



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

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## COMMITTEE AGAINST TORTURE

Fortieth session

### SUMMARY RECORD OF THE 820<sup>TH</sup> MEETING

held at the Palais Wilson, in Geneva,  
Tuesday, 6 May 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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#### Second periodic report of Indonesia

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*The meeting was called to order at 10:05 a.m..*

CONSIDERATION OF THE REPORT SUBMITTED BY THE STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Second periodic report of Indonesia (CAT/C/72/Add.1; CAT/C/IDN/Q/2 and written responses to questions in the list of items for consideration (unofficial document distributed in English only)

1. *At the invitation of the Chairperson, Mr. Jenie, Mr. Puja, Mr. Cornelis, Mr. Harkrisnowo, Dr. Abbas, Mr. Muzhar, Mr. Sutadi, Mr. Effendy, Mr. Soeparto, Ms. Syukrie, Mr. Masudi, Mr. Lyong, Ms. Firman, Mr. Mardjono, Mr. Sitepu, Ms. Soedewo, Mr. Rambe, Mr. Muchti, Mr. Roembiak, Ms. Sinaga, Mr. Sunaryono, Mr. Day, Ms. Diansari, Mr. Gofur, Ms. Marpaung, Mr. Firman et Mr. Adnan (Indonesia) took places at the Committee table.*

2. MR. JENIE (Indonesia) underscored that the makeup of his delegation attested to the importance which his government attached to active dialogue with the Committee and to its will to implement the Convention Against Torture in full. He said that Indonesia, one of the largest democracies and the largest country in the Islamic world in terms of the number of inhabitants, now had a very decentralized system of government: 436 of its cities now had their own local committees in charge of monitoring the implementation of the National Human Rights Action Plan, one of the most important tasks of which was to ensure that the population had recourse in the event that its rights were violated. The program of reforms which had been undertaken by Indonesia to redress past injustices, protect the state based on the rule of law, and to eliminate corruption was progressing and the many amendments to the Constitution of 1945 introduced between 1999 and 2002 had strengthened the process of democratization and the protection of human rights. A complete reexamination of the laws and regulations had been carried out in order to remove all texts which were incompatible with the amended Constitution and international standards, and new laws had been enacted to consolidate this process. Three important judiciary institutions had been established: the Constitutional Court, the Legal Commission, and the Office of the Mediator, which, by working together, would greatly contribute to Indonesia's implementation of the Convention.

3. The right not to be tortured was expressly set out in Article 28 of the Indonesian Constitution, which stipulated that the Constitutional Court should continuously monitor to ensure that this principle was respected by means of amendments, administrative decisions, interpretations of case law, etc. As for the Legal Commission, it had been empowered to undertake significant reforms, in particular to prevent corruption among the judicial authorities. Thus judges who were candidates for the Supreme Court would already have had to have worked on the issue of the implementation of human rights instruments and, specifically, the Convention. Another mission of the Legal Commission was to strengthen the dignity and authority of judges at all levels of the judicial system. Academics and civil society organizations have had the opportunity to publish their opinions on the courts' decisions in the publications of the Commission. The Commission has also played an important role in the admissibility of evidence. In Indonesian law, evidence has been declared admissible provided that it was obtained in a public process, and the Commission should have rejected any evidence which was not obtained in conformity with the recognized human rights standards and, specifically, with the provisions of the Convention, without compromising the independence of

the judges. Finally, the Commission has ensured that the State has met the obligation incumbent upon it to provide the services of a lawyer to any suspect at risk of being sentenced to more than five years of prison.

4. Another fundamental change was the establishment of a national Office of the Mediator, which had been tasked with monitoring and providing external supervision of the actions of the public services and the legal authorities, and specifically with receiving complaints. The office had been monitoring the penitentiary establishments for a year, and this would become systematic. The monitoring had demonstrated that there were still numerous and serious difficulties to be overcome, particularly owing to financial constraints.

5. The recent changes to the Constitution had created the desired structural balance among the executive, legislative and judicial powers. Specifically, the elected Parliament was actively working to improve the implementation of international human rights instruments that had been ratified. As part of the process of democratization and decentralization, a series of elections, namely parliamentary, presidential and local, had taken place over these past few years under conditions deemed by international observers to be free, democratic, fair and peaceful. The electoral process has been progressing at the district and regional levels, and the population was proving to be increasingly attached to democracy and to fundamental rights and freedoms.

