Derailed

Transitional Justice in Indonesia Since the Fall of Soeharto

international center for TRANSITIONAL JUSTICE

KontraS
Komisi untuk Orang Hilang dan Korban Tindak Kekerasan

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A joint report by ICTJ and KontraS

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About KontraS
KontraS (Commission for the Disappeared and Victims of Violence) was established in 1998 by Indonesian human rights NGOs and student organizations in response to the increase in political violence and abductions committed toward the end of Soeharto's authoritarian regime. KontraS is working toward a democracy based on people's sovereignty, free from fear, oppression, violence, and human rights violations. To learn more, visit www.kontras.org.

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The European Instrument for Democracy and Human Rights (EIDHR) is an initiative by the European Commission that aims to promote human rights, democracy and conflict prevention in non-EU countries by providing financial support for activities supporting these goals.

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Abbreviations and Key Terms

ABRI	*Angkatan Bersenjata Republik Indonesia* (Indonesian Armed Forces)
AGO	Attorney General's Office
ATCA	Alien Tort Claims Act
BIN	*Badan Intelijen Negara* (State Intelligence Agency)
BRA	*Badan Reintegrasi Aceh* (Aceh Reintegration Agency)
CAVR	Commission for Reception, Truth and Reconciliation in East Timor
CTF	Commission of Truth and Friendship
DPR	*Dewan Perwakilan Rakyat* (People's Representative Council or Lower House of Parliament)
ELSAM	*Lembaga Studi dan Advokasi Masyarakat* (Institute for Policy Research and Advocacy)
GAM	*Gerakan Aceh Merdeka* (Free Aceh Movement)
ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
Kapolri	Chief of Police
KDP	*Kecamatan* Development Program
KNPI	*Komite Nasional Pemuda Indonesia* (Indonesian National Youth Council)
KKR	*Komisi Kebenaran dan Rekonsiliasi* (Truth and Reconciliation Commission)
Komnas HAM	*Komisi Nasional Hak Asasi Manusia* (Indonesian National Human Rights Commission)
Komnas Perempuan	*Komisi Nasional Anti Kekerasan terhadap Perempuan* (National Commission on Violence Against Women)
KontraS	*Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* (Commission for Disappeared Persons and Victims of Violence)
KPK	*Komisi Pemberantasan Korupsi* (Corruption Eradication Commission)
KPN	*Komisi Penyelidik Nasional* (National Investigation Commission)
KPP HAM	*Komisi Penyelidik Pelanggaran Hak Asasi Manusia* (Human Rights Violations Investigations Commission)

KPTKA	*Komisi Independen Pengusutan Tindak Kekerasan di Aceh* (Independent Commission for the Investigation of Violence in Aceh)
KNPI	*Komite Nasional Pemuda Indonesia* (Indonesian National Youth Council)
KUHAP	*Kitab Undang-Undang Hukum Acara Pindana* (Criminal Procedural Code)
LBH	*Lembaga Bantuan Hukum* (Legal Aid Foundation)
LOGA	Law on the Governing of Aceh
LPSK	*Lembaga Perlindungan Saksi dan Korban* (Witness and Victim Protection Agency)
MoU	Memorandum of Understanding
MPR	*Majelis Permusyawaratan Rakyat* (People's Consultative Assembly or Upper House of Parliament)
NGO	Nongovernmental Organization
PDI	*Partai Demokrasi Indonesia* (Indonesian Democratic Party)
SBY	Susilo Bambang Yudhoyono, the current President of Indonesia
SCIT	Serious Crimes Investigation Team
SSR	Security System Reform
TNI	*Tentara Nasional Indonesia* (Indonesian National Armed Forces)
TRC	Truth and Reconciliation Commission
YLBHI	*Yayasan Lembaga Bantuan Hukum Indonesia* (Indonesian Legal Aid Foundation)

Executive Summary

General Soeharto resigned as president of Indonesia in May 1998 after 32 years of authoritarian rule. This report provides a review of transitional justice mechanisms in the reform period that followed. Known in Indonesia as reformasi, the process began with a period of momentous change and hope that effective systems of accountability would be established, but became compromised before stalling altogether.

Successive governments during the period have established or provided legal bases for a number of commissions of inquiry, truth and reconciliation commissions, an agency for the protection of victims and witnesses, permanent human rights courts, and ad hoc human rights courts for particular cases. Human rights protections have been inserted in the national constitution, international conventions ratified, a constitutional court established, and guaranteed seats in the legislature for security forces eliminated.

Despite all of these changes in relation to the structures protecting human rights, in practice progress has been consistently blocked by a deep, systemic unwillingness to uncover the truth surrounding serious human rights violations and hold those who are responsible accountable for their actions. This has blocked initiatives to provide assistance and recognition to victims and reform institutions in ways that would help prevent recurrence. It should be acknowledged that the number of mass crimes committed has significantly dropped during this period. Still, a failure to confront the truth and achieve accountability contributes to low levels of trust in public institutions, the emergence of suspected perpetrators in powerful new roles, and continued reports of serious violations committed by state agents against civilians in places such as Papua and Aceh. This failure also violates the Indonesian government's international legal obligations.

In the initial hopeful period of reformasi or reform (1998-2000), a number of high-level inquiries took place. The National Human Rights Commission (Komnas HAM) conducted an investigation into crimes against humanity in East Timor that produced unprecedented findings, implicating senior members of the security forces. Parliament agreed on a law establishing a national Truth and Reconciliation Commission (TRC), and a range of important new laws were drafted.

The second period (2001-06) was characterized by compromised mechanisms. While some significant legal changes were made and new mechanisms established, relevant laws were poorly implemented, or not impletmented at all, and the new mechanisms became seriously compromised. Attempted prosecutions failed, the Constitutional Court struck down the TRC law, and official inquiries proved to be ineffective.

The third period (2007-11) has been characterized by the return to the political stage of disgraced former members of the security forces and foot-dragging on accountability for mass crimes. The Attorney General's Office (AGO) has failed to bring a number of important cases to trial. Several pieces of important legislation, including those that establish national human rights courts, require military actors to be tried in civilian courts, and establish regional TRCs in Aceh and Papua have not been implemented. Emblematic cases, such as the murder of the human rights activist Munir Said Thalib (Munir) while aboard an international flight, have demonstrated a continuing lack of will to address the involvement of state institutions in serious crimes against civilians.

Taken individually, the many transitional justice initiatives could be perceived as legitimate efforts that faced unexpected difficulties, resulting in failure. However, as a whole, the series of successive failed mechanisms indicates systemic factors that undermine efforts to achieve truth and accountability for past crimes. This failure is evident in all four areas under consideration in this report: truth-seeking, judicial proceedings, reparations, and security system reform (SSR).

Truth-seeking

Reformasi began with dramatic achievements that gave rise to hopes for an end to the long-standing impunity for mass human rights violations. The team established to investigate the May 1998 violence that led to Soeharto's downfall conducted a credible inquiry and recommended prosecuting a number of senior members of the security forces. In the Aceh case another inquiry team found that "the acts of violence conducted by the military constituted a form of state violence. This means the violence was strongly perceived by the people as 'cultivated' by the state to ensure the exploitation of natural resources from Aceh for the benefit of the central government and of national and local elites."[1]

However, truth-seeking initiatives into later violations indicated a shift toward protecting powerful figures and institutions. When Papuan indigenous leader Theys Eluay was murdered on his way home from a function at army Special Forces Command (Kopassus) headquarters in 2001, President Megawati Sukarnoputri established an inquiry team—led by a retired police officer—that also included an army major general. A military tribunal eventually found seven soldiers guilty, but only of mistreatment and battery. In 2002, Megawati established a team

1 Independent Commission for the Investigation on Violence in Aceh (KPTKA), *DOM dan Tragedi Kemanusiaan di Aceh: Portret Tindak Kekerasan di Propinsi Daerah Istimewa Aceh: Ringkasan Eksekutif* [Military operations area and a tragedy for humanity in Aceh: a portrait of violence in the special province of Aceh: executive summary] (January 27, 2000), 2, on file with KontraS.

to investigate the religious violence in Maluku that eventually claimed 5,000 lives, but never released the resulting report that might have shed light on the alleged role of the security forces in promoting the violence. Similarly a team composed of military, police, and government officials appointed to investigate an incident in Tanah Runtuh, Poso, Central Sulawesi, that took place in 2006, produced no tangible result. This incident was part of a spate of violence that took place since 1998, resulting in thousands of deaths.

The passage of Law 26 of 2000 provided Komnas HAM with the power to conduct inquiries, determine whether crimes against humanity or genocide were committed, and recommend investigation and prosecution to the AGO. However, in five major cases of mass violations in which such findings were made, the AGO did nothing, claiming that the files were administratively incomplete (which Komnas HAM disputed). In addition, the AGO and Komnas HAM continue to hold different views concerning the procedures to be followed for cases that occurred before Law 26 passed. This has placed these cases in legal limbo, which has continued for years without any serious effort by the government to resolve them.

The National Commission on Violence Against Women (Komnas Perempuan) has conducted a number of inquiries into systematic rape and other violations committed against women in conflict areas. However, despite strong findings that government and military officials were involved in widespread violations, not a single case of rape has been brought before the human rights courts.

The bilateral Indonesia–Timor-Leste Commission of Truth and Friendship that looked into the violations committed in East Timor in 1999 conducted a series of highly problematic public hearings in which alleged perpetrators were given an opportunity to present implausible, unchallenged versions of events before national media. Despite this, the commission found that militia groups committed crimes against humanity, including murder, rape, and torture, with the involvement and support of the Indonesian military, police, and civilian authorities. The acceptance of the report by the presidents of both countries represented a dramatic shift from previous official denials of Indonesia's responsibility for the violations. However, it is suspected that instead of marking a positive move toward achieving a measure of accountability for those crimes, acceptance of the report marked an unofficial agreement to close the door on justice for the Timor violations, thus denying victims their international legal right to an effective remedy.

Human rights activists who advocated for the establishment of a national Truth and Reconciliation Commission were disappointed when the Constitutional Court struck down the TRC law in 2006. A new draft law has been prepared, but those who oppose uncovering the truth concerning the events of 1965—including the killing of up to one million Indonesian citizens—are likely to oppose its passage. A regional TRC for Aceh was included in both the peace negotiations and the resulting Law on Governing Aceh, but has not been implemented. A TRC for Papua was included in the Special Autonomy Law, yet this too has not been established.

The potential for effective fact-finding inquiries has been repeatedly stunted through appointment of individuals who are perceived to lack objectivity, including members of the security forces

tasked with investigating violations of their colleagues. In addition, the results of a number of inquiries have not been released, even when, as in the case of the Munir inquiry, the failure to publish violated the presidential decree that established the fact-finding mechanism. Witnesses and victims have reported intimidation and threats in a number of truth-seeking inquiries, including that of the bilateral Commission of Truth and Friendship.

Senior military officials have repeatedly refused to cooperate with official truth-seeking inquiries, including failing to comply with summons issued by Komnas HAM and requests from President Susilo Bambang Yudhoyono in the Munir inquiry, without any repercussions. The requirement to appear in response to Komnas HAM's summons is part of a national law. Despite this, the Minister for Defense told the press that Komnas HAM did not have the authority to compel retired military personnel to appear.

Judicial Proceedings

Early in the reform period, Law 26 of 2000 created a national legal structure to deal with crimes against humanity and genocide, and established four permanent regional human rights courts. However, 13 years later only one such court (Makassar) was established to try the Abepura (Papua) case. In addition, specifically established ad hoc human rights courts could hear cases that occurred before the law passed. Ad hoc courts have been established for crimes in East Timor and Tanjung Priok. One of the conditions of the Aceh peace accord in Helsinki was that a human rights court be established for Aceh, but this has not been implemented. In addition, the Special Autonomy Law on Papua included provision for a human rights court for Papua, yet this has not been established either.

Investigations and prosecutions of human rights cases have consumed time and resources, and reduced short-term public pressure for justice, but in the end have produced no tangible results. Of the 34 people charged in the various cases, only 18 were convicted and even they were later acquitted on appeal, producing a zero conviction rate. In the East Timor case 18 were indicted, six convicted at trial, and all acquitted on appeal. In the Tanjung Priok case 14 were indicted, 12 convicted at trial, and all acquitted on appeal. In the Abepura (Papua) case heard by the permanent Human Rights Court in Makassar, only two suspects were indicted, despite the fact that Komnas HAM found many more, and both were acquitted. The role of higher courts, particularly the Supreme Court, in overturning all convictions in human rights cases has not been subjected to the serious scrutiny it demands.

In addition, regarding the five cases mentioned earlier in which Komnas HAM has recommended prosecutions, the attorney general has taken no action and no ad hoc court has been established. Those cases are Trisakti-Semanggi I-Semanggi II, Wasior Wamena (Papua), Talangsari, the May 1998 violence, and the enforced disappearance of activists from 1997 to 1998.

In Indonesia members of the armed forces implicated in serious crimes have traditionally been dealt with by the military justice system that includes both military courts and civil-military

courts (*koneksitas*). The 2004 Law on the TNI (Indonesian National Armed Forces) requires members of the armed forces to stand trial in civilian courts for alleged crimes against civilians, but to date these provisions have not been implemented. The military system has tried some soldiers for violations committed against civilians. However, these mechanisms have repeatedly failed to consider the responsibility of senior commanders for widespread, systematic crimes committed by their subordinates. In a number of cases low-ranking servicemen were prosecuted in military courts, received relatively lenient penalties, were allowed to continue to serve, and even received promotions.

In contrast to the lack of results in Indonesia, a number of successful cases were brought against members of the Indonesian security forces and their proxies in other jurisdictions. In a U.S. Alien Torts Act case, a court handed down a $14 million judgment against Maj. Gen. Sintong Panjaitan to the mother of a victim of a 1991 massacre in which an estimated 200 civilians were killed in Dili, East Timor. However, this judgment can only be enforced if he enters the US jurisdiction. In the UN-sponsored trials in Timor-Leste, 55 trials resulted in 84 convictions during the same period as the total failure of the ad hoc process in Jakarta concerning the same events.

Prosecutors' lack of commitment to address crimes that government officials committed has contributed to their failure to successfully prosecute a single case in the human rights courts. This is demonstrated by their unwillingness to follow up the recommendations of Komnas HAM to investigate and prosecute cases of gross violations, weak indictments in the cases that did proceed, and their failure to take any action regarding claims of witness intimidation. In the trial of Gen. Adam Damiri in the ad hoc East Timor court, the prosecutors argued that the accused should be acquitted.

The Indonesian judiciary is notoriously weak and corrupt, and the human rights courts are no exceptions. Despite abundant rhetoric around reform, even relatively easy first steps on this road have not been taken. For example, written judgments are not strictly required, preventing timely analysis of legal reasoning and accurate scrutiny of the performances of judges.

Reparations

Laws passed during the reform period provide a legal basis for reparations, and in 2006 the Witness and Victim Protection Agency (LPSK) was created. However, once again, a lack of support and implementation has undermined legal reform and establishment of mechanisms. The agency has received only limited resources, making effective implementation of its mandate impossible. The rights that victims of gross human rights violations have to reparations have consistently been denied.

One partial exception is the assistance provided by a reintegration agency established as part of the Aceh peace process to communities and individuals following the end of conflict in Aceh. However, instead of specifically targeting victims, the funds were generally distributed to communities in the form of development assistance. A significant opportunity to provide

meaningful reparations to victims thus did not fully materialize. The agency also distributed an Islamic form of compensation known as *diyat* as a direct, one-off payment to a significant number of victims in Aceh. This provided a positive contribution, but again recognition of the circumstances of the violations and role of victims did not play a significant part in the implementation of the program.

Security System Reform (SSR)

The reform period started with genuine progress in SSR, as the military separated from the police and gave up its formal political role, including a guaranteed quota of seats in Parliament. Although there was a rise in violence in the early years of reformation (1998-2000), the number of rights violations fell (with the notable exception of Papua), especially after conflicts in Aceh, Sulawesi, and Maluku gave way to peace and Timor-Leste gained its independence.

However, as in other areas of transitional justice, this initial progress soon slowed and then stalled. Indonesia has yet to achieve genuine civilian oversight of the military by the executive or the legislature. The lack of vetting means that security personnel linked to serious crimes, including personnel indicted by the UN-backed court in East Timor and even some convicted in Indonesian military courts, continue to serve, in many cases receiving promotions.

The absence of vetting cannot be separated from the lack of accountability discussed in the judicial proceedings section. Efforts to deal with the closed, ineffective military justice system by shifting jurisdiction to civilian criminal courts have failed due to resistance by the military and bottlenecks in the executive and legislative branches.

Finally, although many businesses previously owned by the armed forces have been sold, the military nonetheless failed to meet the 2009 deadline given by law to divest itself of all businesses, legal or illegal.

I. Goals and Methodology

General Soeharto resigned as the president of Indonesia on May 21, 1998, after 32 years of authoritarian rule. The fall of his New Order regime marked the beginning of an important political transition toward democracy. Successive governments have struggled to replace a system built on corruption, nepotism, and impunity with one supported by foundations of the rule of law and accountability. A fundamental aspect of this challenge is the question of mass human rights violations from both the Soeharto era and the *reformasi* period that followed.

Successive governments created or provided for a range of mechanisms, including commissions of inquiry, TRCs, an agency for the protection of victims and witnesses, permanent human rights courts, and ad hoc human rights courts for particular cases. The reformasi-era governments enshrined more human rights protections in the constitution, ratified international human rights instruments, established a constitutional court, and eliminated guaranteed seats in the legislature for security forces.

Considering the passage of new laws, the establishment of new mechanisms, and the number of cases addressed, it may appear that significant progress has been made toward accountability for mass crimes. This report explores whether the promise of these legal and institutional changes has been fulfilled. The essential goal of the research is not to provide comprehensive, in-depth analysis of any particular cases, nor to undertake new primary research. Instead, it seeks to reveal systemic patterns through a comprehensive review of a broad range of cases and mechanisms.

A. Methodology

ICTJ and KontraS jointly researched and wrote this report, developing the framework and refining drafts in five participatory workshops. To achieve a broad, composite picture, researchers used a number of methodologies.

Interviews were conducted with:

- key actors within justice mechanisms, including judges, commissioners of human rights bodies, and government officials
- experts monitoring transitional justice issues in Indonesia

- lawyers who have represented victims
- staff of legal aid organizations
- staff of human rights organizations
- victims

Use of secondary materials included:
- reports by commissions of inquiry and other fact-finding bodies
- reports by the National Human Rights Commission, the National Commission for Violence Against Women, and other government bodies
- legislation, draft legislation, policy papers, and parliamentary debates
- civil society organization monitoring reports of trials and other mechanisms
- reports from the United Nations and international human rights organizations
- media reports
- a 2002-03 mapping of civil society transitional justice initiatives in Indonesia[2]
- previous research by KontraS
- previous research by ICTJ

This information was analyzed using a transitional justice framework that included four key areas: truth-seeking, judicial proceedings, reparations, and SSR. Examples of mechanisms are examined for each theme followed by a section analyzing the patterns that emerge. Although this report is organized around these major themes, individual cases often involve various thematic aspects. For example, an investigation of mass killings by a truth-seeking mechanism may have led to prosecutions or raised questions of reparations and institutional reform. Such cases are addressed in each section, resulting in a degree of duplication, while presenting a holistic picture. Additionally a small number of cases, such as the killing of Munir, appear in summary form in text boxes, to demonstrate how the different themes have converged in a single case.

B. Transitional Justice Framework

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation, and democracy. Transitional justice is not a special form of justice, but justice targeted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades. The long-term goal of

2 See Hilmar Farid and Rikardo Simarmatra, *The Struggle for Truth and Justice: A Survey of Transitional Justice Initiatives Throughout Indonesia*, Occasional Paper Series (New York: ICTJ, January 2004).

transitional justice is to strengthen accountability for serious crimes, which is clearly articulated as an obligation under international law.[3] The basic mechanisms of transitional justice include:

- **Truth-seeking**. This can take place officially or unofficially through truth commissions, commissions of inquiry, documentation, etc. The goal of truth-seeking is to gather information about past abuses and create a space for public acknowledgment of what happened, why it happened, and how people were affected. These measures are often integral steps to ensure that such abuses are not repeated.
- **Judicial Proceedings**. Prosecutions are judicial investigations of human rights violations. The goal is to hold those responsible for abuses accountable and help deter future abuses by ending impunity for past violations. Accountability may also be sought through noncriminal judicial proceedings, such as civil suits against perpetrators or cases involving states before the International Court of Justice.
- **Reparations**. Reparations are meant to recognize the loss and pain that victims suffer and to help repair the consequences of past abuses. They can deliver a mix of material and symbolic benefits to victims that may include financial compensation and official apologies.[4]
- **SSR**. These efforts seek to transform the military, police, and related state institutions from instruments of repression and corruption into instruments of public service and integrity.

3 See Diane Orentlicher, *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1 (February 8, 2005), 7. Principle 1 outlines states' obligation "to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations."

4 See UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (December 16, 2005), http://www2.ohchr.org/english/law/remedy.htm (hereafter *UN Basic Principles on the Right to Remedy and Reparation*).

Jakarta, Indonesia. Sri Sulistiyawati (above) and Lestari (below), former 1965 political detainees, at a weekly demonstration held every Thursday in front of the Presidential Palace, demanding justice for gross human rights violations. **ANTARA/Fanny Octavianus**

II. Historical Context

A. Soeharto's New Order Era

The end of the New Order regime, like its beginning 32 years earlier, was steeped in violence and shrouded in secrecy. Soeharto came to power in 1965, leading the military response to an alleged attempted coup d'etat that culminated in a comprehensive campaign to eliminate those perceived to be linked to the Indonesian Communist Party. From 1965 to 1966 an estimated 500,000 to one million people were killed because they were accused of belonging to fully legal communist or leftist groups. The new regime imprisoned more than one million others without trial, including writers, artists, poets, teachers, and ordinary citizens, routinely subjecting them to illegal detention, torture, and ill treatment. These prisoners were gradually released starting in the late 1970s, and many of them served more than a decade in prison. They were closely monitored and required to regularly report to the authorities, and their civil and political rights have never been fully restored.[5]

Soeharto consolidated his power, centralizing control under an authoritarian structure dominated by the military. Through regular but tightly controlled elections, his military-backed political machine enjoyed an uncontested majority, reelecting him to six consecutive terms. Soeharto's iron grip was accompanied by policies supporting privatization, natural resource extraction, and foreign investment, as well as brutal suppression of dissent. Those fighting for rights in areas such as labor, environment, or land, were met with violent response.[6] Security forces committed systematic, large-scale human rights violations against civilians in the context of operations against independence movements in East Timor, Aceh, and Papua.[7]

By the 1990s Soeharto's claim to legitimacy as the "Father of Development" had been undermined, first by corruption and then by economic setbacks. The 1998 Asian financial crisis

5 Teresa Birks, *Neglected Duty: Providing Comprehensive Reparations to the Indonesian "1965 Victims" of State Persecution*, Occasional Paper Series (New York: ICTJ, July 2006), 25-27.

6 In 2000, a civil society network produced a policy paper on Indonesia's transitional justice agenda and included the following key cases: the murder of labor activist Marsinah in Surabaya, East Java (1993); detention of 13 farmers involved in a land dispute in Badega, West Java (1992); and a land dispute in Gili Trawangan, West Nusa Tenggara (1995). See Society for Transitional Justice, *Transitional Justice Menentukan Kualitas Demokrasi Indonesia di Masa Depan* [Transitional justice determines the quality of democracy in Indonesia's future] (2000), on file with ICTJ.

7 For more information on Indonesia during the Soeharto New Order era see John H. McGlynn et al., *Indonesia in the Soeharto Years: Issues, Incidents and Images* (Jakarta: Lontar Foundation, 2005).

brought dramatic increases in unemployment and prices, and a shortage of basic goods, leading to widespread civil discontent. In May members of the military shot and killed four students at an antigovernment demonstration at Jakarta's Trisakti University. The shootings provoked larger and more violent demonstrations in the capital as well as in Solo and other cities. Amid the ensuing chaos, calls for justice and political reform grew louder, building to massive demonstrations demanding a transition to democracy. On May 21, 1998, just two weeks after the Trisakti shootings, Soeharto stepped down.

B. Three Waves of Reformasi

After the fall of Soeharto, Indonesia began a transition toward a more democratic society. The 13-year period of reformasi has traced a gradual decline, however, through three phases: momentous change, compromised mechanisms, and stalled reform.

1. Momentous Change (1998-2000)

The first wave of reformasi was accompanied by both continued violent upheavals in several regions and a clear political commitment to transitional justice (i.e., seeking the truth, punishing perpetrators, and ensuring nonrepetition).

Indonesia was dogged by the outbreak of new and old violent conflicts in East Timor, Sampit (Kalimantan), Maluku, and Poso (Sulawesi). At the same time, high-level inquiries took place on mass violations committed in Jakarta during the May 1998 riots, Aceh, and Maluku, including official investigations, moves to create a TRC, and investigations into the crimes committed in East Timor in 1999. Komnas HAM spearheaded investigations into the East Timor incidents, marking the first time that high-ranking military officials faced interrogation by human rights lawyers and activists as part of a national inquiry that would lead to criminal trials.

Many of these developments took place under President Bacharuddin Jusuf Habibie, Soeharto's vice-president, and Habibie's successor, Abdurrachman Wahid, who assumed the presidency in 1999. Wahid continued many of the reforms, removed some powerful generals from top military and civilian posts, and allowed the East Timor trial process to proceed. His impeachment on corruption charges in 2001 was, according to many observers, a backlash to his pursuit of human rights cases. His successors Megawati Sukarnoputri and Susilo Bambang Yudhoyono became more cautious about confronting still-powerful figures from the Soeharto era.[8]

Box 1: Commitment to Accountability by Parliament's Upper House (MPR)

Between 1998 and 2000, the People's Consultative Assembly (MPR), the upper house of the Indonesian Parliament, issued resolutions that set the stage for reform.

8 ICTJ interview with Ifdhal Kasim, chair of Komnas HAM, December 9, 2010.

- Under siege by pro-democracy student demonstrations in 1998, the outgoing Parliament held a special session. It adopted Resolution XVII of 1998 on human rights that upheld human rights principles, and made commitments to ratify core international human rights conventions and to strengthen the mandate of the National Human Rights Commission.
- In 1999, the new Parliament passed the resolution TAP MPR IV of 1999 setting out state policy for the next five years. The resolution explicitly acknowledged that during Soeharto's New Order regime there had been "fractured protection and promotion of human rights, demonstrated by various human rights violations, in forms that include violence, discrimination, and abuse of power." This resolution further called for a "just solution" to the protracted conflicts in Aceh, Irian Jaya (now Papua), and Maluku, and committed the state to developing "a legal system that guarantees the supremacy of the rule of law and human rights based on justice and truth."
- In 2000, the MPR issued the Resolution on Strengthening National Unity and Integrity, acknowledging past crimes and calling for a national Truth and Reconciliation Commission, with a mandate to expose abuses of power, investigate past human rights violations, and undertake a broad-based reconciliation program. Following a truth seeking process, the commission was to facilitate admissions of guilt, requests for and granting of forgiveness, rule of law, amnesty, and rehabilitation..
- Later in 2000 the MPR issued two decrees separating the military from the police, with the military to focus on defense and the police to maintain public security and order. The decrees noted that both institutions were responsible for respecting the rule of law and human rights. They also provided a scheme to phase the military and police out of politics and place them under greater civilian control.

These resolutions by the country's most powerful legislative institution, previously considered a mere rubber stamp for Soeharto, represented watershed moments in Indonesia's transition. However, many of these resolutions did not reach their potential due to flaws in the design and implementation of enacting laws, and a lack of genuine support from government and military leadership.

2. Compromised Mechanisms (2001-06)

Despite the spate of broad policies, there was little progress in realizing these commitments. The second wave of reformasi was flanked by two deeply compromised mechanisms for accountability: the human rights courts and the national TRC, which was later eliminated by a Constitutional Court decision before ever taking shape. As discussed below, Law 26 of 2000, which provided for the establishment of human rights courts in several regions, contained major weaknesses and ambiguities. The trials that followed were a futile exercise in criminal accountability, with a final acquittal rate of 100 percent.

In addition, during this period military trials and joint military-civilian trials (a separate jurisdiction) took place in a number of conflict areas in response to new abuses by military personnel in Aceh, Poso, and Maluku. These proceedings generally prosecuted only low-level perpetrators and delivered brief sentences, providing little justice, accountability, or transparency.

In 2005, the governments of Indonesia and Timor-Leste established the first ever binational truth commission with a mandate to examine the violations committed in Timor in 1999. This commission was heavily criticized, particularly for a bias toward the perpetrators through its power to recommend amnesty and rehabilitate those "wrongly accused." Despite a seriously flawed mandate and implementation, the commission found that representatives of the Indonesian military, police, and government officials were responsible for crimes against humanity in 1999 in East Timor.

This period also saw two politically charged assassinations of human rights leaders, Theys Eluay in 2002 and Munir Said Thalib (Munir) in 2004. These killings highlighted the apparent return of covert operations in which the security forces were implicated, as well as continued impunity.

