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Indonesia: The Protection Against Torture, Violence and Economic, Social and Cultural Rights

Report on the Implementation of the Convention Against Torture by Indonesia

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1. Preliminary Observations

The submission of information specifically relating to economic, social and cultural rights and the socio-economic context to the Committee against Torture forms part of the Programme on Economic, Social and Cultural Rights of the World Organisation Against Torture (OMCT).

This programme focuses on altering the socio-economic conditions that pave the way for the emergence of torture.¹ The United Nations have reiterated the idea that human rights pertaining to the different UN treaty or charter-based mechanisms are indivisible, interdependent and interrelated.² Human dignity and the freedom from violence and attacks upon the human persona cannot fully be guaranteed in societies where economic, social and cultural rights are violated. To this effect, the Programme on Economic, Social and Cultural Rights of OMCT has produced a report titled: *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture*, which forms part of the Report on Indonesia presented by OMCT to the Committee Against Torture.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) implicitly recognises that the prevention of torture involves other measures than solely legislative, administrative or judicial ones. Indeed, article 2 provides that *each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*. The Committee Against Torture has itself recognised the relevance of the socio-economic context to the protection against torture.³

The Report of OMCT on Indonesia to the Committee Against Torture is composed of this report, of the *Comments on the Initial Report of the State of Indonesia Concerning the Implementation of the UN Convention Against Torture*, presented by the Legal Department of OMCT, and of the *Violence Against Women in Indonesia* report, presented by the Women's Programme of OMCT.

1.1 International and regional human rights instruments

The Republic of Indonesia⁴ ratified the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) as recently as 28th October 1998. Indonesia is simultaneously a State Party to a number of conventions relating to economic, social and cultural rights: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and to the Convention on the Rights of the Child (CRC). Although Indonesia has signed the the Optional Protocol of CEDAW (CEDAW-OP), it has not yet ratified it.

OMCT deplors that thus far Indonesia has refused to become a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and to the International Covenant on Civil and Political Rights (ICCPR). Furthermore, Indonesia has signed neither Optional Protocols to

¹ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17; OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture*, 2001

² U.N. Doc. A/CONF. 157/23, 12 July 1993, *Vienna Declaration and Programme of Action*; U.N. Doc. E/CN.4/SUB.2/RES/2001/2; U.N. Doc. E/CN.4/SUB.2/RES/2000/8; U.N. Doc. E/CN.4/SUB.2/RES/1999/29; U.N. Doc. E/CN/RES/2001/31; U.N. Doc. E/CN/RES/2001/30, para 4(a)(d); U.N. Doc. E/CN/RES/2000/9, para 3(a)(d); U.N. Doc. E/CN/RES/1999/59

³ OMCT, *Torture and Violations of Economic, Social and Cultural Rights : Appraisal of the Link and Relevance to the Work of the Committee Against Torture*, 2001; U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f); U.N.Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e), 7(g); U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

⁴ Hereafter, Indonesia.

the CRC. OMCT strongly hopes that Indonesia will accede to these remaining international human rights instruments and their optional protocols.

Indeed the human rights situation within Indonesia, and in particular that of economic, social and cultural rights is extremely worrying. OMCT welcomes the fact that Indonesia, in its quality of State Party to the Organisation of the Islamic Conference (OIC), has signed the 1990 Cairo Declaration on Human Rights in Islam. OMCT notes however that the Cairo Declaration is not legally binding on the signatory States as it is but a declaration.

Indeed, the Cairo Declaration contains a number of precise provisions regarding economic and social rights. Amongst those, the Cairo Declaration provides for the sanctity of human life and the freedom of Man from enslavement, torture and other attempts on liberty and life (art. 1, 2, 11, 12, 18, 19, 20); provisions are also made for the equality of men and women, especially in the labour force (art. 6, 13); labour conditions as well as health, housing and educational provisions are also made, with specific provisions for children (art. 7, 9, 13, 15, 17). In the light of this short synthesis of the Cairo Declaration, which highlights the commonalities between the provisions of this Declaration with those of the ICESCR and some of the ICCPR, OMCT can but regret that Indonesia still refuses to accede to either the ICESCR or the ICCPR. Indonesia has ratified a number of ILO conventions, namely conventions no. 29 and 105 on forced labour; no. 87 and 98 on the freedom of association; no. 100 and 111 on discrimination; no. 138 and 182 on child labour.

1.2 Domestic economic and social rights instruments

The situation of domestic human rights instruments is developed in full in the *Comments on the Initial Report of the State of Indonesia Concerning the Implementation of the UN Convention Against Torture* prepared by OMCT and presented to the Experts of the Committee Against Torture alongside this report. This report will focus on the particular situation of economic and social rights in Indonesia.

Until 18th August 2000, the 1945 Constitution of Indonesia did not encompass any specific and detailed provision regarding economic and social rights. The only provisions regarded the equal status of citizen before the law (art. 27.1), the right to live and work (art. 27.2), the freedom of association and of expression (art. 28), the right to education (art. 31). The 1945 Constitution did not carry any other provision whatsoever, in particular no protection was offered against torture or arbitrary punishment or treatment. In August 2000, the People's Consultative Assembly voted a second amendment to the 1945 Constitution, which was specifically devoted to human rights in Indonesia. The second amendment, while including protection against torture, does not significantly expand the scope of rights with respect to the rights encompassed by the 1945 Constitution.

However, in 1998, the People's Consultative Assembly adopted bill no. XVII/MPR/1998 on a Declaration of Human Rights. The Declaration contains a number of provisions regarding economic, social and cultural rights. Art. 27 provides for the right to material and spiritual welfare; art. 29 for the right to housing and adequate standards of living; art. 31 for social security, art. 32 for the right to property ownership and freedom from arbitrary seizure thereof. A specific article protects against torture (art. 25) and a number of articles guarantee protection of the individual and his/her freedoms (art. 1, 3, 4, 6, 7, 13, 14, 22, 23, 38, 39). Art. 41 in particular protects the rights of indigenous peoples, including their rights over their own land.

In June 1993, a Presidential Decree established and defined the tasks of the *Komisi Nasional Hak Asasi Manusia Indonesia* - National Commission on Human Rights (Komnas HAM). The Komnas HAM mandate was to promote conditions conducive to the implementation of human rights in Indonesia in accordance with the *Pancasila*⁵, the Constitution, the UN Charter and the Universal

⁵ President Sukarno first described the Pancasila ideas in June 1945. They are represented by five principles: national unity of Indonesia, a just and civilised humanity, representative government or democracy, social justice

Declaration of Human Rights. In 1998-1999, a series of executive and legislative documents broadened the operational framework of the Komnas HAM. In 1999, President Habibie issued a Government Regulation granting the Komnas HAM the sole authority to inquire into human rights violations that would subsequently be brought to justice, with which the Komnas HAM is meant to work in close co-operation.⁶ The Komnas HAM deals with all human rights, including economic, social and cultural rights.

The Komnas HAM has been fairly active on the regional field, setting up representative offices in Aceh and East Timor. The Commission has been particularly successful in its missions to Aceh and East Timor. The Komnas HAM further participated in the Commission for Peace and Stability, in the Independent Commission of Investigation into Acts of Violence in Aceh as well as the Commission of Inquiry into Human Rights Violations in East Timor set up by the Government. Regarding East Timor, the Komnas HAM set up a Commission of Inquiry in Post-referendum Violations.⁷

The Komnas HAM is concerned that social conflict in different areas of Indonesia (Moluccas, Mataram, South Malang, Aceh, Irian Jaya or West Papua, etc.) has had a strong negative impact on the human rights situation, in particular regarding the incidence of violence.⁸ This view is shared by OMCT, as it believes that the violation of human rights, in particular economic, social and cultural rights, is conducive to violence and torture. The inter-relatedness of human rights violations and the incidence of torture and other inhumane or degrading treatment is essential.

Due to the socio-economic context prevalent throughout the country, OMCT believes that the measures taken by the State to resolve the issue of torture will remain insufficient as long as the wider context, characterised by poverty, economic hardship, socio-economic imbalances and violations of economic, social and cultural rights, is not addressed.

OMCT welcomes the first report of the Indonesia to the Committee against Torture, which gives a comprehensive account of the various laws and measures that have been enacted to combat torture. The State Report of Indonesia makes scarce reference to the socio-economic context. It mentions the lack of financial resources, particularly in connection with the recent Asian financial crisis, the lack of human resources in the law enforcement and human rights sector, as well as the archipelago situation of Indonesia.⁹ In this regard, OMCT notes that the lack of economic and financial resources cannot, under any circumstances, exempt a country from fulfilling its obligations under the CAT. However, OMCT believes that the relevance of the socio-economic context goes well beyond the situations mentioned in the State's report. OMCT will therefore address this issue by focusing on the current socio-economic situation in Indonesia and its impact on the occurrence of torture and ill treatment.

and monotheism. These interact in a spirit of 'community co-operation' or 'working together'. In recent years, Pancasila has been made part of curricula and is imposed as basis for all organisations in Indonesia.

⁶ *Annual Report 1999*, Komnas HAM, at www.komnas.go.id/english/report/1999/ar_txtc01.html accessed on 24/09/01.

⁷ *Annual Report 1999*, Komnas HAM, at www.komnas.go.id/english/report/1999/ar_txtc01.html accessed on 24/09/01.

⁸ *Komnas HAM Annual Report 1999*, at www.komnas.go.id/english/report/1999/ar_txtc03.html accessed on 24/09/01.

