

INDONESIA

Submission to the Universal Periodic Review
of the United Nations Human Rights Council (Third Cycle)

TORTURE

Commission for the Disappeared and Victims of Violence (KontraS)
Asia Justice and Rights (AJAR)

October 5, 2016

I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS) and Asia Justice and Rights (AJAR) submit this report for the Universal Periodic Review (UPR) of Indonesia that will take place in May 2017.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. AJAR is a regional human rights organization whose aim is to contribute to the strengthening of human rights and the alleviation of entrenched impunity in the Asia-Pacific region. Its work focuses on countries involved in transition from a context of mass human rights violations to democracy. Working together with partner organizations in these countries, AJAR strives to build cultures based on accountability, justice, and a willingness to learn from the root causes of mass human rights violations to help prevent the recurrence of state-sanctioned human rights violations.
4. KontraS and AJAR have evaluated the implementation of recommendations made to Indonesia during its previous UPR in 2012, in particular recommendations related to torture in Indonesia. Together, we submit this report on the legacy of torture and the obstacles to legal reform in Indonesia. This report is based on our monitoring of human rights in Indonesia over the past five years and our

documentation of torture in various cases of past human rights violations, including in Aceh and Papua.

5. We have found a number of inconsistencies in state practice with regard to the Government of Indonesia's obligations under international human rights law. In particular, there are inconsistencies related to the disproportionate use of force and the widespread use of torture by state security forces throughout Indonesia. Further, the Indonesian government has not demonstrated a commitment to criminalize torture, recognize the truth about widespread torture by state agents, or to prosecute perpetrators, prevent recurrence, and offer reparations to victims. As a result, torture has become 'normalised' in the practices and culture of the state security apparatus, even almost two decades after Indonesia's transition to democracy began.
6. Without a way to reckon with Indonesia's systematic use of torture and assert institutional reform, the practice of torture lingers. It is still routinely used to force confessions and extract information from detainees during criminal investigations. Accountability is lacking in state policy and practice, with a culture of impunity and denial of past crimes forming a foundation for continued torture.¹
7. In submitting this report, we would like to highlight a list of anti torture policy recommendations that we believe must be adopted by the Government of Indonesia.

II. Implementation of the 2012 UPR Recommendations on Torture

8. In the second cycle of UPR review in 2012, the Indonesian government accepted the recommendations regarding the situation of torture in Indonesia, namely to:
 - Ratify the OPCAT to prevent torture and establishment of a comprehensive system of independent monitoring.²
 - Criminalize torture in its penal code.³
 - Amend and reform the Criminal Code, Law of Criminal Procedure and judicial system to make it torture punishable.⁴
 - Ensure that security officials are held accountable for torture and other human rights abuses.⁵

¹ Briefing Paper The Legacy of Torture and Challenge of Reform in Indonesia, AJAR – KontraS, February 20016. <http://www.asia-ajar.org/files/Indonesia%20Briefing%20Paper%20-%20English.pdf>

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.2 (Chile), 108.3 (Austria), 108.4 (Slovenia), 108.5 (Sweden), 108.6 (Switzerland), 108.7 (United Kingdom of Great Britain and Northern Ireland), 108.8 (Turkey), 108.9 (Maldives), 108.10 (Ecuador), 108.26 (France), 108.70 (Denmark),

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.26 (France), 108.27 (Spain), 108.29 (New Zealand), 108.28 (United States of America),

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.27 (Spain), 108.30 (Turkey), 108.31 (Nicaragua), 108.85 (Russian Federation).

- Accelerate efforts for early enactment of the draft new bill which includes the definition of torture consistent with the CAT.⁶
- Fully implement the CAT.⁷

