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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy

Addendum

Mission to Indonesia and East Timor on the issue of violence against women

(20 November-4 December 1998)

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Introduction

1. At the invitation of the Government of Indonesia, the Special Rapporteur on violence against women, its causes and consequences, visited Indonesia from 20 November to 4 December 1998 to study the issue of violence against women as perpetrated or condoned by the State. The Special Rapporteur also visited Dili, East Timor from 30 November to 2 December 1998. She had requested access to Irian Jaya and Aceh; however, the Government denied access on the grounds that there was insufficient time.

2. The Special Rapporteur would like to express her appreciation for the cooperation and the assistance extended to her by the Government of Indonesia, and in particular by the Minister for Foreign Affairs, Mr. Ali Alatas, and his staff, which enabled the Special Rapporteur to meet with representatives of all relevant sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner. The Special Rapporteur would like to place on record her appreciation for the assistance given to her by Mr. Andri Hadi and Mrs. Wiwiek Setyawati of the Ministry of Foreign Affairs and for the efficiency and professionalism they brought to their work.

3. The Special Rapporteur is very grateful for the efficient cooperation and support provided by Mr. Ravi Rajhan, Resident Representative of the United Nations Development Programme (UNDP) in Indonesia and his staff for ensuring a substantively and logistically successful visit.

4. In Jakarta and Dili the Special Rapporteur focused on gathering information, mainly on: (a) violence against women during the May riots; (b) violence against women in East Timor, Irian Jaya and Aceh.

5. During her mission, the Special Rapporteur met with high-level government representatives, including the Minister for Women's Affairs, the Minister for Foreign Affairs, the Director-General for Law and Regulations of the Ministry of Justice, the Deputy Attorney-General, the Secretary-General of the Ministry of Defence and Security, the Chief of the Indonesian Police Force, the Minister for Social Affairs, and representatives of the National Commission for Human Rights and the National Commission on Violence against Women. The Special Rapporteur also met with representatives of non-governmental and women's organizations and took testimonies from victims of violence.

6. In Dili, East Timor, the Special Rapporteur had meetings with the Governor, the local Military Commander, the Police Chief, and representatives of the International Committee of the Red Cross (ICRC) and of women's organizations.

7. The Special Rapporteur would like to express her heartfelt thanks to all the women who agreed to tell their very personal stories to her, so that she could attempt to understand the suffering which they had endured, many of them had to travel long distances to meet her. She would also like to thank the organizations which facilitated meetings with women survivors of violence from East Timor, Aceh and Irian Jaya, as well as with ethnic Chinese women targeted during the May 1998 riots.

I. CASES

8. Except in the case of E, the events in the following cases took place before May 1998.

9. N lives in Aceh. The following events took place when Aceh was a military zone designated by the Government of Indonesia. One day soldiers from Kopassus, elite army commandos, came to N's house and took her husband away. He was missing for several days. During his time at the army command post, he was tortured and he lost hearing in one ear and his thigh was fractured. Fearing that he would be taken in again, he went to another village to work as an agricultural labourer. Kopassus became suspicious, convinced that he had joined the guerrillas. As a result, they came and took N to the military post and interrogated her on the whereabouts of her husband. They disbelieved her story and continued with the interrogation. On the sixteenth day, they began to use force. They undressed her and she was raped by one of the soldiers while the others watched and laughed. After that, she was given electric shock treatment in her ears, nose, breasts and genitalia. She suffered injuries from which she has yet to recover. To keep her quiet they put paper into her mouth and gagged her. They also took a rope and tried to strangle her. As a result of all this she fainted. Five days later she was released and asked to go home and warned that she should not tell a soul about what had happened to her. When she told officials of her treatment, soldiers from Kopassus came and threatened her. When the present Government removed the designation of military zone, she went public with her story. As a result of her torture, she has many internal injuries and no money to pay for her medical expenses. [1]

10. J lives in Irian Jaya. She was married before but her husband left her, so she decided to marry again. Her sister disagreed with her plans and they had a huge fight. Troops from the Indonesian army came by to inquire into the disturbance and took J, her sister and the husband-to-be into custody. They resolved the dispute and released them, asking J and her boyfriend to come back the next day. When they returned the next day, the soldiers asked them to remove their clothes. She resisted so they stripped her. She and her boyfriend were then requested to walk hand in hand into the sea. They stayed in the water for about an hour. Then the soldiers put an elevated board on the beach. They were told to come out of the water and to lie on the board. Her boyfriend was then forced to rape her. Two soldiers held her legs, two held her arms and her boyfriend was forced to have intercourse with her. The other soldiers watched, and some even took photographs. After that she and her boyfriend were paraded naked around the village. The boyfriend was asked to beat a drum and soldiers followed carrying rifles. When they had walked around the village, they returned to the army post, were given their clothes and told to go home. [2]

11. A lives in East Timor. For some time, the army had suspected her and her family of having dealings with the guerrillas. As they were forewarned, they tried to escape, but were followed by army trucks. When the soldiers detained them, they were interrogated with regard to arms and ammunitions. A was beaten, taken to a camp and then to the district military office. She was tied to a pole and beaten for about four hours. After that she was taken back to the cell. Left-over food was thrown at her through the cell window. She

was kept for four days in the room. On the fourth day a soldier came into the cell and raped her. The next day she was moved to another post near the jungle. At this post, she was raped four times by different soldiers. She was detained for two weeks. Her duties included having to clean the army post and do other menial chores. Her family and the priest intervened and she was released. She became pregnant as a result of the rapes. Initially she hated the child and wanted to get rid of her, but now, with the aid of counsellors, she is trying to think differently. The child is one year and four months old. A has decided to take her case to court. [3]

12. E is an 18-year-old Indonesian of Chinese origin who lives in Jakarta. After May 1998, when the riots took place, many of E's Chinese friends and neighbours, especially those working for the Voluntary Team for Humanitarian Causes (an NGO investigating the May riots) received anonymous death threats. Some of these death threats, signed by the "Pribumi Warriors" were extremely racist, informing the recipient that they intended, among other things, to strip women naked and to rape them. Since they did not wish to "dirty our thing", they threatened to use curtain rods in the rape. E was a home-stay student in a house and she worked as a part-time shop assistant. On 2 July 1998, she was at home on her bed, reclining on her side facing the wall, when two men barged in. One was muscular and the other was smaller in build. They put their hands over her mouth and then took an aluminium curtain rod and shoved it into her vagina. In her attempt to prevent the attack, her hand was lacerated by the rod, requiring stiches. She lost consciousness because the pain was excruciating. When she regained consciousness, she crawled to the door and shouted for help. The surgeon who operated on her managed to patch up some of her organs but she has to receive further treatment since there is extensive damage to her system. [4]

II. THE CONTEXT: INDONESIA IN TRANSITION

13. The Special Rapporteur's visit to Indonesia took place during a time of transition. Elections are scheduled to take place in June 1999, but in the interregnum, a transition government is faced with unrest and disturbances. Since the change of regime in May 1998, Indonesia has experienced student demonstrations, riots against ethnic minorities and apparent religious conflict, with churches and mosques being burnt to the ground. Conspiracy theories circulated as people attempted to separate fact from fiction. The visit of the Special Rapporteur took place during this period of uncertainty, when the promise of a democratic future was being challenged by civil unrest.

14. Despite the uncertainty, the Special Rapporteur was struck by the good will and openness of the present Government of Indonesia with regard to her visit. Her stay in Jakarta was facilitated by the Ministry of Foreign Affairs which arranged for her to have access to the highest levels of government and the armed forces. The Ministry did not interfere with the Rapporteur's meetings with NGOs and victims of violence and allowed her to maintain her own itinerary, in keeping with her mandate. Government officials and members of the security forces spoke to her with frankness and candour, even if they disagreed with what she presented.