3. Stalled Reform in Jakarta (2007-11)

The next four years were characterized by the return of retired military commanders to the national political stage accompanied by continued foot-dragging on accountability for gross human rights violations. Although Komnas HAM continued to conduct credible inquiries and recommend formal investigations, prosecutors from the Attorney General's Office (AGO) have either been slow to act or have refused to investigate altogether, citing lack of jurisdiction in the absence of an ad hoc court, incomplete documentation, and existing convictions by a military court of those identified by Komnas HAM's inquiry. Following the ruling of the Constitutional Court that overturned the TRC law, the government has prepared a new draft law that is scheduled for discussion by Parliament in 2011, but it has little political support.

This stalemate in Jakarta has resulted in a number of initiatives outside of the nation's capital. Victims' groups continue to demand justice throughout the archipelago, and civil society groups in Aceh are pushing for a local truth process within the framework of the Helsinki peace agreement (Helsinki MoU).[9] Women's groups working with victims of 1965 and in conflict areas such as Poso, Aceh, and Papua, facilitated by the National Commission on Violence Against Women (Komnas Perempuan), are documenting state-sponsored gender-based violations. A civil case in Washington D.C. has accused Exxon Mobil of complicity in the military's human rights abuses in Aceh in 2000. In Australia, a coroner's inquest has triggered a new investigation by the Australian Federal Police into the killing of five international journalists during military action in the East Timor border town of Balibo in October 1975.

9 Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki MoU), August 15, 2005, sec. 2.3, http://www.aceh-mm.org/download/english/Helsinki%20MoU.pdf.

Abepura, Indonesia. Civil society groups in Papua holding a demonstration to commemorate the violence against indigenous people in Papua and demanding the establishment of a human rights court for Papua. **KOMPAS/Ichwan Susanto**

Jakarta, Indonesia. Defendants, Captain Sutrisno Mascung (left) along with other military officials at the Ad Hoc Human Rights Court for Tanjung Priok where they were tried for gross human rights violations. **KOMPAS/Agus Susanto**

III. Truth-seeking

A. Overview of Truth-seeking Mechanisms and Initiatives

A comprehensive effort to understand the root causes, nature, and impact of the conflicts and mass violations is necessary to avoid recurrence. Consistent advocacy from civil society groups in Indonesia has led to a range of fact-finding missions, inquiries, and commissions, each tasked to examine one particular aspect of the violent past. In general, the individual results of these efforts have been disappointing. Moreover, separating the various pieces of the puzzle has concealed the patterns and policies that have allowed mass violations by state actors to remain unacknowledged, and has promoted impunity.

Many truth-seeking efforts have presented gross violations in which members of the security forces are implicated as the actions of poorly disciplined individuals acting on their own accord. However, a broader view of the scale and nature of these violations undermines the explanation that rogue individuals committed these acts. The scale and similarities of the crimes in East Timor, Aceh, Papua, and other conflict zones raise the question whether these crimes have been committed as part of a state policy.

Conducting an investigation based on the available evidence of high-level responsibility, or uncovering new evidence in the form of testimony or documentary proof, is beyond the scope of this report. However, the patterns revealed demonstrate, at the very least, the government's systematic lack of will and capacity to disclose the nature of the violations and to punish those responsible.

1. First-line Response: Fact-finding Teams and Investigative Commissions

The manipulation of government and legal institutionsby Soeharto-era elites severely undermined public confidence in the integrity of these bodies. As a result, subsequent governments entrusted specially created teams to investigate past human rights violations, as well as violence and assassinations during the reformasi period. More than a dozen such bodies have been established, including investigative teams established by parliamentary or presidential decree, or operating under the mandate of Komnas HAM. Each of these was triggered by strong public pressure demanding action by government agencies, instead of an official movement toward greater accountability. This section describes the work of a number of the teams and commissions.

a. Joint Fact-finding Team for the Events of May 1998

Over a three-day period in May 1998, the antigovernment riots that led to Soeharto's resignation claimed the lives of more than 1,000 people, and many others were beaten or raped. Security forces did little to protect civilians and, by some accounts, instigated the violence. Two months after the incidents, a joint ministerial decree launched one of the more credible reformasi-era investigations, the Joint Fact-finding Team for the Events of May 1998. The team's mandate was "to investigate and uncover the facts, perpetrators, and background to the events of 13-15 May 1998."[10] Led by the chair of Komnas HAM, the 18-member group included religious leaders and representatives of the police, military, and civil society.[11] For three months the team investigated the violence in Jakarta, Solo, Palembang, Lampung, Surabaya, and Medan. Members collected and verified data on victims and perpetrators, conducted field visits, and compiled a report with recommendations.

The final report drew on testimonies from 124 victims and witnesses, in addition to evidence compiled by civil society groups. Notably, the team also requested and obtained testimony from senior members of the security forces, an important break from past practices.[12]

The team's final report concluded that the violence was primarily the result of the political elite's struggle to maintain the New Order regime in the face of rapid economic decline and civil unrest.[13] It found that unidentified provocateurs initiated and directed some of the violence, and appeared to be well trained, with access to transportation and communication equipment. In some cases, the report specifically identified military personnel and youth groups as the provocateurs.[14] The report also highlighted the role of high-ranking military personnel allegedly responsible for orchestrating the violence, as well as the previous abduction and disappearance of pro-democracy activists.

The team's recommendations included further investigation of a planning meeting held at Army Strategic Reserve Command Headquarters in Jakarta on May 14, 1998, and that:

> The government must immediately follow up cases relating to the sequence of violent events that culminated in the May 13-15, 1998 riots. This may involve bringing judicial procedures against implicated civilians or military officials in a fair manner to enforce the rule of law. (This may also) include speeding up the ongoing judicial process. In this series (of actions), Chief Operational Commander Sjafrie Sjamsoeddin must be held accountable. In the case of abductions, Lieutenant General Prabowo and all actors involved must be brought

10 The joint decision was signed by the ministers of defense, justice, interior, foreign affairs, the minister for the role of women, the commander of the armed forces, and the attorney general.

11 *Laporan Tim Gabungan Pencari Fakta Peristiwa Tanggal 13-15 Mei 1998: Ringkasan Eksekutif* [Report of the Joint Fact-finding Team on the Events of 13-15 May 1998: executive summary] (October 23, 1998), on file with KontraS.

12 Ibid., 6-7.

13 Ibid., 16.

14 Ibid., 10.

> before a military court. Also in the case of Trisakti serious follow-up actions must be taken to uncover the incident of shooting against students.[15]

Significantly, the report confirmed that widespread sexual violence took place during the riots, with 52 specific cases of sexual violence reported by victims, witnesses, doctors, or counselors.[16] As a strong indication of the systematic nature of these crimes, the report concluded that many victims were raped multiple times, and the majority of them were of Chinese descent.

The findings of the team, particularly the evidence that senior members of the military were involved, are a testament to the composition of the team, their courage, and the sense of sweeping change and possibility in the early days of reformasi. Despite the political turmoil, instability, and uncertainty of the time, the report made several remarkable recommendations. These included judicial accountability, compensation and rehabilitation for victims, and widespread institutional reform. The report recommended laws to guarantee victim and witness protection, the ratification of international human rights conventions, and civilian control of the national intelligence agency. The fact that the team was able to conduct a credible, independent investigation that did not whitewash military accountability—so soon after Soeharto's resignation—was a remarkable achievement that stimulated grand hopes for the future.

b. Independent Commission for the Investigation of Violence in Aceh

A 1999 presidential decree established the Independent Commission for the Investigation of Violence in Aceh (KPTKA), an exception to a broader trend of closed processes with little public participation.[17] The commission worked for six months and met with victims, witnesses, and other actors relevant to the violence in Aceh. The final report stated: "The acts of violence conducted by the military constituted a form of state violence. This means the violence was strongly perceived by the people as 'cultivated' by the state to ensure the exploitation of natural resources from Aceh for the benefit of the central government and of national and local elites."[18]

The report also described the patterns of mass violence, including a detailed list of the forms of violence perpetrated by security forces, such as rape and sexual assault, electrocution, immersion in fecal matter, forcing detainees to engage in sexual acts, and severe beatings. The commission provided official evidence of the abuse of power and lack of accountability that characterized the New Order regime.[19] A holistic depiction of the effect of the conflict on ordinary lives emerged

15 Ibid., 24. Other recommendations included seeking more data and conducting more investigations, creating a witness protection mechanism, granting rehabilitation and compensation to all riot victims and their families, ending the activities of criminal gangs and paramilitary organizations, and regulating the use of national intelligence.

16 Ibid., 13-14.

17 Keppres 88/1999 tentang Komisi Independen Pengusutan Tindak Kekerasan di Aceh [Presidential Decree 88/1999 on the Independent Commission for the Investigation of Violence in Aceh].

18 KPTKA, *DOM dan Tragedi Kemanusiaan di Aceh*, supra note 1, 2.

19 Ibid., 14-16. This list was an eerie foreshadowing of similar lists. See Timor-Leste's Truth and Reconciliation Commission (CAVR), *Chega! The Report of the Commssion for Reception, Truth and Reconciliation in Timor-Leste*, chap. 7.5, 260-61, http://www.cavr-timorleste.org/chegaFiles/finalReportEng/07.4-Arbitrary-Detention-Torture-and-Ill-treatment.pdf.

from the team's open and participatory methods. The objectivity and quality of the investigation, together with the inquiry into the May 1998 riots, reinforced hopes in the early days of reformasi, which faded as time progressed.

c. *Fact-finding Team on the Assassination of Theys Eluay*

Theys Eluay was a Papuan leader who had once collaborated closely with the Indonesian government, but later led Papuan indigenous groups raising the right to self-determination before the international community. On November 10, 2001, he was killed while riding home with soldiers from a function at the regional headquarters of Kopassus, the Indonesian Special Forces Command. Soon after, his driver, Aristoteles Masoka, went to report to the Kopassus post and has not been seen since.[20]

Under pressure from Papuan organizations and human rights groups, President Megawati established the National Investigation Commission (KPN). Although members of Papuan and national civil society were included in the commission, the chair was a retired police officer and one member was an army major general.[21] From its inception human rights groups regarded the KPN with skepticism, particularly as its mandate obstructed inquiries by Komnas HAM that could have led to prosecutions in the human rights courts.[22]

In its April 2002 report to President Megawati, the KPN found six "rogue" military officials responsible for the murder and concluded that gross human rights violations did not occur. The investigation's focus never went higher than a lieutenant colonel, Tri Hartomo, despite allegations that the killing was ordered or planned by more senior officials. A year later, a military tribunal found seven Kopassus members guilty of mistreatment and battery—but not murder—and issued

20 See Institute for Human Rights Study and Advocacy (ELSHAM), Papua, *The Abduction and Assassination of Theys Hiyo Eluay Was Premeditated and Politically Motivated*, Preliminary Report (December 13, 2001); Amnesty International, *Indonesia: Impunity and Human Rights Violations in Papua* (April 1, 2002); Tito Sianipar, "Keluarga Sopir Theys Mengadu ke Komnas HAM" [Family of Theys' driver appeals to Komnas HAM], *TEMPO Interaktif*, July 27, 2004, http://www.tempointeraktif.com/hg/nasional/2004/07/27/brk,20040727-43,id.html.

21 Keppres 10/2002 tentang Pembentukan Komisi Penyelidik Nasional Kasus Theys Hiyo Eluay [Presidential Decree 10/2002 on the establishment of the National Investigation Commission on the Theys Hiyo Eluay Case].

22 Amnesty International, *Indonesia: Impunity and Human Rights Violations in Papua*, supra note 20; "Ada Upaya Belokkan Kasus Theys" [There are efforts to misdirect Theys' case], *Kompas*, May 1, 2002, http://kontras.org/index.php?hal=dalam_berita&id=609.

relatively light sentences of two to three and a half years.[23] The findings of the KPN were never widely disseminated, and those convicted remained in the military.[24]

d. National Investigation Team on Maluku

In the provinces of Maluku and North Maluku (also known as the Moluccas or the Malukus), tensions between Christian and Muslim communities escalated when Soeharto fell, and a new conflict ignited in January 1999. Witnesses to the escalation make repeated references to provocateurs unknown in the area. By early 2002 more than 5,000 individuals had lost their lives and more than one third of the region's population of 2.1 million had been displaced. The conflict allegedly involved members of the military and police, and was exacerbated by interests from outside the area that stood to gain from continuing conflict.[25]

In 2002 the central government brokered the Malino peace agreement, which included the establishment of a national independent investigation team.[26] Four months later, President Megawati officially established a 14-member team with a mandate to investigate, seek facts, and analyze the various events and issues in Maluku.[27] The team worked for one year in Maluku and Jakarta. However, an event to release the final report was canceled, and its findings and recommendations remain unknown to the public, including the parties to the Malino agreement.[28]

e. Fact-finding Team on Poso

Poso, Central Sulawesi, was another setting for significant violence between Christians and Muslims in the years after Soeharto stepped down. In the four years following the outbreak of violence in late 1998, an estimated 1,000 civilians lost their lives. Witnesses again reported the

23 Human Rights Watch, *"What Did I Do Wrong?" Papuans in Merauke Face Abuses by Indonesian Special Forces* (June 25, 2009).

24 Chief of Staff of the Army Gen. Ryamizard Ryacudu reacted to the verdict by saying, "The law says they are guilty. OK, they're punished. But for me, they are heroes." "Jenderal Ryamizard: Pembunuh Theys Hiyo Eluay Adalah Pahlawan" [General Ryamizard: Theys Hiyo Eluay's murderer is a hero], *TEMPO Interaktif*, April 23, 2003, http://www.tempointeraktif.com/share/?act=TmV3cw==&type=UHJpbnQ=&media=%20bmV3cw==&y=JEdMT0JBTFNbeV0=&m=JEdMT0JBTFNbbV0=&d=JEdMT0JBTFNbZF0=&id=MTEwNTA=. Despite his conviction, Lt. Col. Hartomo was promoted to Group-1/Parako commander, a senior post in the Kopassus leadership. In March 2010, after NGOs publicized his promotion, he was transferred out of Kopassus, but not dismissed from the military. "Kopassus Mutasi Sejumlah Perwira Menengah" [Kopassus transfers a number of mid-level officers], March 15, 2010, http://www.kopassus.mil.id/kopassus/dynamic/home/8/Berita/167/Kopassus+mutasi+sejumlah+Perwira+Menengah+html. See also Usman Hamid, "No Justice, No Aid to Kopassus!", *Jakarta Post*, October 30, 2010, http://www.thejakartapost.com/news/2010/06/06/no-justice-no-aid-kopassus.html.

25 Scott Cunliffe, et al., *Negotiating Peace in Indonesia: Prospects for Building Peace and Upholding Justice in Maluku and Aceh*, Country Case Study: Indonesia (New York: ICTJ, June 2009).

26 *The Moluccas Agreement in Malino (Malino II)* (February 12, 2002), item 6. The agreement was signed by 70 representatives from Muslim and Christian groups, and witnessed by local and national government officials in Malino on February 12, 2002. Susilo Bambang Yudhoyono and Jusuf Kalla, who at that time were coordinating ministers for politics and security, and social welfare respectively, led the mediation team.

27 Keppres 38/2002 tentang Pembentukan Tim Penyelidik Independen Nasional untuk Konflik Maluku [Presidential Decree 38/2002 on the establishment of the National Investigation Team on the Maluku Conflict], art.1.

28 ICTJ interview with a former member of the investigation team, Jakarta, October 28, 2008.

presence of provocateurs on both sides of the conflict, which helped fuel the violence.[29] The conflict declined following a peace agreement that lacked a meaningful truth-seeking component. However, after violence broke out between mobile police and community members in October 2006, the coordinating minister of politics and security established a fact-finding team. Unlike the teams for Aceh and Maluku, the members of the Poso team were primarily police, military, government officials, and representatives of religious groups. The team worked for one month, conducting forensic investigations, interviews with police and local leaders, but only a few interviews with victims. The findings and recommendations were presented to and discussed with the coordinating minister. The media reported that the recommendations were to be implemented by the police force, but no details were publicly released.[30] The team made findings on the sequence of events, with little criticism of police conduct. Similarly, the recommendations called for building trust and improving relations with the community, but did not adopt any significant measures for security sector reform.[31]

Box 2: The Assassination of Munir

On September 7, 2004, Munir, a leading human rights lawyer, was killed on Garuda Flight GA-974 to Amsterdam, where he planned to undertake postgraduate studies. Dutch authorities found a massive dose of arsenic in his system. Munir founded leading human rights organizations, including KontraS and Imparsial, and discovered the role that members of the security forces played in the disappearance of students in 1998 and the violence in East Timor in 1999.

Truth-seeking. In December 2004, public outrage led to Presidential Decree No. 111 of 2004 that created a 14-member fact-finding team led by a high-ranking police official and including senior human rights figures. The team was given six months—later extended—to assist the police investigation. The team faced a lack of cooperation from two agencies whose members were implicated through phone records and internal memos: the State Intelligence Agency (BIN) and Garuda, the national airline.[32] However, the team completed its investigations and submitted a final report to the president. This implicated senior staff of Garuda and BIN, and recommended creating a new team with a more robust mandate. The government did not create a new team and never released the report, despite domestic and international pressure, and an explicit provision in the decree calling for its public release.

29 Human Rights Watch, *Breakdown: Four Years of Communal Violence in Central Sulawesi* (December 2002).

30 Shanty, "Penyelidikan TPF Poso Selesai 20 November" [Poso fact-finding team investigation to be completed on 20 November], *Media Indonesia Online*, November 16, 2006, http://www.cmm.or.id/cmm-ind_more.php?id=A3229_0_3_0_M; "Rakor Polkam Bahas Penyelesaian Kasus Poso" [Ministry of Politics and Security coordinating meeting to discuss remedies for the Poso case], *Republic of Indonesia Defense Ministry*, November 28, 2006, http://www.dephan.go.id/modules.php?name=News&file=article&sid=728.

31 Independent Fact-finding Team on Poso, *Temuan dan Kesimpulan Insiden Tanah Runtuh 22-23 Oktober 2006* [Findings and conclusions on the Tanah Runtuh incidents 22-23 October 2006] (November 20, 2006), on file with KontraS.

32 See Human Rights First, *After One Year: A White Paper on the Investigation and Prosecution of the Munir Murder Case* (September 7, 2005), 2-6.

Judicial Proceedings. As a result of the fact-finding team's work, prosecutors brought cases against three Garuda employees, one intelligence official, and one man, Pollycarpus Priyanto, who appeared to be both. Pollycarpus, a co-pilot, had phoned Munir's house to check his travel schedule, arranged to be on the same flight as a security officer, and gave Munir his own business-class seat after seeing him at the airport. At trial Pollycarpus was convicted of murder, but the Supreme Court overturned the verdict. Following calls from the president, the public, and the international community for a review of this decision, the justices reversed the acquittal following a procedure called peninjauan kembali, or case review. Pollycarpus is currently serving a 20-year sentence. Three Garuda officials were also jailed for issuing an unauthorized letter that allowed Pollycarpus to join the flight.

Pollycarpus made more than 40 calls to a senior BIN official, Muchdi Purwopranjono, near the time of the murder and the release of the autopsy. After sustained pressure on police and prosecutors, Muchdi was tried on the basis of witness statements and phone records. The prosecutor alleged that Muchdi had ordered Pollycarpus to carry out the murder. However, some witnesses failed to appear in court, and others who had provided incriminating statements to police withdrew them at trial. Muchdi was acquitted on December 31, 2008. The following June, the Supreme Court rejected the prosecutor's appeal. No inquiry has been made into the circumstances that undermined the prosecution's case at trial by the failure of major material witnesses to give their planned evidence.

Reparations. In one of the few civil human rights cases to award damages, in 2007 the Central Jakarta District Court found Garuda Airlines negligent in Munir's death and ordered the company, its managing director, and the pilot to pay $70,000 in compensation to Munir's widow, Suciwati. In January 2011, the Supreme Court upheld the award, raising its value to more than $380,000. The payment still has not been made.[33]

SSR. In 1998 Muchdi was the commander of Kopassus when civil society investigations that Munir led uncovered the branch's role in the disappearance of pro-democracy activists. As a result, Muchdi lost his position, but was later made deputy chief of BIN. Promotion of officials implicated in serious human rights violations, such as the Munir and Eluay killings and the crimes against humanity in East Timor, is a common pattern in Indonesia.

As of 2011, the courts have not decided on whether to conduct a case review for the trial of Muchdi. Civil society representatives are pushing for an examination of witness tampering and possible corruption in the Muchdi trial.[34]

33 "Court Upholds Ruling in Favour of Munir's Widow," *Jakarta Post*, February 19, 2011, http://www.thejakartapost.com/news/2011/02/19/court-upholds-ruling-favor-munir%E2%80%99s-widow.html.

34 For more information about Munir, his murder, and the search for justice see Human Rights Watch, "Indonesia: Reopen Inquiry Into Activist's Murder," (February 11, 2010), http://www.hrw.org/en/news/2010/02/11/indonesia-reopen-inquiry-activist-s-murder; Human Rights First, "Munir Said Thalib," http://www.humanrightsfirst.org/defenders/hrd_indonesia/hrd_indonesia_munir.asp; KontraS, "Munir," http://www.kontras.org/munir/index.php.

2. National Human Rights Commission (Komnas HAM)

President Soeharto established Komnas HAM in 1995 to appease criticism of the regime's human rights record. Although received with skepticism, the commission has demonstrated a capacity to monitor violations and advocate on behalf of victims.[35] In 1999 the momentum of reformasi helped to revamp the commission's mandate and powers through Laws 39 of 1999 and 26 of 2000.

Law 39 changed the legal basis of Komnas HAM to that of an independent statutory body with a robust mandate in four areas: research, education, monitoring, and mediation on human rights issues. The law also gave the commission powers to receive complaints, conduct investigations, and subpoena witnesses. In 2000 international pressure concerning the 1999 atrocities in East Timor contributed to passage of Law 26 on Human Rights Courts. This law provided Komnas HAM with powers to conduct inquiries into gross violations, make findings, and then forward completed files, with a recommendation for formal investigation and prosecution, to the AGO. The law defined gross human rights violations as crimes against humanity and genocide.

Komnas HAM is empowered to monitor and report on human rights violations either through its general mandate under Law 39 or through its specific mandate to establish inquiries for particular cases under Law 26.[36] The latter mandate is a double-edged sword: inquiries are pro justicia, meaning they are designed to potentially lead to prosecutions. However, the results of the inquiries cannot be made public, impairing the truth-seeking goals of its work.

Despite significant challenges, including a repeated failure of government officials and security forces personnel to respond to subpoenas, Komnas HAM has completed important inquiries, finding that crimes against humanity have been committed in a number of cases. However, when the completed files were forwarded to the AGO with a recommendation for formal investigation and prosecution, they were blocked; the AGO claimed that investigations cannot proceed because the files were administratively incomplete, or lacked adequate evidence, although Komnas HAM's chair denied these claims.[37]

An additional obstacle is a dispute between Komnas HAM and the AGO over whether the attorney general is required to begin investigations based on Komnas HAM recommendations for human rights violations committed before Law 26 passed, or whether they must wait until the lower house of Indonesia's parliament (DPR) and the president create an ad hoc court. Both the delays (noted above) and this dispute may arise from an unwillingness to prosecute cases involving the military, which is still powerful, and the fact that during Soeharto's regime the office

35 Cornelis Lay, et al., *Komnas HAM 1993-1997: Pergulatan dalam Otoritarianisme* [Komnas HAM 1993-1997: struggling with authoritarianism] (Yogyakarta: Fisipol UGM, 2002); Cornelis Lay, et al., *Komnas HAM 1998-2001: Pergulatan dalam Transisi Politik* [Komnas HAM 1998-2001: struggling with political transition] (Yogyakarta: Fisipol UGM, 2002).

36 Law 39/1999, art. 76(1) states, "To achieve these aims, the National Commission on Human Rights functions to study research, disseminate, monitor and mediate human rights." Law 26/2000, art. 19 more specifically mandates the commission "to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights."

37 ICTJ interview with Ifdhal Kasim, supra note 8.

of the prosecutor and the security forces were linked. This legal issue is discussed in more detail in the section on prosecutions.

3. National Commission on Violence Against Women (Komnas Perempuan)

In July 1998 reports emerged of sexual violence against ethnic Chinese women during the May riots in Jakarta and other cities. A group of women activists, academics, and community leaders met with President Habibie to demand that 1) the president provide an apology to the victims of violence; 2) the government immediately establish an official inquiry into the violence; and 3) a mechanism be established to prevent the repetition of mass violence against women. Several months later in October, the president announced the creation of Komnas Perempuan.[38]

Since its inception, the commission's membership has included women from the conflict areas of Papua, Maluku, Aceh, and East Timor (prior to 1999 when East Timor was still a de facto part of Indonesia). Komnas Perempuan has interpreted its mandate to include truth-seeking in places where mass gender-based violence has occurred, and it has focused on ensuring nonrepetition. The commission has emphasized the historical causes of mass violations against women and utilized these findings to instigate institutional reform and dialogue about cultural norms.[39] It has also conducted inquiries on gender-based violence in Aceh, Poso, Jakarta, and Papua, made a

Jakarta, Indonesia. Communities and families of victims commemorating the five year anniversary of the May 1998 tragedy at Klender Mall, one of the sites where many lives were lost. **KOMPAS/Alif Ichwan**

38 Keppress 181/1998 tentang Komisi Nasional Anti Kekerasan terhadap Perempuan [Presidential Decree 181/1998 on the National Commission on Violence Against Women].

39 ICTJ discussion with members of Komnas Perempuan, December 16, 2008.

submission on patterns of gender-based violations to the Timor-Leste truth commission's public hearing on women and conflict, and conducted research into the violence of 1965.[40] Despite findings that government and military officials were involved in widespread violations committed against women, no prosecutions in the human rights courts have followed.

4. Commission of Truth and Friendship (CTF)

Under pressure from a UN Commission of Experts' review of justice mechanisms to address the crimes committed in East Timor in 1999,[41] the Indonesian and Timorese governments in August 2005 established a binational truth commission called the Commission of Truth and Friendship (CTF). The CTF, composed of ten commissioners, five from each country, was supported by a secretariat mostly comprising appointees from the Indonesian foreign ministry. It was the first example of a TRC involving more than one country.

The CTF's mandate did not include original research. It was to review the findings of four previous mechanisms: the Special Panels for Serious Crimes in Dili, the widely condemned ad hoc human rights court trials in Jakarta, the Komnas HAM inquiry, and the report of Timor-Leste's Truth and Reconciliation Commission (CAVR). On the basis of this review, the CTF was to provide findings about "the conclusive truth" of what had taken place and make recommendations to ensure nonrepetition. The commission also had the power to recommend amnesties for those who "cooperate fully in revealing the truth" and to recommend rehabilitation measures for those

40 Some of these reports are available on the Commission's website, including two reports on women in the conflict in Aceh (2006): Indonesian National Commission on Violence Against Women (Komnas Perempuan), *Sebagai Korban Juga Survivor: Pengalaman dan Suara Perempuan Pengungsi Aceh tentang Kekerasan dan Diskriminasi* [As victims, also survivors: experiences and voices of displaced Acehnese women concerning violence and discrimination] (April 2006), http://www.komnasperempuan.or.id/2010/08/pelaporan-khusus-untuk-aceh-sebagai-korban-juga-survivor/sebagai-korban-juga-survivor-english-2/; Komnas Perempuan, *Kondisi Tahanan Perempuan di Nanggroe Aceh Darusalam* [Conditions of women prisoners in Nanggroe Aceh Darussalam] (2009), http://www.komnasperempuan.or.id/2010/09/kondisi-tahanan-perempuan-di-nanggroe-aceh-darusalam/. See also a report based on testimonies of more than 120 women victims collected by civil society groups that found gender-based crimes against humanity took place in 1965: Komnas Perempuan, *Kejahatan Terhadap Kemanusiaan Berbasis Jender: Mendengarkan Suara Perempuan Korban Peristiwa 1965* [Gender-based crimes against humanity: listening to the voices of women survivors of 1965] (2007), http://www.komnasperempuan.or.id/2010/08/mendengar-suara-perempuan-korban-peristiwa-1965-2/. The commission also produced a report evaluating the situation of victims 10 years after the 1998 May riots: Komnas Perempuan, *Saatnya Meneguhkan Rasa Aman: Langkah Maju Pemenuhan Hak Perempuan Korban Kekerasan Seksual dalam Kerusuhan Mei 1998* [Time to affirm feeling safe: steps toward fulfilling rights of women victims of sexual violence during the 1998 May unrest] (2008), http://www.komnasperempuan.or.id/2010/09/saatnya-meneguhkan-rasa-aman/; and a report on violence against indigenous women in Papua from 1963 to 2009: Komnas Perempuan, *Stop Sudah! Kesaksian Perempuan Papua Korban Kekerasan dan Pelanggaran HAM* [Stop already! Testimonies from Papuan women victims of violence and human rights violations] (2010), http://www.komnasperempuan.or.id/2010/10/stop-sudah-kesaksian-perempuan-papua-korban-kekerasan-dan-pelanggaran-ham-1963-2009/. In November 2009 the commission publicly launched a report integrating the findings of these inquiries and presented it to the president: Komnas Perempuan, *Kita Bersikap: Empat Dasawarsa Kekerasan terhadap Perempuan dalam Perjalanan Berbangsa* [Taking a stand: four decades of violence agasint women in the journey of the Indonesian nation] (2009), http://www.komnasperempuan.or.id/2010/08/kita-bersikap-empat-dasawarsa-kekerasan-terhadap-perempuan-dalam-perjalanan-bangsa/. Some victims also provided testimonies during this event: "Victims of Violence Celebrate Komnas Perempuan's Anniversary with SBY," *Jakarta Post*, November 30, 2009, http://www.thejakartapost.com/news/2009/11/30/victims-violence-celebrate-komnas-perempuan039s-anniversary-with-sby.html.

