association for the prevention of torture

MEMORANDUM OF UNDERSTANDING BETWEEN KOMISI NASIONAL HAK ASASI MANUSIA REPUBLIC OF INDONESIA AND THE ASSOCIATION FOR THE PREVENTION OF TORTURE CONCERNING COOPERATION IN STRENGTHENING TORTURE PREVENTION IN INDONESIA THROUGH OPCAT RATIFICATION AND IMPLEMENTATION ADVOCACY

This Memorandum of Understanding ("MoU") is concluded between the **Komisi Nasional Hak Asasi Manusia Republic of Indonesia** ("KOMNAS HAM") and the **Association for the Prevention of Torture** ("APT") on *12 December 2018.* Each party is individually referred to as "the Party" and collectively referred to as "the Parties".

Considering KOMNAS HAM's status as an independent National Human Rights Institution (NHRI) established in Indonesia by virtue of Presidential Decree No.50 of 1993 on Human Rights National Commission and Law No. 39 of 1999 on Human Rights to carry out principle functions which include, investigating and monitoring allegations of human rights abuses, promoting human rights to all members of the public, advising the Government on national policies and practices, ratification and implementation of international treaties related to human rights as well as its other functions and mandates as stipulated by Law No.26 of 2000 on Human Rights Court and Law No. 40 of 2008 on The Elimination of Racial and Ethnic Discrimination.

Considering the APT's status as an independent international non-governmental organization dedicated to the prevention of torture worldwide, including Indonesia, particularly through cooperation with governments and other local actors;

Taking into consideration Komnas HAM's legal and moral duty to adhere to the principles of the Universal Declaration of Human Rights, 1945 Constitution of the Republic of Indonesia, and the principles of Pancasila for the promotion and protection of human rights for all citizens of the Republic of Indonesia;

Taking into consideration the APT's non-harassment policy, and affirmed human rights-based approach to its work, which ensure that its interventions do no harm and actively contribute to the enhancement and protection of human rights, guided by the principles of empowerment, participation, non-discrimination, and accountability;

Taking into consideration the firm commitment of the Parties in furthering the promotion, protection, the guarantee of human rights, strengthening awareness, knowledge, and subsequently- national legal frameworks as well as other international commitments relevant to the prevention of all forms of torture;

With the intention of establishing cooperation that enhances efforts in regards to the encouragement of national agreement and commitment to ratify the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Degrading Treatment ("OPCAT") through education and awareness-raising, informational exchanges, technical assistance, training and capacity building in torture prevention;

Pursuant to the prevailing laws and regulations of the Republic of Indonesia as well as policy of the Government of the Republic of Indonesia and Switzerland;

Have reached the following understanding:

Article 1
OBJECTIVE

The objective of this MoU is to establish a framework for cooperation between the Parties. This includes laying out general aspects surrounding the cooperation.

Article 2
SCOPE OF COOPERATION

1. The cooperation between the Parties shall be aimed at raising awareness about, and facilitating the implementation of, the principles and framework of the OPCAT through national actors as part of Indonesia's long-term preparation to ratify OPCAT:

    a. Education, promotion and enhancement of awareness, and information exchange with and amongst relevant constituencies;
    b. Capacity building training with stakeholders relevant to the ratification and implementation of OPCAT;
    c. Technical assistance in developing materials and tools which will help to promote OPCAT in Indonesia.

2. Other activities which the Parties may choose to set out in a further written agreement.

3. The Parties agree that the cooperation and all activities carried out for the purpose of this cooperation shall:

    a. Comply with the laws, regulations, and policies of the Government of the Republic of Indonesia;
    b. Respect Human Rights principles as stipulated in the Universal Declaration of Human Rights and/or other relevant conventions or protocols;
    c. Respect the sovereignty and unity of the Republic of Indonesia; and
    d. Be carried out in good faith with respect to each of the Party's aims and functions.

