

# **PREVENTING FUTURE MASS ATROCITIES IN INDONESIA: IMPLEMENTING THE RESPONSIBILITY TO PROTECT WITHIN A CULTURE OF IMPUNITY**

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In this paper, I examine critically the possibilities for implementing the Responsibility to Protect (RtoP) – the principle agreed upon by Member States of the UN to prevent genocide and other mass atrocities – in Indonesia given its ongoing culture of impunity for past and current grave abuses of human rights.<sup>1</sup> Essentially I examine two facets of the relationship between the Indonesian state and implementing the Responsibility to Protect. After briefly outlining the RtoP, I first consider the importance of Indonesia's support for the principle both nationally and within the region and the benefits that Indonesia can derive from its support. I then examine the potential for RtoP promotion and implementation at the domestic level in Indonesia. In particular, I critique some of the numerous failures of successive administrations since the beginning of *Reformasi* (1998 - ) to fulfil the promises of reform, particularly in the area of redressing gross human rights abuses. The main argument of this paper is that although the current Susilo Bambang Yudhyono (SBY) administration appears one of Southeast Asia's greatest supporters for the RtoP, the government's continuing unwillingness to redress impunity for grave human rights abuses will undermine current and future humanitarian efforts in the region.

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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 widespread 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 many 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 two years, 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.<sup>2</sup> 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.’<sup>3</sup> 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 and have the potential to impede future reforms.

The most serious failure of successive *Reformasi* governments since 1998 has been their inability and unwillingness to redress past grave abuses of human rights and to combat Indonesia’s continuing culture of impunity. This culture of impunity has, and will continue to

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<sup>2</sup> 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.

<sup>3</sup> Greg Barton, ‘Comment: Democracy in Indonesia’, *The Monthly*, July 2009, p. 13.

have, a seriously negative effect on building the rule of law and the democratisation process in Indonesia. It also has a negative effect on the capacity and likelihood of Indonesia to implement the Responsibility to Protect and thus prevent future mass atrocities.

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

The Responsibility to Protect (or RtoP) is the principle unanimously agreed upon by Member States of the United Nations in 2005 to prevent, react to, and rebuild after mass atrocities. In essence, it is comprised of three pillars; first, the responsibility of all states to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; second, the responsibility of the international community to assist states in upholding their obligations; and third, the responsibility of the international community to act in a timely and decisive manner to protect populations when a state is manifestly failing to uphold its responsibility to protect.<sup>4</sup> To date, the current Indonesian administration under President Susilo Bambang Yudhoyono (SBY) has been a prominent voice within Southeast Asia's supporters of the RtoP.<sup>5</sup>

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 important, 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.<sup>6</sup> Given 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.

Indonesia also has much to gain politically 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

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<sup>4</sup> For detailed discussion on the Responsibility to Protect, see Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009).

<sup>5</sup> See *The Responsibility to Protect in Southeast Asia*, The Asia-Pacific Centre for the Responsibility to Protect, January 2009, pp. 19-29.

<sup>6</sup> See, for example, Anthony L. Smith, *Strategic Centrality: Indonesia's Changing Role in ASEAN* (Singapore: Institute of Southeast Asian Studies, 2000).

other mass atrocity crimes.<sup>7</sup> Particularly since SBY began his first term in 2004, Indonesia has shown its desire to raise its profile within international relations. As McIntyre and Ramage have argued, ‘Indonesia has shown new international confidence and activism.’<sup>8</sup> 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.

There are numerous additional reasons that 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 its capacity to protect. This assistance could take various forms including investment in development aid and 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.

As a regional leader, Indonesia is also 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 were 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

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<sup>7</sup> At the September 2009 UN General Assembly debate on RtoP, aside from some detractors (such as North Korea), there was widespread support.

<sup>8</sup> 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.

to prevent war.<sup>9</sup> 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.

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. 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.<sup>10</sup> 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 1965-1966<sup>11</sup> is a case in point) and localized (such as in the protracted cases of East Timor and Aceh during the New Order period<sup>12</sup>), and the devastating loss of life as a result, it is promising that Indonesia has shown such vocal support for the RtoP to date. Hopefully, this support for the RtoP at international forums will coalesce into implementation over the next few years and into the future. There are, however, significant barriers to domestic implementation in Indonesia.

### **Impunity and Preventing Future Atrocities in Indonesia**

The most serious impediment to strengthening and implementing the Responsibility to Protect in Indonesia, and thus to preventing future mass atrocity crimes, is impunity for past

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<sup>9</sup> 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.

<sup>10</sup> Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the UN Secretary-General, A/63/677, 12 January 2009, p. 16.

<sup>11</sup> 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).