⁹ *Initial Report of the Indonesian State Party to the Committee Against Torture*, 7 February 2001, CAT/C/47/Add.3

2. General Observations

2.1 Political developments

2.1.1 The political background

The political system prevalent in Indonesia after independence is characterised by the domination of Java over the rest of the republic. The outer islands, possessing the majority of Indonesia's natural resources, could not export these directly and did not receive a return on their production from the central State. Unrest broke out in the 1950s as a result of this exploitative economic policy and as a direct consequence of the attempt to establish a national ideology in spite of regional opposition. The Moluccas, Aceh but also west Sumatra and north Sulawesi rebelled and saw an increased militarisation of their administration.¹⁰

In the mid-1960s, the situation escalated and in October 1963 the Anti-Subversion Law was re-activated to quell revolts in outer islands and internal disagreements to the military. In September 1965, following an alleged coup plot by the communists, the military massacred, tortured and imprisoned suspected members and sympathisers of the Communist Party of Indonesia (PKI). Many innocent ethnic Chinese were also killed as they were identified as communists, resulting in a death toll estimated at one million. During this period, presidential and military powers grew in a disproportionate manner.¹¹

In the first half of the 1980s, President Soeharto introduced legislation to force all social and political organisations to adopt *Pancasila* as their foundation. *Pancasila* became the national ideology and has been used by the State to dissolve and repress any social and political organisation that did not comply with this ideology. This was opposed by Islamic groups and by the military that did not want to be identified with the defence of *Pancasila*. This resulted in severe popular discontent and culminated in the military shootings at Tanjung Priok in October 1984. Muslim groups were charged with subversion and the military's capability to enforce law and order was enhanced.¹²

In the 1990s, the New Order regime promulgated legislation destined to deregulate the economic and market activity, however, the government did not modernise its legislation with respect to public liberties. Human rights lawyers, student leaders, trade unionists and campaigners for independence in East Timor, Aceh and West Papua were accused of criminal offences and of belonging to illegal organisations. People fighting for economic, social and cultural rights were subjected to savage repression and often torture by the military.¹³

The Asian financial crisis of 1997 further eroded the economic and social inequalities of the New Order regime. In April 1998, students staged large-scale demonstrations demanding political reforms, rallying other social groups as well. Following the shooting by the police of two peaceful demonstrators in Jakarta in May 1998, the situation escalated into rioting and arson, causing more than a thousand deaths. President Soeharto resigned in favour of Vice-President Habibie.¹⁴

It is in the outer islands and the regions that the repressive and authoritarian nature of the political-military regime of the New Order was most in evidence. The brutal repression of regional movements for autonomy or independence was accompanied by severe human rights violations (arbitrary arrest, torture, violence against women and disappearances). These violations benefited from near total

¹⁰ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹³ *Ruler's Law, Mission to Indonesia*, International Commission of Jurists, October 1999.

¹⁴ *Ruler's Law, Mission to Indonesia*, International Commission of Jurists, October 1999.

impunity, as the judiciary did not bring perpetrators to justice and as the military and the police themselves carried out investigations.¹⁵

2.1.2 The role of the military

On 20 June 2001, President Abdurahman Wahid labelled the TNI and the National Police as institutions prone to abuse human rights, particularly in the past,¹⁶ and that the violations of human rights in Aceh were mostly committed by the State security apparatus from the National Police and the TNI.¹⁷ The TNI is represented at every level of government, from the national legislature down to local authorities. The President argued that the TNI should relinquish its socio-political role as well as its links with the National Police and thus concentrate on external defence.¹⁸

The international pressure borne on Indonesia following the incidents in East Timor have prompted the government to issue new legislation to remedy the inadequacy of the legal system, but if those new laws are not implemented promptly, it will convince the security forces and the civilian establishment that they effectively benefit from impunity and also convince the victims that the State will not honour its obligations to protect them.¹⁹ The TNI continues to play a substantial domestic security and political role. The TNI and the National Police are still accused of human rights violations throughout Indonesia, such as random shootings, rape, torture, beatings and arbitrary detentions to quell the unrest motivated by socio-economic conditions.²⁰ Thus Indonesia risks perpetuating the cycle of violence that threatens its stability and fuels separatist movements. This is a direct result of the inability of the government to assert its authority over the military.²¹

The military²² (TNI) has been heavily implicated in a number of legal or barely-legal business ventures, which represented around 75% of its budget.²³ In areas of unrest, the TNI has been heavily involved in various legal and illegal business practices (smuggling, drug trafficking, weapon sale, extortion and protection racket) thus making conflict zones particularly lucrative for TNI members more inclined to protect their own interests than those of the population.²⁴ The recent reform course that Indonesia has at last introduced threatens the interests of a number of domestic interest groups. These groups have been favoured under the New Order regime of President Soeharto through a system of *kkn* (which stands for: corruption, collusion and nepotism). Today these groups, amongst which the most prominent is the TNI, are fighting to retain their privileges. The TNI is politically powerful and relies heavily on its business interests for funding.²⁵

2.2 The social and economic situation: voluntary imbalance of development

2.2.1 The social and economic situation: less poverty and more inequality

Indonesia's recent process of democratisation and political liberalisation is evolving in a social and political context characterised by widespread poverty, unemployment and social dislocation. These in

¹⁵ *Ruler's Law, Mission to Indonesia*, International Commission of Jurists, October 1999.

¹⁶ 'President condemns human rights abuse', *The Jakarta Post*, 21 June 2001.

¹⁷ 'Absence of laws leads to human rights abuses', *The Jakarta Post*, 12 December 2000.

¹⁸ 'Quit practical politics, Megawati tells TNI', *The Jakarta Post*, 06 October 2001.

¹⁹ *Indonesia: Impunity Versus Accountability for Gross Human Rights Violations*, International Crisis Group Asia Report No. 12, 2 February 2001, Jakarta-Brussels.

²⁰ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

²¹ *Indonesia: Impunity Versus Accountability for Gross Human Rights Violations*, International Crisis Group Asia Report No. 12, 2 February 2001, Jakarta-Brussels.

²² Commonly referred to by its Indonesian acronym TNI or *Tentara Nasional Indonesia*.

²³ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

²⁴ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

²⁵ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

turn foster political instability and violence.²⁶ The attempt by the State security apparatus to maintain its control over the political life and its inability to guarantee a safe environment for Indonesian citizen have caused massive human rights violations and widespread violence and torture. The inability of the government to deliver economic growth in the long-term and the country's financial woes risks to have a severe knock-on effect on large-scale outbreaks of violence and repression.²⁷

In 1999, Indonesia occupied the 102nd position out of 162 countries examined by the Human Development Indicators Report 2001 published by UNDP. Indonesia is thus classified as having a 'medium human development' level.²⁸ The Indonesian GDP per capita represented USD 2,857 and achieved an annual GDP growth rate of 3% for the period 1990-1999, against 4.6% in 1975-1999. For 2000, the GDP growth rate was of 4.8% according to World Bank figures and the forecast for 2000-2004 was for 4.9% growth per annum.²⁹

Before the Asian crisis, Indonesia has had an excellent record in bringing down absolute poverty figures. 27.1% of the population lived below the national poverty line and 7.7% lived with less than USD 1 a day.³⁰ However, while the national per capita income stands at USD 1,000, 80% of the population earns less than USD 250 a year, which represents quite a significant level of poverty incidence.³¹ Regarding poverty figures, the ILO reported that, since the crisis, nearly 100 million people or 48% of the population fell below the poverty line by the end of 1998. This means that there has been a four-fold increase from the official estimate of 11% poverty incidence in 1996. According to ILO estimates, a price increase of 25% in 1999 will push some 140 million people or 66% of the population below the poverty line.³² According to Oxfam International, the implementation of IMF programmes will adversely affect long-standing development problems of Indonesia. Namely, the high maternal mortality rate, the lack of access to safe water for 80 million people and the income disparity.³³

The increasing income gap between the few extremely wealthy and wealthier and the poor is fuelling popular discontent and social unrest. The rioting and disturbances, which have been the hallmark of Indonesia's recent social and political scene, have been caused in part by this unequal distribution of wealth. The Gini index amounted to 31.7.³⁴ UNDP further reported that from 1981 to 1991, unequal levels of income were such that the ratio of the highest 20% of income to the lowest 20% was of 4.9 to 1. Poverty may have been drastically reduced as in other Asian countries, but the wealth differential between rich and poor is widening.³⁵ For many people, it seems clear that the government is taking the side of big business and favouring a nepotistic elite. Addressing the socially explosive issue of comparative poverty rather than absolute poverty (which has been reduced) should be a priority of the Indonesian government. This will become even harder to achieve as austerity measures are being implemented on advice by the IMF. The question of inequality in income distribution needs to be

²⁶ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

²⁷ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

²⁸ *Human Development Indicators*, UNDP, 2001.

²⁹ *Indonesia at a Glance*, World Bank, accessed on 28/09/2001.

³⁰ *Human Development Indicators*, UNDP, 2001.

³¹ *The Cikini Jewels*, Social Watch, IPS Report 1998, www.socwatch.org.uy/1998/english/reports/indonesia.htm accessed on 26/09/2001.

³² *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap3.htm accessed on 30/08/2001.

³³ *The Real Crisis in East Asia*, Oxfam International, April 1998, www.caa.org.au/pr/1998/equity.html accessed on 04/09/2001.

³⁴ The Gini index measures inequality over the entire distribution of income or consumption. A value of 0 represents perfect equality and a value of 100 perfect inequality.

³⁵ *The Cikini Jewels*, Social Watch, IPS Report 1998, www.socwatch.org.uy/1998/english/reports/indonesia.htm accessed on 26/09/2001.

addressed, as it is a cause of violence, repression on the part of the State and ultimately of torture cases.

2.2.2 Developmental imbalance

Although Java represents but 7% of the national territory, it accounts for 60% of the population and it concentrates ¾ of the best irrigated paddy fields.³⁶ Until the end of the 1980s, Java represented the principal source of exports. This imbalance in development is not merely due to natural conditions or to mismanagement; it is the fruit of a declared State policy to favour Java over the outer islands. In the 1970s, development programmes to increase rice production and to limit births were launched in Java and Bali. They were financed by the exploitation of the natural resources of outer islands.³⁷ Thus, the less developed outer islands were exploited to further increase the imbalance of development in favour of the central islands (mostly Java). Not only did the outer islands receive little benefits from their own natural resources, but also, following the discovery of oil and natural gas reserves, the outer islands suffered from the presence of the military. The military, in the name of protecting these resources from rebels, committed grave human rights violations and perpetuated the exploitation of the resources and that of the indigenous populations.³⁸

The discrepancy between the levels of development is also evident when one looks at the disparity between regional GDP per capita figures and regional per capita consumption. Some regions, particularly West Papua, have very high GDP per capita figures but very low per capita consumption,³⁹ therefore indicating that the living standards do not benefit from the wealth creation. The governmental policies of using wealth in one place to further development in another is thus creating unacceptable social discrepancies which lie at the root of social and political conflicts which in turn lead to severe repression and human rights violations by the TNI and National Police.

