



Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect

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1. Executive Summary

This report examines some of the challenges and possibilities for implementing Responsibility to Protect (RtoP) principles in Indonesia by evaluating reforms made in relevant areas over the past ten years. The overall purpose of this report is to provide a background on relevant issues within Indonesia today for professionals with an interest in the Responsibility to Protect. Past and current reforms over the last ten years which are significant in terms of implementing the principle are addressed thematically with each issue placed within its historical context of Indonesian history and politics. This report therefore aims to provide useful information for professionals and practitioners with an interest in Indonesia yet who may be less familiar with past and current political developments.

The report begins with an introductory section in which the benefits for Indonesia's support for and implementation of the RtoP are addressed. The report then addresses the previous decade of reforms made in Indonesia since the end of the New Order regime (1966-1998). These reforms are assessed with the aim of determining their usefulness for putting the RtoP into practice in Indonesia:

- Section One, 'Indonesia & the Responsibility to Protect', sets the context for the report. The Responsibility to Protect as a principle is explained briefly and then Indonesia's interests, its prominence within Southeast Asia and its participation in implementing the RtoP are addressed.
- Section Two, 'A Decade of *Reformasi*,' considers the relevant reforms made since the end of the New Order, such as those which attest to a strengthening human rights culture, greater rights' protection and a growing civil society. It also critiques some of the numerous failures of successive administrations since the beginning of *Reformasi* (the 'Reform Movement', 1998 -) to fulfill the promises of reform, particularly in the areas of redressing gross human rights abuses, judicial impartiality and security sector reform. These areas of reform are analysed in turn and, for each, a critique made as to how these areas are important for strengthening RtoP principles in Indonesia.

To date, there has been very little research into the implementation of the RtoP within specific countries, in particular within the Asia-Pacific Region.¹ As the January 2009 UN Secretary-General's report on implementing the RtoP makes clear, mechanisms developed for RtoP must be created and adapted to suit local and regional conditions.² By assessing past and current trends relevant to implementing the RtoP in Indonesia, this report contributes substantially to finding ways to strengthen the RtoP in Southeast Asia's most populous nation and largest economy.

The overall conclusion of this report is that Indonesia shows strong commitment to the RtoP principles as part of the current administration's growing involvement in international relations, particularly within the Asian region. In addition, it is the judgment of this report that Indonesia is likely to continue steadily in the democratization process and that there is now a very low risk of remilitarization or the return to more authoritarian tendencies. These factors indicate that in the short to medium term, Indonesia holds strong potential for promoting and implementing the RtoP. The background information on reforms and their various stages of implementation contained within this report should therefore be used to inform efforts when engaging with Indonesian government and civil society stakeholders on the matter of the Responsibility to Protect.



2. Section One: Indonesia & the Responsibility to Protect

Euphoria, Hope & Disappointment: Ten Years of Reforms

Tens of millions of Indonesians watched and listened on 21 May 1998 as President Suharto announced his resignation, finally bringing to an end his authoritarian, 'New Order' regime (1966-1998). The catalyst for this forced resignation was the Asian economic crisis of 1997-1998, but it came after internal dissatisfaction with the regime since at least the beginning of the 1990s. The New Order's blatant and extravagant nepotism and corruption had caused deep resentment amongst most Indonesians and had tarnished the President's and the regime's history of economic growth which had resulted in improved living standards for millions of Indonesians. Yet aside from entrenched corruption, the price for the New Order's economic success was the depoliticisation of civil society, the militarisation of social and political life, a weak and corrupt judiciary, and an authoritarian regime willing to use repression and intermittent displays of state violence to retain power.

Ten years of *Reformasi* (the Reform movement, 1998 -) was marked in 2008 and, over the past year, many Indonesians and Indonesia observers have paused to take stock of the changes since the New Order. Dissatisfied with the progress of *Reformasi*, some have looked back at Suharto's long-lasting, repressive but stable rule with fond memories of years of economic growth and improved living conditions.³ On the other hand, others (particularly the regime's many victims) remember the New Order as the long, dark night of repression with recurrent threats of violence. Yet, despite the many and conflicting views over the changes since 1998, as one long-time observer, Greg Barton, remarked, '[o]nly a decade ago, the Indonesia of today would have represented the best-case scenario that few dared to believe possible. Certainly, no one could have predicted that in 2009 Southeast Asia would have one successful democratic nation marked by political openness, social stability and steady economy growth – and that that nation would be Indonesia'.⁴ Such praise, for many reasons, is well deserved. Looking back at Indonesia's post-colonial past, at the rise and fall of regimes and the violence that marked those regime changes, the reforms of the past decade have been impressive. Yet there have also been some failures which undermine the progress made.

This report reviews some of this progress since the fall of Suharto. On a positive note, there have been strong developments in civil society, steady economic recovery and growth, as well as many reforms made to strengthen the protection of civil rights in Indonesia. There have been, however, numerous failures by the successive *Reformasi* governments to uphold or implement fully their reform programs, such as in the areas of security and judicial reforms as well as in

addressing past gross human rights abuses. This assessment is intended to inform practitioners and professionals interested in promoting and implementing the Responsibility to Protect (RtoP) in Indonesia. The information contained within this report should be used as a background document by these interested parties to inform engagements with Indonesian government and civil society stakeholders on the issue of the RtoP.

The Responsibility to Protect and Indonesia

To date, the current Indonesian administration under President Susilo Bambang Yudhoyono (SBY), has been a prominent voice within Southeast Asia's somewhat unexpected supporters of the RtoP.⁵ At the 2005 World Summit, for example, President SBY expressed his general support for the principles of the RtoP. As with many others, however, he also stated that Indonesia had some reservations about its implementation. In particular, Indonesia expressed its desire for further clarity about what situations are applicable under R2P, what steps might be taken when a situation arises, and which bodies will be authorised to carry out these steps.⁶ More recently, at the UN General Assembly's 'Interactive Informal Dialogue' and plenary session on the RtoP in July 2009, Indonesia again expressed its support and made a number of suggestions as how best to mainstream the RtoP.⁷

Why is it crucial to discuss Indonesia and the RtoP? What is to be gained by Indonesia supporting RtoP principles and initiatives? Conversely, how can the strengthening of the RtoP benefit Indonesia, its reform agenda and future prospects? To answer these questions, this report first outlines briefly the three pillars of the RtoP and then addresses how both Indonesia and the principle of the RtoP stand to benefit from Indonesia's support.

The Responsibility to Protect

The initial concept of the 'Responsibility to Protect' (R2P or RtoP) came from the International Commission on Intervention and State Sovereignty (ICISS) set up in 2000 in the wake of a series of humanitarian crises in the 1990s.⁸ The ICISS's 2001 report aimed to reconcile, on the one hand, the growing urgency to protect human populations from gross abuses through 'humanitarian intervention' and, on the other, to achieve these aims without contravening state sovereignty. In essence, the report concluded that the two concepts were not contradictory. Rather, following Francis M. Deng's notion of 'sovereignty as responsibility'⁹, the ICISS found that the fundamental responsibility of a state is to protect its people. In addition, the Commission argued that if a state is unable or unwilling to protect its people from harm, then it is incumbent upon the international community, in extreme cases, to intervene militarily.

In the lead-up to the 2005 UN World Summit, the then UN Secretary-General Kofi Annan took a particular interest in promoting international responsibility to protect human populations from genocide and other gross human rights abuses. Annan's 2005 report, *In Larger Freedom*, emphasised the importance of the RtoP principle.¹⁰ At the World Summit six months later, Annan's support together with vocal advocacy from countries such as Rwanda, Chile and a number of other Southern countries,

saw the RtoP principle outlined in Paragraphs 138-139 of the World Summit Outcome Document.¹¹

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Advisor of the Secretary-General on the Prevention of Genocide.

The three essential parts of this were: (a) the responsibility of states to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; (b) the assistance of the international community for states to carry out this responsibility; and (c) the responsibility of the international community to take appropriate and timely measures to intervene if a state fails in its responsibility to

protect. The UN Security Council in Resolution 1674 of 2006 then reaffirmed these outcomes.

At the beginning of 2009, the current UN Secretary-General, Ban Ki-moon, released his report, *Implementing the Responsibility to Protect*. In it, the Secretary-General clarified some of the earlier strategies of the RtoP principle to propose a three-pillar structure for the principle's implementation. Pillar One contains the protection responsibilities of the State. Pillar Two discusses international assistance and capacity-building and Pillar Three outlines timely and decisive responses. The Secretary-General's report also emphasised that all three pillars were of equal importance and that no single pillar should be emphasised over the others. All together, the three pillars comprise a broad approach to prevent, react to, and rebuild after gross human rights abuses. Another crucial point was that the scope of the RtoP should remain 'narrow but deep,' that is, it should only apply to genocide, war crimes, ethnic cleansing and crimes against humanity.¹²

The Responsibility to Protect, Southeast Asia, and Indonesia's Interests

The significance of Indonesia's support of the RtoP should not be underestimated. In the most basic terms of scale, Indonesia is the fourth most populous country in the world, the largest majority Muslim nation, and is Southeast Asia's largest economy. In its own right therefore, Indonesia should remain of key strategic significance for the principle's implementation. More importantly for this discussion of the RtoP, however, is Indonesia's strong regional significance. Indonesia played a crucial part in the founding of the region's most important and influential organisation, the Association of Southeast Asian Nations (ASEAN) in 1967, and continues to be one of the dominant countries in that organisation's decision-making process. Since 1967, Indonesia has consistently made its involvement in ASEAN a central part of its foreign policy.¹³ Given that one of the major recommendations made in the Secretary-General's January 2009 Report was the importance of fostering the principle's development at the regional level, Indonesia and, more importantly, its role within ASEAN, is vital to strengthening the RtoP norms in the Southeast Asian region. In addition, Indonesia's role within the Southeast Asian and broader Asia-Pacific regions is essential for supporting the RtoP's implementation.¹⁴ As the Secretary General's report also outlined, mechanisms developed for the RtoP must be created and adapted to suit local and regional conditions.¹⁵ As Indonesia plays a strong role in these regional arrangements, its ongoing support for the RtoP is a positive step towards strengthening regional sponsorship of the principle.

Over the last few years, ASEAN has changed from its original structure toward becoming a more cohesive and integrated regional organisation. ASEAN has, since the early-2000s, been moving towards becoming a more institutionalised regional community.¹⁶ Progress towards this was seen in the signing of the ASEAN Charter in November 2007. Of particular interest for this report was that the new Charter, apart from re-stating its more traditional principles of consensus, respect for national sovereignty, regional cooperation and non-interference, also made it one of the 'purposes' of ASEAN 'to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental

freedoms.¹⁷ Indonesia's strong support for the Charter and ASEAN's claims of becoming a more 'people-focused' grouping are both positive signs for seeking further consensus with governments in the region for promoting the RtoP.

Another way in which Indonesia has shown leadership in this area has been its role in the setting up of the human rights body promised under the ASEAN Charter.¹⁸ Two years after the Charter was signed, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated at the 15th ASEAN Summit in October 2009. Indonesia's key leadership role in matters to do with promoting human rights was seen in the discussions surrounding the setting up of the AICHR. Although the terms of reference for the Commission were, in the end, watered down after considerable debate, Indonesia pushed for the Commission's framework document to include much stronger powers.¹⁹ Despite its failure to strengthen the terms of reference, Indonesia showed that it was willing to take a leadership role on this issue. This is also a positive indicator for the role that Indonesia can potentially play in promoting and implementing the RtoP in the region.

Indonesia also has much to gain from its support of the RtoP. First, it affords Indonesia the opportunity to assert its leadership on a topical and generally universally-agreed upon principle; that is, the protection of populations from genocide and other mass atrocity crimes.²⁰ Particularly since SBY began his first term in 2004, Indonesia has shown its desire to raise its profile within international relations, however, previous attempts over the last five years have had mixed results. For example, Indonesia appeared to squander its opportunity to raise its profile during its 2007-2008 term on the UN Security Council, instead vacillating between supporting American and European positions and not wanting to be seen to be doing precisely that.²¹ SBY also fumbled when he attempted to host 'peace negotiations' in September 2008 for the Thai government and stakeholders from Thailand's southern, mostly Muslim, region. All this managed to achieve was an angry response from the Thai government and a request that Indonesia mind its own business.²²

Despite these occasional setbacks, however, as McIntyre and Ramage have argued, 'Indonesia has shown new international confidence and activism.'²³ As some public examples of this new international activism during SBY's first term, Indonesia hosted the UN Framework Convention on Climate Change in Bali in December 2007 as well as another UN conference on Anti-Corruption in February 2008, both of which raised Indonesia's international profile. Another attempt made by Indonesia to show regional leadership was with the establishment of the 'Bali Democracy Forum' in December 2008 that, as SBY described in his opening address, would provide a forum for regional governments to strengthen democracy, support human rights, improve the rule of law, and increase regional cooperation, amongst other aims.²⁴

During 2009 with the legislative and presidential elections going on, in conjunction with domestic pressures and the global financial crisis, SBY has focused more on internal matters. It is expected, however, that SBY's administration will once again turn its attention to international relations during his second term which ends in

2014. In October 2009, Rizal Sukma, a well-known expert on Indonesia and head of the Centre for Strategic and International Studies in Jakarta, argued that SBY would be far more active in international relations during his second term. He also argued that the new and significant 'buzz-word' within the Foreign Ministry was 'new activism'; meaning that SBY wishes to have more of a focus on international relations and, in particular, within the Southeast and East Asian context.²⁵

All in all, this indicates that Indonesia is likely to continue its leadership efforts in the region. Given its previous support at international forums for the RtoP, this will hopefully lead to Indonesia's continued regional leadership in promoting the principle over the next few years. This benefits Indonesia in that the RtoP is a widely supported principle at the international level and the principle's implementation depends upon the kinds of capacity-building activities in which Indonesia has already indicated desire for regional leadership; democratization, strengthening the rule of law and supporting human rights. By showing leadership with respect to supporting and implementing the RtoP within the region and, in particular, within ASEAN, this may help Indonesia to achieve the international profile SBY has sought.

There are numerous additional reasons why support of the RtoP would be to Indonesia's advantage. Economically, there are several ways in which Indonesia stands to benefit. As the emphasis of Pillar Two activities is on international assistance for capacity-building, Indonesia could gain from initiatives by donor states which help to build their capacity to protect. This assistance could take various forms including investment in development aid, education as well as programs aimed at RtoP-related areas such as strengthening the rule of law, security sector reform or developing mediation capacities. Of course, it is facile to argue that Indonesia, or indeed any country, should implement RtoP initiatives with the hope of preventing mass atrocities because it stands to benefit economically. Economic inducements, be they the long-term economic benefits which derive from political stability and peace or potential direct economic stimulus in the form of donor aid, however, are further incentives for states such as Indonesia to become involved in RtoP programs.

