



**STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES OF THE  
KOMISI NASIONAL HAK ASASI MANUSIA (KOMNAS HAM) ([INDONESIAN]  
HUMAN RIGHTS NATIONAL COMMISSION),  
JAKARTA, INDONESIA, 13 DECEMBER 2006**

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**INTRODUCTION**

1. The name of the Indonesian NHRI is “*Komisi Nasional Hak Asasi Manusia*”, which means Human Right National Commission. It is popularly known and referred to by its acronym “*Komnas HAM*”. For practical purposes, the acronym “*Komnas HAM*” will be used hereinafter in referring to the Indonesian NHRI.

**I. CHARACTER OF THE NHRI**

**(1) Establishment**

2. The Indonesian NHRI has been established, initially, by a presidential decision, *i.e.* Presidential Decision No. 50 of 1993 of 7 June 1993 on Human Rights National Commission. The Indonesian name of the institution was “*Komisi Nasional Hak Asasi Manusia*” with its official acronym “*Komisi Nasional*” with the following main features:

(a) The reasons behind and the purposes for the establishment of *Komisi Nasional* under the above Presidential Decision are spelled out in its preambular paragraphs which, essentially, contains the following statements:

- (i) The Indonesian nation, being a part of the international community, shall respect the Charter of the United Nations and the Universal Declaration of Human Rights;

(ii) To promote and protect human rights and, in accordance with the principles of a state based on law, their implementation needs to be enhanced and affirmed;

(b) The principle of *Komisi Nasional* is *Pancasila*, the State philosophy (Article 2), it is independent (Article 3) and whose objectives are to assist in the development of conditions conducive to the implementation of human rights in accordance with *Pancasila*, the 1945 [Indonesian] Constitution, the Charter of the United Nations and the Universal Declaration of Human Rights and to enhance the protection of human rights to support the realization of the objectives the national development, *i.e.* the development of the Indonesian society at large (Article 4);

(c) The activities to be carried out by *Komisi Nasional* are dissemination of national and international human rights concepts, conducting research on various United Nations human rights instruments with a view to recommending their ratification thereof or accession thereto, monitoring and conducting inquiry on the implementation of human rights and submitting views, advices and recommendations to the authorities concerned for the implementation of human rights and conducting regional and international cooperation for the promotion and protection of human rights (Article 5);

(d) The membership of *Komisi Nasional* consists of prominent figures of the society (Article 7), 25 in total (Article 8(1)), appointed for the first time by the President (Article 8(3)) with terms of office of five years with the possibility of reappointment for one term of appointment only (Article 8(5));

(e) The budget of *Komisi Nasional* was borne by the State Secretariat (Article 13);

(f) As *Komisi Nasional* was established by the authoritarian regime at that time, whose members were appointed by the Government and the budget was provided by the Government as well, it had difficulties in preserving its image as an independent institution as stipulated under Article 3;

(g) The situation changed since May 1998 with the fall of the authoritarian and repressive regime of the so-called "New Order" as a result of a nation-wide reform

movement for the establishment of a democratic regime. With the collapse of the authoritarian and repressive regime “New Order” and Soeharto as its leader, *Komisi Nasional* was able to act independently. This was shown, among others, by the conduct and results of its inquiry on the alleged serious violations of human rights in the then East Timor which occurred in 1999 in connection with the implementation of the act of free choice held in August 1999. *Komisi Nasional’s* report on the subject was brought to and considered by the then Commission on Human Rights at its special session in 2000.

3. The reform movement towards democracy which brought the downfall of the authoritarian and repressive “New Order” regime in May 1998 drastically changed the political life of the Indonesian nation and, in this context, its perspectives on human rights and fundamental freedoms as may be seen, *inter alia*, in the following developments:

(a) The issuance of a decree by the People’s Consultative Assembly, the highest policy body under the original 1945 Constitution, namely Decree No. XVII/MPR/1998 of 13 November 1998 which, *inter alia*:

- (i) States “that, the Indonesian nation, as a part of the world community should respect human rights as stipulated in the Universal Declaration of Human Rights and other international instruments on human rights” (preambular paragraph c);
- (ii) Provides that “The implementation of information, research, monitoring, study and mediation of human rights shall be carried out by a human rights national commission to be established by act” (operative paragraph 4);
- (iii) Spells out in details the “Perspectives and stance of the Indonesian nation on human rights” (Annex I);
- (iv) Proclaims a 44-article “Human Rights Charter” which adopts almost all of the provisions of the Universal Declaration of Human Rights, 1948 which groups the 44 articles into ten categories of basic rights and fundamental freedoms, *i.e.* right to life (articles 1-6), right to justice (articles 7-12), right to freedom (articles 13-19), right to freedom of information (articles 20-21), right to [personal] security (articles 22-26), right to welfare (articles 27-33), duties (articles 34-36), and protection and promotion (articles 37-44) and which states that “To uphold and protect human rights in accordance

with the principles of a democratic legally-based State, the implementation of human rights shall be guaranteed, governed and incorporated in legislative instruments” (Article 44);

(b) The enactment of Act No. 39 of 1999 of 23 September 1999 on Human Rights. This legal national instrument, which consists of 106 articles, devotes 31 articles to various aspects of the (new) NHRI to replace the NHRI established under a presidential decision, *i.c.* Presidential Decision No. 50 of 1993 (see: sub-paragraph (a) above), called “*Komisi Nasional Hak Asasi Manusia*” (Human Rights National Commission) with its official acronym “*Komnas HAM*”. The (new) NHRI, “*Komnas HAM*” established under Act No. 39 of 1999 has, *inter alia*, the following features:

- (i) Its status is strengthened, uplifted and affirmed as a state institution (not a government institution as was the case with its predecessor, “*Komisi Nasional*”, which was established by a presidential decision, a governmental instrument binding governmental institutions only, not the state and nation as a whole as it is not an instrument issued with the approval of the Parliament). *Komnas HAM* is established by an act, a legislative body’s sanctioned legal instrument, and that its status as “an institution having the same level as other state institutions is affirmed by Act No. 39 of 1999 (see: Article 1.7);
- (ii) Although not specifically mentioned in Act No. 39 of 1999, the geographical jurisdiction of *Komnas HAM*, being a national institution, covers the geographical areas falling under the jurisdiction of the Unitary State of the Republic of Indonesia. It may be noted that, in line with Article 76 (4) of Act. No. 39/1999, *Komnas HAM* has, so far, established three *Komnas HAM*’s Regional Offices (*Perwakilan Komnas HAM*) (in Padang, West Sumatera; Pontianak, West Kalimantan; and Jayapura, Papua) and three *Komnas HAM*’s “Branch” Offices (*Kantor Perwakilan Komnas HAM*) in the regions (Banda Aceh, Aceh; Ambon, the Moluccas; and Palu, Central Sulawesi). *Komnas HAM*’s “Branch” Offices of Banda Aceh and Ambon have been processed to be “uplifted” to *Komnas HAM* Regional Offices in 2007 and a number of new *Komnas HAM*’s Branch Offices have been planned to be established in 2007.

(2) **Independence**

4. The independence of *Komnas HAM* is reflected in the following:

(a) Act No. 39 of 1999 itself determines that *Komnas HAM* is an independent institution. Article 1.7 states that “*Komisi Nasional Hak Asasi Manusia*, hereinafter referred to as “*Komnas HAM*”, is a independent institution the status of which is of the same level to other state institutions, having the functions of carrying out research, study, information, monitoring and mediation of human rights”. The general elucidation of Act No. 39 of 1999 reaffirms the independent character of *Komnas HAM* (see: Elucidation of Act No. 39 of 1999, General, 12<sup>th</sup> paragraph);

(b) Under Act No. 39 Year 1999, Rules of Procedures on the following matters shall be established by *Komnas HAM* itself:

- (i) Rules concerning the Plenary Assembly and the Sub-commissions of *Komnas HAM* (see: Article 82);
- (ii) Procedures for election, appointment and termination of membership and leadership of *Komnas HAM* (see: Article 86);
- (iii) Duties and rights of the Members of *Komnas HAM* and their implementation (see: Article 88);
- (iv) Implementation of *Komnas HAM*'s competence not to carry out or to suspend examination of complaints for which a solution through an available legal process is being undertaken (see: Article 91(2));
- (v) Examination of alleged violations of human rights shall be conducted in closed doors unless *Komnas HAM* decides otherwise (see: Article 93);
- (vi) “Indirect” sub-poena power accorded to *Komnas HAM* in the event that a person does not appear following a summons issued by *Komnas HAM* or refuses to provide information to upon the latter’s request. It is called “indirect” sub-poena power because, in the exercise of this authority, *Komnas HAM* has to carry it out with the assistance of the relevant District Court (see: Article 95);
- (vii) The rules and procedures relating to the implementation of the functions, duties and competences of *Komnas HAM* (see: Article 99).

(b) *Komnas HAM*'s independence is recognized and reaffirmed by Act No. 26 of 2000 on Human Rights Courts as a reason for designating it as the only institution having the competence to conduct *pro justitia* inquiries of gross violations of human rights (genocide or crimes against humanity). The elucidation of Article 18(1) of Act No. 26 of 2000 referred to above states that "[The reason for determining that] the competence to carry out inquiries [of gross violations of human rights] is accorded to *Komnas HAM* only is meant to ensure the objectivity of the results of the inquiries because the institution of *Komnas HAM* is an institution of an independent nature".

