



**INDONESIA'S ROAD TO CONSTITUTIONAL REFORM:
THE 2000 MPR ANNUAL SESSION**

An Assessment Report

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TABLE OF CONTENTS

“Balancing Indonesia’s Constitution,” <i>Asian Wall Street Journal</i> . 8/18/00	
Executive Summary	i
Introduction	1
Timetable and Process	2
The Constitutional Debate in the MPR: Successes and Failures	3
Constitutional Amendments and MPR Decrees	5
Civil-Military Relations	5
The Separation of Powers and Checks and Balances	7
The Decentralization of Power to the Regions	11
The Bill of Rights	13
Other Amendments	14
The Agenda for the Future	14
Semantics and the Constitutional Debate in Indonesia	17
Conclusion: An Opening for Debate and Ownership	18
NDI’s Constitutional Reform Program and this Report	19
Appendix 1: The Second Amendment to the 1945 Constitution	21
Appendix 2: MPR Decree III/2000 on the Sources of Law and the Hierarchy of Laws and Regulations	28
Appendix 3: MPR Decree IV/2000 on Policy Recommendations in Implementing Regional Autonomy	32
Appendix 4: MPR Decree V/2000 on the Consolidation of National Unity and Integrity	37
Appendix 5: MPR Decree VI/2000 on the Separation of TNI and POLRI	45
Appendix 6: MPR Decree VII/2000 on the Roles of TNI and POLRI	47

EXECUTIVE SUMMARY

Many Indonesians believe that the 1945 Constitution (UUD 1945) contributed to the rise of authoritarian dictatorships under both President Soekarno (1959-1966) and President Soeharto (1966-1998). Constitutional reform was one of the basic demands of the student movement that overthrew Soeharto in May 1998. Despite its drawbacks, the 1945 Constitution has remained the basic framework for the country's ongoing democratic transition. UUD 1945 puts implementation of popular sovereignty in the hands of the People's Consultative Assembly (MPR). One of the primary functions of the MPR is to establish and amend the constitution. Indeed, it is the only body that can do so according to the 1945 Constitution.

Last October, the MPR decided to hold Annual Sessions, beginning in 2000, in order to amend the constitution and/or pass decrees, as it saw fit. The 2000 Annual Session of the MPR convened on August 7, in an atmosphere of political tension, with persistent talk of a confrontation between President Abdurrahman Wahid and the MPR and even of possible impeachment proceedings. The rumored showdown, however, did not take place, and behind these headline events, a large amount of work was completed on other issues—a few of which made news, most of which did not. This report examines both these changes and the remaining constitutional reform agenda. It is designed to give detailed analysis and commentary to inform debate on these issues.

Timetable and Process

In Indonesia, as in many other countries, “constitutional” issues are not just resolved in the formal constitution but also in other sources of law, such as MPR decrees and laws themselves. In late 1999, the MPR Working Body (Badan Pekerja) formed two subcommittees, one to address formal constitutional amendments and one to draft MPR decrees, following the mandate stipulated by the 1999 MPR General Session. The process of constitutional reform followed by Ad Hoc Committee I (PAH I) was based on amending the existing 1945 Constitution in lieu of drafting an entirely new Constitution. After its formation, PAH I established its ground rules and broad principles, reaffirming support for the existing preamble, for the unitary state, and for the presidential system. The responsibility for drafting new decrees for debate at the MPR Annual Session rested with Ad Hoc Committee II (PAH II).

Between November 1999 and May 2000, these two subcommittees conducted witness hearings, provincial consultation meetings, and international study missions. After the legislature reconvened in May 2000, PAH I conducted a detailed chapter-by-chapter review of the 1945 Constitution, which it completed at the end of June. PAH II considered about 20 possible subject areas and narrowed the list down to the following six topics, which produced seven draft decrees: (1) review and amendment of MPR Standing Orders (two decrees), (2) regional autonomy policy implementation, (3) national unity and integrity, (4) the sources of law and the hierarchy of laws, (5) the separation of TNI and POLRI, and (6) the roles of TNI and POLRI.

Further debate then took place during July in order to reduce the number of open questions remaining. The final subcommittee reports were agreed upon at the end of July and were transmitted via the full MPR Working Body to the Annual Session. The Annual Session referred the reports to its commissions, which met from August 11 to 14. The reports from these commissions returned to the plenary session on August 15. The MPR approved the new decrees and the Second Amendment on August 18, the 55th anniversary of the adoption of the original Constitution in 1945.

The Constitutional Debate in the MPR: Successes and Failures

The PAH I proposals included revisions of the 16 chapters of the existing 1945 Constitution and draft text for five new chapters. The 21 proposed chapters were divided by Commission A into four groups: (a) three on which full agreement had been reached in PAH I; (b) three on which such agreement was almost in place; (c) six where minor issues remained to be resolved and; (d) nine where major issues of difference still existed. In the event, only the first three categories, totaling 12 chapters, were debated at all. Of these 12 chapters, it was only possible to reach full agreement on seven.

There appear to have been two main reasons for the slow progress: the first related to political positions, the second to procedural issues. The political cause of delay was the lack of any real consensus on the major structural issues of the Constitution, coupled with the wish of conservative elements in the MPR to conduct the debate in slowly and cautiously. As compromises negotiated in PAH I broke down, debate consequently commenced in Commission A. This led into procedural difficulties and arguments.

Despite the difficulties, the MPR adopted amendments to five chapters of the constitution: regional authorities, the DPR, citizens and residents, defense and security, and national symbols. In addition, two new chapters, on human rights and on national territory, were agreed upon.

Constitutional Amendments and MPR Decrees

The constitutional amendments contained in the Second Amendment and several of the MPR decrees passed at the 2000 Annual Session can be divided into four themes: (1) civil-military relations, (2) the separation of powers and checks and balances, (3) the decentralization of power to the regions, and (4) a bill of rights. Each of these themes contains important changes to the Indonesian political system.

The Indonesian military dominated the authoritarian New Order political system; ending its role in domestic politics has thus been an important facet of the democratic transition in Indonesia. The 2000 MPR Annual Session represented one of the first opportunities for civilian politicians to address the military's role in politics on an institutional level. Although the results were mixed, the MPR laid a legal foundation on which the DPR can now pass laws to build an edifice of democratic, civilian control over the military in Indonesia.

One of the primary weaknesses of the 1945 Constitution is the lack of clarity concerning one of the fundamental dimensions of any democratic political system: is it presidential or parliamentary? Since the greater weight is on the presidential side, perhaps it is appropriate to call the political system created by the original 1945 Constitution, “presidential with parliamentary characteristics.” As part of the process of constitutional reform, the MPR has set about to clarify the basic nature of the Indonesian political system as presidential. One of the challenges in this regard is that in addition to the lack of clarity mentioned above, UUD 1945 also lacks recognition of the principles of the separation of powers and checks and balances among the executive, legislative and judicial branches that is such an important part of a presidential system. On the whole, the amendments and decrees passed last month have helped to strengthen these principles.

The New Order had a highly centralized political and economic system. Decentralization of power was thus one of the central demands of the reform movement in 1998, and in the post-Suharto period, many regions began voicing discontent. The transitional administration of President B.J. Habibie responded to these developments with a policy of “wide-ranging regional autonomy.” This policy resulted in the passage in May 1999 of Law 22/1999 on regional government and Law 25/1999 on the financial balance between the central and regional governments. Implementation of these laws has been continued by the Wahid administration.

Despite these concessions from the center, many regions remained dissatisfied that regional autonomy was based only in laws that were in essence a “gift” from the center that could be rescinded at any time by a decision of the DPR and the president. Thus pressure continued for the decentralization of power to the regions to be enshrined in the constitution, making it harder to reverse in the future. Through the amendment to Chapter VI of UUD 1945, the general spirit of Laws 22/1999 and 25/1999 is now reflected in the constitution. A strongly regional flavor is given by the principle that regions may act on any subject that is not reserved by law to the central government.

The original 1945 constitution contained few guarantees of civil and political rights; if anything, it more often referred to citizens’ responsibilities to the state. It is thus quite significant that a substantial new chapter on human rights has been added to the Constitution as part of the Second Amendment. The provisions of the new Chapter X-A of UUD 1945 on human rights have proven controversial, despite having been substantially drawn from the *Universal Declaration of Human Rights* (UDHR). In particular, the clause prohibiting prosecutions under retrospective legislation originates from Article 11(2) of the UDHR. The juxtaposition of international human rights standards and the calls for justice for past human rights violations has created a dilemma for Indonesian and international human rights activists.

The Agenda for the Future

The material that was not agreed can be divided into three categories. First, there were three chapters – elections, finance, and the State Audit Agency (BPK) – that appeared to fail purely due to lack of time. Second, there are a number of chapters where there are remaining questions to resolve on specific issues, including education, the economy and social welfare. This category probably also includes the role of religion, including the proposal to add the famous phrase from the Jakarta Charter to the existing Article 29: “with the requirement for Muslims to carry out Islamic law.” Two structural issues, regarding the fate of the DPA and the possible creation of a Constitutional Court within the Supreme Court, may also fall into this category. Third, there is a series of inter-connected issues, many of which have proven highly controversial, relating to the basic structure of state institutions. These chapters certainly include the form and sovereignty of the state, the structure and role of the MPR, executive powers (including the method of election of the president and vice president), the possible creation of an upper chamber representing regional interests (Dewan Perwakilan Daerah or DPD), and the procedures for constitutional amendment.

The result of this year's constitutional debate has not only been the agreement of seven new or amended chapters. The MPR has also decided to use the remaining material prepared by PAH I as the basis for a continuing constitutional debate, scheduled to take place between now and August 2002 at the latest. This is the latest Annual Session at which it will be possible to pass major changes to the structure of state institutions with enough lead time to put the technical arrangements in place to conduct elections under the new arrangements in 2004. It is also possible that the debate over the next one or two years may address not only formal constitutional amendments, but also related issues that are to be regulated by laws. Foremost among these are issues relating to the electoral system.

Semantics and the Constitutional Debate in Indonesia

An interesting sidebar to the constitutional reform process in Indonesia is the important role played by semantics in the debate. This report has earlier remarked on the fact that the Indonesian political system can be described as “a presidential system with parliamentary characteristics.” The ongoing debate over the structure of the national legislature has also produced similarly unique terminology. The results of this aspect of constitutional reform in Indonesia may be “a unicameral legislature with bicameral characteristics.” These two phrases are actually plays on a statement made by President Abdurrahman Wahid that the overall goal of the regional autonomy implementation process is the creation of “a unitary state with federal characteristics.” The underlying cause of these semantic acrobatics is the lack of consensus among significant domestic political forces regarding the most desirable form for the emerging democratic political system in Indonesia.

Conclusion: An Opening for Debate and Ownership

Any constitution, as the foundation of a state, reflects political choices. Political judgments and choices are not only an inevitable but also an essential part of constitution making. Thus any amendment of the 1945 Constitution will be debated in a political context. The choice made by many MPR members at the 2000 Annual Session may have been that fundamental decisions on structural issues should not be finalized in an atmosphere of high tension over the relationship between the current President and the current legislature. Whether the atmosphere will be more conducive to debate on these issues in 2001, or 2002, is not yet known. However, the additional time available does create an important opportunity for debate on the fundamental issues to be much wider than during the past year. The Constitution gives effect to the sovereignty of the people, and there is now no reason why the people cannot be widely and directly involved in the debate. The extent of the openness of the MPR to encouraging and promoting that process will help determine whether consensus develops on further constitutional changes.

INTRODUCTION

Many Indonesians believe that the 1945 Constitution (UUD 1945) contributed to the rise of authoritarian rule under both President Soekarno (1959-1966) and President Soeharto (1966-1998). The original 1945 Constitution was written as a temporary, emergency document and therefore was vaguely worded, leaving room for non-democratic interpretations. It established a strong executive branch and a weak legislature and judiciary, with few checks and balances among the three branches. It also contained few guarantees of basic civil and political rights. Constitutional reform was thus one of the basic demands of the student movement that overthrew Soeharto in May 1998.