Indonesia is also a regional leader, so it is in a position to offer assistance to other countries to build their capacities to protect. While this may not directly benefit Indonesia economically, it does afford it the chance to increase its profile within the region (and perhaps globally) and brings with it the indirect benefits of increasing regional security which, in turn, increases Indonesia's security. We need only look at some of the reasons that ASEAN was set up in 1967 to see the potential benefit for Indonesia's becoming a regional RtoP leader. By the early 1960s, there was a number of security threats in Southeast Asia, including Sukarno's '*Konfrontasi*' with Malaysia and the continuing Indochina wars. When ASEAN was founded, it was in part based on the desire to create a regional structure that would not only promote trade liberalization but also moderate intra-regional conflicts in order to prevent war. Despite some fairly large failures in this regard (i.e. the crisis in East Timor in 1999), as Amitav Acharya points out, ASEAN has survived and, for the most part, succeeded in its original security goals.²⁶ As one of these original purposes of ASEAN was to increase stability in order to facilitate regional economic growth, then it is in the

interests of both Indonesia and the other Southeast Asian nations for Indonesia to promote the RtoP initiatives. After all, these initiatives are, ultimately, not only about preventing genocide and other mass atrocities, but also about decreasing the likelihood of their occurrence through increasing democratization, the rule of law and human rights' standards.

One area in which the Indonesian government already contributes to preventing and intervening in humanitarian crises, is through troop contributions to UN peacekeeping forces. Indonesia has a long history of troop contributions, such as in the United Nations Transitional Authority in Cambodia (UNTAC) operations in 1992-1993, the United Nations Mission of Observers in Tajikistan (UNMOT) in the 1990s and more recently in the United Nations Mission in Sudan (UNMIS) since 2005. Continuing and perhaps increasing these troop contributions to multilateral peace operations not only shows Indonesia's commitment to pragmatic national security concerns (ensuring stability in its regions) but also aids the humanitarian goals of the RtoP. Additionally, Indonesia has also shown its commitment to protecting civilians as one of the primary responsibilities of the international community during conflicts. For example, during its time on the Security Council in 2007-2008, Indonesia called for more cooperation between the UN and regional organisations as well as increased funding for the protection of civilians.²⁷ This commitment to civilian protection is also a positive sign in terms of Indonesia's willingness and perhaps preparedness to commit to international efforts to protect civilians in RtoP situations.

Another way in which Indonesia could become a RtoP leader within the region is through collaborating with other states in ASEAN and the Asia-Pacific on regional initiatives. These initiatives could take many forms and could be grafted onto already existing regional arrangements. For example, one of the first steps towards implementing the RtoP is information-gathering, specifically for monitoring and reporting on situations which may turn into mass atrocities. In the Secretary-General's 2009 report, Ban Ki-moon drew specific attention to the need for the development of such an early warning mechanism and highlighted the importance of national and regional information-gathering systems within this. The Secretary-General envisaged that these national and regional systems would interact with the UN in order that a 'two-way flow' of information might facilitate early warning for impending crises and thus promote timely and decisive responses.²⁸ A second area in which Indonesia could show leadership is through strengthening normative consensus for the RtoP at the national and regional level.

In addition to these examples, there are also numerous advantages for Indonesia (and indeed, for any state) to support and implement the RtoP. These advantages are most clearly seen in comparison with states which choose to engage in serious crimes and violations relation to the RtoP. As the Secretary-General's 2009 report outlines, the cost to states which engage in these violations can be staggering, not only in terms of the cost to human lives and welfare, but also to the state's long-term survival. States which engage in these crimes suffer capital flight, the loss of foreign investment and often the reduction of aid as well as tourism.²⁹ Additionally,

the strain placed on resources and the loss of productivity as a result of widespread conflicts and/or mass human rights abuses can affect a state's future for many years. Given Indonesia's unfortunate post-independence history of mass human rights abuses, both widespread (the politically motivated massacres of an estimated 500,000 nation-wide in 1965-1966³⁰ are a case in point) and localized (such as in the protracted cases of East Timor and Aceh during the New Order period³¹), and the devastating loss of life as a result, it is promising that Indonesia has shown such vocal support for the RtoP to date. As this report will show, Indonesia has come a long way with its reform process and there is no benefit (and, indeed, there is very little likelihood) for it to return to more militarized, authoritarian ways. Hopefully, this support for the RtoP at international forums will coalesce into implementation over the next few years and into the future.

Having discussed the Responsibility to Protect principle itself and Indonesia's strategic interests in supporting its implementation, this report will now turn to the final section: A Decade of *Reformasi* (1998 – 2008) and recent areas of reform.



3. Section Two: A Decade of *Reformasi* (1998 – 2008)

The aim of this section is to provide a succinct review of the major reform issues of the past ten years which are of relevance to the implementation of the RtoP in Indonesia. The purpose of doing so is not to consider the last decade as a whole or indeed even to consider all of the many issues that could be considered related to the RtoP. This report therefore leaves aside changes to finance and monetary policies, corruption reforms, the important changes made as part of decentralization, regional politics, and religious laws and freedoms.³² While these changes have had profound impacts on Indonesia more generally, their direct relevance to the implementation of the RtoP in Indonesia is limited.

The more relevant issues to be outlined in this section are therefore:

- Strong growth in civil society
- Greater rights' protection
- Judicial reforms
- Security sector reforms (1998 – 2008)
- Redress of past gross human rights abuses and a culture of impunity

Each of these five issues will be discussed in turn and their relevance for implementing the RtoP highlighted. These areas of growth and reform have been identified for discussion because each at least partially addresses some of the 'root causes' of conflict. These root causes or preconditions of violence include state repression, a weak or heavily corrupted rule of law, a history of previous violence and human rights abuses.³³ Indonesia, unfortunately, has a history of these root causes of conflict which can, in turn, lead to the future perpetration of the kinds of mass atrocity crimes that the RtoP is aiming to prevent. Thus these issues are highlighted because they are both relevant to the implementation of the RtoP in Indonesia and because they are indicators of the progress made towards hopefully preventing future atrocities from occurring. That said, while there has been significant progress made in almost all of these areas towards improving the protection of human rights and strengthening the rule of law, there have also been considerable failures to fulfill some of these reform agendas. It should also be noted that these issues are inter-related and thus some points are revisited in more than one section.

Strong Growth in Civil Society

One of the most positive aspects of the first ten years of *Reformasi* which is important for the implementation of the RtoP in Indonesia has been the strong growth in civil society movements. The significance of this growth should not be underestimated, particularly when compared with the heavy state repression of civil society organizing during, in particular, the New Order period (1966-1998).³⁴ Given also that President Suharto's downfall in May 1998 was brought about largely due to the pro-democracy or '*Reformasi*' movement (of which student protesters were prominent)³⁵, this rise in the participation of civil society groups occurred at a crucial historical moment in Indonesian history.

The importance of civil society participation during a process of democratization has been discussed extensively elsewhere.³⁶ Putting aside the continuing debate over the level of influence that civil society and democratization can have upon each other, the relationship between the two is thought to be mutually constructive. Simply put, within any given socio-political context, the growth of civil society and the strengthening of democratization are in theory dependent upon each other. The outer parameters of what may constitute 'civil society' again also depends on the context, but may include organisations which come together intentionally around a particular theme (i.e. advocacy groups), to voluntary organisations, to mass social movements, to professional organisations to policy institutions and many more.³⁷

In Indonesia since the beginning of *Reformasi*, there have been literally tens-of-thousands of new civil society organisations created which include unions and labour movements, women's groups, religious groups, community organisations, professional associations, and mass-based membership organisations.³⁸ This is in stark contrast to the state of permissible civil society organizing under the New Order. To what extent these new organisations have affected the continuing democratization process in Indonesia is debatable³⁹, however, by their sheer size in numbers and advocacy areas that they cover, they are evidence of a healthy and diverse civil society which actively participates in social and political activities.

Under the Suharto regime, society was depoliticized in numerous ways. Suharto's 'floating mass' doctrine of the 1971 elections, for example, was essentially the banning of any kind of mass organizing in Indonesia; put bluntly, the 'floating mass' referred to ordinary people who should not have their lives complicated with politics, rather, they should be allowed to 'float' without such a burden. Although initially aimed at banning political parties from campaigning at the village levels, this semi-official doctrine effectively worked to exclude everyday people from politics. It did so by, in practice, eradicating any kind of mass organizing at the lower levels which, in turn, meant that no mass-based grass-roots organisations were allowed to form. As Benedict Anderson described it, the floating mass policy 'in effect [said] that Indonesia's unsophisticated rural masses [were] not to be distracted from the tasks of development by political parties, except in brief state-defined pre-election campaign periods.'⁴⁰ It was also in 1971 that the political structure of Indonesia was 'simplified' by the regime, reducing the number of political parties from nine to two.

Golkar, the regime's own party, was given the status of being non-political, and thus did not 'count' within the 'simplification' scheme.

Another way in which civil society and, indeed, many ordinary people were barred from political participation was by co-opting many of them into state-run organisations. For example, all members of Indonesia's extensive civil service and armed forces personnel (and their spouses) had to be members of the government's various civil service organisations, such as the female civil servants' and wives of civil servants' organisation, *Dharma Wanita*. In addition to being required to join these organisations, civil servants were also obliged to be part of the government's 'non-political' political party, Golkar. Unions were also 'simplified' so all unions were banned except for the state-run All-Indonesia Workers' Union (*Serikat Pekerja Seluruh Indonesia*), which operated only to control workers and prevent them from organizing independently.⁴¹

There were, of course, civil society organisations operating in Indonesia during the New Order. These were, however, heavily circumscribed by the regime which used a variety of legal and ideological methods to either curtail or regulate these organisations. The most well-known method of government control was the 1985 Law on Social Organisations (*Undang-Undang Organisasi Kemasyarakatan* No. 8/1985, otherwise known as UU ORMAS). Under this law, all organisations had to accept the government's 'guidance' and supervision and had to adhere to the state's official philosophy, *Pancasila*, or else be considered subversive.⁴² Of course, it was the government's prerogative as to how the *Pancasila* was interpreted, so to not be considered subversive, organisations had to not be considered anti-government. Criticism of the government or its policies was anti-government and therefore subversive.⁴³

By the 1990s, there were increasingly high levels of dissatisfaction with the Suharto regime and, in particular, with the Suharto family's businesses and progressively more extravagant levels of corruption attracting criticism. By this stage, Indonesia had started to experience regime fatigue⁴⁴ and there were increasing efforts by civil society to oppose the New Order. It was during this late New Order period that a new generation of human rights and pro-democracy organisations began to form. In true New Order regime style, many of these new organisations were considered subversive and various methods were used to repress them, including entirely spurious efforts by the military to discredit them as communists trying to destabilize the country.⁴⁵

As the New Order drew to a close, the government stepped up its campaign against pro-democracy advocates, particularly those associated with the future President Megawati Sukarnoputri's Indonesian Democratic Party (PDI – *Partai Demokrat Indonesia*). In one incident in July 1996, troops and anti-riot police attacked PDI supporters and, in the ensuing violence, five people were killed, 149 seriously injured and seventy-four others went missing.⁴⁶ By the 1997 elections and as the economy began to deteriorate due to the Asian Financial Crisis, Suharto's regime became increasingly unpopular and the protests against the government more frequent. By

early 1998, with prices of basic goods soaring and the *Rupiah* having lost most of its value, student groups in particular held more and more demonstrations protesting against the government.⁴⁷

In May of that year, the New Order came to an end in a paroxysm of violence which climaxed on 13 and 14 May. On 12 May, four Trisakti University students who were taking part in a 10,000 strong anti-government protest were shot dead by security forces.⁴⁸ This incident was followed by riots, widespread looting and burning, the violence of which many believe was engineered by parts of the military.⁴⁹ These two days saw high levels of ethnicized violence directed against Chinese Indonesians who were made scapegoats for the spiraling food prices and cost of basic goods. These two days also saw the mass rape of predominantly Chinese Indonesian women. The exact number of victims of these rapes is unknown because it is believed that the majority of cases went unreported.⁵⁰ Public anger towards the government increased as did the number of protestors. On 18 May, thousands of mainly student protestors occupied the DPR/MPR building (the parliament house), demanding reform (*Reformasi*) and the resignation of President Suharto. Finally, on 21 May 1998, after thirty-two years of authoritarian rule, Suharto announced his resignation and ended the New Order.

Ten years later, civil society in Indonesia has come a long way from the days of restrictions and intimidation that were a way of life for many pro-democracy advocates under the regime. In the period directly following Suharto's resignation, although civil protests continued on and off, the mass mobilization of students in particular ended.⁵¹ For a short period of time, the many different factions which had made up the pro-democracy and *Reformasi* movement had united to oust Suharto and, with that goal achieved, they then divided again into their various interest groups.⁵² Over the next few years with the removal of regulations controlling organizational activities, the number of NGOs and other civil society organisations increased at a rapid rate, with an estimated 70,000 NGOs operating in Indonesia by 2000.⁵³ A great many of these NGOs are structured around development and poverty reduction, including self-help and microfinance activities at a local level. Others congregate around particular social or political issues.

In conclusion, these many new civil society organisations which have been created over the past decade in Indonesia are a positive sign of democratic norms becoming increasingly entrenched in the Indonesian political system. In terms of promoting and implementing the Responsibility to Protect, this is positive in terms of potential civil society engagement with the principle. There are, however, some challenges to be faced with this vast number of new NGOs. These challenges include: many of these NGOs are fragmented along sectoral lines with a lack of coordination between groups working on similar issues; many are weak organizationally and have low levels of capacity to improve this; and there are very few mechanisms through which these organisations can be held accountable to the communities which they endeavour to help.⁵⁴ Despite this, these conditions are improving and the strengthening of NGOs and the coordination between these various organisations are both signals of a strong civil society movement in Indonesia into the future.

