

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/IDN/CO/2)

INDONESIA

(...)

C. Principal subjects concerns and recommendations

Widespread torture and ill-treatment and insufficient safeguards during police detention

10. The Committee is deeply concerned about the numerous, ongoing credible and consistent allegations, corroborated by the Special Rapporteur on torture in his report (A/HRC/7/3/Add.7) and other sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, there are insufficient legal safeguards for detainees, including:

- (a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody for up to 61 days;
- (b) Absence of systematic registration of all detainees, including juveniles, and failure to keep records of all periods of pretrial detention;
- (c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a zero-tolerance policy on any ill-treatment or torture by State officials. As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered, especially children. The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Furthermore, it should keep under systematic review interrogation rules,

instructions, methods and practices with a view to preventing cases of torture.

(...)

Local regulations and breaches of the Convention

15. The Committee is deeply concerned that local regulations, such as the Aceh Criminal Code, adopted in 2005, introduced corporal punishment for certain new offences. The Committee is concerned that the enforcement of such provisions is under the authority of a “morality police”, the *Wilayatul Hisbah*, which exercises an undefined jurisdiction and whose supervision by public State institutions is unclear. Furthermore, the Committee is concerned that the necessary legal fundamental safeguards do not exist for persons detained by such officials, including the absence of a right to legal counsel, the apparent presumption of guilt, the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) that contravene the Convention and national law. In addition, it is reported that the punishments meted out by this policing body have a disproportionate impact on women (arts. 2 and 16).

The State party should review all its national and local criminal legislations, especially the 2005 Aceh Criminal Code, that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention. Furthermore, such a policing body undermines the provisions of Law No. 22/1999 on Regional Autonomy and Law No. 32/2004 on Local Government, which provide that law, religion and security sectors remain under the authority of the national Government. The State party should also ensure that the members of the *Wilayatul Hisbah* exercise a defined jurisdiction, are properly trained and operate in conformity with the provisions of the Convention, especially on the prohibition of torture and ill-treatment, and that their acts are subject to review by ordinary judicial authorities. State institutions should supervise the actions of the *Wilayatul Hisbah* and ensure that fundamental legal safeguards apply to all persons who are accused of violating matters of its concern. The State party should further ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention. The State party should review, through its relevant institutions, including governmental and judicial mechanisms at all levels, all local regulations in order to ensure they are in conformity with the Constitution and with ratified legal international instruments, in particular the Convention.

(...)

Violence against the Ahmadiyah and persons belonging to other minorities

19. The Committee expresses its concern at incitement and acts of violence against persons belonging to minorities, in particular the Ahmadiyah and other minority

religious communities. Furthermore, there are persistent, disturbing allegations of a routine failure to investigate such violence and the reluctance on the part of the police and authorities to provide the Ahmadiyah with adequate protection or to conduct prompt, impartial and effective investigations into such acts. The Committee is especially concerned that the Attorney-General has announced plans to make public a joint ministerial decree that will criminalize the activities of the Ahmadiyah. The Committee notes with concern the report of the Special Rapporteur on freedom of religion or belief, which refers to the State party's intention to prohibit Ahmadiyah activities (E/CN.4/2006/5/Add.1, para. 163); it reiterates the Special Rapporteur's view that "there is no excuse for the use of violence against its members". The Committee is especially concerned that State party officials who may authorize a decree banning the Ahmadiyah, thereby putting members of that community at further risk of ill-treatment and physical abuse, also express the view that the Ahmadiyah must refrain from "provoking" members of the community, in effect blaming the group at risk (arts. 2, 12 and 16).

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by prosecuting and punishing all acts of violence and abuses against those individuals and ensuring implementation of positive measures of prevention and protection. The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts. The State party should also publicly condemn hate speech and crimes and other violent acts of racial discrimination and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such violence. It should ensure that officials are held accountable for action or inaction that breaches the Convention. The State party should give prompt consideration to expanding the recruitment of persons belonging to ethnic and religious minorities into law enforcement, and to respond favourably to the request of the Special Rapporteur on freedom of religion to visit the country.

Trafficking and violence against migrant workers

20. While noting the adoption of Law No. 21/2007 on trafficking in persons, the Committee remains concerned at the high estimates by the State party of victims of trafficking, as compared to the limited number of investigations of such cases, and at the absence of information on prosecutions and convictions. The Committee is also concerned at reported cases of ill-treatment of migrant workers, especially women, reportedly abused by Indonesian recruiting companies, which often place them in situations that impair the enjoyment of their human rights while abroad, including debt bondage, forced labour and other ill-treatment, including sexual abuse (art. 16).

The State party should take all necessary measures to implement the current laws combating trafficking and provide protection for victims and their access to medical, social rehabilitative and legal services, including

counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigation into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes. The State party is strongly encouraged to strengthen the role of Indonesian diplomatic and consular missions abroad, in accordance with Presidential Instruction No. 6/2006, reinforcing the Citizens' Advisory Services, as well as its cooperation with countries receiving Indonesian migrant workers. The State party should ensure independent monitoring of terminal 3 of Jakarta international airport, including by civil society organizations.

Harassment and violence against human rights defenders

21. The Committee expresses its concern at information on a common pattern of harassment and violence against human rights defenders, corroborated by the Special Representative of the Secretary-General on the situation of human rights defenders in her report on her visit to Indonesia (A/HRC/7/28/Add.2) in June 2007. Such actions severely hamper the capacity of civil society monitoring groups to function. The Committee notes with satisfaction the sentence of 25 January 2008 of the Supreme Court convicting and sentencing one person for the murder of Munir Said Thalib to 20 years of imprisonment, but regrets that the instigators of this crime have not yet been brought to justice (art. 16).

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.

(...)

Lack of effective investigation and prosecution by the Attorney-General

25. The Committee is concerned by the absence of prompt, impartial and effective investigations into allegations of torture and ill-treatment by the Attorney-General's office, including with regard to cases presented by the National Commission on Human Rights (Komnas HAM), such as in the Wasior, Wamena (1997/1998) enforced disappearances or Trisakti, Semanggi I and Semanggi II cases (art. 12).

The State party should reform the Attorney-General's office to ensure that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality. In addition, the State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment. The State party should also publish, without delay, the reports of Komnas HAM investigations.

(...)

43. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25 above.

(...)
