



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

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COMMITTEE AGAINST TORTURE

**Comments made by State parties concerning conclusions and
recommendations adopted by the Committee following the
examination of reports submitted under article 19 of
the Convention**

INDONESIA

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The Permanent Mission of the Republic of Indonesia to the United Nations and other International Organization in Geneva presents its compliments to the Chairman of the Committee against Torture and would like to provide him, and through him the Committee, with some clarifications on a number of points of concern raised in paragraphs 7, 8, 9 and 10 of the Committee's conclusions and recommendations.

Beginning with the Committee's remarks under paragraph 9 (i) and 10 (m) to the effect that cooperation with the United Nations Transitional Administration in East Timor (UNTAET) is inadequate, the Permanent Mission would like to emphasize that a number of exchanges have in fact been taking place between the Government of Indonesia and UNTAET for some time. In this regard, a major example of cooperation is the Joint Border Committee, which was established in September 2000 to build and foster good relations between Indonesia and East Timor and to further the normalization of activities along their common border, including refugee issues such as movements of people, pensions and compensation. The Joint Border Committee, which has just concluded its third meeting on 21 November 2001 in Dili, comprised a delegation of 50 people from both countries and was conducted in a climate of friendly and constructive cooperation. In the words of José Ramos Horta, "the two sides have been working hard for the past two years in addressing the issues of common interest and have made real progress".

Furthermore, on 26 June 2001 Indonesia and UNTAET signed an agreement on an investigation into the July 2000 killing of United Nations peace keeper Leonard Manning in Suai, East Timor, in a skirmish with Indonesian militiamen. The two sides were represented by the head of the West Timor Prosecutor's Office and provincial police chief (for Indonesia) and by the East Timor Attorney-General (for UNTAET) and agreed to facilitate and expedite investigation of the case by questioning witnesses and suspects. In a separate development, the two countries decided to allow the East Timor Attorney-General's Office to question nine key witnesses in Indonesia, including several high-ranking Indonesian Military (TNI) officers, in connection with the killing of five Australian journalists on 16 October 1976.

In a further move to promote closer ties between Indonesia and East Timor, a delegation led by UNTAET chief Sergio Viera de Mello met with House Speaker Akbar Tandjung and Assembly Speaker Amien Rais earlier this year, and was attended by legislators of Commission I for Defence, Security and Foreign Affairs. More recently still, as the Committee against Torture was convening in Geneva, Mr. Longuinhos Monteiro, the Prosecutor-General of UNTAET, was simultaneously visiting Jakarta for talks with high-ranking Indonesian officials. Indeed, on 20-21 November, Mr. Monteiro, accompanied by Mr. Marco Kalbush, from the UNTAET serious crime unit in Dili, met respectively with the Attorney-General, the Minister for Justice and Human Rights and the Director of the narcotics department of the Indonesian police, with a view to discussing legal matters and establishing cooperation links between East Timor and Indonesia.

Mr. Monteiro and the Attorney-General reviewed a number of issues ranging from the prosecution of the murderers of two United Nations officials working in East Timor, to the current status of the Memorandum of Understanding on legal matters signed in April 2000, and the stepping up of exchanges of legal information through regular visits. Breakthroughs were achieved in numerous areas, notably with regard to the case of the murder of Netherlands

journalist Sander Thoenes, on which the decision was made to send to Dili a joint team of investigators from the Attorney-General's Office, Komnas HAM and the Netherlands police, in order to research the case more thoroughly. Moreover, UNTAET and Indonesia are pursuing the possibility of recruiting Indonesian lawyers to hear cases involving former militia members. Finally, the desire to strengthen mutual legal cooperation between them was expressed, as well as the promise to initiate a series of talks involving the Attorney-General and UNTAET, with the first of these scheduled to take place in Indonesia in January 2002.

Mr. Monteiro's meeting with the Indonesian Minister of Justice and Human Rights elicited assurances from both sides to resurrect training programmes for East Timorese judges and legal advisers, given that both countries use the same legal system. Further negotiations, relating both to the status of East Timorese citizens and to immigration matters, are also due to take place soon. In this regard, the Government of Indonesia and UNTAET have in the past conducted meetings under the aegis of the Joint Border Committee to debate questions relating to border security; cross-border police cooperation; the demarcation and regulation of the border between the Republic of Indonesia and the independent State of East Timor; and the cross-border movement of people and goods.

Meanwhile, discussions between the representatives of UNTAET and the Director of the narcotics department of the Indonesian police focused on the urgent need to combat drug trafficking on both sides of the border through mutual and regular exchanges of information and by using international help to break cross-border networks. Indonesia and UNTAET are also considering the possibility of training East Timorese police officers in prevention techniques to fight drug smuggling.

