

CRUCIAL ISSUES RELATED TO THE IMPLEMENTATION OF THE CEDAW CONVENTION IN INDONESIA

An independent report prepared by
the National Commission on Violence Against Women
presented on the occasion of
Indonesia's Combined Fourth and Fifth Periodic Reports
to the CEDAW Committee

Jakarta, 19 July 2007

Background

1. The National Commission on Violence Against Women, or commonly referred by its Indonesian acronym as *Komnas Perempuan*, was established in 1998 as a national mechanism for the protection and promotion of women's human rights. It was set up in response to a public demand from women leaders for state accountability in the aftermath of mass rapes and other forms of sexual violence which occurred during a major incident of rioting directed at the Chinese ethnic minority community in May 1998. A presidential decree, No. 181/1998, stipulates the establishment, role and independence of this national commission, which was renewed in 2005 by Presidential Decree No. 65/2005. This national mechanism is recognized in the Combined Fourth and Fifth Periodic Reports of the Indonesian Government (item 2, pg. 4) to the CEDAW Committee.
2. According to Presidential Decree No. 65/2005, the objectives of the National Commission on Violence Against Women are: (a) to develop an environment conducive to the elimination of all forms of violence against women and the enforcement of women's human rights in Indonesia; and (b) to strengthen efforts aimed to prevent and address violence against women and to protect women's human rights.

To accomplish the objectives, the National Commission has the following tasks:

- to promote public awareness about all forms of violence against Indonesian women and about efforts to prevent, address and eliminate violence against women;
- to implement assessment of and research on existing laws and regulations and international instruments relevant to the protection of women's human rights;
- to undertake monitoring activities, including fact finding and documenting all forms of violence against women and violations of women's human rights; to publicize the results of monitoring activities and to take necessary steps towards ensuring accountability for and addressing of issues uncovered in the monitoring process;

- to provide information and recommendations to the government, to legislative and judicial bodies as well as to civil society organizations that facilitate and advocate for the formulation and ratification of a legal and policy framework that is conducive to preventing and addressing all forms of violence against Indonesian women, as well as to the protection, enforcement and promotion of women’s human rights; and
 - to develop regional and international partnerships to improve the effectiveness of efforts to prevent and address all forms of violence against women; including efforts to protect, enforce and improve women’s human rights.
3. As stated in the Presidential Decree, the establishment of this Commission is based on the Constitution and two international conventions which have been ratified by Indonesia, namely the International Convention on the Elimination of All Forms of Discrimination Against Women and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
 4. In carrying out its mandate, the National Commission uses the definition on violence against women as stipulated in the International Declaration on the Elimination of Violence Against Women, and works within a human rights framework. In the eight years of its existence, the National Commission has given special attention to domestic violence, women migrant workers, women in armed conflict situations, displaced women, and women human rights defenders, including indigenous women.
 5. This document is an independent report prepared based on the National Commission’s work as it relates to implementation of the CEDAW Convention in Indonesia, and is submitted to the CEDAW Committee, the Indonesian Government and the general public in Indonesia.

Constitutional, legislative and institutional framework

Legal guarantees

6. In 2005, the Municipality of Tangerang, a city on the outskirts of the capital city of Jakarta and is part of the same wider metropolitan area, enacted a Local Regulation on the Prohibition of Prostitution (No. 8/2005) which criminalizes “anyone whose attitude or behavior are suspicious, therefore creating the impression that he/she/they are prostitutes are prohibited from being in public streets, open fields, hostels, hotels, boarding houses, citizens’ homes/rented homes, coffee shops, recreation sites, theaters, street corners or alleyways or in other locations in the region” (Art. 4.1). In February 2006, the Tangerang Municipality commenced implementation of this law by arresting women who were out in public at night, including housewives who were on their way home. In April 2006, three citizens of Tangerang with a group of civil society organizations submitted a judicial review of this local regulation to the Supreme Court on grounds that its definition of a criminal act violates the Criminal Code, its enforcement procedure is in contradiction to the principle of fair trial and the presumption of innocence until proven guilty, and that the whole regulation is contrary to the CEDAW Convention and human rights.

