INDONESIA
Commentary on Indonesia's first report to the UN Committee against Torture

Amnesty International welcomes Indonesia's first report to the United Nations' Committee against Torture (CAT). The report represents an important step by the Government of Indonesia towards addressing its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). It is hoped that it will be swiftly followed by concrete measures, including legal and institutional reform, to bring about an end to the widespread practice of torture in Indonesia and to ensure that allegations of torture can be effectively addressed.

Indonesia's report to CAT attaches great importance to Indonesia's existing constitutional, legal and other protections against torture. However, the report fails to acknowledge the endemic nature of torture in Indonesia making no reference to the hundreds of cases of torture which are reported by human rights organizations each year. Nor does Indonesia's report adequately address the obstacles impeding the effective implementation of existing safeguards. It also makes no reference to plans for legal and institutional reform; for more effective training and oversight of law enforcement and justice officials; for providing the tens of thousands of victims of torture, or their families, with redress including justice and reparations; and other measures which are clearly required for Indonesia to fulfil its obligations under the Convention against Torture.

The following report summarizes Amnesty International's concerns about the use of torture in Indonesia. It provides comments on the context in which torture occurs and highlights specific areas where legal and institutional protection is inadequate or safeguards are not implemented and outlines the main reasons for this. The report ends with a series of recommendations which Amnesty International believes, if implemented, would contribute significantly to ending torture in Indonesia.

Torture in Indonesia

Following the collapse of the 32-year-old New Order regime and resignation of former President Suharto in May 1998, several significant initiatives were taken by subsequent governments which have the potential to contribute to ending the practice of torture in Indonesia. Among these measures was the ratification of the Convention against Torture in October 1998. This step was one of a number measures outlined in the National Plan of Action on Human Rights 1998-2003 which was launched on 25 June 1998. In addition to laying out a timetable for ratifications of human rights instruments, the National Plan of Action also includes measures for implementation *inter alia* through the harmonization of domestic laws and providing guidelines for law enforcement and other relevant officials for implementation.

In April 1999 the Anti-subversion Law was repealed. This legislation had been widely criticised, including by the UN Special Rapporteur on torture, as being inconsistent with international human rights standards and because it facilitated the practice of torture. Under the Anti-subversion Law exceptions to essential safeguards to protect the rights of detainees contained in the Code of Criminal Procedure (KUHAP) were permitted. Thousands of people had been detained or imprisoned under this law during the Suharto years, many of them were subjected to torture and ill-treatment.

Also in April 1999, it was announced the police would be separated from the military and in January 2000 authority for the police was transferred from the Ministry of Defence to the President. Although still far from being an effective, accountable, civilian police force, its separation from the military is considered to be a positive development. A further significant measure was the adoption by the Indonesian parliament (DPR), in November 2000, of the Law on Human Rights Courts (Law 26/2000). Under Law 26/2000 torture as a crime against humanity is recognized for the first time under Indonesian law.

The fact that torture and cruel, inhuman or degrading treatment continues to be widely perpetrated in Indonesia points to the need for additional measures, as well as for existing safeguards to be implemented. Many of the cases of torture documented by Amnesty International take place in areas where there is opposition to Indonesian rule - specifically the provinces of Aceh and Papua (also known as Irian Jaya) where there are both peaceful and armed independence movements. Torture of detainees who are alleged to have links with armed opposition groups is routine in these areas. The situation was similar in East Timor prior to authority for the territory being transferred to the United Nations on 25 October 1999.[1]

There was a brief period following the fall of former President Suharto's government in which there was greater tolerance by the government of expressions of support for independence, and there were various initiatives in both Aceh and Papua to find negotiated settlements. During the last two years a more repressive approach has again been evident, involving both the military and the police in operations to suppress independence movements. The human rights situation in both regions has deteriorated markedly during 2001.

In this context torture is used for a range of purposes including to extract confessions, as a form of reprisal or punishment, to intimidate and for the purposes of extortion. It is carried

[1] The transfer of authority for East Timor to the UN resulted from a ballot on 30 August 1999 in which the population of East Timor voted overwhelmingly against continued integration with Indonesia. Under an agreement signed in May 1999 between the governments of Indonesia and Portugal (the colonial power in East Timor prior to the Indonesian invasion in 1975), Indonesia agreed to relinquish its claim to the territory if the East Timorese voted against their proposal to give the territory special autonomy status within Indonesia.

out by both members of the military and the police and typically takes the form of kicking, beatings with fists, lengths of wood, iron bars, electric cable, the butts of guns, batons, rattan whips and other objects, burning with lighted cigarettes or matches, slashing with knives or razors, death threats and mock executions, soaking with water including water containing sewerage, mutilation of the genitals, sexual molestation and rape. In some cases torture results in death.

The profile of victims is broad, but the justification is generally the same - that they are suspected of supporting independence. Little distinction is made between peaceful political activists and members of armed groups. Ordinary civilians, including women and children, have been subjected to torture and other rights violations, in some case in revenge for an attack on the security forces by an armed opposition group, or to discourage them from giving support to such groups.

Increasingly, human rights activists and humanitarian workers have become the target of human rights violations including torture or ill-treatment. Amnesty International has documented cases of 41 human rights activists or humanitarian workers in Aceh who have been the victims of torture or ill-treatment since October 1999. Others have been extrajudicially executed or have "disappeared". Human rights defenders in Papua have also been subjected to increasing levels of harassment and intimidation, including death threats, over recent months. Amnesty International believes that human rights activists are being specifically targeted to discourage them from carrying out their legitimate work to investigate, document and report on human rights violations.

Torture and ill-treatment in Indonesia is not confined to the context of counter-insurgency operations. Amnesty International has also documented cases of torture or ill-treatment of criminal detainees and of individuals involved in disputes with the authorities over issues such as land and labour rights.

Crucially, torture - like other human rights violations in Indonesia - is a crime which goes unpunished. With few exceptions allegations of torture are not investigated and perpetrators are not brought before the courts. In the few cases where perpetrators have been brought to justice, trials have taken place in military courts, or in one case, in a mixed military/civilian tribunal (*pengadilan koneksitas*). Amnesty International is concerned that these trials did not meet with international standards for fair trial and that the independence of the process was compromised by the involvement of the police and military in investigations of cases in which their own members were suspects.

There is no mechanism in Indonesia by which allegations of torture can be promptly, independently and impartially investigated as a matter of routine. Moreover, although a process to reform the civilian courts has been initiated, the judiciary in Indonesia still lacks independence.

It has also been criticised, including by Indonesian government officials and the National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM), for widespread corruption among its officials and the way in which this has undermined its independence and impartiality. In the absence of effective and credible mechanisms for investigation or an independent judiciary there is no avenue through which victims can seek redress with any expectation of success.

The failure of the judiciary to adequately deal with cases of torture and other human rights violations is reinforced by the incomplete legal framework to protect against torture and a failure to implement legal safeguards that do exist. However, at the root of the problem is a lack of political will to bring to justice individuals suspected of committing human rights violations which has created a situation in which there is almost total impunity for those who violate human rights in Indonesia.

The authorities continue to demonstrate a resistance to bringing to trial members of the military, the police or other state officials, particularly those holding senior positions. Senior military and other officials who have been officially named as suspects in cases of serious crimes, including crimes against humanity, have never been detained and continue in active service. Investigations have been actively obstructed in a number of key cases, including because members of the security forces and other officials have refused to cooperate or because witnesses and victims have been subjected to intimidation. In the few cases where investigations have been completed, prosecutions have been repeatedly delayed. In the absence of a strong stand by the country's leadership against torture and meaningful efforts to prevent it, including by punishing individuals found to have committed acts of torture, there effectively exists little or no deterrent against torture or ill-treatment.

Analysis of the situation of torture in Indonesia by article of the Convention

Article 1. The definition of torture

In its report, the Government of Indonesia refers to safeguards against torture contained in the Constitution; the state ideology - *Pancasila*; Peoples Consultative Assembly (MPR) Decree number XVII of 1998; the Criminal Code (KUHP); Law 39 of 1999 on Human Rights; and the Government Regulation in lieu of Law Number 1 of 1999 on Human Rights Courts (this regulation was subsequently replaced in November 2000 by Law 26/2000 on Human Rights Courts).

