



## **INDONESIA**

### **Submission for Universal Periodic Review of the United Nations Human Rights Council (Fourth Cycle), 41st Session**

#### **Impunity and Ongoing Gross Human Rights Violations**

##### **Asia Justice and Rights (AJAR)**

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

#### **I. Introduction**

1. AJAR is a regional human rights organization whose aim is to strengthen human rights and contribute to the alleviation of entrenched impunity in the Asia-Pacific region. Its work focuses on countries in transition from a context of mass human rights violations to democracy. Working together with partner organizations in these countries, AJAR strives to build cultures based on accountability, justice, and a willingness to learn from the root causes of mass human rights violations to help prevent the recurrence of state-sanctioned human rights violations.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. AJAR and KontraS have evaluated the implementation of recommendations made to Indonesia during its previous UPR in 2017, in particular recommendations related to impunity. We are concerned by the continued failure of Indonesia to ensure truth, justice, reparations and guarantee of non recurrence for the victims of past human right violations and their families.

#### **II. Overview**

4. In its previous cycle, Indonesia supported several recommendations regarding impunity in Indonesia. These recommendations are:

- a. Ratify without delay the Optional Protocol to the Convention against Torture, as well as the International Convention for the Protection of All Persons from Enforced Disappearance, and expedite the harmonization of legislation in accordance with them.<sup>1</sup>
  - b. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>2</sup>
  - c. Ratify the Rome Statute of the International Criminal Court.<sup>3</sup>
  - d. Continue to combat impunity, including by strengthening laws and regulations as well as their implementation.<sup>4</sup>
  - e. Thoroughly and transparently investigate past human rights abuses.<sup>5</sup>
5. This submission also took notes on the request of information by the Human Rights Committee to the Indonesian government in the List of Issues Prior to Submission of the Second Periodic Report of Indonesia, CCPR/C/IDN/QPR-2
    - a. the progress in establishing a court to investigate cases of enforced disappearances committed between 1997 and 1998;
    - b. the status of the case of the murder of a prominent human rights defender, Munir Said Thalib, including the Government's intention to release the report of the fact-finding team as requested by the Public Information Commission;
    - c. the implementation of the recommendations issued by the Truth, Reception and Reconciliation Commission, in 2005, and by the Truth and Friendship Commission, in 2008, including those on the search for, and reparation for, children who were displaced between 1975 and 1999; and
    - d. the progress of the Aceh Truth and Reconciliation Commission.
  6. Human rights have only been formally recognized, both by law and in the Constitution, after the fall of Suharto's authoritarian regime in 1998. A transitional justice framework which encompasses truth, justice, reparations and the guarantee of non-recurrence emerged in response to the widespread and systematic human rights violations carried out during this period of dictatorship. The transitional justice approach in Indonesia also seeks state accountability and recognition of victims as well as the encouragement of peace processes, reconciliation, and democracy. This recognition of human rights is in line with the international conception of human rights standards where the State has the duty to protect the rights of every citizen. Civil liberties, which had never been respected during the Suharto regime, also became 'constitutional rights' in the post-1998 era<sup>6</sup>
  7. To date, Indonesia has enacted the Human Rights Law (No. 39/1999) and the Human Rights Court Law (No. 26/2000) establishing a mechanism to investigate and prosecute gross human rights violations, defined as crimes against humanity and genocide (but not including war crimes). The government has been initiated to revise the human rights law and human rights court law.
  8. However, such achievements do not necessarily provide protection to the people. They did confirm that all repression, injuries, and suffering needed to be repaired and that any violation, harm, or

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 139.5 (Bosnia and Herzegovina).

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 139.6 (France) (Portugal) (Ukraine) (Sierra Leone); (Japan); (Kazakhstan).

<sup>3</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 141.11 (Bostwana).

<sup>4</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 141.61 (Turkey).

<sup>5</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 141.62 (United States of America).

<sup>6</sup> AJAR has written a brief summary on Indonesia's path in transitional justice. Available at: <https://asia-ajar.org/wp-content/uploads/2018/12/English-Indonesia-Case-Study.pdf>.

abuse of individual rights and social justice should be punished according to the law. Across the country however, many victims still suffer the consequences of past human rights abuses while ongoing violations still occur in parts of Indonesia such as in Papua. While victims of historical or ongoing human rights violations have tried to utilize human rights-related laws and institutions, their efforts have been largely unable to drive institutions to initiate the legal processes for the protection and fulfilment of human rights.

9. Conflict not only violates the victim's civil and political rights, but is also accompanied by the violation of social economic rights. Yet widespread abuses of social and economic rights are largely missing from accounts of conflict and oppression. These abuses include the loss of access to land, natural resources and livelihoods, poverty, destruction of homes and possessions, forced displacement to squalid camps, and exclusion from education and health care services. In addition, the economic, social and cultural aspects of victims' lives have been impacted. The failure of the Indonesian government to be accountable for conflict and gross human right violations also entrenches the impunity and increases the vulnerability of victims as they face impoverishment and are marginalized from their rights.

