



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

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**List of issues to be considered during the examination of
the second periodic report of INDONESIA (CAT/C/72/Add.1)**

Article 1

1. According to information before the Committee, Indonesia has not yet amended its penal legislation in order to conform fully its definition of torture with the definition contained in article 1 of the Convention as the definition of torture of article 1 section 4 of Law 39/1999 on Human Right is not applicable to criminal offences other than “gross violations of human rights” (CAT/C/72/Add.1, para. 73), which is the sole competence of the Human Rights Court (article 104 of Law 39/1999). Please clarify whether perpetrators of individual acts of torture which have not been classified as “gross violations of human rights” have been prosecuted under this definition and this legislation.

(a) If so, please give examples of prosecutions, convictions and penalties applied by the Courts of General Jurisdiction as well as by the other courts of the Indonesian penal system. How many accused and convicted persons have been public authorities, including members of TNI or Police, and how many are “individuals” as cited in paragraph 21 of the State party report (CAT/C/72/Add.1).

(b) If persons have not been prosecuted under this definition, please provide the definition and legislative act under which perpetrators of acts of torture have been prosecuted and convicted and what were the penalties applied. Please indicate whether there has been any progress, or any timetable for adoption, of the draft Penal Code (CAT/C/72/Add.1, para. 22).

2. Please also provide detailed information on all cases of torture investigated and prosecuted by the Human Rights Courts under Law 26/2000 as well as number of indictments and convictions, and indicate the penalties applied to the convicted perpetrators. Please provide the legal or jurisprudential definition of “gross violations of human rights” (articles 1 (2) and 7 of the Law) as applied by the Courts and provide examples of the trials mentioned in paragraph 107 of the report (CAT/C/72/Add.1), including the sentences and penalties.

Article 2

3. How are the basic legal safeguards for detained persons (access to lawyer and doctor and right to inform a relative) implemented in the State Party from the outset of their detention? What legal provisions, if any, establish those guarantees? According to information before the Committee, the police may detain suspects without warrant and for a period up to 20 days (even more in some cases) without presenting them before a judge. Please provide detailed information on the *de facto* practice of detention of suspects by the police and Indonesian Armed Forces (TNI), including numbers and length of detention. Are persons detained by the police and TNI systematically registered and is there a central registry of detainees? Please provide information on the enforced disappearances (a) of a 16 year-old boy allegedly taken into custody in 2004 by the police, (b) of Mukhlis and Zulfikar, members of the local NGO Link for Community Development, and (c) of elementary school teachers Muhammad Amin Alwi and Hasballah, who were forcibly taken in 2004 by 10 armed men in military uniforms in Nagan Raya Regency.

4. Please provide detailed information on all cases of torture prosecuted by the Military Courts applying the Military Penal Code as well as number of indictments and convictions, and indicate the sentences and penalties applied to the convicted perpetrators. Under article 9 section (a) of Law 31/1997, Military Courts have the jurisdiction to prosecute military personnel regarding any acts, including crimes of a non military nature. Please report on plans to modify such provision, bringing the law in compliance with the State party's international obligations. Please explain on what specific charges the military personnel mentioned in paragraphs 38 and 39 of the State party report (CAT/C/72/Add.1) were prosecuted and what were the penalties for such acts.

5. According to documentation before the Committee, torture is widely used by police forces and military forces, especially in Papua and Aceh provinces, reportedly against many detainees. Sources claim that a climate of persistent impunity for the security forces exists, especially in those provinces, where most cases reportedly have not been investigated or the perpetrators have not been prosecuted or convicted, or where the alleged cases of torture adjudicated have been prosecuted as disciplinary or ordinary criminal cases and resulted in lenient sentences. Please provide information on the steps taken to establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into all allegations of torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials, as recommended by the Committee (A/57/44, para. 45 (b)). In view of the state of emergency declared in Aceh in 2003 and 2004, please explain whether measures have been taken to uphold the absolute prohibition of torture there and, if so, how they are monitored and enforced.

6. According to the State Party report (CAT/C/72/Add.1, para 8), since 2000, the Police have been separated from the Armed Forces. In principle, this would permit not only police independence from the military, but also accountability before the courts. However, the Criminal Procedure Code was also reportedly amended to prohibit prosecution of any criminal case not already subject to an official police investigation or inquiry, including cases against police officers. As a result, it is alleged that police are able to stall or end investigative or disciplinary cases against their officers. Please provide information on cases in which police been brought before non-military courts and found responsible for torture or ill-treatment.

