



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

Distr.: General
15 February 2011

Original: English

Committee against Torture

Forty-fifth session

1-19 November 2010

List of issues prior to the submission of the third periodic report of Indonesia (CAT/C/IDN/3)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations¹

Articles 1 and 4

1. With reference to the previous recommendations of the Committee (para. 13), of the Working Group on the Universal Periodic Review (A/HRC/8/23, para. 77(6)) and of the Special Rapporteur on torture (A/HRC/13/39/Add.6, para. 33), please update the Committee with regard to the definition of torture contained in the State party's legislation. Has the definition of torture as set out in article 1 of the Convention been incorporated into domestic law, in particular into the Penal Code or a special law on this crime? Have there been any cases of direct application of the Convention by the courts, including application of the definition of torture in conformity with article 1? Has the specific offence of torture been made applicable to military personnel, either through an amendment to the Military Criminal Code or by other means?

2. Please provide up-to-date information on the current status of the long-standing draft Criminal Code (KUHP). When is it expected this code will be adopted? What steps have been taken by the State party to adapt the current penal legislation to the human rights obligations to which Indonesia has subscribed, in particular under the Convention Against Torture? With regard to the statement by the Indonesian Government to the Working Group on the Universal Periodic Review (A/HRC/8/52, para. 355), please also provide

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. The replies of the State party to this list of issues will constitute the next periodic report under article 19 of the Convention.

¹ Unless otherwise indicated, paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/IDN/CO/2.

information on plans or efforts, if any, to amend article 351 of the Code, addressing ill-treatment, to bring it into conformity with the definition of torture under the Convention. Please indicate measures taken or envisaged to ensure that torture is made punishable by appropriate penalties in accordance with the requirements of article 4(2) of the Convention. Please also provide up-to-date information on the current status of the draft Law on Military Courts. When is it expected this law will be adopted? Please also provide information on plans or efforts, if any, to amend the Military Criminal Code to include the offence of torture, to define it in conformity with the Convention and make it punishable by appropriate penalties in accordance with the requirements of article 4(2) of the Convention.

Article 2²

3. In light of the Committee's previous concluding observations (paras. 10-11), please provide detailed information on the measures taken to prevent acts of torture during police or remand detention and during military operations, and in particular:

(a) Measures to ensure that detainees are brought before a judge promptly and to reduce the length of pretrial detention to ensure it is in line with acceptable international standards.

(b) Efforts to ensure systematic registration of all detainees, including juveniles, and thorough records of all periods of pre-trial detention.

(c) Measures to ensure all fundamental legal safeguards, including the right of access to a lawyer and medical doctor of their own choice as well as the right to inform a relative, for all persons detained both during police detention and military operations. Please indicate whether detainees are entitled to have access to a lawyer from the very outset of detention and whether police officers are present when the detainee meets with his/her lawyer and doctor. Has the legislation against terrorism affected these rights? Has the State party investigated allegations that some prisoners, in particular political prisoners, have faced mistreatment and denial of medical access? Please provide information about Filep Karma, a Papuan political prisoner, who has allegedly been denied medical treatment.

4. In light of the Committee's previous concluding observations (para. 33), please provide information on the legal aid system implemented in Indonesia, including on the functioning and financing of the system.

5. Please inform the Committee of the measures taken to amend article 51 of the Penal Code, which permits official orders to be invoked as a justification for acts and constitutes a violation of article 2(3) of the Convention.

6. There is reportedly still widespread impunity for members of the security forces responsible for serious violations of human rights, including torture, throughout the country and particularly in Papua, Aceh, the Malukus and Kalimantan. It is also reported that none of the existing mechanisms has either the mandate or the independence to hold police officers accountable for human rights violations. Please provide the Committee with

² The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

statistical information, disaggregated by crime committed, region and rank, on the number of allegations or complaints of torture or ill-treatment at the hands of members of the security forces that have led to investigations, prosecutions, and convictions, if any, on any grounds, as well as information on the punishments provided for in the case of persons found guilty of torture or any other offence related to such allegations and their current fates.

7. Further to the Committee's previous concluding observations (para. 12), please provide detailed information about the specific measures taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement, intelligence services or military personnel. Please also provide detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by other law enforcement officials, including intelligence services and police, and on related investigations, prosecutions and convictions. Please also provide information on the penal or disciplinary sanctions applied, if any. Please elaborate on the steps being taken to ensure that those accused of torture or ill-treatment are brought to justice as well as to ensure prompt, impartial and full investigations and punishment of the perpetrators.

