

AI Index: ASA 21/0577/2019

HE Ir. H. Joko Widodo
The President of the Republic of Indonesia
Ministry of State Secretariat
Jl. Veteran No. 17-18
Central Jakarta
DKI Jakarta 10110
Indonesia

25 June 2019

OPEN LETTER ON TORTURE OR OTHER ILL-TREATMENT BY THE POLICE IN THE MASS PROTEST FOLLOWING THE ELECTION RESULT ANNOUNCEMENT OF 21-23 MAY 2019

His Excellency:

On the occasion of the United Nations International Day in Support of Victims of Torture 2019, we would like to express our concern about grave human rights violations allegedly committed by police during the violent protest on 21-23 May 2019 in Jakarta, which followed the announcement of the general election results. Amnesty International has received credible reports of a range of violations by police, including the unlawful killing of 10 people (one of whom received his fatal injury in Pontianak), arbitrary arrests and detentions, and the excessive or unnecessary use of force against protesters and bystanders.

In this letter, we would like to address, in particular, the use of torture or other ill-treatment by the police on 23 May 2019 in Kampung Bali and surrounding areas of Central Jakarta, which we investigated in the wake of the protest.

As is well known, videos of violent acts committed during the protest by members of police's paramilitary mobile brigade unit (Brimob) in Kampung Bali on persons in their custody have circulated on social media.¹ One particularly viral video shows an incident in a Smart Parking lot in that area, which took place on 23 May 2019 at around 6am. The video shows a prone man being kicked and beaten by approximately 10 Brimob agents, using batons and rifles, before being dragged away. Further, Amnesty International found that at least four other men were beaten by the police during that incident, in the same parking lot, and that one of them was so badly injured that he had to be admitted to a hospital's intensive care unit.

Two days after the incident, soon after the video went viral, a spokesperson from the National Police Headquarters acknowledged that the video showed members of the Brimob unit, saying that they were arresting a suspect who had allegedly attempted to escape. The spokesperson also said that Brimob agents' violent acts could not be justified and, indeed, violate the police's standard operating procedures. He promised that the Internal Affairs Division (Propam) of the police would investigate the case.² However, to date the police have not announced the investigation's result nor identified the alleged perpetrators.

Separately, the National Human Rights Commission (Komnas HAM) conducted an inquiry into the Kampung Bali incident, and announced its preliminary conclusion that the police committed human rights violations, including torture

¹ See, for instance, the following video, available on YouTube: <https://www.youtube.com/watch?v=n3NZtkEWeCk> and <https://www.youtube.com/watch?v=4cXnZXveQbY>.

² Kompas.com, Polri Benarkan Video Brimob Pukuli Warga di Lahan Parkir, Akui Tak Sesuai SOP (*Police Confirm the Video of Brimob Beating Resident in The Parking Lot, Admit Not In Compliance with Standard Operating Procedure*), 25 May 2019, available at <https://nasional.kompas.com/read/2019/05/25/15413931/polri-benarkan-video-brimob-pukuli-warga-di-lahan-parkir-akui-tak-sesuai-sop>.

or other ill-treatment.³ While the commission's inquiry is a welcome step, the commission does not have the power to submit its findings on human rights violations to the public prosecutor (as is the case with other external mechanisms such as the National Ombudsman (ORI) and the National Police Commission (Kompolnas). Instead, it must send its findings on police abuses to the police, which can forward them to their own Internal Affairs Division for internal investigation.

In addition to the viral video, Amnesty International has received other videos of police actions during the unrest (some of which metadata and authenticity have been verified by our Digital Verification Corps), and has interviewed victims and witnesses of the incident. The evidence we have obtained indicates that the police carried out torture or other ill-treatment against persons in their custody in other areas of Jakarta, not only in Kampung Bali. The evidence also suggests that the police held people in arbitrary and incommunicado detention, detaining people without a proper warrant, and failing to inform the families of the arrested persons of the arrest and/or barring them from visiting for several days.

Amnesty International acknowledges that some protesters engaged in violent acts, however underlines that a police response must distinguish between peaceful and violent protesters and use no more force than is strictly necessary, proportionate and in accordance with the law to apprehend violent protesters and bring them to justice before a court of law. There is no justification for the torture or ill treatment of persons who are in police custody and control.

Further, we would like to emphasise that the practice of torture and other ill-treatment by the police has been an ongoing problem in Indonesia. Over the years, Amnesty International has received numerous reports of the use of torture and other ill-treatment against suspects and detainees during arrests, interrogation, and incarceration by police and other public security officials. Ten years ago, in the report "Unfinished Business: Police Accountability in Indonesia," Amnesty International presented evidence demonstrating that the use of torture and other ill-treatment by police officers during arrest, interrogation, and detention was widespread, and that police accountability mechanisms were weak and ineffective.⁴ The organization called upon the Indonesia government to take decisive measures to remedy the situation, including by ensuring prompt, independent, impartial and effective investigations of reports on possible acts of torture and other ill-treatment by the police—investigations whose results should be made public. Before and since then, we have been communicating to the government, international community, and the public on torture and ill-treatment cases, emphasizing the urgency to combat impunity within the Indonesian police. This includes our recently released 9-point human rights agenda that called on presidential and legislative candidates to ensure accountability for human rights violations committed by the security forces.⁵

