



UNFINISHED BUSINESS

POLICE ACCOUNTABILITY IN INDONESIA

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Cover photo: Indonesian police on parade, Monas Square, Jakarta, July 2008

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GLOSSARY

IN ENGLISH

CAVR: The Timor-Leste Commission for Reception, Truth and Reconciliation (the Portuguese acronym)

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CERD: Convention on the Elimination of Racial Discrimination

CRC: Convention on the Rights of the Child

ICCPR: The International Covenant for Civil and Political Rights

ICESCR: the International Covenant for Economic, Social and Cultural Rights

IOM: International Organization for Migration

IDSPS: Institute for Defence Security and Peace Studies

INP: Indonesian National Police

INTERPOL: International Criminal Police Organization

New Order: The regime of President Suharto

NGO: Non Governmental Organization

PR: Police Regulation

UDHR: Universal Declaration of Human Rights

UNCAT: United Nations Committee against Torture

UN: United Nations

UPR: Universal Periodic Review

IN INDONESIAN

86: Delapan Enam, a slang term meaning to 'make peace' or to 'come to a mutual understanding'. Although its origins are disputed, this term is mostly used in interactions with the police.

ABRI: Angkatan Bersenjata Republik Indonesia, the Armed Forces of Indonesia

AKB: Ajun Komisaris Besar, Adjutant Senior Commissioner

AKBP: Ajun Komisaris Besar Polisi, Adjunct Senior Police

Ankum: Atasan yang berhak menghukum, Police superior who has the power to give punishments (Disciplinary Code)

BAP: Berita Acara Pemeriksaan, Police Investigation Report

Bareskrim: Badan Reserse Kriminal, Criminal Investigations Bureau (headquarters level)

Bintara: rank and file police officers, lower ranking police.

BKN: Badan Kepolisian Negara, National Police Force

Bolak-balik: in and out of prison

Buser: Buru Sergap, hunt and capture unit, support police officers from the Criminal Investigation Division

Dokkes: Kedokteran dan Kesehatan, Medicine & Health Department

DPO: Daftar Pencarian Orang, List of Wanted Persons

DPR: Dewan Perwakilan Rakyat, House of People's Representatives, the lower house of the legislature of Indonesia

DPRD: Dewan Perwakilan Rakyat Daerah, House of Regional Representatives

FKPM: Forum Kemitraan Polisi dan Masyarakat, Police-Community Partnership Forums

Irwasum: Inspektorat Pengawasan Umum, General oversight inspectorate

Kapolri: Kepala Kepolisian Republik Indonesia, National Head of Police

Kapolda: Kepala Kepolisian Daerah (Polda), Head of Regional Police

KDRT: Kekerasan dalam Rumah Tangga, Domestic violence

Kombes Pol: Komisaris Besar Polisi, Senior Police Commissioner

Komisi Kode Etik: Commission of the Code of Ethics

Komnas HAM: Komisi Nasional Hak Asasi Manusia, National Commission for Human Rights

Kompolnas: Komisi Kepolisian Nasional, the National Police Commission

KUHP: Kitab Undang-Undang Hukum Pidana, Criminal Code

KUHAP: Kitab Undang-Undang Hukum Acara Pidana, Criminal Procedure Code

LESPERSSI: Lembaga Studi Pertahanan dan Studi Strategis Indonesia, Indonesia Institute for Defense and Strategic Studies

Mabes Polri: Markas Besar Kepolisian Republic Indonesia, Police Headquarters

MPR: Majelis Permusyawaratan Rakyat, People's Consultative Assembly

NAD: Nanggroe Aceh Darussalam, also known as Aceh

Pamong Praja: Local/regional police forces

Perwira: Higher ranking police, Commissioned Police Officer

Polda: Kepolisian Daerah, Regional Police

Polda Metro Jaya: the Jakarta metropolitan police / the regional level Jakarta police station.

Polmas: Perpolisian Masyarakat, Community Oriented Policing

Polres: Kepolisian Resor, District Police

Polresta/poltabes: Kepolisian Resor Kota / Kepolisian Kota Besar, Municipality/metropolitan police.

Polri: Kepolisian Negara Republik Indonesia, the Indonesian National Police

Polsek: Kepolisian Sektor, Sub-District Police

Polwiltabes: Kepolisian Wilayah Kota Besar, City police

PPNS: Penyidik Pegawai Negeri Sipil, Civilian Investigators of the State

Propam: Divisi Pertanggungjawaban Profesi dan Pengamanan, Division of Profession and Security, the internal disciplinary unit.

PROTAP: Prosedur Tetap, Standard Operating Procedures

Provost: Investigative unit within Propam, the internal disciplinary unit

PTIK: Perguruan Tinggi Ilmu Kepolisian, Higher Police Science College

Reformasi: The democratic reform movement by which the post-Suharto era is known

Reserse: Criminal investigator

Reskrim: Reserse Kriminal, Criminal Investigation Division

RPK: Ruang Pelayanan Khusus, Special Service Room

RUU: Rancangan Undang-Undang, Bill

SKEP: Surat Keputusan Kapolri, Decree of the National Head of Police

SKM: Saran dan Keluhan Masyarakat, Recommendations and Complaints from the Public

SPN: Sekolah Polisi Negara, National Police School (for bintara, lower ranking officers)

TNI: Tentara Nasional Indonesia, National Military of Indonesia

TO: Target Operasi, Operational Target, or 'repeat offender'

Trantib: Ketentraman dan Ketertiban, Peace and Order Unit

UU: Undang-Undang, National Law

UPPA: Unit Pelayanan Perempuan dan Anak, The Women & Children's Service Unit.

Visum et Repertum: Medical certificate which can be used in legal proceedings in Indonesia

Wakapolda: Wakil Kepala Kepolisian Daerah, Vice Head of Regional Police

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Police Accountability in Indonesia

1. INTRODUCTION AND SUMMARY

‘The Indonesian police are not just law enforcement people. They are key agents of change ... And by doing this professionally, they are visibly demonstrating that no one is beyond the reach of the law.’

Susilo Bambang Yudhoyono, Indonesia’s President, 11 April 2006.¹

‘Those police, they really check who you are. If it looks like you understand the law, they won’t do anything to you, but if it looks like you don’t really get it, then they keep squeezing you. [They keep] beating you’

Ali, 24, was arrested for possession of marijuana in January 2008.²

Since the fall of the authoritarian regime of President Suharto in 1998, Indonesia has embarked in a series of key strategic reforms, which have contributed towards enhancing the rule of law and better protecting human rights. These steps reflect an increased commitment towards better protecting and promoting human rights both at a national and international level. Yet there is still a huge gap between the policies and the practice. The laws and their implementation still fall short of protecting the rights of the Indonesian people. In this regard, Amnesty International continues to receive many reports about human rights violations in the country, including by police personnel.

Ali’s experience is typical of what happens to many criminal suspects at the hands of the police. Despite the current reform process and attempts to make the Indonesian National Police (POLRI, *Kepolisian Negara Republik Indonesia*) more professional and respectful of human rights, Amnesty International has observed a pattern of police abuse towards certain groups in the population. Criminal suspects living in poor and marginalized communities, in particular women and repeat offenders, suffer disproportionately from a range of human rights violations including excessive use of force leading in some cases to fatal shootings; torture and other ill-treatment during arrest, interrogation and detention; and inadequate access to medical care while in police custody.³

Amnesty International acknowledges the many challenges facing the police in their daily

work.⁴ However as set out in international human rights law and standards, police have rights, but there are also limits on police powers.⁵ Police in Indonesia have an obligation to respect the provisions set out in the international human rights treaties ratified by Indonesia⁶ and other internationally recognised human rights standards which form customary international law.⁷ Police personnel also have a duty to respect human rights provisions in national legislation.⁸

In the rare cases where victims have reported police abuses, police often subject them to further intimidation and harassment. Although the authorities have made some attempts to bring alleged perpetrators to trial and to institute an internal disciplinary mechanism, the processes have been unsatisfactory, leaving many victims without adequate access to justice and reparations.

Impunity is deeply engrained throughout Indonesia's criminal justice system, whereby perpetrators of human rights violations are rarely brought to justice for their crimes.⁹ Although Indonesia has made some efforts to counter impunity among officials, much more needs to be done. Impunity erodes the trust of the local community in the police, and thereby deprives police officials of a key community support base to detect and combat crime effectively and professionally.

In order to address these problems, Amnesty International recommends the Indonesian authorities to undertake the following as a matter of priority:

- Acknowledge the serious problem of police abuse within the country and state publicly that it is unacceptable. Relevant legislation should be amended to ensure better compliance with Indonesia's international human rights obligations and better safeguards for victims and their families. Prompt, impartial and effective investigation into every alleged police abuse should be conducted as a matter of priority. Those found responsible should be brought to justice in proceedings which meet international standards of fairness, and the victims should be granted reparations;
- Review the current accountability system to deal with suspected human rights violations by police officials. In particular, the internal system for submitting and processing complaints of police abuse should be reviewed to ensure that investigations into police misconduct are prompt, impartial and independent;
- Set up an independent police complaints mechanism that can receive and deal with complaints from the public. This task could be undertaken either by a new mechanism or an existing external police oversight mechanism as long as the terms of reference of this independent police complaints mechanism ensure that it is operationally independent of the government, political influence and the police itself and accessible to members of the public throughout the country. Its mandate should empower it to, among other things, receive complaints; carry out effective investigations; and refer cases to the public prosecutor or to the police internal disciplinary body. It should also have the power to choose when to supervise or manage investigations conducted by police investigation officers and when to carry out its own independent investigations.

1.1 GENERAL BACKGROUND

The Indonesian National Police Force has made significant progress in becoming an effective, independent body since separating from the Armed Forces a decade ago under the Presidency of Bacharuddin Jusuf Habibie. Successive governments have put in place a number of key legislative and structural reforms to strengthen police effectiveness in preventing and detecting crime; maintaining public order; and promoting the rule of law. Moreover sections of the police force have been trained in international human rights law and standards, and community policing initiatives have been taken forward in order to develop police professionalism and accountability to the public.¹⁰

Despite these positive moves, the police in Indonesia are still perceived today as a highly corrupt¹¹ and mistrusted institution.¹² Although police officials are in charge of promoting the rule of law, in reality they often behave as if they were above the law, a situation which is supported by a lack of effective accountability mechanisms, both internally and externally.



Police march at Indonesian police anniversary display in Monas Square Monas Square, Jakarta, 1 July 2008.

Amnesty International believes that a human rights based approach to policing greatly enhances police professionalism (see box on human rights based policing, p15).¹³ Policing and human rights are closely intertwined, as the police's role is to protect human rights.¹⁴ In such an approach, human rights are not in conflict with effective policing but on the contrary support it. In this regard the UN Codes and Standards on policing have developed three basic principles: 1) the police need to ensure they carry out their work in a way which is responsive

to the public they serve; 2) that they are representative of the population; and 3) that they are accountable within their structure and externally in accordance with international human rights law and standards.

1.2 METHODOLOGY

The findings of this report cover issues related to human rights based policing over the last five years. This timeframe allows for an overview of the police reform process under the leadership of Susilo Bambang Yudhoyono, Indonesia's President (from 2004) and of the previous National Head of the Indonesian National Police, General Sutanto (2005-2008). It also coincides with the appointment of the new National Head of Police, Bambang Hendarso Danuri, in September 2008.¹⁵

Amnesty International obtained some of the information in the report during a visit to West Java and Jakarta between June and August 2008, based on 62 individual and group interviews with government officials, including senior and mid-ranking police officials; academics; donors; lawyers; members of local non-government and international organizations; journalists; and over 110 victims of police abuse. Additional information was obtained during a subsequent visit in April 2009 to Jakarta, Central Java and Riau during which an additional 37 individual and group interviews were conducted with government officials, lawyers, members of local non-government (NGO) and international organizations and over 50 victims of police abuse. For security reasons information which could identify those who were interviewed has been removed unless the victims asked Amnesty International to use their real names.

The research is also based on daily news monitoring on issues related to police reform over the last two years; extensive reading of academic and other professional publications on police; analysis of laws and police regulations and regular contact with lawyers, victims of police abuse and members of NGOs in Indonesia. The analysis of this report draws extensively on the book 'Understanding Policing', which was published by Amnesty International Netherlands in 2006, and translated into Indonesian in 2008.¹⁶

In this report Amnesty International provides details about ongoing human rights violations of criminal suspects by the police. It follows a submission by Amnesty International to the UN Committee against Torture in April 2008 which highlighted the widespread use of torture and other-ill-treatment; and the lack of sufficient strong legal safeguards to protect suspects from torture and other ill-treatment.¹⁷ The report also examines the police internal and external accountability mechanisms and their inability to date to effectively prevent human rights violations by punishing perpetrators and providing reparations and assistance to the victims through a free, fair and transparent process.

At the end of the report, Amnesty International makes a series of recommendations to the Indonesian authorities and other key stakeholders on a police reform process to strengthen the internal and external accountability mechanisms, and considers potential new mechanisms to help the Indonesian National Police meet the challenge of operating an effective, rights-friendly police service.

WHAT IS HUMAN RIGHTS BASED POLICING?¹⁸

At the root of the international system that guides policing are human rights enshrined in the Universal Declaration of Human Rights (UDHR) and provided in UN treaties binding on states parties, including Indonesia. These rights include, among others: the right to life,¹⁹ freedom from torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment);²⁰ the right to liberty, including freedom from arbitrary deprivation of liberty; the right to a fair trial;²¹ the right of women to be free from discrimination and violence of any kind;²² and the rights of children.²³

As officers of the state, police personnel must carry out their duties in a non-arbitrary and impartial manner. To do this, it is often necessary to employ a degree of autonomy and discretion when exercising their powers. For example, they must decide when to use force and to what degree, or when to make an arrest or carry out a search. In order to balance these powers and prevent their abuse it is essential for police to be accountable to the law, the State and its citizens.

Amnesty International has documented cases from countries around the world where police have exceeded their powers and violated human rights. Under international law and standards, states may restrict human rights only in narrowly-defined circumstances, for purposes such as securing the human rights of others and of meeting the requirements of morality, public order and the general welfare in a democratic society. Police must not exceed the powers given to them by law, which must reflect the above principles.

Police personnel, from the highest to the lowest ranking officers must be trained in applying international human rights standards in their everyday work. Police conduct must be regulated by well-conceived procedural codes of conduct and effective supervisory mechanisms reflecting these standards.

Where violations are suspected, prompt, impartial and effective investigations must be carried out, and followed by, where necessary, disciplinary measures and criminal prosecutions. Otherwise, police misconduct, such as violent behaviour and patterns of corruption, could result in a serious deterioration in relations with local neighbourhoods and the population as a whole.

The UN, in a continuing effort to assist member states in the development of national police practice consistent with the human rights framework, has developed a series of Principles, Codes and Guidelines related to policing.²⁴ UN General Assembly resolution 34/169, by which the UN Code of Conduct for Law Enforcement Officials was adopted in 1979, is of particular significance. The Resolution and Code of Conduct, by setting out that "every law enforcement agency should be representative of and responsive and accountable to the community as a whole," establishes a fundamental standard of human rights based policing, and the basic relationship police should have with the communities they serve and political system within which they function.²⁵

2. OVERVIEW OF THE NATIONAL POLICE FORCE

2.1 HISTORICAL BACKGROUND

The National Police Force (then called BKN, Badan Kepolisian Negara) was created in the context of Indonesia's independence struggle against the Dutch. The BKN initially enjoyed full autonomy operationally and administratively; however beginning in 1960 the police were slowly integrated into the military structure (then called ABRI, *Angkatan Bersenjata Republik Indonesia*). By 1968 the police "was practically a new wing of ABRI without any autonomy on its own".²⁶ In the following years, the police's budgets, planning, wage and rank structure were all incorporated into the army.

The militarization of the National Police Force under the authoritarian 'New Order' regime, which was put in place by President Suharto when he came to power in 1965, blurred the line of responsibilities between the police and the army over police functions.²⁷ The power of the military grew strong and largely unchecked. Amnesty International and other human rights organizations have reported extensively on the gross human rights violations committed by the military and the police throughout the country during this period.²⁸ The overwhelming majority of the victims of these human rights violations have yet to receive justice or reparations.²⁹

Within the unified Indonesian military command, the National Police Force was increasingly isolated from international developments with regard to policing and law enforcement standards. The proportion of police to the population dropped from one police official per 500 people in 1945 to 1:1200 during the New Order.³⁰ Moreover, the already inadequate resources allocated to the police were often diverted to their 'older siblings' in the Indonesian military.³¹

Following the 1997 Asian economic crisis which led in part to the fall of the New Order regime of President Suharto, there were widespread calls including within the police themselves for an autonomous 'clean' police institution which "appreciates human rights"; maintains "domestic security by taking into account the existing norms and values in the society"; and supports "improving the law awareness in the society".³² In April 1999 the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR)³³ passed resolutions establishing the National Police Force, POLRI, as a separate institution while the three remaining branches of the armed forces (the Army, the Navy, and the Air Force) became the Indonesian National Military (Tentara Nasional Indonesia, TNI).

The Indonesian National Police was tasked with 'security and order' and the military with defence. In July 2000, through Presidential decree No89/2000, they were removed from the Department of Defence to the President's office (Article 2.1).³⁴ In August 2000, a constitutional amendment delineated the scope of police authority, which was to "maintain

public order and security”, “protect, guard, and serve the people”, and “to uphold the law”.³⁵

2.2 THE POLICE’S SCOPE OF AUTHORITY AND THEIR RELATIONSHIP WITH THE MILITARY

The National Police Act (Law No2/2002) further outlines the scope of police authority.³⁶ According to the National Police Act, the function of the Indonesian National Police is to be a tool of the state that works to maintain security and social order, enforce the law and provide protection, nurturing and service to the community (Articles 2 and 13). They have the primary responsibility for arrest, detention and investigation (Article 16.1). The police are directly under the authority of the President (Article 8).

The role of the police as the primary investigators of crime is also provided for in the Criminal Procedure Code (Law No 8/1981) which states that “an investigator is a state police official of the Republic of Indonesia” or “a certain civil service official who is granted special authority by law” (Article 6.1). Once the investigator has conducted his duties as specified in Article 7, they hand over the dossier of the case to the public prosecutor (Article 8).

Although there have been positive moves to distinguish police authority from the authority of the army, many grey areas remain. In the Armed Forces Act (Law No34/2004), which defines the scope of military authority, the Armed Forces have authority over 14 operations other than war (Article 7.2 (b)). They include dealing with separatist movements; other armed insurgencies; terrorism threats; security threats to the nation and its vital resources; natural disasters; and acts of piracy and smuggling.

In the Armed Forces Act, the Armed Forces are mandated to “assist the Indonesian National Police in tasks of security and social order to be regulated by law” (Article 7.2 (b)10). This is reinforced by the Police Act, which provides that “In the interests of carrying out security functions, the Indonesian National Police may request assistance from the Indonesian National Military to be regulated by Governmental Regulations” (Article 41.2). The Police Act also provides for the police to assist the military in times of war (Article 41.2).

Currently there are still two draft bills at the House of People’s Representatives (Dewan Perwakilan Rakyat, DPR) to further clarify the relationship between the police and the military: the Technical Assistance of the Indonesian Armed Forces in the Form of Operations other than War bill (Rancangan Undang Undang Tugas Perbantuan Tentara Nasional Indonesia) and the National Security Bill (Rancangan Undang Undang Keamanan Nasional). It is not clear when the new parliament elected in April 2009 will pass these laws.

Amnesty International is concerned by the ongoing lack of clarity over delineation of authority between the police and the military. This situation, coupled by the maintenance for both forces of the same territorial structure which goes all the way down to the village level [see Appendix 2 on the National and Territorial Structure, p74], has led to competition between the police and the military – and sometimes armed clashes – at a local level.³⁷

While over the past ten years there have been significant positive developments in establishing the police as a civilian institution separate from the military, more needs to be done to ensure that the relationship between the two institutions is sufficiently clear and distinct. Clearer delineation of the separation between internal security and national defence is a priority for achieving human rights-based policing and respect for human rights. If, in exceptional circumstances, it is found necessary for the military to perform police functions and vice versa, it should be clearly established on what legal basis this is being done; what law enforcement duties they will carry out, in what locations, and for how long – which should be the shortest time possible.

In any situation where the military carry out law enforcement functions it is essential that they comply with international legal standards. These include the international human rights treaties Indonesia has ratified, and other international law enforcement standards, in particular the UN Code of Conduct for Law Enforcement Officials and the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials.³⁸ Further military personnel should be subject to the same level of accountability as the police when they perform law enforcement functions as well as defence related functions.³⁹

3. POLICE VIOLATIONS AGAINST CRIMINAL SUSPECTS



Police sign, Indonesia, 3 August 2008: Polisi - Kami siap melayani anda (Police - we are here to serve).

THE CASE OF DENNI

Denni,⁴⁰ 28 years old, a heroin addict, was arrested in Central Jakarta on 19 December 2005 as he made a purchase from his dealer in the marketplace. Police tied him up and beat his shins with a block of wood. Denni told Amnesty International what happened at the time of arrest:

'Confess!' they [police officers] said, 'Confess!' But the buser [support police officer from the Criminal Investigation Division], who seemed to have a higher job position, said 'enough of this, just take him to the station'. I was taken to the highway. But we didn't get into a police car. We went in a cab. As the cab drove, they bargained with me. 'Hey can you get us 40 million [3858 USD]⁴¹ tonight? If you can get the 40, I'll let you go'. I said, 'I don't have any money, I don't have anything like that'. He said, 'Ok, you tell us a friend who is also a user, but pick someone with some money, someone who can provide us with some cash. Do you know someone like that?' I said, 'it's midnight, how do I find someone like that? I don't know anyone like that'. They said, 'Ok. Fine'. And then they started to beat me. 'Then you are going to die', he yelled. You are going to die''.

