

**ALTERNATIVE REPORT  
OF THE 2008 UPR RECOMENDATION IMPLEMENTATION FOR  
INDONESIA AS A STATE CONCERNED**

**Submitted in 1<sup>st</sup> Session of 2<sup>nd</sup> Cycle of the  
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**in collaboration with;**

**KontraS, Imparsial, Koalisi NGO HAM Aceh, Demos, CMARs (*Center for Marginalized Communities Studies Surabaya-East Java*), Protection International, PIAR NTT, Arus Pelangi, Serikat Buruh Migran Indonesia, Ardhanary Institute, GAYa Nusantara, KKSP Medan, ECOSOC Rights, Yayasan Pulih, Gandi, Lembaga Dayak Panarung (Central Kalimantan) ECPAT, JALA-PRT.**

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An overview;

**Human Rights Working Group (HRWG)**, The Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG) was established in 2003 by a the majority of NGOs working in different issues to elaborate advocacy works already in place with the aim of maximizing the goals and putting more pressures on the Indonesian government to execute its international and constitutional obligations of human rights in the country.

(AJI Nasional, ALIANSI SIPIL untuk ACEH DAMAI, ASAD, BWI, CIMW, DEMOS, IDSPS, ELPAGAR, ELSAM, ELSHAM-PAPUA, IGJ, IKOHI, ILRC, IMPARSIAL, INFID, INFOHD, Institute of ECOSOC Rights, ITP, SKP, Kalyanamitra, Kapal Perempuan, KBH Bengkulu, KPI, KontraS, KOPBUMI, KRHN, LBH ACEH, LBH APIK, LBH JAKARTA, LBH SURABAYA, LP HAM, LSPP, Mitra Perempuan, Ori Sumatera, PBHI, RACA, RPUK Aceh, Setara Institute, Solidaritas Perempuan, TAPAL, UPC, VHR, WALHI, YAPPIKA, Yayasan KEMALA, Migrant Care, Yayasan KIKIS, Yayasan PULIH, YLBHI, Arus Pelangi, Koalisi NGO HAM Aceh, Ardhanary Institute, PIAR-NTT)

**KontraS (Commission for the Disappeared and Victims of Violence)**, was established in 1998 by Indonesian human rights NGOs and student organizations in response to the increase in political violence and abductions committed toward the end of Soeharto's authoritarian regime. KontraS is working toward a democracy based on people's sovereignty, free from fear, oppression, violence, and human rights violations.

**ELSAM (Institute for Policy Research and Advocacy)**, was established in 1983 in the spirit of encouraging the development of a democratic political order, by means of strengthening civil society through advocacy and promotion of human rights in Indonesia. ELSAM's mission is to promote the existence of a society that respects the values of human rights and democracy and attains social justice as well as gender sensitivity.

**LBH Jakarta (Jakarta Legal Aid Institute)**, was established of the idea addressed on the Indonesian Bar Association (PERADIN) 3rd congress in 1969. It was aimed to provide legal aid for the poor in defending their rights especially the poor which are victim of force eviction, marginalization, lay off and human rights violation in general. The decision on the establishment of The Jakarta Legal Aid Institute and The Public Defender Institute that came into force in October 28, 1970.

**SETARA INSTITUTE**, was founded by those persons who care about elimination or decreasing of discrimination and intolerance based on religion, ethnic, race, skin color, gender, and other social strata as well as increasing solidarity to those who are weak and detriment. SETARA INSTITUTE for Democracy and Peace takes part in urging an open political condition based on the respect on diversity, defending of human rights, elimination intolerance and xenophobia.

**Center for Marginalized Communities Studies (CMARs)**, was established in 2004 from the study forum which involve academics, activists, and the Islamic religious figures whom are concerned about the living of socio-politics-culture in Indonesia after Reformation was decorated which further strengthening the alienation of marginal communities such as; attack against the minority based on religion/faith, marginalization of indigenous people, criminalization of women's body, denial of the existence of LGBTIQ (Lesbian, Gay, Biseksual, Transgender, Interseks, and Queer) community.

**JALA PRT (National Network for Domestic Workers Advocacy)**, is working to defend the domestic workers rights especially women domestic workers through the public policy which protecting and ensuring the workers in the form of Domestic Workers Protection Law to realize the protection system of the domestic workers.

**Koalisi NGO HAM Aceh (Aceh's Human Rights NGO Coalition)**, was established to be the center of civil society movement dedicated to the human rights and peace upright in Aceh by empowering, inform, synergizing the civil society in Aceh, and push the government to fulfill the human rights obligations.

**Demos; Center for Democracy and Human Rights Studies**, begins in 1997 when the Institut for the Studies on Free Flow of Information (ISAI – Institut Studi Arus Informasi ) collaborate with SAREC (Swedish Agency for Research Cooperation) done some research about the democratisation movement in Indonesia. Demos working to improve and develop the capacity of people to promote democracy and human rights.

**Arus Pelangi**, established in Januari 15<sup>th</sup>, 2006 in Jakarta. The establishment of Arus Pelangi was forced by the urgent needs in the circle of Lesbian, Gay, Biseksual, Transseksual/Transgender (LGBT) – individually or communally – to form the mass organization which promote and defend the rights of LGBT.

**Serikat Buruh Migran Indonesia (Indonesia Migrant Workers Union)**, is an organization of Indonesia origin migrant workers (applicant, current workers, and the former) and all the families and individual and organizations who supported. SBMI works to strive the fairness in the system of migrant workers management which take sides on the workers.

**Ardhanary Insitute**, is an research, publishing, and advocating institute about the rights of women Lesbian, Bisexual, and Transexual (LBT) in Indonesia. Established in November 14<sup>th</sup>, 2005 as a co-operation from the same interest community; Indonesia Women Coalition. This institute is focused on the discourse about the crystallization of patriarch culture which has a big contribution in various unfairness received by the women LBT.

**GAYa NUSANTARA**, is a pioneer to the gay organization in Indonesia which openly and proud of the identity without dispute the diversity of sex oriented, gender, and other backgrounds and aspire to realize the social order which welcoming and respecting human rights, diversity of sex, gender, sexuality and sexuality welfare, and based on voluntary, democracy, non-violence, independent, and also openness.

**Imparsial; The Indonesian Human Rights Monitor**, is an NGO which engaged in the issue of monitoring and investigating the Human Rights abuses occur in Indonesia. Imparsial has a mandate to defend every victim of human rights violation with disregard their backgrounds of social origin, sex, ethnicity or race, political view, or religion.

**KKSP Foudnation; Center for Education and Information in the Rights of Children**, is a Non-Governmental Organization which established in 1987 and currently working on the rights of children issue and also cares about the children who are in a difficult conditions.

