



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

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COMMITTEE AGAINST TORTURE

Fortieth session

SUMMARY RECORD (PARTIAL)\* OF THE 823rd MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 7 May 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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\* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Indonesia (continued) (CAT/C/72/Add.1; CAT/C/IDN/Q/2  
and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Indonesia resumed places at the Committee table.
2. Mr. PUJA (Indonesia) said that his Government valued the current dialogue with the Committee, as it highlighted the challenges faced in adapting its national institutions and drafting legislation to address such a major human rights issue as torture.
3. Ms. HARKRISNOWO (Indonesia), referring to the question raised about the criminalization of acts of torture, said that although the Penal Code did not deal with torture as such, it did contain a provision for maltreatment, which covered physical abuse. The lack of a clear legal definition of torture was a problem, however, as it allowed for a broad interpretation of the crime. Nevertheless, draft legislation was currently under consideration to bring the provisions on torture into line with article 1 of the Convention. Furthermore, the lack of specific provisions on torture in the Penal Code did not mean that the Government failed to take action to combat it. Cases of torture were also dealt with under the Military Penal Code.
4. Concerning the 362 members of the Armed Forces of Indonesia and national police who had been tried for maltreatment, it was difficult to determine how many of them had engaged in acts of torture, as torture was not clearly defined under the law. However, each of those members had been duly prosecuted and no military or law enforcement officer enjoyed impunity. The sentences handed down varied because of the different levels of seriousness of the offences committed. The penalties for those military officers found guilty of maltreatment included dismissal and further punishment. In 2007 alone, 350 police officers and some 300 military officers had been dismissed.
5. In addition, police, military and prison authorities had stepped up their efforts to train officers in human rights and the Convention. There were a number of national mechanisms to monitor and prevent maltreatment by the police, including the National Police Commission, a new oversight commission appointed by the police and others. All police members charged with criminal offences were tried in civil rather than military courts. The Government had also established a complaints mechanism with regard to maltreatment on the part of public officers, which included the participation of civil society. A hotline had also been set up which was directly connected to the local police.
6. Mr. MUZHAR (Indonesia) said that the Government recognized Aceh's unique contribution to the development of the country and its historical, cultural and religious traditions. The Islamic religious courts in Aceh, which had jurisdiction over issues of marriage and divorce, had been granted additional jurisdiction over matters involving Islamic transactions.

7. A set of regulations known as the Qanun regulated gambling, drinking and adultery. The maximum possible penalty regulated by the Qanun was a three-month prison term. In addition, a body known as the Wilayatul Hisbah was responsible for assisting the police, although it did not constitute a police force itself. Rather, it helped to raise awareness about the Qanun and advised the local community. It also heard complaints from the public and reported on incidents of violations of the Qanun, protected the violators from punishment by mobs and forwarded information to the police.
8. With respect to the questions raised concerning the Ahmadiya incident, freedom of religion was guaranteed under the Constitution. The Constitution stipulated that the freedom of religion could only be restricted by law. One example of such restriction was an Act on the prevention of religious abuse and defamation, which prohibited certain acts or the interpretation of religious beliefs which deviated from the core teaching of an existing religion registered in Indonesia. The restriction was aimed at maintaining public order in society. The Ahmadiya case involved the spread of deviant religious teachings which significantly disturbed public order. However, followers of Ahmadiya had become the target of acts of violence from other groups. The authorities were therefore obliged to preserve law and order and protect the followers of Ahmadiya from attack.
9. With regard to the case of the attack on the Ahmadiya followers in West Java and Nusa Tenggara Barat province, in accordance with the law, some people were detained by the police and others had subsequently been brought before the court. Additionally, the number of Ahmadiya followers in the shelters for internally displaced persons in the province had decreased from 180 to 70 persons. Most of them had returned to their villages of origin. Negotiations were currently under way, and it was hoped that the remaining internally displaced persons would soon be able to return to their villages.
10. Mr. CORNELIS (Indonesia), referring to local efforts to abolish human trafficking in the Sanggau region, said that regional authorities were required under the Act on regional autonomy of 2004 to implement national legislation on such matters as child protection, domestic violence, witness protection, the national plan for the elimination of the sexual exploitation of children, and the national plan for the elimination of trafficking of women and children. Other measures to address the problem of human trafficking at the regional level included job fairs, training, health-care centres for women and children and a special victims unit.
11. Mr. EFFENDY (Indonesia) said that following more than three decades of a strongly centralized national Government, a new policy of regional autonomy had been in place since 2001, which provided a solid basis at the local level for enhanced delivery of services for the protection and promotion of human rights. Regional authorities were called on to implement the relevant provisions of the Convention and were held accountable to their constituents. Furthermore, efforts had been made to increase public awareness of the foregoing issues and to coordinate the actions of the relevant stakeholders at the regency and provincial level.
12. Mr. SUTADI (Indonesia) said that a person could be detained for two days without charges or up to 40 days upon a decision of the Prosecutor's Office. Every detained person had the right to a lawyer and to contact family members. Foreign nationals who were detained had the right to choose their own lawyer and to contact their consular representatives. Those who could not

