STOP IMPRISONMENT, TIME FOR REHABILITATION

Monitoring & Documentation Report of Police Abuse against People who Use Drugs in Indonesia 4 Provinces in Java, 2007 - 2011

FORKON - PANAZABA - PERFORMA - EJA

The Monitoring Network on Human Rights Violations against People who Use Drugs
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EXECUTIVE SUMMARY

In many countries, including Indonesia, the issue of mistreatment at the hands of government officials is one of the most common and serious human right violations. Physical assault and torture, sexual assault and harassment, verbal abuse, and other forms of mistreatment can occur in a variety of settings. It happens during searches, demonstrations, meetings, arrest or while the person is at the police station being questioned. Such ill-treatment occurs in public, police stations, prisons, private places, detention centres and military bases.

The victims highlighted in this report are people who use narcotics, psychotropic and other dependence causing substances. They experience stigma from their families, society and the state. They have been labeled as criminals, thieves, junkies, sources of disease and generally a negative influence on the community. This stigmatization has led to discriminative practices and mistreatment from society. The negative perception of people who use drugs within society also allows violence, coercion, and abusive force to be used by the state apparatus. People who use drugs are an easy target in the “War on Drugs” and are often victims of harassment and extortion by law enforcement authorities.

People who use drugs are vulnerable to a number of human right violations in the form of: physical, mental and sexual violence; neglect of health rights; stigmatization; and discriminatory and disproportionate punishment. Those rights, especially the right to physical integrity and liberty, freedom from torture or cruel, inhuman or degrading treatment or punishment, as well as freedom from arbitrary arrest and detention, are found in the major international human rights treaties (i.e. International Covenant on Civil and Political Rights and Convention against Torture) and in domestic law.

This report was prepared as a monitoring and documentation analysis and was carried out by The Monitoring Network of Human Rights Violation against People who Use Drugs. The Monitoring Network has four members which are FORKON, PANAZABA, PERFORMA and EJA. These are organizations of People who Use Drugs which are located in the Jakarta Capital Region, West Java Province, Central Java Province, and East Java Province.

The aims of this documentation analysis are to:
(1) Better understand the causes and linkages between problems of mistreatment and abuse by the police and other law enforcement authorities against people who use drugs, and how national and international resources can help to address these problems;
(2) Identify necessary actions to implement human rights based harm reduction programs in Indonesia; and
(3) Contribute to country program strategies for evidence-based intervention, future research, and rights-focused advocacy efforts (especially at the grass root level).
The monitoring process was conducted initially from May to August 2009 and then continued in 2011. The monitoring took place primarily in Jakarta, Central Java, West Java, and East Java. The data and information gathered were based on the cases submitted. To analyze the results collected during monitoring, the question, “Who did what to whom?” was applied. This is based on a model developed by HURIDOCS. In summary, 139 cases were documented from 5 provinces during the period between 1997 and 2011:

1. 27 cases from DKI Jakarta
2. 28 cases from West Java
3. 56 cases from Central Java
4. 26 cases from East Java
5. 1 case from Yogyakarta

There was also one case reported from Lampung (outside Java). Of the 139 cases that were examined, 19 were female victims and 120 were male victims. Most of the cases recorded are related to the following acts:

- Denial of the right to personal integrity, especially related to physical violence: 117 cases
- Illegal arrest: 112 cases
- Detention / imprisonment: 97 cases
- Right to be presumed innocent: 96 cases
- Denial of the right to treatment with dignity and humanity: 95 cases
- Denial of the legal rights of arrested persons: 112 cases
- Denial of the right to lawful arrest: 108 cases
- Denial of the right to legal assistance: 108 cases

There are significant numbers of cases related to:
- Physical violence: 106 cases
- Torture: 71 cases
- Illegal search: 70 cases
- Extortion: 46 cases
- Threat or intimidation: 34 cases
- Seizures: 15 cases

Based on the patterns above, it can be seen that most of the violations were conducted by a state agent, particularly by police at the provincial and district level. The Monitoring Network also found that violations sometimes happen during investigation at the District Attorney Office, during the trial by the District Court, or at the Correction Centres.

This research illustrates that repressive and punitive responses by law enforcement towards people who use drugs will not solve the problem of drug use or HIV / AIDS. Instead, punitive approaches drive people who use drugs away from the centres of preventive care and treatment for drug dependence.
Based on the results of the research, The Monitoring Network recommends that the Government, with the assistance of the civil society, take decisive steps to implement the following recommendations:

1. Torture should be defined and criminalized as a matter of priority. Doing so will demonstrate Indonesia’s commitment to implement Articles 1 and 4 of the Convention against Torture.

2. The Government of Indonesia should continue efforts to improve detention conditions with a view to providing health care, treat (rather than punish) persons with mental disabilities, and improve the quantity and quality of food provided to detainees. The Government, in all detention contexts, should ensure the separation of minors from adults, the separation of pre-trial prisoners from convicts, and train female personnel to women’s sections of prisons and custody facilities.

3. The Government of Indonesia should ensure that the criminal justice system is non-discriminatory at every stage. It should continue to combat corruption, which disproportionately affects the poor, the vulnerable and minorities. It should take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.

4. All detainees should be effectively guaranteed the ability to challenge the lawfulness of their detention before an independent court, e.g. through habeas corpus proceedings. Judges and prosecutors should routinely ask persons arriving from police custody how they have been treated. If they suspect that the detainee has been subjected to ill-treatment, he/she should order an independent medical examination in accordance with the Istanbul Protocol (even in the absence of a formal complaint from the defendant). Confessions made by persons in custody without the presence of a lawyer, and which are not confirmed before a judge, shall not be admissible as evidence against the persons who made the confession.

5. Accessible and effective complaint mechanisms should be established. These should be accessible from all over the country and from all places of detention. Complaints by detainees should be followed up by independent and thorough investigations. Additionally, complainants must be protected against any reprisals.

6. The Government of Indonesia should accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention. The Human Rights Commission, The National Commission on the Elimination of Violence against Women, and The Ombudsman should initiate the National Preventive Mechanism and conduct more regular monitoring at prisons and detention places, especially cases related to drug users, as part of the implementation of the Optional Protocol to the Convention against Torture.

Finally, the civic and human rights education for people who use drugs, which has focused on raising awareness on the right to health care (specifically relating to harm reduction), has resulted in the community mobilization of people who use drugs to access existing services and advocating for initiation of services where none are available.
Hopefully, publication of this report will mark the awakening of people who use drugs in Indonesia to realize that the need to monitor and document human rights violations conducted by law enforcement authorities are critical advocacy tools. The purpose of this report is to provide the organization of people who use drugs an understandable format for regular monitoring, data collection and reporting in the effort to decrease abuses against people who use drugs and enhance human rights protection for all.

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The Monitoring Network on Human Rights Violations against People who Use Drugs (FORKON – PANAZABA – PERFORMA – EJA)
The History of Drug Regulation Policy
CHAPTER ONE

The History of Drug Regulation Policy

Under Dutch Administration

The use of drugs in Indonesia is not just a new lifestyle adapted from outside Indonesia. Rather the use of drugs in the archipelago has a long history preceding the beginning of regulation during Dutch Colonization beginning in the early 17th Century.

In 1894, the system of selling opium through private traders was replaced by a state opium monopoly, the Opiumregie, which imported and refined raw opium and sold it to registered users through government shops. Opium use was often seen as a primarily Chinese problem, but in Java a majority of consumers were indigenous.1

Beginning in that period, the Dutch Administration began the regulation of the consumption of opiate drugs. For example, in 1925-1938, opium users were required to register and obtain a license from the Government. The grantees were divided into three classes: Native, Chinese, and European. The areas of licensed consumption were West Java, East Java, Yogyakarta, Surakarta, West Sumatera, Tapanuli, Bengkulu, Lampung, Palembang, Jambi, East Sumatera, Riau, Bangka, West Kalimantan, South Kalimantan, East Kalimantan, Manado, Celebes, Maluku, Timor, Lombok, and Bali. The number of opium users was recorded, both registered and unregistered.2

The use of opium became widespread in Java. Nearly 12% of Dutch Government revenue from the colony can be attributed to the opium monopoly between 1827-1933.3

Early Independence of Indonesia (1945-1950)

At the beginning of the Republic of Indonesia, the Government had an unwritten policy on drugs in Indonesia. The trade in opium in and through Indonesia has been substantial over the years, first under the Dutch Administration, followed by the Japanese Occupation Administration and later by some key persons from the Indonesian Independence Movement.

Among the names of opium smugglers during that period are the heroes of the independence struggle such as Adi Sutjipto, Abdul Rahman Saleh, Adi Sumarmo, Abdul Halim Perdanakusumah, and R. Iswahyudi, known as important figures in the Indonesian Air Force (AURI). The black market trade used routes through (1) Yogyakarta – Bukittinggi – Kutaradja (Banda Aceh) – Rangoon (Burma) – Bangkok (Thailand); (2) Then the route through Yogyakarta – Singapore; and (3) Yogyakarta – Manila (Filipina). At the same time, the sea route led by John Lie, who used the route among the cities in the east coast of Sumatera to Singapore. The smuggling operations were conducted with the goal to exchange opium for modern weaponry, including airplanes to bring medicines needed by the independence movement. Additionally, the proceeds from smuggling bought weapons, ammunition and medicines used by the Indonesian Red Cross in 1950s.

However, the history of drugs smuggling as a tactic of independence struggle has largely remained untold.

The Beginning of the “War on Drugs” Campaign in Indonesia

The Indonesian Criminal Code, as a colonial legacy, stipulated the articles related to drug use. However that changed with the advent of the New Order Regime, under Law No. 9, Year 1976 relating to narcotics.

In 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was declared. The Convention has become the foundation for the implementation of illicit drugs policy in many nations around the world. By January 1st 2005, this Convention had been signed by 170 nations including Indonesia.


Toward the end of the New Order Regime in Indonesia, the drug policy was revised under Law No. 5, Year 1997 relating to control of psychotropic substances and Law No. 22, Year 1997 on Narcotics, emphasizing punitive sanctions for both drug dealers and people who use drugs. However, the war on drugs has done little to curb drug trafficking and drug use in Indonesia.

In response, the Government and Parliament in 2009 took the initiative to amend Law No. 22, Year 1997 on Narcotics with Law No. 35, Year 2009 on Narcotics, that according to Government and the Parliament was “more humane”. The claim was based on the provision relating to providing rehabilitation for drug users (article 54) as victims.

Following the new law, a variety of operational guidelines and technical guidance to support the rehabilitation of people who use drugs was passed.

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5 Ibid
In this law, all psychotropic drugs have been categorized as “narcotics”. This categorization was created without a scientific basis by the order of the Government, because there was no more time for legislative review during the legislative session to amend the previous legislation relating to psychotropic substances.

Drug policy in Indonesia since 1997 effectively created a massive prohibition on drugs using the the slogan, “War Against Drugs”. The spirit of that campaign can be seen even in the current and amended 2009 Law on Narcotics.

The use of the word “war” has affected the behaviour of the state apparatus, which assumes that it has permission to use any means, including violence and the abuse of human rights, in the effort to suppress the distribution of drugs in Indonesia.