2.2.3 Transmigration and regional conflict

The promotion of the internal migration or Transmigration⁴⁰ of millions of Indonesians from the most densely populated islands of Java, Bali and Madura to other areas was initiated by the Dutch colonisers and adopted by the Indonesian government following independence. Transmigration resettled a large number of people to Kalimantan, Sumatra, Sulawesi, Moluccas and West Papua.⁴¹ The objectives of the Transmigration were three-fold: to balance the demographic development of Indonesia, to alleviate poverty by providing land to landless populations and to achieve a more efficient exploitation of the potential of the outer islands. Under the 'New Order' regime of General Soeharto, Transmigration intensified in the name of nation-building, regional development and national security. In fact, Transmigration specifically and purposefully targeted areas where independence movements were strong and where historical opposition to the central Javanese power was powerful, namely in West Papua, Aceh and East Timor. Transmigration was in reality a tool of 'internal colonialism'.⁴² On the other hand, many Javanese peasants were coerced into migrating after losing their own land to 'development' projects. Transmigrants also fell victim to the debt trap, forcing them to work in the new areas because of the debt they accumulated in transmigrating.⁴³

In the 1980s, the programme benefited from financial support by IFIs and by bilateral donors, which allowed the programme to expand substantially. Consequently, in 1980-1990, ten times more people resettled than in the previous seven decades.⁴⁴

³⁶ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

³⁷ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

³⁸ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

³⁹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁴⁰ In Indonesian known as *Transmigrasi*.

⁴¹ Renamed *Irian Jaya* by the Indonesian government.

⁴² *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

⁴³ *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

⁴⁴ *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

Minority Rights Group International (MRG), a member of the OMCT network, denounces Transmigration as a developmental mistake, an environmental catastrophe and a human rights violation. The criticisms are three-fold: Transmigration violates the rights of indigenous populations⁴⁵, Transmigration does not produce better living conditions nor does it contribute to development, and Transmigration wrecks the environmental balance of the islands. Indeed, the resettlement is inspired by the will to control and to forcefully assimilate the indigenous populations in the outer islands (West Papua, East Timor, Kalimantan). Resettlement violates customary land rights (*adat*) of the indigenous populations. Moreover, the socio-economic condition of transmigrants did not improve, due to poor planning and inadequate infrastructure for developing a sound agricultural sector and market. The programme is an economic disaster and it diverts up to 40% of available development funds as well as increasing the national debt for no positive result whether in the densely populated areas nor in the settlement areas. Finally, Transmigration imperils the ecological balance of the outer islands, which represent 10% of the world's rain forests.⁴⁶

The systematic theft of indigenous lands, the deforestation and annihilation of indigenous peoples' means of subsistence as well as the social and economic tensions, which find expression in bloody inter-community conflict, are urgent problems, which contribute to the climate of violence and torture in Indonesia. The State repression and crushing of protests against these policies and their devastating consequences has fuelled even more violence and torture, thus entering a vicious circle of protests and savage repression.

In areas where protracted historical movements of independence or autonomy did not exist, opposition to Transmigration from indigenous populations became part of their struggle to recover their cultural identity and to re-appropriate their very own natural resources. In 1996/97 and in 1999, violence broke out between Transmigrants from Madura and indigenous Dayaks in West Kalimantan. In February 2001, violence spread to Central Kalimantan. Transmigrants moved by the hundreds and by the thousands out of Transmigration areas. In these areas that had not, until then experienced autonomy movements, anti-Javanese sentiment peaked.⁴⁷

In the early 1990s, criticism of Transmigration prompted donors and IFIs to pull out of the project. However, the resettlement figures remained high. Today, the picture is contrasted. On the one hand, the new political openness and democratisation means that the post-Soeharto governments cannot anymore coerce people to transmigrate without impunity. On the other hand, the intensive exploitation of natural resources⁴⁸ by the newly empowered local authorities will create a demand for labour and thus give a new impetus to migration. This export-oriented policy of commercial exploitation of resources in 'virgin' territories is actively supported by IFIs.⁴⁹

3. The Asian Crisis and its Repercussion in Indonesia

3.1 The Asian crisis in Indonesia, a historical summary

Economic development in the 1980s and 1990s displayed a number of important weaknesses. Growth did not mean a better situation for all; on the contrary, growth went hand-in-hand with a worsening income distribution. The consumption of over half Indonesia's population remained below USD 1 per person per day.⁵⁰ The government's industrialisation-led programme of development neglected the

⁴⁵ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁴⁶ *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

⁴⁷ *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

⁴⁸ These include: logging, mining, industrial timber and pulpwood plantations, oil palm and industrial shrimp farming.

⁴⁹ *Indonesia's Transmigration Programme – An Update*, Down to Earth, July 2001.

⁵⁰ *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap1.htm accessed on 30/08/2001.

development and diversification of the agricultural sector on which most Indonesian depend for their living. This led to a need to use foreign exchange resources to import basic agricultural commodities (rice, soybean, sugar). This situation, compounded with the rising current account deficit and the need to maintain high interest rates to attract foreign capital, meant that the Indonesian economy was open to a speculative attack on its fragile currency.⁵¹

The Asian financial crisis spread in 1997 by way of a currency crisis in Thailand. The value of the Indonesian rupiah fell by 85%. Inflation pressurised consumer price indexes and reduced real incomes. Unemployment rates shot up, poverty incidence increased and income disparity widened. The impact of the crisis in Indonesia has been tremendous, the consumer price index increased by 60%, employment in the manufacturing sector fell by 9.8%. The poverty index rose from 11% in 1996-1997 to 14% in 1998-1999. Real per capita income fell by 24%.⁵² GDP fell by 14% in 1998, it did not grow in 1999 and it grew by 8% in 2000.⁵³ According to the Asian Development Bank, poverty induced by the crisis peaked in February 1999, plunging an additional 17 million people below the poverty line in less than two years.⁵⁴

In the meantime, Indonesian internal and external debt increased dramatically. The government now owes USD 74 billion to the IMF, the World Bank, the Asian Development Bank (ADB) and to foreign governments. State companies owe USD 10 billion of foreign debt. The government domestic debt in bonds is of USD 70 billion. As the Asian financial crisis hit Indonesia, a number of companies defaulted on the repayment of the debt that they had over-accumulated in the preceding Asian boom, thus the government had to bail these companies. Consequently, in October 2000, the government found itself in possession of bailouts for a total of USD 30 billion.⁵⁵ In the 2001 draft budget, 52% of the total State expenditures were targeted for debt servicing and only 7% for health and education combined. Unfortunately, Indonesia is 'too rich' to be considered by the IMF and the World Bank for the Heavily Indebted Poor Countries Initiative (HIPC-I) which permits debt relief.⁵⁶

In connection with this and with the debt problem highlighted in section 3.1, the Commission on Human Rights declared in its Resolution 2001/27⁵⁷ that *the absolute amounts attained by the foreign debt and debt service of the developing nations indicate the persistent seriousness of the situation, that the episodes of financial crisis in Asia and other regions have caused this situation to deteriorate further and that the foreign debt burden is becoming increasingly unbearable for a considerable number of developing countries* (emphasis added).

The social tensions created by the crisis as well as the attempt by President Soeharto to destabilise the protest movements resulted in widespread violence and looting. Violence was specifically directed towards the Chinese community, traditionally involved in the trade industry. A total of 2,000 people

⁵¹ *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap1.htm accessed on 30/08/2001.

⁵² *The Asian Crisis*, Social Watch, www.socwatch.org.uy/2000/eng/thematicreports/theasiancrisis_eng.htm accessed on 28/09/2001.

⁵³ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

⁵⁴ *Indonesia: Country Economic Review*, Asian Development Bank, 28 April 2000.

⁵⁵ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

⁵⁶ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

⁵⁷ *Effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*, Commission on Human Rights, Resolution 2001/27, E/CN.4/RES/2001/27, 20/05/2001.

were killed.⁵⁸ Food riots erupted in and outside Java in the second half of 1997, sparked by a dramatic price increase of commodities and shortages due to distribution bottlenecks.⁵⁹

3.2 Social and urban unrest.

Indonesia benefited from a prolonged period of economic growth since the arrival of the New Order regime in the mid-1960s. Between 1965 and 1988, economic growth resulted in a GNP per capita growth of 5%.⁶⁰ Until 1993-1996, economic growth remained satisfactory with an average of 7.5%. The percentage of persons living below the national poverty line continued to decline and Indonesia was perceived as the new Asia tiger economy.⁶¹

However, the economic growth was not equally distributed. Institutionalised corruption, inefficiency and alienation of certain social groups were widespread. There is therefore a link between on the one hand, the conflicts that arise from specific socio-economic conditions and, on the other hand the repression carried out by the State security services in the name of private corporations. There exists in Indonesia a collusion between private social conflicts and State violence and torture. The benefits of the economic boom were distorted by corruption, embezzlement and by monopolies controlled by a wealthy elite, often with links to the State. Multi-national corporations (MNCs) also participated in this system, most notably in that they paid bribes and in that they made use of military personnel to protect their facilities.⁶²

The environmental consequences of the over-exploitation of natural resources have created severe problems for the populations living in these areas. Indigenous peoples have not been able to participate in the exploitation of these resources and have met with repression and violence in their attempts to control their resources or to demonstrate against the destruction of the environment.⁶³

The presence of export-orientated development projects that do not contribute to the local economy of the regions of Indonesia continue despite the high social costs and the social unrest that they cause. The pressures for Indonesia to accept and accommodate these projects, including in terms of providing for their security (see section 5), have actually increased with the Asian financial crisis. The IMF's conditions for a rescue package include opening the Indonesian market to foreign investors and liberalising the investment market. The IMF plan is based on an increase of export revenues, which come in part from foreign production sites in Indonesia.⁶⁴ Furthermore, in April 2001, the World Bank has been reported to have insisted that Parliament pass a new law regarding the mining industry to further de-regulate the sector and thus attract more foreign investment.⁶⁵

Most of Indonesia has experienced violent protest, riots, strikes, occupation of sites and outright conflict. The establishment of such development projects, especially in the context of the crisis, creates the basis for social protest and repression. The mix between unfulfilled social demands, degradation of living standards, exploitation, non-respect for labour rights and disregard for basic human rights by the economic sector has prompted many a protest. In turn, these have been cracked down by the National Police, the TNI and other security forces.⁶⁶ Development projects in Indonesia have been established

⁵⁸ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁵⁹ *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap1.htm accessed on 30/08/2001.

