

Ref: TG ASA 21/2012.005
Index: ASA 21/014/2012

Amir Syamsuddin
Minister of Justice and Human Rights
Ministry of Justice and Human Rights
Jl. H.R. Rasuna Said Kav No. 4-5
Kuningan
Jakarta Selatan 12950
Indonesia

4 April 2012

Dear Minister,

OPEN LETTER ON TORTURE AND OTHER HUMAN RIGHTS VIOLATIONS BY THE POLICE IN INDONESIA

We are writing at this time to raise our concerns about human rights violations committed by the police in Indonesia. Amnesty International has received ongoing credible reports of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). We highlight below some recent cases that have occurred over the last year.

These reports point to the fact that the findings in Amnesty International's 2009 report *Unfinished Business: Police Accountability in Indonesia* (Index: ASA 21/013/2009) are, unfortunately, still relevant in 2012. The report concluded that the use of torture and other ill-treatment by police officers during arrest, interrogation and detention was widespread in Indonesia and that police accountability mechanisms were too weak or ineffective to combat impunity within the police.

In order to bring an end to such practices, we urge you to take the lead in ensuring prompt, independent, impartial and effective investigations of these reports. The results should be made public.

1. MEN ALLEGEDLY TORTURED TO FORCE A CONFESSION

Two men, **Sun An Alang**, aged 51, and **Ang Ho**, aged 34, both of Chinese ethnicity, were allegedly tortured by the police in North Sumatra province between 2 and 16 April 2011 and forced to sign a confession that they were involved in the killing of two men on 29 March 2011.

Sun An Alang was arrested on the morning of 2 April 2011 by six armed plainclothes police officers from the Asahan District Police. The officers did not have an arrest warrant. On 1 April Ang Ho was arrested at a hotel, also without an arrest warrant, by four armed plainclothes police officers from the Medan Metropolitan City and East Medan Sub-district Police. According to Ang Ho, he was sexually assaulted following his arrest – one of the police officers stripped him and ejaculated on his buttock. Ang Ho was then taken to the East Medan Sub-district Police Station where police officers hit his face and body and burned his hand with cigarette butts. Under international human rights law, the way in which Ang Ho was reportedly treated amounts to torture, as it was intentionally inflicted by officials, clearly with some punitive and/or discriminatory purpose, and caused severe pain and suffering, both physical and mental.

In the evening of 2 April, the two men were transferred to Police Mobile Brigade (Brimob) Headquarters in Medan where they were put in a room, handcuffed, and their eyes and mouths covered with a black cloth. There, around 20 Brimob officers took turns beating, punching and kicking each man's chest, head and buttocks. The two men were then threatened with further ill-treatment by the officers if they did not sign the Police Investigation Report (BAP) confessing that they killed two men on 29 March 2011. Both men signed a confession.

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT

Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom

T: +44 (0)20 7413 5500

F: +44 (0)20 7956 1157

E: amnestyis@amnesty.org

W: www.amnesty.org

They were then transferred to the Medan Metropolitan City Police Headquarters the following day where they reported further torture every night between midnight and 4am until 16 April. Police stripped, slapped, punched, kicked and stepped on them. The officers also poured cold water on them at night. Although they requested access to their own lawyers, this was denied by the police who instead assigned a lawyer to them. The lawyer was not present when the Police Investigation Report (BAP) was signed but nevertheless, according to both men, he signed the document that he had represented them during the interrogation. They were subsequently charged and tried for murder (Article 340 of the Indonesian Criminal Code, Kitab Undang-Undang Hukum Pidana, KUHP) and sentenced to life imprisonment.

A report was filed by a human rights lawyer about the allegations of torture to the internal affairs division (Propam) at the National Police Headquarters in Jakarta on 24 February 2012. Amnesty International is not aware of any independent investigation into these allegations.

2. DEATH IN CUSTODY IN BOGOR

Yusli, aged 23, from Bogor, West Java province died after being arrested and allegedly tortured by police from the Cisauk Sub-district Police, possibly as a result of the torture.