Police abuse petty criminal suspects, sex workers and drug users like Denni, sometimes because they want to extract money from them. These violations include excessive use of force sometimes leading to fatal shootings, and torture and other ill-treatment. The violations

occur in an environment where suspects lack access to adequate legal safeguards during detention and interrogation. Criminal suspects from poor and marginalized communities appear to suffer disproportionately in urban settings. Women and repeat offenders from these poor and marginalized communities are particularly at risk.

These individuals have very limited access to legal assistance and are often not familiar with the complexities of Indonesia's criminal justice system. They are often unaware of their rights. Moreover, these violations point to a persistent problem within the police force of corruption at all the levels of the chain of command, driven in part by their need for additional resources. These themes are addressed more fully in Section 5, below.

3.1 UNNECESSARY AND EXCESSIVE USE OF FIREARMS

Newspaper reports, field interviews conducted within communities living in poverty in June-August 2008 and April 2009, and reports from NGOs reveal that police often use their firearms unlawfully. In the past few years Amnesty International has received many reports about police misuse of firearms against unarmed people from poor and marginalized communities in various contexts – during arrests of criminal suspects, peaceful demonstrations and forced evictions.⁴² Amnesty International has also noted a high number of shootings by police officers when they are off duty. Once police officers are not carrying out their duties, their access to their lethal equipment should be strictly regulated.⁴³

Examples of misuse of firearms indicated below do not provide an exhaustive list of the reports Amnesty International has received over the last two years and are limited to shootings of criminal suspects.⁴⁴ They do however illustrate some of the problems associated with the misuse of firearms during arrests of criminal suspects, most of them petty criminals from poor and marginalized communities. Repeat offenders appear to be at particular risk of police shootings.

Under international standards the police may use firearms in certain circumstances, either to protect their own life or the lives of others, but it is essential that every incident involving the use of firearms is investigated to ensure that the use of lethal force is not unnecessary or excessive. In particular there should be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.

3.1.1 POLICE SHOOTINGS OF CRIMINAL SUSPECTS

In mid 2008, two victims of police abuse interviewed by Amnesty International described possible unlawful killings by police officials of 'repeat offenders' in Jakarta. These testimonies illustrate a belief within poor marginalized communities in Jakarta that local police stations maintain blacklists of repeat offenders known as 'TO' (Target Operasi, Operational Target) or 'DPO' (Daftar Pencarian Orang, List of Wanted Persons). Repeat offenders believe that if they ignore the police's warning to end their criminal activity, they

will be targeted and killed.

One repeat offender described what happened to his friend at the hands of the police:

"I was a robber from way back. I've been in and out of Cipinang (East Jakarta prison) my whole life. But, I found out in 2005 that I was TO [a repeat offender]. I'm on my last life. If I do it again, it's game over. They'll shoot me and throw me somewhere, on the side of a highway or in the forest... My friend, Ronnie, was DPO [a repeat offender] too. He'd been in and out of jail with me for years ... Anyway, they told his family that Ronnie wasn't to steal again. Turns out they weren't kidding. Ronnie didn't care enough about his life, and honestly, what else could he do but steal? They found him last year at the Cakung toll road with a bullet in his belly. Pos Kota [a local Jakarta newspaper] reported it as an unidentified corpse."⁴⁵

Another witness recounted his own experience when he was brought to his local police station in Banten province in January 2005. He was 14 years old at the time:

"My friend's name was Iwan. He was 20 and he was my neighbour. We were very close. He was just a street kid. He had no parents or job, so he stole wallets. He often went in and out of jail. While I was in detention at Polres [District Police Station] ... he came in as well. It was his fourth time. On the seventh day in detention, five buser [support staff from the Criminal Investigation Division] took him. They took him at 1am. They said, 'I'm sick of seeing your face, get out'. He was handcuffed and taken away. He was shot at the back of the Polres. I heard the shots. This had always been the place of execution. I heard the sound of the shot and I knew it was my friend. I knew he was dead. I knew he didn't run, like they said. They killed him.

At 3am, he was returned to the cell. There were bullets in his head and chest, at the back. I saw the holes. They had used a small pistol. We were told to mop up the blood. The police said, 'if you bolak balik [go in and out of jail] this will happen to you too'. We were silent. The proof was right there in front of us. At midday, they took him. I don't know where they took his body. I think he wasn't taken to the hospital. I think he just disappeared. He had no family. This is why they could do this to him. While I was in the adult prison, many people told me that this happens to criminals that bolak-balik. They say that they are shot and thrown into the sea. I am scared that this happens to my friends. The accused are still human. We have to be treated like humans... This is the first time I have ever told this story. I wanted report it, but to who? I could only tell it to my cell mates, but what's the point of that?"⁴⁶

Amnesty International's monitoring of the Indonesian media revealed that between April 2008 and April 2009 there were at least 76 firearm incidents involving the police and criminal suspects. At least 49 people, including two police officials,⁴⁷ were killed by firearms during these incidents and over 60 criminal suspects were injured. The reports indicated that in many cases the criminal suspects were shot during arrest after the police had fired warning shots and/or because police said that they were trying to escape. They appeared to be involved in petty crimes, mostly theft. There was in most cases no mention in the media reports that the criminal suspects used or threatened violence against police officials or other

members of the public during their arrests and/or attempts to escape. Below are selected examples of police shootings gleaned from the press.

■ In April 2009, police officials shot at nine criminal suspects, mainly thieves and repeat offenders, during arrest. One of them died as a result. A police official shot dead Ade Susilo, 25 years old, at the time of arrest in Cilincing, North Jakarta. Ade Susilo was suspected of car theft in January 2009. According to the news report, the bullet went through his back all the way through to his chest.⁴⁸ Police shot two robbery suspects in the leg in Jakarta because they were trying to escape.⁴⁹ Police shot one man suspected of having stolen a motorcycle from a hospital parking area in Langsa, Aceh province. According to police, they met the suspect on the road, and after asking him to surrender and firing warning shots, they 'procedurally' shot the suspect to stop him.⁵⁰ Police shot in the leg a repeat offender in Jakarta for resisting arrest.⁵¹ Police shot at a suspected thief who reportedly specialized in 'hotel breaking' and who was already the target of police operations for 'resisting' arrest in Pekanbaru, Riau province.⁵² Police shot a suspected thief for 'resisting' arrest while he was stealing a phone line cable in the village of Ngujo, Kalitidu, East Java.⁵³ Police shot two suspected vehicle thieves in their left legs while trying to escape from police in Banjarmasin, South Kalimantan.⁵⁴ There was no mention in any of the news reports that the suspects used violence at any stage of their arrests or attempted escapes.

Police appear to use warning shots often, despite the fact that they can be very dangerous and harm the suspects, members of the public or police officials themselves. International standards call for warnings to precede, where appropriate, any use of firearms, and any such use that "cause unwarranted injury or present an unwarranted risk" is prohibited.⁵⁵

■ In November 2008, Police shot dead Kusrin who was reportedly caught stealing wood in Blora, Central Java with 29 other people. Police officials reportedly fired warning shots, but one of the bullets bounced and hit Kusrin. After three nights at a hospital Kusrin died. A police investigation was reportedly conducted to look into the incident. There was no mention in the news report that Kusrin used violence during the course of his arrest.⁵⁶

In a report published in January 2008, the National Police Commission (Komisi Nasional Kepolisian, thereafter referred as Kompolnas) highlighted the vulnerability of petty criminals from poor marginalized communities to firearm abuses by police officers.⁵⁷ In their report, Andik recalled the story of a suspected thief who was shot in the leg by police:

"The offender had already surrendered, but he was shot at anyway. The first and second shot were in the leg, and the third to the fifth shot were fired in the air. Yes if they are asked by their superiors they say they gave a warning".⁵⁸

The Indonesian authorities should ensure that there are thorough, prompt and impartial investigations into all reports of unnecessary and excessive use of force by police officials. In particular there should be investigations into reports of deaths at the time of arrests and detention involving the use of firearms by police officials. As provided for in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, "In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control" (Principle 22). Further, Governments must ensure that arbitrary or abusive use of force and

firearms by law enforcement officials is punished as a criminal offence under their law (Principle 7).

3.1.2 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS



Police march at Indonesian police anniversary display in Monas Square Monas Square, Jakarta, 1 July 2008.

The power to use force given to police officers is restricted by relevant international human rights law and standards, at the basis of which is the right to life. The International Covenant on Civil and Political Rights (ICCPR) to which Indonesia is a state party provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” (Article 6.1). Further, as provided by Article 4 of the ICCPR, states cannot derogate from their obligations under this provision, even “in time of public emergency which threatens the life of the nation”. The right to life is provided for in Indonesia’s National Constitution (Article 28.A) and other provisions within national legislation.⁵⁹

Article 3 of the UN Code of Conduct for Law Enforcement Officials states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials apply this general principle to the use of firearms.⁶⁰

As far as possible law enforcement officials should apply “non-violent means before resorting to the use of force and firearms”, which they should use only if other means are ineffective (Principle 4). They must not use firearms against persons except to defend themselves or

others against an imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest or prevent the escape of a person presenting such a danger and resisting their authority, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Principle 9). Arbitrary or abusive use of force and firearms by law enforcement officials should be punished as a criminal offence under national law (Principle 7).

3.1.3 NATIONAL DEVELOPMENTS: NEW REGULATIONS AND TRAININGS

POLICE REGULATION ON THE USE OF FORCE

The new police regulation on the use of force in police action (No. 1/2009) meets many requirements of the UN Basic Principles on the Use of Force and Firearms. Amnesty International in particular welcomes the Regulation's statement of principle, that "use of force can be applied only when it is necessary and inevitable according to the situation being faced" (Article 3.b).

As provided for in the regulation, police action should be "used in an accountable manner according to the prevailing law, to prevent, impede, or stop a subject's behaviour that threatens the safety or endangers the life, property or chastity of others. The force is used to create order and enforce the law, as well as to maintain peace within the community" (Article 1.2). Further, it should respect the principles of legality, necessity and proportionality. All police need to ensure that "the use of force has to be carried out in a balanced manner, between the threat being confronted and the level of force and response by the INP [Indonesian National Police] officer so as not to cause excessive losses/injuries/suffering" (Article 3).

Articles 7(2)(d), 8 and 9 cover the situations in which firearms (as opposed to lesser means of force) may be used. By and large, Article 7(2)(d) echoes the requirement of the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (Principle 9), which states that firearms may not be used "against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape".

However, Article 7 which refer indirectly to the dispersal of non-violent assemblies⁶¹ omits crucial points on different threat levels and it does not refer to the use of force in detention facilities. In particular if there is no other specific regulation on the use of force within such facilities, the National Head of Police should ensure that there are strict guidelines entrusting police officers to only use force in detention facilities when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened; and prohibit the use of firearms except in accordance with the principle of protecting life.⁶²

Article 13 of the Regulation provides a framework for the accountability of police individuals in using force. In particular every police individual "shall be responsible for the use of force

in his/her police action” (Article 13.1), and “The commander who gives INP [Indonesian National Police] personnel an order to use force in a police action shall be held accountable for the risks/results of the force used when the ordered INP [Indonesian National Police] personnel does not deviate from the given directions” (Article 13.4). Police should also write a report about every incident involving the use of force. This report can be used as a form of legal liability and/or defence in case there are criminal proceedings following the use of force incident (Article 14).

However the regulation, does not state explicitly that any suspected unlawful use of force and firearms by police must be referred to the authorities for prosecution and investigation as a criminal offence under the law (unlike Principle 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

TRAININGS, SYSTEMS AND MECHANISMS

The National Head of Police and other senior police officers need to ensure that trainings on the use of force and firearms are included at all levels of the chain of command, including among lower rank officials to ensure that the entire police structure understands the human rights principles relating to the use of force. Moreover it is essential to note that trainings, while an important part of human rights based policing, can never be a substitute for genuine accountability.

In particular, adequate systems and mechanisms need to be put in place alongside trainings and regulations on the use of force and firearms to make sure that police officers apply the UN standards on the use of force and firearms in their daily work. It includes ensuring that police officers have access to a differentiated range of police equipment, that they have trainings on open hand techniques (techniques not requiring equipment), and other tactical methods to apply the UN standards on the use of force.

The National Head of Police and other senior police officers need to ensure that there are appropriate procedures for storage and registration of weapons. Police should store weapons in designated secure facilities and each police officer should carry a registration number. When a police officer receives a weapon, the date, time, weapon registration number, type and number of munitions used should be registered. Police should check these details when weapons and munitions are returned and police officers should report weapons’ use following any operation.

Further, if a police officer intends to take his or her weapon home, this should be reported to and approved by a superior officer. The police officer’s home should have adequate and secure storage facilities. However taking of firearms home should be the exception rather than the general rule. These decisions must be kept in the “Command Log/Incident Record” and police superiors should use them for evaluating the operation in order to distil lessons for the future and as evidence in case an incident leads to any disciplinary or criminal action.⁶³

3.2 TORTURE AND OTHER ILL-TREATMENT DURING ARREST, INTERROGATION AND DETENTION

THE CASE OF IRFAN

Irfan, 26 years old, is an unemployed user of shabu-shabu, a drug made from crystal methamphetamine. In February 2008 police arrested him and detained him at a Police District station, in Banten province, West Java. Irfan told Amnesty International the circumstances of his arrest, detention and interrogation:

“I was done in by a police informant. I had about a gram of the stuff on me. When I was arrested I was beaten, punched, slapped. ... They [police officers] said, ‘don’t worry, we’ll free you as long as you tell us the name of someone (...) who has some money, do you know anyone like that?’ I gave them the name of my dealer but still they drove me to the football field. They took out their guns and said, why don’t you run across that field? I knew if I did it, I would be shot.

When we were in the car they said, ‘do you want to do 86⁶⁴? [pay a bribe] Pay us Rp200 million [19290 USD] and we’ll set you free’. I don’t have that sort of money, so I thought, ‘I’ll just do my time.’ Back at the station, they beat me again. We did the BAP [Berita Acara Pemeriksaan, Police Investigation Report] at midnight. While we did it, they yelled at me and hit me. They said, ‘come on, don’t you want to ‘86’? If you don’t have the money for it, what about reducing the evidence? If you’ve got some money, we can reduce it’. For 5 million, the 1 gram of shabu had become 0.145 ... Everything was about money. The entire police investigative report could be changed. Everything.

My cell was only three by five metres but it had 13 or 14 people in there. And the food wasn’t even fit for a cat. ... I got sick because of it ... What do you mean medical attention, are you kidding? I got diarrhoea and I wanted to be released to the medical unit, but they said I wasn’t allowed. But then when I paid them Rp300,000 [28 USD], I was taken there the very next day. I wanted some medicine but don’t even think about getting any. My parents brought some to the jail but the ‘door money’ for each item of medicine cost Rp40,000 [3.80 USD] to bring in so they couldn’t get it to me.”⁶⁵

Since April 2008, Amnesty International has continued to receive reports about torture and other ill-treatment against various groups including political activists,⁶⁶ rural people, and criminal suspects. In the section below, Amnesty International highlights cases of torture and other ill-treatment against criminal suspects, particularly those allegedly involved with narcotics and theft. These cases represent a fraction of the reports received by Amnesty International over the past year, and demonstrate that the use of torture and other ill-treatment by police is still widespread in Indonesia.⁶⁷

3.2.1 POLICE TREATMENT OF CRIMINAL SUSPECTS

For many criminal suspects, like Irfan, torture and other ill-treatment appear to be a standard feature of their interaction with the staff members of the Criminal Investigation Department. Many of the victims of human rights violations Amnesty International delegates interviewed in

June-August 2008 in Jakarta and West Java were arrested on suspicion of theft or possession of narcotics and subjected to torture or ill-treatment during arrest, interrogation and detention by members of the Criminal Investigation Department. Most were not presented with a warrant of arrest before being taken to the police station to be officially detained, contrary to provisions contained in Indonesia's Criminal Code.⁶⁸

"At 2am we got to Polres [District Police Station]. I was taken to the head of the unit for interrogation [in January 2007]. There, ten men beat me for an hour with their batons, "where is your friend?" they asked. My three front teeth had cracked and I was bleeding. I was exhausted...Every time I said something, I was hit. I was handcuffed, standing, to the trellis above, and couldn't sleep for a whole night. For the first four days I was hit over and over again...Once, the buser [Police support staff for the Criminal Investigation Division] asked me, how is it here, and I said, I'm scared of being beaten. He said, you should be killed, not just hit..."

Sofyan, 18 year old, arrested for murder.

Furthermore, Amnesty International received a number of credible reports that individual units within the Criminal Investigation Divisions were using unofficial places of detention for the detention, extortion and interrogation of criminal suspects.

A community lawyer told Amnesty International about Endah. She and her husband were arrested in February 2007 in Jakarta on suspicion of using heroin. Endah was taken to an unoccupied house in Central Jakarta while her husband was driven around the city by support staff from the Criminal Investigation Division. When her husband arrived, they forced Endah to watch him receiving electric shocks and repeated beatings. Endah was subsequently tried and sentenced to nine years' imprisonment. She does not know what has happened to her husband.

3.2.2 DETENTION CONDITIONS AMOUNTING TO CRUEL, INHUMAN OR DEGRADING TREATMENT

"Sometimes on Saturday night the wardens of police detention would come in, rolling drunk in their uniforms. They'd wake us up and beat us up, yelling obscenities. I was asked for money every time there was a visit from my family. The money went directly to the head of room. The 'rent' was around Rp100,000 [9.60 USD] per month. They shared this money with the warden of the detainees".⁶⁹

Arief, 28, was imprisoned in September 2005 for possession of heroin.

A system of extortion and bribery characterizes police detention. Access to food, bedding, and family visits all come at a price. Detainees pay to be placed in cells of varying size and density depending on the amount of bribe paid. The extortion to which detainees are subject is not simply levelled by police officials. Cells have a head of room (kepala kamar), a fellow inmate who extorts monthly payments from detainees and makes regular payments to the police wardens, purchasing a monopoly on violence amongst inmates within the cell. Failure to pay results in ill-treatment.

Following his visit to Indonesia in November 2007, the UN Special Rapporteur on Torture highlighted a number of concerns relating to the conditions of pre-trial detention, particularly

the overcrowding in some police cells due in part to the long period of pre-trial detention. The Special Rapporteur stated: "Some cells were overcrowded and some facilities lacked fresh air, natural light and adequate sanitary facilities. Detention for up to 61 days in these conditions amounts to degrading and inhuman treatment."⁷⁰

Amnesty International and other organizations have long expressed concerns at the lack of separation between women and men in police lock-ups as well as the lack of separate facilities for children who are held in custody, in contravention with international human rights standards.⁷¹

Recent reports have indicated that women and children continue to be detained in police lock-ups together with men, or in the same room with only a thin curtain separating the room. This lack of separate facilities place women and children at particular risk of human rights abuses, especially sexual abuse by male detainees.

As the following case illustrates, female detainees are also vulnerable to possible human rights violations by male police officers. Mina told Amnesty International about her experience in 2005:

"The police came to the cell and woke me up. I was in my nightie. There were five of them. I think they were drunk. They said, 'hey, do you wanna hang out, how many boyfriends do you have, where do you like to go with your lover? Let's go there'. I said, Pak, 'I don't want to go anywhere. I'll just stay here'. I thought if they rape me, I'm going to scream. Eventually they went away".⁷²

3.2.3 INTERNATIONAL HUMAN RIGHTS LAW AND NATIONAL LEGISLATION

The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) to which Indonesia is a state party explicitly requires states to prevent acts of torture and other ill-treatment by state agents; to ensure that there is a prompt and impartial investigation into such acts; and specifically, to ensure that acts of torture or complicity or participation in torture are punishable by criminal penalties which take into account their grave nature. Moreover, under the ICCPR the right not to be subjected to torture or other ill-treatment is absolute and cannot be restricted or derogated from at any time, even "in time of emergency which threatens the life of the nation".⁷³

Article 28G (2) of the Indonesian constitution stipulates that "each person has the right to be free from torture or inhuman and degrading treatment". The Human Rights Act (Law No39/1999) also provides for everyone to be free from torture and other cruel, inhuman and degrading treatment or punishment (Article 33.1); however national laws still fall short of fully protecting people in Indonesia from torture and other ill-treatment. The Law on Human Rights Court is the sole legislation in Indonesia to include torture as a crime. However only acts of torture in the context of 'crimes against humanity' are taken into consideration under this law, leaving virtually all torture cases in Indonesia, outside the jurisdiction of the Human Rights Court and thus of the whole justice system, as torture per se is not specifically prohibited in Indonesia's Criminal Code.⁷⁴

Indonesia's Criminal Code does not contain a definition of torture, criminalizing only 'maltreatment'. The Special Rapporteur on Torture noted in his 2008 report that,

"...the concept of maltreatment as enshrined in KUHP [Kitab Undang Undang Hukum Pidana, Criminal Code] lacks several elements of the torture definition under Article 1⁷⁵, CAT [Convention against Torture], such as the elements of purpose, mental pain, suffering and agency that comprises the definition of torture by a public official are not recognized and sanctioned in line with the full severity of the crime".⁷⁶

The new draft Criminal Code does contain a definition of torture.⁷⁷ However, this draft has been in development for some three decades. It is urgent that the criminalization of the practice be legally grounded as a matter of priority.⁷⁸ This is particularly so in the context of routine torture to which people are subjected, as indicated by the cases mentioned above and in previous reports, in order to extract 'confessions', to punish people or to extract bribes.