### **III. Indonesia Entrenched Impunity from the View of Transitional Justice Mechanism**

#### **Truth-seeking process**

10. A law to establish a national truth and reconciliation commission was passed in 2004, but struck down by the Constitutional Court after a judicial challenge. Civil society and victims' groups sought an amendment to articles that required victims to forgive perpetrators in order to receive reparations. However, the Constitutional Court then annulled the entire law, a defeat in the struggle against impunity. In early 2020 the Government initiated a revisit to the national truth commission law through a Presidential Decree. However, the discussions on the law have not taken place due to COVID-19 restrictions.
11. To date, the government in its promise to deal with past human rights violations only offers a mechanism deemed to be more attractive to perpetrators including the military generals. The proposed mechanism only focused on reconciliation of elites and "harmonization" with a policy to forgive and forget, rather than considering the needs and desires of victims in order to reveal the truth. The mechanism called National Harmony Council (Dewan Kerukunan Nasional)<sup>7</sup> tossed by Wiranto as Coordinating Minister of Political, Legal and Security Affairs which was rejected by the civil society and victims.
12. In Aceh, after decades of conflict, a peace agreement was reached in 2005 between the Indonesia Government and Free Aceh Movement (GAM), which included a mandate to establish a truth and reconciliation commission. The Aceh TRC was established in October 2016 through the passing of a local law after long-term advocacy by civil society. Their mandate includes: uncovering the truth behind past human rights violations to strengthen peace initiatives; helping promote reconciliation between perpetrators of human rights violations, both individuals, institutions, and victims; recommending comprehensive reparations for victims of human rights violations, in accordance with universal standards relating to the rights of the victims. By the end of its first term

---

<sup>7</sup> Dewan Kerukunan Nasional (DKN) proposed in 2016 by retired Army General Wiranto who at that time served as Indonesia Coordinating Minister of Political, Legal, and Security Affairs. Wiranto is also the individual allegedly responsible for several past human rights violations in He is the former national Military Chief, allegedly involved in the case of crimes against humanity in East Timor during a referendum in 1999. He is also allegedly involved in the cases of student shootings in Trisakti and Semanggi 1998-1999. Available at: <https://kontras.org/2018/07/19/kontras-imparsial-dan-keluarga-korban-pelanqqaran-ham-berat-masa-lalu-dewan-kerukunan-nasional-dkn-bukan-jawaban/>.

in October 2021, Aceh TRC has conducted three public hearings, and documented more than 5264 statements from individuals across Aceh spanning the entire 1976-2005 conflict.<sup>8</sup> The total of 50 victims and their families involved in the public hearings, with officials also invited and given remarks on the process. By 2022, it is expected to release their first final report.<sup>9</sup>

13. In 2020, the Aceh TRC recommended urgent reparations for 245 victims of mass violations which included medical and psychological assistance, entrepreneurship, social insurance, and administration registry with priority given to the elderly. The Aceh Government then issued a Decree on The Determination of the Recipient of Urgent Reparations and the Fulfillment of Victims of Human Rights Violations. However, the government has yet to provide any actual "immediate reparation"<sup>10</sup> for 58 women victims verified by the TRC. Thus, the concerns that the allocation of funds for the implementation of urgent reparations will not be available until the 2022 fiscal year.<sup>11</sup>
14. In Papua, the extension of special autonomy status through Law No. 2/2021 still provided a local human rights court and truth and reconciliation commission. However, the establishment of the truth and reconciliation commission and human rights court has been stalled until now. The discourse on establishment of truth and reconciliation in Papua has been circulating in civil society, while still questioning its effectiveness considering the situation of conflict, violence and security approach that still occur in Papua.

### Recommendation

- a. Establish the national truth commission and ensure that any mechanism to address past human rights violations not be used as a substitute for the responsibility of the criminal justice system to investigate and prosecute those responsible for grave human rights violations and crimes under international law.
- b. Ensure the effective establishment of the TRC in Aceh by acknowledging truth about the conflict, provide justice for victims and their families, and provide effective reparation for victims of the Aceh conflict in the framework of peace.
- c. Ensure the establishment of Human Rights Court and Truth Commission in Papua, as recommended in Local Special Law 2/2021.