15. The sincerity of the Government's wish to become more open and respectful of human rights was highlighted by various events that have taken

place in the months following the change of regime in May 1998. Firstly, a fact-finding commission was appointed to look into the May events; it included non-governmental representatives. Then, the National Commission on Violence against Women was established, with broad based representation. In addition, the heads of the security forces were very keen that the United Nations engage in human rights training of their cadre and were very enthusiastic about a follow-up programme. Finally, the decision of the Government to invite the Special Rapporteur on violence against women, the Special Rapporteur on racial discrimination and the Working Group on Arbitrary Detention is evidence that the new Government is interested in improving the condition of human rights in Indonesia.

16. In addition to a responsive Government, the Special Rapporteur was extremely impressed by the vibrant civil society that has emerged in Indonesia. She was truly encouraged by the commitment and dedication of non-governmental organizations, women's groups and human rights groups and their efforts to develop a sensitive human rights culture in Indonesia. During her visit, she also met with a student leader and was impressed by the secular human rights vision that seems to animate the student movement in Indonesia.

17. Despite all these positive developments, the darker side of recent developments in Indonesia is of great concern to the Special Rapporteur. The anonymous letters and death threats, especially to children of victims and activists, are ominous, especially when a certain element of impunity seems to be attaching to the perpetrators. The Chinese community, members of which provided the Special Rapporteur with ample evidence of death threats and anonymous letters that they have received threatening their very existence in Indonesia, seems to be terrorized.

18. Activists have also been targeted. The safety of human rights defenders in Indonesia is of primary concern and the international community must ensure that they are protected and that those responsible for the campaign of terror receive their just punishment.

19. Another worrying factor is the apparent polarization within elite circles between those who want to continue to push for democratic and human rights reforms and those who prefer to return to the old order. This struggle for power has yet to work itself out. Given the fact that there are strong linkages between the Government and the military, the final nature of government has yet to be determined. As Indonesians solve these problems for themselves, the international human rights community must assist the Government to strengthen the human rights component of governance.

20. The recent financial crisis is another factor that has accentuated the civil unrest in Indonesia. Poverty, reflected in a large increase in the number of street children, and disparities in income have added a class factor to the human rights debate. With the security forces holding their fire, looters and arsonists are often left to their own devices, though they appear to be provoked by groups of provocateurs. The lawlessness, anarchy and chaos that surrounded the May riots and the inability of the Government to act firmly against the perpetrators has created a climate of impunity that is exploited by those who are desperate to make a living. The linkages between

economic reform, a welfare safety net and human rights protection is amply demonstrated in the events leading up to the economic crisis in Indonesia.

III. THE POSITION OF WOMEN IN INDONESIAN SOCIETY

A. General

21. The Special Rapporteur met with various non-governmental organizations and was struck by the extraordinary vitality of civil society and the women's movement, which has had the courage to speak out in the new era of reform since May 1998.

22. The Special Rapporteur recognizes the steps that the Government has already taken with respect to the promotion and protection of human rights, in particular the establishment of the National Human Rights Commission and the National Commission on Violence against Women.

23. The Indonesian National Commission on Violence against Women was established by the Government, on 15 July 1998, in response to strong protest from a broad spectrum of women activists/organizations at government passivity in the face of incidents of sexual violence during the May 1998 riots. It was founded on the basis of Presidential Decree No. 181 (1998), with reference to the Convention on the Elimination of All Forms of Violence against Women and the Declaration on the Elimination of Violence against Women. The objectives of the Commission are to (a) promote public understanding of all forms of violence against women; (b) create a conducive environment for the elimination of violence against women and defend the human rights of women; and (c) improve prevention of violence against women and defend the human rights of women. Its activities are directed towards empowering women and society in general, strengthening the capacities of organizations defending women against violence, and influencing the Government to take the necessary steps to create a conducive environment for the elimination of all forms of violence against women.

24. The Commission consists of women's rights activists, academics, medical professionals, religious leaders and human rights activists. Three of its members are male, while the rest are female. Its composition is interracial, with representatives from Aceh, Irian Jaya and East Timor.

25. Another positive recent development is the National Programme for the Elimination of Violence against Women, which has been incorporated in the National Plan of Action for Human Rights, 1998-2003. The programme includes: the compilation of statistical data on cases of violence against women; the establishment of guidelines for police officers on the investigation and temporary detention of women suspects, as well as minimum standards to be maintained in handling women prisoners in correctional institutions; and the development of gender mainstreaming programmes in all government institutions.

26. It is encouraging to note that, with the support of the State Minister for the Role of Women, the number of women studies centres has grown in both public and private universities, including teacher training institutes and public Islamic religious institutes. There are currently more than 70 women studies centres conducting research on the situation of women. These centres

identify particular problems faced by women in their respective provinces and propose recommendations to the provincial management team. [5]

B. Legal Framework

27. The Government of Indonesia has been a party to the Convention on the Elimination of All Forms of Discrimination against Women since 13 September 1984 and submitted its combined second and third periodic reports [6] on the implementation of that Convention to the Committee on the Elimination of Discrimination against Women (CEDAW) at its 377th meeting, on 2 February 1998.

28. CEDAW expressed its concern that the information provided on the situation of women in areas of armed conflict reflected a limited understanding of the problem. The Government's remarks had been confined to the participation of women in the armed forces and did not address the vulnerability of women to sexual exploitation in conflict situations, or a range of other human rights abuses affecting women in such contexts. CEDAW urged the Government to collect, as a matter of priority, data on the extent, causes and consequences of the problem of violence against women in Indonesia.

29. The ratification of the Convention is proof of the Government's political will to eliminate all forms of discrimination against women. However, commentators have expressed concern that as a consequence of the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women and Clarification Act, which states that "implementation ... of this Convention must be adapted to the cultural and religious values that are embraced by the Indonesian people", [7] patriarchal, cultural and religious values cannot be challenged by invoking the Convention.

30. The national laws of Indonesia contain provisions that are discriminatory towards women. In November 1998, the People's Consultative Assembly (MPR) passed 11 reform decrees unanimously; a twelfth was passed after a formal vote. In these decrees, which set out the principles of change during transition, the Government has agreed to reform the legal structure, focusing on laws that are disadvantageous to the situation of women. In this endeavour, the Special Rapporteur would urge the Government to ensure that all penal provisions are in full compliance with international human rights law and humanitarian law.

31. In theory every citizen enjoys equal status before the law and in government. The 1945 National Constitution guarantees every citizen equal rights and obligations in the fields of education, law, health, political participation and employment. [8] Furthermore, the Pancasila, or five core principles of the State philosophy, are: "1. Belief in the One Supreme God Almighty; 2. Just and civilized humanity; 3. The Unity of Indonesia; 4. Representative government and democracy; 5. Social justice for the whole people of Indonesia". [9] Thus, all forms of discrimination against women violate both the 1945 Constitution and the Pancasila.

32. However, the de facto situation is that women remain unequal to men in terms of rights and opportunities because of a combination of traditional and cultural practices and certain laws that are contrary to the spirit, if not

the letter, of the principle of equality. For example in the Marriage Law the role of husband and wife is clearly delineated. The husband is the head of the family, while the wife is the mother of the household. [10]

33. According to the same law the husband is the provider of the family. Article 34 provides: "(1) the husband shall protect his wife and provide all necessities of life required in a family to the best of his ability; and (2) the wife shall manage the household to the best of her ability." If either the husband or the wife neglects his or her responsibilities, the other party may lodge a complaint with the court. [11] Despite this division of labour, the Marriage Law explicitly stipulates that the rights and position of the wife are equal to the rights and position of the husband, both in the family and in society. Both parties to the marriage have full legal capacity. [12]

34. At the time of the mission of the Special Rapporteur, domestic violence was not specified as a distinct crime under the Indonesian Criminal Code. Articles 351 to 355 of chapter XX of the Criminal Code set forth the general crime of and penalties for maltreatment, under which cases of domestic violence could be, but rarely are, prosecuted.

35. The police still regard domestic violence as a private matter and do not intervene. In most cases, law enforcement personnel are not responsive to the plight of women victims. In cases of rape and other forms of violence against women, unless there are witnesses, the police generally refuse to bring the case to court. The Special Rapporteur is pleased that the Government is planning to address these problems through both law reform and gender sensitization training for the police force in modern methods of dealing with incidents of violence against women.

