

# policy briefing

ICTJ, IKOHI and KKPK  
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## Indonesia's Obligations to Provide Reparations for Victims of Gross Human Rights Violations

*The International Center for Transitional Justice (ICTJ), Association for the Families of the Disappeared in Indonesia (IKOHI) and Coalition for Justice and Truth (KKPK)*

### Executive Summary

Thirteen years after the fall of Soeharto, victims in Indonesia continue to suffer from the negative effects of gross human rights violations and from ongoing discrimination. Although efforts by the president and the National Human Rights Commission (Komnas HAM) to create a reparations policy have lost momentum, victims' demands have not diminished.

This report by ICTJ, IKOHI (Association of the Families of the Disappeared in Indonesia) and KKPK (Coalition for Justice and Truth) is based on focus group discussions (FGDs) with victims and civil society actors held in seven cities. The paper's main findings include:

**Victims' needs:** The condition of victims demands urgent attention from the government. Victims and family members who suffered losses due to conflicts, killings, disappearances, and other human rights violations still need all five components of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.

**Legal and policy framework:** While laws and regulations provide for reparations to victims, they require a court's finding that a perpetrator has been guilty of a criminal offence and a judicial order for reparations, which have rarely been issued to date. In addition, implementing regulations defines reparations in a way that confuses victims and policy makers.

**Lessons learned:** Indonesia's experience with reparations to date demonstrates the following:

- Court-ordered reparations have not been effective.
- Reparations must be distinct from broader social assistance programs.
- There must be transparency and strong official support.

**Recommendations:** Based on these conclusions, the paper recommends that the government of Indonesia take both immediate and longer-term actions. It should begin the process through an official acknowledgement and apology to victims, providing official documentation to families of the disappeared, issuing instructions to all agencies to prioritize the resolution of cases of disappearances, and it should ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

The government should then create a comprehensive reparations program that:

- officially acknowledges violations;
- is complementary to, and does not replace, efforts to seek justice. Information gathered should be shared with Komnas HAM, and vice versa.

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- contributes to a more complete historical record through a comprehensive report based on information provided by victims;
- builds on existing documentation about victims collected by Komnas HAM, the Women's Commission (Komnas Perempuan), the Victims and Witness Protection Agency (LPSK) and civil society;
- develops in partnership with civil society and victims' groups;
- is distinct from broader social and economic development programs.

The paper concludes with recommendations for the proposed mechanism's institutional arrangements, mandate, registration, financing, the types of reparations it should focus on, and its relationship to truth-seeking, justice, and legal reform.

## Introduction

When President Soeharto stepped down in May 1998, the era of *reformasi*, or reform, began. Thirteen years later, the country has enjoyed several peaceful democratic elections, the withdrawal of the military from an overt political role, an end to the conflict in Aceh, and a significant reduction in human rights violations. However, Indonesia has yet to deal with decades of human rights abuses by seeking the truth, holding perpetrators accountable, and repairing the harm done to victims of systematic crimes.

This paper builds on the broad analysis of transitional justice in Indonesia presented in a 2011 report.<sup>1</sup> It focuses specifically on reparations, based on a series of focus group discussions in five cities—Jakarta, Kendal, Medan, Makassar, and Jayapura.<sup>2</sup> Additionally, the paper reflects views expressed by victims in a two-day workshop held in Aceh organized by KontraS-Aceh and a victims workshop held by JPIT, in cooperation with ICTJ.<sup>3</sup> It also draws on ICTJ's experience in Chile, Sierra Leone, Peru, Argentina, and a number of other post-conflict settings.

## Assessing Victims' Needs

*For me, the first thing is to heal the community of its time of trauma. Then, the second priority is the financial problems of paying for children who need school and preparation for the labor market.*

Victim from Aceh<sup>4</sup>

After decades of authoritarian rule, there are vast numbers of victims, from a multitude of places and historical periods, in Indonesia. Most violations were committed by the hands of unaccountable security forces that repressed political dissent and carried out harsh counter-insurgencies in Aceh (1978-2004), East Timor (1974-'99), and Papua (ongoing).

<sup>1</sup> See ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto* (New York: ICTJ and KontraS, March 2011).

<sup>2</sup> A focus group discussion (FGD) was held in Jakarta on July 5, 2010, followed by a series of discussions with victim communities in four more cities: Kendal, Central Java (July 17, 2010); Medan, with victims from Aceh and North Sumatera (July 25, 2010); Makassar, South Sulawesi (August 3, 2010); and Jayapura, Papua (November 25-27, 2010). A discussion on interim findings and recommendations was held in Jakarta on August 13, 2010, with civil society members of the Coalition on Justice and Truth (KKPK) to review the main findings in the first draft of the paper. ICTJ Director of Reparative Justice Ruben Carranza and international expert Catalina Diaz also provided input and comparative perspectives on reparations during this discussion. This policy briefing was compiled by Matt Easton and Galuh Wandita, and is based on an Indonesian-language report, "*Hak Korban Atas Reparasi di Indonesia*," that was prepared by IKOHI's Zainal Mutaqin and Simon Simonsky, and minutes of FGD proceedings and a workshop for 1965 women victims held by JPIT (Eastern Indonesia Women's Network) in Kupang, East Nusa Tenggara, in March 2011.