6. The policy of regional autonomy which had been in place since January 2001 had made possible a significant improvement in services provided to the public, including in the promotion and protection of human rights. The regional administrations were then capable of responding to the expectations of the population and of ensuring that their rights and, specifically, the relevant provisions of the Convention, were respected. Elected directly by their constituents, the regional administrations were in the avant-garde with respect to safeguarding these rights. Pursuant to Law No. 32 of 2004 on regional autonomy, the governors of districts and other local officials have now been elected by direct suffrage, and by the end of 2009, some 500 local governments would have been elected in this manner. The local collectives were capable of ensuring, both in legislative terms and at the executive level, that their interests and needs were being taken into consideration. Thus torture and other similar practices would be eradicated from the bottom up, from the local level all the way to the highest echelons.

7. Thanks to these reforms and to the establishment of democracy, the Indonesian Government had been able to settle conflict situations affecting various regions, and specifically Aceh. This province had entered a promising period marked by the signing and implementation of a peace agreement; all of the parties present had been participating in the process of reintegration and reconstruction following the devastating tsunami of December 2004, a time when the international community demonstrated its solidarity. Development efforts had intensified in the provinces of West Papua and Papua; priority was being given to food security and to the development of the local economy, as well as to health, education, infrastructure development and measures to benefit the indigenous peoples. The President encouraged the concerned regional governments to increase its efforts in these areas.

8. The Indonesian Government was committed to respecting human rights and international law in its fight against terrorism and other forms of transnational crime. Furthermore, the perpetrators of terrorist acts who had been arrested

benefited from a standardized procedure, custody conditions which meet recognized standards, and the *habeas corpus*. While fighting terrorism, the authorities had also been addressing its causes, such as poverty, injustice and extremism, and they wished to contribute to peace and security in the region and around the world by cooperating with other countries in this fight.

9. The implementation of the Convention required that a fair balance be struck between promotion and protection activities. It would be difficult to reduce the number of cases of violations of the Convention without more vigorous promotional actions, but such actions cost more and were more sensitive to implement than protection activities. It was imperative for all of the concerned parties to work together in synergy, and there also had to be investment in technical cooperation.

10. In a democratic society, freedom of the press and the media was a prerequisite for promoting and protecting human rights. The Indonesian media was among the freest anywhere and the majority of large, national newspapers had columns dedicated to human rights, and therefore no allegation of torture or of a violation of the Convention would have gone unnoticed. Moreover, television programs were regularly devoted to public debate on human rights issues, including suspected cases of torture by State agents. Thus it was not an exaggeration to say that, through the media, the Government had successfully put into place control mechanisms for use by the public. In general terms, it attached great importance to partnerships which had been established with civil society organizations with a view to promoting human rights in the country.

11. It was true that the Indonesian Criminal Code in force at this time was still the one established by the Dutch authorities in 1915, as revised and modified through 1976. This code was considered at the time to be one of the main obstacles to Indonesia's full implementation of the Convention and it was urgent for the definition of torture to be incorporated into the revised Criminal Code. The Indonesian Government was well aware that the Convention stipulated that States Parties were obliged to prohibit, prevent and punish torture and ill-treatment everywhere where people were detained, be it in prisons, hospitals, schools, institutions for children, the elderly, mentally ill or disabled persons, and in all other contexts where the State's absence promoted and exacerbated the risks of cruelty being inflicted by private entities. For this reason, it was desirable for constructive dialogue to be established between the Committee and the States Parties in order to assist the latter in better implementing the Convention. Indonesia was firmly resolved to work in this spirit, and two new important laws had just been enacted, namely Law No. 13/2006 on the protection of witnesses and victims, and Law No. 12/2007 on the trade in human beings; they would have a direct effect on the implementation of the Convention in Indonesia.

12. Ms. GAER (Rapporteur for Indonesia) thanked the delegation for its written responses and recalled that Indonesia's initial report (CAT/C/47/Add.3), which had been reviewed by the Committee in 2001, had focused primarily on legal aspects of the situation in the country: The Committee requested that information be provided to it in other areas as well. The State Party had indeed undergone significant changes since the Convention had been signed and the most recent report attested to the fact that there was follow-up on the reform efforts. The Commission's mission, however, was to ensure not only that the laws, but also the practice, conformed to

the stipulations of the Convention and, in this respect, the examination report raised more questions than it provided responses.

13. As regards the implementation of the first article of the Convention, the Committee was still attempting to verify that the States Parties did indeed qualify acts of torture as criminal offenses. The Indonesian legislation appeared to contain a weakness since, apparently, prosecution could be initiated only against persons who were guilty of ill-treatment, whereas the Committee had been of the opinion that in the case in point, the notion of ill-treatment did not cover the that of torture; Laws Nos. 39/1999 and 26/2000, as important as they may have been, did not appear to have resolved the issue. In fact, neither prosecution nor sentencing had occurred with respect to acts of torture within the meaning of the Convention since, by virtue of Law No. 39/1999, flagrant human rights violations had to have been identified in order for torture to have been the subject of legal action, individual acts not having been taken into consideration. Moreover, the Special Rapporteur on Torture had himself also raised this issue.