III. Legal and institutional frameworks on torture in Indonesia

9. After the collapsed of the Indonesian authoritarian regime in 1998, the Government of Indonesia ratified both the United Nations Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). To demonstrate its commitment, the Government of Indonesia has also submitted two reports on CAT, one under the ICCPR's treaty obligation. It is important to note that in its most recent government report in 2008, the Committee Against Torture stated its profound concern with the rampant practice of torture and ill treatment that occurred in police custody, including in detention centers, and with the excessive use of force.
10. According to the Committee of CAT, the Government of Indonesia must now submit its third report on the implementation of CAT. Yet, to date, no agenda for review has been issued. In 2012, in the second Universal Periodic Review (UPR) session, the practice of torture and ill treatment was highlighted and robust recommendations were made in order to address the issue. In response, the Government of Indonesia's delegation stated that Indonesia will ratify the Optional Protocol to the Convention Against Torture (OPCAT) and demonstrated a commitment to incorporating anti torture standards into the Bill of Criminal Code, by criminalizing the perpetrators of torture.
11. Indonesia has not made progress in ratifying the OPCAT, realizing Article 22 of CAT and ratifying the Second Optional Protocol of the ICCPR in order to fully legitimize the Committee of CAT to receive individual communications or complaints. It appears that the Government of Indonesia still does not accept the full monitoring function of the Subcommittee on the Prevention of Torture.
12. As noted previously, there is limited official documentation in Indonesia, acknowledging the concept of torture prevention. References are limited to: a single provision in the Indonesian Constitution 1945 (Article 28g Para.2), Human Rights Law (Article 33 Para 1 and Article 66 Para. 1) and Human Rights Court Law No. 26/2000, which cover criminal penalties for human rights abuses,

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.28 (United States of America).

⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.28 (United States of America) No. 108.69 (Republic of Korea).

⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 5 July 2012, document A/HRC/21/7 recommendations No. 108.71 (Mexico).

including torture, as long as they amount to “gross violations of human rights,” defined under this law as genocide and crimes against humanity.

13. At the parliamentary level, the Indonesian House of Representatives has raised the notion of amending the Indonesian Penal Code in order to codify torture prevention. The criminal code recognizes “maltreatment” (in Indonesian, *penganiayaan*) as the only offense covering acts similar to torture. The grade of maltreatment depends upon the state of mind of the perpetrator, and the harm that results, with additional penalties for using maltreatment to coerce a confession or obtain information. It remains very difficult to prosecute torturers claiming to have acted on official orders. The proposed amendment to the Indonesian Penal Code was scheduled for completion by end 2015, However, to date, the House of Representatives Special Committee on the Penal Code Bill has yet to finish their deliberation of Book 1 of the Penal Code.
14. In reference to internal state security accountability, the Indonesian National Police (Polri) has issued a regulation ‘regarding the implementation of human rights principles and standards in the discharge of duties of the Indonesian National Police’ (No. 8/2009). In principle, this document details the human rights standards of internal police mechanisms and prohibits the use of torture. However, socialization of this regulation is still very limited and it remains difficult to hold police officers accountable to the standards outlined. For instance, the professionalism and security division of the national police (Propam) has failed to address torture allegations made by police personnel.
15. The Indonesian military has also made a similar gesture. In 2010 the military chief issued an internal decree (No. 73/IX/2010) on the Prohibition of Torture and Other Cruel Treatment in the Indonesian National Armed Forces. The decree was issued after a heinous torture incident in Papua, which had drawn domestic and international condemnation. However, the military police, too, have failed to address serious allegations of torture made by military personnel.
16. In several cases where accountability has been pursued in the judicial system, the light sentence given to perpetrators demonstrates a lack of commitment on the part of both the state and the judiciary system to condemn, punish and eliminate the practice of torture.
17. Further, an amendment to the Law on Witness and Victim Protections that granted the establishment of the National Agency on Witness and Victims Protection (LPSK) (Law No. 31/2014), identified torture as a crime that should be prioritized in LPSK’s mandate. However the Government of Indonesia has not yet implemented policies required to support and give effect to this mandate, including revision of Government Regulation No. 44/2008 on Compensation, Restitution and Victims Rehabilitation to include torture victims. The revision of this regulation would operationalize another government regulation No. 92/2015 on the Second Amendment of Government Regulation No. 27/1993 on the Book of Criminal Procedure Law that was approved by the President in 2015. Since both government regulations have not been implemented, it is extremely difficult for victims to access reparations.

18. Amidst uncertainty surrounding national legislation and policy preventing the use of torture, some progress has been made by the National Human Rights Commission (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), and the Ombudsman and the Witness and Victims Agency (LPSK). These organisations, supported by the Law and Human Rights Minister, are cross-mandated to monitor human rights issues, handle official dialogue with other state bodies and official decision making, and conduct regular visits to detention centers throughout Indonesia. Together, they can help to ensure the quality of facilities, as well as the services and human resources standards that can contribute to the prevention of torture.

IV. The practice of torture and ill treatment and the situation of torture survivors in Indonesia

19. In order to evaluate the practice of torture in Indonesia, it is instructive to examine Indonesian government policy in several areas. *First*, the Government is still using capital punishment as ‘deterrence’ against illicit drugs, premeditated murder and terrorism offences. *Second*, the use of caning as a form of corporal punishment continues in Aceh province under the justification of *sharia* in contravention to the Government of Indonesia’s commitment to the CAT and ICCPR. *Third*, there remains a lack of commitment in the internal security forces to prosecute the perpetrators of torture, reinforcing the culture of impunity for perpetrators. *Fourth*, the government’s plans to strengthen the use of force in order to combat terrorism through legislation amendments and policies in Indonesia.