41 Such mechanisms included ad hoc trials in Jakarta and the serious crimes process in Timor-Leste.

"wrongly accused."[42] This curious mandate led human rights groups to condemn the process as intended to sustain the Indonesian government's official denial of responsibility.[43]

Although the CTF did not have a specific mandate to conduct public hearings, it chose to do so. The format of these hearings, however, gave alleged perpetrators the opportunity to use national television and press coverage to present their testimonies without being seriously cross-examined or confronted with thousands of pages of contradictory evidence in the commission's possession. Past TRCs have encouraged victims and witnesses to speak freely in public without serious challenge. However, it was unusual and highly inappropriate to let perpetrators abuse the model in this way.

Many of those who condemned the commission as a whitewash attempt were surprised by its final report, which included the following findings:

- Crimes against humanity, including murder, torture, rape, and forced transfer or deportation, were committed throughout East Timor in 1999.
- These crimes were not spontaneous or random, and were not the result of retaliatory actions.
- The main perpetrators were pro-autonomy militia groups that targeted supporters of independence and acted with the involvement and support of the Indonesian military, police, and civilian authorities.
- Indonesian support for pro-autonomy militia groups included money, food, and weapons. All of these were provided in a systematic manner and with the knowledge that the recipients were committing gross human rights violations.

The presidents of both Timor-Leste and Indonesia accepted the report, marking a major shift from a total denial of responsibility on Indonesia's part. While the findings were not news to the Timorese, most Indonesians had only heard or read unfounded explanations from national media outlets that blamed the UN and pro-independence groups. The CTF's findings clearly showed these versions of events to be biased.

Notably, the CTF declined to recommend amnesties, concluding that "amnesty would not be in accordance with its goals of restoring human dignity, creating the foundation for reconciliation between the two countries, and ensuring the non-recurrence of violence within a framework guaranteed by the rule of law."[44]

However, the positive response to the CTF's findings soon turned to disappointment. The lack of concrete follow-up raised fears that both governments were using the process as an excuse to close the door to further action and provide protection to perpetrators in the name of reconciliation.

42 Commission of Truth and Friendship (CTF), Terms of Reference, August 2005, art. 14, http://www.deplu.go.id/Pages/News.aspx?IDP=41%20&l=en.

43 Joint statement issued by KontraS, ELSAM, Solidamor, HRWG, PBHI, Imparsial, PEC, ICTJ Indonesia, YLBHI, and Forum Asia, "Commission of Truth and Friendship–A Stage Play for Human Rights Abusers," March 23, 2007, http://www.forum-asia.org/index2.php?option=com_content&do_pdf=1&id=506.

44 CTF, *Per Memoriam Ad Spem: Final Report of the Commission of Truth and Friendship*, (2008), 297, http://www.scribd.com/Per-Memoriam-Ad-Spem-Final-Reeport-of-the-Commission-of-Truth-and-Friendship-IndonesiaTimor-Leste/d/17680407.

Box 3: Disappearance of Pro-democracy Activists

Pro-democracy and human rights activists began disappearing in the last days of the Soeharto regime. Munir, together with other human rights defenders, was involved in the safe return of nine in military custody, but 13 others were never found. The investigations and prosecutions surrounding these disappearances illustrate how the ineffective military justice system, unclear legal standards, and lack of political will resulted in the failure to obtain truth or justice.

Truth-seeking. Komnas HAM carried out an inquiry and questioned 77 witnesses: victims, their families, current and retired members of the police, and one retired military officer. However, military commanders refused to appear before Komnas HAM and declined to grant it access to the detention sites. Komnas HAM's full report, completed in November 2006, was not released, but the executive summary identified victims and the violations they experienced, found evidence pointing to crimes against humanity, and concluded that at least 27 persons may be criminally responsible for these crimes. Komnas HAM recommended that the AGO immediately begin investigations on these alleged perpetrators, and the parliament and president establish an ad hoc human rights court, as well as provide compensation to family members of the victims.[45]

Judicial Proceedings. Soon after the crimes were revealed, in April 1999, the military tried 11 members of a Kopassus unit called Tim Mawar (the Rose Team) for abducting the nine activists who were later found alive. All members were convicted, received sentences from one to three years in prison, and were dismissed from military service.[46] The soldiers appealed the verdict, but the outcome was not made public. In 2007 it was learned that some of those convicted, including the supposedly dismissed captains Untung Budi Harto and F.S. Multhazar, were still in the military and had been promoted. Prosecution of the matter in civilian courts has been blocked by the AGO's refusal to begin an investigation based on Komnas HAM's recommendations, and the president's failure to issue a decree creating an ad hoc court.[47]

Reparations. In September 2009, the DPR recommended reparations and rehabilitation of victims in this case (discussed below.) The government has not yet implemented these recommendations.

45 Komnas HAM, *Hasill Penyelidikan Tim Ad Hoc Penyelidikan Pelanggaran Hak Asasi Manusia yang Berat Peristiwa Penghilangan Orang Secara Paksa Periode 1997-1998: Ringkasan Eksekutif* [Investigation findings of the Ad Hoc Team of Inquiry on Gross Human Rights Violations in the Enforced Disappearances of 1997-1998: executive summary] (October 30, 2006), on file with ICTJ.

46 See Ministry of Defense web page on abductions at http://www.dephan.go.id/fakta/p_penculikan.htm.

47 Komnas HAM, *Laporan Tahunan 2007 Komisi Nasional Hak Asasi Manusia* [Annual report 2007 of the National Human Rights Commission], 17, 34.

SSR. The court-martials addressed only the abductions, not the disappearances. Furthermore, military officers who were found guilty of abducting civilians continue to hold positions in the security forces, with some promoted to senior roles in the TNI and the Ministry of Defense. After Soeharto stepped down, a military honor board headed by Gen. Wiranto as commander in chief of the armed forces also conducted an internal inquiry. Lt. Gen. Prabowo was suspended from active duty, and Maj. Muchdi Purwopranjono was dismissed from his position as commander of Kopassus. Such actions were not adequate responses to allegations of crimes of torture and disappearance and, like other half-hearted measures, may have shielded those implicated from genuine prosecutions. The abduction and disappearance cases demonstrate that the military is unable to adequately deal with officers implicated in serious crimes and that these crimes need to be handled by civilian prosecutions.

Current Status. On September 28, 2009, as the DPR closed out its five-year term, it finally acted on the Komnas HAM report and issued recommendations to the government. The DPR urged the government to establish an ad hoc human rights court, search for the missing, provide compensation and rehabilitation to the victims, and ratify the Convention on Enforced Disappearances to prevent further disappearances.[48] In September 2010 the foreign minister signed the convention on disappearances. However the president has not yet acted on the other recommendations, including the establishment of an ad hoc human rights court.

5. National Truth and Reconciliation Commission

In 2000 the MPR called for the establishment of a national Truth and Reconciliation Commission. Following up on the MPR resolution, Law 27 of 2004 required the government to establish a TRC within six months. A March 2005 presidential decree then created a panel to select commissioners. The panel produced a short list of 42 names within five months and forwarded the list to the president for approval that would have officially established the TRC. President Yudhoyono, however, made no decision for more than a year, keeping the status of the TRC in limbo and leaving the Constitutional Court to decide the commission's fate in a very different manner.

In April 2006, human rights NGOs and representatives of victims successfully requested a judicial review of the 2004 TRC law, claiming that three provisions violated victims' constitutional right to remedy:

48 "Pansus Orang Hilang Rekomendasikan Pembentukan Pengadilan Ham Adhoc" [Disappearance committee recommends creation of ad hoc human rights court], September 29, 2009. (Note: In order to access this document, you must first go to the DPR website: http://www.dpr.go.id, type in "Pansus Orang Hilang", and then search the full title above).

- The TRC's power to recommend amnesties for perpetrators of serious crimes;
- Cases that the TRC addressed could not be prosecuted in court, and;
- The requirement that victims would only receive compensation if the perpetrator of the crimes against them was given amnesty.[49]

In December 2006, the Constitutional Court found that the prerequisite of granting amnesties to perpetrators in order to provide reparations to victims contradicted rights enshrined in the Constitution.

In a surprise move, rather than merely annulling these specific provisions, the court annulled the entire law.[50] The court provided two options for the future: passage of a new law or reconciliation efforts through political policies on rehabilitation and amnesty.[51] Factions implicated in past violations welcomed the decision, and the credibility of the Indonesian judiciary, notoriously prone to political interference and corruption,[52] took another blow.

Civil society continues to support the establishment of a national TRC. The Ministry of Law and Human Rights has completed a new draft TRC law that is listed among more than 250 to be debated in Parliament between 2010 to 2014.[53]

49 For a more in-depth analysis on the weaknesses of this law, see Eduardo González, *Comment by the International Center for Transitional Justice on the Bill Establishing a Truth and Reconciliation Commission in Indonesia*, ICTJ (undated).

50 The decision states, "Whereas although the petition granted relates only to Article 27 of the KKR Law, however as the overall implementation of the KKR Law depends on and must pass via the aforementioned article, the declaration that Article 27 of the KKR Law is inconsistent with the 1945 Constitution and does not have binding force renders all the provisions of the KKR Law unenforceable." Constitutional Court Decision No. 006/PUU-IV/2006 (2006), 24, http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_eng_Verdict%20No.%20006-PUU-IV-2006.pdf.

51 For a more detailed analysis of this decision and its implications, see ELSAM, *Ketika Prinsip Kepastian Hukum Menghakimi Konstitusionalitas Penyelesaian Pelanggaran HAM Masa Lalu: Pandangan Kritis atas Putusan Mahkamah Konstitusi dan Implikasinya bagi Penyelesaian Pelanggaran HAM* [When the principle of legal certainty undermines the constitutionality of resolving past human rights violations: a critical view of the Constitutional Court's decision and implications for resolution of human rights violations], position paper (December 2006), http://www.elsam.or.id/pdf/position%20paper%20Elsam%20thd%20Putusan%20MK%20membatalkan%20UU%20KKR.pdf.

52 Indonesia's judiciary continues to be perceived as one of the most corrupt institutions in the country. See "Indonesia's Judiciary Worst for Corruption-Survey," *Dalje.com*, February 4, 2009, http://dalje.com/en-world/indonesias-judiciary-worst-for-corruption--survey/230919; "The Urgency for Judicial Reform in Indonesia," *Hukum Online*, September 23, 2008, http://en.hukumonline.com/pages/lt48d8e86754848/the-urgency-for-judicial-reform-in-indonesia; "Only KPK Can Fight Corruption: Survey," *Jakarta Post*, July 11, 2010, http://www.thejakartapost.com/news/2010/11/07/only-kpk-can-fight-corruption-survey.html; Frans H. Winarta, "Judicial Corruption Not Only Rampant but also Shameful," *Jakarta Post*, October 31, 2005, http://antikorupsi.org/eng/ index.php?option=com_content&task=view&id=454&Itemid=1; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Indonesia* (March 6, 2007), http://www.state.gov/g/drl/rls/hrrpt/2006/78774.htm.

53 The new draft law provides a broad framework to seek the truth about gross human rights violations only and does not specify the period under investigation. The succinct nature of the draft, intended to make passage easier, gives the commissioners wide latitude. After considerable lobbying by civil society, the law no longer includes amnesties and now mentions the Papuan and Acehnese TRCs, but does not provide them with the autonomy to develop a process appropriate to their contexts. Civil society continues to work for a law that complies with international standards in areas such as victims' rights to reparations, sensitivity to women and vulnerable groups, and having the commission, not the government, appoint senior staff.

6. Local TRCs

Other laws have provided for TRCs in the major conflict areas of Aceh and Papua.[54] In an attempt to settle division and conflict, the Special Autonomy Law for Papua and the Law on Governing Aceh (LOGA) provided for local TRCs, although neither TRC has been established.[55]

Local and national government officials have claimed that they need to wait for a national TRC in order to implement the TRC for Aceh. Thus the Constitutional Court decision has, in effect, blocked both mechanisms. However, it is unclear if this is a legal or practical obstacle, as Parliament has already passed laws establishing these local TRCs.[56]

Discussions concerning both local TRCs, and work on draft legislation to implement them continue, mostly spearheaded by civil society. Groups in Aceh have developed a detailed proposal and drafted legislation to implement the TRC, using their knowledge of the conflict and local conflict resolution mechanisms (see Box 4: Aceh Civil Society Proposal for a TRC). Victims' groups in Aceh continue to demand reparations, and the establishment of a human rights court and the TRC to prevent future violations. In 2009 a new association of 200 families from 10 districts, the Association of Acehnese Families of Missing Persons (Kagundah), presented a petition to demand reparations. In December 2010, hundreds of victims demonstrated in front of the Acehnese parliament demanding the establishment of the TRC.[57] In Papua, civil society groups have also raised the need to acknowledge the truth about past systematic violations as part of a Jakarta-Papua dialogue needed to create a peaceful future.[58]

54 The CAVR was also established to look into human rights abuses in East Timor. The UN established this commission under its truth-seeking mandate in the newly independent Democratic Republic of Timor-Leste. As such, it was not an Indonesian transitional justice mechanism, although its findings significantly implicated Indonesian institutions and leaders in abuses in Timor-Leste. For a more specific discussion of the CAVR, see Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), 39-42.

55 Law 21/2001, art. 46 requires the government to establish a commission of truth and reconciliation to clarify the historical record with a view to strengthening the integrity of Indonesia, and not to question the political status of Papua. See also Law 11/2006, art. 229.

56 The argument relates to art. 229(2) that states, "The Truth and Reconciliation Commission in Aceh referred to in paragraph (1) shall constitute an inseparable part of the Truth and Reconciliation Commission." Law 11/2006. As such, officials have claimed that if the Aceh TRC is an "inseparable part" of the national TRC, it cannot be created without a national TRC. An alternate view is that this refers to the administration of the institutions and does not affect their legal identities.

57 Kutaraja, "Korban Konflik Tuntut Hak Reparasi" [Victims of conflict demand reparation rights], *Serambi*, October 15, 2009, http://www.serambinews.com/news/view/15601/korban-konflik-tuntut-hak-reparasi; Muhamad Riza, "Korban Konflik Aceh Tuntut KKR" [Victims of Aceh conflict demand TRC"], *VIVAnews*, December 8, 2010, http://nasional.vivanews.com/news/read/192803-korban-konflik-aceh-tuntut-pembentukan-kkr.

58 See Muridan S. Widjojo, et al., ed., *Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future* (Jakarta: LIPI, Yayasan Tifa, dan Yayasan Obor Indonesia, 2008). A summary is available at http://sydney.edu.au/arts/peace_conflict/docs/PAPUA_ROAD_MAP_Short_Eng.pdf. See also "Transitional Justice and the Rights of Indigenous Peoples," Papuan NGO Forum or Foker, Komnas Perempuan, and ICTJ Workshop Report, Bali, July 7-9, 2008, on file with ICTJ.

Box 4: Aceh Civil Society Proposal for a TRC

In the 2007 document "A Proposal for Remedy for Victims of Gross Human Rights Violations in Aceh," the Aceh Coalition for Truth found that even without the national TRC law, there is a sufficient legal framework for the resolution of past human rights violations in Aceh. Citing the MPR resolutions on human rights, Law 26 of 2000 on Human Rights Courts, and Law 11 of 2006 on Governing Aceh, the document concludes that there are "no legal or procedural obstacles to the establishment of a TRC for Aceh" and makes a detailed proposal of the principles, goals, structure, and process for such a commission. The coalition followed up in 2008 with proposed language for a local law to create the body. The group made the following recommendations to the Indonesian government:

1. Immediately create a TRC for Aceh as a starting point for truth-seeking, reparations, reintegration, and institutional reform. At the same time, address legal issues at the national level to ensure that a local TRC can function effectively.
2. Immediately take steps to establish a human rights court for Aceh and resume investigations of past human rights abuses.
3. Have the TRC design a comprehensive, transparent, and appropriately gendered reparations program. Based on the TRC's findings regarding victims, this program must provide a holistic reparations package emphasizing psychosocial rehabilitation.
4. Reestablish trust between local communities and the authorities by addressing corruption and extortion, ensuring equal protection for women under the law, vetting security personnel, and increasing civilian oversight of the security sector.
5. Connect the Aceh Reintegration Agency (BRA) programs with the Aceh TRC to ensure that assistance targets victims most in need.[59]

B. Assessment of Truth-seeking Mechanisms and Initiatives

Despite the rich variety of forms and the hard work of many individual members, truth-seeking initiatives in Indonesia have generally failed to achieve their goals. These task forces, inquiries, and commissions share a common set of weaknesses. These include their failure to: uncover underlying causes, contend with political and security sector interference and intimidation, and ensure adequate transparency and participation.

1. Failure to Uncover Core Elements Behind Violations

Pressure from civil society has led to truth-seeking initiatives on individual cases, but this ad

59 Coalition for Aceh Truth Recovery, *A Proposal for Remedy for Victims of Gross Human Rights Violations in Aceh* (2007), http://www.kontras.org/buku/buku%20aceh%20ENG.pdf.

hoc approach has generally not revealed the relationship between the violations and government policies and institutions (such as the military, police, and judiciary).[60] Like many police investigations, most inquiries have focused on individual crimes in which only the facts directly surrounding the particular criminal acts are deemed relevant. As a result, investigative processes have failed to capture broader patterns of state-sponsored abuse and the cumulative impact of violations. In addition, they have generally avoided examination of the responsibility of senior commanders for the actions of subordinates.

2. Lack of Cooperation from the Security Sector

Government and security sector officials have refused to cooperate with commissions and have limited their access to witnesses, alleged perpetrators, and evidence. This problem extends to formal national institutions such as Komnas HAM, which has a statutory authority to summon witnesses under Law 26 of 2000.[61] Despite repeated summonses, current and former military officials have refused to appear, with no action by police or courts. Examples include:

- Komnas HAM's inquiry into the 1989 events in Talangsari, Lampung, South Sumatra, in which the army is accused of killing, causing the disappearance of, and torturing villagers associated with a Muslim group. In 2008, Komnas HAM summoned several retired generals, including A.M. Hendropriyono, head of the state intelligence agency, former armed forces chief Gen. Try Sutrisno, and former Kopassus commander Gen. Wismoyo Arismunandar. Hendropriyono was commander of the military forces at Lampung when the attack took place. All refused to answer the summons, and the Minister of Defense told the press that Komnas HAM did not have the authority to compel retired military personnel to appear.[62]
- The official fact-finding team assisting police in investigating the assassination of Munir struggled to overcome the lack of cooperation from the intelligence agency and the national airline. President Yudhoyono repeatedly provided assurances and directives that these organizations would comply with the team's requests, but took no action in response to their failure to appear, answer questions, and supply materials.[63]
- Retired and active-duty officers refused to appear before a Komnas HAM inquiry into the Trisakti and Semanggi cases, separate incidents in which security forces opened fire and killed civilians in demonstrations in Jakarta from 1998 to 1999. One of those who refused to appear, West Jakarta

60 The CTF may be a notable exception. See supra Section III(A)(4) discussing the CTF.

61 Law 26/2000, art. 19(d).

62 "Menhan: Komnas HAM Tidak Berwenang Panggil Paksa Purnawirawan TNI" [Minister of defense: Komnas HAM not authorized to summon retired army officers], *Kapanlagi*, March 6, 2008, http://berita.kapanlagi.com/politik/nasional/menhan-komnas-ham-tidak-berwenang-panggil-paksa-purnawirawan-tni-yf4bgda.html.

63 See Human Rights First, *After One Year*, supra note 32. The team, which included senior civil society representatives, managed to play a valuable role despite these obstacles by providing important updates on key findings and ensuring that the investigation's focus was not solely on an individual perpetrator but also examined the political motives and suspects who allegedly ordered the killing.

Police Chief Timur Pradopo, was named national chief of police in October 2010.[64]

3. Composition of Fact-finding Teams

Generally, presidential or parliamentary decrees have created ad hoc investigative teams without public participation in the selection process. Often the approach has been to select a cross-section of government officials, civil society figures, and members of the security forces. While the inclusion of credible representatives of the police or prosecutors' office can increase the effectiveness of a team, as in the Munir fact-finding team, a number of investigative teams have lacked independence and credibility. The fact-finding teams investigating the assassination of Theys Eluay and the 2006 Poso shooting demonstrate how the appointment of team members and the political climate shaped the potential of officially sanctioned investigations to reveal and publicize accurate versions of events.

In the case of Theys Eluay, President Megawati appointed a commission that included representatives of civil society but was dominated by police and military figures.[65] This situation undermined the effectiveness and credibility of the commission's work, as members of Kopassus were implicated in the killing.

In the Poso case, the coordinating minister of politics, law and security appointed police, military, and government officials to the team, with minimal civil society representation. As a result, the team's work included only a superficial focus on interviews with victims, who would be expected to be the major source of evidence, and did not appear to adequately examine the alleged role of the military in the violence.[66]

International human rights standards indicate clearly that the investigation of alleged serious violations must be carried out independently and impartially. This requires that people engaged in the same chain of command not be allowed to carry out inquiries into alleged acts of subordinates or colleagues; additionally those carrying out investigations cannot have any other links to or be susceptible to influence from those under investigation.[67]

> For an investigation into an alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection, but also a practical independence.[68]

64 "Sore Ini, Timur Pradopo Dilantik Jadi Kapolri" [This afternoon, Timur Pradopo installed as Indonesian chief of police], *TEMPO Interaktif*, October 22, 2010, http://www.tempointeraktif.com/hg/hukum/2010/10/22/ brk,20101022-286464,id.html; Bagus BT Saragig, "Rights Groups Question Timur's Candidacy," *Jakarta Post*, October 6, 2010, http://www.thejakartapost.com/news/2010/10/06/rights-groups-question-timur%E2%80%99s-candidacy.html-0.

65 Presidential Decree 10/2002, art. 4.

66 See supra Section III(A)(1)(e) discussing the Fact-finding Team on Poso.

67 These are the concepts of hierarchical and practical independence elaborated in most detail by the European Court of Human Rights in a series of cases against the United Kingdom and Turkey, but also broadly embraced by the UN.

68 *Case of Paul and Audrey Edwards v. the United Kingdom*, application no. 46477/99, European Court of Human Rights, Judgement (March 14, 2002), para. 70.

Responsibility for poor results of the investigations therefore rests not only with those who failed to carry out the inquiries effectively and without bias, but also with those who failed to select a robust and independent team.

4. Pressure and Intimidation

Fear of reprisal continues to be a significant hindrance for witnesses, particularly in inquiries in which military actors are implicated. Even government organs may experience pressure.

The 1965-66 massacres of perhaps more than one million people, along with the illegal detention of hundreds of thousands more, is the largest atrocity in the country's modern history. However, due to the extreme sensitivity surrounding these crimes, the massacres have received minimal national or international official attention.

Komnas HAM began a research into the 1965 atrocities as part of a broader examination of Soeharto-era crimes, focusing on the infamous prison camps on Buru Island. The commission found that between 1968 and 1979 more than 10,000 detainees suffered violence and torture as a result of state-sanctioned policy. Komnas HAM recommended the formation of a team to investigate cases related to New Order crimes, including the Buru prison. This recommendation languished for six years until 2008 when Komnas HAM established an ad hoc investigation team on 1965 crimes, with the atrocities of Buru Island falling under its mandate.[69]

Since the outset, the investigation has encountered pressure and intimidation from official and unofficial sources. News reports about the establishment of the process elicited extremely negative responses, with groups that oppose investigating the 1965 events resorting to anti-communist rhetoric targeting the investigators. Komnas HAM came under strong pressure to cease investigations and received threats of violence, which the police failed to seriously investigate. In May 2008, anti-communist groups, including some that have been repeatedly implicated in violent acts against opponents, protested outside the Komnas HAM office and demanded that the team be disbanded. Despite this intimidation the team began investigations in 10 regions and, as of July 2010, had taken statements from more than 380 victims.[70]

The current chair of Komnas HAM, Ifdhal Kasim, noted that the commissioners of Komnas HAM lack the immunity and protections that attach to similar positions in other countries, resulting in the constant threat of criminal defamation charges or civil cases brought against them as a result of the legitimate exercise of their legal duties.[71]

69 Desy Nurhayati, "Rights Body to Probe Soeharto Case," *Jakarta Post*, January 30, 2008, www.thejakartapost.com/news/2008/01/29/rights-body-probe-soeharto-cases.html. ICTJ interview with Ifdhal Kasim, supra note 8. Chair Ifdhal Kasim stated that in an effort to examine high-level officials and policies, the commission chose to focus on events at Buru Island instead of the extensive violence that took place across Indonesia.

70 Statement made by Nur Kholis, deputy chair of Komnas HAM, at a workshop with victims from 1965, Solo, July 24, 2010.

71 ICTJ interview with Ifdhal Kasim, supra note 8.

5. Failure to Release Findings

The mandates of fact-finding teams have varied on the question of dissemination of their final reports, with a significant number partially or completely withheld. Even in cases in which a release was mandatory, government officials have often refused to make findings public, undermining trust and ignoring citizens' rights to receive this information.

Komnas HAM has forwarded eight reports to the AGO with recommendations for formal investigation and prosecution. In most cases there has been no prosecution and no public release of the report, a lost opportunity for a measure of truth-seeking. Both the National Investigation Team on Maluku and the Fact-finding Team on the Assassination of Munir appointed by the president produced important reports that were never officially released. The Komnas HAM report on the 1999 violations in East Timor was also never officially made public, even after it was widely leaked and an ad hoc court was established.

6. Lack of Public Participation and Engagement with Victims

Historically, truth commissions have provided a sense of restorative justice by giving a voice to victims and acknowledging their suffering. Truth-seeking mechanisms in Indonesia have failed to recognize the needs of victims or to ensure broader participation that can restore public trust.

The country's only formal truth commission to date, the binational CTF, provides a clear example of such a lost opportunity. Unlike similar commissions in other countries, the CTF's terms of reference did not even mention the role of victims, and they were treated poorly during hearings. After traveling from Timor-Leste to Jakarta to give evidence of violations committed against them that involved Indonesian security forces, victims found themselves in hearing rooms filled with uniformed soldiers, who ridiculed and intimidated them. This was a highly traumatic experience for victims providing evidence of serious crimes, including murder and rape. Some commissioners implied that the victims bore responsibility for the crimes because they supported independence for East Timor. In addition, inadequate translation services forced some victims to provide their evidence in broken Bahasa Indonesian rather than their native Tetum, and the audience responded with laughter and ridicule.[72]

72 See Megan Hirst, *Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste* (New York: ICTJ, January 2008), 18, 32-35.

IV. Judicial Proceedings

A. Overview of Judicial Mechanisms and Processes

Many of the truth-seeking mechanisms described above made recommendations, or even formal referrals, to the AGO to investigate and prosecute those implicated in serious human rights violations. However, in most cases the AGO failed to act. In those few cases in which prosecutions took place in either ordinary criminal courts or human rights courts, the results have been extremely disappointing. Although a small number of low-ranking members of the security forces have been sentenced to short prison terms, not a single case of gross human rights violations from the Soeharto or reformasi periods has been successfully prosecuted.

Even though significant constitutional and legal reforms have been made and numerous cases brought before a range of prosecutorial mechanisms (military tribunals, ad hoc and permanent human rights courts, and ordinary criminal trials), a review of the results leads to an inescapable conclusion that the Indonesian government is unwilling or unable to fulfill its international legal duties to bring perpetrators of international crimes to justice.

There are a number of reasons for this. The combination of legal uncertainties, a culture of impunity among prosecutors and police, massive resources available to the military through legal and illegal business activities, a legal system for sale to the highest bidder, and a lack of political will to overcome these obstacles have produced a formula for entrenched impunity.

1. Human Rights Courts

a. The Legal and Institutional Framework

Mechanisms to address massive crimes emerged only after Indonesia's transition to democracy in 1998 and in response to international pressure to prosecute serious crimes committed in East Timor in 1999. Following the withdrawal of Indonesian forces from East Timor, a UN Commission of Inquiry recommended an international criminal tribunal to try those responsible

for the mass violations.[73] After intense lobbying by representatives of the Indonesian government, the UN Security Council accepted a recommendation that Indonesia first have an opportunity to try any of its citizens responsible for the violations. In October 1999, the government quickly passed Regulation (*Perpu*) 1/1999 on Human Rights Court, later to be superseded by Law 26 of 2000, establishing a mechanism to investigate and prosecute gross human rights violations, defined as crimes against humanity and genocide (but not including war crimes).[74]

Under Law 26 of 2000, Komnas HAM may form a pro justicia team to undertake inquiries and make findings on whether gross human rights violations have been committed.[75] If the team finds "sufficient preliminary evidence that a gross violation of human rights has occurred,"[76] it has seven days to pass the results to the AGO, the only body with the power to conduct a formal investigation and prosecution.[77] If the AGO receives the Komnas HAM report and declares it to be complete, prosecutors must then complete an investigation within 90 days.[78] However, the AGO may delay the investigation and return the file to Komnas HAM if it finds the evidence insufficient.[79]

What happens next depends on whether the crimes took place before or after Law 26 passed. Law 26 of 2000 provides for four permanent regional human rights courts in Jakarta, Surabaya, Makassar, and Medan, with jurisdiction over gross human rights violations committed after the law passed in November 2000. Only the Makassar court has been established. It has tried one case, involving events in Abepura (Papua).[80]

For cases that predate passage of the law, the legislation creates a mechanism for establishing an ad hoc court and creates additional steps in the process. Article 43 provides that such cases can only be prosecuted if the lower house of Parliament recommends creating an ad hoc court, and the president then issues a decree establishing it.