Greater Protection of Human Rights

Undeniably, the level of protection for human rights in Indonesia has substantially improved over the past decade. In those early days of *Reformasi* after the downfall of the New Order regime, it was clear that there was the need for far-reaching reforms, particularly in improving the protections of rights. The man who took over from Suharto and who became the third president of Indonesia was Suharto's last Vice-President, Bacharuddin Jusuf (B.J.) Habibie. Scorned by many in the government and in the pro-democracy movement at first, Habibie was seen as the last, desperate attempt for the New Order to retain power. To the surprise of most, however, Habibie turned out to be a reformist President.⁵⁵ In the seventeen months of his presidency, Habibie oversaw some of the most progressive changes in Indonesia's post-colonial history. Among the many changes made during the Habibie administration, long-term political prisoners were released (some of whom had been in jail since 1965), freedom of the press and to establish political parties was assured and the necessary grounds were laid for decentralization, the independence of East Timor and an overhaul of the constitution.⁵⁶ Under the subsequent two Presidents, the late Abdurraman 'Gus Dur' Wahid who came to power after the 1999 elections and who was replaced by Megawati Sukarnoputri in mid-2001, these initial steps to reform were mostly consolidated. For the first time since 1955, free and fair elections were held in both 1999 and 2004 and the 1945 Constitution was given a much-needed revision (to be discussed further below). Since the beginning of SBY's first administration, there has been further gradual progress made towards strengthening the protection of rights in Indonesia. This part of the discussion on the protection of rights is closely tied to the following consideration of legal and judicial reviews, with both the progress made in these areas as well as some disappointing setbacks taken into account.

It is fair to say that, after the installment of each new President since the beginning of *Reformasi*, there have been renewed hopes of dramatic reform, particularly in the area of human rights. Reforms have gradually occurred and continue to be implemented, yet as each new administration inevitably struggles to fulfill promised reform agendas, optimism quickly fades to disillusionment. As one observer of human rights' legal reform in Indonesia, Jeff Herbert, has said, 'it is not surprising that public skepticism pervades about the effectiveness and underlying motivations behind recent developments in the human rights legal framework.'⁵⁷ As stated, there have been major improvements made in the legal protection of human rights in Indonesia in the last ten years. Much of this progress, however, has been in strengthening and improving legislation and policies, rather than in greatly improved practices on the ground. Put another way, while Indonesia now has quite a respectable level of protections in place to guarantee the rights of its citizens (some of which are outlined below), for ordinary people, it is sometimes difficult to see these new protections in practice. Given these circumstances, it is understandable that people feel cynicism about political leaders, their policies and whether or not reforms have the ability to achieve any true change.⁵⁸

Tim Lindsey and Mas Achmad Santosa, two leading scholars on Indonesian law, see this dilemma in terms of how the 'new laws, courts and commissions lag well behind

policy promises and national agendas. They will likely do so for the some years to come.⁵⁹ Part of the reason for this lagging behind may be accredited to a lack of political will and inertia on the part of government departments and relevant sections of the security forces to carry out these reforms, however, some of the delay is also the result of the limited capacity amongst, in particular, local government offices to comply with reform policies. This delay amongst local government offices may also be the result of a lack of local political will to comply with reforms as well as ongoing problems of malfeasance and corruption amongst local governments.⁶⁰ To its credit, the central government has attempted to overcome this delay in the implementation of its policies. Accompanying the decentralization of government power in Indonesia in the early 2000's, for example, Law No. 10/2004 on the Formulation of Laws and Regulations included guidelines on the harmonization of local by-laws with human rights standards. While there continues to be high levels of dysfunction and delay in this harmonization⁶¹, it is hoped that this will gradually improve over the coming years.⁶² For the protection of human rights, this means that, as with many other areas of reform in Indonesia, while the framework is now fairly well placed at least in theory, it will be some time before government institutions (both central and regional) implement the reforms fully in everyday practice.

Despite evidence of cynicism over the effectiveness of reforms, particularly within the area of protecting peoples' rights, there are several causes for hope. One area which has seen some marked improvement in terms of rights' protection is in Indonesia's increasing commitment to international human rights instruments and norms. Over the course of the past ten years but in particular during the first few years of *Reformasi*, Indonesia ratified numerous instruments, including the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (but not the Optional Protocol), the ILO (International Labour Organisation) Conventions on Freedom of Association and Protection of the Right to Organise, and the International Convention on the Elimination of all Forms of Racial Discrimination. Further important instruments which have been ratified in 2005 include the International Convention on Civil and Political Rights (ICCPR, in Law No. 12/2005 and Law No. 39/1999 on Human Rights, discussed further below) and the International Covenants on Economic, Social and Cultural Rights (ICESCR).⁶³ The ratification of these international human rights instruments are significant and positive steps and indicate commitment on the part of the Indonesian government to reform in the area of rights' protection.

In addition to acceding to these and numerous other international legal instruments, Indonesia has also allowed for increased UN monitoring. During the New Order era, Indonesia at times displayed a somewhat reluctant attitude towards international monitoring of human rights' situations.⁶⁴ Since the beginning of *Reformasi*, however, numerous monitoring missions have been allowed (though not entirely unhindered⁶⁵) into Indonesia, such as: the Working Group on Arbitrary Detention in 1999; the Joint mission by Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on violence against women in 1999; the Special Rapporteur on the independence of

judges and lawyers in 2002; and the Special Representative of the Secretary-General on the situation of human rights defenders in 2007.⁶⁶ This new willingness to accept international monitoring since the beginning of *Reformasi* can be viewed, perhaps, as a product of both genuine progress towards increasing openness on human rights' issues as well as Indonesia's desire to be perceived as being more open to and compliant with international standards. Indonesia's position as a current member of the UN Human Rights Council also places a certain pressure on Indonesia to show that it is committed to international cooperation and dialogue on human rights' issues and therefore must show its full support for the Council and its special procedures. This commitment by Indonesia within international relations towards upholding and protecting human rights is beneficial for promoting and implementing the Responsibility to Protect because: (a) it shows a willingness to discuss issues to do with rights and the prevention of mass atrocities; (b) through Indonesia's existing international commitments, the government has already legally bound itself to it upholding the rights under these assorted treaties and conventions which, in turn; (c) provides an existing platform upon which to engage with Indonesian officials about these issues. This is, of course, in addition to the fact that Indonesia has already shown its support for the RtoP at international forums, such as the recent General Assembly debate on the matter in July 2009.⁶⁷

While there is cause for hope when surveying Indonesia's international commitments to protecting rights and engaging with the Responsibility to Protect, the massive task of implementing the reforms and practices necessary to prevent, ultimately, the reoccurrence of mass atrocities must be understood as the difficult and long-term challenge that it is. As stated, the level of legal protection of rights in Indonesia has come a long way over the past ten years, with much of this progress the result of dynamic civil society pressure upon government. These reforms, however, are but the beginning of a process that will take decades. Indonesia is a country undergoing the process of democratization after long-term authoritarian rule. This process will continue to be, as Michael Malley correctly foresaw shortly after the 1999 elections, a protracted transition, stalled by political torpor due to both the agendas of competing elites and the practical dilemmas of overhauling the inherited system.⁶⁸ Added to this is the fact that a great many of the older political elite (and their collusive, patronage business connections) still in power today came to power under the New Order, a fact which draws some criticism about the viability of the push for change coming from politics.⁶⁹ As Edward Aspinall has described this dilemma within *Reformasi* politics, 'when Suharto's government collapsed, principled opposition remained weak, allowing for a rapid consolidation of the ruling coalition which had underpinned the New Order, the subsequent blurring of the division between "reformist" and "status quo" forces, and numerous obstructions to democratic transition and consolidation.'⁷⁰

Often commentators about current-day Indonesia will stress that while Indonesian democracy has improved greatly since the New Order, it remains a 'low quality' democracy with many areas still of great concern in terms of reform.⁷¹ As can be seen in the area of human rights' protection, with the commitments made to international treaties and the improvement in domestic legal protections, what may

be achieved in policy is a beginning, but putting it into practice is another matter altogether. To illustrate the difficult task ahead for achieving real progress in protecting human rights in Indonesia, this report highlights just two examples of policy reforms and programs since the beginning of *Reformasi*, the experiences of which show this dilemma of translating policy into practice.

The Indonesia's National Commission on Human Rights (hereafter, Komnas HAM – *Komisi Nasional Hak Asasi Manusia*) has struggled to support and implement human rights in the face of political stalemate and occasional intimidation. Komnas HAM was originally founded during the late New Order period by Presidential Decree No. 50 of 1993 (this initial body is now often referred to as 'Komnas HAM I'). This rather unprecedented move came after Indonesia's First National Workshop on Human Rights in 1991, the result of which was a recommendation that a human rights commission be established. The setting up of the commission was delayed initially, however, by the Dili or 'Santa Cruz' Massacre in November 1991, in which hundreds of East Timorese were killed, the media coverage of the incident causing international uproar and bringing world-wide attention to human rights abuses in Indonesia.⁷² When Komnas HAM was finally announced in 1993 (interestingly, only one week before the landmark 1993 World Conference on Human Rights in Vienna), there was some cynicism as to the intentions behind setting up the commission.⁷³ As many suspected, 'the main purpose of the new body was to divert international criticism of Indonesia.'⁷⁴ These suspicions of Komnas HAM being mere window-dressing to appease international critics were reinforced by the original mandate of Komnas HAM under the Presidential Decree.⁷⁵ In these early days of the commission, Komnas HAM was headed by a senior Army officer, its members were appointed by Suharto, and had a rather vague mandate about what activities it should be carrying out, including: disseminating information about human rights; making suggestions to the government about UN treaties and conventions which should be ratified; monitoring the implementation of human rights; and carrying out international cooperation on the promotion and protection of human rights. Essentially, Komnas HAM had the power to make recommendations about human rights, but it did not have the power to enforce these recommendations. The commission also had limited abilities to carry out any independent investigations of its own into abuses of human rights or to act on complaints from citizens to investigate allegations.⁷⁶ As such, the commission's mandate failed to comply with the Paris Principles on national human rights institutions.⁷⁷ Despite these limitations, during those last years of the New Order, Komnas HAM became an often strident supporter of human rights, readily criticized the government and military, received hundreds of complaints from all over Indonesia of abuses, and took on several high profile cases, such as the 1993 torture, rape and murder of the young worker activist Marsinah.⁷⁸

When the New Order ended, increasing the protection of human rights was a clear area of needed improvement and thus Komnas HAM was quickly identified as being an integral part of government reforms in this area. Under Law No. 39 of 1999 (and later complemented by Law No. 26 of 2000 on Human Rights Courts), the mandate of Komnas HAM was substantially expanded; it became a statutory authority with its own annual state budget, allowing for a much expanded scope of programs. The new

mandate also extended some of the previous powers of research, education and information dissemination about human rights which include: various education and training programs for government and civil society organisations; public awareness activities; and maintaining a documentation centre at their offices.⁷⁹

Most importantly for the increased promotion and protection of human rights in Indonesia, however, was that the new mandate for Komnas HAM included greater investigation and monitoring powers. Specifically, under Laws 39/1999 and 26/2000, Komnas HAM has the power to carry out investigations to determine whether incidents which have occurred constitute violations of human rights. If an initial investigation finds that a gross violation of human rights has occurred (i.e. crimes against humanity), Komnas HAM then have the power to carry out a further, more extensive 'pro-justicia' enquiry. In carrying out these inquiries, Komnas HAM has only limited enforcement powers, for example, it only has limited subpoena powers and has been unable to compel some witnesses, particularly those from the military, to give evidence for previous investigations.⁸⁰ Yet these are not the most significant challenges facing these investigations into past abuses. Under Law 26/2000 on Human Rights Courts, if Komnas HAM's pro-justicia enquiry finds that gross human rights abuses have in fact occurred, the next step is referral of the case by the Commission to the Attorney-General's Office (AGO) for further investigation, which is the only body that can seek prosecutions into these cases. Once the Attorney-General receives the case, his office is then supposed to carry out its own inquiry. Throughout the early 2000's, there was some confusion (or, if interpreted more cynically, deliberate recalcitrance on the part of the AGO) over which step should be taken next towards prosecutions. The next step should then be the creation of an Ad Hoc Human Rights Court to try alleged perpetrators which is enacted by the President after a recommendation from the parliament (DPR). So far, out of the numerous cases investigated and referred to the AGO, only two have been continued by the Attorney-General (discussed further below), namely the East Timor 1999 and Tanjung Priok 1984 cases.

Komnas HAM finished its investigations into alleged crimes perpetrated in East Timor at the time of the Referendum in 1999. The Commission then made a list of recommendations as a result of their inquiry (this was prior to Law 26/2000 being passed), only some of which the AGO took up. The AGO finished its own investigation in September 2000 which was followed in November by the introduction of the Law on Human Rights Courts. Shortly afterwards, mainly due to the high level of domestic and international pressure to see accountability for the crimes committed in East Timor, the Ad Hoc Human Rights Court was set up by the parliament.⁸¹

There was hope that this new Ad Hoc Court would usher in a new era of accountability for grave human rights abuses. The East Timor trials, however, became a farce and have been criticized by a great many human rights' advocates, international monitors and civil society organisations.⁸² A report by the International Center for Transitional Justice entitled 'Intended to Fail', for example, listed the numerous organizational, structural and systemic failures within the Court, but came

to the conclusion that '[u]ltimately, the failure of these trials to meet international standards, and to achieve legitimacy in the eyes of national and international observers, rests on the lack of commitment on the part of the Indonesian government to encourage or permit a process that could lead to genuine accountability.'⁸³ In all, only eighteen out of the extensive list of potential defendants given to the AGO by Komnas HAM were put on trial, none of whom was one of the senior military officers identified in the original Komnas HAM investigations as responsible for mass atrocities. The purview of the trials was also limited to only events that occurred between April and September 1999 and only within a small number of districts, unlike in the Komnas HAM investigation which examined events between January and September and in many more areas (and no reasons were given for these limitations).⁸⁴ In addition, the court became an arena for intimidation of judges, prosecutors and witnesses. Large numbers of military personnel were almost always present within the courtroom and there was repeated harassment of, in particular, judges through threatening midnight phone calls, 'visits' and other messages.⁸⁵ The end result was a series of show trials put on for the international community's benefit and the acquittal of all of the defendants either at the initial trials or on appeal.⁸⁶

Shortly after the East Timor trials, the Ad Hoc Court then began trials for the Tanjung Priok case. To briefly describe this case, in 1984, thousands of mostly Muslim protestors from Tanjung Priok (an area in North Jakarta) went to the police headquarters to demand the release of some mosque officials who had been arrested after an altercation between them and police over an incident at the local mosque. The police opened fire on the crowd, killing at least sixteen people (most estimates, however, put the death toll in the hundreds), but this incident also led to extrajudicial executions, arbitrary arrests, torture and other abuses of at least one hundred more.⁸⁷ In 2000, Komnas HAM conducted an inquiry into the incident and concluded that grave violations had occurred, formally submitting its results to the AGO in 2001. Finally, in September 2003, the Tanjung Priok trials began before the Ad Hoc court. Once again, senior military officials identified for prosecution by the Komnas HAM report were never put on trial, the two most prominent being Major-General Tri Sutrisno and the now deceased General Benny Murdani. As with the East Timor trials, all of the fourteen defendants put on trial were acquitted either at the original trials or on appeal.⁸⁸