It is hoped that these clarifications will reassure the Committee that all is being done to cooperate fully with UNTAET and show that, contrary to the impression gained by the Committee, cordial and cooperative ties are in fact being cultivated between the Indonesian authorities and UNTAET officials in order to facilitate the latter's work and promote greater professionalism on the Indonesian side.

On the topic of the appointment of ad hoc court judges, the Government of Indonesia is on the verge of designating 60 career and non-career judges to permanent and ad hoc courts set up to try human rights cases. They will commence work after attending a six-day course on human rights issues and will sit in permanent human rights courts established in Jakarta, Surabaya, the North Sumatran capital of Medan and the South Sulawesi capital of Makassar. Half the nominations represent non-career judges who are experts from human rights study centres at major State universities. Although this action on the Government's part represents a milestone event, there are nevertheless a number of obstacles which remain to be overcome. These include the formulation of trial procedure codes for human rights tribunals and courts, as well as remedying the career judges' lack of prior experience in trying human rights cases.

Moving on to another important issue raised, namely the trafficking of women and children, this emotional issue is a complex problem in Indonesia because of the acute poverty in which many people still live and is therefore difficult both to monitor and eradicate

completely. Nevertheless, this is an issue which is particularly close to the heart of the Indonesian President and which, as a woman, she feels compelled to address. Indeed, President Megawati Soekarnoputri recently referred to this problem when speaking at the annual session of the People's Consultative Assembly (MPR) on 1 October 2001. Moreover, the National Commission for Women (Komnas Perempuan) has proposed the establishment of a special task force consisting of representatives of various agencies, such as local administrations, police, experts, activists and the Ministry of Foreign Affairs, to tackle the matter. The latest annual session of MPR endorsed this same idea and recommended that the Government establish a task force and ratify the 1949 United Nations convention on human trafficking.

In a similar vein, the House of Representatives (DPR) has begun deliberations on the child protection bill, detailing the obligations of parents, families, the community and the Government towards children, which was drafted in March 2001 by a group of legislators. The bill comprises 13 chapters and 67 articles and requires the establishment of regional-based commissions for the legal protection of children. It should be recalled that Indonesia ratified ILO Convention 182 on the Worst Forms of Child Labour in March 2000 and that at present, child protection is regulated by Laws No. 4/1979 on Children's Health and No. 33/1999 on Human Rights and by several international conventions also ratified by Indonesia.

Turning now to a number of human rights incidents which have been handled by the military courts, including the Trisakti shootings, the Permanent Mission of Indonesia would like to bring the following to the Committee's attention. On 12 May 1998 security personnel opened fire on students demonstrating in front of the Trisakti University campus, West Java, resulting in the death of four demonstrators. Nine police officers were subsequently tried for violating article 338 of the Criminal Code on premeditated murder and article 351 line (3) on assault leading to death. The sentences handed down in August 1998 by the military court were widely considered to be unjustifiably lenient. However, it was argued that due to the prosecutors' failure to decide whether the bullets belonging to the defendants had in fact caused the student deaths, there was insufficient proof to call for tougher sentences. Since then and following a public outcry, the National Human Rights Commission (Komnas HAM) has reopened the cases and begun new investigations into this fatal shooting, as well as into similar incidents which occurred in Semanggi. Although the deadline for completing the investigations has lapsed, the proceedings have been carried over into January 2002 due to the complicated nature of the cases, which are not only interlinked but also have a bearing on two other incidents, notably the May riots and the kidnapping of activists in 1998. Komnas HAM is therefore re-examining evidence linking to troop mobilization and to the bullets used to shoot the protestors, as well as summoning for questioning any senior military officials who were in charge at the time.

The Permanent Mission of Indonesia regrets the doubt expressed by the Committee in paragraph 8 (c) of its conclusions and recommendations as to whether the Indonesian National Commission on Human Rights (Komnas HAM) is sufficiently impartial or independent. On the contrary, Komnas HAM, in its preliminary inquiries under the mandate given to it by the Law on Human Rights Courts, has on a number of occasions denounced abuses which have taken place in Indonesia and which have not been punished adequately. In this regard, the reputation for independence of Komnas HAM is illustrated most notably by this body's various initiatives in East Timor. Indeed, the Permanent Mission of Indonesia would like to recall that it was on the strength of the investigations carried out by a Committee of Inquiry (KPP HAM) set up by