7. According to information before the Committee, in Aceh, punishments for certain offences include flogging, or 'caning' carried out in public by persons who wear hoods. Reports have identified at least 15 such cases in 2006 and 88 cases in 2005. Does the State Party plan to adopt de facto and de jure measures to prevent such breaches of the Convention in its territory? Please provide statistical information on the sex and age of persons flogged, whether other punishments were meted out to such persons, and whether they have a capacity to register complaints against such abuses. Does the State party ensure its international standards prohibiting breaches of the convention apply to all local or federal parts of the State territory, and if so, what measures have been taken to combat such abuses? Please provide detailed statistical data on corporal punishment applied in any territory under the jurisdiction of the State Party (including offences for which such measures are applied, types of punishment, sentences, sex and age and number of convicted persons, etc.), including but not limited to Aceh.

8. Please clarify the precise jurisdiction of the Wilayatul Hisbah, the morality or religious police, the laws under which they are authorized and the evidentiary standards utilized in criminal and other cases. Also, please clarify how those recruited into such groups are trained, notably on the prohibitions on torture or cruel, inhuman or degrading treatment in conformity with the Convention. How do officials in the Wilayatul Hisbah relate, de jure, to ordinary police and are their actions subject to review by ordinary judicial authorities?

9. What measures have been taken to prevent and combat trafficking in the State Party? Please provide the relevant statistical data on the issue, especially the number of complaints, investigations, indictments, and conviction related to trafficking. According to information before the Committee, a new law on trafficking has been recently adopted. Please provide detailed information on it and indicate what are the expected results of such legislative measure and what implementing actions have already been taken.

Article 3

10. Regarding the provisions implementing article 3 of the Convention into domestic law, please clarify who are the competent authorities, what are the existing legal safeguards and the procedures for appeal, including whether these have suspensive effect, regarding the expulsion, return and extradition of persons to another state? Please provide detailed information on all decisions taken on extradition and other cases relevant to article 3 of the Convention as well as on the criteria for those decisions, including with regard to the case of Hambali and others associated with the 2002 Bali bombing.

11. Please provide detailed information on whether the State party has engaged or participated in any form in the so-called extraordinary renditions; include in your answer whether any investigation on this issue has taken place by branches of the Government or state agencies. Are there pending cases on this issue?

12. Please explain what measures have been considered by the State Party to determine its non-refoulement obligations under article 3 of the Convention with regard to the existing bilateral

extradition treaties Indonesia has signed? Under those treaties, has extradition ever been denied on grounds that a persons would be in danger of being subject to torture if extradite to the requesting State? What post-return monitoring mechanisms have been put in place?

Article 4

13. According to information before the Committee, international conventions are not self-executing in Indonesian law, but article 7 (2) of Law 39 of 1999 on Human Rights states that international human rights laws ratified by Indonesia become national law (CAT/C/47/Add.3, para. 53) and must be complied with (article 67 of this Law). Please clarify how this provision has been implemented and especially how the Convention has become part of the domestic legal system. Has it been applied directly by the courts? Please provide examples of judicial decisions. Does the Convention need to be further incorporated into domestic law? If so, which provisions still need to be incorporated? How is the national legislation harmonized with the Convention?

14. Please provide detailed information on current criminal provisions concerning offences such as attempted acts of torture, instigation or consent of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences. Please provide information on the number and the nature of the cases in which those legal provisions were applied as well as on the penalties imposed or the reasons for acquittal.

15. The long awaited draft penal code has not yet entered into force. Please explain this delay in its entry into force, considering that the State party's initial report claimed that it would "guarantee the promotion and protection of human rights". Please provide the exact definition of torture as well as the penalties for acts of torture of the draft code (in paragraphs 25 and 37 of its report (CAT/C/72/Add.1), the State party mentions different penalties). Although the new Penal Code has not been adopted, have specific measures been taken to adapt the current penal legislation to the human rights obligations Indonesia has subscribed, including the provisions of the Convention? For example, is article 185, paragraph 2 of the Code of Criminal Procedure, requiring complaints to be confirmed by two witnesses to prove rape, still in force and applied?