afford a lawyer were provided one for free. Places of detention were monitored by the appropriate oversight bodies and were accessible to the family members of the prisoners. Under Indonesian law, evidence obtained by means of torture was not admissible. The Government did not keep a register of detainees. In addition, as sufficient prison facilities were lacking, police stations often served as places of detention.

13. Mr. ABBAS (Indonesia), responding to the question concerning the Truth and Reconciliation Commission, said that the Government had undertaken a comprehensive formulation and review of laws and regulations to address past gross human rights violations. The Truth and Reconciliation Commission Act had been adopted in 2004. In describing the intricacies of the composition and role of the selection committee established under the Act, he said that in 2006, a group of NGOs had proposed amendments to the Act, on the grounds that some of its articles contradicted the 1945 Constitution. In response, the Constitutional Court had later decided to declare the Act as having no legally binding power, a decision that had shocked NGOs because they had never expected the Court to issue such a decision. Citing inconsistencies, the Court had felt that some articles could lead to multiple interpretations and ambiguity, which could give rise to institutional disputes between the Commission, the ad hoc human rights tribunal and the Parliament. The Court's decision had consequently terminated all the processes relating to the establishment of the Commission. Nevertheless, there would still be solutions aimed at addressing past human rights violations through a reconciliation mechanism. At present, the Government continued to conduct public debates on the revision of the bill on truth and reconciliation.

14. Ms. FIRMAN (Indonesia) said that the Government had established a National Natural Disaster Management Board to provide guidance and directives on disaster management. The Board had also established strategies to enable it to conduct disaster management and the supervision of internally displaced persons in a direct and effective manner.

15. Due to its strategic location, Indonesia had always been a transit country for refugees and asylum-seekers. It was however difficult to understand how the principle of non-refoulement, as defined in the 1951 Convention relating to the Status of Refugees, could be effectively applied in Indonesia, since it was an archipelagic State consisting of thousands of islands. Indonesia had a large population of internally displaced persons, who were victims of natural disasters or internal ethnic conflict, and the Government did not wish the country to also become a major transit point for asylum-seekers. Nevertheless, although it was not a party to the Convention on refugees, Indonesia remained highly committed to the issues concerned, and had strengthened its commitment through accession to a number of pertinent international human rights conventions, and the enactment of Law No. 39/1999 on Human Rights. It had also incorporated several norms on extradition preventing the extradition of persons who might face the risk of torture.

16. In response to a question posed by the Committee on Indonesia's request to make a declaration under article 22 of the Convention, she said that her Government concurred with the principle that the provisions of the complaints procedure should be made available to all individuals, within its national jurisdiction, in order to establish a mechanism for persons suffering human rights abuses to seek domestic remedies. The complaints procedure at the local level was currently being strengthened within the respective local committees as part of the implementation of the National Plan on Human Rights. Without a complaints procedure at the

local and national levels, Indonesia would not yet be in a position to accept such a procedure as mandated under the Convention, especially since the procedures at the domestic and international levels must work together in order to be mutually reinforcing and to fulfil admissibility criteria. Moreover, she said her delegation accepted that it was the primary responsibility of the Government to establish mechanisms that strengthened the protection of human rights within its jurisdiction.

