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**The question of impunity in Indonesia**

The existing judicial mechanisms are more geared towards granting impunity to the perpetrators of human rights violations than providing justice to the victims in Indonesia.

Victims of torture and disappearances have long longed for justice; a fundamental right that has been so far denied to them. The failings in the institutions that were instrumental in perpetuating such crimes have so far remained un-reformed. The Attorney General's Department, which is crucial in prosecuting the perpetrators of human rights violations, despite changes of personnel, has adamantly abdicated its role. This blunt refusal is evident from the following:

**The failure of the Attorney General in fulfilling its basic duties.**

The refusal to act on the findings provided by the National Human Rights Commission (Komnas HAM) concerning the abductions, torture and disappearance of several democracy activists in 1998 and 1999 speaks for itself.

In a report presented on December 8, 2006, by Komnas HAM, the Attorney General was accused of failing in his basic duties and obligations in bringing charges against the alleged perpetrators of the abductions in 1998 and 1999. It was stated by Komnas HAM Official Enny Suprpto that: *"In spite of the significant evidence that we have found, the Attorney General's Office refused to carry out its own investigation. It has refused to seek testimony from experts or look for new evidence at locations considered to be places where the activists were allegedly held captive"*.

The reluctance on the part of the Attorney General to conduct further investigations and to press for the recommendations of these cases to be prosecuted by the Ad-Hoc Human Rights Tribunal has perplexed many both locally and internationally.

Article 20 of Law 26 of 2000 stipulates:

1. *Should the National Commission on Human Rights consider there is sufficient preliminary evidence that a gross violation of human rights has occurred, a summary of the findings of the inquiry shall be submitted to the investigator.*

2. *No later than 7 (seven) working days following the submission of the summary findings of inquiry, the National Commission on Human Rights shall submit the inquiry findings in full to the investigator.*
3. *In the event that the investigator considers the inquiry findings referred to in clause (2) insufficient, the inquirer shall immediately re-submit the inquiry findings to the investigator accompanied by guidelines for their completion, and within 30 (days) of receiving the inquiry findings, the investigator is required to consummate these insufficiencies.*

### **No justice for the Victims of Tanjung Priok, Trisakti and Semanggi 1 and 2**

The Ad-Hoc Human Rights Tribunal, which heard the case of Tanjung Priok, has recently acquitted all the suspects, much to the horror of the victims. This case concerns a massacre that occurred on September 12, 1984, in which hundreds of persons were shot during a mass prayer session, following a series of provocations by the Indonesian army in and around a mosque in the port area of Jakarta.

The gross human rights violations committed both by the Military and the Police in the murder of over 33 young students in Trisakti and Semanggi in 1998 and 1999 have also suffered a similar fate. Indonesian police and soldiers shot dead a total of at least 33 persons in three separate incidents in Trisakti and Semanggi between May 1998 and September 1999. Three military tribunals were convened to look into the killings and 15 officers were found guilty of conspiracy to commit mass murder. However, none of them have been held accountable for their actions and no independent judicial inquiries have been conducted concerning these incidents.

Komnas HAM conducted an inquiry into these cases and submitted its official findings to the Attorney General in 2002, concluding that they constitute gross violations for which elements in the Indonesian police and military are responsible. However, the Attorney General has consistently refused to follow up on the inquiry and conduct an investigation into the killings, which is vital notably if they are to be considered by an ad-hoc human rights court. Besides petty technical reasons, the Attorney General justified his inaction on the grounds of a recommendation by the Indonesian Parliament, which stated that the killings at Trisakti and Semanggi did not constitute gross violations of human rights. This recommendation was later revoked, thus allowing for the case to be submitted to the Parliament to be declared a case of gross human rights violations and then to be presented to the Ad-hoc Human Rights Tribunal. Nevertheless the Attorney General stubbornly refused to follow through in taking the case to its logical conclusion.

The Ad-hoc Human Rights Tribunal (Courts), created with the explicit purpose of delivering justice in cases of gross human rights violations, has also failed miserably in its mission. In cases of gross human rights violations committed in East Timor or in Tanjung Priok, all the alleged perpetrators have either been acquitted or granted formal immunity.

The relevance of the issues raised above must be seen in the context of two major issues in Indonesia: the tradition of impunity for perpetrators of human rights

violations, and the denial of justice for victims, which contribute to the loss of public faith in the justice system and the government. The Asian Legal Resource Centre is of the view that the Indonesian government is grossly failing to respect its international obligations, including those given in its pledge prior to election to the Human Rights Council, and must take corrective action both in reforming the prosecution system as a whole and the Attorney General's Department in particular, and to press for further investigations with the clear objective of providing redress to the victims, as is enshrined in Art 2 of the International Covenant on Civil and Political Rights.