In daily life, people who use drugs, those at the bottom (and thus the largest and most visible part) of the drug distribution pyramid, become the primary target of police attention and subsequent abuse. The war against drugs campaign employs moral and religious rhetoric to condemn and put the blame for drugs on people who use drugs with the intention to decrease the desire of people to use drugs.

Intolerance and indoctrination by the state has created the popular image that people who use drugs are criminal and are pariahs that must be eliminated. The obvious outcome of this rhetoric is to increase stigmatization and discrimination against those who use drugs. As a result, many people who use drugs lose hope. Moreover, because they are used to having a low status in society, people who use drugs are inclined to accept the judgement of the government and the popular view of society against them. Thus, their basic human rights are often seriously and constantly abused by the state apparatus and there is very little recourse for them.

The understanding among the community of people who use drugs regarding the law and access to legal aid is also very low. This is partly the result of misinformation from the legal apparatus and the fact that often in the case of drugs, the intervention of legal aid or lawyers will actually make the penalty worse.

The war against drugs takes the form of sweeping raids, attempted seizure, arrest and detention (which is sometimes illegal), and
lengthy detention and prison for drug dealers, people who use drugs, or anyone in possession of drugs.

People who use drugs are thus encouraged to use the so called “peace way” by providing some money to the legal apparatus – the police, the attorney general or even the court. Those who fail to use the “peace way” will in practice be ensured a harsher punishment.

It is apparent that the average people who use drugs are very vulnerable to abuse and corrupt behavior given societal attitudes regarding people who use drugs, the general level of ignorance of of people who use drugs regarding his or her rights, and the evident complicity to deny those rights at the various levels of the drug enforcement regime.

**Police Abuse against People who Use Drugs**

Given the abusive approach of the legal apparatus, specifically police, to deal with the drugs issue, it may be instructive to examine the culture and history within the institution, as well as the communication methods employed by the government to disseminate propaganda in the form television commercials and banners in public places that reinforce a negative stereotype of drug use.

Instead of analysing the failure of the government’s efforts to prevent illicit drug distribution in Indonesia, the government tends to discredit the use of drugs and people who use drugs personally. They put the blame on the small-time dealers and/or people who use drugs.

The violence and coercive approaches used by the police and other legal institutions to deal with drugs can be seen as a cultural byproduct with wide consequences. For instance, the structural violence directed towards people who use drugs has become, for all intents and purposes, ‘legal’ or at least condoned as expedient and necessary in the name of law enforcement and the public interest.

Aside from violence, the police and other legal institutions are also dominated by corrupt behaviour, case manipulation, etc.⁶ *Amnesty International* noted that until now the public perception of police accountability is very low, especially when it deals with violence, corruption, or abuse of power conducted by its members. At the same time, internal control is also very weak.⁷

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**Harm Reduction Approach in Indonesia**

Harm reduction is a program that takes a different and more pragmatic approach; it recognizes that not everyone is able or willing to stop illicit drug use, and that those who are still using drugs can make choices to protect their health and the health of others. This approach, also known as "harm minimization," focuses on reducing the adverse consequences of drug use, including risk of HIV and other blood-borne infections, rather than on demanding that people stop drug use altogether.

The spirit of the harm reduction approach is the belief that services should meet people who use drugs “where they are,” rather than requiring people to fulfill many complicated requirements or behavioural changes before they can get help.  

People who use drugs are vulnerable. They suffer from inadequate medical assistance. They experience discrimination, invasion of privacy, police harassment and social marginalization. They have to endure the arbitrary deprivation of rights, such as mandatory medical treatment. Their capacity to defend their interests is impaired by social stigmatization. As mentioned by AD from Central Java:

One would assume that the majority of society would oppose such violations. After all, arbitrary searches, disco raids, compulsory urine tests, and wrongful appropriation of confidential medical files are injustices suffered by nonusers as well as users, but unfortunately the majority accepts the invasion of privacy in an attempt to have a drug-free environment.

Support for the human rights of people who use drugs “...as people who use drugs, I have fulfilled my obligation (as ruled by Narcotic Law No 35 / 2009 article 54). I have reported myself to the community health clinic and got the patient card...yet I was arrested by the Sleman Police. In my opinion, people who use drugs are supposed to be medicated and rehabilitated and not to be imprisoned like this .....”

(AD, from Central Java)

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drugs is virtually nonexistent.\(^9\) Harm reduction goes hand in hand with advocacy to ensure a range of human rights for people who use drugs. Such advocacy includes work to ensure:

- Access to information and measures to protect against disease and overdose.
- Protection against cruel or inhumane treatment.
- Protection against violations of privacy such as forced testing and registration.
- Freedom of association and political participation.

Harm reduction is an approach that is based on human rights. It includes protection against abuses by police as one of the harm minimization efforts, since mistreatment of people who use drugs by police is widespread. Police use the threat of incarceration and painful withdrawal symptoms to coerce testimony and extort money from people who use drugs.

In general, the harm reduction program can be seen in many formats, such as sterile injection services, methadone therapy and monitoring state use of violence and/or coercion towards people who use drugs.

The basic foundation of the harm reduction approach is to minimize the harm to people who use drugs as mentioned in the Declaration on The Guiding Principles of Drug Demand Reduction, adopted by the UN General Assembly Special Session (UNGASS); Resolution No. S20/4, citing drug policy at the national and international level should aim not only for prevention of drug use but also to minimize harm from drug use. The Decision 74/10; Flexibility of Treaty Provisions as Regards Human Reduction Approaches endorsed by the UN International Narcotics Control Board emphasizes that the harm reduction approach is in line with other drug prevention conventions.

**National Initiatives Related to Harm Reduction Program in Indonesia**

Compared to past years, the Government of Indonesia currently has demonstrated a high level of political commitment in addressing the HIV epidemic among one of the most affected population, people who inject drugs, by having introduced all elements of a comprehensive HIV prevention, treatment and care response for this population. In 2007 the Co-coordinating Minister for People’s Welfare issued a new regulation, the *National HIV and AIDS*

Policy for reducing harm arising from injection of narcotics, psychotropic, and other dependence causing substances (PerMen No.2/ Per/Menko/Kesra/I/2007). The National Narcotics Agency, BNN, has emphasized the much needed revision concerning the importance of distinguishing between drugs dealers and drug users. In 2009, the Supreme Court issued the Letter of Supreme Court (Surat Edaran Mahkamah Agung – SEMA) No. 7 Year 2009, related to the placement of people with drug dependence, and then amended by the Letter of Supreme Court (Surat Edaran Mahkamah Agung – SEMA) No. 4 Year 2010 regarding the placement of people who use drugs and people with drug dependence in medical and social rehabilitation institutions.

At the level of civil society nationwide, the harm reduction movement initiated by people who use drugs has acted as a major impetus for scaling up the national harm reduction response and for greater access to and utilization of health care services by people who use drugs. For example, there were a series of meetings involving groups from several provinces that resulted in the establishment of organizations and networks of advocacy for people who use drugs.

There was also an effort at documenting the abuses experienced by people who use drugs through research. JANGKAR based in Jakarta has surveyed 1106 people who inject drugs in 13 cities about their experiences of police abuse. Of those interviewed, 667 or 60% reported physical abuse by police. These findings indicate the importance of continuing efforts to promote police reform and harm reduction in Indonesia.10

A total of 78 NGOs are implementing harm reduction activities and there are 274 peer support groups of people living with HIV in 31 provinces. It should be acknowledged that harm reduction has begun to affect behaviour change – since over 8 in 10 people who inject drugs surveyed in harm reduction project sites reported the use of sterile equipment on their last injection.11 Among those national initiatives conducted by civil society, there are some grass root organizations working on the monitoring and advocacy regarding abuses suffered by people who use drugs, mostly by police officers. Those organizations actively monitoring the situation are also advocates for policy change, public education, as well as community outreach.

10 http://www.soros.org/initiatives/health/focus/hrd/articles_publications/publications/atwhatcost_20090302
The Voices from Unheard Groups
CHAPTER TWO

The Voices from Unheard Groups

From Labeling to Abuses

In many countries, including Indonesia, the issue of mistreatment at the hands of government officials is one of the most common and serious human right violations. Physical assault and torture, sexual assault and harassment, verbal abuse, and other forms of mistreatment can occur in a variety of settings. It happens during searches, demonstrations, meetings, arrest or while the person is at the police station being questioned. Such ill-treatment occurs in public, police stations, prisons, private places, detention centres and military bases.

The victims highlighted in this report are people who use narcotics, psychotropic and other addictive substances. They experience stigma from their families, society and the state. They have been labeled as criminals, thieves, junkies, sources of disease and generally a negative influence on the community. This stigmatization has led to discriminative practices and mistreatment from society. The negative perception of people who use drugs within society also allows violence, coercion, and abusive force to be used by the state apparatus. People who use drugs are an easy target in the “War on Drugs” and are often victims of harassment and extortion by law enforcement authorities.
People who use drugs are vulnerable to a number of human right violations in the form of: physical, mental and sexual violence; neglect of health rights; stigmatization; and discriminatory and disproportionate punishment. Those rights, especially the right to physical integrity and liberty, freedom from torture or cruel, inhuman or degrading treatment or punishment, as well as freedom from arbitrary arrest and detention, are found in the major international human rights treaties (i.e. International Covenant on Civil and Political Rights and Convention against Torture) and in domestic law.

**The Findings of Monitoring**

An obligation to monitor human rights is imposed on all who are concerned with protection and promotion of human rights. Monitoring is necessary because violations continue to exist throughout the world. As well as being the responsibility of individuals, the monitoring of human rights is also the responsibility of organizations and communities in society. These responsibilities stem from national laws and international human rights instruments. The process of monitoring helps with the establishment of current and future human rights standards at the national and international level.

Monitoring human rights allows the standards of these inter-governmental organizations to be improved and their mechanisms for applying these standards to be strengthened.

The success of human rights monitoring has traditionally relied on both non-quantitative forms of reporting using anecdotal evidence, eyewitness testimonials and the individualized human story as well as statistical quantitative data. Creating an advocacy plan from measurement-based evidence is crucial to recognizing everyone’s human rights.

In 2008, the UN Special Rapporteur Against Torture monitored and examined the detention centers and prisons in Indonesia, including places where drug users have been experienced violence and tortured. The findings have been published and some of the conclusions are related to the treatment and punishment against people who use drugs. Manfred Nowak, on his report mission to Indonesia 10 March 2008, noted: “The Indonesian correctional service under the Ministry of Justice manages around 350 detention facilities (16 juvenile prisons, 6 drug prisons) with an official capacity of 75,000. In December 2007 there were about 134,000 inmates, of which approximately 60,000 were in pre-trial detention. About 35 per cent of the persons are in detention on charges related to drug crimes.”

The Special Rapporteur received a considerable number of allegations of torture and ill-treatment perpetrated by the police, either during arrest or in custody. Reflecting the general heterogeneity of the country, abuses by the police appear to be more common in the densely populated cities, which are also plagued by urban crime and drug-related offences. In light of the information received in private interviews with individuals who were or/and had been in police custody, the corroborating results of independent forensic medical examinations of injuries, he concludes that torture is routine practice.