Article 3
CONTRIBUTIONS OF EACH PARTY

1. The APT will provide technical, legal, practical expertise, and advice on the effective implementation and ratification of the OPCAT, and funding necessary for activities specified in the ToR; and

2. KOMNAS HAM will work with the APT to provide advice on the needs and context relevant to OPCAT and torture prevention in Indonesia. Additionally, Komnas HAM agrees to institutionalize relevant knowledge within its department, facilitate and follow-up cooperation with all national actors, in particular, Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), Komisi Perlindungan Anak Indonesia (KPAI), Ombudsman Republik Indonesia (ORI), and Lembaga Perlindungan Saksi dan Korban (LPSK), organize all logistical aspects of activities, and provide technical support.

Article 4
SETTLEMENT OF DISPUTES

Any disputes or difference between the Parties concerning the interpretation or implementation of this MoU shall be settled amicably through consultations and negotiations.

Article 5
AMENDMENT

This MoU may be amended by mutual written consent of the Parties. The amendments shall come into force on the date as determined by the Parties and shall constitute an integral part of this MoU.

Article 6
COORDINATING AGENCY/LIASON

1. Komnas HAM assigns The Inter Agency Cooperation Sub Division as the coordinating and liaison committee relevant to this MoU;
2. The APT assigns the Asia-Pacific Programme Officer as focal point/liaison person for all activities relevant to this MoU.

Article 7
DATA PROTECTION AND MANAGEMENT

1. The APT and KOMNAS HAM shall ensure that all data and information collected and documented for the purpose of this project shall remain confidential and used only for the sole purpose of achieving the objects and purposes of this project.

2. In the event that the data collected may put anyone at risk of harm and require immediate action as jointly determined by the Parties KOMNAS HAM shall, together with all relevant authorities, take all measures in the best interest of and required to protect, the person at risk, informing the APT and the individual(s) concerned beforehand and throughout the process. Such intervention must be undertaken only with a view to the protection of the person(s) concerned.

3. Data collected, received and documented by the APT shall comply with all applicable data protection laws particularly the European General Data Protection Regulation of April 27, 2016 (Regulation (EU) 2016/679) (the GDPR). Each Party shall protect, within the territory of its country, intellectual property rights of other the other Party in accordance to the domestic law in force in its respective country. In cases where specific arrangements, programmes or projects may result in intellectual property, the Parties shall include separate agreement in accordance with their regulations in their respective countries.

Article 8
ENTRY INTO FORCE, DURATION, AND TERMINATION

1. This MoU shall enter into force on the date of its signing, and shall remain for a two (2) year period and may be extended by the Parties in mutual written consent.

2. Either Party may seek to terminate the agreement in the event of gross non-compliance of the responsibilities agreed by the other Party. In such a case, the Party must inform the other Party, in writing, of the non-compliance and its intention to terminate the contract. In the event of a failure to rectify the non-compliance within 30 (thirty) days of receiving the notice, all activities will be put on hold until the process of settlement is over.

3. This MoU may be terminated by any one Party by giving a written notification with a statement of reasons for termination, 6 months in advance of termination.

IN WITNESS WHEREOF, the undersigned, has signed this MoU.

Done in duplicate in Jakarta, on the 12 December in the year of 2018

.....	.....
(Ahmad Taufan Damanik) Chairperson Komisi Hak Asasi Nasional Republik Indonesia	Jean-Sébastien Blanc Director of Thematic Programmes Association for the Prevention of Torture

Annex

TERMS OF REFERENCE
ON
THE COOPERATION BETWEEN
THE KOMISI NASIONAL HAK ASASI MANUSIA REPUBLIK INDONESIA
AND THE ASSOCIATION FOR THE PREVENTION OF TORTURE

I. BACKGROUND

The **Komisi Hak Asasi Manusia Nasional Republic of Indonesia**("KOMNAS HAM") and the **Association for the Prevention of Torture** ("APT"), collectively referred to as "the Parties," have a common goal in the promotion, protection, and guarantee of human rights in Indonesia, specifically in increasing greater commitment and political will of the Government and national actors towards OPCAT ratification and implementation.

KOMNAS HAM and the APT has been working on prevention of torture in Indonesia since 2005, in partnership with ELSAM, a local civil society organization, and also directly with the Directorate General of Human Rights, Ministry of Law and Human Rights (Ditjen HAM-KEMKUMHAM). The focus has included working with NGOs on preparing alternative reports to the Committee against Torture, as well as conducting activities and direct advocacy and capacity building activities with Government officials, authorities and oversight agencies to promote Indonesia's ratification of the Optional Protocol to the UN Convention against Torture (OPCAT).