Despite its drawbacks, the 1945 Constitution has remained the basic framework for the country's ongoing democratic transition. UUD 1945 invests implementation of popular sovereignty in the People's Consultative Assembly (MPR), a 695-member body consisting of: the 462 elected members of the national legislature, the People's Representative Assembly (DPR); the 38 appointed DPR members from the military (TNI) and police (POLRI); 130 regional representatives chosen by provincial assemblies that had themselves been popularly elected; and 65 unelected members of various social groups ("functional group representatives"). One of the primary functions of the MPR is to establish and amend the constitution. Indeed, it is the only body that can do so according to the 1945 Constitution.

Last October, the MPR decided to hold annual sessions beginning in 2000. There were two particular goals for these sessions. First, the MPR would hear annual progress reports from the President, the DPR, the Supreme Advisory Council (DPA), the State Audit Agency (BPK) and the Supreme Court. Second, the MPR could amend the Constitution and/or pass decrees, as it saw fit.

The 2000 Annual Session of the MPR convened on August 7 in an atmosphere of political tension, with persistent talk of a confrontation between President Abdurrahman Wahid and the MPR and even of possible impeachment proceedings. The rumored showdown did not take place, and behind these headline events, however, a significant amount of work was completed on other issues—a few of which made news, most of which did not.

In Indonesia, as in many other countries, "constitutional" issues are not just resolved in the formal constitution but also in other sources of law, such as MPR decrees and laws themselves. This report focuses on the constitutional changes made by the MPR on August 18, 2000 at the end of the Annual Session, with the Second Amendment to the 1945 Constitution and several new MPR decrees. This report describes the content and significance of this work in the context of Indonesia's ongoing transition to democracy. There were two major fields of discussion: (1) the amendment of the 1945 Constitution (which resulted in the passage of the Second Amendment and MPR Decree IX/2000), and (2) the passage of other new MPR decrees. These decrees are divided in turn into the evaluation of the work of the president and other higher state institutions (Decree VIII/2000), amendments to MPR Standing Orders (Decrees I/2000 and II/2000), and

other decrees (Decrees III/2000 to VII/2000). This report examines both these changes and the remaining constitutional reform agenda. It is designed to give detailed analysis and commentary to inform debate on these issues.

Timetable and Process

The MPR formed Ad Hoc Committee I (PAH I) of the MPR Working Body (*Badan Pekerja*) in late 1999 to review the Constitution of the Republic of Indonesia, following the mandate stipulated by the 1999 General Session. This process served to amend the existing 1945 Constitution rather than draft an entirely new constitution.

PAH I comprised 44 members drawn proportionally from all 11 blocs represented in the MPR (nine political parties or groupings of parties, one grouping of TNI and POLRI representatives, and one bloc of functional group representatives). After its formation, PAH I established its ground rules and broad principles, reaffirming support for the existing preamble, the unitary state and the presidential system. Between November 1999 and May 2000, PAH I conducted witness hearings, provincial consultation meetings, and international study missions. As formal meetings of an MPR committee, all plenary sessions and witness hearings of PAH I were open to the public.

After the legislature reconvened in May 2000, PAH I conducted a detailed chapter-by-chapter review of the 1945 Constitution, which it completed at the end of June. Further debate during July reduced the number of open questions remaining. The final PAH I report was adopted on July 31, and was transmitted via the full MPR Working Body to the Annual Session.

The Annual Session referred the report to its Commission A, which met from August 11 to 14, and returned its report to the plenary session on August 15. The provisions that were finally agreed were accepted into the constitution as the Second Amendment on August 18, on the 55th anniversary of the adoption of the original document in 1945. See Appendix 1.

The responsibility for drafting new decrees for debate at the MPR Annual Session rested with Ad Hoc Committee II (PAH II) from late 1999 onward. PAH II considered about 20 possible subject areas and narrowed the list to the following six topics, which resulted in seven draft decrees: (1) review and amendment of MPR Standing Orders (two decrees), (2) regional autonomy policy implementation, (3) national unity and integrity, (4) the sources of law and the hierarchy of laws, (5) the separation of TNI and POLRI, and (6) the roles of TNI and POLRI.

The final PAH II report was transmitted via the full MPR Working Body to the Annual Session. The decree containing the first amendment to Standing Orders was agreed upon in the opening session on August 7. The remaining decrees were referred to and considered by Commission B of the Annual Session.

In addition, the amendment to Standing Orders contained in Decree I/2000 provided the Annual Session with the power to discuss, rather than merely hear, the reports of the president and other higher state institutions. This discussion took place in Commission C of the Annual Session.

The reports of these commissions returned to the plenary session on August 15, with the resulting decrees adopted in the largely ceremonial session on August 18.

See Appendices two to six for decrees III to VII/2000. Decrees I and II/2000 contain amendments to MPR Standing Orders, many of them of a technical nature. NDI intends to publish a revised English translation of MPR Standing Orders at a later date. Decree VIII/2000 contains the results of the MPR discussions on the reports of the president and of the higher state institutions. Decree IX/2000 instructs the Working Body of the MPR to prepare further amendments to the 1945 Constitution, based on the drafts already developed by PAH I, by the 2002 Annual Session at the latest.

The Constitutional Debate in the MPR: Successes and Failures

The PAH I proposals included revisions to the 16 chapters of the existing 1945 Constitution and draft text for five new chapters. These proposals had been drawn up by the committee through a process of plenary sessions, lobbying and negotiating sessions between the committee leadership and bloc representatives, and drafting sessions involving representatives of all 11 MPR blocs. The resulting report was comprehensive and complex, and included alternatives at some 24 points. The final draft addressed a wide range of issues in a broadly coherent manner, although inevitably some chapters were well drafted and others less so. Many parts of the final wording were the result of carefully crafted, essentially political deals in the drafting process.

Commission A divided 21 proposed chapters into four groups: (a) three on which full agreement had been reached in PAH I; (b) three of which such agreement was almost in place; (c) six where minor issues remained to be resolved; and (d) nine where major differences still existed.

This categorization proved overly ambitious. There was immediate unanimous agreement on only one chapter that dealt with the national flag, language and symbols. In the 21 hours available to Commission A, only the first three categories, totaling 12 chapters, were debated at all. Of these 12 chapters, it was only possible to reach full agreement on seven. What happened?

In essence, there appear to have been two main reasons for the slow progress: the first related to political positions, the second to procedural issues. The political cause of delay was the lack of any real consensus on the major structural issues of the constitution, coupled with the wish of elements in the MPR that are more conservative on constitutional change to conduct the debate in a slow and cautious manner. These elements include Vice President Megawati Soekarnoputri's Indonesian Democracy Party

– Struggle (PDI-P) and the TNI-POLRI bloc, which together hold 223 of the 695 seats in the MPR – nearly the one-third necessary to defeat any proposed constitutional amendments in a vote.

The PAH I report contained negotiated compromise wording on key issues. As is common with such agreements, the compromises would only hold if all parties involved wished them to hold. Once debate started to expose the underlying differences in such compromises, with different parties making different interpretations, the compromises could not hold. The context and importance of the constitution, combined with the political strength of the more conservative forces, meant that little effort was made within the MPR to force contested issues, such as whether to move to a direct presidential election system. Even had more effort been made, it is unlikely that it would have succeeded at this time.

In addition, PAH I decisions which appeared to have all-bloc political backing, such as the chapter on regional government, turned out in the event not to enjoy such support. Debate in PAH I on the issues had been conducted between the blocs through the presentation of 11 viewpoints and subsequent discussion and negotiation. However, some blocs proved better than others at communicating with and convincing their bloc leadership and their MPR colleagues outside PAH I of their stands. Debate consequently started over again in Commission A.

This led into procedural difficulties and arguments. The issue arose of whether members of PAH I who had signed the agreed committee report were now entitled to take a position (whether as a bloc representative or on a personal basis) disagreeing with the report. There was considerable feeling that such action was wrong, but this did not lead to universal adherence to the committee report by PAH I members. This is an issue on which the development of legislative custom and practice over time, rather than any formal decision or ruling, is likely to create accepted norms. While this process is under way, delay and ill-feeling is sure to recur.

The tendency for debates to run on was accentuated by the decision – which appears to have emerged rather than been formally made – that contributions to the debate in Commission A would be made by individual members rather than by blocs. On each chapter, these contributions were made in two rounds of speeches by members. Some rounds had as many as 16 contributions, often without a firm time limit on each contribution.

Moreover, contributions addressed any element of the chapter under discussion. Where the chapter contained a number of points of debate, discussion jumped to and fro among them. In considering a long report full of complex proposals and alternatives, this caused some confusion. The MPR has not yet developed procedural traditions whereby specific proposals for secondary amendments can be put in writing and discussed in turn, either before debate or in the course of it. This process only takes place in the lobbying sessions that follow initial plenary debate. (One attempt to address this problem through line by line drafting in a plenary of over 200 members was, unsurprisingly, not

successful.) While this might be explained by some as being an integral part of the process of deliberation and consensus that characterizes MPR decision-making, debate might have been much more effective if conducted topic by topic. Although this could have led to voting on each issue in turn, there was certainly no necessity that it would have done so.

As a result of these essentially procedural issues, it was in retrospect never going to be possible for the entire PAH I report to be considered in the context of fewer than four days' debate in Commission A. There are lessons to be learned for future Annual Sessions where a significant volume of complex material is to be debated – whether constitutional amendments or anything else. Conscious decisions could be taken to change the current procedural conventions; they may also develop over time to accommodate more debate within the same time frame. Pending such a process, the limitations imposed by these conventions and exposed this year will restrict the amount of work that can be done at any Annual Session.

Despite the difficulties, amended text was agreed for five chapters of the constitution: regional authorities, the DPR, citizens and residents, defense and security, and national symbols. In addition, two new chapters, on human rights and on national territory, were agreed. The full text of the agreed amendments is contained in Appendix 1 to this report.

Constitutional Amendments and MPR Decrees

The constitutional amendments contained in the Second Amendment and several of the MPR decrees passed at the 2000 Annual Session can be divided into four themes: (1) civil-military relations; (2) the separation of powers and checks and balances; (3) the decentralization of power to the regions; and (4) a bill of rights. Each of these themes contains important changes to the Indonesian political system.

Civil-Military Relations

The Indonesian military dominated the authoritarian New Order political system; ending its role in domestic politics has thus been an important facet of the democratic transition in Indonesia. Establishing civil supremacy over the military has also been an important theme of President Abdurrahman Wahid's administration, although most of the progress in this regard over the past 10 months has been at the more personal and less institutional level of officer reshuffles to sideline or remove some of the more recalcitrant generals.

The 2000 MPR Annual Session thus represented one of the first opportunities for civilian politicians to address the military's role in politics on a more institutional level. The results are mixed, reflecting both the military's rebound in political influence in the months leading up to the Annual Session and the proclivity of civilian politicians from across the political spectrum to continue to look to the military for support in inter-party rivalries. Nonetheless, the MPR has laid a legal foundation on which the DPR can now pass laws to build an edifice of democratic, civilian control over the military in Indonesia.

One of the most important developments is the amendments to Chapters VI and VII of UUD 1945, in which the DPR and provincial and district assemblies (DPRDs) will become fully elected bodies as a result of the next general elections in 2004, thus ending the appointment of military and police representatives to those bodies.

The MPR, however, also decided in Decree VII/2000 that TNI and POLRI would retain their MPR representation until 2009 at the latest. This represents a significant step backwards from the prior consensus among all major political parties to end TNI/POLRI representation in all legislative bodies (DPRDs, the DPR *and* the MPR) by 2004. This consensus began to break down in June when MPR Speaker Amien Rais first raised publicly the idea of ending TNI/POLRI representation in the DPR, but maintaining it in the MPR through 2009. The decree does not indicate a specific number of representatives, although it appears that the current level of 38 is considered the ceiling and may be further reduced for the 2004-2009 term. This will be determined in a new law on the MPR, DPR and DPRDs that must be passed by the DPR at the latest in 2003 to prepare for the 2004 elections.