Komnas HAM, that the Attorney-General's Office conducted formal probes into five human rights incidents which occurred both before and after the 1999 ballot, namely: the 6 April massacre in Lequica; the 17 April killings at independence leader Manuel Carrascalao's house; the 5 September attack on the compound of the Catholic Diocese in Dili; the 6 September massacre of priests and displaced persons at a church in Suai; the 21 September killing of Netherlands Journalist Sander Thoenes. In its report submitted to the Attorney-General on 31 January 2000 listing the names of 33 suspects, Komnas HAM implicated a number of senior officers of the Indonesian Military (TNI) and of the Indonesian police, some of whom are still on active duty. Another example of Komnas HAM's independence of action is the condemnation by its Commission of Inquiry into Human Rights in Irian Jaya of the December 2000 attacks carried out by police at six separate locations in Abepura. In its report, KPP HAM named 21 police officers suspected of being the direct perpetrators of crimes against humanity and 4 senior police officials responsible through the chain of command for these gross violations.

At this point, a consideration on which a number of comments were raised should be examined, in particular the question of acting under orders from a superior. In this regard, the following information may be useful for the Committee to understand not only the "lenient" sentencing in some of the cases mentioned above, but also the concept of criminal responsibility addressed in article 2 of the Convention against Torture. In international law, the so-called "commander's responsibility" is a precept which places full responsibility on the commanding officer for any crimes or violations which may have occurred as a result of his orders or negligence. A commander must be responsible - this is the principle invoked, amongst others, in the report of the Investigating Committee on Human Rights Violations in East Timor in order to incriminate a number of generals assigned to East Timor before and after the self-determination ballot. Nevertheless, the military court, with its competence based on the perpetrator rather than the act committed, has proven to be a very effective mechanism for the enforcement of hierarchical obedience and military discipline.

In contrast to military law, Indonesian civil law adopted the concept of vicarious liability long ago, including that of military commanders and superiors. However, court proceedings involving military and police officers are subject to Law No. 31/1997 on Military Courts, which does not specifically insist on the principle of "commander's responsibility." Thus, in certain instances of human rights violations in Indonesia, such as the Trisakti, Semanggi and Bantaqiah cases, field officers have been made to bear the full brunt of blame for these events, while military and police commanders escaped prosecution.

In a bid to realign Indonesian legal practice on international standards, Law No. 26/2000 on Human Rights, which explicitly adopts the principle of "commander's responsibility", was ratified in November 2000. Article 42 (1) of Law No. 26/2000 states that:

"A military commander, or a person effectively acting as a military commander, shall be responsible for any crimes that come within the jurisdiction of the Human Rights Court and which were committed by forces under this effective command and control, or effective authority and control as the case may be, as a result of his failure to exercise proper command over the forces, namely:

(a) the military commander ... knew or, under the circumstances at the time, should have known that the forces ... were committing serious human rights violations; and

(b) the military commander ... did not take the proper and necessary action within its power to prevent or to halt the action or to deliver perpetrators to the authorities for investigation, examination and prosecution.”

Article 42 of Law No. 26/2000 broadens this interpretation of “commander’s responsibility” to include the police and other civilians. The principles governing the liability of commanders and superiors other than those in the military are in line with those adopted in the Rome Statute of the International Criminal Court. Consequently, during the pre- and post-ballot periods in East Timor, both the governor and the regents were held responsible due to their active roles or their negligence, which led to violations by their subordinates. It is thus obvious that this liability applies not only to military, police and militia commanders, but also to civilians in positions of commands and that Law No. 26/2000 provides the country with a stronger legal basis in defence of human rights.

On the subject of crimes against humanity, which include torture, such crimes bear a strict legal definition under international human rights law, most notably according to the statute of the International Criminal Court, also known as the Rome Statute. Although Indonesia has yet to ratify the Rome Statute, the Law on Human Rights courts was passed in November 2000, underscoring the extreme criminality of gross violations of human rights by applying severe penalties to two of the four crimes laid out in the Statute, notably genocide and crimes against humanity. This Act is a strong basis for determining and punishing gross violations of human rights perpetrators by Indonesians.