8. In light of the Committee's previous concluding observations (para. 15) with regard to the Aceh Criminal Code and other local regulations, please provide:

(a) The reason why, despite the Committee's recommendations as well as the international standards, including General Assembly resolution 63/181, there appears to have been little progress in efforts to bring the criminal laws unique to Aceh in line with the State obligations under the Convention. Furthermore, a new Islamic Criminal Code (Qanun Jinayah), was adopted in Aceh in September 2009, and includes provisions authorizing the use of corporal punishment as criminal sanctions, such as, *inter alia*, the punishment of stoning to death, and legalizing marital rape. Please explain the adoption of this new legislation in light of the Committee's concerns in paragraph 15 of the previous concluding observations. Has the federal Government petitioned the Supreme Court to review Sharia-based Qanuns in Aceh and has it taken any action to urge the provincial government to amend Sharia-based Qanuns in Aceh to bring them into compliance with Indonesia's obligations under international law and its own Constitution? What is the legal status of the 2009 Qanun Jinayat and Qanun Hukum Jinayat, a criminal procedure code unique to Aceh? Have these draft laws been revised to bring them in line with the State's obligations under the Convention? Please also provide detailed information on the measures taken by the State party to review its national and local criminal legislation, including by-laws, which may be in violation of human rights and particularly the prohibition of torture, as well as any efforts to repeal or amend such legislation where identified.

(b) Information on measures taken to ensure that Wilayatul Hisbah members exercise a defined jurisdiction, operate in conformity with the provisions of the Convention and that their acts are subject to review by ordinary judicial authorities. Please also clarify the complaints mechanisms in place for persons alleging abuse by the Wilayatul Hisbah, as well as any oversight bodies to ensure that the Wilayatul Hisbah acts in accordance with the State's obligations under international law, in particular the Convention.

9. Please provide statistical information, which was being compiled at the time of the consideration of the last period report, on the sex and age of persons flogged and on any other forms of corporal punishment applied in any territory under the jurisdiction of the State Party (the State Party's written response to the list of issues).

10. Pursuant to the Committee's previous concluding observations (para. 16), please provide:

(a) Statistical information on the number of allegations of rape and sexual violence, including such crimes perpetrated in military conflict areas, and the number of such allegations that were investigated and brought to trial. According to information in the 2008 annual report of Komnas HAM, the Government has failed to adopt adequate measures in domestic violence cases, including sexual violence cases in conflict and military operation areas. Please indicate whether the State party had repealed discriminatory laws against women, including article 185, paragraph 2, of the Code of Criminal Procedure which requires complaints to be confirmed by two witnesses to prove rape. If not, please explain when it is expected to be done. According to information before the Committee, 80 of 162 by-laws remain discriminatory against women, such as limiting women's movement at night. Please provide the Committee with information on whether there are plans to review and/or repeal these laws, including details on when these amendments will take place.

(b) Information on the specific laws in force criminalizing traditional practices that could be considered to be torture, including female genital mutilation (FGM). While acknowledging the circular letter issued by the Ministry of Health prohibiting the practice of FGM, the Committee notes that there have been reports that this practice is ongoing, without any preventive measures or sanctions imposed by the Government, in contravention of the Convention.

(c) Detailed information on the measures adopted to fully implement Law No. 23/2004 to effectively combat domestic violence in the State party. According to KOMNAS Perempuan, the National Commission on Violence Against Women, there has been a 20% increase in incidents of domestic violence. Please comment on or explain this development.

(d) Please provide information on the legal safeguards in place to prevent targeting women as a result of the overly broad and vague definition of "pornography" in Law No. 44 of 2008 on anti-pornography. Please also provide detailed statistical information on the number of persons who have been charged under this bill, disaggregated by gender, age, location and offence.