16. Does the State Party monitor sexual violence in conflict areas, as well as in the prisons or other places of detention, and if so, with what results? Have there been any prosecutions related to sexual violence, including rape, particularly in areas of armed conflict? Also, please provide information on the measures taken, if any, to prevent torture or ill-treatment of women in places of detention or confinement. Are women separated from men in all places of detention and prisons? Please provide statistical data on the number of complaints received and investigated and the measures taken to discipline or prosecute offenders.

17. In paragraph 39 (CAT/C/72/Add.1), the State party reports on a case in which members of a military patrol were accused of torture against three civilians, and provides a description of the prosecution and punishment meted out by the Military Court. Please clarify under what law the case was prosecuted and the perpetrators convicted? The Court found the three officers guilty and sentenced them to four months imprisonment and a fine. Please comment on how this punishment is in accordance with the gravity of the crime of torture as set forth in article 4 of the convention.

Similarly, the Committee understands that those convicted in the 2000 Apebura case were given administrative punishments. Please clarify how these comport with the obligations under the Convention. What happened after the convicted persons completed their punishment? Were they permitted to return to their posts or transferred elsewhere? Please, provide detailed information on the sentence applied to the law enforcement officers of Belu, in East Nusa Tenggara, who tortured and murder Yupiter Manek in December 2005. Is it correct that the perpetrators were sentenced from 21 to 14 days imprisonment? How does such a sentence conform to the obligation of the State party, under article 4 of the Convention?

18. How has Law 23/2004 on the Elimination of Domestic Violence been implemented and what have been the practical results of its entry into force? How many complaints under this law have been presented? Please, indicate which measures have been adopted to sensitize and train law enforcement personnel and other relevant staff to recognize, and to ensure that they take preventive measures, as appropriate, and prosecute those responsible.

Article 5

19. Please indicate any legislative or other measures taken to implement each provision of article 5 of the Convention. Under the legislation in force, are acts of torture considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or victim? Please provide any relevant examples.

Articles 6, 7, 8 and 9

20. When Indonesia refuses to extradite to another country a person suspected of acts of torture, will a criminal case be opened in Indonesia? Have there been any such cases in the practice? The State party cites, in paragraphs 50 and 51 of its report (CAT/C/72/Add.1), the “Tanjung Priok” and the “Abepura” cases. Please provide detailed information on the exact prosecution charges and the penalties applied in those cases and how they conform to the principle *aut dedere aut judicare*.

Article 10

21. Please provide detailed information on training programmes for the persons enumerated in article 10 of the Convention and, in particular, on the training of judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect physical and psychological *sequelae* of torture. Regarding the prevention of torture and ill-treatment, what specific training has been provided to the Police and the TNI? Is there gender-sensitive training? Is there any training into the absolute nature of non refoulement of article 3 as well as on the non derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment?

22. According to information before the Committee, there is “endemic and systematic corruption within the administration of justice, in particular, within the judiciary”, “the incidence of corruption, collusion, and nepotism in the Public Prosecution Service is high” and there is “no law applicable to the organization of the legal profession”. Considering Indonesia’s current transition to a democratic regime committed to uphold the rule of law and human rights, please provide information on the

measures taken to combat and prevent corruption in the judiciary and in the Public Prosecution Service as well as to regulate the legal profession. Please provide examples of cases tried, and their results.

23. What specific measures have been taken to train the police, prosecutors and judges to prevent, detect, prohibit and prosecute those responsible for the specific issues of sexual violence against adults or children? Has the State party considered the establishment of special police stations or units to address such matters?

Article 11

24. Please provide information regarding the interrogation rules, instructions and methods currently existing in Indonesia. Please explain the mechanisms in place for the inspection of prisons, police station and other places of detention. Has an independent authority been established, as recommended by the Committee in its concluding observations on the State party's initial report (A/57/44, para. 45 (b)), to receive complaints from inmates in prisons and what is the procedure to deal with such complaints. Is any non-government organization able to conduct periodic visits to places of deprivation of liberty? Has Komnas Ham or another governmental organization been provided with the authority to conduct such visits and take appropriate follow up action?

