

INDONESIA

CAT A/57/44 (2002)

36. The Committee considered the initial report of Indonesia (CAT/C/47/Add.3) at its 492nd and 495th meetings, held on 16 and 19 November 2001 (CAT/C/SR.492 and 495), and adopted the following conclusions and recommendations.

A. Introduction

37. The Committee welcomes the initial report of Indonesia, although it notes that the report, due in November 1999, was submitted with more than one year's delay. It notes that the report mainly addresses legal provisions and lacks detailed information on the implementation of the Convention against Torture in practice. However, the Committee wishes to express its appreciation for the efforts of the State party to provide added information as it engaged in a constructive dialogue with the Committee.

38. The Committee welcomes the clarification made by the State party confirming that it recognized the competence of the Committee as provided for in article 20 of the Convention.

39. The Committee notes that Indonesia has not made the declarations provided for in articles 21 and 22 of the Convention.

B. Positive aspects

40. The Committee takes note of the following positive aspects:

(a) The ongoing efforts of the State party to reform the legal system and revise its Constitution and legislation in order to safeguard universal human rights, including the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment;

(b) The adoption of Act No. 26/2000 on the establishment of human rights courts, which have jurisdiction over gross violations of human rights, including torture, and the State's assurances that the human rights courts will be operational by early December 2001;

(c) The plans outlined by the representatives of the State party for the imminent finalization of new laws on the protection of victims and witnesses, and on the establishment of a Commission of Truth and Reconciliation to re-examine past cases of human rights violations which have had a significant impact on the nation;

(d) The formal separation of the police from the military in 1999, as a vital aspect of the effort to ensure an independent civilian authority responsible for maintaining law and order;

(e) The recognition by the State party that eradication of torture is linked to overcoming a culture of violence within the army and the police, and the assurances that efforts to continue to

work towards this goal are a high priority of the Government;

(f) The acknowledgement of the pressing need to introduce a centralized register of detainees for the whole country, and assurances that the State party is currently studying the implementation of such a system;

(g) The interest expressed by the State party in the possibility of the Government's cooperating with national non-governmental organizations in monitoring prisons and places of detention;

(h) The statement made by the representative of the State party relating to a possible visit next year of the Special Rapporteur on the independence of judges and lawyers.

C. Factors and difficulties impeding the implementation of the Convention

41. The Committee is aware of the difficulty faced by the State party in view of the armed secessionist conflicts in several parts of the territory of the State party, and in view of the geographical characteristics of the Indonesian archipelago. In addition, the Committee also recognizes the difficulties in the political transition towards a democratic system of government.

D. Subjects of concern

42. The Committee is concerned about:

(a) The large number of allegations of acts of torture and ill-treatment committed by members of the police forces, especially the mobile police units ("Brimob"), the army (TNI), and paramilitary groups reportedly linked to authorities, and in areas of armed conflict (Aceh, Papua, Maluku, etc.);

(b) Allegations of excessive use of force employed against demonstrators or for purposes of investigation;

(c) Allegations that paramilitary groups, reported to be perpetrators of torture and ill-treatment in Indonesia, are supported by some parts of the military, and sometimes reportedly are joined by military personnel;

(d) Allegations of numerous attacks directed against human rights defenders, sometimes leading to death;

(e) Allegations that human rights abuses related to the Convention are sometimes committed by military personnel employed by businesses in Indonesia to protect their premises and to avoid labour disputes;

(f) Allegations of inadequate protection against rape and other forms of sexual violence, which are frequently alleged to be used as forms of torture and ill-treatment;

(g) The high number of persons reported to be suffering from the after-effects of torture and other forms of ill-treatment.