The AGO attributes its failure to investigate several cases to its belief that its duty to investigate only arises after such an ad hoc court has been established by the Parliament and president. However, the view of Komnas HAM representatives, supported by a Constitutional Court ruling, is that formal investigations by the AGO must take place before Parliament decides whether to establish an ad hoc court, so that the results of the investigation can be the basis of the Parliament's and president's decision (see below).

73 *Report of the International Commission of Inquiry on East Timor to the Secretary-General*, UN Doc. A/54/726, S/2000/59 (January 31, 2000).

74 Law 26/2000 based the definitions for crimes against humanity and genocide on the Rome Statute of the International Criminal Court, but omits war crimes, in contrast to other human rights courts such as the European Court of Human Rights.

75 Law 26/2000, art. 18.

76 Ibid., art. 20.

77 Ibid., arts. 21-23.

78 Ibid., art. 22.

79 Ibid., art. 20(3).

80 According to Law 39/1999, art. 104, permanent human rights courts shall be established within four years; the following year, Law 26/2000, art. 45 stated that establishing human rights courts would begin immediately in four locations: Central Jakarta, Surabaya, Medan, and Makassar.

Although Komnas HAM is an independent statutory authority, the AGO is situated within the executive branch. During the Soeharto dictatorship, the AGO was responsible for prosecuting people who opposed the government or promoted democracy, and the police were a formal part of the armed forces. As a result, in cases since reformasi, that involve allegations against members of the security forces, police and prosecutors, often find themselves tasked with bringing former or current colleagues to account for acts committed during periods when they themselves may have been part of the military apparatus or its extension.

The table below demonstrates the disparity between the findings of Komnas HAM and the results of mechanisms triggered by these inquiries. In three cases—East Timor, Tanjung Priok, and Abepura—the inquiries have led to prosecutions in ad hoc or permanent courts, but these have not produced a single conviction following appeals. In five additional cases, Komnas HAM completed its inquiries and referred the cases to the AGO, which took no action. In each case, prosecutors returned the dossiers to Komnas HAM with a short note stating that the files were incomplete, and the AGO's duty to investigate within 90 days was not triggered. Komnas HAM has emphatically and repeatedly stated that the files are complete and contain sufficient evidence for prosecution.

Table: Summary of Komnas HAM Inquiries into Cases of Gross Human Rights Violations and AGO Response[81]

Komnas HAM inquiries completed	Outcome
East Timor	Eighteen people were accused, of which 12 were acquitted and six convicted at trial before an ad hoc court. All of the convictions were overturned on appeal, resulting in zero convictions.
Tanjung Priok	Fourteen people were accused, of whom two were acquitted and 12 convicted at trial before an ad hoc court. All the convictions were overturned on appeal, resulting in zero convictions.
Abepura Human Rights Court	Two people were accused, and both were acquitted at a trial before the Makassar permanent human rights court.

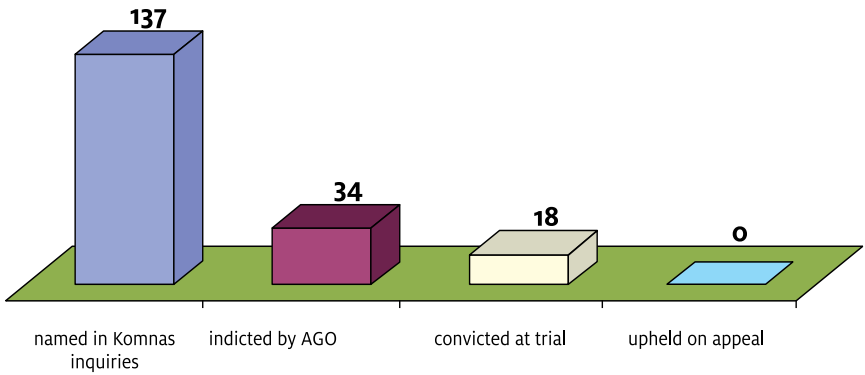
81 Quotes in this table are excerpts from the AGO's letter to the prosecutorial commission, Letter No B 016/A/F/F6/03/2009 (March 13, 2009), on file with ICTJ.

Trisakti and Semanggi I and II	**No action by AGO**. After returning the dossier to Komnas HAM four times in 2002, the AGO has claimed that double jeopardy (due to court martial of low-ranking soldiers in 1999) and lack of a recommendation for an ad hoc court from the DPR prevent it from taking action. The AGO states, "The inquiry cannot be continued to the stage of investigation, because the commanders and executing officers in the field have been tried in military court . . . (and the accused) given criminal sanctions and were dismissed." Another reason given is that "command responsibility in relation to an act of omission cannot be used, because the subordinate who committed the violation was punished."
Wamena and Wasior, Papua	**No action by AGO**. The AGO stated that prosecutors "have submitted the investigation findings file with instructions for completion . . . (but) Komnas HAM . . . had returned the Wamena-Wasior (dossier) without the necessary information based on the instructions and the Komnas HAM has stated that the instructions were completely unfounded."
Talangsari killings	**No action by AGO**. In January 2008, a fourth Talangsari inquiry team began its work, using Law No. 26 of 2000 as a basis for a pro justicia inquiry and Law No. 39 of 1999 as a basis for subpoena powers. Retired security officers still refused to appear. The AGO stated that the file is "currently being investigated by the Directorate Research Team on Gross Human Rights Violations, (to review) the completeness of formal and material requirements."
May 1998 riots	**No action by AGO**. The AGO stated that it has "several times returned the results of the investigation file to Komnas HAM . . . with instructions to wait for the formation of the ad hoc human rights court."

Enforced disappearance of activists	**No action by AGO**. After a year-long inquiry, a Komnas HAM pro justicia team submitted a report to the AGO and the DPR in November 2006. The team found evidence of gross human rights violations and stated that, as disappearances are a continuing crime, prosecutors could bring the case to a permanent human rights court. In a letter sent in January 2007, the AGO said it would wait for the DPR and the president to create an ad hoc human rights court before conducting an investigation. In September 2009, the DPR recommended creating the court. Yet the president has not issued an order, and the AGO has not begun an investigation. The attorney general stated that he has "several times returned the results of the investigation file to the National Human Rights Commission . . . with instructions to wait for the formation of the ad hoc human rights court . . . Komnas HAM continues to hand back the results of the investigation file. . ."

Convictions for Gross Human Rights Violations in Human Rights Courts

Major cases where a known number of suspects were named in Komnas HAM inquiries: Tanjung Priok, Abepura, East Timor, and Trisakti/Semanggi I and II



Although the attorney general has officially responded to Komnas HAM with claims that the files the commission submitted were incomplete, in 2006 he announced that his office had not investigated cases in which Komnas HAM had made findings of gross human rights violations because, according to his legal analysis, his office had no jurisdiction or obligation to investigate cases that occurred before 2000 until after an ad hoc court had been established, following a DPR parliamentary recommendation and presidential decree.[82] This claim is based on article 43 of Law 26 of 2000, which states:

> (1) Gross violations of human rights occurring prior to the coming into force of this Act shall be heard and ruled on by an ad hoc human rights court.
> (2) An ad hoc human rights court as referred to in clause (1) shall be formed on the recommendation of the lower house of parliament of the Republic of Indonesia for particular incidents upon the issue of a presidential decree.

Komnas HAM and some members of the parliamentary commission tasked with these issues believe the AGO has misread the act.[83] They believe that it is illogical for the lower house of Parliament, which does not have investigators or technical experts, to investigate whether gross violations have occurred, or to make a determination without evidence from law enforcement officials. The correct analysis, they argue, is that only the AGO can legally undertake such an investigation and prosecution, and that it has the legal duty to do so if Komnas HAM has made findings that gross human rights violations have taken place and has passed on a complete file. There is nothing in article 43 or elsewhere that requires the ad hoc tribunal to be established before this investigation takes place. In fact, the AGO's own actions at times have supported this interpretation, as prosecutors initiated investigations into both the Tanjung Priok and East Timor cases before ad hoc courts were created.

According to the view expressed by Komnas HAM representatives, once they have completed their inquiry into one of these cases and ruled that gross human rights violations (crimes against humanity or genocide) have been committed, the attorney general must commence the investigation. The AGO need not wait for the DPR to recommend establishing the court or for the president to issue a decree.[84]

The core function of the legislature is to create laws. The role of the judicial branch of the government is to interpret laws and apply them to facts. One of the fundamental rules of the democratic model is that these two branches of government should operate separately and not be allowed to mix.

82 AGO press conference, Jakarta, November 28, 2006. See also "Penyelidikan Kasus Talang Sari tak Perlu Tunggu Pengadilan HAM" [Talangsari investigation does not need to wait for human rights court], *Republika Online*, September 11, 2008, http://koran.republika.co.id/berita/2610/Penyidikan_Kasus_Talangsari_ tak_Perlu_Tunggu_Pengadilan_HAM.

83 Gayus Lumbuun, "Pengadilan HAM: Kejagung Seharusnya Gunakan Penalaran Hukum" [Human rights court: AGO should follow legal logic], *Suara Karya*, November 30, 2006, http://www.suarakarya-online.com/news.html?id=161254. The author is a member of Parliament's Committee III, which has authority over human rights violations issues.

84 ICTJ interview with Ifdhal Kasim, supra note 8.

The cases of Trisakti, Semanggi I, and Semanggi II provide an example of how the ambiguity of the law and the interpretation accepted by the DPR, and supported by the AGO office, create a major legal problem in relation to the separation of powers. Each of these cases include allegations that members of the security forces were involved in the deliberate killing of significant numbers of civilians and that these cases had not been adequately dealt with through police investigation.

In 2001 the DPR established Pansus, a special panel that conducted an investigation into whether these three cases constituted gross human rights violations according to the definition provided in Law 26 of 2000. Members of the panel applied the law to a set of facts, which is the role of the judiciary, not the legislature. The different political factions represented in the panel voted on the issue. Three factions voted that gross human rights violations had occurred. Seven others, including those representing the police and military that at that time still had guaranteed quotas in Parliament, voted to the contrary. Therefore, political factions representing the police and military were able to vote as part of the legislature on an issue that should not have been dealt with by the legislature, and that directly involved allegations of major violations committed by members of the police and military. Prevention of such conflicts of interest is the reason why a separation of powers is accepted as a fundamental building block of the democratic model.

Despite this decision, Komnas HAM conducted an in-depth inquiry and found that gross human rights violations had been committed in the cases of Trisakti, Semanggi I, and Semanggi II. It forwarded the completed file to the AGO with a recommendation that formal prosecution be launched. The file was returned to Komnas HAM several times, accompanied by claims that it was incomplete; claims which Komnas HAM denied.

In 2003 the attorney general affirmed Pansus's conclusions that gross human rights violations had not been committed in the cases of Trisakti, Semanggi I, and Semanggi II. The result of this decision was that the AGO did not conduct any informal investigations into these cases, nor did the government establish an ad hoc tribunal.

It is clear that some DPR members were troubled by what had taken place. In 2005 Committee III of the DPR recommended reopening discussions of the Trisakti and Semanggi cases. However, this recommendation was not accepted, and the following year Parliament decided that there was no precedent for reopening a decision the DPR made during a previous electoral period.[85]

The Constitutional Court addressed this issue after Timorese militia leader Eurico Guterres requested a judicial review of article 43(2) of Law No. 26 of 2000. The case concerned crimes committed in 1999, before the law passed. The court stated that the rationale for the DPR's role related to the issue of retroactivity. For crimes committed before Parliament created an applicable law, the people, represented by Parliament, must decide in each case on whether to establish an ad hoc court. However, the court stated:

85 KontraS, *Kronik Kasus Trisakti, Semanggi I, Semanggi II: Penantian dalam Ketidakpastian* [Trisakti, Semanggi I and Semanggi II chronology: waiting in uncertainty] (2009), http://www.kontras.org/data/kronik%20tss%20update.pdf.

> The DPR in recommending the establishment of an ad hoc human rights court must observe the results of inquiries and investigations conducted by the authorized institutions. Therefore, the DPR cannot simply assume for itself without receiving the results of inquiries and investigation by the authorized institutions, in this case the National Commission on Human Rights as the preliminary investigator [*penyelidik*] and the AGO as investigator [*penyidik*] as stipulated by Law Number 26 Year 2000.[86]

This decision, therefore, reflects the view of the highest court in the country that the DPR cannot legally establish an ad hoc court without an investigation by the AGO. This would seem to be in direct contradiction to the AGO's rationale that prosecutors cannot legally conduct the investigations recommended by Komnas HAM until after the DPR has created an ad hoc court for the case.

A senior official with the AGO confirmed the view of his office that the main obstacle to investigating serious human rights violations that occurred before 2000 was the lack of action from the DPR and the president, while "for those after 2000, the problem is the substance."87 The prosecutor also faulted the quality of the investigations from Komnas HAM. "Don't just conclude that human rights violations took place. But who are the perpetrators, and what is the evidence? . . . The problem with Komnas HAM is, to what extent are its inquiries truly high quality? because they are not all legal people. They need expertise."[88]

He specifically cited lack of evidence implicating senior officials, as well as the commission's failure to consider the military's perspective: "In the case of Papua, [Komnas HAM] inquiries don't consider the side of the security forces, what triggers the actions, etc. Because security forces also become victims of violence there."[89]

However, in the view of Komnas HAM's chair, the AGO is waiting for executive action not only for legal reasons, but also for political cover.

The AGO does not have a sufficiently clear directive from the president about what has to be done in connection with serious human rights violations. And without support from the president, the AGO will, of course, think twice about its authority, because the possible suspects are important people. . . . Processing people like that without a direct order or directive from the

86 Constitutional Court Decision No. 018/PUU-V/2007 (2007) states, "In order to determine whether or not there is a need to create an ad hoc Human Rights Court . . . there is indeed a need for the involvement of political institutions that reflect the population, namely the DPR, but the DPR in its recommendation to form an ad hoc Human Rights Court must pay attention to the inquiry [*penyelidikan*] and investigation [*penyidikan*] of the relevant institutions, in this case Komnas HAM and the Attorney General's Office," http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_Putusan%2018_PUU-V_2007%20Baca%2021%20Feb%2020081.pdf; See also KontraS, "Penolakan Penyidikan Kasus Pelanggaran HAM oleh Jaksa Agung," [Rejection of attorney general's investigation of cases of human rights violations], open letter to chair of the prosecutorial commission, February 10, 2009, http://www.kontras.org/index.php?hal=siaran_pers&id=843.

87 ICTJ interview with Zulkarnain Sidi, expert staff coordinator from Attorney General's Office, November 30, 2010.

88 Ibid.

89 Ibid.

president, the AGO doesn't dare do it. . . . They run from it using legal reasons, saying they need a recommendation from the DPR. In the end they allow the clock to run down.[90]

To address the blockage, Komnas HAM is pursuing a long-term strategy that involves passing a law to increase the commission's authority so it has the power not only to conduct inquiries but also to conduct formal legal investigations of cases of gross violations of human rights. While this strategy is being followed, Komnas HAM plans to continue working with the DPR, the AGO, the president, and the minister of law and human rights in an effort to move the cases forward.[91]

There is a precedent for an independent commission to have power to conduct a formal investigation when handling cases in which the normal process that involves police and prosecutors may be compromised. The national Corruption Eradication Commission has its own investigators and submits the results of these investigations to prosecutors who operate under the authority of the specialized Corruption Court.[92] However, there are attempts under way to bring this specialized Corruption Court back within the national court system where it would confront the same challenges as those that have limited progress in the human rights cases.

A strong, independent team of prosecutors is an essential foundation for law enforcement in Indonesia. This is particularly needed to address mass human rights crimes that often represent the gravest crimes committed. To achieve this the government must root out corruption and nepotism from the AGO, and increase the skills and willingness of prosecutors and investigators to handle serious crimes implicating state officials. Given the depth of the problem shown by the repeated reluctance to investigate past crimes, even in the face of guidance from the Constitutional Court and the increasing number of cases involving prosecutors before the Corruption Eradication Commission, fulfilling this goal will require years of commitment and targeted resources.[93]

Steps that could be taken now include legislative reforms. In the absence of specialized, highly independent teams of investigators and prosecutors to handle complex human rights crimes, legislation should clearly guarantee that the decisions and files of Komnas HAM should be considered legally complete if the chair decides they are. The AGO's decisions of whether to investigate a case recommended by Komnas HAM must include reasons in writing and be made public within a short period of receiving a file. The decision of the AGO should be subject to

90 ICTJ interview with Ifdhal Kasim, supra note 8.

91 Ibid.

92 Law 30/2002, arts. 53-62. The commission was created under Law 30/2002 on the Corruption Eradication Commission. A Corruption Court was also created under art. 53-62 of the law. However, in 2006 the Constitutional Court found that the court required a stronger legal basis under a stand-alone law. The DPR then passed Law 46/2009 on the Corruption Court. The new law preserved the court, but undermined some of its independence as well as that of the commission See Law 46/2009 at www.komisiinformasi.go.id/assets/data/arsip/UU_46_Tahun_2009.pdf.

93 "Prosecutor's Arrest Shows Need for Monitoring," *Jakarta Post*, February 22, 2011, http://www.thejakartapost.com/news/2011/02/14/prosecutor's-arrest-shows-need-monitoring.html.

judicial review. A similar system has been relatively successful in dealing with allegations of crimes committed by police in Northern Ireland.[94]

One highly pertinent question is raised by the history and confusion over prosecuting cases of crimes that occurred before Law 26 of 2000 passed: Why has this been allowed to continue for more than 10 years? The issue of whether the AGO should wait for the DPR's determination and recommendation or act on the findings of Komnas HAM can be solved by an amendment to the current legislation. In the 2007 Euricco Guterres decision, the Constitutional Court stated that the DPR's decision about prosecuting past crimes should be based on pre-investigation by Komnas HAM and investigation by the AGO. Why has this not led to a clear directive from the president or a legislative amendment to clear any ambiguity and allow the cases to be fully investigated and prosecuted? Once again, analysis of the total picture reveals that all intentions to pursue accountability are undermined by a systemic lack of will to confront the past.

b. The Record of the Human Rights Courts

As explained above, the government was legally obligated to establish four permanent human rights courts in Makassar, Surabaya, Jakarta, and Medan by September 2003. However, only the Makassar court exists, and it has dealt with only one case: Abepura.[95] Ad hoc courts created by Parliament and presidential decree have dealt with two cases that occurred prior to 2000, East Timor and Tanjung Priok.

i. Ad Hoc Human Rights Court for East Timor

The most prominent human rights prosecutions since the fall of the New Order took place at the Ad Hoc Human Rights Court for East Timor. In September 1999 a Human Rights Violations Investigations Commission (KPP HAM) for East Timor under the direction of Komnas HAM investigated abuses committed in East Timor between January and October 1999. In January 2000 the team handed the results to the attorney general. This report is widely regarded as a courageous, groundbreaking attempt to address the role of the security forces in gross human rights violations. The report, based on rigorous cross-examination of high-level officials and findings from an exhumation of bodies, found that crimes against humanity had taken place. In a rare move, it named 29 military, police, militia, and civilian actors suspected of bearing responsibility for the violence.[96] As a result of the inquiry, as well as increasing international pressure, a presidential decree created the ad hoc court for East Timor following the process specified in Law 26 of 2000.

94 See Police (Northern Island) Act 1998 as amended, http://www.legislation.gov.uk/ukpga/1998/32/contents.
95 See supra note 80.
96 Komnas HAM, *Komisi Penyelidikan Pelanggaran HAM Timor Timur: Ringkasan Eksekutif* [Commission of Inquiry on Human Rights Violations for East Timor: executive summary] (2000).

The ad hoc court's mandate did not include the many attacks that took place before the August 1999 ballot and included incidents in only three of the 13 districts of East Timor.[97] These artificial constraints made it difficult to establish the widespread or systematic element necessary to prove charges of crimes against humanity. Prosecutors charged 18 mid- and senior-level officials, most of them members of the security forces. The court of first instance convicted six senior police, military, civilian, and militia leaders, a rare development in Indonesia. However, all six were acquitted on appeal.[98] The result was a total failure to convict.

While some of the blame can be attributed to the court's limited mandate, most analysts place responsibility on the prosecutors. One thorough report concluded, "The problem with the Jakarta trials is that the process has been fundamentally flawed from the moment the attorney general's office took over the investigation following its acceptance of the report of the Commission of Inquiry."[99]

Investigators and prosecutors failed to get evidence from thousands of eyewitnesses, or even to present much of the compelling evidence provided by the UN investigators in Timor-Leste. For example, in mid-2000 a team of Indonesian prosecutors heard testimony from more than 20 carefully selected witnesses on a floating hotel anchored off the destroyed capital of Dili.[100] The majority of this material, which included strong evidence of many of the elements of crimes against humanity, was never presented to the courts in Jakarta.

The failure of the Jakarta ad hoc court process is even more distressing when compared with the UN serious crimes process in Dili. Most of those responsible for violations had fled over the border to Indonesia when the international peacekeeping force arrived in Timor-Leste in October 1999, and yet the Indonesian mechanisms that had jurisdiction over and access to all of these individuals, produced no convictions. Meanwhile, in Timor-Leste the UN serious crimes process investigating and prosecuting those responsible for the 1999 violations completed 55 trials, resulting in 84 convictions and three acquittals.[101] Prosecutors in Timor indicted 314 more people, but could not bring them to trial because they were believed to be in Indonesia.

97 A decree from President Megawati narrowed the court's jurisdiction to cover only violations that occurred in April and September 1999 and in only three districts, effectively excluding major incidents and underlying issues such as the creation of the militias and the role of senior military officials. Presidential Decree 96/2001 amending Presidential Decree 53/2001 on the Creation of an Ad Hoc Human Rights Court at the Central Jakarta District Court, http://www.setneg.go.id/index.php?option=com_perundangan&id=1469&task=detail&catid=4&Itemid=42&tahun=2001. See also International Crisis Group (ICG), *Indonesia: The Implications of the Timor Trials* (May 8, 2002).

98 For a critique of the acquittals, see ICTJ, *Indonesia: A Case of Impunity* (June 30, 2008). See also ICG, *Indonesia: The Implications of the Timor Trials*, supra note 97, for the impact of the weak indictments on Indonesian views regarding the events of 1999 and the concept of crimes against humanity.

99 David Cohen, *Intended to Fail: the Trials Before The Ad Hoc Human Rights Court in Jakarta*, Occasional Paper Series (New York: ICTJ, August 2003), v.

100 ICTJ interview with the UN official in charge of the Serious Crimes Investigations Team (SCIT), August 2009. This information was corroborated by investigators who were personally involved.

101 The Serious Crimes Unit mandate also included past crimes, but no investigations or trials were conducted for pre-1999 crimes.

If the trials conducted in the Ad Hoc Human Rights Court for East Timor were intended to hold perpetrators responsible for crimes against humanity, they were clearly a failure. The lengthy investigation, trials, and appeal process took several years, and during this time pressure for a separate international tribunal diminished. The establishment of the ad hoc court was considered sufficient progress to avert action by the UN Security Council. Progress on bringing accused criminals to trial was very slow but could still be presented as movement toward justice. The trials resulted in six convictions, at that time also seen as an indication of some degree of progress. By the time all of those convicted were acquitted on appeal, international outrage had decreased and attention diverted elsewhere.

ii. Ad Hoc Human Rights Court for Tanjung Priok

In September 1984, Indonesian security forces opened fire on civilian protestors at Jakarta's port, Tanjung Priok, killing dozens. Others were forcibly disappeared, tortured, arbitrarily arrested and detained, and subjected to unfair judicial processes. A 2001 presidential decree established the Ad Hoc Human Rights Court for Tanjung Priok at the same time as the one for East Timor. The results were similar: of 14 retired and active military personnel on trial, 12 were initially found guilty and then all were acquitted on appeal.[102]

After the court acquitted artillery Capt. Sutrisno Mascung, in 2006 the Supreme Court refused the prosecutor's request to overturn the decision, arguing that the actions were not human rights violations (because the victims were armed) and the case should have been heard in a regular court, not an ad hoc human rights court.[103] As in other such cases, prosecutors failed to consider those responsible for planning the action, drafted weak indictments, and failed to ensure protection of witnesses or victims. Outside the court process, defendants offered payments to victims and witnesses, many of whom then withdrew their testimony or retracted their statements.[104]

iii. Makassar Human Rights Court on the Abepura Case

Both the East Timor and Tanjung Priok cases occurred before 2000, and therefore they required ad hoc tribunals established by the president on the recommendation of Parliament. The only case heard in a permanent human rights court has been the alleged violations in Abepura, Papua, tried in the regional court in Makassar, South Sulawesi.

The eastern-most provinces of Papua and West Papua (colloquially referred to as Papua) are the sites of continuing conflict. This region was not part of Indonesia when it declared independence, although the new nation envisioned its territory to include what was the Dutch East Indies.

102 Sentences ranged from 10 years for the former district military commander to two years for 10 low-ranking soldiers.
103 Thoso Priharnowo, "MA: Perkara Mascung Bukan Pelanggaran HAM" [Supreme Court: Mascung case not human rights violation], *TEMPO Interaktif*, March 1, 2006, http://www.tempo.co.id/hg/nasional/2006/03/01/brk,20060301-74649,id.html.
104 J. Fabian Junge, *Kesempatan yang Hilang, Janji yang tak Terpenuhi: Pengadilan HAM Ad Hoc untuk Kejahatan di Tanjung Priok 1984* [Lost opportunity, promise not kept: Ad Hoc Human Rights Court for Tanjung Priok 1984], KontraS and Watch Indonesia! (2008), 22.

Papua remained in Dutch hands until it was handed over to Indonesian control in 1962, pending a referendum as part of an agreement brokered by the UN.[105] In 1969, the referendum was held under UN auspices. Although some Papuans claim that the process was flawed because it did not allow for "one person-one-vote" and was conducted in a context of ongoing military operations, the UN endorsed the results.[106]

The region has been the site of numerous human rights abuses in the context of both military operations against a small, armed separatist movement and crackdowns on unarmed civilian populations. According to investigations conducted by Komnas HAM, in the early morning of December 7, 2000, unknown people attacked a police post in Abepura, killing two officers and a security guard and setting fire to a number of shops. In response the police conducted a "sweeping" operation through student dormitories. They took more than 100 students into custody, and the abuses the prisoners suffered led to numerous injuries and three deaths. Komnas HAM found that there had been torture, summary executions, and assault, and recommended prosecuting 25 police officers, 21 for their direct role in the violence and four for operational responsibility.[107] Komnas HAM forwarded the file to the AGO, which only charged two senior officers two years later. Almost 100 witnesses provided evidence of systematic arrests and beatings with high-level involvement. The court acquitted both officers and dismissed the victims' claims for compensation.

iv. Results of the Human Rights Trials

In the East Timor, Tanjung Priok, and Abepura cases, 34 individuals were charged with crimes against humanity or genocide in human rights courts. All were acquitted. It is beyond the scope of this report to analyze the strengths and weaknesses of each case, and others have undertaken this. In each of these cases Indonesian human rights organizations and international experts who have done analysis have concluded that the investigations, prosecutions, and trial process did not proceed in a manner nor produce a result based on a serious will to bring those responsible to justice. David Cohen concludes that the East Timor trials were in fact "intended to fail."[108] The analysis of two national human rights organizations, KontraS and ELSAM, concluded that in the

105 *Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian)*, August 15, 1962 (signed at UN headquarters in New York), http://www.Indonesiaseoul.org/archives/papua/Agreement%20between%20RI%20and%20Netherland.pdf.

106 This contested history remains an ongoing source of conflict. Law 21/2001, arts. 45-46 establish a truth and reconciliation commission for Papua with a mandate "to clarify the history" of Papua. The need for dialogue and recognition of "prolonged experience of the history of political violence" is identified as one of the four key issues to be addressed in Muridan S. Widjojo, ed., *Papua Road Map*, supra note 58, 9.

107 Komnas HAM, *Laporan KPP HAM Papua: Ringkasan Eksekutif* [Human Rights Commission of Inquiry (KPP HAM) report on Papua/Irian Jaya: executive summary] (May 8, 2001), 11; Human Rights Watch, *Violence and Political Impasse in Papua* (July 2001), 15-21.