**The Vision of Pulih Foundation**, is the institution based on psychological healing to the realization of the recovery and strengthening of the community of victims of violence & disasters into a community which is thriving and healthy psychosocially, peaceful, free of fear and violence, democratic, by upholding the values of humanity, peace, Human Rights, social justice and gender equality with re-empowerment of the survivors, families, groups and the community in order to be able to live productive and meaningful lives.

**ECOSOC Rights**, is the institute which focused on the advocacy based on the fulfilling the rights of economy, social and culture to the civil society. ECOSOC Rights was established to heralding human rights analysis as our framework and norm in our research and delivering services toward the public interest.

**GANDI (The Indonesian Anti Discrimination Movement)**, a group of Indonesian Chinese businessmen and executives gathered after the 13 – 15 May 1998 riots against the Indonesian Chinese in Jakarta, Solo, and other cities. KH Abdurrachman Wahid (Gus Dur), who was the President of Nahdlatul Ulama (union of Islam clerics), responded instantly and declaring his support to our plea. GANDI was officiated by Gus Dur on November 6, 1998 at his house (Ciganjur).

**UNIVERSAL PERIODIC REVIEW ON INDONESIA**  
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**The preparation of the report**

1. The present report was prepared by a number of human rights organisations attached to the Indonesian NGO Coalition for International Human Rights Advocacy (Human Rights Working Group, HRWG) and its networks. HRWG comprises 47 member organisations working on a wide range of issues, including women, LGBT, children, freedom religion, economic, and environment.
2. The report has been disseminated to the Indonesian civil society and discussed during the National Workshop on 10-11 November 2011 counted with the participation of various Indonesian CSOs working in different areas across Indonesia and advocacy sectors.
3. The report has been consulted with the National Commission on Human Rights (Komnas HAM) and the National Commission on Violence Against Women (Komnas Perempuan) on 7 and 18 November 2011.
4. A more specific information can be found in various reports prepared by HRWG's members and networks, including the information on the protection of human rights defenders in Indonesia, cases of impunity for human rights violation, and the situation of freedom of religion and belief in Indonesia.

## I. Reviewed UPR recommendations

### Recommendation 2: The implementation of the National Action Plan on Human Rights (RANHAM) in regard to the ratification of international human rights instruments

5. By and large, the ratification plan included in the National Action Plan on Human Rights (RANHAM) 2004-2009 has yet to be implemented.<sup>1</sup>

6. The implementation of the ratification agendas has encountered a number of obstacles. Generally, there are 2 (two) main obstacles:

*First*, the lack of coordination and support among government institutions. For example, the preparation for the ratification of the Rome Statute by the National Commission on Human Rights (Komnas HAM) was not followed-up by the Government and the Parliament, albeit its ratification had been scheduled in the 2004-2009 RANHAM. To date, the Government has yet to respond to the urgency of ratifying the Rome Statute. A ratification agenda tends to be seen as posing a threat to the interests of certain parties.<sup>2</sup> For example, the rejections of the military and the Ministry of Labour towards the ratification of the Rome Statute and the ICMW, respectively.

*Second*, the lack of initiative, consistency, and political will within the Government and the Parliament. This is evident from the fact that the ratification agendas included in the 2004-2009 RANHAM were not prioritised by the Parliament<sup>3</sup> nor included in the 2010-2014 National Legislation Programme (Prolegnas)<sup>4</sup>. To date, there is no sign that changes are to be made in this regard and thus, it is most likely that the ratification agendas in the 2011-2014 RANHAM will be potentially delayed or even unimplemented.

#### **Recommendations:**

- (1) Urge the Government to timely implement the ratification agendas as included in the 2011-2014 RANHAM.
- (2) Urge the Government to strengthen the monitoring and evaluation mechanism of the implementation of the 2011-2014 RANHAM by involving civil society.
- (3) Urge the Government to encourage legislative and executive commitments to support the the process of ratification of international human rights instruments.

#### ***Ratification of the ICMW***

7. In 2011, the Ministry of Foreign Affairs prepared a draft academic paper and a draft law on the ratification of the ICMW. The draft academic paper has been discussed in two formal meetings between the Ministry and civil society.<sup>5</sup> During the meetings, there was still resistance from the Ministry of Labour to the ratification plan; however, the majority of the ministries have agreed and proposed a discussion on the ratification in Parliament by 2011.<sup>6</sup>

### *Ratification of the OP-CEDAW*

8. The Ministry of Law and Human Rights has prepared a draft academic paper and held a consultation process with various departments and civil society.<sup>7</sup> To date, there is no information on the follow-up to the discussion on the ratification of the OP-CEDAW.

### *Ratification of the OP-CAT*

9. In the 2011-2014 RANHAM, the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment (OP-CAT) is scheduled for ratification in 2013. However, the progress towards the OP-CAT ratification appears to have stalled. Some political and practical complexities have arisen from the fact that there is a reluctance of some detaining authorities to open up all places of detention to outside scrutiny, notably to the international oversight mechanism like the Sub-Committee on the Prevention (SPT).

#### **Recommendation:**

- (1) Urge the Government, through the Ministry of Labour, to support the ratification process of the ICMW, notably the efforts of the Ministry of Foreign Affairs, which enjoy the support of all relevant departments.
- (2) Urge the Government, through the Ministry of Law and Human Rights, to immediately proceed with the preparations for the ratification of the OP-CEDAW and the OP-CAT and simultaneously improve the conditions of places of detention.

**Recommendation 3: Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.**

10. Threats and acts of violence against human rights defenders not only carried out by state actors, but also non-state actors, notably radical Islamist groups and “thugs”.<sup>8</sup>

11. In the context of legislation, there are legislations that have the potential to threaten and hamper the work of human rights defenders: the Criminal Code (KUHP)<sup>9</sup>, Law No. 11 Year 2008 on Information and Electronic Transaction<sup>10</sup> and the Law on Intelligence, which was enacted on 11 October 2011,<sup>11</sup> to name but a few examples. These legislations restrict their right to information, right of opinion, and the right to publication.

12. In Papua and West Papua, article on treason in the Criminal Code has been a ‘favourite’ provision used to threaten human rights defenders. In the period of 2006-2011, there were 49 people charged with treason, where 29 of them are presently serving their sentence in prison and the rest have been released or are still awaiting a legal ruling. In addition, many human rights defenders in Papua have been intimidated in various forms, including threats by text message and telephone, beatings, intimidations, and even murders by an unknown person.<sup>12</sup> At present, Papua and West Papua remain closed to NGOs and foreign journalists.<sup>13</sup>

13. Efforts have been taken by civil society to ensure the protection of all human rights defenders, including encouraging Komnas HAM to create a special desk on human rights defenders which dedicated to the protection of human rights defenders in Indonesia.<sup>14</sup> The

establishment of this desk is still in the process of internal discussion at Komnas HAM. At the level of legislation, the House of Representatives (DPR) has included the drafting and discussion of the bill on the Protection of Human Rights Defenders in its 2014 agenda. However, there is a stiff resistance by some of the members of the Parliament for the bill to be discussed.