Another significant development is that both the amendment to Chapter XII (Defense and Security) of UUD 1945 and Decrees VI and VII/2000 delineate the important distinction between external defense, as the responsibility of TNI, and internal security, law enforcement and maintenance of public order, as the responsibility of POLRI. Furthermore, Decree VI/2000 establishes the legal basis for the institutional separation of the police from the military begun by former President B.J. Habibie's administration on April 1, 1999. This decree also contains a duty of mutual assistance between TNI and POLRI when there is an overlap between external defense and internal security activities.

Although this is not standard constitutional practice around the world, the amended Chapter XII has also enshrined the doctrine of "total people's defense and security" (*sistem pertahanan keamanan rakyat semesta* or *sishankamrata*) in the constitution, with a provision for citizen assistance to the TNI/POLRI core role in national defense and security. The inclusion of this doctrine in UUD 1945 was seen by its proponents as a step forward, as a statement that national defense and security is not just the duty of TNI and POLRI alone. The concern is that this intention will not carry through to the process of revising defense legislation and defense policy and that the inclusion of this doctrine in the constitution will now be used by the Army to justify the maintenance of the territorial system, which is the backbone of military intervention in political and economic affairs.

The precise roles, organization and doctrine of TNI and POLRI, as well as the definition of citizen assistance, are to be dealt with by law, and have indeed been considered in MPR Decree VII/2000. The major points relating to TNI in this decree are: (1) TNI will be the principal component of national defense and will act together with the people through a new system of compulsory military service; (2) the forces – Army, Navy and Air Force – come under the ultimate authority of the President as head of state; (3) the President will appoint and dismiss the TNI Commander with the approval of the DPR; (4) TNI members will not be entitled to vote or be elected to public office, except after their

resignation or retirement; and (5) TNI members are subject to the jurisdiction of the military judicial system for breaches of the military legal code and the civilian judicial system for ordinary criminal cases.

The major points in Decree VII/2000 relating to the police are: (1) POLRI will be a national force organized on a hierarchical basis from the central to the local level;¹ (2) POLRI will report directly to the President; (3) the President will appoint and dismiss the national police chief with the approval of the DPR; (4) POLRI members will not be entitled to vote or be elected to public office, except after their resignation or retirement; (5) POLRI members are fully subject to the jurisdiction of the civilian judicial system; and (6) a National Police Council will be established to assist the President on matters of police policy as well as provide advice on the appointment and dismissal of the national police chief.

MPR Decree V/2000 on National Unity and Integrity contains a wide-ranging historical, philosophical and analytical discussion of the desirability of national unity and integrity and of possible threats to these. It requires the MPR Working Body to draw up a statement of national ethics and a vision for the future of Indonesia. It also calls specifically for the establishment of a National Truth and Reconciliation Commission. To the extent this commission is successful at all, it is widely expected by Indonesians to focus more of its efforts on reconciliation than uncovering the truth of past human rights abuses. Combined with the clause in the new bill of rights forbidding retroactive legislation (see below), this approach emphasizes looking to the future more than a thorough uncovering of the dark sides of Indonesia's recent history.

The Separation of Powers and Checks and Balances

One of the primary weaknesses of the 1945 Constitution is the lack of clarity concerning one of the fundamental dimensions of any democratic political system: is it presidential or parliamentary? On the one hand, the position of the MPR as the sole repository of popular sovereignty, the highest state institution and the body charged with electing the president and vice president and receiving their "accountability speech" makes the system look somewhat parliamentary. On the other hand, the position of the president as both head of state and head of government, with a fixed term and the inability to dissolve the DPR makes the system look more presidential. Since the greater weight is on the presidential side, perhaps it is appropriate to call the political system created by the original 1945 Constitution, "presidential with parliamentary characteristics."

Despite the all-party support for the presidential system reflected in one of PAH I's first decisions in November 1999, as mentioned above, there has also been a general desire on the part of DPR and MPR members to limit the powers of the presidency, given the autocratic history of Indonesia's first two presidents. With the basic rules of the political game in flux, this desire has sometimes manifested itself in phenomena not usually seen in a presidential system. These phenomena include the DPR's use of its "right of

¹ Before the MPR session, provincial governors were proposing that policing should be a provincial government function. Draft special legislation on Irian Jaya is said to contain a similar proposal.

interpellation" (*hak interpelasi*) to question President Wahid's dismissal of two cabinet ministers in April and the repeated calls by the president's critics to transform the August 2000 MPR Annual Session into a Special Session that could impeach him on political, not judicial, grounds.

As part of the process of constitutional reform, the MPR has set about to clarify the basic nature of the Indonesian political system as presidential. One of the challenges in this regard is that in addition to the lack of clarity mentioned above, UUD 1945 also lacks recognition of the principles of the separation of powers and checks and balances among the executive, legislative and judicial branches that is such an important part of a presidential system. On the whole, the amendments and decrees passed last month have helped to strengthen these principles.

As mentioned above, the amendment to Chapter VII of UUD 1945 establishes that the DPR will become a fully elected body in 2004. The end of military and police representation in the legislature will help clarify the separation of the executive and legislative branches and will facilitate the improvement of the DPR's oversight role of the executive. The powers of the DPR have been clarified, including the legislative function, the oversight function, and the right to approve the budget. Although the rights of inquiry (*hak angket*) and immunity have been made constitutional, so has the more parliamentary right of interpellation. The procedures by which a bill becomes a law will be determined by law rather than in the constitution. The presidential "pocket veto" has been abolished. If the DPR and the President jointly agree on legislation and the president then fails to sign it within 30 days, the legislation takes effect regardless. From the original constitution, government regulations in lieu of laws (*perpu*) are restricted to national emergencies or similar situations, and will require approval at the following session of the DPR.

A proposal by President Wahid's critics to change the MPR's Standing Orders to allow an MPR Annual Session to call for or transform itself into a Special Session with impeachment powers had met with sufficient resistance prior to the Annual Session that it was not expected to gain much support during that session. The proposal was formally scrapped during Commission B's deliberations. In addition, the proposal to formalize in the constitution the existing procedures laid down by MPR Decree III/1978, under which the DPR can call for an MPR Special Session for the purposes of receiving a presidential accountability report, was dropped. The abandonment of these two proposals has left the constitutional relationship between the president, the MPR and the DPR regarding impeachment procedures the same before the Annual Session. In other words, the 1945 Constitution only mentions the power of the MPR to elect the president and vice president and says nothing about removing them. The latter procedure is only established in the less powerful MPR Decree III/1978, which requires the DPR to request an MPR Special Session through a complex multiphase process over a period of several months.

The Standing Orders of the MPR are adopted for the Annual Session at the beginning of the session. The existing Standing Orders were agreed in MPR Decree II/1999. The review of Standing Orders has addressed both issues that are key to the separation of

powers and checks and balances, and minor issues requiring drafting clarification. The definition and relationship of General, Annual and Special Sessions of the MPR, the procedures for the hearing of annual reports and accountability reports from the President and from other high state institutions, and the different categories of MPR decrees are all issues of Standing Orders.

The amendments to Standing Orders comprise two decrees. The first was debated at the beginning of the Annual Session, and therefore took effect for the proceedings of the 2000 Annual Session; it is formally Decree I/2000. It includes a single amendment to Article 49, which allows the MPR Annual Session both to hear and discuss the annual report of the president and of other high state institutions. However, a second part of this amendment to allow for an annual constitutional amendment process was defeated by PDI-P. As a result, an Annual Session may only discuss constitutional amendments when specifically tasked to do so by a previous MPR decree.

The second decree was debated in the course of the Annual Session and adopted at its end as Decree II/2000; it will thus take effect in future Annual Sessions. Although it contains a number of significant changes, the most far-reaching proposal from PAH II was rejected. This would have allowed an MPR Annual Session to call a Special Session.

Decree II/2000 states that MPR decisions will consist of the 1945 Constitution and amendments to it, MPR decrees and MPR resolutions. MPR decrees may contain guidelines of policy for state administration, as previously. A new form of MPR decree is specified, which contains recommendations on the implementation of MPR decisions, and requires a report on progress to be submitted at the following Annual Session. The decree on regional autonomy policy implementation, discussed further in the next section, and the decree responding to the annual progress reports are both in this form. Furthermore, the MPR Working Body, a standing committee of 90 MPR members chosen from the 11 blocs in proportion to membership, is given permanent status and acquires the additional task of reviewing the implementation of MPR decrees by the executive. This suggests that the MPR intends to take a more active role in executive oversight in the future.

Decree II/2000 also states that General Sessions will take place at the beginning and end of the five-year term of office of the MPR. The General Session at the beginning of the MPR term will swear in the members, choose the MPR leadership and Working Body membership, establish the Broad Outlines of State Policy (GBHN), and (provided that direct presidential election is not introduced into the constitution) elect the president and vice president. The General Session at the end of the MPR will evaluate a presidential accountability report. Annual Sessions will hear and discuss the progress reports of the president and of the other high state institutions, and may adopt MPR decisions. Special Sessions can be convened by the DPR to hear and evaluate a presidential accountability report, and may also be convened to replace a permanently incapacitated president or vice president.

If an accountability report is rejected by the General Session at the close of an MPR term of office, the outgoing president may not stand for re-election. If an accountability report is rejected at a Special Session, the president has a right of reply; if that reply is also rejected, the MPR may impeach the president. When the president is impeached or either the president or vice president is permanently incapacitated, the replacement will serve out the term of the previous incumbent.

Although the constitutional chapter on the judicial system was not one on which agreement was achieved at the 2000 Annual Session, MPR Decree III/2000 on the Sources of Law and Hierarchy of Laws does contribute to the establishment of greater rule of law and a more independent judiciary. This decree updates and replaces a number of old decrees. It defines the 1945 Constitution and its amendments, Pancasila, and unwritten (in essence traditional) laws as sources that underpin legislation.

The hierarchy of laws is redefined as having seven tiers: (1) the 1945 Constitution and amendments; (2) MPR decrees (*ketetapan*); (3) laws (*undang-undang*); (4) government regulations in lieu of laws (*peraturan pemerintah pengganti undang-undang* or *perpu*); (5) government regulations (*peraturan pemerintah*); (6) presidential decrees for administrative purposes (*keputusan presiden* or *keppres*); and (7) regional regulations (*peraturan daerah* or *perda*).

Consistent with Article 22 of UUD 1945, under the new decree *perpu* are to be issued by the president only in cases of urgency and require subsequent ratification or rejection by the DPR. Presidential decrees, often manipulated by former President Soeharto to award development projects to his family and business cronies, have been restricted to the purpose of state and government administration. Regional regulations, which are introduced to this hierarchy for the first time, are to be issued by the relevant DPRD in conjunction with the head of the provincial or district executive. Village regulations are also defined within the regional regulations provision.

An inferior legal instrument may not conflict with a superior one. Rulings of the Supreme Court, ministers and state or government agencies must also be consistent with the hierarchy of laws.

Judicial review of laws *vis-à-vis* MPR decrees and the constitution has been delegated to the MPR by Decree III/2000. This is inconsistent with the principles of separation of powers and checks and balances, for two reasons. First, in general, judicial review should be carried out by a judicial, not legislative, body. Second, and more specific to the Indonesian case, 500 of the MPR's 695 members are also members of the DPR that passed the laws in the first place, thus rendering it unlikely that the MPR will use this new power against its own members. The Supreme Court has the power of judicial review of regulations below laws in the hierarchy *vis-à-vis* higher tiers. This power can be used on the Court's own initiative, without requiring a specific case to be brought before it. However, the mechanisms for implementation of these powers by the MPR and the Supreme Court are not specified in the decree.

The issue of the powers of the judiciary, and especially the Supreme Court, will continue to be debated as part of the ongoing process of constitutional reform in Indonesia (see below).