108 David Cohen, *Intended to Fail*, supra note 99, v.

Abepura and Tanjung Priok cases, only relatively low-level actors were charged, issues regarding the systematic nature of the crimes were ignored, and the prosecution was seriously flawed.[109]

The role of the appellate courts, particularly the Supreme Court, is also significant. A total of 18 out of 34 people were convicted at trial, and all were acquitted on appeal. It is worth noting that institutional practices within the judiciary serve to seriously hinder monitoring and evaluation of the judicial process and the performance of judges and prosecutors. Decisions made by Indonesian courts are in many cases not issued in writing. When a written decision does become available it often does not include legal reasoning and an analytical base in which elements of crimes are proven by reference to specific proven facts. Written decisions that are issued are difficult to access and may be released months or even years after the case has been decided. In addition, decisions by appellate bodies, such as the Supreme Court, frequently overturn the factual findings made by trial judges even though the appellate court does not have the power to do so. All of these practices serve to block effective questioning of the appropriateness of court decisions and allegations of corruption. The term used for the systematic control of the judicial process and sale of decisions, even by senior politicians including the president, is the judicial mafia. In December 2009 President Yudhoyono appointed the Task Force to Eradicate the Judicial Mafia. The mandate of the task force includes investigation of the network of case brokers and influence peddlers who act as middlemen in purchasing favorable treatment from prosecutors and the judiciary. Even though a number of credible national figures were appointed to the task force, it was widely criticized at the end of its first year as not achieving any practical results and focusing largely on calling press conferences. Despite calls to disband the task force due to ineffectiveness, the president publicly stated that it would be allowed to operate until the completion of its mandate in late 2011.[110]

Reform is made even more difficult because the manner in which the entire process is conducted serves to shield the individuals responsible for producing the poor results. Allowing the legislative deadlock to continue without intervention, the lack of transparency and written decisions, the delays, and the process in which initial results that provide indications of progress are later nullified by appellate decisions all serve to conceal the manner in which the integrity of the process is destroyed. Once again the continuation of these practices without intervention indicates a systemic lack of will at the senior levels of government to seriously pursue accountability.

Despite these acute problems, not everyone involved in the human rights courts trials lacked integrity and commitment. A number of courageous individuals accepted significant risks to

109 ELSAM, KontraS, PBHI, *Pengadilan yang Melupakan Korban* [Trials that forgot victims] (August 24, 2006); ELSAM, *Laporan Pemantauan Pengadilan HAM Kasus Abepura: Perkara Johny Wainal Usman dan Daud Sihombing* [Human rights court monitoring report on the Abepura trials: the case of Johny Wainal Usman dan Daud Sihombing] (undated), http://www.elsam.or.id/downloads/1265865824_01._Preliminary_Conclusive_Report_lengkap.pdf.

110 Bagus BT Saragih, "SBY Wants to Keep Taskforce, Despite Flak," *Jakarta Post*, January 25, 2011, http://www.thejakartapost.com/news/2011/01/25/sby-wants-keep-taskforce-despite-flak.html. For more information on Task Force for Elimination of the Judicial Mafia (Satgas Pemberantasan Mafia Hukum), see http://www.satgas-pmh.go.id/.

fulfill their duties. In particular, one panel of Indonesian judges was responsible for the initial convictions in the East Timor case. They received little training in international human rights law, had never dealt with complex crimes against humanity charges, and received credible death threats. Despite these challenges, they drew on international jurisprudence for guidance and produced credible judgments. All of the convictions they handed down were overturned on appeal to the Supreme Court.[111]

v. Broken Promises for Human Rights Courts: Aceh and Papua

The 2004 tsunami, in which approximately 225,000 people were killed in one day, proved to be a catalyst for peace in Aceh. The next year, the Helsinki MoU formalized the end of the decades-long conflict. The agreement committed Indonesia to establish a TRC and a human rights court for Aceh. Consistent with existing law, the court would have jurisdiction over violations committed after 2000. Although this period excludes the large number of mass crimes committed prior to this date, it would have included many serious incidents. Promises to establish the court and the TRC were included in LOGA, the national legislation that implemented the Helsinki MoU.112 However, the government has not created either one.

In 2001 the Indonesian government also granted special autonomy status to Papua to assuage pro-independence sentiments. Like the Aceh agreement, this law includes the establishment of a TRC and a human rights court for Papua.[113] However, as in Aceh, neither mechanism has been established.

2. Military and Joint Military-Civilian Trials

Throughout the New Order period, members of Indonesia's armed forces could only be tried in military courts under the military criminal code and criminal procedure code. During the early stages of reformasi, joint military-civilian (koneksitas) courts were established with jurisdiction over offenses committed by military and civilians acting together, and presided over by a panel including both civilian and military judges.[114] These courts operated with very little transparency: verdicts were not always disclosed to the public and there was no way to verify whether the sentences had been carried out.

The military courts and the koneksitas courts handled a number of mass violations during the New Order period and the early years of reformasi. The results reflect systematic efforts to protect perpetrators, particularly senior officers, from effective sanctions. In many cases, senior

111 ICTJ interview with one of the judges, who wished to not be named, June 2009. See also David Cohen, *Intended to Fail*, supra note 99, 6, which found that judges "withstood blatant intimidation, harassment, and serious pressures to return guilty verdicts."

112 Law 11/2006, arts. 228-29.

113 Law 21/2001, art. 45.

114 The chief justice of the Supreme Court may issue an order that such a case be dealt with by the military courts instead. In addition, the Supreme Court hears appeals from decisions of the koneksitas courts, and the chief justice may send the matter to the military courts. Law 35/1999 on Judicial Power, Supplement to the Official Gazette, No. 3879.

commanders regarded human rights violations as a matter of military discipline rather than criminal liability. In some cases, more junior members of the military forces were sacrificed to demands for accountability, although the penalties were extremely low compared with the gravity of the crimes. Even those convicted did not always serve their sentences, but merely were transferred to other units. Some were later promoted (see Box 3: Disappearance of Pro-democracy Activists).

During the period of military emergency in Aceh (2003-04), military courts processed hundreds of cases. In May 2004, former TNI commander Endriartono Sutarto reported that 429 breaches of military law had come before military courts with 57 soldiers convicted and receiving prison sentences.[115] Not all were human rights violations, but those cases that were, demonstrated the absence of appropriate penalties and lack of transparency.
Out of hundreds of documented human rights violations in Aceh only a handful have been brought to trial, all in military or koneksitas courts.[116] Those few cases in which trials were held reveal a pattern of protecting senior officers and a lack of transparency in relation to whether those convicted actually served their sentences. Examples include the following:

- In January 1999, after the Free Aceh Movement (GAM) kidnapped soldiers, security forces rounded up dozens of civilians and held them in the local headquarters of the Indonesian National Youth Council (KNPI) in Lhokseumawe, North Aceh, for questioning by police. Some 50 soldiers from various units went to the building and beat the civilians, leaving 27 hospitalized and four dead. In January 1999, a military court in Banda Aceh sentenced a major to six years imprisonment. Four other soldiers were later sentenced to seven years, and all were dismissed from military service. However, the army provided no information about the location of their detention or date of their dismissal, making it impossible to verify if these officers actually served their sentences or are no longer in active service.[117]
- A July 1999 attack on an Islamic religious school killed a religious leader, Teungku Bantaqiah, and 56 of his followers. Eyewitnesses said that members of the military shot the victims at close range and then forced other villagers to bury them. Officials at that time, Attorney General Marzuki Darusman and Komnas HAM Secretary General Asmara Nababan, publicly supported prosecution in a human rights court because the crimes were part of a systematic attack against civilians. Instead, the perpetrators went before a koneksitas court. An inquiry by a presidential fact-finding team named eight officers with ranks as high as colonel, and the indictment described the direct involvement of three lieutenant colonels.

115 Amnesty International, *New Military Operations, Old Patterns of Human Rights Violations in Aceh (NAD)* (October 7, 2004), 42.

116 Yuli Rahmad, "Hanya 4 Pelanggaran HAM di Aceh Diadili dari 100 Kasus" [Only 4 human rights trials in Aceh for a 100 cases], *Globe Journal*, December 10, 2009, http://www.theglobejournal.com/kategori/hukum/hanya-4-pelanggaran-ham-di-aceh-diadili-dari-100-kasus.php.

117 See Human Rights Watch, *Indonesia: The May 3, 1999, Killings in Aceh* (undated), Section IV: Events in Lhokseumawe, August 1998-April 1999; KontraS, *Aceh, Damai Dengan Keadilan: Mengungkap Kekerasan Masa Lalu* [Aceh, peace with justice: revealing violence of the past] (February 2006), 79-80, http://www.kontras.org/buku/aceh damai dengan keadilan.pdf.

The level of public attention on this major case led to trials resulting in convictions and some serious sentences. However, once again the process served to shield the senior leaders most responsible. Despite the fact that the accused gave evidence that they had been ordered to "school" the youth and that the commander used this term to mean killing of a detainee, the commanders were not included among those accused. Twenty-four low-ranking soldiers and one civilian were tried and convicted, receiving sentences from eight and a half to 10 years in prison. The officer overseeing the operation, Lt. Col. Sudjono, was indicted but disappeared from police custody and has not been rearrested. (He reportedly reappeared in Aceh during the martial law period.) An Amnesty International report on the case at the time noted that senior officers escaped scrutiny and that there were indications of witness intimidation.[118]

Outside of Aceh, there have been at least four military trials including:

- In 1996, security forces took part in an attack on the office of the Indonesian Democratic Party (PDI), a major political party. An inquiry, established by President Abdurrahman Wahid in 2000, named 15 suspects, eight of whom were arrested. Other officials from the Ministry of Home Affairs and retired senior police and military officials were subsequently identified as being involved. Three years after the initial inquiry a koneksitas trial was convened for only four civilians and two soldiers. Only one civilian was convicted and sentenced to two months and 10 days imprisonment.[119]
- In 2003, seven members of Kopassus were convicted for the murder of Papuan leader Theys Eluay and received strikingly lenient sentences of two- to three-and-a-half years imprisonment.[120]
- In 2007 Indonesian marines fired on farmers protesting the expropriation of their land for use by a state-owned enterprise, killing four villagers and wounding eight. A military court in Surabaya in August 2008 sentenced 13 marines to brief sentences and the military rotated two senior officers from their posts. There was no attempt to investigate or prosecute any officer for command responsibility.[121]
- In November 2010, four soldiers were tried in a military court in Jayapura for acts of torture against civilian detainees in Papua. The trial was held in response to international attention

118 Amnesty International, *Indonesia: Aceh Trial - Amnesty International and Human Rights Watch Call for Full Accountability* (May 17, 2000).

119 "Tersodok Berkas Lama" [Trumped by old files], *TEMPO Interaktif*, June 14, 2004, http://majalah.tempointeraktif.com/id/arsip/2004/06/14/HK/mbm.20040614.HK92077.id.html; KontraS, *Persoalan Penting Hak Asasi Manusia di Indonesia, Table 1: Kasus Pelanggaran HAM Masa Lalu yang Belum Tersentuh Proses Hukum* [Important issues of human rights in Indonesia, table 1: past human rights violations cases that have not been touched by legal process] (undated), http://www.kontras.org/data/persoalan_penting_HAM_di_IND.pdf.

120 See supra Section III(A)(1)(c) discussing the Fact-finding Team on the Assasination of Theys Eluay.

121 Pasuruan Investigation Team, *Penembakkan Protes Damai Petani: Ongkos Kemanusiaan Bisnis TNI di Alas Tlogo, Pasuruan Jawa Timur* [Shooting of farmers during peaceful protest: human cost of TNI business in Alas Tlogo, Pasuruan, East Java] (September 3, 2007), http://www.kontras.org/data/ALAS_TLOGO.pdf; "Warga Alas Tlogo Protes Vonis Pengadilan Militer" [Alas Tlogo community members protest the military tribunal sentences], *TEMPO Interaktif,* August 18, 2008, http://www.tempointeraktif.com/hg/nusa/2008/08/18/brk,20080818-131290,id.html; Imparsial, *Politik Militer Dalam Penguasaan Tanah: Belajar dari Tragedi Pasuruan 2007* [Military politics in land tenure: learning from the Pasuruan tragedy 2007] (February 2009).

brought about by a shocking video released on the Internet of Indonesian soldiers severely torturing two indigenous men, Anggenpugu Kiwo and Telangga Gire, on May 30, 2010, in Puncak Jaya, Papua.[122] However, when the trial commenced it became clear that the accused were in fact being charged for a less serious assault in a separate incident of torture of detainees.[123] Public outrage and international pressure finally led to a trial, with three soldiers from Battalion 753 charged with "insubordination." Military prosecutors did not file more serious charges of assault because they claimed they could not get evidence from the victims who remain in hiding.[124]

In 2000 Parliament passed a resolution that military personnel should be tried in civilian courts for violations of the civilian criminal code.[125] This requirement was included in article 65(2) of Law 34 of 2004 on the Indonesian Armed Forces ("the TNI Law"). However, for the legislation to be implemented, Law 31 of 1997 on Military Courts also needs to be amended. More than six years later, this change has not taken place, blocking the intended result. Once again, the lack of commitment to change at the senior levels of government has nullified the practical impact of policy and legal changes.

3. Trials in the Criminal Courts

Most prosecutions for mass human rights violations have been held in human rights or military courts. However, there are several examples of the criminal justice system being used to prosecute human rights-related crimes. The most prominent example is the case of the murder of Munir, in which three airline officials were convicted and one senior intelligence official was acquitted after a trial marked by irregularities (see Box 2: The Assasination of Munir). The civilian court system is plagued by corruption, which makes prosecuting powerful and wealthy state actors problematic. When the actions were not part of systematic mass crimes, they are more appropriately dealt with in the criminal courts. However, in many cases it appears that if acts committed by state actors are not considered to rise to the level of the international crimes included in Law 26 of 2000 (genocide and crimes against humanity), they are not dealt with at all. This situation is exacerbated by the fact that individual human rights crimes such as torture are not included in the mandate provided by Law 26 of 2000, nor are they found in the national criminal law.[126]

122 See Komnas HAM, *Laporan tentang Kekerasan di Puncak Jaya,* [Report on violence in Puncak Jaya] (December 22, 2010), 50.

123 The victims of this incident were Kotoran Wonda and Dipes Tabuni, and it took place in the village of Gurage on March 16, 2010. The military court charged Lt. Cosmos with allowing his charges to disobey an order. He was found guilty and sentenced to seven months imprisonment. Three more soldiers were also found guilty and sentenced to five months each. "Soldiers Punished in 'Red Herring' Case," *Jakarta Post*, November 12, 2010, http://www.thejakartapost.com/news/2010/11/12/soldiers-punished-%E2%80%98red-herring%E2%80%99-case.html.

124 Banjir Ambarita, Markus Junianto Sihaloho, and Nivell Rayda, "Military Court Tries Soldiers Accused of Papua Torture," *Jakarta Globe*, January 14, 2011, http://www.thejakartaglobe.com/home/military-court-tries-soldiers-accused-of-papua-torture/416894; "Papua ruling blasted as 'miscarriage of justice'," *Jakarta Post*, January 25, 2011, http://www.thejakartapost.com/print/301629.

125 TAP MPR Nomor VII/MPR/2000 (MPR Resolution Number VII/MPR/2000).

126 Amnesty International, *Indonesia: Briefing to the UN Committee Against Torture* (April 2008).

4. Civil Trials

Due to the failure of the human rights, military, and criminal courts to hold perpetrators accountable, victims have sought other avenues for redress. While not widely utilized, some victims of serious crimes have initiated civil actions to claim reparation. Some of the barriers they find include difficulty in proving legal standing and the courts' general unwillingness to address controversial cases (see Box 2: The Assasination of Munir and Box 5: The Civil Case Concerning 1965).

Box 5: The Civil Case Concerning 1965

The Jakarta Legal Aid Foundation used the civil law system as a form of advocacy through a 2005 class action civil suit against five former presidents. The action primarily sought compensation and rehabilitation for victims of the mass killings of 1965, in which it is estimated that 500,000 to one million Indonesian civilians lost their lives. The claim also sought an order compelling the government to issue a written apology, erect monuments to the 1965 victims, include an accurate history of events in the national curriculum, and repeal discriminatory legislation. One of the goals of this action was to redress the continuing discrimination victims still face with respect to their civil and political rights, property ownership, access to employment, and political freedom. For example, the identity cards of some former political prisoners are marked with a special code, disclosing their status as "former political prisoners" to every policeman or administrative officer scrutinizing their papers. The Central Jakarta District Court rejected the claim in September 2005, citing a lack of jurisdictional authority.

5. Legal Action in Other Countries

Since victims have been unable to obtain accountability through the Indonesian legal system, a number of them have attempted to utilize judicial processes available in other countries. These efforts have included civil claims under the Alien Torts Claims Act (ATCA) in the United States, as well as serious crime investigations and indictments in Australia and Timor-Leste.

a. ATCA Cases in U.S. Courts

An old U.S. law, the ATCA of 1789, allows individuals who are not American citizens to sue those who have harmed them through violations of the "law of nations or a treaty of the United States" in U.S. federal court.[127] Originally intended to address piracy, victims of human rights abuses have increasingly filed suits under the law since the 1980s, with some notable successes. U.S. courts have interpreted this law to include acts of genocide, crimes against humanity, war crimes, torture, and "disappearances," extrajudicial executions, forced labor, and prolonged arbitrary detention.

127 28 U.S.C. § 1350.

In one case U.S. courts found an Indonesian general responsible for atrocities committed in East Timor and awarded substantial damages. The U.S. district court found Maj. Gen. Sintong Panjaitan responsible in his role as commander for crimes committed during the 1991 attack by Indonesian military personnel on a student's funeral procession at the Santa Cruz cemetery, East Timor. The court ordered Panjaitan to pay $4 million in compensatory damages and $10 million in punitive damages to the mother of Kamal Bamadhaj, a New Zealand citizen and human rights activist killed during the incident.[128]

While such civil judgments are only enforceable against individuals and their assets within the U.S., the unsuccessful parties can no longer travel to the U.S. without the judgments being enforced. The official judgments of U.S. courts also contribute to the struggle to establish and make public the truth behind mass violations.[129]

b. Exxon Mobil Case in U.S. Courts

Eleven victims of human rights abuses in Aceh brought a civil case in Washington, D.C., against Exxon Mobil. They claim that Exxon is responsible for murder, rape, and torture by members of the Indonesian military forces who were paid by and acting as company agents at the time of the violations. The suit alleges that these crimes were committed as part of a systematic program of violence committed by the TNI, which was hired to protect Exxon Mobil gas installations in Aceh. The case proceeded through years of pre-trial hearings and attempts to have it dismissed on the grounds that it would adversely affect the relationship between the U.S. and Indonesian governments. In one of the early judgments, the ATCA basis of the claim was removed, but the case continued under U.S. domestic state tort law in Washington, D.C.. In September 2009, a federal district judge granted the defendant's motion to dismiss the cases on the basis that nonresident, non-U.S. citizens did not have standing to sue in U.S. courts. At the time of writing this decision was the subject of appeal.[130]

c. Investigations by Australian Federal Police

Five international journalists were killed during the Indonesian invasion of East Timor in 1975. The TNI claimed they were caught in the crossfire, but the journalists' families maintain that they were murdered to prevent them from reporting what had taken place. In 2007 the New South Wales Coroner's Court opened an inquest into the death of one of the journalists, Brian Peters, at the request of his family. The court, which has jurisdiction to conduct formal, in-depth inquiries

128 *Todd v. Panjaitan*, No. 92-12255, 1994 WL 8271 11 (D. Mass. October 26, 1994).

129 Tom Beanal filed an ATCA class action suit in the U.S. District Court in the Eastern District of Louisiana in 1996 against the Freeport mining company for, among other things, alleged human rights violations in Papua. The case was dismissed when the court found that the plaintiff did not sufficiently plead his claims of human rights violations and genocide. The Fifth Circuit Court of Appeals upheld that decision. *Beanal v. Freeport McMoran Inc.*, No. 98-30235 (November 29, 1999), http://caselaw.findlaw.com/us-5th-circuit/1082269.html.

130 See Ross Clark, *A Matter of Complicity?: Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh*, Case Study Series (New York: ICTJ, 2008). See also Business and Human Rights Resource Centre, "Case profile: ExxonMobil Lawsuit (re Aceh)," http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ExxonMobillawsuitreAceh (last checked March 2011).

into unexplained deaths, called 66 witnesses, including two dozen Timorese. In November 2007, the deputy coroner found that the Indonesian forces executed the journalists to silence them. Two Indonesians were named: Yunus Yosfiah, now a retired general, and a soldier, Christoforus da Silva. The court also found strong circumstantial evidence that the five were killed on orders from the head of Kopassus, Maj. Gen. l Benny Murdani, via Col. Dading Kalbuadi, the group commander in Timor (both men are deceased).[131] In September 2009, the Australian federal police announced they were opening an investigation into the killings.[132]

d. Investigation by UN Investigators

Following the withdrawal of the Indonesian military from Timor in 1999, the UN became the de facto government in Timor-Leste. Its authority included administering justice and bringing those responsible for the 1999 violations to justice. The mechanism included the Serious Crimes Unit and the Special Panels for Serious Crimes of the Dili District Court, a hybrid model in which international and Timorese judges sat together on panels. The jurisdiction of this court was based on the Rome Statute of the International Criminal Court in addition to national criminal statutes like those concerning murder and rape. Most of the investigators and prosecutors involved in this process were UN professionals, led by the deputy general prosecutor for serious crimes. Between 2000 and 2005 the court convicted 84 persons, mostly for crimes against humanity. When the Serious Crimes Unit's funding and mandate was terminated on May 20, 2005, 514 cases had been investigated but had not yet had indictments issued, and 50 more has been investigated, but not completed. These outstanding cases involved murder, rape, other gender-based violence, torture, and other acts of violence.[133]

One of the indictments issued by the court, known as the "national indictment," charged nine senior Indonesian military and civilian officials with crimes against humanity. The list included Gen. Wiranto, supreme commander of the Indonesian security forces in 1999. This indictment took several years to prepare and was presented to the court in 2003 with more than 13,000 pages of supporting evidence. On May 24, 2004, an American judge appointed by the UN issued warrants for the arrest of those indicted.[134]

Despite the fact that the UN investigators and prosecutors produced the indictment under the leadership of the deputy prosecutor general for serious crimes, also a UN staff person, the UN officially and publically claimed that the indictment was the responsibility of the Timor-Leste

131 Brendan Nicholson, "Balibo Inquiry Worries Indonesia," *Sydney Morning Herald*, September 25, 2009, http://www.smh.com.au/world/balibo-inquiry-worries-indonesia-20090924-g4t2.html.

132 "AFP Launches Balibo War Crimes Probe," *ABC*, September 9, 2009, http://www.abc.net.au/news/ stories/2009/09/09/2680922.htm.

133 Caitlin Reiger and Marieke Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect*, Prosecutions Case Studies Series (New York: ICTJ, March 2006), 37.

134 See Matthew Moore, "Court Issues Warrant for Wiranto," *Sydney Morning Herald*, May 15, 2004, http://www.smh.com.au/articles/2004/05/10/1084041340705.html; "Arrest Warrant for Jakarta General," *BBC News*, May 14, 2004, news.bbc.co.uk/2/hi/asia-pacific/3699879.stm.

government.[135] Although technically the deputy prosecutor general's position reported to the East Timorese prosecutor general, she was contracted to the UN. No Timorese had a significant substantive role in producing the indictments. UN investigators and prosecutors had almost entirely done the work. The Timorese government—feeling unfairly abandoned by the UN to face Indonesia's reaction—stated that the indictments were the result of the UN's work.[136] The indictments were thus orphaned at birth, leaving UN staff and Timorese civil society demoralized and undermining international pressure to act.

The UN's attempt to distance itself from the national indictment reflects a broader issue concerning justice for the 1999 Timor crimes. Representatives of the newly independent Timor-Leste government have put forward a view that, as a small, relatively weak country surrounded by a large, powerful neighbor (Indonesia), it should not be responsible for bringing perpetrators of past atrocities to justice. The 1999 crimes were committed around a UN-sponsored ballot, and the UN itself was a victim, with staff members killed, resources destroyed, and the entire mission forced to evacuate. The crimes prior to 1999 were committed against East Timorese civilians who were residents of a region that was recognized by the UN as a "non self-governing territory." In addition, a number of states, including the United States, the United Kingdom, and Australia, had provided substantial assistance to the Indonesian military and government during this period. These factors formed the basis of the argument that pursuing accountability for the international crimes committed in Timor should be the responsibility of the international community, not just the fragile new government of Timor-Leste.[137]

In recognition of this duty, the UN Security Council has continued to include investigations of the 1999 crimes in the mandate of UN missions in Timor-Leste. However, the current mechanism, the Serious Crimes Investigations Team (SCIT) that began in 2008, only has authority to assist Timor-Leste's Office of the Prosecutor General to investigate remaining cases, with no functioning UN-supported mechanism to prosecute on the basis of these investigations. A recent study of the team found that it suffered from insufficient resources, limited cooperation with prosecutors, and lack of support from the political leadership for accountability.[138]

B. Assessment of Judicial Proceedings

A superficial view may provide an impression that in Indonesia progress is being made toward greater accountability for serious human rights violations. There has been continuing positive rhetoric by

135 See Fred Eckhard, Daily Press Briefing by the Office of the Spokesman for the Secretary-General, May 22, 2003, www.un.org/News/briefings/docs/2003/db022503.doc. Eckard said, "I have to remind you that those indictments were issued by the Office of the Prosecutor General of Timor-Leste, and not by the United Nations, which merely provides advisory assistance to the East Timorese in this matter. So, we hope that in future you'll say, 'East Timor indicts,' and not 'the United Nations indicts'."

136 Previously, the Timorese government forwarded every such indictment and arrest warrant to Interpol, which could issue a "Red Notice" providing the basis for member states to take those indicted into custody should they enter the state's territory. However, the Timor-Leste government did not forward the names in the national indictment case to Interpol.

137 See CAVR, *Chega!*, supra note 19, chap. 11, sec. 7.1.

138 ICTJ, *Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference* (New York: ICTJ, June 2010).

senior civilian and military officials, major changes to the Constitution and laws, the establishment of specialized human rights courts, and a law passed transferring responsibility for trying military perpetrators to civilian courts. However, a closer look reveals a different reality. The human rights courts and appellate decisions have acquitted all of the individuals accused of committing mass violations, there is a continued resistance to allowing military perpetrators to stand trial in civilian courts, those in positions of superior responsibility have uniformly escaped legal sanctions, excessively lenient sentences are handed down to lower rank servicemen who are often scapegoats for their commanders, and many substantiated cases of gross violations remain in legal limbo.

1. Lack of Commitment from the AGO

The old connections between prosecutors and investigators in the AGO and the security forces appear to have created a strong reluctance to prosecute members of the security forces. The AGO has failed to bring prosecutions, has issued flawed indictments, and has carried out ineffective prosecutions. Komnas HAM has repeatedly conducted credible inquiries into past cases and referred them to the AGO for prosecution. However, these past cases have not been pursued, with the AGO citing questionable administrative issues as the reason for inaction and delay in a number of cases. In those cases that were brought against military, police, and state officials, such as the human rights trials in the cases of East Timor, Tanjung Priok, and Abepura, prosecutors did not present the strongest available evidence.

2. Show Trials to Protect Those Most Responsible for Crimes

A core strategy used to protect those responsible for systematic crimes has been the use of military courts. Military prosecutors and judges have demonstrated an unwillingness to seriously target senior-ranking officers. Instead they often dragged out investigations until attention moved to other issues to avoid prosecutions, brought cases against only a small number of low-ranking officers who were frequently given relatively light sentences, with a lack of oversight on whether these sentences are actually served. In some cases, the legal sanctions were simply replaced by transfer to other duties.

3. Lack of Political Support for Accountability

There are many examples that demonstrate a lack of will by political leaders to hold powerful people accountable for their roles in serious crimes. Often this is achieved through the absence of appropriate action. The law necessary to implement a previous government decision to permit military perpetrators accused of crimes against civilians to be prosecuted in civilian courts has made little progress for over six years. No inquiry or examination at any level has been launched into the question of why there has been a failure to achieve a single sustained conviction in the human rights courts. The president has not issued the decree that would establish the ad hoc court to look into the disappearances of pro-democracy activist in 1997-98, despite Parliament's recommendation that he do so. No action has been taken to solve the legal dispute between Komnas HAM and the AGO in relation to whether the AGO must act on the findings of Komnas HAM to investigate and prosecute those responsible for human rights abuses before the passage of Law 26 of 2000.

4. Weak and Corrupt Judiciary

The legacy of 30 years of dictatorship, in which the courts were used to protect the interests of the ruling elite rather than as a tool to achieve justice, has produced a broken system. Following a visit to examine the court system in Indonesia in 2002, the then UN Special Rapporteur on the Independence of the Judges and Lawyers stated that the Indonesian judicial system was worse than he had expected.[139]

Komnas HAM Chairman Ifdhal Kasim points out that the courts themselves would need to answer to any complete reckoning of past human rights violations. "Our courts made a big contribution to justifying detentions at that time . . . Courts also carried out judicial violence in that form, innocent people were found guilty, and it became a corrupt institution. Now if we don't open this up, it will be difficult to reform these institutions."[140]

The rampant corruption at every level of the judicial process, coupled with the vast power and financial disparities between the perpetrators and victims of mass abuses, may also help explain the lack of investigations into many cases, the dearth of indictments of high-level officials, the low conviction rates, and the weak sentences for gross violations of human rights. While direct evidence of such corruption is hard to obtain due to the lack of transparency, ineffective record-keeping etc., indications of corruption in the various human rights judicial proceedings are overwhelming.[141]

In particular, the Supreme Court's consistent pattern of overturning convictions of military and civilian officials for human rights crimes merits an intense investigation.

A lack of understanding of the complexities of crimes such as crimes against humanity and genocide contributed to these results. However, the essential problem appears to be a lack of will, which will not be overcome until mechanisms for accountability of the judiciary itself are strengthened, requiring greater transparency in decisions and greater oversight of the judiciary and its officers.[142]

5. Intimidation and Poor Witness Protection

Witnesses in human rights cases have consistently reported both direct and indirect intimidation, in the form of death threats through phone calls and cell phone text messages.