<sup>12</sup> 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); and Carmel Budiardjo and Liem Soei Liong, *The War Against East Timor* (London: Zed Books, 1984).

grave human rights abuses. The continuing lack of accountability for these atrocities, among them a wide range of cases of grave human rights abuses committed before, during and after the New Order regime, has created a culture of impunity in Indonesia.<sup>13</sup> 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 that have been co-opted at different times by the military.<sup>14</sup> 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.’<sup>15</sup>

Over the years since the end of the New Order, an impressive range of reforms has led to the growth of civil society, greater freedom of expression and political participation, free and fair elections for the first time since 1955, a gradual depoliticisation of the armed forces and numerous other reforms which are evidence of Indonesia’s continuing democratization.<sup>16</sup> When examining the reforms that have been made with regard to the level of protection for human rights and accountability for human rights’ violators, however, there is a distinct disjuncture between the promise of reform and the reality in Indonesia today. On the one hand, particularly within international forums, Indonesia has drastically improved its commitment to uphold human rights. It has ratified numerous international human rights’ instruments and participated in various UN monitoring activities.<sup>17</sup> 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.

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<sup>13</sup> For a report on the culture of impunity in Indonesia and its effects conducted, see Martha Meijer, *The Scope of Impunity in Indonesia* (Utrecht: The Netherlands Humanist Committee on Human Rights (HOM), 2006).

<sup>14</sup> On this topic, see, for example, Angel Rabasa and John Haseman, *The Military and Democracy in Indonesia: Challenges, Politics, and Power* (Santa Monica, CA: RAND, 2002); and Geoffrey Robinson, ‘People’s War: Militias in East Timor and Indonesia’, *South East Asia Research* 9/3: 271-318 (2001).

<sup>15</sup> Suzannah Linton, ‘Accounting for Atrocities in Indonesia’, *Singapore Year Book of International Law* 10: 199-231 (2006), p. 201.

<sup>16</sup> See Annie Pohlman, ‘Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect,’ Research Report of Indonesia No.1, Asia-Pacific Centre for the Responsibility to Protect, July 2010, available online at <http://r2pasiapacific.org/documents/Indonesia%20Report%20No%201%20Jly%202010%20FINAL.pdf>.

<sup>17</sup> 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) and the International Convention on the Elimination of all Forms of Racial Discrimination. Numerous monitoring missions have also been allowed into Indonesia, such as: 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; and the Special Representative of the Secretary-General on the situation of human rights defenders in 2007.

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 study briefly highlights the handling of just one case, that of atrocities committed in East Timor in 1999, as an example of the lack of accountability for grave human rights' abuses as well as the inability and unwillingness of the Indonesian government to bring serious violators to justice.

On 30 August 2009, East Timor (or Timor-Leste) celebrated ten years since the vote for independence, a decision that was followed by a 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 crimes perpetrated against the civilian population.<sup>18</sup> As this paper 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).<sup>19</sup> 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.<sup>20</sup> 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).<sup>21</sup>

The handling of cases to prosecute those charged with alleged serious violations committed in East Timor by Indonesian courts, however, is where the strongest examples of institutionalized impunity can be seen. The East Timor case was the first test of Indonesia's Ad Hoc Human Rights Court which, unfortunately, it failed. To explain how the court came about, as well as the great hopes that were invested in its creation, it is necessary to explain the background leading up to its creation in 2000.

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<sup>18</sup> On these crimes, see 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).

<sup>19</sup> Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR), *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR)* (Dili: CAVR, 2005). This report is available online at <http://www.etan.org/news/2006/cavr.htm>.

<sup>20</sup> David Cohen, "Justice on the Cheap" Revisited: The Failure of the Serious Crimes Trials in East Timor', *Asia Pacific Issues*, 80: 1 – 8 (May 2006), p. 2.

<sup>21</sup> See Susan Harris Rimmer and Juli Effi Tomaras, 'Aftermath Timor Leste: Reconciling Competing Notions of Justice', EBrief, Parliament of Australia, 22 May 2006, available online at <http://www.aph.gov.au/library/INTGUIDE/LAW/TimorLeste.htm>.

The Indonesian National Commission on Human Rights (hereafter, Komnas HAM – *Komisi Nasional Hak Asasi Manusia*) is the body in Indonesia most identified with the support for human rights. Originally founded in 1993 as a result of international pressure on Indonesia to improve its human rights' record, Komnas HAM's initial weak mandate was strengthened during the early years of *Reformasi* under Law No. 39 of 1999 (and later complemented by Law No. 26 of 2000 on Human Rights Courts). Specifically under these new laws, 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 (e.g. crimes against humanity), Komnas HAM then has the power to carry out a further, more extensive 'pro-justicia' enquiry.<sup>22</sup> Under Law 26/2000, 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 creation of an Ad Hoc Human Rights Court to try alleged perpetrators should then be the next step 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, 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.<sup>23</sup>

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<sup>22</sup> 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. 461-463.

<sup>23</sup> 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 Linton, 'Accounting for Atrocities,' 199-231.