Article 12

25. While noting the inquiries mention in paragraphs 72 to 81 and paragraph 127 of the State party report (CAT/C/72/Add.1), the Committee understands that the National Committee on Human Rights (Komnas HAM) has encountered difficulties in the discharge of its mandate. Please provide statistical data on its activities, especially complaints received related to the Convention, inquiries completed and their outcome, and whether they were discontinued or handed over to the Attorney General for further investigation and prosecution. How does Komnas HAM challenge a decision by the Attorney General not to publish its report or prosecute a case? How has the Government followed up in response to the findings of Komnas Ham in the cases of Trisakti, and Semanggi I and II? Please provide information on the outcome of the cases mentioned in the report: (a) violence against students of the Universitas Muslim Indonesia in Makassar, (b) killings in Wasior in 2001-2002, and (c) in Wamena in 2003 in Papua province. What measures have been taken to reinforce the independence of this institution, in line with the Paris Principles, as recommended by the Committee in its previous concluding observations (A/57/44, para. 45 (d))? What other measures have been implemented to ensure its objectivity, effectiveness and public accountability? Can Komnas Ham recommend compensation, and can it take cases to court, if Attorney General does not prosecute them?

26. What has been the result of the complaints against the Brimob police in the Abepura case of 2006, in which 24 people were allegedly tortured in connection with a protest that resulted in killing four police officers and an intelligence officer? Was an investigation ever undertaken into the actions of the police officers alleged to have been involved in the torture of the 24 people? What has been the result?

27. According to the State report (CAT/C/72/Add.1, paras 76 and 92), the Truth and Reconciliation Commission, established by Law No. 27/2004, has the mandate to investigate gross human rights violations and to compensate victims. Please provide information, including statistical data, on its activities, especially how many investigations have been completed, and their outcome, as well as on any compensation, restitution or rehabilitation granted to victims.

28. Please provide updated detailed information on the results of the *Ad Hoc* Human Rights Courts for Timor-Leste, especially the number of investigations, prosecutions and convictions, including the penalties applied. Have the temporal and geographical limitation to the jurisdiction of the Court been eliminated? If not, please explain why. According to information before the Committee, intimidation of Timorese witnesses appearing before the *Ad Hoc* Human Rights Courts for Timor-Leste was common, including in the courtrooms. What special protection mechanisms have been granted to Timorese witnesses? Considering that Timorese witnesses have refused to go to Jakarta on grounds of lack of security, what means have been used to collect their testimony in Timor-Leste? With what results? How many United Nations staff (or former United Nations staff members) have been requested to present their testimony to the Court and how many have testified in fact?

29. Please also indicate what have been the practical results of cooperation with the Serious Crimes Unit and the Special Panels Courts in Timor-Leste, as full cooperation was recommended by the Committee in its previous concluding observations (A/57/44, para. 45 (m))? What measures have been taken to find and extradite to Timor-Leste the Indonesian officials indicted for crimes against humanity to be prosecuted before the Special Panel Courts of Timor-Leste? How many of those indicted suspects have been extradited to Timor-Leste?

30. According to numerous well documented public reports, gross and systematic human rights violation occurred in Timor-Leste before 1999. Please indicate the measures taken to investigate those human rights violations?

Article 13

31. Please provide data regarding results of complaints and investigations of torture and other forms of cruel, inhuman or degrading treatment or punishment, especially during detention by police forces or TNI, as well as in prisons and other place of deprivation of liberty (CAT/C/72/Add.1, paras. 82 to 87), as recommended by the Committee in its previous concluding observations (A/57/44, para. 45, (p)). Please disaggregate the data by, inter alia, gender, ethnic group, geographical region, type and location of detention.

Article 14

32. What measures have been taken to address the urgent need for compensation and rehabilitation of victims of torture in Indonesia, in order to implement the Committee's recommendation (A/57/44, para. 45, (n))? Please provide statistical data regarding compensation and rehabilitation for victims of torture (CAT/C/72/Add.1, paras. 88 to 94). Please provide information on the procedures in place to obtain rehabilitation and compensation for victims of torture and their

families and if those procedures are also available to non-nationals. What rehabilitation programmes currently exist for victims of torture in Indonesia?

Article 15

33. How is the provision in article 15 of the Convention prohibiting the use of any statement obtained as a result of torture as evidence in any proceedings, except against the alleged torturer, implemented in practice in the State Party? Please provide examples of any judicial cases where the courts have declared statements inadmissible on the ground that they were obtained coercively.