The recent establishment of the Witness and Victim Protection Agency (LPSK) provides only a sliver of hope, as it has been given an unclear, ineffective mandate and limited resources. Once

139 Berni K. Moestafa, "RI Judiciary Worse than First Thought: UN rapporteur," *Jakarta Post*, July 22, 2002. Available at: http://www.rghr.net/mainfile.php/0429/323/; *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, submitted in accordance with UN Commission on Human Rights Resolution 2002/43, *Report on Mission to Indonesia 15-24 July 2002*, UN Doc. E/CN.4/2003/65/Add.2 (January 13, 2003).

140 ICTJ interview with Ifdhal Kasim, supra note 8.

141 ICTJ interview with Haris Azhar, coordinator of KontraS, October 4, 2010.

142 More effective use of accountability mechanisms such as the Judicial Commission and the Corruption Eradication Commission would help ensure that the judicial proceedings are transparent and that judicial officers are operating appropriately.

again, this significant but insufficient action hides the reality, which is a lack of real institutional support to protect witnesses and victims.

Defamation charges have also been used to intimidate victims and potential witnesses. Following the acquittal of Muchdi for the murder of Munir, the founder of civil society organization KontraS, the group's coordinator, Usman Hamid, was charged with criminal defamation for statements made outside the courthouse linking Muchdi to Munir's murder. Indonesia's criminal defamation laws continues to be used as a tool of oppression in Indonesia, scaring people into silence for fear that they will be imprisoned for speaking the truth.[143] Suggestions that it should be a civil charge instead are met with little official support.

6. Lack of Transparency

While trials are generally open to the public, there are usually no written legal judgments made available to the public. As a result, the only way to monitor the actions of judges and attorneys is to attend every session of a trial. Furthermore, judges are not required to provide reasoned written explanations to support their decisions. Thus their legal reasoning (or lack thereof) is generally not available to the public or to any potential appellate proceeding that may want to review their decisions to make sure they are acting in full accordance with the law.

Military trials have suffered from an even greater lack of transparency. Their proceedings are not always open to public scrutiny, and their decisions are not open to review by civilian courts.

This lack of transparency in the judiciary has provided judicial officers a shield. It has impeded attempts to monitor their activities and decisions, thus facilitating a culture of corruption and intimidation by those with the power and money to purchase justice and avoid accountability.

7. Convictions Not Linked to Reparations

Another indication that human rights trials are intended to provide a veneer of justice without holding perpetrators accountable is that even after the few successful convictions in lower courts, none of the trials provided victims with reparations, despite being able to do so.[144] In the human rights court trials, providing reparations to victims has a strong basis in Indonesian law.[145] Instead the question of reparations was all but left out of the trial proceedings altogether.

8. Absence of Trials for Sexual Violations

Even though serious cases of sexual violence on a massive scale have been reported, there has been a striking absence of indictments for sexual crimes. One reason for this is that the human

143 Though many countries have criminal defamation laws, criminal penalties are disproportionate for reputational harm. This is especially the case in Indonesia where truth is not a defense as long as an official finds your statement insulting. See Human Rights Watch, *Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation in Indonesia* (May 2010).

144 See supra Section IV(A)(1)(b)(ii) discussing the Human Rights Court for Tanjung Priok's ruling that reparations should be granted, which the Supreme Court subsequently overturned.

145 See infra Section V(A)(1) on legislative mechanisms supporting reparations in Indonesia.

rights courts are bound to apply the Indonesian criminal procedural code (KUHAP), which requires two witnesses to corroborate the allegation made by a rape victim, as well as a medical examination ordered by police within 24 hours of the crime to satisfy a guilty verdict.[146] As it stands, not a single case of rape committed during the 1965 atrocities, in East Timor, or in the many other conflict situations has been tried in a human rights court under Law 26 of 2000.[147]

146 Presentation by Asni Damanik, senior lawyer with LBH APIK, a Jakarta-based women's legal aid NGO, at Women's Commission Workshop on Gender-based Crimes against Humanity, Jakarta, August 22, 2005.

147 The prosecutors in the East Timor trials did not submit evidence of sexual violence despite the fact that Komnas HAM documented a number of rape cases that had been submitted, in accordance with the procedures outlined in Law 20/2000.

V. Reparations

A. Overview of Reparations Mechanisms and Processes

With other transitional justice mechanisms focusing on perpetrators and their abuses, reparations focus on victims' needs. Reparations for gross violations of human rights form a central pillar of international and Indonesian law.[148] Under the UN basic principles and guidelines on the subject, reparations take the following forms:

- *Restitution* should restore the victim to the original situation before the gross violations of human rights occurred, such as through restoration of one's liberty, citizenship, employment, or property.
- *Compensation* should be proportional to the gravity of the violation, in order to account for economic losses due to physical or mental harm, lost employment or educational opportunities.
- *Rehabilitation* should include provision of medical, psychological, legal, and social services.
- *Satisfaction* should include cessation of continuing violations, verification and full and public disclosure of the truth; a search for the whereabouts of the disappeared or the remains of those killed; an official declaration or a judicial decision restoring the dignity, reputation, and rights of the victim; a public apology; judicial and administrative sanctions against people liable for the violations; and commemorations and tributes to the victims.
- *Guarantees of nonrepetition* should include effective civilian control of security forces; strengthening the independence of the judiciary; human rights education for law enforcement officials and security forces; mechanisms for preventing and monitoring conflicts; and reviewing and reforming laws.

148 See *UN Basic Principles on the Right to Remedy and Reparation*, supra note 4, para. 15, which says, "Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim."

As Indonesia embraces international consensus that victims of human rights abuse are entitled to some forms of reparations, the government has integrated some forms of reparations into legislation, court proceedings, and even peace agreements. However, the lack of convictions for or official acknowledgement of gross human rights violations continue to be major stumbling blocks to genuine reparations.[149]

1. Legislation

The wave of human rights legislation that followed the fall of Soeharto provided a legal foundation for reparations programs.

Law 39 of 1999 on Human Rights provided an initial, if indirect, basis, stipulating that individuals are able to exercise "all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law."[150] Combined with language in the law that makes international treaties ratified by Indonesia binding under national law, this provision provides a legal argument that reparations are mandated for cases of gross human rights violations.

Law 26 of 2000 on the Human Rights Courts more directly provides that "every victim of human rights and/or his/her beneficiaries may receive compensation, restitution, and rehabilitation" and the human rights court may grant such measures in its rulings.[151] To implement this provision, the government passed Regulation 3 of 2002 on the Compensation, Restitution, and Rehabilitation of Victims of Human Rights Abuses.[152] However, under this law victims must wait for the perpetrator to be found guilty and for that verdict to be upheld on all available appeals. This might take years to achieve and, as noted in the section on judicial proceedings, is in practice a serious barrier to reparations.

Law 13 of 2006 on Witness and Victim Protection provided for a new statutory commission to oversee the protection of these groups and a new mechanism for victims to claim compensation. The law stipulates that victims of gross human rights violations have "(a) the right to compensation in cases of gross human rights violations, (b) the right to restitution or compensation for loss by the perpetrator of the crime," and may receive social assistance and medical care.[153] Regulation 44 of 2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims allows victims and their families to request compensation

149 To exacerbate the problems, most victims in Indonesia have continued to suffer systematic discrimination and neglect, leading to poverty and marginalization.

150 Law 39/1999, art. 7.

151 Law 26/2000, art. 35.

152 Victims can also receive compensation for crimes under the Indonesian civil procedure code, in which the state can be held responsible for the conduct of its employees. Under Law 14/1970, victims can claim compensation for unlawful arrest, detention, or prosecution. However, the amounts are relatively small. See REDRESS, *Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries, Indonesia Country Report* (May 2003), 19, http://www.redress.org/smartweb/asia/indonesia.

153 Law 13/2006, art. 7. Under art. 6, the law also provides the right to medical care and psychosocial rehabilitation support for "victims of violent criminal acts and gross human rights violations."

through the LPSK. Although judges from a human rights court still have to approve these decisions, victims no longer have to wait for a finalized court decision.

The new agency began in January 2009 and has begun to develop its operating procedures. However, members believe that the legal framework still requires the establishment of a human rights court before victims receive compensation. Speaking at a September 2010 workshop, the LPSK chair said "As long as the (human rights) court does not exist, it will be difficult to process (compensation) because this is how the law has been written."[154] This narrow reading of the law is regrettable, considering the delays in the courts, the problems with securing convictions, and the urgent needs of victims. The agency has provided medical assistance to a small number of victims with a referral letter from Komnas HAM, but the Chair stated that handling a large number of victims would "meet with resistance."[155] The agency could instead explore the possibility of administrative reparations that are independent of judicial proceedings. However since LPSK is already encountering difficulties due to limited funding, lack of cooperation with other institutions, and allegations of corruption, the outlook for progress is not good.

2. Reparations through the Courts

a. Criminal Cases

The Tanjung Priok case, in which soldiers were prosecuted for opening fire on protesters in Jakarta in 1984, was the only instance of an ad hoc human rights court considering reparations. The human rights court ordered the state to pay 1.15 billion rupiah (approximately $110,000) to family members of 13 victims, citing the need to consider victims who have not accepted an out of court settlement paid by the perpetrator. However, when the appeals court overturned the initial conviction, the initial court order to pay compensation was never implemented. In February 2007, the victims went to the Central Jakarta court to demand the compensation. In rejecting their requests, the judge said the decision on compensation was cancelled when the Supreme Court rejected the appeal on February 28, 2006.[156]

b. Civil Cases

Although the Indonesian civil procedure code provides for compensation for crimes, there is minimal precedent for successful compensation claims. An exception is the 2007 decision by a civil court concerning Munir's assassination. The Central Jakarta District Court found Garuda Airlines negligent in Munir's death and ordered the company, managing director, and pilot to pay $70,000 to his widow, Suciwati. Judges drew on national and international aviation law, including the Warsaw

154 Statement made by Abdul Haris Semendawai, chair of Witness and Victim Protection Agency (LPSK), at workshop on reparations, Jakarta, September 2, 2010. According to the law, restitution from the perpetrator would require a conviction, but compensation from the state would only require a decision for such from the human rights court.

155 ICTJ interview with Abdul Haris Semendawai, chair of LPSK, December 6, 2010

156 Kartika Candra "Pengadilan Tolak Kompensasi Korban Tragedi Priok" [Court denies compensation to victims of the Priok tragedy], *TEMPO Interaktif*, February 28, 2007, http://www.tempointeraktif.com/hg/nasional/2007/02/28/brk,20070228-94446,id.html.

Convention and Indonesia's Law Number 15 of 1992.[157] The decision has since been upheld by the Supreme Court raising its value to more than $380,000 (see Box 2: The Assasination of Munir).

3. Compensating Victims under the Aceh Peace Process

The Helsinki MoU ended decades of conflict between the Indonesian government and the separatist Free Aceh Movement. Brokered through international mediation in August 2005, the agreement also provided a foundation for compensation payments to those affected by the conflict. The MoU provided for "economic facilitation" for affected parties, defined as former combatants, political prisoners, and "all civilians who suffered a demonstrable loss." Compensation was to include suitable farmland, employment, or social security if they were unable to work. The Aceh Reintegration Agency (BRA) was then established to implement an extensive reintegration program.

After calling for livelihood proposals from former combatants and victims, BRA received approximately 48,500 applications. However, because BRA felt that it had neither the capacity nor the resources to handle such a large number of projects, the agency abandoned the program. BRA then integrated its program into the World Bank's national subdistrict development program (KDP). The program used village facilitators to help communities identify development projects by groups, or the village as a whole, that would be funded through the local government. During the first phase of the program, which ended in June 2007, BRA disbursed $26.5 million to 1,724 villages, with grants ranging from 60 million to 170 million rupiahs. However, victims were never explicitly consulted in determining these projects. As a result, few—if any—of these projects specifically addressed victim-specific needs or provided any kind of acknowledgement of their suffering. The program was discontinued in 2007.

Another form of reparations predated the MoU, but was continued under BRA. Diyat is traditional Islamic compensation for family members of people who are killed. Under this scheme initiated by the governor of Aceh in 2002, the family of an individual killed or disappeared due to the conflict could receive a payment of between $200 and $300 annually for a limited number of years. The Acehnese government transferred the funds directly to recipients' bank accounts, reportedly reaching 20,000 victims.[158]

The assistance or diyat that Acehnese victims received through BRA was the first post-conflict administrative reparations scheme in Indonesia. This commendable achievement was due to the unique situation created by the international response to the tsunami, the internationally brokered Aceh peace agreement, as well as goodwill from the central government to achieve a sustainable peace. At the same time, inserting reparations for victims within a reintegration program for former combatants has proven problematic. Without acknowledgment, many victims

157 Kartika Candra, "Pengadilan Kabulkan Gugatan Suciwati" [Court grants Suciwati's suit], *TEMPO Interaktif*, May 3, 2007, http://www.tempointeraktif.com/hg/nasional/2007/05/03/brk,20070503-99348,id.html.

158 Badan Reintegrasi-Damai Aceh (BRA), *Fakta Seputar Reintegrasi (2)* [Facts about reintegration (2)] (June 22, 2007), http://bra-aceh.org/details_news.php?bra=new&id=290.

felt that this was a form of assistance that was not related to the state "repairing" the violations they experienced.[159]

B. Assessment of Reparations

Indonesia's laws and programs for reparations have raised expectations without significantly delivering on victims' most fundamental right to redress. As in other areas of transitional justice, the lack of political will is compounded by the absence of a clear, coherent framework that is consistent with international standards. In fact, the current legislative framework provides little practical guidance on how to claim reparations. As a result, only a small fraction of human rights victims have been able to claim and access reparations.

1. Failure to Reflect International Standards

While a positive initiative, Indonesia's reparations legislation unfortunately is inconsistent with international standards and lacks a victim focus.

Conflating Terms and Obscuring Liability. Under Regulation 3 of 2002 on the Compensation, Restitution, and Rehabilitation of Victims of Gross Human Violations , primary liability (mistakenly termed "restitution") rests with the individual perpetrator, while secondary liability (mistakenly termed as "compensation") rests with the state if the perpetrator refuses or cannot pay the compensation.[160] In contrast, under international law, the state is responsible for reparations arising from the state's actions or omissions. States have a duty to respect the rights of their citizens by not violating them and to protect their peoples' rights by preventing others from violating them.[161] This duty is binding on a new government even if a previous regime was responsible for the violations. By shifting primary liability to individual perpetrators, whether state actors or third parties, the Indonesian regulation contravenes these international principles and deflects attention from the systematic state policies behind many of the abuses of the Soeharto era and the transition period.[162]

159 See Ross Clark, Galuh Wandita, and Samsidar, *Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective*, Occasional Paper Series, (New York: ICTJ, January 2008).

160 Under Regulation 3/2002 on Compensation, Restitution, and Rehabilitation of Victims of Human Rights Abuses, chap. I(1)(5), restitution is "redress which is given to the victim or his family by the actor or a third party, and comprises the return of property, the payment of redress for loss or suffering, or compensating costs for specific actions." The state has second-tier liability and is required to pay compensation, defined as "redress that is given by the State because the actor is not able to give the whole redress that is his responsibility." Cited in REDRESS, *Reparation for Torture*, supra note 152, 20. Revised Regulation 44/2008 on Compensation, Restitution, and Assistance to Victims and Witnesses reflects the same problem.

161 For an overview of the right to remedy and reparation, including the relevant treaty articles and basis under customary international law see *UN Basic Principles on the Right to Remedy and Reparation*, supra note 4. See also the International Covenant on Civil and Political Rights, art. 2(3), and the Convention Against Torwture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, art. 14(1), which clearly affirm the state's responsibility to provide redress and reparations to victims.

162 There is growing acceptance of courts awarding reparations to victims from convicted people under international law. See the Rome Statute, art. 75, http://untreaty.un.org/cod/icc/statute/romefra.htm.

Lack of Victim Focus. Reparations programs under the Aceh peace agreement also fell short of international norms because they did not provide targeted support for those affected by the conflict as victims. Peace negotiations that were driven by the two former warring parties marginalized the conflict's victims from the beginning, as attempts to provide reparations were subsumed within broader reintegration initiatives focused on former combatants. The Helsinki MoU used the broad term "affected civilians," a term that could include all of Aceh's almost four million people.[163] The result was that BRA's program provided collective reparations to communities and their leaders without reference to or consultation with victims. In most cases, community members successfully argued that the money had to be used for the benefit of all, not just victims. This practice contradicts international norms, which state that reparations are in response to specific harm suffered.[164] Collective reparations given without such a direct reference, such as those BRA gave in Aceh, were therefore more like reconstruction or development assistance.[165] In another significant omission, female victims of sexual violence did not fit BRA's definition of "affected civilians."[166]

2. Difficulty Making Claims

There are multiple obstacles to accessing reparations through judicial proceedings. As noted above, a defendant generally must first be found guilty for committing a human rights violation. Then, a victim or their family must rely on the prosecutor to make a claim for reparations on their behalf. Given the political interference, intimidation, and corruption in the AGO, combined with the absence of detailed procedures or precedents on how to execute a claim, prosecutors rarely take this step. The link between reparations and a final guilty verdict—an extremely rare outcome in for these cases in Indonesian courts—presents a further hurdle in victims' efforts to obtain reparations.

LPSK has not yet handled a request for compensation for a gross human rights violation, primarily because of the lack of judicial processes in that category. However, it has handled claims for restitution concerning other cases, under Regulation 44 of 2008. These claims are submitted during a criminal trial so the judge may consider it at the time of verdict and sentence. According to the chairman of LPSK, this process has worked well even through the appeals process.[167] In relation to cases that occurred before Law 26 of 2000, he said, "For the LPSK it is already clear

163 The BRA established 10 criteria to define "affected civilians": a widow, widower, or child of someone who died; those who, because of the conflict, had a close family member die; people who had a close family member disappear; those whose homes were burnt or destroyed; those whose property was damaged; people who were displaced; those who suffered from physical defects; those who suffered mental illness; those who suffered physical illness; and those whose livelihoods were negatively affected by the conflict. BRA presentation, December 6, 2006.

164 *UN Basic Principles on the Right to Remedy and Reparation*, supra note 4, VII.

165 For a brief discussion on the differentiation between reconstruction and reparations see Naomi Roht-Arriaza and Katharine Orlovsky, "A Complementary Relationship: Reparations and Development," in *Transitional Justice and Development: Making Connections*, eds. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009), 172.

166 See supra note 163.

167 ICTJ interview with Abdul Haris, supra note 155.

there are victims of gross human rights violations who have rights that must be realized under international and national law. But those rights heavily depend on whether the legal process moves ahead or not. If the there is no legal process, the rights (to reparations) are not realized, and for that reason we push strongly for the relevant bodies to handle human rights cases and fulfill their responsibility."[168]

Outside the courts, the provision of diyat to widows of the conflict in Aceh also faces administrative hurdles. To receive diyat, victims are almost always required to get the approval of the local security forces and government officials, requiring applicants to trust and engage with institutions (and sometimes individuals) that may have been complicit in the death of family members.[169] The application process and amount received under diyat also lack consistency and transparency, varying depending on location and circumstance.

168 Ibid.

169 See UN Development Program, *Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh* (2007), 37, 59.

Jakarta, Indonesia. A child carrying a cart looking for anything salvageable during the riots in Dili, which followed the announcement of the referendum results. **KOMPAS/Eddy Hasby**

VI. Security System Reform

A. Overview of Justice-sensitive SSR

During armed conflict or authoritarian regimes, the military, police, and other security institutions, including nonstate security actors, are often responsible for serious and systematic human rights abuses. Reforming these abusive institutions is essential to preventing the violations from recurring, strengthening trust in security sector institutions, and reinforcing the rule of law.

Justice-sensitive SSR aims to build institutional integrity, promote legitimacy, and empower civilians. Such an approach is integrated with other post-conflict or post-authoritarian justice initiatives to reinforce a holistic transitional justice strategy to strengthen peace and security. The key components of a justice-sensitive SSR include: increased civilian oversight of security sector institutions; vetting security personnel responsible for past abuses; providing accountability for past abuses; and building capacity through training and monitoring human rights issues.

1. Historical Context: The Security Sector in the Soeharto Era

The Indonesian armed forces (then known as ABRI) were the backbone of the control mechanisms used under Soeharto's dictatorship. ABRI, which included the police and intelligence agencies, enjoyed broad powers to maintain internal and external security. ABRI's territorial structure required a physical presence in all provinces, districts, subdistricts, and villages across the country. With such an overwhelming presence and power, ABRI played a role as both a defense/security force and a social/political force. Under this doctrine of dwifungsi or dual function, ABRI officers held key public offices at the national, regional, and local levels, and the military held influence in almost all aspects of daily life.

The Soeharto regime used the military, police, and intelligence services to deal with dissent swiftly and violently. Throughout the many Soeharto-era conflicts and other incidents of mass violence, civilians were regularly subjected to severe, systematic abuses from official and unofficial security sector personnel.[170]

170 Unofficial security sector personnel included militias that the government supported, as well as members of armed resistance groups.

2. SSR Initiatives

a. The New Paradigm

After the fall of Soeharto's New Order, there was support for sweeping SSR as a central pillar of Indonesia's democratic transition. Presidents Habibie and Abdurrahman Wahid, as well as many others inside the military and police, backed this. Reformasi included initial progress toward reforming the security sector through policies to end dwifungsi and increase civilian control of the military.

The first step toward SSR was ABRI's declaration of its New Paradigm concept in the second half of 1998.[171] This separated the police from the military (the latter became known as the TNI), and took steps to fundamentally change the military's involvement in politics and to establish greater power sharing with civilian authorities. Concrete actions included eliminating social-political posts for the military, reducing the number of military representatives in the national and local Parliaments, removing ABRI from day-to-day politics, severing ties with political parties, and creating a policy of impartiality in elections.[172] While some resisted these new policies, many others felt that these internally proposed reforms did not go far enough.[173]

b. President Wahid's Reforms

Reforms continued under President Wahid, who took office in October 1999. Wahid took steps to increase civilian oversight of the military and help end the military's culture of impunity. He appointed the first civilian minister of defense and established the Ad Hoc Human Rights Court for East Timor. After Komnas HAM's report on the 1999 violence in East Timor included Gen. Wiranto on a list of people to be investigated, Wahid suspended him, and the general eventually resigned.

However, as President Wahid continued to support positive change, reformist officers met increasing resistance from conservatives in the military, particularly in response to the gradual liquidation of the military's territorial structure, which had stationed soldiers in communities across the country rather than in barracks during peacetime. This structure had been widely criticized; it allowed the military to control large-scale illegal and legal businesses, particularly involving natural resources, in many areas. The territorial structure was also seen as providing the context for a range of serious problems—from widespread sexual violations committed against local women to forced relocation of communities from their traditional land for business

171 Muhammad Najib Azca, *Security Sector Reform, Democratic Transition, and Social Violence: The Case of Ambon, Indonesia*, Berghof Research Center for Constructive Conflict Management (2004), 3, http://www.berghof-handbook.net/uploads/download/dialogue2_azca.pdf.

172 Ibid., 3-4; Bonn International Center for Conversion (BICC), *Security Sector Reform in Indonesia* (2006), http://www.bicc.de/ssr_gtz/pdf/indonesia.pdf.

173 Muhammad Najib Azca, *Security Sector Reform, Democratic Transition, and Social Violence*, supra note 171, 4-5.

reasons.[174] These tensions between military reformists and conservatives were a significant factor in Wahid's ultimate political demise and impeachment.

c. Slowing Reforms: Megawati and Beyond

Megawati replaced Wahid as president in July 2001, and she halted the initial post-Soeharto momentum of SSR. Since then, justice-sensitive SSR initiatives have proceeded at a significantly slower pace. The reforms implemented have generally been driven and controlled internally by the security institutions themselves, ignoring the past (and at times the present) and concentrating on the future. As a result, there have been few efforts to prosecute those responsible for past (or current) abuses, and there have been no attempts to vet past perpetrators and remove them from the security forces. However, there has been some progress toward reforming the TNI and police through new policies, a degree of increased internal accountability, and training that focuses on respecting and protecting human rights.

B. Assessment of Justice-sensitive SSR

1. The Challenge of Civilian Oversight

The essential task of bringing the security sector under civilian oversight and control has several components: 1) a constitutional and legal framework for democratic civilian control; 2) civilian oversight through parliament; 3) the placement of qualified civilian professionals in the defense and interior security ministries; and 4) independent civil society monitoring.[175]

a. Constitutional and Legal Reforms

Following the fall of Soeharto, the government and security institutions adopted several policies and laws to promote SSR. These measures included amendments to the 1945 Indonesian Constitution, parliamentary decrees, and internal police and military policies. The amendments provided greater human rights protections and explicitly codified obligations for the police and military to respect and protect the rights of Indonesians.

To implement these protections, as well as to realize the New Paradigm policies of 1998, the

174 See Human Rights Watch, *Unkept Promise: Failure to End Military Business Activity in Indonesia* (2010), 2-3; Human Rights Watch, *Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities* (2006), 9-15. See also Komnas Perempuan, *Pemantauan Pelanggaran Hak Asasi Perempuan Selama Konflik Bersenjat di Poso Periode 1998-2005* [Monitoring report on violations of women's human rights in the armed conflict in Poso 1998-2005] (November 2007); Komnas Perempuan, *Perempuan Aceh Meniti Keadilan* [Aceh women bridging justice] (January 2007), on file with ICTJ; Komnas Perempuan, *Stop Sudah!*, supra note 40.

175 See Anak Agung Banyu Perwita, "Security Sector Reform in Indonesia: The Case of Indonesia's Defence White Paper 2003," *Journal of Security Sector Management* 2, no. 4 (December 2004), 2-4, http://www.ssronline.org/jofssm/issues/jofssm_0204_perwita.pdf?CFID=1467984&CFTOKEN=85101092. Perwita does not discuss independent civil society monitoring of security institutions. But in transitional contexts where people have little faith in government and security sector institutions, civil society organizations often play a key role as the most trusted source of oversight and information.

Indonesian Parliament passed MPR decrees VI and VII of 2000. These clarified the separate responsibilities of the TNI to defend the country and the police to maintain public security and order. They noted that both institutions were responsible for respecting the rule of law and human rights. The MPR decrees also provided a scheme to phase the military and police out of politics and put them under greater civilian control; seats guaranteed for the TNI and police in the DPR and the MPR were to be phased out by 2004 and 2009 respectively.[176]

Subsequent laws further supported SSR for the police and military. Law 2 of 2002 on the Indonesian police promoted greater professionalism and accountability for the police force. However, it also weakened civilian oversight by excluding an independent external oversight mechanism and placing the chief of police directly under the president rather than within a ministry.[177] The police worked together with national and international civil society organizations to develop policies and guidelines to help achieve the law's objectives, such as a community policing strategy to work in greater partnership with local communities to maintain security and order. The police also adopted strategies to improve services for women and children by increasing the number of female police officers and establishing a desk in every office to provide women and children with legal support and counseling.[178]

These policies and guidelines have achieved varying degrees of success. Community policing remains in its early stages and has had mixed results across the country. Women remain severely underrepresented in the police force and are often relegated to administrative duties. Moreover the special woman's desk more often than not does not exist in reality. Gender sensitivity and mainstreaming remains a significant unresolved issue.

The government also created legislation to spur military reform. Law 34 of 2004 on the Indonesia Army (TNI Law) sought to improve military professionalism, increase civilian control over the military, eliminate the military's automatic votes in Parliament, and eliminate military businesses by October 2009. However, this law also regressed military reform in several areas. It reintegrated the military into politics by making the TNI commander a political official with the effective rank of a cabinet member and allowing military officers to hold civilian bureaucratic posts. The law maintained the military's territorial command structure, gave the TNI jurisdiction over certain domestic threats that included communal conflicts, and confirmed the jurisdiction of military courts to try criminal cases involving military soldiers until a new implementing law is passed.[179]

176 ICG, *Indonesia: Next Steps in Military Reform* (October 2001), 2-3. The timeline changed in 2002 in a decision to remove both military and police seats from Parliament by 2004.

177 The law creates a National Police Commission (Kompolnas) as an external mechanism to receive complaints and that reports to the president, but gives it no power to investigate police activities or behavior. Presidential Regulation 17/2005, art. 4.

178 Institute for Defense Security and Peace Studies (IDSPS) and International Center for Human Rights and Democratic Development, *Civil Society and Security Sector Reform in Indonesia: 1998-2006* (2008), 13-14. As of June 2009 the police were still consulting with civil society organizations about official guidelines on human rights.

179 The TNI law gives somewhat confusing direction in relation to this final issue, noting that the military should respect national law enforcement mechanisms but also noting that military courts would have jurisdiction to try criminal cases involving military soldiers until there is a new law. To date, no such law has been passed.

