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Transitional Justice in Indonesia Since the Fall of Soeharto

Executive Summary and Recommendations

A joint report by ICTJ and KontraS

international center for TRANSITIONAL JUSTICE

KontraS
Komisi untuk Orang Hilang dan Korban Tindak Kekerasan

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The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

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.

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 to 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.

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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, Komisi Independen Penyelidikan Tindak Kekerasan di Aceh (KPTKA) or Independent Commission for the Investigation on Violence in Aceh, reported 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."

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**

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 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 studies 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

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**

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

> *Of the 34 people charged in the various cases, only 18 were convicted and even they were later acquitted on appeal, producing a zero percent conviction rate.*

18 were convicted and even they were later acquitted on appeal, producing a zero percent 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.

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**

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.

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

Komnas HAM Inquiries into Cases of Gross Human Rights Violations and AGO Response

(excerpts from the AGO's letter to the prosecutorial commission, Letter No B 016/A/F/F6/03/2009)

Komnas HAM inquiries completed	Outcome
East Timor	Eighteen people were accused, of whom 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.
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. . ."

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

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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.

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.

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