
ADVANCE UNEDITED VERSION

Human Rights Committee

108th session

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Agenda item 6

**Consideration of reports submitted by States parties
under article 40 of the Covenant**

Concluding observations on the initial report of Indonesia

Prepared by the Committee

1. The Committee considered the Initial report submitted by Indonesia (CCPR/C/IDN/1) at its 2984th, 2985th and 2986th meetings (CCPR/C/SR.2984, CCPR/C/SR.2985 and CCPR/C/SR.2986), held on 10th and 11th July 2013. At its 3002nd and 3003rd meetings (CCPR/C/SR.3002 and CCPR/C/SR.3003), held on 23rd and 24 July 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Indonesia and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's high level delegation on the measures that the State party has taken, since the entry into force of the Covenant in 2006, to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/IDN/Q/1/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following policy and legislative steps taken by the State party:

- (i) The adoption of a Human Rights Action Plan for the Period 2011-2014; and
- (ii) The enactment of Law No. 11 of 2012 on Juvenile Criminal Justice System, which increased the age of criminal responsibility from 8 years to 12 years.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2012;

- (b) The Convention on the Rights of Persons with Disabilities in 2011;
- (c) The Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in 2009;
- (d) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2012; and
- (e) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2012.

C. Principal matters of concern and recommendations

5. While taking note of article 7 of Law No. 39 of 1999 on Human Rights and the response of the State party in its replies that all international instruments ratified by the State party are part of domestic law, the Committee also takes note that the Covenant does not take precedence over the provisions of national legislation that are deemed inconsistent with the Covenant. The Committee is concerned that notwithstanding the fact that the State party's Constitutional Court has made references to the provisions of the Covenant in its decisions, there is limited knowledge and usage of its provisions by lawyers and judges (art. 2).

The State party should take all measures to give full effect to the provisions of the Covenant in its domestic legal order. It should also take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors at all levels, especially in autonomous regions, to ensure that its provisions are taken into account by national courts. The State party should also consider acceding to the first Optional to the Covenant.

6. While noting the State party's efforts to devolve State authority pursuant to the policy on decentralization (Law No. 32/2004), the Committee regrets that the resultant autonomy of regions has led to the enactment of sub-national legislation and by-laws that are inconsistent with the provisions of the Covenant. The Committee particularly regrets that regions have increasingly adopted by-laws and policies that are severely restrictive of the enjoyment of human rights and discriminate against women, such as those which promote interpretations of Sharia law in Aceh that are inconsistent with the ICCPR. The Committee is also concerned with reports that in Aceh province individuals must demonstrate the knowledge of or ability to read religious texts in order to be employed in the police service, and in some other public institutions (arts. 2, 3, 18, 26 and 50) (arts. 2, 3, 18, 26 and 50).

The Committee recalls general comment no. 31, paragraph 4 "and reminds the State party that the "[t]he obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party". The State party should, therefore, ensure that the provisions of the Covenant are respected in all its provinces and autonomous regions despite the State party's internal governance arrangements. In connection with this, the State party should ensure that legislation at all governmental levels is consistent with the provisions of the Covenant. The State party should also revise its policies and practices, which may be interpreted as establishing adherence to a particular religion as a mandatory requirement for employment in the public service.

7. While noting the State party's efforts to promote cooperation between National Commission on Human Rights (Komnas HAM) and the State party's entities, and that

Komnas HAM has been accorded “A” status by the International Coordinating Committee of National Human Rights Institutions, the Committee also notes that concerns have been raised regarding, inter alia, the tenure of the members of Komnas HAM and the lack of adequate funding (art. 2).

The State party should take appropriate measures to address the concerns raised with regard to Komnas HAM including the tenure of its members, and to provide it with adequate financial and human resources in line with the Paris Principles (General Assembly resolution 48/134, annex).

8. The Committee regrets the failure by the State party to implement article 43 of Law 26/2000 in order to establish a Court to investigate cases of enforced disappearance committed between 1997 and 1998 as also recommended by Komnas HAM and the Indonesian Parliament (DPR). The Committee particularly regrets the impasse between the Attorney General and Komnas HAM with regard to the threshold of evidence that should be satisfied by Komnas HAM before the Attorney General can take action. The Committee further regrets the prevailing climate of impunity and lack of redress for victims of past human rights violations particularly those involving the military (art. 2)

The State party should, as a matter of urgency, address the impasse between Komnas HAM and the Attorney General. It should expedite the establishment such a Court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament (DPR). Furthermore, the State party should effectively prosecute cases involving past human rights violations such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families.