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12 A/HRC/7/3/Add.7, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum Mission to Indonesia, 10 March 2008.
The overwhelming majority of the detainees interviewed indicated that the ill-treatment was used primarily to extract confessions or, in the cases of drug-related crimes, to receive information on drug suppliers. In a number of cases detainees were offered to be spared in return for the payment of a substantial amount of money. Those interlocutors who had been already tried reported in unison that their coerced confessions had been used during the court proceedings and that objections they had raised were not considered by the judge, prosecutor or even their own legal aid clerk. Furthermore, they were not aware of any complaints mechanism to which they could address their grievances with any expectation of action on their behalf.

The Special Rapporteur notes with concern the very long duration of police custody. While the Criminal Procedure Code authorizes a maximum length of 61 days only in very specific circumstances, the imposition of such a long period is applied as a standard procedure. Consequently, detainees remain under exclusive police authority for a period exceeding many times the maximum period permitted under international law, making abuses more likely, and furthermore renders the detection of torture significantly more difficult since visible traces are likely to have disappeared by the time the detainee is released or transferred.

The regional discrepancies are also reflected in the conditions of detention in police custody. Although the infrastructure of the cells in police stations was generally in line with international standards, the facilities were not adapted for the prolonged periods of up to several months that people usually spend in police custody. Some cells were overcrowded and some facilities lacked fresh air, natural light and adequate sanitary facilities. A lack of access to medical care was another major concern, especially as some inmates had sustained injuries during arrest and/or interrogation and in need of urgent medical attention.

The Special Rapporteur received numerous and consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that at every stage, starting from the police and the judiciary to the detention centres and prisons, corruption is a quasi-institutionalized practice. This is of particular concern in detention situations, where it can lead to significant discrimination in terms of conditions, notably access to food, sanitary facilities, health care and the possibility to receive visitors. At the same time, corruption also has an impact on how a prisoner is treated; some detainees alleged that they have to pay in order not to be subjected to beatings upon arrival in prison and during police interrogation.

In line with the international effort, at the national level from 2009 – 2011, the Monitoring network on human rights violations against people who use drugs begin seriously monitoring and documenting the human rights violations against people who use drugs. They collect data and information, as well as testimonies from the victims. In summary, 139 cases were documented from 5 provinces during the period between 1997 and 2011:

- 27 cases from DKI Jakarta
- 28 cases from West Java
- 56 case from Central Java
- 26 cases from East Java
- 1 case from Yogyakarta
There was also 1 (one) case reported from Lampung (outside Java). This case may be considered as it still relates to cases monitored by the group from Semarang in Central Java.

The number of cases collected by the group can be seen like iceberg. The findings represent a situation where the number of violations is actually much greater than officially reported. These collected cases can be used to complete the picture begun by organizations from over time. Also, the documentation will strengthen the analysis of violations that happen and relate them with other human rights issues, such as torture, denial to provide treatment, administration of justice, police reform, etc.
Victims and Their Experiences

Justice is based on the respect for the rights of every individual. When individual stands trial on criminal charges, he or she is confronted by the whole machinery of the state. How the person is treated when accused of a crime provides the concrete demonstration of how far that state respects individual human rights.

Every criminal trial tests the state’s commitment to respect human rights – when the authorities suspect the person of being a threat to those in power. Every government has the duty to bring justice those responsible for crimes. However, when people are subjected to unfair trials, justice cannot be served. When people are tortured or ill-treated by the law enforcement officials, when innocent individuals are convicted, or when trials are manifestly unfair or perceived to be unfair, the justice system itself loses credibility. Unless human rights are upheld in the police station, the interrogation room, the detention centre, the court and the prison cell, the government has failed in its duties and betrayed its responsibilities. 13

Anti-drug campaigns in Indonesia have been commonly associated with police abuses, extortion, and violence against suspected people who use drugs. In many places in Indonesia, people who use drugs have been the victims of human rights violations mostly through the criminalization and marginalization; arbitrary detention, torture, inhumane prison conditions, excessive punishments including death penalty; antiquated methods of forced treatment and detoxification; as well as exposure to increased risk of infection with HIV/AIDS and hepatitis.

The Group found of the total 139 cases, 19 were female victims and 120 were male victims. There is one recorded case of a victim categorized as children / juveniles (See: Case No.013).

In general, there are some common patterns seen in the various types of violations. All 139 cases recorded can be classified as:

- Violations or coercive acts by state agencies. Included here are: torture, arrest, detention / imprisonment, extortion.

• Acts of omission allowing the continuation of situations of non-respect of personal integrity and/or individual/group liberties.
• Acts of omission through failure to enforce law or put into effect policies in protection of individuals or groups menaced by violent or coercive actions, including failure to ensure the proper functioning of mechanisms of administration of justice.

There are cases recorded as violations or coercive acts by state agencies by non-state agents, such as civilian mob. There are cases recorded as:
• Acts or omission through failure to enforce laws or put into effect policies in protecting vulnerable groups. These consist of cases related to the protection of children and juveniles and also cases related to women.
• Acts of omission allowing the continuation of situations of non-respect of rights of vulnerable groups

Based on the patterns above, it can be seen that most of violations were acted by state agent. The types of perpetrators and their institutions are:
• 31 cases reported Police (general/unknown institution)
• 21 cases reported Police at regional or provincial level (Polda)
• 50 Police at resort or district level (Polres, including Poltabes)
• 38 cases reported Police at Sector or Municipal level (Polsek, including Polwil and Polwiltabes)

Other groups of perpetrators:
• 5 cases reported District Court
• 2 cases reported District Attorney
• 1 case reported Correction Centers

The Types of Violations

The violent practices and abuses of power within police and other legal institutions happen in almost all the areas seen in Java Island, as found by the group of monitors, such as extra judicial arrest and detention, the use of excessive and coercive force during the operation, criminalization, as well as physical violence and torture that ended in death.
The Monitoring Network found that all those acts of violence become worse by incomplete administration (such as warrants) during the investigation, arrest, and detaining process. In more detail, the rights that violated mostly are:

a. Violations against personal integrity
   - Physical assault
   - Sexual violations
   - Psychological assault and harassment
     - Threat against victims
     - Threat against the families
   - Violations with physical, sexual, and psychological dimension
     - Sexual assault / molestation
     - Torture

b. Violations against the right to liberty
   - Arrest
   - Detention / imprisonment
     - Denial of release in case of unlawful arrest
     - Denial of release pending trial

c. Violations of rights of children and juveniles
   - Direct actions which violate the rights of children and juveniles
   - Non-implementation of law or policy to fulfil the right of children and juveniles

d. Violations of rights of accused persons
   - Denial of the right to be presumed innocent
   - Denial of the right to adequate times and facilities
   - Denial of the right to legal assistance
   - Denial of the right to equality of arms

e. Violations of rights of detained / imprisoned person
   - Denial of the right to treatment with dignity and humanity
   - Denial of the right to adequate accommodation
   - Denial of the right to lawful arrest

f. Violations against the rights of privacy
   - Illegal search / raid
   - Seizure

G. Violations of the right to retain property
   - Extortion
In almost all of the cases the victims experienced more than one act of violence and or violation. Those acts are varied from the violation of right of personal integrity in the form of physical, psychological, and sexual violence, the right to privacy such as illegal search, seizure, forced urine test without medical and judicial procedure, right to get legal support, etc. The most of the cases recorded are related to the following acts:

| Denial Right to personal integrity, especially related to physical violence | 117 cases |
| Illegal arrest | 112 cases |
| Detention / imprisonment | 97 cases |
| Right to be presumed innocent | 96 cases |
| Denial of the right to treatment with dignity and humanity) | 95 cases |
| Denial of the legal rights of arrested persons | 112 cases |
| Denial of the right to lawful arrest | 108 cases |
| Denial of the right to legal assistance | 108 cases |

It should be noted that there is a significant number of cases related to:

- physical violence : 106 cases
- torture : 71 cases
- illegal search : 70 cases
- extortion : 46 cases
- threat / intimidation : 34 cases
- seizures : 15 cases
Methods of Violence

The Monitoring Network discovered the most common methods of violence used are:

a. Methods of imprisonment, restriction of movement
   - held in regular detention place
   - held in private place

b. Methods of violence against person
   - beatings, including slapping, kicking, punching
   - blows with heavy sticks, straps
   - Burns; with cigarette
   - Sexual assault / harassment
     - Sexual threats
     - Sexual comments or other form of sexual harassment
     - Touching as form of sexual harassment and molestation
   - Application of electric shock
   - Being bound or tied up as form of immobilization
   - Psychological torture and ill treatment
   - Degradation
     - Verbal abuses
     - Nakedness as form of degradation
     - Being forced to act in degrading way

c. Other methods of violence, such as shooting

However, among those 139 cases the most frequent methods of violence used are:

- Beatings with hands
- Blows with rifle butts, straps, whips, or heavy sticks, and
- Slapping, kicking and punching.

Violations occurred mainly at police stations during the interrogation process, and/or at other places during the search operation. There are also some cases (in East Java) where the victims were in the process of therapy. It seems that police are not well informed about the law regarding methadone treatment and do not know that they are forbidden to make arrests in the clinic area; as a result, some patients report that they have become targets of the police because they use other drugs in addition to methadone.

The group found extortion in every level of legal process, from investigation (by police) to the decision at the court level (by the judges and court administration). The extortion was conducted to stop the investigation or to change the articles/charges or to remove cumulative charges. It also can be found that extortion will lead to manipulation of evidence in the case, so the proof will be weak and as a result the suspect will be acquitted.
Sexual Violence

The combination of gender inequality, stigma, and discrimination makes the situation of women who use drugs more vulnerable for sexual violence, especially when it happens at the closed setting, like prison or detention centre. Even though it must be noted that sexual violence does not happen to women who use drugs exclusively, but also to men who use drugs and juveniles. From the cases monitored, the group gives a special attention to the cases of sexual violence. Almost all the cases involving female victims are related to sexual violence; from harassment (touching, nakedness, verbal abuse, to rape, sexual slavery, sexual assault, etc.).

As quoted in the Declaration of Violence against Women, the term ‘sexual violence’ can be defined as: “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It can be physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

“I was using drugs with my boyfriend in my room when police caught us. The police did not wear uniform, came and kick the door. Then the police put the gun against me. They began to search us. They told us to take our clothes off. There were no police women at that time. All men. A police officer found heroin in my panties, the other touch my breast and make jokes about whether my tits such a drug?

M from Jakarta
In the closed setting like detention centre or prison, women, are very vulnerable to become target of sexual harassment, or even raped by the staff of prison or male inmates. They also vulnerable to be sexually exploited or involved to have sex to get food, medicine, cigarette or even drugs and other basic stuff.

“I was detained with my boyfriend. At the detention centre, they offered me heroin, but I have to have sex with the police. My boyfriend has passed away, he’d never know how can we be released at that time. I’d never told him that I have to have sex with the police when we were at the detention centre. Almost everynight I have to pass his cell to go to police room. One day, the police even ask me to do that in sport room.