### Access to justice

---

<sup>8</sup> For more information on the second Aceh TRC Public Hearing in July 2019, see AJAR Press Release in: <https://asia-ajar.org/2019/07/aceh-truth-and-reconciliation-commission-public-hearing-in-north-aceh-the-urgency-to-provide-reparation-for-victims/>

<sup>9</sup> See more at:

<https://asia-ajar.org/2021/12/31/indonesia-handover-of-truth-and-reconciliation-commission-findings-and-recommendations-to-aceh-parliament/>

<sup>10</sup> Aceh TRC proposed two reparation mechanisms for victims: urgent and comprehensive. The form of urgent reparations consists of 5 things; 1) medical; 2) psychological; 3) venture capital; 4) life guarantee; and 5) population status and prioritization for victims who are elderly. This urgent reparation will continue to be recommended by the Aceh TRC according to the needs of the victims. Meanwhile, the comprehensive reparations recommendation will be submitted by the Aceh TRC to the President of the Republic of Indonesia, the Governor of Aceh, and the Aceh DPR at the end of the 2016-2021 period of the Aceh TRC. Available in Bahasa Indonesia at: <https://kkr.acehprov.go.id/berita/kateqori/news/ Pernyataan-kkr-aceh-penetapan-penerima-reparasi-mendesak-korban-pelanggaran-ham>.

<sup>11</sup> National Commission on Violence Against Women, *Press Release on the Commemoration of 16 years of Peace Accord in 2021*. Available in Bahasa Indonesia at: <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-menyambut-16-tahun-nota-kesepahaman-helsinki-15-agustus-2021>.

15. Based on the human rights court law, the human rights court heard three cases: the massacre of Tanjung Priok (1984), Timor-Leste (1999), and the Abepura case in Papua (2001) with evidence drawn from investigations conducted by The National Commission on Human Rights (Komnas HAM) and the Attorney General's Office (AGO). Nevertheless, these three cases resulted in the acquittal of all defendants, either by the first ruling or on appeal.
16. Komnas HAM established *ad hoc pro justitia* inquiries for 13 cases of crimes against humanity.<sup>12</sup> They recommended criminal investigation and prosecution, but the AGO refused to take a further investigation, claiming the files were administratively incomplete and insufficient evidence, which Komnas HAM disputed. In fact, civil society claimed that the problem was mostly based on lack of political will by the government.<sup>13</sup> In particular, the government committed to establish the Human Rights Court for Wasior-Wamena in Makassar as stated by the Minister of Foreign Affairs during her speech in the 3rd cycle of UPR, 2017. However, there has been no implementation of her statement.
17. At the end of 2021, the AGO started conduct an investigation for the killing and torture of civilians by the military in Paniai Regency, Papua, in 2014, with a promise to established the human rights court this year.<sup>14</sup> However, victims and civil societies criticized the process as it undermines victims' involvement in the judicial process.
18. The refusal of the AGO to follow up the gross past human rights violations cases has been happening since 2008, and the President has never provided any response regarding this situation. On the other hand, Komnas HAM and AGO were taking a series meeting in dealing with this issue, however, there is no further action to solve it. A ping-pong situation has been going on for decades that has frustrated the victims.
19. In 2021, the Government of Indonesia passed the amendment of Law No. 11 of 2021 concerning the Prosecution. The law added the duty and authority of the prosecutor to "participate and be active in the truth-seeking process of gross human rights violations cases" outside their law enforcement roles as investigators of gross human rights violations. Consequently, the Indonesian General Attorney Office has two distinct roles in resolving gross human rights violations; as law enforcement officers and as the authority to truth-seeking work. Thus, the AGO now owns non-judicial authority which is outside its function as law enforcers.
20. Despite lack of political will from the government, civil societies continue to push accountability for justice. Family victims of the shooting of students of Trisakti Semanggi also filed a lawsuit against the statement from the AG) who decided that the Semanggi I and II tragedies were not gross human rights violations to the Jakarta State Administrative Court. However, the Administrative Court decisions were in favor of AGO.

---

<sup>12</sup> The 13 cases are: shootings of students at Trisakti and Semanggi I and II (1998-1999); the Paniai case in Papua (2014); Wasior (2001-2002) and Wamena (2003) cases in Papua; the May Riots (1998); activist disappearances (1997-1998); the Talangsari case (1989); summary killings (1982-1985); 1965-66 atrocities; three cases in Aceh called Jambo Keupok, Aceh (2003), Simpang KKA (1999), Rumah Geudong (1989-1998); and Banyuwangi Killings on Black Magic Shaman (1998).

<sup>13</sup> These reasons include: insufficient evidence to support the investigation, Komnas HAM' investigators have not been sworn in (although it is not required by the Human Rights Court Law), and an *ad hoc* Human Rights Court has not been established (in fact it can be established after the Attorney General has conducted the investigation, following the decision by the Constitutional Court).

<sup>14</sup>See more at: "*Mahfud MD p ledges Paniai human rights case be solved*" available at <https://en.jubi.co.id/mahfud-md-pledges-paniai-human-rights-case-be-solved/>

21. This failure to deliver justice reveals a systemic weakness in the judiciary and a lack of political will in the administration. Taken with the AGO's refusal to follow up on Komnas HAM inquiries into other cases, the Government is not pursuing justice for past gross human rights violations.