Since the East Timor and Tanjung Priok Ad Hoc trials, however, the Attorney-General's Office has failed to pursue cases of grave human rights abuses. To date, the Attorney-General has failed to follow the recommendations made by Komnas HAM to pursue investigations into the cases of Trisakti 1998, Semanggi 1998, Semanggi 1999, the May riots of 1998, the enforced disappearances of persons during 1997-1998, Wasior 2001-2002 and Wamena 2003 (some of which are described briefly in the last part of Section Two).⁸⁹ This refusal by the AGO to pursue these cases through its own investigations and then to the Ad Hoc court constitutes a serious undermining of Komnas HAM's mandate.⁹⁰ The strengthening of Komnas HAM's powers in the 1999 and 2000 laws was supposed to increase accountability for past and present grave abuses. The lack of political will and intimidation by the

military shown in the only two cases to be brought to trial as a result of Komnas HAM's investigations is evidence of the very high level of dysfunction between what has been promised by human rights' reforms and their implementation. The current investigations underway by Komnas HAM (including the cases of the 1965-1966 Massacres, the Mysterious Shootings of 1983 and the Talangsari 1989 incident) are likely to receive the same indifference and refusal to investigate further by the AGO. Despite these antagonistic forces making their work difficult, the Commission's members continue to perform with a high level of professionalism, dedication and integrity, making Komnas HAM a very well-respected human rights body in Indonesia and the region.⁹¹

The second area of rights' protection which shows the difficulty of translating policies into practice is that of the two National Action Programmes of Indonesian Human Rights (RANHAM – *Rencana Aksi Nasional Hak Asasi Manusia*), the first covering the period 1998-2003, the second 2004-2009. The first RANHAM was established by Habibie by Presidential Decree No. 129 of 1998 and was, in essence, a tool to both raise the profile of human rights' issues and to set an agenda for coordination on these issues across the various relevant government departments.⁹² The main elements of the RANHAM 1998-2003 were: the ratification of various international human rights' instruments (such as the Convention on Torture and the Convention on the Elimination of All Forms of Racial Discrimination); the distribution of information and education about human rights; and decisions on which areas of human rights' protection should be prioritized by the government.⁹³ The second RANHAM 2004-2009 had much the same list of goals, but also included strengthening human rights' institutions and implementation; the harmonization of national and regional legislation with human rights' instruments; as well as monitoring, evaluation and reporting on progress made thus far.⁹⁴ However, the main problem with both RANHAMs has been that the various goals and schedules set under their auspices have rarely been met. In particular, international human rights' instruments that were supposed to be ratified by Indonesia according to the RANHAMs have not been, the UN Conventions on Genocide and the Rome Statute being two clear examples of this. While the existence of the RANHAMs shows the Indonesian government's commitment to keeping human rights' issues on their agenda, the failure to achieve scheduled tasks highlights failures to fulfill reforms in this area. The government has yet to announce the next RANHAM for 2010-2014, but it will be interesting to see if currently unachieved tasks and ratifications listed under the 2004-2009 Programme will be relisted or simply dropped.

In summary, there is a distinct disjuncture when considering the level of human rights' protection in Indonesia since the beginning of *Reformasi*. On the one hand, particularly within international forums, Indonesia has drastically improved its commitment to upholding human rights. It has ratified numerous international human rights' instruments and participated in various UN monitoring activities. On the other hand, however, when it comes to putting these reforms into practice and fulfilling the promises of *Reformasi* of greater accountability for abuses, there have been numerous failures. The difficulties encountered by Indonesia's human rights institution, Komnas HAM, and its attempts to bring perpetrators to trial, as well as

the challenges of implementing the RANHAMS are but two examples of this. While the Indonesian government's obvious commitment to working with the United Nations and regional bodies on improving human rights' standards (i.e. its strong support for the setting up of the AICHR, discussed in Section One) is promising for promoting and implementing the Responsibility to Protect in Indonesia, advocates of RtoP must also be aware of and support efforts to overcome the many challenges faced when implementing reforms.

Judicial and Law Reforms

The reform efforts made within the Indonesian judiciary and legal system more broadly are another important issue crucial for the implementation of the Responsibility to Protect. Legal infrastructure and governance reform are clearly priority areas when it comes to the promotion and dissemination of civil and political rights, rule of law, and democratic governance norms necessary for realizing the RtoP. The relationship between strengthening the rule of law and preventing the kinds of mass atrocities targeted by the RtoP has been extensively discussed in numerous forums. The recent Genocide Prevention Task Force's report, *Preventing Genocide: A Blueprint for U.S. Policymakers*, for example, highlighted strengthening the rule of law as one of its key recommendations for early prevention strategies.⁹⁵ In Indonesia, there have been several positive advances made within judicial and legal reforms. In this report, for example, the improvements made to the Constitution and the overturning of various, draconian laws are highlighted as positive advances. However, as was outlined in the previous discussion on the protection of rights, many legal reforms made over the past ten years will take many more years to realize in practice.

Without doubt, improvements have been made to Indonesia's legal infrastructure since the end of the New Order. As one human rights' advocate put it, '[u]nder Suharto, most people viewed the courts as a symbol of the regime and its control over society. Judges exercised their power systematically to remove basic freedoms and prevent access to justice for the community.'⁹⁶ While significant areas of concern remain with regards to the reform of the judiciary in Indonesia (some of which are discussed below), the positive reforms already in place lay the foundations for further progress, all of which are beneficial for operationalising the RtoP.

One of the most significant improvements made in terms of law reforms in Indonesia during the *Reformasi* period has been the overhaul of the 1945 Constitution. This Constitution was the Republic of Indonesia's first and was essentially a war-time document that gave the President authoritarian, highly state-centred and centralized powers. It was originally drafted during the Japanese Occupation period (1942 – 1945) by a committee of Nationalist leaders, including many of those responsible for much of the early legal infrastructure of the nascent republic, such as Supomo and Yamin.⁹⁷ The original 1945 constitution was replaced briefly in 1949 by a federalist constitution during the short life of the Republic of the United States of Indonesia, but it was then swiftly replaced by the new unitary Republic of Indonesia's 1950 Constitution. The 1950 version was a far more liberal document, but this version was revoked in 1959 by President Sukarno who unilaterally decided to return to the 1945

Constitution and, at the same time, ended the parliamentary party system, effectively securing greater powers for the President and instituting authoritarian rule.⁹⁸ During the last years of the Sukarno era, the judiciary was ‘practically and symbolically stripped of any semblance of independence [and] became little more than an adjunct to the President.’⁹⁹ Under Law No. 19 of 1964 on Judicial Power, for example, the judiciary was made an instrument of Sukarno’s national ‘revolution’, allowing the President to interfere at will in the courts’ decisions.¹⁰⁰ When Suharto came to power following the massacres of 1965-1966, this weak and corrupted judiciary, in addition to the strong powers of the 1945 Constitution, remained.

The legal position of the judiciary under the 1945 Constitution was technically independent of the legislative and executive arms of power. In practice, however, the judiciary became notoriously corrupt, highly partial to government concerns and acquiescent to the ruling family’s and their clique’s business interests. As Tim Lindsey described this situation during the New Order, ‘[i]ngrained judicial corruption and structural limits on judges’ independence meant that the courts proved unable to recover from the degradation visited upon them by Soekarno and, indeed, sunk further into corruption, blatant political subservience and desuetude.’¹⁰¹ This was ingrained into the judicial system in numerous ways. For example, Law No. 14 of 1970 Concerning the Basic Principles of Judicial Power (which replaced Sukarno’s Law No. 19 of 1964), the power of the Executive to interfere was ostensibly removed. However, under this same law, the four branches of the judicature (the General, Islamic, Military and Administrative Courts) were put beneath the power of the Supreme Court. On paper, this ensured the independence of these bodies. The Supreme Court and the other Courts, however, were in turn placed under the power of relevant Ministries. The Ministry of Justice, for example, had financial and administrative control over the lower courts and the Ministry of Defense had the same powers over the Military Courts.¹⁰² As such, these different judicial bodies ‘functioned essentially as arms of the cabinet, with no real autonomy and a consequent lack of influence.’¹⁰³ Another, more practical, way in which the New Order government could ascertain the continued support of its court officials was by forcing all lower-court judges to join the civil service. This, together with the fact that the Ministry of Justice controlled the lower courts, meant that if judges wished to remain employed, they were to acquiesce with the government’s wishes.¹⁰⁴ Altogether, it made for a system that actively discouraged dissent and encouraged unflinching loyalty to the regime.

Since 1998, there have been numerous efforts to address these weaknesses and corruption within the judiciary. In terms of building new institutions to strengthen the judiciary, a new Constitutional Court (*Mahkamah Konstitusi*) was established in 2003 as part of the Constitutional amendments (some of which are addressed below); as well as the Judicial Commission (*Komisi Yudisial*) in 2005, also as a result of the amendments. The new Constitutional Court holds the power of judicial review and has become a robust institution with a high case load in which it ‘has shown impressive levels of independence and has exhibited competence far higher than that of other Indonesian courts.’¹⁰⁵ The Judicial Commission is an independent institution made up of former members of the judiciary and public with two main

functions: (1) to monitor the behaviour of judges; and (2) to propose appointments for the Supreme Court to the parliament.¹⁰⁶ While the Commission has no powers to sanction misbehaving judges, it can refer the matter to either the Constitutional or Supreme Courts for further action. Since its inception, it has received hundreds of complaints of judicial misconduct and has made numerous recommendations as a result, but it cannot compel the other two courts to act (i.e. it could not force the Supreme Court to act against its own judges, with much ensuing controversy).¹⁰⁷ Also, the powers of the Supreme Court, for so long subsumed under the Justice department, were given an overhaul, moving the organizational and administrative control of the national courts to the Supreme Court, known as the 'one roof', or *satu atap*, reforms. As Simon Butt has argued, the '*satu atap* reforms appear to have achieved ... their intended purposes: improved judicial independence from government.'¹⁰⁸ The damage done by decades of political interference and suppression of the judiciary, however, will take a long time to be undone. While these and other reforms to the judicial system over the past ten years have substantially improved the independence of the judiciary, corruption, low managerial capacities and competence levels remain a challenge.¹⁰⁹

Returning to the issue of the 1945 Constitution, however, there were a series of amendments made to it during the early years of *Reformasi*, some of which have direct impacts on strengthening the rule of law and improving the protection of rights in Indonesia. There were four rounds of amendments made: in October 1999, August 2000, November 2001 and August 2002. While it may have been better to do away with the 1945 Constitution altogether and begin afresh, the parliament's review and drafting committee for reforming the constitution (in the MPR chaired by Jakob Tobing) took a somewhat messy, patchwork approach, not wanting to introduce any drastic changes.¹¹⁰ The changes that were made by the end of the amendments, however, did much to improve the Constitution from the short, authoritarian and highly centralist document that it was into a more 'sophisticated democratic rule book.'¹¹¹

Without describing these many changes made as part of the four rounds of amendments, those which are more relevant to implementing the Responsibility to Protect include: first, after years of authoritarian rule under Suharto who exercised extensive Presidential powers, there were limitations placed on these powers. The number of five-year Presidential terms possible to be served was limited to two (meaning that SBY must step down in 2014), the President's legislative powers were reduced to being able to submit bills and approve new laws and limits placed on his/her ability to veto legislation or dissolve the parliament. Furthermore, in the third round of amendments, rather than being elected by the MPR (one of the parliament houses), the President had to achieve a popular mandate and be directly elected by the people.¹¹² The second very important area of reforms was the amendments made to extricate the military from politics. Some of these changes will be discussed further in the following discussion on security sector reforms, but the most important of these were the separation of the police from the military (and the division of their responsibilities, external defense the purview of the military and internal security and law enforcement that of the police), the removal of the military

from its longstanding appointed seats in the parliament, and the regulatory powers over the security forces were taken away from the military and police and given to the legislature.¹¹³ All of these forms were substantial steps forward in dismantling the military pervasive political power that had dominated much of the New Order. The third and perhaps most significant part of the Constitutional amendments when considering the implementation of the Responsibility to Protect, however, was the introduction of what forms a bill of rights. This introduction of the lengthy and comprehensive Chapter XA to the Constitution marked perhaps ‘the most radical change to the original ... paternalist and authoritarian presidential model [and] tempered [it] with clauses lifted directly from the Universal Declaration of Human Rights (UDHR).’¹¹⁴ However, the inclusion of Article 11 (2) of the UDHR which says that people should not be prosecuted under retrospective legislation was cause for some concern. In essence, the argument was that the military had ‘‘stolen’ protection from prosecution’ for crimes perpetrated prior to the amendments, because protection from crimes against humanity and other grave human rights abuses was not constitutionally assured until those amendments.¹¹⁵

Another area of much needed legal reforms since the beginning of *Reformasi* has been the overturning of previous laws that were used during the New Order to silence those who opposed the regime. In particular, the overturning of the Anti-Subversion Law (The Law on Subversion, Presidential Decree No. 11/1963, incorporated as a statute by Law No. 5/1969) and the ‘hate-sowing’ articles within the Criminal Code (*Haatzaai Artikelen*, Articles 154 and 155 of the KUHAP, *Kitab Undang-Undang Hukum Acara Pidana*). The Anti-Subversion Law, originally introduced by the first President, Sukarno, during the *Konfrontasi* period with Malaysia, was retained and made into a statute by the New Order government. The two main criticisms by human rights’ advocates of the Anti-Subversion Law were: first, its deliberate vagueness and sweeping powers (the Law was so ambiguous and wide-ranging that a ‘subversive act’ included anything that could be interpreted as a ‘threat’ to national stability, security or order); and second, its provision for vast detainment capabilities (such as the power to detain suspects without charge for up to one year, after which this period could be renewed indefinitely).¹¹⁶ The ‘hate-sowing’ articles under the Criminal Code (again, broad accusations that the defendant had done something to cause hate towards the government in any way) were often used in conjunction with the Anti-Subversion Law as joint charges served against those who criticized the government. While the Anti-Subversion Law was repealed early in the *Reformasi* period, it was not until 2007 that the ‘hate-sowing’ articles were struck out of the Criminal Code by the Constitutional Court.¹¹⁷ Unfortunately, Article 160 on incitement was retained by the Court and continues to be used against those who criticize the government. The trial of Papuan rights’ activist, Buktar Tabuni, in 2009 on charges including ‘incitement’ under Article 160 and the detention of four staff members of the Banda Aceh Legal Aid Foundation (LBH – *Lembaga Bantuan Hukum*) in July 2007 over suspicion of incitement are recent examples of this.¹¹⁸

Thus once again, it can be seen that both impressive positive changes as well as some challenges remaining in the area of judicial and legal reforms. The

Constitutional amendments of 1999-2002 brought about numerous improvements and began a raft of institutional reforms in Indonesia. Some, but not all, of the draconian laws used to suppress dissent during the New Order have been overturned. However, once again, the greatest challenge over the coming years will be to implement fully the reforms begun in the past ten years. For a country going through the slow process of democratization following decades of authoritarian rule, these judicial and legal reforms remain a crucial area of work for implementing the Responsibility to Protect.