7. On April 2006, the Supreme Court rejected the request for judicial review of Tangerang's local regulation on prohibiting prostitution on basis that its formulation procedure had been found sufficiently meeting the legal and political requirements, and therefore no review of the substantive content of the this local regulation was considered necessary. The decision was announced to the public in a press conference by the Supreme Court's speaker. To date, the Supreme Court has not provided any documentation fully articulating its decision to the individuals or organizations who initiated the request for judicial review. According to Indonesian law, the Supreme Court is the final judicial review mechanism for a local regulation.
8. The Supreme Court's rejection to carry out a judicial review on the content of a local regulation that is discriminatory against women is a failure to comply by Article 2 of the CEDAW Convention and the constitutional guarantee for all citizens equal status before the law.
9. Under a government system of regional autonomy, more and more local regulations produced by local governments are undermining or are in violation of legal guarantees for women's rights as stipulated in the Constitution, the ratified CEDAW Convention and in various laws on human rights. In 2006, the National Commission identified 25 policies produced by 16 local governments at provincial, district and village levels which constitute discrimination, particularly against women. These policies (in the form of regulations, decrees, official circulars and directives) obligate Muslim women to wear a headcover (*jilbab*); encourage sexual segregation in pools; criminalize women who are in close proximity with males who are not their guardians; criminalize women who create the impression of being prostitutes and those who are in the public area at nighttime. Indonesian women's rights groups have expressed their deep concern over this new development.
10. As part of efforts to end long-standing armed conflict in Aceh, the Government of Indonesia, through a national law, has allowed for Sharia law to be enstated in Aceh. Under this law, the provincial government has introduced regulations, called *qanun*, which define close proximity between a single woman and a man who is not her guardian as a crime, along with possession of alcohol and gambling. A new enforcement agency, called *wilayatul hisbah*, has been established to ensure public compliance to this regulation and a new form of official punishment has been introduced in Aceh which is public flogging. Acehnese women have been sentenced to public flogging for all three types of 'crimes' with a large proportion for violating the regulation on close proximity. An Acehnese woman who publicly expressed her concern about the negative impacts of this regulation has been legally accused of defamation by the *wilayatul hisbah*. When the local court decided she was innocent of the charges, the local prosecutor then appealed to the Supreme Court. The Supreme Court has not decided on this case.
11. The National Commission's Special Rapporteur on Aceh, herself an Acehnese, has concluded that the public flogging is a form of inhuman punishment, in reference to the International Convention Against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment¹. This conclusion is made after obtaining testimonies from women who had been publicly flogged for violating the Sharia-inspired *qanun* of Aceh, and finding that after the public flogging, these women and their children are further ostracized by the community.

12. The national Government of Indonesia has not taken comprehensive nor effective steps to reverse this current trend of local governments producing policies which undermine women's human rights, as required by the CEDAW Convention.
13. In 2006, the National Parliament deliberated on a bill for the elimination of pornography in which the demonstration of sensuality in the (female) body is criminalized, including that expressed through individual act as well as in cultural and artistic performances unless they are carried out in government-approved venues. This bill was vehemently opposed by advocates of women's rights, multiculturalism, freedom of expression, and human rights. Existing laws, such as on public broadcasting, the press, children's rights, and the criminal code, already have specific stipulations targeted at eliminating pornography. A revision of the bill is currently being formulated by the National Parliament.
14. It is yet to be seen whether the Indonesian Government will, as required by the CEDAW Convention, take all appropriate measures to address the various new bills and policies at the national and local levels which could constitute discrimination against women in a comprehensive and proactive manner.

National mechanisms

15. The National Commission on Violence Against Women (hereafter 'the National Commission') is an independent public institution set up by Presidential Decree to create a conducive environment for the elimination of violence against women and the protection of women's human rights. Its existence – created out of the public demand of women rights advocates – is in accordance to Article 2c of the CEDAW Convention, and identifies this Convention as one of its legal basis.
16. The National Commission's organizational structure and programs reflect the following basic approach:
 - violence against women (VAW) as a human rights violation: through its programs on public education and human rights monitoring (including fact finding)
 - VAW as a public health issue: through its program on systems-building for recovery of victims and support for women's crisis centers
 - addressing past VAW as part of a national transitional justice agenda: particularly VAW in armed conflict situations
 - women living free from violence and discrimination as a constitutional right: through its work on addressing discriminatory local regulations and policies

¹ Human Rights Education Association describes inhuman or degrading treatment as “acts that inflict mental or physical suffering, anguish, humiliation, fear or debasement, but that fall short of torture.” www.hrea.org/learn/guides/torture.html