14. The Committee had asked the State Party to provide examples of prosecutions and sentencing pursuant to Law No. 39/1999. The information which had been provided by the delegation in this respect was puzzling: between 2000 and 2004, approximately 330 military personnel and police officers had been prosecuted for ill-treatment, and between 2005 and 2007, after the army corps and the police had been separated, 362 military servicemen had been prosecuted and sentenced for ill-treatment and were serving their sentences at that time. How was it that they had all been found guilty, and had they received a fair trial? And why were people who had been sentenced in 2005 to a few months' imprisonment still incarcerated? Furthermore, the figures which had been cited in the delegation's response were general and provided no information about the number of sentences relating to acts of torture. Given that the army and the police had been distinct entities for several years by then, it would have been surprising if 362 cases of ill-treatment had been the subject of legal action within the army and none at all within the police. Indeed, many cases attributed to police officers had been described in great detail by the Special Rapporteur on Torture and by various organizations.

15. In response to the second question posed with respect to Article 1 of the Convention, the State Party had indicated that "flagrant human rights violations" included genocide and crimes against humanity: in the cases of Tanjung Priok and Timor-Leste, which had been cited as examples in the written responses, all of the interested parties had been found not guilty: it would be useful to learn what reasons had been behind this decision. In all the other cases of this type which had been mentioned, it appeared that no one had ever been found guilty of torture. The principle of a fair trial was certainly very important, but in the face of so many allegations of torture, of which so few had been subject to legal action and none had resulted in a guilty verdict, one could ask whether there was an element of the Indonesian system which was preventing acts of torture from being punished.

16. As regards Article 2 of the Convention, it seemed that the fundamental guarantees for detainees were not sufficient. In the report on his mission in Indonesia (A/HRC/7/3/Add.7), the Special Rapporteur on Torture had expressed a certain number of concerns with respect to these guarantees and concluded that torture was a common practice in police commissariats in Jakarta and in other urban areas of Java, including Jogjakarta. Indonesia had indicated in its written responses

that daily and monthly registers of detainees had been kept in the detention centers, but the delegation could indicate if this was the case in all detention centers, including police stations or military installations.

17. As regards the fate of two teachers said to have been abducted by force in 2004 by 10 armed men wearing military uniforms in the district of Nagan Raya (question 3), the State Party had indicated that the concerned parties, Mohammed Amin Alwi and Hasballah, had been among the victims of acts of genocide perpetrated by the Movement for a Free Aceh (GAM). Should the Committee have concluded that these disappearances had been attributable to this armed group and that the Indonesian Government bore no responsibility? The delegation could perhaps clarify the issue and, specifically, indicate whether the investigations of these disappearances had been expedited.

18. The report stated that several cases of torture had been heard by the courts and that in 2003, 12 military personnel from the 301st infantry battalion (*Yonif*) of Prabu Kiansantang, who had been accused of having tortured civilians, had been acquitted by military tribunal 01 of Banda Aceh and rejoined their military units. It would be appropriate to know why the concerned persons had not been found guilty. The written responses indicated that three other members of the army had been tried before the military tribunal 01 of Banda Aceh on the basis of Articles 351 1) and 55 1) of the Criminal Code and that they had been found guilty of acts of violence committed collectively and sentenced to imprisonment for four months and twenty days. These were very light sentences which were not proportional to the severity of the acts; it should also be known whether the concerned parties had been allowed to rejoin their military units after having served their sentences.

19. The State Party asserted that the Special Rapporteur on Torture had not identified any generalized practice of torture by the police or the army in Papua New Guinea, but in his report, the Rapporteur had cited multiple examples of excessive use of force by the mobile brigade. The Special Rapporteur also mentioned information indicating that new arrivals to the Abepura prison had been systematically subjected to beatings. He was glad that the new director of this establishment had taken measures to stop this practice, but the Committee wanted to know if the Government had undertaken to conduct investigations. More generally, the delegation could perhaps indicate what measures had been taken since the Special Rapporteur had visited the country. Had a mechanism for complaints been put into place, or did the Government consider that the investigations conducted by the penitentiary services or by the mediator had been sufficient? It would also have been good to know whether the State Party planned to increase the access of the representatives of the National Human Rights Commission (*Komnas*) or of non-governmental organizations to the prisons and to authorize unexpected visits, which the Special Rapporteur had not been permitted to conduct during his mission. A few weeks before, Indonesia had announced that it would ratify the Optional Protocol to the Convention Against Torture; the delegation could have perhaps specified the date when the ratification was planned or when a national mechanism for the prevention of torture would be put into place by means of which unexpected visits to detention centers could be authorized.