9. The Committee is concerned at the lack of a clear provision in article 28I of the Constitution of 1945 and Regulation in lieu of Law No. 23 of 1959 (regulating the rights that are non-derogable in a state of emergency) to dispel any doubts that certain rights, including the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation protected under article 11 of the Covenant, cannot be derogated from during a state of emergency (arts. 2 and 4).

The Committee recalls its general comment no. 29 (2001) and urges the State party to ensure clarity in its legislation governing states of emergency so that all rights protected under article 4 of the Covenant, including the right protected under article 11 of the Covenant, are not derogated from during a state of emergency, and to ensure that the requirements of such derogations are consistent with the Covenant.

10. The Committee regrets that the State party suspended its *de facto* moratorium on the death penalty and has resumed executions. The Committee regrets that death sentences are imposed by courts for drug crimes, which do not meet the threshold of the “most serious crimes” set under article 6 of the Covenant (art. 6).

The State party should reinstate the *de facto* moratorium on the death penalty and should consider abolishing the death penalty by ratifying the Second Optional Protocol to the Covenant. Furthermore, it should ensure that, if the death penalty is maintained, it is only for the most serious crimes. In this regard, the Committee recommends that the State party review its legislation to ensure that crimes involving narcotics are not amenable to the death penalty. In this context, the State party should consider commuting all sentences of death imposed on persons convicted for drug crimes.

11. While noting that the State party is in the process of finalising a Gender Equality bill and the State party’s efforts to improve the representation of women in political office

through the introduction of temporary special measures, such as the 30% quota for women's representation in political parties, the Committee regrets the lack of information on similar measures in order to facilitate the representation of women beyond political parties. The Committee appreciates data provided in the replies to list of issues on the representation of women in the judiciary. However, it is concerned at the lack of data on the representation of women in the private sector (arts. 3 and 26).

The State party should strengthen its efforts to increase the participation of women in political and public affairs as well as in the private sector and, if necessary, through the extension of temporary special measures to give effect to the provisions of the Covenant. The Committee urges the State party to include in its next periodic report, disaggregated statistical data on the representation of women in the private sector.

12. The Committee regrets the State party's issuance of Regulation No. 1636 of 2010, following a *fatwa* (ruling) by the Ulema Council, which permits medical practitioners to conduct female genital mutilation (FGM) including on 6 months old babies. The Committee regrets the State party's explanation that a previous ban against FGM led to an increase in its practice by non-medical practitioners exposing women to grave risks of harmful forms of FGM and that the current regulation would better protect women (art. 7).

The State party should repeal Regulation of the Minister of Health No. 1636 of 2010, which authorises the performance of FGM by medical practitioners (Medicalization of FGM). In this connection, the State party should enact a law that prohibits any form of FGM and ensure that it provides adequate penalties that reflect the gravity of this offence. Furthermore, the State party should take efforts to prevent and eradicate harmful traditional practices including FGM, by strengthening its awareness-raising and education programmes. In this regard, the National Level Team established to develop a common perception on the issue of FGM should ensure that communities where the practice is widespread are targeted in order to bring a change in mind-set.

13. While noting the State party's efforts to eradicate violence against women, such as the establishment of the National Commission on Violence against Women (*Komnas Perempuan*), the Committee is concerned at the prevalence of such violence, which is exacerbated by a culture of silence and stereotypical attitudes on the role of women in the State party. The Committee is also concerned that, while the Penal Code puts the maximum penalty for rape at 12 years imprisonment, courts in the State party impose lenient penalties on rapists (arts. 2, 3 and 7).

The State party should adopt a comprehensive approach to prevent and address violence, including domestic violence, against women in all its forms and manifestations, including through awareness-raising on its harmful effects. In this regard, the State party should adopt programmes to eradicate stereotypes on the role of women and to ensure that it encourages female victims of violence to report such incidents to law enforcement authorities. The State party should ensure that cases of violence against women are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are provided with adequate reparations. Furthermore, the State party should conduct regular training for judges and magistrates to ensure that the crime of rape is punished with appropriate penalties commensurate to the gravity of the offence.