### **Recommendation**

- a. Immediately resolve the impasse between Komnas HAM and the AGO by establishing an effective mechanism for cooperation between the two institutions under the President's supervision;
- b. Conduct an independent, effective, and thorough investigation of the Paniai case in Papua to bring perpetrators to justice and ensure reparation for victims.
- c. Immediately conduct an audit towards the AGO regarding the case handling of gross human rights violations cases for accountability and transparency; which include establishing an independent prosecutor which is free from political interest to prosecute the gross violations of human rights;
- d. Establish ad hoc human rights courts for all cases involving crimes against humanity that have been determined by Komnas HAM, including the human rights court for Wasior-Wamena, and as committed by the Government of Indonesia during the 3rd cycle of UPR, 2017;
- e. Accede to the Rome Statute of the International Criminal Court, in accordance with the commitment made in the National Human Rights Action Plan of 2011-2014.

### **Right to reparation**

22. The most challenging in providing reparation in Indonesia is that the reparation can only be provided if a court has acknowledged human rights violations and according to the court verdict. Law No. 13/2014 regarding the Protection of Witness and Victims regulates a victim's right to restitution, rehabilitation, compensation, satisfaction, and non-repetition (of human rights violations). The regulation regarding restitution, compensation and rehabilitation is also included in the human rights court law.
23. The current human rights legislation allows reparations provided by a decision made by a court of law. Thus the demise of the human rights court has effectively blocked victims from receiving reparations. However, the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban*, LPSK), is empowered to provide referrals for urgent health and psychosocial services for victims, including those whose cases were investigated by the national human rights commission. Currently however, LPSK has integrated this assistance into the national policy health system (BPJS). The change means that ongoing advocacy to acknowledge them as victims has become difficult as they are now included in a public service mechanism.
24. However, reparations are only provided if a court has acknowledged human rights violations. LPSK can provide referrals for urgent health and psychosocial services based on a recommendation from Komnas HAM of a person's "legal status as a victim." From 2012 until 2021, Komnas HAM has issued 5858 SKKPHAM (Surat Keterangan Korban Pelanggaran HAM) for individuals receiving the legal status as victims of gross human rights violation. Notwithstanding the importance of these services, the period to obtain urgent health and psychosocial services is only 6 months with a maximum extension of up to 1.5 years. The majority of the victims applied for the status are elderly (over 65 years) and in many cases the applicant has died before Komnas HAM can verify. Throughout the mandate of LPSK, there are various obstacles despite amendments to regulations since Law No. 13/2006 was introduced.

25. In 2021, the government is in favor of only initiating social services for victims of human rights violations, without overriding existing judicial laws that could be used to reveal the truth about past violations. They had a plan called *Unit Kerja Presiden untuk Penanganan Peristiwa Pelanggaran Hak Asasi Manusia yang Berat* or Presidential Work Unit for Handling Gross Human Rights Violations (UKP-PPHB).<sup>15</sup> The government also developed *Tim Terpadu Penanganan Dugaan Pelanggaran HAM* (the Integrated Team for the Settlement of Alleged Human Rights Violations) to solve case of Talangsari<sup>16</sup>, ignoring the voices of the victims<sup>17</sup>, and provide money to individual victims without a clear legal basis and recognition for victims of gross human rights violations. The current draft regulation also fails to address the issue of adequate reparations for the victims.

### **Recommendation:**

- a. Revise the Law to include the definition of the victims of gross human rights violations in the reparation mechanism to be specified as the reparation beneficiary;
- b. Provide victims with comprehensive reparations that complement justice mechanisms, restore victims' trust, and provide social and economic programs, prioritizing rehabilitation for women, the elderly, children, and those living in geographically isolated locations.
- c. Ensure effective programs for women victims of both domestic and state violence, including programs for women who need legal assistance or medical care.

### **Guarantees of non-recurrence**

26. Since 1998, the military and the police have been separated, while the military has a defence role and police has a security's function. Apart from the Indonesian Military Law No. 34 of 2004 has stated that civilian courts have the authority to try military personnel in cases of crimes against civilians, the military remained openly opposed to amendments to the Military Court Law No. 31 of 1997 as an effort to place military accountability under civil law. Therefore, the mentioned law is still in use today, accompanied by a lack of transparency in military courts and military disciplinary procedures, and also weak sanctions.
27. The lack of trust between the military and the police then triggered the military's rejection of the civil criminal justice system. This mistrust is exacerbated by the competition between the two institutions for resources and overlapping security mandates, which hinder state accountability. It is also exacerbated by corruption and weak legal institutions, hence, expanding the authority of civilian courts to try military personnel will produce little progress in the courts remaining corrupt and vulnerable to political influence. The need for security sector reform cannot be separated from the need to reform other justice institutions.
28. Vetting and lustration mechanisms are not acknowledged in state policy. The military, police and intelligence services continue to assign a number of personnel involved in gross human rights

---

<sup>15</sup> KontraS, Press release, April 2021, Available at: <https://kontras.org/2021/04/09/komisi-untuk-orang-hilang-dan-korban-tindak-kekerasan-rancangan-peraturan-presiden-republik-indonesia-tentang-unit-kerja-presiden-untuk-penanganan-peristiwa-pelanggaran-hak-asasi-manusia-yang-berat-me/>.