The Decentralization of Power to the Regions

The New Order had a highly centralized political and economic system. All important decisions were reserved to the central government that was firmly under President Soeharto's control, using regional authorities merely as a means of implementing central instructions. Decentralization of power was thus one of the central demands of the reform movement in 1998, and after Soeharto resigned many regions began voicing their discontent. This led to fears of national disintegration, with many Indonesians pointing to the former Yugoslavia and the former Soviet Union as negative examples.

The transitional Habibie administration responded to these developments with a policy of "wide-ranging regional autonomy" across the board, with special additional arrangements for the provinces of Aceh, Irian Jaya and East Timor (the latter becoming irrelevant to the policy after the August 30, 1999 referendum). This policy resulted in the passage in May 1999 of Law 22/1999 on regional government and Law 25/1999 on the financial balance between the central and regional governments and in August 1999 of Law 34/1999 on the special capital region of Jakarta. In short, the Habibie government traded the political problem of regional discontent and potential national disintegration for the administrative problem of implementing regional autonomy. This policy has been continued by the Wahid administration.

Despite these concessions by the center, many regions remained dissatisfied that regional autonomy was based only in laws that were in essence a "gift" from the center that could be rescinded at any time by a decision of the DPR and the president. Thus pressure continued for the decentralization of power to the regions to be enshrined in the Constitution, making it harder to reverse in the future. Nonetheless, although some political leaders and observers, most prominently MPR Speaker Amien Rais, had raised the idea of federalism in 1998 and 1999, this constitutional debate continued to take place within the overall framework of a unitary state, as decided by PAH I in November 1999.

Through the amendment to Chapter VI of UUD 1945, the general spirit of Laws 22/1999 and 25/1999 on regional autonomy is now reflected in the constitution, with the status of both provinces and districts (rural *kabupaten* and urban *kota*) being recognized. A strongly regional flavor is given by the principle that regions may act on any subject that is not reserved by law to the central government. There is a constitutional provision for special legislation and/or special status for particular provinces. There is a requirement for justice and equity and regard to local distinctiveness and diversity in the financial arrangements for regions.

Governors, regents (*bupatis*) and mayors (*walikotas*) will be democratically elected, with the method (direct election by the people or indirect election by the local assembly) to be determined by law. The current drafts of the special legislation for Aceh and Irian Jaya

already include proposals for direct election of these positions. However, the alternative of providing for universal direct elections to these positions in the Constitution was not accepted.

MPR Decree IV/2000 on regional autonomy policy implementation takes the form of a series of recommendations to the executive, on which a report back will be required as part of the annual presidential progress report in August 2001. It reaffirms and reinforces progress towards the establishment of regional autonomy and expresses concern that the government is not acting fast enough in this respect. Special legislation for both Aceh and Irian Jaya (the name change to Papua has not yet been formalized in law) is required by May 1, 2001.

The tone of debate on this decree was strongly regionalist. In the event that all of the necessary implementation regulations are not in place by the starting date of January 1, 2001, regions will be able to introduce their own regulations. While these must be consistent with national regulations, specific proposals requiring consultation with the central government in this instance were removed by Commission B.²

Decree IV/2000 contains several important general provisions relating to the implementation of the key legislation on regional autonomy, Laws 22/1999 and 25/1999. One of these is the requirement considered above that the central government must issue all remaining implementing regulations by the end of December 2000. If this is not done, then regions that are fully capable of implementing autonomy will be able to produce their own regulations. In addition, the decree contains a provision that the national and regional budgets should reflect the position of regions that are fully ready for implementation in 2001. In other regions, implementation should be on a phased basis in line with capability. There is a provision requiring justice in financial equalization among regions that raises the possibility of using the local profits of state-owned enterprises where local natural resources are limited. Finally, the decree contains a requirement for the development of regional autonomy master plans in each region to define the process of transition, a recommendation for the establishment of coordination teams in each region to smooth the implementation of autonomy, and a requirement for a fundamental review of Laws 22 and 25.

The Bill of Rights

The original 1945 Constitution contained few guarantees of civil and political rights; if anything, it more often referred to citizens' responsibilities to the state. It is thus quite significant that a substantial new chapter on human rights has been added to the Constitution as part of the Second Amendment.

² There is in addition a general provision in the legislation requiring all regional regulations to be submitted to "the government" (undefined), which has 15 days to object to them. If it does so, any resulting dispute is decided by the Supreme Court. However, no practical mechanism to implement these clauses exists.

One issue related to the bill of rights is that of citizenship, *i.e.*, for whom are these rights guaranteed by the state. In the amended Chapter X of UUD 1945 on citizens and residents, the essence of the existing provisions is retained and an additional definition of a resident of Indonesia is added. The duty of citizens to contribute to national defense has also been moved here from the chapter on defense and security.

What is more important, however, is what was not changed. Despite agreement in PAH I on this chapter, Commission A engaged in a heated debate over the phrase “indigenous Indonesian peoples” (*orang-orang bangsa Indonesia asli*) that appears in the original constitutional language on the definition of an Indonesian citizen. The historical context for this language is that in 1945 the drafters were accustomed to the Dutch colonial racial division of “Europeans,” “Orientals” (largely Chinese, Arabs, and Indians) and “Indigenous” that also corresponded to a decreasing hierarchy of rights and privileges. Thus the 1945 Constitution’s drafters established that citizens of the new, independent Republic of Indonesia were those in the Indigenous category (automatically) and any members of the other two categories who resided in and claimed Indonesia as their homeland and who were loyal to the Republic.

Fifty-five years later, largely as a result of the New Order’s dichotomization of Indonesians as “indigenous” (*pribumi*) and “non-indigenous” (*nonpribumi, i.e.*, Sino-Indonesian), this language is seen by the latter primarily as a way to provide constitutional justification for such discrimination. During the heated debate on this chapter in Commission A of the Annual Session, one member asked rhetorically “who are truly indigenous Indonesians?” referring to the successive waves of migration from the Southeast Asian mainland to what is now Indonesia. Nonetheless, despite this debate, the original language was retained, more out of a desire to move on to other issues than an appreciation for one proposal or another.

The provisions of the new Chapter XA of UUD 1945 on human rights have proven controversial in the aftermath of the Annual Session, despite having been in the public domain since mid-June and despite having been substantially drawn from the *Universal Declaration of Human Rights* (UDHR). The requirement of religious belief imposed by the constitution and Pancasila made any proposal to incorporate the UDHR in its entirety into the constitution impossible.

In particular, the clause prohibiting prosecutions under retrospective legislation originates from Article 11(2) of the UDHR. Its effect appears to be to require that prosecutions for past violations will need to be made under the Criminal Code in force at the time of those violations; it is also possible, though unclear in extent, that provisions of international law may apply. The juxtaposition of international human rights standards and the calls for justice for past human rights violations has created a dilemma for Indonesian and international human rights activists.

The provisions of the new chapter cover:

- the right to life;
- the right to family and procreation;
- the right to self-betterment;
- the right to justice;
- freedom of religion, speech, education, employment, citizenship, place of residence, association and expression;
- freedom of information;
- personal security;
- the right to well-being, including social security and health provision;
- the right to personal property;
- the right to seek political asylum;
- freedom from torture and degrading treatment;
- protection and non-discrimination, including freedom of conscience, traditional cultural identity, recognition under the law and unacceptability of retrospective criminal legislation;
- the primary responsibility of the government to protect, advance and uphold human rights;
- the obligation to uphold the human rights of others and to be bound by the law for this purpose; and
- the restriction of the application of human rights provisions on justified grounds of moral and religious values or of security and public order.

Other Amendments

As part of the Second Amendment, the MPR also touched on two other chapters that are largely symbolic. In the new Chapter IXA of UUD 1945, the existence of the national territory is defined in the context of an archipelagic state. The exact international borders are to be defined by law. In the amended Chapter XV, the national symbol (the *garuda* eagle), the national slogan “Unity in Diversity” (Bhinneka Tunggal Ika) and the national anthem are added to the previous flag and language provisions.

The Agenda for the Future

The material that was not adopted can be divided into three categories. First, there were three chapters – elections, finance, and the State Audit Agency (BPK) – that appeared to fail purely through lack of time. The debate in Commission A on these chapters focused on important points of detail rather than fundamental differences. It is likely that further consideration could produce a consensus on these chapters, which include in particular the recognition of a permanent and independent National Election Commission, and the specification of BPK as the only external audit agency with responsibility both at the national level and at provincial and district levels.

Second, there are a number of chapters where there are questions to resolve but which are stand alone issues. One clear example is education, where the question of the role of religion needs to be resolved and the appropriateness of a constitutional commitment to a minimum 20 percent of budget spending considered. Another example is the economy and social welfare.

This category probably also includes the role of religion, including the proposal to add the famous phrase from the Jakarta Charter to the existing Article 29: “with the requirement for Muslims to carry out Islamic law” (*dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya*). This provision requiring adherents of Islam to practice their faith was considered but excluded from the 1945 Constitution at the time of its proclamation and was the subject of deep divisions during the constitutional debates in the 1950s. It remains controversial both within the different strands of Islam in Indonesia and among followers of other religions. Although there does not appear to be even a simple majority for the proposal, it is clearly a sensitive and potentially divisive debate the tone of whose conduct and whose timing will be a very important factor in the continuing process of transition.

Two structural issues may also fall into this category. First, although the constitutional debate on the future of the Supreme Advisory Council (DPA) was not broached in the Annual Session, the MPR decree evaluating the DPA annual progress report clearly indicates that the DPA should continue in a modified form at least for the coming year. While the need for the DPA’s existence has been strongly questioned in the course of PAH I’s debates, the tone of the MPR debate suggested that its abolition no longer appears to be on the agenda. In addition, the chapter on judicial power turned out to be one of the least satisfactory pieces of drafting, especially on questions of jurisdiction, and still requires decisions to be made on the possible creation of a Constitutional Court within the Supreme Court.

Third, there are a basket of interconnected issues relating to the basic structure of state institutions. These chapters certainly include the form and sovereignty of the state, the structure and role of the MPR, executive powers (including the method of election of the president and vice president), the possible creation of an upper chamber representing regional interests (Dewan Perwakilan Daerah or DPD), and the procedures for constitutional amendment.

The key points of disagreement can be summarized as follows. First, regarding the nature of the sovereignty of the people, some believe in the status quo with sovereignty being exercised solely through the MPR as the highest state institution. Others argue that the separation of powers principle that accompanies a presidential system requires the legislative, executive and judicial branches to be separately defined, with no highest state institution. Some envisage an intermediate *primus inter pares* role for the MPR.

The second point of disagreement concerns the role, function and composition of the MPR. If the MPR is to act as the highest state institution, it needs to be a permanent body. With a substantial definition of the separation of powers, the MPR might cease to

be a permanent body and become solely a joint session of two constituent houses with the possible addition of some extra members (specifically TNI and POLRI). The agreement that TNI and POLRI should remain in the MPR until 2009 is currently expressed only in MPR Decree VII/2000, not in the constitution itself.

Third is the creation and powers of the DPD, thus establishing a bicameral system. The DPD would have equal representation from each province; it might or might not be given legislative power on issues relating to the regions.

Fourth, the direct election of the president and vice president has proven to be one of the most controversial issues. This proposal would clearly give greater legitimacy in practice to the president and vice president, who would be able to appeal to a direct mandate. It also raises the question of the relationship between the campaign manifesto of the successful ticket and the Broad Outlines of State Policy (GBHN) agreed by the MPR. The most important issues in this regard are whether the GBHN should exist at all in a direct election system and, if so, whether breach of the GBHN should be among the valid grounds for impeachment. The balance of power between the legislative and executive branches will be critically affected by the decisions made on these questions.

Finally, there is disagreement over the requirements for future constitutional amendment. This is clearly connected to the future status and function of the MPR, as the body currently responsible. A proposal has been made that would require a referendum on any amendments that would change the preamble, the unitary state or the presidential system.