On 26 December 2011, at about 3am, three plainclothes police officers arrested and handcuffed Yusli, without an arrest warrant, and dragged him into their car. His father-in-law, who was present, attempted to chase the car but was not successful. His family then visited several police stations in the vicinity to look for Yusli but could not locate him. On the same day, the Mekarsari village head in Bogor district informed the family that Yusli had died and that his body was at the Kramat Jati hospital in West Jakarta. He reportedly gave the family 2 million Indonesian Rupiah (US\$ 220) and also asked them to sign a piece of paper stating that they would not question the nature of Yusli's death. The family rejected the money and refused to sign the document.

When the family arrived at the hospital the following day, a man reportedly approached them and introduced himself as a member of the Cisauk Sub-district Police. He informed them that officers from the Cisauk Sub-district Police had arrested Yusli and that when he attempted to escape, the police shot him. The man did not inform the family the reasons for the arrest. When they saw Yusli's body, they found injuries on his head, lacerations on his face, cuts on the right side of his chest and a bullet wound on the left side, and bruises on his chin, hands and body. Suspecting that Yusli may have been beaten to death, they reported to the Tangerang City Sub-district Police Station on 27 December 2011 that he had been murdered.

On 2 January 2012, the family also reported the case to the internal affairs division (Propam) at the National Police Headquarters in Jakarta. On 31 January, they were informed that the Jakarta Metro Jaya Police were investigating the case. According to the family, they were told by the police that on 16 January they had questioned four suspects. The family were denied access to a copy of the medical report (visum et repertum) prepared by Kramat Jati hospital. On 20 February police informed the family that the medical report stated Yusli's death was due to the bullet wound but did not give them a copy of it. No progress on the case has been reported since.

3. MAN SHOT AT AND TORTURED IN EAST JAVA

Rahmatullah, aged 28, was allegedly tortured or otherwise ill-treated by the police and then charged with committing theft and rape in 2010, a charge which he denies.

Rahmatullah was arrested without a warrant on 18 August 2011 by four police officers from the Jember District Police in East Java province. During his arrest the police reportedly hit his mouth with a pistol handle and shot his right knee. He was then taken to Jember District Police Station where police inflicted cigarette burns on his stomach and hands and told him to confess to a series of thefts, which he refused to do. He was charged on the same day with theft of a motorcycle and a rape (Articles 365 and 285 of the Indonesian Criminal Code) that occurred in 2010 in Badean village in Jember district. Rahmatullah had initially been a suspect in that case in 2010, but subsequently three other people

were tried, convicted and sentenced for the crime. It is not clear why he was charged with these crimes in 2011 after three other people were convicted of the same crime.

Rahmatullah did not have a lawyer with him throughout his interrogation by both the police and Public Prosecutor's office. A lawyer was then assigned to him by the judge after the case became public. Amnesty International has also received credible reports that Rahmatullah's charge sheet was altered by the prosecution during the trial, violating Article 144 (2) of the Indonesian Criminal Procedure Code.¹ On 14 March 2012 he was sentenced to four years' imprisonment by the Jember District Court. Both the rape victim and one of the three sentenced for the crime have reportedly stated in court that Rahmatullah was not involved in the crime.

Amnesty International has received information that two police officials from the Jember District Police were detained for 21 days after internal disciplinary proceedings found them guilty of not adhering to arrest procedures and for the shooting of Rahmatullah. Moreover, he has not received any medical attention for the bullet wounds from the shooting.

Amnesty International is not aware of any independent investigation into his alleged torture by the police.

4. TWO CHILDREN TORTURED AND KILLED IN POLICE LOCK-UP

Two brothers, both children from Nagari Pulasan village, Sijunjung district in West Sumatra province were allegedly tortured and killed in a police lock-up on 28 December 2011.

Faisal, aged 14, was arrested by the Sijunjung Sub-district Police on 21 December for allegedly stealing from a charity box at a mosque. When his mother and brother visited him the following day, his legs were wrapped up with a plastic sheet and his buttocks were bruised. He reportedly told his family that police had beaten him with wooden sticks. His brother **Budri**, aged 17, was arrested on 26 December for allegedly stealing a motorcycle.