M from Jakarta
Human Rights Framework in Cases of Abuse
**Chapter Three**

Human Rights Framework in Cases of Abuse

**Rights Violated Under the International Human Rights Law**

The right to a fair trial is one of basic human right. It is one of the universally applicable principles recognized in the Universal Declaration on Human Rights, adopted more than 60 years ago by the world’s government and still the cornerstone of the international human rights system. In the years since 1948, the right to fair trial recognized in the UDHR has become legally binding on all states as part of customary law. From the findings, it can be shown that the legal apparatus often tries to deny the suspect’s rights, even though it is clear that all those rights are categorized as non-derogable rights (under the ICCPR).

Based on the cases reported, it can be confirmed that human rights violations were committed against people who use drugs, especially violations related to the right of liberty and security of person, right to protection from abuse of authority (including freedom from torture, freedom from inhuman treatment or punishment, and the administration of justice during the investigation and trial process). The summary of rights violated and affected to the victims are as follows:

a. Protection from abuse of authority (Right to)
b. Liberty of person (Right to)
c. Security of person (Right to)
d. Freedom from torture (Right to)
e. Freedom from inhuman treatment or punishment (Right to)
f. Privacy (Right to)
g. Social and medical assistance (Right to)
h. Rights of children and juveniles
i. Protection of children (Right to)
j. Rights of women
k. Be presumed innocent (Right to)
l. Adequate time and facilities (Right to)
m. Equality of arms (Right to)
n. Legal assistance (Right to)
o. Treatment with dignity and humanity (Right to)
p. Adequate medical services (Right to)
q. Lawful arrest (Right to)
r. Release in case of unlawful arrest (Right to)
s. Release pending trial (Right to)
The year 2005 could be considered as a new era for human rights promotion in Indonesia. In October 2006 Indonesia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) through Law No. 11 Year 2005 and the International Covenant on Civil and Political Rights (ICCPR, 1966) through Law No. 12 Year 2005. Both instruments are considered as the International Bills of Rights for the promotion and protection of human rights all over the world. However, several problems still also occurred in the implementation and protection of civil and political rights, especially, the right to liberty and security of person. Acts of violence and abuses or even atrocities still happened either conducted by the state apparatus or groups in the community.

The previous chapter has described the components of cases involving the police and other authorities against drug users. Those cases contain general information about the incidents (date and place); patterns of violations, including types of violations, types of acts and the methods of violence perpetrated; victims general information; persons denounced for the violations, that is, perpetrators or the person / institutions responsible for the violations. The following section provides a general overview of the regimes of national and international law which will in turn provide a basis for the examination of specific rights in the context of abuses against people who use drugs.

**The Major Human Rights Instruments and Its Mechanism**

Elements of international law related to the issue must be focused on fundamental human rights in the interpretation and application of relevant treaty provisions. This includes, for example, implications of the right to personal liberty and security, the right to due process, detention and prosecution, as well as the impact of the rights to property and privacy upon the investigation and seizure. In general, the findings of the monitoring process have discovered incidents of human rights violated or affected, as follows:

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 6</td>
<td>The right to life.</td>
</tr>
<tr>
<td>Article 7</td>
<td>The right to freedom from torture or cruel, inhuman or degrading treatment or punishment, including a prohibition on being subjected to medical or scientific experimentation without one's free consent.</td>
</tr>
<tr>
<td>Article 9</td>
<td>The right to liberty and security of person, including freedom from arbitrary arrest and detention.</td>
</tr>
<tr>
<td>Article 10</td>
<td>The right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person</td>
</tr>
<tr>
<td>Article 14</td>
<td>The right to a fair hearing in criminal and civil cases by an independent and impartial tribunal</td>
</tr>
<tr>
<td>Article 15</td>
<td>Freedom from ex post facto laws and the retroactive application of heavier</td>
</tr>
<tr>
<td>Article 16</td>
<td>The right to recognition as a person before the law</td>
</tr>
<tr>
<td>Article 17</td>
<td>The right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence or to unlawful attacks on one’s honor and reputation</td>
</tr>
<tr>
<td>Article 26</td>
<td>The right to equality before the law and the equal protection of the law</td>
</tr>
</tbody>
</table>

**The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**  
**Law No. 5 Year 1998**

| Article 4 (1) and (2) | “Each State Party shall ensure that all acts of torture are offences under its criminal law” and the same shall apply to attempts to commit torture and acts that constitute “complicity or participation in torture”. It shall, moreover, “make these offences punishable by appropriate penalties which take into account their grave nature” |
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| Article 9 | The States parties shall take the measures necessary to exercise their jurisdiction over the preceding offences and to submit the person alleged to have committed acts contrary to article 4 of the Convention to the “competent authorities for the purpose of prosecution” (arts. 5-7) and they shall moreover “afford one another the greatest measure of assistance in connection with criminal proceedings brought” in respect of any of these offences |
| Article 10 (1) | The States parties shall further “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment” |
| Article 11 | For purposes of prevention of torture, the States parties “shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form” of deprivation of liberty |
| Article 12 | “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed ...” |
| Article 13 | “Each State party shall further ensure that any alleged victim of torture “has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” |
| Article 14 | “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible” |
| Article 15 | “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made” |

**The Convention on the Rights of the Child, 1989**

**Presidential Decree No. 36 Year 1990**

| Article 12 | Duty to respect the views of the child and the right of the child “to be heard in any judicial and administrative proceedings affecting” itself. |
| Article 16 | The child’s right to legal protection against arbitrary and unlawful interference with his or her privacy, family, home or correspondence and the right not to be subjected to “unlawful attacks” on his or her honour or reputation. |
| Article 19 | The child’s right to protection against all forms of violence and abuse. |
| Article 20 | The child’s right to special protection and assistance when deprived of his or her family. |
| Article 37 (a) | The right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, including capital punishment. |
| Article 37 (b) | The child’s right not to be deprived of his or her liberty arbitrarily and unlawfully. |
| Article 37 (c) | The child’s right to humane treatment whilst deprived of his or her liberty. |
| Article 37 (d) | The child’s right to legal safeguards in connection with deprivation of liberty. |
| Article 39 | The child’s right to appropriate measures to promote physical and psychological recovery and social integration in case of any form of neglect, exploitation or abuse. |
| Article 40 | Principles of juvenile justice. |

**Other Instruments Adopted by the United Nations General Assembly**

<table>
<thead>
<tr>
<th>Year</th>
<th>Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>The Basic Principles for the Treatment of Prisoners</td>
</tr>
<tr>
<td>1988</td>
<td>The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</td>
</tr>
<tr>
<td>1979</td>
<td>The United Nations Rules for the Protection of Juveniles</td>
</tr>
<tr>
<td>1955</td>
<td>The Standard Minimum Rules for the Treatment of Prisoners</td>
</tr>
<tr>
<td>1990</td>
<td>The Guidelines on the Role of Prosecutors</td>
</tr>
<tr>
<td>1990</td>
<td>The Basic Principles on the Role of Lawyers</td>
</tr>
</tbody>
</table>
The Prohibition of Torture in International Human Rights Law

It must also be considered, however, that certain rights as mentioned above can never be the subject of derogation. It may be observed at this stage, however, that Article 4 (2) The International Covenant on Civil and Political Rights (ICCPR) enumerates all of the rights that may not be the subject of derogation, namely the right to juridical personality, the right to life, the right to humane treatment, the prohibition of slavery and servitude, the principle of non-retroactivity of laws, freedom of conscience and religion. Non-derogable rights within the ICCPR also include the rule of law, the principle of legality, and habeas corpus.

During the monitoring process, the Monitoring Network found that the right to liberty and security of person has become the most common violated by authorities. The arrest and detention against people who use drugs can be indicated as illegal since it is not based on legal grounds; the actions are not respecting legal procedures; not reasonable/appropriate in the circumstances; not proportional to the legal objectives; contains discriminatory purposes; not predictable; without fair, solid and substantial cause; and unduly intrusive vis-à-vis other rights, as mentioned by the victims below:

Those violations then affected to other certain rights such as right to adequate access to legal assistance; prompt notification of family; appropriate treatment of detainees (including presumption of innocence, treatment which is humane and respects the inherent dignity of the human person, absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment, prohibition of violence or threats, respect for religious and moral beliefs, respect for the special status and rights of women, respect for the special status and rights of juveniles, etc.).

All those violations above are enumerated in Article 9, Universal Declaration on Human Rights (UDHR) and Article 9 (1) and (2) of The International Covenant on Civil and Political Rights (ICCPR). At the national level those violations were prohibited according to Articles 18 (1), 19 (2), and 21 (2) of the Criminal Procedure of Republic of Indonesia. More specifically, the prohibition of illegal search, extortion, and seizure has been stated in article 33 of the Criminal Procedure as well as article 368, 423, and 429 of the Criminal Code.
The act of torture and ill-treatment has not been fully eradicated in the process of law enforcement even though Indonesia ratified the International Convention against Torture (CAT) through the Law No. 5, Year 1998.

Reports have emerged regarding the practice of violence and other cruel punishments in police stations, detention places and other closed settings. These practices become increasingly rationalized in part due to the moral rhetoric of the war on drugs campaign. Torture and cruel treatment has become an “unofficial means” of obtaining information or confessions, and also as punishment and intimidation of operation targets, both people who use drugs as well as drug dealers.

The prohibition of torture is mentioned in Article 5 of UDHR and Article 7 ICCPR, however a broader definition was elaborated in Article 1 of The Convention against Torture (CAT); “For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

In fact, torture and other cruel and degrading treatment and punishments are prohibited based on the national criminal law in Indonesia. It is also against Pancasila, the state ideology, and also the Constitution of the Indonesian Republic. The Human Rights Law No.39/1999 also guarantees the right to freedom from torture.

The prohibition of torture by public officials is also stated in the Criminal Law Article 422, which says: “A public official in a criminal case, who uses the means of force to obtain confession or information, is penalized with 4(four) years’ imprisonment.” The prohibition of torture in Article 442 uses the definition which is close to the one defined in CAT, however, it is insufficient as it does not include the act of “instigation” or “consent” from public officials or persons acting in an official capacity.

To deal with that limitation, the Draft of Criminal Code that prohibits torture as stated in CAT is being prepared. In the Draft, Article 300 states “…every public official by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity inflicting pain or suffering both mentally and physically for such purposes as obtaining from her/him or a third person information or a confession, punishing him ... will be sentenced for 3 years minimum or 12 years maximum imprisonment”.

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It is important to be noted, in Human Rights Council, Manfred Nowak, the UN Special Rapporteur on Torture concludes with a series of recommendations, including the need for the Human Rights Council to address the tensions between the current punitive approach to drug control and take up the question of drug policies in the light of international obligations in the area of human rights at a future session. He observes that from a human rights perspective, drug dependence should be treated like any other health-care condition. Consequently, denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law.

“...From a human rights perspective, drug dependence should be treated like any other health-care condition. Consequently, denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law.”