The result of this year's constitutional debate has not only been the agreement of seven new or amended chapters. The MPR has also decided to use the remaining material prepared by PAH I as the basis for a continuing constitutional debate, scheduled to take place between now and August 2002 at the latest. This is the latest Annual Session at which it will be possible to pass major changes to the structure of state institutions with enough lead time to put the technical arrangements in place to conduct elections under the new arrangements in 2004. This decision is codified in Decree IX/2000. The MPR Working Body has already acted on this decision by setting up a new Ad Hoc Committee I for constitutional review.

It is also possible that the debate over the next one or two years may address not only formal constitutional amendments, but also related issues that are to be regulated by laws. Foremost among these are issues relating to the electoral system. While it is impossible for constitutional amendments to be adopted by the MPR simultaneously with the passage of laws by the DPR and their signature by the president, it could well be that the support of any party for a direct presidential election system could be contingent on at least an outline of the specific electoral system to be adopted. The effects of a majority system, a plurality-plus-distribution system on the Nigerian model, an electoral college system and a first-past-the-post plurality system could clearly be very different. In addition, there are possible linkages to any proposals for a new electoral system for the DPR. The substantial existing bias of DPR representation against the most densely populated islands of Java and Bali could well be a factor in this debate. It should also be

noted that there are important technical questions in the election legislation that need to be addressed as a result of the 1999 experience. It would be unfortunate if this were to be submerged as a result of the wider political debate.

Semantics and the Constitutional Debate in Indonesia

An interesting sidebar to the constitutional reform process in Indonesia is the important role played by semantics in the debate. This report has earlier noted the contrast between the consensus to maintain the presidential system and the desire to limit the powers of the presidency, a contrast that has produced several odd phenomena, that leads one to describe the Indonesian political system as “a presidential system with parliamentary characteristics.”

The ongoing debate over the structure of the national legislature has also produced similarly unique terminology. Some forces advocate the establishment of an upper house to represent the regions (the DPD) recognizes and thereby create a bicameral system. However, the more conservative elements that wish to see as little change as possible to the original 1945 Constitution point out that if the MPR is maintained as a joint session of the DPR and DPD, then it is really still a unicameral legislature. In the weeks leading up to the Annual Session, the phrase “semi-bicameral system” was also floated. In sum, the results of this aspect of constitutional reform in Indonesia may be “a unicameral legislature with bicameral characteristics.”

These two phrases are actually plays on a statement made by President Abdurrahman Wahid that the overall goal of the regional autonomy implementation process is the creation of “a unitary state with federal characteristics.” This reflects his desire to carve out a middle ground between those who advocate federalism for Indonesia and those for whom the term federalism evokes distasteful memories of the Dutch attempt in 1949-1950 to maintain their influence in the newly independent Indonesia by establishing in many regions puppet states that became the constituent units of the Federal Republic of the United States of Indonesia. This federal republic lasted only eight months until August 1950, at which time President Soekarno declared the establishment of the unitary Republic of Indonesia.

The underlying cause of these semantic acrobatics is the lack of consensus among significant domestic political forces regarding the most desirable form for the emerging democratic political system in Indonesia. The more conservative elements, such as PDI-P and TNI/POLRI, want, at minimum, to maintain the impression that the 1945 Constitution is being changed as little as possible. Thus, for them, Indonesia will continue to have a unitary, presidential and unicameral system. In contrast, most of the other major political parties want to be able to tell their supporters that constitutional change, as one of the basic demands of the reform movement, has in fact been carried out. Thus these parties may emphasize the “characteristics” of the new system that are more federal, parliamentary or bicameral in nature while simultaneously being careful at least to maintain the terms unitary, presidential and unicameral in their description. In

the end, however, the most important dimension is how the system actually works in practice.

Conclusion: An Opening for Debate and Ownership

Any constitution, as the foundation of a state, reflects political choices. It is a mistake to believe that it is possible to “take the constitution out of politics” and hand it over completely to “independent” experts. Political judgments and choices are not only an inevitable but also are an essential part of constitution making.

Thus any amendment of the 1945 Constitution will be debated in a political context. The choice made by many MPR members at the 2000 Annual Session may have been that fundamental decisions on structural issues should not be finalized in an atmosphere of high tension over the relationship between the current president and the current legislature. Whether the atmosphere will be more conducive to debate on these issues in 2001, or 2002, is not yet known. What is certain is that it will be different.

The additional time available does create a very important opportunity for debate on the fundamental issues to be much wider than during the past year. PAH I was open in its proceedings, but few people noticed – perhaps under the mistaken impression that constitutions are boring and technical documents. It is to be hoped that any such impression has been dispelled by this year's debates.

The constitution gives effect to the sovereignty of the people, and there is now no reason why the people cannot be widely and directly involved in the debate. The extent of the openness of the MPR to encouraging and promoting that process will help determine whether consensus develops on constitutional changes over the next one or two years. Undoubtedly it will also be one measure used to judge the performance of MPR members during the 2004 elections.

NDI's Constitutional Reform Program and This Report

The National Democratic Institute for International Affairs (NDI) has been working in Indonesia since 1996 and more intensively since the democratic transition began in 1998. NDI has conducted programs supporting political party strengthening, domestic and international election monitoring, the role of parties in the legislature, civil society strengthening, and enhancing the capacity of civilian institutions regarding the military.

Since late 1999, NDI has also conducted a program on constitutional reform as part of a larger set of interrelated issues, including electoral reform and regional autonomy. One aspect of the constitutional reform program has consisted of technical support to members of PAH I. NDI has monitored PAH I's plenary sessions and has responded to requests from MPR members for comparative information about a range of constitutional issues. NDI also hosted the leadership of PAH I on its visit to the United States in May 2000 to learn more about the American Constitution in theory and practice. Another aspect of the program has consisted of technical and financial support to one of the leading Indonesian NGOs examining constitutional reform issues, the Centre for Electoral Reform (CETRO). Finally, NDI has also supported a number of seminars and conferences held in Indonesia on the topic of constitutional reform. NDI intends to continue to support this process over the coming years.

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APPENDIX 1

The Second Amendment to the 1945 Constitution¹

Chapter VI Regional Authorities

Article 18

- (1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies and municipalities, each of which shall have regional authorities, as regulated by law.
- (2) The authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance (*tugas pembantuan*).
- (3) The authorities of the provinces, regencies and municipalities shall include for each a Regional People's Representative Assembly (DPRD) whose members shall be elected by general election.
- (4) Governors, Regents and Mayors, respectively as head of government of the provinces, regencies and municipalities, shall be elected democratically.
- (5) The regional authorities shall exercise wide-ranging autonomy, except in matters provided by law to be the affairs of the central government.
- (6) The regional authorities shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.
- (7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

Article 18A

- (1) The authority relations between the central government and the regional authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the distinctiveness and diversity of each region.
- (2) The relations between the central government and regional authorities in finances, public services and use of natural and other resources shall be regulated and administered with justice and equity according to law.

Article 18B

¹ Where the Second Amendment only affected portions of an article, the remainder of the article from the original 1945 Constitution or the First Amendment is also included in this appendix.

- (1) The state shall acknowledge and respect units of regional authorities that are special and distinct, which shall be regulated by law.
- (2) The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

Chapter VII
People's Representative Assembly
(*Dewan Perwakilan Rakyat* or DPR)

Article 19

- (1) Members of the DPR shall be elected by general election.
- (2) The structure of the DPR shall be regulated by law.
- (3) The DPR shall meet at least once a year.

Article 20

- (1) The DPR shall hold the authority to establish laws.
- (2) Each bill shall be discussed by the DPR and the President to achieve joint approval.
- (3) If a bill fails to achieve joint approval, that bill shall not be introduced again in that DPR term of sessions.
- (4) The President signs the jointly approved bill to become a law.
- (5) If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.

Article 20A

- (1) The DPR shall hold legislative, budgeting and oversight functions.
- (2) In carrying out its functions, in addition to the rights regulated in other articles of this Constitution, the DPR shall hold interpellation (*interpelasi*), investigative (*angket*), and opinion rights.
- (3) Other than the rights regulated in other articles of this Constitution, every DPR member shall hold the rights to propose questions, to convey suggestions and opinions, and of immunity.
- (4) Further provisions concerning the rights of the DPR and the rights of DPR members shall be regulated by law.

Article 21

DPR members shall have the right to submit proposed bills.

Article 22

- (1) Should exigencies compel, the President shall have the right to establish government regulations in lieu of laws.
- (2) Those government regulations must obtain the approval of the DPR during its next session.
- (3) Should there be no such approval, these government regulations shall be revoked.

Article 22A

Further provisions concerning the procedures to establish laws shall be regulated by law.

Article 22B

DPR members may be removed from office, whose conditions and procedures shall be regulated by law.

Chapter IXA State Territory

Article 25E

The Unitary State of the Republic of Indonesia is an archipelagic state, the boundaries and rights of whose territory shall be established by law.

Chapter X Citizens and Residents

Article 26

- (1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law.
- (2) Residents shall consist of Indonesian citizens and foreigners living in Indonesia.
- (3) Matters concerning citizens and residents shall be regulated by law.

Article 27

- (1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.
- (2) Every citizen shall have the right to work and to earn a humane livelihood.
- (3) Each citizen has the right and duty to participate in the effort of defending the state.

Article 28

The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

Chapter XA Human Rights

Article 28A

Every person shall have the right to live and to defend his/her life and existence.

Article 28B

- (1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.
- (2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

Article 28C

- (1) Every person shall have the right to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.
- (2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28D

- (1) Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.
- (2) Every person shall have the right to work and to receive fair and proper recompense and treatment in employment.
- (3) Every citizen shall have the right to obtain equal opportunities in government.
- (4) Every person shall have the right to citizenship status.

Article 28E

- (1) Every person shall be free to embrace and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

- (2) Every person shall have the right to the freedom to hold beliefs (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.
- (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

Article 28F

Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

Article 28G

- (1) Every person shall have the right to protection of self, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.
- (2) Every person shall have the right to be free from torture or inhuman and degrading treatment, and shall have the right to obtain political asylum from another country.

Article 28H

- (1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.
- (2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.
- (3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.
- (4) Every person shall have the right to own personal property, and such right may not be arbitrarily interfered with by any party.

Article 28I

- (1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.
- (2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

- (3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.
- (4) The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government.
- (5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

Article 28J

- (1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.
- (2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

Chapter XII State Defense and Security

Article 30

- (1) Every citizen shall have the right and duty to participate in the defense and security of the state.
- (2) The defense and security of the state shall be conducted through the total people's defense and security system, with the Indonesian National Military (TNI) and the Indonesian National Police (POLRI) as the main force, and the people as the supporting force.
- (3) TNI, consisting of the Army, Navy and Air Force, as an instrument of the state has the duty to defend, protect, and maintain the integrity and sovereignty of the state.
- (4) POLRI, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.
- (5) The structure and status of TNI and POLRI, the authority relationships between TNI and POLRI in performing their respective duties, the conditions concerning the participation of citizens in the defense and security of the state, and other matters related to defense and security, shall be regulated by law.

Chapter XV National Flag, Language, Coat of Arms and Anthem

Article 35

The national flag of Indonesia shall be the Red and White (*Sang Merah Putih*).

Article 36

The national language shall be Indonesian (*Bahasa Indonesia*).

Article 36A

The national coat of arms shall be the Pancasila eagle (*Garuda Pancasila*) with the motto Unity in Diversity (*Bhinneka Tunggal Ika*).

Article 36B

The national anthem shall be *Indonesia Raya*.

Article 36C

Further provisions regarding the national flag, language, coat of arms and anthem shall be regulated by law.