⁶⁰ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁶¹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁶² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁶³ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁶⁴ *Paper Pulp Development in South Sumatra*, Down to Earth, www.gn.apc.org/dte/Ctel2.htm accessed on 16/10/2001.

⁶⁵ *Communities and Companies*, Down to Earth, No. 50, August 2001, www.gn.apc.org/dte/50min.htm accessed on 16/10/2001.

⁶⁶ *Paper Pulp Development in South Sumatra*, Down to Earth, www.gn.apc.org/dte/Ctel2.htm accessed on 16/10/2001.

with considerable costs to society, the economy and the community. Serious conflict arose between companies and communities, prompting companies to collude with the repressive apparatus of the State to protect its interests.

3.3 Differential impact between rural and urban areas

A study carried out for the World Bank on the social impact of the Asian crisis⁶⁷ shows that urban areas have been harder hit than rural areas. It also shows that the effects of the crisis are very heterogeneous with some regions withstanding the situation well while others experience great difficulties. In Java, both rural and urban areas have been hard hit by the economic downturn. The main part of outer islands such as Sumatra, Sulawesi and the Moluccas were not significantly affected by the crisis. The report also concluded that there seemed to be little relationship between initial poverty levels and the impact of the crisis on that particular region. Some poor areas of Indonesia fared relatively well during the recession whereas more affluent areas were affected by the crisis.⁶⁸ It seems therefore that the issue of poverty and crisis impact must be disconnected in the case of Indonesia. The Asia financial crisis levelled poverty differences in a complex manner.

According to the report, the single most affected region in the whole of Indonesia is urban East Kalimantan. If one compares the 40% hardest hit provinces and the 40% least hit provinces, it appears that the hardest hit areas are overwhelmingly urban in nature. Urban areas have therefore been much harder hit than rural areas. Of the 20 hardest hit areas, 14 are urban while of the 20 least hit, 13 are rural. Java was hit particularly hard, as all areas of Java are present in the 20 hardest hit areas, be they urban or rural. East Kalimantan and Aceh are amongst the hardest hit rural areas. In the provinces of South Sumatra, Bali, North Sulawesi, Central Sulawesi, the Moluccas and Bengkulu the urban and rural areas alike were least hit by the crisis.⁶⁹ These results signify that the impact of the crisis has been concentrated in urban areas and on the central island of Java.

The explanation for such discrepancies in crisis impact must be found in the discrepancy of development highlighted above. Java and urban centres were integrated into the modern economic system, whereas other areas were either excluded from modernity or they depended upon external sources of income (tourism or export crops).⁷⁰ The hardest hit regions were those that had been favoured by the New Order regime.

However, it is difficult to say that regions that have been least hit by the crisis are absolutely better off than at the same time last year or whether their living standards had decreased in a lesser proportion than their neighbours'.⁷¹ On the whole, official estimates indicate that urban poverty declined faster than rural poverty and since Indonesia is predominantly a rural country the bulk of the population remains affected by this phenomena. Rural poor accounted for two thirds of the total poor in Indonesia in 1996.⁷²

⁶⁷ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World Bank.

⁶⁸ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World Bank.

⁶⁹ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World Bank.

⁷⁰ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World bank.

⁷¹ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World Bank.

⁷² *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap3.htm accessed on 30/08/2001.

4. Right to Housing, Health and Education

As the Report presented by OMCT on the interrelatedness of economic, social and cultural rights with violence and torture⁷³ demonstrates, poor people are disproportionately at risk from violence, ill-treatment and torture. The increase in poverty in Indonesia following the Asian crisis is thus particularly worrying. In 2000, the Special Rapporteur on the Question of Torture argued that *the majority of those subjected to torture and ill-treatment are ordinary common criminals from the lowest strata of society*.⁷⁴ Moreover, the Independent Expert on human rights and extreme poverty of the Commission on Human Rights declared that extreme poverty often brings people to break the law in order to survive.⁷⁵ Poor people fall particularly victim to a vicious circle of destitution and violence.

While the occurrence of torture can be diminished through the adoption of appropriate legal, administrative or judicial measures, an effective approach has to address the structural causes of poverty and therefore the socio-economic context. For instance, the Special Rapporteur on torture recognises that *as long as national societies and indeed the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as the risk of torture is concerned, directly contributing to the vicious circle of brutalisation that is a blot on and a threat to our aspirations for a life of dignity and respect for all*.⁷⁶ The term «other measures», included in article 2 of the CAT, contemplates this possibility.

Furthermore, these economic and social rights cannot be subordinated to any other national policy objective such as economic growth or recovery programmes. The Commission on Human Rights further stated in 2001 that *the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies, growth programmes and economic reform arising from the debt*.⁷⁷ The threat posed to these rights by a series of IFIs-designed packages is important. A number of letters of intent have been signed by Indonesia and the IMF since October 1997 to reduce public debt and to balance the budget. A series of measures have been agreed such as: rescheduling debt repayment, cutting subsidies and expenses, balancing the budget, increasing tax revenues, restructuring private debt to the State, selling government commercial assets and reforming the legal and banking system.⁷⁸ The IMF has further threatened economic and social rights in Indonesia by suspending loans to Indonesia on four occasions since 1997 in protest at Indonesia's slow implementation of the package.

Prolonged drought, the Asian crisis as well as the permanent problems affected Indonesian society have caused human suffering to increase. A great number of people are out of work, there has been a sharp rise in the price of essential food and non-food items as well as a breakdown of the distribution network of basic necessities.⁷⁹ Millions of Indonesian households cannot afford basic health care, nor can they send their children to school or buy enough food to survive. Prices of imported basic

⁷³ OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the Committee Against Torture*, 2001.

⁷⁴ *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, Commission on Human Rights, 11/08/2000, A/55/290.

⁷⁵ Report of the Independent Expert, 25/02/2000, E/CN.4/2000/53.

⁷⁶ *Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment*, 11 August 2000, A/55/290.

⁷⁷ *Effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*, Commission on Human Rights, Resolution 2001/27, E/CN.4/RES/2001/27, 20/05/2001.

⁷⁸ *Bad Debt: The Politics of Financial Reform in Indonesia*, International Crisis Group, ICG Asia Report No. 15, 13 March 2001, Jakarta-Brussels.

⁷⁹ *The Real Crisis in East Asia*, Oxfam International, April 1998, www.caa.org.au/pr/1998/equity.html accessed on 04/09/2001.

necessity goods have increased dramatically, putting them beyond the capabilities of ordinary Indonesian households.⁸⁰

This serves to highlight the central importance of social and economic rights in the overall balance of human rights and in particular in the prevention of torture and other forms of violence. OMCT believes that it is the current disregard by the Indonesian government, a disregard that has been enhanced by the crisis and the action of IFIs, which has caused the violent episodes of torture and ill treatment that have been witnessed in Indonesia.

4.1 Education

The World Bank report on the impact of the Asian crisis on education shows that there has been a negative impact on the right to education. In the case of the provision of education, the impact has been worse in rural and poor areas, in total contrast with the trend observed overall. Although dropout rates have not increased significantly, rural areas report a number of problems. Rural families, even though least hit by the crisis, are more vulnerable as they can accommodate only a small variation in their income. The small economic downturn that they witnessed may have been enough to force them to take their children out of school (to work or because they could no longer afford the fees).⁸¹

4.2 Land and housing issues

In January 1999, it was reported that the billion-dollar paper pulp development site run by PT TEL was being implemented in South Sumatra despite criticism and opposition from grassroots movements. In 1995, PT TEL began to acquire land and, faced with the opposition of small landowners, has started to collaborate with the security forces (TNI and National Police) to coerce landowners into abandoning their plots of land. The Environmental Impact Assessment (EIA), mandatory for such a project, took place in 1997, that is to say two years after the start of the project. This site affects an estimated 4,500 persons living in six different villages. They now face destitution, as they no longer possess land for subsistence crops. A number of protests and demonstrations have taken place over the years but they have decreased in occurrence and intensity through police pressure and repression as well as through acts of intimidation by local authorities. In October 1998, the TNI carried out military exercises in the area, in a direct attempt to further intimidate the landowners and force them to accept the *status quo*.⁸²

Local authorities participate in the confiscation of homes and land. In October 2001, 50 fishing families were evicted from their homes in North Jakarta by public order. The Jakarta Legal Aid Institute reported that the North Jakarta Public Order Office destroyed the homes and the working equipment of fishermen to make way for a luxury development project. The authority alleged that the houses had been built without authorisation. Since 1965, the North Jakarta Office has been trying to evict the fishermen from the village of Ancol, killing a baby in 1985. The Komnas HAM and other organisation intervened in favour of the fishermen and fruitlessly attempted to negotiate. Neither shelters nor schooling have been provided for evictees or their children nor any alternative possibility of livelihood as their work tools have been destroyed.⁸³

Participating in an International NGO Forum on Indonesia Development (INFID) held in Australia in April 2001, a representative from Komnas HAM reported that land disputes are increasing in importance from year to year. In Java in particular, the need for land has dramatically increased. Due

⁸⁰ *The Real Crisis in East Asia*, Oxfam International, April 1998, www.caa.org.au/pr/1998/equity.html accessed on 04/09/2001.

⁸¹ *The Social Impact of the Crisis in Indonesia, Results from a nationwide Kecamatan survey*, S. Sumarto, A. Wetterberg and L. Pritchett, World Bank.

⁸² *Paper Pulp Development in South Sumatra*, Down to Earth, www.gn.apc.org/dte/Ctel2.htm accessed on 16/10/2001.