- inter-linkages of VAW and poverty: through its initiatives on women migrant workers and domestic workers
17. The National Commission has played a substantive role in ensuring new national legislation is responsive to the needs of women victims of violence to access justice and rehabilitation, particularly in relation to the Law on Elimination of Domestic Violence (2004), Law on Witness and Victim Protection (2006), Law on Disaster Management (2006) and Law on Special Autonomy for Aceh (2006).
 18. The National Commission has provided strategic support for local women's rights advocates in their effort to influence local policy making in relation to the provision of services and support for women and children victims of violence. In 2006, the National Commission recorded 11 new local policies on provision of integrated services for women and children victims of violence were enacted. This followed six new policies, at the village, district, provincial and national levels, recorded in the previous year of 2005.
 19. As part of its task to monitor violence against women, the National Commission carries out fact finding missions on the basis of complaints/requests from victim groups, as it has done for incidences of mass violence in several areas of natural resource conflicts. In response to the tsunami in Aceh, the National Commission established a new fact finding mechanism which is an adaptation of the UN special rapporteurship system. The National Commission's special rapporteur is appointed to carry out an in-depth documentation of violence against women using a human rights framework for at least one year. The rapporteur is selected for her deep knowledge of the particular area of assignment. To date, the National Commission has appointed three special rapporteurs: for Aceh, Poso and victims' rights in relation to the sexual violence of May 1998.
 20. As part of its reporting task, the National Commission produces annual reports, every March 8, which are data compilations on cases of VAW handled by civil society and state agencies around the country, including women's crisis centers, hospitals, police stations and courts. Out of its fact finding missions, the National Commission has produced reports on violence and human rights violations of women in the context of indigenous communities and environmental conservation sites, pollution of a bay in a gold mining area, impact of mass attacks of a religious minority community. The special rapporteur on Aceh has produced two reports, one on the human rights of female displaced persons (IDPs) in the barracks and other temporary housing situations; and another on women victims' views and experiences in seeking justice. The latter consists of women victims of armed conflict, tsunami and the implementation of the Sharia law. The special rapporteur on the armed conflict area of Poso will be producing her report which includes the impact of peacekeeping security forces on women in the community. The National Commission also produced reports and policy inputs on the human rights situation of women migrant workers, and developed tool for documenting the human rights of displaced women.
 21. The National Commission's reports are presented as a public document to the relevant government agencies and key civil society institutions. Overall, according to the Presidential Decree, the National Commission reports to the President of Indonesia.

22. The National Commission also initiates communication with the UN Special Rapporteurs or Representatives, particularly rapporteurs on VAW, the human rights of migrants and independence of the judiciary, as well as the Special Representative for human rights defenders. The National Commission was actively involved in encouraging and supporting the Indonesian Government to invite the UN Special Rapporteur on the human rights of migrants, who came in 2006, and the UN Secretary General's Special Representative on human rights defenders, who just came in June 2007.
23. The National Commission carries out its work with limited financial support from the Government. During its first five years, less than 15% of its budget originated from the Government – an average of US \$118,000 per year – while the rest was sought from international donor institutions. Last year, Government funding was increased to approximately US \$811,000, although the National Commission cannot access it directly and must do so through the intermediary of the National Human Rights Commission. In terms of honorarium, its commissioners have among the lowest levels compared to other national commissions. During the first five years, the National Commissioners received an approximate of US \$100 per month, while in the last couple of years the amount has been raised to US \$500 per month. By contrast, commissioners in the Human Rights Commission and the Children's Rights Commission receive honoraria at approximately US \$1,400.

Violence against women and trafficking

Incidence

24. The National Commission's latest annual report, which is a compilation of data from 280 institutions (state and community) from around the country, as many as 22,512 cases of VAW was handled by 258 organizations in 32 provinces in 2006. This is an increase from the previous years when 20,391 cases were handled in 2005 and 14,020 cases handled in 2004. The rise in numbers reflect both the heightened knowledge of victims that violence is not tolerated, especially with the ratification of the Domestic Violence Law in late 2004, as well as the increased capacity of national data compilation.
25. Overall, in 2006, of the 22,512 cases, 74% are domestic violence, 23% are violence in the community and as many as 43 cases are state violence against women. Over the years of national data compilation, domestic violence is consistently the highest form of VAW handled by state and community organizations.
26. In post-tsunami Aceh, the National Commission's Special Rapporteur on Aceh reported 146 cases of violence, 38 cases of discrimination, and 7 cases of forced evictions against displaced women living in temporary housing, including in the barracks. In terms of locus, 44% of these cases happened in the public sphere, 42% in the private sphere, and the remaining happened within the jurisdiction of the state. Out of the 146 cases of VAW, 74% was in the form of sexual violence.
27. Among the conclusions in the report on post-tsunami Aceh, it was found that the physical construct of the temporary barracks contributed to women's vulnerability to

violence, and that marital status is one of the most often used methods for discriminating women from receiving needed emergency aid by local authorities.