<sup>3</sup> The workshop was held with 25 victims in Saree, Seulawah, Aceh Besar, on December 6 and 7, 2010. See "*Konsep Reparasi Berdasarkan Perspektif Korban Pelanggaran HAM*" on file with ICTJ.

<sup>4</sup> Male victim, FGD 3, Medan, July 25, 2010: ". . . menurut saya yang pertama adalah bagaimana menyembuhkan masyarakat dari masa trauma. Kemudian yang kedua adalah masalah ekonomi untuk membiayai anak-anak yang butuh sekolah serta penyediaan lapangan pekerjaan."

The security forces were also responsible for a number of major incidents of violence throughout the country, such as firing on protestors at the Jakarta harbor in Tanjung Priok (1984), carrying out attacks on several Jakarta campuses (1998) and on the South Sumatran town of Talangsari (1989); the disappearance of democracy activists (1998 - 99); and sexual violence and other human rights violations that accompanied the May 1998 riots in several cities.

The largest single group of victims is composed of survivors of the violent purge of those alleged to have been members of the Indonesian Communist Party at the time of the Soeharto regime's rise to power from 1965 to 1966. Over an extended period, vigilante groups worked with the army to murder hundreds of thousands of members, or perceived allies, of what had been a major legal party. Many more were detained in conditions of deprivation for lengthy periods without trial. On their release, official policies restricted the access of victims and their families to jobs, education, and social services.<sup>5</sup>

#### The Reparations Framework Provided by the UN Basic Principles and Guidelines

**Restitution** is meant to restore the condition lost by the victim due to gross violations of human rights, such as the restoration of liberty, citizenship, employment, or property.

**Compensation** provides victims with monetary and nonmonetary damages to pay for the losses they have experienced.

**Rehabilitation** seeks to repair the lasting damage of human rights violations through provision of medical, psychological, legal, and social services.

**Satisfaction** is a broad category that includes cessation of continuing violations, disclosure of the truth, a search for the disappeared or the remains of those killed, an official declaration and apology restoring the dignity, reputation, and rights of the victim, judicial and administrative sanctions against perpetrators, and commemorations and tributes to the victims.

**Guarantees of nonrepetition** include reforms to ensure civilian control of security forces, independence of the judiciary, human rights education, mechanisms for preventing and monitoring conflicts, and review and reform of laws and policies that contribute to gross violations of human rights.

Information drawn from the focus group discussions in five cities and other research reveals that victims' rights in all five categories of reparations as laid out in UN guidelines (see box) remain unfulfilled.<sup>6</sup>

*Victims in Indonesia have a right to restitution because:*

- Property or government pensions have been unfairly confiscated from them.
- There are continuing harms, including discrimination, unresolved disappearances, intimidation of those speaking out for accountability, and obstacles to legally selling and inheriting property. For the 1965 victims in particular, the problem can be multigenerational. One participant explained, "As a grandchild I also directly feel the impact of those events . . . We need to restore the good name [of victims] and also demand the resolution of the cases that occurred."<sup>7</sup>

<sup>5</sup> Teresa Birks, "Neglected Duty: Providing Comprehensive Reparations to the Indonesian '1965 Victims' of State Persecution," Occasional Paper Series (New York: ICTJ, July 2006), 25-27.

<sup>6</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly Resolution 60/147 of Dec. 16, 2005, <http://www2.ohchr.org/english/law/remedy.htm>. See also the International Covenant on Civil and Political Rights, art. 2(3), and the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, art. 14(1), on state responsibility to provide redress and reparations to victims.

- They and their children continue to be subjected to dozens of regulations that discriminate against them. The daughter of a 1965 victim asks, “[How] about all the regulations that discriminate against [victims] and their families . . . that forbid us from becoming civil servants or being active in other government structures?”<sup>8</sup> A 1965 victim voices a similar concern: “I hope the [brand] of GESTAPU can disappear, that my children will also receive attention, because my children have no work [as civil servants]; all my children are in the private sector.”<sup>9</sup>

*They have a right to compensation because:*

- Their family members were killed, disappeared, and arbitrarily detained.
- They lost wages and educational opportunities.
- They experienced injuries and poor health resulting from violence, torture, or detention.

*They have a right to rehabilitation due to:*

- Psychological trauma. Most victims and their families have never received counseling and suffer from multiple layers of grief and pain. The mother of a victim from May 1998 explained, “I still feel traumatized. I am still afraid it will happen again to another one of my children.”<sup>10</sup>
- Physical trauma. The 1965 generation in particular is aging and experiencing health problems, including those due to violence, torture, or detention.

*Victims have a right to satisfaction due to:*

- the absence of judicial accountability for past human rights violations;
- the lack of resolution about the fate of the missing;
- the burial of the many people killed in 1965 in mass and unmarked graves;
- stigmatization as rebels, communists, extremists, or terrorists.