APPENDIX 2

MPR Decree III/2000

on

The Sources of Law and the Hierarchy of Laws and Regulations

By the Grace of Almighty God

The People's Consultative Assembly of the Republic of Indonesia,

Whereas:

- a. based upon the history of the nation and in order to face future challenges, the Indonesian nation has concluded that both at the present time and in the future, the Indonesian nation and state must be truly based upon the principle of supremacy of law;
- b. the Unitary State of the Republic of Indonesia, as a state based upon law, needs to clarify the sources of law which provide guidance for the laws and regulations of the Republic of Indonesia;
- c. in order to realize the supremacy of law, legal instruments are required in the form of laws and regulations, in accordance with their hierarchy, for the purpose of regulating the life of the community, nation and state;
- d. in the context of the implementation of regional autonomy, regional regulations need to be accommodated in the hierarchy of laws;
- e. the sources of law and the hierarchy of laws and regulations found in Interim People's Consultative Assembly Decree XX/1966 have in practice given rise to confusion, so that this decree can no longer be the basis for the establishment of laws and regulations;
- f. based upon the considerations described in points a, b, c, d, and e, it is deemed necessary to stipulate an MPR Decree on the Sources of Law and the Hierarchy of Laws and Regulations.

In accordance with:

1. Article 1(2), Article 2 and Article 3 of the 1945 Constitution;
2. MPR Decree V/1973 on Review of the Decrees of the Interim MPR;
3. MPR Decree IX/1978 on the Necessity of Amending Article 3 of MPR Decree V/1973;
4. MPR Decree II/1999 on the MPR Standing Orders;
5. MPR Decree I/2000 on the First Amendment to MPR Decree II/2000 on the MPR Standing Orders.

Having considered:

1. MPR Decision No. 1/2000 on the Agenda of the MPR Annual Session from August 7-18, 2000;

2. Consultations in the MPR Annual Session from August 7-18, 2000 concerning the draft MPR decree on the Sources of Law and the Hierarchy of Laws and Regulations prepared by the MPR Working Body;
3. The decision of the 9th Plenary Session on August 18, 2000 of the MPR Annual Session.

BE IT HEREBY RESOLVED

To establish:

A DECREE OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF
INDONESIA ON THE SOURCES OF LAW AND THE HIERARCHY OF LAWS AND
REGULATIONS

Article 1

- (1) The sources of law are the source materials used to draw up laws.
- (2) The sources of law consist of written and unwritten sources of law.
- (3) The national basic sources of law are Pancasila, as written in the Preamble to the 1945 Constitution, i.e., Monotheistic Deity, Just and Civilized Humanitarianism, Indonesian Unity, Democracy Led by the Wise Policy in Consultation/ Representation, and Social Justice for the People of Indonesia, and the main body of the 1945 Constitution.

Article 2

The hierarchy of laws and regulations shall be a reference in the drafting of inferior legal instruments.

The hierarchy of laws and regulations is as follows:

1. The 1945 Constitution;
2. MPR Decrees;
3. Laws;
4. Government Regulations in Lieu of Laws (*Perpu*);
5. Government Regulations;
6. Presidential Decrees;
7. Regional Regulations.

Article 3

- (1) The 1945 Constitution shall be the basic written law of the Republic of Indonesia, including the legal basis and framework for state administration.
- (2) MPR Decrees are decisions of the MPR taken during MPR sessions in the exercise of its powers as the holder of popular sovereignty.

- (3) Laws shall be established by the DPR and the President to implement the 1945 Constitution and MPR Decrees.
- (4) Government Regulations in Lieu of Laws (*Perpu*) shall be issued by the President in pressing and compelling cases, subject to the following provisions:
 - a. A Government Regulation in Lieu of a Law must be submitted to the DPR at its next session.
 - b. The DPR may approve or reject a Government Regulation in Lieu of a Law without amending it.
 - c. Should the DPR reject a Government Regulation in Lieu of a Law, that regulation must be revoked.
- (5) Government Regulations are issued by the government for the purpose of giving effect to Laws.
- (6) Presidential Decrees that create requirements are made by the President in the exercise of his functions and duties and take the form of guidelines for the administration of the state and the government.
- (7) Regional Regulations are regulations to implement superior legal instruments and to accommodate the special conditions of the particular region.
 - a. Provincial Regulations are issued by the Provincial DPRD in conjunction with the Governor.
 - b. Regency/Municipality Regulations are issued by the Regency/Municipality DPRD in conjunction with the Regent/Mayor.
 - c. Village (or equivalent) Regulations are issued by the Village (or equivalent) Council, while the procedures for issuing Village (or equivalent) Regulations shall be regulated by a Regency/Municipality Regulation.

Article 4

- (1) In accordance with the hierarchy of laws and regulations set forth herein, an inferior legal instrument must not conflict with a superior legal instrument.
- (2) Regulations or rulings of the Supreme Court, the State Audit Agency, Ministers, Bank Indonesia, Agencies, Institutes or Commissions of equivalent level that have been established by the government, must not conflict with the hierarchy of laws and regulations set forth herein.

Article 5

- (1) The MPR shall have the authority to review laws vis-à-vis the 1945 Constitution and MPR Decrees.
- (2) The Supreme Court shall have the authority to review regulations inferior to laws in the hierarchy.
- (3) The power of judicial review referred to in clause (2) shall be at the initiative of the Court and shall not depend upon an appeal process.

- (4) A ruling of the Supreme Court in a case of judicial review as referred to in clauses (2) and (3) shall be binding.

Article 6

The procedures for the establishment of Laws, Government Regulations and Regional Regulations, for the exercise of the Supreme Court's power of judicial review, and the regulation of the scope of Presidential Decrees shall be further regulated by law.

Article 7

Upon the issuance of this MPR Decree on the Sources of Law and the Hierarchy of Laws and Regulations, Interim MPR Decree XX/1966 on the DPR-GR Memorandum concerning the Sources of Law and the Hierarchy of Laws and Regulations and MPR Decree IX/1978 on the Necessity of Amending Article 3(1) of MPR Decree V/1973 shall stand repealed and are no longer considered valid.

Article 8

This decree shall enter into effect on the date of issuance hereof.

Established in Jakarta on August 18, 2000.

APPENDIX 3

MPR Decree IV/2000 on Policy Recommendations in Implementing Regional Autonomy

By the Grace of Almighty God
The People's Consultative Assembly of the Republic of Indonesia,

Whereas:

- a. that regional development as an integral part of national development is carried out through regional autonomy, just regulation of national resources and financial balance between the center and the regions;
- b. that the implementation of regional autonomy so far has not been carried out in the expected manner such that it has experienced many failures and has not achieved the established goals. These failures have resulted in dissatisfaction and offended beliefs in justice, producing among other results demands for separation and strong demands that the implementation of regional autonomy be improved;
- c. that political decisions made by the MPR in the form of decrees as well as other legal instruments produced by high state institutions, relevant to regional autonomy, have not yet been fully implemented;
- d. that based upon the considerations described in points a, b and c, it is deemed necessary to stipulate an MPR Decree on Policy Recommendations in Implementing Regional Autonomy.

In accordance with:

1. Article 18 and Article 23(1) of the 1945 Constitution;
2. MPR Decree XV/1998 on Implementation of Regional Autonomy; Just Regulation, Division and Use of National Resources; and Financial Balance between the Center and the Regions within the Framework of the Unitary State of the Republic of Indonesia;
3. MPR Decree II/1999 on the MPR Standing Orders;
4. MPR Decree IV/1999 on the 1999-2004 Broad Outlines of State Policy (GBHN);
5. MPR Decree I/2000 on the First Amendment to MPR Decree II/2000 on the MPR Standing Orders.

Having considered:

1. MPR Decision No. 1/2000 on the Agenda of the MPR Annual Session from August 7-18, 2000;
2. Consultations in the MPR Annual Session from August 7-18, 2000 concerning the draft MPR decree on Policy Recommendations in Implementing Regional Autonomy prepared by the MPR Working Body;

3. The decision of the 9^h Plenary Session on August 18, 2000 of the MPR Annual Session.

BE IT HEREBY RESOLVED

To establish:

A DECREE OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA ON POLICY RECOMMENDATIONS IN IMPLEMENTING REGIONAL AUTONOMY

Article 1

Policy Recommendations in Implementing Regional Autonomy consist of:

- I. Background
- II. Problems
- III. Recommendations
- IV. Conclusion

Article 2

The contents of the recommendations mentioned in Article 1 shall be stated in a document and shall become an inseparable part of this Decree.

Article 3

This decree shall enter into effect on the date of issuance hereof.

Established in Jakarta on August 18, 2000.

Policy Recommendations in Implementing Regional Autonomy

I. Background

The MPR agrees with the view that there is no room for further negotiation in respect of the people's demands and expectations concerning the creation of equity in the fields of the economy, politics, sociocultural affairs and law enforcement, as well as respect for human rights. The demands and expectations of the people for an accelerated pace of democratization so as to create a democratic and equitable society reflect the dynamics at work in Indonesia in confronting the changing life of the nation and state.

In order to accommodate these popular aspirations, the MPR is of the opinion that the implementation of regional autonomy is one strategic measure that needs to be considered in a mature, in-depth and forward-looking manner. These considerations have been incorporated into a comprehensive regional autonomy policy based upon the principles of democracy, equity and justice as well as an awareness of the variety found in our nation in accordance with the principle of "Unity in Diversity." This regional autonomy policy is designed to achieve the following objectives:

1. Improving public services and developing the creativity of the people and local governments in the regions.
2. Creating equity in respect to powers and financial resources between the central and regional governments and among regional governments themselves.
3. Improving patriotism, democracy and public welfare in the regions.
4. Creating a wider space for the exercise of regional self-sufficiency.

II. Problems in the Implementation of Regional Autonomy

The fundamental problems involved in the implementation of regional autonomy are as follows:

1. The central government has failed to view the implementation of regional autonomy as a constitutional mandate so that the decentralization process has tended to become bogged down.
2. The strength of centralizing policies has resulted in increased dependency of the regions on the center and has nearly killed the creativity of the people and local governments in the regions.
3. Wide discrepancies exist between the center and the regions and among the regions themselves in respect to the control of natural resources, cultural resources, economic infrastructure and the quality of human resources.
4. The interests of various parties obstruct the implementation of regional autonomy.

Bearing in mind the aforesaid deep-rooted problems and also bearing in mind the strong desire of the people for the immediate realization of regional autonomy as provided for in MPR

Decree XV/1998 on Implementation of Regional Autonomy; Just Regulation, Division and Use of National Resources; and Financial Balance between the Center and the Regions within the Framework of the Unitary State of the Republic of Indonesia and Law 22/1999 on Regional Government as well as Law 25/1999 on Financial Balance between the Central and Regional Governments, the MPR has drawn up recommendations.

III. Recommendations

These recommendations are addressed to the government and the DPR so that they can be followed up in accordance with the following points:

1. The Laws on Special Autonomous Status for Aceh and Irian Jaya, in accordance with the mandate given under MPR Decree IV/1999 on the 1999-2004 Broad Outlines of State Policy should be issued not later than May 1, 2001, taking into account the aspirations of the people in those regions.
2. The implementation of regional autonomy in other areas in accordance with Laws 22 and 25/1999 shall be carried out on the current timetable having regard to the following:
 - a. All of the government regulations required for the implementation of both of these laws should be issued no later than the end of December 2000.
 - b. Regions that are already capable of implementing full regional autonomy should be allowed to do so from January 1, 2001 and this should be reflected in the national and regional budgets.
 - c. For regions that are not yet capable of implementing full regional autonomy, the process should be implemented on a phased basis in accordance with their respective capabilities.
 - d. Should the entire package of government regulations not be issued by the end of December 2000, regions that are already capable of fully implementing autonomy shall be permitted to issue regional regulations to govern its implementation. Once government regulations have been issued, the relevant regional regulations must be revised accordingly.
3. In the framework of implementing regional autonomy, each region should develop its own regional autonomy implementation master plan, with attention to the stages involved in implementation; institutional, infrastructure and capacity constraints; and budget management and public management systems.
4. In the case of regions that possess limited natural resources, financial balance can also have regard to the possibility of obtaining part of the profits of state-owned enterprises that operate in the regions concerned, as well as a share of the income tax paid by companies operating there.
5. In the case of resource-rich regions, the achievement of financial balance between the center and the regions must have regard to the sense of justice and propriety. For regions that possess limited educated human resources, special attention will be necessary.