Article 16

34. According to information before the Committee, violence against children, including corporal punishment as well as neglect and abuse, especially sexual abuse and exploitation and trafficking, are persistent in the State Party. The criminal responsibility at eight years old and detention with adults as well as East Timorese children separated from their families are also factors favouring ill-treatment of children. Please, provide information on the measures taken to effectively protect children from mal-treatment, especially in childcare institutions and detention centers. What have been the practical effects of Law 23/2002 on Child Protection (CAT/C/72/Add.1, para. 27)? What are the objectives and results achieved so far by the Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children?

35. According to information before the Committee, 85 per cent of all juveniles coming before the courts are sentenced to terms of imprisonment and most of them are not segregated from adults during pre-trial detention and sentencing period due to the lack of space in detention facilities as well as to the lack of implementing legislation. Apparently children are often ill-treated during their detention, including through humiliation in public. What measures is the State Party taking to prevent such practices? Has the Independent Commission for the Protection of Children been established, as provided by the Child Protection Law No. 23/2002? What specific measures have been taken to train the police, prosecutors and judges on the specific issues of juvenile delinquency and justice?

36. According to information before the Committee, Indonesians migrant workers, especially female domestic helpers, have been abused by Indonesians recruiting companies and/or have been put in situations that impact negatively on the enjoyment of their human rights while abroad, including debt bondage and forced labour, which often leads to intimidation, torture or other ill-treatment and labour related abuses, including sexual abuse. Please provide information on ANY implementation of the recommendations of report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24/Add.3), especially regarding the monitoring and regulating of recruitment companies, the imposition of adequate penalties for the violation of regulations by those companies, the awareness raising campaigns on the situation and rights of migrants workers and the education campaigns for workers and recruiters, the creation of legal aid, the mechanisms to receive complaints and to prosecute perpetrators for human rights violations as well as the training of Indonesians consulates abroad to identify and prevent such abuses and to protect the rights, of migrant workers to be free from such abuses. What have been the practical effects of Law 13/2003 on Labors and Law 39/2004 on the Placement and Protection of Migrant Workers (CAT/C/72/Add.1, para. 27)?

37. According to information before the Committee, human rights defenders conducting peaceful and legitimate activities of advocacy, monitoring and/or reporting human rights violations have been harassed as well as prevented by the police, military and intelligence agencies from exercising their freedom to assemble, demonstrate or associate freely as well as their freedom of movement. What measures has Indonesia taken to protect and prevent such harassment and violations specifically in accord with the recommendations of the Special Representative of the Secretary General on human rights defenders (A/HRC/7/28/add.2, para. 90)? What measures recommended by the Special Representative of the Secretary General on human rights defenders have been implemented? What mechanisms are in place, and have been used, to investigate those acts from public entities? Please provide data on complaints, investigations, prosecutions and conviction related to such acts. Detailed information on the latest stage of the investigation and prosecution of the murder of Munir Said Thalib should also be provided. Additionally, please provide information on the attacks on human rights defenders from west Papua including the chairperson of the Papuan representation office of Komnas Ham, Albert Rumbekwan on 24 September 2007, following the visit of the Special Representative on Human rights Defenders in June 2007. What is the status of any investigation or prosecution in connection with it?

38. Please provide information on violence against the Ammadiya community, especially in Lombok and West Java, in September and October 2005, including on the investigation of alleged police inaction to provide security to the victims. Where there any prosecution and conviction? Please, also provide detailed information on the investigation on the incidents in the Maluku and inter-communal violence between Muslims and Christians in the Poso region of Central Sulawesi Province.

39. According to the special representative on internally displaced persons (see E/CN.4/2002/95/Add.2), the police and military forces have often used excessive and disproportionate force against ethnic and religious groups or persons, in particular in Aceh, Papua, the Maluku and West Timor provinces. Please provide information on the specific measures taken to combat and prevent such actions by TNI and the police forces on the ground, including training and education programmes. Please explain whether and how such allegations are investigated and prosecuted, and by which authorities. Are suspects routinely suspended from their duties during investigations? Please provide any concrete examples of such cases.

Other issues

40. Please provide information on the legislative, administrative and other measures the State Party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice. Please indicate which specific measures have been adopted following the Bali bombing? Are there any special measures in force in Aceh, Papua, Maluku, or any other provinces? In this respect, the Committee would like to recall Security Council Resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) all of which reiterate that States must “ensure that any measure taken to combat terrorism comply with all their

obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.” Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints. Please confirm that there are no secret detention facilities in the State party.

41. Is the State party considering making the declaration under articles 21 and 22, recognizing the competence of the Committee to receive and consider communications?

42. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?
