

INDONESIA

Input for marking of the 30th anniversary of the Declaration

The Commission for the Disappeared and Victims of Violence (KontraS)

2022

The Commission for the Disappeared and Victims of Violence (KontraS), a human rights non-governmental organization based in Jakarta, Indonesia, drafted this input for marking the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance.

This input was written as a response to the following questions below:

- 1. Can you please share examples of how the Declaration on the Protection of All Persons from Enforced Disappearances (hereinafter, “the Declaration”) has contributed to the development of domestic legislation in your country (or countries in focus)? Can you kindly share examples of domestic provisions that were adopted in your country (or countries in focus) as a result of the implementation of the Declaration?**

The Declaration on the Protection of All Persons from Enforced Disappearance has not been implemented in any laws or regulations in the Republic of Indonesia. Enforced Disappearances is only regulated in the Human Rights Law, the reason is similar to the Rome Statute, although Indonesia has not ratified it, it does not clearly regulate Enforced Disappearances.

- 2. Can you please indicate the status of the Declaration in the domestic legal order in your country (or countries in focus), i.e. with respect to ordinary legislation?**

The status of the declaration is only a non-legally binding international document. Since the declaration is not legally binding, it is hard to implement the declaration despite the obligation to respect the declaration. Indonesia also has not ratified ICPPED. The government promised to ratify it on December 10, 2021. But until now that promise has not been fulfilled. In fact, until now academic manuscripts and presidential letters which are the requirements for making laws have not been published to the public.

- 3. Can you please illustrate how the Declaration contributed to the development of international law on enforced disappearance?**

Following a General Assembly resolution in 1992 containing a 21 article declaration about enforced disappearance, and its resolution of 1978 requesting that recommendations be made, the Commission on Human Rights established an

"inter-sessional open-ended working group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance" in 2001. Whilst the instrument is non-binding, it evidences international consensus to criminalize enforced disappearances that are found to amount to a crime against humanity. This characterization has been confirmed by the UN General Assembly in a number of subsequent Resolutions. Several draft conventions were prepared during the 1980s by Latin American-based NGOs, and these were the basis for the parallel development and adoption of the Enforced Disappearance Declaration in 1992.

- 4. Has your State (or countries in focus) ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances? If your State (or countries in focus) has not yet ratified or acceded to the Convention, is there any pending project or initiative to do so?**

Indonesia has signed the convention but has not ratified it. In 2014, Indonesia came close to ratifying the convention against enforced disappearances. However, the legislature stopped the process on the grounds that it was still being studied. The legislative member who stopped the process was the chairman of commission 3 of the Indonesian House of Representatives who became a member of the Gerindra faction. Gerindra itself is a political party in Indonesia led by Prabowo Subiyanto, the alleged leader of the Mawar Team operation that forced the disappearance of activists in 1997/1998. Prabowo Subiyanto was also involved in a number of operations in Santa Cruz Timor Leste in 1991. He was briefly fired as the Head of Kostrad. But now he serves as Minister of Defense of the Republic of Indonesia. Meanwhile, other members of the Mawar Team held strategic positions. For example, The Indonesian Armed Forces (TNI) Major General Untung Budiharto was appointed Commander of the Jaya Regional Military Command. TNI Brigadier General Dadang Hendrayudha and Brigadier General Yulius Selvanus who are echelon 1 officials in the Ministry of Defense led by Prabowo Subianto. Each of them served as Director-General of Defense Potential and Head of the Defense Strategic Installation Agency.

- 5. Can you kindly illustrate whether your country (or countries in focus) has previous experiences with regard to technical cooperation and assistance from Special Procedures and whether you think this could be an effective means to further disseminate and foster the implementation of the Declaration. What other kind of initiatives could be favoured?**

Indonesia already had 2 communications with the United Nations Working Group on Enforced or Involuntary Disappearances. On 21 October 2011, UNWGEID had sent the government a communication letter related to their joint study on global practices in relation to secret detention in the context of countering terrorism. In this context, they invited Indonesia to provide them with information on measures taken to investigate the allegations contained in the joint study and if found true, to rectify the situation in compliance with international human rights norms and standards; to implement the

related recommendations; and to provide any other relevant information. On 1 February 2021, UNWGEID sent a letter related to the alleged detention, enforced disappearance, and extrajudicial execution of Mr. Apinus Zanambani, and Mr. Luther Zanambani, at the hand of the military in Sugapa, Intan Jaya, Papua. In the letter from 1 Feb 2021, UNWGEID pointed out the importance of Indonesia to respect the Declaration.

6. Can you kindly share information on existing training programs (directed both at authorities and at civil society organizations) in your country (or countries in focus) where the Declaration is analyzed and disseminated? Any information on the nature and frequency of such training is welcome.

UN Mechanism training by AFAD (Asian Federation Against Involuntary Disappearances) in 2021, Truth Telling session with families of victims of enforced disappearances by AFAD which invited several Special rapporteurs and UN WGEID in 2020. From this Truth Telling activity KontraS ((The Commission Of Disappeared and Victims of Violence) followed up several missing persons reporting documents to UN WGEID whose files were returned several years ago so that the files had not been transmitted to the Indonesian government. Now, the UNWGEID reporting files have been transmitted to the Indonesian government.

a. Is there any other information that you deem relevant for the purposes of the study?

In the context of Indonesia, even though it has not been very influential in regulations, at least the issue of enforced disappearances is a form of gross human rights violation. For example, when there are certain political moments such as the presidential election, there are rumors that politicians who are running for president or the people behind certain presidential candidates are former perpetrators of gross human rights violations while they were still in the military.

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