20. During the past four years there has been a significant surge in the number of allegations of torture submitted. From July 2011 to June 2012, there were 86 allegations of torture involving 243 victims.⁸ Meanwhile for the categories of alleged perpetrators during this period, police officers were alleged perpetrators in 14 cases, military officers in 60 cases and prison guards in 12 cases. During this time period Papua continued to be a fragile region where allegations of torture were widespread.

21. In comparison to KontraS’ 2012-13 torture report, there has been a significant increase in the number of cases of torture and ill treatment to 100 cases, with 204 victims injured and 15 dead. KontraS classified the torture actions committed by state security forces into 3 categories: (1) torture or cruel actions to force information as an intermediary (not the target) 2 cases, (2) torture in order to extract a confession 44 cases, (3) torture as a punishment 30 cases. Torture practices also occurred during the anti-terrorism operation in Poso, where 14 people were victims of the actions of Special Detachment 88 personnel under the Polri chain of command.

22. During the period 2013-2014, KontraS documented 108 cases of torture and ill treatment: (1) 80 cases committed by police officers, (2) Ten cases committed by

⁸ See more: KontraS. 2012. Torture increased drastically. The report can be accessed at: http://www.kontras.org/eng/index.php?hal=siaran_pers&id=160.

military officers, and (3) 18 cases involving prison guards. The cases resulted in 20 deaths, 155 people injured and 107 people experiencing mental and physical suffering, including profound trauma, inability to communicate and withdrawal. In addition, KontraS documented one victim whose whereabouts is still unknown. The practice of torture is strongly correlated with (1) arbitrary arrest, (2) the use of military force and state practice of kidnapping (for example, the case of Dedek Khaerudin, who is still disappeared), power relations among civilians, law enforcement officers and business people (for example, the case of torture and land grabbing from the Anak Dalam Tribe in Jambi, and the case of intimidation, torture and shooting of workers at a kitchenware factory in Tangerang⁹).

23. KontraS has also documented several tools and devices that have been used to injure victims: (1) Bare hands, (2) Electrical instruments, (3) Instruments for mutilating, (4) Paddling instruments (rattan/wood/iron bars), and (4) Binding instruments (cords/rope/handcuffs/duct tapes).
24. Torture has a profoundly traumatic impact on victims and their families. It creates such an atmosphere of terror for victims that many do not report the experience. Despite the establishment of the Law of Information Transparency (No.14/2011) and the Law of Access to Justice (No. 16/2012) the relevant state agencies tend to close access and there is no effective transparency mechanism on torture prevention that can be used by the public.
25. Although there was a slight decrease in the number of cases of torture and ill treatment documented in the period 2014-2015 to 84 cases, KontraS found new and different forms of torture and ill-treatment, including: (1) torture causing grave injury (forced confession of crime in the case of Kuswanto and arbitrary arrest for Papuan students in the case of Alvares and Yali Wenda), (2) torture leading to death (the allegation of sexual abuse towards minor at the Jakarta International School, wherein one of the detainees died after being tortured), (3) torture and modern slavery (the torture case of 85 illegal migrant workers of PT. Pusaka Benjina Resource).
26. During this period KontraS also monitored several places where torture and ill-treatment occurred. This included police stations, military institutions (inhuman treatment toward Ramunia farmers for land conflict), private locations (in the case of the death of a farmer named Indra Pelani in Jambi).
27. This year KontraS noted a dramatic escalation up to 108 torture cases throughout Indonesia. These included: (1) torture and the use of capital punishment (the executions in July 2016), (2) torture, minor and capital punishment (the case of Yusman Telaumbanua that lead to a miscarriage of justice),¹⁰ (3) torture to death

⁹ Related to the workers condition, in addition to that In addition, the workers were frequently arrested, confined, and physically abused in a special chamber if they tried to escape. This action has fallen under a cruel and inhumane act, as prohibited by the International Covenant on Civil and Political Rights, article 8, paragraph 3(a), "No one shall be required to perform forced or compulsory labour"

¹⁰ The latest report from the UN Special Rapporteur on Torture Juan E. Mendez expounded that children victims of torture would have different response compared to adults, both physically and

in a detention center (the case of Undang Kosim in Banceuy West Java), (4) torture and gross human rights violations in past abuses (the Wira Lano tragedy and Jambo Keupok in Aceh), (5) torture and canning policy (the use of sharia law in Aceh for non Muslim people and LGBT groups), (6) torture and anti terrorism (the death of Siyono), (7) torture and petty crime accusation (the death of a minor named Suhuddin during an interrogation session at a police office), (8) ill treatment in the business sector (the death of Salim Kancil who protested against illegal land mining in East Java).