As one woman victim of the 1965 anti-Communist purges has stated, “I hope . . . history [will be straightened out to show] that at that time, those of us accused did not do anything wrong as they had accused us . . . Also, if possible, in schools there are teachers who teach their students that it is not true that [these] organizations were involved in the 30 September Movement.”<sup>11</sup>

*Victims have a right to guarantees of non-repetition through the effective reform of institutions.*

- One of the reasons for the failure to achieve criminal convictions is the lack of judicial independence. The judiciary is marred by pervasive corruption and has been totally ineffective in holding perpetrators of mass violations accountable.<sup>12</sup>

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<sup>7</sup> W., grandson of 1965 victim, FGD 2, Kendal, July 18, 2010: “Secara langsung sebagai cucu juga merasakan dampak dari peristiwa tersebut. . . . Kita membutuhkan pemulihan nama baik (para korban) dan juga penuntasan kasus-kasus yang telah terjadi.”

<sup>8</sup> Female victim, FGD 4, Makassar, August 3, 2010: “[Bagaimana] tentang peraturan-peraturan yang diskriminatif terhadap [korban] atau keluarganya . . . dilarang untuk beraktifitas dalam kepegawaian sipil dan struktur pemerintah lainnya?”

<sup>9</sup> Female victim, Kupang, East Nusa Tenggara, March 29, 2011. “GESTAPU” is an acronym coined by the government, (*Gerakan 30 September* or the 30 September Movement) to describe the alleged attempted coup by forces aligned with the Communist Party in 1965. “Harapan saya untuk generasi berikut: kalau bisa (cap) GESTAPU bisa menghilang, anak-anak saya juga dapat diperhatikan, karena anak-anak saya tidak ada yang bekerja [sebagai PNS], anak saya semua swasta.”

<sup>10</sup> Female victim, FGD 2, Kendal, July 18, 2010: “Saya masih ada rasa trauma. Saya masih merasa takut hal itu akan terjadi lagi pada anak saya yang lain.”

<sup>11</sup> Female victim, Kupang, East Nusa Tenggara, March 29, 2011: “Harapan saya . . . sejarah [diluruskan, yaitu] bahwa pada waktu itu kami yang dituduh ini tidak melakukan sesuatu yang tidak benar seperti yang mereka tuduhkan pada kami . . . Kalau bisa juga di sekolah-sekolah ada guru yang mengajarkan pada murid bahwa organisasi-organisasi yang terlibat dalam G30S tidak benar.”

- The military has undertaken some important reforms but still suffers from an absence of civilian control or an effective military justice system.

In the context of Papua where conflict continues, the guarantee of nonrepetition should include special protection for victims to assemble freely. When victims or members of their families demand that the government be held responsible for the human rights violations they have suffered or if they gather to discuss and give each other support, they are labeled as “separatists” and experience further intimidation and terror from security forces.

### Legal and Policy Framework

Although victims have not received meaningful reparations in any of the five categories, there is a legal basis for such measures. In 2000, the upper house of Parliament, the People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR), mandated efforts to uncover misuse of power and human rights violations from the past, to be followed by “acknowledgement of wrongs, apologies and forgiveness, peace, law enforcement, amnesty, rehabilitation, or other meaningful alternatives to pay full attention to a sense of justice in society.”<sup>13</sup>

The provisions of Law 26 of 2000 on Human Rights Courts, one of two major human rights laws passed in the first years of transition, provide a more direct statement of the legal obligation; “All victims of human rights violations and their heirs must receive compensation, restitution, and rehabilitation.”<sup>14</sup> The law provides that judges of the human rights courts may include these remedies in their rulings.<sup>15</sup> However, a final verdict of guilt is required before there can be a judicial order for reparations. Most human rights cases never proceed to trial, and not one of the 34 trials before the human rights courts has resulted in a conviction (all 18 convictions from the trials were overturned on appeal). The requirement of an effective prosecution for reparations and the total failure of the judicial system to achieve this goal have effectively blocked the provision of reparations to victims of serious human rights violations.

More recently, Indonesia enacted Law 13 of 2006 that established a statutory body tasked to protect witness and victims. The law states that victims of “gross human rights violations” have the right to medical care and psychosocial rehabilitation support, as well as “the right to compensation... [and] the right to restitution or compensation for damages [provided] by the perpetrator of the crime.”<sup>16</sup> An implementing regulation provides for victims and their families to file for compensation to the human rights court through LPSK.<sup>17</sup> Commissioners were appointed in 2009, but implementation of the law is hampered by the fact that the human rights court for past crimes has yet to be established.<sup>18</sup>

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<sup>12</sup> The human rights courts and appeal processes have a 100 percent failure rate: from 34 trials, there were 34 acquittals. Following a visit to examine the court system in Indonesia in 2002, the then UN special rapporteur on the Independence of Judges and Lawyers stated that the Indonesian judicial system was worse than he had expected. Moestafa, Berni K., “RI Judiciary Worse than First Thought: UN rapporteur,” *Jakarta Post*, July 22, 2002. Available at: <http://www.rghr.net/mainfile.php/0429/323/>; “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 Mission to Indonesia 15-24 July 2002, UN Doc. E/CN.4/2003/65/Add.2 (January 13, 2003).