**Recommendation:**

- (1) Urge the Government and all its law enforcements to be committed to the protection of human rights defenders
- (2) Urge the Government and Parliament to revise all legislations that threaten the human rights defenders.
- (3) Urge the Government to settle all cases of violence against human rights defenders.
- (4) Urge Komnas HAM to strengthen its internal mechanisms of protection of human rights defenders.

**Recommendation 4: Welcomes Indonesia's reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard.**

14. After more than seven years, the murder case of a prominent Indonesian human rights defender, Munir Said Thalib, is still unresolved. Those who had been prosecuted and tried were merely the field perpetrators. The intellectual actors remain untouchable, including the former Special Forces Commander General/ Deputy V of the State Intelligence Agency (*Badan Intelijen Negara, BIN*), Muchdi PR and the former Head of BIN, Hendro Priyono.

15. Serious impediments to the enforcement of law and justice in Munir Case include the low level of willingness of the Government to live up to and implement its commitments and pledges, the judicial independence and the professionalism of the prosecutors. Furthermore, the Government, on 7 September 2011, stated that Munir Case has been resolved and thus, judicial proceeding will no longer be available, including Supreme Court's Case Review (*Peninjauan Kembali, PK*) of Muchdi PR's Case. This proves that the Government and law enforcement officials have systematically weakened the disclosure of Munir Case.

**Recommendations:**

- (1) Urge the Government and law enforcement officials in Indonesia to reopen and put in their best efforts to ensure the functioning of the legal process and that all intellectual actors are brought to justice.
- (2) Urge the international community, including the European Union (EU) and some countries that have paid a great deal of attention to Munir Case, to continue providing their support and monitoring the efforts of the Government of Indonesia and law enforcement officials to disclose the case.

***Settlement of Past Human Rights Violations Cases***<sup>15</sup>

16. There has been little progress in the effort to settle past human rights violations cases. Komnas HAM had conducted investigations into 5 (five) human rights cases which had been submitted to the Attorney General's Office, namely Trisakti Case (1998), Semanggi I (1998) and Semanggi II (1999) Cases, May 1998 Case, Talangsari Case (1989), and Wasior and Wamena (2000).<sup>16</sup> All of these cases constituted gross violations of human rights. To this end,

Komnas HAM recommended immediate establishment of an ad hoc human rights court in accordance with Law No. 26 Year 2000 on Human Rights Court.

17. The impediments of the settlement of the aforementioned cases lie within the unwillingness of the Attorney General's Office that kept returning the dossiers of the cases to Komnas HAM without any explanation. The Attorney General's Office is supposed to conduct investigations to follow up on Komnas HAM's reports.

18. 18 out of 34 people who were indicted and tried before the Ad Hoc and Permanent Human Rights Courts were convicted at the first instance court but then acquitted by the appeals court.<sup>17</sup> The pro-Indonesian militia leader, Eurico Guterres, the last person sentenced to jail for his involvement in crimes against humanity, was also acquitted in 2008. In some cases, this condition was worsened by the use of military justice system to try low-ranking field perpetrators.<sup>18</sup>

19. In the 1997/1998 abduction and enforced disappearance cases, the Government of Indonesia has yet to implement 4 (four) recommendations adopted by the DPR Plenary Session in September 2009, which urge the President and all relevant state institutions to establish an ad hoc human rights court; to immediately locate the whereabouts of 13 people cited as still missing by Komnas HAM; to immediately rehabilitate and provide compensation to the families of the disappeared; and to immediately ratify the Convention for the Protection of All Persons from Enforced Disappearance as a form of Indonesia's commitment and support to end the practice of enforced disappearance in Indonesia.

20. There are 4 (four) other factors which also affect the settlement of past human rights violations cases.

*First*, the inexistence of human rights courts in Aceh and Papua.<sup>19</sup> *Second*, the revocation of Law No. 27 Year 2004 on Truth and Reconciliation Commission. The absence of a Truth and Reconciliation Commission (TRC) at the national level has become the reason of the delay in establishing truth and reconciliation commissions at the local level, namely in Papua and Aceh. The Ministry of Law and Human Rights has initiated the re-drafting of a Truth and Reconciliation Commission Bill. The enactment of the Bill has been included in the 2011 National Legislation Program Plan.

*Third*, the lack of a vetting mechanism in the military (TNI). This is related to the conferral of strategic positions to the Indonesian military personnel who were allegedly involved in the cases of past human rights violations such as Lieutenant General (TNI) Sjafrie Syamsuddin.<sup>20</sup>

*Fourth*, the application of the unrevised Law No. 31 Year 1997 on Military Court. The Law has been widely used to protect the perpetrators with military background in many cases of past human rights violations; for example, military proceeding of the Rose Team (*Tim Mawar*) in the 1997/1998 abduction and enforced disappearance cases.

**Recommendations:**

- (1) Urge the Government to follow-up on the establishment of the human rights courts in Aceh and Papua in accordance with the mandate of Law No. 26 Year 2000 on Human Rights Court.

- (2) Urge the Government to immediately discuss the Bill on Truth and Reconciliation Commission.
- (3) Urge the Attorney General to follow-up on Komnas HAM's investigation reports.

### ***Impunity for the Settlement of May 1998 Riots***

21. In regard to the CERD Committee's recommendations,<sup>21</sup> to date, no legal measures have been taken by the Government of Indonesia to resolve May 1998 riots case. Whereas, the investigation report of the Joint Fact Finding Team (*Tim Gabungan Pencari Fakta, TGPF*), which was established by the Government in 1998 and that of the Ad Hoc Investigation Team for May 1998 Riots, which was established by Komnas HAM in 2003, concluded that 13-15 May 1998 riots constituted gross human rights violations, including racial-based violence. Such violations were carried out in a systematic and widespread manner.

22. There is no initiative from the Government, notably Attorney General's Office, to process the case. It was recorded the Attorney General's Office has twice returned the dossiers of the case to Komnas HAM. The DPR has also contributed to the stagnation in the settlement of the case by not taking any initiative to recommend the establishment of an ad hoc human rights court for May 1998 Case.

**Recommendation:** Urge the Government to implement the recommendations of the CERD Committee to follow-up on the legal proceedings against the perpetrators of violence in the May 1998 riots.