5. (a) *Komnas HAM* is a state institution, not a government institution. As a state institution *Komnas HAM* is not responsible to the government. It does not receive and has never received instruction from the Government. On the contrary, on many occasions, *Komnas HAM* criticizes the Government for not having seriously discharged its responsibilities in protecting, promoting, upholding and implementing human rights as called for by the Constitution and Act No. 39 of 1999 on Human Rights;

(b) On many occasions *Komnas HAM* expressed its dismay to the Government for its lack of commitment to uphold human rights and justice in connection with the facts that the Attorney General, the examination institution of gross violations of human rights (genocide or crimes against humanity), for not having started with the examination process of cases on which *pro justitia* inquiries have been completed by *Komnas HAM* since a long period of time. Likewise, on many occasions, *Komnas HAM* openly expressed its concern whenever members of the state apparatus refused to comply with *Komnas HAM*'s summons for providing information or testimony in the framework of *pro justitia* inquiry of alleged gross violations of human rights (genocide or crimes against humanity).

6. The drawing up and implementation of human rights national plan of action and the drawing up of periodic reports to treaty bodies are two areas of potential conflicts of interest between the Government and *Komnas HAM*. To avoid such possible conflicts *Komnas HAM* has taken, is taking and will continue to take the following position:

(a) *Komnas HAM* considers that human rights national plan of action is a governmental plan of action, as a manifestation of its responsibilities in the protection, promotion, upholding and implementation of human rights and fundamental freedoms as

stipulated both by the Constitution and Act No. 39 of 1999 on Human Rights. Consequently, *Komnas HAM* takes the following position:

- (i) It provides inputs and advices if requested;
- (ii) It does not take part in the drawing up of the plan of action concerned;
- (iii) It refrains from taking part in the Government-sanctioned body for the purpose of monitoring the implementation of the plan of action;
- (iv) It conducts its own monitoring on the implementation of the plan of action and proposes, as appropriate, its amendments;
- (v) It carries out its activities in the attainment of its objectives set out in Act No. 39 of 1999 on Human Rights (Article 75) by performing its functions and in carrying out its activities in the field of research, study, information, monitoring and mediation of human rights in accordance with its five-year strategic plan and annual programmes of work;

(b) *Komnas HAM* also considers that submission of periodic reports to the treaty bodies of international human rights legal instruments to which Indonesia is a party is the responsibility of the Government. However, whilst *Komnas HAM* does not take part in the drawing up of such reports as such, it does provide information on the findings and experiences of *Komnas HAM* in relation to the implementation of the international human rights legal instruments concerned.

7. (a) To be noted that Act No. 39 of 1999 on Human Rights does not contain any provision which ensures a sort of “legal immunity” for members of *Komnas HAM* in the exercise of their duty under the Act concerned. Consequently, and unluckily, members of *Komnas HAM* may be held legally responsible for any act performed or any statement made, even in their official capacity and in the exercise of their duties and may be subjected to legal actions by those concerned;

(b) To be also noted that, even though members of *Komnas HAM* have to travel, from time to time, either to conflict areas or remote areas or both, they are not covered by any accident and/or life insurance relating thereto.

(3) **Appointments processes and organizational infrastructure**

**(3)(1) Composition of the Komnas HAM's membership and appointment processes**

8. (a) Article 76(2) of Act No. 39 of 1999 on Human Rights stipulates that "Membership of *Komnas HAM* consists of public figures who are professional, highly dedicated and of high integrity, conscious of the ideals of a state based on law and a welfare state with justice and respect for human rights and basic duties as the core";

(b) Article 84 of the act referred to in (a) above provides that persons who are eligible for appointment as members of *Komnas HAM* are Indonesian citizens who:

- "a. have experience in endeavours to promote and protect persons or groups whose human rights have been violated;
- b. have experience as judge, prosecutor, police officer, attorney at law or as holder of other legal professions;
- c. have experience in the fields of legislative, executive, and high state institutions; or
- d. religious figures, public figures, members of non-governmental organizations, and academicians".

9. The present membership of *Komnas HAM*, totalling 20, who served since 31 August 2002 and whose terms of office (five years) will expire on 30 August 2007 is composed of the following:

(a) Gender-wise:

- (i) three women;
- (ii) seventeen men;

(b) Background/origin:

- (i) Attorney-at-law 1;
- (ii) Retired Supreme Court Judge 1;
- (iii) Religious Leader 1;
- (iv) Journalist 1;
- (v) Retired Senior Staff of the United Nations/International Law Expert 1;
- (vi) Retired Civil Servant 1;
- (vii) Retired Police Officers 1;
- (viii) Retired Military Officers 3;

- (ix) Academicians/Lecturers 4;
- (x) NGOs 6.

10. The selection process for *Komnas HAM*'s membership for the period 31 August 2007-30 August 2012. It consists as follow:

(a) Establishment of a selection team by the Plenary Session of *Komnas HAM*, five members in total and should all be from outside *Komnas HAM*. The established five-member selection team consist as follows:

(i) Gender-wise:

(A) Women 3;

(B) Men 2;

(ii) Background:

(A) Senior Journalist 1;

(B) Women rights' defenders 2;

(C) Academicians 2;

(b) Announcement on the selection of candidates will be announced openly in the media, printed, audio, video and electronic in January 2007;

(c) Criteria for selection:

(i) Articles 76(2) and 84 of Act No. 39 of 1999 on Human Rights (see: supra, para 8);

(ii) Paris Principles, particularly section B.1;

(d) Selected candidates will be submitted to the Parliament for fit and proper tests and election in June 2007 and for further submission to the President in his capacity as Head of State for officialization (July/ August 2007);

(e) Those current members of *Komnas HAM* who are eligible for re-election (have served one term only) and who wish to present themselves as candidates for membership for the period of 31 August 2007-30 August 2012 shall have to follow the same process applicable to all other "fresh" candidates;

11. (a) As earlier mentioned (see: *supra*, para 9, *chapeau*), the term of office of the members of *Komnas HAM* is five years and re-eligible for one other term only;

(b) Members of *Komnas HAM* receive a modest honorarium. It is lower than the honorarium of member of other states institutions of the same level of *Komnas HAM*. However, considering the mission of *Komnas HAM*, which may and humanitarian and bearing in mind the economic condition of the country here millions of people are still living below poverty line and where economic, social and cultural rights of the majority of the nation have not been adequately addressed, the level of honorarium of *Komnas HAM* members may be considered as adequate.

12. As to possible dismissal of members of *Komnas HAM* (prior of the completion of their terms of office), the following rules would apply:

(a) Article 85 of Act No. 39 of 1999 on Human Rights which states as follows:

- (1) Termination of the terms of office of Members of *Komnas HAM* shall be based on the Decision of the Plenary Session and shall be communicated to the Parliament and shall be confirmed by a Presidential Decision.
- (2) The terms of office of a member of *Komnas HAM* shall be terminated prior its completion in the following circumstances:
  - a. his/her death;
  - b. upon his/her own request;
  - c. physical or mental sickness preventing him/her from performing his/her duties for a period of 1 (one) year continuously;
  - d. convicted for being guilty for having committed a criminal offence which falls under the category of a crime;
  - e. having committed a reprehensible act and/or another act decided by the Plenary Session as besmirching the dignity and reputation and/or diminishing the independence and credibility of *Komnas HAM*”;

(b) Article 27 of the Rules of Procedure of *Komnas HAM* which states as follows:

“Besmirching and other acts decided by the Plenary Session referred in Article 85(2) a of Act No. 39 of 1999 shall be further regulated in the Code of Conduct of members of *Komnas HAM*”;

(c) Article 4e and f of the Code of Conduct of the members of *Komnas HAM* which state as follows:

“ As a person who is professional, highly dedicated and conscious of the ideals of a state based on law and a welfare state having justice, respect for human rights and basic duties, every member of *Komnas HAM* is required to abide by the following conducts:

- a. ...
- b. ...
- c. ...
- d. ...
- e. refuse pressure and do not accept any instruction, request, or appeal, made or conveyed either directly or indirectly, from whomever outside *Komnas HAM* to take a position, express opinion, either orally or writing, or to commit an act which negatively influences on or is contrary to the character, principle and objectives of *Komnas HAM* or disturbs, harms, or damages the credibility, dignity and image of *Komnas HAM*;
- f. do not accept any gift or promise from whomever outside *Komnas HAM* which obviously or could reasonably be suspected to influence him/her to express opinion, either orally or in writing, take a position, or commit an act which influences negatively on or is contrary to the character, principle and objectives of *Komnas HAM* or disturbs, harms or damages the credibility, dignity and image of *Komnas HAM*;
- g. ...
- h. ...
- i. ...”.

13. To be noted that:

(a) The total number of members at the beginning of the current period (31 August 2002 – 30 August 2007) was 23;

(b) In the meantime two died (in 2003 and 2006 respectively) and one resigned (2004);

(c) No one has ever been dismissed under Article 85 of Act No. 39 of 1999 on Human Rights.

**(3)(2) Organization infrastructure**

**(A) Organs**

14. *Komnas HAM* has the following policy-making, operational and administrative organs:

**(A) Policy-making organ:**

The Plenary Session which:

- (i) is composed of all members of *Komnas HAM* (see: Articles 78(1)a and 79(2));
- (ii) is the highest authority of *Komnas HAM* (see: Article 79(1));

**(B) Operational organ:**

Sub-commissions (see: Article 78(1)b):

- (i) Sub-commissions are *Komnas HAM* organs which carry out *Komnas HAM's* activities (see: Article 80(1));
- (ii) It has currently three sub-commissions, as decided by the *Komnas HAM's* Plenary Session. They are:
  - Sub-commission of Economic, Social and Cultural Rights;
  - Sub-commission of Civil and Political Rights;
  - Sub-commission for the Protection of Special (Vulnerable) Groups;
- (iii) Centre for Documentation and Information;

**(C) Administrative organ**

Secretariat headed by a Secretary-General who is not a member of *Komnas HAM*.

