worth recalling that they work in particularly difficult circumstances. The explanation is simple: human rights organizations in East Timor operate in a climate of threats and repression such that they find it almost impossible to verify many data. The following comments made to the Group are illustrative: “the families of detainees do not wish to give us their information, out of fear”; “we do not leave the country out of fear that we might be denied the right to return, or that we might face reprisals upon return”; “we do not know the mechanisms of the Commission on Human Rights, and would like to know more about them”; “we need technical assistance”; “when we write to the military, we do not receive written replies and oral replies always attribute responsibility to the guerrilla”. NGOs work in inadequate offices, with difficult access to modern

technology, which means that their protection work is limited in scope. Failure to use the pre-trial hearing procedure under the Code of Criminal Procedure is due, in part, to the impossibility of mounting defence programmes in urgent cases.

93. In its contacts, particularly with lawyers and representatives of civil society, the Group developed the feeling that several decades of authoritarian regimes in Indonesia have often contributed to some form of desensitization in relation to human rights. This can take the form of loss of confidence in institutions, of acceptance of the absence of the rule of law and of a certain fatalism vis-à-vis the phenomena of impunity and corruption. On this last point, the Working Group considers that the envisaged judicial proceedings against the highest official of the former regime, especially for embezzlement of public funds and other economic crimes, should be conducted with firmness, independence and transparency so as to permit public opinion to regain confidence in the country's institutions.

V. RECOMMENDATIONS

94. Apart from encouraging continuation of the process of ratification of several international human rights instruments which is either under way or under examination, the Group makes the following recommendations.

Recommendation 1

95. First priority: to intensify, on a non-discriminatory basis, measures consistent with the current policy of releasing all political prisoners incarcerated or convicted under the old regime.

Recommendation 2

96. Second priority: to reinforce the independence of the police by separating them from the armed forces and placing them under the sole authority of the Ministry of Justice or, at the very least, a civil authority.

Recommendation 3

97. Third priority: to reinforce the independence of the judges by placing the judiciary under the authority not of the Ministry of Justice but of the Supreme Court. The law should guarantee that they cannot be removed from office, which implies that their status of civil servants should be eliminated and that they should be granted a specific status guaranteeing their personal independence.

Recommendation 4

98. Information and education efforts should be intensified, especially in the context of bilateral or multilateral technical cooperation programmes, with a view to ensuring respect for and proper implementation of certain existing laws which provide sufficient procedural guarantees. Priority should be given to:

A campaign to sensitize lawyers, NGOs, prosecutors and judges to the procedure of habeas corpus (pre-trial hearing procedure), so that confidence in this procedure may be restored;

Technical cooperation programmes necessarily require the training of members of human rights organizations, as well as of the lawyers defending the activities of such organizations;

The sensitization of prosecutors to the fact that they must ensure that every prolongation of their detention is effectively notified to detained persons in conformity with the applicable provisions of the Code of Criminal Procedure;

The establishment of the habeas corpus (pre-trial) procedure for military justice.

Recommendation 5

99. Reform of the Code of Criminal Procedure: there should be a legal obligation to present the detained person before a judge or any other authority authorized by law to exercise such functions, promptly and in person.

Recommendation 6

100. Creation of a central detention register: the Government of Indonesia should establish a central register of detainees, which would enable judicial authorities and penitentiary administrations to monitor the location and transfers of, and status of judicial proceedings in respect of, all detainees in Indonesia.

Recommendation 7

101. National Commission for Human Rights (KOMNAS HAM): legislation should be drafted and enacted promptly which would guarantee the independence of all activities of the Commission by taking into account all the Principles relating to the status of national institutions for the promotion and protection of human rights (the so-called “Paris Principles”, adopted by the General Assembly in its resolution 48/134 of 20 December 1993).

Recommendation 8

102. Emergency laws: all emergency laws and measures should be abrogated and replaced by a legal system which would be applicable in times of national crisis and in states of emergency and which would be compatible with article 4 of the International Covenant on Civil and Political Rights, i.e.: legal procedure for the proclamation of the state of emergency; listing of all non-derogable rights; measures ensuring respect for the principle of proportionality, both in relation to time (limited duration and renewal subject to specific conditions) and to space (limitation to the zones covered by a state of emergency).

Recommendation 9

103. Military tribunals: their competence should be limited strictly to offences committed under the Code of Military Justice by military personnel. Cases involving non-military victims, especially in the field of human rights, should be excluded from the military jurisdiction.

Recommendation 10

104. Legal assistance: the Government should take initiatives to inform detained individuals of their rights and progressively put into place an effective legal aid system providing free legal assistance to those who cannot afford legal representation.

Notes

1.See Commission resolution 1993/97 of 11 March 1993, paragraph 9; Commission Chairman's statement of 9 March 1994 (E/1994/24-E/CN.4/1994/132, paragraph 482); Chairman's statement of 1 March 1995 (E/1995/23- E/CN.4/1995/176, paragraph 590); Commission resolution 1997/63 of 16 April 1997, paragraph 3 (d).

2.Chairperson's statement of 24 April 1998 (E/1999/23-E/CN.4/1999/167, paragraph 243).

3.Pancasila embodies the following principles: belief in one god, humanitarianism, national unity, democracy and social justice for all.

4.This refers to incidents that occurred in Lampung in 1989, during which members of the Indonesian Armed Forces are said to have killed a number of activists of an Islamic religious group. Leading members of this group were subsequently arrested, tried and sentenced.

5.The provisions concerned are articles 7 and 13 to 21 of the Universal Declaration and articles 12, 18 to 22, 25 and 27 of the International Covenant on Civil and Political Rights.

6.The Indonesian Student Solidarity for Democracy and the Indonesian Peasants' Union.

7.They are: Budiman Sudjatmiko, leader of the PRD (13 years' prison term); Petrus Hari Haryanto (eight years); Yakobus Eko Kurniawan (eight years); I Gusti Anom Astika (five years); Suroso (seven years); Garda Sembiring (12 years); Ignatius Pranowo (nine years); and Dita Indah Sari (five years).

8.They are: Marinus Muabuay, Soleman Manufandu, Ones Paraibabo, Amos Ramandey, Yakobus Tanawani, Piter Samolo, Paulus G.M. Muabuay, Margaretha Wakman, Yemmy Togotly and Isak Windesi.

9.They are: Filip Jakob Samuel Karma, Nelles Sroyer, Augustinus Sada, Clemens Rumsarwir, Marinus Ronsumbre, Adrianus Rumbewas, Djoumounda Costan Karma, Nico Rumpaidus, Melky Kmur, Lamek Dimara, Robert George Iwanggin.

10.The others are Isnanto (detained at Tanjung Gusta), Buyung Ketek (detained at Padnag prison), Markus Giroth (detained at Kalisosok), Sido (detained at Sari prison in Ujung Pandang), Soma Suryabrata (detained at Pamekasan prison, Madura), and Sri Sudjarto (detained at Padnag prison).