Manfred Nowak, UN Special Rapporteur on Torture

Regarding the review process, the Special Rapporteur recommends that States and the relevant United Nations agencies reassess their policies, bearing in mind the following points:

a) States should ensure that their legal frameworks governing drug dependence treatment and rehabilitation services are in full compliance with international human rights norms;

b) States have an obligation to ensure that drug dependence treatment as well as HIV/hepatitis C prevention and treatment are accessible in all places of detention and that drug dependence treatment is not restricted on the basis of any kind of discrimination;

c) Needle and syringe programs in detention should be used to reduce the risk of infection with HIV/AIDS; if people who inject drugs undergo forcible testing, it should be carried out with full respect of their dignity;

d) States should refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement;

e) Given that lack of access to pain treatment and opioid analgesics for patients in need might amount to cruel, inhuman and degrading treatment, all measures should be taken to ensure full access and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care.
The Position of People who Use Drugs Under National Law
CHAPTER FOUR

The Position of People who Use Drugs

Under National Law

Law No 35 Year 2009 on Narcotics, Protecting Whom?

The increasing drug problem related to the spreading of HIV/AIDS in Indonesia has pushed the Indonesian Government to endorse regulations and policies concerning drug use. The Indonesian People’s Consultative Assembly in its 2002 session, through the People’s Consultative Assembly Provision No. VI/MPR/2002, recommended to the Government a revision of Law No. 22, Year 1997 on Narcotics and Law No. 5, Year 1997, on Psychotropic, resulting in Law No. 35, Year 2009 on Narcotics, however, there is an ongoing debate between the health approach and punitive approach.  

In Law No. 35, Year 2009 on Narcotics Law, it is difficult to find the exact meaning of “people who use drugs” as a subject / person (as a noun). If it is related to people who use drugs, then we can find more confusing terms, such as:

1. **People with drug dependence** shall mean any person who consumes or abuses drugs and is in dependent condition upon drugs, either physically or psychologically (Article 1 (13) Narcotics Law);
2. **People who abuse drugs** shall mean any person who unrightfully or unlawfully consumes narcotics (Article 1 (15) Narcotics Law)
3. **Victim of drug abuse** shall mean any person who does not intentionally use the narcotics, due to be persuaded, tricked, deceived, coerced, and / or threatened to use the narcotics (Explanation of Article 54 Narcotics Law)
4. **Patient** shall mean any person who based on medical indications may use, acquire, possess, store and carry drug class II and class III in limited quantities and certain preparations;
5. **People who once dependent** on drugs shall mean any person who have physically and psychologically recovered y from drug dependency (Explanation of Article 58 Narcotics Law)
6. **Narcotic dependence** shall mean any condition indicated by the impulse to continuously consume Narcotics with increasing doses to produce the same effects and occurring specific physical and psychological symptoms if the consumption is suddenly reduced and/or terminated (Article 1 (14) Narcotics Law)

\[\text{Totok Yulianto (PBHI), The Legal Position of People who Use Drugs in National Legal System\textsuperscript{a}, Paper, Unpublished, (2010).}\]
The different term describing people who use drugs causes some confusion and lack of clarity in interpretation and implementation of the Narcotic Law.

Problems resulting from the number of terms can be seen in Article 4d, on Narcotics Law, that states: "Narcotics Law had a purpose, to guarantee the control of medical and social rehabilitation efforts for "people who abuse drugs (term no. 2)" and "people with drug dependence (term no. 1)." But Article 54, Narcotics Law states "people with drug dependence (term no. 1)" and "victim of drug abuse (term no. 3)" shall be required to go through medical and social rehabilitation", but based on this Article the right of people who abuse drugs (term no. 2) to receive rehabilitation was not acknowledged.

In Article 127, people who use drugs may become criminalized and lose their right to rehabilitation, except for those who can prove themselves as victim of drug abuse. It is difficult to prove a person is a victim of drug abuse, because the victim must explain how they came to use drugs and they must prove to the judge that they used drugs under the condition of persuasion, deception, force, and/or threat.

The obligation to report for parents or the guardian of the people who use drugs also had confusing implications for the parents or the guardian, because to determine whether their child is in drug dependence or not must be determined by mental health expert.

Based on the objectives of the Narcotics Law and the position of people who use drugs, it can be seen that the war on drugs is targeted for illegal drugs dealers. However, people who use drugs who try to access the guaranteed rehabilitation must face the risk of criminal prosecution as stated in Article 127, Narcotics Law. It is an interesting point to pursue, if people who use drugs is considered the perpetrator of a crime, then who is the victim of the 'crime' carried out by them?

To answer questions related to the status of people who use drugs as perpetrator of a criminal act and at the same time as victim, the Supreme Court made a breakthrough using Article 103 Narcotics Law, by issuing Circular Letter 04 in 2010, making placement of drug-abuse, victim of drug abuse, and people with drug dependence within the jurisdiction of the Medical and Social Rehabilitation Agency. This Letter became the reference for the Judges at District, Higher and Supreme Court to handle cases involving drugs. The following criteria must be met for referral:

1. The defendant, when being arrested by police investigator and the BNN (National Board of Narcotics) investigator, was caught in the act of using drugs;
2. The defendant, when being arrested in the act of using drugs, the investigator should have should have possessed sufficient amount of drugs to be used for one day;
3. Based on the investigator’s request, laboratory results testing positive for drug use of the defendant;
4. A certificate from a psychiatrist/ government psychiatrist as appointed by the judge is needed;
5. The defendant could not be proven to be significantly/ relevantly involved with illegal drug dealers
The panel of judges in the drug related case must firmly and clearly appoint the closest place of rehabilitation in their decision. And in making their decision the judges must seriously consider the condition/ drug dependence level of the defendant. Consequently the period of medical treatment and/or rehabilitation for people with drug Dependence has to be counted as punishment period, where the verdict to undergo medical treatment and rehabilitation has to be determined by the mental health expert. However the Circular Letter of Supreme Court will be difficult to implement while the legal apparatus (the investigator, prosecutor and judges) do not necessarily have the same mindset on drug policy.

**People who Use Drugs and Citizen’s Rights**

People who use drugs are also citizens of the country, thereby having right equally to be respected, protected, and fulfilled by the State, both related to access to justice as well as access to health or social care. Apart from the human rights attached to any human being, in the Narcotics Law there are some provisions that mention the specific rights of people who use drugs:

A. **The Rehabilitation of People who Use Drugs**

As mentioned in the objectives, Narcotics Law guarantees rehabilitation for people who use drugs. In this case the government is required to make available medication and health care. On the other hand, people who use drugs can choose a qualified place for rehabilitation meeting the standard of national supervision.

B. **The Right of not to be Criminalized for People who Use Drugs under the Age of 18.**

Narcotics Law gave discretion to several matters so that people who use drugs were not criminalized as mentioned in the Article 128 with the criteria as follows:

- People with drug dependence under the age of 18 and was reported by parents or guardian as being meant in the Article 55 articles (1)
- People with drug dependence who is considered adult (18 years old above) as being meant in the Article 55 articles (2) who is conducting medical rehabilitation at the hospital and/or the medical rehabilitation agency for maximum two times.

Although this policy was ruled by the Law it is not effective since there is no technical guidance for implementation. The police and other officials continue using repressive and punitive methods to treat the juvenile who use drugs.
Some Problems Around the Drug Policy

a. Institutions and Policies

Unfortunately, real effort is lacking at implementation and issuance of technical regulation in Narcotics Law regarding the interests of people who use drugs. Drug eradication effort has higher priority than prevention and rehabilitation. Below is a list of technical regulations needed:

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Articles</th>
<th>Under authority of</th>
</tr>
</thead>
<tbody>
<tr>
<td>The implementation of reporting obligation</td>
<td>Article 52</td>
<td>Government Decree</td>
</tr>
<tr>
<td>The procedure to use seized asset</td>
<td>Article 101</td>
<td>Government Decree</td>
</tr>
<tr>
<td>Medical Rehabilitation and the Medical Rehabilitation Agency</td>
<td>Article 59</td>
<td>Minister of Health Decree</td>
</tr>
<tr>
<td>Social Rehabilitation</td>
<td>Article 59</td>
<td>Minister of Social Affairs Decree</td>
</tr>
<tr>
<td>Coordination Forum and the Role of Community</td>
<td>Article 108</td>
<td>National Narcotics Agency</td>
</tr>
</tbody>
</table>

b. The Overlapping of Criminalization Articles for People who Use Drugs.

Among people who still use drugs illegally, there are several actions can be identified as illegal such as buying, controlling, keeping, or possessing drugs with the purpose of personal use which is mentioned in Article 27. Narcotics Law did not give a clear distinction between possession for personal use and possession with intent to sell in Article 127.

In practice, the above article, people who use drugs for personal consumption of Narcotics Class I can be charged with penalties of maximum 4 years in prison.

The Article 27 does not differentiate people who consume drugs into classification of people with drug dependence or victim of drug abuse as mentioned in the Article 54. Then, the subject generally determined as people who abuse drugs.

c. There are No Clear Expiration Limits for People who Use Drugs

The Narcotics Law did not give a clear expiration limit as to the criminal act that could be imposed upon people who use drugs. For people who use drugs that shared their experiences and undergo the process of rehabilitation, based on their own willingness (was not based on the decision of the judge), could potentially face charges based on actions that happened in the past (bought, used, controlled or kept drugs illegally) and they could be from time to time liable to be punished.
As mentioned before, the Special Rapporteur on Torture has given a recommendation to the Indonesian Government to limit the time of arrest and detention; however the Narcotics Law clearly ignored this recommendation by giving the authority to the National Narcotics Board (BNN) investigator to arrest people who use drugs for 3 days, with an extension of 3 days possible. The Narcotics Law also did not regulate the rehabilitation guarantee for people who use drugs. The rehabilitation could be obtained by people who use drugs only after a decision from the judge’s panel. The length of the arrest and detention period lacking the rehabilitation guarantee resulted in a worse condition for people who use drugs. They have greater risk of abuse and ill treatment from police and detention officers. Torture is often conducted by the police and other law apparatus to get information from people who use drugs for the purpose of investigating drug dealers.

d. Some Difficulties in Implementing Supreme Court’s Circular Letter (SEMA) No. 04 /2010

Although the Supreme Court issued the Circular Letter (SEMA) to be a guidelines for judges in giving verdict in drug related case. SEMA could not intervene in the law apparatus (the investigator and the public prosecutor). In this case, The SEMA will not be possible to be implemented if:

- Investigations only highlighted the defendant’s involvement in illegal drug trafficking and do not consider the defendant’s status as a people with drug dependence.
- The investigators refuse to cooperate in asking for a laboratory drug test for the defendant.
- The public prosecutor makes a single accusation towards the possession of drugs although it can be proved that the defendant is using drugs or dependent on drugs.
- The public prosecutor refuses to receive the expert that was requested by the judge to consider the drug dependence level of the defendant.
- The defendants do not understand the law.

.... This is the second time for me to be in jail. I’d never have dreamt to become dependent on drugs. I want to have a normal family with wife and children...I tried to get rid of my drug dependence. When I was arrested by the police, my rehabilitation process was not finished yet.

Is there any solution for me in this case?