36. Rape is defined in article 285 of the Penal Code, which states:

> "Any person who, by using force or threat of force, forces a woman to have sexual intercourse with him out of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of 12 years."

The legal definition of rape is limited to forced penetration of the vagina by the penis, and thus other forced sexual actions are not covered. The Special Rapporteur recommends a broader definition of rape to include acts beyond penile penetration, in order to stress the demeaning and violent aspects of rape, rather than its sexual nature, as spelt out in her first and third reports (E/CN.4/1995/42, paras. 172-189; E/CN.4/1997/47, paras. 17-43).

37. Article 287 of the Penal Code states:

> "Any person, who out of marriage, has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years."

The Special Rapporteur expresses concern that the emphasis is placed on the girl's conduct or appearance, which should under no circumstances constitute a defence.

38. Another cause for concern is the legal requirement that the testimony of rape victims must be corroborated. Article 185, paragraph 2, of the Code of Criminal Procedure states: "The testimony of one witness is not sufficient to prove that a defendant is guilty of the act of which he is charged". The necessity of corroboration puts the burden of proof on the victim and ultimately ensures that the victim is the one being subject to trial.

39. Punishment for rape under the Penal Code is lenient compared to other jurisdictions and any reform of the law should increase the punishment for rapists and other perpetrators of violence against women.

40. Neither the Penal Code nor other regulations or policies specifically regulate cases of violence against women perpetrated by the State. State perpetrators can be charged under civil or military law; investigations into allegations of human rights violations are normally conducted by the security forces themselves. The Special Rapporteur would urge the Government to undertake impartial investigations into any alleged violations, in order to prevent perpetrators acting with impunity. [13]

41. The Special Rapporteur notes the need for the establishment of standardized law libraries and legal documentation centres in order systematically to collect all legislation and authoritative court verdicts.

42. In June 1998, the Government announced an action plan for human rights that included ratification of key human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the process of law reform, it must be ensured that all international instruments which have been ratified are incorporated into legal policies, laws and existing regulations of Indonesia.

IV. GENERAL FINDINGS

43. Before May 1998, rape was used as an instrument of torture and intimidation by certain elements of the Indonesian army in Aceh, Irian Jaya and East Timor. Since May 1998, the policy appears to be different. The Army Commander of East Timor assured us that rape by soldiers will not be tolerated and that perpetrators will be prosecuted. Nevertheless, the rapes continue. The Special Rapporteur has the names of four women allegedly raped by soldiers in East Timor since May 1998. It is still too early to assess whether the assurances of army officials will be implemented and rapists brought to trial before military tribunals.

44. Before May 1998, torture of women detained by the Indonesian security forces was widespread, especially in Aceh, Irian Jaya and East Timor. Among the methods of torture that were employed were rape of the detainee, electric shock treatment to ears, nose, breasts and the vagina, submerging in water tanks, burning with cigarette butts, detention in a room full of water and sewage, severe beating, being stripped and paraded naked, being tied by the thumbs from the ceiling, forced intercourse with other detainees, and other means of torture. Since May 1998, the Special Rapporteur has not received information about any cases of torture in custody by the security forces. The Special Rapporteur visited two women held in detention by the police since a

violent incident in Alas in East Timor. Though they seemed frightened, the detainees did not show any signs of having been tortured. However, the Special Rapporteur did not talk with them alone.

45. During the events of May 1998 and the riots in Jakarta, there were many reports of rape of ethnic Chinese women. The Special Rapporteur's information corroborated the findings of the fact-finding commission set up to study the events. There was mass rape but the numbers are hard to determine since the Chinese community appears to be terrorized by the events and victims are reluctant to come forward. The Special Rapporteur spoke with victims, none of whom felt safe enough to report their cases to the police. The Special Rapporteur was also given video footage of the riots that show the military forces standing idly by as the riots continued, sometimes accepting drinks from the looters. Witnesses of these incidents corroborated the findings that the riots were instigated by outside provocateurs who invited the mobs to loot and destroy Chinese property. In addition, the events appeared to have taken place in different places at the same time. There is therefore enough evidence to suggest that the riots may have been organized. A thorough investigation of the riots is necessary and the perpetrators must be identified and punished. Unless this takes place, large segments of the Indonesian community will continue to live in fear and insecurity.

46. Victims and witnesses of violence, along with human rights defenders, continue to receive macabre death threats and anonymous letters and phone calls threatening their lives and the lives of their families, especially the children. The Special Rapporteur has a collection of these letters. They seem to be of two kinds. The first are letters to victims, witnesses and human rights defenders threatening them not to come forward and report crimes of violence, especially those that took place in May 1998. The authors of these letters threaten the recipients and their children with language that suggests that they know the daily routine of the recipients and their families. The brutal murder of Ita Martadinata Haryono, the daughter of a human rights defender, which police alleged was carried out by a neighbour, has sent shock waves through the human rights community and terrorized many human rights defenders.

47. The second type of anonymous letter is signed "Pribumi" ("indigenous") and is aimed at the Chinese population, threatening them with murder, rape and mutilation. These are racist letters meant to terrorize the Chinese community into remaining silent and leaving the country. These letters, along with the death threats mentioned in the previous paragraph, must be thoroughly investigated. It is imperative that the police and the prosecutors put an end to this terror, and victim and witness protection programmes should be developed to ensure the safety and security of victims, witnesses and human rights defenders.

48. After years of authoritarian rule, victims, witnesses and human rights defenders in Indonesia have very little confidence in the criminal justice system of the country. As a result, cases are not reported and the police and prosecutors conclude that there are no cases. Nothing could be further from the truth. There are many cases of rape and sexual violence, but people do not come forward. They are terrorized by intimidation and threats from

anonymous individuals. They also lack confidence in the system and therefore feel that reporting crimes of this nature is a dangerous waste of time.

49. As a whole, the Special Rapporteur found the criminal justice system to be gender insensitive. Further, there is a certain denial culture that prevents effective enforcement of the law. With regard to the May events, for example, officials of the criminal justice system argued that cases were not reported and therefore rape must not have taken place. The Special Rapporteur met with victims of the riots and she is convinced that rape did take place. Lack of reporting stems from the distrust of the criminal justice system which has prevented women from coming forward. It is necessary that the police take a proactive role in making their institutions more accessible to female victims. Measures should be taken to make the police reach out to the community. In this regard, the Special Rapporteur welcomes the decision to distance the police from the army so that they may be able to earn the trust of the community by engaging in community policing.

50. Both army and police officials stated that, although there is some training in human rights for members of the criminal justice system, it is inadequate. They seemed to be enthusiastic about the possibility of technical cooperation training being conducted by the Office of the High Commissioner for Human Rights. This training in human rights would include detailed training on issues of gender rights and violence against women. The lack of training is probably one of the main reasons why the criminal justice system is seen to be insensitive to the rights of women.

51. The Special Rapporteur's discussions at the office of the Attorney-General also revealed the prevalence of a “denial culture”: a refusal to acknowledge the magnitude of the events that have taken place. Again, reference was made to the fact that cases had not been reported. The prosecutors were not aware of any of the numerous cases of rape in Aceh, Irian Jaya and East Timor. Given the enormous challenge to law and order during the previous six months, there had been no prosecutorial initiative or any special attempt to bring perpetrators to trial. The Special Rapporteur was concerned at the reticent approach to the rule of law. A more dynamic approach by the Attorney-General’s department is necessary, given the nature of the crisis facing Indonesian society.

52. In any culture, it is the judiciary that is the custodian of the rule of law. The Special Rapporteur regrets that she did not meet any member of the judiciary. The perception of members of the Bar, however, is that, since May 1998, the judiciary is beginning to assert itself. However, victims and human rights defenders were more sceptical: they felt that the judiciary in Indonesia is extremely passive and pointed out that it does not have a reputation for vindicating human rights. In addition, women’s groups pointed out that the judiciary has been extremely lenient with regard to convicted rapists, sentencing them to imprisonment for a mere three months to one year. If the rule of law is to be revived in Indonesia, it is essential that the judiciary assert its independence. It is hoped that the technical cooperation programme being worked out between the Office of the High Commissioner for Human Rights and the Government of Indonesia will include a component of workshops and seminars for judges involving discussion of human rights in general and violence against women in particular.