The UN Committee against Torture has expressed similar concerns, and made the following recommendation:

"The Committee reiterates its previous recommendations and the recommendations of the Special Rapporteur on torture in the report on his visit to Indonesia, that the State party should, without delay, include a definition of torture in its current penal legislation in full conformity with article 1 of the Convention. Two approaches merit consideration: (a) the prompt adoption of the draft comprehensive Penal Code; and (b) the adoption of a stand-alone specific bill on torture, following the State party's example of adopting other individual laws in the field of human rights".⁷⁹

Amnesty International is also concerned by the lack of sufficient safeguards within the Criminal Procedure Code to protect suspects and defendants against torture and other ill-treatment. In particular the Criminal Procedure Code is silent on the use that may be made in judicial proceedings of statements obtained as a result of torture and/or ill-treatment.⁸⁰

Contrary to Article 15 of the UNCAT, there is no provision which clearly excludes the use of evidence obtained as a result of torture. It is left to the discretion of the judge as to whether or not evidence allegedly obtained under torture is admitted, and if it is admitted, what weight to give to it.⁸¹ The judge does not have the authority to order an investigation by an impartial authority into an allegation that evidence or testimony was obtained under torture or ill-treatment.

Both the Criminal Code and the Criminal Procedure Code have now been under revision for many years. It is unclear when the new parliament will ratify them given that parliamentary elections were held in April 2009. Amnesty International urges the newly elected parliament to ensure that the revised Codes comply with national and international human rights standards, and ratify these Codes as a priority.

Amnesty International urges the Indonesian government to ratify the Optional Protocol to the UNCAT, as it expressly committed to so in its Human Rights National Action Plan 2004-2009 (see Presidential decree No40/2004). As provided for in Article 1 of the Protocol, the ratifying state shall "establish a system of regular visits undertaken by independent

international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment". Such a system would constitute a useful tool to prevent torture and other ill-treatment in detention facilities in Indonesia including police lock-ups.

The prohibition on cruel, inhuman or degrading treatment or punishment extends to conditions of detention. The UN Standard Minimum Rules for the Treatment of Prisoners (1955) applies to all custodial facilities and to all persons deprived of liberty without discrimination (see Rule 6(1)). The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also provides inter alia for humane treatment of everyone deprived of their liberty.⁸²

3.3 WOMEN AT PARTICULAR RISK

3.3.1 SEXUAL ABUSE OF FEMALE SEX WORKERS AND DRUG USERS

In July and August 2008 Amnesty International interviewed a number of female sex workers and drug users about their experience with the police. Female sex workers are at particular risk of gender based violence including sexual harassment and sexual assault by police officers. Some reported that they have to pay monthly protection fees to various police officials including staff members of the traffic police, internal affairs department, and the criminal investigation department. Further, they had to do so at various levels of the police chain of command and localities including staff members of the District Police, Sub-district Police, and other local government auxiliary policing units such as Trantib (Ketentruman dan Ketertiban, Peace and Order Unit) and Civilian Investigators of the State (PPNS, Penyidik Pegawai Negeri Sipil, also called Pamong Praja). However these bribes did not protect them from other abuses by police.

Ratna, a sex worker in Jakarta, told Amnesty International: *"Last year [in 2007], three guys came around here. They came in a private car and only one was wearing a police uniform so I reckon it wasn't a proper police operation. They arrested me and forced me into the car. We drove to Melayu village and in front of the hospital ... they told me to get out. One of them tried to kiss me and he grabbed my breasts. I cried. They he told me to get out my wallet and I gave it to him. I said, 'take it all'. They took it and drove off."*⁸³

Dita, a 21-year-old sex worker, described sexual abuse and intimidation at the time of her arrest: *"I was arrested [in 2006] with five or six other prostitutes. On the way to Polres [District Police station] East Jakarta, they were grabbing me and touching me saying, you're so young, why aren't you in school, you know, that kind of stuff. When we got to the station, they gave us a choice. They said we could get off if we paid one million rupiah [96 USD] or if we had sex with them. Three of the girls agreed to have sex with them. I point blank refused to do either. Our pimps have paid them enough already"*.⁸⁴

Lita, another sex worker, provided similar testimony: *"Police often abuse their rank and authority around here. They come here saying it's an operation and then they demand sex and money or they'll send you to Kedoya [rehabilitation centre] ...our pimps take a cut from*

*us towards a monthly fee to the police to keep us safe, but still they come here.*⁸⁵

Amnesty International has also interviewed female drug users who had been strip-searched, and otherwise sexually abused by male officers.

Dewi, a waitress at a nightclub, recalls: *“In 2005, one of the clients who I knew as a friend came up to me and asked me to find him some ecstasy. He said, “Oh Dewi, I’m desperate, can you get me some stuff” ... so I asked a friend who I knew had some. I gave him nine pills and then he said, you’re coming with me to Polda [Regional Police]. I didn’t know he was a cop. [He and four other police officers] took me downstairs to the parking lot and stripped me to my bra and underwear. They humiliated me. Then they told me to get in the car and we drove around and around for hours.” Dewi added that she subsequently gave the police 15 million Rupiah [1446 USD] after they threatened to charge her with being a dealer*”.⁸⁶

When Amnesty International raised Dewi’s case with police generals in subsequent interviews in July 2008, asking if this was a consequence of there being too few female officers in the police force, the generals dismissed the complaint immediately and accused the interviewer of lying.⁸⁷

3.3.2 INTERNATIONAL HUMAN RIGHTS STANDARDS

Sexual abuse of women and girls including sexual harassment and rape are acts of gender-based violence and constitute ‘discrimination’ as prohibited by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Indonesia is a state party.

The Committee on the Elimination of All Forms of Discrimination against Women has confirmed that the definition of discrimination against women contained in Article 1 of CEDAW includes violence against women:

*“The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.*⁸⁸

Violence against women reflects unequal power relations between men and women. The right not to be discriminated against on the grounds of race, sex, sexual orientation, gender expression and identity, age, birth, or religion, is an inherent human right of every woman, man and child and is provided for in Articles 2(1) and 3 of the ICCPR.

Although the Convention against Torture does not specifically include sexual assault or rape, it has become accepted that these are a form of torture. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in 1992 that “[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture”.⁸⁹

3.3.3 NATIONAL LEGISLATION ON WOMEN

The Criminal Code specifically prohibits a number of violent acts against women including rape and sexual assault (Articles 285-91), trafficking (Article 297), slave-trading (Articles 324-7), kidnapping (Article 328), using violence or the threat of violence to force somebody to do something against their will (Article 335), murder (Articles 338-50) and abuse (Articles 292-4 and 351-8).

The Criminal Code has traditionally been the reference law in Indonesia in relation to provisions on violence against women. In September 2004, the government took concrete steps toward eliminating violence against women by passing Law No. 23/2004 Regarding the Elimination of Violence in the Household.⁹⁰ The law is an improvement on the provisions on violence against women in the Criminal Code in many ways, including in expanding definitions of both domestic violence, and potential victims of that violence. The law criminalizes sexual harassment for the first time in Indonesia.

The Law sets out some special procedures to be followed in relation to offences involving sexual violence which occur in the context of the family; however it does not address offences in the criminal justice system including sexual abuses which may arise in the context of arrest, interrogation or detention. However the Criminal Code in its current form contains some provisions which can be applied to deal with the reported cases of violence against women by police officials.

Under Indonesia's Criminal Procedure Code, there are no provisions specifically designed to provide protection to women in custody and detention. Contrary to international standards,⁹¹ there is no requirement that female staff must be present during the interrogation of female detainees or that only female staff be permitted to conduct physical searches of female suspects or defendants. Further there is no formal requirement in the Criminal Procedure Code that they be segregated in this way.

In a 2006 report entitled "Indonesia: Comments on the draft Criminal Procedure Code" (AI Index: ASA 21/005/2006), Amnesty International expressed concern at the lack of provisions to protect women from possible abuses and recommended that the draft revised Criminal Procedure Code provide that female detainees always be held separately from male detainees; that female staff are present throughout the interrogation of female detainees; and that female staff are solely responsible for conducting searches of female suspects and detainees.

3.3.4 WOMEN'S POLICE DESKS

These limited legal safeguards put women at risk of abuses by police officers and other male detainees. Furthermore there are too few women law enforcement officers in the Criminal Research Department. Only four percent of investigating officers are women, which is insufficient to assist female victims of rape and domestic violence and to deal with female criminal suspects.⁹²

Police pilot programs specializing in women victims have been operating since 1999.

The police currently run more than 300 Women and Children Service Units (UPPA, Unit Pelayanan Perempuan dan Anak, The Women & Children's Service Unit) or 'women's desks' throughout Indonesia where female officers receive reports from women and child victims of sexual assault and/or trafficking and where victims find temporary shelter.⁹³

The Women and Children Service Units are situated under the Criminal Investigation Department. Although the Units are still largely seen as a 'soft' sector for police work, recent detective work on high profile cases such as human trafficking and the eagerness of foreign donors to engage with the units, have increased their profile. Nonetheless, Women and Children Service Units' impact remains limited and regionalized.

Unlike the regional levels, the district and subsidiary police levels still face a severe lack of qualified personnel and resources. A community lawyer that has worked closely with the police on the Women's desks, told Amnesty International: "We're really proud of the women and children's room at Polda [Regional Police] Metro Jaya and Polda [Regional Police] East Java. The rooms are so great, appropriate and very comfortable for both child and women victims". However "there's nothing yet at the Polsek [Sub-district] level".⁹⁴

The women's police desks, although a positive initiative, need to be further promoted including amongst poor and marginalised communities to ensure that women and children victims of crimes know about the services available and feel comfortable using them. A Jakarta-based activist working directly with marginalized and poor communities told Amnesty International, "I've never heard of UPPA [The Women and Children Service Units], much less seen one. Maybe there is one at the Polda [Regional Police] level?"⁹⁵

3.4 LACK OF ACCESS TO ADEQUATE MEDICAL EXAMINATIONS AND POST-MORTEM

THE CASE OF ACEP

Police arrested Acep, 42, in early May 2008 on a charge of assault. Police detained Acep at a Sub-District Police Station in Central Jakarta. Acep said that police beat him and subsequently forced him to stand, wet and stripped to his underwear, for nine hours in a cell with his hands cuffed behind his back. He requested medical treatment. Police took him to police hospital Kramat Jati. Acep told Amnesty International: "The nurse said you have to buy a ticket here to register and then we will give you medical treatment, but I had no money. I'd been in detention and they took everything from me, so I couldn't buy the ticket. I just had to sit in the corridor and wait. Eventually, after three hours, my wife came and bought the ticket."

Acep told the doctor about the torture he had experienced and the doctor prescribed a psychological test of some 500 questions and bed-rest for 15 days, for which he was charged a daily fee. Acep's medical receipts show that he paid Rp 1,200,000 [115 USD] for medical services at Kramat Jati Police Hospital.

Like Acep, many of the criminal suspects interviewed by Amnesty International in June through August 2008 received inadequate medical care for the injuries they received as a result of torture and other ill treatment at the hands of the police.

Acep recalls another case of police abuse: *“Everything is money in those institutions. Next to me, there was a guy, he had nothing, no money or anything so he didn’t get any medical care. They gave him an IV [intravenous drip] but it was just lying there, they didn’t even hang it up. He died, I don’t know what of, but they made me take care of the corpse. There were open wounds and insects and he smelt. It was disgusting”*.⁹⁶

Although Amnesty International received some reports praising recent treatment of women and children who had been victims of crimes,⁹⁷ complaints of covering up police abuses or extorting money from detainees appear particularly prevalent in police hospitals.⁹⁸

The lack of access to adequate medical care for victims of torture and other ill-treatment by police is confirmed by other reports Amnesty International has received in the last two years.⁹⁹ In this regard, Amnesty International’s information is in line with the findings of the UN Special Rapporteur on Torture that “serious cases remain untreated or receive attention at a very late stage if the detainee cannot provide necessary funds”.¹⁰⁰ The UN Committee against Torture noted a related concern, “the lack of specific training of medical personnel in detention facilities to detect signs of torture and ill-treatment”.¹⁰¹

The UN Standard Minimum Rules for the Treatment of Prisoners specifically places the responsibility on the state to provide medical, including dental and psychiatric, care for all detainees without discrimination. It also requires that a medical officer ensure the health of every prisoner, ensure that medical services are provided where necessary as well as check the standards of detention and care being provided at the institution and report to the institution’s director (Rules 22-26). Article 58 of Indonesia’s Criminal Procedure Code also ensures the right of a detainee to be visited by a medical doctor.

Documentation such as health certificates and medical reports are an important safeguard for detainees. They are also important to determine whether or not complainants are victims of crime. Detainees and victims of crime recounted their inability to access and read their own medical reports (‘visum et repertum’)¹⁰² or those of their relatives. In some testimonies, the report had been altered or some of the medical results were missing.

- In early 2008, the body of Renata’s husband was found by people known to her in an open sewer near their home in East Jakarta. Witnesses told Renata that her husband’s body had large wounds to the back of his head and his feet had been tied with string. When Renata asked the local police to start an investigation, they asked her how much money she was prepared to give. They called it “food and fuel money”. She had no money to give them. When she asked for the medical certificate, they refused to provide it. Over a period of months, she repeatedly went to the police station to obtain a copy of the medical certificate. After her husband’s death Renata found it very difficult to feed her children or pay for transport to and from the police station. Eventually the police gave her the certificate, charging her Rp 25,000 (2.40 USD). It stated that Renata’s husband had died of natural causes. A community lawyer working on Renata’s case commented: “they didn’t want to write he’d been murdered because then they’d have to start an investigation and they knew they couldn’t extort the money from Renata. So they lied on the medical certificate”.¹⁰³

The lack of an independent and impartial police medical system is particularly concerning when there are reports of ongoing abuses including police shootings, other misuse of

firearms, torture and other ill-treatment, including sexual abuse. Amnesty International urges that procedures relating to the conduct of medical examinations and autopsies be reviewed to ensure consistency with medical ethics, best medical practice and international standards.¹⁰⁴ Standards relating to the investigation of possible human rights abuses provide that investigations must include an adequate medical examination, as well as collection and analysis of all physical and documentary evidence and statements from witnesses.

In the case of possible abuses resulting in death, an autopsy should be carried out, preferably by a forensic pathologist. Those conducting the autopsy must have access to all investigative data and should attempt to identify the deceased and the cause and manner of death. The family of the deceased should have a right to be represented at the autopsy. A full, detailed, clear, comprehensible and objective report should be prepared and should be made public by the authorities. There should also be specific measures put in place to ensure that female victims of abuse by police can access impartial, competent and gender-sensitive medical examinations.

3.5 ACCESS TO FAIR TRIALS

3.5.1 LEGAL COUNSEL

"The police offered to introduce me to a prosecutor who could do the deal and I said, ok. The police officer did the 'order' to the prosecutor and it was 85 million [8198 USD]. I think if I did it myself, it would be cheaper... But when it came to my trial, it wasn't the same prosecutor. I was prosecuted by someone else, so now here I am"

Ali, 24, was arrested for possession of marijuana in January 2008.¹⁰⁵

Like Ali, most former detainees Amnesty International interviewed in July and August 2008 were reluctant to seek legal counsel for fear that it would signal to the police that they were wealthy and thereby make them even more vulnerable to bribery, extortion and other abuses. Other detainees were strongly counselled by the police not to seek legal assistance, as Dwi's case below illustrates.

■ Dwi, a 27-year-old woman convicted on charges of carrying drugs in 2003 recalls that the police advised her not to have a lawyer but to bribe the prosecutor. The police assisted to broker a deal. *"I paid Rp 30 million to get a sentence of less than a year. But when my trial came up, it wasn't the same prosecutor. They lied to me."* Dwi was sentenced to six years' imprisonment.¹⁰⁶

Amnesty International has also found that detainees sometimes preferred to seek the assistance of unofficial village 'brokers' who claimed to have contacts within the criminal justice system. However, two community lawyers explained that the rights of their clients to legal counsel were often obstructed:¹⁰⁷

"We have to get a permit from the police if we want to see a suspect in custody. They say its PROTAP (Prosedur Tetap, standard operating). They won't let us see the PROTAP, so we don't know for sure." Lili, community lawyer.¹⁰⁸

“If it’s theft, we have to pay around Rp 25 million (2414 USD) to get to see the client.”
Adung, community lawyer.¹⁰⁹

Lawyers interviewed by Amnesty International in April 2009 confirmed these findings. They described how police told criminal suspects from poor and marginalised rural communities not to seek legal counsel as it could complicate their case. Often, lawyers were not allowed to visit suspects immediately following arrest, thus allowing the police to interrogate rural people living in poverty without the presence of legal counsel. Police beat or otherwise mistreated many suspects during interrogation. They also forced suspects from poor and marginalised rural communities to sign statements that they did not necessarily agree with or understand. Police forced one suspect to sign a statement without the presence of a lawyer although he did not know how to read.¹¹⁰

Denial of the right to legal counsel and the right not to be tortured leads to unfair trials where additional rights are violated. The Special Rapporteur on Torture noted in his 2008 report that: “Those interlocutors who had been already tried reported in unison that their coerced confessions had been used during the court proceedings and that objections they had raised were not considered by the judge, prosecutor or even their own legal aid clerk. Furthermore, they were not aware of any complaints mechanism to which they could address their grievances expecting any kind of outcome.”¹¹¹

3.3.2 INTERNATIONAL HUMAN RIGHTS STANDARDS AND NATIONAL LEGISLATION

The Criminal Procedure Code determines the procedures and rights of individuals at different stages of investigation and trial.

As provided for in Articles 54, 55 and 56 of Indonesia’s Criminal Procedure Code, criminal suspects have the right to be granted a lawyer ‘at every level of examination’, and under certain conditions free of charge.¹¹² Legal counsel can contact a suspect from ‘the moment of arrest or detention at all stages of the examination’. Further criminal suspects have the right to the assistance of an interpreter (Article 53). As investigators, police officials ‘shall be obligated to hold the prevailing law in high respect’ (Article 7.3).

While the Code provides many safeguards for the protection of the rights of suspects and defendants, there are a number of areas where it does not meet international standards for fair trials. Further, those safeguards which the Criminal Procedure Code does contain are often in practice ignored, with adherence to the Code undermined by the absence of any penalty for failing to comply, including the absence of a clear prohibition on the admissibility of evidence obtained illegally.

The cases of police abuse reported to Amnesty International since 2007 show that there was a widespread violation of international fair trial standards, including those prescribed under the current Criminal Procedure Code:

- Letters of arrest and detention were not shown by police officers to the suspect or given

to family members (Article 18 & 21);

- Criminal suspects were not granted access to counsel, and were often advised not to seek counsel by police officers (Articles 54, 56 and 57.1);
- The right for Counsel to be present and to speak with their client from the moment of arrest or detention, at all stages of the proceedings and at any time in the interest of the case were violated (Articles 69 & 70.1);
- Suspects were not able to provide information freely to the investigator or the judge, and they were subject to pressure from the investigator (Article 52, and Article 117.1).

International human rights law, including the ICCPR, provides for fair, transparent, humane and judicially monitored treatment of persons deprived of their liberty.

Based on these laws and other UN standards, Amnesty International has developed the “10 Basic Standards for Law Enforcement Officials” which provide detailed guidelines as to how these rights should be protected. They include the following standards applicable during arrest itself:

- Police must record the time of the arrest, the reasons for the arrest, precise information identifying the place of custody, and the identity of the law enforcement officials concerned;
- The records must be communicated to the detained person or to his or her lawyer;
- Officials making an arrest should wear name tags or numbers and should identify themselves to the arrested person.¹¹³

4. HUMAN RESOURCES: TOWARDS MORE REPRESENTATIVENESS?

WHAT IS REPRESENTATIVENESS IN LAW ENFORCEMENT BODIES?

For a police agency to be representative of a community as a whole, its membership should be representative of the community according to key criteria, including race or ethnic group, women and men, language and religion. Minority communities must be adequately represented, and individuals from these groups must be able to pursue their careers fairly and without discrimination. At a minimum, an internal police culture should be established that is sensitive to the needs and concerns of minority communities.¹¹⁴

Diversity in every police force is essential to combat crimes effectively. For instance, police in general tend to ignore or deprioritize certain crimes, including those crimes that affect women more than men, such as sexual abuse, domestic violence and trafficking. All these crimes are underpoliced, because the victims may feel ashamed or because they may fear an unsympathetic response from police officers when they do report such crimes.¹¹⁵ Women domestic workers in Indonesia rarely report violence that they have suffered in the home by their employers to the police.¹¹⁶

However increasing the number of women and members of ethnic or religious minorities does not mean that there will automatically be a decrease in human rights violations or that there will be better reporting of cases of violence against women. Research has shown that in some situations new police recruits regardless of their background, are quick to adopt the dominant behavioural code in practice, sometimes at the expense of respecting the rights of others.¹¹⁷

The number of police personnel in Indonesia has doubled in the last 15 years. While in 1992, there were about 180,000 police officers,¹¹⁸ there are now approximately 400,000.¹¹⁹ In other words there is about one police officer for 585 people.¹²⁰ Criminal Investigators (Reserse) who work within the Criminal Research Department¹²¹ at a local and national level (Bareskrim, Badan Reserse Kriminal, Criminal Investigations Bureau and Reskrim, Reserse Kriminal, Criminal Investigations Division) make up less than 10% of the National Police force.¹²² This means that less than 40,000 officers service the entire criminal justice needs of Indonesia's 234 million people.

In recent years the authorities have put in place a recruitment system with an increased sensitivity towards the recruitment of local police personnel to suit local contexts. The policy of 'local jobs for local boys' was put in place in order to increase police officials' understanding of the local context in which they operate, and to improve relations between the police and the local community. In practice the policy has led to the appointment in some areas of provincial heads of police, taking into account their ethnic, religious and geographical background and the local context. According to a police official from the human resources department in Jakarta, the general public has welcomed this policy.¹²³



Police mural, Indonesia, 5 August 2008.