The Secretariat has the following administrative bureaus:

- (i) Bureau for General Affairs;
- (ii) Bureau for Financial Affairs;
- (iii) Bureau for Administrative Matters and Meetings' Services.

15. See the organigram on Attachment 1.

**(B) Members and their status and responsibilities**

16. (a) All *Komnas HAM's* members are elected by the Parliament. They are of equal status and relations among members are based on the concept of *inter pares*. The Chairperson and Vice-Chairperson of *Komnas HAM* are considered as *primus inter pares*, not as superior(s) of other members. Chairpersons of sub-commissions are only coordinators of the work in their respective sub-commissions (see (b) below).

(b) Every member of *Komnas HAM*, including those elected by the members themselves as Chairperson and Vice-Chairperson, is responsible for a group human rights themes and is allotted with a related budget to carry out his/her activities in the context of *Komnas HAM's* overall functions (research and study, information, monitoring and mediation). Every member is responsible and accountable for the Plenary Session of *Komnas HAM*, the highest authority in this situation.

**(C) Staff**

17. The staff of *Komnas HAM* consists of two categories. They are:

(a) Professional staff:

(i) Those having at least bachelor degree in the field of study which is in line with the functions of *Komnas HAM*;

(ii) They are appointed as professional or specialists of:

- Research and study;
- Information;
- Monitoring;
- Mediation;

(iii) These professional staff are assigned to the operational organs of *Komnas HAM* (see: supra, para 14(b)) or the bureau of the Chairperson or Vice-Chairperson;

- (iv) All professional staff has followed trainings on human rights organized or co-organized by *Komnas HAM*. Many have followed human rights training outside Indonesia and some obtained their master degree in human rights-related field of study abroad;

(b) Administrative staff:

Those staff with administrative and/or financial background assigned working unit the Secretariat (Bureau for General Affairs; Bureau for Financial Affairs and Bureau for Administrative and Meetings' Services) or bureau of the Chairperson or Vice-Chairperson to provide administrative, logistical and financial aspects of the activities of the members and operational staff of *Komnas HAM*.

**(D) Budget**

18. (a) Annual draft budget is drafted by *Komnas HAM* on the basis of the programme of work prepared by members of *Komnas HAM* for every coming year and by the Secretariat for administrative purposes;

(b) The draft budget is submitted to the Parliament which, in turn, will discuss with the Ministry of Finance with the presence of the Secretariat to eventually decide *Komnas HAM's* budget for the year concerned;

(c) The spending of *Komnas HAM's* budget is managed by *Komnas HAM* itself in accordance with its overall programmes of work approved by the Plenary Session and in conformity with technical-administrative formalities applicable to the use of budgets coming from the State Budget, issued by the Ministry of Finance;

(d) *Komnas HAM's* annual budgets since 2002 are as follows: (1US\$ is equivalent to approximately IDR 9.000,00):

- (i) 2002: IDR 4.2 billions;
- (ii) 2003: IDR 14.5 billions;
- (iii) 2004: IDR 20.5 billions;
- (iv) 2005: IDR 29.7 billions;
- (v) 2006: IDR 40.2 billions;

(vi) 2007: IDR 49.5 billions.

**(E) Recruitment, size and composition of staff**

19. (a) Depending on the wish of the persons concerned, staff may be accorded a civil servant or non-civil servant status;

(b) Considering that professional staff are operational staff carrying out professional work, not administrative work, in support of the work of *Komnas HAM's* members (see: *Supra*, para 16(a)), their appointment or dismissal is decided by the Plenary Session (Article 2(2)s of *Komnas HAM's* Rules of Procedures);

(c) Administrative staff are appointed or dismissed by *Komnas HAM's* Secretary-General;

(d) The primary considerations of employment of staff are to secure the highest standard of efficiency, competence and integrity. These requirements are met through recruitment of staff on the basis of their educational background, work experience, motivation to work for *Komnas HAM* and psychological test. Special efforts are made to recruit competent women staff in a proportionate number as possible and staff coming from as many different regions as possible. The composition of *Komnas HAM's* staff is as follows (as at the end of 2005):

- Total: 86 consisting of 28 professional and 58 administrative staff;
- Gender: 40 women, 46 men;
- Level of education: 16 advanced university degree (masters), 42 first university degree (bachelors), 5 academic diplomas (three-year study after senior high school), and 23 junior high school or elementary school.

**(F) Frequency of Komnas HAM's Meetings**

20. "Regular" internal meetings:

(a) *Plenary Session*: twice a month (except December, once only), two days each, dates of 23 meetings a year have schedule in December of the preceding year;

(b) *Sub-commissions*: as required.

21. Other internal meeting as required:

(a) Drawing up or amending *Komnas HAM's* 5-year strategic plan;

(b) Drawing up and coordination of work programmes and budget of members of *Komnas HAM* for the coming year;

(c) Many other meeting relating to the preparations and assessments of implementation of work programmes and other activities.

22. External meetings:

(a) With the Parliament: twice a year (usually in March and October) and when necessary;

(b) With the President: average once a year;

(c) With other competent institutions or authorities concerned: when necessary.

**(4) Relations with civil society and human rights institutions**

23. The role of civil society and its relations with *Komnas HAM* in the protection and promotion of human rights are spelled out in the following national instruments:

(a) Article 89(1)f, 89(2)c and 101-103 of Act No. 39 Year 1999 on Human Rights which reads, respectively, as follows:

(i) Article 89(1)f:

“To carry out its function in the fields of research and study referred to in Article 76, *Komnas HAM* has the duty and competence:

.....

f. to undertake cooperation to conduct research and study with organizations, institutions or other parties, at the national, regional, or international level in the field of human rights;

...”;

(ii) Article 89(2)c:

“To carry out its function in the field of information referred to in Article 76, *Komnas HAM* has the duty and competence:

....

b. to undertake cooperation with organizations, institutions or other parties, at the national, regional, or international level in the field of human rights.”

(iii) Article 101:

“Every person, group, political organization, society organization, non-governmental organization or other society institutions has the right to submit reports on the occurrence of human rights violations to *Komnas HAM* or other competent institutions in the context of protection, upholding and promotion of human rights.”;

(iv) Article 102:

“Every person, group, political organization, society organization, non-governmental organization or other society institutions has the right to submit proposal concerning the drawing up and policy relating to human rights to *Komnas HAM* and/or other institutions.”;

(v) Article 103:

“Every person, group, political organization, society organization, non-governmental organization, university, study institution or other society organization, either on its own or in cooperation with *Komnas HAM*, may conduct study, education and dissemination of information concerning human rights.”;

(b) Article 18 of Act No. 26 of 2000 on Human Rights Courts which stipulates as follows:

(1) Inquiry of gross violations of human rights shall be conducted by *Komnas HAM*.

(2) In conducting the inquiry referred to in paragraph (1) *Komnas HAM* may establish an ad hoc team consisting of *Komnas HAM* and elements of the society.;

(c) Article 66a, d, e and f and 67 of the Rules of Procedure of *Komnas HAM* which stipulates, respectively, as follows:

(i) Article 66:

“In carrying out its functions, duties and competences *Komnas HAM* shall cooperate with:

a. the President, People’s Consultative Assembly, Parliament, Supreme Court, Financial Audit Agency and Regional Houses of Representatives;

.....

c. educational institutions;

d. groups, political organizations, society organizations, non-governmental organizations and other society organizations;

e. public figures, religious figures and individuals who are interested in human rights.”;

(ii) Article 67:

“The cooperation referred to in Article 66 comprises:

a. coordination on protection, promotion, upholding and fulfilment of human rights;

b. research on legislations and other instruments on human rights;

c. study on the social-economic, social-cultural and social-political real conditions of the Indonesia society and its diversity;

d. assists in the preparation of national report on the implementation of human rights international instruments which have been ratified [by Indonesia];

e. exchanges of information;

f. provision of assistance in human resources;

g. education and trainings;

h. dissemination of human rights concepts.”.

24. In practice, the cooperation with or involvement of the civil society in the activities of *Komnas HAM* take, *inter alia*, in the following forms:

(a) Involving them in the organization of seminars, workshop, etc. for the protection and promotion of human rights;

(b) Involving them as trainers, moderators or facilitators in human rights training organized by *Komnas HAM*;

(c) Involving them in research or study on specific human rights-related subjects;

(d) Involving them in *Komnas HAM*'s teams which carry out inquiries in the context of its monitoring function under Article 89(3)b of Act No. 39 of 1999 on Human Rights;

(e) Involving them in the *pro justitia* inquiry *ad hoc* teams established by *Komnas HAM* in carrying out its *pro justitia* inquiry competence on alleged gross violations of human rights under Act No. 26 of 2000 on Human Rights Courts (Article 18);

(f) Exchanges of information and views on alleged violations of human rights, draft bills on human rights-related subjects, etc.;

(g) Mutual assistance in the provision of human resources with specific expertise to advise or assist one another in the drafting of specific documents relating to the protection and promotion of human rights.

25. To be noted that *Komnas HAM* also conduct cooperation with organizations or institutions of a sub-regional, regional, inter-regional or international nature as referred to in Article 68 and 69 of *Komnas HAM*'s Rules of Procedure which reads, respectively, as follows:

(a) Article 68:

"In carrying out its functions, duties and competences, *Komnas HAM* shall cooperate with:

a. Commission on Human Rights and other relevant bodies of the United Nations;

- b. High Commissioner for Human Rights;
- c. relevant institutions of the Association of Southeast Asian Nations (ASEAN);
- d. Asia-Pacific Forum on National Human Rights Institutions (APF);
- e. International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies;
- f. NHRIs of other countries;
- g. aid agencies of other countries, either governmental or non-governmental.