⁸³ *Ancol homes destroyed in public order operation*, The Jakarta Post, 06 October 2001.

to the weak legal structure, people are left without protection and are evicted from their land.⁸⁴ The representative of the Institute of Dayakology Research and Development reported that major development projects expropriate land from their owners, often by force. Local communities are therefore completely transformed and destroyed as the very basis of their social organisation and means of subsistence, i.e. land, has disappeared. In West Papua and Kalimantan local people are protesting against the land acquisition and expropriation for development projects. These projects only marginalize local inhabitants and deprive them of their livelihood.⁸⁵

A collateral issue of land and housing problems is the question of traditional Indonesian markets. Social Watch reported that in the push for market economics and for the modernisation of the Indonesian economy the traditional markets are obliged to disappear. These traditional markets often contain a jewellery section, which serve as a bank. When poor people have a surplus of cash they buy some piece of jewellery as a safe investment and then sell it when they need cash again. However, these markets are falling victim to the government's 'urban rejuvenation' programmes and to real estate speculation. In the Jakarta Cikini market only 32 such jewellery stands are open out of a total of 479. The neighbouring huge commercial shopping centre has drawn land and customers away. The results of development are not equally shared and the poorest are left with no alternative to deposit and secure their excess of cash. When market traders attempt to oppose eviction and so-called development programmes, more often than not a fire will break out in the market. Then a sign will be put up to claim the site in the name of the government and to announce the launch of a property development project.⁸⁶ These programmes are unequal and contribute to the impoverishment of a significant sector of Indonesian society, namely those who are already poor. They are also quite violent in nature, relying on brute force for their implementation and violating the rights of market traders and customers alike.

4.2 Health

The Asian Development Bank reported that the Asian crisis has hit the poorest populations in a number of regions particularly hard, especially with regards to their nutritional status. The proportion of children most seriously at risk from malnutrition has increased significantly. The very serious impact on education, health and nutrition will not be reversed even if transient poverty returns to pre-crisis levels. The poverty and destitution induced by the crisis will remain imbedded in Indonesian society. Even with a return to pre-crisis incidence levels, about 39 million people will be below the poverty line. Many people's savings and assets have been depleted and will take a long time to recover.⁸⁷

There have been reports in which the police have not respected the right to healthcare and hospital grounds. The Institute for Policy Research and Advocacy (ELSAM) reported that the Indonesian security forces do not respect hospitals and health centres. ELSAM reported that in December 1998, Arpin was detained and heavily tortured by the National Policy following a charge of robbery. He was severely injured and taken to hospital after his family was able to bribe policemen. On 25 December 1998, the police penetrated the hospital compound and attacked Arpin again. He was forced to fight a fellow detainee and then beaten until he fell unconscious.⁸⁸

⁸⁴ *Indonesia, Fighting for Land*, Community Aid Abroad, www.caa.org.au/horizons/h17/indon.html accessed on 04/09/2001.

⁸⁵ *Indonesia, Fighting for Land*, Community Aid Abroad, www.caa.org.au/horizons/h17/indon.html accessed on 04/09/2001.

⁸⁶ *The Cikini Jewels*, Social Watch, IPS Special Report 1998, www.socwatch.org.uy/1998/english/reports/indonesia.htm accessed on 26/09/2001.

⁸⁷ *Indonesia: Country Economic Review*, Asian Development Bank, 28 April 2000.

⁸⁸ *Reporting on the Convention Against Torture*, ELSAM, 1999.

5. The Regional Crisis Within Indonesia

The issue of Indonesian regional conflicts is a complex one. However, there are a number of commonalities between the different conflicts and the different historical periods, which allow us to draw a basic blueprint of such conflicts. Four factors are important in determining the incidence of conflict. Two of these factors are linked to social and economic conditions, thus demonstrating that torture and violence in Indonesia is inextricably dependent on particular socio-economic conditions. These factors are: the imbalance of development and social injustice that exists between Java and the outer islands; the Transmigration policies and their impact on the economic and social rights of the inhabitants of outer islands. The two other factors include: the role of the armed forces in the repression and the political manipulation of religious themes by President Soeharto.⁸⁹

Since President Abdurahman Wahid attempted to assert civilian control over the TNI by sacking top army commanders, the situation in the islands has become more volatile than ever. Since early 2000, when this new policy took effect, the relationship between civilians and the military has become a determinant element in clashes around the country. According to TAPOL, a member of the OMCT network, the problems in the Moluccas, West Timor, West Papua and Aceh were direct and indirect military interventions against President Wahid.⁹⁰ The situation today seems therefore out of control as the civilian authority does not have the power to enforce its control over the TNI, while the TNI seeks to de-stabilise the civilian power to its own ends.

The economic and social problems prevailing in the outer islands as well as the discrepancy that exists between the level of development of the outer islands and the central provinces (mainly Java) have either prompted the inhabitants to demand greater autonomy and sometimes even independence from the central government. It is the brutal and thoughtless repression of these movements by the central government that has resulted in the grave human rights violations and acts of torture that we are witnessing in Indonesia today.

5.1 Sumatra: Aceh and Riau 5.1.1 Aceh

The link between torture and violations of socio-economic rights is particularly in evidence in Aceh as the region and its inhabitants have suffered from economic exploitation and poor socio-economic conditions. As a result of these conditions, they have revolted to demand reforms but these have only been met by repression and random violence on the part of the security forces.

According to Minority Rights Group International (MRG), a member of the OMCT network, since 1988, the conflict in Aceh is estimated to have claimed more than 30,000 lives.⁹¹ However, estimates are difficult to make. Moreover, Acehnese have suffered from other forms of violence, i.e. rape, torture, arbitrary detention and brutality. Since the imposition of Dutch colonial rule in 1913, Aceh has been under a regime whereby its natural resources have been exploited to no benefit in developmental terms to the indigenous population. Furthermore, Aceh's social and cultural distinctiveness from the rest of the island of Sumatra and from Indonesia as a whole gave it a strong feeling of cohesion in the face of repression. In 1953, rebellion led by the All-Aceh Ulama Association (PUSA) started against the incorporation of Aceh in the province of North Sumatra, as PUSA had until then operated independently from the central State. The situation subsided in 1957 and 1959 as Aceh respectively gained provincial and special regional status.⁹²

⁸⁹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁹⁰ *It's the Military, Stupid!*, TAPOL, International Workshop Violence in Indonesia, Leiden, 13-15 December 2000, www.gn.apc.org/tapol/p001213mili.htm accessed on 21/09/2001.

⁹¹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁹² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

The conflict flared up again with the proclamation of the New Order regime by President Soeharto and the centralisation of power. As in the rest of Indonesia, the New Order regime focused development in the hand of a limited number of individuals, i.e. those linked personally to the State apparatus. Moreover, any developmental programmes that escaped this nepotistic rule were managed by and for the central government. The goals of Indonesian national unity as proclaimed by the New Order regime began to be perceived as incompatible with the appropriate economic, social and cultural rights of Acehnese. This feeling was further enhanced by the security and ultimately the repressive measures taken by the Indonesian State to impose its centralised control over the nominally autonomous region of Aceh.⁹³

The discovery of oil and natural gas reserves in 1971 and their exploitation have been determinant in the recent history of Aceh. As a result of the growing interests held by the central government and the military alike in the region. The military control over Aceh was thus increased.⁹⁴ For the indigenous population, the rewards of the discovery of fossil fuels was mostly negative: not only did they not benefit from the returns as they were diverted to the central government, but also they suffered from a more pervasive military presence. Land appropriations occurred without adequate compensations, the labour market was reserved for skilled personnel arriving from outside Aceh and Transmigration caused the problems⁹⁵ mentioned in section 2.2. The exploitation of Acehnese resources was a crucial asset for the central government and it was not prepared to any compromise. Furthermore, MNCs have often sought and benefited from the protection of the Indonesian security forces. It has been alleged that MNCs, through the actions of the security forces, have violated human rights. Please refer to section 6.1.

In May 1998, four major cases of human rights violations have come to court and been tried. Two of these cases concern Aceh. The first Aceh trial took place in January 1999. In the context of the repression of the unrest in Aceh the mob killed seven soldiers travelling in a bus. In retaliation, the TNI raided a number of villages and arrested 38 persons. The soldiers subsequently attacked the prisoners, killing four of them. The commanding officer was charged with assault rather than murder and sentenced to six years' imprisonment.⁹⁶

The second trial in Aceh followed the killing by TNI troops of a religious teacher, Teuku Bantaqiah and of 56 of his followers. President Habibie had recently released Teuku Bantaqiah, an independence activist. The events took place in July 1999 in a West Aceh village. After numerous postponements, the trial took place in April 2000 and resulted in 24 murder convictions. However, senior TNI officers in charge at the time of the killing were said to have disappeared and could not therefore stand trial.⁹⁷

Today, the situation Aceh remains extremely tense and worrisome, even though a Humanitarian Pause has been decreed. TAPOL reported that at least 17,000 persons had been killed in 2001 as of October. Unfortunately, the Indonesian government has failed to translate into decisive action its vocal commitment to human rights. The government has pledged to protect human rights, now it must enforce legally and practically the protection that it offers to those rights.

5.1.2 Riau

As Minority Rights Group International (MRG), a member of the OMCT network, reports, the region of Riau, Sumatra, has witnessed growing demands on the government to share the returns on the exploitation of the natural resources of the region. In April 1999, a demonstration comprising 1,500

⁹³ Indonesian Legal Aid and Human Rights Association PBHI, 2000.

⁹⁴ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁹⁵ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁹⁶ *Indonesia: Impunity Versus Accountability for Gross Human Rights Violations*, International Crisis Group Asia Report No. 12, 2 February 2001, Jakarta-Brussels.

⁹⁷ *Indonesia: Impunity Versus Accountability for Gross Human Rights Violations*, International Crisis Group Asia Report No. 12, 2 February 2001, Jakarta-Brussels.

persons demanded that the Indonesian government deliver its promise to re-invest 10% of all oil revenues in the province itself as Riau represents 15% of the government's revenues.⁹⁸ Riau otherwise threatened to demand independence. Riau is the site of Asia's largest oil field operated by Caltex. It is alleged that the region receives only 0.02% of its contribution to the national budget back in developmental funds.⁹⁹ These demands for independence stem largely from a wish to see a better repartition of the national wealth that should not be made at the expense of peripheral areas of Indonesia.

5.2 The Moluccas¹⁰⁰

In January 1999, inter-religious fighting broke out in this immense archipelago comprising some one thousand islands. According to reports by Minority Rights Group International (MRG), a member of the OMCT network, between 200 to 1,000 persons were killed in the violence that year.¹⁰¹ Since then, violent incidents have escalated into an open conflict between Christians and Muslims. The conflict also spread geographically to the neighbouring state of Sulawesi. The conflict has left 5,000 persons dead and has caused the displacement of over half a million people.¹⁰² The government of Indonesia has thus far been unable to restore civil peace and guarantee the safety of the population in the Moluccas.

