



**Submission on the List of Issues Prior to
Reporting (LOIPR) on Indonesia's 2nd periodic
report under the International Covenant on Civil
and Political Rights (ICCPR)**

June 2020

**IMPUNITY AND
ONGOING GROSS HUMAN RIGHTS
VIOLATIONS**

INDONESIA

I. Introduction

Asia Justice and Rights (AJAR) submitted this report for the UN Committee of Civil and Political Rights ahead of the adoption of the list of issues prior to reporting for Indonesia at its **129th session of the Human Rights Committee**.

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.

AJAR has evaluated the implementation of recommendations made to Indonesia during its previous Concluding Observation on the Initial Report of Indonesia from the Human Rights Commission in 2013¹:

- *The Committee regrets the failure by the State party to implement article 43 of Law 26 of 2000 in order to establish a court to investigate cases of enforced disappearance committed between 1997 and 1998 as also recommended by Komnas HAM and the Indonesian Parliament. The Committee particularly regrets the impasse between the Attorney General and Komnas HAM with regard to the threshold of evidence that should be satisfied by Komnas HAM before the Attorney General can take action. The Committee further regrets the prevailing climate of impunity and lack of redress for victims of past human rights violations, particularly those involving the military (art. 2)*
- *The State party should, as a matter of urgency, address the impasse between Komnas HAM and the Attorney General. It should expedite the establishment of a court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament. Furthermore, the State party should effectively prosecute cases involving past human rights violations, such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families.*

¹ Concluding observations CCPR/C/IDN/CO/1 20 Aug 2013

We also oversaw the implementation of the information received from Indonesia on follow up concluding observations in 2015²:

- *A notable progress was achieved at the end of 2013 when the Government submitted a bill to ratify the Convention for the Protection of All Persons from Enforced Disappearance to the Parliament. At this stage, the Bill is expected to be discussed by the parliament at its earliest.*
- *With regard to efforts to address past human rights issues, Indonesian National Human Rights Institution (Komnas HAM) and Attorney General's Office have agreed to convene a series of meetings to share views in order to resolve the issue of data which was previously considered insufficient by the latter.*

We are concerned by the continued failure of Indonesia to ensure truth, justice, and reparations for the victims of past human rights violations and their families.

II. Human Rights in Indonesia

Human rights have only been formally recognized in Indonesia, both by law and in the Constitution, after the fall of Suharto's authoritarian regime, in 1998. Adopting the transitional justice framework as a concept appeared in response to the human rights violations that had been conducted systematically and at an escalated rate, which include delivering justice, seeking truth, providing reparations and promoting guarantees of non-recurrence. It includes seeking state accountability and recognition of victims and to encourage the peace process, reconciliation, and democracy. This recognition can be seen in accordance 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, now became 'constitutional rights'.³

However, such achievements do not necessarily provide protection to the people. They confirmed that all repression, injuries, and suffering needed to be repaired. Any violation, harm, or abuse of individual rights and social justice should be punished according to the law. Across the country, many victims still suffer the consequences of past human rights abuse they experienced, while ongoing violations still occur in parts of Indonesia, including Papua. Many victims of past or current human rights

² Information received from Indonesia on follow-up to the concluding observations CCPR/C/IND/CO/1/Add.1, March 2015

³ AJAR has written a brief summary on Indonesia's path in transitional justice. See more at: <https://asia-ajar.org/wp-content/uploads/2018/12/English-Indonesia-Case-Study.pdf>

violations have tried to utilize human rights-related laws and institutions. Unfortunately, the victims' efforts have failed to drive the institutions to initiate the legal processes for the protection of human rights.

After the recommendation to the State by the Human Rights Committee in their initial report, there are no improvements committed by the government to seek the settlements accordingly to the past human rights violations. There has been a lack of comprehensive remedy for victims, including acknowledgement, recognition, and fulfilment of their rights.

III. Legal framework

Indonesia has enacted the Human Rights Law (No. 39/1999) and the Human Rights Court Law (No. 26/2000). The UN Security Council has already accepted a recommendation that Indonesia have an opportunity to try any of its citizens responsible for the violations. In October 1999, the government quickly passed Regulation in lieu (Perppu) No. 1/1999 on Human Rights Court, later to be superseded by 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.

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 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.

The Law No. 13/2014 regarding the Protection of Witness and Victims regulated five rights of victims, they are restitution, rehabilitation, compensation, satisfaction, and non-repetition (of human rights violations). The regulation regarding restitution, compensation and rehabilitation is also stated within the Law No. 26/2000 on human rights court.

Reparations are only provided if a court has acknowledged human rights violations. However, the national Witness and Protection Agency (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". According to the Law No. 13/2014 regarding the Protection for Witness and Victims and regulating the mandate of LPSK, there are several obstacles even though the regulations have already been amended from Law No. 13/2006.

