

Indonesia

Submission to the Universal Periodic Review of the United Nations Human Rights Council (Second Cycle) 13th Session

Commission for the Disappeared and Victims of Violence (KontraS)
International Center for Transitional Justice (ICTJ)

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Introduction

1. Indonesia underwent its Universal Periodic Review (UPR) process at the fourth meeting on April 9, 2008.¹ During the meeting, Indonesia presented its National Action Plan on Human Rights and its network of local committees as its main tool to implement human rights protection in Indonesia. The Human Rights Council made two important recommendations that are the focus of this submission. The council encouraged Indonesia to follow through on its intentions to accede to the Rome Statute of the International Criminal Court, to ratify the optional protocols on human rights treaties it already adopted, and ratify the International Convention on the Protection of All Persons from Enforced Disappearances. Furthermore, the council commended Indonesia for “its commitment to combat impunity and encourage[d] it to continue its efforts in this regard.” However, three years later, impunity for serious crimes remains intact.

Historical Context

2. Indonesia’s New Order regime ruled for 32 years with an iron fist, violently suppressing dissent and dissatisfaction across the archipelago. Between 1965 and 1966, the army—with support from armed groups of civilians—was responsible for the killing of an estimated 500,000 to one million people thought to be associated with leftist organizations. Another million were incarcerated for a decade without trial. The military quelled armed rebellions from Aceh, East Timor (now Timor-Leste) to Papua, causing hundreds of thousands of civilians to perish as collateral damage. Toward the end of the regime in 1998, pro-democracy activists were disappeared, and thousands lost their lives during the upheaval that led to the resignation of President Soeharto.²

3. Since the fall of the New Order in 1998, successive administrations have introduced human rights protections in Indonesia’s Constitution and legal framework. Ad hoc and

¹ A/HRC/8/23 (May 14, 2008).

² International Center for Transitional Justice and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto* (ICTJ and KontraS, March 2011).

permanent human rights courts with jurisdiction over crimes against humanity and genocide were established in 2000, and a national truth commission was established in 2004. However, the human rights courts exist in name only, and the law for a national truth commission was annulled in 2006. An agency for the protection of victims and witnesses was established in 2009 with a mandate, among others, to facilitate the provision of psychosocial and medical support for victims of gross human rights violations. However, because the law requires a decision from a human rights court that is practically defunct, these measures cannot be implemented.

Implementation of UPR Recommendations on Impunity

National Human Rights Plan Silent on Impunity

4. Since the last UPR review, Indonesia has put into place a new National Action Plan on Human Rights (signed into force on April 2011) that falls short in a number of ways. Unlike the previous plan (National Human Rights Plan 2004-2009) that included goals to improve the performance of the human rights court on crimes against humanity and genocide, as well as to establish a truth commission, the new plan is silent on Indonesia's obligation to redress serious crimes. An entire section on accountability for gross human rights violations in the 2004-2009 Plan no longer exists in the current one.³ This reflects a critical flaw in the process of drafting the new plan because it is not based on an evaluation of the achievements or failures of the previous one. Instead of renewing efforts to achieve targets that were not achieved in the previous plan, these important goals have been erased. This omission reflects a step backward in Indonesia's political commitment to combat impunity.

Treaties and Protocols Delayed

5. The 2004-2009 Plan targeted the ratification of 12 human rights treaties and protocols by 2009.⁴ However, since the UPR process of 2008, Indonesia has only signed the Convention for the Protection of All Persons from Enforced Disappearances. Full ratification is not scheduled until 2014, according to the new human rights action plan. Similarly, the Rome Statute is now scheduled for ratification in 2014, six years later than stated in the previous national plan.

³ In Section E ("Implementation of Human Rights Standards and Norms, Point 7"), the 2004-2009 Plan stated its aim to "remedy gross human rights violations" through the following activities: "strengthening efforts to remedy cases of gross human rights violations through the human rights court; developing operational standards of proof for gross human rights violations; developing a Truth and Reconciliation Commission (TRC) to deal with cases of gross human rights violations."

⁴ 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 ones: 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>.

Serious Crimes Trials Derailed

6. During this UPR review period, little progress was made in mediating an impasse between the National Human Rights Commission and the Indonesian attorney general's office (AGO). The commission found that crimes against humanity were committed in five major cases that were then referred to the AGO. These included recommendations to try the following cases in the ad hoc human rights court: the killings of student demonstrators in 1998 (Trisakti and Semanggi I and II), the killings and rapes around the May 1998 upheavals, the attack of villagers in Sumatra in 1984, and the disappearance of 13 pro-democracy activists in 1997-1998; and to try another case that took place in Papua in 2000 (Wasiar and Wamena) in the permanent human rights court. However, there has been little progress in these cases; the AGO claims that the dossiers are incomplete, they cannot investigate retroactive cases without the establishment of an ad hoc court (which requires a parliamentary recommendation and a presidential decree), and double jeopardy exists for cases in which low-level perpetrators were already tried in military courts despite the fact that these processes have produced highly questionable results.⁵ Upon scrutiny, these excuses lack integrity and reflect a systemic lack of political will for justice.

7. Of the 34 people who were indicted and tried in the ad hoc and permanent human rights courts, 18 were convicted during their first trials, but all were later acquitted on appeal.⁶ The last of those convicted at trial, Timorese militia leader Eurico Guterres was acquitted following appeals in 2008.

