

# INDONESIA: BRIEFING TO THE UN COMMITTEE AGAINST TORTURE – SUMMARY

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In May 2008, the UN Committee against Torture (or the Committee) will examine Indonesia's second periodic report which was submitted by the Indonesian government on 23 September 2005. This examination provides an opportunity to review Indonesia's progress since its last submission in 2001 in abiding both in law and practice by the provisions of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Convention Against Torture*, or the Convention).

The Indonesian government ratified the Convention in 1998 (Law No.5/1998) as the country was slowly emerging out of authoritarian rule. Indonesia has entered one declaration and one reservation to the Convention. This second consideration by the UN Committee against Torture occurs at an opportune time. It coincides with the recent visits to Indonesia of the UN Special Representative on Human Rights Defenders, Hina Jilani, and of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, as well as the end of the five year mandate of Susilo Bambang Yudhoyono (2004-2009), Indonesia's first directly elected President. Further, ten years after the fall of President Suharto, it provides an opportunity to assess Indonesia's real progress towards respecting human rights and the rule of law during the so-called *reformasi* period.

In recent years, Indonesia has repeatedly affirmed its commitment to human rights principles, and has undertaken important legal reforms to better protect persons on its territory from human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). Yet Amnesty International has documented many instances under the Presidency of Susilo Bambang Yudhoyono and of his predecessors where provisions of the Convention have been violated.

As of early 2008, old and new national laws continue to offer inadequate safeguards to deter the use of torture and other ill-treatment in all circumstances. Amnesty International receives on a regular basis reports indicating that state agents have been committing torture and other ill-treatment during arrests, interrogation and detention, sometimes leading to deaths. Further, conditions in detention facilities and prisons are of concern as they often do not meet the UN Standard Minimum Rules on the Treatment of Prisoners, and Indonesia continues to use forms of cruel, inhuman and degrading punishment such as the death penalty and caning.

This context of widespread use of torture and other ill-treatment is aggravated and supported by a pattern of impunity throughout the country, which can be perceived by perpetrators as giving them licence to continue violating human rights. Victims have few reliable means of complaint, protection and redress, and in the isolated cases where perpetrators of torture have been brought to court, they usually go free or are sentenced to very light punishments.

In this submission Amnesty International will provide information on the implementation by Indonesia of the Convention, and will set out ways in which the Indonesian government could better comply with its obligations under the Convention. This documentation draws on years of Amnesty International field and desk research on Indonesia through regular contacts with local and international non governmental organizations, victims and their families, lawyers, government officials, and other individuals. It also relies on daily media monitoring, and extensive reading of academic and other reliable publications on Indonesia.

This briefing, although not exhaustive, will highlight the following aspects:

- **Insufficient provisions prohibiting acts of torture in the Criminal Code (Articles 1.1, 2 and 4).** Until now, the Law on Human Rights Court remains the sole legislation which specifically prohibits torture and this only as a crime against humanity.
- **Insufficient safeguards in the Criminal Procedure Code (Articles 2, 12, 13 and 15).** Although the existing Criminal Procedure Code provides several safeguards for the rights of suspects and defendants at different stages of investigation and trial, there are a number of areas where it does not meet international standards, including those provided by the Convention. Likewise, the draft Criminal Procedure Code which has been under revision for a number of years, although it contains notable improvements compared to the current Code, remains inconsistent with international standards and leaves suspects and defendants, particularly those in detention, vulnerable to human rights violations including torture and other ill-treatment.
- **The absence of legal provisions prohibiting 'non-refoulement' (Article 3).** Although Indonesia is bound by Article 3.1 of the Convention, it has yet to incorporate within its national legislation and extradition treaties, provisions prohibiting the expulsion, return or extradition of individuals to another state where they would be at risk of severe human rights violations including torture (the principle of non-refoulement).
- **Torture and other ill-treatment in detention (Articles 2, 10, 11, 12, 15 and 16).** Amnesty International is concerned at the lack of legal safeguards preventing police abuse during pre-trial detention, and the extent to which such safeguards as do exist are not implemented in practice. This failure in both law and practice has encouraged a culture of violence leading to torture and other ill-treatment of detainees. Over the last few years, Amnesty International has received many reports of individuals who have been tortured or otherwise ill-treated, sometimes resulting in death during arrest and interrogation. Further, Amnesty International has noted specific health concerns with respect to detention conditions in Indonesia due to overcrowding, poor sanitation, lack of food and insufficient medical care in police custody, detention centres and prisons.
- **Cruel, inhuman or degrading punishments including death penalty and caning (Article 16).**
- **Accountability mechanisms (Articles 5, 6, 7, 8, 9, 12, 13, 14 and 16).** Amnesty International has recorded many instances whereby there have been no investigations into cases of torture and other ill-treatment, and where victims have been reluctant to submit a complaint to the relevant authorities. In a small number of cases of human rights violations, including torture and other ill-treatment, committed by the police force, there have been only internal investigations or officers have been subject to internal disciplinary proceedings. In cases of gross human rights violations, despite the creation of human rights courts, suspected perpetrators of such violations have often gone unpunished and victims left without justice or reparations. Amnesty International is also concerned by the use of military courts in the context of insurgency operations (e.g. Aceh) which are not impartial or independent.
- **The inadequate implementation of the Domestic Violence Law (Articles 2.1, 12, and 16).** In its report entitled "*Exploitation and abuse: the plight of women domestic workers*" (AI Index: ASA 21/001/2007), Amnesty International highlighted cases of physical, sexual and psychological violence against women and girl domestic workers in Indonesia. Such cases of abuse against domestic workers are under-reported to the police, mirroring a pattern which is prevalent in cases

of violence against women in Indonesia. Isolated from their family and friends, women domestic workers risk losing their jobs if they speak out, a risk most of them do not feel in a position to face. Their fear, coupled with the failure of government authorities to protect domestic workers' rights and to prevent, investigate and punish abuses committed against them leaves much of the violence and other abuses perpetrated against such women and girls in the shadows.

This report summarizes a 65-page document (22,372 words): Indonesia, Briefing to the UN Committee Against Torture (AI Index: ASA 21/003/2008) issued by Amnesty International on 15 April 2008. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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