Indonesia is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the prohibition of torture is set out in the country's Constitution. There is also an absolute prohibition on torture under customary international law. However, Indonesia still fails to fulfill its obligations under the CAT, including the obligation to incorporate the crime of torture into the Criminal Code, as required under CAT's Article 1.1. This failure is all the more egregious given the fact that the issue was raised by the Committee against Torture in its 2008 Concluding Observations,⁶ and by other UN human rights bodies.⁷ In these review sessions by UN human rights bodies, Indonesia has agreed to integrate the crime of torture in its Criminal Code; to amend the Criminal Code, Law of Criminal Procedure, and the judicial system to make torture punishable; and to ratify the Optional Protocol to the CAT. Still Indonesia has yet to translate this rhetorical commitment into meaningful action.⁸

The lack of legal provisions on 'acts of torture' creates a loophole with devastating consequences. It does not create a sufficient legal basis to allow state agents to be brought to court for 'acts of torture,' nor does it provide a sufficient legal deterrent to prevent state agents from committing acts of torture. This has contributed to the continued and

³ Tempo.co, Komnas HAM: Brimob Melanggar HAM di Kampung Bali (*Komnas HAM: Brimob Violates Human Rights in Kampung Bali*), 20 June 2019, available at https://metro.tempo.co/read/1216558/komnas-ham-brimob-melanggar-ham-di-kampung-bali?utm_source=Digital%20Marketing&utm_medium=Twitter&utm_campaign=Metro_Novi

⁴ Amnesty International, *Unfinished Business: Police Accountability in Indonesia*, June 2009, (Index: ASA 21/013/2009), available at: <https://www.amnesty.org/en/documents/asa21/013/2009/en/>.

⁵ Rights Now: 9-point human rights agenda for Indonesia's election candidates (Agenda 3), April 2019 (Index: ASA 21/0153/2019), available at: <https://www.amnesty.org/en/documents/asa21/0153/2019/en/>.

⁶ Committee Against Torture, *Concluding observations of the Committee against Torture: Indonesia*, UN Doc. CAT/C/IDN/CO/2, 2 July 2008, para 13.

⁷ Human Rights Committee, *Concluding observations on the initial report of Indonesia*, UN Doc. CCPR/C/IDN/CO/1, 21 August 2013, para 14.

⁸ UN Human Rights Council, *Universal Periodic Review (UPR) 3rd Cycle on Indonesia*, UN Doc. A/HRC/36/7, 14 July 2017, para 139.23.

widespread use of torture by military and police officials during arrests, interrogation or detention, sometimes leaving victims and their families without a legal basis to claim their rights.

In addition, weaknesses in both internal and external police accountability mechanisms contribute to a culture of impunity. In past reports, Amnesty International has outlined how investigations into reports of police violations are rare, and those rare efforts at police accountability are typically done through internal disciplinary mechanisms rather than formal judicial proceedings.

While Amnesty International is not opposed to internal investigations or disciplinary measures, we believe that they should not replace independent or external investigations, or criminal charges where relevant, to ensure compliance with the CAT's provisions, especially Articles 4.2, 12, 13 and 14. In our view, existing internal police disciplinary mechanisms are inadequate to deal with grave human rights violations, and external police oversight bodies do not have adequate powers to bring to justice police perpetrators.⁹

We also note that Indonesia is a state party to the International Covenant on Civil and Political Rights (ICCPR) and, as such, is also bound to prevent arbitrary detention, which violates Article 9(1) of the treaty. Notably, arbitrary detention facilitates torture and other ill-treatment, enforced disappearance, and other violations. An important means of preventing these abuses is to ensure that proper grounds and procedures for deprivation of liberty are adhered to at all times.

Considering that it has been 21 years since Indonesia's ratification of CAT, and yet credible allegations of police torture and other ill-treatment continue, Amnesty International calls on the Indonesian authorities to:

- Establish a prompt, independent, impartial and effective investigation into allegations of grave human rights violations by police in Kampung Bali and other areas in Jakarta as well on 21-23 May 2019, including torture and other ill-treatment. The findings of this investigation should be made public, and those suspected of involvement, including those with command responsibility, should be prosecuted in proceedings that meet international standards of fairness. Any victims of the violations should be provided with reparations;
- Ensure that no one is subjected to arbitrary detention, that detainees have prompt access to their families, to legal counsel of their choice, to a court, and to medical care. Medical records evidencing torture or other ill-treatment and other violations against detained persons should be made available to the victim and/or the victim's family and legal counsel;
- Ensure that all police officials are familiar with and well trained according to 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);
- 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 CAT;
- Ratify the Optional Protocol to the Convention against Torture, which would establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty.

We urge you to address these issues as a matter of priority, and, in particular, to institute these important and needed police reforms.

Please do not hesitate to contact us should you have any questions. We would welcome the opportunity to discuss these matters with you.

Yours sincerely,

⁹Footnote No. 4, p. 16.

Usman Hamid
Executive Director

Carbon Copied:

Chairperson of the House of Representative, H. Bambang Soesatyo, S.E., MBA

Chairperson of Commission III of the House of Representatives, Aziz Syamsudin

The Minister of State Secretary, Prof. Dr. Pratikno, M.Soc.Sc.

The Minister of Cabinet Secretary, Dr. Ir. Pramono Anung Wibowo, M.M.

The Coordinating Minister for Political, Legal, and Security Affairs and The Chairperson of the National Police Commission, Wiranto

Chief of the Indonesian National Police, Police General Tito Karnavian

Commander of Mobile Brigade Corps, Police Inspector General Ilham Salahudin

Chairperson of the National Commission of Human Rights, Ahmad Taufan Damanik

Chairperson of Witness and Victim Protection Agency, Drs. Hasto Atmojo Suroyo, M.Krim.

Chairperson of the Ombudsman of the Republic of Indonesia, Prof. Amzulian Rifai, S.H., LL.M., Ph.D