<sup>13</sup> People’s Consultative Assembly Resolution V/2000 regarding Stabilization of National Unity (TAP MPR V/2000 tentang Pemantapan Persatuan dan Kesatuan Nasional) states: “*Kebenaran dengan mengungkapkan penyalahgunaan kekuasaan dan pelanggaran hak asasi manusia pada masa lampau.*” After the truth is established, “*Dapat dilakukan pengakuan kesalahan, permintaan maaf, pemberian maaf, perdamaian, penegakan hukum, amnesti, rehabilitasi, atau alternatif lain yang bermanfaat dengan sepenuhnya memperhatikan rasa keadilan dalam bermasyarakat.*”

<sup>14</sup> The law establishes human rights courts for “gross human rights violations” defined as genocide and crimes against humanity. For a critical review on the courts’ mandate and performance, see ICTJ and KontraS, “Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto,” 37-51.

<sup>15</sup> Law 26 of 2000 on Human Rights Courts, art. 35(1) states: “*Semua korban pelanggaran hak asasi manusia dan ahli warisnya harus menerima kompensasi, restitusi dan rehabilitasi.*” (See also Surat Ketua MA RI No. KMA/403/VI/2003 of June 12, 2003, and DPR (House of Representatives), Letter No. KS.02/3947/DPR-RI/2003.)

<sup>16</sup> Law 13/2006, articles 6 and 7.

## Implementation to Date: Hard Lessons Learned

As in other areas of transitional justice, the lack of political will for reparations in Indonesia is compounded by the absence of a framework that is clear, coherent, and consistent with international standards. Only a minute fraction of victims have obtained reparations, comprising mostly small cash payments with no clear link to harm suffered. The examples below demonstrate the need for a comprehensive reparations program that does not rely on the courts, includes acknowledgement of harm suffered, and provides a range of measures to repair the breach of trust.

### *Court-ordered Reparations Are Not Effective: The Tanjung Priok case*

In 1984 soldiers opened fire on protesters in the Jakarta harbor of Tanjung Priok. After the fall of Soeharto, legal action against members of the military provided an opportunity for a human rights court to consider reparations. An Ad Hoc Human Rights Court found the defendants guilty and ordered them to pay 1.15 billion rupiah (approximately \$110,000) to family members of 13 victims. However, when the appeals court overturned the conviction in 2005 and the Supreme Court rejected the prosecutor's appeal against this decision stating that the massacre did not constitute a human rights violation, the court order for reparations was canceled.<sup>19</sup> In addition, some victims received out-of-court payments from one defendant. These payments were interpreted by other victims as an effort to buy their silence and led to conflicts and bad feeling among them.

The Tanjung Priok case highlights obstacles to court-ordered reparations. A prosecutor must make a claim for reparations on the victim's behalf (overcoming political pressure and a lack of clear precedents and procedures), the defendant must be found guilty, and the verdict must survive years of appeals.

The Indonesian civil procedure code allows for compensation for crimes, but these procedures are also dogged by the same problems as the criminal courts, namely corruption and poor enforcement of decisions. Two cases below demonstrate these problems. The widow of Munir, a human rights lawyer assassinated aboard a Garuda flight in 2004, successfully sued the airline for negligence. Three years later, a Jakarta court ordered the airline to pay \$70,000. The Supreme Court upheld the decision in January 2011, but payment has yet to be made.<sup>20</sup> In another case, a Jakarta court granted Tommy Soeharto \$1.5 million in damages from an in-flight magazine that described him as a "convicted murderer." The ruling claimed that "although the Supreme Court has convicted Hutomo Mandala Putera (Tommy Soeharto) in the murder case, he has served his sentence and since the completion of the [term] he has fully regained his rights as a citizen and for his past to not be mentioned."<sup>21</sup>

Part of the solution is to ensure that the judicial system is able to secure convictions in human rights cases. However, victims should not have to wait for these judicial reforms, and even a well-functioning judicial system would only benefit those victims who could

<sup>17</sup> Regulation 44 of 2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims allows victims and their families to request compensation through the LPSK, after a decision granted by the human rights court.

<sup>18</sup> ICTJ and KontraS, *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, 38.

<sup>19</sup> Priharnowo, Thoso, "Supreme Court: Mascung case not human rights violation" (MA: Perkara Mascung Bukan Pelanggaran HAM), *TEMPO Interaktif*, March 1, 2006, <http://www.tempo.co.id/hg/nasional/2006/03/01/brk,20060301-74649,id.html>.

<sup>20</sup> "Court Upholds Ruling in Favour of Munir's Widow," *Jakarta Post*, February 19, 2011, <http://www.thejakartapost.com/news/2011/02/19/court-upholds-ruling-favor-munir%E2%80%99s-widow.html>.

<sup>21</sup> "Court Awards Tommy \$1.5 Million Damages for 'Convict' Article," *Jakarta Globe*, May 24, 2011, <http://www.thejakartaglobe.com/news/2011>. Tommy Soeharto was convicted for ordering the murder of a Supreme Court judge who presided over a corruption case against him. He was sentenced 15 years in jail, but was released after serving five.



obtain legal assistance and meet the standards of proof and eligibility to bring the case to court, leaving hundreds of thousands without access to reparations.<sup>22</sup>

*Reparations Must Be Distinct from Broad Social Programs: The Case of Aceh*

After decades of conflict in the province of Aceh, the 2004 tsunami helped instill a sense of urgency in the stalled peace negotiations, leading to the Helsinki Memorandum of Understanding (MOU) between the Indonesian government and the separatist Free Aceh Movement. The MoU provided for “economic facilitation,” including farmland, employment, and social security, for former combatants, political prisoners, and “all civilians who suffered a demonstrable loss.”