28. Current practices of torture in Indonesia include the use of a firing squad in carrying out the death penalty; as well as caning, introduced as a punishment by Islamic courts in Aceh province for a range of offences including sexual relations outside marriage, consumption of alcohol, being alone with someone of the opposite sex who is not a spouse or other relative, and for any Muslim found eating or drinking during sunlight hours during the fasting month of Ramadhan.
29. Survivors of torture do not receive sufficient legal aid and rehabilitation from the government. However, recently the Supreme Court affirmed a 2013 decision by a local court in West Sumatra, granting compensation to a victim of torture to be paid by the police. This decision followed a criminal conviction in 2012 that found police officers guilty of “maltreatment.” Nevertheless, the lawyers in this case have yet to receive the Supreme Court decision, two years later.¹¹
30. In addition, in 2014-2015, KontraS and AJAR documented 143 instances of torture in past violations in Aceh, Papua and the 1965 atrocities. The practice of torture, with a lack of state accountability, continues in Indonesia. Survivors of past abuses continue to suffer discrimination, poverty, psychological trauma and health issues long after their release.¹²
31. Thousands of survivors of torture from the 1965 atrocities continue to struggle on their own against ongoing discrimination in politics and society as they become

mentally. The damage from practice of torture and other inhuman treatment would be amplified on children compared to adults (A/HRC/28/68, Para. 33). Furthermore, the UN Special Rapporteur also stresses that death penalty has been forbidden in many international human rights instruments regarding its mandatory application to children, such as the provision of Article 37(a) of the Convention on the Rights of the Child. The Committee on Rights of the Child, in the General Comment no 10 (CRC/C/GC/10) and the UN Human Rights Committee in the General Comment no 21 explain that a life sentence without parole is also inappropriate for juvenile offenders (see: Ibid, Para 37).

¹¹ The Supreme Court decision was published on their website in March 2016, but was reached in 2014. “Police torturers can be sued, this is the precedent,” Hukum Online, 15 March 2016, <http://www.hukumonline.com/berita/baca/lt56e7fa8879f2b/polisi-pelaku-penyiksaan-bisa-digugat--ini-preseden-putusannya>.

¹² KontraS and AJAR collected the testimonies of 143 torture survivors using participatory methods that assist victims to deal with trauma and empower themselves. They included survivors of torture from the 1965 atrocities in Yogyakarta (16), Kupang, Nusa Tenggara Timur (18), Buru Island, Maluku (17), Jakarta, Bogor, Depok and Bekasi (12) and North Sulawesi (13). In conflict areas, we documented 45 survivors of torture in Aceh and 22 survivors in Papua.

increasingly elderly and infirm.¹³

32. In Papua, racism, stigma, and labeling persons as members or supporters of the armed independence group Organisasi Papua Merdeka are common justifications for torturing victims. Most political prisoners in Papua experienced torture during their arrest, detention and interrogation. Like other survivors in Indonesia, they experience discrimination long after their release, as well as poverty, psychological trauma and health problems.¹⁴
33. In Aceh, the practice of torture, including rape and sexual violence, was widespread during military operations in that province. The military accused civilians in Aceh of being members, supporters and relatives of the armed separatist group the Free Aceh Movement (Gerakan Aceh Merdeka, GAM). Victims were taken to Indonesian military posts and headquarters to be interrogated and tortured, as well as to empty houses, public facilities and companies, such as Rumah Geudong in Pidie and the Wira Lano company in East Aceh. Women survivors of torture, in particular, faced ongoing trauma and stigmatisation by their community. Many are single mothers, after husbands or other family members were killed or disappeared. AJAR's research in Indonesia found that only a small minority of women survivors of torture were able to access government-funded medical support.¹⁵

V. State Policy towards torture and ill-treatment

34. A draft criminal code that criminalizes torture has been under development for years. In the absence of the new code, a law to criminalize torture is being drafted jointly by the Ministry of Foreign Affairs and the Ministry of Law and Human Rights, although it too has not been released or debated.
35. The National Human Rights Commission, the National Commission on Violence Against Women, the Indonesian Child Protection Commission, the Ombudsman, and the Witness and Victims Agency have decided to adopt a multiple body approach to a national prevention mechanism for torture (a body that would be required if Indonesia signed the Optional Protocol to the CAT). Based on their mandates, they can monitor and supervise all those in places of deprivation of liberty. They will conduct dialogue with the state, conduct regular visits, and ensure the availability of facilities, resources and services to prevent torture.