20. The State Party had indicated that after the separation of the police forces and the Indonesian army in 2004, measures had been taken to subject the police officers to independent monitoring. The Committee wished to know what procedures had

been established to guarantee that the police officers provided an account of their acts and, more specifically, what body was in charge of investigating the acts of violence allegedly committed by the police officers.

21. Information indicating that whipping or beating with a cane had allegedly been authorized in certain regions to punish the perpetrators of certain offenses was of particular concern. The delegation said that these practices were explained by decentralization. It was particularly important, however, to ensure that within the framework of such a process, the decentralized authorities respected the national laws as well as the provisions of the Convention Against Torture. It was said that more precise information on the measures taken to ensure that local regulations (*Qanuns*) conformed to the provisions of the Convention would be useful.

22. A certain number of questions had arisen with respect to the *Wilayatul Hisbah* (the morality or religious police). Thus the Committee wanted to know if the members of this group received training on the provisions of the Conventions, specifically on the prohibition of torture, and what authority was responsible for monitoring it. It also wanted to have more precise information on the scope of competence of the *Wilayatul Hisbah* to receive the population's complaints relating to violations of sharia law, and it wanted to know whether disciplinary measures had already been taken against certain officials who had been said to have abused their positions. As regards the fight against trade in human beings, the delegation was invited to specify whether persons sentenced under documents relating to such trade had likewise been found guilty or sentenced on the basis of Articles 351 to 358 of the Criminal Code directed at ill-treatment.

23. With respect to Article 3 of the Convention, Ms. Gaer asked if the question of the illegal transfer of persons had been subject to inquiry and whether the Indonesian Government had already rejected a request for extradition by invoking the principle of non-refoulement.

24. As regards Article 4 of the Convention, Ms. Gaer asked whether the new Criminal Code which, as Indonesia had indicated during the review of its initial report in 2001, should have enabled it to respond to the Committee's concerns, had entered into force or whether it could be hoped that it would do so in the near future; perhaps it would be possible to envisage enacting, without further delay, the draft provisions relating to the definition of torture so as to save time. According to the information which had been provided by the State Party, the Criminal Code contained a chapter on offenses committed by persons with a high level of responsibility; could the delegation indicate whether anyone had been charged and sentenced on the basis of these provisions? It should also have specified what provisions of the Criminal Code had formed the basis for the prosecution of the seven military personnel involved in the assassination of Mr. Man Robert in Sumatra. These servicemen had rejoined their military units; one wondered whether there had been a change in the law or in practice. Specifically, it should have been made known what happened if an individual who had been found guilty of torture had been removed from the staff list or whether, at the completion of his sentence, he could resume his service. The question was important given the information received by the Committee which mentioned serious acts which had been perpetrated first in Timor-Leste (before independence) and then in the province of Aceh, and, more recently, in Papua New Guinea. In fact, a certain number of army personnel with a high level of responsibility had served or were serving in each of

these three regions. Had these high level personnel been charged with ill-treatment, and had investigations been conducted before the concerned persons had been posted to the military commands of other regions? Was it possible to establish a link between their presence in the above-mentioned regions and the increase in acts of violence which had been reported to have been committed by military personnel posted in these various regions?

25. With respect to rape, the old criminal procedure code had contained an article stipulating that a complaint should be confirmed by two witnesses in order to prove rape; it should have been made known whether this provision also existed in the new Code. Statistical data on legal action initiated for rape would have been very useful. The same was true for sexual violence in the province of Aceh during the armed conflict. In its written responses, the State Party indicated that in the case of emergency, body searches on women could be carried out by the members of the *Bhayangkari*, that is to say, the wives of the members of the Police Association. The Committee wished to know whether they had special training and how often they were called upon.

26. The State Party indicated with respect to the Abepura affair that three military personnel had been found guilty of ill-treatment and had been sentenced to four months of imprisonment. Ms. Gaer wished to know whether these were the cases which had been referred to by the State Party in paragraph 39 of its report, whether the concerned persons had rejoined their military units after having served their sentences, and whether it was standard practice for military personnel found guilty of such acts to be authorized to rejoin their units. According to the information which had been provided to the Committee by NGOs, only two military personnel had been charged in the Abepura affair, and both had been acquitted. In fact, in its written responses, the State Party had indicated that 16 people, namely 7 civilians and 9 military personnel, had been brought to justice and that they had all received prison sentences ranging from six to fourteen months. Consequently, more details would be welcome.