The Aceh Reintegration Agency (BRA) was established to implement an extensive reintegration program for former combatants and civilians affected by the conflict. BRA integrated its efforts with a World Bank-funded program in which communities identified projects to be funded through the local government. During a first phase that ended in 2007, BRA and the World Bank disbursed \$26.5 million to 1,724 villages.<sup>23</sup> However, some victims feel that their specific needs for recognition and rehabilitation were overlooked in this scheme. A community leader in Aceh provided this example. “Because [the money] is directed toward the village, every person in the village feels that they have a right [to it], so they demand that the money be divided equally. Meanwhile, there is a victim who was tortured with electric shocks 23 times, including in his sexual organs, in 1990. He has still not received any help.”<sup>24</sup>

The BRA also continued a form of reparations that pre-dated the MoU. *Diyat* is a traditional Islamic practice of compensating relatives of people who are killed. Under a scheme initiated by the governor in 2002, the family of someone killed or disappeared due to the conflict could receive \$200 to \$300 annually for a limited number of years. The local government paid funds directly to a reported 20,000 victims.<sup>25</sup>

Indonesia’s first post-conflict administrative reparations scheme, consisting of these two types of payments, was possible due to the international response to the tsunami, the peace agreement, and the government’s commitment to sustainable peace. However, inserting reparations within a reintegration program for former combatants has proven problematic. Few, if any, of these projects specifically addressed victims’ needs or provided acknowledgement of their suffering. Without acknowledgment, victims did not feel the state had, in fact, “repaired” the breach in trust. An opportunity to ensure that the program addressed the victims’ wishes to have their suffering recognized and to learn from the reports of violations was squandered by not designing it with these priorities in mind. One victim noted, “In [my] experience with BRA, there was no transparency about how many victims were recorded,” raising concerns about errors in determining who was a victim.<sup>26</sup>

Furthermore, to receive *dijat*, victims often needed to get the approval of local security forces, government officials, institutions, and sometimes individuals who may have been complicit in the death of family members. The process and amounts received varied with

<sup>22</sup> In 2005 the Jakarta Legal Aid Foundation initiated a class action suit against five former presidents seeking compensation and rehabilitation for the huge number of victims of the violence of 1965. The Jakarta court dismissed the suit.

<sup>23</sup> BRA, “Facts about Reintegration” (*Fakta Seputar Reintegrasi*), June 22, 2007), [http://bra-aceh.org/details\\_news.php?bra=new&id=292](http://bra-aceh.org/details_news.php?bra=new&id=292).

<sup>24</sup> ICTJ, *Considering Victims: the Aceh Peace Process from a Transitional Justice Perspective* (New York: ICTJ, June 2008), 30.

<sup>25</sup> *Ibid.*, note 18.

<sup>26</sup> Male victim, FGD 3, Medan, July 25, 2010: “Pengalaman di BRA, tidak adanya transparansi sudah berapa banyak korban yang tercatat.”

location or circumstance, undermining transparency and consistency. Significantly, the definition of affected civilians omitted victims of sexual violence.

*The Need for Transparency and Official Support: The 1998-99 Disappearances*

In the last months of the Soeharto regime, pro-democracy and human rights activists began disappearing. Nine were eventually released from military detention, while 13 were never found. There were some unsatisfactory prosecutions of low-ranking soldiers in a military court, several of whom later received promotions.

This case is one of many major incidents never brought before an Ad Hoc Human Rights Court, the venue for serious human rights violations that occurred prior to 2000. For several years, prosecutors have refused to begin an investigation into the absence of a decision from the House of Representatives (DPR). Even after a December 2009 resolution by the DPR calling for creation of a tribunal, the president has not issued the required decree. Without a court established to hear the cases, let alone the required final guilty verdict, victims have received no court-ordered reparations.

However, the 2009 resolution also recommended reparations for relatives of the disappeared and the surviving abductees.<sup>27</sup> In early 2011 several relatives of the 13 disappeared who were in urgent need received unofficial monetary payments.<sup>28</sup> Officials reportedly characterized these payments as humanitarian in nature, rather than based on the victims' rights and the government's obligation, and they were reportedly made by individuals rather than by the government. They therefore lack the transparency and official stamp that might make even a limited program a useful precedent for other families of the disappeared.

To set a useful precedent, such payments should be made to all appropriate victims and family members of the 1998-99 disappearances, in a transparent manner, consistent with UN principles and should be accompanied by nonmonetary measures such as counseling and efforts to determine the fate of those missing.<sup>29</sup> At the same time, the payments indicate that an administrative reparations program is politically and logistically feasible with legislative and executive branch support.

## Recommendations

Review of the victims' situations and the inadequate efforts to address them to date demonstrate a clear need for a mechanism that is not dependent on the decision of courts, is specifically designed for and with victims, and has the backing of the legislative and executive branches. In the words of the mother of a student killed in the 1999 Semanggi II shootings, "This bloody tragedy was an act of cruelty by the state, so the government must take responsibility. This is a country of laws, and the government cannot just produce hot air. It is useless for us to shout at the top of our voices if we are the only ones listening."<sup>30</sup>

<sup>27</sup> See DPR's letter to the president, No. PW.01/6204/DPR-RI/IX/2009, September 30, 2009.