<sup>16</sup> Talangsari Tragedy, Jakarta Post, November 2014, "Jokowi urged to get to bottom of Talangsari case". Available at: <https://www.thejakartapost.com/news/2014/11/10/jokowi-urged-get-bottom-talangsari-case.html>.

<sup>17</sup> See more: KontraS. 2022. Press Release. The article available at: <https://kontras.org/2022/02/09/33-tahun-talangsari-1989-gonta-ganti-kebijakan-yang-tetap-tidak-berpihak-pada-korban-dan-keadilan/>.

violations. In several cases, security forces who were revealed to have been involved in human rights violations were not fired, but only transferred to other units, and even received promotions.

29. General Wiranto who was one of the indicted military officers in East Timor in 1999 by the UN Serious Crime Unit, appointed as the new Coordinating Minister of Politics, Law, and Security in 2016. Lieutenant General (Ret.) Prabowo Subianto, suspected of being the mastermind behind the 1997-1998 enforced disappearances by Indonesia's National Commission on Human Rights (Komnas HAM) official investigation, appointed as the Minister of Defense in 2019. In addition, three former military officers of *Mawar* team,<sup>18</sup> who were involved in 1997-1998 activists disappearances have been given strategic positions.<sup>19</sup> Lastly, the President gave the award of *Bintang Jasa Utama* - one of the nation's third-highest civilian honors - to Eurico Guterres, a former militia commander during the popular consultation of Timor-Leste 1999 and tried in a human rights court in Indonesia.<sup>20</sup>

## Recommendations

- a. Immediately conduct a thorough evaluation of security sector reform-related laws and strengthen the criminal justice system to combat impunity, as well as measures to strengthen the independence and professionalism of the judiciary.
- b. Revise the 1997 Military Court Law to require military officers who committed crimes to be tried in civilian court as stated in the 2004 Indonesian Military Law ;
- c. The government of Indonesia and the House of Representatives shall establish vetting mechanism policy to avoid the involvement of alleged perpetrators of gross human rights and corruption to be elected as public officials.

## IV. Emblematic Gross Violations of Human Rights Cases

30. Indonesia continues to neglect its responsibility to investigate past human rights abuses thoroughly and transparently based on the recommendation of 3rd UPR 2017.<sup>21</sup> Below is the update of the situation on emblematic gross violations of human rights in Indonesia, which significantly eroded the current situation of human rights in Indonesia.

### IV.1. The premeditated murder of human rights defender, Munir: Deadlocked Legal Process

31. Munir, a prominent human rights defender and a former Director of KontraS, was killed in 2004. He had campaigned for enforced disappearance, and helped to uncover evidence and military

---

<sup>18</sup> *Mawar* Team is a Group IV Army Special Forces Command led by Prabowo Subianto. The team was already sentenced 16-20 months imprisonment for the activist kidnapping operation ahead of the 1997 General Election and the People's Representatives Assembly (MPR) General Session in 1998.

<sup>19</sup> Former *Mawar* Team members, namely Brigadier General Yulius Selvanus and Brigadier General Dadang Hendrayudha, were respectively appointed to serve as Head of the Defense Strategic Installation Agency and Director General of Defense Potential of the Ministry of Defense through the President issued Presidential Decree of the Republic of Indonesia Number 166/PA of 2020 concerning Dismissal and Appointments from and in Senior High Rank Leaders in the Ministry of Defense (Keppres No. 166 / TPA 2020). Another *Mawar* Team member, Untung Budiharto, has also been appointed to become the Commander of the Jakarta Raya Military Regional Command on January 7, 2022, despite being sentenced to 20 months imprisonment and dismissal from the army in the Military Court for enforced disappearances in 1997-1998.

<sup>20</sup> Eurico Guterres was accused of being involved in a number of massacres in East Timor. He was deputy commander of the Integration Fighters Force (PPI) and commander of the Timor Leste Aitarak militia in 2002, he was tried at the East Timor Human Rights Court and sentenced to 10 years in prison, but was later released in Supreme Court.

<sup>21</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia*, 14 July 2017, Document A/HRC/36/7 recommendations No. 141.62 (United States of America).



involvement of human rights violations by the Indonesian security forces, particularly in conflict areas and was actively involved in investigations into the violence that occurred in Timor-Leste. This case is not an ordinary criminal case, because it involves a state airline, Garuda Indonesia and the State Intelligence Agency.