Suggested adoption of issues:

1. *Revise the law to include redress for victims of serious crimes that ensure their rights to truth, justice and reparations, as well as measures to strengthen the independence and professionalism of the judiciary.*
2. *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.*

IV. Implementation of the situation of impunity and ongoing gross violation of human rights.

IV. 1 Lack of truth, justice and reparation for victims of human rights violations

A. Accountability of the Attorney General Office

The Attorney General Office (AGO) has a role to investigate and prosecute those implicated in gross human rights violations. Although a small number of low-ranking members of the security forces have been sentenced to short prison terms, not a single case of gross human rights violations in the past has been successfully prosecuted.

National Commission on Human Rights established ad hoc *pro justitia* inquiries for 12 cases of crimes against humanity.⁴ They recommended criminal investigation and prosecution, but the Attorney General's Office (AGO) refused to take a further investigation, claiming the files were administratively incomplete and insufficient evidence, which Komnas HAM disputed.

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, May 3, 2017. However, there has been no implementation of her statement.

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.

⁴ The 12 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).

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.

Therefore, a promise by the government as stated in Indonesia on follow up concluding observations in 2015 is not implemented.

- *With regard to efforts to address past human rights issues, Indonesian National Human Rights Institution (Komnas HAM) and Attorney General's Office have agreed to convene a series of meetings to share views in order to resolve the issue of data which was previously considered insufficient by the latter.*

Suggested adoption of issues:

1. *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;*
2. *Immediately conduct an audit towards the Attorney General Office 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.*
3. *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, as committed by the Government of Indonesia during the 3rd Cycle of Universal Periodic Review.*

B. Revealing the truth by the establishment of Truth Commission

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 in the 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. On the positive note, in early 2020, the government initiated a revisit to the national truth commission law through Presidential Decree. It is not clear yet how the prospect of these initiatives.

On the other hand, pressure by civil society in Aceh led to a local TRC law in 2013. The Aceh parliament has appointed seven commissioners and started to work in 2016. At the start of the establishment, there was little to no recognition by the

government. This resulted in the working condition of Aceh TRC based on voluntary measures with limited official recognition and support.

Aceh TRC has made several groundbreaking achievements, including statement takings and conducting three public hearings.⁵ The total of 50 numbers of victims and their families involved in the public hearings, with officials also invited and given remarks on the process. By the end of 2021, Aceh TRC will be expected to release their first final report.

Suggested adoption of issues:

- 1. Establish the national truth commission with ensuring that 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.*
- 2. 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. Continuing violence against women and lack of accountability in Papua

Violation is ongoing in Papua and further escalated in early 2020. Racism, stigmatisation and accusations of being and associated to separatist or accusations of treason were the common justification for torturing victims. Survivors of torture continue to be victimized long after they have been released with many enduring continued discrimination, as well as poverty, psychological trauma and health issues.⁶ In mid 2019, there occurred increased racial discrimination and internet shutdowns with escalating violence involving the Indonesian security apparatus and armed civilian groups. On the case of political prisoners, there was ongoing tension since the mid 2019 racial discrimination case. From the total of 63, 6 political prisoners were convicted and released on 12 May 2020. Instead of using the dialogue approach towards the Papuan people, the Government of Indonesia still uses a security approach to reduce the conflict, however as we are aware, the security apparatus is the source of the conflict in Papua.

Women in Papua are having a wider impact of the ongoing violence. They had suffered as victims of discriminations and violence, which includes domestic violence, sexual violation, and in the context of development projects. They are also unable to

⁵ 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/>

⁶ See AJAR and TAPOL report The Practice of Torture, Business as Usual in Papua: <http://asia-ajar.org/wp-content/uploads/2015/11/Torture-report-English.pdf>

access healthcare and proper food. In particular, women victims of sexual violence have been continually facing difficulties in speaking out about their experiences, due to shame, fear of stigma and judgement, concerns about confidentiality, and lack of confidence in the rule of law.⁷ Moreover, discrimination and marginalization of HIV-positive Papuan women remains a problem for ongoing violence, since Papua has an alarmingly high rates of HIV/AIDS cases.

There is a local regulation as an improvement to protect the victims of human rights violations which is the Local Law on the Rehabilitation of the Rights of Women Victims of Human Rights Violations (Perdasus no.1/2011), which was passed without public dissemination and remains lacking in sub-regulations. The regulations are not implemented.

Papua's 2001 Special Autonomy Law also provided for a TRC, but it has been stalled. Seeing official indifference, civil society and victims' organizations have begun documenting survivors' stories, and conducting public hearings and advocacy as alternative forms of truth seeking in Papua.

Suggested adoption of issues:

- 1. Take urgent steps to stop human rights violations and violence, including torture, racism and violation against women by redressing the past, addressing current challenges, and strengthening indigenous survivor's resilience.*
- 2. Immediately implement the existing law, Local Special Law 1/2011 on the redress of Papuan women's rights for victims of violence and human rights violations.*
- 3. Ensure the establishment of Human Rights Court and Truth Commission in Papua, as recommended in Local Special Law 1/2011*

D. Lack of reparation for victims

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 accord to the court verdict. However, the national Witness and Protection Agency (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". According to the Law No. 13/2014 regarding the Protection for Witness and Victims and regulating the mandate of LPSK, there are several obstacles even though the regulations already have been amended from Law No. 13/2006.