The police have also made efforts to recruit more women; however female police staff still constitute only about three per cent of the total police force¹²⁴ – more or less the same percentage as in previous years.¹²⁵ There have also been recent police regulations on ‘gender mainstreaming’ in order to make police officers more sensitive towards women victims of violence.¹²⁶ However, the implementation of this policy has so far been limited in scope.¹²⁷

5. PERVASIVE CORRUPTION

In many of the cases described above, suspects interviewed by Amnesty International were beaten or subjected to other forms of torture or other ill-treatment unless they could pay bribes. These findings are consistent with those of the UN Special Rapporteur on Torture who noted following his visit to Indonesia in November 2007, that “*detainees interviewed indicated that ill-treatment was used primarily to extract confession, or in the cases of drug related crimes, to receive information on drug suppliers. In a number of cases, detainees were offered to be spared in return for the payment of a substantial amount of money.*”¹²⁸

As illustrated, in some cases Amnesty International found that female sex workers paid bribes to avoid being forced to have sex with police who arrested them. In other cases detainees in police custody had to pay bribes to police in order to receive adequate food, bedding facilities and access to family visits. Some reported that they were charged with a lesser offence because they paid a bribe. In another case police attempted to extract money from a widow to conduct an investigation after her husband’s body had been found in a gutter with severe head wounds. In many cases police beat criminal suspects unless they could pay bribes.

Corruption in any institution involved in law enforcement or the administration of justice undermines the framework for respect, protection and fulfilment of human rights. Corruption in the Indonesian police, most notably extortion from criminal suspects, has led to human rights violations by the police when suspects cannot or refuse to pay bribes.

The Special Rapporteur on Torture noted that:

*“The Special Rapporteur received numerous and consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that at every stage, starting from the police and the judiciary to the detention centres and prisons, corruption is a quasi-institutionalized practice. This is of particular concern in detention situations, where it can lead to significant discrimination in terms of conditions, notably access to food, sanitary facilities, health care and the possibility to receive visitors. At the same time, corruption also has an impact on how a prisoner is treated; some detainees alleged that they have to pay in order not to be subjected to beatings upon arrival in prison and during police interrogation.”*¹²⁹

Corruption in the police takes place in a context of inadequate resources allocated to some units to conduct their work and a police culture of financial pay-back towards police superiors.¹³⁰ In his report the Special Rapporteur on Torture said further:

*“Well aware of the complexity of the reasons for corruption, the Special Rapporteur notes that the eradication of corruption which might result in discriminative practices and ill-treatment is dependent on adequate salaries and working conditions for police officers and prison guards.”*¹³¹

In this regard, some local police stations have no operational budget whatsoever and equipment which is not suitable for situations they need to deal with on a daily basis.¹³²

Furthermore, there is a police culture of pay back by junior to more senior police officials through 'gifts' and/or payment of supplementary 'monthly wages'. Although this practice varies in its prevalence and in the form it takes between different police units and across the country, there continues to be an unwritten rule in the police which requires lower rank police personnel to seek additional resources outside the official budget in order to augment the remuneration and other benefits of more senior police officials.¹³³

Related to this, postings to some police departments and some areas of the country are reportedly regarded as more desirable than others, because they are potentially more lucrative. For instance, the department which deals with traffic crimes is considered by some police personnel to be a good choice as it offers scope for making substantial 'profits'. This leads to a system where decisions to work in certain police departments tends to be guided by the potential of 'extra' illegal financial gain rather than by other personal or professional considerations.¹³⁴

According to reliable reports, many new police recruits still have to pay substantial sums to enter the police force, which means that they are often heavily indebted to more senior police officials, thus fuelling a cycle of corruption and 'payback'.¹³⁵ In an interview in March 2009, the current National Head of the Indonesian National Police, Bambang Hendarso Danuri, acknowledged that "there are criticisms everywhere over how people must pay between Rp100-200 million [9645-19290 USD] to join the force".¹³⁶

However it is worth noting that there have been recent moves to counter these practices. For example, the Police Regulation on Police Recruitment No 5/2006 explicitly provides for police candidates not to pay recruitment fees and for recruitment expenses of police officers to be covered by the police budget (Articles 3 and 20). Furthermore this Police Regulation provides for a number of recruitment criteria to select candidates and clarify the recruitment process which is open to internal and external oversight (Article 18). In practice, the recruitment process has been opened to observation and/or input by some NGOs in some of the regionally based police schools (SPN, Sekolah Polisi Negara) which recruit lower rank police officers (Bintara).¹³⁷ Moreover a few senior police officials have been arrested and convicted for corruption in recent years, thus sending a signal that corruption will not be tolerated.¹³⁸

Amnesty International welcomes these developments; however more needs to be done to ensure that the Indonesian National Police no longer rely on illegal sources of finances. There is still resistance at various levels of the organization to eradicate corruption and bring to justice those who support this system. Some provincial stations appear hostile to the new internal and external oversight mechanisms over recruitment.¹³⁹

Article 7 of the UN Code of Conduct for Law Enforcement Officials states that: "Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts." Corruption encompasses the commission or omission of an act in connection with ones duties, in response to gifts, promises or incentives demanded or accepted, or wrongful receipt of these once the act has been committed or omitted.

Corruption, like any other abuse of authority, is incompatible with the profession of law enforcement officials. It also undermines law enforcement generally, as governments cannot expect to enforce the law among the population if they do not enforce the law in their own agencies. Accordingly, the UN Code of Conduct for Law Enforcement Officials calls for the law to be enforced fully with respect to any law enforcement official who commits an act of corruption.¹⁴⁰

Resources allocated to the police both centrally and locally need to be sufficient to enable police to perform their duties in a professional manner. Police should have adequate premises, equipment, means of transportation and uniforms in order to carry out their functions properly and there should be sufficient resources for providing effective training. Managers should be committed to ensuring transparency and accountability.¹⁴¹ Moreover, police personnel, like anyone else, have the right to just and favourable working conditions, including adequate remuneration.¹⁴²

6. WEAK ACCOUNTABILITY MECHANISMS

A number of internal and external mechanisms now exist in Indonesia to monitor police work, but none of these institutions has the mandate, independence and authority to hold to account police officers responsible for human rights violations. Conspicuously absent from these institutions is an independent public complaints board that would guarantee that police who violate human rights are brought to justice and victims receive reparations.

Police officers and the policing institution are furnished with unique discretionary powers by the State and 'operational independence'.¹⁴³ These are fundamental prerequisites of effective policing. However, discretion and operational independence come with a burden of accountability in which police need to take full responsibility for their actions.

The following section examines the current internal and external accountability mechanisms responsible for overseeing police work in Indonesia. Along with responsiveness and representativeness, accountability is one of the three key principles developed in the UN Code of Conduct for Law Enforcement Officials. Comprehensive internal and external accountability mechanisms are key to ensuring that the police become more professional and thus respectful of human rights. These mechanisms can act as a deterrent to prevent human rights violations and help develop public trust in the police institution, which in the long term could help police conduct their police work more effectively.

6.1 WHAT IS HUMAN RIGHTS BASED POLICE ACCOUNTABILITY?

6.1.1 INTERNATIONAL LEGAL STANDARDS

The duty to ensure individual accountability for perpetrators of human rights violations is not as such explicitly provided for in most of the international human rights treaties. However, this obligation is clearly implied, for instance in Article 2(3) of the ICCPR.

The UN Code of Conduct for Law Enforcement Officials emphasises accountability to the community as a whole, accountability to the law, internal discipline and the need for thorough monitoring. It states:

*"... like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;
... the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws;
... every law enforcement agency ... should be held to the duty of disciplining itself in*

complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency;

... standards as such lack practical value unless their content and meaning, through education and training and thorough monitoring, become part of the creed of every law enforcement official ...”.

In addition, Article 7 of the UN Code of Conduct for Law Enforcement Officials requires police to oppose and combat corruption and Article 8 urges Law Enforcement Officials to respect the law and the present Code, prevent and rigorously oppose any violation of the UN Code of Conduct and report any suspected violations either internally or to “other appropriate agencies or organs vested with reviewing or remedial power”. The commentary to Article 8 refers to the need to report violations within the chain of command but, if no other remedies are available or effective, to take lawful action outside the chain of command, and, as a last resort, to the media.

6.1.2 THE VARIOUS LEVELS OF POLICE ACCOUNTABILITY

For accountability to be effective it should involve police being accountable to the law, the state and the people. Accountability to different groups requires a variety of mechanisms which meet the four different areas of accountability: internal accountability, state accountability, public accountability and independent external accountability. Just as it would be rash to allow police unlimited powers and discretion, it is also unsafe to vest control of the police in a single institution, be it the President, other parts of the executive, or a national commission. Accountability is always a matter of balancing the power and influence of various players involved. This helps to ensure that policing serves the public interest rather than partisan concerns.¹⁴⁴

6.2 AN INADEQUATE INTERNAL POLICE ACCOUNTABILITY MECHANISM

6.2.1 A WEAK SUPERVISION SYSTEM

The national and provincial heads of police often do not share coherent systems and regulations. For instance, police and government regulations are not always disseminated down the chain of command, and systems in place may differ from one police station to another.¹⁴⁵ For accountability mechanisms to be effective, internal commitment, most notably from police leadership at all levels of command, is an essential precondition.

Lower rank police (Bintara) make up approximately 90% of the Indonesian National Police.¹⁴⁶ Although in recent years, the rates of officer recruitment have increased and more police cadets attend officer schools, functioning police managers are still far below those needed to implement a comprehensive system of supervision and monitoring.¹⁴⁷ Another

major problem is that there are few paper trails of post-operational reporting on employee performance. Records that do exist are patchily archived and rarely accessible to superiors. Institutional knowledge is therefore incomplete.¹⁴⁸

This low level of functioning managers and appropriate procedures to support their work can hamper a functioning police force from being professional and accountable. Managers are key to ensuring that effective human rights training is embedded in a broader framework and that there is follow-up in practice. They are essential in detecting failure within systems and procedures and to ensure a priori as well as a posteriori accountability. Managers are also crucial in providing guidance to police before an operation as well as to assist the monitoring and assessment of police afterwards. All this needs to be supported by police management. In this regard Amnesty International welcomes recent moves towards establishing a system by which the performance of officers can be evaluated.¹⁴⁹

Respect for human rights spanning the entire chain of command (including lower rank police officials) is key when police officials themselves become aware of cases of misconduct, including possible human rights violations by other police officers, and have to report these cases through the internal disciplinary system or take other lawful actions.

'Blowing the whistle' may often be difficult for most police officers. Police culture often cherishes loyalty, sometimes at the cost of integrity towards the public (the 'blue wall of silence').¹⁵⁰ The Indonesian police leadership should ensure that the current system in place allows for police officials of all ranks to report cases of possible police misconduct, including possible human rights violations, without fear of reprisal.

6.2.2 THE INTERNAL CODES OF CONDUCT

Neither the Disciplinary Code nor the Code of Ethics complies fully with international human rights law or standards such as the UN Code of Conduct for Law Enforcement Officials. Both the Codes require police officers to respect human rights but neither contains an explicit prohibition against torture and other cruel, inhuman or degrading treatment or punishment. Nor do the Codes explicitly prohibit unnecessary and excessive use of force and firearms as provided for in the recently revised police regulation on the Use of Force.

Police personnel in Indonesia are also required to respect their own internal Codes of Conduct as provided for in the Police Act (Articles 27, 32, 34 and 35, Law No2/2002): the Code of Ethics (Police Regulation on the Code of Ethics No7/2006) and the Disciplinary Code (Government Regulation on Police Discipline No2/2003).

Although human rights based policing requires national governments to disclose their rules and regulations governing police behaviour, in Indonesia the police internal Codes of Conduct are very difficult to obtain, and are not made publicly available and accessible for the general public. Further many police officials, especially at the local levels, do not know about them.¹⁵¹ The statutory framework that governs police operations, including the Code of Ethics and the Disciplinary Code, should be distributed to police officials throughout the chain of command and be made accessible to the public, both in terms of availability and clarity.

THE DISCIPLINARY CODE

The Disciplinary Code for the Indonesian police spells out a number of standards of professional conduct including the need for police officers to conduct their work in a professional manner and in respect of human rights (Articles 3 and 4, Government Regulation No2/2003).

According to the Disciplinary Code, police officers should not undertake actions that could diminish the authority of the state or of the Indonesian National Police. They should not conduct political activities, join groups threatening the national unity of Indonesia, work with other individuals within or outside their scope of work which could directly or indirectly challenge the interests of the state, to act as a protector for gambling activities, prostitution and entertainment (Article 5).

If a police officer violates any of the standards set out in the Disciplinary Code (see also Article 6),¹⁵² he/she can be subjected to disciplinary measures or punishments. Disciplinary punishments are issued by the police superior who has the power to give punishments (Ankum, Atasan yang berhak menghukum) (Article 16 of the Disciplinary Code). The punishments vary from physical exercises, attending school for a year, salary and/or promotion freeze, dismissal and/or 'physical restriction' or detention (penempatan dalam tempat khusus) for 21 days (Articles 9 and 33). The detention order can be increased to 28 days in certain cases (Article 10).

A disciplinary hearing (sidang disiplin) may be conducted by the police superior who has the power to hand down punishments. This disciplinary hearing has 30 days to conduct its work (Article 23). Police Officers who have been given an administrative punishment have 14 days to make an appeal (Article 30).

THE CODE OF ETHICS

The Code of Ethics requires police officials to respect the provisions set out in the Indonesian constitution and other laws (Article 4, Police Regulation (PR) No.7/2006) and to refuse orders which violate the law (Article 7.3, PR No.7/2006). Police officials are explicitly required to respect human rights (Article 10.1 (a), PR No. 7/2006).

The Commission of Ethics is required to process cases within 21 days. Their decisions, which may lead to administrative sanctions, are final and cannot be appealed (Articles 10, Police Regulation on the working procedures of the Commission of Ethics No8/2006). Police personnel who have violated the Code of Ethics may be subject to punishment by the Commission of Ethics. Administrative measures for violations of the Code of Ethics range between dismissal with/without honour to transfer of duties or territorial transfer (Article 12.4, PR No7/2006).

Accused officers have the right to know the composition of the commission, examine the case file, express protest before the hearing and identify an escort (Article 17, PR No7/2006, and Article 12 PR No8/2006).

Amnesty International is also concerned that the Commission of Ethics does not sufficiently guarantee the rights of police officers accused of having breached the Code of Ethics. In particular police officials should have the right to appeal.

6.2.3 AN UNCLEAR PROCESS TO LODGE A COMPLAINT ABOUT POLICE MISCONDUCT

“Actually, I wanted to complain, but I just didn't know where to go”¹⁵³. Prapti, 34, a kiosk owner living in East Jakarta

Within Indonesia's existing policing structure, Irwasum (Inspektor Pengawasan Umum, General Oversight Inspectorate), the department that deals directly with oversight and implementation of police policy, and Propam, the Internal Disciplinary Division (Propam, Divisi Profesi dan Pengamanan, literally the Division of Profession and Security) are the main bodies that deal specifically with external complaints about police misconduct (see Appendix 1 on the INP organizational structure, p72). Amnesty International received many reports about the difficulty with lodging complaints about police misconduct and the inadequacy of Propam to investigate independently, impartially and promptly these complaints. Victims of police abuse usually do not know where to lodge a complaint if they do attempt to do so, police may subject them to further abuse.

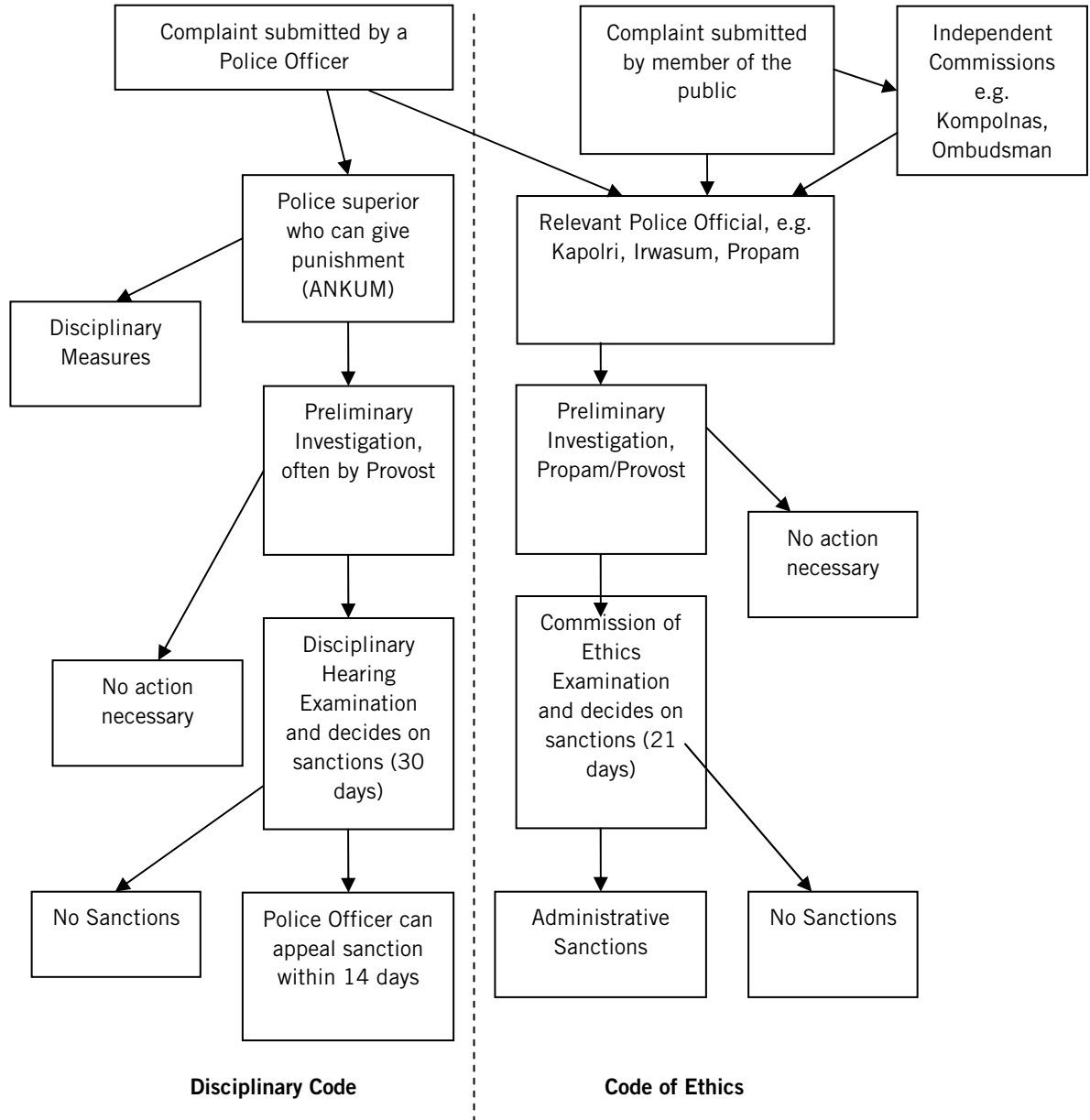
The National Head of Police together with the Indonesian President need to take measures so that Propam and Irwasum's composition, powers and functions are reviewed to ensure effective disciplinary oversight of the Indonesian National Police. In particular there should be adequate checks and balances to guarantee Irwasum and Propam's impartiality and objectivity in receiving complaints and conducting investigations.

Only police officials can lodge a complaint about police violations of the Disciplinary Code. This process is purely internal. However, members of the public (as well as police officials) can directly or through independent external commissions (e.g. Komnas HAM, KOMPOLNAS) lodge complaints about police violations of the Code of Ethics to Irwasum or Propam (see the chart below on the Disciplinary Code and the Code of Ethics, p48). This process is described in police regulations on the Code of Ethics (see Article 10.1, PR No8/2006). Propam and its investigative body 'Provost', are usually in charge of conducting investigations into police violations of the Code of Ethics (Provost may also conduct investigations into violations of the Disciplinary Code).

In practice, victims of police abuses and lawyers appear to lodge their complaints directly to Propam. Other bodies such as KOMPOLNAS (National Police Commission) and Komnas HAM (the National Human Rights Commission) appear to send the reports they receive about police abuses to Irwasum, who is then in charge of assessing the complaint and forwarding it to Propam for subsequent investigation.¹⁵⁴ Despite ongoing discussion about moving Propam under the supervision of Irwasum, Propam continues to be a separate department.

POLICE MISCONDUCT

The Disciplinary Code and the Code of Ethics



However, the general public is not familiar with the procedures to lodge police complaints through the internal policing structure. Furthermore, lawyers acting on behalf of victims of human rights violations who have tried to lodge a complaint with Propam have told Amnesty International that they found the process opaque. Complainants and their lawyers were usually given no information on the procedures to follow or the charges that may be levelled against police officials. While Propam at times acted on high profile cases reported in the media, such as Budi Harjono's case (see below), it is less responsive to complaints from other individuals, particularly those from impoverished or marginalized communities.

Further, victims of police abuse who dare to make a complaint while in detention are particularly vulnerable to reprisals.¹⁵⁵ A lawyer from a legal aid organization observed: "*in my experience, there is no detainee who is willing to report torture while still on the inside*".¹⁵⁶ Where a complaint may have been made, police officers may attempt to bribe or intimidate the complainants to ensure that they do not pursue their complaint.¹⁵⁷

Under Indonesia's Witness Protection Act 13/2006, witnesses and victims have a legal right to obtain protection in connection with the investigation of crimes. However, victims' testimonies suggest that Propam has failed in practice to provide even basic protection. The names of complainants and witnesses appear to be freely available within the police. Reports indicate that police personnel who have nothing to do with Propam's investigation walked freely in and out of rooms where victims were giving testimony (see the case of Hartoyo below).

For Propam to function as an adequate complaints mechanism, the National Head of Police should ensure that it is well publicized, accessible, effective and trustworthy. People should be able to lodge complaints without the threat of retaliation. Police should process complaints in good faith and the complainant's name and address should be kept confidential. Police officials who are the subject of a complaint have the right to know if they are being investigated and under what provisions within the Codes of Conduct and/or other national legislation.