In 2013, with the support of the EU and in partnership with KOMNAS HAM, the APT organized a workshop on the role of a national oversight mechanism in preventing torture and OPCAT in anticipation of Indonesia's plan to ratify the optional protocol which was envisaged in Indonesia's 2004-2009 National Human Rights Action Plan (RANHAM). A consensus emerged from the workshop on the possibility of designating a multiple body NPM in Indonesia, in the event that Indonesia ratifies OPCAT. It was further agreed that the multiple body option shall comprise of 5 different national institutions ; KOMNAS HAM, Komnas Perempuan, Komnas Anak, Ombudsman Republic of Indonesia and the Witness and Victim Protection Agency (LPSK), with overall coordination handled by KOMNAS HAM.

For the last five years, the 5 national institutions have led and advanced cooperation and activities that promote and implement OPCAT principles and framework among relevant stakeholders and authorities, with the view of building government's confidence on the benefits of becoming a state party to OPCAT. The APT has been providing technical and financial support to most of these initiatives:

Year	Objectives	Activities
2016	• To increase national momentum and participation in	• National Forum on OPCAT and Importance of Oversight in Detention

	discussing benefits of OPCAT ratification and implementation for Indonesia. • Strengthening and institutionalizing OPCAT efforts among 5 national institutions • Strengthening cooperation with authorities particularly in accessing detention places for monitoring purpose. • Strengthening inter-institution synergy and cooperation in conducting detention monitoring	• Memorandum of Understanding among 5 national institutions • Memorandum of Understanding between 5 national institutions with Ministry of Law and Human Rights. • Detention Monitoring Training for 5 national institutions
2017	• Raising awareness and building confidence of 5 national institutions and key decision-makers in Indonesia on OPCAT and torture prevention • Building capacity of 5 national institutions on OPCAT implementation and strategic planning.	• OPCAT Awareness rising session with parliamentary commission on international treaties. • Study trip to Geneva and a 1-day workshop on UK NPM's work and experience. • OPCAT internal awareness session with LPSK
	• Building capacity of 5 national institutions on OPCAT implementation and strategic planning.	• OPCAT internal awareness session with KOMNAS HAM, KOMNAS Perempuan and Ombudsman • Technical Meeting with KOMNAS HAM, Ditgen HAM KEMKUMHAM and parliamentary staff.

In 2018, KOMNAS HAM received financial support from the EU to continue its national coordination and work around OPCAT implementation and ratification. The support given will cover KOMNAS HAM and the other 4 national institutions' cooperation over the next three years. Cooperation will include national seminars for relevant stakeholders on torture prevention, the formulation of internal guidelines, as well as a manual on detention monitoring. During a bilateral meeting on March 2018, the APT and KOMNAS HAM agreed in principle that there is an opportunity for the APT to continue providing technical support to the 5 national institutions in synergy with the EU-KOMNAS HAM framework of cooperation. The APT's support in this regard, may include providing relevant expertise for capacity building and national seminars as well as practical materials and tools that will help increase knowledge and capacity of the 5 national institutions on the roles and skills needed as potential National Preventive Mechanism (NPM).

The primary focus of this MoU is to further institutionalize and strengthen APT and KOMNAS HAM's cooperation in OPCAT advocacy, particularly to sustain APT's continued technical and material support and advice to KOMNAS HAM and the 5 national institutions. This will also enable the APT to complement constructively KOMNAS HAM and the 4 national institutions' existing efforts while ensuring its national partners' full ownership of the on-going efforts.

The foundation of the cooperation is Chapter X of the Constitution of Republic of Indonesia, where it stipulates that the people and residents of Indonesia should be free from any form of torture and ill-treatment, the principles found in UNCAT which was ratified by Indonesia in 1998 as well as the provisions of OPCAT, which was considered for ratification by the Government of Indonesia through their National Human Rights Action Plans (RANHAM) since 2004.