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.<sup>24</sup> 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.'<sup>25</sup> In all, only eighteen of the extensive list of potential defendants given to the AGO by Komnas HAM were put on trial, none of whom was a senior military officer identified in the original Komnas HAM investigations as responsible for mass atrocities.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

Since the East Timor Ad Hoc trials (and a number of trials in the Tanjung Priok incident from 1984), 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 at least seven further cases of serious crimes.<sup>29</sup> This refusal by the AGO to pursue these cases through its own

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<sup>24</sup> 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).

<sup>25</sup> 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>.

<sup>26</sup> See McDonald and Tanter, 'Introduction', pp. 7-8.

<sup>27</sup> On this intimidation and harassment, see Cohen, 'Intended to Fail', pp. 56-57.

<sup>28</sup> 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>.

<sup>29</sup> See Komnas HAM, 'Information on Activities of Komnas HAM Carried Out during the Period of September 2008-July 2009', submitted to the 14<sup>th</sup> 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>.

investigations and then to the Ad Hoc court constitutes a serious undermining of Komnas HAM's mandate.<sup>30</sup> 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 East Timor case which was brought to trial as a result of Komnas HAM's investigations are evidence of the very high level of dysfunction between what has been promised by human rights' reforms and their implementation.

The redress of grave abuses of human rights and overcoming this culture of impunity are crucial for Indonesia. Not only is it the right of victims to see those suspected of crimes prosecuted and to know the truth about violations, it is the responsibility of the state to take all necessary steps to prevent the recurrence of violations. In Indonesia today, ongoing impunity for, in particular, security sector 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.'<sup>31</sup> Despite the reforms carried out during the last ten years, 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.<sup>32</sup>

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,

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<sup>30</sup> 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.

<sup>31</sup> Cited in 'Indonesia: UN Expert Hails Progress in Combating Torture, Urges Further Measures', *UN News Service*, 23 November 2007, available online at <http://www.un.org/apps/news/story.asp?NewsID=24769&Cr=Indonesia&Cr1>.

<sup>32</sup> As a small number of more recent examples, see 'Indonesia: Police officers severely torture a man and shoot him, making impossible claims that he had been trying to escape', Asian Human Rights Commission, 26 June 2009, <http://www.ahrchk.net/ua/mainfile.php/2009/3189>; 'KontraS Aceh: Penyiksaan Biasa di Kepolisian', *Harian Aceh*, 16 December 2009, <http://www.harian-aceh.com/banda-raya/banda-aceh/3924-kontras-aceh-penyiksaan-biasa-di-kepolisian.html>; and Amnesty International, 'Indonesia: Briefing to the UN Committee Against Torture', AI Index: ASA 21/003/2008, 15 April 2008, <http://www.amnesty.org/en/library/info/ASA21/003/2008/en>.

and is conducted repeatedly and systematically.’<sup>33</sup> In terms of preventing atrocities in Indonesia, there must be a 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.<sup>34</sup>

This is an alarming and urgent challenge for preventing future atrocities in Indonesia for several reasons. First, 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. This would seriously hamper a nation’s ability to protect its populations, thus necessitating the potential involvement of regional and/or international bodies.

### **Conclusion: No Prevention without Accountability**

The failure by successive Indonesian governments since the beginning of *Reformasi* to address past abuses, and the culture of impunity which exists 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 UN 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.<sup>35</sup> For strengthening and implementing the Responsibility to Protect principle in Indonesia, this poses serious, and perhaps insurmountable, challenges. Without

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<sup>33</sup> Human Rights Council, Working Group on the Universal Periodic Review, ‘Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Indonesia’, A/HRC/WG.6/1/IND/3, 6 March 2008, p. 3, available online at [http://www.upr-info.org/IMG/pdf/A\\_HRC\\_WG6\\_1\\_IDN\\_3\\_E.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_WG6_1_IDN_3_E.pdf).

<sup>34</sup> According to the Jakarta Legal Aid Institute (LBH Jakarta), most complaints of rights’ violations are made about police officers. See Proditia Saharini, ‘Cops Main Civil Rights Abusers: LBH’, *The Jakarta Post*, 31 December 2009, available online at <http://www.thejakartapost.com/news/2009/12/31/cops-main-civil-rights-abusers-lbh.html>.

<sup>35</sup> ‘Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human rights Council Resolution 5/1: Indonesia’ A/HRC/WG.6/1/IND/3, 6 March 2008, pp. 5-8, available online at <http://www.unhcr.org/refworld/pdfid/4857a6f10.pdf>.

accountability for past and present atrocities, Indonesia's capacity to prevent and respond to future mass atrocities is limited. Thus, despite progress in domestic reforms and leadership at the regional level on promoting democratization and human rights, unless there is drastic action to deal with its culture of impunity for gross abuses, Indonesia will fail to uphold its responsibility to protect.