

AI Index: ASA 21/5273/2016

Mr. Muhammad Syafii
Chairperson of the Special Committee on the Revision of the Anti-Terrorism Law
of the House of Representatives of the Republic of Indonesia
House of People's Representatives (DPR RI)
Kompleks Gedung Dewan Perwakilan Rakyat
Jl. Gatot Subroto, Senayan
Jakarta, 10270,
Indonesia

05 December 2016

OPEN LETTER TO THE CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA ON THE NEW PROPOSAL ON COUNTER-TERRORISM LAW REVISION

Dear Chairperson,

Amnesty International and the Institute for Criminal Justice Reform (ICJR) are writing to express our deep concerns about proposed amendments to the Law on Counter-Terrorism (No. 15/2003). The announcement of the proposal to amend the existing counter-terrorism law was made soon after the violent attack on Central Jakarta's business district in January in which at least four members of the general population were killed and around 20 others injured.

Our organizations recognize that the Indonesian authorities have a duty to protect the population from such attacks, and to carry out investigations with a view to bringing the perpetrators to justice in fair trials without recourse to the death penalty. However, in doing so they must abide by Indonesia's obligations under international law and human rights standards. In our view, the proposed amendments to the law are highly flawed, in particular because they undermine safeguards against arbitrary detention, fail to safeguard against torture and other ill-treatment, expand the scope of application of the death penalty, and undermine the right not to be arbitrarily deprived of nationality. We urge you to fundamentally revise the proposed amendments as your office proceeds to approve the final text in the coming months.

PROLONGING PRE-TRIAL DETENTION WITHOUT JUDICIAL SUPERVISION; ADMINISTRATIVE DETENTION

Under the draft amendment to Article 28 the period for which the police can detain a person without charge is extended from seven days to thirty days (for crimes generally it is one day). Once charged and named as a suspect, the person can be detained for a further period of up to 510 days (or 16.7 months) before being brought to trial (that is, a total of up to 540 days after arrest). For 210 days of this period, the individual can be held on the sole authority of the police. Subsequently the police can seek extensions from the prosecutor and from the courts, but at no point during this period is the individual brought before a judge. Under the Counter-Terrorism Law (No. 15/2003) as it currently stands, a suspect can be detained up to six months before trial.

The draft amendment also gives powers of administrative detention to law enforcement agencies, which can arrest those suspected of terrorism-related offences and hold them in detention for up to six months; it identifies this as a preventive measure, not related to any intention to bring charges. Article 43A of the draft revision law stipulates that "to resolve the acts of terrorism, the investigator or prosecutor can take preventive measures against any particular person, who is suspected to commit acts of terrorism, to be taken or placed at certain places under the jurisdiction of the investigator or prosecutor up to six months." There is no provision in the draft amendment for those detained in this

way to have any access to a lawyer or members of their families or to medical care. It states that they will be under the jurisdiction of the police or prosecutor; there appears to be no judicial oversight.

The rights to the assistance of a lawyer and to communicate with the outside world enable an individual suspected of a criminal offence to protect their rights, including the right to challenge their detention, and provide important safeguards against torture and other ill-treatment, coerced “confessions”, enforced disappearance and other human rights violations. Judicial oversight of detention, which ensures that detainees are not exclusively at the mercy of the authorities detaining them, also provides a safeguard against these violations as well as against arbitrary detention.

This administrative detention will enable state authorities to hold suspects without bringing charges or prosecuting them in a criminal trial and will prevent the suspects from challenging the lawfulness of their detention before a court.

TORTURE AND OTHER ILL-TREATMENT

Our organizations remain concerned that torture and other acts of ill-treatment are not criminalized under the Indonesian Criminal Code or other laws, even though Indonesia is a state party to the Convention against Torture [and other Cruel, Inhuman or Degrading Treatment or Punishment] and is accordingly under a treaty obligation set out in Article 14 of the Convention to ensure that all acts of torture are offences under its criminal law. Indonesia is also obliged under international law to ensure that statements or other forms of evidence elicited as a result of torture, ill-treatment or other forms of coercion are excluded as evidence in all proceedings, except those brought against suspected perpetrators of such abuse (as evidence that the statement was made).

Torture and other ill-treatment are absolutely prohibited under customary international law, at all times. There are no exceptional circumstances, including threats of terrorism or other violent crime, which can be used to justify any departure from this absolute prohibition.

Amnesty International and the Institute for Criminal Justice Reform (ICJR) have documented cases in Indonesia in recent years of arbitrary arrests followed by torture and other ill-treatment during arrest, detention and interrogation by the police, including by the counter-terrorism unit Detachment 88. However, there are rarely independent and impartial investigations into such allegations, and the perpetrators are not held to account. In particular, our organizations are concerned that in April 2016, General Badrodin Haiti, then the chief of Indonesia’s national police, confirmed that members of the elite Detachment 88 counter-terrorism unit kicked an alleged suspect in the chest, breaking his ribs, and causing his heart to fail. Despite this confirmation of the use of torture, the perpetrators, two members of the Detachment 88 unit, received only administrative punishment after facing an internal police hearing in May 2016.