Torture is not explicitly prohibited in the Constitution although amendments adopted in August 2000 do include more detailed protection for human rights than was previously the case.[2] Indonesia's report to the Committee points to Part 1, Article 27 of the Constitution as implying that the right to be free from torture is guaranteed. The article states that : "*All citizens shall have the same status in law and in the government and shall, without exception, respect the law and the government*". Amnesty International regards this provision to be too vague and open to interpretation to afford an effective constitutional safeguard against torture.

Pancasila is similarly vague. According to the government the second principle of a "*just and civilized humanity*" is conceived to mean that torture is unacceptable. However, there is no specific reference to torture in *Pancasila*. Amnesty International does not believe that the state philosophy can be regarded as providing legal protection against torture, indeed, individuals accused of threatening the *Pancasila* have in the past themselves been subjected to torture. Criticism of *Pancasila* remains a criminal offence in Indonesia, although no one is currently detained or imprisoned under the relevant legislation.

Amnesty International recognizes that the right to be free from torture, or cruel, inhuman and degrading punishment or treatment is stated in both MPR Decree XVII of 1998 and Law 39/1999 on Human Rights. However, torture is not specifically prohibited in criminal law. Under Article 422 of Indonesia's Criminal Code (KUHP) it is forbidden for an official involved in a criminal case to make use of coercion either to extract a confession or to persuade someone to provide information. This definition is more restrictive than Article 1 of the Convention against Torture. It does not include the infliction of torture by a person who is not a state official or person acting in an official capacity but is nevertheless acting on their instigation or with their consent or acquiescence. Nor does it include the possibility that torture can take place outside of the formal criminal justice system. Article 422 also limits the purposes for which torture is carried out to just "*extracting a confession, or persuading someone to give information*" which is inconsistent with the wider and non-exhaustive list of purposes for which torture may be inflicted which is contained in the Convention against Torture.[3]

[2] The right to life, the right to freedom from persecution or humiliating treatment and to equality before the law are among the amendments included in Chapter 10 Articles 28a-28j.

[3] Article 1 of the Convention against Torture states that "*... the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third party information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*".

Another provision which it is sometimes argued could be applied in cases of torture is that of maltreatment under KUHP Article 354. The precise nature of, or the circumstances in which, the term maltreatment is applicable is not defined under the this article which also does not incorporate all aspects of the definition of torture in Article 1 of the Convention against Torture.

KUHP also fails to provide adequate protection against rape or other forms of sexual violence which are frequently employed as forms of torture. Following a visit to Indonesia and East Timor in late 1998, the Special Rapporteur on violence against women noted that "*torture of women detained by the Indonesian security forces was widespread, especially in Aceh, Irian Jaya and East Timor*" and that among the methods of torture that were employed were "*rape, electric shock treatment to ears, nose, breasts and vagina... [and] forced intercourse with other detainees...*". Rape, as it is defined under KUHP Article 285, is limited to forced penetration of the vagina by the penis and does not cover other forms of sexual violence which have been used to torture victims in Indonesia. The Special Rapporteur recommended a broader definition of rape to include acts beyond penile penetration, in order to stress the demeaning and violent aspects of rape, rather than its sexual nature.[4]

Amnesty International welcomes the inclusion of torture as a crime against humanity in the recently adopted Law on Human Rights Courts (Law 26/2000). However, it is concerned that the definition of torture in this law is not fully consistent with the definitions contained in the Convention against Torture and the Rome Statute of the International Criminal Court (Rome Statute) which provide the definitive standards.[5] Under the General Notes to Law 26/2000 torture is defined as "*deliberately and illegally causing gross pain or suffering, physical or mental, of a detainee or person under surveillance*". Under this definition the situations in which torture can take place is too limited and, as with KUHP Article 422, does not include the possibility that torture can take place outside of the formal criminal justice system - in this case outside the situations of detention or surveillance. It is also unclear whether the word "illegally" means contrary to international law and not just domestic law.

Amnesty International has recommended, in meetings with Indonesian government officials and in writing, for this and other provisions in Law 26/2000 which are inconsistent with international standards to be reviewed. Without amendments to the law the right to fair trial for

[4] Report of the Special Rapporteur on violence against women, its causes and consequences. Mission to Indonesia and East Timor on the issue of violence against women (20 November - 4 December 1998). E/CN.4/1999/68/Add.3, 21 January 1999.

[5] Under Article 7.2(e) of the Rome Statute, torture is defined as "*...the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused;...*".

suspects and the likelihood of delivering justice to victims will be jeopardized. It is not known whether the government intends to act on these recommendations.[6]

Article 2.1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 4.1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by an person which constitutes complicity or participation in torture.

Article 4.2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Administrative measures, which could contribute to reducing the risk of torture and other human rights violations including "disappearances", have yet to be implemented in Indonesia. Among the measures which Amnesty International believes should be taken without delay is the introduction of a central register of detainees. Up-to-date registers and detailed custody records should also be maintained at every detention facility.

In addition, a system of visits to detention facilities and prisons by an independent body should be established. Komnas HAM has on occasions performed this role, but not in any systematic manner. Although Amnesty International regards such visits by Komnas HAM as positive it is important that individuals performing this role should have the necessary skills and expertise. The organization was concerned that, after a visit in January 2001 to four Papuan students Metro Jaya Regional Police Headquarters in Jakarta to investigate allegations that they had been tortured, Komnas HAM representatives publicly reported that they had found no evidence of torture or ill-treatment in this case. The statement was later retracted. Amnesty International subsequently visited the four students in March 2001, who were by then in the Salemba detention centre in Jakarta awaiting trial. It was clear to the Amnesty International delegates that at least two of the detainees were suffering the ill-effects of torture and that they had been denied access to medical treatment.

As detailed in the previous section, torture as a crime against humanity has recently been recognized under Indonesian national law. Under Law 26/2000 torture which is widespread

[6] For detailed comments and recommendations on Law 26/2000 see Amnesty International document: *Indonesia: Comments on the Law on Human Rights Courts (Law 26/2000)*. AI Index: ASA 21/005/2001, February 2001.

or systematic and therefore constitutes a crime against humanity is punishable by up to 15 year's imprisonment.[7]

Other legislative measures needed to fulfil its obligations under the Convention against Torture have not been taken by the Government of Indonesia, including ensuring that independent acts of torture are offences under criminal law. Moreover, the maximum punishment of just four years' imprisonment under Article 422 of KUHP does not adequately reflect the seriousness of the crime. The crime of "maltreatment" (KUHP Article 354) punishes the deliberate infliction of serious physical injury by a maximum prison sentence of eight years or 10 years if the "maltreatment" results in death.

Plans to amend KUHP have existed for some time. In a meeting in March 2001, the Minister of Justice informed Amnesty International that an amended version of KUHP would be presented to parliament by the end of that year. Amnesty International has recommended that amendments to KUHP should include a provision which explicitly prohibits torture, and that torture should be defined in such a way that it is consistent with the definition contained in the Convention against Torture. It is not known what the current schedule for the review is or whether the government intends to amend provisions relating to torture.

In the meantime, the crime of torture goes largely unpunished in Indonesia. The rare exceptions are not sufficiently numerous or credible to represent a deterrent to others, nor have the sentences imposed on those found guilty reflected the seriousness of the crime. Of the many hundreds of cases of human rights violations in Aceh which have been documented by Amnesty International, only two cases have come to trial since January 1999. In one of the cases, five soldiers were sentenced to terms of imprisonment of between two and six years, for their role in beating to death five detainees and severely injuring 19 others who were being held in a building owned by a student group in Lhokseumawe, North Aceh in January 1999.