43. The Committee is also concerned about:

(a) A climate of impunity, promoted in part by the fact that there has been little progress in bringing to trial members of the military, the police or other State officials, particularly those holding senior positions, who are alleged to have planned, commanded and/or perpetrated acts of torture and ill-treatment;

(b) The failure of the State party to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture reported to the authorities, as well as to prosecute alleged offenders, as required in articles 12 and 13 of the Convention;

(c) The insufficient level of guarantees of the independence and impartiality of the National Commission on Human Rights (Komnas-HAM) which hinders it in fully carrying out its mandate, which includes sole responsibility under Law 2000/26 for conducting initial investigations relating to gross violations of human rights, including torture, prior to forwarding cases to the Attorney-General for prosecution. Because only the Attorney-General has the authority to decide whether to initiate criminal proceedings, the Committee is further concerned that all the reports of Komnas-HAM on preliminary investigations are not published, and that Komnas-HAM does not have the right to challenge a decision by the Attorney-General not to prosecute a case.

44. The Committee further expresses its concern about the following:

(a) The country's penal legislation does not adequately define the offence of torture in terms consistent with article 1 of the Convention; as a result, torture is not punishable by appropriate penalties in the criminal code of the State party, as required in article 4, paragraph 2, of the Convention. The Committee notes, in this regard, that the definition of torture in Law 2000/26 is not fully consistent with article 1 of the Convention;

(b) The geographical and time limitations on the mandate of the proposed ad hoc human rights court on East Timor;

(c) The inadequacy of measures to ensure that the second amendment to the 1945 Constitution, relating to the right not to be prosecuted based on retroactive law, will not apply to offences such as torture and crimes against humanity which under international law are already criminalized;

(d) The lack of adequate protection of witnesses and victims of torture, who can be subject to intimidation and abuse by officials;

(e) The length and terms of police custody, and the lack of adequate guarantees of the rights of persons deprived of liberty, including to notify a close relative or third party and to have access to medical assistance and counsel of their choice;

- (f) In spite of the formal separation of the police and the military, the latter continues to be associated with allegations of torture and ill-treatment. The Committee is particularly concerned over the absence of habeas corpus for the military;
- (g) Insufficient legal protection ensuring, as set out in article 3 of the Convention, that no person can be expelled, returned or extradited to another State where he/she would be in danger of being subjected to torture;
- (h) The lack of response to communications sent by the Special Rapporteur on torture, as well as the fact that he has not been invited to visit by the State party, despite requests dating back to 1993;
- (i) The inadequate cooperation with the Serious Crimes Unit of the United Nations Transitional Administration in East Timor (UNTAET);
- (j) The absence of statistics and other information regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender, ethnic group, geographical region, and type and location of detention.

E. Recommendations

45. The Committee recommends that the State party:

- (a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted;
- (b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials;
- (c) Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture will be appropriately prosecuted;
- (d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas?HAM), and ensure that all its reports to the Attorney-General are published in a timely fashion;
- (e) Ensure that the proposed ad hoc human rights court for East Timor will have the capacity to consider the many human rights abuses which were alleged to have occurred there during the period between 1 January and 25 October 1999;
- (f) Ensure that crimes under international law such as torture and crimes against humanity

committed in the past are investigated and, where appropriate, prosecuted in Indonesian courts;

(g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency;

(h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any legal proceedings, except against the torturer;

(i) Ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture, in accordance with article 3;

(j) Ensure that human rights defenders are protected from harassment, threats and other attacks;

(k) Reinforce human rights education to provide guidelines and training, regarding in particular the prohibition of torture, for law enforcement officials, judges, and medical personnel;

(l) Invite the Special Rapporteur on torture to visit its territories;

(m) Fully cooperate with UNTAET, in particular by providing assistance in investigations or court proceedings in accordance with the memorandum of understanding signed in April 2000, including affording the members of the Serious Crimes Unit full access to relevant files, authorizing visits to Indonesia and East Timor, and transferring suspects for trials in East Timor;

(n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country;

(o) Make the declarations provided for in articles 21 and 22 of the Convention;

(p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation;

(q) Widely disseminate the Committee's conclusions and recommendations throughout the country, in all appropriate languages.