THE CASE OF BUDI HARJONO

In 2002, at Bekasi District Police Station, police beat Budi Harjono for several days,¹⁵⁸ and told him they would not release his mother, who was scheduled for surgery, until he confessed to the murder of his father. In 2006, Budi Harjono's case hit the headlines when the media discovered that another person had confessed to the murder of Budi Harjono's father.

He told Amnesty International: "I was acquitted of the murder of my father in 2003 but in 2006, the police [told me] that the real killer had confessed to the crime. Because of the media exposure, the Kapolri [National Head of Police] called the Kapolda [Head of Regional Police] ... and asked him to open an investigation into why two people had confessed to the same crime. The Kapolda got on the TV later and said that although I could be lying, he would launch an investigation. So there was a gap between the Kapolri and his Kapolda. The Kapolri asked the case to be investigated but the Kapolda tried to protect his subordinates. Only with the power of the press did the Propam investigation finally commence.

We went down to the Polda Metro Jaya [Metro Jaya Regional Police station] many times. My mother and the maid were interviewed as witnesses first. In total, my mother was probably interviewed six to eight times.

Eventually, I was interviewed about four times, sometimes from 2pm until 2am.

But I saw that the questions were designed to protect their colleagues rather than seek out the truth. It was almost as if the questions were already structured; they weren't very probing and they were general. The minute we started to get into our side of the story, they would cut us off. "Oh no", they said, "that bit we don't have to worry about. We'll do it later"...

One of the officials they interviewed was the District Head of the Bekasi Police. When he handled my case, he was still a colonel,¹⁵⁹ but by the time he was investigated by Propam, he was already a Brigadier General.¹⁶⁰ But the person that investigated him was just a captain,¹⁶¹ so eventually the Brigadier General was interviewed in his own closed office. We don't know what the result was and we're not allowed to read the case file. We were just asked to sign the police investigation report by Propam Metro Jaya. But we felt heavy hearted to do so, because they kept saying in the interview, oh not this, not that. My family and I even showed them Rp 50,000 (4,8 USD) with which they bribed our maid to say that I murdered my father. We proved that my younger brother had a gun held to him. But if that's the way they're going to go about it, then what's the point? At the same time, we're trying to get justice, to prove that there is right and there is wrong. The police have to be made responsible and they have to be tried.

They said that later my mother would be called to give evidence before an internal police tribunal but until now there has been no news about the internal investigation."¹⁶²

Propam undertook an investigation into the case because of political pressure but it remains unclear what elements of police misconduct the unit was investigating. As illustrated above, Budi Harjono and his family found the process to be disempowering and demoralizing. At no time did Propam explain the charges they were seeking to press against the officers or the procedure for lodging those charges. Nor did they willingly provide information to the family about the outcome of the investigation.

6.2.4 THE FAILURE TO PROSECUTE POLICE OFFICERS BEFORE CIVILIAN COURTS

Many of the complaints by members of the public are about possible human rights violations by police officials from the Criminal Investigation Department itself, however they themselves appear to be the main body in charge of submitting Criminal Cases to the Public Prosecutor once the dossier is finalized (see Article 8 of the Criminal Procedure Code).

As far as Amnesty International is aware, very few police officers have faced criminal charges for offences involving human rights violations, and only a handful of them have been found guilty.¹⁶³ The few that have been prosecuted are usually acquitted and according to the UN Committee against Torture "otherwise sentenced to lenient penalties which are not in accordance with the grave nature of their crimes" in the cases of torture and other ill-treatment.¹⁶⁴

As set out in Article 29.1 of the Police Act (Law No2/2002), police personnel who are suspected of violating the law should be brought before a civilian court.¹⁶⁵ Article 4 of the Government regulation No.3/2003 on the technical application of how the police can be brought before civilian courts, clarifies that investigations into criminal acts involving

members of the Indonesian National Police should be conducted through the same procedures as provided for civilian courts. In other words it is regulated by the provisions set out in the Criminal Procedure Code whereby the police have the primary responsibility for arrest, detention and investigation (Article 1.1 and 6.1).¹⁶⁶

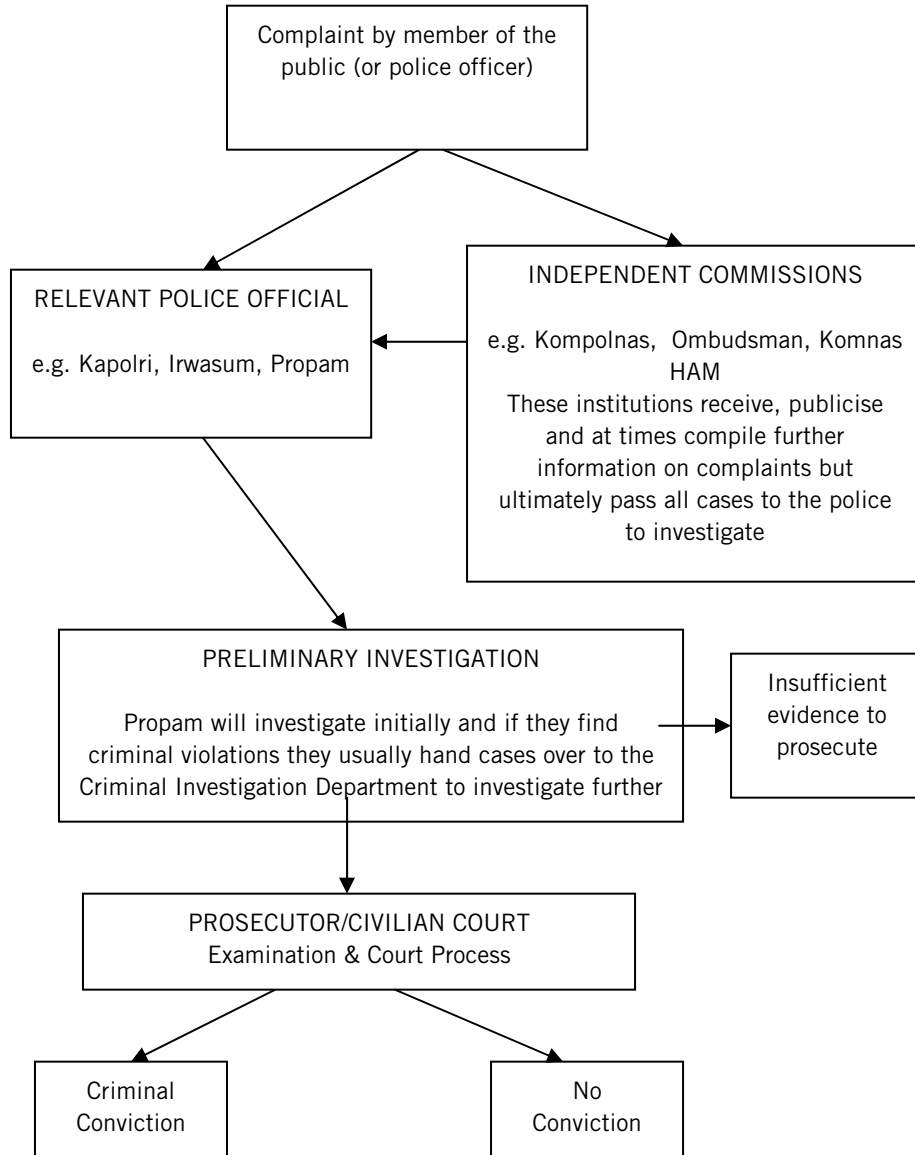
Within the current police structure, when the complaints about police misconduct involve suspected criminal offences including allegations of torture and other ill-treatment, the investigation may involve the police's own Criminal Investigation Department (see the chart below on criminal cases, p52). For complaints about police misconduct involving violations of the Code of Ethics, the responsibility for the investigation appears to lie with the Provost (the investigative body within Propam).

The power thus granted to the Criminal Investigation Department to investigate reports of alleged crimes by their own investigators, is extremely inappropriate. The same police officials who commit human rights violations may be in charge of investigating human rights violations involving criminal offences by their own staff or colleagues. This system illustrates one of the main weaknesses of the current internal disciplinary system and its inability to deal with many complaints by members of the public, especially from poor and marginalised communities.

Amnesty International believes investigations into possible human rights violations involving police officials from the Criminal Investigation Department should be conducted by a separate department that specializes in investigating police misconduct (e.g. Propam), to ensure that the investigation is independent, impartial and effective. In this context, Indonesian authorities, in particular the National Head of Police and Kompolnas should review Propam's composition, powers and functions to ensure that they can investigate themselves cases of human rights violations involving criminal offences, alongside cases of police misconduct. Propam should also be specifically granted the power to refer criminal cases involving members of the Criminal Investigation Department to the public prosecutor.

POLICE ABUSE

Criminal Cases



THE CASE OF HARTOYO

In January 2007, police tortured and otherwise ill-treated Hartoyo and his homosexual partner including through sexual abuse at Aceh Banda Raya Sub-district police station.¹⁶⁷

During his detention, Hartoyo said that around six or seven police officers beat him in the stomach, legs and feet. The police also allegedly forced him and his partner to strip naked and perform oral sex and other sex acts in front of them. At one point, a police officer allegedly pushed his rifle against Hartoyo's anus. Hartoyo and his partner were then taken outside into a courtyard and were made to squat on the ground in their underwear. Police officers sprayed them with cold water from a hosepipe for around 15 minutes. When his partner asked for permission to go to the toilet, a police officer allegedly forced him to urinate on Hartoyo's head.

Pressure from the media and prominent individuals forced Propam Aceh and the Criminal Investigation Department to open a police investigation file against officers accused of having tortured Hartoyo.¹⁶⁸ He told Amnesty International of his ordeal:

"I reported my case at Mabes Polri [Police Headquarters] in Jakarta and I felt that it was pretty good service. But they said I had to report it to Polda [Regional Police] Aceh, where I was tortured.¹⁶⁹ However, when I reported my case at Polda Aceh at the end of February [2007], it was like being abused all over again. The room in which I gave my testimony was completely open and officers came and went as they pleased. I was accompanied by a woman from the RPK [Ruang Pelayanan Khusus, Special Service Room – the then women's desks]¹⁷⁰ who deals specifically with violence against women. But she didn't do anything, the verbal harassment, the bad words, the way they looked at me, she just let them do it. Even in front of my lawyer, they would do it. They jeered, 'it's your own fault you were tortured, you should know what Acehnese culture is like'. I was there from 2pm to 2am.

That night, around 7pm, they called a meeting without my lawyer telling me that they wanted to give me a psychological test with 500 questions. They said they wanted to do the test to 'know what I was like'. It was carried out by a psychologist affiliated to the police from the mental hospital of Banda Aceh and I had to pay to do it. It was stuff like, should women be head of the family, yes or no. It had nothing to do with my case! The questions were leading and I got the impression they were trying to say that I was too feminine and that's why I am gay. But I have never been given the results because they had a special meeting about it with the psychologist and I was not invited.

At 2am when we were finished, we had a meeting with the police and they asked us to trust the police and not to expose this case to the media. A criminal case was opened but it seems that they are hinging the case on the witness testimony of my friend. But I just feel hopeless, it's not possible that he will show up and they know it.

Throughout July and August 2008, nobody received any information on Propam's investigation. Suddenly, on 22 September 2008, Hartoyo was asked to give evidence at the 24 September trial of four officers who were indicted for 'jointly and openly committing violence against persons or property in order to force a confession'. Because of the short notice, Hartoyo was unable to attend and the trial was delayed. On 8 October 2008, at the Banda Aceh district court, Hartoyo testified against the officers. However, according to Hartoyo's lawyer, the presiding judge did not focus on the acts of torture. Hartoyo was quizzed on his sexual orientation and

advised to turn away from 'sin'.

The judge said that the officers had only committed a minor offence and therefore were each sentenced to six months' probation to be commuted to three months' imprisonment if the police officials were guilty of another abuse during the probation period and a fine of Rp 1,000 (US \$0.10).

At the time of writing, Hartoyo continued to fight for his case. In early 2009, his lawyers submitted a report to the judicial commission concerning possible irregularities during the trial session.

Currently Hartoyo cannot appeal the court's decision as it was tried as a 'light Criminal Act'.¹⁷¹

In many cases of credible criminal offences involving human rights violations, those responsible appear to have been subjected to administrative measures such as transfer to another region rather than criminal prosecution and conviction.

■ In August 2006, the Head of East Sulawesi Regional Police was rotated from his position after a disciplinary hearing for the sexual harassment of 12 female officers. When Propam mentioned the possibility of criminal charges to the press, the then National Head of Police, General Sutanto, commented that: "being fired from his position is already a punishment for a high ranking officer the level of a Kapolda [Head of Regional Police]".¹⁷² The Head of Regional Police's suspension from service in operational positions was temporary, before he was reinstated to another area of the police.

In practice most of the reports of human rights violations committed by police officers in Indonesia never reach civilian courts, but are dealt with through the Commissions of Ethics or via the Disciplinary hearing.¹⁷³ Although Amnesty International believes that each police force should have an effective human rights compliant internal disciplinary mechanism which deals with minor offences, it should not replace an effective prosecution into every credible allegation of offences involving human rights violations by police officers.

Misconduct involving recognisably criminal offences should be dealt with under criminal law (although it may also lead to disciplinary measures such as dismissal); all other misconduct can be dealt with under disciplinary proceedings. When disciplinary investigations reveal information about criminal offences a criminal investigation must be initiated. In any event, when an investigation into misconduct is found to constitute a criminal act, it should be handed over to a criminal court.

6.3 THE LIMITED POWERS OF THE EXTERNAL OVERSIGHT MECHANISMS

A number of commissions in Indonesia can provide potential external oversight mechanisms for police work. They include the Corruption Eradication Commission (KPK, Komisi Pemberantasan Korupsi), the National Commission on Violence against Women (Komisi Nasional Anti-kekerasan terhadap Perempuan, Komnas Perempuan), the National Ombudsman (Ombudsman Republik Indonesia), the National Police Commission (Kopolnas), and the National Human Rights Commission (Komnas HAM). The media and NGOs also play a role in providing some independent oversight of police actions. However, these

commissions remain in many ways too weak, too little known and their mandate largely inadequate to deal effectively with public complaints about ongoing police abuses that are described in Section 3, and bring justice and reparations to the victims.

For the purpose of this report, the role of Kompolnas, Komnas HAM and the Ombudsman will be briefly analyzed to show their limitations in investigating police abuses and bringing reports of alleged human rights violations through the criminal justice system. Their limitations are among the reasons which clearly point out at the need for the setting up as a matter of priority of an independent police complaints mechanism to combat widespread impunity for police abuses.

6.3.1 THE NATIONAL POLICE COMMISSION – KOMPOLNAS

'That thing they call the police commission? It only exists up among the clouds'.¹⁷⁴

An East Jakarta community activist.

Complaints about police abuses submitted to Kompolnas go through the same cycle of investigation as other complaints directly submitted to the Propam divisions, thus making it almost impossible for complaints about possible offences involving human rights violations by police officers to actually reach the civilian courts.

In 2007, the first full year of its operation, Kompolnas received 449 complaints about police abuses, which they subsequently transmitted to the police. By the end of the year, Kompolnas had received a response from the police about 257 complaints, while 192 were still being processed.¹⁷⁵ Once Kompolnas receives a response from the police they report the responses directly to the President.¹⁷⁶

The National Police Commission, Kompolnas, was created under the National Police Act in 2002; however it only became operational in 2007. Kompolnas was established primarily in order to provide policy advice to the upper echelons of the police, rather than act as a police oversight body.

As set out in the National Police Act (Law 2/2002), the main functions of Kompolnas are: (1) to assist the President in setting policy direction for the National Police institution, and (2) to give advice to the President about possible reform within the institution (Article 38). Although it may receive complaints about police abuse and submit them to the President as part of its duties (Article 38.2.c), its mandate is not to be an independent complaints mechanism which can conduct investigations and submit cases for prosecution.

Kompolnas largely remains a political body, whose chairperson is nominated by the President of Indonesia. A third of its nine members are Ministers. They are *ex officio* – the Ministers for the Interior, for Law and Human Rights and the Minister for Political, Legal and Security Affairs. Further some Ministers have chosen to be represented by police delegates in Kompolnas meetings. For example Inspector General Budi Utomo, a two star police general, or Brigadier General Harry Montolalu, a one star police general, represent Minister Widodo A.S., the current Minister for Political, Legal and Security Affairs and currently the head of Kompolnas.¹⁷⁷

It is not clear what degree of independence Kompolnas has from the National Police force. According to the Police Act, Kompolnas is to be fully funded from the State budget (Article 40, Law No2/2002), but a lack of state resources has reportedly hampered the commission's work. Kompolnas appears to be receiving assistance from the police headquarters themselves which provide administrative support to the commissioners. Kompolnas has also received aid from local and foreign donor agencies.¹⁷⁸

Currently Kompolnas is struggling to find its role based on this mandate. Some commissioners believe that the body's foremost task is to support the police and convey its aspirations to the President, whereas for others, Kompolnas is a "functional oversight" institution.¹⁷⁹ In November 2007, the then National Head of Police General Sutanto issued a memorandum articulating Kompolnas' complaints mechanism, stating that complaints must be immediately dealt with under the principles of "objectivity [...] efficiency, effectiveness, accountability, confidentiality and transparency".¹⁸⁰ The role of Kompolnas as a complaints mechanism seems to be directly linked with provisions on the Police Code of Ethics which state that "other external sources", including Kompolnas, may submit complaints to the Police about violations of the Code of Ethics (Article 10.1, PR No8/2006).

Kompolnas is relatively small, given the size and population of Indonesia, making it difficult for complaints to be effectively dealt with and submitted by members of the public living outside Jakarta. There is a general lack of awareness about Kompolnas and its services to the public. Even in Jakarta, there is little knowledge of the institution and a sense that Kompolnas does not serve the impoverished or the marginalized.¹⁸¹ However, there have been recent moves by Kompolnas to be more accessible to the general public and a number of formal reporting agreements have recently been put in place with 14 NGOs and law faculties in various areas of Indonesia including in North Sumatra (Aceh and Medan), Jakarta, Central Java (Semarang), East Java (Surabaya), South Sulawesi and Papua (Jayapura). These organizations are requested to forward police complaints to Kompolnas who will then process them.¹⁸²

All complaints about police abuse submitted to Kompolnas must include the address and identity of the complainants (Articles 25.1, Kompolnas regulation No1/2006). These complaints are then subsequently referred back in writing to the police for clarification (Articles 25.2 and 25.3, KR No1/2006). In this regard, there should be adequate measures in place to protect the identities of the complainants from possible retaliation by the police officials who have been named in their complaint.

The complaints are usually transmitted to the General Oversight Inspectorate (Irwasum) within Police Headquarters in Jakarta who will then be in charge of assessing whether the complaint should be transmitted to the Propam division for investigation.¹⁸³

6.3.2 THE NATIONAL HUMAN RIGHTS COMMISSION - KOMNAS HAM

In 2008, the highest number of complaints submitted by members of the public to Komnas HAM was about the Police.¹⁸⁴ Although Komnas HAM can appear to be an effective body to investigate police abuses, a number of factors both in law and practice currently hinder the commission's ability to act as an effective check on the police.

As provided for in the Human Rights Act, Komnas HAM is charged with and authorized to investigate and examine incidents occurring in society which either by their nature or scope are likely to constitute violations of human rights (Article 89.3b) and submit recommendations concerning cases of human rights violations to the government or the House of Representatives for their follow-up (Article 89.4.d & e).

Komnas HAM is authorized by law to receive complaints about human rights violations from individuals or groups (Article 90). It is also empowered to monitor the progress of human rights development in the country, to investigate complaints and report publicly on its findings. It has the power to call witnesses, examine sites where violations are alleged to have taken place and to testify in court. With permission from the head of the court, it has powers to 'examine sites such as houses, yards, buildings and other places where human rights violations have taken place' (Article 89.3).

Although Komnas HAM can "call complainants, victims and accused to request and hear their statements" as well as "call on witnesses to request and to hear their witness statements, and in the case of prosecution witness to request submission of necessary evidence", (Article 89.3 (c) and (d)), Komnas HAM lacks sufficiently strong enforcement powers to oblige suspected perpetrators to appear before the institution.

Laws and regulations governing Komnas HAM make the institution largely dependent on police cooperation at all stages of its investigation. For instance, Komnas HAM does not specifically have the right to observe autopsies or examine autopsy reports, death certificates and other medical certificates in cases involving police. Instead, they are dependent on police willingness to assist. This becomes particularly problematic if the human rights violation involves the police force itself.

Furthermore although the Law on Human Rights Court (Law No26/2000) gives powers to Komnas HAM to conduct enquiries into cases of 'gross human rights violations' (i.e. crimes against humanity or genocide under Indonesian Law)¹⁸⁵ involving the police and submit their findings directly to the public prosecutor (Articles 18, 19 and 20),¹⁸⁶ they do not have the same powers if the reported cases of police misconduct are not defined by Komnas HAM Commissioners as a 'gross human rights violation'.

Komnas HAM has offices in different parts of the archipelago, including in Java (Jakarta), Papua, West Sumatra, West Kalimantan, Sulawesi, and Aceh.¹⁸⁷ Komnas HAM would usually send those complaints about 'ordinary' cases of police misconduct and other human rights violations including torture and other ill-treatment by police officials to the General Oversight Inspectorate (Irwasum) within Police Headquarters in Jakarta.¹⁸⁸ By law, they do not have the power to submit their findings directly to the public prosecutor. According to the Criminal Procedure Code, this is the responsibility of the police.

In practice it means that Komnas HAM powers to hold to account police officers who may have committed human rights violations are very limited by law.