Amnesty International knows of no case in Papua in which alleged perpetrators of torture have been brought to justice in recent years. Trials of torture suspects elsewhere in Indonesia are also thought to be rare. In what appears to be an exception, it was reported in a local newspaper that a police officer was found guilty in September 2001 of beating to death a

[7] Under the Rome Statute individuals convicted of crimes under the jurisdiction of the International Criminal Court - which includes crimes against humanity - should be imprisoned for a specific number of years, which may not exceed a maximum of 30 years; or to life imprisonment, when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. (Article 77).

19 year old student called Nasaruddin in Pekayon Sub-district, West Java. He was sentenced to three years' imprisonment and dismissed from the police force.[8]

The possibility of bringing perpetrators to justice for torture as a crime against humanity exists under Law 26/2000 on Human Rights Courts. This law provides for the establishment of permanent and of *ad hoc* human rights courts in cases which took place prior to the promulgation of the legislation. Although a number of investigations have so far taken place under Law 26/2000, and two *ad hoc* human rights courts have been authorised by the President, neither the permanent or any *ad hoc* courts have yet been set up and no cases have yet been heard under this legislation.[9] The reason given for the delay by the government has been the difficulty in identifying suitable candidates to act as judges in the human rights courts. While a shortage of judges and other officials with the necessary training and experience is a factor in Indonesia, Amnesty International considers that a lack of political will among senior government officials, politicians and others to overcome these and other difficulties is the main cause of the delays.

The most prominent case among the three that have so far been investigated under Law 26/2000 is that of serious crimes committed in East Timor in the months leading up to and immediately after the popular consultation of 30 August 1999. The case illustrates obstacles which prevent the effective implementation of this law and demonstrates a continued reluctance by the Indonesian authorities to bring perpetrators of torture and other human rights violations to justice.

Separate investigations were carried out by an International Commission of Inquiry, a team of three UN Special Rapporteurs and an Indonesian Commission of Inquiry into Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggarang Hak Asasi Manusia Timor Timur* - KPP HAM East Timor). All found that widespread and systematic human rights violations, including torture, were committed in East Timor during 1999. All agreed that members of pro-Indonesian militia groups and the Indonesian security forces were responsible for the violations.

[8] "Police Officer jailed for beating", *Jakarta Post*, 13 September 2001.

[9] The two *ad hoc* courts are for East Timor and for Tanjung Priok. The latter case dates back to 1984 when scores of people were killed or "disappeared" when the Indonesian security forces opened fire on Muslim demonstrators in the Tanjung Priok area of Jakarta. Around 200 people were arrested in connection with the protest of which around one half were brought to trial. Some were accused of acts of violence, but scores were sentenced to years in jail because of their peaceful beliefs.

On the basis of the KPP HAM report, in which senior military officials were among those named as suspects, the Indonesian Attorney General established a team to investigate five priority cases. Amnesty International was concerned that the team, which consisted of officials from the Attorney General's office, the military police, national police and the home affairs ministry had neither the experience, particularly in issues relating to human rights, nor was it sufficiently impartial, to carry out a credible and independent investigation. Notwithstanding these concerns, investigations were said to have been completed in October 2000. As of 1 October 2001, no indictments had been issued in any of the five priority cases, nor are there any indications that the Indonesian authorities intend to investigate the many hundreds of other cases of serious crimes, including torture, perpetrated in East Timor during 1999. In the meantime, individuals who have already been named as suspects by the Attorney General, remain in active service including in senior positions within the military and the police service.

On 24 April 2001, former President Wahid issued a Presidential Decision (Presidential Decision 53/2001) authorising the establishment of an *ad hoc* Human Rights Court for East Timor. Under the Decision the temporal jurisdiction of the court was limited to the period after the ballot of 30 August 1999 meaning that the court would not have jurisdiction over two of the five cases investigated by the Attorney General's office, or over hundreds of other cases of serious crimes which were committed in the months leading to the vote. The negative international reaction to the Decision prompted the Indonesian authorities to agree to review it.

On 1 August 2001, Indonesia's new President, President Megawati Sukarnoputri, issued an amended Decision (Presidential Decision No. 96/2001). However, the latest Decision also limits the jurisdiction of the court, in this instance to cases which took place in either the months of April *or* September 1999, and in only three out of the 13 Districts of East Timor. While a human rights court established under this latest Decision would have jurisdiction over all of the five cases investigated by the Attorney General's office, the limits on both temporal and territorial jurisdiction of the court are regarded by Amnesty International as effectively institutionalising impunity for the vast majority of crimes committed throughout East Timor during 1999.

In the meantime, there are fears that the cases which might come before the *ad hoc* Human Rights Court on East Timor will be dismissed on the basis of a recent amendment to the Indonesian Constitution. The drafting of Law 26/2000 was dominated by a debate as to whether the human rights courts could have jurisdiction over past cases of crimes against humanity and genocide which, at the time of their commission, were not prohibited under Indonesian law. Notwithstanding the fact that the final version of Law 26/2000 does include provisions for past cases to be investigated and tried, the debate revealed a lack of understanding among government officials and others of Indonesia's obligations under international law. This debate over retroactivity continues to be waged in the light of an amendment to the Constitution prohibiting the retroactive application of laws, which was adopted by the People's Consultative

Assembly (MPR) in August 2000.[10] Indonesian legal experts and non-governmental organizations have expressed fears that judges, inexperienced in the application of international law, will dismiss cases which took place prior to the promulgation of Law 26/2000 on the basis of the Constitutional amendment. The government has so far not responded to requests to formally clarify that the amendment does not prohibit retrospective criminal legislation in light of the fact that these crimes were already defined as such under international law.

Article 5.2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any States mentioned in paragraph 1 of this article.

Article 8.1 The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between State Parties. State Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

Article 9.1 State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

Article 9.2 State Parties shall carry out their obligation under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Under Article 5 of Law 26/2000 the Human Rights Courts have authority to hear and rule on cases of gross violations of human rights perpetrated by an Indonesian citizen outside the territorial boundaries of the Republic of Indonesia. The law does not provide for the exercise of universal jurisdiction over persons suspected of crimes under international law who are found in Indonesian territory, or for suspects in such cases to be extradited to another state which is able and willing to prosecute alleged perpetrators.

Indonesia has shown itself to be unwilling to cooperate with investigations and prosecutions of serious crimes including torture in other territories. On 6 April 2000, a Memorandum of Understanding on legal, judicial and human rights cooperation was signed between Indonesia's Attorney General and the United Nations Administration in East Timor

[10] Article 28.i of the 1945 Constitution.

(UNTAET). The agreement provides for "*the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the prosecution of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party*". Assistance includes: taking evidence or statements from persons; assisting in the availability of detained persons or others to give evidence or assist in investigations; ensuring service of judicial documents; executing arrests, searches and seizures and facilitating transfer of persons.

To date, UNTAET investigators have not been permitted access to witnesses in Indonesia or received other evidence despite repeated requests and a number of visits to Indonesia by members of UNTAET's Serious Crimes Unit. Indonesia has so far been unwilling to transfer suspects for trial in East Timor. A warrant for the arrest of an Indonesian Army Officer, Lieutenant Sayful Anwar, was issued by UNTAET in December 2000. Lieutenant Sayful Anwar was the Deputy Commander of the Special Forces Command (Kopassus) stationed in Los Palos, Lautem District, East Timor in 1999. He is charged with crimes against humanity relating to the torture and murder of Aversito Lopez, an independence supporter, on 21 April 1999. The Indonesian military withdrew from East Timor in September 1999 before the territory was formally transferred to the United Nations the following month. It is believed that Lieutenant Sayful Anwar is now in Indonesia and may still be an active member of the military, but as of 1 October 2001 he had not been extradited to East Timor to stand trial. On 27 September 2001, indictments were issued against 11 people for eight counts of crimes against humanity. The charges relate to the killing of 65 people in Oesilo Sub-district Oecusse District in September 1999. Ten of those charged in this case are in Indonesia.

Article 11. Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

The Criminal Procedure Code (KUHAP) contains a range of provisions relating to the protection of the rights of suspects and detainees. These include safeguards which, if applied, would substantially reduce the risk of torture or cruel, inhuman or degrading treatment. However, in practice key provisions of KUHAP are often ignored, or their implementation obstructed. Their application is also undermined because there are no effective sanctions against non-compliance.