(b) Article 69:

“The cooperation referred to in Article 68 comprises:

- a. organization of international seminars and workshops;
- b. participation in international conferences;
- c. submission of reports on the conditions and plans to uphold human rights in Indonesia to the relevant international institutions;
- d. participation in [human rights] education and trainings for members and staff [of *Komnas HAM*];
- e. exchanges of information and publications;
- f. non-binding assistance of funds;
- g. solutions of problems of common concern as long as it is not contrary to the applicable laws and regulations;
- h. [exchanges of] working visits;
- i. comparative studies;
- j. exchanges of professional human resources;
- k. exchanges of experience;
- l. development of cooperation networks in the framework of protection and promotion of human rights;
- m. other forms of cooperation which support the carrying out of *Komnas HAM*'s functions, duties and competences.”.

26. With regard to para 25(b)f above, it is underlined that it is the policy and strict rules of *Komnas HAM* that any external financial assistance may not be used for *Komnas HAM*'s activities in the field of monitoring. Such assistance, which should be absolutely for a non-binding nature, may be accepted and used for *Komnas HAM*'s non-monitoring or non-inquiry activities only, such as research, study, education, trainings, seminars, workshops,

publications or other forms of activities for the purpose of disseminating human rights concepts and enhancing human rights awareness in general.

**(5) Cooperation with regional and international institutions**

27. As quoted in paragraph 25 above, *Komnas HAM's* Rules of Procedure provide that, to carry out its functions, duties and competences, *Komnas HAM* shall cooperate with relevant sub-regional, regional and international institutions (referred to in para 25(a) above) in possible various forms (referred to in para 25(b)). The following paragraphs describe some of such cooperation.

28. At the sub-regional level, *Komnas HAM* has taken, *inter alia*, the following endeavours:

(a) Initiating institutionalized consultations with NHRIs existing in Southeast Asia, specifically State Members of ASEAN, to address human rights issues of common concern;

(b) The first informal meeting was held in Jakarta upon *Komnas HAM's* initiative in June 2004. The informal meeting was attended by representatives of Indonesia (host), Malaysia, Philippines and Thailand. It was agreed that the first formal meeting to identify human rights issues of common concern would take place in Bangkok, Thailand. For this purpose, *Komnas HAM* was requested by the three other NHRIs to prepare the relevant terms of reference. The term of reference prepared by *Komnas HAM* identified five human rights issues of concern to all NHRIs in the ASEAN countries. They are:

- (i) Terrorism and human rights;
- (ii) Human trafficking;
- (iii) Rights of migrant workers;
- (iv) Human rights education;
- (v) ECOSOC rights, in particular rights to development;

(c) The first formal meeting of the four NHRIs referred to in (b) above was held in Bangkok, Thailand which agreed to the following:

- (i) The five human rights issues referred in (b) above were of common concern of all NHRIs in ASEAN countries;

(ii) Each NHRIs was assigned to prepare a working paper or working papers on the five human rights issues referred to in (b) above and which would describe the background of the human rights issues concerned and the possible areas and forms of cooperation which might be promoted between the four NHRIs. The human rights issues and the NHRIs which should address in its working paper are as follows:

- Terrorism and human rights : NHRI of Indonesia;
- Human trafficking : NHRI of the Philippines;
- Rights of migrant workers : NHRI of Malaysia;
- Human rights education : NHRI of Philippines;
- ECOSOC rights, in particular  
right to development : NHRI of Thailand;

(d) The working papers referred to in (c) above were discussed in the second formal meeting held in Kuala Lumpur, Malaysia in March 2006. It was agreed the third formal meeting should be held in Bali, Indonesia and that the NHRI of Indonesia should prepare a working paper identifying possible areas and forms of cooperation which could be promoted or enhanced in addressing each of the five human rights issues referred to in (b) and (c) above;

(e) The third informal meeting of the NHRIs in ASEAN countries is scheduled to be held in Bali, Indonesia in January or February 2007.

29. Cooperation between *Komnas HAM* and regional institutions could be noted, *inter alia*, as follows:

(a) *Komnas HAM* is one of the co-founders of the Asia-Pacific Forum of National Human Rights Institutions (APF) (1996);

(b) *Komnas HAM* participated, regularly, in the annual meetings of APF;

(c) *Komnas HAM* hosted the APF annual meeting in September 1998;

(d) *Komnas HAM* has been cooperating with APF when the latter conducted a survey on the conditions of the internally displaced persons (IDPs) in Indonesia (2005);

(e) *Komnas HAM* has been receiving assistance from AUSAID and the Indonesia-Australia Legal Development Facility (IALDF) in the context of *Komnas HAM's* capacity building programmes and review of existing national legislations which require amendment, such as Act No. 26 of 2000 on Human Rights Courts.

30. The cooperation conducted by *Komnas HAM* with international institutions could be noted, *inter alia*, as follows:

(a) Participation of *Komnas HAM* in the annual meetings of the then Commission on Human Rights;

(b) Participation of *Komnas HAM* in the resumed second session and the third session of the Human Rights Council (November - December 2006);

(c) Hosting the training of staff of NHRIs of countries in the Asia Pacific region (17 NHRIs in total) on the prevention of torture (November 2005) in cooperation with OHCHR;

(d) Participation of *Komnas HAM* in the seventh ICNI (Seoul, Republic of Korea, 2004). *Komnas HAM* failed to participate in the eighth meeting of ICNI (Santa Cruz, Bolivia, October 2006) due to its inability to obtain plane seats at the right time for its delegations.

31. At the bilateral level, *Komnas HAM* has been cooperating the following institutions of other countries:

(a) AUSAID and Indonesia - Australia Legal Development Facility (IALDF) (Australia) in the context, particularly, of capacity building (trainings, expertise, etc.);

(b) CIDA (Canada) particularly for capacity building and development of *Komnas HAM's* websites;

(c) SIDA and Raoul Wallenberg Institute (Sweden), as above;

(d) Norwegian Centre for Human Rights (Norway), as above.

32. Also at bilateral level it may worth noting the consultation held from time to time between *Komnas HAM* and *SUHAKAM* (Malaysian NHRI), particularly on the problems of migrant workers.

**(6) Accessibility**

33. As to accessibility of *Komnas HAM* stakeholders, the following may be noted:

(a) Members:

- (i) Anybody can see any member of *Komnas HAM* any time, even without prior notice;
- (ii) In the event that the member concerned is not available because he or she is out for duty, any other member would see those who wished to see the former;
- (iii) To ensure that any member could be contacted at any moment, his/her names and his/her mobile telephone number are printed on the official correspondence sheets of *Komnas HAM*;

(b) Development of *Komnas HAM*'s websites:

- (i) To facilitate access to *Komnas HAM*'s information, *Komnas HAM* has been developing an information system since 2000 using the information technology, which both integrated an inter-active (*Komnas HAM*'s websites are [www.komnasham.go.id](http://www.komnasham.go.id) and [www.portal.komnasham.go.id](http://www.portal.komnasham.go.id));
- (ii) These websites would enable all those concerned, at both national and international levels, to obtain information on *Komnas HAM* such as organization and activities of *Komnas HAM*, including its regional and branch offices, subjects of *Komnas HAM*'s publications, national and international human rights instruments, on-line catalogues, latest information on *Komnas HAM*'s activities and on-line complaint handling system;

(c) Accessibility to complaints:

- (i) Complainants, who claim that their specific rights have been violated could lodge their complaints to *Komnas HAM*:
- By coming in person to *Komnas HAM* any time during working hours;
  - By sending their complaints by mail, both ordinary and electronic, facsimile or telephone;
  - By using on-line complaint handling system;
- (ii) A unit, called Complaint Service Unit, with three staff, functions as the first “entry gate” to *Komnas HAM* for complainants;

(d) Accessibility to media:

- (i) *Komnas HAM* does not use an accreditation system for the press to cover *Komnas HAM*'s activities. *Komnas HAM* is open to any journalist, both local and foreign, any time during the working hours;
- (ii) Any *Komnas HAM*'s member can be contacted by any journalist any time (the printing of members' mobile telephone number of the official correspondence sheets of *Komnas HAM* referred to in (a)(iii) above facilitates the media people to contact them).

**(7) Addressing public opinion**

34. (a) To be noted, from the outset, that the national and official language of Indonesia is *Bahasa Indonesia* and English is the official language used for communication with the international community. There some 250 local languages/dialects in Indonesia;

(b) *Komnas HAM* is using the following means in addressing public opinion:

- (i) Issuing periodic and occasional publications;
- (ii) Issuing press releases;
- (iii) Organizing periodic meeting with the media;
- (iv) Interviews with the media;
- (v) Participation in direct broadcast discussions organized by television or radio stations.