6.3.3 THE NATIONAL OMBUDSMAN

The National Ombudsman Commission (Komisi Ombudsman Nasional) was created by Presidential decree in 2000 (Keputusan Presiden Republik Indonesia No44/2000) under the presidency of Abdurrahman Wahid. The Ombudsman's task is to "request clarifications from state officials/organs and monitor or investigate the complaints of the citizens on the performance of the state officials, including on the (misconduct and performance) of the judiciary, in particular those related to the public service they have to provide" (Article 2). More specifically the Ombudsman must "follow up the complaints or information given by the public concerning mishaps, maladministration and/or abuses of power of government officials in the execution of their duty and in providing their services to the public" (Article 4.c). It has become over the years an oversight mechanism to investigate cases of misconduct by civil servants, including police officials. It currently has offices in Jakarta, Kupang, Manado, Medan and Yogyakarta.

In their 2007 annual report, the National Ombudsman Commission indicated that they had received 865 complaints between January and December 2007. Almost 30 per cent of these complaints were about police misconduct – which made the police the branch of the government that received the single highest number of complaints from members of the public that year.¹⁸⁹ An overwhelming majority of the reports came from individuals, often the victims themselves.¹⁹⁰ Two cases of possible extra-judicial executions by police officials were among complaints investigated by the Ombudsman Commission.¹⁹¹

The National Ombudsman Commission was transformed into the National Ombudsman (Ombudsman Republik Indonesia) in October 2008 when Parliament passed Law No37/2008. The National Ombudsman's task is to "supervise the administration of public services which are executed by the State Officials and public officials, both in central and regional government including those as executed by the State Owned Enterprise and Regional Government Enterprise and State Owned Legal Person as well as private sector or individual entity which are assigned to administer certain public services" (Article 6).¹⁹² Further they are entitled "to receive grievance on presumption of maladministration in administering public services" (Article 7). These reports must be submitted in writing with the name and address of the complainants (Article 8.1).

Although the Ombudsman institution appears to have investigated criminal cases in the past, it is unclear under the new law whether they will have the mandate to continue doing so. As clarified in Article 36, the Ombudsman may not deal with public complaints which do not fall directly under its remit (Article 36.1 (e) and (g)). If the case is already the object of a court case, the Ombudsman must stop investigating the complaint, except when the case is directly related to maladministration (Article 36.1 (b)). Further the Ombudsman should not accept the complaint if it is already been processed by the relevant public administration. The concept of maladministration is defined as behaviours or actions by state officials and public officials which violate the law. It includes instances whereby these officials exceed their authority, use their power for purposes other than what they are permitted for, and/or through ignorance or negligence of their legal obligations commit unlawful acts in their

administration of public services. These actions may affect the community and/or individuals (Article 1.3).

Even if the Ombudsman continues to include public complaints about human rights violations by police officials within its mandate, its scope of authority remains limited. During the conduct of investigations of police misconduct, the Ombudsman has subpoena powers, but only to the extent that the police agree to cooperate with the Ombudsman office. As provided for in Article 31 “In the event that the Party Complained and the witness ... having been summoned for three times consecutively, failed to comply without good reason, the Ombudsman may ask for the aid of the Indonesian National Police to compel the relevant person brought to the Ombudsman”. It is unclear how this would work when the police themselves are the subject of an investigation for possible human rights violations.

Once the Ombudsman has received a public complaint it decides to investigate, it can send a letter requesting clarifications to the relevant public administration where the case of ‘maladministration’ occurred. This process appears to be rather similar to the process conducted by Kompolnas, and can be problematic especially as regards the protection of the identities and names of complainants. In this regard, Amnesty International welcomes the fact that two separate articles emphasize the need for confidentiality during the investigation process (Article 30), and in particular the need to protect the names and identities of the victims (Article 24.2).

In a case of maladministration (‘maladministrasi’), the Ombudsman may submit recommendations to the ‘state officials’ or ‘public officials’ of the administration concerned, including their superiors (Article 35, 37, 38). Further, in case the administrative body concerned and the state officials do not comply with the Ombudsman’s recommendation(s) or have only complied with parts of it without sufficient reasons, the Ombudsman may submit a report to the House of People’s Representatives and the President (Article 38.4). The Ombudsman does not have the authority to submit a case to the public prosecutor. In other words, in the case of police misconduct, it appears to be up to the police internal disciplinary mechanism to process possible complaints of human rights violations brought to their attention by the Ombudsman.

6.4 ACCOUNTABILITY TO THE STATE

Despite the current decentralization process, the Indonesian National Police remains a centrally coordinated body. The section below describes briefly the lines of state accountability the Indonesian National Police is currently subject to – except for their responsibility before the judiciary which is analysed through Sections 6.2 and 6.3.

As provided for in the National Police Act, the National Head of Police, who is in charge of the day to day running of the police, finances and operations, is directly responsible to the Indonesian President (Articles 8 and 9). The President has the authority to nominate and terminate his/her mandate with the agreement of the House of People’s Representatives (Article 11). The President is in charge, with the guidance of Kompolnas, of the overall direction of police policy (Articles 7 and 38).



Police march at Indonesian police anniversary display in Monas Square, Jakarta, 1 July 2008.

There is ongoing public debate about the relationship between the President and the police, characterized by suspicions that the police are politically aligned with the President and the President is therefore unlikely to bring the police to account. This debate has taken place in the context of a draft National Security bill that has, at different times, aimed to place the police under the jurisdiction of the Ministry of Law and Human Rights, the Ministry of Home Affairs or the Attorney General Office.¹⁹³

The House of People's Representatives has an important role to play nationally in ensuring police accountability to the public. It approves or rejects the Presidential nomination of the national Head of Police (Article 11.1, Law No2/2002), it passes legislation, it votes on the police budget and, through a parliamentary committee (Commission III), it monitors the performance of the police.

Commission III deals with issues of legislation, human rights, security and law, which includes monitoring police work. This multiparty grouping of some 45 parliamentarians with experience and expertise in the law regularly monitors police work by summoning the National Chief of Police and specific police officers to answer questions.

In a few high profile instances, parliamentary attention has resulted in questioning of police activity and even in some degree of accountability.¹⁹⁴ However, these interventions have been too rare and ad-hoc to satisfactorily address endemic cases of police abuses and provide justice and reparations to victims.

Regional governments have some role to play in holding the police accountable although the legislative framework places the responsibility of the police with the central government. As clarified under the Regional Government Act (Law No32/2004) a number of areas remain under the authority of the central government including foreign affairs, justice and security issues (Article 10).

There are some points of interface between regional governments and the police (see in particular Articles 5, 18, 27, 43, 57, 148 and 149). Articles 148 and 149 provide in particular for provincial, local and town regional heads (kepala daerah)¹⁹⁵ to form Pamong Praja forces in order to enforce the implementation of regional regulations. Pamong Praja are considered Civilian Investigators of the State (PPNS, Penyidik Pegawai Negeri Sipil).

6.5 PUBLIC ACCOUNTABILITY THROUGH COMMUNITY POLICING

“The implementation of Community Policing is at the heart of the INP’s reform strategy. Therefore all police district chiefs, ... must adopt it with all their heart and soul and all district police chiefs must be able to impart knowledge on human rights principles to each of his subordinates.”

The then Head of the National Police, General Sutanto, April 2008.¹⁹⁶



An official police banner at Pati District Police Station, Central Java province, Indonesia, 28 April 2009

The Indonesian National Police regard community policing known as ‘Polmas’ (Polmas, Perpolisian Masyarakat) as the cornerstone of their reform effort.¹⁹⁷ Although the community policing initiative is welcomed, it cannot replace the setting up of effective accountability mechanisms, both internally and externally, to deal effectively with human rights violations involving criminal offences.

Police policy documents define community policing as “the performance of policing duties which is built upon the understanding that the creation of a secure and orderly condition ... must be carried out jointly by the police and the community by empowering the people to serve the police in their own respective areas, thus allowing the community to detect symptoms that can cause problems in the neighborhood, anticipate such problems, and maintain security and order within the location”.¹⁹⁸ The adoption of community policing is “aimed at the establishment of a partnership between the police and the community that is built upon a shared awareness to overcome problems that can disrupt security and public order towards the creation of a sense of security, order and peace and to enhance the quality of the community’s life”.¹⁹⁹

The community policing policy has been mainstreamed to all police departments and has been integrated into many fields of police training. As of April 2008, approximately 100,000 police officers had benefited from some training on community policing and human rights. An overwhelming majority of these trainings were delivered by police officers themselves.²⁰⁰

As part of the Community Policing strategy, the Indonesian National Police has developed Police-Community Partnership Forums (Organisasi Forum Kemitraan Polisi dan Masyarakat, FKPM) which are set up between police and community representatives.²⁰¹ Community Police Forums have between 10 and 20 members²⁰² and are primarily established at the district and sub-district levels. The forums are not part of the police structure but are established and run jointly by community and police representatives. They are resourced from the national police budget.²⁰³

Community policing can be part of the answer towards a more accountable police; however it is not the only answer. While the inclusion of human rights in community policing trainings and policies is a positive step, this should not detract from the need to provide a rigorous and effective accountability system to deal with suspected human rights violations.

7. CONCLUSIONS AND RECOMMENDATIONS

‘We must pick up the pace, to achieve the target of improving public trust by 2010’.

Bambang Hendarso Danuri, head of the Indonesian National Police, March 2009²⁰⁴

Despite positive moves within the last ten years to ensure that the Indonesian National Police becomes more professional and respectful of human rights, more needs to be done to ensure that the 1999 hopes for an autonomous ‘clean’ police institution appreciative of human rights and supporting the rule of law are not vain.²⁰⁵ The Indonesian National Police are still responsible for many human rights violations in the country, including unnecessary and excessive use of force leading sometimes to fatal shootings, torture and other ill-treatment, violation of fair trial safeguards during arrest and police detention and disproportionate abuses of individuals at risk such as women.

In this Chapter, Amnesty International provides a series of key recommendations to the Indonesian authorities. They are addressed in particular to the Indonesian President, the Head of the Indonesian National Police, Senior Police Officers, relevant ministers including the Coordinating Minister for Political, Legal and Security Affairs, the Minister for Law and Human Rights, the Minister for Home Affairs and the State Minister for Women's Empowerment. These recommendations are also geared towards members of Parliament (especially from Commission III); Komnas HAM Commissioners; and Kompolnas Commissioners.

Many of these recommendations can assist foreign donors in the formulation of their financial assistance towards police reform. They may also prove useful to international and national non governmental organizations and agencies in their work towards ensuring police accountability.

7.1 RECOMMENDATIONS REGARDING POLICE VIOLATIONS

7.1.1 THE RIGHT TO LIFE - UNNECESSARY AND EXCESSIVE USE OF FIREARMS

Amnesty International recommends that the Indonesian authorities, and in particular the President, the Indonesian National Head of Police and senior police officers:

- Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all reports of unnecessary or excessive use of force and firearms by police, in particular where it has caused injury or death, including against suspected criminal offenders from poor and marginalized communities. Those suspected of being responsible for arbitrary or abusive use of force, including persons with command responsibility for such use, should be prosecuted in proceedings which meet international standards of fairness and victims should be granted reparations;
- Establish procedures, develop expertise and procure equipment to facilitate professional investigations into unnecessary or excessive use of firearms, including for securing and examining (potential) crime scenes, ballistics and other forensic tests, and autopsies or medical examinations;
- Ensure that the Police Regulation on the Use of Force (No. 01/2009) is disseminated throughout the chain of command, and that appropriate trainings on the UN Code of Conduct for Law Enforcement Officials and Basic Principles, and on this Police Regulation are conducted;
- Ensure that adequate systems and mechanisms are put in place alongside training and regulations on the use of force and firearms to make sure that police officers apply the relevant UN standards in their daily work. This includes ensuring that police officers have access to a differentiated range of police equipment, that they have trainings on open hand techniques (techniques not requiring equipment) and other tactical methods to apply the UN standards on the use of force and firearms;
- Ensure that there are adequate procedures for storage and registration of weapons. Weapons should be stored in designated secure facilities and each should carry a registration number;
- Ensure that when weapons are issued the receiving officer, date, time, weapon registration number, type and number of munitions used are accounted for. These details need to be checked when weapons and munitions are returned and any use should be reported following any operation;
- Ensure that procedures for reporting incidents as well as investigation following every incident are appropriate and enforced throughout the chain of command. These procedures must be kept in the "Command Log/Incident Record" and be used for evaluating the operation in order to distil lessons for the future and as evidence in case an incident leads to any disciplinary or criminal action.

7.1.2 TORTURE AND OTHER ILL-TREATMENT

Amnesty International recommends that the Indonesian authorities, in particular the President and the Indonesian National Head of Police:

- Acknowledge publicly the serious problem of torture and other ill-treatment in Indonesia and send a clear public message to all police officials in Indonesia that torture and other ill-

treatment of detainees are unacceptable and strictly prohibited at all times; that any allegations of such treatment will be subject to investigation; and that all perpetrators will be brought to justice;

- Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all reports of torture and other ill-treatment by police, and ensure that those suspected of involvement including persons with chain of command responsibility, are prosecuted in proceedings which meet international standards of fairness, and that victims are provided with reparations;
- Conduct comprehensive human rights trainings to both lower grade police staff and officers, to ensure that the absolute prohibition of torture and other ill-treatment is instilled throughout the Chain of Command.

Amnesty International recommends that the Indonesian National Head of Police, and senior police officers:

- Ensure that all detainees and prisoners held at police detention facilities are provided with access to adequate medical care at all times in accordance with international law and standards and national law. Prisoners should be given or offered a medical examination as promptly as possible after admission to a place of detention;
- Ensure that all detainees and prisoners at police detention facilities are allowed access to their families and lawyers;
- Ensure that written custodial records are kept up to date on a regular basis.

Amnesty International recommends that the Minister for Law and Human Rights:

- Initiate the drafting of new legislation specifically prohibiting torture and other ill-treatment. This new law should make torture and other ill-treatment punishable by appropriate penalties that take into account their grave nature. The bill should then be debated and passed by the House of People's Representatives as a matter of priority.

Amnesty International urges the House of People's Representatives to:

- Ensure that the draft revised Criminal Code and draft revised Criminal Procedure Code are fully debated. They should incorporate provisions prohibiting acts of torture, including as a discrete act, and make these offences punishable by appropriate penalties that take into account their grave nature. The Codes should then be passed into law as a matter of priority;
- Ratify the Optional Protocol to the UN Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, so that a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty is established.

7.1.3 WOMEN

Amnesty International recommends that the Indonesian authorities, in particular the President and the National Head of Police:

- Publicly condemn all forms of gender-based violence, intimidation and harassment by law enforcement officials, and make clear that any such act perpetrated by police officers will not be tolerated;
- Give police clear instructions to ensure that the human rights of women involved in sex work are protected in the course of all law enforcement activities;
- Ensure effective separation of men and women in prisons, police stations and all other places of detention, and that detention facilities for women are staffed by women officers;
- Ensure that the Women and Children Service Units are publicized, adequately resourced and that they are available throughout the country. Ensure that all other police units offer comprehensive services to female victims of crime.

Amnesty International recommends that the National Head of Police and Senior Police officers:

- Ensure that all police units promptly investigate all complaints of gender-based violence in the community, refer cases to the appropriate authority for prosecution and ensure that police staff who fail to respond effectively to allegations of such violence are disciplined;
- Ensure that women can make allegations of misconduct against police officers, including of sexual violence, intimidation or harassment, and that these are promptly, independently and impartially investigated, and where reasonable suspicion exists of misconduct and/or a criminal offence the suspect should be immediately suspended from duty and subjected to disciplinary and/or criminal proceedings commensurate with the severity of the offence.

7.1.3 MEDICAL EXAMINATIONS AND AUTOPSIES

Amnesty International recommends that the Indonesian authorities, in particular the National Head of Police, the Minister for Home Affairs, and Kompolnas:

- Review procedures relating to the conduct of medical examinations of people in detention to ensure consistency with medical ethics, professional best practice and international human rights law and standards. Such standards provide that investigation of alleged abuses must include an adequate medical examination, as well as collection and analysis of all physical and documentary evidence and statements from witnesses;
- Specific measures should be put in place to ensure that female victims of alleged

abuses by police can access impartial, competent, ethical and gender-sensitive medical examinations;

- Autopsies should be undertaken in cases of violent or otherwise unexpected death and should meet the standards set out in the UN Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions.²⁰⁶

7.1.5 FAIR TRIALS

Amnesty International recommends that the Indonesian authorities, in particular the National Head of Police and Senior Police Officials:

- Ensure that detainees have prompt access to legal counsel of their choice;
- Ensure that police units record the time of arrest, the reasons for arrest, precise information identifying the place of custody, and the identity of the law enforcement officials concerned;
- Ensure that police units communicate records to the detained person or to his or her lawyer;
- Ensure that police officials making an arrest wear name tags or numbers and identify themselves to the arrested person;
- Ensure that police vehicles are clearly identified as such and carry clearly visible number plates.²⁰⁷

Amnesty International recommends that the House of People's Representatives:

- Ensure that the draft revised Criminal Code and draft revised Criminal Procedure Code are brought into line with the relevant provisions of the International Covenant on Civil and Political Rights and other human rights standards on fair trials. In particular provisions should be incorporated within the Criminal Procedure Code that would ensure detainees can challenge the legality of their detention and be brought promptly before a judge or other judicial officer. The Codes should then be passed into law as a matter of priority.

7.2 RECOMMENDATIONS REGARDING TO POLICE ACCOUNTABILITY

7.2.1 THE INTERNAL DISCIPLINARY SYSTEM

Amnesty International recommends that the Indonesian authorities, in particular the President, the National Head of Police, and Kompolnas:

- Ensure that appropriate disciplinary measures are taken against law enforcement

officials who harass or intimidate individuals making a complaint about police misconduct;

- Ensure that there are clear guidelines requiring officers to report abuses, and that officers at all levels of the chain of command, including at the local levels, know about these guidelines and are held responsible for enforcing such guidelines, with penalties imposed for failing to report, or covering up, police misconduct;
- Review the Code of Ethics and the Disciplinary Code so as to bring them fully into line with international human rights law and standards. In particular they should include specific prohibition of the use of torture and other ill-treatment, and prohibit unnecessary and excessive use of force and firearms. The Codes should clearly state that a superior officer will be held responsible for violations by his or her subordinates if he or she was aware, or should have been aware of, and failed to prevent or stop the violation;
- Ensure that all police internal disciplinary procedures and mechanisms are clearly set out in publicly available documents and that information on internal investigation procedures, including how to make a complaint about police misconduct, is readily available to the public (including at police stations, and on the internet). In particular the procedures should be disseminated through radio and television programs to ensure that criminal suspects from poor and marginalised communities know about police disciplinary mechanisms and procedures to submit complaints;
- Review Irwasum and Propam's composition, powers and functions to ensure effective disciplinary oversight of the Indonesian National Police. In particular ensure that there are adequate checks and balances to guarantee Irwasum and Propam's impartiality and objectivity in receiving complaints and conducting investigations;
- Ensure that those who are making a complaint about police misconduct, including violations of the Code of Ethics, are kept informed of the disciplinary investigation process, by placing time limits for processing filed reports and establishing a system for reporting, both internally and publicly, on the investigation;
- Ensure that internal disciplinary procedures are thorough, prompt and fair. In particular a complainant's name and address must be kept confidential, and officers who are the subject of a complaint have the right to know if they are being investigated and under what provisions within the Disciplinary Code or the Code of Ethics.

7.2.2 CRIMINAL OFFENCES INVOLVING HUMAN RIGHTS VIOLATIONS

Amnesty International recommends that the Indonesian authorities, in particular the President, the National Head of Police and Kompolnas:

- Ensure that there is a clear, independent and impartial system in place to deal with complaints about suspected human rights violations by police officers. In particular, suspected criminal offences involving human rights violations must be dealt with through the criminal justice system, rather than only internally and only as disciplinary breaches. Although a disciplinary process may be conducted alongside prosecution, the disciplinary

internal process must never replace bringing those suspected of offences involving human rights violations including torture and other ill-treatment before civilian courts;

- Ensure that criminal investigations into alleged criminal offences by police officers, are conducted in a prompt, impartial and independent manner;
- Nominate a separate department (e.g. Irwasum/Propam) or division to conduct investigations into suspected cases of criminal offences involving human rights violations committed by members of the Criminal Investigation Department to guarantee that the investigation is impartial and objective;
- Ensure that those who are making a complaint about suspected human rights violations by police officials are kept informed of the criminal investigation process, by placing time limits for processing filed reports and establishing a system for reporting, both internally and publicly, on the investigation's progress and results;
- Ensure that the complainant's name and address are kept confidential;
- Ensure that appropriate disciplinary, and where necessary criminal, measures are taken against law enforcement officials who harass or intimidate individuals making a complaint about police suspected criminal offences;
- Publish annually disaggregated data on the number and type of complaints received about police misconduct in Indonesia, and how the various complaints were processed within the internal police structure. There should in particular be details about the number of public complaints made about suspected human rights violations by police officers and how these complaints were processed through the criminal justice system.

7.2.3 TOWARDS AN INDEPENDENT POLICE COMPLAINTS MECHANISM

Amnesty International recommends that the Indonesian authorities, in particular the President and the House of People's Representatives, either set up a new police oversight mechanism or revise the mandate of existing ones such as Kompolnas to ensure that there is an independent, effective, and impartial complaints mechanism which can deal with public complaints about police misconduct including criminal offences involving human rights violations.

The independent police complaints mechanism should have independent investigation teams, to deal specifically with complaints involving the police. Such a body should be:

- Operationally independent of the government, political influence and the police;
- Accessible to members of the public with an office in all provinces. Publicity about the new mechanism and its offices should be undertaken to ensure that members of the public are aware of this mechanism, its functions and how to access it;

- Required to report publicly on its activities.