It is common for individuals to be arrested without a warrant; not to be informed of the reason for their arrest; and to be denied access to legal representation, to members of their family and medical assistance. In Aceh and Papua, where there are military operations in progress, arrests are frequently carried out by members of the military. In these circumstances detainees have often been held in unofficial places of detention.

Incommunicado detention and denial of access to legal representation

The right to legal representation immediately upon arrest and at each stage of examination is provided for under KUHAP Article 54 and the right to choose a legal advisor is provided for under KUHAP Article 55. Detainees also have the right to have his or her family or friends informed about their detention and to receive visits from them (Articles 59 to 60). The right to medical assistance is also provided for, but is limited in that a detainee can contact and be visited by his or her personal doctor (Article 58). There is no rule which obliges the authorities to provide medical assistance.

Amnesty International has documented numerous cases in which those rights specified in Indonesian law are denied. Detainees are frequently not informed of their rights or intimidated to discourage them from asserting these rights. In many cases requests for legal assistance are refused. Interrogations routinely take place without the presence of legal representation. When lawyers do gain access to detainees their time with them may be limited and repeat visits are not necessarily guaranteed.

It is also commonplace for detainees to be refused access to their families especially during the first days of detention. Families are also frequently not informed that a relative has been detained or of the reason for their detention and may have to search for them at police and military facilities. Medical assistance is also often denied, even in cases where detainees have sustained injuries on arrest, including gunshot wounds, or as a result of torture or ill-treatment

in detention. In Aceh and Papua individuals are frequently held in incommunicado detention for periods of days and sometimes weeks, and then released without charge.

Limitations on the right to legal counsel under national law contribute to a situation in which basic rights can be denied and increases the risk of torture or ill-treatment occurring. Only in cases where an individual is suspected of a crime which carries the death sentence or a term of imprisonment of five years or more, are the authorities obliged to appoint a legal representative (KUHAP Article 56.1). Moreover, although legal counsel has the right to speak with a suspect at any stage of examination and at any time for purposes of the defence of his or her case, there are certain limitations on this right. According to KUHAP Article 71(2) in cases involving crimes against the security of the state, an investigator, public prosecutor or prison officer can listen to the content of the discussion between a lawyer and their client. As the International Commission of Jurists has pointed out "[*i*]*n national security cases, confidentiality between lawyer and client becomes all the more important because the penalties are higher and the full machinery of the state is mobilised to secure conviction*".[11] Although in ordinary criminal cases lawyer-client meetings are meant only to be supervised and not listened to, Amnesty International has documented cases in which this right to confidentiality has been denied resulting in clients being unable to make a full disclosure to their lawyers, including about allegations of torture.

Example - Beatings of Sosa indigenous peoples in police detention: Thirty-three people were arrested on 27 August 2000 in relation to a land dispute between Sosa indigenous peoples and local plantation companies in Sosa Sub-district, Tapanuli Selatan District, North Sumatra. Their arrests followed an incident two days earlier when members of the Police Mobile Brigade (Brimob) fired on demonstrators at the offices of the PT PHS (*Permata Hijau Sawit*) Mantani plantation company - seven people were shot in this incident, one of whom subsequently died.

Eighteen people were released on the 28 August 2000. The remaining 15 were held at the Police Resort (Polres) in Padang Sidempuan, the capital of Tapanuli Selatan District. They were not permitted access to legal representatives for three days after their arrest and police officers were present throughout the first meeting between the detainees and lawyers. According to the lawyers, some of the detainees had visible injuries consistent with having been beaten with rattan sticks. However, when they asked how the injuries had been sustained they were told by the detainees that they resulted from falls. One of the detainees, Atar Pasaribu, had injuries resulting from being shot with a plastic bullet in the thigh during the incident on 25 August 2000. The lawyers reported that they dared not ask Atar Pasaribu about his injuries in front of

[11] *Rulers Law - Report of the International Commission of Jurists Mission to Indonesia October 1999*.

the police. Families of the detainees were refused access to them until a week after their detention.

All but three of the detainees chose to be represented by a lawyer. The reason given by the three who refused legal representation was that they feared that they would receive a harsher sentence if they were represented by a lawyer. All three were sentenced to one year imprisonment but were released without serving the sentence. The 12 other defendants were sentenced to terms of imprisonment of between one year and one-year-and-three-months. The charges against them related not to the 25 August 2000 incident but to occupying disputed land on 16 June 2000. According to their lawyers, most of those who were brought to trial were community leaders and had not participated in the occupation. It is their view that the arrests and trials were staged to intimidate the Sosa peoples from pursuing their land claims. The sentences of the 12 were upheld on appeal to the High Court and an appeal judgement is currently being awaited from the Supreme Court.

Komnas HAM visited Sosa in late 2000 to carry out investigations into the land dispute and the resulting human rights violations. They have not reported publicly.

Example - Incommunicado detention and torture of political activists in Aceh: On 19 September 2000 at around 5pm, two activists with the Information Centre for a Referendum in Aceh (*Sentral Informasi Referendum Aceh* - SIRA) - a group advocating a referendum on independence for Aceh - were abducted by armed men in plain clothes from a car repair workshop in Banda Aceh, the capital of Aceh province. Muhammad Saleh and Muzakkir were not shown any identification or told why or where they were being taken. It was only when they arrived at the Brimob headquarters in Banda Aceh that it became clear who had detained them. The two were forced to strip and blindfolded before being kicked and beaten including with baseball bats and chairs. A knife was held to Muhammad Saleh's throat and eyes and the two were accused of being members of the armed opposition group the Free Aceh Movement (*Gerakan Aceh Merdeka* - GAM).

At around 8.45pm, Muhammad Saleh and Muzakkir were taken by car to the Aceh Besar Police Resort (Polres) where they were beaten again, including with rifle butts. According to Muhammad Saleh's testimony some 40 people were involved in the beatings which lasted for around one hour after which the two were interrogated until 5am the following morning. The interrogation began again at 8am on 20 August 2000 and continued for nine hours. A lawyer was eventually permitted access to the two at 5pm that day and was able to secure their release. They were both hospitalised as a result of their injuries.

Muhammad Saleh and Muzakkir did attempt to lodge a complaint to the police about their treatment but did not pursue it because the police threatened to summon other SIRA members for questioning. According to Muhammad Saleh's testimony, the Regional Police Chief

(Kapolres) had met with the two when they were in custody and had responded to their allegations of torture by explaining that he could not control the non-Achenese police who were sent from Jakarta. The Kapolres later denied that Muhammad Saleh and Muzakkir had been tortured.

The two have never been charged, although the police said at the time that they may be questioned further in relation to a dispute over the ownership of a vehicle. The police allege that this dispute was the original reason for their detention. However, it is thought more likely that it was linked to their activities around the 17 August anniversary of Indonesian independence in which SIRA raised flags and distributed leaflets promoting a referendum. The Chairperson of SIRA, Muhammad Nazar, was subsequently sentenced to 10 months' imprisonment in connection with these activities. Amnesty International considered him to have been a prisoner of conscience.

Detentions by the military

Under KUHAP Article 18 only police officers are authorised to make arrests, except in cases where a person is caught actually committing a crime. For many years the distinction between the police and the military was blurred because the police were a part of the Indonesia armed forces (*Angkatan Bersenjata Republik Indonesia*, ABRI) under the authority of the Ministry of Defence. Historically, the military has played a leading role in internal security matters during the course of which they have engaged in a wide array of legal and extra-legal activities against individuals or groups perceived as threatening national security, including arbitrary arrests, "disappearances", torture.

A greater distinction between the roles of the police and military has to some extent been developed by the formal separation of the police from the military in 1999. However, the military continues to play a central role in matters of internal security. In this role arrests are carried out by the military - or *Tentara Nasional Indonesia*, (TNI) as it is now known - including in the provinces of Papua and Aceh. Detainees in military detention, which has no legal status under Indonesian law, are at particular risk of torture.