6. During the implementation of regional autonomy, it is recommended that coordination teams be established among the agencies in each region to deal with any problems that may arise and activate governmental and non-governmental institutions in order to smooth the implementation of regional autonomy based upon a clear agenda.
7. In line with the spirit of decentralization, democratization and balance in the relations between the center and the regions, initial measures should be taken for a fundamental review of Laws 22 and 25/1999. This review will be for the purpose of bringing this legislation into line with the provisions of Article 18 of the 1945 Constitution, including the granting of stratified autonomy to the provinces, regencies/municipalities, villages, etc.

IV. Conclusion

The President and the DPR shall report the results of the implementation of this Decree as parts of their reports on the implementation of the GBHN at the next MPR Annual Session.

APPENDIX 4

MPR Decree V/2000 on The Consolidation of National Unity and Integrity

By the Grace of Almighty God
The People's Consultative Assembly of the Republic of Indonesia,

Whereas:

- a. by the Grace of Almighty God, the Unitary State of the Republic of Indonesia was proclaimed on August 17, 1945 based upon special characteristics, namely the ethnic, cultural and religious diversity that is to be found in the thousands of islands scattered from Sabang to Merauke, but which are united in the determination to create one country, nation and national language, based upon Pancasila as the cornerstone of the state;
- b. the diversity referred to above is a pivotal factor in determining the course of Indonesian history and its past, present and future;
- c. the Indonesian nation has experienced various internal conflicts, including both vertical and horizontal conflicts, which have been ignited by injustice, the violation of human rights, weak law enforcement and the practices of corruption, collusion and nepotism;
- d. globalization, driven by trade and technological advancement, has helped accelerate the flow of people, goods, services, money and information, and has had a significant impact on politics, the economy, society, culture, defense and security, but if not guarded against can potentially do harm to the integrity of the Unitary State of the Republic of Indonesia;
- e. accordingly, awareness and commitment are required on the part of the entire nation to respect efforts to ensure unity in the life of the people, nation and state so as to ensure that the Unitary State of the Republic of Indonesia will progress to a better future;
- f. based on the aforesaid considerations it is deemed necessary to issue an MPR Decree on the Consolidation of National Unity and Integrity.

In accordance with:

1. the 1945 Constitution;
2. MPR Decree II/1999 on the MPR Standing Orders;
3. MPR Decree I/2000 on the First Amendment of MPR Decree II/2000 on the MPR Standing Orders.

Having considered:

1. MPR Decision No. 1/2000 on the Agenda of the MPR Annual Session from August 7-18, 2000;

2. Consultations in the MPR Annual Session from August 7-18, 2000 concerning the draft MPR decree on the Consolidation of National Unity and Integrity;
3. The decision of the 9^h Plenary Session on August 18, 2000 of the MPR Annual Session.

BE IT HEREBY RESOLVED

To establish:

A DECREE OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF
INDONESIA ON THE CONSOLIDATION OF NATIONAL UNITY AND INTEGRITY

Article 1

This Decree consists of a systematic discussion that deals comprehensively with the meaning of the consolidation of national unity and integrity, as follows:

CHAPTER	I	INTRODUCTION
CHAPTER	II	IDENTIFICATION OF PROBLEMS
CHAPTER	III	DESIRED CONDITIONS
CHAPTER	IV	POLICY DIRECTIONS
CHAPTER	V	IMPLEMENTATION GUIDELINES
CHAPTER	VI	CONCLUSION

Article 2

The contents and detailed descriptions referred to in Article 1 are found in the document on The Consolidation of National Unity and Integrity and its appendices that shall constitute an integral and inseparable part of this decree.

Article 3

- (1) The President is hereby ordered to implement this MPR Decree on the Consolidation of National Unity and Integrity and to report on the implementation hereof to the MPR Annual Session.
- (2) The MPR Working Body is hereby ordered to formulate a national ethics and a vision for Indonesia's future and report the on the implementation hereof to the MPR Annual Session.

Article 4

This decree shall enter into effect on the date of issuance hereof.

Established in Jakarta on August 18, 2000.

The Consolidation of National Unity and Integrity

Chapter I Introduction

A. Background

The Indonesian nation is large and consists of many ethnic groups, cultures and religions. These complexities are a strength and benefit for the nation but also present many challenges. These challenges are being particularly felt at times when the Indonesian nation requires unity in confronting changes in the life of the nation and state, whether these changes originate at home or abroad.

On October 28, 1928, young people from various parts of the country stated their awareness of the strength that could be derived from national unity. They agreed to stand together by taking the Youth Pledge so as to uphold the concept of one country, nation and language, that is to say Indonesia. This spirit and movement of unity became a source of inspiration for other movements that combined to free the nation from colonization. The Indonesian people then proclaimed their independence on August 17, 1945. The Proclamation of Independence was a common expression of determination to establish the Unitary State of the Republic of Indonesia, covering all of the territory from Sabang to Merauke, which would be free and sovereign and would realize our national goals.

Since the founding of the Unitary State of the Republic of Indonesia, our founding fathers were aware that the diversity of the Indonesian people was a blessing that should be acknowledged, accepted and respected, as enshrined in the national motto of “Unity in Diversity.” However, they were also aware that difficulties in managing such diversity, the unwillingness of some sections of the population to accept diversity and the continuing influence of the colonial policy of divide and rule had and could continue to give rise to conflicts which could endanger the unity and integrity of the nation.

During the history of the Indonesian state, a number of upheavals and rebellions have occurred primarily as a result of centralistic misuse of power, a failure to resolve differences of opinion among national leaders and the unwillingness of some sections of the community to respect differences of opinions and accept diversity. These failings in turn have led to injustice, both vertical conflicts between the center and the regions and horizontal conflicts between various sections of society, ideological and religious conflicts, structural poverty, social inequalities, etc.

The New Order government, which was originally conceived in order to correct the authoritarian and centralistic excess of its predecessor, eventually ended up repeating these mistakes. This fact was exacerbated by the prevalence of corruption, collusion and nepotism, and the misuse of the armed forces as a political tool for the purpose of perpetuating the regime’s power.

With the outbreak of the economic crisis in Asia, particularly Southeast Asia, Indonesia suffered the most. The economic system built up by the New Order government failed to provide for the people’s well-being and gave rise to economic difficulties, social inequalities and

a growing crisis of confidence. As a result, the people's dissatisfaction peaked with demands for total reform.

The reform movement, in essence, constitutes a demand for the implementation of democracy in all fields; enforcement of the law and justice; respect for human rights; eradication of corruption, collusion and nepotism; implementation of regional autonomy and the financial balance between the central and regional government; and the repositioning of the role and status of the armed forces.

The effort to continue the reform movement and to resolve the various conflicts occurring at the present time clearly requires patience and commitment on the part of the entire nation so as to consolidate national unity and integrity. National unity and integrity will only be achieved if every citizen is capable of living with diversity and dealing with it creatively.

B. Objectives

This decree on the consolidation of national unity and integrity is designed, generally speaking, to identify existing problems, determine the conditions which must be put in place in order to achieve national reconciliation and to establish policy guidelines for the consolidation of national unity and integrity.

A true awareness and commitment to the consolidation of national unity and integrity must be created through tangible measures such as the establishment of a National Truth and Reconciliation Commission, as well as the formulation of national ethics and a vision for the future of Indonesia.

Chapter II Identification of Problems

The Indonesian nation is currently faced by various problems that have given rise to a widespread crisis. The causative factors for these problems may be identified as follows:

1. Religious and cultural values do not form the source of ethics in national and state affairs for a portion of the community. This has given rise to a crisis of character and morals in the form of injustice, violations of the law and human rights abuses.
2. Pancasila as the state ideology has been arbitrary interpreted by the power holders and has been abused for the purpose of maintaining power.
3. Sociocultural conflicts have arisen due to the fact that ethnic, cultural and religious differences have not been properly and fairly managed by both the government and society. This has been exacerbated by government policies that have tended to resurrect feudalism and paternalism. This has given rise to social conflicts that endanger the unity and integrity of the nation.
4. The law has been transformed into an instrument of power and its processes have been so misused as to conflict with the fundamental principle of law and justice, namely equality before the law.

5. Economic activities have involved the practices of corruption, collusion and nepotism and have been dominated by tycoons. This has resulted in the current, extended economic crisis, the high level of debt that must be borne by the government, increasing unemployment and poverty, and widespread socioeconomic inequality.
6. The authoritarian political system proved incapable of producing leaders who are capable of fighting for the interests of the people.
7. Transfers of power have often given rise to bloody conflicts and acts of revenge among different groups in society. These are the result of an imperfect democratization process.
8. The existence of a government that ignored democracy has resulted in a lack of participation by the people in channeling their political aspirations. Thus the political demands of the reform movement have centered on freedom, equality and justice.
9. Centralistic government has given rise to asymmetries and inequalities in the relationship between the central government and local governments so that vertical conflicts, rebellions and even demands for independence have arisen.
10. The misuse of power as a consequence of the weakness of internal governmental and legislative checks and balances, and the lack of control exercised by the press and society in the past, have resulted in a lack of transparency and government accountability as the means to achieve clean and responsible government. As a consequence, the people have lost confidence in state officials.
11. The sociopolitical role of the Indonesian armed forces as an instrument of power during the New Order regime has resulted in deviations in the role of the military and the police that have prevented the development of democratic life.
12. While globalization in political, economic, social and cultural life may provide benefits for the Indonesia nation, it is also possible that it could have negative effects if not monitored carefully.

Chapter III **Desired Conditions**

The various problems that currently confront the nation must be resolved in a comprehensive manner through a process of reconciliation that is capable of consolidating national unity and integrity. In this respect, the following preconditions need to be satisfied:

1. Religious and cultural values must be instilled as the source of ethics and morals so as to promote good and avoid reprehensible actions, violations of the law and human rights abuses. Such religious and cultural values are always on the side of truth and encourage us to forgive those who repent for their wrongdoing.
2. The realization of the principle of the unity of the Republic of Indonesia, the third principle of Pancasila, as the basis of a united people.
3. The establishment of a state administration that is capable of understanding and managing the nation's diversity in a proper and fair manner so as to ensure tolerance, harmonious social relations, a sense of community and equality in the nation.

4. The upholding of a system of law that is based upon philosophical values of truth and justice, social values that are oriented towards our value system and are of benefit to the people, and judicial values that adhere to the laws and regulations in effect so as to guarantee order and legal certainty. This should be accompanied by the willingness and ability to uncover the truth about the past and to acknowledge wrongs that have been committed and the development of mutually beneficial attitudes and behavior.
5. The recovery of the national economy, particularly the popular economy, so that the economic burden of the people and unemployment may be reduced, which will then give rise to a feeling of optimism and encouragement about the economy.
6. The creation of a democratic political system that can give rise to a screening, election and appointment process for leaders that are trusted by the people.
7. The establishment of a democratic, orderly and peaceful system for the transfer of power.
8. The creation of a democracy that guarantees the rights and obligations of the members of society to be involved in a responsible manner in the decision-making process so as to give rise to better awareness in consolidating national unity and integrity.
9. The equitable implementation of regional autonomy so as to give power to the regions to manage their own affairs while at the same time maintaining national unity and integrity.
10. The restoration of public confidence in public officials and among the diverse groups in the community so as to instill a sense of common purpose in national life.
11. Redefinition of the functions, improvement of the professionalism and restoration of the image of the military and the police so as to create feelings of security and order in society.
12. The creation of quality human resources that are capable of working together and competing so as to benefit from globalization.

Chapter IV

Policy Directions

The policy directions that are required in order to bring about reconciliation as part of the process of consolidating national unity and integrity are as follows:

1. Instilling cultural and religious values as the source of ethics in the life of the nation in the context of strengthening moral integrity among our public officials and in the community as a whole.
2. Developing Pancasila as an open state ideology through open discourse and dialogue in the community so that it may be justified in accordance with our vision of Indonesia in the future.
3. Creating a sense of common cause among religious adherents, ethnic groups and cooperation based upon the principles of equality, tolerance and mutual respect. Government intervention in social and cultural life needs to be reduced while community potential and initiative needs to be improved.
4. Upholding the supremacy of law and the enforcement of laws in a consistent and accountable manner, and guaranteeing and respecting human rights. These measures must

be preceded by the prosecution and resolution of cases of corruption, collusion and nepotism, and human rights violations.