17. With respect to domestic violence, she was pleased to inform the Committee that Law No. 23/2004 on the Elimination of Domestic Violence had proved to be effective in changing the mindset and attitudes of the society at large as well as the practice of the judiciary, particularly the treatment of women by judges of the Islamic court.

18. Mr. ROEMBIAK (Indonesia), referring to the question of Indonesia's ratification of the Optional Protocol, said that no single model of national preventive mechanisms adopted elsewhere could be implemented in Indonesia. Under Indonesia's strong decentralization policy, local governments had the authority to establish local preventive mechanisms. In that context, the institution of monitoring by a centralized preventive mechanism, based in Jakarta, would be unfeasible, would contradict the principles of democracy, and undermine the efficacy of the Optional Protocol in combating torture in places of detention throughout Indonesian territory. Local populations needed to be empowered in order to guarantee their full participation in achieving Indonesia's objective for a full-fledged democracy, as a precondition for ratification of the Optional Protocol.

19. Ms. SYUKRIE (Indonesia), speaking on the role of the National Ombudsman Commission, said that the Office of the Ombudsman processed grievances raised by individuals or on the initiative of the Office itself. It also conducted visits to penitentiaries in order to monitor conditions in places of detention in various cities. One conclusion drawn from such visits was the need to separate child inmates from adults, as required by law, but the Office had also recognized the prevailing problem of undercapacity, and had urged the State to continue its efforts to build new facilities in the near future. She highlighted the Office's alternative handling of children in conflict with the law by facilitating their return to the custody of their parents, social services or non-governmental organizations working specifically in the field of child development.

20. Mr. ROEMBIAK (Indonesia) said that, in an effort to resolve misunderstandings about cases of violence in the Papua Province, he was willing to provide detailed responses to specific queries from the Committee. Allegations of violations committed by police officers were closely investigated by the regional authorities and a number of strategies had been launched to prevent the recurrence of such abuse, including training and sensitization of law enforcement personnel.

21. Ms. DIANSARI (Indonesia) said that the Government had adopted a number of laws and legal measures on child protection since the ratification of the Convention on the Rights of the Child in 1999. Special protection was granted to children in vulnerable situations under the provisions of Law No. 23/2002 on Child Protection, and Presidential Decree No. 87 had been enacted for protection against commercial sexual exploitation and the prosecution of perpetrators. In association with the International Labour Organization, the Government had also strengthened programmes to reduce the number of child domestic workers.

22. Turning to the issue of birth certification, she said that the Government was responsible for issuing birth certificates, free of charge, from the village level upwards, and had established programmes to sensitize the public on the right of children to birth certificates and other broader issues relating to children's rights. With the abundance of legislation in place, the National Commission of Child Protection hoped that the Government would be better equipped to provide service to the people of Indonesia, especially to children in former areas of conflict and those in conflict with the law.

23. Ms. SOEDEWO (Indonesia) provided an update on developments aimed at eliminating violence against women. The current strategy encompassed the adoption of legislation on the eradication of violence, as well as the rehabilitation of victims of such violence. She said that although the rise in the number of cases of domestic violence might be construed as an absolute increase, she pointed out that, in fact, its incidence had previously been underreported and that better mechanisms were currently available for registering complaints.

24. Turning to the issue of street children, she said the Government had conducted a number of programmes to address the issue, including education and skills training, psychological counselling and health services. Although many initiatives were under way, the Government recognized that it should continuously strive to improve services provided for the benefit of children.

25. Mr. MASUDI (Indonesia), responding to the query on female genital mutilation or female circumcision, assured the Committee that the practice was merely a ritual, and was a non-invasive and painless procedure. It was a symbolic activity performed by trained midwives, physicians, traditional medical practitioners or birth attendants. His delegation believed it was important to stress that the tradition as practised in Indonesia differed significantly from the ritual performed in other parts of the world. He also said that reports to the effect that 97 per cent of the population of girls underwent circumcision were unreliable. The Department of Health had launched an awareness-raising and public information campaign on the non-compulsory nature of the ritual and on the health and religious aspects of the issue.