53. The legal framework that operates with regard to violence against women is based on the Indonesian Penal Code. The Code, introduced by the Dutch under the civil law system, does not incorporate many of the changes that have assisted other countries in dealing with issues of violence. For example the rape law only speaks of sexual intercourse and not any other form of sexual activity, and requires corroboration, including the testimony of two witnesses. Though the woman does not have to prove absence of consent as in common law jurisdictions, the evidentiary procedure is still weighted against her. The Justice Department informed the Special Rapporteur that it is revising the Penal Code. It is important that it be changed to incorporate many of the standards advocated at the international level with regard to violence against women. In addition, Indonesia does not have specific domestic violence legislation or any provision with regard to sexual harassment in the workplace.

54. It is increasingly recognized that victims of violence against women need to be compensated and that they require support services. Especially in East Timor, Aceh and Irian Jaya, it is important that the Government set up a process whereby rape victims are compensated. In addition, there appears to be a need for more crisis centres where victims of violence can take shelter and receive legal counselling, vocational training and psychological counselling. A government-supported initiative, in partnership with NGOs, to establish such centres should be seriously considered.

55. The Special Rapporteur is also concerned that no attempt is being made to deal with the psychological trauma caused by violence against women. One of the ethnic Chinese victims she met was suffering from a serious mental illness resulting from her rape during the May riots. However, her guardians were too afraid to come out with her story. A victim from Aceh was suffering seriously from the physical after-effects of torture, as well as from depression. Most of the victims the Special Rapporteur met appeared to be in need of psychological counselling to help them cope with the violence in their lives. There is a need for a national mental health policy that addresses openly the psychological problems of victim-survivors of violence against women.

56. Much of the violence against women in Aceh, Irian Jaya and East Timor was perpetrated in the context of these areas being treated as military zones, which resulted in the subordination of certain civil processes. Rape by soldiers in these areas is tried in military tribunals and not before an ordinary court of law. As a result, the measure of independence necessary for the passing of judgement does not appear to exist. Civilian government should reclaim this space. Rape by a soldier may be a subject for a military tribunal, but it should also be actionable in an ordinary court of law. Given that very few cases are brought before a military tribunal, it is important that the normal courts, which are technically more accessible to victims, should also have jurisdiction.

57. The Special Rapporteur was constantly reminded that victims, witnesses and human rights defenders live in fear because of death threats and anonymous letters. The Government must make a firm and determined effort to overcome this realm of private terror. An effective witness and victim protection scheme is absolutely essential if the rule of law is to prevail in Indonesia.

Criminal investigations of death threats and punishment of those who indulge in such activities are the only way to deter this kind of private thuggery. Such action should be initiated at the highest level with a national campaign against such practices, which appear to have reached epidemic proportions in the post-May 1998 era.

58. Another matter that requires attention is that of the children of Indonesian soldiers in the military zones of Aceh, Irian Jaya and East Timor. Some of these children are the result of rape, others are the product of situations that resemble sexual slavery and some are the result of consensual sex. The Special Rapporteur met some of the victims and their children. The women are having a very difficult time, not only because of poverty, but also because the sight of the children often reminds them of the rape. As a result, the children are often either abandoned or treated badly. Women's groups are working with victim-survivors, counselling them to accept their children. The Indonesian State should accept responsibility for assisting these women in the upbringing of these children. Such assistance could take the form of compensation or special privileges with regard to housing and education. Many of the women who were raped as virgins are single mothers who have suffered stigma in their communities after giving birth to children of Indonesian soldiers.

59. The other category of victims from Aceh, Irian Jaya and East Timor who deserve attention are widows whose husbands have been killed in the ongoing confrontation between the Indonesian army and the guerrillas. In East Timor there is a whole village called "Widow's Village". In Aceh, the Ministry of Social Services has begun a programme to help widows, but there are no similar programmes in East Timor and Irian Jaya. Widows whom the Special Rapporteur met appear to be in dire straits financially after the death of the families' breadwinners. Programmes for their empowerment are necessary if rehabilitation is to be achieved in the affected areas.

60. Although the Special Rapporteur was impressed by the activities of civil society groups, she was also convinced that Indonesia did not have a culture of human rights in its legal and political institutions. There is both a lack of confidence in the criminal justice system and an apparent lack of confidence in the transitional government. Civil society groups are therefore anxious to develop such a human rights culture. The institutions of the criminal justice system have to be retrained and the mass media has to be called on to spread human rights values throughout the society. Courses on human rights should be included in school and university curricula. Further, there should be research on the human rights aspects of civil life so that effective policy can be formulated.

61. Women's rights in Indonesia, especially those related to violence against women by the State, are greatly dependent on the development of a democratic society. The truth and reconciliation necessary to establish accountability will not be possible in the absence of democratic norms. However, they are unlikely to be achieved unless the boundaries between political and civil society on the one hand and the military on the other are more clearly demarcated. The military must withdraw from its political and civil role if democracy is to prevail in Indonesia. A human rights culture cannot emerge within the contours of a militarized State.

V. RAPE OF ETHNIC CHINESE WOMEN

62. The ethnic Chinese make up 2.8 per cent of the Indonesian population and number around 6 million. [14] They are predominantly urban dwellers and, by all accounts, have, as a community, made a significant contribution to the Indonesian economy. The perception among average non-Chinese Indonesians is that the Chinese control the economy in collaboration with Indonesian power elites. Although the Special Rapporteur was repeatedly told that the Chinese were rich and wealthy, many of the victims she met, who had been raped during the May riots, appeared to be from lower-middle-class backgrounds. Some were single women living alone, striving to make ends meet. It appeared that the victims were in fact poor, ordinary women who had very little "control of the economy".

63. Since 1967, the Government of Indonesia has pursued a policy of assimilation with regard to the ethnic Chinese minority. It is important to highlight the framework within which the May riots took place (an issue the Special Rapporteur on racial discrimination will address in greater depth in his report (E/CN.4/1999/15)). The assimilation policy has been contained in government guidelines since 1967. Chinese Indonesians have been asked to change their names to Indonesian ones. Their language schools have been closed and replaced by schools, where Chinese is taught as an extracurricular language. The use of Chinese characters in public has been discouraged and Chinese festivals and rituals are to be celebrated only in the privacy of the home. Chinese Indonesians carry identity cards with special markings to show that they are of Chinese origin [15] and Chinese businessmen are encouraged to find "indigenous" Indonesian business partners. However, the Chinese are free to practise the religion of their choice, and many of them are Christians or Buddhists.

64. There are two categories of Chinese in Indonesia. The first, called "Peranakans", are locally born Chinese who have intermarried with Indonesians and speak Bahasa Indonesia. Some of them have become Muslims. The second category are called "Totoks". They are recent migrants who continue to speak Chinese and are more involved in education and business. Both categories of Chinese were targeted during the May 1998 riots.

65. With regard to the May 1998 riots, the Special Rapporteur spoke with victims, witnesses, members of the Chinese community, human rights defenders and NGOs. She also spoke with government officials and representatives of the military and the police. The following conclusions are based on these interviews.

66. On 12 May 1998, four university students were shot dead at Trishakti University during a demonstration. By 14 May, thousands of establishments had burnt to the ground. According to the Volunteers for Humanitarian Causes, 1,190 people were dead in Jakarta and 168 women had been gang raped. According to the police, only 451 people died and there were no cases of gang rape. The Joint Fact-Finding Team (TGPF) was able to interview 85 victims of sexual violence, of whom 52 were victims of rape.