35. Publications of *Komnas HAM* consist of the following:

(a) Periodic publication:

- (i) Monthly “Wacana HAM” (Human Rights Discourse), a four-page publication, presented in a “popular” language, with lay people as its target (5000 copies for every issue);
- (ii) Quarterly “Suar” (Beacon; Light, Illumination), 42 to 48 pages, containing articles written in a popular-scientific style, with middle and upper class segments of the society as the target (3500 copies for each issue);
- (iii) Six-monthly “Jurnal HAM” (Human Rights Journal, both in Indonesian and, occasionally, translated into English, approximately 250 pages, articles are written in scientific style, with “professional” and intellectuals as targets (1000 copies for every issue);
- (iv) *Komnas HAM’s* Annual Reports, in both *Bahasa Indonesia* and English (1000 copies);

(b) Occasional publications, *inter alia*:

- (i) Comic strips “Petualangan di Dunia 1012” (Wandering in the 1012 World), intended as a means of human rights education for children of school age (5000 copies);
- (ii) Reports of various seminars, workshops or discussions organized by *Komnas HAM* on various themes of human rights, including working papers presented (approximately 1000 copies);
- (iii) Translation to *Bahasa Indonesia* of various international human rights legal instruments, international human rights “soft laws”, human rights fact sheets and some reports;
- (iv) Translation of books on specific human rights issues (naturally in compliance with the applicable rules on copyrights), such as “Crimes against Humanity, The Struggle for Global Justice” by Geoffrey Robertson, QC (1000 copies);
- (v) *Komnas HAM* profile (booklet) in both *Bahasa Indonesia* and English (5000 copies);

(vi) Documentary movie "Twelve-Year Komnas HAM", issued in CD, showing the activities since its inception in 1993 through 2005 (1000 copies);

(c) To be noted that:

(i) The publications referred to in (1)(iv) and (b)(i) above have also been converted to CD form;

(ii) All publications referred to in (a) and (b) above are made available *free of charge*:

- To those addresses who are in *Komnas HAM's* mailing list;
- Upon request;
- Available in the publication shelves of *Komnas HAM's* Documentation and Information Centre (for (a)(i) and (ii), and also b(iii)).

36. Press releases are usually issued in the context of the following occasions:

(a) Assessment of human rights conditions made by *Komnas HAM* at the end of every year (normally issued in December on or close to international human rights day of 10 December);

(b) Upon completion of *Komnas HAM's pro justitia* inquiry of alleged gross violations of human rights under Act No. 26 of 2000 on Human Rights Courts;

(c) Whenever *Komnas HAM* deems appropriate and when it considers necessary to issue such a press release with the purpose of informing the public of the position of *Komnas HAM* on human rights-related issues, including those reflected in Government's policy, draft bills, other legislations, both national and regional, and alleged violations of human rights, either of vertical or horizontal nature.

37. Meetings with the media is normally organized three times a year with the media and with specific topic or topics on human rights in the agenda. Such meetings are organized as follows:

(a) In an informal and relaxed atmosphere;

(b) A short note on the topic or topics brought to the attention of the media was prepared by *Komnas HAM*, distributed to the media people who take part and followed by questions and answers;

(c) The discussion is not limited to the topic or topics referred to in the note mentioned in (b) above.

38. Interview with the media is usually conducted by the media with members of *Komnas HAM* individually, particularly those members who are responsible for the human rights issue(s) concerned or who are considered by the interviewer(s) as having special expertise on the subject(s) concerned. Such interviews are generally conducted in the following forms:

(a) Face-to-face interview (wherein both the interviewer and the interviewed are physically present at the time of the interview);

(b) By telephone;

(c) The members interviewed are not prohibited to express their personal opinion or views as long as they clearly state that the specific views of opinion expressed during the interview are of their personal views or opinion (this is in line with the provisions of Article 4c of the Code of Conduct for Members of *Komnas HAM*).

38. Participation in direct broadcast discussion organized by television or radio station is, generally, conducted in the following forms:

(a) Such directly broadcast discussions which involve one person only did take place. However, in most cases, such discussions involve a number of panellists, at least two;

(b) Such discussions are generally “inter-active”, where listeners or viewers could contact the radio or television concerned during the broadcast in order to ask questions or to make comments;

(c) Members of *Komnas HAM* who are involved such discussions are not prohibited to express their own personal views provided that they explicitly and clearly state to this effect.

**(8) Working groups and similar bodies**

39. (a) Article 2(2)q of the Rules of Procedures of *Komnas HAM* states as follows:

“The authority of the Plenary Session referred to in paragraph (1) comprises the competence to decide:

.....

q. the establishment of a working group, body, institution or unit which is deemed necessary;

.....”;

(b) *Komnas HAM* has established, so far, one working group, namely “*Working Group on Human Rights Education and Training*”, in order to ensure that education and training of various themes or sectors of human rights to be undertaken by the members of *Komnas HAM* could be appropriately coordinated thus ensuring efficiency and avoiding possible overlapping;

(c) To be noted that in dealing with various human rights issues which are of “cross thematic” or “cross-sectoral” nature, *Komnas HAM* follows the practice of setting up “teams” consisting of the members of *Komnas HAM* having the competence relevant to the various aspects of the human rights issue concerned.

**(9) Regional and “branch” offices of Komnas HAM**

40. (a) As earlier mentioned (see: supra, para 3(b)(ii)), Act No. 39 of 1999 on Human Rights provides that regional office of *Komnas HAM* may be established (Article 76(4)).

*Komnas HAM* has at present Regional Offices for the following regions:

- (i) West Sumatera Province, located in Padang;
- (ii) West Kalimantan Province, located in Pontianak;
- (iii) Papua Province, located in Jayapura;

(b) As also earlier mentioned (see: para 3(b)(ii)), *Komnas HAM* has, at present, three “Branch” Offices for the following areas:

- (i) Aceh Province, located in Banda Aceh;
- (ii) Central Sulawesi Province, located in Palu;
- (iii) Maluku (the Moluccas) Province, located in Ambon;

(c) With regard to regional and “branch” office, *Komnas HAM*’s programmes for 2007 include the following:

- (i) “Up-grading” of the “Branch” Office in Banda Aceh and the “Branch” Office in Ambon to Regional Office (for Aceh Province and Maluku Province respectively);
- (ii) Establishing “Branch” Offices in Pekanbaru (Riau Province) and in Kupang (East Nusa Tenggara).

41. The difference between a “Regional Office” and a “Branch Office” are, essentially, as follows:

(a) Functions:

- (i) Regional Office:  
Carrying out *Komnas HAM* functions under Act No. 39 of 1999 on Human Rights at the region concerned (research and study of local legislations, dissemination of human rights concepts at the region concerned, monitoring of human rights violations which occurred in the region concerned ) and recommending solution on human rights disputes through mediation;
- (ii) “Branch” Office:  
An extension of *Komnas HAM*’s “arms” in the region to carry out specific *Komnas HAM*’s functions under Act No. 39 of 1999 on Human Rights, particularly monitoring of alleged violations of human rights;

(b) Membership:

- (i) Regional Office:

Recruited through open recruitment procedures from candidates of the region concerned and appointed, eventually, by *Komnas HAM*. The membership should also reflect the principles of plurality as well other requirements for membership of *Komnas HAM* applied *mutatis mutandis* in the region;

(ii) "Branch" Office:

Selected and directly appointed by *Komnas HAM*.

42. To be noted that the various aspects of *Komnas HAM's* Regional and Branch Offices are governed in details in *Komnas HAM's* Rules of Procedure (Article 1.4, 11 and 54-65) for Regional Offices and Articles 1.5 and 63-65 for "Branch" Offices) as well as in *Komnas HAM's* internal instrument called "decision" or *keputusan*) on the various aspects and implications of the establishment of the Regional Office or the "Branch" Office concerned.

**(10) Access of *Komnas HAM's* office for persons with disabilities**

43. *Komnas HAM's* office is an old building made available by the State Secretariat. It is not equipped with adequate facilities for visitors with physical disability and who needs supporting special instruments for their movements (such as wheelchairs). To overcome such a situation, members of *Komnas HAM* staff on the ground floor of the building are assigned to fulfil the needs of persons with physical disability.

**II. COMPETENCE AND RESPONSIBILITIES**

**(1) General jurisdiction and functions**

**(1) (1) Legislative mandate of KomnasHAM**

44. The Competence and responsibilities of KomnasHAM are set forth in two legislations, namely:

(a). Act No. 39 of 1999 on Human Rights; and

(b). Act No. 26 of 2000 on Human Rights Courts.

45. (a) As may be understood from the relevant provisions of act No. 39 of 1999 on Human Rights, specifically on the Indonesia's position on the Universal Declaration of Human Rights (UDHR), 1948 (preambular para d), the "definition" of *Komnas HAM* (Article 1.7), Indonesia's position on International human rights instruments which been ratified by Indonesia (Article 7 (2) ), *Komnas HAM's* purposes (Article 75), *Komnas HAM's* functions (Article 76 (1) ), *Komnas HAM's* duties and responsibilities (Article 89, 95 and 97), *Komnas HAM* is required to address all human rights, *i.e* civil, political, economic, social and cultural rights as stipulated in the following instruments:

(i) National instruments:

- 1945 Constitution (first preambular para and Articles 26(2), 27, 28, 28A-28J, 29(2), 30(1) and 31 (1));
- Act No. 39 of 1999 on Human Rights (preambular para d and Articles 3-74);
- Other national legislations which spell out in more details in the implementation of human rights referred to the 1945 Constitution and Act No. 39 of 1999 on Human Rights referred to above;

(ii) International instruments:

- UDHR 1948 (on which the preambular para d of Act No. 39 of 1999 on Human Rights states "that the Indonesian nation as a member of the United Nations bears moral and legal responsibilities to uphold and implement the Universal Declaration of Human Rights adopted by the United Nations and various other international instruments concerning human rights which have accepted by the State of the Republic of Indonesia");
- International human rights ratified by Indonesia:
  - Convention on the Political Rights of Women, 1952;
  - International Convention on the Elimination of All Forms of Racial Discrimination, 1965;
  - International Covenant on Economic, Social and Cultural Rights, 1966;
  - International Covenant on Civil and Political Rights, 1966;
  - International Convention on the Suppression and Punishment of the Crime of *Apartheid*, 1973;

- Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- International Convention against *Apartheid* in Sports, 1985;
- Convention on the Rights of the Child, 1989;

(b) With the view to ensuring that all aspects of human rights and that vulnerable groups of people's rights could be better addressed, the organization of *Komnas HAM* was restructured in 2004 and, since the restructuring, as earlier mentioned (see: supra, para 14(b)), is composed of the following:

- (i) Sub-Commission on Economic, Social and Cultural Rights;
- (ii) Sub-Commission on Civil and Political Rights;
- (iii) Sub-Commission for the Protection of Special (Vulnerable) Groups; and
- (iv) Documentation and Information Centre;

(c) Additionally, to ensure that all human rights and the rights of vulnerable groups of people are better addressed, as also earlier mentioned (see: supra, para 16(b)), every member of *Komnas HAM* is assigned with the dealing of a group of rights or a group of vulnerable people. The grouping of rights and vulnerable people is as follows:

- (i) Six groups of ECOSOC rights;
- (ii) Seven groups of civil and political rights;
- (iii) Six vulnerable groups of people;
- (iv) Gross violations of human rights (under Act No. 26 of 2000 on Human Rights Courts).