¹³ Still Denied: Right to Rehabilitation for Torture Victims During the Mass Detention of 1965 in Indonesia, *Submission to Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, October 2016. AJAR, KontraS, ELSAM, SKP HAM Sulawesi Tengah, KIPPER, LAPPAN, JPIT.

¹⁴ AJAR, ELSHAM Papua and Tapol, "The Practice of Torture: Business As Usual in Papua," 2015, at asia-ajar.org/wp-content/uploads/2015/11/Torture-report-English.pdf

¹⁵ The action research documented stories of 60 women in Indonesia, 34 of them torture survivors, but only 5 were able to access medical support from Indonesia's Victim and Witness Protection Agency. See "Enduring Impunity: Women Surviving Atrocities without Justice," Jakarta, October 2015, <http://asia-ajar.org/2015/11/enduring-impunity-women-surviving-atrocities-in-the-absence-of-justice/>

Currently, these institutions are building the internal mechanisms necessary to work together to preventing torture.

36. The Government of Indonesia often takes a shortcut by providing cash assistance to victims (see for example the case of Siyono, in which Polri provided 100.000.000 IDR to his family for his death). Even though the Government does not routinely use that kind of approach (providing cash money to victims without acknowledging the wrong doing), the Government does not provide a clear mechanism for the victims' redress. Moreover, the government oversight bodies (Komnas HAM, Ombudsman, KPAI, LPSK) are mandates only to make an administration sanction or light reprimand. There is no secure accountability mechanism that can reform both organizational and security apparatus practices.
37. In 2016 the Government of Indonesia issued a regulation to protect children by promoting genital castration as part of legal punishment. This notorious policy has gained a wide popular support at the grassroots level yet it contravenes the government's commitment to not support policies of ill treatment. On the issue of judicial oversight, the case of Suhuddin is a landmark decision on victim reparation. The family of Suhuddin brought a case to the Southern Jakarta District Court through a lawsuit on the act against the law. Suhuddin's family finally received a fair verdict by favoring of material as much as 268.295.000 IDR and immaterial lawsuit as much as 518.295.000 IDR.

VI. Recommendations to the Government of Indonesia:

- Accelerate, both in the legislative and executive sectors, the Penal Code Bill and ensure the articles regarding the prohibition and criminalization of torture and other cruel, inhuman treatment are clearly articulated in the regulation.
- Expedite the Anti-Torture Bill, and include in it requirements of the CAT including a definition and punishment for perpetrators, as well as evidence, witnesses and recognition of torture practices.
- Acknowledge and rehabilitate victims of past torture, including from 1965-6 and the conflicts in Aceh and Papua, by establishing a Presidential Committee on truth, justice, reparations, and reform.
- Develop an individual complaints mechanism, where victims of torture and human rights violations can provide details of their experience in safety, and ensure that the complaints of victims are followed by effective investigations and prosecutions.
- Amend local regulations or by-laws that provide for torture and other ill-treatment, such as the use of caning as punishment in Aceh.
- Guarantee reparations and remedies for victims and family of victims of torture practices by providing clear mandates to the Witness and Victims Protection Agency (LPSK).

- Ensure that supervision agencies such as Kompolnas, Ombudsman, Attorney Commission, Judicial Commission, and Komnas HAM take a lead role in carrying out supervision and encouraging the implementation of legal accountability, as well as promoting socialization among institutions to prevent the practice of torture. Ensure also that these agencies work together with other state institutions (internal) to ensure prevention mechanisms, punishment, protection for witnesses and victims, and remedies for victims are in accordance with international human rights standards.
- Evaluate the capacity development of law enforcement agencies, including in particular the National Police and National Armed Forces in carrying out their duties and functions during inquiries and investigations. Also revise Law No. 31/1997 regarding the Military Court accordingly.
- Immediately ratify the Optional Protocol to the Convention Against Torture (OPCAT) and develop effective national torture preventive mechanisms.
- Implement the recommendations of the UN Human Rights Committee of 2013 and the UN Special Rapporteurs, as a demonstration of Indonesia's commitment to promoting accountability and preventing all forms of torture and other cruel, inhuman or degrading treatment or punishment. Urgently schedule a session meeting with the Committee against Torture, which is long-overdue.