Security Sector Reforms (1998 – 2008)

The fourth major issue of direct relevance for the implementation of the Responsibility to Protect in Indonesia is that of security sector (primarily the police and military) reforms during the first ten years of *Reformasi*. These security sector reforms have seen some impressive changes made since the end of the New Order, however, there have also been some considerable setbacks. There are three main areas related to security sector reforms that this report will address. These are:

- The changes made to Indonesia's armed forces (TNI – *Tentara Nasional Indonesia*) since 1998, including the separation of the police from the military and reduction of the military's role in domestic security affairs and institutional engagements in politics;
- The need to dismantle the military's territorial command structure; and
- The involvement in the economy and financial interests of the military.

The need for reform of Indonesia's security sector was (and continues to be) one of the most urgent issues since the beginning of *Reformasi*. The long-time dominance of the military in politics and many other areas of life during, in particular, the New Order has made these reforms an area of priority to ensure that the power structures of the militarist, authoritarian regime are dismantled. The first major efforts made in terms of security sector reforms were those carried out as part of the Constitutional amendments (addressed above) in conjunction with various parliamentary Decisions (TAP or *Ketetapan*).¹¹⁹ What these legislative and constitutional reforms aimed to achieve was essentially the destruction of the so-called 'dual function' (*dwifungsi*) role of the military. Originally discussed by Nasution, the main military actor during the Sukarno period, *dwifungsi* grew under the New Order to become a central part of military doctrine. According to Suharto himself, 'in the Indonesian state structure, the military has two functions, that is, as an armed tool of the state and as a functional group to achieve the goals of the revolution.'¹²⁰ What this essentially meant was that the military carried out both defense (both internal and external) and political roles (including its approximately one-fifth unelected hold over seats in the DPR and almost one-third of seats in the MPR, the two parliament houses), removing any pretense of the armed forces being beneath civil control. This *dwifungsi* was further entrenched via the territorial command system, addressed below.

Getting rid of the *dwifungsi* of the military is an essential step when considering Indonesia's democratization process and, in turn, the potential of implementing the Responsibility to Protect. As Beeson and Bellamy have pointed out, for example,

security sector reform 'contributes to the building of democratic peace ... through its direct assistance to broader processes of democratization.'¹²¹ The depoliticisation of the military and its removal from the legislature were amongst the first tasks to be achieved in the reform of the Indonesian security sector. As part of the Constitutional amendments (particularly in the second round), therefore, two significant changes were made: (1) a distinction was made between external defense which remained the responsibility of the military (by then renamed the TNI – *Tentara Nasional Indonesia*) and internal security and law enforcement, which was made the responsibility of the police; and (2) the legislature was given the power to regulate both bodies.¹²² Separating the police from the military was a crucial step because, particularly during the New Order period, the line of responsibilities between the two organisations blurred considerably, to the extent that the military also carried out most policing functions.¹²³ Other early changes made during *Reformasi* aimed at dismantling the military's *dwifungsi* included: their number of seats within the parliament being at first reduced and then entirely removed by 2004¹²⁴; the withdrawal of current military personnel from civil posts in 1998; the withdrawal of the military from Golkar in 1999; and the disbandment of Bakorstanas, the domestic security agency of the New Order coordinated by the military.¹²⁵ These were early and concrete steps taken in security sector reforms, yet there remains a great deal left to be done to realize the goals of these early reforms.

The second area of urgently-needed security reform is the ongoing military territorial command structure. The military's territorial command structure is one of the most worrying hangovers from the New Order in Indonesia today. In essence, it is a duplication of 'the features and functions of the territorial civilian bureaucracy and serve[s] as [the military's] backbone and... its coordinating guide.'¹²⁶ In terms of the structure itself, it originated in the late 1950s in order for the military to 'anchor the armed forces deeply in the economic and political infrastructure of the regions'.¹²⁷ In practical terms, this means that there is a corresponding military position to that of each civilian position at every administrative level in the country, from the provincial level all the way down to the sub-district and village levels.¹²⁸ Disappointingly, there were reforms on the table in 2000, but these were abandoned during the same year under pressure from the military.¹²⁹ There also appears to be little chance of the structure being undone in the near future. In the 2003 Defense White Paper, for example, the TNI argued that it had to retain the structure in order to 'remain close to the people' and that, to remove them from their command structure would constitute an 'abuse of the very essence' (*kodrat*) of the military.¹³⁰ Furthermore, shortly after his reelection in 2009, SBY called for an 'increased' territorial command structure for the military, supposedly to help combat terrorism.¹³¹ One of the most worrying aspects of allowing for the territorial command system to continue (or, worse still, be expanded), is that this system greatly facilitates the military's 'self-financing' activities throughout the country.¹³²

This leads to the third area of important security sector reforms regarding the military's involvement in the economy and its extensive financial interests. The involvement of the military in the Indonesian economy has a long history that stretches back to at least the early days of the independence Revolution against the

Dutch (1945-1949). This was partly due to the army's origins in the early days of the Revolution as mostly groups of haphazard militias, or *lasykar*, and former members of PETA (the Japanese-sponsored volunteer militia during the Occupation) which only later developed into the Indonesian military. During the Revolution itself, Sukarno's beleaguered government was mostly broke and able to maintain at best only partial control over the newly formed army. It was during this time, therefore, that the army got used to 'self-financing', both for its operations and for the welfare of its soldiers. Suharto himself, during his time as an army commander in Central Java and the Special District of Yogyakarta in the 1950s, became very adept at finding alternate funds to support his soldiers.¹³³

Gradually throughout the Sukarno period, the military expanded its economic interests to include former (seized) Dutch companies and state-owned enterprises. Under Suharto, the involvement in business activities (both legal and illegal) by the military increased to incorporate businesses in all areas of the economy. This expansion of economic interests and controls, together with 'political backing and favouritism, [meant that] the military-linked businesses became a dominant economic force. For example, the military took over ownership of privatized state companies, gained vast forestry exploitation rights, and enjoyed favoured access to government contracts, licenses, and credits.'¹³⁴ The size of the vast wealth controlled by the military should not be underestimated. As of the end of 2007, the military's net assets were estimated at Rp. 2.2 trillion (approximately US\$235.4 million) while its 'foundations and cooperatives' had gross assets of approximately Rp. 3.2 trillion (approximately US\$350 million).¹³⁵ These economic interests of the military, however, come at a high cost; they 'undermine civilian control over the armed forces and fuel human rights violations. They also contribute to crime and corruption, impede military professionalism, and distort the function of the military itself.'¹³⁶

In late 2004, Law No. 34 of 2004 on military businesses was passed which mandated that '[w]ithin five years... the government must take over all business activities that are owned and operated by the military, both directly and indirectly.'¹³⁷ From the beginning, however, despite promises from SBY that he would support the Law and indications from the military that it would comply, progress was slow. The Minister of Defense himself during this period, Juwono Sudarsono, made excuses for the military's lack of progress on the Law and the government's Supervisory Team for the Transformation of TNI Businesses (TSTB) failed to implement any of the proposals it put forward in 2006 and 2007.¹³⁸ In October 2009, only five days before the expiration of the deadline imposed under Law 34/2004, SBY announced Presidential Decree No. 43 of 2009 on the Takeover of Business Activities of the TNI. This Decree sets up a new 'Oversight Team' which will now oversee a 'partial reform' of military businesses.¹³⁹ This 'overseeing', however, does not mean that the Team will have any managerial role in the restructuring; a restructuring which will only be the result of regulations which are to be set by the commander of the TNI, regulations which yet to eventuate.¹⁴⁰ The failure of the TNI to meet the terms with the original 2004 Law shows a flagrant disregard for compliance with efforts in this area of security sector reform. The importance of removing military control over its many businesses and from economic involvement altogether is necessary both to

subordinate the armed forces to civilian governance and to help stem the very high levels of corruption within the military and police.

The scale of police and military corruption seriously undermines efforts to either professionalize these institutions or build public confidence in them. Indeed, in a poll conducted at the end of 2007, Indonesians considered the police the most corrupt institution in the country, even more than the judiciary and legislature (which is significant considering how notoriously corrupt these other institutions are).¹⁴¹ Another poll, conducted in 2009, once again found that the police were considered the most corrupt institution, out-performing even Custom and Excise in the average bribes paid.¹⁴² The military is also seen as a highly corrupt institution; at the time that this report was being finalized, another top military official (this time retired Brigadier General Herman Sarens Sudiro) was being forcibly brought before a military tribunal for allegations of embezzlement.¹⁴³

To conclude, the progress made thus far in security sector reform in Indonesia might be considered, according to Marcus Mietzner, as ‘first generation’ reforms.¹⁴⁴ These first generation reforms have included great improvements in the legislative control over the military and the extrication of the military’s presence within the parliament. As discussed above, however, there remains a great many challenges in order for the Indonesian military to be brought fully under civilian power without control over sections of the economy and for the armed forces to become professional and accountable. ‘Second generation’ reforms in order to achieve these goals are therefore the task of the next few years. As Mietzner has pointed out, however, the ‘incompleteness of the first-generation agenda undermine[s] the chances of designing substantial second-generation reforms. This phase in the reform process, in which the newly created institutions are typically equipped with the capacity, skills, and resources to carry out their functions properly, could proceed only very fragmentarily.’¹⁴⁵ Given the centrality of security sector reform to long-term democratization of Indonesia, therefore, those promoting and implementing the Responsibility to Protect should have a focus on supporting these reforms.

Redress of Past Gross Human Rights Abuses and a Culture of Impunity

This issue is cause for perhaps the greatest concern when considering the implementation of the Responsibility to Protect in Indonesia. The relationship between a culture of impunity and the degree to which this culture undermines efforts for building and entrenching the rule of law is clear. Undeniably, in the case of Indonesia, this culture of impunity is directly linked to the lack of accountability of the Indonesian military in particular, as well as the police and the various non-state militias which have been co-opted at different times by the military.¹⁴⁶ As one observer, Suzannah Linton, put it, Indonesia ‘provides a textbook example of the direct link between impunity for atrocities going back over decades and perpetual cycles of violence.’¹⁴⁷

As mentioned in the introduction to this report, millions of Indonesians watched and listened on 21 May 1998 as Suharto announced his resignation. For many of them, the initial euphoria that came with Suharto’s downfall was in part fueled by a hope

that the crimes committed against civilians under his regime would be redressed. There was new hope in particular for those who had suffered from state repression and violence under the New Order that the crimes perpetrated against them would, in the very least, be investigated and perhaps some acknowledgement of their suffering given. Of the many incidents of gross human rights' abuses perpetrated throughout (and at the beginning of) the New Order, there are a number of cases which stand out. This report briefly highlights only some of these because of, firstly, their scale, and secondly, their prominence within advocacy and activist circles in Indonesia. These cases are the massacres of 1965-1966, atrocities committed in East Timor, and the assassination of human rights' activist, Munir Said Thalib.

The massacres of an estimated 500,000 'suspected Communists' or 'Communist sympathisers' as well as the political detention of a further estimated 1.5 million during the 1965-1966 purges has been one of the major concerns of human rights' advocates over the past decade. Although there remains some contention over the extent of the military's control and direction of the massacres and arrests, there is general consensus (at least within the community of academics and advocates whose work examines these events¹⁴⁸) that the Indonesian military, under the control of then General Suharto, played a key role in inciting and carrying out the purges.¹⁴⁹ In the period directly following the end of the New Order, as Ann Laura Stoler has noted, there was an unprecedented 'explosion of interest' in talking about the 1965-1966 period.¹⁵⁰ This interest was mostly a result of the fact that, throughout the New Order, the government banned any publications relating to these events which did not follow the regime's interpretation of 1965-1966.¹⁵¹ In the first few years of *Reformasi*, however, a handful of non-government organisations had formed that were either exclusively or greatly concerned with advocacy and/or research for victims of the 1965-1966 purges, such as the YPKP (The Foundation for Research into the 1965/1966 Massacres). Currently, an investigation is being carried out by Komnas HAM into the 1965-1966 killings, the results of which are expected sometime this year.¹⁵² Whether this case will also be ignored by the Attorney-General's Office once the initial investigation's findings are presented is unknown.