46. As earlier mentioned (see: supra, para 4(b)), under Act No. 26 of 2000 on Human Rights Courts, *Komnas HAM* is designated as the sole *pro justitia* inquiry institution for gross violations of human rights (genocide and crimes against humanity under Act No. 26 of 2000 on Human Rights Courts) for the purpose of, as stated in the elucidation of Article 81(1) of this Act, "ensuring the objectivity of the results of the inquiry because *Komnas HAM* is an independent institution".

47. The *pro justitia* inquiry competence of *Komnas HAM* for genocide and crimes against humanity is stipulated in Articles 18 and 19(1) of Act No. 26 of 2000 on Human Rights Courts, which reads, respectively, as follows:

(a) Article 18:

- (1) Inquiry of gross violations of human rights shall be conducted by *Komnas HAM*.
- (2) In conducting inquiry referred to in paragraph (1), *Komnas HAM* may establish an *ad hoc* team consisting of *Komnas HAM* and elements of the society.

Elucidation:

Paragraph (1)

[That] The competence of inquiry shall be solely carried out by *Komnas HAM* is intended to ensure the objectivity of the results of the inquiry because *Komnas HAM* is an independent institution.

Paragraph (2)

Elements of the society mean public figures and members of the society who are professional, dedicated, have high integrity and have the fullest feeling on human rights.

(b) Article 19:

- (1) In carrying out the inquiry referred to in Article 18, the inquirer has the following competence:
  - a. to conduct inquiry and examination of events which occur in the society which, on the basis of their nature and scope, may reasonably be assumed that gross violations of human rights have been committed;
  - b. to receive reports or complaints from individuals or groups of persons on the occurrence of gross violations of human rights and to look for information and evidence;
  - c. to summon complainants, victims or those to whom complaints are directed to request and hear the information they have;
  - d. to summon witnesses to request and hear their testimony;
  - e. to visit and collect information from locations where events occurred and in other locations which are deemed necessary;

- f. to summon those concerned to provide information in writing or to submit required documents in accordance with their originals;
- g. on order of the investigator may take the following actions:
  - 1) examination of letters;
  - 2) searches and seizures;
  - 3) on-site examination of houses, yards, buildings, and other places occupied or owned by certain parties;
  - 4) sending for experts pertinent to the inquiry.

(2) .....

Elucidation:

“The conduct of inquiry referred to in these provisions is meant as a series of *Komnas HAM’s* actions within the scope of *pro justitia*.

Paragraph (1)

.....

Paragraph (2)

.....”.

48. The responsibilities of *Komnas HAM* are set out in both Act No. 39 of 1999 on Human Rights (particularly Article 97) and Act No. 26 of 2000 on Human Rights Courts (particularly Article 19(2) and 20). These provisions read, respectively, as follows:

(a) Act No. 39 of 1999 on Human Rights:

“Article 97

*Komnas HAM* is required to submit annual reports on the implementation of its functions, duties and competence as well as on conditions of human rights and cases handled by it to the House of Representatives of the Republic of Indonesia and the President with copy to the Supreme Court.”;

(b) Act No. 26 of 2000 on Human Rights Courts:

(i) Article 19(2):

“Upon initiating an inquiry of an alleged of being a gross violation of human rights, the inquirer shall inform thereof to the investigator.”;

(ii) Article 20

- (1) In the event that *Komnas HAM* considers the existence of sufficient initial evidence on the occurrence of a gross violation of human rights, the conclusions of the inquiry shall be submitted to the investigator.
- (2) Not later than 7 (seven) working days following the submission of the results of the inquiry, *Komnas HAM* shall deliver the entire results on inquiry to the investigator.
- (3) In the event that the investigator considers that the results of referred to in paragraph (2) are not sufficiently complete, the investigator shall immediately return the results of the inquiry to the inquirer with guidance for its completion and, within 30 (thirty) days from the date of receipt of the results of the inquiry, the inquirer is required to complete such insufficiencies.

**(1)(2) The exercise of *Komnas HAM*'s mandate in practice**

**A. *Komnas HAM*'s mandate under Act No. 39 of 1999 on Human Rights**

49. (a) Article 89(3) of Act No. 39 of 1999 on Human Rights states as follows:

“To carry out its monitoring function referred to in Article 76, *Komnas HAM* has the duty and competence to take the following actions:

- a. observation of implementation of human rights and drawing up reports on such observation;
- b. inquiry and examination of events which occurred in the society which, on the basis of its nature and scope, may reasonably be assumed that a violation of human rights has occurred;
- c. summoning complainants or victims or those against whom a complaint has been directed to provide information;
- d. summoning witnesses to give their testimony to requesting witnesses who are complainants at the same time to provide the necessary evidence;
- e. summoning those concerned to provide information in writing or to submit the necessary documents in accordance with their originals, with the consent of the Chair of the District Court;

- f. on-site examination of houses, yards, buildings and other places occupied or owned by certain parties, with the consent of the Chair of the District Court;
- g. on the basis of the consent of the Chair of the District Court, provision of opinion on certain cases which are under judicial examination process, in the event that violations of human rights in public affairs and in the examination procedures were involved and that the opinion of *Komnas HAM* shall be to be brought to the knowledge of the parties by the judge.”;

(b) To be noted that, in practice, *Komnas HAM* undertakes inquiries and examination of alleged violations of human rights under its monitoring function stipulated in Article 89(3) of Act No. 39 of 1999 on Human Rights either *proprio motu* or following a complaint lodged by a complainant or his/her representative. To be also noted that, as stated in the elucidation of Article 89(3)b of Act No. 39 of 1999 on Human Rights referred to in (a) above, the meaning of “inquiry and examination in the context to determine whether or not a violation of human rights has occurred.”;

(c) The first step taken by *Komnas HAM* in the carrying out of inquiry and examination under paragraph 89(3)b of Act No. 39 of 1999 on Human Rights referred to in (b) above is to collect information, in addition to that provided by the complainant, from the party or parties against whom the complaints have been directed, as well as from other sources, as appropriate. This is a standing procedure applied by *Komnas HAM* in order to ensure the objectivity of the results of the inquiry and examination. Those, from whom information are requested, are generally cooperative;

(d) In this context, it is worth mentioning that *Komnas HAM* and the National Police have, in June 2005, concluded a Memorandum of Understanding, whereas both sides will support each other in the carrying out of their respective mandate and responsibilities under the law, in particularly by the following:

- (i) The National Police will follow up on any information on human rights violations allegedly committed by a police officer brought to the attention of the former by *Komnas HAM*;
- (ii) *Komnas HAM* will provide assistance to the *National Police*, in the promotion of human rights education in the latter’s education and training institutions;

(e) In the event that, following a thorough inquiry and examination, *Komnas HAM* concluded that a violation of human rights did occur in the event concerned, it would take the following actions:

- (i) Vis-à-vis the alleged perpetrators:
  - Informing the superior(s) concerned that a violation of human rights has occurred in the event concerned;
  - Requesting the superior(s) concerned to take appropriate actions against the alleged perpetrators;
  - Checking the development of such request after a certain period of time has elapsed;
  
- (ii) Vis-à-vis the complainant:
  - Informing the complainant of the actions taken by *Komnas HAM* by, *inter alia*, making available of a copy of the correspondence between *Komnas HAM* and the authority or authorities concerned, including any information that may provided by the latter on the subject on the complaints;

(g) In the event that, following careful research, study and monitoring endeavours, *Komnas HAM* found that human rights violations have occurred and expected to occur again as result of the existing rules or legislation which the instruments themselves are contrary to human rights or contain provisions which violate human rights, *Komnas HAM* would request the competent authorities concerned to rescind such rules or legislations.

50. (a) The problems encountered by *Komnas HAM* in the context actions referred to in paragraph 49 (f) and (g) above are caused by the following conditions:

- (i) Act No 39 of 1999 on Human Rights does not contain any provision that would compel the authorities or other parties (in cases where alleged violations of human rights were committed by a non-state actor) concerned to comply with *Komnas HAM's* request;

- (ii) No mechanism is foreseen by act No. 39 of 1999 on Human Rights to deal with a situation described in (i) above;

(b) To be noted that *Komnas HAM* has decided to initiate the amendment of Act No. 39 of 1999 on Human Rights and the problems referred to in (a) above would be one of the so many subject to be addressed with view to better ensuring the implementation, promotion, upholding of human rights.