Similarly to the situation in Aceh, the destabilising factor was a factor external to the Moluccas. The harmonious social, political and religious balance between the different, and diverse, components of Moluccan society has been upset by the migration of large numbers of Muslims in the 1970s. The old system of power was further eroded until it disappeared and with it the traditional system of inter-religious co-operation. Following the Transmigration of the 1970s, Moluccan society divided along a strict religious line.¹⁰³

The Moluccas, like many Indonesian outer provinces, have had to cope with growing economic imbalance in their societies. The seemingly religious conflict of the Moluccas hides in reality economic and cultural disparities. The Moluccas were at the centre of a huge monopoly scandal in the Soeharto years. The clove monopoly given to his son, Tommy Soeharto, allowed him to divert millions of dollars into private accounts at the expense of clove growers and their co-operatives.¹⁰⁴ The economy of the Moluccas are further in the hand of an elite with close ties to the central island of Java and who export their profits to Java instead of investing them in the region. This created economic and social rivalries which needed only a small incident to ignite into large-scale violence and rioting. The shift in political and hence in economic power from the Christian minority to the Muslim majority, compounded with the creation of vigilante groups on both sides, has contributed to the eruption of open conflict between both communities.¹⁰⁵ The central Indonesian government has been instrumental in creating this situation by fostering Transmigration and by allowing the exploitation of economic resources of the Moluccas by a corrupt elite and to the detriment of the general population.

Finally, the security forces, most prominently amongst those the TNI, have a vested economic and financial interest in the perpetuation of the crisis. As it stands, the TNI is the only economic force present in the Moluccas, which has the capabilities to protect its economic interests and its investments in the area. Thus the TNI benefits directly from the unrest and the instability to further its economic dominance and exploitation of the archipelago. By avoiding to find a solution to the situation the TNI ensures the elimination of any competitor in the area of the Moluccas.¹⁰⁶ Furthermore, the security

⁹⁸ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

⁹⁹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁰ Also known as 'Maluku'.

¹⁰¹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰² Human Rights Watch Report, 2000.

¹⁰³ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁴ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁵ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁶ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

forces have been known to extort 'protection' money while simultaneously fostering instability to justify the payment of 'protection' funds. The TNI has therefore a vested interest in maintaining a climate of instability through acts of torture, violence and other ill treatments.

On the other hand, the sending of security forces, namely the military, to the Moluccas might have appeared as a gesture on the part of the central government, demonstrating its willingness to intervene in the crisis. However, the presence of security forces has but worsened the tension and the violence. TNI or National Police personnel, because of their own personal affinities, have taken sides in the conflict. Members of both forces have become involved in a number of attacks against the opposing faction.¹⁰⁷ Moreover, more generally, the TNI and the central government have chosen to exploit the unstable situation to impose their control over the Moluccas and to foil the democratisation process in the islands.¹⁰⁸

The government of President Wahid has proved unable to begin to address the situation in the Moluccas as its focus is on the situation in Aceh. Vice-President Soekarnoputri, nominally in charge of the situation, did not take any action aimed at defusing the conflict. The declaration of the State of Emergency by President Wahid in June 2000 did not contribute to defusing tension nor did it signify a significant commitment on the part of the Indonesian State to solving the crisis.¹⁰⁹

5.3 West Papua¹¹⁰

The population of West Papua is ethnically and historically distinct from the rest of Indonesia as it is composed of a Melanesian population, present in the Pacific islands, and as it is shared by around 240 different groups. At independence, the Dutch colonial authority refused to hand over West Papua to the newly independent state of Indonesia. While the Dutch had initiated a process of autonomy and independence in West Papua, Indonesia invaded, and occupied the territory in January 1962. An agreement was reached through the United Nations between the Dutch and the Indonesians. The UN Temporary Executive Authority (UNTEA) administered West Papua from October 1962 to May 1963, when Indonesia annexed assumed total control and committed itself to organising a consultation of the people of West Papua over their future. However, Indonesia's organisation of the July 1969 self-determination vote did not conform to UN standards. As a result, only 1,025 West Papuans were eligible to vote under the traditional consultation system. The UN accepted the unsurprising outcome whereby West Papua elected to join Indonesia.¹¹¹

Since then, a significant part of the West Papuan society has not accepted the annexation of the region. The *Organisasi Papua Merdeka* (OPM) was created in 1970 and sought to fight militarily for West Papua's independence. The central Indonesian government reacted by way of a military action, arbitrary arrests and disappearances of suspected activists. It is alleged that up to 100,000 West Papuans have been killed by Indonesian security forces since 1963.¹¹² The OPM has not fought many battles but remains a focal point for the struggle for independence and the demand for a new self-determination consultation.¹¹³

According to Minority Rights Group International (MRG), a member of the OMCT network, the situation in West Papua is degrading steadily as the Indonesian government is attempting to upset the ethnic balance by fostering Transmigration to the island. Indeed, Indonesia has a serious stake in West Papua's remaining within the Republic. The island is extremely rich in natural resources, especially

¹⁰⁷ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁸ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹⁰⁹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹⁰ Also known by its Indonesian name of Irian Jaya.

¹¹¹ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹³ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

timber, copper and gold.¹¹⁴ Since 2000 and the referendum in East Timor, the OPM has decided to abandon the military struggle in favour of pursuing independence through peaceful protest and dialogue with the government. The Indonesian security forces have responded to these peaceful actions by violently repressing any demonstration and by killing dozens of people.¹¹⁵ President Wahid suggested in January 2000 to revert the name of the province to West Papua, to increase developmental projects, to hand over more autonomy and to make excuses for the human rights violations. However, these positive developments have been emptied of their value by the TNI's counter-campaign of creating village militias opposed to independence and by cracking down on independence campaigners and on pro-independence rallies. A fresh elite battalion of soldiers has been sent to West Papua to protect officially those opposed to independence.¹¹⁶

Since October and December 2000, 22 West Papuans members of different West Papuan organisations (Papuan Presidium Council, Papuan Task Force) have been arrested following the raising of the West Papuan flag in and around the town of Wamena. According to the Institute for Human Rights Study and Advocacy (ELS-HAM) and to TAPOL, the National Police carried out a number of provocative raids in and around Wamena. These incidents became known as the Wamena Incidents. These 22 detainees were brutally beaten with rifle butts and canes and tortured. On repeated occasion, riot police would attack the prisoners in their cells by beating them with various blunt objects. One prisoner died following the beatings inflicted by police officers. Confessions were obtained under duress and at no time were the prisoners informed of the charges brought against them. They were ultimately sentenced to imprisonment in unfair trials. All 22 prisoners were convicted for engaging in political activities (rebellion) and must therefore be considered as political detainees.¹¹⁷

5.4 East Timor

According to TAPOL, a member of the OMCT network, the elite commando force of the TNI called *Kopassus* has been involved in East Timor even before the invasion in 1975 when Portugal left the colony and Indonesia annexed it. Initially, the TNI had planned an intelligence operation, but seeing that the East Timorese were resisting more than anticipated, it was decided to launch a full-scale invasion.¹¹⁸ The average TNI soldier was wholly untrained to lead guerrilla warfare against the *Falintil*, the East Timorese liberation army, and so special forces such as *Kopassus* were called in. Combats in East Timor have been extremely violent, as TAPOL reports. A TNI general as estimated the number of Indonesian casualties at 11,000, which also explains why the TNI and *Kopassus* in particular have behaved with such brutality and total lack of regards for human rights.¹¹⁹ Even in quieter zones, service in East Timor was similar to service in a war zone. TNI soldiers had to be debriefed by a psychologist after serving in East Timor; unfortunately the East Timorese could not escape the situation and had to live permanently this state of war and terror.

TAPOL, a member of the OMCT network, reports that, until the 1980s, the standard operating procedure of *Kopassus* was not to take any prisoners. All captives were tortured, interrogated and killed.¹²⁰ Only after mounting international pressure, did *Kopassus* had over some detainees for trial. Until the middle of the 1990s, *Kopassus* managed a whole network of detention centres and torture

¹¹⁴ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹⁵ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹⁶ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹¹⁷ *Criminalising Politics in West Papua*, ELS-HAM and TAPOL, 6 July 2001, www.gn.apc.org/tapol/r010706wp.htm accessed on 21/09/2001.

¹¹⁸ *It's the Military, Stupid!*, TAPOL, International Workshop Violence in Indonesia, Leiden, 13-15 December 2000, www.gn.apc.org/tapol/p001213mili.htm accessed on 21/09/2001.

¹¹⁹ *It's the Military, Stupid!*, TAPOL, International Workshop Violence in Indonesia, Leiden, 13-15 December 2000, www.gn.apc.org/tapol/p001213mili.htm accessed on 21/09/2001.

¹²⁰ *It's the Military, Stupid!*, TAPOL, International Workshop Violence in Indonesia, Leiden, 13-15 December 2000, www.gn.apc.org/tapol/p001213mili.htm accessed on 21/09/2001.

facilities in East Timor. These facilities, called SGI, were often located in residential houses and had an infamous reputation among the East Timorese population.¹²¹

5.5 Sulawesi and Kalimantan

Minority Rights Group International reported that serious fighting broke out in West Kalimantan at the beginning of 1999 between settlers and indigenous groups, highlighting once more the negative impact of the policy of Transmigration on the security and freedom from violence of the local inhabitants of the island. It is alleged that at least 260 persons were killed in 1999. Similar clashes occurred in Sulawesi. The economic and social balance of these islands has been upset by the influx of transmigrants from Madura. The local ethnic groups rebelled against the influx, supported by the Indonesian State, of Muslim from Madura. The conflict and the repression may escalate if the State does not take into consideration the human rights issues, in particular the economic, social and cultural rights of the inhabitants of Sulawesi and Kalimantan.¹²²

6. Multinational Corporations and Labour Issues

6.1 Multinational Corporations and human rights violations

According to TAPOL, a member of the OMCT network, international attention has focused on extreme acts of violence committed by the TNI and by security forces whereas the most insidious form of violence and repression has occurred at grassroots level. Indeed, the TNI is present at all levels; therefore TNI personnel are stationed at all levels of administration, down to the village level. Furthermore, this means that the TNI has a pervasive presence at the workplace and in labour relations.¹²³ In particular, foreign corporations present in Indonesia have been known to employ military personnel to protect their premises and to avoid labour disputes.