⁷ See AJAR report on voices of Papuan Women struggling from violence, I am Here: Voice of Papuan Women: <https://asia-ajar.org/2019/04/i-am-here-report/>

In fact, within the implementation either LPSK and the victims still find it difficult to access protection, particularly for the gross human rights violations victims. For instance, access to medical-psychosocial service from LPSK integrated with the State Healthcare Insurance, which has only applied for 6 months. Therefore, the medical and psychological access is not sustainable.

However, civil society organizations and survivors are also engaging local governments to provide assistance and social services, such as the apology and provision of services for torture survivors of the 1965 mass human rights violations by the former Mayor of Palu in Central Sulawesi.

Suggested adoption of issues:

- 1. 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.*
- 2. Ensure effective programmes for women victims of both domestic and state violence, including programmes for women who need legal assistance or medical care.*

IV. 2 Emblematic Gross Violations of Human Rights Cases

A. Dealing with 1965 atrocities and attempting to restrict civil society efforts to push accountability.

Between 1965 and 1979 in Indonesia, hundreds of thousands of civilians were detained without trial and became victims of torture and ill-treatment. Many detainees were disappeared or 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.⁸

However, 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.

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

⁸ See AJAR report: Still Denied, Right for rehabilitation for torture victims during the mass detention of 1965 in Indonesia <http://www.asia-ajar.org/files/Submission%201965.pdf>

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.

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 1965-66.⁹ However, several current and former high-ranking officials speaking at the symposium, voiced their reluctance to apologize and acknowledge the violence of 1965. Some asked that the nation merely forget the past. 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 the events related to the issue. Indonesian 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.

Suggested adoption of issues:

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

B. Truth of 1997/1998 Enforced Disappearance cases ignored

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.

⁹ 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/>

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 has already been delivered to the Attorney General Office in 2006. Nonetheless, up until now there is no further follow up towards the inquiry process.

The government also has yet to implement the recommendation of the previous Concluding Observation on the Initial Report of Indonesia from the Human Rights Commission in 2013 to investigate the case of enforced disappearances committed between 1997-1998 as stated below:

“the State party should, as a matter of urgency, address the impasse between Komnas HAM and the Attorney General. It should expedite the establishment of a court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament.”

In addition, the government has yet to ratify the Convention for the Protection of All Persons from Enforced Disappearances that has been agreed from Indonesia on follow up concluding observations in 2015 and 3rd Cycle of Universal Periodic Review in 2017.

Suggested adoption of issues:

- 1. Establish ad hoc human rights courts for enforced disappearances in 1997-1998 that have been determined by Komnas HAM.*
- 2. Acknowledge and reveal the truth on the whereabouts of the disappeared persons of 1997/1998.*
- 3. Immediately ratify the Convention for the Protection of All Persons from Enforced Disappearances that has been accepted within the 3rd Cycle of Universal Periodic Review.*

C. A premeditated murder of human rights defender, Munir: Deadlocked Legal Process

Munir, a prominent human rights defender, was killed in 2004. He had campaigned for enforced disappearance, and helped to uncover evidence of human rights violations by the Indonesian security forces, particularly in conflict areas. The State Intelligence Body allegedly involved in this murder.

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 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.

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 denied 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.

The government also has not yet solved the case according to the previous Concluding Observation on the Initial Report of Indonesia from the Human Rights Commission in 2013 as stated below:

"..the State party should effectively prosecute cases involving past human rights violations, such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families."

Suggested adoption of issues:

- 1. Immediately open the Munir FFT investigation report to the public as a form of truth-telling process.*
- 2. Immediately prosecute the main perpetrators of this Munir's murdered.*

D. The disappearances of children (now adults) in the former Indonesia occupied territories of East Timor (1975-1999)

Approximately several thousands of East Timorese children were forcibly displaced during the Indonesian occupation of East Timor from 1975 to 1999. The Governments of Indonesia and Timor-Leste established the Commission for Truth and Friendship (CTF) in 2005 and in 2008 released its report with a number of 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.

However, beginning in 2013, a group of civil society organizations in Indonesia and Timor-Leste (AJAR, KontraS, IKOHI, and Hak Association), in collaboration with the national human rights institutions of Indonesia and Timor-Leste, began looking for these stolen children, taken from East Timor between 1975-1999. By the end of 2019, we have documented more than 130 stolen children, 80 of whom have since participated in reunion visits with their families in Timor-Leste. 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, experienced abuse, hardships and challenges to own land and obtain jobs due to their lack of education. Many show signs of ongoing trauma.¹⁰

Suggested adoption of issues:

- 1. 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 disappeared.*
- 2. Ensure the acknowledgement for 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.*

**Respectfully submitted,
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¹⁰ For more information related the Stolen Children of Timor-Leste, see AJAR brief report in: <https://asia-ajar.org/2016/08/long-journey-home-stolen-children-timor-leste/>