11. In light of the Committee's previous concluding observations (para. 21), please provide information on measures taken to prevent harassment and violence against human rights defenders, in particular with regard to the reported criminalization of their activities, alleged stigmatization of them as separatists (Aceh and West Papua), and other forms of intimidation and restrictions on freedom of expression and assembly. Please provide information on:

(a) Steps taken to ensure that all persons, including those monitoring human rights, are protected from any intimidation, unjust imprisonment or violence as a result of their activities as well as the prompt, impartial and effective investigation of such acts. Please comment on reports of widespread impunity for violations committed against human rights activists. Specifically, please provide information on the investigation and any arrests or prosecutions in the case of Tama Satrya Langkun, who was hospitalized after he was knocked off his motorcycle and beaten.

(b) Specific legal framework recognizing the existence of human rights defenders and their role in the promotion and protection of human rights. Does the State party envisage amending or repealing all provisions of its Criminal Code that have been used to imprison individuals for their peaceful activities in conformity with international standards? Please provide the number of prisoners sentenced under articles 106, 110, 160, 310 and 335 of the Criminal Code.

(c) The status of draft laws, which would reportedly hamper the work of human rights defenders, including the amended Law on Mass Organizations, the draft Law on Reserve Forces for State Defense (KCPN) and the draft State Secret Law.

12. In addition, please provide the Committee with information on the steps taken to support and protect the work of human rights defenders at the provincial and local level as well as in regions with special autonomy. Please comment on the concerns about the situation of human rights defenders in the West Papua province.

13. Further to the Committee's previous concluding observations (para. 22), please describe steps to strengthen the independence of the judiciary, and prevent and combat corruption, collusion and nepotism in the administration of justice. According to information before the Committee, current pending legislation undermines the effectiveness and even the very existence of the Corruption Eradication Commission, e.g. by limiting its mandate to investigative functions and reducing the number of ad hoc judges to sit on trial panels. Please provide concrete information on the difficulties faced by the judiciary, measures taken to improve the situation, judicial inspection, training and their results. Please also describe steps taken to strengthen the transparency, independence, and impartiality of the military court system.

Article 3

14. With reference to the Committee's previous concluding observations (para. 28), what legal guarantees have been established to meet the requirements of article 3 of the Convention in cases of expulsion or return (*refoulement*) of foreigners? Has article 3 of the Convention been directly applied in these cases?

15. What is the current situation of asylum-seekers in Indonesia? Please provide statistics by region of the country, disaggregated by age, sex and country of origin of the asylum-seeking population.

Articles 5 and 7

16. Please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result since the consideration of the previous report. If so, please provide information on the status and outcome of such proceedings.

17. With reference to the Committee's previous concluding observations (para. 27), please provide updated information on the measures taken to ensure international judicial cooperation in investigating, prosecuting or extraditing perpetrators of acts of gross human rights violations, especially with regard to acts perpetrated in East Timor in 1999. Has the State party fully cooperated with Timorese, United Nations and relevant international institutions to that end?

18. In light of the Committee's previous concluding observations (para. 29), please provide information on domestic legislation establishing universal jurisdiction over the offence of torture and examples of current practice in this respect.

Article 10

19. In light of the Committee's previous concluding observations (para. 34), please provide detailed information on the human rights instruction and training provided for:

(a) Law enforcement and military personnel with respect to human rights, specifically the treatment of detainees and the non-refoulement obligation of article 3 as well as on the absolute nature of the prohibition of torture. Please provide information on training in areas such as non-coercive investigatory techniques and gender-sensitive training.

(b) Judges and prosecutors, particularly training on the specific obligations under the Convention.

(c) Medical personnel involved with detainees on the guidelines to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol. What safeguards are in place to ensure that medical personnel are not subject to police intimidation and are able to examine victims independently of the police?

Article 11

20. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report in 2008, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment. In view of the issuance of the Regulation of the Chief of the Indonesian National Police No. 8 of 2009 on the implementation of human rights principles and standards in the discharge of duties of the Indonesian National Police, please provide detailed information as to the measures adopted to fully implement the regulation in police stations of all levels. In view of Decree No. 1/2008 on the Investigation Control Officer designated to oversee the investigation process at the lowest level of the police unit, please provide detailed information as to the measures adopted to fully implement the decree, including measures taken, if any, to respond to complaints, including those regarding abuse of power, against the investigating unit.

21. In light of the Committee's previous concluding observations (para. 26), please provide information on the measures taken to establish consistent and comprehensive standards for independent monitoring mechanisms for all places of detention at the local or the national level, with a strong and impartial mandate and adequate resources.

