



association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

## UN Human Rights Committee 108th Session (8-26 July 2013)

### **APT submission on Indonesia**

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**14 June 2013**

Alternative report from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2), 7 and 10 of the Covenant in relation to **INDONESIA**, whose initial report will be considered by the Committee during its 108th session in Geneva.

*The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva, working for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.*

*To achieve this vision we:*

- *Promote transparency and monitoring of places of detention*
- *Advocate for legal and policy frameworks*
- *Strengthen capacities of torture prevention actors and facilitate exchanges*
- *Contribute to informed public policy debates*

## 1. Summary

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

The APT encourages Indonesia to prioritize ratification of the Optional Protocol to the UN Convention against Torture (OPCAT) and establish an independent system of oversight for all places of detention. In the APT's view, an appropriately constituted and funded system would make significant inroads to reducing risks of torture and ill-treatment in Indonesia.

The APT further recommends that a coordinated national approach to training of all public-facing State officials (including the police, military and security agencies), and the criminalisation of torture, would serve to significantly reduce the risk of torture and other forms of ill-treatment in places of detention.

## 2. Background information on Indonesia

Torture and other ill-treatment in places of detention in Indonesia has been well-documented.<sup>1</sup> For example, the Committee against Torture and the Special Rapporteur on Torture have noted with concern the prevalence of torture in police detention, particularly as a means to extract a confession or information.<sup>2</sup> Risks are heightened in cases of security or military detention where detainees are denied procedural safeguards such as being brought before a judge in a timely manner, and being afforded access to a lawyer, doctor and family members.<sup>3</sup> The widespread problem of overcrowding in prisons, as highlighted in Indonesia's State Report to the Human Rights Committee,<sup>4</sup> can also often create conditions that may amount to ill-treatment, in violation of article 10(1) of the Covenant.

### 2.1. Low awareness on the absolute prohibition of torture and CIDT

The APT commends the Government of Indonesia on the introduction of positive initiatives which raise awareness amongst law enforcement officials of the absolute prohibition of torture and other forms of ill-treatment, such as developing pocket books, a related training curriculum, and conducting training for some officials. However, more comprehensive, coordinated and appropriately funded awareness raising strategies are needed in order to fully address the lack of awareness amongst front line law enforcement officials. This is most urgently needed in the context of

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<sup>1</sup> See, for example, UN Committee Against Torture, *Concluding Observations: Indonesia*, UN Doc. CAT/C/IDN/CO/2, 2 July 2008; Special Rapporteur on Torture, *Report on Visit to Indonesia*, UN Doc. A/HRC/7/3/Add.7, 10 March 2008.

<sup>2</sup> UN Committee Against Torture, *Concluding Observations: Indonesia*, UN Doc. CAT/C/IDN/CO/2, 2 July 2008, 10; Special Rapporteur on Torture, *Report on Visit to Indonesia*, UN Doc. A/HRC/7/3/Add.7, 10 March 2008. This issue has also been raised by the Human Rights Committee for this review: UN Human Rights Committee, *List of issues in relation to the initial report of Indonesia*, UN Doc CCPR/C/IDN/Q/1, 29 April 2013, 10.

<sup>3</sup> *Ibid.*

<sup>4</sup> UN Human Rights Committee, *Initial reports of States Parties: Indonesia*, UN Doc. CCPR/c/IDN/1, 19 March 2012, 167.

public engagement, where the risk factors for torture are most acute. Such contexts include police interrogation units, army and security forces, mobile police brigades and among militia forces.<sup>5</sup>

## **2.2. Lack of national independent system of oversight to prevent torture and ill-treatment**

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to reduce the risks of torture and ill-treatment in detention by opening up prisons, police stations, places of military detention, mental health institutions and all other places of detention to examination by independent oversight institutions. The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

The Indonesian government has committed to ratify the OPCAT in its current National Human Rights Action Plan 2009-14, and during its Universal Periodic Review before the UN Human Rights Council.<sup>6</sup> OPCAT ratification has also been recommended by the Committee against Torture.<sup>7</sup>

Indonesia has a number of existing institutions with some oversight over places of detention. However, each body operates with a different mandate to visit places of detention. Significantly, none have been established in accordance with the requirements for independence, or officially mandated to conduct regular visits and provide recommendations to reduce the risks of torture and other ill-treatment, in compliance with the system proposed by the OPCAT.

Oversight institutions could yet assist to significantly prevent further deaths and injuries in custody, as highlighted in the Committee's List of Issues.<sup>8</sup>

The APT welcomes current efforts by the Ministry of Law and Human Rights to engage relevant stakeholders in discussions about OPCAT ratification, and the establishment of the system of oversight described in the Optional Protocol. It is important that all authorities that are responsible for places of detention are actively engaged in the process in preparing for OPCAT ratification, and in particular, the Police, Army and Security Forces.

## **2.3. Lack of the crime of torture in the Penal Code**

The period of reform of the current Penal Code has been on-going for some time. However, torture is still not criminalized in the Indonesian Penal Code in a manner

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<sup>5</sup> UN Committee against Torture, *Concluding Observations: Indonesia*, UN Doc. CAT/C/IDN/CO/2, 2 July 2008, at 11.

<sup>6</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Indonesia*, UN Doc. A/HRC/21/7, at 108.

<sup>7</sup> UN Committee Against Torture, *Concluding Observations: Indonesia*, UN Doc. CAT/C/IDN/CO/2, 2 July 2008, at 26.

<sup>8</sup> UN Human Rights Committee, *List of issues in relation to the initial report of Indonesia*, UN Doc CCPR/C/IDN/Q/1, 29 April 2013, at 10.

consistent with requirements under the UN Convention against Torture.<sup>9</sup> The lack of a clearly defined legislative framework that prohibits, prevents, and punishes torture severely limits efforts to eradicate torture, and fails to send a clear and unambiguous message to State officials that torture is condemned, and will be punished severely with individual criminal liability.

### **3. Suggested recommendations**

In light of the background material above, the APT proposes that the Human Rights Committee make the following recommendations to the delegation from Indonesia:

#### **Articles 2 and 7**

- Indonesia should ratify the OPCAT without delay, and establish a national preventive mechanism in compliance with the requirements of the Optional Protocol.
- Indonesia should prioritise the criminalisation of torture in accordance with the obligations of the UN Convention against Torture as soon as possible.
- Indonesia should develop a coordinated, inter-Ministerial, and appropriately funded strategy for training government officials on the absolute prohibition of torture and other forms of ill-treatment.

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<sup>9</sup> UN Human Rights Committee, *Initial reports of States Parties : Indonesia*, UN Doc. CCPR/c/IDN/1, 19 March 2012, 105.