On 30 August 2009, East Timor (or Timor-Leste) celebrated ten years since the vote for independence, a courageous decision given the bloody reprisal campaign by the Indonesian military. Large-scale abuses were perpetrated prior, during and after the vote which included massive physical destruction of infrastructure, murder, rape and other abuses perpetrated against the civilian population.¹⁵³ As this report is concerned only with efforts for justice within Indonesia itself, it leaves aside the work of the Commission for Reception, Truth and Reconciliation in East Timor (*A Comissao de Acolhimento, Verdade e Reconciliação* – CAVR). To outline this commission's work very briefly, however, the CAVR was established in July 2001 under the UN Transitional Authority in East Timor and had a mandate to 'establish the truth about the human rights violations' committed between April 1974 and October 1999. The report of the CAVR, *Chega!* (meaning 'enough'), was released in 2005 and outlines the many gross human rights abuses committed during this period.¹⁵⁴ In addition to the CAVR, two other bodies created to deal with the atrocities committed in East Timor were the Special Panels for Serious Crimes within

the Dili District Court and the Serious Crimes Unit (SCU) under East Timor's Prosecutor General's Office, both of which were constructed in 2000 by the UN Transitional Administration in East Timor (UNTAET). Both of these bodies were responsible for dealing with 'serious crimes' committed, including genocide, crimes against humanity and war crimes.¹⁵⁵ Some of the outcomes at the Dili Court included eighty-four convictions and four acquittals, however, the remaining 339 suspects, among them former General Wiranto (who ran in the Presidential elections in 2004 and 2009), are still in Indonesia (which will not cooperate with East Timor's extradition requests).¹⁵⁶ In 2005, the joint 'Commission on Truth and Friendship' (CTF) was also set up between the Indonesian and East Timorese governments. Many international monitors and human rights organisations objected strenuously to the creation of this commission, which many saw as an attempt by the Indonesian government to avoid an international tribunal.¹⁵⁷ The CTF was widely criticized for many reasons, including that it had a mandate to grant amnesties and yet did not have the power to recommend prosecutions. The CTF was so deeply flawed that the UN boycotted it and refuted any legitimacy for the Commission.¹⁵⁸ The final report, entitled 'Per Memoriam Ad Spem' ('From Memory to Hope'), was also criticized because of its various problematic conclusions, including that the atrocities carried out in 1999 were the result of 'low-level Indonesian soldiers failing to follow recently-instituted policies to respect human rights.'¹⁵⁹

In November and December 2009, the issue of Indonesia's occupation of East Timor and, in particular, the launch of occupying forces in late 1975, has again caused controversy. This controversy was fueled by the release of the Australian film, *Balibo* (director Robert Connolly), which depicts the story of Roger East (played by Anthony LaPaglia), an Australian journalist who travelled to East Timor just before the Indonesian invasion to discover what had happened to five missing foreign journalists. While aspects of the film have been fictionalized and it does not address in detail Australia's or US complicity in and condonance of Indonesia's invasion of East Timor, it does represent the deliberate killing by Indonesian forces of first the five missing journalists and then Roger East, as well as the fear and anxiety in the build-up to the invasion. *Balibo* was officially banned in Indonesia by the Film Censorship Board on 1 December which in turn has only fueled an underground cult following of the film.¹⁶⁰ What is clear is that calls for accountability for atrocities committed in East Timor during the Indonesian occupation as well as those committed at other times in other parts of the country during the New Order, will not go away.¹⁶¹

The final case to be mentioned here which has continued to attract widespread condemnation of the Indonesian legal system and military impunity is the assassination of leading human rights' advocate Munir Said Thalib (commonly known as Munir). Munir was a prominent figure within human rights advocacy circles in Indonesia and an outspoken critic of the security forces, having worked with organisations such as KontraS (The Commission for 'the Disappeared' and Victims of Violence) and Imparsial (an Indonesian human rights monitor).¹⁶² On 7 September 2004, Munir was on a flight to Amsterdam where he was to begin his Master's degree in international law and human rights. During the flight, he became ill and

was pronounced dead on arrival in Amsterdam. An autopsy performed by the Dutch Forensic Institute found that Munir had died of arsenic poisoning, his death believed to have been planned by members of the State Intelligence Agency (BIN).¹⁶³ Two months later and after public outcry against the murder, the newly-elected President SBY promised to bring Munir's killers to justice, saying that it would be a test case for 'how much Indonesia has changed.'¹⁶⁴ As many have observed, if the handling of the Munir assassination is the 'test case', then Indonesia has well and truly failed. In the few, highly publicized trials that followed, all of the defendants have since been acquitted, either at trial or on appeal, including the acquittal of former Commander of the Army's Special Forces and member of the State Intelligence Agency, Muchdi.¹⁶⁵

More than ten years on, hope that these past injustices would be redressed has faded. This loss of hope comes after numerous attempts for successive early *Reformasi* governments to deal with the issue of impunity for past gross human rights abuses. One way to deal with this issue which was debated earlier in the *Reformasi* period was the creation of Truth and Reconciliation Commission (*Komisi Kebenaran dan Rekonsiliasi – KKR*). Indonesia's fourth President, Abdurrahman Wahid, called for a Truth and Reconciliation Commission to be mandated in a decree of the People's Consultative Assembly (MPR, one of the parliamentary houses) in 2000. In 2001, the MPR passed a resolution that the President and the parliament should create the KKR. During the administration of Wahid's successor, President Megawati Sukarnoputri, a draft of the KKR was again submitted in 2002 and, subsequent to significant delays in voting on the legislation, it was submitted yet again in 2003. After a further three and a half years of continuous postponements and 'ongoing discussions' about the Commission, on 7 December 2006, the new Constitutional Court annulled the KKR law, ruling vaguely that it was 'contrary to the Constitution' due to its provisions for amnesty. One of the Court justices, Jimly Asshidiqie, further added that the April 2005 deadline for the law's implementation having passed without result was another reason for its annulment, commenting that, 'we thought we should just scrap the whole law.'¹⁶⁶ Very recently, however, there is cause for hope that a Truth and Reconciliation Commission for Indonesia is not entirely out of the question. In 2009, the United Nations Development Programme worked together with the Indonesian Ministry of Law and Human Rights and the Director-General Office regarding a draft for a new national law to establish the KKR.¹⁶⁷ How this new proposal will fare once it reaches the Parliament is unknown, but the fact that it exists means that the possibility of a Commission has not been entirely discounted.

Why is addressing this culture of impunity so crucial for the implementation of the RtoP in Indonesia? The Responsibility to Protect is fundamentally about preventing serious human rights abuses, which include the crimes of torture, rape and murder. In Indonesia today, ongoing impunity for security personnel seriously undermines any efforts to deter or redress what might be speciously termed 'bad behaviour' by those in the military and police. Manfred Nowak, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, after his initial visit to Indonesia in 2007 came to the broad conclusion that 'given the lack of

legal and institutional safeguards and the prevailing structural impunity, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment.¹⁶⁸ Despite the reforms carried out during the last ten years (discussed above), there continues to be reports of torture, rape and murder by security service personnel across Indonesia, particularly against those held in detention and marginalized members of the community such as the urban poor, homeless and drug users.¹⁶⁹ At the 2008 Universal Periodic Review for Indonesia at the UN Human Rights Council, a number of stakeholders who made submissions to the review also highlighted that torture was 'part of police practice' and that it is 'regarded by Indonesian security services as one of the most effective methods to obtain forced confessions and instill a climate of fear, and is conducted repeatedly and systematically.'¹⁷⁰ In terms of preventing atrocities in Indonesia, those who wish to implement the Responsibility to Protect must focus both on the kinds of widespread gross abuses occurring within particular areas (i.e. in Papua), as well as on the more banal, 'everyday' atrocities which occur in police stations and detention facilities across the country on a regular basis.¹⁷¹

While the behaviour of the military and police force as a whole has been suspect, the actions of two sections of Indonesia's Special Forces in particular have drawn exacting criticism from various human rights bodies. These are the military's KOPASSUS (*Komando Pasukan Khusus* – Special Forces Command) and the police's BRIMOB (*Brigade Mobil* – Mobile Brigade or special riot police). Both organisations have been repeatedly criticized for their routine and disproportionate use of force, including their propensity to use torture, rape and other cruel, inhuman and degrading treatment against civilians, particularly in areas of armed conflict such as in Papua, Aceh and formerly in East Timor.¹⁷² Under the New Order, when the government often resorted to authoritarian and violent means to suppress dissent, these two organisations were frequently deployed and also frequently accused by international observers of grave human rights' abuses. Since the beginning of *Reformasi*, these accusations have not ended because members of these two organisations continue to perpetrate serious human rights' abuses without any apparent consequences. As two recent examples, on 6 April 2009, BRIMOB police officers opened fire on pro-Independence demonstrators in West Papua, injuring eleven people including a nine-year-old child and, in another incident involving BRIMOB during the same month in Cirebon (Java), two men were detained and tortured in order to force false confessions for receiving stolen goods.¹⁷³

This is an alarming and urgent challenge for implementing the RtoP in Indonesia for several reasons. For example, first, the RtoP is fundamentally aimed at each state upholding its responsibilities to protect its populations from mass atrocities. It is the international community's responsibility to support and aid each country in fulfilling these responsibilities. The continuing practice and lack of accountability for the types of grave human rights' abuses the RtoP is attempting to prevent are fundamental failures by Indonesia to uphold its responsibility to protect its citizens. It therefore must become a priority issue for both national and regional efforts when discussing the RtoP. Second, this kind of behaviour by the military and police seriously undermines public confidence in these institutions. It is fair to say that if people

perceive the security forces as a threat rather than as a source of protection, then there is little chance of building public trust in these institutions, even with reforms in place to help build them into professional, impartial and disciplined forces. In addition to this, in an impending emergency in which there is a call to prevent mass atrocities, it is often a nation's security sector which is first called upon to stabilize a situation. If the nation's military and police cannot be trusted to prevent rather than perpetrate atrocities against civilians, then they become a liability rather than a resource in such a situation. Under the Responsibility to Protect, this would seriously hamper a nation's ability to fulfill its responsibilities, thus necessitating the potential involvement of regional and/or international bodies.

The Indonesian government's failure to address past abuses and the culture of impunity which exist for past and current abuses are perhaps the greatest impediments for lasting reform in the protection of human rights, improving the rule of law and, ultimately, the continuation of the democratization process. As was noted by several of the organisations which made submissions for the 2008 Universal Periodic Review on Indonesia, this impunity allows for past perpetrators to go unpunished which, in turn, 'encourages' further human rights abuses by those charged with the protection of civilians.¹⁷⁴ For operationalising the Responsibility to Protect, these failures have the potential to undermine initiatives for implementing the principle in Indonesia.



4. Conclusion and Recommendations

Indonesia is of vital importance for implementing the Responsibility to Protect in the Asia-Pacific region. As this report has outlined, Indonesia can play a strategic role within the region chiefly because of its prominence and leadership capacities within ASEAN. As Southeast Asia's most populous country and because of its own history of gross human rights abuses, the Responsibility to Protect can also benefit Indonesia in numerous ways.

Over the past ten years, some progress has been made in the democratization process after thirty-two years of authoritarian rule under Suharto's New Order. Civil society has flourished, slow but steady progress has been made in the areas of rights' protection and legal reform and there has been some success in extricating the military from politics. There remains, however, much to be done, particularly in the areas of implementing fully the reforms begun over the past ten years as well as dealing with past and present grave human rights abuses.

The current Indonesian President, Susilo Bambang Yudhoyono, has shown his support for the RtoP and his administration has indicated that it wishes to increase Indonesia's international standing. Having been re-elected in mid- 2009, SBY's government has until mid-2014 when he finishes his second (and constitutionally, final) term as President to fulfill these expectations. It is in the best interests of advocates for the Responsibility to Protect and interested stakeholders to seize the opportunity of SBY's second term to identify and cooperate with both individuals and departments within the current government. While it is unlikely that the administration that will come after SBY in 2014 will drastically reverse any of the current government's decisions in relation to international affairs, there is at this stage much speculation about what the new administration will look like; whether a renewed, reformist coalition will emerge (which is hoped for but unlikely) or if an amalgamation of the many and varied party stakeholders that make up SBY's current 'rainbow cabinet' will produce what will probably be a less popular but very similar 'SBY No. 2'.¹⁷⁵ Whatever the next administration will shape up to be, however, it is crucial that advocates for the Responsibility to Protect build the contacts and networks within government and civil society in the immediate short term in order to maximize the opportunities of SBY's second term.

Finally, some of the overall messages that should be part of advocacy work and interaction with these contacts and networks include:

Encourage continued reform in areas directly related to implementing the RtoP, such as:

- legislative reforms to bring national laws into line with international human rights conventions;
- ratification of further international human rights instruments;
- supporting continued legislative reforms in the area of military and police powers and accountability; and
- discuss possible improvements that could be made in the area of addressing past and present gross violations of human rights.

Foster existing areas of reform by:

- encouraging ownership and debate about current reforms amongst relevant stakeholders;
- calling attention to existing reforms in areas where their implementation lags behind their legislation;
- building professional and institutional capacities within the relevant professions through supporting training and education workshops.



Notes

¹ Implementing R2P principles in the Asia-Pacific region is one of the core aims of the Asia-Pacific Centre for the Responsibility to Protect. To date, the Centre has published one report on R2P in Southeast Asia. See Asia-Pacific Centre for the Responsibility to Protect (APCR2P), *The Responsibility to Protect in Southeast Asia*, 30 January 2009. For another report on a specific country within the Asia-Pacific, see Sarah Teitt, 'Assessing Polemics, Principles and Practices: China and the Responsibility to Protect', *Global Responsibility to Protect*, 1/2: 208-236 (2009).

² Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the UN Secretary-General, A/63/677, 12 January 2009. For example, p. 20.

³ Opinion polls conducted around the time of Suharto's funeral in 2008 showed that 58% of Indonesians thought that living conditions under the New Order were preferable than during *Reformasi*. Lingkaran Survei Indonesia (Indonesian Survey Circle), 'Reformasi Setelah 10 Tahun [Reform After 10 Years]', Jakarta, May 2008, p. 9. Cited in Marcus Mietzner, 'Indonesia in 2008: Yudhoyono's Struggle for Reelection', *Asian Survey*, 49/1: 146-155 (2009), p. 148.

⁴ Greg Barton, 'Comment: Democracy in Indonesia', *The Monthly*, July 2009, p. 13.

⁵ For a brief discussion on Indonesia's stance on R2P up until early 2009, see APCR2P, *The Responsibility to Protect in Southeast Asia*, pp. 19-29.

⁶ APCR2P, *The Responsibility to Protect*, p. 21.

⁷ For reports on the outcomes of the GA debate, see APCR2P, 'Implementing the Responsibility to Protect: Asia-Pacific in the 2009 General Assembly Debate' October 2009, online at http://www.r2pasiapacific.org/documents/final_un_ga_debate_july_2009.pdf; and the Global Centre for the Responsibility to Protect, 'Implementing the Responsibility to Protect – The 2009 General Assembly Debate: An Assessment', August 2009, online at http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf.

⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

⁹ Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington D.C.: Brookings, 1993).

¹⁰ Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2—5, 21 March 2005.

¹¹ '2005 World Summit Outcome', UNGA Res. 60/1, 16 September 2005.

¹² Ki-moon, 'Implementing the Responsibility to Protect,' 8; see also Edward Luck, Statement to the US Senate Foreign Relations Committee, 17 June 2008 and Asia-Pacific Centre for the Responsibility to Protect, 'Cyclone Nargis and the Responsibility to Protect', report, 16 May 2008.

¹³ See, for example, Dewi Fortuna Anwar, *Indonesia in ASEAN: Foreign Policy and Regionalism* (New York: St Martin's Press, 1994); and Anthony L. Smith, *Strategic Centrality: Indonesia's Changing Role in ASEAN* (Singapore: Institute of Southeast Asian Studies, 2000).

¹⁴ The organisations I refer to here include ASEAN Plus Three (APT), ASEAN Regional Forum (ARF) and the Asia-Pacific Economic Cooperation (APEC).

¹⁵ Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the UN Secretary-General, A/63/677, 12 January 2009. For example, p. 20.