Moving on to the concern raised by the Committee, in paragraph 9 (b) of its conclusions and recommendations, on “the geographical and time limitations of the mandate of the proposed ad hoc human rights court on East Timor”, the Permanent Mission of Indonesia would like to provide the following explanations. The provisions of paragraph 2 of Presidential Decree No. 96/2001 states that “the ad hoc human rights court ... has a mandate to investigate and to judge cases of gross violations of human rights which took place in East Timor under the administrative jurisdiction of Liquica, Dili and Suai in April 1999 and September 1999”. An extension of the court’s jurisdiction to also cover alleged cases of human rights violations which occurred outside these dates would therefore contravene the letter of this Decree. Furthermore, such an extension is inconsistent with the agreed Chairperson’s statement of the fifty-seventh session of the Commission on Human Rights, which refers to alleged cases of violations “*leading up to and immediately following the popular consultation held in August 1999*”. Indeed, throughout the negotiations preceding the adoption of the Chairperson’s statement on East Timor, it was understood that the Attorney-General’s Office, assisted by a joint team which included human rights NGOs, was to investigate and bring to the ad hoc Human Rights Court five specific cases of alleged violations which occurred in April and September 1999, on the basis of the report of the National Commission on Human Rights. Moreover, the Permanent Mission would like to point out that in view of the fact that the second amendment to the 1945 Indonesian Constitution unequivocally stipulates that no law can be retroactive, modifying the parameters of the above-mentioned Presidential Decree would not

achieve its purpose. In other words, although the Constitution explicitly provides for the protection of human rights, article 28 on the other hand stipulates the principle of non-retroactivity, thereby contradicting Law No. 26/2000 on Human Rights Courts.

The spate of violent clashes opposing the police and demonstrators over recent months has once again raised the issue of excessive use of force employed by police officers to control often dangerous situations, which are nearly always referred to as “peaceful protests”, and is no doubt responsible for raising the Committee’s concerns expressed in paragraph 7 (b). The Permanent Mission of Indonesia would like to draw the attention of the Committee to the increasingly difficult task faced by the Indonesian police in dealing with armed separatist movements in Aceh and Irian Jaya, and ethnic conflicts in Maluku, Central Kalimantan and Central Sulawesi, as well as the frequent violent protests in cities and growing crime rates in most urban areas. Many of these demonstrations are in fact masterminded by outside provocateurs bent on creating agitation designed to cause political and social upheaval. In defence of the police, it should be said that, given the hard work they must perform and the heavy responsibilities they must shoulder, they are often chronically understaffed, undertrained and underpaid.

The National Police is also in the process of being revamped following its June 2000 formal separation from the Indonesian Military. The transformation, from the quasi-military institution of three decades of President Soeharto’s New Order regime into one that is fully professional and capable of protecting the people, will take time. Although the abuse of authority may still occur, at least among lower-ranking police officers, a number of improvements have been made, most notably the present policy of attempting to negotiate with protestors before resorting to physical action. Overall, the National Police can be expected to transform itself in step with a corresponding ability by the public to evolve towards a healthier and more mature civil society. In this regard, public opinion, which is increasingly saturated with all the rioting, is expecting the police to clamp down on demonstrators. A poll conducted by the Jakarta-based television station *Metro-TV* in the wake of anti-United States demonstrations in Jakarta, suggested that 79 per cent of respondents were of the opinion that the police should bring street protesters to heel, if necessary by using “repressive” methods when confronted by violent demonstrators, with only 16 per cent of respondents wanting the authorities to take a more persuasive approach.

The Permanent Mission of Indonesia would like to draw the Committee’s attention to the fact that a number of significant legal and institutional reforms are currently under way, and therefore regrets the reference, in paragraph 9 (d) of the Committee’s conclusions and recommendations, to “a lack of adequate protection of witnesses and victims of torture”. In this regard, as was mentioned in the statement read out to the Committee, the draft laws on witness and victim protection are still in the process of completion. In the same vein, legal prohibitions against torture are being formulated in the draft of the revised Criminal Code, which is not yet complete, but will be debated in the House of Representatives when it reconvenes.

Allegations were also made to the effect that there exists a “discrepancy between the law on paper and the law in practice”. Although Indonesian legal institutions have witnessed a steady upgrading over the years in order to meet international standards, our judicial system still has much ground to cover before it can rival those of established democracies. The legal aspects

which Indonesia needs to improve are threefold. The first of these is the universality aspect of Indonesian law, whereby all legal principles should be universal, not particular or local. The second is the predictability aspect, which involves the need to establish standard sentencing, thereby ruling out situations in which the perpetrators of similar crimes receive significantly different sentences, and the third concerns the self-explanatory precedence aspect. Thus, both the country's judicial system and its legal institutions must be brought into line with the universal principles of law recognized by the international community. This will involve reassessing and overhauling the courts, including the supreme court, the Attorney-General's Office, the police force and other legal professions. However, the law cannot be implemented without the support of the community or if the legal culture is neither strong nor widespread.

On the strength of the clarifications given above, the Permanent Mission of the Republic of Indonesia would therefore like to request the Chairman and their substance reflected in any future official documents of the Committee relevant to the issues in question. The Permanent Mission of the Republic of Indonesia avails itself of this opportunity to renew to the Chairman of the Committee against Torture the assurances of its highest consideration.