27. Ms. Gaer thanked the delegation for its information on family violence and wished to know whether measures had been taken to ensure that the judiciary personnel in charge of handling these cases received appropriate training on the applicable legislation and on the means for detecting this type of violence, and to ensure that the victims receive sufficient care. She asked whether complaints of family violence had already been submitted and whether sentences had been handed down. If that was the case, she said, more details with respect to the sentences awarded would be welcome.

28. As regards Article 5 of the Convention, the State Party indicated in paragraph 41 of its report that the human rights tribunals were authorized to investigate and hand down verdicts on flagrant human rights violations committed by Indonesian nationals outside of Indonesian territory and that the principle of universal jurisdiction indeed existed in accordance with Law No. 26/2000. The Committee wished to know whether any measures had been taken against people residing in Indonesia at the time who may have taken part in the massive human rights violations which had been carried out in Timor-Leste in 1999. Interpol had issued an international wanted persons notice in view of the extradition of a certain number of these criminals. Would Indonesia, as a member of Interpol, hand over those who are on its territory?



29. With respect to Articles 6, 7, 8 and 9 of the Convention, the Committee wished to know whether the investigation of the acts of intimidation against people who testified before the special human rights tribunals for Timor Leste (question 28) had resulted in any sentences. It also said that more details would be useful with respect to the means which had actually been implemented in order to assist the authorities in Timor-Leste in handling the serious human rights violations which had been committed.

30. The non-retroactivity of the laws which had been established by the second amendment to the Constitution hindered the ability to shed light on human rights violations committed before the law on human rights had been adopted. According to a article published shortly before in the *Jakarta Post*, some 500 retired army generals and police officers had formed a coalition to protest against the investigations conducted by the National Human Rights Commission (*Komnas Ham*) of violations committed in the past, and they had called for the dismissal of Commission members on the basis of the abuse of authority. The article had indicated that the Indonesian President had made a public statement in support of the Commission's activities and had invited all of the governmental institutions to assist the Commission in conducting its investigations. It was suggested that perhaps the delegation would like to react to this information. Specifically, it could indicate whether cooperation with the Commission had, in fact, been established and whether a strategy had been decided upon with respect to the handling of past cases of human rights violations when the applicable law entered into force.

31. In its response to question 37 with respect to the *Munir* affair, the State Party indicated that the alleged murderer of Mr. Munir had been found guilty and sentenced to twenty years of imprisonment, but according to other sources, he had been sentenced to only two years of imprisonment and acquitted of the murder charge by the Supreme Court. She said that explanations would be welcome, as would be information on any proceedings initiated to prosecute other persons suspected of involvement in the plot against Mr. Munir.

32. In response to question 29 concerning the special administrative bodies in Timor-Leste, the State Party had responded that since it did not recognize the Committee's competence to know petitions from individuals, it did not consider itself capable of providing the requested information to the Committee. This objection was not admissible because the questions had been asked in the framework of the review provided for by Article 19 of the Convention rather than Article 22. She said that it would be useful to hear the delegation's explanations in this regard.

33. The Committee wished to know how the State Party guaranteed the right to the assistance of a lawyer and whether it planned to extend the mandate of the National Human Rights Commission to this aspect of legal guarantees or to establish other commissions which would be in charge of ensuring the right to defense, more specifically through the organization for jurisdictional assistance.

34. Ms. Gaer wondered about the applicability to individual cases of the two legal texts containing provisions which prohibit torture and provisions on legal protection mechanisms. She also wished to have greater details on the scope of competence of the *Komnas Ham* (National Human Rights Commission), specifically as concerns prison visits.

35. Among the other issues of concern which required particular attention, Ms. Gaer mentioned violence against women, trafficking in women and children, and incitement to violence against religious communities.

36. Mr. GROSSMAN (Co-Rapporteur for Indonesia) asked whether measures had been taken to follow up on the Special Rapporteur's recommendation that torture be precisely defined and established as a criminal offense and whether, to this end, a calendar had been set. He also wished to know whether the memorandum of agreement dated 6 April 2000 on legal and judiciary issues and human rights issues was legally binding or, in other words, whether the agents of the State who did not cooperate could be punished and if so, in what way. If this was not the case, he wanted to know, what effect does this memorandum have? Also with respect to mutual legal assistance, the question arose whether Indonesia recognized the principle of universal jurisdiction and what measures had been taken to date to prosecute or extradite perpetrators of international crimes committed in Timor-Leste.

37. Numerous sources had mentioned the excessive use of force by members of units of the mobile brigade. He said that in this regard, it would be useful to know more specific details about the financing of these paramilitary units and about the organization, duration and content of their training; it should be indicated who provided the training, whether it included information on the provisions on torture and concrete examples, and whether the training of members of the Indonesian Armed Forces (TNI) included a unit on international human rights standards, including the prohibition of torture and a presentation of cases of persons who had been punished.