67. The riots followed a pattern. Initially there were rumours threatening violence. Then a group of strangers, described as heavily built and in army

boots and armed with crowbars, inflammable liquids and Molotov cocktails would come to a locality in jeeps and on motorcycles. They would incite the populace to riot, assisting them to break into buildings and loot the premises. They would also assist in arson. After some time, they would withdraw. Although both Chinese and non-Chinese died in the arson, the target of the riots was Chinese establishments. With regard to the cases of rape, again it was the Chinese who were the targets. Rape occurred in west and north Jakarta, where there was a concentration of Chinese.

68. The TGPF could not conclude that the riots were systematically planned and instigated, but asked for further investigations, mentioning by name Lt.-Gen. Prabowo, the son-in-law of former President Soeharto, and Major-General Syafrie Syamsoeddin, the chief of army operations in Jakarta. According to witnesses, the perpetrators of the crimes committed were local criminals, some of whom have confessed that they were paid to riot. The witnesses also felt that individuals from the Indonesian army and from some political organizations also took part in the rioting. It is absolutely essential that the perpetrators be brought to trial after proper investigations so that such events do not occur in the future.

69. The Special Rapporteur was shown a video of the riots. She was appalled to see members of the armed forces wearing red berets stand by and watch as the looting and rioting continued. At one time they shared looted drinks with the miscreants, joking and laughing during the chaos. One victim described to the Special Rapporteur how she ran out of her house and asked a soldier to help her family. He just turned away. She watched her sisters suffer sexual violence, her brother killed and her house burn to the ground. This type of lawlessness gives impunity to criminal actors and allows for large-scale violations of human rights. All States have a due diligence duty to prevent, prosecute and punish private actors involved in violating the rights of others.

70. The Special Rapporteur asked members of the security forces why they had allowed such lawlessness to prevail. They argued that, after the shooting of the students, they had not wanted any more civilian casualties, so the soldiers had been reluctant to intervene. The inability of the security forces of Indonesia to distinguish between the exercise of the right to free speech and lawful assembly by the students and pure criminal activity by gangs of thugs and looters is extremely worrying and points to the need for intensive human rights training of the Indonesian security forces.

71. Throughout the Special Rapporteur's stay, government officials, as well as individual civilians, inquired whether the so-called mass rapes actually took place since no one was reporting the cases to the police. The Special Rapporteur is firmly convinced that there was mass rape, more often gang rape. It took place in homes, in public places and in workplaces. Although she cannot provide a definite number, the pattern of violence that was described by victims, witnesses and human rights defenders clearly indicated that such rape was widespread.

72. None of the victims with whom the Special Rapporteur spoke had reported their cases to the police. The reasons for this were manifold. Firstly, they had received death threats and anonymous letters warning them not to report

the cases. Secondly, they had no confidence in the criminal justice system and were convinced that the police would not do anything to bring the miscreants to trial. Finally, they were afraid that the publicity would result in their being ostracized in their community, where rape carries with it a stigma that is hard to erase. The lack of confidence of the victims in the criminal justice system strikes at the heart of the integrity of the institutions that defend the rule of law. It is important that these institutions regain the confidence of this important element of Indonesian society.

73. The Special Rapporteur is deeply concerned about the proliferation of death threats and anonymous letters after the May 1988 riots. These threats and letters have been targeted at victims, the families of the victims, doctors and human rights defenders. In the case of human rights defenders, the threat is directed against their children. The threats are delivered by telephone and by letter. In the case of rape victims, photographs of the rape are sent warning the victim that if she speaks the photographs will be circulated widely. This private thuggery has to be confronted and eliminated. The rule of law must prevail if the criminal justice system in Indonesia is to give relief to victims. There is a need for an effective witness protection scheme so that victims and witnesses come forward. In addition, the State must confront this phenomenon of thuggery at the highest levels. These kinds of threats should be outlawed and the police should take a proactive role in bringing the perpetrators to trial. Such a campaign should be endorsed at the highest level. Otherwise the legitimate process of politics and governance will always be subverted by shadowy forces who rule civil society through the use of terror.

74. Some of the officials the Special Rapporteur met were dismissive about these letters, regarding them as pranks by individuals. However, the death of Ita Martadinata Haryono has struck terror into the hearts of those who have received such letters. Ms. Haryono, a 17-year old ethnic Chinese woman, was brutally murdered in her home in Jakarta. Ms. Haryono and her mother were active members of the Volunteers for Humanitarian Causes; they had constantly received death threats and anonymous letters. Suddenly, Ms. Haryono was brutally murdered in her own home. The police claim that the murder was an attempted burglary by a neighbour who was a good friend of Ms. Haryono. The human rights community is convinced that she was murdered to silence those involved in human rights work. The two sides presented us with their evidence. Whatever the truth of this matter, the fact that Ms. Haryono and her family were recipients of death threats and anonymous letters casts a cloud over the case. Without understanding the context of the case, the police appear to have become combative, further alienating human rights defenders from the criminal justice system.

VI. EAST TIMOR

75. East Timor, Irian Jaya and Aceh all have Military Operation Area or Daerah Operasi Militer (DOM) status which limits access by outside observers, who are required to obtain a permit (surat jalan) either through the Director-General of the Social and Political Affairs Department or the region's military commander. Once in the area, visitors must report to military checkpoints in the villages they visit. In further restricted

“Red Zone” areas, local people are required to carry passes, obtained from the village head or from the local military commander, in order to go in and out of villages, including to hunt and garden. [16] The inaccessibility of East Timor, Aceh and Irian Jaya has allowed human rights abuses to go unreported and perpetrators to act with impunity. The Special Rapporteur requests the Government to allow human rights monitors full and unrestricted access to military operation areas in order to monitor and report on the human rights situation in inaccessible areas where people are most at risk.

76. The resignation of President Soeharto was seen by many East Timorese as a turning point, creating the possibility of a solution for East Timor and the end to years of human rights abuses. On 5 August 1998, the United Nations brokered an agreement between Indonesia and Portugal, in which both sides committed themselves to working towards an agreement on “wide-ranging autonomy”. Indonesia agreed to drop its insistence that a precondition of negotiations must be acceptance of Indonesian sovereignty, although it continued to reject the idea of a referendum on independence. [17]

77. Although there is now greater freedom in East Timor, and gestures of good will have been offered by President Habibie, the serious and systematic abuses that prevailed in the territory continue to create a climate of distrust and suspicion. Women are particularly vulnerable to gender-specific human rights violations, including rape and sexual harassment. Rape is often unreported because of fear of retaliation.

78. Before May 1998, rape was used by the military as a method of torture and intimidation against the local population. Relatives of political opponents were raped by the military as a form of revenge or to force their relatives out of hiding.

79. In East Timor, “almost everyday there are persons who force their way into houses of the population and rape the women, it is these accursed actions which sow hatred and traumatize the East Timorese”. [18]

80. Rape continues even after the fall of Soeharto, but the Regional Army Commander assured the Special Rapporteur that he would not tolerate violence against women by the armed forces. It is still too early to ascertain whether he will implement his assurances.

81. While the Special Rapporteur was in Dili, East Timor, she was able to meet with victims of gender-specific violence, the majority of whom had allegedly been targeted because of their assumed relationship with the resistance movement. Furthermore, rape was used as a form of intimidation and torture against the female community when the military could not find male family members. Meetings with victims were arranged through Women's Forum, a non-governmental organization established on 5 July 1998, which provides a place for victims of violence to receive counselling and support. The events in most of these cases occurred before May 1998. The Special Rapporteur cannot reproduce all the testimonies for lack of space; however, the following few testimonies give a sense of the violations that took place.