The government has also passed laws that allow the police, TNI, and BIN to override human rights protections in the name of fighting terrorism.[180] Other important components of SSR have yet to be adequately addressed by legislation, such as reform of the Indonesian intelligence services, military assistance to civilian authorities, and a more holistic strategy on national security.

b. Parliamentary Oversight

Since 1998 Parliament has gained additional controls over security sector institutions. The legislative body has the power to authorize security sector budgets, and parliamentary committees now oversee various security sector initiatives. Although Commission I, in charge of foreign affairs, defense, and security issues, has increased its expertise, it has been criticized for not appropriately addressing bills on internal security that appear to violate democratic or human rights principles.[181]

Moreover, since the government covers only portions of the security institutions' budgets (with the remainder raised privately by sanctioned private businesses), Parliament's financial leverage, which is perhaps its most significant instrument of control, has been greatly diminished. Although the 2004 TNI law set an October 2009 deadline for military divestment of all businesses, legal or illegal, the military continues to operate businesses through a range of foundations and cooperatives with retired and active-duty officers in leadership positions.[182]

In addition, or perhaps as an alternative to direct parliamentary control, the government has also set up several independent commissions to look into various incidents of state violence. Despite their efforts to investigate violations of human rights, these commissions have often lacked ample expertise and political leverage. As a result, there have been only a few instances in which the government has taken legal action against members of the security sector.

c. Executive Oversight

Indonesian law technically gives the Ministry of Defense oversight of the TNI. Yet it is widely believed that the TNI continues to direct the department's policy.[183] In February 2009, then-presidential advisor and retired three-star Army Gen. Agus Widjojo declared that the military had

180 IDSPS, *The Effectiveness of Civil Society Organization Advocacy Strategies in Security Sector Reform in Indonesia 1998-2006* (2008), 18-19.

181 BICC, *Security Sector Reform in Indonesia*, supra note 172, 9.

182 There has been some decline in the importance of these businesses. The military sold off the more valuable ones, while the more inefficient, unprofitable ones—perhaps the majority—collapsed into bankruptcy.

183 IDSPS, *Civil Society and Security Sector Reform*, supra note 178, 21. It is believed that TNI members wrote the Department of Defense 2003 White Paper, which attempted to slow ongoing TNI reform. See Perwita, "Security Sector Reform in Indonesia," supra note 175, 5; BICC, *Security Sector Reform in Indonesia*, supra note, 172, 4.

still not shifted its control to the Ministry of Defense, as required by law, but remained under the president's jurisdiction.[184]

Similarly the police and BIN lack civilian oversight at the ministry level. Unlike the TNI, they do not fall under the Ministry of Defense. Instead, the chief of police (Kapolri) and the head of BIN report directly to the president.

There still appears a widespread belief in the TNI, police, and BIN that civilians do not adequately understand military, security, and intelligence issues. As a result, SSR is primarily controlled and shaped by security institutions' own reform agendas. Even though security forces no longer hold assigned seats in the legislature, they retain significant influence over making laws. The executive and legislative branches, and many political parties, rely heavily on the support of security sector personnel for political support and influence. Moreover, the continued recruitment of retired TNI, police, and intelligence officials into major political parties provides the security sector institutions with considerable political influence. In the 2009 presidential election all three presidential and vice presidential teams had at least one former high-ranking TNI member.

d. Civil Society Monitoring

Just as the TNI, police, and intelligence have resisted government oversight, they have also opposed monitoring by civil society. This has not stopped many groups from attempting to monitor security institutions from a distance. The lack of cooperation and access from security institutions, however, has meant that civilian monitoring is based on incomplete data. The majority of civil society monitoring and reporting has highlighted and focused on abuses and the lack of reform. Given the lack of alternative civilian oversight from within the government, this has played an integral role in the promotion of SSR. However, the focus on highlighting negative reporting has also created a somewhat confrontational relationship with security sector institutions, which have threatened and intimidated people working for civil society organizations. The office of KontraS was raided by "unidentified security forces" in 2000 and 2003, and its presence in Aceh was banned from 2003 to 2005. Moreover, internal TNI presentations continue to refer to human rights defenders as communists and enemies of the state.[185] Such antagonistic attitudes have reinforced the cycle of lack of access and negative reporting.

On a more positive note, in recent years the relationship between civil society and the police appears to have been improving. Discussions with the organizations' staff have highlighted a change in attitude that police have toward civil society groups engaged in monitoring and reporting on human rights and security sector abuse. Police have begun engaging and consulting with civil society personnel in relation to their reform agenda. At very least this is a sign that the police are starting to acknowledge that these groups could be integral partners in building

184 "TNI Reform Remains Slow Under SBY Government," *Jakarta Post*, February 27, 2009, http://www.thejakartapost.com/news/2009/02/27/tni-reform-remains-slow-under-sby-government.html.

185 See leaked military and police presentations, on file with KontraS.

trust with local communities. Such attitudinal changes appear to be only in the initial stages and should not be overstated, but they are being noticed.

With access improving there has also been increased attention on teaching civil society the skills needed to monitor the police. Most notably international organizations such as Amnesty International, the International Organization for Migration, and the Democratic Control of Armed Forces have been working with national organizations interested in SSR, particularly the Institute for Defense Security and Peace Studies (IDSPS), ProPatria, and KontraS, to conduct training on best practices in police monitoring.

2. Lack of Vetting

Put simply, there has been no programmatic vetting of security sector personnel since the fall of Soeharto. Vetting, as it is related to justice-sensitive SSR, is the process of identifying those responsible for human rights abuses and either removing them or preventing them from getting positions of public authority. No such process is under way in Indonesia. As a result, the military, police, and intelligence services continue to employ a significant number of personnel implicated in severe human rights abuses.

Even in the few cases in which security sector personnel have been officially implicated in violent human rights abuses, they have not been removed from security sector institutions; instead they were transferred within security institutions.[186]

This lack of vetting continues to be a significant impediment to SSR in Indonesia. The fact that people implicated in serious violations continue to have senior positions within the security forces reenforces the lack of trust and the fear that were prominent features of the relationship between civilians and security forces during the New Order regime.

This has been particularly problematic for the police in post-conflict settings such as Aceh. During the 30 years of civil war, the police were seen as an extension of the Indonesian military, fighting the Acehnese separatist movement and the civilians that supported it. During this time police officers took part in significant, violent abuses against civilians. After the Helsinki peace agreement was signed in 2005, marking an official end to hostilities, the police were asked to transform from being party to the conflict to being an internal security force that would protect and serve the population, including the demobilized forces with whom they had previously been fighting. The lack of any effective form of vetting has seriously undermined this goal. Since many of the police responsible for past abuses against civilians are now patrolling the same districts and villages in which the violations occurred, the ability to build trust with the local community necessary to provide safety and security has been severely impeded. This has not only affected Aceh. It has played itself out to varying degrees across Indonesia, especially in areas where conflict

186 See supra Box 3: Disappearance of Pro-democracy Activists ; supra Box 2: The Asssasination of Munir.

has not ended, such as West Papua, with the police, military (who play a major role in internal security issues), and intelligence forces continuing to garner low levels of public trust.

The lack of vetting since the Soeharto regime's demise has been even more visible in the political sphere. Two vice presidential nominees in the 2009 elections, Wiranto and Prabowo Subianto, are both men who have been implicated in serious human rights violations. The UN-sponsored Serious Crimes Unit in East Timor indicted Wiranto, the commander of the Indonesian military from 1998 to 1999, for crimes against humanity. Prabowo, a former Kopassus commander, was implicated in crimes in East Timor according to the Final Report of the CAVR, as well as kidnapping student activists, according to the findings of the official fact-finding team into those events.[187]

After his re-election in 2009, President Yudhoyono continued to support and promote members of the security forces implicated in past human rights abuses. In late 2009 he appointed Lt. Gen. Sjafrie Sjamsoeddin deputy minister of Defense. This decision sparked controversy as Sjamsoeddin has been implicated in several cases of gross human rights violations, including abducting activists in 1997-98, the violence on the streets and killing of student demonstrators in May 1998, and violations surrounding the 1999 referendum in East Timor. As a result of his alleged role in Timor, Sjamsoeddin has been denied entry into the United States. In April 2010 victims and families of victims of the student shootings at Trisakti University, the May violence, and the enforced disappearances of student activists filed a lawsuit challenging his appointment. The lawsuit cited the findings in Komnas HAM's inquiries into the three cases. In September 2010 the Administrative Court in Jakarta rejected the suit.[188] Most recently, in late 2010 the president appointed Gen. Timur Pradopo as chief of the national police, despite concerns Komnas HAM raised about his role in the May 1998 violence and the Trisakti and Semanggi shootings.[189]

3. Lack of Accountability

As noted in the section on judicial proceedings, there have been few criminal prosecutions for security personnel implicated in severe human rights violations and no senior officers convicted. This failure comes despite the creation of specialized human rights courts to try those responsible for abuses and the 2008 CTF report's confirmation that Indonesian security forces were responsible for gross violations of human rights in East Timor.

187 *Laporan Tim Gabungan Pencari Fakta Peristiwa Tanggal 13-15 Mei 1998*, supra note 11. The CAVR mentions Prabowo in its final report in 2005. CAVR, *Chega!*, supra note 19, chap. 8.3, 5; chap. 3, 104; chap. 7.4, 207, http://www.cavr-timorleste.org.

188 Joint statement by KontraS and the Asian Human Rights Commission, "Indonesia: Key Perpetrator of Student Crackdown and Riots in 1997/98 Promoted to Vice Minister of Defense," September 7, 2010, http://www.humanrights.asia/news/ahrc-news/AHRC-STM-191-2010.

189 Hans David Tampubolon, "Rights Commission Says Timur May Have Violated Human Rights," *Jakarta Post*, October 13, 2010, http://www.thejakartapost.com/news/2010/10/13/rights-commission-says-timur-could-have-violated-human-rights.html.

The military and police claim that they have investigated and disciplined their own personnel for violations. However, the lack of transparency in military courts and disciplinary procedures, and the leniency of punishments, continue to foster skepticism around the security sector's commitment to accountability.

Despite statements by the Indonesian Supreme Court that civil, rather than military, courts should have jurisdiction to try military personnel for crimes against civilians,[190] representatives of the armed forces continue to openly contest civil courts' jurisdiction to hear claims of crimes committed by military personnel and oppose revisions to the military court law that seek to codify accountability under civil law.[191]

Distrust between the military and the police further fuels resistance to civil criminal processes. Military personnel insist that they would not receive fair treatment from the police and refuse to accept a police mandate to arrest them for criminal behavior. This distrust is exacerbated by competition for resources (in the form of businesses, natural resources, and extortion) and ambiguous, overlapping domestic security mandates. The competition between security forces, combined with the TNI's strong political influence, is yet another factor that has made it extremely complicated to hold the military accountable for continued abuses in the post-Soeharto era.[192]

The challenge has been further complicated by the corruption and general lack of capacity of judicial institutions within Indonesia.[193] Establishing the jurisdiction of civilian courts over members of the military would lead to few improvements as long as those courts remained corrupt or vulnerable to influence. As a result, the need for SSR is hard to separate from the need for larger reform in other criminal justice institutions.

4. Human Rights Training and Capacity Building

Given the reluctance to deal with the past, there has been progress in SSR primarily in the area of human rights training and capacity building. The TNI has integrated human rights training into military schools and has organized limited training in human rights and international humanitarian law for those already in the military.

The national police service has also increased its focus on human rights training and capacity building. Human rights classes are integrated at various levels of police training, both as stand-alone courses and within the syllabi of other classes. The police have also embraced the philosophy of community policing and are attempting to work more cooperatively with local communities to maintain and enforce the rule of law. While not all police have been trained in human rights and community policing, the acceptance and promotion of these issues at the

190 IDSPS, *Civil Society and Security Sector Reform*, supra note 178, 11-12.
191 Ibid.
192 Mufti Maakarim, Wendy Andika Prajuli, and Fitri Bintang Timur, eds., *Almanac on Human Rights and Indonesia's Security Sector* (2009), http://www.dcaf.ch/Publications/Publication-Detail?lng=en&id=110445.
193 See supra Section IV(B).

highest levels of the department suggest a significant attitudinal change and a willingness to support a justice-sensitive reform agenda.

This increased training in human rights for security sector personnel in the post-Soeharto era has been a significant accomplishment.[194] However, it is just an initial step, and civilian and military authorities must now translate this knowledge into lasting behavioral and institutional change.

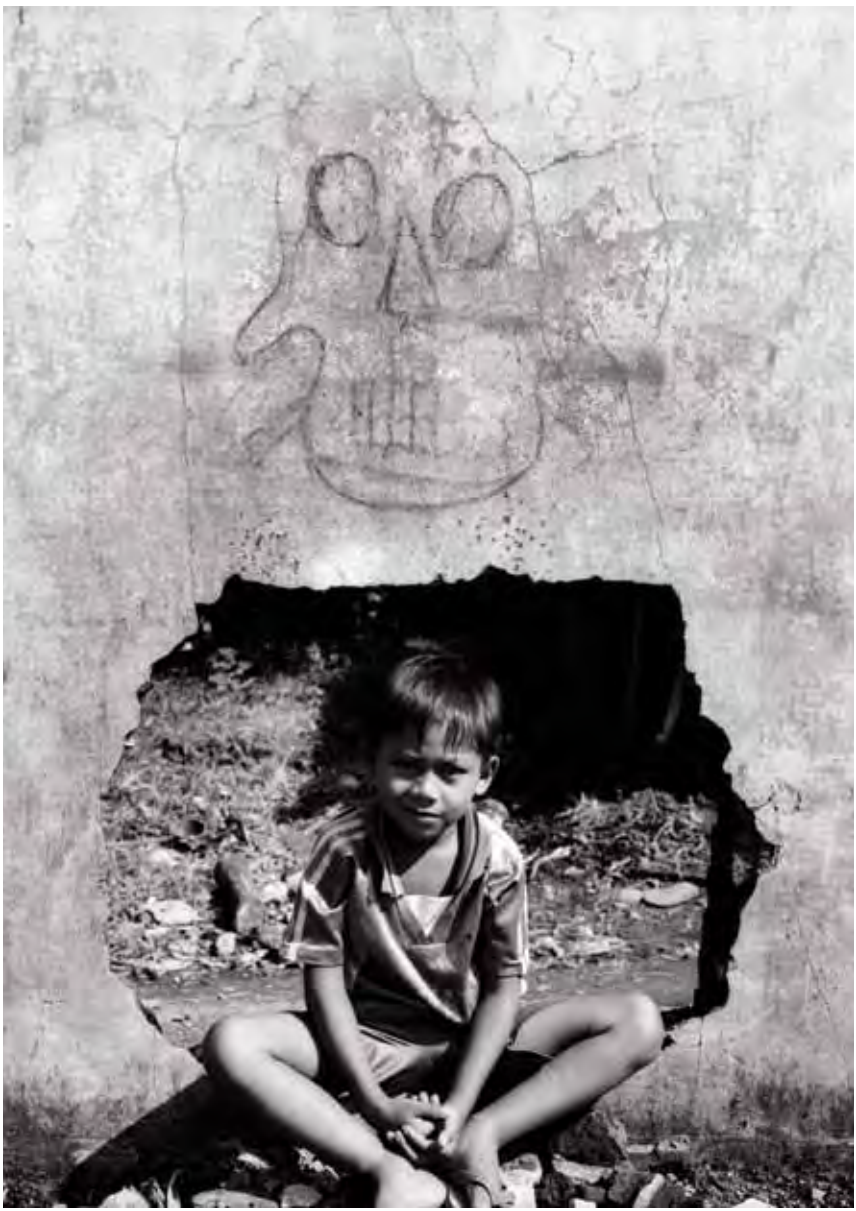
Unfortunately, continuing human rights abuses by security sector personnel indicate that this crucial step has not yet taken place.[195] The UN Committee Against Torture report from 2009 noted the continued, widespread use of torture by Indonesian security forces.[196] Moreover, the military has remained involved in serious human rights abuses in places like Aceh, Papua, Ambon, and Central Sulawesi. In these areas, abuses continue to be committed against Indonesian citizens in an attempt to quell separatist movements and inter-religious rivalries. These violations highlight the challenge of the continuing role the military plays in internal security issues, supported by Law 34 of 2004, and the related persistence of the territorial command system. The military continues to fulfill a wide array of policing duties, with the majority of soldiers in the TNI engaged in internal security instead of external defense.[197]

194 There is no indication that the intelligence services have received any training in human rights. In fact there have been no laws yet passed on intelligence reform; there has been only a presidential decree calling for it.

195 See for example Amnesty International, *Unfinished Business: Police Accountability in Indonesia* (June 2009).

196 UN Committee Against Torture, "List of issues to be considered during the examination of the second periodic report of Indonesia (CAT/C/72/Add.1)," CAT/C/IDN/Q/2 (February 2008), para. 5.

197 BICC, *Security Sector Reform in Indonesia*, supra note 172, 3.



Aceh, Indonesia. A child sitting in front of the remains of an infamous secret detention and torture center that was burned to the ground by the community in Sigli district, Aceh. **Poriaman Sitanggang**

VII. Conclusions

Indonesia has undergone a significant transition since the New Order regime fell in 1998. The nation's progress toward democratization has been lauded by the international community, which views it as a model for other countries in the region struggling with legacies of conflict and authoritarian rule.

In the context of transitional justice there have been many reforms in terms of the passage of new laws and establishment of mechanisms and institutions. These include the following:

- Constitutional amendments including a bill of rights.
- Inclusion of crimes against humanity and genocide within the national legal system.198
- Legislation providing for the establishment of four regional human rights courts.199
- Legislation on the military, including focus on improved levels of professionalism, increased civilian control over the military, eliminating the military's automatic quota in Parliament, eliminating military businesses, and requiring those suspected of committing crimes against civilians to be tried in civilian courts.200
- Establishing a National Commission on Violence Against Women. (Komnas Perempuan).
- Strengthening the mandate of Komnas HAM.
- Establishing a national Witness and Victim Protection Agency (LPSK).
- Increased authority by Parliament over security sector budgets.
- Increased levels of human rights training for security sector personnel.

198 Law 26/2000.
199 Ibid.
200 Law 34/2004.

- Ratification of core human rights treaties.[201]
- Recent signing of the Convention for the Protection of All Persons from Enforced Disappearances.[202]

While there have been undeniable steps toward making Indonesia a more stable, peaceful democracy, a review of transitional justice reforms and initiatives reveals a disturbing lack of commitment to addressing serious violations of humans rights, including mass crimes. Apparent progress in legal reform and creation of institutions stands in stark contrast to a poor record of implementation of these reforms. Analysis of the manner in which the laws, investigations, judicial proceedings, policies, and decisions have been implemented across a wide variety of cases presented in this report demonstrates clearly that the progress has been largely restricted to form, but not to action.

Taken individually, the performance of many transitional justice initiatives reflect results that could be perceived as legitimate attempts to achieve their stated goals but that faced unexpected difficulties resulting in ultimate failure. However, taken as a whole, the patterns paint a different picture. The series of successive failed mechanisms indicates that there are deep systemic factors that undermine efforts to achieve truth and accountability for past crimes, resulting in the continued reign of impunity, denial of victim's rights, and preservation of structures that have enabled these mass atrocities to be repeatedly committed. The cases demonstrate a repetitive pattern in which efforts are taken to assuage public outcry, present some degree of action that then leads to periods of delay and a final lack of tangible results. Responsibility does not rest in one particular government agency. The cases indicate a lack of commitment to address issues of accountability for mass violations on the part of a wide range of institutions including the military, police, prosecutors, judges, Parliament, and the president.

This conclusion is based on the following indicators, each of which has been discussed in detail above:

201 Indonesia has ratified six of the nine core human rights treaties: "International Covenant on Civil and Political Rights" (ratified February 23, 2006); "International Covenant on Social, Economic and Cultural Rights" (ratified February 23, 2006); "International Convention on the Elimination of All Forms of Racial Discrimination" (ratified June 25, 1999); "Convention on the Elimination of All Forms of Discrimination Against Women" (ratified September 13, 1984); "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (ratified October 28, 1998); and "Convention on the Rights of the Child" (ratified September 5, 1990). Indonesia has signed but not ratified the three remaining core human rights treaties: "International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families" (signed September 22, 2004); "Convention on the Rights of Persons with Disabilities" (signed March 30, 2007); and "International Convention for the Protection of All Persons from Enforced Disappearance" (signed September 27, 2010). See http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

202 Foreign Affairs Minister Marty Natalegawa signed the convention on September 27, 2010, at UN headquarters in New York. Ratification requires that the DPR accept it as well.

Truth-seeking

- A general lack of impetus within government to act in response to violations by security forces and government actors unless there is significant public pressure to do so.
- A repeated pattern of appointing individuals who may reasonably be expected to lack objectivity to bodies mandated to investigate violations.
- A repeated failure to release the reports compiled by fact-finding bodies.
- The failure of the AGO to act on five major cases in which Komnas HAM's formal inquiries had found that crimes against humanity or genocide occurred.
- The failure of successive governments to deal with the blockage between Komnas HAM inquiries and recommendations and the AGO's unwillingness to act.
- The failure to establish a TRC for Aceh that was legally mandated by the Law on Governing Aceh.
- The failure to establish a TRC for Papua that was legally mandated by the Special Autonomy Law for Papua.
- The failure to investigate or resolve complaints or indications of serious intimidation of witnesses.

Judicial Proceedings

- Repeated cases of weak indictments drafted by prosecutors in human rights cases and failure to include command responsibility in these indictments.
- The failure of the human rights court process to secure a single conviction from the 34 individuals who were indicted and brought to trial in three separate major cases.
- The failure to scrutinize or investigate the decisions of appellate courts—including the Supreme Court—in overturning all convictions for human rights cases that were referred on appeal.
- The failure to establish the human rights courts for Aceh, although it was a condition of the peace agreement involving GAM and the government and is included in the Law on Governing Aceh.
- The failure to establish the human rights court for Papua, although it was included as one of the provisions in the special autonomy law.
- The failure of the military court system and the koneksitas civilian-military courts to bring commanders to justice. In serious cases often low-ranking individuals are tried instead, receiving extremely lenient sentences, which then may not be implemented or replaced with a transfer of duties.
- The failure to take the legal steps necessary to implement the provisions in Law 34 of 2006 that require military suspects of crimes against civilians to be tried in civilian courts.
- Continuing practices in which judges do not issue written judgments containing the full reasoning for their decisions, which makes realistic assessment of judicial proceedings impossible.

Reparations

- The failure to fulfill the rights of victims to any form of reparation in a range of cases of serious violations.
- Failure to provide the Witness and Victim Protection Agency (LPSK) with sufficient resources and mandate to successfully complete its work.

SSR

- The failure to enforce legal requirements that current and former members of the military answer official summonses to appear and answer questions to inquiries into serious violations conducted by Komnas HAM. Military personnel have also failed to cooperate with other fact-finding bodies, including those established by the president.
- A failure to remove those implicated in human rights violations from public office, including senior positions of authority in the military, police, and government.
- Promoting people implicated in major human rights cases to senior roles in government, military, and police.
- Continuing involvement of the military with private businesses, foundations, and cooperatives despite the October 2009 deadline for divestment of all businesses, legal or illegal set in the 2004 TNI Law.
- Security institutions' continuing resistance to and lack of acceptance of civilian oversight.
- Repeated cases in which lower-ranking members of the military are tried for offenses in which senior commanders are implicated, receiving extremely lenient sentences that they may never serve.

There has been no holistic, comprehensive and sustained approach to truth-seeking initiatives aimed at discovering and acknowledging the full extent of abuses committed during the Soeharto regime. Political and military interests often hijack efforts to uncover the truth, and the findings of truth-seeking initiatives have largely been kept secret from the public, limiting their ability to contribute to the healing and recognition of victims and a pro-justice agenda.

Judicial proceedings to hold those most responsible for abuses accountable have been few and far between. When they were conducted, they were heavily manipulated by political and military elites to create an appearance of justice, while actually absolving the state and state actors from liability.

Reparations for victims have similarly been given rhetorical and legislative backing by the Indonesian government. Yet reparations initiatives have been designed without taking into account international best practices, thus limiting their positive mechanisms impact on victims. They have also largely been tied to judicial mechanisms that have been difficult for victims to effectively access.

As for justice-sensitive SSR, despite initial changes to the institutional structures of the security sector and its official separations from other parts of the government, there continues to be minimal civilian oversight of security sector institutions; members of the security sector implicated in past crimes and abuses have not been held accountable and continue to serve at even the highest levels of security institutions. While there has been increased acceptance of human rights training, significant challenges in transforming new knowledge into better behavior continue.

The official indifference to injustices of the past has helped lead to the continuation of abuses. Papua, in particular, is an area where the Indonesian government and military continue to embrace of the old ways of the New Order regime, as evidenced by continuing reports of severe abuses committed against the local population. Harsh actions are accepted in order to "maintain security," and in doing so ensure continuing control, both legal and illegal, over the massive natural resources of the region.

Unless Indonesia takes steps to embrace the need for justice and to reconcile itself with its often oppressive, abusive past, it runs the very real risk of repeating it. Significant reform has been made, but much of this has been in the form of new laws that have not been implemented and mechanisms that have not produced concrete results, continuously undermined by the self-interested action of those who are clinging to their New Order roles.

Jakarta, Indonesia. Tuti Koto, the mother of Yani Afri, one of the victims of enforced disappearances in Indonesia, holding a picture of her son at a demonstration demanding that the government solve cases of gross human rights violations. **Puri Kencana Putri**

VIII. Recommendations on Transitional Justice

The Indonesian government, national stakeholders, and the international community need a comprehensive strategy for transitional justice in Indonesia that includes all four pillars: truth-seeking, judicial proceedings, reparations, and SSR. Accordingly, the government and other relevant stakeholders should implement the following recommendations:

The President

1. Immediately resolve the impasse between Komnas HAM and the AGO by establishing an effective mechanism for cooperation between the two institutions.
2. Establish ad hoc human rights courts for enforced disappearances in 1997-1998, and all cases of violations committed prior to the passage of Law 26 of 2000 in which Komnas HAM has found crimes against humanity or genocide have been committed.
3. Sign and ratify the Rome Statute of the International Criminal Court, in accordance with the commitment made in the National Human Rights Action Plan. Ratify the recently signed Convention for the Protection of All Persons from Enforced Disappearances.
4. Publicly release the findings of any and all inquiries or other fact-finding efforts. Enforce provisions in Indonesia's freedom of information law, Law 14 of 2008, which requires the publication of the results of inquiries and fact-finding mechanisms.
5. Immediately establish a human rights courts for Aceh and Papua, as mandated under existing laws, and a bilateral commission on disappeared people as recommended by the CTF.
6. Establish an administrative reparations program that does not rely on convictions from the courts. Reparations must go beyond monetary compensation to include social programs promoting health, education, and sustainable livelihoods, as well as symbolically honoring victims, restoring their rights, and annulling discriminatory regulations.
7. Change school textbooks to better reflect the Indonesia's true history. Revisions should include accurate accounts of mass human rights violations and a more complete account of those who suffered as a result. Citizens have a right to know their true history and to use this knowledge to ensure nonrepetition.

The Attorney General

1. Ensure that crimes, such as murder, assault and rape, in which state actors are implicated but were not part of a large-scale commission of serious crimes are effectively prosecuted under the national criminal code.
2. Immediately commence formal legal investigation into all cases in which Komnas HAM has conducted credible inquiries and made findings that crimes against humanity or genocide have occurred. This is in accordance with the Constitutional Court's view that it is inappropriate for the DPR to make decisions on whether acts constitute crimes against humanity or genocide and that this questions should be decided by Komnas HAM and the AGO.
3. Investigate all credible allegations of witness intimidation and corruption in any past human rights cases, through the judicial commission or the AGO.

The National Parliament

1. Pass a new law on a national TRC. The law should be based on broad consultations with civil society and explicitly state the period, locations, and violations under investigation, going as far back as the critical national events of 1965. The commission should not have the power to recommend or provide amnesties for gross human rights violations. A new panel of commissioners should be selected through a transparent public consultation process and should reflect Indonesia's diversity. The national TRC should be designed to work cooperatively with local TRCs established under special autonomy laws in Aceh and Papua.
2. Amend Law 26 of 2000 to provide the following:
    - Komnas HAM's inquiries are considered to be legally complete upon being so certified by its chairman. The AGO has no power to decide whether a Komnas HAM inquiry is complete or otherwise.
    - The AGO is legally compelled to provide public written reasons on whether or not to investigate or not to investigate a case referred to it by Komnas HAM within 30 days of receiving the certified file.
    - The decision and written reasons of the AGO are subject to review by the courts.
3. Annul Parliament's resolution made in 2001 finding that the Trisakti, Semanggi I, and II did not constitute gross human rights violations under Law 26 of 2000. As the Constitutional Court stated in the Guterres case, such a decision is an inappropriate matter for the DPR to decide.

Political Parties

1. Vet party members implicated in human rights abuses. All parties must take steps to ensure that those running for office have not been implicated in human rights abuses.

Local Parliaments and Governments in Aceh and Papua

1. Create TRCs for Aceh and Papua, in accordance with the intentions of national Parliament as reflected in the laws already passed. They should be created immediately, without unnecessarily waiting for the passage of a national TRC law. If a national TRC is established, the work of the regional bodies can be included in the larger process.
2. Establish a local reparations program for victims, based on acknowledgement of violations. Ensure that these reparation programs are based on a truth-seeking process that identifies victims of human rights abuses and their needs. In Aceh this reparations program should be separate from reintegration programs. In Papua, special autonomy funds should be allocated to initiatives that provide services and acknowledgment to victims of human rights violations.

The Judiciary

1. Take steps to increase accountability, including requiring judges to justify their decisions in written, legally reasoned judgments that are available to the public.
2. Submit judiciary staff, including judges, to regular audits by the Corruption Eradication Commission.
3. Strengthen the independence and professionalism of the judiciary, including ad hoc and permanent human rights courts. This should be done through training, better panel selection, and increased transparency and monitoring.

The National Judicial Commission

1. Undertake a credible and independent inquiry into the issue of why each of the 18 convictions handed down by the ad hoc human rights courts judges have been overturned on appeal.