38. It was indicated that the maximum duration of police custody authorized by the Criminal Procedure Code is sixty days. Despite being normally reserved for certain particular cases, this provision appeared to have been applied frequently. Thus He said that it would be good to re-specify under what particular circumstances the application was authorized and what jurisdictional control mechanisms existed. He said that even more importantly, the delegation could describe the practice by citing figures and specific examples and by indicating whether the measure had ever been contested and, if so, what the result had been. There was also a desire to know whether military detention was subject to jurisdictional control, whether or not there had been complaints of inhuman or degrading treatment during such detention, and whether there had been any prosecutions or sentencing.

39. It appeared that in certain penitentiary establishments, there are very few female staff members. Given that it is essential for detainees to be supervised by women, it was asked whether measures had been taken to correct this situation and, furthermore, whether there were independent mechanisms for supervision and investigation of cases of sexual harassment in prison.

40. Citing recent events, Mr. Grossman asked for greater details on the reasons why Johan Teterisa had been sentenced to life imprisonment. In this regard, he wondered about the legal restrictions on the freedom of speech in Indonesia and on the meaning which had been attributed in this context to the simple fact of having displayed a flag. He also wished to know how many people were at the time serving a prison sentence for treason. Citing Article 12 of the Convention, he requested

explanations about the acquittal of Eurico Guterres by the Supreme Court and also wished to know what provisions were in place to fight corruption.

41. He said that Law No. 39 from 1999 contained certain provisions prohibiting torture and that it would thus be useful to know what means the victims of acts of torture had in order to benefit from the prohibition and whether the implementation of these provisions could lead to compensation being awarded. It was said that the scope of competence of the special human rights tribunals, which had been created in accordance with Law 26/2000, was restricted to flagrant and massive human rights violations. Such a restriction appeared to be incompatible with Article 4 of the Convention, which targeted all acts of torture, including attempts to torture; it was thus justified to wonder about the definition of massive violations which justified this provision of Law No. 26/2000. It was asked whether the special tribunals have the competence to award appropriate compensation to the victims.

42. The Special Rapporteur on Torture had mentioned in his report numerous allegations of confessions which had been obtained through force or torture. There was a desire to know what mechanisms the tribunals could use to establish a distinction between these confessions and those obtained using legal methods, and whether there was an evaluation system which was external to the National Police Commission and provided by an independent entity.

43. Certain punishments provided for by sharia law had been incorporated into the Criminal Code of the province of Aceh. Specifically, this was the case with public flogging, which, as corporal punishment, constituted inhuman and degrading treatment and, as such, should be prohibited. It was asked whether the comments on this issue by the Special Rapporteur for Torture had been heard. Given that violence against women, and especially domestic violence, were an issue of concern, the delegation was invited to report on the measures which may have been taken to raise greater awareness about the law on the elimination of violence in the family and, more generally, the authorities' policies with respect to this type of violence and the measures implemented to fight it. Finally, the Committee wished to know whether the legislation contained provisions guaranteeing suitable protection against rape. It had been noted that certain cases of rape had resulted in police mediation, which, in turn, had ended in the accused paying a sum of money to the victim in place of an investigation having been carried out. He said that clarifications on this point would be useful.

44. Ms. SVEAASS, inquiring more specifically about the situation of children, noted with satisfaction the adoption of the human rights law of 2000 which prohibited the corporal punishment of children, Law No. 23 of 2002 on the protection of childhood and Law No. 20 of 2003 on the national education system. Nevertheless, she underscored that none of these measures were sufficient if they were not accompanied by activities to raise awareness about them, to implement them, and to monitor their implementation. This is why she wished to know what had been done to promote the implementation of the existing provisions and whether coordination mechanisms had been set up. Worrisome information received from various sources showed that much remained to be done in practice to protect children and adolescents from violence, ill-treatment and corporal punishment, not only in the family and at school, but also in detention; she asked what specific measures had been taken to this end and whether children had access to complaint mechanisms.

45. She said that young girls and girls in particular were exposed to certain forms of violence including genital mutilation, which was still widespread in certain regions, trafficking, sexual exploitation, and forced marriage. It seemed that women who were women's rights activists appeared to be the victims of acts of harassment and ill-treatment. She said that the delegation could indicate whether the authorities had adopted any measures to combat these practices and deal with this situation, and how protection was being provided for the rights of migrant women's children.

46. According to the Committee's information, 75% of children under age 5 had no birth certificate. Ms. Sveaass wondered whether there was a connection between this situation and the fact that a certain number of the names on the lists of tortured persons which had been established by NGOs were not accompanied by any information about their date or place of birth. Recalling that the Committee on the Rights of the Child had recommended to the Indonesian Government to ensure that by 2015 all births were registered, she asked what follow-up there had been on this recommendation.