32. Munir's murderer, Pollycarpus Priyanto, was initially convicted, but later acquitted by the Supreme Court in 2009. His acquittal was reversed after a case review, and he was given a 20-year sentence. However, he was granted a number of remissions, and released early in 2014. Pollycarpus made more than 40 phone calls to a senior intelligence official, Muchdi Purwopranjono, around the time of Munir's murder and the release of the autopsy report. He faced trial in 2008, but was acquitted and many activists claim the process was flawed. 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 31 December 2008. Further, the findings of a 2005 independent Fact-Finding Team (FFT) into the killing, which was established by the President, was disregarded by the government and has never been published. In 2010, Komnas HAM also identified flaws in the police investigation, prosecution and trial of Muchdi and recommended a new police investigation.
33. Civil society has asked the State Secretariat to publish the FFT report, but it has not responded. The dispute between civil society and the Government over release of government findings regarding Munir's death continues in the Public Information Commission in 2016. The commission granted that the document of Munir FFT should be open to the public and requested the President towards the State Secretariat to open the document. However, the State Secretariat refused to open the document because they claimed that they did not know of its existence and which state institution held the document. Up until now, the government has still resisted to recognize the existence of the official Munir FFT investigation report.
34. In 2022, in accordance with Indonesia's Criminal Code, Munir's case will expire and cannot be reinvestigated. Civil society organizations continue to push Munir's case as a crime against humanity<sup>22</sup>, therefore, the statute of limitations does not apply. Currently, Komnas HAM is re-examining the case to be put under the case of gross violation of human rights.

## **Recommendations**

- a. Immediately open the Munir FFT investigation report to the public as a form of truth-telling process;
- b. Immediately prosecute the main perpetrators of Munir's case;
- c. Immediately determine the case of Munir as a gross violation of human rights.

## **IV.2. Addressing enforced disappearances and delayed of the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance**

35. The enforced disappearances, particularly of student activists have become a discourse amongst the public since the fall of the New Order Era by Suharto in May, 1998. It was strongly alleged that 23 people are victims of enforced disappearances because of their political activities. From the list, 9 people were returned, one of them found dead and 13 people still disappeared whose fate, whether alive or not, is still unknown.

---

<sup>22</sup> Kontras, 'Tetapkan Kasus Munir Sebagai Pelanggaran HAM Berat', (Press Release, 29 January 2021) Available at: <https://kontras.org/2021/01/29/tetapkan-kasus-munir-sebagai-pelanggaran-ham-berat/>

36. During 2005-2006, Komnas HAM conducted a pro-justicia investigation and concluded the presence of evidence concerning gross human rights violations within the cases of enforced disappearances during 1997-1998. The result from the findings was delivered to the Attorney General Office in 2006. Until now there is no further follow up towards the inquiry process.
37. Enforced disappearances still continue in Papua. In 2018-2020, at least six cases of enforced disappearances were documented during the armed conflict between the security forces and the TPNPB in Intan Jaya and Nduga. There were 16 Indigenous Papuans reported missing during 2019-2020. Two patterns were seen in the identified cases of enforced disappearance: one, the victim was arrested with alleged involvement in the TPNPB and disappeared after the arrest; two, the victim disappeared after the military attacked or swept the village with gunfire.<sup>23</sup>
38. The Indonesian government signed the International Convention for the Protection of All Persons from Enforced Disappearance on 27 September 2010, but has yet to ratify it.<sup>24</sup> Whereas the ratification of this Convention is a mandate from the recommendation of the Indonesian House of Representatives (period 2004-2009) for cases of kidnapping and enforced disappearances 1997/1998.<sup>25</sup> Indonesia has agreed to follow up concluding observations in 2015 and 3rd UPR, 2017.<sup>26</sup> In 2021, the Ministry of Law and Human Rights targets the Law on the Ratification of Enforced Disappearances to be passed on December 10, 2021. To date in March 2022, one of the obstacles that hindered the drafting process of this Convention Bill is that Prabowo Subianto, the alleged human rights violations perpetrator who is now the Defence Minister, has not yet signed the draft.

27

## Recommendations

- a. Establish ad hoc human rights courts for enforced disappearances in 1997-1998 that have been determined by Komnas HAM.
- b. Acknowledge and reveal the truth on the whereabouts of the disappeared persons of 1997/1998.
- c. Immediately ratify without delay the Convention for the Protection of All Persons from Enforced Disappearances that has been accepted within the 3rd of UPR, 2017.

### IV.3. The ongoing gross human rights violations in former Indonesia occupied territories of East Timor (1975-1999): The disappearances of children and second generation East Timorese refugees

39. One of the remaining cases related to conflict is the issue of “stolen children” from Timor-Leste, children who were forcibly taken by Indonesia officials in the period of occupation of East Timor (1975-1999). The impact for the girls, now adult women, of “stolen children” is particularly related to psychological trauma due to the experience of violence inside the adoptive families, some mentioned facing sexual harassment. To date, they are living in parts of Indonesia, unable to go back due to economic hardship, fear of rejection, and isolation. Many families in Timor-Leste still

<sup>23</sup> See more: International Coalition for Papua. 2021. Human Rights in West Papua 2021. Available at: <https://humanrightspapua.org/hrreport/2021/>.