### ***Impunity for Violence against Ahmadiyya***

23. In the past three years, there has been an increase in attacks and acts of violence against the Ahmadiyya community. In the period of 2008-2010, the number of violations against the Ahmadiyya reached 271 cases and continues to increase in 2011.<sup>22</sup> The violations include, among others, attacks on the Ahmadiyya community in Cisalada, Bogor, West Java; attacks on the houses of Ahmadiyya community in Kuningan; assaults and acts of violence which had resulted in the killings of Ahmadiyya people in Cikeusik, Banten. All of these cases have been reported to the Government and the law enforcement officials (police). Disappointingly, only a few cases were legally processed where the perpetrators were convicted. Judicial process and punishment of perpetrators of the aforementioned violations has been carried out not in a fair and impartial manner and thus, has failed to bring justice to the victims given that the perpetrators merely received a light sentence. As a result, such judicial proceedings provided no deterrent effect on the perpetrators as well as other intolerant groups. Worse, in the Cikeusik and Cisalada cases, instead of being compensated, the victims were criminalised and punished with a heavier sentence.<sup>23</sup>

**Recommendation:**

- (1) Urge the Government to provide protection to the Ahmadiyya community in Indonesia.
- (2) Urge the law enforcement officials to follow-up on all complaints of the victims.
- (3) Urge the Government and the law enforcement officials to bring justice to the victims by punishing the perpetrators.
- (4) Urge the Government to provide remedy to the victims.

**Recommendation 5: While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.**

This recommendation has yet to be fully implemented as attacks, intimidations and discriminations remain directed against specific groups, including religious minority groups; faith and belief groups; migrant workers; and LGBTIQ.

### ***Violation Discrimination against Religious Minority Groups and Faith and Belief Groups***

24. Fundamentally, the 1945 Indonesian Constitution and other legislations, including Law on Human Rights, Law on Child Protection, and Law on the Ratification of the International Conventions, provide the protection and respect for the right to freedom of religion or belief. Some provisions even have accorded such a right the status of a non-derogable right. On the other side, however, there are provisions that restrict the exercise of the right to freedom of religion or belief and thus, violate one's human rights, such as Law No. 1/PNPS/1965 on the Prevention of Religious Abuse and/or Defamation, which only recognises 6 (six) official religions and criminalises religious practices which considered not in accordance with the Law. For the past couple of years, violations of the right to freedom of religion or belief have taken the forms of restrictions of the establishment of places of worship, acts of violence against the Ahmadiyya community, religious defamations, and weak role of the Government officials to protect and respect for the right to freedom of religion and belief.<sup>24</sup>

25. Accusing religious minority groups of being deviant sects has been used to conduct acts of violence against such groups in the society. At first, it was the decision of the Indonesian Ulema Council (*Majelis Ulama Indonesia, MUI*), which declared certain groups to be deviant, that gave birth to mass violence against such groups.<sup>25</sup> Nowadays, any person or group can declare certain groups to be deviant and attack such groups without making any reference to MUI's *fatwa*. Instead of protecting the groups, state apparatus tend to follow the demands of the pro-violence and intolerance groups.<sup>26</sup>

### ***The Absence of Protection of the LGBTIQ***

26. The reluctance of a notary or other competent authorities to include the word lesbian, gay, bisexual, transgender or transsexual in the establishment act of the organisation, despite no provision prohibits such an inclusion, has hampered the process of legalising the organisation. In a similar vein, LGBTIQs are also discriminated, notably in regard to their right to personal identities like ID card, driving license and other personal documents.<sup>27</sup>

27. LGBTIQ groups have also been exposed to various acts of violence committed by a group of people in the name of certain religion. In 2010, there were incidents of forced disruption of LGBT meetings:

- a. On 26-28 March 2010, the Islamic Defender Front (FPI) disrupted an international conference held by the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) in Surabaya. No preventive measures were taken by the police to anticipate the attacks. Eventually, the conference had to be cancelled.<sup>28</sup>

b. On 30 April 2010, FPI forcibly disrupted a national human rights training for LGBTIQ held by Komnas HAM and Arus Pelangi. Similar to the case in Surabaya, the police did not take any preventive measures. This incident has been reported to the police and yet no legal proceedings have been taken against perpetrators.

c. In 2010, the 9<sup>th</sup> Q! Film Festival, which run in several cities in Indonesia (Jakarta, Yogyakarta, Surabaya and Makassar), was disrupted by the FPI. In some places, the screenings took place with the protection of the police. Due to permission issue, the screenings in Yogyakarta was eventually cancelled.

28. Acts of violence against LGBTIQ were not only conducted by civilian groups (radical Islamist groups), but also by Government officials:<sup>29</sup>

a. In August 2011, there were acts of violence against 6 (six) transsexual individuals by Batam Centre Municipal Police Unit (Satpol PP). After the arrest, the individuals were taken to Satpol PP's office, stripped, beaten and forced to have sexual intercourse.

b. In April 2009, the police and public prosecutors at Tunjungan Blora Police Sector, Blora Police Resort and Blora District Court sexually abused a lesbian. The lesbian was forced to show her genitals, her breasts squeezed, and forced to show her artificial penis in front of the journalists.

c. In August 2011, a gay, who was beaten by a group of unknown people, was criminalised without a presence of a lawyer at Solo District Court.

#### **Recommendation:**

- (1) Urge the Government to live up to and implement its commitment to respect and protect LGBTIQ.
- (2) Urge the Government to enforce the law and prosecute those who commit violence against LGBTIQ.
- (3) Urge the Government to promote the respect for the rights of LGBTIQ.

#### **Death Penalty against Indonesian Migrant Workers**

29. Many Indonesian migrant workers face the threat of executions in the countries of employment. Based on the data published by the Ministry of Foreign Affairs<sup>30</sup>, there are 303 Indonesian migrant workers who are on death row in various countries, namely: 233 in Malaysia, 29 in China, 28 in Saudi Arabia,<sup>31</sup> 10 in Singapore 10, 1 in Syria, 1 in the United Arab Emirates, and 1 in Egypt. Five out of twenty-eight migrant workers in Saudi Arabia have received death penalty verdicts, namely Sutinah, Siti Zaenab, Aminah, Darmawati and Tuti Tursilawati.<sup>32</sup>

30. In July 2011, the President established the Indonesian Migrant Worker Task Force.<sup>33</sup> Three months after its establishment, the Task Force has yet to show any progress in the release of Indonesian migrant workers who are currently on death row in various countries of employment.

31. A high number of death penalty cases against Indonesian migrant workers are resulted from the poor migration system and the lack of protection mechanism of Indonesian migrant

workers as provided for in the national legislation (Law No. 39 Year 2004). One of the flaws of the Law is that it does not regulate a legal assistance mechanism for migrant workers.