26. Ms. SINAGA (Indonesia) said that the Government's thrust against trafficking in persons targeted the perpetrators and mediators of the crime equally. In line with its unique position, Indonesia was developing a comprehensive policy and strategy for dealing with trafficking in persons, with the involvement of the relevant sectors. Labour sector reform had led to the establishment of a Board for the placement and protection of Indonesian workers. In addition, special women's desks had been set up in police stations nationwide, with a mandate to provide comprehensive and coordinated support to victims of violence. Indonesia faced a variety of national and regional challenges in addressing the care of traumatized victims and protecting their rights.

27. In addition, the Government had developed a national policy aimed at promoting the rights of Indonesian workers abroad, and had implemented firm measures in that regard.

28. Ms. GAER (Country Rapporteur) said that she remained concerned at the gap between domestic legal provisions, particularly Law No. 39/1999 on Human Rights and Law No. 26/2000 on the Human Rights Court, and the way torture was dealt with in practice. The absence of

convictions of torture in the Human Rights Court was alarming. She requested clarification of the number of people who had been convicted in the case of Abepura in 2000, the names of those convicted, and their current whereabouts. The State party should also provide information on its cooperation, particularly with the International Criminal Police Organization, on criminal proceedings regarding Timor-Leste. In particular, she asked whether the reporting State would fulfil its obligation under the Convention in arresting Mr. Burhanuddin Siagian, a colonel currently serving in Jiapur who had allegedly committed acts of torture and other war crimes.

29. The Committee would welcome assurances that the bilateral Commission on Truth and Friendship would limit its jurisdiction by excluding any possibility of amnesty for acts of torture.

30. She wished to know how much money the Government allocated to the issue of trafficking, particularly to law enforcement for the investigation and prosecution of cases, for the provision of services, and for prevention campaigns. It would be useful to learn whether there was an enforceable directive from the highest levels of Government that required all the relevant ministries and departments to take the necessary steps to fight trafficking, and whether there was a requirement to report on progress in order to ensure accountability in that regard.

31. She asked why the Committee had been prevented from meeting with the Indonesian National Human Rights Commission, commonly known as Komnas HAM. She also wished to know whether the people alleged to have been involved in the conspiracy surrounding the death of Mr. Munir in 2004, other than the two mentioned in the reply to question 37 on the list of issues, would be brought to justice. She asked whether the delegation could give the Committee assurances that none of the non-governmental organizations present at the meetings with the Committee would face any reprisals or negative consequences as a result of their attendance or the information they had supplied.

32. It would be useful to learn what effective measures were in place to prevent the emergence of local regulations that were inconsistent with domestic law, the Constitution and the Convention against Torture. In particular, she asked whether the Government had established enforceable guidelines, a judicial review, and set standards on that issue.

33. She wished to know how the State party implemented its prohibition on using coerced testimony. In particular, she enquired whether there had been complaints that testimony had been coerced. If so, the delegation should indicate how many such complaints had been received, how many people had been released on that basis, and whether anyone had been acquitted as a result of such claims. She also asked whether there was a review mechanism at the national level to monitor that issue.

34. The CHAIRPERSON (Alternate Country Rapporteur) asked whether persons who had been acquitted of torture as a gross human rights violation, but had been proven to have committed a single act of torture, could argue a case of *res judicata* if they faced trial for that single act. He asked whether the defendants who had been acquitted of torture on the grounds that they had not committed mass human rights violations had nonetheless been prosecuted under other statutes. If not, the delegation should explain how the decision not to prosecute was compatible with the Convention.

35. The State party should indicate whether it intended to restrict the use of police custody, which could currently last up to 61 days. Additional information on any cases in which people had been detained in police custody for such long periods would be useful. He also requested additional information on the case of Mr. Eurico Guterres.

