

HUMAN RIGHTS COUNCIL  
7<sup>TH</sup> SESSION  
3 TO 28 MARCH 2008

RESPONSE BY THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS (KOMNAS HAM) ON THE REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT CONCLUDES VISIT TO INDONESIA

1. The Indonesian National Commission on Human Rights (hereafter called: Komnas HAM) is an independent institutions, with a broad mandate to study and research, raise public awareness, monitor and mediate on human rights.
2. Komnas HAM appreciated the whole efforts that have been done by Mr. Manfred Nowak. We believed that his visit has reckoned some problems and challenges regarding the situation of human rights promotion and protection, especially on the issue of torture.
3. With regard to the issue of impunity, Komnas HAM observed that since legal or moral prosecution is part of retaliation politics, especially in the military, there is indication that impunity of human rights violations are still exist. Thus, to end the impunity, while it is already criminalized as a part of gross human rights violations (UU No. 26/2000), Komnas HAM is of the same view as the Special Rapporteur, that torture should be criminalized in the Indonesian Criminal Code.
4. Komnas HAM noted that based on the investigation of Abepura and Wasior case (Papua), torture was conducted at places of detention in police station by police apparatus, yet the treatment the detainees in these places of detention was not reported as acts of violence and the alleged perpetrators were not brought to the court. The acts of torture that have been indicated by Komnas HAM in its investigation report have never been followed up by the Office of Attorney General.
5. To meet the effectiveness of torture prevention, it is important to endorse the establishment of standard mechanisms in monitoring and visit detention places, as well as, the importance of the ratification of the OPCAT.
6. It should be reckoned, that basically, the prohibition of the act of torture conducted by public officials is stated in the Criminal Law Article 442. The prohibition of torture in Article 442 uses the definition which is close to the one defined in CAT, even though it is not sufficient enough, since it does not cover the act of "instigation" or "consent" or "acquiescence" from public officials or person acting in an official capacity. There are some efforts done by Komnas HAM and civil society to amend the law of the Criminal Code that prohibits torture as stated in CAT.

7. Komnas HAM has visited some of detention places and Correctional Institutions as a part of its monitoring function. The recent visit was done from April to May 2007, in several relevant agencies in Indonesia. Based on the visit, Komnas HAM noted several conditions in the detention places were not give the standard minimum of the protection of the prisoners.
  
8. Komnas HAM has formulated a Memorandum of Understanding (MOU) with National Police to cooperate and work together in handling human rights cases in Indonesia. Recently, in January 2008 Komnas HAM has also met with the Directorate General of Correction Institutions and the meeting has concluded the mechanism between two parties related to case that submitted to Komnas HAM. In this regard, Komnas HAM will be able to visit any correction institutions in Indonesia.
  
9. Komnas HAM particularly appreciates the recommendations that have been proposed by Mr. Nowak and encourage the Indonesian Government to take those recommendation as part of positive consideration to improve human rights conditions in Indonesia.

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