¹⁶ While there has been some speculation that ASEAN is seeking to become more of an European Union-style organisation (see, for example, recent reporting of the 15th ASEAN summit, Karen Percy, 'ASEAN Creates Human Rights Commission', *ABC News*, 23 October 2009, <http://www.abc.net.au/new/stories/2009/10/23/2722940.htm?section=world>), there is doubt about whether ASEAN would ever attempt to turn itself into a similar type organisation. See, for example, Amitav Acharya, 'ASEAN at 40: Mid-Life Rejuvenation?', *Foreign Affairs*, 15 August 2007, <http://www.foreignaffairs.com/articles/64249/amitav-acharya/asean-at-40-mid-life-rejuvenation>. See also for a comparative analysis of the EU and ASEAN, Soe Moe Oo, 'Governance in the European

Union (EU) and the Association of Southeast Asian Nations (ASEAN): A Comparative Analysis' (PhD Thesis, University of Duisburg-Essen, 2008). It needs also be said that ASEAN's need to institutionalize is also being driven by India's and China's rise in economic power in the region and therefore increased competition for foreign direct investment. See Daniel Seah, 'Current Developments: The ASEAN Charter, edited by Dominic McGoldrick', *International and Comparative Law Quarterly*, 58: 197-212 (2009), p. 201.

¹⁷ Charter of the Association of Southeast Asian Nations (hereafter ASEAN Charter), article 1: 7, <http://www.aseansec.org/21069.pdf>, accessed 2 October 2009. For a discussion on the ASEAN Charter in relation to implementing the RtoP, see Noel M. Morada, 'The ASEAN Charter and the Promotion of R2P in Southeast Asia: Challenges and Constraints', *Global Responsibility to Protect*, 1/2: 185-207 (2009).

¹⁸ Ibid., article 14: 1. Furthermore, there will also be an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) set up in 2010. The Terms of Reference for the ACWC were released 24 November 2009, available online at <http://www.aseansec.org/documents/TOR-ACWC.pdf>.

¹⁹ 'ASEAN Members Back Historic Rights Commission', *Asia Pacific Forum*, 21 July 2009, <http://www.asiapacificforum.net/news/asean-members-back-historic-rights-commission.html>.

²⁰ At the September 2009 UN General Assembly debate on RtoP, aside from some detractors (such as North Korea), there was widespread support. See note 7 above.

²¹ Mietzner, 'Indonesia in 2008', 153. Mietzner highlights this by pointing to the example of Indonesia's initial support in March 2007 of Resolution 1747 on sanctions against Iran and then, in September 2008, claiming that it had fought to protect Iran against the inclusion of additional threats such as military action.

²² Ibid., p. 154. Another example by SBY to raise Indonesia's profile which Mietzner points out was at the otherwise quite successful UN Climate Change Summit in Bali in December 2007. During the Summit, SBY announced his support for a research project on 'blue energy'; a project which promised to convert water into fuel. However, it was soon revealed that the program was a hoax, causing widespread criticism and embarrassment for the President.

²³ Andrew MacIntyre and Douglas Ramage, 'Seeing Indonesia as a Normal Country: Implications for Australia', Australian Strategic Policy Institute, ASPI Strategy Paper, Canberra, May 2008, p. 39. Cited in Mietzner, p. 154.

²⁴ Susilo Bambang Yudhoyono, 'Opening Statement', 10 December 2008, <http://balidemocracyforum.org/>.

²⁵ Rizal Sukma, 'Political Update – Indonesia's Politics in 2009: Defective Elections, Resilient Democracy?', paper presented at the Indonesia Update Conference: Democracy in Practice, the Australian National University, 9-10 October 2009.

²⁶ On this topic, see for example, Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, Second Edition (London and New York: Routledge, 2009), pp. 5 - 10; and Derek McDougall, 'The (In)effectiveness of Security Regionalism: Comparing ASEAN and the Pacific Islands Forum' in Heribert Dieter (ed.), *The Evolution of Regionalism in Asia: Economic and Security Issues* (New York: Routledge, 2007), pp. 160 – 176.

²⁷ For a discussion on statements made by Indonesia during this period on the matter of civilian protection, see the Asia-Pacific Centre for the Responsibility to Protect, 'The Responsibility to Protect in Southeast Asia', p. 25.

²⁸ Ki-moon, 'Implementing the Responsibility to Protect', p. 31.

²⁹ Ibid., p. 16.

³⁰ On the massacres of 1965-1966, see Robert Cribb, 'The Indonesian Massacres' in Samuel Totten, William S. Parsons and Israel W. Charney (eds.), *Century of Genocide: Critical Essays and Eyewitness Accounts* (New York and London: Garland, 1997).

³¹ For information on these violent conflicts see Geoffrey Robinson, 'Rawan Is as Rawan Does: The Origins of Disorder in New Order Aceh', *Indonesia*, 66: 127-157 (1998); Amnesty International, *Indonesia: 'Shock Therapy' – Restoring Order in Aceh, 1989 – 1993* (London: Amnesty International, 1993); Elizabeth F. Drexler, *Aceh, Indonesia: Securing the Insecure State* (Philadelphia: University of Pennsylvania Press, 2008); John Taylor, *Indonesia's Forgotten War: The Hidden History of East Timor* (London: Zed Books, 1991); and Carmel Budiardjo and Liem Soei Liong, *The War Against East Timor* (London: Zed Books, 1984).

³² For works on these crucial topics, however, see, for example, Tim Lindsey and Howard Dick (eds.), *Corruption in Asia: Rethinking the Governance Paradigm* (Annandale, NSW: Federation Press, 2002); Ross H. McLeod, 'Towards Improved Monetary Policy in Indonesia', *Bulletin of Indonesian Economic Studies*, 39/3: 303-324 (2003); Andrew Rosser, 'What Paradigm Shift?: Public Sector Reform in Indonesia' in Anthony B.L. Cheung and Ian Scott (eds.), *Governance and Public Sector Reform in Asia: Paradigm Shift or Business as Usual?* (London and New York: RoutledgeCurzon, 2003), pp. 227-247; Simon Butt, "'Unlawfulness" and Corruption under Indonesian Law', *Bulletin of Indonesian Economic Studies*, 45/2: 179-198 (2009); Ito Takeshi, 'The Dynamics of Local Governance Reform in Decentralizing Indonesia: Participatory Planning and Village Empowerment in Bandung, West Java', *Asian and African Area Studies*, 5/2: 137-183 (2006); and Erni Budiwanti, *Pluralism Collapses: A Study of the Jama'ah Ahmadiyah Indonesia and its Persecution* (Singapore: Asia Research Institute Working Paper Series No. 117, Asia Research Institute, National University of Singapore, 2009).

³³ For further discussion on some of these 'root causes', see the Asia-Pacific Centre for the Responsibility to Protect, *Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation*, June 2009.

³⁴ For some background reading on the controls placed on civil society during the New Order period, see Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia* (Stanford: Stanford University Press, 2005); Jamie Mackie and Andrew MacIntyre, 'Politics' in Hal Hill (ed.), *Indonesia's New Order: The Dynamics of Socio-economic Transformation* (St Leonards, NSW: Allen and Unwin, 1994), pp. 1 – 53; Vedi Hadiz, *Workers and the State in New Order Indonesia* (London and New York: Routledge, 1997); and Bob S. Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement* (London and New York: RoutledgeCurzon, 2003), pp. 52-71.

³⁵ For contemporaneous information on the pro-democracy or *Reformasi* movements and the collapse of the Suharto regime, see the special issue of *Inside Indonesia* (issue 55 in July-September 1998: 'Salam Reformasi!') which was released shortly after. Available online at http://insideindonesia.org/index.php?option=com_content&task=view&id=993&Itemid=29.

³⁶ For some examples of this, see Guillermo A. O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986); Carolyn M. Elliott (ed.), *Civil Society and Democracy: A Reader* (New Delhi: Oxford University Press, 2006); and Jeffrey Haynes, *Democracy and Civil Society in the Third World: Politics and New Political Movements* (Malden, Mass.: Polity Press, 1997).

³⁷ For a handful of the many works on civil society, democratization and theoretical frameworks, see Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, Mass.: MIT Press, 1992); Petr Kopecky and Cas Mudde, *Uncivil Society? Contentious Politics in Post-Communist Europe* (London and New York: Routledge, 2003); and Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities* (Cambridge, UK and New York: Cambridge University Press, 2001).

³⁸ Hans Antlov, Rustam Ibrahim and Peter van Tuijl, 'NGO Governance and Accountability in Indonesia: Challenges in a Newly Democratizing Country' in Lisa Jordan and Peter van Tuijl (eds.), *NGO Accountability: Politics, Principles and Innovations* (London: Earthscan, 2006), pp. 147-163, p. 147.

³⁹ For two more recent interpretations of the level of effect that these many new organisations have had on the democratization process in Indonesia, see Bob S. Hadiwinata, *The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement* (London and New York: RoutledgeCurzon, 2003); and Mikaela Nyman, *Democratizing Indonesia: The Challenges of Civil Society in the Era of Reformasi* (Copenhagen: NIAS Press, 2006).

⁴⁰ Benedict R. O'G., *Imagined Communities: Reflections on the Origins and Growth of Nationalism* (London: New Left Books, 1983), p. 490.

⁴¹ On this topic, see Vedi Hadiz, *Workers and the State in New Order Indonesia* (London and New York: Routledge, 1997) and Michele Ford, 'Testing the Limits of Corporatism: Industrial Relations in Suharto's Indonesia', *Journal of Industrial Relations* 41/3: 372-392 (1999).

⁴² Mikaela Nyman, 'Civil Society and the Challenges of the Post-Suharto Era', in Marco Bunte and Andreas Ufen (eds.), *Democratization in Post-Suharto Indonesia* (London: Routledge, 2009), p. 255. See also Hadiwinata, *The Politics of NGOs*, pp. 93 – 96.

⁴³ For a broader discussion on this, see Patrick Guinness, 'Local Society and Culture' in Hal Hill (ed.), *Indonesia's New Order: The Dynamics of Socio-economic Transformation* (Honolulu: University of Hawai'i Press, 1994), pp. 270-272.

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- ⁴⁴ Edward Aspinall, 'The Broadening Base of Political Opposition in Indonesia', in Garry Rodan (ed.), *Political Oppositions in Industrializing Asia* (London and New York: Routledge, 1996), p. 236.
- ⁴⁵ Hadiwinata, *The Politics of NGOs*, pp. 72 – 73.
- ⁴⁶ Ibid., p. 74 - 77.
- ⁴⁷ Ibid., p. 74 - 77.
- ⁴⁸ This incident is discussed again in the sub-section on impunity.
- ⁴⁹ See, for example, Jun Honna, 'Military Ideology in Response to Democratic Pressure during the Late Suharto Era: Political and Institutional Contexts', in Benedict R. O'G. Anderson (ed.), *Violence and the State in Suharto's Indonesia* (Ithaca: Cornell Southeast Asia Program Publications, 2001), pp. 54 – 89.
- ⁵⁰ According to The Volunteers' Team for Humanity (Tim Relawan untuk Kemanusiaan) which conducted a study on the mass rapes shortly afterwards, there were between 76 and 168 victims. See Tim Relawan untuk Kemanusiaan, 'Mass Rape in the Recent Riots: The Climax of an Uncivilized Act in the Nation's Life,' <http://www.hsph.harvard.edu/Organizations/healthnet/reprorights/docs/indonesia.pdf>; and Kees van Kijk, *A Country in Despair: Indonesia between 1997 and 2000* (Leiden: KITLV Press, 2001), p. 239.
- ⁵¹ Nyman, *Democratizing Indonesia*, p. 81.
- ⁵² Ibid., p. 206-207.
- ⁵³ Hadiwinata, *The Politics of NGOs*, p. 113.
- ⁵⁴ Antlov, Ibrahim and van Tuijl, 'NGO Governance and Accountability in Indonesia,' pp. 150 - 154.
- ⁵⁵ R. E. Elson, 'Engineering from Within: Habibie the Man and Indonesia's *Reformasi*' paper presented at the School of Advanced International Studies, Johns Hopkins University, Washington D.C., 26-27 March 2007.
- ⁵⁶ For some early reflections on these reforms during the Habibie years, see Dewi Fortuna Anwar, 'The Habibie Presidency' in Geoff Forrester (ed.), *Post-Soeharto Indonesia: Renewal or Chaos?* (Bathurst, NSW: Crawford House, 1999), pp. 33-47; David Bourchier, 'Habibie's Interregnum: *Reformasi*, Elections, Regionalism and the Struggle for Power' in Chris Manning and Peter Van Diermen (eds.), *Indonesia in Transition: Social Aspects of Reformasi and Crisis* (Singapore: Institute of Southeast Asia Studies, 2000), pp. 15-38; and Ken Young, 'Post-Suharto: A Change of Regime?' in Arief Budiman, Barbara Hatley and Damien Kingsbury (eds.), *Reformasi: Crisis and Change in Indonesia* (Clayton: VIC: Monash Asia Institute, 1999), pp. 69-104.
- ⁵⁷ Jeff Herbert, 'The Legal Framework of Human Rights in Indonesia' in Tim Lindsey (ed.), *Indonesia: Law and Society*, Second Edition (Sydney: The Federation Press, 2008), p. 456.
- ⁵⁸ For an analysis of survey data which included cynicism towards the political process in 2008, see Dwi Tiyanto, Pawito, Pam Nilan and Sri Hastjarjo, 'Perceptions of Indonesian Politics in the Run-up to the 2009 General Election', *Asian Social Science*, 4/11 : 107-117 (2008). See also Marcus Mietzner, 'Stable but Unpopular: Indonesians have a Love-Hate Relationship with Their Political Parties', *Inside Indonesia*, Issue 92 (April-June 2008), available online at <http://insideindonesia.org/content/view/1068/47>.
- ⁵⁹ Tim Lindsey and Mas Achmad Santosa, 'The Trajectory of Law Reform in Indonesia: A Short Overview of Legal Systems and Change in Indonesia' in Tim Lindsey (ed.), *Indonesia: Law and Society*, Second Edition (Sydney: The Federation Press, 2008), p. 22.
- ⁶⁰ For some of the research of local government capacities and corruption, see Benjamin A. Olken, 'Monitoring Corruption: Evidence from a Field Experiment in Indonesia', *Journal of Political Economy*, 115/2: 200-249 (2007); and J. Vernon Henderson and Ari Kuncoro, 'Corruption in Indonesia', NBER Working Paper no. 10674, National Bureau of Economic Research, 2004.
- ⁶¹ The issue of law-making (and, in particular, the harmonisation between different laws) since decentralisation has caused numerous controversies in Indonesia. When the central government decentralised (under Law No. 22/1999 and then Law No. 32/2004), some of the powers which had belonged to the central government were transferred to the provinces, districts and municipalities. These regional governments can now make regional legislation (*Perda – Peraturan Daerah*) in 'all fields except foreign policy, defence, security, monetary policy, the legal system and religious affairs.' See Marco Bünte, 'Indonesia's Protracted Decentralization: Contested Reforms and Their Unintended Consequences' in Marco Bünte and Andreas Ufen (eds.), *Democratization in Post-Suharto Indonesia* (New York: Routledge, 2009), p. 107. However, this has not stopped regional governments from making laws in these areas, all of which are, technically, unconstitutional. In particular, the controversies over the so-called *Perda Syariah* (Islamic religious by-laws) have caused much

comment. See, for example, Bunte, 'Indonesia's Protracted Decentralization', pp. 102-123; Robin Bush, 'Regional Sharia Regulations in Indonesia: Anomaly or Symptom?' in Greg Fealy and Sally White (eds.), *Expressing Islam: Religious Life and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 174-191; and Michael Buehler, 'The Rise of Shari'a By-Laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption', *South East Asia Research* 16/2: 255-285 (2008).