Example - Arbitrary detention and torture of Muhammad Nasib by the military in Aceh: Muhammad Nasib (name changed to protect his identity), a trader from Idi Rayeuk Sub-district in East Aceh was detained on 15 June 2000 and held for four days by members of a military unit known as Rajawali[12]. At the time, the inhabitants of his village had been ordered to leave their homes and go to a camp for internally displaced persons. Because he refused to go he was accused of being a member of GAM - an accusation which he denies. Muhammad Nasib told an Amnesty International researcher that he was taken to a Rajawali post in Idi

[12] Rajawali is a special detachment of the Army Strategic Reserve Command (Kostrad).

Rayeuk Sub-district where he was subjected to torture for two days, including being kicked in the mouth, beaten all over his body with a length of wood and having his hair pulled. While in detention he was chained to a bench. He received food but was not given access to medical assistance or to a lawyer. His family had to pay 1,500,000 rupiah (the equivalent of approximately US$150) to secure his release. However, he was not released immediately but held for two additional days which Muhammad Nasib believes was in order that swellings and other more visible injuries had time to heal. Among his injuries were broken ribs and bruising. Muhammad Nasib claims that another three other people from his village were detained and beaten at around the same time and that many others had been detained at the same Rajawali post during the year 2000.

Absence of judicial control over detentions

Both the Special Rapporteur on torture and the Working Group on Arbitrary Detention have drawn attention to the absence of judicial control during the initial period of arrest.[13] Under KUHAP, the police, in which all investigation powers are vested, are not obliged to present a detainee before a prosecutor for a period of up to 60 days. There is no legal obligation to bring the accused before a judge for a further 170 days. In his report of 8 January 1992 the Special Rapporteur on torture noted that the delay in bringing an accused before a judge is at odds with Principle 37 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[14]

The Special Rapporteur noted that "[*s*]*ince torture usually occurs during the initial phases of an investigation, such external supervision of the lawfulness of the detention and treatment of a detainee must be seen as an important protection measure for the person's basic human rights, provided the judicial or other authority takes its responsibility seriously*". It is commonplace for individuals in Indonesia to be detained for days or even weeks and then released without charge. During this time, in which there is no judicial supervision of their detention, torture regularly occurs.

[13] *Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to Commission on Human Rights resolution* 1991/38, E/CN/4/199217/Add.1, 8 January 1992 and *Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January - 12 February 1999)*, E/CN.4/2000/4/Add.2.

[14] Principle 37 states: "*A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody*".

The pre-trial hearing (*pra-peradilan*) is the primary legal avenue for challenging arrest or detention. Under this procedure, detainees or their family can at any time in the proceedings from the time of arrest present to a judge a request for an order declaring the arrest or detention to be illegal. If, at the hearing the judge declares the detention to be illegal, or the charges unfounded, the detainee must be released immediately. According to non-governmental organizations in Indonesia, this process is used only infrequently, particularly in political cases, because it is not considered to be effective. The *pra-peradilan* process is also not used in cases of torture or ill-treatment because it does not address either the conditions of, or treatment in detention.

Example - Arbitrary detention and torture of human rights activists in Aceh: Indra P Keumala, a member of the Commission for Disappearances and Victims of Violence *(Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* - Kontras) and Hepi Suaidi from the Peoples' Crisis Centre (PCC) were detained after being stopped at a military checkpoint in Rikit Gaib Sub-district, Southeast Aceh District on 17 July 2001. The two were on their way to Banda Aceh, together with two other members of Kontras, having been investigating reports of military and militia involvement in the killing of some one hundred people in the previous week. Information relating to their investigation was discovered on them and resulted in their detention.

The two were held for approximately 36 hours without access to a lawyer, medical attention or members of their families. While detained at Rikit Gaib Police Sector (Polsek) they were accused of being members of GAM and threatened with death. They were also slapped, kicked and beaten with rifle butts and other objects. Their fingers were burnt with cigarettes and they were doused in water containing human excrement. The two were moved to the Aceh Tenggara District Police Resort (Polres) on the evening of 18 July 2001 where they were questioned further but not tortured. There are unconfirmed reports that they had access to legal advice at Polres Aceh Tenggara. Indra P Keumala and Hepi Suadi were released on 19 July 2001 without charge. To Amnesty International's knowledge there has been no investigation into the allegations that the two were tortured.

Article 12. Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Investigations into allegations of torture or ill-treatment are exceptional in Indonesia. It is even rarer for such investigations to result in prosecutions. Investigations which do take place occur on an *ad hoc* basis and generally result from a particularly high degree of national or international attention on a specific case. However, the majority of cases do not attract such attention and are not acted upon by the authorities.

Although, the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM) is able to conduct some inquiries into individual cases, it has neither the powers, capacity or expertise to actively and effectively investigate all allegations of torture and other human rights violations in Indonesia. Where criminal investigations have taken place into cases of torture, the agencies responsible for, or involved in, the investigations have often been the same as those whose members are accused of committing the violation casting doubt on the independence and impartiality of the process.

Massive publicity surrounding the role of the military in committing human rights violations followed the resignation of former President Suharto in May 1998. Indeed, the high level of state violence and the absence of justice had contributed to the public protests which had caused the regime to collapse. Against this background and a number of highly publicised discoveries of mass graves in Aceh, President Suharto's successor, President Habibie, established the Independent Commission to Investigate Violence in Aceh (*Komisi Independent Pengusutan Tindak Kekerasan di Aceh* - KPTKA) to investigate thousands of cases of torture, extrajudicial killings, "disappearances" and other violations that had taken place in the province over the past decade. Its final report listed thousands of cases of violations, but recommended that priority given by the Attorney General's office to just five cases. The five cases included the rape of a woman, disabled by polio, in Pidie in August 1996; cases of torture and "disappearance" in a facility known as Rumoh Geudong in Pidie between 1997 and 1998 and the unlawful killings of the Muslim cleric, Teungku Bantaqiah, and over 50 of his followers in Blang Meurandah village, West Aceh in July 1999.

To date, only one of the five cases has been brought to trial. The case, which is referred to in Indonesia's report to the Committee, was that of the killing of Teungku Bantaqiah and his followers. One civilian and 24 members of the military were found guilty and sentenced to terms of imprisonment of between eight-and-a-half years and ten years. Although Amnesty International recognized that the fact that a trial was held at all was an important step forward, it remains concerned that the process was flawed and that the trial may not have met with international standards for fairness.

The case came before a joint civilian/military court known as a *koneksitas* court. Although the suspects were charged with offences under the civilian criminal code (KUHP) the procedure did not appear to precisely follow KUHAP. The investigation, rather than being carried out by the police, was overseen by the Attorney General who appointed an investigation team consisting of members of the Military Police - who headed the team; the military prosecutor (*Oditur Militer*); and the police. The prosecution was prepared by the Attorney General, who is a political appointee, before being sent to local civilian prosecutors to prosecute the case in court.

As is common in other human rights cases which have come to trial, only junior ranking military officers were charged. A more senior officer, Lieutenant Colonel Sudjono, had been named as a key suspect but had gone missing several months previously and was not present at the trial. Defendants testified that Lieutenant Colonel Sudjono had ordered them to "school" the victims - a term the soldiers said was used by local commanders as a euphemism for killing a detainee. The District Military Commander, Lieutenant Colonel Syanfnil Armin, who appeared as a witness admitted having ordered troops to bring back Teungku Bantaqiah "dead or alive". The issue of command responsibility was not examined by the court and no senior officers have ever been charged in relation to the case.

The credibility of the trial was further undermined because witnesses for the prosecution did not testify allegedly out of fear for their security. Among them were the family of Teungku Bantaqiah who refused to appear in court although they were given assurance in writing by the Chief of Police and the Attorney General that their security would be guaranteed. According to reports members of the family received death threats in the weeks preceding the trial. In addition, a close friend and driver of Teungku Bantaqiah's family together with two other men, M. Yusuf and Ahmat were shot dead by unknown assailants on 28 April 2000 as they returned to the Muslim boarding school which had been run by Teungku Bantaqiah. Although it is not clear that the incident is related, the family took it as a warning and decided not to testify in person. However, because of time constraints their statements were not read out in full in court. The four other Aceh priority cases have never been brought to trial.