The draft amendment should include a provision that explicitly states that nothing in the law should be interpreted or applied in a way that conflicts with, or is in any way inconsistent with, Indonesia’s international human rights obligations, in particular its obligations regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

EXPANDING THE SCOPE FOR THE USE OF THE DEATH PENALTY

Law No. 15/2003 already provides the death penalty for “anyone who commits violence or threatens violence that takes ‘massive casualties’ or destroying strategically vital objects, using chemical or biological weapons, transferring illegally any firearms or explosives into Indonesia to be used for ‘terrorism acts’ and for any person who masterminds those actions under the Counter-Terrorism Law”.

The proposed amendments, if adopted, would add the imposition of the death penalty for encouraging another person to found, manage or administer a terrorist group (under Article 14 and Articles 12A.2 and 3 combined) or encouraging another person to separate a territory from any “friendly states” of Indonesia or unlawfully change the governance of those “friendly states” (under Article 14 and Articles 12B.3 combined). These provisions could include acts that do not constitute intentional killing and as

such do not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted under international law and standards.¹

Moreover, the expansion of the scope of the death penalty is contrary to international standards on the death penalty. The UN Human Rights Committee has stated that it “raises questions as to the compatibility with article 6 of the International Covenant on Civil and Political Rights” and the UN Commission on Human Rights in 2005 called upon all states that still maintain the death penalty “not to extend its application to crimes to which it does not at present apply”.²

THE RIGHT NOT TO BE ARBITRARILY DEPRIVED OF NATIONALITY

Another proposed amendment would give powers to the authorities to revoke the citizenship of an Indonesian national who has participated in any training intended for acts of terrorism. Nationality is itself a human right, and enshrined in article 15 of the Universal Declaration of Human Rights (UDHR), which affirms that everyone has the right to a nationality, and that no one shall be arbitrarily deprived of their nationality. In addition there are a number of other rights that flow from and are dependent on nationality, in particular, the possession of a country’s nationality provides a right to enter and remain in the country, and accordingly a strong guarantee against expulsion to another country where an individual may be at risk of torture or other serious human rights violations. In any case, no one may be arbitrarily deprived of the right to enter or remain in their own country.

As Indonesia does not permit its citizens to hold a second nationality, this would also mean that anyone deprived of Indonesian nationality would become stateless. This would contravene obligation on states to avoid statelessness, a fundamental principle which has been recognized as a norm of customary international law, and in particular not to deprive anyone of nationality leaving them stateless.

RECOMMENDATIONS

Our organizations recognize that in recent years there have been several ideologically-based violent attacks on the general population. Indonesia has an obligation to protect the right to life of the population, but the recent deplorable attacks must not be used to roll back human rights in the name of security, and it is essential that counter-terrorism measures are proportionate. It is essential that there is a change of course to adopt an approach that respects human rights and the rule of law.

Therefore we urge you as the Chairperson of the House of Representatives of the Republic of Indonesia to take the following steps:

- Ensure that the amendments of the existing counter-terrorism law comply with international law and standards, particularly with Indonesia’s obligations under customary international law and human rights treaties to which Indonesia is a state party;
- Ensure that the law does not permit any Indonesian authority to detain anyone unless she or he is promptly charged with a recognizably criminal offence and tried within a reasonable time;
- Ensure that the law provides that detainees are not restricted in their access to lawyers, that there is prompt notification of and regular contact with family members or a third party of their choice, as a crucial means of scrutiny of the well-being of the individual concerned and of the conditions in which they are being detained;

¹ ICCPR Article 6(2); UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984/50 of 25 May 1984, Safeguard No. 1; UN Human Rights Committee, General Comment 6, Article 6; report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, A/67/275 (2012), para.122.

² UN Human Rights Committee, Concluding observations of the Human Rights Committee, Peru, UN document CCPR/C/79/Add.67, 25 July 1996, para.15. See also UN Commission on Human Rights, Resolution 2005/59 of 20 April 2005.

- Ensure that the law is amended to include an explicit statement that nothing in the law may be interpreted in way that conflicts with, or is in any way inconsistent with, Indonesia's international human rights obligations, in particular its obligations regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; it should also include a provision that explicitly states that statements or other forms of evidence elicited as a result of torture, ill-treatment or other forms of coercion must be excluded as evidence in criminal proceedings, except those brought against suspected perpetrators (as evidence that the statement was made);
- Ensure that the provisions extending the scope of the death penalty are removed, and establish a moratorium on executions, commute existing death sentences and bring national legislation regarding the death penalty into line with international law and standards as first steps towards full abolition of the death penalty;
- Ensure that the provisions on deprivation of nationality are removed or substantially amended so as to ensure that no one is deprived of nationality so as to render them stateless or otherwise arbitrarily deprived of their nationality.

Thank you for your attention.

Yours sincerely,

Rafendi Djamin
Director
South East Asia & the Pacific Regional Office
Amnesty International

Supriyadi W. Eddyono
Chief Executive
The Institute for Criminal Justice Reform (ICJR)