(D from Central Java)
Conclusion and Ways Forward
Looking for Solutions

Human Rights have been guaranteed in the 1945 Indonesian Constitution. In the Constitution there are some provisions about the rights guaranteed for all Indonesian citizens. It shows the commitment of the State to implement its obligation to respect, protect and fulfil human rights. International human rights law has had an ever-growing impact on domestic legal systems in recent decades, and also on the daily work of law enforcement (police, judges, prosecutors and lawyers). Whenever bound by international human rights law, States have a strict legal obligation to guarantee the effective protection of human rights to all persons within their jurisdiction. States’ legal duty to protect human rights implies an obligation to prevent, investigate and punish human rights violations, as well as to restore rights whenever possible or provide compensation.

States may also have a legal duty not only to provide protection against human rights violations committed by public authorities, but also to ensure the existence of adequate protection in their domestic law against human rights violations committed between private individuals. Thereby it is clear that the State will incur international responsibility for a human rights violation if it has failed to provide the alleged victim with an adequate and effective remedy through the workings of its own courts or administrative authorities. To understand the position of human rights in the national legal system is an important step to understand how the human rights mechanism can be implemented and how to access those mechanisms.

The finding of the monitoring activities conducted by the Monitoring Network has shown that the repressive and punitive response would never solve the problem of drug use and HIV / AIDS. Drug problems could not solely be solved by criminal justice initiative. Punitive approaches drive people who use drugs away from the centres of preventive care and treatment for drug dependence.

1. The stigma and criminalization experienced by people who use drugs have caused many abuses against them. Instead of a focus on health care, this issue has been seen merely a legal problem. The Monitoring Network also has concerns in cases involving juveniles.

2. Even though there are a lot of initiatives by the government to improve national drugs policy, the practices and behaviour of the law apparatus should be regularly monitored and observed.

3. The Monitoring Network observed that police abuses against people who use drugs happen because of:
a. There is no clear definition and lack of prohibition about torture and cruel, inhumane and degrading treatment / punishment as stated at the Convention against Torture that has been ratified by Law No 5 Year 1998.

b. The Law No 5 Year 1998 is not followed up with the revision or harmonization of other national regulations/policy (for example the Criminal Code).

c. The discriminatory practices, corruption, and lack of protection related to administration of justice.

d. The absence of an independent mechanism for monitoring.

e. Lack of awareness among law apparatus in the national criminal justice system on drug related issues.

4. The Monitoring Network is concerned that the observed number of cases involving young people or children at risk of ill-treatment than adults in situations where they are deprived of their liberty. They were placed in detention centre or prison where there are no separation with adult detainees or prisoners.

5. The National Police efforts on increasing its focus on human rights training and capacity building should be appreciated.

Human rights classes are integrated at various level of police training, both as stand-alone courses and within the syllabi of other classes. The police have also embraced the philosophy of community policing and are attempting to work more cooperatively with local communities to maintain and enforce the rule of law. While not all the police have been trained in human rights and community policing, the acceptance and promotion of these issues at the highest levels of the department suggest a significant attitudinal change and a willingness to support a justice sensitive reform agenda. Of course, this increased training in human rights for police personnel has been a significant accomplishment. However, it just an initial step, they must now translate this knowledge into lasting behavioural and institutional change.
**Recommendation**

In the spirit of cooperation and partnership, the Monitoring Network recommends that the Government, with the assistance of the civil society, take decisive steps to implement the following recommendations:

1. Torture should be defined and criminalized as a matter of priority and as a concrete demonstration of Indonesia’s commitment to implement articles 1 and 4 of the Convention against Torture.

2. The Government of Indonesia should continue efforts to improve condition in detention centre, in particular with a view to providing health care; treat rather than punish persons with mental disabilities and improve the quantity and quality of food. The Government, in all detention contexts, should ensure the separation of minors from adults and of pre-trial prisoners from convicts and train and deploy women’s personnel to women’s sections of prisons and custody facilities.

3. The Government of Indonesia should ensure that the criminal justice system is non-discriminatory at every stage. It should continue to combat corruption, which disproportionately affects the poor, the vulnerable and minorities, and is should take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, and police and prison personnel.

4. All detainees should be effectively guaranteed the ability to challenge the lawfulness of their detention before an independent court, e.g. through *habeas corpus* proceedings. Judges and prosecutors should routinely ask persons arriving from police custody how they have been treated and if they suspect that they have been subjected to ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant. Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession.

5. Accessible and effective complaint mechanisms should be established. These should be accessible from all over the country and from all places of detention. Complaints by detainees should be followed up by independent and thorough investigations. Additionally, complainants must be protected against any reprisals.

6. The Government of Indonesia should accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention. The Human Rights Commission, The National Commission on the Elimination of Violence against Women, and The Ombudsman should initiate the National Preventive Mechanism and conduct more regular monitoring at prisons and detention places, especially cases related to drug users, as part of the implementation of Optional Protocol of Convention against Torture.
GUIDELINE
FOR DOCUMENTING
HUMAN RIGHTS VIOLATION
AGAINST PEOPLE WHO USE DRUGS
**Starting Point**

The effort of documenting human rights violations is an important aspect of human rights advocacy and even more important as a starting point for effective accountability.

On the national level the number of cases involving drug use and human rights violations must be massive. Therefore, in the effort of documenting those kinds of cases the Monitoring Groups need to have a better system and procedures to collect, keep, and analyse the cases. As learned from the experience of other organizations engaged in documentation of human rights violations in many contexts, the documentation process can be divided into four stages, namely: data collection, data coding, data entry, and data analysis. This guideline is available to help everyone engaged in documenting human rights violations.

**Why do we monitor and document the human rights violations?**

We wish that documentation can serve to right past wrongs, but sadly it is often the case that the crimes of the past will go unpunished; there will be no great reckoning or reparation, not even recognition or apology offered to the victims; this is the reality of human rights violations. But without careful and complete documentation of the events, there is no chance at all that justice or change will be effected. Even when there is little hope of getting justice for past violations, the stories can still serve to help the victims simply by telling their story, but also these stories can be invaluable to future generations. If there is no documentation, all those stories will be gone forever; no more information or lesson that can be learned by the future generations.

In other words, documentation is an activity with long term goals to meet the needs not only of the present, but also of the future. People who need information will need documents and once the information is well documented it can be used repeatedly.

An obligation to monitor human rights is imposed on all who are concerned with protection and promotion of human rights. Monitoring is necessary because violations continue to exist throughout the world. As well as being the responsibility of individuals, the monitoring of human rights is also the responsibility of organizations and communities in society. These responsibilities stem from national laws and international human rights instruments. The process of monitoring helps with the establishment of current and future human rights standards at the national and international level.

Monitoring human rights allows the standards of these inter-governmental organizations to be improved and their mechanisms for applying these standards to be strengthened. It can also be used to improve the protection of people using drugs from apparatus abuses. As a marginalized group, people using drugs are vulnerable. They become the target of punishment from the apparatus and are ignored or denigrated by the greater society who sees them as the ‘trash of the community’.
The success of human rights monitoring has traditionally relied on both non-quantitative forms of reporting using anecdotal evidence, eyewitness testimonials and the individualized human story as well as statistical quantitative data. Creating an advocacy plan from measurement-based evidence is crucial to recognizing everyone’s human rights. Through the monitoring process, we will able to:

1. **Identify patterns of human rights abuses and violations.** Understanding the types, frequency and causes of human rights violations can lead to systemic solutions for addressing them.

2. **Offer validation to victims of human rights violations.** Monitoring can give an opportunity for the voices of victims to be heard, thereby helping to create alternative stories to those told to us by governments. This is one of the most important reasons for doing monitoring—amplifying the voices of victims and providing opportunities for those voices to be heard.

3. **Provide remedies for human rights abuses.** The information we collect through monitoring can be used to obtain remedies for the victims of human rights violations.

4. **Ensure compliance with international and domestic human rights law.** This is the preventive aspect of human rights monitoring. We are working to ensure that human rights safeguards are implemented by government authorities and citizens. The goal is to ensure that government actions are accountable to the international and domestic human rights standards that have been established.

5. **Address impunity for human rights abuses.** The monitoring and fact finding of human rights violations can be used to gather evidentiary material for court cases.

6. **Educate the public about human rights situations.** This is the public education aspect of human rights monitoring. Oftentimes, governments and common opinion misrepresent the human rights situation in a particular context, however, documentation can help counteract such myths and bring attention to cases of violation. Monitoring can help to ensure that there is transparency for government and individual actions.\(^{15}\)

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**Monitoring, Fact Finding, and Documentation**

In general, human rights monitoring relates to fact-finding and documentation. Here, monitoring is defined as closely observing a given situation in society over a long period of time to see whether human rights standards are met. To carry out monitoring, investigation and documentation of a large and / or representative number of events is conducted. Monitoring often involves a tool or instrument, such as a recording format or survey, which is used to collect data that can measure the performance of State obligation. The State obligation is assessed against specific standards or norms. For instance, to monitor whether the right to life

is respected, events involving killings are monitored to see whether or not they were committed in violation of relevant standards such as that put forward by ICCPR.

**Fact finding/Investigation** is the process of identifying the violations in one event and establishing the facts relevant to the violations. Fact finding and investigations are interchangeable terms.

**Documentation** is the process of systematically recording the results of Fact finding/Investigations in relation to an event or number of events. Fact finding and documentation are organically related and should not be viewed as separate processes.

The human rights organizations need to struggle to find evidence relative to the violations that happen. This will involve a systematic documentation about the cases and collection of the information, as well as statistical data to identify the patterns in a specific period.

A good analysis about the facts in an event of human rights violation will help the groups to support the victims. The systematic documentation will also make the organizations or groups better able to relate many pieces of information from many sources and encourage the process to uncover the issues and get accountability.

**Who did what to whom?**

To analyze the result of monitoring, the question, "Who did what to whom?" was applied. This is based on a model developed by HURIDOCS. This model uses a principle based on the concept by Patrick Ball in, "Who Did What to Whom? Planning and Implementing a Large Scale Human Rights Data Project," published by the American Association for the Advancement of Science (1996). This method has been long utilized by many organizations around the world. It began from the visible type of violations, such as killing, disappearance, torture, arrest, etc. With this method monitors can analyse and connect all the elements of an event.

For example, in "Basuki hit Sunarti on her head," the victim and perpetrator are linked through the recorded act of violence. "When and where" place the act in the context and are recorded through the narrative that links acts into a coherent whole. Recorded acts and the methods of violence are to be very specific. For example, a number of acts, e.g., beating to the head, electric shock to the genitals, punching on her fingers, etc. An event could comprise several acts/incidents, such as "The Illegal search / the arrest / the detention / the torture / of Sunarti." [This application will be described further on the findings of monitoring].

This method assumes that data is created by the complainants, the information givers and or the interviewees about a specific event. The data can be qualitative in format of stories, testimonies or narrative statements. To have further quantitative analysis then the documentalist utilizes a coding process and quantifies it. Then, these data can be stored in a database and used as statistical data.
Additionally, the components of data gathered minimally include the date, time, perpetrator, place of the abuse and details of the abuse; including physical, psychological and social effects of the abuse.