47. Another element of particular concern was the legal age of criminal liability, which was, at the time, 8 years. She asked whether amendments been made or whether amendments would be made to the criminal legislation in order to raise this age? As regards children in conflict with the law, there were many allegations of children having been detained with adults, including convicts. She said that perhaps the delegation had specific information on the number of detained minors and the proportion of children and adolescents who had been placed in detention with adults. The written responses mentioned the enactment shortly before of a decree containing provisions on the separation of detainees; She said that it would be useful to know to what extent these measures had been taken into account and implemented. According to recent figures, of 4000 delinquent minors who had been prosecuted by the courts, around 85% had been given a prison sentence, which was a disturbing proportion, particularly in view of the detention conditions which they would likely have had to endure owing to the overcrowding of many prisons. Thus it was important to know whether provisions had been or would be made to place young delinquents in different establishments which have means to provide them with instruction, or to substitute their sentences with alternate sentences, and whether or not there was a mechanism for monitoring sexual violence against detained children. More generally, it appeared that perpetrators of serious violence against children enjoyed a certain degree of impunity, which raised the question of complaint mechanisms accessible to the children.

48. Ms. BELMIR asked what the legal basis was for punishments such as public flogging and inquired about the role of provisions inspired by sharia law in the legal order. She wondered whether they formed part of a standardized framework and originated in texts which had been subjected to a test of constitutionality or whether they stemmed more from customary regional law.

49. With respect to the morality or religious police (*Wilayatul Hisbah*), She said that it would be useful to know whether it came under the State's administrative or legal organization, and whether it was subjected to any monitoring, whether any recourse could be taken against its actions, and whether the members could be subjected to any punishment. These issues led to questions about the role of the law in the State Party, and specifically the part played by religion in the administration of justice. In the mission report which he had written in Indonesia in July 2002

(E/CN.4/2003/65/Add.2), the Special Rapporteur on the Independence of Judges and Lawyers had mentioned allegations of widespread and systematic corruption in the legal system affecting all of the staff, including judges, prosecutors, police officers and other civil servants in the legal system. She said that it should be made known to what extent the allegations were true and what the causes were of such a situation, and specifically the possible connection it could have had with the transfer of the administration of justice from the Ministry of Justice and Human Rights to the Supreme Court.

50. The treatment reserved for minors in conflict with the law was of great concern. Both the State Party's law, namely that 8 years was the age of legal liability, and its practice, i.e. children detained with adults, violated the rights of the child as recognized in international standards. The Committee wished to know whether the practices were based on a religious frame of reference and how the State Party planned to reconcile them with the international standards.

51. Mr. MARIÑO MENÉNDEZ asked with respect to the implementation of Article 2 what body carried out the functions of criminal investigation, specifically as regards detention for questioning, interrogation, and police custody of suspects. In its written responses, the State Party had made reference to "authorized investigators", but He said that specific details about their responsibilities would be useful. It was also stated that it should be specified whether suspects detained for questioning, after having been interrogated on police premises, were transferred to temporary detention centers, and if this was the case, whether there was a register where such transfers were recorded.

52. As regards the inspections of the detention centers which had been carried out by the Mediation Commission, he said that it would be interesting to know to which authority the Commission reported any irregularities it had identified during its visits and whether it could draw directly upon the services of the prosecutor. He said that it would seem that the professional practice of lawyers was not clearly regulated and that there was no professional organization for lawyers. It would be desirable for measures to be taken along these lines in order for lawyers to be able to play their role fully and thus to guarantee the right to defense, specifically in the form of jurisdictional assistance.

53. With respect to the guarantees established in Article 3, one basic question was to know whether a foreigner could be deported solely on the basis of the competence of the concerned minister, or whether the minister's decision could be subject to jurisdictional control in the event of the alleged risk of torture in the country of return.

54. It was indicated that Article 5 of the Convention Against Torture is based on the international law principle of *aut dedere, aut judicare* and aims to establish the universal jurisdiction of the States Parties with respect to acts of torture. It seemed, however, that Indonesian legislation did not clearly establish the State's jurisdiction to prosecute foreigners in its territory who had allegedly committed acts of torture. The Committee wished to hear a statement from the delegation in this regard.

55. With respect to internally displaced persons, it was said that the priority should be to respond to their vital needs. The Representative of the Secretary General on Internally Displaced Persons had developed some recommendations (E/CN.4/2002/95/Add.2) which aimed to bring an end to the displacement. Among

other possible options, he had advocated integrating the displaced populations into the existing communities. He said that it would be useful to know how these proposals had been followed up on, both in practice and in documents.