8. In the case of the 1997-1998 forced disappearances, the Indonesian government has continued to ignore a recommendation that Parliament made in September 2009. The Parliament urged the government to establish an ad hoc court to try those responsible, commence an immediate search for the whereabouts of the disappeared, provide compensation for their family members, and ratify the Convention for the Protection of All Persons from Enforced Disappearances. To date, the government has only partially implemented the last recommendation.

9. Lastly, human rights courts (i.e. courts with jurisdiction to try crimes against humanity and genocide, according to Law 26/2000) were to be established in Papua and Aceh, by their respective the special autonomy laws (Papua, 2001, and Aceh, 2006). However, to date these courts have yet to be established.

Truth Commissions Indefinitely Postponed

10. After the Constitutional Court struck down Law 27/2004 on establishing a national truth and reconciliation commission because it required victims to forgive perpetrators in order to qualify for reparations, the human rights action plan of 2004-2009 targeted the drafting of a new law and establishment of a truth commission by 2009. Although a draft law is now registered for discussion in Parliament, there is little political support for it. The failure to establish a national truth commission has resulted in indefinite delays in establishing truth

⁵ ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 37-42.

⁶ The East Timor) ad hoc court on crimes committed in 1999 tried 18 people and convicted six. All but six were later on acquitted on appeal. Similarly, the Tanjung Priok (North Jakarta, 1984) ad hoc court tried 14 officers, found that 12 were guilty, but they were later acquitted. The human rights court for the Abepura incident, which took place in Papua in 2000, tried two police officers who were both found not guilty. ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 45-51.

commissions for Papua and Aceh that were legally mandated by their respective special autonomy laws.

11. The Commission for Truth and Friendship (CTF) recommended forming a commission for the disappeared at the end of its mandate in 2008. The CTF was a bilateral commission established by the governments of Indonesia and Timor-Leste. It found that crimes against humanity took place during the ballot in East Timor in 1999. Unfortunately, to date there has been little progress in establishing this follow-up mechanism dedicated to find the whereabouts of those disappeared during the conflict.

Military Tribunals Prosecuting Torture as a Disciplinary Act

12. Indonesia continues to try serious crimes, such as torture, committed by military personnel in the military courts. Because torture is not recognized in the military code, acts of torture are often charged as disciplinary offenses. Often those who appear to be most responsible have not been tried and those relatively low-level personnel found guilty receive consistently lenient sentences. In 2000 Parliament passed a resolution that military personnel should be tried in civilian courts for violations of the civilian criminal code. 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. To date, this change has not taken place, blocking the intended result. This pattern was repeated during the 2010 trials of four soldiers in Jayapura charged with torturing civilian detainees in Papua. The trial was held in response to international attention brought about by a shocking video of the torture that was released to the public. However, the defendants received light sentences of five months for “insubordination.”

The Lack of Vetting

13. There continues to be little progress in removing people implicated in human rights violations from public office, including those who have senior positions of authority in the military, police, and government. 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.⁷ In late 2009, President Susilo Bambang Yudhoyono appointed Lt. Gen. Sjafrie Sjamsoeddin as 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 1997-1998, killing student demonstrators in May 1998, and other violations surrounding the 1999 referendum in East Timor. In April 2010, victims and families of victims filed a lawsuit challenging his appointment, citing the findings of the National Human Rights Commission’s investigations in the three cases. However, the suit was rejected. Late in 2010, the president appointed Gen. Timur Pradopo as Chief of the National Police, despite concerns raised by the National Human Rights Commission about his role in the May 1998 violence and the Trisakti and Semanggi shootings.

Munir Case

14. Human rights defender Munir Said Thalib was killed on September 7, 2004, aboard a Garuda flight to Amsterdam. During an autopsy, Dutch authorities found a lethal dose of arsenic in his system. Munir played a critical role in discovering the role of the military in the

⁷ ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, 22, 28, 77-78.

disappearances of students in 1998 and in investigations into the violence that occurred in East Timor the following year. Munir's murderer, Pollycarpus Priyanto was convicted at first, but later acquitted by the Supreme Court. That decision was reversed after a case review, and he is serving a 20-year sentence.

15. Pollycarpus made more than 40 calls to a senior intelligence official, Muchdi Purwopranjono, near the time of Munir's murder and the release of the autopsy. After sustained pressure by human rights groups on police and prosecutors, Muchdi was tried on the basis of the phone records and witness statements. 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 when the major material witnesses failed to testify as planned.

Recommendations

16. The international community should:

- Urge the Indonesian government to implement existing legislation on prosecuting serious crimes, and ensure the establishment of truth commissions and human rights courts in Papua and Aceh as mandated by the special autonomy laws.
- Restrict donor support to institutions involved in human rights violations and deny visas to individuals implicated in serious human rights violations.
- Increase funding to programs designed to promote transparency and accountability within the government, judiciary, and security sector.

17. The government of Indonesia should:

- Immediately resolve the impasse between the Human Rights Commission and the AGO by establishing an effective mechanism for cooperation between the two institutions.
- Revise the current human rights action plan to include redress for serious crimes that ensure victim's rights to truth, justice and reparations, as well as measures to strengthen the independence and professionalism of the judiciary.
- 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.
- Accede to 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.
- Immediately establish truth commissions and human rights courts for Aceh and Papua, as mandated under existing laws, and a bilateral commission on disappeared people as recommended by the CTF.