Since then investigations into a number of other cases have been initiated but have not resulted either in identification of suspects, or in other cases, in trials. The repeated failure of the authorities to bring perpetrators to justice has both reinforced impunity and seriously undermined confidence in the justice system in Indonesia. Even high profile cases, where public outrage has forced an investigation to be carried out, have been met with resistance and apathy by the authorities.

Example - The torture and extrajudicial execution of humanitarian workers in Aceh: The torture and extrajudicial execution of three volunteers with the Rehabilitation Action for Torture Victims in Aceh (RATA) in December 2000 attracted national and international attention both because the victims were from a well known local humanitarian organization, and because one person who survived the attack provided a detailed account of the events to the US-based human rights organization, Human Rights Watch. The same testimony was also given to Indonesian police officials before the survivor went into hiding.

A vehicle carrying the four RATA workers was stopped by armed men in Mantang Baru village, Tanah Pasir Sub-district, North Aceh on 6 December 2000. The four were accused of belonging to GAM and were beaten with rifle butts and shots were fired near their feet. After being forced into vehicles and driven for several hours they stopped in Kandang, an

area on the outskirts of Lhokseumawe. They were ordered out of the vehicles and the one survivor, Nazaruddin Abdul Gani, witnessed Idris Yusuf and Ernita binti Wahab, a female nurse with RATA, being shot dead. As he escaped he heard two further gunshots which he believes killed the third RATA worker, Bakhtiar and another man called Rusli who had been detained later in the day.

A police investigation resulted in the arrest of eight people in late December 2000. The eight consisted of four civilians, including a well-known military informer and four members of the military, including the head of intelligence for military resort command 011 (Korem 011) in Lhoksuemawe. In late March 2001, the four civilian detainees escaped from the Brimob barracks in Medan, North Sumatra - there has been speculation that they received assistance from officials. No indictments have yet been issued against any of the suspects either military or civilian.

In January 2001 Komnas HAM agreed to establish an inquiry into the RATA case in accordance with its role under Law 26/2000 to carry out initial inquiries into cases of alleged systematic and widespread human rights violations. However, the inquiry has never been carried out and the Attorney General's office has argued that if it was to take place the investigation would have to start from the beginning again and all the suspects released.[15] In the meantime, members of RATA have received death threats and other forms of intimidation.

The role of the National Commission on Human Rights

In his January 1992 report, the Special Rapporteur on torture recommended that an authority or agency should be established where victims of human rights violations can file their complaints and that had independent, investigative powers. He recommended that local offices of a national commission on human rights could function as such an agency.

The following year the Indonesia National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM) was established by Presidential Decree. Its headquarters is in Jakarta and it currently has one branch office in Banda Aceh, the capital of Aceh. Komnas HAM has made an important contribution to increasing awareness of human rights in Indonesia. It has carried out investigations into a number of high profile cases of human rights violations, including cases of torture. It has made a variety of recommendations over the years, including for perpetrators to be bought to justice in specific cases; for justice and reparations for victims of violations by the security forces in Aceh; and for the security forces to review its response to peaceful demonstrations in Papua to avoid "shooting, oppression, unlawful arrest and other acts of violence". These and other recommendations have not been

[15] See Human Rights Watch report *Indonesia: War in Aceh*. August 2001, Vol 13, No. 4.

acted upon and Komnas HAM has no authority to enforce them. Komnas HAM also does not have the power to refer cases directly to prosecutors.

Komnas HAM's capacity to carry out investigations is limited, including because of insufficient resources and organizational constraints. Although it has often been critical of the government, it has itself been criticised for not being sufficiently independent. In the case of one inquiry into unlawful killings and "disappearances" of Muslim protestors in the Tanjung Priok area of Jakarta in 1984, Komnas HAM was forced to reopen its investigation after it was alleged that the original investigation team had relied heavily on the military's version of events in its report. It was also criticised for recommending that the military, rather than civilian authorities, should be responsible for carrying out further investigations.

Although its only branch office is based in Aceh, Komnas HAM has often appeared reluctant to carry out investigations into human rights violations in the context of this politically sensitive internal conflict. The Aceh office, although it can receive complaints, does not have the authority to carry out investigations. On the one occasion on which it established a fact finding team to investigate reports that a number of women had been raped by members of the security forces in Mantangkuli, North Aceh, in early 1999, the head of the office was publicly reprimanded by a Komnas HAM Commissioner for acting outside his authority.

Recently, the work of Komnas HAM Aceh has been disrupted because of accusations of defamation by the police against the head of the office. Iqbal Farabi, together with members of several human rights non-governmental organizations, became the subject of police investigations for their involvement in assisting, or receiving information, from five women who claimed to have been the victims of rape or sexual assault by members of the Police Mobile Brigade (Brimob) in South Aceh in late 2000 and early 2001. The women were detained by the police in March 2001 when they were returning to their homes in South Aceh from Banda Aceh where they had gone to report their cases. While in custody the women changed their accounts claiming that GAM had forced them to make the allegations and the police subsequently launched a criminal investigation into defamation and kidnapping. Iqbal Farabi, who has been named as a suspect in the case, has left Aceh because of fears for his security.

Under the 1999 Human Rights Act, Komnas HAM has the power of *subpoena* in order to compel testimony or the production of written documents. The granting of this power significantly improves Komnas HAM's ability to carry out effective investigations. However, even with this power the cooperation of the authorities is not always forthcoming. In one recent case, state officials and members of the police in Papua actively obstructed Komnas HAM's efforts to investigate allegations of the extrajudicial execution, torture, and arbitrary detentions which took place in Abepura on 7 December 2000.

Example: The torture and extrajudicial execution of students in Abepura, Papua: Police raids were carried out on student hostels and other locations in the town of Abepura, Jayapura District on the night of 7 December 2000 in apparent retaliation for the killing of two police officers and a security guard earlier in the day. It is not thought that any of the students arrested were involved in the violence. Eyewitnesses stated that the police fired shots during the raids on the hostels and beat and kicked students, many of whom were asleep when the raids began. Elkius Suhuniab (also written as Suhuniap), an 18-year-old high school student, was shot dead by members of Brimob during one of the raids.

Over 100 people were arrested and detained in Jayapura Police Resort (Polres). They included 19 children between the ages of seven and 18 years old. A Swiss journalist, Oswald Iten, who was being detained in the same facility for an alleged visa offence witnessed some 35 detainees being severely beaten by police officers. In a media interview, Oswald Iten described detainees being beaten with clubs, staffs, and split bamboo whips and being jumped on by police officers as they lay on the ground. The beatings continued for around 45 minutes. The floor, which was covered in blood, was then washed down before beatings were resumed on a second group of detainees.[16] Two people died as a result of the torture. According to the autopsies conducted by the Jayapura General Hospital, the bodies of two high-school students, Johny Karrungu (aged 18) and Orry Doronggi (aged 17) were covered in cuts and bruises. Both died as a result of the impact of a blunt object to the back of the head.

In January 2001, Komnas HAM announced that it would establish a Commission of Inquiry (*Komisi Penyelidik Pelanggarang Hak Asasi Manusia Papua/Irian Jaya* - KPP HAM Papua/Irian Jaya) to investigate the case in accordance with its role under the recently adopted Law 26/2000 on Human Rights Courts. Under the legislation, Komnas HAM is the sole body empowered to carry out a preliminary inquiry into alleged cases of gross human rights violations, the results of which are then submitted to the Attorney General who decides whether to proceed with a criminal investigation and prosecution. Notwithstanding Komnas Ham's legally defined role under Law 26/2000, the local office of the Ministry of Justice and Human Rights issued an official letter stating that the investigation was illegal and advising the Chief of Police for Papua not to cooperate with the investigators. The police did eventually agree to submit to questioning, but their continued lack of cooperation prompted the investigation team to issue a public statement on 21 March 2001 in which it complained that witnesses had been intimidated by the police and that the police themselves had refused to provide detailed responses to their questions.