Komnas HAM

1. Publish and disseminate findings on inquiries conducted on gross human rights violations, while respecting the principles of presumption of innocence. At the same time, continue to conduct pro justicia investigations of serious crimes.
2. Work with the Corruption Eradication Commission (KPK) to investigate corruption cases related to mass human rights violations, including those in which Soeharto and his family are implicated. Assets recovered could then be used to help pay for an appropriate reparations program for the victims of these violations.

The Department of Defense and other Security Sector Institutions

1. Ensure prosecution of members of the military responsible for human rights violations in civilian courts. This will require making changes to relevant civilian and military laws and codes. Military courts should retain jurisdiction only for violations of military discipline or procedure.

2. Vet officers implicated in human rights abuses. All security institutions must take steps to ensure that they do not employ staff implicated in human rights abuses.
3. Ensure that the military and its officers comply with the law by divesting all direct or indirect control of military businesses.
4. Increase civilian oversight of security-sector institutions.
5. Work with civil society organizations to increase open, transparent monitoring of security institutions.

The International Community

1. Urge the Indonesian government to follow through on justice and accountability measures that were agreed to in the Helsinki MoU on the Aceh conflict. This includes a human rights court and TRC for Aceh.
2. Restrict donor support to institutions involved in human rights violations and deny visas to individuals implicated in serious human rights violations.
3. Provide targeted assistance for victims. Currently donor funds do not appropriately recognize or support those who have been victimized.
4. Increase funding to programs designed to promote transparency and accountability within the government, judiciary, and security sector.

Annex 1. Summary Matrix of Official Transitional Justice Mechanisms

A. Explanation of Summary Matrix

The following matrix provides an overview of the major cases of mass human rights violations committed from 1965 through the present with reference to the transitional justice responses to those violations. It is intended as a summary and therefore does not attempt to capture all the complexities of each particular context. The matrix focuses on individual cases because this is how the authorities have chosen to approach them. Such a case-by-case approach has supported official rhetoric that human rights violations were isolated events, rather than the result of an official policy. However, an overview suggests that the government chose to respond individually to cases involving state actors because such an approach produced few tangible results and required months and years to process, allowing time for public outrage to dissipate. In many cases, inquiries were conducted but did not lead to any prosecutions, or led to targeted and lenient sentences for low-level perpetrators while commanders faced no sanctions. In a striking number of cases where convictions did result from trials, these convictions were later overturned, often by the Supreme Court. The government's overwhelming failure to provide accountability for crimes implicating state actors indicates a systemic lack of will to fulfill national and international duties and to address human rights abuses.

B. Summary Matrix of Transitional Justice Mechanisms in post-Soeharto Indonesia

Context	Factual Overview	• Truth-seeking	• Judicial Proceedings	• Reparations
1965-66 massacre	During Soeharto's rise to power in 1965, an estimated 500,000 to over one million civilians suspected of communist or leftist ties, were killed or disappeared, and another million were incarcerated without trial. Political prisoners were gradually released starting in the late 1970s, but continue to face discrimination today.	• Komnas HAM conducted research into 1965 crimes, focusing on Buru Island. • Komnas HAM has not yet completed investigations begun in 2008 of 1965 atrocities. • Komnas Perempuan completed an inquiry on gender-based crimes against humanity for 1965-66 in 2007.	• No prosecutions were conducted. • Civil trial: The Jakarta Legal Aid Foundation filed a class action suit against five former presidents seeking compensation and rehabilitation for victims. The case was dismissed due to lack of jurisdiction	• The class action suit claimed to represent an estimated 20 million victims and sought a broad range of reparations from five former presidents. Since it was dismissed, the issue of reparations was not analyzed in court.
East Timor (1975-99)	Between 1975 and 1999, Indonesian security forces undertook a brutal military campaign in East Timor. This included years of bombing and famine that devastated the Timorese population, and soldiers carried out widespread systematic violations to quell resistance. Before, during, and after a 1999 referendum, militia groups, in conjunction with Indonesian security forces, unleashed waves of violence, destruction, forced displacement, and intimidation. Following the overwhelming vote for independence, Timor-Leste became independent in 2002. Indonesia's invasion and occupation directly and indirectly caused the death of more than 100,000 out of a population of less than one million.	• A Komnas HAM inquiry on 1999 crimes in East Timor led to ad hoc human rights trials. • In Timor-Leste a UN-backed Commission for Reception, Truth and Reconciliation (CAVR) was established to look at human rights violations that took place between 1975-99. • The Commission on Truth and Friendship (CTF) was established by Indonesia and Timor-Leste with a focus on 1999 crimes.	• Trials of the Ad Hoc Human Rights Court for East Timor were hampered by the court's limited mandate. Six of the 18 military and civilian personnel indicted were found guilty after trials, but all six were acquitted on appeal, leaving a zero success rate for the prosecutions. • International judicial action: A U.S. court decided in favor of victims in an Alien Torts Claims Act (ATCA) case brought against Maj. Gen. Sintong Panjaitan, awarding $14 million in damages. Victims have not received any of this because he did not have assets in the United States. • In Timor-Leste, a UN-backed serious crimes process indicted more than 300 people for crimes against humanity. The special panels court tried and convicted 84 former militia members.	• Indonesia has not implemented a reparations program, although both the CAVR and the CTF recommended some forms of reparations for victims. • Victims have been unable to attain the damages awarded them in their ATCA claim in U.S. federal court, because the Maj. Gen. Sintong Panjaitan has no assets in the United States.

Aceh (1976-2005)	Conflict in Aceh escalated in the mid-1970s when the Soeharto regime employed brutal tactics to combat Aceh's rising separatist movement, led by the Free Aceh Movement (GAM). The Acehnese had minimal access to revenue from their natural resources, which was a key factor in the conflict. Aceh was declared a military operations area between 1989 and 1998. The fall of Soeharto raised the prospect of peace, and the Indonesian government granted the province special autonomy in 2001. However, martial law was declared in 2003, unleashing a new spate of violence. It is estimated that since 1976 at least 15,000 civilians have been killed, and thousands more disappeared and tortured. Arbitrary arrest, unlawful detention, torture, rape, and mass displacement were common. The 2004 tsunami was the catalyst for negotiations that led to a peace agreement, signed in Helsinki.	• Komnas HAM conducted an investigation. • Joint Parliamentary Fact-Finding Mission conducted. • President Habibie established the Independent Commission for the Investigation of Violence in Aceh (KPTKA). • The Helsinki peace agreement and the subsequent Law on the Governing Aceh (LOGA) legally established a TRC for Aceh; to date, the TRC has not been created. • Komnas Perempuan completed two inquiries on violations against women in Aceh in 2006 and 2009.	• A human rights court for Aceh was agreed on in the Helsinki agreement. The subsequent LOGA legally established this court but limited its jurisdiction to crimes committed after 2006. Even so, the court has still not been created. • Military trials: The military court has reportedly processed more than 400 cases, but many details are unavailable. • Joint military-civilian (koneksitas) trials: The attorney general investigated five prominent cases, in which 24 soldiers and one civilian were convicted of murder with sentences ranging from eight and a half to ten years in prison. • Trial in United States: A civil claim under the ATCA against Exxon Mobil was submitted by 11 victims who claim the company is liable for murder, rape, and torture perpetrated by Indonesian security forces. The case progressed through the courts for several years but was then dismissed on the basis of a lack of standing. The case is currently on appeal.	• Reintegration aid to the conflict's "affected civilians" is implemented by the World Bank and the Aceh Reintegration Agency (BRA). • Diyat: The governor of Aceh initiates Islamic-based compensation in 2002 for family members of people who died because of the conflict. Under this scheme, families could receive annual payments of approximately $200 to $300 for a limited number of years. • According to LOGA, the human rights court for Aceh has the power to grant reparations to victims.
Petrus killings (1983-85)	The killings of suspected criminals took place in urban centers between 1983-85. Dubbed Petrus (from *penembakan misterius* or mysterious shootings), this was a New Order strategy of covert killings organized by the military. Approximately 5,000 people were murdered as a result of the operation.	• The Komnas HAM inquiry is ongoing.	• There was no judicial process.	• No reparations were granted.

Tanjung Priok (1984)	On September 12, 1984 Indonesian security forces opened fire on civilian protestors at the Jakarta port of Tanjung Priok. A few days earlier, a dispute over antigovernment sermons delivered in a local mosque resulted in several arrests and a soldier allegedly desecrating a mosque. This caused mass protests. In response, security forces indiscriminately shot at civilians, killing dozens. Fifteen were forcibly disappeared, 98 tortured, 96 arbitrarily arrested and detained, and 58 experienced unfair judicial processes. Following the events, victims were branded enemies of the state and the government claimed the shooting was a justified responses to the protest.	• A Komnas HAM inquiry established to investigate 23 suspects led to ad hoc human rights trials.	• Trials of the Ad Hoc Human Rights Court for Tanjung Priok: Fourteen active and retired military officials were put on trial. Twelve were convicted, and the Supreme Court later acquitted all of them on appeal.	• The ad hoc human rights court awarded financial compensation claimed by 85 victims. However, the acquittal on appeal meant that the award was never implemented. Only 13 claimants received out-of-court compensation from an individual perpetrator.
Talangsari (1989)	A religious study group in the village of Talangsari in South Sumatra allegedly sought to establish an Islamic state in Indonesia. Attempts at dialogue failed, and the military brutally attacked civilians. At least 45 people were killed, five raped, 88 forcibly disappeared, 36 tortured, and 173 arbitrarily detained. Twenty-three were subjected to unfair trials, and many houses of suspects and local residents were completely destroyed.	• A Komnas HAM inquiry recommended the establishment of an ad hoc human rights court.	• The attorney general did not investigate. • There was no judicial process. • Civil trial: Several civil society groups initiated a claim for compensation; however the claim was rejected.	• No reparations were granted. • Claims for compensation through the courts have been rejected.

Attack on PDI office (1996)	On July 27, 1996 the central Jakarta office of the Indonesian Democratic Party (PDI) was attacked and occupied. The attack, which involved security forces, was a coordinated operation against a prominent opposition party and its well-known leader, Megawati. In the attack, 14 people were killed, 149 injured, and 124 were arbitrarily detained.	• Police conducted an investigation and recommended a koneksitas trial.	• Koneksitas trials: Four civilians and two soldiers were prosecuted under criminal law. All but one civilian were acquitted, and he received a sentence of two months and 10 days.	• No reparations were granted.
Abduction and Enforced Disappearances (1997-98)	The targeting of political activists by security forces was at its height during the last years of Soeharto's New Order regime. At least 24 activists were abducted. Only nine of them survived. The Rose Team of Kopassus, an elite commando force, carried out the operation.	• A Komnas HAM inquiry recommended the establishment of an ad hoc human rights court. • Parliament issued a recommendation in 2009 to find the whereabouts of the disappeared.	• The attorney general did not investigate. • Parliament's recommendation in 2009 also called for the establishment of an ad hoc human rights court to look into disappearances. This court has not yet been established. • Military trials: Eleven Kopassus members were found guilty only of disciplinary offenses. Seven convictions were overturned on appeal.	• Parliament's 2009 recommendation included providing compensation to victims' families. No reparations have yet been provided.

Triksakti, Semanggi I, and II incidents (1998-99)	The incident at Jakarta's Trisakti University on May 12, 1998 galvanized the reform movement and culminated in Soeharto's resignation only nine days later. In response to an increasing student protest movement calling for reform, four students were shot and killed on campus grounds, and 681 were injured. The Semanggi I incident occurred on November 8-14, 1998 during a student protest demanding that President Habibie resolve Indonesia's crippling economic crisis. Security forces opened fire on civilians, killing 17 and injuring 109. The Semanggi II incident occurred in September 1999 when a planned state of emergency elicited widespread protests from students in Jakarta, Palembang and Lampung. Security forces responded with repressive tactics, opening fire on students resulting in 11 deaths and 217 injuries.	• A parliamentary resolution affirmed a committee finding that gross human rights violations did not occur. • A Komnas HAM inquiry found that crimes against humanity did occur and recommended establishing an ad hoc human rights court. •	• The attorney general did not investigate. • Triksakti military trials: Six police officers and nine mobile brigade officers were charged with disciplinary offenses and found guilty of joint actions that constituted murder. They received sentences from three to six years. • Semanggi II military trials: Military trials were held in Jakarta, Lampung and Palembang. Results of the Jakarta military trial remain undisclosed. Low ranking soldiers in the other locations were convicted for disciplinary offences, receiving sentences of less than one year.	• No reparations were granted.
May 1998	In addition to the specific incident at Trisakti University, a breakdown in law and order spurred on widespread rioting during May 1998. Although the riots commenced with students targeting police and military officers, they later spread and grew substantially, targeting many ethnic Chinese communities and businesses. There were widespread reports of rape, mass killings, assault, and looting, including the alleged involvement of senior military commanders.	• The government established a joint fact-finding team. • Komnas HAM conducted an investigation. • In May 2008 Komnas Perempuan issued a 10-year commemoration report on the status of victims.	• The attorney general did not investigate. • There has been no judicial process.	• No reparations were granted.

Poso (1998-2002)	Religious-based communal conflict took place in Poso, Central Sulawesi after the fall of the New Order. Conflict was initially triggered by political disputes between local elites, but later spread to broader sectarian violence between Christian and Muslim communities with the involvement of external armed groups. Security forces were seen to be instrumental in the conflict, either by fuelling tensions or failing to prevent attacks from occurring.	• The government established a fact-finding team. • A Komnas HAM investigation was conducted jointly with police and a recommendation was made that military police conduct the investigation. • Military police conducted an investigation and seized evidence. • Komnas Perempuan completed an inquiry on the impact of the conflict in Poso on women in 2009.	• Military trial: Ten defendants were found guilty of abduction and murder related only to cases from 2001. Despite the serious charges, the only punishment handed down was dismissal from the military. • Criminal trials were held for individuals charged with murder and acts of terrorism.	• No reparations were granted.
Maluku (1999-2002)	Similar to the Poso conflict, tensions between religious communities that escalated after the fall of Soeharto were allegedly instigated and exacerbated by external interests. By 2000 armed groups from inside and outside Maluku mobilized along Christian and Muslim lines, and were engaged in violent communal conflict that caused thousands of deaths and left tens of thousands of people displaced and homeless. This resulted in community segregation along religious lines and the destruction of a significant amount of public infrastructure.	• A national investigation team was established by presidential decree, but its report was never disseminated to the public.	• There was no judicial process.	• No reparations were granted.

Abepura (2000), Papua	Following an attack on police headquarters in Abepura, in which a senior police officer was killed and three others were injured by suspected separatists, police conducted extensive sweeping operations to arrest the perpetrators and their supporters. During this operation, 105 people were arrested, arbitrarily detained, and subjected to racial abuse. At the detention site, many were tortured; two men were killed on the spot, and another was killed while the arrests were taking place. Several others sustained serious injuries that later killed them.	• A Komnas HAM inquiry, established to investigate 25 suspects, led to human rights trials.	• The Abepura trial was conducted in the Makassar Human Rights Court. Two police officers faced trial, and both were acquitted.	• No reparations were granted.
Assassination of Theys Eluay (2001)	Theys Eluay, the leader of the first Traditional Council of Papua, was assassinated on November 10, 2001. His driver, Aristoteles Masoka, was disappeared after the murder.	• A national investigation committee was established by presidential decree. •	• Military trial: Seven Kopassus officers were convicted of jointly committing persecution leading to death. They were given light sentences of two to three and a half years in prison.	• No reparations were granted.
Wasior (2001) and Wamena (2003), Papua	In the Wasior case, security forces conducted extrajudicial executions, torture, and arbitrary detentions, affecting some 140 people in this Papuan district. After a raid on a military weapons store in Wamena, security forces conducted sweeping operations to identify separatist supporters. During this process they forcibly displaced more than a thousand people, causing widespread property damage and completely burning five villages.	• A Komnas HAM inquiry recommended these cases be investigated by the AGO and tried in the regional human rights court.	• The attorney general did not investigate. • There was no judicial process.	• No reparations were granted.

Sampit (2001)	Long-standing tensions between indigenous Dayak communities and immigrant Madurese led to a massacre of 391 people and the displacement of more than 55,000. Along with the widespread persecution and violence, significant looting, arson, and destruction of property also occurred.	• Komnas HAM conducted research.	• Civil action: Civil society groups initiated a claim for legal standing but were rejected.	• No reparations were granted.
Assassination of Munir (2004)	In September 2004, prominent Indonesian human rights lawyer Munir Said Thalib was poisoned and died aboard a Garuda flight en route to Amsterdam. A leading figure of the reformasi movement, Munir was founder of KontraS.	• A fact-finding team was established by presidential decree.	• Off-duty Garuda pilot Pollycarpus Priyanto was convicted of murder, following an lengthy appeals process which was eventually decided by the Supreme Court. • Ex-Kopassus chief Gen. Muchdi Purwopranjono was acquitted on charges of ordering Munir's murder. • Garuda CEO Indra Setiawan and Secretary Rohainil Aini were convicted as accessories, and each received a one-year sentence. • Civil action: Munir's widow Suciwati filed a civil claim for compensation. She was awarded damages in the Jakarta District court which were later increased by the Supreme Court.	• Civil claim: The Central Jakarta District Court found Garuda Airlines negligent in Munir's death and ordered the company, its managing director, and the pilot to pay Munir's widow, Suciwati, $70,000 in compensation. The Supreme Court upheld the award, raising its value to more than $ 380,000. At the time of publication, this payment still has not been made.

Papua (1969-2001)	Under the agreement of 1962, the Dutch government handed over Netherlands New Guinea (then renamed Irian Jaya) to Indonesia. However, many Papuans felt that the vote for self-determination that occurred in 1969 failed to meet international standards as required in the UN-brokered agreement. The Indonesian military declared Irian Jaya a military operation zone in the 1970s, using brute force to quell any dissent, including dissent against the exploitation of natural resources in Papua. At the start of reformasi, a group of Papuan leaders asked President Habibie for independence; in response a special autonomy law passed in 2001. The law protects the rights of indigenous people; provides for affirmative action; and establishes an indigenous people's council, a truth commission for Papua, and a human rights court.	• No truth commission for Papua has been established yet. • Komnas HAM conducted research into the violations during Indonesia's military operations. • Komnas Perempuan and the Women's Working Group of the Indigenous People's Council and Papuan Civil Society documented gender-based violations against Papuan indigenous women from 1963 - 2009.	• The attorney general did not initiate investigations. • There has been no judicial process. • No human rights court was created, despite it being legally established in the special autonomy law. • Military trials for documented cases of torture resulted only in disciplinary proceedings and light sentences of five to seven months.	• No reparations were granted.

Annex 2. Transitional Justice in Indonesia: A Selected Timeline

1997-98	The Asian financial crisis led to widespread civil unrest in Indonesia. Thousands of homes and shops were burned in Solo, Medan, and other major cities.
March 1998	The MPR reappointed Soeharto as president for the fifth time, sparking student-led anti-government demonstrations.
May 12, 1998	Trisakti Incident: The Indonesian military shot and killed four Trisakti University students who were participating in an anti-government demonstration.
May 13-15, 1998	Following the widespread civil unrest and killing of the Trisakti students, major riots hit Jakarta. Hundreds of shops and public facilities were burned. There were reports that more than 1,000 people died in the violence and ethnic Chinese women were raped.
May 21, 1998	As a response to the situation, Soeharto resigned and handed the presidency over to Habibie, marking the fall of the New Order regime and the commencement of political transition in Indonesia.
July 1998	The Joint Fact-finding Team for the Events of May 1998 was created with a mandate to investigate and uncover the facts, perpetrators, and background related to the May riots.
October 1998	The team reported that the May riots were closely related to the national political power struggle in the final days before Soeharto's resignation.
October 15, 1998	In response to women activists' demands that the government acknowledge and apologize for the rapes that took place during the May riots, the president agreed to establish an independent National Commission on Violence Against Women (Komnas Perempuan).

November 1998	Semanggi I Incident: At a special session of the MPR to decide whether to hold elections to replace Habibie, students conducted demonstrations against his administration. The demonstrations devolved into clashes between demonstrators and the military. The first spate of violence occurred from November 11 to 13, killing 17 and injuring 456. The second round of killings occurred on November 24, resulting in one death and 217 injuries.
November 13, 1998	Under siege by pro-democracy student demonstrations, the MPR adopted Resolution XVII of 1998 on Human Rights. This upheld basic human rights principles, made a commitment to ratify human rights conventions, and strengthened the National Human Rights Commission (Komnas HAM).
January 27, 1999	President Habibie proposed two options for East Timor to be determined through a universal ballot: special autonomy or independence.
April 1999	Eleven Kopassus (Special Command Forces) members went on trial before a military court in Jakarta in relation to the 1997-98 abductions of pro-democracy activists. All were convicted and received sentences ranging from one to three years imprisonment; some were dismissed from the military. However, the military appellate court overturned seven of the dismissals. In East Timor, attacks on civilians increased, including serious incidents in Dili and Liquisa.
July 23, 1999	In Aceh, security forces attacked an Islamic religious school, killing its leader, Teungku Bantaqiah, and 56 of his followers. Eyewitnesses said that members of the military shot the victims at close range and then forced other villagers to bury them.
August 30, 1999	The referendum in East Timor resulted in a vote for independence. More than 1,300 people were killed, and hundreds of thousands were displaced during the violence around the ballot results.
September 22, 1999	Komnas HAM established the Commission of Inquiry for Human Rights Violations in East Timor.
September 24, 1999	Semanggi II Incident: A government plan to declare a state of emergency led to student protests. Security forces responded by shooting civilians, killing 11 and injuring 217.

October 19, 1999	The MPR passed Resolution V of 1999 on the Result of the Referendum in East Timor.
January 31, 2000	KPP-HAM completed its inquiry on East Timor, and gave the attorney general its report, which included recommendations for investigations and prosecution.
April-May 2000	Twenty-four soldiers and one civilian were tried in koneksitas (joint military-civilian) court for the murder of Acehnese religious leader, Teuku Bantaqiah, and 56 others; the highest-ranking officer was a captain. The trials were held over 12 sessions with at least 1,000 military personnel providing security. Victims did not participate and, as a result, defendants were the main witnesses at their own trials.
August 2000	The MPR issued Resolution V of 2000 on Strengthening National Unity and Integrity, further recognizing the existence of past violations and calling for the establishment of a national TRC.
November 23, 2000	Parliament passed Law 26 of 2000 on Human Rights Courts that allowed the creation of ad hoc human rights courts for past crimes. Under this law, Komnas HAM was given the mandate to conduct investigations into gross violations of human rights.
April 2001	President Wahid signed a decree establishing two separate ad hoc human rights courts for crimes committed in 1999 in East Timor and in 1984 during the Tanjung Priok (North Jakarta) massacre.
June 2001	President Megawati signed a new decree to limit the jurisdiction of the two courts.
July 2001	A special parliamentary panel passed a resolution stating that gross human rights violations did not take place during the Trisakti, Semanggi I, and Semanggi II events. Parliament adopted the resolution.
November 21, 2001	The DPR passed Law 21 of 2001 on Special Autonomy for Papua.
February 2002	President Megawati issued a presidential decree establishing a national investigation commission to probe the murder of Theys Eluay.

February 12, 2002	In response to sectarian violence in Maluku, the government brokered the Malino peace agreement which included the establishment of a national independent investigation team. Four months later, President Megawati officially established the team with a mandate to seek facts and analyze the various events and issues in Maluku.
March 2002-03	Eighteen military and civilian personnel were tried for the East Timor 1999 case. Six of them were convicted, but later acquitted on appeal.
September 2003-August 2004	Fourteen active and retired military officials were tried for the Tanjung Priok case. Two of them were convicted, but later acquitted on appeal.
September 7, 2004	Human rights activist Munir Said Thalib was poisoned with arsenic during a flight to Amsterdam. His murder threatened the sustainability of the struggle for human rights in Indonesia.
October 6, 2004	The DPR passed Law 27 of 2004 on a TRC.
December 14, 2004	Timorese and Indonesian leaders agreed to establish the Commission for Truth and Friendship (CTF).
2005	The Jakarta Legal Aid Foundation initiated a class action lawsuit against five former presidents. The action primarily sought compensation and rehabilitation for 1965 victims. The court dismissed the suit.
August 15, 2005	Eight months after a tsunami devastated Aceh, the Indonesian government and the Free Aceh Movement (GAM) signed the Helsinki Memorandum of Understanding (MoU), ending more than three decades of conflict.
October 25, 2005	The minister of Home Affairs inaugurated members of the Papua People's Assembly which was created in Law 21 of 2001 on Special Autonomy for Papua.
December 20, 2005	The Central Jakarta District Court convicted Pollycarpus Budihari Priyanto of Munir's murder and handed down a sentence of 14 years in prison. This decision was upheld on appeal by the Jakarta High Court, but overturned by the Supreme Court. On the basis of new evidence, the Supreme Court later reversed the decision and increased the sentence to 20 years in January 2008.
April 2006	A group of human rights NGOs and representatives of victims launched a judicial review of Law 27 of 2004 on a national TRC, claiming that three provisions in the law violated victims' constitutional right to remedy.

August 1, 2006	Parliament passed Law 11 of 2006 on Governing Aceh as part of the Helsinki agreement. The law established a TRC and a human rights court for Aceh.
December 7, 2006	The Constitutional Court found that the TRC law's prerequisite of granting amnesties to perpetrators in order to provide reparations to victims contradicted the rights enshrined in the constitution. However, in a surprise move, instead of annulling specific provisions, the court annulled the whole TRC law.
November 2007	Komnas Perempuan released a report on gender-based crimes against humanity that took place in 1965, using data collected by civil society groups. In this report, the commission considered testimonies from 122 women victims and found that gender-based crimes against humanity occurred.
November 2007	The government began to draft a new law on a national TRC and produced an academic paper to support the new law.
March 13, 2008	The Supreme Court acquitted former East Timorese militia leader Eurico Guterres on appeal. Thus all 18 people tried in Indonesia's Ad Hoc Human Rights Court for East Timor were finally acquitted.
July 15, 2008	The CTF submitted its report to the Timorese and Indonesian presidents. The report made strong findings regarding institutional responsibility of the Indonesian military and civilian government for crimes against humanity committed in East Timor in 1999.
December 16, 2008	Civil society organizations in Aceh submitted a draft law (qanun) for an Aceh TRC to the government of Aceh and Aceh Parliament.
December 31, 2008	Retired Maj. Gen. Muchdi Purwopranjono was acquitted of charges that he masterminded Munir's murder.
June and July 2009	Indonesia and Timor-Leste held two bilateral meetings to negotiate implementing the CTF's recommendations.
September 2009	Parliament passed a resolution on the 1997-98 disappearances case calling for the establishment of an ad hoc court, finding the disappeared, payment of compensation, and ratification of the UN Convention on Enforced Disappearances.
November 2009	Komnas Perempuan launched a report on 40 years of gender-based violence. President SBY attended the ceremony and made a public commitment to attend to victims' needs.

January 21-22, 2010	Indonesia and Timor-Leste held a fourth bilateral meeting to discuss CTF implementation. They did not make any progress on the issue of missing persons.
January 26, 2010	Komnas HAM signed a MoU with the Ombudsman for Justice and Human Rights of Timor-Leste to monitor implementation of CTF recommendations, particularly those relating to missing persons.
May 3, 2010	A victims' group in Lhokseumawe, Aceh held a public hearing on a massacre, known as Simpang KKA, to commemorate the incident in which 49 people were killed and hundreds wounded.
November 2010 and January 2011	Soldiers were tried by the military in Jayapura in relation to acts of torture against civilian in Papua. They received light sentences.

Annex 3. Erratum to Original Report

Erratum to *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, Jakarta, Indonesia: International Center for Transitional Justice and KontraS, 2011.

Acknowledgements
An additional primary author should be added. The first sentence should read:
ICTJ and KontraS would like to acknowledge the primary authors of this paper: Yati Andriyani, Ari Bassin, Chrisbiantoro, Tony Francis, Papang Hidayat, Puri Kencana Putri, and Galuh Wandita.

Page 3
In the first sentence of paragraph three, the word "studies" should be replaced by "inquiries". It should read as follows:
The National Commission on Violence Against Women (Komnas Perempuan) has conducted a number of **inquiries** into systematic rape and other violations committed against women in conflict areas.

Page 25
There is a typo in the last sentence. The comma in the beginning of the sentence should be removed. The sentence should read:
…..institutional reform and dialogue about cultural norms.[39] It has also conducted inquiries on gender-based violence in Aceh, Poso, Jakarta, and Papua, made a….

Page 94
Under the context of the 1965-66 massacre the following additional "Truth-seeking" bullet point should be added:

- Komnas Perempuan completed an inquiry on gender-based crimes against humanity for 1965-66 in 2007.

Page 95
Under the context of Aceh (1976-2005) the following additional "Truth-seeking" bullet point should be added:

- Komnas Perempuan completed two inquiries on violations against women in Aceh in 2006 and 2009.

Page 99
Under the context of Poso (1998-2002) the following additional "Truth-seeking" bullet point should be added:

- Komnas Perempuan completed an inquiry on the impact of the conflict in Poso on women in 2009.

Page 102
Under the context of Papua (1969-2001) the following additional "Truth-seeking" bullet point should be added:

- Komnas Perempuan and the Women's Working Group of the Indigenous People's Council and Papuan Civil Society documented gender-based violations against Papuan indigenous women from 1963 to 2009.