<sup>24</sup> International Convention for the Protection of All Persons from Enforced Disappearance <https://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>

<sup>25</sup> The recommendation stated that “recommends the government to immediately ratify the Convention against Enforced Disappearances as a form of commitment and support to stop the practice of enforced disappearances in Indonesia.”

<sup>26</sup> Report of the Working Group on the Universal Periodic Review; Indonesia, 14 July 2017, Paragraph 139, UN Doc. A/HRC/36/7

<sup>27</sup> See more: *Ratifikasi Konvensi Anti Penghilangan Paksa Terhambat Paraf Prabowo*, available at: <https://tirtoid.ratifikasi-konvensi-anti-penghilangan-paksa-terhambat-paraf-prabowo-gpqG>.

look for them, some consider them missing persons or dead in conflict, after being lost decades apart.<sup>28</sup>

40. The Indonesia and Timor-Leste Government established the Commission for Truth and Friendship (CTF) in 2005 and in 2008 released its report with recommendations to be implemented by the two countries. One recommendation was the formation of a Commission for Missing Persons to identify children who had been taken to Indonesia and reunite them with their parents in Timor-Leste. Until recently, the two countries had not implemented this recommendation.
41. However, beginning in 2013, a group of civil society organizations in Indonesia and Timor-Leste in collaboration with the national human rights institutions of Indonesia and Timor-Leste, began looking for these stolen children. By the end of 2021, more than 160 stolen children documented, 80 of whom have since participated in reunion visits with their families in Timor-Leste.
42. However, thousands still separated from their families, without contact for many decades. Our findings show that the majority of victims in Indonesia faced difficulties obtaining citizenship documents that essential to access basic services, experienced abuse that impacted their physical and mental health up until today, while also hardships and challenges to own land and obtain jobs due to their lack of education. Many show signs of ongoing trauma.
43. Moreover, since 1999 repatriation has been taking place, those who remain are often persons identified as human rights violators or those who no longer have any relatives in East Timor to help them start a better life if they go back. When the UN High Commissioner for Refugees (UNHCR) released the Declaration of Cessation in 2002, it estimated that 28,000 ex-refugees stayed in Indonesia. The East Timorese, however, claimed almost 200,000 persons were in West Timor, and the local government of East Nusa Tenggara stated that more than 100,000 people stayed.
44. After more than 20 years, they are now facing hardship in receiving financial assistance, and face limited access to basic services such as housing, land tenure, and job opportunities. The conditions affected the second generation of the Timorese who were internally displaced from East Timor and resettled in West Timor under an unfinished resettlement scheme after East Timor had been separated from Indonesia and formed into Timor-Leste.

## **Recommendations**

- a. Establish ad hoc human rights courts for enforced disappearances in 1997-1998 that have been determined by Komnas HAM;
- b. Acknowledge and reveal the truth on the whereabouts of the disappeared persons of 1997/1998;
- c. Immediately ratify the Convention for the Protection of All Persons from Enforced Disappearances that has been accepted within the 3rd UPR, 2017;;
- d. Establish a bilateral commission with the Government of Timor-Leste to study and implement the recommendations of previous truth commissions (the Timor-Leste Commission for Reception, Truth, and Reconciliation/CAVR and the Indonesia and Timor-Leste Commission for Truth and Friendship/CTF) that relate to the separated children and the search for the

---

<sup>28</sup> Asia Justice and Rights, Long Journey Home: Stolen Children Timor Leste, available at: <https://asia-ajar.org/2016/08/long-journey-home-stolen-children-timor-leste/>.

disappeared;

- e. Ensure the acknowledgment of the case of the Stolen Children in Timor-Leste and provide reparations for the victims, particularly to reunite victims in Indonesia to their families in Timor-Leste.
- f. To review and continue the Senior Official Meeting (SOM) between Government of Indonesia and Timor-Leste that has been halted since 2016 to address the recommendations of previous truth commissions particularly that relates to the rights of the refugees in the camps including their right to own land.