A report published by the Catholic Institute for International Relations points out that foreign corporations operating in Indonesia have thus far failed to incorporate ethical and social standards into their codes of conduct. In particular, the negative impact of the involvement of military personnel in labour relations. The report highlights that while UK corporations maintain a high degree of consumer safety they routinely disregard employees' safety. Working standards are poor and wages are low despite high profits. Core international and Indonesian labour standards are routinely ignored.¹²⁴

The creation of development projects based on mining, timber or paper production is detrimental to local communities in that they destroy their means of production. For example, the establishment of a paper pulp project in Sumatra by PT TEL has destroyed the local small rubber plantations. In 1995, rubber producers could count on a monthly income of USD 1,000 when the average national income was of USD 83 (USD 1,000 a year). Since then, rubber prices have significantly increased but rubber farmers in PT TEL's region cannot benefit from this price increase as they have been expropriated from their land. For these farmers, the implementation of this development project has meant that they now must face destitution.¹²⁵

On June 20th 2001, a suit was initiated against Exxon Mobil, an international oil company, at the Columbia District Court, USA, by an NGO called the International Labour Rights Fund (ILRF). The suit was filled in the name of eleven Acehese villagers who directly suffered at the hands of the

¹²¹ *It's the Military, Stupid!*, TAPOL, International Workshop Violence in Indonesia, Leiden, 13-15 December 2000, www.gn.apc.org/tapol/p001213mili.htm accessed on 21/09/2001.

¹²² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹²³ *UK Companies Must Help Remove Military from the Workplace*, TAPOL, Bulletin 157, April 2000, www.gn.apc.org/tapol/157nukco.htm, accessed on 21/09/2001.

¹²⁴ *UK Companies Must Help Remove Military from the Workplace*, TAPOL, Bulletin 157, April 2000, www.gn.apc.org/tapol/157nukco.htm, accessed on 21/09/2001.

¹²⁵ *Paper Pulp Development in South Sumatra*, Down to Earth, www.gn.apc.org/dte/Ctel2.htm accessed on 16/10/2001.

Indonesian security forces paid by Exxon Mobil to protect its sites in Aceh.¹²⁶ The ILRF is arguing that Exxon Mobil must be held accountable for its part in the massacres, torture, murder and rape carried out by the security forces in Aceh. Exxon Mobil has been accused of providing the military with buildings where torture cases have been reported and with excavators used to dig mass graves for the victims. The victims were mostly suspected Free Aceh Movement (GAM) sympathisers. The suit also argues that the military have used Exxon Mobil funds to finance operations against Acehese dissidents and to increase their capacity to maintain order in the region.¹²⁷

The plaintiffs complained of the following act of torture and violence. In January 2001, a villager riding his bicycle into town to sell his vegetables was arrested by Exxon's 113 Unit of troops. The soldiers shot him in the wrist, threw a hand grenade at him and abandoned him on the site. The man survived with the loss of his right hand and left eye. In 2000, a man was tortured during three months at 'Camp Rancong'. According to the lawsuit, at the end of the three-month period, the man was shown a pit full of severed human heads. The prisoner was threatened with the same fate. He was eventually released to find that his house had been burnt down. In late 2000, a pregnant woman was beaten and sexually assaulted by a soldier member of Exxon's Unit 113. She was also threatened with death. Other plaintiffs complained that their husbands had been killed or that they 'disappeared'.¹²⁸

It is argued that Exxon Mobil has been instrumental in prompting the presidential decree ordering more security personnel to be sent to Aceh to enforce law and order and to repress protests. The importance of Exxon Mobil's operations in Indonesia is such that it exerts a powerful influence over the State. Since the closure of Exxon Mobil's site at Arun, the militarisation of Aceh and the repression have intensified significantly. Killings have continued and human rights as well as humanitarian organisations have found it harder to operate in Aceh.¹²⁹ It has been reported that the government of Indonesia is expected to deploy 2,200 soldiers along the gas pipeline and production sites in Lhoksukon, East Aceh to guarantee resumption of Exxon Mobil activities in the area.¹³⁰ As Radhi Darmansyah, president of the Aceh Student Front for Reform (FARMIDIA) up it, *with power comes responsibility. Exxon Mobil must be held accountable*.¹³¹

In West Papua, the significant mining reserves of gold and copper are mainly exploited by the mining conglomerate Freeport. Freeport is also Indonesia's biggest single taxpayer and as such it yields considerable power. Their operations in West Papua in gold and copper are estimated at USD 2 billion a year. The Freeport site is an autonomous entity with no links to the outside community. Elite paratroopers guard it.¹³² Furthermore, LEMASA, a leading community organisation of West Papuans, has denounced Freeport's selective use of community grants and funding to create artificial 'tribal foundations'. Freeport also attributes part of its extensive financial resources to furthering its own community development programmes over which it retains total control. At issue is the redistribution of benefits to the local populations who do not profit in any way from their natural resources.¹³³ West Papuans' demands and claims continue to be repressed by the Indonesian government while in parallel the natural resources of the island continue to be exploited by MNCs with the protective support of security forces. The violation of social and economic rights is once more accompanied by the occurrence of violence and torture.

¹²⁶ *Exxon Mobil Sued Over Rights Abuses in Aceh*, The Jakarta Post, 23/06/2001.

¹²⁷ *Exxon Mobil Sued Over Rights Abuses in Aceh*, The Jakarta Post, 23/06/2001.

¹²⁸ *Aceh: Lawsuits accuses Exxon Mobil of complicity in abuses*, Down to Earth No. 50, August 2001, www.gn.apc.org/dte/50ach.htm accessed on 24/10/2001.

¹²⁹ *Aceh: Lawsuits accuses Exxon Mobil of complicity in abuses*, Down to Earth No. 50, August 2001, www.gn.apc.org/dte/50ach.htm accessed on 24/10/2001.

¹³⁰ *Jakarta Post*, 29/06/2001.

¹³¹ *Aceh: Lawsuits accuses Exxon Mobil of complicity in abuses*, Down to Earth No. 50, August 2001, www.gn.apc.org/dte/50ach.htm accessed on 24/10/2001.

¹³² *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

¹³³ *Indonesia: Regional Conflict and State Terror*, Minority Rights Group International, London, 2001.

The CEACR of the ILO made an Individual Observation concerning ILO Convention No. 29, Forced Labour, 1930 regarding a situation in Indonesia. The Committee was concerned that the Dayak people in East Kalimantan were subjected to debt bondage. The practices of commercial logging companies, of community development projects and of industrial forest plantations are at the root of the problem. The development programmes, imposed by the government on companies, have been misused by these companies to coerce and intimidate workers into forming work groups and farmers' groups. These groups were then obliged to carry out unpaid and uncompensated labour in the framework of alleged 'participatory' development projects. This constitutes in effect a form of forced labour and an inhuman and degrading treatment upon workers.

6.2 Trade union rights

OMCT welcomes as an important step the ratification by Indonesia of the ILO Convention No. 87 on the *Freedom of Association and Protection of the Right to Organise*. According to the ILO, the trade union bill currently in drafting process should fully incorporate the recognition of independent trade unions to provide a true basis for the implementation of ILO Convention No. 87.¹³⁴ The International Confederation of Free Trade Union reports that while Indonesia has ratified all core ILO conventions, their application and implementation on the Indonesian labour market is not very good.¹³⁵

In July 2001, the government approved a new Trade Union Act. The Act does not significantly remove State control over trade unions. The Act allows the State to interfere in the internal affairs of trade unions, for example, trade unions must inform the State of nominations and changes in their internal structure on pain of losing their right to exist.¹³⁶ The law pitches against each other different trade union present at the same workplace by not providing for a system of dispute settlement. Trade unions may be disbanded and prohibited from existing by the State for crimes against national security or for not observing *Pancasila*. When a trade union is dissolved, its former members may not re-enter another union for six years.¹³⁷

The IUF, a member of the OMCT network, reports that the government is attempting to destroy independent trade union. The means used are varied and include the legally sanctioned intervention of the TNI in labour disputes as well as the criminalisation of the labour movement. Moreover, public order rules prevent meetings outside the workplace of more than five people from taking place. They need a police authorisation. In 1995, this regulation was repelled but it remains in force for trade union meetings.¹³⁸ This means that the National Police has the authority to crack down on labour meetings taking place outside the workplace without authorisation.

TAPOL, a member of the OMCT network, reports that the TNI and former military personnel actively intervene in labour issues in Indonesia. Troops are used to quell strikes and demonstrations violently. Military intelligence officers are placed within companies to collect

¹³⁴ *Understanding the Indonesian Economic Crisis*, ILO Office in Indonesia, www.un.or.id/ilo/english/chap5.htm accessed on 30/08/2001.

¹³⁵ *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

¹³⁶ *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

¹³⁷ *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

¹³⁸ *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

information on trade union representatives and to intimidate them. Former army personnel are present during labour negotiations between employers and trade union, along with police officials. The aim being to resolve strikes, however often families are intimidated to resolve disputes.¹³⁹ The International Confederation of Free Trade Unions (ICFTU) in its 2001 Annual Report of Violations of Trade Union Rights indicated that the National Police was making use of art. 160 of the Penal Code (subversion) to jail trade union leaders. During a strike at the PT Paiko company in Samarinda, the police shot with rubber bullets on the strikers. In general, the military infiltrate the workers and attempt to organise violent actions, which in turn justify the TNI's violent intervention.¹⁴⁰ In April 2001, three workers of the Kaldera/Jakarta automobile plant were killed by hand grenades thrown by the TNI.¹⁴¹

The ICFTU further reported that the right to organise trade unions and to collective bargaining are seldom respected in Indonesia and that attempts to implement these rights are met with violent repression on the part of the National Police and the TNI. On 21 February 2000, 1,500 union workers of PT Surabaya Meka Box in East Java went on strike to protest at the dismissal of three union representatives. These representatives had taken a tough stance during collective bargaining. On the 22nd the management called the police and the military who intervened violently, injuring a number of workers. On the fifth day of the strike, 200 policemen attacked the striking workers, including threatening them with a lorry at full speed. Other events include police officers the shooting with rubber bullets at 1,200 striking workers at PT Nanindah Mutiara in Batam and injuring seven of them (20 March 2000); and on 1 May 2000 the police arrested and killed Attar Muhammad, a trade union leader in an attempt to disrupt Labour Day celebrations. The National Police and the TNI are increasingly making use of *agents provocateurs* to disrupt labour actions, to intimidate workers and to justify repression. In October 2000, 300 striking workers from PT Mepoly Surabaya, East Java, were attacked by a group of hooligans recruited by the management. The police were present but did not intervene. Six workers were injured and one of them was in a critical condition. Then the police intervened and arrested 36 workers and accused them of instigating the rioting.¹⁴²

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), a member of the OMCT network, has reported a number of serious violations of workers' rights accompanied by violence and ill-treatment in the hotel and catering industry. The IUF reported on the case of the Shangri-La Hotel in Jakarta. Union members have been locked out of their jobs since 22 December 2000 in a dispute over basic trade union rights.¹⁴³ Workers had wanted to negotiate basic employment conditions, notably the absence of a pension plan since October 2000. The management however, has refused to allow the trade union to participate in negotiations and illegally suspended the union's president, which is a violation of ILO convention 135. The workers then organised a peaceful demonstration in protest. The management reacted by calling in the police to violently evict workers and to close the hotel. Union members were subsequently dismissed and told that in order to be re-employed they had to resign from the union. Moreover, 600 workers were told that they must resign from their membership of the union in order to retain their jobs.