82. On 10 June 1980, X was arrested during a meeting in the village office. She was held at a military post for an hour and then taken to a former

boarding house of the military (now a maternity clinic). She was interrogated and tortured all night: beaten, burned with cigarettes and given electric shocks in her ears. When questioned about her friend Beatrice, she told her interrogators that she knew nothing. She was stripped naked and told to walk around outside, then they put her in a water tank and pushed her (with their boots) under the water numerous times. They taunted her that perhaps she could find her friend at the bottom of the tank. When she could not support the torture any longer, she told them where they could find Beatrice. They told her to put on her clothes and go with them to Beatrice's house. They surrounded the house and told her to knock on the door and ask for her friend. They arrested Beatrice and took both of them to the command post, where she and Beatrice were stripped and tortured in the ways described above. X was then raped by Captain Jambrot; she was only 16 years old. Marilina (another inmate) was also raped. Another inmate was stripped and told to get in the water tank. [19]

83. The Special Rapporteur heard testimonies from women in regard to the Craras village massacre, which occurred in the 1980s. All the men of the village above the age of 12 had reportedly been killed by the Indonesian military. The massacre was allegedly in retaliation for the killing of one soldier by the guerrillas. The residents of the village had been moved to another village, Kampung Janda, commonly known as “widows' village”.

84. M (36 years old) from Viqueque was arrested, interrogated and raped in the 1980s whenever there was a clash between the military and the guerrillas, because her relatives were involved in the resistance movement. She testified that in 1981 she was raped on many occasions. In 1982, M and her family were exiled to Atauro island. For a whole year they were fed only with rotten corn; many people suffered from malnutrition, including her father, who died as a result. The family spent five years, from 1982 to 1987, on Atauro island. Finally, the ICRC came to the island and ensured that they were given proper food, and for that reason she survived. [20]

85. B (32 years old) from Craras, Viqueque was told, after her husband disappeared, that if she wanted to see him again she would have to serve 100 soldiers at Pos Lalarek Mutin military post. For three months, she had to obey all orders and accede to all the needs of the post during the day and was raped at night. When she went to look for wood in the forest she was accused of meeting with the guerrillas and she was raped in front of her family as punishment. She continued to search for her husband, until finally she received news that he had been killed. As a result of the rape she has a seven-year old daughter. B is afraid to go to the authorities and file a complaint out of fear of retaliation against her and her family. [21]

86. D (38 years old) from Viqueque was arrested and raped on many occasions during the period 1975-1991. She was forced to serve different soldiers who were stationed near her village. She has five children, all of them allegedly the result of rape by soldiers. Reportedly, those who fathered her children were officers in the Military District Command KODIN and the Nanggala Kopassus Unit. Her church has helped her to support her children but she wants Indonesia to take responsibility for her and the children. [22]

87. The following cases are alleged to have taken place after May 1998.

88. It is reported that at 11 a.m. on 1 May 1998 Ms. Rosita Gomes Pereira was raped in her home in the hamlet of Darnei in the village of Poetete, Ermera district, by members of the Indonesian military. It is reported that the perpetrators were from the Lulirema military post, located in the village of Coliate in Hatolia, Ermera district. A report of the incident was made to the ICRC and the local Catholic Church.

89. It is reported that on 6 May 1998 Ms. Filomena da Costa (24) was raped by a member of the Special Intelligence Unit at night while in detention at the Indonesian Special Forces (Kopassus) headquarters, Baucau, Rumah Merah.

90. On 27 May 1998 Ms. Jacinta Soares (16) was allegedly raped by Sergeant II Restu, the local Babinsa, military head, of Laline village, RT I/RK IV, Lacluta sub-district. It is reported that the perpetrator had targeted another woman who had been a sex slave but, because she was pregnant, Restu asked her to find another woman. The pregnant woman contacted her cousin, Jacinta and invited her to come to the house for a meal. When she arrived she was taken to a room where she was raped by Restu, despite her protests. [23]

91. On 24 September 1998, Ms. Anastacia de Assuncao (21) from the village of Assalimo in Los Palos, was allegedly raped and killed by a member of a paramilitary unit, Team ALPA, linked to Kopassus. She is believed to have been taken into custody by a member of the armed forces and her body was found later by the side of the road. Her brother is suspected by the armed forces of being involved with the armed resistance movement, the National Army for the Liberation of East Timor (FALINTIL).

92. The Special Rapporteur had a very fruitful meeting with Colonel Tono Suratman, the Territory's Regional Commander. She was impressed with his desire to break with the past and to have intensive human rights training for his troops. During the meeting he agreed to declare publicly that violence against women would not be tolerated within the military, and perpetrators would be severely punished. He released a statement to this effect the day after he met with the Special Rapporteur. It was carried as headlines in all the East Timor newspapers. Furthermore, he agreed to raise the possibility of setting up a compensation fund for rape victims, and children born of rape, with his superiors in Jakarta. The Special Rapporteur mentioned the large number of widows in East Timor and requested that they be provided with the same service as that provided under the Minister for Social Affairs widows' programme in Aceh. The Special Rapporteur also asked the Colonel to investigate the cases, referred to above, which had been brought to her attention.

VII. ACEH

93. The designation of Aceh as a DOM was justified by allegations that there was resistance from those known as the Free Aceh Movement (Gerakan Aceh Merkedka (GAM)) in 1989.

94. The Special Rapporteur has received reports of widespread atrocities in Aceh during counter-insurgency operations there in 1990-1991. The deportation of hundreds of Acehnese migrants from Malaysia in late March caused an

international outcry, as some of those sent back were clearly refugees who had fled Aceh in the early 1990s and feared persecution. Counter-insurgency operations by the Indonesian army resulted in large-scale sexual violence. Large numbers of victims have come forward in the past three months and testified to the violence they endured. As Aceh is a Muslim province, there appears to be a lot of support in Jakarta for victims in Aceh. Findings of a team from the House of Representatives and the National Commission on Human Rights call for those who were responsible for the atrocities in Aceh to be brought to trial.

95. The Special Rapporteur notes that the Armed Forces (ABRI) Chief General Wiranto is still reluctant to look into the institutional involvement of ABRI in violations of human rights in the past, as he promised to do earlier. In August 1998, General Wiranto apologized to the people of Aceh for the abuses they had suffered and declared the DOM status revoked. In September 1998, the Jakarta Post newspaper reported that the 300 remaining combat troops had been withdrawn from Aceh province. It is reported that on 2 September 1998, as troops were leaving the city of Lhokseumawe, violence directed against them soon turned into a riot, in which almost 2,000 shops, government offices and other buildings were allegedly looted and set on fire. There were rumours that military elements themselves had sparked the riot to ensure their continued presence in Aceh.

96. Amnesty International remains concerned at reports that the violations are continuing, albeit at a reduced level. Amnesty International, London has stated that “despite taking a number of initiatives to improve human rights since coming to power in May, the Habibie Government is showing that, under pressure, it will resort to the same strong arm tactics to suppress dissent which characterized the Suharto era”.

97. In August, a human rights team investigating reports of atrocities by the military in Aceh unearthed a mass grave in the province where it is reported that more than 150 victims could be buried. Amnesty International has alleged that at least 2,000 people were extrajudicially executed, disappeared or arbitrarily arrested and tortured at the height of the Indonesian military's counter-insurgency operations in Aceh between 1989 and 1993.

98. One of the testimonies the Special Rapporteur received was from F, who lives in Aceh. At 2 o'clock one morning about 23 soldiers came looking for her husband. They broke the door down, interrogated the children and searched the house. She told them that her husband had gone to his parents' house because they were ill. When the soldiers found that he was not there, they left. Around 3 a.m. three of the soldiers returned and asked the same question. They put out the oil lamp. When she ran toward her mother's house, they knocked her with a rifle butt. She was six months pregnant. They took turns hitting her and kicking her. Only one spoke Acehnese, the others spoke Bahasi Indonesia. Finally they pushed her into the kitchen area where there was a bench and, with her children in the adjacent room, they gang raped her, despite the fact that she was pregnant. The child she was bearing finds it difficult to breathe. She feels that the rape incident affected the foetus.