14. While taking note of the existence of a bill on the Penal Code, which seeks to provide for a comprehensive definition of torture and attendant penalties, the Committee is concerned at the inordinate delay in its enactment leaving victims of acts of torture without adequate remedies (arts. 2 and 7).

The State party should expedite the process of the enactment of a revised Penal Code. It should ensure that the revised Penal Code includes a definition of torture that

covers all of the elements contained in article 1 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and article 7 of the Covenant. The State party should also ensure that the law adequately provides for the effective investigation and prosecution of perpetrators and their accomplices of such acts, and if convicted, they should be punished with sanctions commensurate with the seriousness of the crime, and that victims should be adequately compensated. Furthermore, the State party should ensure that law enforcement personnel receive training on prevention and investigation of torture and ill-treatment by integrating the manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (Istanbul Protocol) in all their training programmes.

15. The Committee regrets the use of corporal punishment in the penal system, particularly in Aceh province where Acehese Criminal Law (*Qanun Jinayah*), inter alia, provides for penalties [that violate article 7 of the Covenant-insert GN], such as flogging, for offences against *qanun* governing outfits, *qanun khalwat* prohibiting a man and a woman from being alone in a quiet place and *qanun maisir* prohibiting the consumption of alcohol. The Committee also regrets that the execution of these sentences by Sharia police (*Wilayatul Hisbah*) disproportionately affects women (arts. 2, 3, 7 and 26).

The State party should take practical steps to put an end to corporal punishment in the penal system and in all settings. In this regard, the State party should repeal Acehese Criminal Law (Qanun Jinayah), which permits the use of corporal punishment in the penal system. The State party should act vigorously to prevent any use of corporal punishment under this law as a form of punishment for criminal offences until it is repealed.

16. The Committee is concerned at increased reports of excessive use of force and extra-judicial killings by the police and the military during protests, particularly in West Papua, Bima and West Nusa Tenggara. The Committee is particularly concerned at reports that the State party uses its security apparatus to punish political dissidents and human rights defenders. The Committee is also concerned that the National Police Commission, which is mandated to receive public complaints against law enforcement personnel, is weak as it has neither powers to summon law enforcement personnel nor the mandate to conduct independent investigations (arts. 6 and 7).

The State party should take concrete steps to prevent the excessive use of force by law enforcement officers by ensuring that they comply with the 1990 United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It should also take appropriate measures to strengthen the National Police Commission to ensure that it can effectively deal with reported cases of alleged misconduct by law enforcement personnel. Furthermore, the State party should take practical steps to put an end to impunity by its security personnel regarding arbitrary and extrajudicial killings, and should take appropriate measures to protect the rights of political dissidents and human rights defenders. The State party should systematically and effectively investigate, and prosecute cases of extra-judicial killings and, if convicted, punish those responsible; and provide adequate compensation to the victims' families.

17. The Committee is concerned at reports suggesting failure on the part of State authorities to protect victims of violent attacks motivated by religious hatred, such as the attack on members of the Shia group on Madura Island in August 2012. It is further concerned about the lenient penalties imposed on the perpetrators of violent attacks motivated by religious hatred, such as the 12 perpetrators of the attacks against members of the Ahmadiyya group at Cikeusik, Banten in February 2011 (arts. 2, 6, 7 and 26)

The State party should take all measures to protect victims of religiously-motivated attacks, and to investigate and prosecute the perpetrators of these attacks, and ensure that, if convicted, appropriate sanctions are imposed and provide victims with adequate compensation.

18. While welcoming the adoption of Law No. 21/2007 on Eradication of Trafficking in Persons and noting the State party's response in its replies that the number of trafficking cases has decreased in the period from 2011 to June 2013, the Committee remains concerned at the prevalence of sex tourism and trafficking in the State party (art. 8).

The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking, which should be disaggregated by age, sex and ethnic origin, and should also focus on trafficking flows from, to and in transit through its territory. The State party should intensify the provision of training programmes to police officers, border personnel, judges, lawyers and other relevant personnel in order to raise awareness of this phenomenon and the rights of victims. Furthermore, the State party should ensure that all perpetrators of trafficking in persons are investigated, prosecuted, and if convicted, adequately sanctioned, and should guarantee that adequate protection, reparation and compensation is provided to victims.