The investigation was completed in May 2001 and the KPP HAM confirmed that human rights violations, including widespread and systematic torture of detainees, had been committed

[16] Sydney Morning Herald, 9 January 2001

and that members of Brimob, police officers from Jayapura Polres and the chief and deputy chief of police for Papua are among those who should be held responsible. The findings have been submitted to the Attorney General. In the meantime, two members of the KPP HAM team who work for the Papuan based human rights group, the Institute for Human Rights Study and Advocacy (*Lembaga Studi dan Advokasi Hak Asai Manusia* -Elsham), have been summoned by the police in Jayapura, Papua for questioning in relation to accusations of defamation and publicly expressing "*feelings of hostility, hatred or contempt towards the government*". It is believed that these summons are motivated by their involvement in the investigations of the 7 December 2000 events.

Article 13. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

In cases of alleged torture or ill-treatment the victims, or families of victims must file a complaint with the police or, if the accusation is against the military, to the military police. In his 1992 report, the Special Rapporteur on torture expressed his concern about this situation. He noted that "[*t*]*his can hardly be called an effective remedy since it is the same police which is said to have maltreated the suspect*".

The Coordinator of one of Aceh's leading human rights organizations, The Commission for Disappearance and Victims of Violence *(Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* - Kontras), explained to Amnesty International that the priority for most families of victims who come to them is to find and secure the release of their relative. Kontras will also assist families and victims in making complaints to the police or the military, but in most cases this offer is refused or they withdraw halfway through the process. Kontras's experiences are consistent with information on other cases which has been received by Amnesty International - that victims do not exercise their right to complain because they are afraid to do so and do not have confidence in the process. Attempts to complain to the police and the military often result in threats or intimidation.

There is currently no witness or victim protection program in Indonesia. Provision has been made for the establishment of such a program under Law 26/2000 on Human Rights

Courts and relevant legislation is said to be in the process of being drafted. In the meantime, the security of witnesses and victims cannot be guaranteed.

Example - The "disappearance" of Safriadi Hamid in Aceh: In July 2000, Amnesty International conducted an interview with an Acehnese man, Saiful, whose brother, Safriadi Hamid, "disappeared" on 7 October 1999. According to the Saiful, witnesses had seen his brother being taken away by a group of soldiers and police from the shrimp farm in the Sub-district of Samalanga in Bireun District where he worked. A police officer at the Samalanga Police Sector (Polsek) admitted to Siaful that his brother had been detained by the security forces. However, Saiful was also accused by the Sector Police Chief of being a member of GAM - an accusation which can lead to arrest, "disappearance" or extrajudicial execution in Aceh. He was also accused of being a member of GAM and was threatened that he would be killed if he continued to ask questions at the Sub-district military command when he went to search for his brother there.

Since then Saiful has visited Jakarta to try and raise his brother's case with government officials, including the Minister of Defence and Minister for Human Rights (the Human Rights Ministry has since been merged with the Justice Ministry). He was unable to meet with the Ministers in person, although a Jakarta based human rights organization did raise the case of Safriadi with the Minister of Defence on Saiful's behalf. There has been no response to his inquiries. There is also no further information on the fate of Safriadi Hamid who is the third member of Saiful's family to have "disappeared" in the last decade. His father, Abdul Hamid Hasballah "disappeared" in January 1991 after being taken from his house by members of the military. In March the same year, Saiful's uncle Drs. Nasral Saleh was arrested by the military and has not been seen since.[17]

Article 15. Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

KUHAP Article 117 (1) forbids the use of duress of any form of a suspect or witness during investigation and Article 153 (2)(b) directs a judge to ensure that the accused does not give involuntary testimony. However, there is no clear rule which excludes the use of evidence or testimony in court which has been improperly obtained by the authorities. Although in many

[17] The Human Rights Committee has held that the suffering of the family of a "disappeared" person constituted a breach of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits torture or cruel, inhuman or degrading treatment (Quinteros Almeida case, Communication 107/1981, para 1.9). The Inter American Court of Human Rights and the European Court of Human Rights have made similar judgements.

cases individuals who have been tortured are released without charge so their cases never comes to trial, in cases which do reach the court it is left to the discretion of the judge as to whether or not to admit evidence allegedly obtained under torture. The judge also does not have the authority to order an investigation by an impartial authority into the allegation that evidence or testimony was obtained under torture or ill-treatment.

Example - Trial of torture victims in Wamena, Papua: Defendants in a trial in Papua in January 2001 complained to the panel of judges that they had been subjected to torture and ill-treatment during interrogation. The court rejected a request from the defence counsel for the court to summon the police officer who conducted the interrogations to answer these charges. Lawyers for the defence also complained to the court that the interrogations had taken place without legal representation. This complaint was also rejected by judges reportedly on the grounds that "*it was in the public interest for the trials to proceed and the rights of the accused therefore took second place*"[18]. The 17 were convicted of conspiring to rebellion (KUHP Article 106) and sentenced to terms of imprisonment of up to two years in March 2001. According to a local NGO which was able to gain access to the court, the case for the prosecution was based entirely on evidence from police officers involved in the arrests of the accused and from the confessions of the accused.

The 17 had been arrested in relation to raids on 6 October 2000 by the security forces against independence supporters in the town of Wamena, the capital of Jayawijaya District in the central highlands of Papua, and subsequent disturbances which left at least 30 Papuans and Javanese transmigrants dead. Eighty people were arrested during the day by joint security force teams consisting of the Police Mobile Brigade (Brimob), crowd control police units from the local police resort (Polres) and troops from the Army Strategic Reserve Command (Kostrad).

Many people were beaten as they were being rounded up. Two teachers and 26 students, most of whom were under the age of 18, were detained when their hostel was raided. According to reports from local human rights groups they were kicked and beaten with rifle butts and sticks and made to crawl the 700 metres or so to the Jayawijaya Police Resort (Polres). One of the teachers, John Wilil, was separated and taken to the office of the district head (*bupati*) where members of Kostrad fired shots close to his head.

Torture also took place at the Polres where detainees were beaten with rifle butts and lengths of wood, kicked, stamped on and had their moustaches pulled out. A journalist, Yohannes Udin, who was detained after taking photographs of the security forces forcibly pulling down the Morning Star flag (a symbol of Papuan independence), died in police custody as a result of being

[18] See: *Criminalizing Politics in West Papua: The trials of 22 Wamena political prisoners and their abuse by the police* by the Institute for Human Rights Study and Advocacy (Elsham), July 2001.

beaten and kicked. Ten Papuans were shot, and at least eight killed during the course of the security operations and in subsequent disturbances in the town in which 24 non-Papuans were also killed in violent protests by local people against the operations.

All but 16 of the detainees were released the following day. They, together with a civil servant, Sudirman Pagawak, who was arrested on 9 October 2000, remained in detention until they were brought to trial in January 2001. Their requests for legal representation were denied and they did not meet with lawyers until some18 days after their arrests. A report from a local NGO in January 2001 said that they were being refused permission either to be visited by doctors or to go to the local hospital for treatment. Instead, medicine was being provided by the military. They were also initially refused access to their families. During this time they were interrogated and forced to sign statements made without legal representation. Another five people were arrested on 13 December 2000. The five were all local independence leaders who were accused of instigating the violence on 6 October 2000.

The trials were conducted in an atmosphere of intimidation. The courtroom in Wamena was heavily guarded by armed members of the police and military which had the effect of discouraging people to attend the trial. A request by the Australian chapter of the International Commission of Jurists to observe the trials was rejected by the Indonesian authorities. During the trials, a local human rights group reported that members of Brimob had gained access to the prison where they were kicked and beaten, including with iron rods. One of the five pro-independence leaders, Murjono Murib, was told to confess that he had instigated the events 6 October 2000 and threatened with having his nails pulled out and nose cut off if he refused.