Articles 12, 13 and 14

22. Please provide information on the prevention and protection measures for persons belonging to minorities, in particular the Ahmadiyah and other minority religious communities, by prosecuting and punishing all acts of violence and abuses against those individuals. Please comment on reports of ongoing incidents of violence against the Ahmadiyah community. Please inform the Committee of the number and the outcome of cases of persecution and punishment thereof.

23. In light of the Committee's previous concluding observations (para. 20), please provide information on the measures, in addition to the legal framework, taken to implement the current laws to combat trafficking. This information should include the number of trafficking cases reported to the police and other authorities, the number of resulting investigations, and the timeliness, status and findings of all such investigations including any resulting penalties (and whether criminal, civil or administrative in nature).

24. Has there been any progress in efforts to amend the legislation on human rights courts, Law No. 26/2000, with a view to implementing the Committee's previous

concluding observations (para. 23)? Please provide statistical data on the number of cases which have been brought to the human rights courts as well as on defendants, including army officers, who were found guilty and indicted, and the sentences applied. In light of the existing legal procedures, under which victims are granted reparation only if the perpetrators are found guilty and served sentences by the court, does the State party envisage taking any specific measures to guarantee the right to remedy?

25. In light of the Committee's previous concluding observations (para. 24), please provide information on the measures, in addition to the legal framework, taken to enhance the independence, mandate and resources of Komnas HAM and its members. Does Komnas HAM have authority to visit all places of detention with or without announcement?

26. In addition, please provide information on the measures taken to reform the Attorney-General's office with a view to ensuring that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality. Has the State party established an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment and published the reports of Komnas HAM investigations? Please elaborate in greater detail on the State party's response to a general allegation made by the Working Group on the lack of cooperation of the Attorney General in investigating the disappearance cases in 1998 (A/HRC/10/9, paras. 190 and 195). What efforts have been made, in cooperation with the Government of Timor-Leste, to communicate with the Working Group to further the clarification of 162 outstanding cases of missing people (A/HRC/13/31, para. 274)? Please provide detailed, updated information on the status of these cases.

27. In light of the Committee's previous concluding observations (para. 30), please provide information on the mandate of the future Commission of Truth and Reconciliation as well as the judicial review of Law No. 27/2004 on the Commission. Please comment on reports that the Commission lacks the necessary legal framework to successfully combat impunity for perpetrators of the violence in the civil conflict in Timor Leste and to guarantee victims' right to compensation. In particular, please provide information on the number of persons investigated, prosecuted, convicted and punished for torture or ill-treatment in connection with the civil conflict in East Timor. Please also provide information on steps taken to establish the Truth and Reconciliation Commission for Aceh, as called for in the Helsinki Memorandum of Understanding of 2005.

28. In light of the Committee's previous concluding observations (para. 31), please provide information on the measures taken to fully implement Law No. 13/2006, and in particular the material, human and budgetary resources provided by the State party to ensure the effective functioning of the newly established Witness and Victim Protection Body (Lembaga Perlindungan Saksi dan Korban, LPSK). Please provide the number of allegations of torture or ill-treatment dealt with by this body, including information on how many complaints led to investigations, prosecutions, convictions and punishments meted out, if any.

29. In light of the Committee's previous concluding observations (para. 32), please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families, since the examination of the last periodic report in 2008. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case. Please also provide information on the kinds of rehabilitation programmes provided to victims of torture, ill-treatment, trafficking and domestic and other sexual violence, including medical and psychological assistance, as well as the accessibility of such programmes.

Article 15

30. Pursuant to the Committee's previous concluding observations (para. 14), please provide information on:

(a) The steps taken to ensure that criminal convictions require evidence other than the confession of the detainee and to ensure that statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture. Has the State party investigated reports of use of torture and other compulsion to extort confession, including the allegations, transmitted by two Special Rapporteurs on 31 July 2008, in relation to detainees who were sentenced to death on the basis of a confession made under torture (A/HRC/11/2/Add.1, pp. 172-179)?

(b) The legislative measures taken to introduce into domestic legislation specific provisions governing the inadmissibility of evidence obtained through torture or ill-treatment.

(c) The outcome of the review of criminal convictions based solely on confessions. Please indicate the cases of wrongful conviction based on evidence obtained through torture or ill-treatment and the State Party's efforts to take appropriate remedial measures.