19. The Committee is concerned that under the Criminal Procedure Code a detained person may be held in police custody for a period up to 20 days, without being brought before a judge, which period might be extended up to 60 days and even longer for suspects of terrorism. While appreciating that the State party is in the process of revising the Criminal Procedure Code and taking into account the additional information provided by the State party's delegation, the Committee is concerned that the new bill only proposes a reduction of the period of detention from 20 days to 5 days (art. 9).

The Committee encourages the State party to ensure that the Criminal Procedure Code be revised in order to provide that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours.

20. While taking note of the State party's efforts to sign Memorandum of Understandings with, inter alia, the Ombudsman, and *Komnas HAM* in order to improve oversight over correctional facilities, the Committee is concerned that no oversight body is allowed to conduct unannounced visits to places of deprivation of liberty in the State party. The Committee is also concerned at reports of undue restrictions on oversight bodies to visit places of deprivation of liberty that are under the authority of the military (art. 9).

The State party should revise its policies to ensure that oversight bodies for correctional facilities have the power to conduct unannounced visits of all prisons and detention facilities. Furthermore, the State party should facilitate the conduct of visits by these oversight bodies to all places of deprivation of liberty including those under the authority of the military.

21. The Committee notes the efforts by the State party to improve conditions of prisons by constructing new facilities. However, the Committee is concerned at reports of overcrowding, lack of segregation of appropriate categories of prisoners and deaths of prisoners, which are related to poor sanitation and lack of adequate healthcare. The Committee is also concerned at the lack of data on complaints lodged by prisoners against prison authorities (art. 10).

The State party should expedite its efforts to reduce overcrowding in places of detention, including by resorting to alternatives to imprisonment, and improve conditions of detention, particularly with regard to medical care, in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of

Prisoners. The State party should include, in its next periodic report, statistical data on complaints lodged by prisoners against prison personnel.

22. While noting the State party's response that Law No. 19 of 2000 on Taxation regulates punishment for tax evasion and, therefore, does not regulate civil debts, the Committee is concerned at the increasing number of reports that the *Gijzeling* system is abused by police officers whereby individuals are detained purely for failing to pay a civil debt to their creditors (art. 11).

The Committee urges the State party to take measures to put an end to the abuse by police officers of the *Gijzeling* system. In this regard, the Committee recommends that the State party investigates and prosecutes such cases and ensure that the perpetrators, if convicted, receive appropriate sanctions.

23. The Committee welcomes efforts by the State party to address corruption in the judiciary such as the establishment of the Taskforce on the Eradication of Judicial Mafia, which has been replaced by a Presidential Working Unit, and the adoption of Presidential Directive No. 17/2011 on a National Strategy of Corruption Prevention and Eradication. However, the Committee remains concerned at reports of corruption in the provision of legal aid and generally in the administration of justice (art. 2 and 14).

The State party should take effective measures to eradicate corruption in the administration of justice, including in the provision of legal aid. The State party should strengthen its efforts to ensure prompt, thorough and independent investigations into allegations of corruption in the judiciary and in the provision of legal aid, and prosecute and punish perpetrators, including judges who may be complicit.

24. The Committee expresses its concern over the recently adopted Law on Mass Organisations, which introduces undue restrictions on the freedoms of association, expression and religion of both domestic and "foreign" associations. The Committee is particularly concerned at the provisions in the law, which introduced onerous requirements for registration, and the vague and overly restrictive requirements that such associations should be in line with the State's official philosophy of *Pancasila* that propagates the belief "in the One and Only God" (arts. 18, 19 and 22).

The Committee urges the State party to review the Law on Mass Organisations to ensure that it is in compliance with the provisions of articles 18, 19 and 22 of the Covenant as expounded by the Committee in its general comments no. 22 (1993) and no. 34 (2011).

25. The Committee regrets that Law No. 1 of 1965 on Defamation of Religion, which prohibits the interpretations of religious doctrines considered divergent of the teachings of protected and recognised religions, the 2005 Edict by the Indonesian Ulema Council and the 2008 Joint Decree by the Minister of Religious Affairs and others, unduly restricts the freedom of religion and expression of religious minorities such as the *Ahmadiyya*. The Committee is also concerned at reports of the persecution of other religious minorities such as Shia and Christians who are subjected to violence by other religious groups and law enforcement personnel (arts. 18, 19, 21 and 22).