VIII. IRIAN JAYA

99. The Free Papua Movement Organisasi Papua Merdeka (OPM), an armed nationalist group, has been waging a low intensity guerrilla war against Indonesia to demand independence for the former Dutch colony of Western Guinea, which became Indonesian territory in 1963. Through a United Nations mediated settlement, the two States agreed on 15 August 1962 to a Dutch withdrawal, to be followed in 1969 by a process of self-determination by the people of Irian Jaya. The Government of Indonesia submitted the 1969 Act of Free Choice, not to all Papuans, but to eight representative councils, comprised of 1,926 representatives selected by the Indonesian authorities. The consultative assemblies voted unanimously to remain with Indonesia. The United Nations recognized Indonesian sovereignty there in 1969. [24]

100. Since 1969 there has been a military presence in Irian Jaya. The reason given by certain commentators is that it is to protect Indonesian economic interests in the area. In the 1970s Freeport Indonesia Inc. began operation in Irian Jaya, the location of the world's largest open-pit gold mine. There are reports, of widespread human rights violations by the military, which reached a peak in 1994. According to reports in February 1996 troops from all over Indonesia came to the Mapnduma area. It was alleged that the soldiers raped women there indiscriminately; girls as young as 12 were victims, as were mute, mentally retarded and pregnant women.

101. In July 1998, on the anniversary of the 1961 proclamation of independence, a series of pro-independence demonstrations were organized by the OPM. The Indonesian army apparently used heavy armed tactics to disrupt the demonstration. It is alleged that women were taken out to sea on Indonesian navy ships, where they were raped, sexually mutilated and thrown overboard. Women's corpses reportedly washed up on the Biak coast. Some of them showed signs of sexual mutilation; breasts had been removed. The Indonesian army claims that the corpses were related to the tidal waves that hit Papua New Guinea and they completely deny the incident. It is important that an independent fact-finding team look into the facts and come up with an impartial report.

102. Before May 1998 sexual violence by the Indonesian security forces in Irian Jaya appeared to be taken for granted, both by the authorities and the local population. The Special Rapporteur heard the following testimonies, among others.

103. A is from Jila village. She was raped by a soldier from the Indonesian military while she was working in the fields in 1987. She has a child as a result of the rape. She returned home and told her parents what had happened. They were extremely angry and went to the military post to demand justice. Her parents were beaten up by the soldiers. Her two brothers, one of whom is a priest and the other a village chief, went to the military post; they were also beaten up by the military. The perpetrator was moved out of the area. In 1988, A had a child as a result of the rape. She had been a virgin when she was raped and virginity has a high premium in this society. Her parents said that she should have protected herself better; the wrong was put on her.

It is alleged that soldiers raped many women in that area. Women were afraid that, if they resisted, their families would be attacked. There are many children as a result of the rapes. [25]

104. A comes from the Freeport mine area. In 1990, 250 women organized themselves to protest against ABRI and the practices of Freeport. Freeport had expropriated a large amount of the local people's land, and the women demanded that it be returned. Freeport said that it had bought the land from the State. The Government denied that the women had any title to the land. The land which they had farmed was used to build houses for Freeport workers. Freeport is also accused of polluting the river causing fish and animals to die.

105. In October 1994, Indonesian soldiers from Paniai Battalion 752, stationed in the town of Timika, detained and tortured A and M, along with three male Amungme civilians. On 9 October 1994, in the middle of the night, A was arrested by six soldiers. She was not allowed to get dressed properly. There were many soldiers outside the house. She was forced into the back of a Freeport truck and taken to the district military command post. She was accused of having a relationship with Kelly Kwalik, the OPM leader, who was involved in the hostage-taking in Mapnduma. A stated: "I and another woman were taken to a room which was knee deep in water and human excrement. We were detained there for one month and two days. The room was full of flies. The guards would throw food into the room for us as they could not bear to enter due to the stench. We had to clean the food of excrement before we ate it. At times we thought we were going to die from the smell."

106. The two women were interrogated. M could not understand Bahasa Indonesian and therefore she did not reply. As a punishment, they put weights on her shoulders and behind her knees and made her do squats for five hours. She was 60 years old. When they took her back to the cell she was exhausted and nearly collapsed. Approximately a month after they were arrested, the Vice President of Indonesia came to the military post. Prior to his arrival, all the cells were cleaned up and the two women were given food. Two days later they were released. A was bed ridden for three months following her release. Once she had recovered, she went to the Bishop in Jayapura and told him about her arrest and detention. [26]

107. In September 1995, the National Human Rights Commission (Komnas Ham) released its findings on human rights violations in the Timika area of Irian Jaya between October 1994 and June 1995. Its report confirmed that the Indonesian military operating in and around the Freeport project area were responsible for the killing of at least 16 civilians and the disappearance of at least 4 individuals living in the area. The Commission stated that the violations, "are directly connected to ... [the military] acting as protection for the mining business of PT Freeport Indonesia ... classified by the Government of Indonesia as a vital project". The Commission also cited military operations against the OPM as a reason for the violations. [27]

108. The Commission concluded at that time that "clear and identifiable human rights violations have occurred". The Commission called on the Government of Indonesia and the military to investigate these occurrences and prosecute

those responsible. They also recommended that the victims and their families be compensated. To date, an investigation and prosecutions have been carried out with regard to only one of the confirmed incidents. No victims have received compensation, and human rights concerns in and around the project area persist.

109. The Special Rapporteur believes that a thorough and impartial investigation into the use of rape as a method of torture and intimidation by the military in Irian Jaya is imperative. According to information received, perpetrators have not been brought to trial, victims and their children have not been compensated and human rights abuses continue to occur even under the new regime.

110. Although the guidelines given to soldiers call for the protection of human rights and explicitly prohibit rape, they have not been effective in eliminating abuse by the military, and there is no indication that military personnel have been held accountable for violating human rights. [28]

IX. RECOMMENDATIONS

A. At the international level

111. Under the Memorandum of Understanding between the Office of the High Commissioner for Human Rights and the Government of Indonesia, on mutual agreement to cooperate in the development and implementation of comprehensive programmes for the promotion and protection of human rights in Indonesia, it . is planned, under the OHCHR technical cooperation programme, to have a programme officer based in Jakarta to monitor the human rights situation. The project includes gender sensitization training for all members of the criminal justice system, the police force and the military. The Special Rapporteur recommends that the memorandum should be implemented as soon as possible.

112. OHCHR should cooperate with the Government of Indonesia with respect to the realization of the national action plan for human rights, as well as the further promotion and protection of human rights in Indonesia and East Timor.

B. At the national level

113. The Government of Indonesia should ratify all the human rights instruments, especially the International Covenant on Civil and Political Rights. It should also review its reservation to the Convention on the Elimination of All Forms of Discrimination against Women.

114. The Government of Indonesia should acknowledge that human rights abuses took place in Indonesia before May 1998, especially in Aceh and Irian Jaya, as well as in East Timor. It must move beyond a “denial culture”.

115. The Government of Indonesia should consider setting up a truth and reconciliation process for the victims of state violence before May 1998. The process should be open to victims of rape, victims of torture, mothers of children born of Indonesian soldiers and widows of individuals killed by

Indonesian military action. The process should involve payment of compensation to the victim and prosecution of the perpetrators, if they are identifiable.

116. The Government of Indonesia should consider accelerating the process of law reform and introduce amendments to the Penal Code that reflect the latest international standards with regard to violence against women. The rape provisions should be amended, in collaboration with women's groups. The reformers should also consider introducing domestic violence legislation and sexual harassment legislation in keeping with international standards. The Government of Indonesia should ask for technical cooperation from the United Nations on this aspect of law reform.

117. The Government of Indonesia should take special measures to improve public confidence in the criminal justice system, especially with regard to violence against women. The police should operate independently and direct their efforts at community policing. The security forces should formulate a human rights policy and engage in extensive human rights training so as to meet the needs of an open, democratic society. The Attorney-General's department and the judiciary should also be gender sensitive and aware of the issues with regard to violence against women. Special programmes and grants should be established to transform radically the perceptions of the criminal justice system, so that it becomes sensitive to human rights violations. Again, technical cooperation assistance from the Office of the High Commissioner for Human Rights may be useful in planning an intensive programme on human rights for the criminal justice system. Other bilateral and multilateral donors might be approached to assist with this programme, which should be comprehensive and systematic.