**B. Komnas HAM mandate under Act No. 26 of 2000 on Human Rights Court**

51. It has been earlier mentioned that *Komnas HAM* is also mandated to conduct *pro justitia* inquiry of gross violations of human rights under Act No. 26 of 2000 on Human Rights Courts which consist of genocide and crimes against humanity (see: supra, paras 4 (b) and 46-48 (b)). Since the enactment of Act No. 26 of 2000 on Human Rights Courts on 23 November 2000, *Komnas HAM* has conducted *pro justitia* inquiries of ten cases of alleged gross violations of human rights, *i.c.* crimes against humanity. They consist of the following:

(a) Nine cases relating to events occurring prior o the enactment of Act No. 26 of 2000 on Human Rights Court. They are, in the chronological completion of the inquiry, as follows:

- (i) East Timor Case of 1999;
- (ii) Tanjung Priok Case of 1984;
- (iii) Trisakti Case of 1998;
- (iv) Semanggi Case of 1998;
- (v) Semanggi Case of 1999;
- (vi) May Riot Case of 1998;
- (vii) Wasior Case of 2001 - 2002;
- (viii) Wamena Case of 2003;
- (ix) Missing Person Case of 1997 - 1998;

(b) One cases relating to an event which occurred after the enactment of Act No. 26 of 2000 on Human Rights Court, *i.c.*:

Abepura Case of 2000.

52. The status of the judicial process of the ten cases referred to in para 51 above is as follows:

(a) Court examination at all levels completed: 1 (East Timor case of 1999);

(b) Still under court examination: 2 (Tanjung Priok Case of 1984 and Abepura case of 2000);

(c) Still with the investigator (Attorney-General) for investigation: 7 cases which be divided into the following two categories:

(i) Cases of which the *pro justitia* inquiry has been completed a long period of time ago : 6 (Trisakti cases of 1998; Semanggi Case of 1998; Semanggi Case of 1999, May Riot Case of 1998, Wasior Case of 2001-2001; and Wamena Case of 2003);

(ii) Case of which the *pro justitia* inquiry has been recently completed: 1 (Missing Persons case of 1997-1998)

53. The difficulties encountered by *Komnas HAM* in discharging its *pro justitia* inquiry mandate under Act No. 26 of 2000 on Human Rights Courts may be listed as follows:

(a) Refusal to summons issued by *Komnas HAM*, especially by the military;

(b) Unwillingness on the part of the investigator to start the investigation of cases on which the *pro justitia* inquiry has been completed since a long period of time (*pro justitia* inquiries of cases referred to para 51(a)(iii)-(V) above have been completed in 2002; 51(a)(vi) in 2003; 51 (a)(vii) and (viii) in 2004; and 51(a)(ix) in November 2006);

(c) Lack of political will on the part of many decision-makers in executive and legislative branches of the State to really settle the cases of alleged gross violations of human rights which occurred in the past authoritarian and oppressive regime of the so-called "New Order" through Human Rights Courts.

(d) The existence of too many weaknesses, inconsistencies, unclearness, and the absences of many required rules to ensure legal certainty of Act No. 26 of 2000 on Human Rights Courts itself.

54. To be noted that, in view of the conditions of Act No. 26 of 2000 on Human Rights Courts referred to in paragraph 53(d) above, *Komnas HAM* has initiated the amendment process of the Act and planned that the draft amendment bill could be submitted to the Parliament in June 2007.

**(1)(3) Harmonization of national legislation, regulation, and practices with the international human rights instruments to which Indonesia is a party and their effective implementation**

55. (a) Preambular paragraph d of Act No. 39 of 1999 on Human Rights states "that the Indonesian Nation, as part of the United Nations, assumes moral and legal responsibilities to highly uphold and implement the Universal Declaration of Human Rights adopted by the United Nations as well as various other international instruments concerning human rights which have been accepted by the State of the Republic of Indonesia";

(b) Additionally, Article 7 (a) of the said Act states that "International legal rules that have been accepted by the State of the Republic of Indonesia which concern human rights become national law".

56. In the light of the provisions referred to in paragraph 55 above, in principle, the UDHR of 1948 and all international legal instruments on human rights to which Indonesia is a party (see list of such instruments in supra, para 45(a)(ii)) are directly implementable as national laws. However, the Government, which is responsible under the 1945 Constitution (Article 28I (4)) and under Act No. 39 of 1999 on Human Rights (Articles 8, 71 and 72) to protect, promote, uphold, and fulfil human rights, has not done enough, to either implement at the national level those international human rights instruments which have been ratified by Indonesia and to harmonize, in the event of consistencies, between international rules contained in such international human rights instruments with or the absence of such rules in national laws.

57. Only very recently that the Government took the initiatives in incorporating in the draft bill on criminal code the relevant rules of the Geneva Convention of 1949 (which have been ratified by Indonesia in 1958 by Act No. 59 of 1958) the violations of which constitute violations of humanitarian law as well as the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. These are significant to note in view of the following:

(a) Even though the four Geneva Conventions of 1949 had been ratified by Indonesia in 1958, no implementing national regulations have ever been enacted. Consequently, violations of those Conventions, particularly Article 3 of the Fourth Convention, were not be able to prosecuted as violations of humanitarian law (in the event of armed conflict of non-international character);

(b) The act of "torture" as defined by CAT 1984 has never existed in Indonesian national legislation. The incorporation of "torture" as defined in CAT 1984 in the draft bill on criminal code as criminal act subject to prosecution and punishment constitute a significant development.

58. It has to be admitted that *Komnas HAM* itself, for a long period of time has not accorded high priority to the exercise of harmonizing the rules contained in international human rights instruments ratified by Indonesia with the relevant national legislation and/or rules. It is only since 2002 that such exercise has started to be undertaken seriously by *Komnas HAM*, by the following actions:

(a) Recommending the ratification of both the ICESCR of 1966 and ICCPR of 1966 since 2002;

(b) Making a comparative table (matrix) between the provisions of the above two instruments with existing national legislation, *i.c.* the 1945 Constitution and Act No. 39 of 1999 on Human Rights;

(c) Subsequently, immediately after the ratification of the ICESCR of 1966 and ICCPR of 1966 in October 2005 (respectively by Act No. 11 of 2005 and Act No. 12 of 2005), *Komnas HAM* organized a one-day seminar with the main theme "Implications of

Indonesia's Becoming a Party to ICESCR 1966 and ICCPR 1966". This Seminar has been followed up by another seminar devoted to consider the implications of Indonesia's ratification of ICESCR 1966 (held 9 December 2006 in the framework of commemoration of International Human Rights Day of 10 December;

(d) Additionally, during 2005 and 2006 Komnas HAM has organized forums of discussions held in various provincial capitals with the purpose of ensuring that CAT 1984, ratified by Indonesia in 1998 (by Act No.5 of 1998) has to be respected.

59. It is recognized that more efforts have to be made and/or intensified for the harmonization of national legislation, regulations or practices with the international human rights instruments to which Indonesia is a party, particularly when now Indonesia is a party to the two most fundamental international instruments on human rights, *i.e.* ICESCR 1966 and ICCPR 1966.

60. Harmonization of national legislation, regulation and practices with the international instruments on human rights to which Indonesia is a party is not explicitly stipulated in Act No. 39 of 1999 on Human Rights as one of the functions, duties or competence of *Komnas HAM*. However, in the light of paragraph d of the preambular paragraph of this Act (see: *supra*, para 55(a)) and Article 7 (2) of the same Act and in view of the duty and competence of *Komnas HAM* to monitor the implementation of human rights under Article 89 (3) a of Act No. 39 of 1999 on Human Rights as well as the fact that *Komnas HAM* has been doing it, it would have to continue to do so. It was of significance to mention that *Komnas HAM*, during 2005-2006, has been organizing various workshop held in various locations in the country, with a view to collecting views and inputs on the draft bill on criminal code, particularly the human rights-related provision, including the application of humanitarian law as well as making certain crimes considered by the international community as being crimes on which there is an obligation *erga omnes* to prosecute them.

**(1)(4) Ratification of International human rights instruments and their effective implementation at the national plan**

61. (a) Article 89 (1) of Act No. 39 of 1999 on Human Rights states as follows:

“To discharge *Komnas HAM*’s function in research and study as referred to in Article 76, *Komnas HAM* has the duty and competence to carry out:

- a. research and study of various human rights international instruments with the objective of providing recommendations on possible accession thereto or ratification thereof;
- b. ...”;

(b) As mentioned earlier (see: *supra*, para 58(a)), *Komnas HAM* has, since as early as 2002, recommended to the Government the ratification of ICESCR 1966, ICCPR 1966 and its Optional Protocol of 1966. To facilitate the constitutional process of the ratification, *Komnas HAM* submitted, in 2003, to both the Government and Parliament, a draft bill on the ratification of these instruments, together with the general and article-by-article elucidation as well as the Indonesian translation thereof (only ICESCR 1966 and ICCPR 1966 were eventually ratified – see: *supra*, para 58(c));

(c) *Komnas HAM* is currently studying the Rome Statute of the International Criminal Court, 1998 with a view to recommending its possible ratification.

**(1)(5) Formulation of Programmes for the teaching of and research into human rights and to take part in their education**

62. (a) Article 89 (2)a of Act No. 39 of 1999 on Human Rights stipulates as follows:

“In the discharge of its function in the field of information as referred to in Article 76, *Komnas HAM* has the duty and competence:

...;

- b. to make efforts to enhance the awareness of the society on human rights through formal and non-formal education institutions as well as through other circles; and

...”