**Recommendation:**

- (1) Urge the Government to live up to and implement its commitment to abolish death penalty in Indonesia.
- (2) Urge the Government to strengthen the protection of migrant workers by providing legal assistance in the countries of destination.
- (3) Urge the Government to conduct diplomacy to prevent death penalty.

***Protection of Domestic Workers in Indonesia***

32. Various studies disclose that the condition of domestic workers in Indonesia is deeply disturbing, given that there is no working hour, no standardised wage, no social protection, and yet they are often subjected to various acts of violence.<sup>34</sup>

33. At the level of legislation, despite the Bill on the Protection of Domestic Workers has been included in the National Legislation Program (Prolegnas) since 2010, the Parliament and the Government have yet to consider the Bill as one of their priorities. It was not until 6 October 2011 that the Bill was finally discussed for the first time. Civil society through *JALA PRT Network* has prepared a draft law on the protection of domestic workers in accordance with ILO Convention 189.<sup>35</sup>

**Recommendations:**

- (1) Urge the Government to speed up the process of enacting the Bill on Domestic Workers in accordance with the standards of ILO Convention 189.
- (2) Urge the Government to ratify ILO Convention 189 as pledged by the President during the 2011 ILC session.
- (3) Urge the Government to promote the protection and respect for the rights of domestic workers.

**Recommendation 6: The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders.**

34. To date, Indonesia's Criminal Code has yet to incorporate torture as defined in Article 1.1 of the UN Convention against Torture as a punishable crime. The long-awaited amendment process of the Criminal Code remains delayed as the Criminal Code draft has been bouncing back and forth between the executive and legislative. As indicated in its 2011 report of the situation of torture practice in Indonesia, KontraS noted that, during the period of July 2010-June 2011, there have been 28 incidents of torture committed by the TNI and police in Indonesia, which include beatings, assaults with electric batons, hitting with a wrench, to name but a few examples.<sup>36</sup> Taking into account the persistent practice of torture, the existence of a legal vacuum with respect to torture would make prosecution for torture impossible; thus fostering a climate of impunity. In order to fill such a legal vacuum, civil society has proposed two feasible alternatives: making a partial amendment to the current

Criminal Code<sup>37</sup> or enacting a specific law that criminalises torture in accordance with the Convention, taking into consideration the principle of *lex specialis*.

35. At least six out of twenty-eight aforementioned cases have drawn public attention to the persistent practice of torture in Indonesia, namely torture case of RMS activists in Ambon; torture case of Hermanus in Maluku; torture case of Charles Mali in NTT; torture case of Aan Susandhi at Artha Graha office; practice of flogging in Aceh; and the disclosure of torture videos (*YouTube*) in Papua.

36. In regard to torture case of RMS activists in Ambon, 13 people were tortured by the Special Detachment 88 Anti-Terror. Victims were physically and psychologically tortured and given a very limited access to their family, legal counsel, healthcare.<sup>38</sup> In the case of Hermanus, victim was subjected to multiple torture sessions at Perigi Lima Resort Police Headquarter and Tulehu Maluku Sector Police station. Hermanus was sentenced to 16 years' imprisonment in Ambon prison for a murder he did not commit.<sup>39</sup> Moreover, Charles Mali was tortured to death on 13 March 2011 by members of 744<sup>th</sup> Infantry (TNI Yonif 744).<sup>40</sup> Aan Susandhi was tortured by two police officers of Maluku Regional Police due to the disclosure of corruption scandals related to Artha Graha's owner, Tommy Winata.<sup>41</sup> There have been 61 (sixty-one) cases of flogging in Aceh (up to 2011) after the enactment of *Qanun Jinayat* which includes stoning for adultery acts.<sup>42</sup> Members of 753<sup>rd</sup> Infantry (TNI Yonif 753), whose acts of torture recorded and circulated on *YouTube* in 2010, were prosecuted using the Military Criminal Code and received a light sentence.<sup>43</sup>

**Recommendation:**

- (1) Urge the Government to speed up the amendment process of the Criminal Code and include the amendment as one of the top priorities in agenda of legislation.
- (2) Urge the Government to carry out a transparent legal process against the torturers.
- (3) Urge the police, TNI and other law enforcement officials to establish an effective internal preventive mechanism.

**Recommendation 7: Capacity-building/cooperation/sharing of best practices: dialogue at the regional and international level, and share best practices, as requested by States during the interactive dialogue.**

***Dialogue between the Government of Indonesia and the European Union (EU)***

37. Dialogues between the Government of Indonesia and the European Union (EU) and also between the Government of Indonesia and Norway should be welcomed as they involve the participation of civil society. Human rights and democracy dialogue between Indonesia and the EU, which was initiated in November 2009, is based on a Partnership and Cooperation Agreement between EU-Indonesia. One of the objectives of such a partnership is to develop cooperation in the area of law and human rights.<sup>44</sup>

In the development, the cooperation has been extended to also cover human rights dialogues. Such a dialogue is aimed at intensifying the discussions of topics of common interest, as well as the development of intercultural exchange and engagement with moderate Islamist groups.

***Dialogue between the Government of Indonesia and Norway***

38. Human rights dialogue Indonesia-Norway, held annually, was initiated in 2002. In 2009, the dialogue decided on three major themes, namely: 1) human rights and the armed forces; 2) inter-religious dialogue and the culture of tolerance; and 3) the rights of the child. In 2010, the dialogue was divided into working groups focusing on the issues of human rights and military; the right of the child and inter-religious dialogue and the culture of tolerance.<sup>45</sup> We extend our support to this process.

39. The aforementioned human rights dialogues are expected to provide support to the Government of Indonesia to promote tolerance and provide protection of the right to freedom of religion or belief. However, it is noted that the results of such dialogues have yet to be concretely and effectively implemented, notably in regard to the right to freedom of religion or belief. Disappointingly, the Government, either directly or by omission, has preserved the existence of violations of the right to freedom of religion or belief.

**Recommendation:**

- (1) Urge the Government to maintain and improve all existing human rights dialogues.
- (2) Urge the Government to always involve civil society in the dialogue process and the evaluation of the results of the dialogue.

***Harmonization of Bylaws with National and International Standards***

40. In terms of harmonisation of legislations, there are many existing bylaws that are not in accordance with human rights standards, including bylaws on the banning of Ahmadiyya activities, discrimination against women, the practice of flogging, etc.