<sup>28</sup> Report on Consolidation Workshop with Family Members of the 13 Disappeared, Jakarta, April 11-12, 2011, on file with ICTJ.

<sup>29</sup> See *UN Basic Principles on the Right to Remedy and Reparation*, supra note 6, para. 20, which says, "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services." See also para. 22 that states "Satisfaction should include... (c) The search for the whereabouts of the disappeared."

<sup>30</sup> *When the Victims Speak (Saatnya Korban Bicara)*, TIFA, 2009), 69. "Tragedi berdarah adalah kejahatan alat negara, jadi pemerintah harus bertanggung jawab. Negara ini negara hukum, pemerintah jangan hanya kasih angin segar saja. Percuma kami berteriak sekeras-kerasnya jika hanya kami sendiri yang mendengarkan."



Drawing on the work of Indonesian organizations and ICTJ's experience in other countries, this section presents recommendations for the scope and approach of such a mechanism. The executive and legislative branches are urged to take these recommendations into consideration as they design a program with the participation of victims and other civil society organizations.

These recommendations primarily address the absence of concrete planning for restitution, rehabilitation, and compensation. However, they are not meant to undermine or replace efforts to secure criminal justice or truth more broadly. The father of one of the disappeared activists explained, "Regarding the DPR recommendations, our first priority is point number one, the search for the 13 who are still missing. The problem is, if we receive only compensation, it seems the most painful of all. What value will be set for a victim and his family? If they provide two billion [rupiah], even then it would not provide a sense of justice for victims' families."<sup>31</sup> A woman whose 12-year-old child died in the May 1998 riots agreed on the need for justice: "I would accept compensation, but with the condition that the case must be continued."<sup>32</sup>

Any relevant decrees, laws, or regulations should clearly state that reparations are part of a broader strategy. This link should be ensured institutionally, such as by making the reparations program one component of a comprehensive mechanism to obtain truth and justice through prosecutions, truth-seeking, and other means.<sup>33</sup>

#### *Immediate Actions*

The principle recommendation of this paper is the creation of a comprehensive administrative reparations program in Indonesia. However, even before such a mechanism is created, authorities should take a number of immediate actions:

1. The president should offer an official acknowledgement and apology to victims of past human rights violations. This statement should include a specific reference to the right to reparations and a promise to provide them as part of a broader effort to secure justice and truth.
2. The government should provide a legal status to families of the disappeared to use for purposes of administering inheritance and transfer of property, and eventually for compensation.<sup>34</sup>
3. The president should instruct all agencies to resolve disappearances, with a new task force or other mechanisms to ensure effective investigation and collaboration among agencies.
4. The government should immediately ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>31</sup> Male victim, FGD 2, Kendal, July 18, 2010: "Kembali dari rekomendasi DPR alangkah indahnya jika kita prioritaskan dulu point nomor satu, yaitu pencarian 13 orang yang masih hilang. Permasalahannya, jika kita terima saja reparasi itu sepertinya hal itu adalah yang paling menyakitkan. Kenapa, akan dihargai berapa sih kita untuk seorang korban dan keluarganya. Misalnya, mereka memberikan dua milyar itupun belum memenuhi rasa keadilan bagi keluarga korban."

<sup>32</sup> Female victim, FGD 2, Kendal, July 18, 2010: "Saya akan menerima kompensasi, tapi syaratnya [adalah] kasus harus tetap dilanjutkan."

<sup>33</sup> Civil society organizations have proposed a Presidential Committee for Justice and Reparations of the Rights of Victims to initiate and oversee efforts in the areas of reparations, truth, and justice. The proposal is awaiting action from the president's office.

<sup>34</sup> The basis for such a process can be taken from Law 23 of 2006 on Population Administration. Art. 44 para. 4, sect. 7 states: "Where there is lack of information on the whereabouts of a person who is missing or deceased but whose body is not recovered, registration by Civil Registry can only take place after a court decision (*Dalam hal terjadi ketidakjelasan keberadaan seseorang karena hilang atau mati tetapi tidak ditemukan jenazahnya, pencatatan oleh Pejabat Pencatatan Sipil baru dilakukan setelah adanya penetapan pengadilan*)." However, the families of the 13 have never received a decision from a court about the civil status of those who have disappeared. See also articles 7(1) and 12 on the Convention on Disappearances.

5. The government should guarantee protection to victims in Papua to ensure they feel safe to seek reparations.

*A Comprehensive Administrative Reparations Program*

As important as these immediate measures would be, they are insufficient. As one advocate noted in a discussion, there have been limited apologies from past presidents, but no official document or policy: “Because there was no framework, nothing happened afterward.”<sup>35</sup> The government should therefore take immediate steps to establish a comprehensive administrative reparations program that:

- includes official acknowledgment of violations;
- is complementary to, and does not replace, efforts to seek justice;
- includes a truth component, such as a final report on the nature and scale of violations and victims;
- is developed in partnership with civil society and victims’ groups, in order to give them a voice and to restore trust through the process itself;
- may be complementary to, but distinct from, broader social and economic development programs;
- is accessible to women, children, and those in remote areas or with poor health.