36. It would be interesting to learn what measures the State party had taken in the light of the 2008 report on the mission of the Special Rapporteur on the question of torture to Indonesia, particularly regarding the considerable number of allegations he had received of torture and ill-treatment perpetrated by the police.

37. Ms. SVEAASS urged the State party to expedite the process of reform of the juvenile justice system, particularly in view of the high number of minors in detention and the fact that they were currently held with adults. Juveniles in conflict with the law should be provided with alternatives to detention and given psychological and social assistance, training and education. The minimum age of criminal responsibility should be raised from 8 to at least 14. She asked what system was in place to register young people who were held in detention.

38. Given that it had been incontestably proven that there were no health benefits to female genital mutilation, the State party should reconsider its position and take stronger action to prevent that practice. The argument that the practice was carried out by health professionals was questionable, since those professionals worked with sharp knives and could therefore do more damage to women's genitalia than non-professionals.

39. Ms. BELMIR requested additional information on local laws in locations such as Aceh, including details on those responsible for implementing the laws and those subject to them. It was difficult to understand why the Supreme Court had not taken the opportunity to regulate those local laws in order to prohibit practices such as flogging, which were inconsistent with the provisions of the Convention.

40. Mr. MARIÑO MENÉNDEZ, referring to the State party's intention to introduce a definition of torture into the draft penal code, urged the legislators to establish Indonesia's jurisdiction over foreign citizens on Indonesian territory who were accused of committing an act of torture abroad, whether against an Indonesian citizen or against a foreigner. That jurisdiction should empower the Indonesian State to try such persons or to extradite them.

41. He asked whether the reform of the judiciary had liberalized the profession of lawyer and whether bar associations played a role in regulating the profession. He requested additional information on lawyers' training, particularly its duration and the experience required in order to begin practising as a lawyer.

42. Mr. WANG Xuexian said that the Committee would welcome the introduction of the Truth and Reconciliation Commission, on the understanding that it would facilitate the implementation of the State party's legal obligations under the Convention. The Committee would, however, be most concerned if the mandate of that Commission resulted in amnesty for perpetrators of acts of torture. He also urged the State party to raise the minimum age of criminal responsibility to 14 years.



43. Ms. HARKKRISNOWO (Indonesia) said that law enforcement officials who forced people to make confessions were liable to a four-year prison sentence. If defendants stated during a court hearing that they had been coerced to confess prior to appearing in court, only the evidence given in court could be taken into consideration.
44. There was legislation in place providing that laws at every level should adhere to several legal norms. Laws that had been enacted by Parliament that did not adhere to those norms could be challenged before the Constitutional Court. Lower level legislation was brought before the Supreme Court, which had the power to revoke such laws. The Ministry of Home Affairs was responsible for reviewing all local laws. Any law found to be inconsistent with the Constitution or with other national legislation could be revoked. By March 2008, the Ministry had revoked some 1,400 such local regulations.
45. Bar associations usually cooperated with law faculties in order to ensure the quality of the training provided to lawyers.
46. The Constitutional Court ruling that the Truth and Reconciliation Commission had no legally binding power was based precisely on the fact that the Commission could provide amnesty for some crimes. The new draft law establishing the Commission would not therefore include the provision for amnesty.
47. Ms. DIANSARI (Indonesia) said that the proposal had been made to raise the minimum age of criminal responsibility to 12 years. In 2008, a Memorandum of Understanding would be signed to ensure that children in prison would receive education equivalent to that provided in schools.
48. Mr. MASUDI (Indonesia) said that public awareness campaigns would be launched to disseminate information on the fact that there were no religious or health benefits to female genital mutilation.
49. Mr. PUJA (Indonesia) said that while his Government continued to face significant challenges, it remained fully committed to the task of promoting and protecting human rights. He thanked the members of the Committee for the fruitful dialogue, which had strengthened his delegation's resolve to ensure consistent progress on the ground.
50. The delegation of Indonesia withdrew.

The discussion covered in the summary record ended at 5.50 p.m.