41. Twenty-seven bylaws banning Ahmadiyya activities comprise 5 (five) regulations at the provincial level and 22 (twenty-two) regulations at the regency level.<sup>46</sup> There are also other religious-based bylaws in other regions in Indonesia, including Regulation of Bulukumba Regency No. 6 Year 2003 on Quranic Literacy for Pupils and Students and Bride-to-be and Qanun in Aceh which introduces flogging.<sup>47</sup> Moreover, it is also noted that there were 154 discriminative bylaws against women in 2009, 189 in 2010 and 207 in 2011.<sup>48</sup>

**Recommendation:**

- (1) Urge the Government to revoke all bylaws that are in conflict with human rights principles.
- (2) Urge the Government to abrogate regulations at the national level that not in accordance with human rights principles.
- (3) Urge the Government to implement and strengthen the program of harmonisation of bylaws as enshrined in 2011-2014 RANHAM as well as its evaluation mechanism.

***Protection of Women's Rights***

42. The application of the unrevised Law No. 1 Year 1974 on Marriage has put women not on an equal footing with men, notably in regard to the minimum age of marriage (woman 16 years old and man 18 years), the division of role in the household (man as the head of the household and woman as a housewife), and the permission for husband to practice polygamy. Furthermore, instead of prohibiting the practice of female circumcision, the existence of the Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 on the Medicalization of Female Circumcision has encouraged persistence of such a practice. Law No. 44 Year 2008

on Pornography, which was passed in 2008, has also paved the way for further discrimination against women, notably against those accused of violating the Law (article 8 of the Law and its Elucidation).<sup>49</sup>

**Recommendation:**

- (1) Urge the Government to revise Law on Marriage Law and Law on Pornography in order to be in line with the standards of international human rights instruments.
- (2) Urge the Government to eliminate the medicalization of female circumcision and encourage the socialisation of the elimination of female circumcision.
- (3) Urge the Government to adequately and appropriately restore women victims of violence in accordance with human rights principles.

***Protection of the Rights of the Child***

43. To date, the 1945 Constitution of the Republic of Indonesia does not guarantee basic rights of the child as enshrined in the CRC. There are also a number of laws and government regulations that do not serve the best interest of the child, including Law on Marriage, Law on the Protection of the Child, Law on Population Administration, and Government Regulation on Birth Certificate. Vertically, there is no guidance or technical implementing regulation available to harmonise all child related regulations with existing bylaws at the local level.

44. The Commission on the Protection of Indonesian Children (KPAI) and the Ministry of Women and Child Protection (KPPPA) are the two institutions mandated with the protection of the child. However, both institutions have yet to effectively carry out their protection mandate. In practice, KPAI mainly focus on the monitoring of the implementation of Law on the Protection of the Child and report the monitoring results to the President. KPAI has no authority to follow-up on cases of violence against children (investigation).<sup>50</sup>

45. Generally, problems related to human resources development in the context of the duty bearer include the lack of human resources' capacity in the planning, implementation, monitoring and evaluation of the programmes; the narrow and insufficient perspective and institutional capacity related to the protection of the child; the lack of the capacity of the Government and relevant authorities to support child related programmes; the lack of the capacity of the law enforcement officials in handling children in conflict with the law. This is evident from the fact that children are often placed together with adults in a cell and that no state apparatus perpetrators are prosecuted.<sup>51</sup>

**Recommendation:**

- (1) Urge the Government to strengthen and enhance the mandate of KPAI in regard to the handling of cases of violence against children.
- (2) Urge the Government to create a child protection policy.
- (3) Urge the Government to strengthen the capacity and paradigm of child protection of Government officials both at the central or local level.

***Protection of Indigenous Peoples***

46. To date, conflicts between indigenous peoples and peasants and palm oil plantation companies are persistent. Such conflicts include expropriation of *adat* lands,<sup>52</sup> land conflicts,

and criminalisation of indigenous people and peasants. Sawit Watch noted that every year, there has been an increase in agrarian conflicts in the area of palm oil plantations. Throughout the year 2010, there were 660 cases of agrarian conflicts and around 240 cases in 2009. In a similar vein, criminalisation of people taking part in the conflicts increased from 112 people in 2009 to more than 130 people in 2010.<sup>53</sup> The increase in the number of agrarian conflicts was resulted from the issuance of the right to cultivate for palm oil plantation companies, which allowed them to use any kinds of means to confiscate peoples' lands to be used as palm oil plantations.<sup>54</sup>

47. The aforementioned facts show that there are no efforts from the Government to protect indigenous people group as recommended by the CERD Committee.<sup>55</sup>

### ***Response to the Voluntary Commitment***

48. Civil society welcomes the voluntary commitment of the Government of Indonesia to involve civil society in the socialisation of the recommendations of the UPR. However, it is regrettable that such a commitment is not sustainable. The available translation and publication of the UPR and treaty bodies' recommendations are very limited.<sup>56</sup>

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<sup>1</sup> Consequently, the 2011-2014 RANHAM reinserts all unimplemented ratification agendas, the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment (OP-CAT) (2013); the Rome Statute of the International Criminal Court (2013); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (2014); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) (2014); the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography (2011); Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW) (2012); the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict (2011); the 1951 Refugee Convention (2014); the 1967 Protocol Relating to the Status Refugees (2014); the Convention on the Prevention and Punishment of the Crime of Genocide (2014); and the International Convention for the Protection of All Persons from Enforced Disappearance (2014); and the Convention on the Rights of Persons with Disabilities (CRPD) (scheduled in 2011)

The majority of the members of Commission VII DPR have agreed to ratify the CRPD. This intention was stated during the meeting between the Minister for Foreign Affairs, Commission VII DPR, and the Minister of Law and Human Rights. <http://www.thejakarta.post.com/news/2011/10/19/ri-ratifies-un-convention-rights-persons-with-disabilities.html>

With a purpose of ensuring that 2011-2014 ratification agendas are be fully implemented, civil society has established working groups for the ratification of human rights instruments, including the Working Group for the Ratification of the Rome Statute; the Working Group for the Ratification of the International Convention on the Protection of All Persons from Enforced Disappearance; and the Working Group for Ratification the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The working groups have been actively campaigning, lobbying, and developing academic papers setting out the reasons for ratification in order to accelerate the process of ratification.

<sup>2</sup> 2004-2009 RANHAM Evaluation Baseline Survey, IDSPS-IOM, 2010. Cited from the Evaluation of the Implementation of the 2004-2009 RANHAM and the Ratification Plan of the OP-CAT in the 2004-2009 RANHAM, and the Planning of the 2010-2014 RANHAM by the RANHAM Monitoring Task Force (LBH Jakarta, KontraS, Imparsial, HRWG, LBH Masyarakat, LBH Banda Aceh, LBH Makassar, LBH Surabaya, Partnership for Governance Reform), p. 19, 2010.