(d) The percentage of cases, since the consideration of the second periodic report of Indonesia, where the case for the Prosecution and/or conviction rested solely on confessions.

Article 16

31. Pursuant to the Committee's previous concluding observations (para. 17), please clarify what the current minimum age of criminal responsibility in Indonesia is at this time. Please also provide updated information on the measures taken to abolish all corporal punishment of children in juvenile prisons and to fully segregate detained children from adults, as well as information on the status of juvenile correctional institutions and juvenile courts including the number of such institutions and courts and their geographic location. Please clarify where child offenders are tried when such courts are not available. Please also comment on reports that some provisions of the Criminal Code (KUHP) and Criminal Procedure Code (KUHAP) apply to adults and children without distinction.

32. Further to the Committee's previous concluding observations (para. 18), please provide information on the measures to prevent violence affecting refugees and internally displaced persons, especially children living in refugee camps, as well as to ensure safe repatriation and relocation of all refugees and displaced persons, in cooperation with the United Nations. Please provide the Committee with information on the measures taken for the safe return of Ahmadis who have been forced into internally displaced person (IDP) camps as a result of mob violence, as well as information on the governmental support provided to these and other refugees and IDPs living in such camps.

33. Please provide information on the measures taken to amend discriminatory provisions contained in some of the existing bilateral memorandums of understanding (MOUs) on the rights of migrant workers, and efforts to ensure that newly adopted MOUs on migrant workers do not contain such discriminatory provisions. For example, are employers still permitted to hold the passports of migrant workers? In addition, has the State party revised the content of the MOU signed with Malaysia in May 2006 to improve the regulation of and monitor the recruitment process with a view to ensuring the protection of the rights of migrant workers?

34. Please comment on reports of a trend towards greater use of the death penalty in Indonesia, in particular in the context of the Law on Human Rights Courts (Law 26/2000), the Law on Combating Criminal Acts of Terrorism (Law 15/2003) and the 2009 draft Qanun Jinayat in Aceh. Please elaborate on the bill adopted in September 2009 providing for the death penalty as possible punishment for leaking State secrets.

35. With regard to prison conditions, please provide the Committee with information on:

(a) Measures taken to address the problem of overcrowding in Indonesia's prisons – are any new prisons currently under construction or are there plans for new detention facilities at this time? Are there plans to reduce the prison population or find alternative punishment?

(b) Treatment of persons living with HIV/AIDS in prison – are they able to access necessary medical care and treatment? Do such prisoners enjoy protection from stigmatization and discrimination within the prison community?

Other issues

36. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and in practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

37. Please provide the information regarding areas of particular concern identified by the Committee at its fortieth session (para. 43) and recalled by the Committee's Rapporteur for Follow-up in her letter dated 12 November 2009.

38. In light of the Committee's previous concluding observations (para. 36), please provide updated information on follow-up measures to fully implement the recommendations contained in the reports of several special procedures mandate-holders on their visits to Indonesia, inter alia, the reports of the Special Rapporteur on torture (A/HRC/7/3/Add.7), the Special Representative of the Secretary-General on the situation of human rights defenders (A/HRC/7/28/Add.2), the Special Rapporteur on the human rights of migrants (A/HRC/4/24/Add.3) and the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2003/65/Add.2). Please indicate the State party's position on extending an invitation to the special procedures mandate holders who have requested a visit, especially to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on enforced or involuntary disappearances, the Special Rapporteur on freedom of religion or belief and the independent expert on minority issues.

39. In light of the Committee's previous concluding observations (para. 39), please provide information on the measures taken to ratify the Optional Protocol to the Convention against Torture, despite its commitment indicated in the second national human rights action plan. Has Indonesia taken steps to set up or designate a national mechanism which would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

40. Please indicate what steps have been taken by the State Party to accept the competence of the Committee under article 22 of the Convention. Is the State party considering withdrawing its reservations and declarations to the Convention?

41. In light of the Committee's previous concluding observations (para. 40) and information regarding the reported deaths of hundreds of Indonesian migrant workers due primarily to inadequate standards of work conditions and security, please indicate what steps, if any, have been taken by the State party toward ratification of the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families. Please also indicate what, if any, time period for ratification has been established by the State party.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

42. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

43. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

44. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2008, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.