On 28 December 2011 police informed their family that both boys had been found hanging in the bathroom of the Sijunjung Sub-district Police Station lock-up. The police initially reported the deaths as suicide. When the family came to the police station to collect the bodies, they were asked to sign a document saying that they accepted the police explanation as to the nature of the two boys' deaths and would not question it further. Signing the document was a pre-condition for them to be able to view and retrieve the bodies of the two boys. The family reluctantly signed the document. When they took the bodies back to their home, they found indications that they may have been beaten in detention. Faisal's face and thighs were swollen, his nose had fresh blood, his toes were broken and there were bruises all over his body. Budri's head and thighs were also swollen, his right hand, toes and jaw were broken and there was a cut below his left knee.

After the case was taken up by a legal aid organization, LBH Padang, police conducted an internal investigation and found nine police officials from the Sijunjung Sub-district Police Station guilty of "negligence in failing to prevent the suicides". They were handed down disciplinary punishments of 21 days' detention, demotions and delayed pay increments. However, the West Sumatra Provincial Police denied that the officers had tortured the two boys and initially refused to hand over a copy of the autopsy report to the family.

An investigation by the National Human Rights Commission (Komnas HAM) in January 2012 found indications that the boys had been tortured from the day there were arrested. Although three of the officers involved have since been charged with "maltreatment" under Article 351 of the Indonesian Criminal Code, no one has been charged in connection with the deaths of the two boys. There are also

¹ According to Article 144 (2) of the Indonesian Criminal Code changes to the charge sheet can only be done once, at the latest seven days before the start of a trial.

concerns that the 2002 Law on Child Protection (No. 23/2002) was not used to charge the police officers despite both the victims being children.

5. AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International recognizes the challenges involved in policing in Indonesia. However, in the cases outlined above, the police appear to have violated the rights to life and to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The provisions protecting these rights are non-derogable under the International Covenant for Civil and Political Rights (ICCPR) (concerning both rights), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (concerning the right to freedom from torture and other ill-treatment). Indonesia is a state party to both treaties.

The right to life must be respected at all times. The ICCPR provides that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” (Article 6.1).

As a state party to both the ICCPR and the UNCAT, Indonesia has undertaken a legal obligation to prohibit torture and other ill-treatment in all circumstances. The Indonesian Constitution and the Law on Human Rights (No. 39/1999) also provide for the right for all people in Indonesia to be free from torture and other ill-treatment.

Moreover, in some of the cases described above, individuals were also reportedly arbitrarily arrested without arrest warrants, denied access to legal counsel, and detained and tortured or otherwise ill-treated by police officers.

The ICCPR clearly provides that “[n]o one shall be subjected to arbitrary arrest or detention” (Article 9.1) and that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him” (Article 9.2). According to international law and standards, everyone has the right to legal counsel of their choice during detention, and in all stages of criminal proceedings.²

The Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHAP) also requires that arrest warrants be shown to the suspect or given to family members (Article 18) and guarantees the rights to contact and be assisted by legal counsel (Articles 57.1 and 54).

The Indonesian authorities also have an obligation under national and international law to provide medical treatment to all prisoners in the country. Article 17 of the Indonesian Government Regulation No. 32/1999 on Terms and Procedures on the Implementation of Prisoners’ Rights in Prison requires the prison authorities to provide adequate access to medical treatment. International standards also provide for medical treatment for prisoners. The UN Standard Minimum Rules for the Treatment of Prisoners provide that prisoners needing treatment not available in the prison hospital, clinic or infirmary should be transferred to an appropriate institution outside the prison for assessment and treatment.

Medical reports should be made accessible to detainees or prisoners wishing to complain of ill-treatment, as stated in Principle 26 of the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. Further, as stated in Principle 34, whenever the death or disappearance of a person occurs during his detention, an inquiry into the cause should be held by a judicial or other authority. The findings of such an inquiry should be made available on request, unless doing so would jeopardize an ongoing criminal investigation. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions also require that “[t]here

² ICCPR, Article 14(3), Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 1 and Body of Principles, Principle 17(1).

shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9).