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<sup>3</sup> *Ibid.*,

<sup>4</sup> The 2010-2014 National Legislation Program (Prolegnas) plan does not specifically mention about the ratification of certain human rights instruments. The Program only mentions the Bill on the Ratification of International Agreement.

<sup>5</sup> Organized by the Ministry of Foreign Affairs on 15-16 July 2011 and October 2011.

<sup>6</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) is rescheduled for ratification in 2014 according to the 2011-2014 RANHAM. The biggest obstacle to the ratification of the ICMW lies within the Ministry of Manpower and Transmigration which, for the past ten years, has been against the idea of ratifying such a Convention with various reasons not in accordance with the principle of law and the protection of human rights. In the past year, the Ministry of Manpower and Transmigration has been asserting that the Convention will impose an obligation on State to guarantee various rights contained in the Convention to all migrant workers and foreign migrant workers in Indonesia, and that the Convention does not automatically provide protection to Indonesian migrant workers working overseas. This statement can be found in the Letter of the Head of Legal Department of the Ministry of Manpower and Transmigration which was addressed to the Center for Research and Development of Economic, Social and Cultural Rights, Ministry of Law and Human Rights. Letter No. B.359/SJ/HK/2005, dated 12 September 2005. The Ministry of Manpower and Transmigration remains firmly of this view, despite the Ministry of Foreign Affairs has pointed out the importance of becoming a State Party to the Convention.

<sup>7</sup> Organized by the Ministry of Law and Human Rights on 27 July 2011.

<sup>8</sup> Attacks during the Remembrance Day of Pancasila in 2008 in front of the National Monument (Monas) by the Islamic Defenders Front (FPI); the disruption of discussions on pluralism which was organised by Setara Institute in Bandung (2010) and Surabaya (2011); and the attacks on human rights activists during the judicial review of Law No. 1/PNPS/1965 on the Prevention of Religious Abuse and/or Defamation at the Constitutional Court (2009).

<sup>9</sup> Some of the provisions in the Criminal Code remain used to threaten the work of human rights defenders, including articles 310, 311 and 315 on criminal defamation; and articles 154, 155, 160, 161, 207 and 208 (*hatazaai artikelen*). The Constitutional Court ruled that articles 134, 136, and 137 are found to be contrary to the Constitution and thus, have no legal force. (Decision of the Constitutional Court No. 013-022/PUU-IV/2006). Usman Hamid, Former Coordinator of KontraS, was reported to the police for violating articles 310 and 314 of the Criminal Code. Two other activists of the Indonesia Corruption Watch (ICW), Emerson Yuntho and Illian Deta Artha Sari, were accused of committing defamation against the Attorney General pursuant to articles 310 and 311 of the Code.

<sup>10</sup> Article 17(e.4) of Law No. 11 Year 2008 which prohibits public agencies to open any access to information on the original plan of the sale or the purchase of land or property. Article 27(3) of Law No. 11 Year 2008 on Information and Electronic Transaction prohibits the distribution of electronic information consists of blasphemy. Anyone caught doing so will be sentenced to 6 years' imprisonment. Law No. 4/PNPS/1963 on Securing Printed Materials (books, magazines, brochures). Source: Matrix attachment "Prospek Perlindungan Pembela HAM dalam Hukum Indonesia", p. 219, Human Rights Support Facilities (HRSF: LBH Jakarta, HRWG, KontraS, Yayasan Tifa, Yayasan Pulih), 2009.

<sup>11</sup> Articles which threaten the work of human rights defenders in the Intelligence Law include, among others, Article 32 on the power of the intelligence agency to conduct wiretaps; Article 26 jo. Articles 44 and 45 on the prohibition to deliberately open or leak intelligence's secrets. Anyone doing so will be sentenced to 10 years' imprisonment and or a fine of 500 million rupiahs or 7 years and a fine of 300 million rupiah for those who leaked intelligence secrets. The article does not provide any explanation on the term "open" intelligence secrets, and thus, the application of the article has the potential to criminalise journalists and human rights defenders.

<sup>12</sup> The killing of Ardiansyah Matrais, *Jubi Tabloid* journalist, in July 2010; the stabbing of Banjir Ambarita journalist and Jakarta Globe journalist on 3 March 2011; and the shooting of 2 members of the trade union of PT. FREEPORT Indonesia in Timika on 10 October 2011. More information on the protection of human rights defenders can be found in a separate report prepared by KontraS and Protection International.

<sup>13</sup> Up to this year, three international organisations had to close their field offices in Papua, namely ICRC, Cordaid and PBI. Even if they could enter the regions, they had to go through complicated and obscure procedures..

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<sup>14</sup> MoU between the Human Rights Support Facilities (HRSF) and Komnas HAM, on 14 September 2009.

<sup>15</sup> Detailed developments of the issue after the fall of the New Orde regime can be found in a joint publication of KontraS and the International Center for Transitional Justice (ICTJ), “Derailed (Transitional Justice in Indonesia Since the Fall of Soeharto, Maret 2001, <http://kontras.org/buku/Indonesia%20report-derailed-Eng.pdf>.

<sup>16</sup> *Ibid.*, p. 40.

<sup>17</sup> Ad Hoc Human Rights Court for East Timor (1999) managed to prosecute 18 defendants. Six were convicted but later acquitted by the appeals courts. In a similar vein, Ad Hoc Human Rights Court for Tanjung Priok (1984) prosecuted 14 defendants. Twelve people were convicted but later acquitted. Human Rights Court for Abepura (Papua, 2000) prosecuted two defendants. Both were found not guilty on the first level. “Derailed”, pp. 45-51.

<sup>18</sup> *Ibid.*, pp. 37-42.

<sup>19</sup> The establishment of such courts is based on the mandate provided under Law No. 26 Year 2000 on Human Rights Court and Law No. 11 Year 2006 on Aceh Government and Law No. 21 Year 2001 on Special Autonomy for Papua Province.

<sup>20</sup> Lieutenant General (TNI) Sjafrie Syamsuddin was conferred the position of Vice Minister of Defence of Indonesia. He was allegedly involved in May 1998 Case and Semanggi I and Semanggi II Cases.

<sup>21</sup> CERD/C/IDN/CO/3, 15 August 2007, para. 24.

<sup>22</sup> Setara Institute, “Laporan Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2010”, <http://setara-institute.org/sites/setara-institute.org/files/Reports/110523-110523-negara menyangkal2010.pdf>.

<sup>23</sup> Detailed report on the freedom of religion or belief in Indonesian, which was prepared by the Network for Religious Freedom Indonesia (LBH Jakarta, HRWG, ELSAM, etc.), will be submitted separately to the UPR.