It should be authorised to:

- Receive complaints and other reports of human rights violations by police and to investigate incidents;
- Provide any necessary protection to complainants, victims and witnesses;
- Procure and receive evidence and examine witnesses as may be necessary to conduct an effective investigation;
- Choose when to supervise or to manage investigations conducted by police investigation officers and when to carry out investigations using its own independent investigators;
- Refer matters to the criminal prosecutor and/or to the police internal disciplinary body, as appropriate;
- Recommend appropriate action in respect of both individual officers and the police system overall;
- Recommend or award reparations to victims of human rights violations, as appropriate.

7.3 OTHER RECOMMENDATIONS TO CONSIDER TO STRENGTHEN THE POLICE REFORM PROCESS

7.3.1 THE RELATIONSHIP WITH THE MILITARY

Amnesty International recommends that the Indonesian authorities, in particular the House of People's Representatives:

- Establish legal clarity concerning the separation of powers between the police and the military and the command and control systems for joint operations, including at a local level. The division of responsibilities between the two institutions should be clarified in law. In particular the law should make clear under what legal and operational procedures the military are performing police functions and using police powers, with special emphasis on those procedures guiding the use of force as well as the means of force available;
- Clarify in law, policy and practice that the military may carry out police functions in extraordinary circumstances only; that when doing so, its members' powers are limited to those of police, including regarding the use of force; and that any suspected offences by military personnel involving human rights violations during such operations are investigated, and if need be prosecuted, by the civilian authorities;

- Amend legislation where appropriate to ensure that those from the military who are responsible for human rights violations are brought to justice before civilian courts and that their trials meet internationally recognised standards of fairness.

7.3.2 REPRESENTATIVENESS

Amnesty International recommends that the Indonesian authorities, in particular the National Head of Police:

- Continue efforts to strengthen recruitment and career development policies to make the police more diverse, representative and accountable to the community they serve. All police officers should be able to perform their duties in a non-discriminatory working environment;
- In particular, continue efforts to recruit into the police women and members of ethnic and religious minorities.

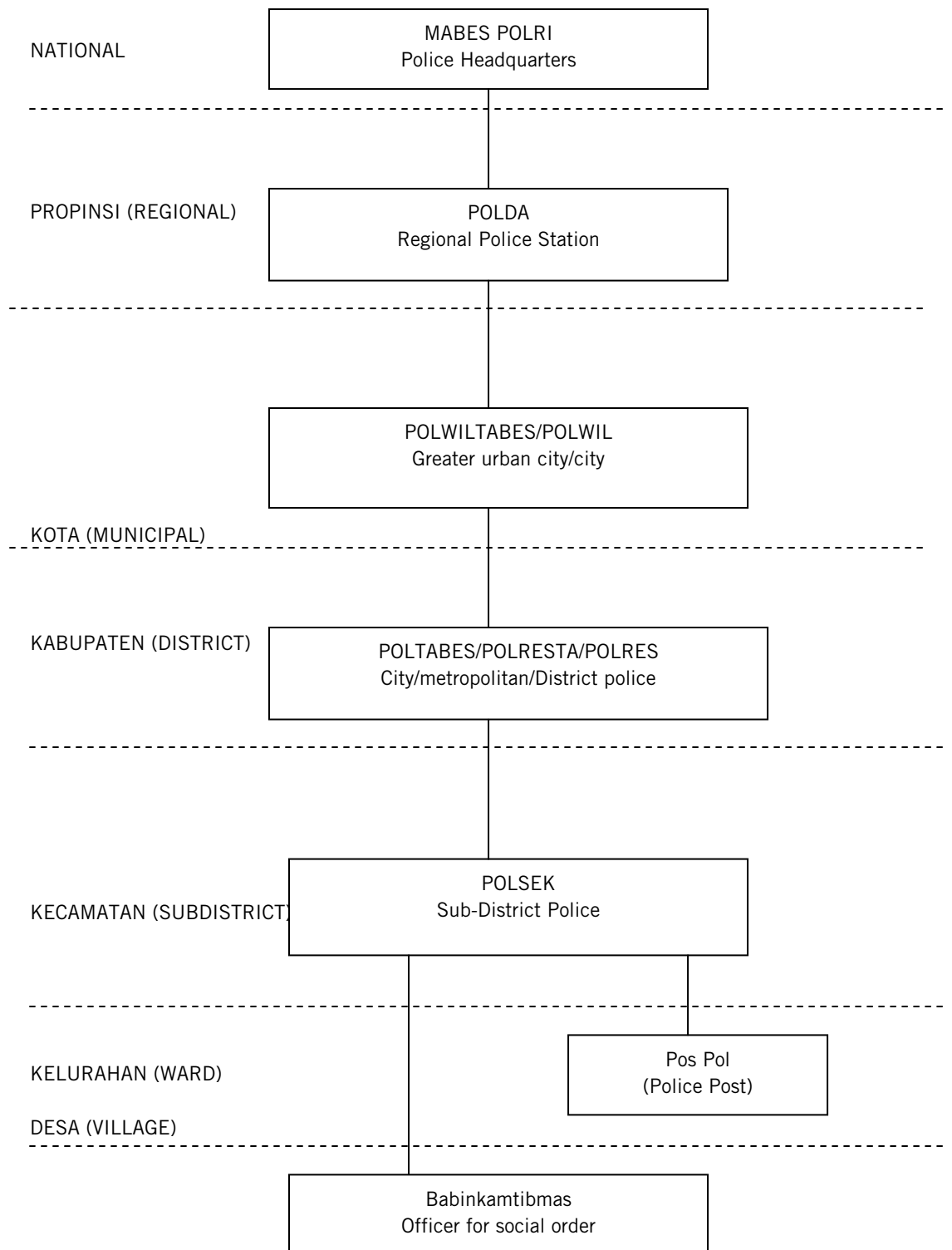
7.3.3 FINANCIAL RESOURCES AND CORRUPTION

Amnesty International recommends that the Indonesian authorities, in particular the President and the National Head of Police:

- Ensure that police personnel, like anyone else, have the right to just and favourable working conditions, including adequate remuneration as provided for in international legal standards, including the International Covenant on Economic, Social and Cultural Rights;
- Ensure that where reasonable suspicion exists of misconduct and/or a criminal offence involving acts of corruption by a police official, that the suspect is immediately suspended from duty and subjected to disciplinary and/or criminal proceedings commensurate with the severity of the offence, as set out in the UN Code of Conduct for Law Enforcement Officials.²⁰⁸

KA	CHIEF HEAD	KADIV TELEMATIKA	HEAD OF TELECOMMUNICATIONS & INFORMATICS DIVISION
WAKA	DEPUTY	KAPUSKOMLEK	HEAD OF ELECTRONICS COMMUNICATION DIVISION
KARO	HEAD OF BUREAU	KAPUS INFOLART	HEAD OF INFORMATION & DATA PROCESSING CENTER
KABA	HEAD OF BODY	KAPUS INKAS	HEAD OF NATION CRIMINAL INFORMATION CENTER
KADIV	HEAD OF DIVISION	GUB PTIK	GOVERNOR OF POLICE SCIENCE COLLEGE
KAPOLBI	CHIEF OF INP	DIR AKADEMIK	DIRECTOR OF ACADEMICS
KAPOLRI	CHIEF OF RPPK	DIR STAF	DIRECTOR OF STAFF
IRWASUM	GENERAL SUPERVISION INSPECTOR	DIR PTIK	DIRECTOR OF POLITICAL SCIENCE & TECHNOLOGY REVIEW CENTER
WAIRWASUM	DEPUTY GENERAL SUPERVISION INSPECTOR	KASESPIM	HEAD OF STAFF AND LEADERSHIP SCHOOL
IRWIL	REGIONAL INSPECTOR	DIR AKADEMIK	DIRECTOR OF ACADEMICS
KOORSAHLI	EXPERT STAFF COORDINATOR	DIR JIANGBANG	DIRECTOR OF REVIEW AND DEVELOPMENT
SAHLI	EXPERT STAFF	GUBAKPOL	GOVERNOR OF POLICE ACADEMY
DEREMBANG	DEPUTY OF PLANNING & DEVELOPMENT	DIR AKADEMIK	DIRECTOR OF ACADEMICS
KARODAKSTRA	HEAD OF POLICY & STRATEGY BUREAU	DIR BINTARLAT	DIRECTOR OF CADET & TRAINING MANAGEMENT
KAROPRAGA	HEAD OF RESEARCH & DEVELOPMENT BUREAU	DIR BINTARLAT	DIRECTOR OF CADET & TRAINING MANAGEMENT
KARO PERTAMA	HEAD OF ORGANISATIONAL PROCEDURES BUREAU	DIR BINAUK	DIRECTOR OF EDUCATION MANAGEMENT
KARO LITBANG	HEAD OF RESEARCH & DEVELOPMENT BUREAU	DIR BINAUK	DIRECTOR OF EDUCATION MANAGEMENT
DEOPS	DEPUTY OF OPERATIONAL	DIR BINAUK	DIRECTOR OF EDUCATION MANAGEMENT
KARO JIANSTRA	HEAD OF REVIEW & STRATEGY BUREAU	KASELAPA	HEAD OF OFFICER ADVANCED SCHOOL
KARO BINOPS	HEAD OF OPERATIONAL MANAGEMENT BUREAU	KABINTELKAM	HEAD OF THE OFFICER'S CADET SCHOOL
KARO BINPOLSUS/PPNS	HEAD OF SPECIAL POLICE/CIVILIAN EMPLOYEE INVESTIGATOR BUREAU	KABARESKRIM	HEAD OF INTELLIGENCE & SECURITY BODY
KARO BINMAS	HEAD OF COMMUNITY MANAGEMENT BUREAU	KARO RENMIN	HEAD OF PLANNING & ADMINISTRATION BUREAU
KAPUSDALOPS	HEAD OF OPERATIONAL CONTROL CENTRE	KARO ANALISIS	HEAD OF RESEARCH BUREAU
KARO JIANSTRA	HEAD OF REVIEW & STRATEGY BUREAU	KAPUS LABOR	HEAD OF FORENSICS LABORATORY CENTRE
KARO BANGPERS	HEAD OF PERSONNEL DEVELOPMENT BUREAU	DIR KAMTRANSAS	DIRECTOR OF SECURITY AND TRANSNATIONAL CRIMES
KARO DALPERS	HEAD OF PERSONNEL CONTROL BUREAU	DIR EKASUS	DIRECTOR OF FINANCIAL AND SPECIAL CRIMES
KARO BINKAR	HEAD OF CAREER MANAGEMENT BUREAU	DIR TIPKORWOC	DIRECTOR OF CORRUPTION & WHITE COLLAR CRIMES
KARO BINJAH	HEAD OF WELFARE MANAGEMENT BUREAU	DIR ANTI TEROR	DIRECTOR OF SPECIFIC CRIMES
KARO PSIKOLOGI	DEPUTY OF PSYCHOLOGY BUREAU	KABINKAM	DIRECTOR OF ANTI-TERROR
DELOG	DEPUTY OF LOGISTICS	KARO RENMIN	HEAD OF UNIFORMED POLICE
KARO JIANSTRA	HEAD OF REVIEW & STRATEGY BUREAU	DIR LANTAS	HEAD OF PLANNING & ADMINISTRATION BUREAU
KARO BEKUM	HEAD OF GENERAL SERVICES BUREAU	DIR LANTAS	DIRECTOR OF TRAFFIC
KARO FASKON	HEAD OF CONSTRUCTION FACILITY BUREAU	DIR POL AIR	DIRECTOR OF MARINE POLICE
KOORSFRIPIM	TOP MANAGEMENT PERSONAL ASSISTANT COORDINATOR	DIR POL UDARA	DIRECTOR OF AIRFORCE POLICE
KASETUM	HEAD OF GENERAL SECRETARIATE	DIR PAMVIP-OPSUS	DIRECTOR OF VIP SECURITY-SPECIAL OPERATIONS
KADENMA	HEAD OF HQ DETACHMENT	KAKORBRIMOB	HEAD OF MOBILE BRIGADE CORPS
SES NCB	NCB SECRETARY	KAPOLDA	HEAD OF REGIONAL POLICE
KAPUS DOKES	HEAD OF MEDICINE & HEALTH CENTRE		
KARUMKIT PUS	HEAD OF CENTRAL POLICE STATION		
KAPUS KU	HEAD OF FINANCE CENTER		
KAPUS KUMAS	HEAD OF PUBLIC RELATIONS DIVISION		
KADIV BINKUMAS	HEAD OF LEGAL MANAGEMENT DIVISION		
KADIV BINKUM	HEAD OF PROFESSION AND SECURITY DIVISION		
KADIV PROPAM	HEAD OF PROFESSION MANAGEMENT CENTER		
KAPUSBIN PROFESI	HEAD OF INTERNAL SECURITY CENTER		
KAPUSPAMINAL	HEAD OF PROVOST CENTER		
KAPUSPROVOST			

APPENDIX 2: INDONESIAN POLICE TERRITORIAL COMMAND STRUCTURE



1 19th INTERPOL Asian Regional Conference Opening remarks of Dr Susilo Bambang Yudhoyono, President of the Republic of Indonesia, Jakarta, 11 April 2006, Weblink: <http://www.interpol.com/Public/ICPO/speeches/AsianConfYudhoyono20060411.asp#>, accessed on 20 March 2009.

2 Not his real name. All the names of those interviewed have been changed for security reasons. Amnesty International interview, July 2008.

3 Amnesty International has also documented police abuses against political activists, rural people and certain religious groups, however they will not be covered in this report.

4 See "Understanding Policing - A resource for human rights activists", Anneke Osse, Amnesty International Netherlands, 2006, Weblink: <http://www.amnesty.nl/documenten/rapporten/Understanding%20Policing%202007%20Full%20text.pdf>, accessed on 23 March 2009. Also available in Indonesian, Weblink: <http://www.amnesty.nl/documenten/rapporten/Understanding%20policing%20-Indonesian.pdf>, accessed on 28 May 2009.

5 See box on "What is human rights based policing?", p15, and Article 29, Universal Declaration of Human Rights (UDHR).

6 Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Convention on the Elimination of Racial Discrimination (CERD), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the UN Convention on the Rights of the Child (CRC).

7 International rules derived from consistent state practice become binding on states irrespective of whether or not they have ratified relevant treaties.

8 See in particular the Indonesian Constitution and its fourth amendment, the Law on Human Rights (Law No39/1999), the Law on Human Rights Courts (Law No 26/2000), and the Criminal Code (KUHP, Kitab Undang Undang Hukum Pidana).

9 Many of those responsible for serious human rights violations in Timor-Leste, Aceh and Papua have not been prosecuted for their crimes.

10 For an overview of the current police reform process, see the "Almanac on Indonesian Security Sector Reform – 2007" by The Geneva Centre for the Democratic Control of Armed Forces and Indonesian Institute for Strategic and Defence Studies (LESPERSSI), Weblink: <http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=39772&nav1=4>, accessed on 31 March 2009. See also Institute for Defence Security and Peace Studies (IDSPS), Backgrounders on Security Sector Reform. Weblink: <http://www.idsps.org/index.php?lang=en>, accessed on 1 April 2009.

11 See Transparency International, "Measuring Corruption in Indonesia: Indonesia Corruption Perception Index 2008 and Bribery Index". The report says that "Bribery index shows that police is still considered as the most vulnerable to bribery" p24 Weblink: <http://www.ti.or.id/en/publication/all/tahun/2009/bulan/01/tanggal/21/id/3845/>, accessed on 23 March 2009. The bribery index is based on the perception the interviewees have of the police. The survey was conducted in 50 cities in Indonesia between September and November 2008 during which 3841 people were interviewed.

12 See The Jakarta Post, "The National Police: Between Idealism and Reality", 1 July 2008. In a poll by major newspaper Kompas Daily, 50.6% of participants said that the police's image was poor. Over 75% thought that the police mishandled corruption and human rights cases. See also ProPatria Institute survey, "Evaluasi Publik atas Keamanan Nasional", in "Nasional Security Framework – Police Reform: Taking the Heart and Mind", T Hari Prihatono and Jessica Evangeline, January 2008, p250. In this national survey conducted in May 2007, 49,8% of those interviewed concluded that police work was not satisfactory.

13 'Human rights based policing' and 'professional' policing are interchangeable concepts. For the purpose of this report, Amnesty International deliberately uses the wording 'human rights based policing' to show to what extent international human rights law and standards are key to conducting effective police reform and developing police professionalism in Indonesia.

14 See 'Understanding Policing', Supra No4.

15 Kompas, "Sertijab Kapolri 9 Oktober", 26 October 2008. Weblink: <http://kompas.co.id/read/xml/2008/09/26/17263747/sertijab.kapolri.9.oktober>, accessed on 28 May 2009.

16 See 'Understanding Policing', Supra No4.

17 See Amnesty International "Indonesia: Briefing to the UN Committee against Torture", AI Index: ASA 21/003/2008. Weblink: <http://www.amnesty.org/en/library/info/ASA21/003/2008/en>, accessed on 28 May 2009.

18 See for instance Amnesty International "Malaysia: Towards Human rights based policing", (AI Index: ASA 28/001/2005), pp2-8.

19 Provided, in Article 6 of the ICCPR.

20 Provided, in Article 7 of the ICCPR, and in the UNCAT.

21 Provided, in Articles 9, 14, 15 and 16 of the ICCPR.

22 Provided in the CEDAW. See also the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, Violence against women, UN Doc. A/47/38, 29 January 1992.

23 Provided, for instance, in the CRC.

24 See in particular the UN Code of Conduct for Law Enforcement officials (1979) and the UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials (1989); the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989); the UN Standard Minimum Rules for the Treatment of Prisoners (1955); the UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment (1988); the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990); and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

25 The Commentaries accompanying the eight Articles of the Code of Conduct, and other international standards, help interpret these core principles and should inform national processes of reform towards police agencies that are representative, responsive and accountable. See 'Understanding Policing', supra No4.

26 See Adrianus Meliala, "Police as military: Indonesia's experience", 2001, p423.

27 See the "Almanac on Security Reform", p56, Supra No10. See also Dr. Awaloedin Djamin, "Menuju POLRI Mandiri yang Profesional --- Pengayom, Pelindung, Pelayan Masyarakat", Yayasan Tenaga Kerja Indonesia, Jakarta, 2000; Robert Lowry, "The Armed Forces of Indonesia, St Leonards", 1996; Meliala, "Quo Vadis polisi?"; Meliala "Problema Reformasi Polisi" 2002, Dr Salim Said, "Polri dalam transisi Demokrasi" 2002.

28 See for instance, Amnesty International, "Indonesia: Paying the price for 'stability'" (Index: ASA 21/12/98); Amnesty International, "Indonesia: Arrests, torture and intimidation: The Government's response to its critics" (Index: ASA 21/70/96); Amnesty International, "Indonesia: 'Operation Cleansing', Human Rights and APEC" (Index: ASA 21/50/94); Amnesty International, "Indonesia and East Timor: Power and Impunity: Human rights under the New Order" (Index: ASA 21/17/94); Amnesty International, "Indonesia: Free Speech Protestors Detained and Beaten" (Index: ASA 21/27/94); Amnesty International, "Indonesia: Deaths in Police or Military Custody" (Index: ASA 21/06/88).

29 See supra No28. See also CAVR, "'Chega!' - The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste", 2005.

30 Amnesty International recognizes the problematic nature of the ratio method of weighing police competency in a country such as Indonesia where population densities vary greatly. See Awoeluddin Djamin, "Kedudukan Kepolisian Negara RI Dalam Sistem Ketatanegaraan: Dulu, Kini dan Esok", PTIK Press, 2007, p19.

31 See Supra No27.

32 See Indonesian National Police, "A Reform Strives for Professional Indonesian Police", 1 July 1999, p22.

33 See Resolutions VI and VII of the People's Consultative Assembly in 2000. For more details, see Dr Sadjijono, "Mengenai Hukum Kepolisian - Perspektif Kedudukan dan Hubungannya dalam Hukum Administrasi", Labstang Mediatama, January 2008, pp131-135.

34 The Presidential decree No 89/2000 is available on <http://www.legalitas.org/incl-phi/buka.php?d=2000+0&f=kp89-2000.htm>, accessed on 11 May 2009.