56. Mr. WANG Xuexian recognized the efforts made by the State Party to fulfill its obligations under the Convention but noted that, as the State Party itself had admitted, obstacles remained to the full implementation of this instrument, and specifically the lack of a specific definition of torture and the deficient training of State agents. It was hoped that the State Party would be successful in overcoming these difficulties. The establishment of a new Truth and Reconciliation Commission had been mentioned as a possibility. He said that the delegation could perhaps indicate when this commission would be established and what its mandate would be. The latter point was of particular interest to the Committee; He said that the aim of such a commission should be to bring justice to the victims and to punish the guilty and not, as had occurred in other countries, to permit a general amnesty.

57. Ms. KLEOPAS said that under Article 4 of the Convention, it was obligatory to make torture a criminal offense and that the Indonesian legislation, which did not fulfill this requirement, deprived those responsible for implementing the laws of a vital means for preventing torture. In his report on his mission to Indonesia shortly before (A/HRC/7/3/Add.7), the Special Rapporteur on Torture had drafted highly pertinent recommendations, specifically as regards minors, the implementation of which recommendations would give the State Party means for effectively preventing torture. She said that it would also be interesting to know how the State intended to follow up on this. It was also stated that it would be useful to know whether the State Party intended to make the declaration which had been envisaged by Article 22 of the Convention, because by recognizing the competence of the Committee to receive and review requests from individuals, the State Party would have provided itself with a new independent mechanism for protecting victims of torture. With regard to violence against women, it appeared that neither the initiatives taken by the Government to better protect women nor the work of the national committee on the issue had been successful in diminishing this problem, which actually appeared to have worsened. She said that this situation could be explained by the existence at the provincial level of discriminatory regulations against women which were based on the religious tradition. According to non-governmental sources, the Ministry of the Interior was tasked with revising the texts adopted at the infranational level if they were incompatible with the federal law, but the regulations in question did not appear to have been subjected to any revision.

58. Mr. GALLEGOS CHIRIBOGA said that the societal change desired by the State Party which, in addition to legislative measures, required certain attitudes, customs and traditions to be called fundamentally into question, should not cause the past to be forgotten. He said that the Truth and Reconciliation Commission had a decisive role to play in this regard, on the condition, however, that it was not used to promote impunity. He said that under the Convention, the State Party was obliged to prosecute perpetrators of torture and cruel, inhuman or degrading treatment. It was of utmost importance for it to make a firm commitment thereto before the Committee.

59. Mr. GAYE requested more specific information about the distribution of competencies between the local authorities and the Government with respect to the establishment of laws. He also wished to know whether a citizen who considered

him or herself to be a victim of acts of torture or whether a citizen having the rights of a person whose disappearance had not been explained could initiate legal proceedings him- or herself if the public prosecutor's office, being otherwise occupied, decided not to move forward with the public action and considered the affair to be closed. He said that clarifications about the system of evidence in the State Party would be useful, particularly with respect to whether or not the State Party envisaged restrictions on the authorized types of evidence.

60. He stated that in Indonesian criminal law, torture was not a distinct offense, and thus no one could be found guilty on the basis of it. In contrast, agents of the State had been sentenced for ill-treatment, but the sentences did not correspond at all to the degree of severity which the Convention attributed to such acts. He said that it should be made known whether this gap stemmed from the wording of the law itself or from the implementation of the law by the judges. Moreover, it appeared that an agent of the State sentenced for ill-treatment could resume his duties after having served his sentence; instead, he said, in order to be truly dissuasive, the criminal punishment should be accompanied by professional sanctions. He said that it would be interesting to hear the delegation's opinion on this subject.

61. Mr. PUJA (Indonesia) thanked the members of the Committee for their many questions, the relevance of which was testimony to the interest with which they had studied the report and the written responses from the Indonesian Government. He said that the delegation would make an effort to prepare responses that are as precise and complete as possible in the allotted time. He said that dialogue with the Committee was always an enriching experience that makes it possible to exchange views, receive constructive advice, and continue down the path toward better practices. He said that the fight against torture was a complex task which required efforts at the legislative level and efforts to increase public awareness and strengthen the role of civil society. Thus, he said, strategies which bring together all of the concerned parties should be put into place, something which Indonesia was already actively working on. He said that the Government was also devoting its full attention to the fight against impunity and to strengthening guarantees against the trivialization of torture. He said Indonesia was sparing no efforts to fully meet its obligations under the Convention, but that the process undertaken to that end would take time.

62. The CHAIRPERSON thanked the delegation and invited it to respond at a future meeting to the questions just posed.

*The meeting rose at 12:50 pm.*