5. Improving the welfare of the people through economic development that is based upon popular and regional economic empowerment.
6. Giving power back to the people through the establishment of a democratic political system so as to produce quality and responsible leaders who are capable of guiding the people and consolidating national unity and integrity.
7. Providing for orderly, peaceful and democratic transfers of power in accordance with the law.
8. Providing for a political system that ensures a balanced distribution of power at the various political structural levels and in power relationships. Every political decision must be taken based upon a transparent and democratic process that upholds and respects the sovereignty of the people.
9. Implementing regional autonomy, providing for a balanced allocation of financial resources, improving equal access to public services, correcting asymmetry in economic development and regional income, and respecting regional cultural diversity based upon the mandate given by the Constitution.
10. Improving integrity, professionalism and accountability in the civil service and empowering the public to exercise social control in an effective and constructive manner.
11. Separating the military as the agency of the state that is responsible for defense from the police as the agency of the state that is responsible for security, and reconstituting the military and the police respectively as a part of the community.
12. Improving human resources so that they are capable of working together and competing as citizens of the country and the world while at the same time continuing to be aware of the importance of consolidating national unity and integrity.

Chapter V

Implementation Guidelines

1. The policy directions constitute guidelines for the laws and regulations governing public administration and community behavior in the life of the nation and state.
2. The government is hereby ordered to:
 - a. facilitate dialogues and collaboration at both the national and the regional level involving all of the elements involved in national life, including informal leaders who represent religious, ethnic and other group diversity, to accommodate the various viewpoints in order to unify perceptions and search for solutions.
 - b. immediately achieve the peaceful resolution of problems and conflicts in various regions, completely, fairly and correctly, in order to consolidate national unity and integrity.
3. A National Truth and Reconciliation Commission should be established as an extra-judicial body, whose membership size and criteria should be established by law. This Commission will be charged with the task of uncovering and revealing the truth about abuses of power

and human rights violations in the past and of achieving reconciliation in the interests of the nation. Follow-up measures after the truth is uncovered could include acknowledgements of guilt, requests for forgiveness and the granting of forgiveness, reconciliation, law enforcement, rehabilitation or such other measures as may be beneficial for consolidating national unity and integrity, having regard at all time to the people's sense of justice.

4. The MPR Working Body is hereby ordered to:
 - a. formulate a code of ethics to govern the life of the nation. This code of ethics would cover a wide range of areas, including politics, law, economics, society and culture, governance, etc;
 - b. formulate a vision for Indonesia's future which would then be promoted in the community through a process designed to create awareness of that vision.

Chapter VI

Conclusion

This decree sets out the policy directions for the effort to bring about reconciliation in the context of consolidating national unity and integrity, through political and legal mechanisms, promotion and inculcation. It is intended to act as a guideline both for public officials and the community at large.

Bringing about reconciliation in the context of consolidating national unity and integrity is anticipated to resolve the problems inherited from the past so as to be capable of overcoming the crisis and create a better future for all.

APPENDIX 5

MPR Decree VI/2000 on The Separation of TNI and POLRI

By the Grace of Almighty God
The People's Consultative Assembly of the Republic of Indonesia,

Whereas:

- a. the establishment of democracy is a key demand of reform and a challenge for the future. Thus it is deemed necessary to restructure and reposition the Armed Forces of the Republic of Indonesia;
- b. defense/security policies had combined the Army, Air Force, Navy and Police into the Armed Forces of the Republic of Indonesia;
- c. as a consequence of the aforesaid merger, confusion and overlapping have resulted regarding the role and duties of the military as the defense agency of the state and the role and duties of the police as the agency of the state responsible for ensuring public order and security;
- d. the sociopolitical role enshrined in the military's dual function doctrine has resulted in deviations from the proper role and functions of the military and the police that have prevented the development of democratic principles in the life of the nation, state and people;
- e. based upon the considerations outlined in paragraphs a, b, c and d, it is deemed necessary to issue an MPR Decree on the Separation of TNI and POLRI.

In accordance with:

1. Articles 1, 2, 3, 10, 11, 12 and 30 of the 1945 Constitution;
2. MPR Decree II/1999 on the MPR Standing Orders;
3. MPR Decree IV/1999 on the 1999-2004 Broad Outlines of State Policy;
4. MPR Decree I/2000 on the First Amendment of MPR Decree II/2000 on the MPR Standing Orders.

Having considered:

1. MPR Decision No. 1/2000 on the Agenda of the MPR Annual Session from August 7-18, 2000;
2. Consultations in the MPR Annual Session from August 7-18, 2000 concerning the draft MPR decree on the Separation of TNI and POLRI;
3. The decision of the 9th Plenary Session on August 18, 2000 of the MPR Annual Session.

BE IT HEREBY RESOLVED

To establish:

A DECREE OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF
INDONESIA ON THE SEPARATION OF TNI AND POLRI

Article 1

The Armed Forces (TNI) and the Police (POLRI) as institutions shall be separated and each organization shall have its own role and functions.

Article 2

- (1) TNI shall be the agency of the state that is responsible for national defense.
- (2) POLRI shall be the agency of the state that is responsible for maintaining security.
- (3) Should any overlap arise between defense and security issues, TNI and POLRI must cooperate and assist each other.

Article 3

- (1) The respective roles of TNI and POLRI shall be established by an MPR Decree.
- (2) Matters concerning TNI and POLRI shall be regulated in a comprehensive and detailed manner by separate laws.

Article 4

This decree shall enter into effect on the date of issuance hereof.
Established in Jakarta on August 18, 2000.

APPENDIX 6

MPR Decree VII/2000 on The Roles of TNI and POLRI

By the Grace of Almighty God
The People's Consultative Assembly of the Republic of Indonesia,

Whereas:

- a. in order to protect the entire Indonesian nation and people, promote public welfare, elevate the life of the nation and participate in the world order, an archipelago-based defense and security system is required for the Unitary State of the Republic of Indonesia;
- b. the defense and security of the Unitary State of the Republic of Indonesia is an integral and inseparable part of national defense and involves the harnessing, preparation and mobilization of national capabilities with the people making up the vanguard;
- c. in the efforts to defend and to ensure the security of the Unitary State of the Republic of Indonesia, every citizen shall have the right and duty to participate in the defense of the nation and to uphold public order and security;
- d. an agency of the state is required which shall play the principal role in defending the nation, namely TNI;
- e. an agency of public security is required in order to protect the public and uphold the law, namely POLRI;
- f. in line with the processes of democratization and globalization, and in order to meet the challenges of the future, the professionalism and performance of the defense and security forces need to be enhanced through redefinition of the roles of TNI and POLRI;
- g. an organizational separation has already taken place between TNI and POLRI;
- h. based upon the considerations outlined in paragraphs a, b, c, d, e, f and g, it is deemed necessary to issue an MPR Decree on the Roles of TNI and POLRI.

In accordance with:

1. Articles 1, 2, 3, 10, 11, 12 and 30 of the 1945 Constitution;
2. MPR Decree II/1999 on the MPR Standing Orders;
3. MPR Decree IV/1999 on the 1999-2004 Broad Outlines of State Policy;
4. MPR Decree I/2000 on the First Amendment of MPR Decree II/1999 on the MPR Standing Orders;
5. MPR Decree VI/2000 on the Separation of TNI and POLRI.

Having regard to:

1. MPR Decision No. 1/2000 on the Agenda of the MPR Annual Session from August 7-18, 2000;

2. Consultations in the MPR Annual Session from August 7-18, 2000 concerning the draft MPR decree on the Roles of TNI and POLRI;
3. The decision of the 9th Plenary Session on August 18, 2000 of the MPR Annual Session.

BE IT HEREBY RESOLVED

To establish:

A DECREE OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF
INDONESIA ON THE ROLES OF TNI AND POLRI.

CHAPTER I ARMED FORCES (TNI)

Article 1 TNI's Identity

- (1) TNI is a part of the people, and was born from and fought alongside the people to defend the interests of the state.
- (2) TNI shall be the principal component in the state's defense system.
- (3) TNI shall be required to possess professional skills and expertise in accordance with its role and functions.

Article 2 TNI's Role

- (1) TNI is the agency of the state that serves as the defender of the Unitary State of the Republic of Indonesia.
- (2) TNI, as the defender of the state, has the basic duty of defending the sovereignty of the state and the territorial integrity of the Unitary State of the Republic of Indonesia that is based upon Pancasila and the 1945 Constitution, as well as protecting the entire Indonesian people and nation from threats to the integrity of the nation and the state.
- (3) TNI shall administer a system of compulsory military service for citizens, as regulated by law.

Article 3 TNI's Organization and Status

- (1) TNI shall consist of the Army, Navy and Air Force, whose organization shall be arranged according to needs as regulated by law.
- (2) TNI shall come under the authority of the President.
- (3) TNI shall be headed by a Commander who shall be appointed and dismissed by the President upon receiving approval from the DPR.

- (4)
- a. TNI soldiers shall be subject to the jurisdiction of the military judicial system for violations of military law and shall be subject to the jurisdiction of the civilian judicial system for violations of criminal law.
 - b. If the civilian judicial system referred to in Clause (4a) of this Article is not functioning, then TNI soldiers shall be subject to the jurisdiction of a judicial system as regulated by law.

Article 4
TNI's Duty of Assistance

- (1) TNI shall assist with humanitarian activities (civic mission).
- (2) TNI shall assist POLRI with security duties upon request, as regulated by law.
- (3) TNI shall actively participate in peacekeeping operations under the flag of the United Nations.

Article 5
TNI's Participation in State Governance

- (1) State policy shall constitute the basis for TNI's policies and the implementation of its duties.
- (2) TNI shall remain neutral in political affairs and shall not involve itself in partisan political activities.
- (3) TNI shall uphold democracy, the law and human rights.
- (4) TNI members shall not be entitled to vote or be elected to public office. TNI participation in national policy making shall be channeled through the MPR until the year 2009 at the latest.
- (5) TNI members may only occupy public office after having resigned or retired from military service.

CHAPTER II
POLRI

Article 6
POLRI's Role

- (1) POLRI is the agency of the state that maintains security and public order, upholds the law and provides protection and service to the public.
- (2) In performing its role, POLRI shall be required to possess professional skills and expertise.

Article 7
POLRI's Organization and Status

- (1) POLRI shall be a national police force and shall be organized on a hierarchical basis from the central to the local level.
- (2) POLRI shall come under the authority of the President.
- (3) POLRI shall be headed by a Chief who shall be appointed and dismissed by the President upon receiving approval by the DPR.
- (4) POLRI members shall be subject to the jurisdiction of the civilian judicial system.

Article 8
National Police Council

- (1) The President, in his/her authority to direct POLRI policy, shall be assisted by a National Police Council.
- (2) The National Police Council shall be formed by the President as regulated by law.
- (3) The National Police Council shall give advice to the President in the appointment and dismissal of the Chief of POLRI.

Article 9
POLRI's Duty of Assistance

- (1) During a state of emergency, POLRI shall provide assistance to TNI, as regulated by law.
- (2) POLRI shall play an active role in the duties of fighting international crime as a member of the International Criminal Police Organization – Interpol.
- (3) POLRI shall actively participate in peacekeeping operations under the flag of the United Nations.

Article 10
POLRI's Participation in State Governance

- (1) POLRI shall remain neutral in political affairs and shall not involve itself in partisan political activities.
- (2) POLRI members shall not be entitled to vote or be elected to public office. POLRI participation in national policy making shall be channeled through the MPR until the year 2009 at the latest.
- (3) POLRI members may only occupy public office after having resigned or retired from police service.

CHAPTER III
CONCLUSION

Article 11

The requirements and stipulations referred to herein shall subsequently be further regulated by laws.

Article 12

This decree shall enter into effect on the date of issuance hereof.

Established in Jakarta on August 18, 2000.