⁶² For example, the World Bank has also a number of projects with a focus on capacity-building in Indonesia, such as the Second Urban Poverty Project (which is to run until 2011) and the Kecamatan Development Project (1998-2008). Information about these projects is available online at <http://www.worldbank.org/id/kdp> and http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/07/14/000094946_01071304250448/Rendered/PDF/multi0page.pdf.

⁶³ For more international instruments ratified by Indonesia during the first few years of *Reformasi*, see Petra Stockmann, 'Indonesia's Struggle for Rule of Law' in Marco Bunte and Andreas Ufen (eds.), *Democratization in Post-Suharto Indonesia* (London: Routledge, 2009), p. 61. Others include Law No. 1/2000 on the Ratification of ILO Convention No. 182 on the Prohibition of an Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁶⁴ One case in point was the attempts by international agencies and human rights' groups to monitor the conditions of the estimated over one million people detained for their alleged 'involvement in the 1 October 1965 coup' during the late 1960s, 1970s and 1980s. On this topic, see, for example, Amnesty International, *Indonesia: An Amnesty International Report* (London: Amnesty International, 1977), p. 15; and Asia Watch, *Prison Conditions in Indonesia* (New York and Washington, B.C.: Human Rights Watch, 1990), pp. 11-13.

⁶⁵ One example of this was during the Special Rapporteur on torture visited Indonesia in November 2007. The Special Rapporteur reported that he 'regrets that the efforts of Government officials to monitor his movements throughout the country restricted his ability to carry out unannounced visits... and that in a small number of instances (Police Headquarters Jakarta, Poltabes Yogyakarta, Military Prison Abepura), his unimpeded access to places of detention was compromised, including his ability to carry out private interviews with detainees, in contravention of his terms of reference.' 'Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum, Mission to Indonesia', A/HRC/7/3/Add.7, 10 March 2008, p. 8. Please also, however, note Indonesia's response, see 'Statement by the Director-General for Human Rights Ministry of Law and Human rights of the Republic of Indonesia on the Report of the Special Rapporteur on Torture at the 7th Session of the Human Rights Council', Geneva, 11 February 2008, a copy of which is available online at http://www.kontras.org/data/Gov_Indonesia_nowak.pdf.

⁶⁶ See 'Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January – 12 February 1999)', E/CN.4/2000/4/Add.2, 12 August 1999, available online at <http://www.unhcr.ch/Huridocda/Huridocda.nsf/TestFrame/1fb77aecf39c857f802568330052ad30?Opendocument>; 'Situation of Human Rights in East Timor', A/54/660, 10 December 1999, available online at <http://www.unhcr.ch/Huridocda/Huridocda.nsf/TestFrame/6fae6dad5614a51c80256865005b729a?Opendocument>; 'Report of the Special Rapporteur on the Independence of Judges and Lawyers Dato'Param Cumaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 2002/43, Report on the Mission to Indonesia, 15-24 July 2002', E/CN.4/2003/65/Add.2, 13 January 2003, available online at <http://dadaccess-dds-ny.un.org/doc/UNDOC/GEN/G03/102/08/PDF/G031310208.pdf?OpenElement>; and 'Special Representative of the Secretary General on the Situation of Human Rights Defenders Concludes Visit to Indonesia', United Nations Press Release, 12 June 2007, available online at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/5B4138C66CE4B53BC12572F8005C4AC8?opendocument>.

⁶⁷ See notes 6 and 7.

⁶⁸ For this interesting, early *Reformasi* article on the democratization process in Indonesia, see Michael Malley, 'Beyond Democratic Elections: Indonesia Embarks on a Protracted Transition', *Democratization* 7/3: 153-180 (2000), cited in Marco Bunte and Andreas Ufen, 'Introduction' in Marco Bunte and Andreas Ufen (eds.), *Democratization in Post-Suharto Indonesia* (London: Routledge, 2009), p. 3.

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- ⁶⁹ For example, see François Raillon, 'Political Succession in Indonesia and Southeast Asia: Cosmetic Changes, Dextrous Adjustments', *Panorama* 2: 41-56 (2004), available online at http://www.kas.de/wf/doc/kas_5857-544-1-30.pdf.
- ⁷⁰ Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia* (Stanford: Stanford University Press, 2005), p. 5, cited in Bünthe and Ufen, 'Introduction', p. 12.
- ⁷¹ See, for example, Bünthe and Ufen, 'Introduction', pp. 1-30; and Marcus Mietzner, 'Indonesia and the Pitfalls of Law-Quality Democracy: A Case Study of the Gubernatorial Elections in North Sulawesi', in Marco Bünthe and Andreas Ufen (eds.), *Democratization in Post-Suharto Indonesia* (London: Routledge, 2009), pp. 102-123.
- ⁷² International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Versoix, Switzerland: International Council on Human Rights Policy, 2000), pp. 21-22.
- ⁷³ Sonia Cardenas, 'Adaptive States: The Proliferation of National Human Rights Institutions', Carr Center for Human Rights Policy Working Paper T-01-04, p.35, available online at <http://www.hks.harvard.edu/cchrp/WebWorkingPapers/Cadenas.pdf>.
- ⁷⁴ International Council on Human Rights Policy, *Performance and Legitimacy*, p. 22.
- ⁷⁵ See Cardenas, 'Adaptive States', p.35.
- ⁷⁶ International Council on Human Rights Policy, *Performance and Legitimacy*, pp. 22-23. See also Human Rights Watch/Asia, *The Limits of Openness: Human Rights in Indonesia and East Timor* (New York: Human Rights Watch, 1994), pp. 122-134, available online at <http://www.hrw.org/sites/default/files/reports/INDONESIA949.PDF>.
- ⁷⁷ For the full list of 'Principles relating to the Status of National Institutions', see <http://www2.ohchr.org/enlist/law/parisprinciples.htm>.
- ⁷⁸ For a contemporaneous discussion on Komnas HAM's dealings with the Marsinah case, see Human Rights Watch/Asia, *The Limits of Openness*, pp. 121-126.
- ⁷⁹ Jeff Herbert, 'The Legal Framework of Human Rights in Indonesia' in Tim Lindsey (ed.), *Indonesia: Law and Society*, Second Edition (Sydney: The Federation Press, 2008), pp. 461-462.
- ⁸⁰ *Ibid.*, pp. 461-463.
- ⁸¹ For information about the setting up of this court, see Hamish McDonald and Richard Tanter, 'Introduction' in Richard Tanter, Gerry van Klinken and Desmond Ball (eds.), *Masters of Terror: Indonesia's Military and Violence in East Timor* (Lanham: Rowman and Littlefield, 2006), pp. 1-12; and Suzannah Linton, 'Accounting for Atrocities in Indonesia', *Singapore Year Book of International Law* 10: 199-231 (2006).
- ⁸² For a very short list of condemnations of these trials, see ELSAM, 'Monitoring Pengadilan HAM Tim-Tim ELSAM', Panel Discussion on the East Timor Human Rights Court, 28 January 2003, available online at <http://www.elsam.or.id/pdf/monham/timtim/Prog-Report10.pdf>; Linton, 'Accounting for Atrocities'; and Suzannah Linton, 'Unravelling the First Three Trials at Jakarta's Ad Hoc Court for Human Rights Violations in East Timor', *Leiden Journal of International Law* 17/2: 303-361 (2004).
- ⁸³ David Cohen, 'Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta', International Center for Transitional Justice, Occasional Paper Series, August 2003, p. 61, available online at <http://www.ictj.org/images/content/0/9/098.pdf>.
- ⁸⁴ See McDonald and Tanter, 'Introduction', pp. 7-8.
- ⁸⁵ On this intimidation and harassment, see Cohen, 'Intended to Fail', pp. 56-57.
- ⁸⁶ For a recent opinion piece on this by a well-known and respected analyst, see Galuh Wandita, 'Indonesia-Timor Leste: Is This True Friendship?', *The Jakarta Post*, 25 September 2009, available online at <http://www.thejakartapost.com/news/2009/09/25/indonesiatimor-leste-is-true-friendship.html>.
- ⁸⁷ On the Tanjung Priok incident, see, for example, KontraS, 'Letter to Ms Gabriela Carina Knaul de Albuquerque e Silva, UN Special Rapporteur of the Human Rights Council on the Independence of Judges and Lawyers', KontraS, 11 September 2009, available online at <http://www.kontras.org/data/SuratSPJudiciaryPriokEnglish.pdf>.
- ⁸⁸ See TAPOL, 'Tanjung Priok Acquittals a Travesty of Justice', TAPOL Press Release, 14 July 2005, available online at <http://tapol.gn.apc.org/press/files/pr050714.htm>. Two lower military officials were sentenced in 2004, Maj. Gen. RA Butar Butar and Capt. Sutrisno Mascung. Both were released on appeal in 2005. In April 2010, over 100 people were injured in riots between civilians and public order officers (Satpol PP) near the area where the 1985 massacre occurred. SBY announced an investigated into these riots on 14 April. Ulma Haryanto, 'Death Toll From 1984 Massacre at Tanjung Priok Still

Uncertain,' *The Jakarta Globe*, 15 April 2010, available online at <http://www.thejakartaglobe.com/city/death-toll-from-1984-massacre-at-tanjung-priok-still-uncertain/369555>.

⁸⁹ See Komnas HAM, 'Information on Activities of Komnas HAM Carried Out during the Period of September 2008-July 2009', submitted to the 14th Annual Meeting of the Asia Pacific Forum on National Human Rights Institutions, Amman, Jordan, 3-6 August 2009, p. 8. Available online at <http://www.asiapacificforum.net/about/annual-meetings/14th-jordan-2009/downloads/apf-member-reports/Indonesia.doc>. Please note, however, that there has been an update on the enforced disappearances in 1997-1998 case, mentioned in Section Three of this report.

⁹⁰ Furthermore, according to Law 26/2000, there were actually supposed to be four permanent human rights courts set up across Indonesia (in Makassar, Medan, Jakarta and Surabaya, each dealing with cases from surrounding provinces). To date, only the Makassar court has been established. For more on this court and the controversial Abepura case from Papua province, see Linton, 'Accounting for Atrocities', pp. 207-208.

⁹¹ Komnas HAM has retained its 'A' status as a national human rights institution since 2000, according to the standards set by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, see 'Chart of the Status of National Institutions', 6 January 2009, available online at <http://www.ohchr.org/Documents/Countries/ChartStatusNIs.pdf>.

⁹² Herbert, 'The Legal Framework', p. 475.

⁹³ Ibid.

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⁹⁶ Agung Putri, 'Tortured Legacy: Legal Reform Must Overcome a History of Authoritarian Development', *Inside Indonesia*, Issue 87 (July-September 2006), available online at <http://insideindonesia.org/content/view/62/29/>. Agung Putri is the former head and member of Indonesia's premier human rights' research centre, ELSAM, the Institute for Policy Research and Advocacy (*Lembaga Studi dan Advokasi Masyarakat*) in Jakarta (<http://www.elsam.or.id>).

⁹⁷ For a discussion on the drafting of the 1945 Constitution, see R.E. Elson, *The Idea of Indonesia: A History* (Cambridge: Cambridge University Press, 2008), pp. 106 – 115.

⁹⁸ On the period which followed this dissolving of the *Konstituante*, known as 'Guided Democracy' under Sukarno following the declaration of martial law in 1957, see two classic studies, Daniel S. Lev, *The Transition to Guided Democracy: Indonesian Politics, 1957-1959* (Ithaca: Modern Indonesia Project, Cornell University, 1966); and Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962).

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- ¹¹⁶ See, for example, Todung Mulya Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990* (Jakarta: Gramedia, 1993), p. 119; and Amnesty International, 'Indonesia: The Anti-Subversion Law: A Briefing', AI Index: ASA 21/003/1997, 1 February 1997, <http://www.amnesty.org/en/library/info/ASA21/003/1997>. As an example of these trials, for a list of some of the political activists on trial for subversion at the end of the New Order period (dated 1997), see 'Making an Ass of the Law', *Inside Indonesia*, Issue 50 (April-June 1997), available at <http://insideindonesia.org/content/view/870/29/>.
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- ¹²³ For an article on the police and law enforcement after this separation, see David Jansen, 'Relations among Security and Law Enforcement Institutions in Indonesia', *Contemporary Southeast Asia* 30/3: 429-454 (2008).
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- ¹⁶¹ Some further past cases of human rights' abuses have also failed to be redressed. In particular, failures with regard to the Trisakti, Semanggi I and II and other cases have caused concern amongst human rights advocates. On these and other cases, see Komnas HAM, 'The Indonesian National Human Rights Commission on Indonesia's Compliance with the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment', April 2008, available online at <http://www2.ohchr.org/english/bodies/cat/docs/ngos/KomnasHAMIndonesia40.pdf>. Another case is that of the Talangsari incident. This incident occurred on 7 February 1989 when members of the Indonesian military attacked the Talangsari village in Lampung (the southernmost province of Sumatra). During and after the incident, villagers were killed, tortured and driven off their land, supposedly in an effort by the local military to stop the setting up of an Islamic state in the area. The Indonesian National Commission on Human Rights (Komnas HAM) conducted an investigation into the incident between 2001 and 2007. They determined that a number of military commanders at the time were responsible for the massacre. No further investigation by the Attorney General's department has taken place. See Dian Kuswandini, 'Commission deems Talangsari Incident Gross Rights Violation', *The Jakarta Post*, 4 September 2008, <http://www.thejakartapost.com/news/2008/09/04/commission-deems-talangsari-incident-gross-rights-violation.html>.
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¹⁷³ These, and many other incidents, are listed in a recent file compiled by ETAN (East Timor and Indonesia Action Network), available online at <http://www.etan.org/news/2008/04brikop.htm>.

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A/HRC/WG.6/1/IDN/3, 6 March 2008, pp. 5-8, available online at <http://www.unhcr.org/refworld/pdfid/4857a6f10.pdf>.

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