<sup>24</sup> *Ibid.*

<sup>25</sup> The most evident example is the case of Ahmadiyya. After the MUI issued a fatwa declaring Ahmadiyya as a deviant sect, the Government immediately issued a joint ministerial decree followed by Governor’s regulations, such as the Decision Letter of East Java Governor on the prohibition of Indonesian Ahmadiyya Jama’at’s activities in East Java.

<sup>26</sup> This happened to Shia Jama’at pilgrims in Sampang and Bangil, East Java. The investigation report of the Center for Marginalized Communities Studies (CMARs) was published in the Newsletter on Religious Freedom (*Shahadah*), 13 October 2011. The report found that there were 45 acts of intolerance and violations of the right to freedom of religion or belief committed by the state apparatus in the period of 2009-2011, according to which 21 violations were active acts, (by commission) and 24 were violations by omission), especially in the period 2009 to 2011.

<sup>27</sup> In the case of Nadia Ilmira Arkadea, although Batang District Court granted his request to change his gender identity to a woman, Nadia still face discriminations and problems when dealing with law enforcement authorities. Presented by Nadia during a Public Discussion held at LBH Jakarta. The presentation was summarized in LBH Jakarta, “Strategic Impact Litigation Journal”, 2<sup>nd</sup> Edition, February 2011, p. 4.

<sup>28</sup> See Report of Arus Pelangi on the disruption of ILGA Conference. King Oey, “Blocking of the ILGA Conference and the Rise of Hard-Line Muslim Groups in Indonesia”, paper presented at the Southeast Asia Human Rights.

<sup>29</sup> 2010-2011 Gaya Nusantara Monitoring Report.

<sup>30</sup> See <http://nasional.vivanews.com/news/read/228120-inilah-data-303-tki-terancam-eksekusi-mati>. Tuesday, 21 June 2011.

<sup>31</sup> One of Indonesian migrant workers who already executed in Saudi Arabia was Ruyati (54). She was executed on 18 June 2011.

<sup>32</sup> Tuti Tursilawati (27) is most likely to be executed in Saudi Arabia in November 2011.

<sup>33</sup> The Task Force, mandated to help Indonesian migrant workers on death row, is responsible for taking inventory of problems and cases of Indonesian citizens or migrant workers threatened with the death penalty,

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providing advocacy and legal assistance, conducting evaluation, and providing recommendations to the President in regard to the settlement of migrant workers cases who threatened with the death penalty. The third point of the Presidential Decree No. 17 Year 2011. The Task Force will be working for 6 months commencing from July 2011 to December 2011.

<sup>34</sup> <http://www.hrw.org/reports/2009/02/10/workers-shadows>.

<sup>35</sup> Civil society through JALA PRT filed a citizen law suit to the District Court urging the Government and the Parliament immediately to ratify ILO Convention 189; to draft a Bill on Domestic Workers in accordance with ILO Convention 189; and to ratify the ICMW.

<sup>36</sup> KontraS, "Torture: A Heinous Act which is not Seriously Addressed: Report on Torture Practice in Indonesia for the International Day of Support for Victims of Torture", 2011, p. 5-6. <http://kontras.org/data/torture%20english.pdf>.

<sup>37</sup> In the 2010 draft Criminal Code, torture is incorporated in Article 404.

<sup>38</sup> KontraS, "Torture: A Heinous Act which is not Seriously Addressed", *Ibid.*, p. 7.

<sup>39</sup> *Ibid.*, p. 14.

<sup>40</sup> *Ibid.*, p. 14.

<sup>41</sup> *Ibid.*, p. 15.

<sup>42</sup> *Ibid.*, p. 16.

<sup>43</sup> *Ibid.*, p. 18.

<sup>44</sup> "Kerangka Persetujuan Mengenai Kemitraan dan Kerja Sama Menyeluruh Antara Komunitas Eropa dan Negara Anggotanya, di Satu Pihak, dan Republik Indonesia di Pihak Lainnya", sub-paragraph (f), p. 6. Retrieved from [http://eeas.europa.eu/delegations/indonesia/eu\\_indonesia/political\\_relations/index\\_id.html](http://eeas.europa.eu/delegations/indonesia/eu_indonesia/political_relations/index_id.html).

<sup>45</sup> Retrieved from [http://www.norwegia.or.id/News\\_and\\_events/Hak-Hak-Asasi-Manusia/](http://www.norwegia.or.id/News_and_events/Hak-Hak-Asasi-Manusia/).

<sup>46</sup> A list of bylaws prohibiting Ahmadiyya activities will be attached to the special report separately.

<sup>47</sup> Qanun Aceh No. 12 Year 2003 on Khamar (liquor), Qanun No. 13 Year 2003 on Maisir (gambling), Qanun No. 14 Year 2003 on the prohibition of Khalwat (illicit relations).

<sup>48</sup> National Commission on Violence Against Women, "2010 Report on Violence against Women: Teror dan Kekerasan terhadap Perempuan: Hilangnya Kendali Negara", p. 1, Jakarta, 2011.

<sup>49</sup> Report of the CEDAW Working Group Indonesia (CWGI) to the CEDAW Committee, 2011.

<sup>50</sup> As stipulated in article 76 of Law No. 23 Year 2002 on the Protection of the Child.

<sup>51</sup> In regard to the children in conflict with the law, see the report of the Children's Human Rights Foundation (YPHA), "Situasi Umum Anak yang Berhadapan dengan Hukum di Indonesia", p. 8, 2011, retrieved at <http://www.ypha.or.id/web/?p=1033>.

<sup>52</sup> Cases documented by Lembaga Dayak Panarung concerning conflicts between indigenous people and palm oil plantation companies in Central Kalimantan, as in the case of PT. Maju Aneka Sawit, which included *adat* land expropriation (no compensation), destruction of graves and sacred sites of Kaharingan indigenous peoples (2005). Another example was the PT. Arta Buana Sejahtera which hired military and police to intimidate people.

<sup>53</sup> <http://cetak.kompas.com/read/2011/01/05/03582943/konflik.di.perkebunan.sawit.meningkat>

<sup>54</sup> *Ibid.* In Central Kalimantan, 336 licenses for companies were issued in 2009.

<sup>55</sup> CERD/C/IDN/CO/5, paras. 15 and 16. The CERD Committee also recommended ratifying ILO Convention 169 of 1989 and revising national regulations on plantation. At the level of legislation, there have been no efforts from the Government to guarantee the rights of indigenous peoples. There is no intention of the Government to ratify the Convention on Indigenous People and revise Law No. 18 Year 2004 on Plantation.

<sup>56</sup> In 2008, the Ministry of Foreign Affairs translated and published a Compilation of Recommendations of the UN Human Rights Protection Mechanisms (Treaty Bodies, Special Procedures, Universal Periodic review) on Indonesia.