#### **IV.4. Dealing with 1965 atrocities and attempting to restrict civil society efforts to push accountability**

45. Between 1965 and 1979, hundreds of thousands of civilians were detained without trial and became victims of torture and ill-treatment. Many detainees disappeared or were killed, some perished in detention centers. Those who survived were released by 1979. However, they faced continued stigmatization and discrimination, reinforced by state policy and social norms.<sup>29</sup>
46. The government has repeatedly resisted attempts to openly grapple with this chapter of history. It has closed all access to the truth about the 1965 history atrocities and other abuses, has ignored recommendations regarding past gross human rights violations issued by Komnas HAM in 2012, and continues to deny the existence of mass graves related to 1965 atrocities.
47. An international people's tribunal, organized by Indonesian civil society and held at The Hague in November 2015, announced its judgment that the Indonesian state is guilty of crimes against humanity and possibly genocide. Although this initiative has quenched victims' thirst for truth, senior government officials have made statements refuting the people's tribunal findings.
48. In 2016, the government showed interest in opening the discussion around 1965 atrocities. Participants included not only victims, but also academics, journalists, practitioners, activists, victims' representatives, and, to some extent, military representatives and members of the accused groups who were part of the prolonged and extra-judicial violence of 1965-66.<sup>30</sup> However, several current and former high-ranking officials speaking at the symposium, voiced their reluctance to apologize and acknowledge the violence of 1965. There was a strong backlash against the symposium, and its recommendations have yet to be implemented. The growing sentiment from military and fundamentalist groups then halted this process. In 2017, the Jakarta Legal Aid office was attacked while hosting events related to the issue. Military also demand communities to watch the controversial movie produced in the New Order regime while conducting raids on books related to socialism, communism, or anything involving the discourse of 1965 in Indonesia.
49. Victims continue to suffer physical trauma resulting from ill-health and socio-economic deprivation as a consequence of the violations. Some have urgent needs that are not being addressed; for example, they have not received medical assistance and trauma counselling for injuries resulting from violence, torture, and detention.<sup>31</sup> Victims' property ownership documents

---

<sup>29</sup> See AJAR report: Still Denied, Right for rehabilitation for torture victims during the mass detention of 1965 in Indonesia, Available at: <http://www.asia-ajar.org/files/Submission%201965.pdf>.

<sup>30</sup> See AJAR press release, "Acknowledgement and Truth for 1965 Victims, A Call for Comprehensive Reparations in Indonesia: A Response to the Symposium on 1965 in Indonesia," <https://asia-ajar.org/2016/04/acknowledgement-truth-1965-victims-call-comprehensive-reparations-indonesia/>.

<sup>31</sup> AJAR in 2016 has written a research report on the story of 140 women survivors of torture and other forms of violence from Indonesia, Timor-Leste and Myanmar. Based on participatory action research with women survivors, "Enduring Impunity" presents a new approach and knowledge on how women experience impunity in conflict and post-conflict settings in Southeast Asia. Available at: <http://www.asia-ajar.org/files/ENDURING%20IMPUNIY%20final-23%20Nov-press.pdf>.

and certificates for houses, land, and farms were also confiscated by military officers. In some cases, they were forced to sign a letter stating they had given their land to the state.

50. Hundreds of survivors recognized as crimes against humanity victims have been able to access psycho-social support and medical services through the Witness and Victims' Protection Agency. This is mainly because the National Human Rights Commission completed a pro-justicia investigation of these cases and has formally recognized them as victims of human rights violations.
51. Through long advocacy from civil society, there are many positive developments from the local government in enacting the policies to provide partial reparation for victims. In Palu, Central Sulawesi, Mayor of Palu declares an apology to victims and provides redress and services to victims, which include assistance such as home repairs, scholarships, and access to government health services, sanitation facilities, clean water, and economic empowerment training for victims.<sup>32</sup> In Maluku, victims received new official marriage certificates, to replace those that had identified them as "ET"—former political prisoners. Local officials have apologized and have produced new certificates. In 2003, the court decided that the government had commit an unlawful act through arbitrary and discriminatory classifications towards one of the victims, Nani Nurani. As the plaintiff, Nani Nurani was then able to access public facilities and services.<sup>33</sup>
52. In 2012, the Supreme Court annuled the Presidential Decree No. 28/1975 on the Discriminatory Treatment towards Those Allegedly Involved in the Failed Coup attempt on 30 September 1965.<sup>34</sup> The Supreme Court considered that this Presidential Decree discriminates against individuals allegedly identified as directly or indirectly involved in the failed coup attempt on 30 September 1965. However, this decision cannot be implemented as it requires the President to issue another Decree for the annulment. Up until now, the annulment Decree has not been issued.

## **Recommendations**

- a. Establish the nationwide Truth Commission to reveal the truth on the 1965 atrocities, provide acknowledgement and comprehensive reparations for the victims;
- b. Establish ad hoc human rights courts for crimes against humanity in 1965-1966 that have been determined by Komnas HAM.

**Respectfully submitted,**

**Asia Justice and Rights (AJAR)  
The Commission for the Disappeared and Victims of Violence (KontraS)**

---

<sup>32</sup> See more: Rudy Mastura: The Mayor who said "sorry" for 1965, Available at:

<https://www.thejakartapost.com/news/2013/10/25/rusdy-mastura-the-mayor-who-said-sorry-1965.html>.

<sup>33</sup> Koalisi Keadilan dan Pengungkapan Kebenaran (KKPK), *Justiabilitas Ekosob (Pemulihan Hak Korban Pelanggaran HAM Masa Lalu Melalui Jalur Litigasi: Pengalaman dan Panduan)*, p.25. ; Jakarta State Administrative Court Decision No. 60/G.TUN/2003/PTUN.JKT; Higher State Administrative Court Decision No. Jakarta No.203/B/2003/PT.TUN.JKT; Cassation Decision No. 400 K/TUN/2004.

<sup>34</sup> Supreme Court Decision No. 33 P/HUM/2011.