In this documentation method information of human rights violations is put together using event organizational units. This involves identifying the various acts, whether of commission or omission, that cause or lead to human rights violations and which on their own or in combination with related acts, constitute events (see Annex: standard format to document human rights violations).

As with any documentation methodology, the events methodology is basically a two stage process. The first stage consists of determining conceptually how the information is to be divided up and organized and the second stage is completing the data for each of the resulting divisions. The first stage of the events documentation methodology contains several steps as follows:

- Identifying the acts that cause violations
- Determining the victims
- Organizing the acts into events
- Determining the perpetrator and their level of involvement in the event
- Identifying their relationship among events
- Identifying other roles performed in relation with the event and the persons or groups who perform these roles
- Showing relationship between the various individual or groups
- Giving further information (updates) about the various individuals or groups
- Identifying where additional information is needed

Those steps can be analyzed through the following diagram:

**HOW TO RELATE THE ELEMENTS OF THE EVENT**

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*Dueck,Judith, Manuel Guzman, Bert Verstappen, Huridocs Events Standard Formats: A tool for documenting human rights violations, HURIDOCs, 2001*
The rationale for detailed recording of each act is the complexity of incidents of human rights violations. During a single event there can be many linked perpetrators, victims and acts separated from each other at various times and places. To make sense of this massive amount of information it is important to break down the event into its component parts in the greatest possible detail.

**What is the element of “Event” and how to distinguish it from an “Act of Violation”?**

**An Event** could be a single act, a series of related acts, or a combination of related acts happening together with a beginning and an end, progressing until its logical conclusion. Moreover, at least one element of an event should qualify as a human rights violation (e.g., arbitrary arrest which is a violation of the right to liberty), or is similar to such (e.g., legal arrest).

**An Act of Violation** is one or more acts involving power, violence, or coercion conducted by individuals or groups to other individuals or groups. An act can be either an “act of commission” or an “act of omission”; the lack of or the absence of conduct resulting in the failure of obligation. An Act can be physical, using force, etc. or abstract, such as policy making that violates the rights of the victim(s).

An event can be any of the following:

**One-act event:** most events of this kind consist of acts which are usually completed immediately, such as the killing of a labour leader or the bombing of an office. Most acts involving legislation or policy-making can also be treated as one-act events.

**Multiple-act event:** multiple acts in one event can occur as:

- **A series of related acts:** one can usually see the following patterns of violations committed under repressive regimes: ’arrest, torture, imprisonment’ or ‘surveillance, abduction, extra-judicial execution’. When such a series of acts is committed against the same persons, it is useful to combine these acts in one event, so as to have a complete narrative.

- **Simultaneous acts:** examples of events with simultaneous acts are a massacre or the beating of several demonstrators during a protest action.

- **A combination of sequential and simultaneous acts:** an example of this is the arrest of several workers belonging to the same union. The arrest could be simultaneous, but the succeeding acts against each one may be different, as some may be released immediately while others could remain detained.
Event with no Act

In general, all events will contain acts. An exception is when investigation still has to be carried out and what is available is general information and not yet the details. For instance, one may hear of a bombing in a remote village, but does not yet know about possible victims or material damage. It means that the event is already clear but as yet, no act can be determined as the number and identity of the victims still have to be ascertained.

Chain of Events
The relationship between two or more events should be explicitly recorded, and in the events methodology it is done by "chain of events". The possible relationships are:
- a large event encompassing a smaller event
- an event preceding a related event
- an event causing another event

Identifying persons involved and their roles
- **Person** - an individual or group involved or connected to an event.
- **Victim** – individuals or group who become the target or are affected by an act of violation
- **Source** – the source of information can be person (individual or group) who provided information about the Event or the elements of event.
- **Intervening Party** – it can be person (individual or group) or institution who intervene an event, for example to assist the victims (trauma healing, legal aid, etc).
- **Perpetrator** – person (individual or group) or institution who conduct the act of violations. The actor can be state or non-state agent. The involvement of the Actor(s) can be seen in many levels. It can be Direct Act of Commission or Indirect Act, or can be also Act of Omission.

Understanding the ‘Controlled Vocabulary’

In order to ensure that the terms on record documented were used in a coherent way requires the use of a controlled vocabulary. It is suggested that organizations develop definitions or “scope notes” describing the meaning of ambiguous terms. They can also apply the standard definitions / terms that have been developed by some international organizations, known as micro-thesauri. Among the uses of thesauri in monitoring human rights violations are categorization of the information precisely, simplified retrieval of information and to bring a common understanding of terms for statistical analysis. Once terms have been finalized, codes can be assigned to represent the terms.

To meet the needs of human rights documentation, HURIDOCS has developed a system of coding for the micro-thesaurus which allows for a more systematic attribution of codes and provides users with additional possibilities for retrieving information. This micro-thesaurus is intended
to assist organizations working toward compatibility and uniformity in data recording and communication.\footnote{Dueck,Judith, Manuel Guzman, Bert Verstappen, HURIDOCs Events Standard Formats: Micro-thesauri, HURIDOCs, (2001).}

The categories in the HURIDOCs Micro thesauri used in this documentation consist of:

**Violations Typology**: This list is to classify human rights violations. It examines violations largely in relation to state obligations, but also considers non-state involvement. The classifications are very general and are most suitable for analysis, such as in identifying patterns of violations. It will be most useful for organizations whose mandates cover a wide range of issues.

**Types of Acts**: This list is to classify specific types of violations and similar acts. As the scope of acts covered by human rights monitoring is continuously expanding, the list should not be considered as comprehensive. Within the list there are two possibilities for its use; one is to indicate acts of omission constituting failure to provide protection. It is recommended however acts of omission, e.g., inaction of law enforcers in the face of killings, be considered as levels of involvement. In this case, the law enforcers are treated as perpetrators in relation to specific acts, but on a different level of involvement compared to direct perpetrators. This category also includes specific kinds of situations that deny rights to certain persons or groups.

**Methods of Violence**: This list is to classify the various methods of committing human rights violations. It relates to the type of acts.

**Rights Typology**: This list is to indicate which rights apply to a human rights event. It is an enumeration of various rights as contained in major human rights instruments. Most terms were taken from Human Rights Terminology in International Law.

**Particular Model of Case Analysis**

Human rights abuses are rarely straightforward. This is why organizations need to develop a standard format for human rights monitoring and documentation and to ensure data gathered from the monitoring process will not initiate biases in the analysis and create other violations. The events-based methodology involves the use of a standard format for recording information. The standard format will help us to produce analysis of information collected by the group of monitors about human rights violations. It will also be useful to identify trends and patterns within the case violation and make it possible for the organization to examine the information they hold and answer questions like:

- How many incidents or events of violation occurred in a given region during last 5 years?
What does our case information show about which part of area was most affected by violations against people who use drugs committed by the police, and how has this changed?

How many victims in cases recorded by our organization were children, women, or person living with HIV?

Data representation may be displayed in the form of lists, graphs and tables to be further analyzed qualitatively. The data representation already analyzed using event based methodology can also assist organizations with tracking cases and their interventions more effectively. Furthermore, by recording cases using this approach, the Monitoring Network can better prepare information for statistical analysis, as well as compare, share and exchange data with other organizations consistently. The following texts are presented as a sample illustrating case analysis using event based methodology using the simple summary form of case and the graphical presentation of the events.

Event Number : 003
Event Title : Arrest of BY I
Geographical Area : Central Jakarta
Initial Date : Central Jakarta
Final date : 1 May 2000
Final date : unknown

**Event Description:**

BY (Male, 32) was a putaw addict that lived in the Central Jakarta. He was arrested by the police for the first time on May 1, 2000 at 1 pm. “I was arrested, raided, and forced to take my clothes off by five people of police in front of the public community as well as beaten repeatedly, with the reason to find material evidence. After that they pointed the pistol to my head and threat me to show where the dealer’s location. Since I did not want to confess, I was beaten repeatedly until my head was bloody and all of my body was bruised. After that, Boyo was brought to the Police Sector Johar Baru and continued to get cruel from the police apparatus. “Every time officer came they beat me without asking, they also shovel my genitals with the broom handle”. He continued, “My family also told me that when I was detained, for a week, almost every night officer came to our house asking for money if they want me secured from other detainees. But my family did not respond it”. Boyo added, “One night when I was sleeping on the cell, I was woken up by police, then I have to push-up and squat jump without any reason, and every time my family visited me in Police Sector they will ask for money”. Boyo was detained in Police Sector Johar Baru for 8 months and charged based on Article 85 Law No. 22 Year 1997 about Narcotics.

**Total Number of victims** : 2 [1 person and 1 group]
### Chain of events: 004 and 005

#### Component of Acts

<table>
<thead>
<tr>
<th>Acts of violations and methods of violence</th>
<th>Victim(s)</th>
<th>Perpetrator</th>
<th>Involvement</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal search/raid</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td>unknown</td>
</tr>
<tr>
<td>Arbitrary arrest and detention</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td>Police Sector Johar Baru</td>
</tr>
<tr>
<td>Denial of the right to lawful arrest</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>Violations with physical, sexual, and psychological dimension as forms of torture</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>- Beatings</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Blowing with heavy stick to genital organ</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Nakedness as form of degradation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threats against victims and family</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>Denial of the right to treatment with dignity and humanity [see above for the methods of violence]</td>
<td>BY BY’s family</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>Extortion</td>
<td>BY BY’s family</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>Denial of the right to be presumed innocence</td>
<td>BY</td>
<td>Police Sector of Johar Baru</td>
<td>Direct Commission of Act</td>
<td></td>
</tr>
<tr>
<td>Denial of the right to legal assistance</td>
<td>BY</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Graphical Presentation of the Events: Case of Boyo I

Perpetrator | Level of Involvement | Type of Acts | Methods of Violence | Victims
--- | --- | --- | --- | ---
Police Sector of John Baru | Direct Commission of Act | Illegal search/raid | Held in regular detention place | Boyo's family

Chain of Events

- Direct Commission of Act
  - Arbitrary arrest and detention
  - Denial of the right to lawful arrest
  - Violations with physical, sexual, and psychological dimension as forms of torture
  - Extortion
  - Denial of the right to treatment with dignity and humanity
  - Denial of the right to be presumed innocence
  - Denial of the right to legal assistance
  - Beatings
  - Beatings with heavy stick to genital organs
  - Nakedness as form of degradation
  - Threats against victims and family
Event Number : 012/Surabaya/2008
Event Title : Arrest of SL
Geographical Area : Surabaya, East Java
Initial Date : 02112008
Final date : 00002009

Event Description

SL (25, M) was searched and then arrested by the City Resort Police of East Surabaya at 4 November 2008 at Indrapura Street, Surabaya. He was waiting for public transport when the police came and suddenly searched and arrested him. He was beaten and forced to admit the evidence as his property, as well as to inform the police his other friends that involved. He was forced to trap his friend to meet him at the Tanah Merah Cemetery. The police officer also pointed out the pistol and forced him to remove his clothes during the raid. He was then brought to Police office and detained for further investigation. During interrogation process at the Police office, he was kept beaten and forced to admit his involvement. He was beaten at his head, chest, foot, back, and chest. He was never accompanied by paralegal or got any legal assistance. Since there was not any evidence relate to him proven, then after 1 day interrogation, he was released.