118. The Government of Indonesia should inaugurate a national campaign against death threats, anonymous letters and the use of terror against members of civil society. This campaign should be endorsed at the highest level and perpetrators should be brought to trial. The criminal justice system should play a proactive role in this regard. There should be zero tolerance for acts of terror. The campaign should be conducted through the media, but in the final analysis, only investigation and imprisonment of the perpetrators will give the public confidence to come forward despite the threats. The impunity of those who engage in these acts must end and they must be punished.

119. Many victims of violence are suffering from mental health problems due to their experiences. A national health policy or programme to help these women victims of violence should be considered by the Ministry of Health. Trauma counselling is absolutely necessary in most of these cases.

120. The Government of Indonesia should consider repealing regulations that discriminate against the Chinese minority, many of which violate the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Laws with regard to minorities should conform to international standards as set out in international documents.

121. The Government, in partnership with NGOs, should encourage a culture of human rights. The media, education policy and academic research should focus on human rights issues, including problems related to violence against women.

All sectors of civil society should be involved in the exercise, including NGOs, women's organizations, trade unions, artists, film stars, individuals from the sporting world, etc. However, for such a policy to be effective, the boundaries between civil society and military responsibility should be strictly drawn. The military must withdraw from the civil/political realm.

122. The Government, in partnership with NGOs, should set up crisis centres for victims of violence against women. These centres should provide shelter, legal counselling, psychological counselling and vocational training for women's economic empowerment.

123. The Government of Indonesia should allow unrestricted access to all parts of the country by independent human rights monitors; in particular, to members of the National Commission on Human Rights, the Commission on Violence against Women and human rights organizations.

124. Without a Victims and Witness Protection Programme, victims are unwilling to come forward with their testimonies owing to the climate of harassment and intimidation of both victims of violence and human rights defenders and to fear of reprisals. There is a need to develop confidence-building measures for victims of violence.

C. Non-governmental organizations

125. Non-governmental organizations should work to sensitize women victims to the need to speak out in order to bring perpetrators to justice, and to coach women witnesses in legal procedures and in giving testimony in court.

126. Non-governmental organizations should take the lead in lobbying for the establishment of "one-stop crisis centres".

127. Non-governmental organizations should undertake research, collection of data and comparative analysis with regard to violence against women in Indonesia, in order to be able to devise a needs-based nationwide response to the problem.

Notes

1.Case interview, Jakarta, November 1998.

2.Case interview, Jakarta, November 1998.

3.Case interview (Dili) December 1998

4.Case interview, Jakarta, November 1998.

5.Insan Harapan Sejahtera Social Science Research and Consultancy, Achie Luhulima and T.O. Ihromi, Sociolegal status of women in selected DMC's Country Study: Indonesia, February 1998, p. 70.

6.CEDAW/C/IDN/2-3.

7.World Organization Against Torture, Violence against Women in Indonesia, June 1998.

8.Insan Harapan Sejahtera Social Science Research and Consultancy, Achie Luhulima and T.O. Ihromi, Sociolegal Status of Women in Selected DMC's Country Study: Indonesia, February 1998, p. 17.

9.Ibid., p. 14.

10.Article 3.

11.Article 34 (3).

12.Article 31 (1) and (2).

13.World Organization Against Torture, Violence against Women in Indonesia, June 1998, p. 31.

14.Leo Suryadinata, The Culture of the Chinese Minority in Indonesia, Times Books International, Singapore, 1997.

15.On 16 September 1998, President Habibie issued a presidential decree requiring equal treatment for all Indonesians and banning the use of the words "pribumi" and "non-pribumi" in all welfare formulations, organizations and programmes, and in the implementation of government coordinated activities. "Pribumi", which means "indigenous" or "native" in the Bahasa Indonesia language is normally understood to exclude persons of Chinese descent. A further welcome development is the recent decision by the Ministry of Home Affairs to stop using special codes on identity cards for Chinese Indonesians.

16.Munir, Coordinator, Kontras, "Military operation area (DOM) within the Framework of the Politics of Violence", October 1998.

17.Human Rights Watch Report 1999.

18.Bishop Belo, De TAK Magazine, 16 July 1998.

19.Case interview, Jakarta, November 1998.

20.Case interview, Dili, December 1998.

21.Case interview, Dili, December 1998.

22.Case interview, Dili, December 1998.

23.Case interview, Dili, December 1998.

24.Robert F. Kennedy Memorial Center for Human Rights and Institute for Human Rights Studies and Advocacy report, Concerning military Violence against Women in Irian Jaya and the Economic policies of the Indonesian State, October 1998.

25.Case interview, Jakarta, November 1998.

26.Case interview, Jakarta, November 1998.

27.National Human Rights Commission of Indonesia, “Results of monitoring and investigation of five incidents at Timika and one incident at Hoea, Irian Jaya, during the period October 1994-June 1995”, September 1995, statement.

28.Directive of the Commander, Military Area VIII/Trikora, concerning human rights, Mal Irja ABRI Operational Command, Major General Dunidja, Instruction No. Skep/96/XII/1995, December 1995.

Annex

SELECTIVE LIST OF PERSONS/ORGANIZATIONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER MISSION

Jakarta

Ms. Habibie	First Lady, wife of the President
Mr. Ali Alatas	Minister for Foreign Affairs
Mrs. Tuti Alawiyah	Minister for the Role of Women
Mrs. Yustika S. Baharsyah	Minister for Social Affairs
Dr. Romli Atmasamita	Director-General for Law and Regulations, Ministry of Justice
Mr. Soehandjono	Deputy Attorney-General
	Secretary General of the Ministry of Defence and Security
Lieutenant-General Rosemanhadi	Chief of Police
Mr. Marzuki Darusman	National Commission on Human Rights (KOMNAS HAM)
Dr. Saparinah Sadli	National Commission on Violence against Women (KOMISI NASIONAL ANTI KEKERASAN TERILADAP PEREMPUAN)
Ms. Nana Soedjatmoko	National Commission on Violence against Women
Ms. Kemala Motik Abdul Gafur	Chairperson of Indonesian Development Women/Indonesia Crisis Centre
Mr. Ninok Leksono	Deputy Editor-in-Chief, KOMPAS Daily Newspaper
Romo Sandyawan Sumardi Dr. Karlina Leksono-Supelli	Volunteer Team for Humanity (Tim Relawan)
Ms. Dwi Ria Latifia	Director of Ria Latifia and Partners law office
Mr. Abdul Hakim G. Nusantara Mr. Aderito de Jesus Soares	ELSAM (Institute for Policy Research and Advocacy)
Mr. Herman Awom	Gereja Kristen Injili di Irian Jaya Unity of Indonesian New Brotherhood (Persatuan Saudara Baru Indonesia/Persabi)

Ms. Ita Nadia	Kalyanamitra, Women’s Communication and Information Centre
Ms. Nursyahbani Katjasungkana	Indonesian Women’s Association for Justice (APIK)
	Indonesian Women's Corps (Korps Wanita Indonesia)
	Religious leaders
Ms. Yenny Thamrin	Chairperson of Yayasan Sosial Caritas (CARITAS Social Foundation)
Mr. Judi W. Leonardi	Indonesian Chinese Social Association
	Indonesian Women’s Coalition for Justice and Democracy (KPIKI)
	KOWANI, Kongres Wanita Indonesia

Dili, East Timor

Mr. Abilio Sores	Governor of East Timor
Col. Tono Suratman	Regional Military Commander Head of Regional Police
Mr. Clementino dos Reis Amaral	National Commission on Human Rights Joint meeting of Women’s organizations
Mr. Manuel Abrantes	Director, Comissaõ Justitia et Pax (Diocesan Justice and Peace Commission)
	Women’s Forum, Yayasan HAK (Foundation for Law, Justice and Human Rights)
Mr. Frédéric Fournier	Head of office, International Committee of the Red Cross (ICRC)
Sr. Bernardita C. Guhit	Secretariat for Justice and Peace of the Bishops’ Conference of Indonesia.
	GERTAK, Anti-violence against Women Organization