We believe that one of the reasons why cases of torture and other ill-treatment continue to occur in Indonesia is the failure to revise the existing Criminal Code. The Indonesian Criminal Code has yet to incorporate the crime of torture based on the Article 1.1 of UNCAT, thus failing to meet Indonesia’s obligations under Article 4 of the Convention.

The Committee against Torture in its 2008 Concluding Observations also raised concerns about “the absence of appropriate penalties applicable to acts of torture in the Criminal Code, qualified as ‘maltreatment’ in Articles 351 to 358 of the code”. The Committee called on the Indonesian government to “ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature, as set out in paragraph 2, article 4 of the Convention”.³

Amnesty International is also concerned by the lack of sufficient safeguards within the Indonesian Criminal Procedure Code against torture and other ill-treatment. Contrary to Article 15 of the UNCAT, there is no provision which clearly excludes the use of statements obtained as a result of torture. It is left to the discretion of the judge to determine whether or not evidence allegedly obtained under torture is admitted, and if it is admitted, what weight to give to it. The judge does not have the authority to order an investigation by an impartial authority into an allegation that evidence or testimony was obtained under torture or other ill-treatment.⁴

Weaknesses in both internal and external police accountability mechanisms also contribute to this culture of impunity. Investigations into reports of police abuses are rare, and when they do occur, police often subject complainants to further intimidation and harassment. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences amounting to human rights violations and are often not known to the public. Furthermore, external police oversight bodies do not have the adequate powers to bring to justice those responsible for human rights abuses.

6. RECOMMENDATIONS

Amnesty International calls on the Indonesian authorities to:

- Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all reports of torture and other ill-treatment by police, and ensure that those suspected of involvement, including persons with command responsibility, are prosecuted in proceedings which meet international standards of fairness, and that victims are provided with reparations;
- Ensure that no one is subjected to arbitrary arrests, that detainees have prompt access to their families and legal counsel of their choice and to a court and access to medical care;
- Ensure that medical records indicating alleged torture and other ill-treatment and other abuses of detained persons are made available to the victim and/or the victim's family and legal counsel;
- Ensure that all police officials are familiar with the Regulation of the Chief of the National Police regarding the Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police (No. 8/2009);

³ See “Concluding observations of the Committee against Torture: Indonesia”, UN Doc. CAT/C/IDN/CO/2, 2 July 2008, para 13.

⁴ See Amnesty International “Indonesia: Briefing to the UN Committee against Torture”, Index: ASA 21/003/2008. Weblink: <http://www.amnesty.org/en/library/info/ASA21/003/2008/en>, accessed on 29 February 2012.

- Review the current accountability system to deal with suspected human rights violations by police officials and set up an independent police complaints mechanism that can receive and deal with complaints from the public. This mechanism should have the power to submit its findings to the Public Prosecutor;
- Revise and enact at the earliest opportunity a new Criminal Code and a new Criminal Procedure Code that comply with international human rights law and standards, and that include provisions explicitly prohibiting acts of torture. The definition of torture in the revised Criminal Code should be consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that the new Criminal Procedure Code explicitly prohibits the admissibility in courts and any other proceedings of any evidence elicited as a result of torture or other ill-treatment, except in proceedings brought against the alleged perpetrator as evidence of the torture or ill-treatment; and
- Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, so that a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty is established.

We urge your office to look into these concerns as a matter of priority and we hope to hear from you regarding our inquiries as soon as possible.

Please do not hesitate to contact us should you have any questions. We would be pleased to discuss this matter with you.

Yours sincerely,

Donna Guest
Asia-Pacific Deputy Director

Cc: General Timur Pradopo
Head of the Indonesian National Police

Inspector General Drs. Herman Effendi
Head of the Division on Professionalism & Security (Propam)

Drs. Ronny Lihawa
Secretary of the National Police Commission (KOMPOLNAS)

Ifdhal Kasim
Head of the National Human Rights Commission (Komnas HAM)