The Republic of Indonesia is aware of its international obligations with respect to UNCAT and its domestic laws, and has subsequently demonstrated its commitment by taking various measures, among others:

1. Indonesia has accepted recommendations and made voluntary pledges under the first cycle (2012) and the second cycle (2017) of the Universal Periodic Review (UPR), to take relevant actions such as to become a Party to the Optional Protocol to UNCAT (OPCAT), to undertake the obligations to implement the UNCAT in full under the national legislation, and to establish national preventive mechanisms on torture.

2. In the area of capacity development, the Directorate General of Human Rights under the Ministry of Law and Human Rights (Ditgen HAM-KEMKUMHAM) has entered into a 2-year Memorandum of Understanding (MoU) with the Association for the Prevention of Torture where the APT assisted Ditgen-HAM KEMKUMHAM in developing a curriculum on the Convention against Torture (UNCAT) for law enforcement agencies and conducting Training of Trainers.

3. In 2014, Indonesia becomes one of the co-founders of a global Inter-State cooperation called the Convention against Torture initiative along with Chile, Denmark, Ghana and Morocco. The 10-year global initiative aims to achieve universal and effective ratification and implementation of UNCAT through Inter-State cooperation, assistance and dialogue.

Despite the aforementioned efforts, Indonesia recognizes the need for further efforts to foster awareness and confidence on the benefits of OPCAT ratification and implementation especially towards improving detention and criminal justice system in Indonesia. Accordingly, and motivated by these considerations, the Parties have agreed to cooperate in pursuit of achieving these goals, by undertaking the activities outlined herein.

II. OVERALL OBJECTIVE

The overall objective is to support OPCAT national advocacy led by KOMNAS HAM and the four national institutions with the view of increasing Government's and authorities' confidence and agreement to ratify and implement OPCAT as a means to preventing torture and ill-treatment in Indonesia.

III. SPECIFIC OBJECTIVES

1. To strengthen KOMNAS HAM and the five national institutions' capacity in understanding and implementing preventive measures as envisaged under OPCAT.

2. To facilitate exchanges and sharing of experiences between experts with relevant stakeholders in Indonesia on issues and subjects relevant to OPCAT, oversight and torture prevention.

3. To develop materials and tools that could be used to increase the knowledge and skills of the KOMNAS HAM and the 5 national institutions' staff on how to prevent torture through detention monitoring.

IV. ACTIVITIES

1. Under specific objective number 1

To attain the first specific objective, KOMNAS HAM will:

a. Host technical meetings with KOMNAS HAM and five national institutions to discuss practical issues and challenges around OPCAT ratification and implementation within Indonesian context.

b. Share relevant information on national developments around OPCAT with the APT through distant or online communication as and when both parties find necessary.

APT will:

a. Participate and contribute technical advice and inputs to national meetings and exchanges on OPCAT advocacy organized by KOMNAS HAM and the other four national institutions.

2. Under specific objective number 2

To achieve the second specific objective, KOMNAS HAM will:

a. Conduct awareness sessions and facilitate a system of information exchange with members of Parliament, Government representatives, civil society organizations, academics and local media.

b. Collaborate in producing written features and/or opinion editorials for local newspapers and digital news websites.

The APT will:

a. Provide expertise and technical assistance to facilitate OPCAT awareness session and information exchange with members of Parliament, government representatives, civil society organizations, academics and local media.

3. Under specific objective number 3

To attain the third specific objective, KOMNAS HAM will:

a. Develop a national manual and/or guidelines on detention monitoring that could be applied by KOMNAS HAM and the four national institutions.

b. Identify the appropriate beneficiaries or participants who will take part in the online learning platform.

APT will:

a. Provide technical support and advice on the development of a national manual/guideline on detention monitoring that could be applied by KOMNAS HAM and the four national institutions.

b. Provide technical support for the development of an online learning platform on torture prevention and detention monitoring that could be used by monitors from KOMNAS HAM and the other four national institutions.

Both parties will:

a. Carry out monitoring and evaluating activities to assess the activities agreed under this MoU both, through a short/mid-term review and long-term review.

b. Carry out publicity and communication of activities developed through printed and digital media.

V. SPECIFIC AREAS OF RESPONSIBILITIES

(To be further discussed and subject to the activities agreed by both parties)

VI. CONCLUDING REMARKS

The Parties agree to use this Terms of Reference as guidance in performing their cooperation as provided for in the MoU and all activities related thereto.