- 35 See Article 30.4, Indonesian Constitution 1945, Second Amendment, August 2000.
- 36 Previous Police Acts include Law No13/1961 and Law No28/1997. For additional information on their provisions, see Dr Sadjijono, "Seri Hukum Kepolisian – Polri dan good governance", *Laksbang Mediatama*, June 2008, pp156-178. The National Police Act is available on <http://www.legalitas.org/database/puu/2002/uu2-2002.pdf>, accessed on 11 May 2009.
- 37 See for example, J. Baker, "A Sibling Rivalry", *Inside Indonesia*, August-October 2008, p93. Weblink: <http://www.insideindonesia.org/content/view/1106/47/>, accessed on 3 April 2009, and Moch. Faried Cahyono, "Resolusi (untuk) Konflik Polisi dengan Tentara", February 2008, Weblink: <http://csps.ugm.ac.id/Resolusi-untuk-Konflik-Polisi-dengan-Tentara.html>, accessed on 11 May 2009.
- 38 United Nations Economic and Social Council, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.
- 39 Military officials, who are suspected of human rights violations, should be brought before civilian courts which meet international standards of fairness. Amnesty International has expressed concerns in the past with trials of military personnel suspected of human rights violations before military courts. These trials lacked adequate independence and impartiality, see Amnesty International "Indonesia: New military operations, old patterns of human rights abuses in Aceh (Nanggroe Aceh Darussalam, NAD)", (AI Index: ASA 21/033/2004), October 2004, pp42-43.
- 40 Amnesty International interview, July 2008.
- 41 1 US Dollar = 10,368 Indonesian Rupiah as of 13 May 2009, in <http://www.xe.com/ucc/convert.cgi>. All conversions from Rupiah to USD are based on this currency rate.
- 42 See Amnesty International "Indonesia: Investigate excessive use of force against peaceful Papuan demonstrators", (Index : ASA 21/002/2009), Weblink: <http://www.amnesty.org/en/library/info/ASA21/002/2009/en>, accessed on 31 March 2009; and Amnesty International "Indonesia: Investigate forcible destruction of homes by the police in Riau", 23 December 2008, Weblink: <http://www.amnesty.org/en/for-media/press-releases/indonesia-investigate-forcible-destruction-homes-police-riau-20081223>, accessed on 31 March 2009.
- 43 See for instance the case of Sitra alias Ninang who was shot in the head by her husband who is a police official in *Kompas*, 01/04/2008 - Berselisih Paham, Polisi Tembak Kepala istrinya. See also the case of Zulhanuddin Bripka who was reportedly shot dead because a police official suspected him of having an affair with his wife in *Liputan6*, "Cemburu, Polisi tembak Warga Sipil", 11 November 2008. See also "Oknum Penembakan Mahasiswa di Isolasi di Pomdam Wirabuana", in *Kapanlagi*, 26 July 2008.
- 44 A subsequent report providing details about police abuses in the context of demonstrations and forced eviction will be published later this year.
- 45 Amnesty International interview, July 2008.
- 46 Amnesty International interview, July 2008.
- 47 A police officer in Lampung Province, Sumatra died of gunshot from another police officer's gun while interrogating a robbery suspect. In *Tempo*, "Police Died of Accidental Shot", 08 April 2009. A police and a robber died during gun fight when police tried to stop a robbery in *Kompas*, "Baku Tembak, Polisi-Perampok Tewas", 19 February 2009.
- 48 *Media Indonesian*, "Polisi Tembak Mati Dua Tersangka Curanmor", 5 April 2009.
- 49 *Detik*, "Kawan pembobol ATM dibekuk, 2 Pelaku Didor", 29 April 2009.
- 50 *Acehindependent*, "Pencuri Sepeda Motor Nenek Didor", 29 April 2009.
- 51 *Indosiar*, "Satu Terpaksa Ditembak, Tiga Perampok kambing Ditantang", 21 April 2009.
- 52 *Detik*, "Specialis Pembobol Kamar Hotel terjungkal di Dor Polisi", 17 April 2009.
- 53 *Kapanlagi*, "Polisi Tembak Seorang Pencuri Kabel Telepon", 8 April 2009.
- 54 *Banjarmasin Post*, "Polisi Tembak 2 Pencuri Motor Teluk Tiram", 7 April 2009.

55 See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 11(e) and 11(c), respectively.

56 Kompas, "Pantat Tertembak Polhut, Kusrin Tewas", 5 November 2008.

57 See National Police Commission and the University of Diponegoro Semarang, "Dasar-dasar pemikiran arah kebijakan Polri – Potensi, Kompetensi, Performansi, dan Indikator Pencapaian tujuan Polri", pp66-67.

58 See "Dasar-dasar pemikiran arah kebijakan Polri", Supra No57, p67.

59 See the Human rights Act, Law No39/1999, Articles 4, 9, 33.2, and 35.

60 See Principle 5 of the UN Basic Principles, which states, among other things, that law enforcement officials must: "(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; and (b) Minimize damage and injury, and respect and preserve human life.

61 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 13 and 14.

62 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 15 and 16.

63 See 'Understanding Policing', Supra No4, p138.

64 '86' is slang term meaning to 'make peace' or to 'come to a mutual understanding'. Although its origins are disputed, this term is used exclusively in interactions with the police. The form of settlement is generally a bribe, but can also be sexual intercourse.

65 Amnesty International interview, July 2008.

66 See Amnesty International, "Jailed for raising a flag - Prisoners of Conscience in Maluku", Index: ASA 21/008/2009), March 2009.

67 Amnesty International has repeatedly expressed concerns over reports of torture and other cruel, inhuman or degrading treatment (other ill-treatment) by police during arrests, interrogation and/or detention. These concerns were summarized in an Amnesty International's Briefing to the UN Committee against Torture which was published in April 2008. The report highlighted the weaknesses of the Criminal Code, the Law on Human Rights Court (Law No26/2000) and the Criminal Procedure Code in providing adequate safeguards to deter the use of torture and other ill-treatment in all circumstances.

68 Article 18 of the Criminal Procedure Law clearly states that the task of making an arrest shall be executed by officers of the State Police of the Republic of Indonesia by showing their assignment letters and giving the suspect the arrest warrant which contains the suspect's identity and states the reasons for arrest and a brief explanation of the criminal case of which he is suspect and the place where he is to be examined.

69 Amnesty International Interview, July 2008.

70 Report of the Special Rapporteur on Torture, Mission to Indonesia, 7 March 2008, para 34.

71 See the UN Standard Minimum Rules for the Treatment of Prisoners 8(a): Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women. The whole of the premises allocated to women shall be entirely separate. See also the Human Rights Committee, General Comment 28 on the equality of rights between men and women: "... States parties should report on whether men and women are separated in prisons and whether women are guarded only by female guards."

72 Amnesty International interview, July 2008

73 ICCPR, Articles 4(1) and 4(2).

74 Amnesty International is also concerned with the restrictive definition of torture in the Law on Human Rights Court, and that acts of deliberate cruel, inhuman or degrading treatment or punishment are by and large disregarded by the Law. See Amnesty International's Briefing to the UN Committee against Torture, Supra No17.

75 "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions". Article 1.1 UNCAT.

76 Report of the Special Rapporteur on Torture, Supra No70, para13.

77 See Article 404 of the Draft Criminal Code on Acts of Torture (penyiksaan). Weblink: <http://www.legalitas.org/database/rancangan/2005/BUKU%20KEDUA%20kuhp.pdf>, accessed on 12 May 2009. The current Article should amend provisions including the death penalty as a possible punishment for acts of torture.

78 See Amnesty International's Briefing to the UN Committee against Torture, Supra No17.

79 See "Concluding observations of the Committee against Torture: Indonesia", UN Doc. CAT/C/IDN/CO/2, 2 July 2008, para13.

80 See Amnesty International's Briefing to the UN Committee against Torture, Supra No17.

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

82 UN Doc. A/RES/43/173.

83 Amnesty International interview, July 2008.

84 Amnesty International interview, July 2008.

85 Amnesty International interview, July 2008.

86 Amnesty International interview, July 2008.

87 Amnesty International interview, July 2008.

88 CEDAW General Recommendation No. 19, (Violence against Women), UN Doc. A/47/38, 29 January 1992, para. 6.

89 See UN Doc. E/CN.4/1992/SR.21, para. 35.

90 Official translation available at <http://www.komnasperempuan.or.id/public/UU%20No%202004%20PKDRT-%20English.pdf>. For the original version, see State gazette of the Republic of Indonesia of 2004, Number 4419.

91 Human Rights Committee, General Comment 16, Article 17 (Thirty-second session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 142 (1994), para.8.

92 Amnesty International interview, July 2008.

93 In Direktorat Reserse Kriminal Umum Polda Metropolitan Jakarta Raya, "Unit PPA", Weblink: <http://www.reskrim.metro.polri.go.id/profile-ppa.php>, accessed on 14 May 2009.

94 Amnesty International interview, July 2008.

95 Amnesty International interview, July 2008.

96 Amnesty International interview, July 2008.

97 Amnesty International interview, July 2008.

98 See for instance, the protest by the Legal Aid for Health non governmental organization in front of the Police Headquarters. They accused the police of corruption and collusion with medical officers. In "Cops told to solve malpractice cases", Jakarta Post, 7 October 2008.

99 See for instance "Jailed for raising a flag", Supra No66.

- 100 Report of the Special Rapporteur on torture, Supra No70, para29.
- 101 UNCAT concluding observations, Supra No79, para34.
- 102 Medical reports are called "visum et repertum" in Indonesia. They are reports from medical doctors at the written request of the criminal investigator, often the police. These reports can be used during criminal proceedings.
- 103 Amnesty International interview, July 2008.
- 104 See the UN Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions: Principles 12, 13, 14 and 16.
- 105 Amnesty International interview, July 2008.
- 106 Amnesty International interview, July 2008.
- 107 Amnesty International interview, July 2008.
- 108 Amnesty International interview, July 2008.
- 109 Amnesty International interview, July 2008.
- 110 Amnesty International interviews, April 2009.
- 111 Report of the Special Rapporteur on Torture, Supra No70, para22. .
- 112 "(1) In case a suspect or defendant is suspected of or charged with having committed a criminal act which is liable to a death sentence or a prison term of fifteen years or more or for those who are not capable who are liable to prison term of five years or more while they have no legal advisers on their own, the official concerned at all levels of examination in the trial process is obliged to appoint a legal adviser for them. (2) Every legal adviser who is appointed to act as intended in section (1), shall give assistance free of charge." Article 56, Criminal Procedure Code.
- 113 Amnesty International, "10 Basic Standards for Law Enforcement Officials", (Index: POL 30/04/98), Weblink; www.amnesty.org/en/library/info/POL30/004/1998, accessed on 28 May 2009.
- 114 See UNGA Resolution 34/169, 17 December 1979. See also 'Understanding Policing', supra No4, pp 90-91, and Amnesty International "Malaysia: Towards Human rights based policing", p7, supra No18.
- 115 See 'Understanding Policing', supra No4, p 90.
- 116 See Amnesty International "Exploitation and Abuse: the plight of women domestic workers", (Index: ASA: 21/001/2007).
- 117 See for example Sandfort, T. and I. Vanwesenbeeck, 2000, "Omgangsvormen, werkbeleving en diversiteit bij de Nederlandse politie.", 2000, in 'Understanding Policing', supra No4, p 90.
- 118 Global Security.org, "POLRI - Indonesian National Police", Weblink: <http://www.globalsecurity.org/military/world/indonesia/polri.htm>, accessed on 29 May 2009.
- 119 Tempo, "We have not closed the book on Lapindo", interview with National Head of the Indonesian National Police, Bambang Hendarso Danuri, 30 March 2009. Other recent sources indicated that there were 374,526 police officials in Indonesia as of June 2008, in BBC Indonesia, "Rumiah janji tak kecewakan polwan junior", 6 June 2008.
- 120 This calculation is based on a population of 234.3 million inhabitants.
- 121 Bareskrim, the Criminal Investigation Bureau is directly responsible to the National Head of the Indonesian National Police. It oversees and provides forensic and operational support to all the territorially located Criminal Investigation Divisions (Reskrim), and criminal investigators (Reserse). Criminal Investigation Divisions at the regional, district and sub-district level are generally divided into units of five to six officers led by a superior, tackling specific crimes such as narcotics and the theft of specific types of property, such as motorbikes and cars.

122 Amnesty International interview, July 2008.

123 Amnesty International interview, July 2008.

124 Amnesty International interview, July 2008. There are about 11,700 women police official in "Gender Mainstreaming di Kepolisian", Institute for Defence Security and Peace Studies", June 2008.

125 See International Crisis Group, "Indonesia: National Police Reform", Website: http://www.crisisgroup.org/library/documents/report_archive/A400239_20022001.pdf, accessed on 11 May 2009.

126 See Police Regulation ST/389/VIII/2003, August 2003.

127 See "Gender Mainstreaming di Kepolisian", Supra No124.

128 Report of the Special Rapporteur on Torture, para22, Supra No70.

129 Report of the Special Rapporteur on Torture, Supra No70, para37.

130 See Neta S Pane, "Jangan bosan kritik polisi", 2009.

131 Report of the Special Rapporteur on Torture, para38, Supra No70.

132 See "Dasar-dasar pemikiran arah kebijakan Polri", Supra No57, pp43-45.

133 Amnesty International interview, March 2009.

134 Amnesty International interviews, March and April 2009.

135 See the 2003 study by PTIK (Perguruan Tinggi Ilmu Kepolisian) which concluded that to become a member of the police a new recruit had to pay 40 million Rupiah [3858 USD], in Neta S Pane, Supra No130, p66. Also Amnesty International interview, June 2008.

136 See "We have not closed the book on Lapindo", Supra No119.

137 See Partnership for Governance Reform, "Involving outsiders in Police Cadet Recruitment: Observe and report", 23 April 2008.

138 Three senior police officials were sentenced to between 18 and 32 months' imprisonment in 2006 over a bank scandal. In Liputan, "Suyitno Landung Divonis Setahun Enam Bulan Penjara", 6 October 2006, Weblink: http://www.liputan6.com/news/?c_id=2&id=130605, accessed on 6 May 2009.

139 Amnesty International interview in July 2008.

140 See UN Code of Conduct for Law Enforcement Officials, Article 7 and Commentary.

141 See "Dasar-dasar pemikiran arah kebijakan Polri", Supra No57, pp46-47.

142 See Article 7, ICESCR.

143 'Operational independence' a policing term meaning that officers decide whether, when, and how to act with regard to particular situations and to do so without undue influence from politicians or other powerful groups. Operational independence also refers to the need of the police as an institution to have a measure of autonomy on budgetary and legal frameworks and the allocation of resources.

144 See 'Understanding Policing', Supra No4, pp185-220.

145 Amnesty International interview, July 2008.

146 Amnesty International interview, July 2008.

147 Amnesty International interview, July 2008.

148 Amnesty International interview, July 2008.

149 Amnesty International interview, July 2008.

150 See 'Understanding policing', Supra No4, pp204-205.

151 Amnesty International interview, May 2009.

152 Police officers should keep police operations confidential, should not leave their area of work without the permission of their superior, should not use the facilities of the state for their own personal use, use evidence for their own personal use, manipulate the content of a legal case, influence the process of investigation for their own personal benefit, use wrongly their authority including towards people under their protection and use the official premises and other facilities for their own benefit.

153 Amnesty International interview, July 2008.

154 Amnesty International interview, April 2009.

155 See for example the case of Nelson Rumbiak who testified in court in August 2006 that he had been ill-treated during interrogation by police in Jayapura, Papua. He was subsequently beaten by police officers on his way back to prison. See Amnesty International's Briefing to the UN Committee against torture, Supra No17, pp12-13.

156 Amnesty International interview, July 2008.

157 Amnesty International interviews, July 2008 and April 2009.

158 Budi Harjono asked that he be identified by his real name in this report.

159 Previously, police shared the same military rankings as the military. The reform effort by the police has meant that the names of the rankings have changed several times. By calling the District head of Bekasi police a "colonel", Budi Harjono probably means AKBP (Adjunct Senior Police) or Kombes Pol (Senior Police Commissioner).

160 One star police general.

161 Captain refers to a low ranked officer in the military, the equivalent of which would be Adjutant Senior Commissioner (AKP, Ajun Komisaris Besar).

162 Amnesty International Interview, July 2008.

163 See for example the case of six police officials who were sentenced to eight years imprisonment for the murder of a military official by the Makassar District Court, Sulawesi, in April 2009 in Tempo, "Enam Polisi Divonis Delapan Tahun Penjara", 24 April 2009. See also the case of two low rank police officials who were sentenced to six years imprisonment in January 2004. They were found guilty of having tortured to someone to death. It is not known whether the two police officers appealed their conviction and whether they served these terms of imprisonment. In Dr Sadjijono, "Seri Hukum Kepolisian – Polri dan good governance", Laksbang Mediatama", June 2008, pp348-349.

164 See UNCAT Concluding Observations, Supra No79, p4.

165 The trials of police personnel before civilian courts is new. Prior to the 2002 Police Act, the police were subjected to military discipline and military courts. See Dr Sadjijono, "Seri Hukum Kepolisian – Polri dan good governance", Laksbang Mediatama", June 2008, pp346-347.

166 There are only two instances during which the investigation may be conducted by another type of law enforcement officials, 'an investigatory civil servant' (penyedik pegawai negeri sipil).

167 Hartoyo asked that his real name be used in this report. See Amnesty International's Briefing to the UN Committee Against Torture, Supra No17, pp21-22.

168 Amnesty International interview, July 2008.

169 The province of Nanggroe Aceh Darussalam (NAD) lies 1,700 km (1,060 miles) northwest of Jakarta.

170 It is a matter of point that Propam asked a female officer, and not an ordinary officer, to assist Hartoyo in lodging his case. The Special Service Rooms (RPK, Ruang Pelayanan Khusus) for women and children were replaced by the Women and Children Service Units in July 2007. See Police Regulation No. 10/2007.

171 As provided for in the Criminal Procedure Code, in a trial procedure for "light criminal acts" which considers offences for which the punishment is of a jail term of at most six months and/or a fine of at most six months and/or a fine of at most seven thousand five hundred rupiahs, the court shall 'judge at the first and last stage through a single judge except when convicted of robbing independence' (Article 205).

172 'Divisi PROPAM Akan Limpahkan ke Badan Reserse', Tempo Interaktif, 10 October 2006. Weblink: www.tempointeraktif.com/hg/nasional/2006/08/10/brk,20060810-81579.id.html, accessed on 28 May 2009.

173 See for instance the case of Nelson Rumbiak, who was attacked by dozens of police officers outside the front gate of the Abepura prison, Papua in August 2006. The Jayapura police disciplinary committee found one police officer, Novril, responsible for the police attack on Nelson Rumbiak, and sentenced him to 21 days of imprisonment. See Amnesty International's Briefing to the UN Committee against Torture, Supra No17.

174 Amnesty International interview, July 2008.

175 See Pane, Supra No130, p112.

176 See "Buku panduan penanganan saran dan keluhan masyarakat (SKM) Komisi Kepolisian Nasional", Kompolnas and the Partnership for Governance Reform, September 2008, p18.

177 See "Komisi Kepolisian Nasional (Kompolnas) – bekerja sama membangun perpolisian demokratis yang profesional dan mandiri", September 2008, p15.

178 See Propatria Institute, "National Police Commission", 9 October 2007.

179 Amnesty International interview, July 2008.

180 Police Regulation No. 1/XI/2007 regarding the Coordination and Cooperation of the Police with Kompolnas.

181 Amnesty International interview, July 2008.

182 For the list of the NGOs, see "Buku panduan penanganan saran dan keluhan masyarakat (SKM) Komisi Kepolisian Nasional", by Kompolnas and the Partnership for Governance Reform, September 2008, p18.

183 Amnesty International interview, April 2009.

184 Amnesty International interview, April 2009.

185 See Articles 7,8 and 9, Law No26/2000.

186 See the Abepura case in Amnesty International's Briefing to the UN Committee against Torture, Supra No17, pp39-41.

187 Indonesian state report to the UPR mechanism. February 2008, para c.

188 Amnesty International interview, April 2009.

189 National Ombudsman, Laporan Tahunan 2007, p35, Weblink: <http://www.ombudsman.go.id/index.php/publikasi.html>, accessed on 9 May 2009.

190 National Ombudsman, Laporan Tahunan 2007, p32, Supra No189.

191 National Ombudsman, Laporan Tahunan 2007, p33, Supra No189.

192 Translation into English of the Law No37/2008, available on Website: <http://www.ombudsman.go.id/index.php/publikasi.html>, accessed on 10 May 2009.

193 See for example Edy Prasetyono "Keamanan Nasional, Tataran Kewenangan, Penggunaan Instrumen Keamanan dan keamanan Manusia", May

2005, p14; The Jakarta post, "New Ministry proposed to oversee police", 22 January 2007, and the Jakarta post, "Police need to learn from turbulent past", 16 January 2007. See the Almanac on Security reform, Supra No10, p63.

194. In May 2008, following an incident where members of the police force ill-treated students from the National University (UNAS, Universitas Nasional), the Rector of the University met with Parliamentarians from Commission III to get their support in urging the Police to carry out a thorough investigation and sanction those responsible. The Commission said that they had requested that the police clarify the incident to parliament and the Commission's head announced that it would establish its own team to conduct an investigation into the incident. See House of People's Representatives, in House of People's Representatives, "Tindak Kekerasan Di UNAS Mencederai Demokrasi", 26 May 2008; and Bisnis Indonesia online, "Tim Pencari Fakta kasus Unas akan Dibentuk", 26 May 2008. Weblink: <http://web.bisnis.com/umum/hukum/1id60362.html>, accessed on 29 May 2009.

195 Regional Heads may be the governor (Kepala Daerah Provinsi); the local regent or Bupati (Kepala Daerah Kabupaten); or the Town representative (Kepala Daerah Kota).

196 In International Organization for Migration (IOM) – Polri Cooperation Newsletter", April 2008, p1.

197 See for instance IOM – Polri Cooperation Newsletter", April 2009, p1.

198 Article 1.7. in the Indonesian National Head of Police Regulation on "Strategies and implementation of Community policing in the performance of the INP duties", N7/2008.

199 Article 7.1, police regulation No7/2008.

200 IOM Newsletter, Supra No196, p4.

201 See Police Decree, Article IV.12.c of SKEP/433/VIII/2006.

202 Article 15.f, SKEP/433/VIII/2006.

203 Article IV, 13 d 1.b in Police Decree No Pol. SKEP/433/VIII/2006.

204 In Tempo, 30 March 2009, supra No119.

205 See "A Reform Strives for Professional Indonesian Police", Indonesian Police, 1 July 1999, p22.

206 See United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/12 (1991).

207 Amnesty International, "10 Basic Standards for Law Enforcement Officials", Supra No113.

208 See UN Code of Conduct for Law Enforcement Officials, Article 7 and Commentary.



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UNFINISHED BUSINESS

POLICE ACCOUNTABILITY IN INDONESIA

The Indonesian National Police Force has made significant progress in becoming an effective, independent body since separating from the Armed Forces a decade ago. Successive governments have enacted key legislative and structural reforms to strengthen police effectiveness in detecting and preventing crime, maintaining public order and promoting the rule of law.

However, despite these positive moves, the police are perceived today as corrupt and untrustworthy. In part, this can be attributed to ongoing reports of human rights violations by the police and the lack of effective internal and external accountability mechanisms. Although some efforts have been made to counter impunity among police officials much more needs to be done.

In this report, Amnesty International examines the extent to which the Indonesian government has failed to develop strong internal and external police accountability mechanisms. Strong mechanisms would help to prevent human rights violations by punishing perpetrators and providing reparations and assistance to victims through a free, fair and transparent process.

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