Total Number of victims: 1 person

Component of Acts

<table>
<thead>
<tr>
<th>Acts of violations and methods of violence</th>
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<th>Involvement</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal search/raid</td>
<td>SL</td>
<td>Police District of Tebet</td>
<td>Direct Commission of Act</td>
<td>Tebet</td>
</tr>
<tr>
<td>Arbitrary arrest and detention</td>
<td>SL</td>
<td>Police District of Tebet</td>
<td>Direct Commission of Act</td>
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<td>Direct Commission</td>
<td></td>
</tr>
</tbody>
</table>
dimension as forms of torture

- Beatings
- Nakedness as form of degradation
- Being forced to act in degrading way
- Threats against victims and family

Denial of the right to treatment with dignity and humanity [see above for the methods of violence]

Denial of the right to be presumed innocence

Denial of the right to legal assistance

<table>
<thead>
<tr>
<th></th>
<th>Tebet</th>
<th>of Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>SL</td>
<td>Police District of Tebet</td>
<td>Direct Commission of Act</td>
</tr>
<tr>
<td>SL</td>
<td>Police District of Tebet</td>
<td>Direct Commission of Act</td>
</tr>
<tr>
<td>Bimbim</td>
<td>Police District of Tebet</td>
<td>Direct Commission of Act</td>
</tr>
</tbody>
</table>
The Graphical Presentation of the Events: Case of Slamet

<table>
<thead>
<tr>
<th>Perpetrator</th>
<th>Level of Involvement</th>
<th>Type of Acts</th>
<th>Methods of Violence</th>
<th>Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Station Timur</td>
<td>Direct Commission of Act</td>
<td>Illegal search / arrest</td>
<td>Held in regular detention place</td>
<td>Slamet</td>
</tr>
</tbody>
</table>
| Police Station East Surabaya | Direct Commission of Act | • Arbitrary Arrest and detention  
• Denial of the right to lawful arrest | • Beatings  
• Threats against victim by pointed out with pistol  
• Nakedness in form of degradation  
• Verbal abuses | Slamet |
| | Direct Commission of Act | • Physical Assault  
• Denial of the right to treatment with dignity and humanity | | |
| | Direct Commission of Act | • Denial of the right to be presumed innocence  
• Denial of the right to legal assistance | | |
Introducing Open Even System (Open Evsys)¹⁸

The OpenEvSys database tool was developed for Human Rights Information and Documentation Systems, International (HURIDOCS) by Respere. This new database tool builds on HURIDOCS’s earlier database systems, which have been used by human rights organisations around the world for the last 20 years. OpenEvSys is a database for the management and documentation of human rights violations. Anyone can download and use it for free on their own computers, or contact HURIDOCS for secure online hosting. OpenEvSys stands for Open Events System. Its built on the Events methodology for recording violations, and the "who did what to whom” data model. An event can best be understood as a basket, containing information on violations, victims, perpetrators, sources and interventions. An event is similar to the notions of incident or case.

OpenEvSys allows us to do the following tasks:

- Record, browse and retrieve information on events violations, victims, perpetrators.
- Analyse your data, produce reports and detect trends and patterns of abuse.
- Manage and track your interventions, such as medical aid, legal aid, etc.
- Secure digital storage of related documents: testimonies, affidavits, audiovisual files.

OpenEvSys has many features, including:

- Built on standards: the HURIDOCS Events Standard Formats and 48 Micro-thesauri.
- Easy to customize formats, fields, and terms to your own needs.
- Easy browsing of your data: events, persons, violations, documents.
- Can handle hundreds of thousands of events, persons, violations.
- Powerful multi-entity advanced search, to identify patterns and trends in your data
- Multi-lingual and translated into some languages including Bahasa Indonesia
- Customisable user roles and permissions.

**Standard Format for Documenting Human Rights Violations against People who Use Drugs**

**EVENT FORM**

No. File  
Date of Receive  
Investigator  

Note: one form will be used only for one event. The form can not be separated from Person form.

### Summary of Event

- **Title of Event:**

- **Location of Event:**  
  - Starting Date  
  - (dd/mm/yyyy)  
  - Final Date  
  - (dd/mm/yyyy)

### Description of Event
Number of Person Form____

<table>
<thead>
<tr>
<th>Act(s) at the Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
</tr>
<tr>
<td>(dd/mm/yyyy)</td>
</tr>
</tbody>
</table>

Note of investigator

Admin

Investigator

Recorded by

Date of recording
**PERSON FORM**

**Note:** one form can only be used to record one person related to the event. The person can be individual or group. The form can not be separated by the event form

<table>
<thead>
<tr>
<th>Counting Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
</tr>
<tr>
<td>Group / Organization</td>
</tr>
<tr>
<td>Community</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Victim</th>
<th>Perpetrator</th>
<th>Witness</th>
<th>Intervenor</th>
</tr>
</thead>
</table>

**Personal Data**

Name

Sex

Male  Female  Unknown

Address:

Phone Number

Cellular

Date of Birth

-  -  -  -

Place of Birth:

Marital Status

<table>
<thead>
<tr>
<th>Single</th>
<th>Married</th>
<th>Divorce</th>
<th>Widow</th>
<th>Unknown</th>
</tr>
</thead>
</table>

**Group Description**

**Involvement to the event**
### Impact

Information

<table>
<thead>
<tr>
<th>Reliability</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Very reliable</td>
<td>Reliable</td>
</tr>
<tr>
<td>Very unreliable</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

Information (from victims or witness)

Investigator's Note

Number of Form P___ From___
The Experience of Joint Advocacy and the Monitoring Network of Human Rights Violations against People who Use Drugs

Harm Reduction Joint Advocacy Experience

Protecting human rights is critical in implementing a humane national drugs policy and strategy. It is clear that the International Human Rights Law recognizes that in the interest of public health government may limit human rights. However, a balance between human rights and public health should constantly be respected. The Siracuse Principles enjoin government to ensure that any restriction of human rights in the interest of public health must be carried out in accordance with the law, its legitimate objective is the general interest, the restriction is strictly necessary in a democratic society to achieve the objective, less intrusive and restrictive means are not available to reach the same objective and finally, the restriction is not drafted or imposed arbitrarily. ¹⁹

For communities of people who use drugs, the struggle against abusive practices by law enforcement has long been part of daily life. They are among the most marginalized and disfranchised in our society and as a result, abusive policing practices are even more likely to go unnoticed and unpunished. While recognizing the resistance of organizations who have stood up against brutality and abuse, the 4 organizations, namely: Forum Korban NAPZA (FORKON)-Jakarta, Paguyuban Korban NAPZA Bandung (PANAZABA), East Java Action (EJA) - Surabaya, and Pergerakan Reformasi Kebijakan NAPZA (PERFORMA) - Semarang, will continue advocating by doing regular documentation of human rights violations against people who use drugs and lobbying relevant government organizations.

Objectives

Broad Objectives:

Enhancing the capacity to do advocacy through monitoring and documentation of police abuse against people who use drugs.

Specific Objectives:

a. To improve quality of reporting, documentation and advocacy on human rights violations against people who use drugs in Indonesia.

b. To increase understanding and capacity on ‘how to do’ monitoring and documentation human rights violations against people who use drugs, using event-based methodology.

c. To create greater use of the documentation report to strengthening advocacy related to implementation of Narcotic Law No 35/2009 and better treatment against people who use drugs.

d. To identify and share advocacy goals and collaborate on finding solutions among community of people who use drugs.

e. To develop ways to utilize and improve documentation efforts to expose police abuses.

f. To help develop concrete strategies for using human rights mechanisms to complement existing methods of advocacy to end police abuses.
In the long term, the network will initiate cooperation and partnership with the National Human Rights Commission and the Law Enforcement Institutions to ensure that police abuses against people who use drugs can be eliminated.

In short term, recommendations for further steps of advocacy are to do more regular monitoring activities and improve the current system of documentation to provide convincing reports and analysis. This report hopes to become the basis of further advocacy to change a punitive approach to a voluntary, medically-assisted, and evidence-based one. In the immediate future, harm reduction initiatives need to be promoted with a more comprehensive approach along with human rights protection and promotion.
**Activities**

1. The collection of facts on human rights violations against people who use drugs.

2. The development of joint report of monitoring human rights violations against people who use drugs.

3. Audiences / hearings with main organizations that relevant on human rights and has function to protect people who use drugs from violence and human rights violations (such as National Human Rights Commission, Ombudsman, National Narcotic Agency, National and Provincial Police Office, UNODC, Women Commission, etc.

4. The joint / multi-stakeholder meetings among the government institutions and community or organization of people who use drugs to find understanding and common solution related to the issue of human rights violations against people who use drugs in Indonesia.

5. The community meeting among organizations of people who use drugs to follow up the result of monitoring and to build a common platform for joint advocacy.


**Lesson Learned and Follow Up for Further Joint Advocacy Efforts**

1. The documentation human rights violations against people who use drugs have to be conducted more seriously and regularly by the group, especially after the Narcotic Law is enforced in 2009. It is important to keep monitor the effectiveness of the law, especially in relation with the rehabilitation for people who use drugs.

2. The more systematic documentation system is needed for better monitoring at the field level. Using the result of documentation will benefit for the basis of advocacy. However aside from the common standard format and system, as well as the database application for documentation, each organization must also increase the capacity of their staff to provide legal aid and documentation of the cases. Those capacities need to be improved in more regular basis using tools available in global human rights advocacy.

3. The violation of human rights has to be seen in more comprehensive approach. What happened to people who use drugs was not limited to the violence acts and violation to their civil rights, but also related to their political, economic, social, and cultural rights.

4. During monitoring process, the group did not have enough opportunity to collect more cases related to vulnerable groups such as children (juveniles), women, and people living with HIV / AIDS. Even though some cases reflect the situation of vulnerable groups, but it is not enough to represent them. In the future the group is committed to make a better design on monitoring using gender perspective and also give special attention for other vulnerable groups.
5. The emergence of various health services and rehabilitation providers must be appreciated, however at the same time the group has to monitor how they work. Moreover the presence of National Narcotics Agency (BNN) role also have to be counted as a main player at the national level and as the most authorised in the handling of drug cases in Indonesia. In that sense, the group needs to have mutual cooperation to ensure human rights are respected on their works and services.

6. Considering the lack of official response from the police, the group will keep doing their advocacy, at national, provincial, and local level. The report will be distributed to the provincial and district police office to make them aware and understand about the result of monitoring and the need of attitudinal change within the agency.

7. The group will bring the idea initiatives to wider community, both within community of people who use drugs as well as human rights group as a whole. Cooperation and partnership with main NGO players at national level need to be done in more active. Some organizations of people who use drugs have stated their willingness to join or express their interest to do monitoring and documentation as well.

8. The public’s campaign and the media involvement are very important to change the perception of the society about people who use drugs. In reality, most of people did not understand the problem that happen around war on drugs. As a result when they or their family member were involved on drug issue they did not have information or knowledge to defend their situation.

9. The group should be involved in the regional and international network to bring their cause in wider arena and get more support.