¹³⁹ *UK Companies Must Help Remove Military from the Workplace*, TAPOL, Bulletin 157, April 2000, www.gn.apc.org/tapol/157nukco.htm, accessed on 21/09/2001.

¹⁴⁰ *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

¹⁴¹ *Massive Labour Rights Violations in Indonesia. Government Fails to Uphold ILO Conventions*, IUF.

¹⁴² *Rapport annuel 2001 des violations des droits syndicaux*, Confédération Internationale des Syndicats Libres, 2001, Bruxelles.

¹⁴³ *Massive Labour Rights Violations in Indonesia. Government Fails to Uphold ILO Conventions*, IUF.

On March 2001, heavily armed police brutally assaulted demonstrating workers who had assembled at the reopening of the hotel. The five units of the police involved in the attack injured twenty workers, including a pregnant restaurant worker who subsequently suffered a miscarriage. The police savagely beat these workers.¹⁴⁴ The IUF, a member of the OMCT network, further notes that the government of Indonesia has acquiesced to the use of violence against workers by private 'security guards' in the employment of the hotel proprietors. On 19 February 2001, FSPM¹⁴⁵ treasurer M. Zulrahman was dragged from the union's picket by five 'security guards' and badly beaten. The guards were later identified as bodyguards to the hotel proprietor.¹⁴⁶ The government also condoned the use of violence and ill-treatment by the National Police against trade union personnel. The FSPM is itself facing criminal charges brought by the employer. These include slander on the company's reputation and illegal exposure of company secrets. As a consequence, in March 2001, the courts ordered the confiscation of the union's property as well as the personal houses of union personnel.¹⁴⁷ The State legal system supported this outrageous act against the independence of trade unions.

7. Conclusions and Recommendations

The number of cases of torture, extra-judicial killings and other forms of ill-treatment, as well as the impunity surrounding them, can be significantly diminished through the adoption of adequate legal, judicial and administrative measures, and better control over the repressive apparatus. However, the disproportionate number of poor people among the victims of torture, as well as the dangerous dynamics of unrest and repression currently in place in Indonesia show that the socio-economic context, and violations of economic, social and cultural rights need to be addressed. Indeed, given the widespread and severe poverty, socio-economic imbalances and the recurrent violation of basic socio-economic rights prevailing in Indonesia, it is very unlikely, as pointed out by the UN Sub-Commission for the Promotion and Protection of Human Rights, that legal, judicial and administrative measures alone can decrease the toll of the violence that include repression, torture and ill-treatment of social protests.

The report showed that increasing levels of poverty, worsening inequality, unemployment, the precariousness of labour standards, restricted access to education and health for a significant proportion of the population, growing food insecurity and non-guaranteed housing characterise the current socio-economic situation of Indonesia. The implementation of Structural Adjustment Policies, along with debt servicing, play a significant role in the deterioration of socio-economic indicators. Overall, the response of the State, in terms of social spending, political will or ability to address these challenges has been inadequate. Moreover, two important channels that are essential to guarantee improvement of the socio-economic situation, the justiciability of economic, social and cultural rights as well as trade unionism, are blocked or at least seriously restricted.

The relevance of the socio-economic context and the need to adopt measures beyond purely legal, judicial and administrative means are also revealed by the restricted access to justice for the victims whose economic, social and cultural rights have been denied.

¹⁴⁴ *Massive Labour Rights Violations in Indonesia. Government Fails to Uphold ILO Conventions*, IUF.

¹⁴⁵ Jakarta Shangri-La Independent Hotel Workers Union.

¹⁴⁶ *Massive Labour Rights Violations in Indonesia. Government Fails to Uphold ILO Conventions*, IUF.

¹⁴⁷ *Massive Labour Rights Violations in Indonesia. Government Fails to Uphold ILO Conventions*, IUF.

As mentioned, article 2 of the CAT contemplates the possibility of adopting measures beyond the declared legislative, administrative and judicial ones: *each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

The Committee Against Torture itself recognised the relevance of the socio-economic context to the protection against torture.¹⁴⁸ Indeed, in its concluding observations on Cameroon, the Committee recognised that the economic situation constituted a factor impeding the application of the CAT.¹⁴⁹ In its concluding observations on Canada, the Committee recognised that the development of a national strategy and other measures to address the historical social and economic disadvantages experienced by the indigenous population constitute a positive aspect with regard to the implementation of the CAT.¹⁵⁰ Similarly, in its concluding observations on Australia, the CAT also welcomed the measures taken by the State party to address the historical and economic underpinning of the disadvantage experienced by the indigenous population.¹⁵¹ Moreover, in its recommendations to Australia, the Committee recommended that «the State party continues its efforts to address the socio-economic disadvantage that *inter alia* lead indigenous Australians to come disproportionately in contact with the criminal justice system».¹⁵² In the cases of Canada and Australia, the positive relationship underlined by the Committee between economic and social disadvantages and the implementation of the CAT highlight the fact that poverty and violations of economic, social and cultural rights do have an impact on protection against torture.

Indeed, a comprehensive and holistic approach to protection against torture, as it is clearly required for Indonesia, needs to integrate specific socio-economic measures and policies, along with the more traditional means applied to prevent the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment.

The report described that social unrest and rioting in Indonesia have emerged due to a State-led policy of developmental imbalance, to the degradation of social indicators, to increasing social inequality and widespread violations of economic, social and cultural rights including the right to work, health, food, education and housing, as well as the right to freedom of association and the right to strike. These protests, as they challenge the current socio-economic context and governmental policies, have encountered violent repression. In response, the Indonesian authorities, have adopted repressive measures, which include the use of torture, summary executions and other forms of cruel, inhuman or degrading treatment or punishment perpetrated either by the National Police, the Army (TNI) or by ‘security guards’.

¹⁴⁸ See part 5 for further developments; U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f); U.N.Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e), 7(g); U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

¹⁴⁹ U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

¹⁵⁰ U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f)

¹⁵¹ U.N. Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e)

¹⁵² *Ibid.*, para 7(g)

Abuses by the TNI and by the National Police in the repression of social protests, against autonomy movements and against innocent inhabitants of conflict areas clearly indicates that, among other measures, immediate steps must be taken to demonstrate that police and army abuses will not be tolerated and to restore confidence in the judicial system of Indonesia. There is a risk that otherwise, the population will completely lose its trust in a judicial system that perpetuates the impunity given in practice to the State security forces.

However, given the dynamics underpinning the authorities' response and the gravity of the Indonesia socio-economic context, it is unlikely that such measures will be sufficient to reduce the toll of violence. In such cases, the right not to be subjected to torture and the right to education, to food, to health and to adequate housing are inseparable. The violation of the last four is closely linked to the first. Moreover, as an increasing number of the victims of torture and ill treatment are poor, the impact of poverty on access to justice also needs to be addressed if the impunity rate prevailing in the country, in particular with regard to police abuse, is to decrease.

OMCT would like to encourage Indonesia to accede to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and to the International Covenant on Civil and Political Rights (ICCPR).

In this respect, OMCT would like to recommend to the State Party, according to article 2 of the CAT, to:

To take immediate measures to ensure that human rights, and in particular economic, social and cultural rights, are justiciable through legal, administrative and judicial means, other than the Komnas HAM.

Take immediate measures to ensure that in responding to social or political unrest, the National Police and the TNI do not violate human rights and do not make use of violent force, torture or other forms of ill-treatment and abuse.

Ensure a fair and balanced development of all the regions of Indonesia so that the resources of a particular region also benefit the local communities. A fair development of the Indonesian nation will contribute to a climate of peace and protection from torture and ill-treatment.

Take steps to find a peaceful solution to social and political unrest in Indonesia, in particular with regards to the autonomy and regional movements of independence in the outer islands.

Address the issue of extreme poverty and income disparities, which are fostering social unrest and repression on the part of the security apparatus.

Address the stifling problem of corruption, embezzlement and nepotism, which are at the root of social unrest and demonstrations.

Take immediate action to ensure that trade unions may carry out their work freely and unthreatened as provided by the ILO conventions signed by Indonesia. And, in particular, ensure that the State security forces do not use excessive violence and torture against trade

union officials nor against employees fighting for their rights. Indonesia should also refrain from using the criminal code to crack down on legitimate trade union activities.

Ensure that Multinational Corporations (MNCs) do not make use of the State security apparatus to repress social and political movements in the vicinity of their production sites. In particular, Indonesia should exercise full control over the activities of its police and army units at the disposal of MNCs, thus ensuring that these units comply the provisions for the protection of human rights.

Ensure that development projects and investments by the State, IFIs and MNCs are implemented with due regard for the economic, social and cultural rights of the local populations, and in particular that these projects are not implemented under duress, coercion, threat or use of torture and repression on local communities.

Ensure that Structural Adjustment Policies (SAPs) are implemented with due consideration of Indonesia's obligations under international human rights instruments and do not contribute to the pauperisation of Indonesian society.