1. Institutional arrangements

- a. The president should issue a decree mandating the creation of a reparations program, setting forth scope, content, and financing. Given the scale and diversity of Indonesia, the program should be as decentralized as possible, with a central task force ensuring appropriate policies, monitoring, and oversight. While a law should not be necessary, Parliament is encouraged to ensure concrete support, including allocation of funds in the national budget.
- b. The president should work with Komnas HAM and Komnas Perempuan to appoint members to the task force from a list created by civil society, including victims’ organizations. The body should comprise well-respected individuals free from credible allegations of responsibility for human rights violations. Members may be from government, academia, NGOs, mass organizations, or the general public, with attention to gender and diversity.
- c. Komnas HAM, Komnas Perempuan, and LPSK should assist in the design of the mandate and the mechanism with participation of civil society. Once established by decree, the program may continue to benefit from their assistance through victim referrals, sharing of existing documentation, and operational support such as staff, facilities, and training.
- d. Much of the provision of reparations can be executed by ministries operating at the local level, with assistance from nongovernment agencies. These programs should be based on standards set by the national body in collaboration with relevant ministries such as the Ministries of Law and Human Rights, Interior, Finance, Education, Health, and Social Welfare.
- e. Papua and Aceh are in a special category due to the high percentage of the population affected by past violations and the opportunities provided by special autonomy laws. In these two areas, local legislative bodies should establish truth and reparations programs. These local bodies may still benefit from resources and guidance from a national program.

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<sup>35</sup> Female NGO worker, FGD 5, Jakarta, August 13, 2010: “Tetapi karena tidak ada dasar, jadi tidak ada apa-apa setelahnya.”

## 2. Mandate

- a. The proposed mechanism should be tasked with the following activities:
  - Registration of victims, starting with existing documentation, followed by registration of new cases through outreach assisted by civil society.
  - Ensuring the provision of urgent medical and psychosocial assistance as mandated by Indonesia's victim and witness protection law.
  - Determining the form and size of reparations for different categories of victims.
  - Securing equitable and transparent agreements with ministries, local governments, service organizations, and other agencies.
  - Monitoring and reporting on implementation by partner agencies.
  - Issuing a final report with detailed findings on the scale and nature of violations and victims, while maintaining confidentiality of living victims.
- b. Types of violations: While it may be politically or financially necessary to carry out the work in phases, at a minimum the complete program should cover all victims of politically motivated human rights violations after 1965, prioritizing victims of:
  - killings
  - forced disappearances
  - sexual violence
  - torture and ill treatment
  - arbitrary arrest and detention
  - slavery or forced labor

Following the initial program, an additional phase could include the following violations:

- arbitrary confiscation of land or other property
- forced relocation
- loss of employment, educational opportunities, or pension due to discrimination

## 3. Registration

- a. All stages of the process must be accessible, even to victims in remote areas or with limited mobility. There should be a streamlined process that includes a low burden of proof. Commissions and NGOs may assist by sharing documentation, preparing victims before registration, and counseling them afterward. However, registration itself should be conducted by the mechanism mandated by the president and should include an element of formal acknowledgment of harm suffered.
- b. The body may start with data already in the hands of Komnas HAM, Komnas Perempuan, and LPSK, as well as civil society and victims' groups, even while it conducts outreach to victims. It is likely that the participation of victims' groups and women's organizations will be essential, especially when there is stigma or a culture of silence about particular types of victims and violations.
- c. Registration can be done in phases to assess the needs and demographics of victims without delaying reparations. Reparations should begin within one year of

the commencement of the registration process. However, registration should remain open as long as victims are coming forward.

- d. Trained verification officers who work in collaboration with civil society groups, women's groups, and local and religious leaders may review victims' accounts. Registries of human rights groups and national commissions can verify many accounts, though some effort may be needed to compile and cross-reference these sources. However, it is essential that the standard of proof does not exclude victims simply due to lack of corroborating evidence; the process should also consider contextual information, including patterns of violations identified during registration or by previous inquiries.

#### 4. Financing

- a. Long-term measures such as pensions and social services should be included in the national budget. These payments are a state responsibility, and such an arrangement can guarantee continuity in a way that a trust fund cannot.
- b. Other forms of extraordinary or transitory financing may be crucial at start-up or to fund one-time payments, but they should be in addition to annual budgeting.
- c. It may be possible to secure donor funding for some of the operations of the mechanism, such as victim registration. However, reparations should not depend on outside funding. Similarly, if assets from corruption are recovered, the government may wish to use them to reimburse itself for expenditures, but reparations should not depend on such funds.
- d. In some countries, reparations programs have had to prioritize reparations to some categories of victims, such as the elderly and the handicapped, due to bureaucratic or financial limitations. Every effort should be made to serve all victims in a timely way, and any prioritization should not be discriminatory or injurious to the rights of other victims.