(b) In the framework of carrying out the provisions referred to in (a) above, *Komnas HAM* has, so far, has conducted, *inter alia*, the following activities:

- (i) Enhancement of cooperation with Human Rights Study Centres of various universities;

- (ii) Providing lectures to various levels of educations and /or training for civil servants, the military, police officers, and other law enforcement officials;
- (iii) In the framework of commemoration of the International Human Rights Day (10 December every year since 2002), organizing human rights writing competition for students of senior high schools;
- (iv) Publishing comic strips with children of school age (elementary schools) (see: supra, para 55(b)(i)) to create human awareness to school children of the following:
  - Concept of equality between human beings;
  - Respect for diversity;
  - Non-violence;
- (v) Cooperation with the National Police to develop appropriate curriculum and/or teachings of human rights in various levels of schools and trainings still have to be worked out in the context of implementation of the June 2005 Memorandum of Understanding between *Komnas HAM* and the National Police;
- (vi) Organizing “mootcourt” process for court examination of cases of gross violations of human rights under Act No. 26 of 2000 on Human Rights Courts for students of law school from various universities;

(c) Efforts to enhance awareness on the part of the Government on the need to introduce human rights education in educational institutions, particularly at senior high school and below, have not, as yet, been successful.

**(1)(6) Examination of bills and/or legislation or administrative regulations in force**

63. (a) Article 89 (1)b of Act No. 39 of 1999 on Human Rights stipulates as follows:
- “In the discharge of its function in the field of research and study as referred to in Article 76, *Komnas HAM* has the duty and competence:
- ...;

- b. to conduct research and study of various legislations with a view to making recommendations on the drawing up, amendment or revocation of legislation relating to human rights;  
...”;

(b) Numerous bills and legislation in force have been subjected to research and study by *Komnas HAM* for their amendment, adoption, or revocation. They are, *inter alia*, as follows:

- (i) Bill on Truth and Reconciliation Commission (recommended for amendment and adoption. It became Act No. 27 of 2005, but revoked by the Constitutional Court in November 2006);
- (ii) Bill on Protection of Witnesses and Victims of Criminals Acts (recommended for amendment and adoption. It was approved by the Parliament to become an Act in October 2006);
- (iii) Bill on Civil Administration (recommended for amendment and adoption. It is still being considered by the Parliament);
- (iv) Bill of Citizenship of the Republic of Indonesia (recommended for amendment and adoption. It became an Act in September 2006);
- (v) Bill on Pornography and Pornaction (recommended for revocation);
- (vi) Bill on Right to Obtain Public Information (recommended for amendment. It is still being re-examined by the Government);
- (vii) Bill on the State Secret (still being examined by *Komnas HAM*);
- (viii) Bill on intelligence (still being examined by *Komnas HAM*);
- (ix) Bill on Criminal Code (recommended for amendment);
- (x) Bill on Military Tribunals (still being studied by *Komnas HAM*)

(c) To be noted that *Komnas HAM* also expressed its opinion on sub-regional instrument that might be adopted by the countries in the sub-region concerned, *i.e.* Southeast Asia. The case in point is the draft sub-regional (ASEAN) instrument on the suppression of terrorism. Upon learning from the media that such a sub-regional legal instrument would be adopted by ASEAN Summit Meeting, scheduled to be held in Cebu, the Philippines, in December 2006, *Komnas HAM* requested the Indonesian Minister for Foreign Affairs (through *Komnas HAM*'s letter of October 2006), to bear in mind that, in line with numerous resolutions adopted by the United Nations Security Council and General

Assembly, the draft sub-regional convention should not be contrary to international law, particularly international human rights law, international humanitarian law and international refugee law while welcoming the conclusion of such a sub-regional instrument, considering that terrorism constitutes the most serious violation of human rights, particularly the right to life and the right to personal security.

**(1)(7) Situation of violations of human rights that Komnas HAM intend**

64. (a) Article 89(3)a and b of Act No. 39 of 1999 on Human Rights states as follows:

“In the discharge of its function in the field of monitoring as referred to in Article 76, *Komnas HAM* has the duty and competence:

- a. to observe the implementation of human rights and to draw reports on the results of such observation;
  - b. to conduct inquiry and examination of events that occurred in the society which, on the basis of their nature and scope, can reasonably be assumed that a violation of human rights has taken place;
- .....”.

(b) On the basis of the provisions of Act No. 39 of 1999 on Human Rights referred to in (a) above, *Komnas HAM* has, since its inception, conducted inquiries and examinations of numerous situation where alleged violations of human rights have occurred, made relevant reports and submitted recommendations to the authorities concerned;

(c) At present, *Komnas HAM* has decided to take up the following human rights situations where violations of human rights could be assumed to have occurred:

- (i) The so-called “Talangsari event” of 1989 (Talangsari is a village located in the Province of Lampung, in the southern part of Sumatera), where an armed conflict between the military and a group of occupants of a religious boarding school and its aftermath have resulted in a large number of people wounded, died, and subjected to torture and/or arbitrary arrests or detention. *Komnas HAM* has completed its inquiry and examination under the relevant provisions referred in (a) above and is currently preparing a legal analysis to determine whether alleged gross violations of human rights occurred;

- (ii) The situation of human rights in Poso, Central Sulawesi, where horizontal conflict resulting in a large number of victims died or wounded and a large number of property damaged. Such conflicts started in 2001, off and on, despite the conclusion of two Government-sponsored peace arrangements. *Komnas HAM* plans to dispatch an inquiry team to the area concerned to address the human rights aspects of the situation. The team is scheduled to go to the area in January 2006;
- (iii) *Komnas HAM* is expected to complete its inquiry and examination of alleged violations of human rights of a religious group of persons, followers of "Ahmadiyah" who live in various places of the country and who have been several times subjected to physical attacks by those members of the society.

**(1)(8) Reports on national situation on human rights**

65. (a) Article 97 of Act No. 39 of 1999 on Human Rights states that "*Komnas HAM* is required to submit annual reports on the implementation of its functions, duties and competence as well as human rights conditions and cases that have been handled by it to the Parliament and the President with copy to the Supreme Court";

(b) *Komnas HAM's* Rules of Procedures (Article 71(5)d) requires that annual reports of *Komnas HAM* as referred to in (a) above should be submitted to the Parliament and the President with copy to the Supreme Court at the latest in March the following year.

66. As to reports to be submitted by the Government to the relevant treaty bodies, *Komnas HAM* assists in the drawing up of such reports by providing information it has as its input to the reports concerned. It does not fully and actively take part in the drawing up of such reports, bearing in mind that *Komnas HAM* is an independent state institution, not a governmental institution. It has to remain, therefore, independent to make it possible to monitor the reports and to independently make its observations.

**(1)(9) Drawing the Government attention to situations in the country**

67. (a) Article 89(3)a states that “In the discharge of its functions referred to Article 76, *Komnas HAM* has the duty and competence to make observations on the implementation of human rights and to draw up reports on the results of such observations”;

(b) Such observations are carried out through inquiry and examination referred to in sub-para b of Article 89(3) according to which *Komnas HAM* shall collect facts, information and data on the situation it was inquiring into and examining;

(c) At the conclusion of the exercise referred to in Article 89(3)a and b of Act No. 39 of 1999 on Human Rights referred to in (a) and (b) above, *Komnas HAM* shall, as appropriate, submits its recommendation to the competent authorities concerned with a request to redress the situation and to take appropriate actions to the alleged perpetrators;

(d) *Komnas HAM* does monitor the development of its recommendations. However, as earlier stated (see: supra, para 49(g)), in the event that the authorities concerned do not comply with *Komnas HAM*'s recommendations, *Komnas HAM* cannot take legal actions to compel the former to comply, as Act No. 39 of 1999 on Human Rights does not provide *Komnas HAM* with such capacity.

**(1)(10) *Komnas HAM*'s quasi-jurisdictional competence**

68. The legal basis of *Komnas HAM*'s quasi-jurisdictional competence and the way such competence is carried out has been described at length in supra, paras 49-50, which is in the context of its monitoring function (Articles 76 and 89(3) of Act No. 39 of 1999 on Human Rights).

69. Additionally, in the context of its mediation function, *Komnas HAM* is also accorded another quasi-jurisdictional competence on the basis of Article 89(4) of Act No. 39 of 1999 on Human Rights, which reads as follows:

“In discharging its function in the field of mediation as referred in Article 76, *Komnas HAM* has the duty and competence to:

- a. propose peaceful solution to the parties concerned;
- b. resolve cases through consultation, negotiation, mediation, conciliation and expert evaluation;

- c. make recommendations to the parties concerned to settle the conflict through the courts;
- d. submit recommendations on cases of violations of human rights to the Government in order that the solution may be followed up on;
- e. submit recommendations on cases of violations of human rights to the House of Representatives of the Republic of Indonesia for follow up.”.

**(1)(11) Komnas HAM's jurisdictional competence**

70. (a) In addition to quasi-judicial competence conferred by Act No. 39 of 1999 on Human Rights through the provisions of Articles 76, 89(3) and 89(4) referred to in *supra*, paras 49-50 and 68-69, *Komnas HAM* also has a jurisdictional competence as conferred by Act No. 26 of 2000 on Human Rights Courts through the provisions of Articles 18-20;

(b) This jurisdictional competence, *i.c. pro justitia* inquiry for gross violations of human rights (genocide and crimes against humanity), has been described at length in *supra* paras 4(b), 46-48(b) and 51-54.

Attachment 1

**KOMNAS HAM'S ORGANIZATIONAL STRUCTURE**