### **What mechanisms of redress can exist after the rejection of the Truth and Reconciliation Commission?**

The Truth and Reconciliation Commission (TRC) Bill, was aborted on December 7, 2006, by the Constitutional Court on the grounds that it was inconsistent with the Constitution and international conventions to which Indonesia is a State Party.

Passed in early 2004, the Bill simply states that in order for the victims of the 1965-66 massacres - in which, according to conservative estimates, at least million people were killed - to be deemed eligible to claim compensation, they must first formally pardon their perpetrators; thus effectively granting the latter *de jure* amnesty from prosecution.

While the abolishment of the TRC Bill is indeed a most welcome, and long-overdue move by the government, the troubles of the victims of the 1965-66 massacres are far from over. The Indonesian State has so far failed to accept responsibility for the grave human rights violations committed by its agencies and officers during these massacres. In addition, the survivors of the 1965-66 massacres and their immediate dependents have long been subjected to institutionalized discrimination. Publicly branded as "Ex-Tapol", they are denied even the most basic rights, such as employment, housing, social welfare, health and education for their children.

Even more shocking is the fact that until recently, the Indonesian schools taught children that the 1965-66 massacres were "heroic crusades" against the corrupt forces of Communism, for which the Government and the State military are extolled as being "national heroes". With such an embedded mentality, it is hardly surprising that the perpetrators of the 1965-66 massacres feel little compulsion to admit to their crimes.

The government's unwillingness to address of the military's rampage of abductions and killings, and their failure to account for over 1 million (independent surveys place it at over 3 million) missing persons, constitutes a clear violation of their obligations under international law and as a member of the UN Human Rights Council.

The abolition of the TRC must be followed by the creation of a mechanism that is envisioned to uncover truth, promote justice and guarantee reparation for the victims. The law should under no circumstances allow for the granting of amnesties to the perpetrators of these crimes. Failure to deal with these issues and ensure justice could unleash a further cycle of violence in the country.

If the government is determined to demonstrate its resolve to overcome the current culture of impunity in the country, it must publicly acknowledge its predecessor's role in orchestrating the 1965-66 massacres, and declare it as being a gross crime against humanity. This is the first, most crucial step.

Secondly, the government must put an immediate halt to all forms of institutionalized discrimination against the survivors of the 1965-66 massacres. A few years ago, the Government passed legislation prohibiting the public branding of 1965/66 survivors as 'Ex-Tapol', and promised to grant all survivors regular ID cards. To date, this promise has not been fulfilled. Moreover, the government should provide additional assistance in relation to employment, housing, and educational scholarships for their children, who have been long deprived of their right to education.

### **Recommendations**

It is quite apparent that the initiatives taken so far have not only undermined the access to justice for the victims of human rights abuses, but have also had the opposite effect, contributing to the perpetuation of impunity currently enjoyed by the perpetrators. The direct result of all this is the loss of confidence in the justice system, rule of law institutions and the State itself.

The case of the prominent human rights activist Munir confirms this. Despite empty promises made by the President and members of the House of Representatives, the Attorney General is reluctant to conduct proper investigations for fear that some of the senior members of the national intelligence bureau may be implicated. Rather than providing justice concerning Munir's killing to his bereaved family, impunity for the perpetrators is evidently being made a priority. In fact, the whole saga of Munir's murder and eventual attempts at prosecution symbolise the state of the justice system in the country. If the State of Indonesia is seeking in good faith to abide by its commitments to Article 2 of ICCPR, it must ensure that:

1. The Attorney General's office is reformed, so that it functions both as a prosecutor and an adviser to the House of Representatives. It is the role of the Attorney General to advise the House of Representatives on the need for new legislation, amendments to existing laws, and reforms to defective systems and institutions.
2. The Attorney General is held responsible for his refusal to conduct further investigations concerning submissions made by Komnas HAM, which are required to pave the way for gross human rights violations to be taken up by the Ad-hoc Human Rights Tribunal.
3. That the House of Representatives declare all massacres in 1965 and subsequently as being defined as gross human rights violations, so that all perpetrators may be tried, and for all the involved victims to be able to receive justice and adequate remedies.

The speed at which such mechanisms are put into place, the resources made available to the establishment of justice for all victims of human rights violations, and the adherence to international norms and standards, will be the ultimate tests of the good faith of the Indonesian Government in protecting human rights and living up to its pledges made to the international community, which resulted in its election to the United Nations Human Rights Council – a place it currently does not deserve.