#### 5. Types of reparations

The process for awarding reparations should be clear and simple in design and execution. It is important to acknowledge every type of violation, but distinctions may be appropriate, taking into account the seriousness of the human rights violations and degree of need. Wherever possible, reparations should be on an individual basis. However, in cases when entire communities or villages were affected by conflict, collective reparations may be appropriate as well. Types of reparations should include:

- a. Pensions and other payments: Given the scale and complexity of the problem, it is unlikely that the loss and suffering of victims can be adequately compensated. However, regular payments can help acknowledge the harm suffered, begin to restore the breach of trust between the state and its citizens, and allow victims to live a life of dignity. The proposed program, working with the relevant ministries, should determine appropriate, inflation-adjusted pensions for all classes of victims, using socioeconomic data such as the median national income as a reference. The mechanism should specify pensions for direct victims as well as for widows, parents, and children of those victims disappeared or killed. Because older victims will not benefit from pensions for as long as younger ones, they should receive either an additional one-time payment or an increased pension.
- b. Packages of services: Services are needed to meet the needs for rehabilitation (mental and physical health) as well as compensation (e.g., for lost educational

opportunities). One focus group participant in Makassar described the trauma from being arrested in 1965: “I am still sometimes scared, afraid of gatherings, afraid of being arrested; that is what I am always imagining.”<sup>36</sup> To ensure that victims receive the specific reparations they are entitled to, the government should create a referral and case management system for victims, implemented by local government and NGOs, to ensure that victims are able to easily access the following services:

- Health care: Health care affirms the dignity of victims, responds to specific needs, and meaningfully improves lives. Victims deserve attention beyond the basic obligation that governments have to all citizens. Victims have specific health problems due to past trauma and injuries, and the state has an obligation to make sure that they are not left to navigate an underfunded and overstretched health system on their own. One victim’s representative at a Jakarta discussion stated, “It’s like we’re made to beg. There should be a different procedure for victims or the victims will become victims again, stranded and ignored in the hospital.”<sup>37</sup> One approach, as practiced in Chile, is to create small teams of physicians, psychologists, nurses, and social workers to respond to the health needs of victims. The program should also include special services for women provided by government agencies, women’s organizations, and Komnas Perempuan.
  - Psychosocial support: All victims and family members should have access to trauma healing through mental health services, peer counseling, creative arts for healing, adult education, and community meetings. Trained workers from government agencies, NGOs, and victims’ groups should conduct this program.
  - Education: Victims or their children who lost educational opportunities due to armed conflict, discrimination, arrest, detention, or other factors should receive scholarships or opportunities for remedial education. Those who are no longer of school age should have access to vocational, literacy, and other adult education that can address lost opportunities and increase earning potential.
  - Livelihoods: Victims have also expressed a need for economic projects, including access to skills training and microcredits, that can help replace lost income in a sustainable way.
- c. Symbolic reparations: Symbolic reparations are an important component of a comprehensive administrative reparations program. Symbolic reparations may include:
- individual and collective apologies
  - reburial, grave markers, or ceremonies for those in mass and unmarked graves
  - statues or plaques marking the sites of incidents

<sup>36</sup> Male victim, FGD 4, Makassar, August 3, 2010: “Sampai sekarang saya kadang masih takut, ketakutan dengan adanya ngumpul-ngumpul, takutnya ditangkap dan itulah yang selalu membayangi saya.”

<sup>37</sup> Female victim, FGD 1, Jakarta, July 5, 2010: “Itu prosesnya seperti mengemis, harusnya ada dokumen yang beda bagi korban, sudah korban menjadi korban lagi, terdampar di RS dan tidak ditangani.”

- correcting incomplete and inaccurate textbooks and curricula. One 1965 victim explains, “Discrimination and stigmatization continue to this very day, and the most important thing is the disclosure and clarification of the accurate history.”<sup>38</sup>
- renaming streets or establishing holidays in honor of victims.

## 6. Truth-seeking

The reparations program should not be a substitute for a comprehensive truth process such as a truth and reconciliation commission. However, it can start to provide a picture of the scale and nature of violations, and the profile of victims. In addition, the question of locating the disappeared must be an integral part of reparations efforts. Without such a step, family members experience the disappearance as a continuing harm, and other efforts to repair the breach of trust with the government and its institutions will be ineffective. A renewed investigation could encompass:

- a. inspection of detention facilities
- b. interviews with other detainees, and current and retired officials
- c. information from mortuaries about bodies received in unusual circumstances
- d. inspection of arrest and detention records of police, military, and prisons

## 7. Justice

Ad hoc and permanent human rights courts, as well as regular courts, must continue to examine past human rights violations notwithstanding any reparations process. Information about individual or systemic violations that emerges through the registration process should be shared with Komnas HAM and prosecutors, along with recommendations for prosecution.

## 8. Legal reform

The executive and legislative branches should amend relevant laws and regulations to correct confusion about primary responsibility and end the need for a settled verdict before reparations can be obtained. Such reforms will also help future victims obtain reparations. Legal reform should also strengthen the mandates of Komnas HAM and LPSK to better assist victims. Additionally, a systematic review to annul regulations that discriminate against victims and members of their families should be undertaken.

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<sup>38</sup> Male victim, FGD 2, Kendal, July 18, 2010: “*Bicara diskriminasi dan stigmatisasi sampai saat ini masih ada dan yang paling penting adalah pengungkapan sejarah atau pelurusan sejarah yang benar.*”