Legal and Institutional Framework

28. At the national level, two new laws specifically dealing with VAW and trafficking have been ratified. The Law on the Elimination of Domestic Violence, which protects not only family members but also domestic workers, was ratified in 2004. In 2006, a Government Regulation on Victim Rehabilitation was produced as part of the implementing regulations on the Domestic Violence Law. The Law on Elimination of Human Trafficking was ratified in 2006.
29. In terms of the institutional framework for the provision of assistance and support for women and children who are victims of violence, the National Commission records 73 civil society organizations, 26 hospitals, 57 special police desks, 33 religious courts, 39 courts and 30 offices of the general prosecutor. These are the institutions which provide data to the National Commission. They are spread throughout the country.
30. After existing for six years from a bottom-up process pushed by activist retired policewomen, the National Police finally provided official recognition to the existence of the special police desks for women and children victims of violence in July 2007. This special unit is now officially part of the police crime division.

Employment and Poverty

31. In its latest annual report for 2006, the National Commission recorded 1,259 cases of abuse experienced by Indonesian migrant workers, including various forms of discrimination, exploitation and violence. More than 80% of Indonesian migrant workers are women, and 90% of these women are employed in private homes as domestic workers.
32. A national law on the Placement and Protection of Indonesian Workers Abroad was ratified in 2004, in which the principles of equal rights and gender justice are explicitly mentioned. However, this law has no provision which recognizes the specific vulnerabilities of workers employed in private homes (domestic workers) of whom the majority are women and which constitute the majority of Indonesian migrant workers. In addition, the law only recognizes documented migrant workers, therefore leaving a large portion of men and women who are employed abroad without formal documents out of its framework of protection. A national body has been set up to implement this law, however, there has been no indication of any special measure taken to ensure that women migrant workers benefit from the existence of this body in terms of fulfillment of their basic human rights nor any expressed commitment of this body to adopt international human rights standards in carrying out its work.
33. In 2006, the Indonesian Government signed a Memorandum of Understanding with the Malaysian Government on Indonesian migrant domestic workers. As verified by the UN Special Rapporteur on the human rights of migrants, who made an official visit to Indonesia in December 2006, this MOU “covers procedural matters regarding

recruitment, but makes little mention of employee's rights"². Given the majority of Indonesia's migrant domestic workers are women, this MOU does not meet the standards stipulated in the CEDAW Convention, including Art. 11, as well as other relevant human rights instruments.

34. The National Commission is currently leading a regional initiative to review the effectiveness of human rights protection mechanisms for undocumented migrant workers and migrant domestic workers in four countries in Asia: Indonesia and the Philippines as sending countries, and Malaysia and South Korea as receiving countries. This review will be completed in September 2007 and its report will be submitted to the national human rights institutions (NHRIs) and governments in the respective countries, to regional associations of NHRIs and civil society, as well as to relevant international mechanisms for human rights and women's rights.

Marriage and Family Relations

35. Currently, the Constitutional Court is carrying out deliberations and consultations on a judicial review of Indonesia's 1974 Marriage Law. At issue is provisions within this law which make polygamy conditional to the approval of the first wife and a judge of the religious court. The judicial review claims that this conditionality violates the constitutional right on freedom of religion. The National Commission has requested approval to take part in the deliberations, as a concerned party, and its written submission refers, among others, to state obligations as stipulated in the CEDAW Convention.

Optional Protocol

36. Given the rising challenges to women's rights in Indonesia at this phase of its history, the National Commission finds ratification of CEDAW's Optional Protocol by the Indonesian Government of highest priority.

² Report of the Special Rapporteur on the human rights of migrants, Addendum Mission to Indonesia, presented at the Fourth Session of the Human Rights Council, 2 March 2007 (A/HRC/4/24/Add.3), page 11.