The convictions of all 22 prisoners were upheld in an appeal to the High Court. However the 22 prisoners were released from prison in July 2001 to serve out the remainder of their sentences under town detention (*kota ditahan*). As of the end of September 2001, they were still awaiting the result of their appeal against their convictions from the Supreme Court. In the meantime, there has been no investigation into the allegations of torture and other alleged human rights violations which took place on 6 October 2000, including the death in custody of Udin and killings.

Conclusion

Despite a number of reforms and developments which have accompanied Indonesia's political transition from authoritarianism, torture and ill-treatment continue to be widespread. Measures taken to date have had no visible impact on preventing the practice of torture either because they have not gone far enough, or because they have yet to be implemented.

Thorough reform of the criminal justice system in Indonesia is required if torture is to be eradicated. As a first step this will need to include revision of laws and legal procedures. However, in order for legal reform to be effective it must be accompanied by profound reform the judiciary and the police. Efforts must also be made to strengthen other key institutions, such as the National Commission on Human Rights, so that it can carry out its role effectively and independently.

Special attention must be paid by the Indonesian government to the actions of its security forces in areas where armed opposition groups are operating. Human rights abuses committed by such groups can never be used to justify torture or other human rights violations by the police or military. Indeed, the government must ensure that members of the security forces abide by international human rights and humanitarian law in which torture and cruel treatment is prohibited under all circumstances.

Political leadership is also needed to end impunity in Indonesia. Over the years lack of accountability has become a part of the culture of the police, the military and other state officials. This culture is constantly reinforced by a lack of concerted action on the part of the government to investigate cases of human rights violations and to bring perpetrators to justice.

Recommendations

Condemn torture

- Officials at all levels of the administration should publicly condemn all forms of torture and ill-treatment. Law enforcement officials, the military, public officials, members of the judiciary and members of civil society should be made aware that torture will not be tolerated under any circumstances.

Reform of the law

The Criminal Code (KUHP)

- Amend the Criminal Code (KUHP) so that torture and other cruel, inhuman or treatment or punishment is explicitly prohibited. The definition of torture should be consistent with that contained in the Convention against Torture. Penalties should reflect the seriousness of the crime.

- Provisions relating to rape and other forms of sexual violence should be amended so that they reflect fully international standards.

The Law on Human Rights Courts (Law 26/2000)

- Amend Law 26/2000 on Human Rights Courts so that it is fully consistent with international law and standards. The definition of the crime of torture in Law 26/2000 should be revised to fully reflect the definition of torture contained in Convention against Torture and the Rome Statute.

The Criminal Procedure Code - KUHAP

- Undertake a thorough review of KUHAP to ensure that it is fully consistent with international human rights standards. Among the issues that should be addressed in such a review are:

  - *The right to legal counsel* - Detainees in all cases, not just those accused of an offence punishable by imprisonment of five years or more, should have the right to legal counsel appointed by the state. Lawyers should be able to communicate with their clients in full confidentiality from the time of custodial interrogation.

- *Right to medical care* - All detainees and prisoners should have access to medical examination and appropriate treatment. Doctors should have the authority in practice to insist that the detainees medical needs are paramount at all times. They should also be responsible to report all indications of torture or ill-treatment to Komnas HAM and to relevant supervisory bodies (see recommendation on monitoring mechanisms);

- *Admissibility of illegally obtained evidence* - The admission of any evidence at trial which has obtained by coercion or any other illegal means should be expressly forbidden. Clear procedures should be put in place for those alleging torture to make their claims and for their complaint to be investigated fairly, in a separate hearing before evidence is committed at trial.

- *Judicial oversight of detention* - the period before which a detainee is presented before a judge should be reduced to a level which is compatible with international human rights law under which anyone arrested or detained is required to be brought promptly before a judge (International Covenant on Civil and Political Rights, Article 9(3)).

Implementing existing legal procedures to protect detainees

- Ensure that arrests and detentions are only carried out by officials who are authorised to do so in law. Law officials conducting arrests should bear clear identification. Arrests and detentions should not be carried out by the military.

- Detainees should only be held in officially recognized places of detention.

- Anyone arrested or detained should be notified immediately of the reason for their arrest or detention and of their rights. They must be informed promptly of any charges against them.

- Ensure that all detainees are informed of their right to legal counsel promptly after arrest and are provided with reasonable facilities for exercising this right. Access to legal representation of the detainees own choice should be provided from the outset of any form of detention by the state, and regularly thereafter. Confidentiality of communications and consultations between lawyers and their clients should be respected by the authorities.

- Respect the right of detainees to notify, or have the authorities notify, their families or friends of their arrest and the reason for it without delay. Families or friends must also

be informed of the place of detention and, if they are transferred, of the new place of detention. Visits by families and friends should also be permitted.

- Firm action should be taken against police or other officials who fail to implement these and other procedures relating to the rights of detainees.

Training

- Provide regular, detailed, practical training for law enforcement officials on the rights of detainees both under national law and under international standards including: the Convention against Torture; the UN Code of Conduct for Law Enforcement Officials; the UN Principles on the Effective Prevention and Investigation of Extra- Legal, Arbitrary and Summary Executions; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Standard Minimum Rules for the Treatment of Prisoners.

- Training in the above standards should also be given to other officials in a position to contribute to preventing torture and assisting those most vulnerable to it. Such officials should include prison staff, members of the judiciary and doctors.

Monitoring Mechanisms

- Establish an effective independent monitoring mechanism to ensure the implementation of safeguards. This should include regular visits to places of detention by independent persons with the necessary qualifications and experience. Their members should be fully aware of international human rights standards and national law. They should have adequate powers and resources to carry out their work effectively, including unannounced, immediate and unhindered access to all places where people may be held in acknowledged or unacknowledged detention; access to interview detainees in private; access to judicial process; and powers to obtain documentary evidence.

  Any evidence of non-implementation of safeguards should be forwarded to relevant government and police officials and to Komnas HAM with requests for further action and/or recommendations. The monitoring mechanism should make their findings public in regular, detailed reports.

Investigations into allegations of torture

- Prompt, independent investigations of all allegations of torture should be mandatory. Those investigating allegations of torture should be fully independent of the alleged perpetrators and have the necessary resources, powers and expertise to carry out

investigations promptly and effectively, including powers to compel witnesses to attend and to obtain documentary evidence.

- Public officials suspected of involvement in torture or ill-treatment should be moved to a position where they cannot interfere with the investigation process in any way, including with victims and witnesses.

- Firm action should be taken against public officials who refuse to cooperate in investigations or who otherwise collude in the cover-up of the crime, including harassment of victims and witnesses.

Bring to justice those responsible for committing torture

- Anyone suspected of involvement of acts of torture, including members of the military, should be brought to trial in civilian courts in process which meet with international standards for fair trial. Criminal responsibility for torture should include those who may have ordered or have tolerated torture by those under their command.

- Any public official indicted for infliction of, or complicity in, torture or ill-treatment should be suspended from duty and not permitted to occupy any public position with responsibility for people in detention.

Victim and Witness Protection

- A witness and victim protection program should be established which can provide effective protection before, during and after trials, until any threat to security ends. In order to be effective, such a program must be provided with adequate resources, including professional personal with specialised training in the field of witness protection.

Complaints

- Establish an effective complaints procedure to provide victims of human rights violations, including those held under the detention system, their families, legal representatives or human rights defenders, to register complaints without fear of reprisals. The individuals who make complaints must be kept informed of the progress of the complaint and have access to any inquiry or procedure opened as a result of it.

Komnas HAM

- Take measures to strengthen the independence, capacity and effectiveness of Komnas HAM. The independence and impartiality of its membership should be guaranteed and they should have proven expertise, knowledge and experience in the promotion of human rights. Its capacity to carry out investigations should be increased, including through effective and practical training of staff working on investigations and access to expert assistance such as forensic pathologists, ballistic experts and specialists on sexual violence. The government should undertake to publicly respond, within a reasonable time to Komnas HAM's findings (both case-specific and more general), conclusions and recommendations. Efforts should also be made to provide greater access to Komnas HAM including by establishing additional branch offices.