Notwithstanding the decision of the Constitutional Court upholding Law No. 1 of 1965 on Defamation of Religion, the Committee is of the view that the said law is inconsistent with the provisions of the Covenant and that it should be repealed forthwith. The Committee reiterates its position in general comment no. 34 of 2011 that "[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant ...Thus, for

instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith". Furthermore, the Committee recommends that the State party provide adequate protection against violence perpetrated against members of religious minorities.

26. The Committee takes note that the State party is currently in the process of formulating a bill that will serve as a legal framework to enhance religious tolerance. The Committee also acknowledges the efforts of the State party to reform the school curricula in order to provide the possibility for students of various religious backgrounds to study the religion they adhere to. The Committee further notes that religion is taught at schools as a compulsory subject and that the State party only intends to partly extend the list of religions to be taught. However, it does not intend to provide students with a choice among religions in which to be instructed, and it does not intend to provide a possibility to avoid religious education altogether (arts. 2 and 18).

The Committee is of the view that the right to freedom of thought, conscience and religion not only implies the freedom to accept and follow particular religions or beliefs but also the right to reject them. The Committee recalls its general comment no. 22 and reminds the State party that "public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians". The Committee, therefore, recommends that the State party should reform the education curricula to promote religious diversity as well as to ensure that the preferences of believers and of non-believers are both accommodated.

27. The Committee is concerned at the application of the defamation provisions of the Criminal Code and the Law on Information and Electronic Transaction to stifle legitimate criticism of State officials (art. 19).

The State party should consider revising its defamation law and, in particular, the Law on Information and Electronic Transactions to ensure that it is in compliance with article 19 of the Covenant.

28. While noting that, unlike in other provinces in the State party, protesters in Papua are not required to obtain a permit from the police before holding demonstrations, the Committee remains concerned at undue restrictions of the freedom of assembly and expression by protesters in West Papua (arts. 19 and 21).

In line with the Committee's general comment no. 34 (2011) on freedoms of opinion and expression, the State party should take the necessary steps to ensure that any restrictions to the freedom of expression fully comply with the strict requirements of article 19, paragraph 3, of the Covenant, as further clarified in general comment no. 34. The State party should ensure the enjoyment by all of the freedom of peaceful assembly and protect protesters from harassment, intimidation and violence. The State party should consistently investigate such cases and prosecute those responsible.

29. The Committee is concerned at reports of the prevalence of the practice of polygamy and that the minimum age of marriage for girls is 16 years whereas it is 19 years for boys. The Committee is also concerned at reports of the persistence of early marriages among girls in the State party (arts. 2, 3, 24 and 26).

The State party should take appropriate measures to ensure that its legislation effectively prohibits polygamy and is effectively implemented, and conduct awareness campaigns on its prohibition and its negative effects, among the population, in particular among women. The State party should review its legislation in order to prohibit early marriages. The State party should further strengthen measures to combat early marriage by putting in place mechanisms in the provinces and by pursuing community awareness-raising strategies focusing on the consequences of early marriages. The State party should also collect data on polygamy and early marriages and provide it to the Committee in its periodic report.

30. The Committee welcomes the decision of the Constitutional Court Decision No. 46/PUU-VIII/2010 of 17 February 2012, which clarifies Law No. 1/1974 on Marriage with regard to the right of inheritance of children born out of wedlock. However, the Committee is concerned that no efforts have been made to revise the law, which leaves it to the public and authorities to interpret and implement the Constitutional Court decision (arts. 2 and 24).

In light of the decision of the Constitutional Court on the right to inheritance for children born out of wedlock, the Committee urges the State party to take legislative steps to revise the Marriage Act and relevant legislation in line with the Constitutional Court's decision and the Covenant.

31. The State party should widely disseminate the Covenant, the text of the initial report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party. The Committee also requests the State party, when preparing its second periodic report, to broadly consult with civil society and non-governmental organizations.

32. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 10, 12 and 25 above.

33. The Committee requests the State party, in its next periodic report, due to be submitted on 26 July 2017, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
