

INDONESIA

At the request of the Indonesian NGO TIFA and the Burma Project/South East Asia Initiative of the the Open Society Institute, New York, one EAAF member traveled to Indonesia to assess the possibility of providing training in forensic anthropology and archaeology to local non-governmental organizations as well as to medical doctors. The trip took place between March 30th and April 13th.

HISTORICAL BACKGROUND

When General Mohammed Suharto initially came to power in 1965, hundreds of thousands of people suspected of belonging to the communist party disappeared. It is conservatively estimated that 500,000 people were killed from 1965-1966.¹ Throughout his authoritarian reign, tactics such as imprisonment, torture, kidnapping, and murder were employed to suppress dissent, particularly in areas attempting secession such as Aceh, East Timor and West Papua.

Suharto's rule stretched thirty-two years until May 1998 when he was forced to resign amidst serious economic and political turmoil. B.J. Habibie briefly followed Suharto as President until Abdurahaman Wahid came to power in the first democratic elections in over four decades, held in October 1999. Wahid was committed to government reform but was unable to garner enough support among government elite. Moreover, corruption charges were brought against him. By July 2001, Wahid was impeached and replaced by Vice-President Megawati Sukarnoputri, the daughter of Indonesia's first president, Sukarno.²

According to the International Crisis Group "The president [Megawati] faces a myriad of dark legacies from the Suharto era including weak institutions, a corrupt and untrained judiciary and a pervasive military structure that exists in parallel with the civilian government. Separatist conflicts in Aceh and Irian Jaya remain unresolved and plans for greater autonomy for these provinces have not

come to fruition. Communal violence has flared in Kalimantan and Maluku and simmers away elsewhere. Little has been done to fix an economy that nearly collapsed in 1997 and has shown few signs of recovery."³

Human rights organizations including Human Rights Watch and Amnesty International note that President Megawati's administration has failed to deal with several major human rights challenges. According to Human Rights Watch World Report 2002, these include continued violations of international human rights law by the country's military forces (Tentara Nasional Indonesia, TNI), pervasive corruption, separatist conflicts in Aceh and Papua, religious violence in Maluku and Poso, and attacks on human rights defenders.⁴

Under pressure from the international community, Indonesia established both national and international commissions of inquiry to conduct investigations into reports of grave human rights violations in East Timor⁵ committed during the movement for independence in 1999. In that year alone, an estimated 2,000 deaths and scores of other violations were committed against the East Timorese people, reportedly by the Indonesian troops and pro-Jakarta militias.⁶ Over a quarter of a million people fled or were forcibly expelled to Indonesia.⁷

The United Nations Mission to East Timor (UNAMET) also established a Special Crimes Investigation Unit (SCIU) in 1999 dedicated to investigating and prosecuting human rights violations. However, the idea



Jakarta, April 22, 2002. Central Jakarta District Court during *ad hoc* trials of human rights violations in East Timor.
Photo by P.J. Leo

of a UN International Commission of Inquiry for crimes committed in East Timor has been displaced in favor of supporting Indonesia's efforts to use its own resources. The Indonesian National Commission on Human Rights (Komnas HAM) was established in 1999 to investigate human rights violations and given the capacity by law to set up *ad hoc* investigative commissions and conduct preliminary investigations. Although Komnas HAM is not a Truth Commission, it shares some features with Truth Commissions: it is a special commission of inquiry for the initial stage of the investigation of past and current human rights abuses, with intermediate status and some judiciary capacities. However, after substantial criticism by the international community, international funding was withdrawn and new members were elected in June 2002 under new guidelines. Indonesia also has a bill pending approval in Parliament regarding the formation of a Truth Commission. In principle a Truth Commission

will handle the cases of past human rights abuses while Komnas HAM will take care of the current ones.

In November 2000, Indonesia's Parliament agreed to establish courts dedicated to prosecuting human rights violations, but few of those responsible for violence in East Timor were brought to justice. In April 2001, former President Wahid established an *ad hoc* Human Rights Court on East Timor and other cases. The establishment of the court was initially well received by human rights organizations but limitations on its mandate raised serious concerns.⁸ Amnesty International (AI) called for the Law on Human Rights Courts (Law 26/2000) to be amended so that it is fully consistent with international standards. Among Amnesty's concerns was "the scope this legislation allows for political interference, including the role of the executive branch of the government in selecting judges and prosecutors and in

deciding which cases can be prosecuted;" similar concerns, AI reports, were also raised by Indonesian NGO's and legal experts. Human Rights Watch/Asia argued that the law's mandate was "well-intentioned but deeply flawed", among other reasons because it is governed by the Rome Statute for the International Criminal Court. The Rome Statute only considers crimes that rise to the level of "serious human rights violations," such as genocide and crimes against humanity, tantamount to crimes of universal jurisdiction. Under this mandate, an individual human rights violation, such as a single massacre, might not rise to the threshold of "serious human rights violation," and would therefore be tried in a military court (with military judges, if suspects were members of Indonesia's armed forces) or in the so-called *koneksitas* courts (with both military and civilian judges, if civilians were included in the ranks of those charged.)⁹ Finally, the court's mandate determined that only the events after August 30, 1999 (the day after the referendum) could be tried, although serious human rights violations also occurred earlier.¹⁰

A change in administration did not greatly affect Indonesian policy towards crimes in East Timor: although new President Megawati Sukarnoputri ordered the prosecution of crimes from April as well as September 1999. According to Human Rights Watch the decree "excludes hundreds of other {crimes} of unlawful killing, torture, rape, and other serious crimes committed from January to October 1999 throughout the territory." At the same time, Amnesty International, notes that Indonesia has yet to take certain steps—such as establishing a witness and victim protection program—provided for under the initial terms of the Court's mandate. Without such protection, witnesses and victims from East Timor are unlikely to travel to testify in Indonesia. Human Rights Watch has argued that Sukarnoputri's decree "weakened the possibility of examining the whole pattern of state policy that would be critical to establishing a crime against humanity case."¹¹

Human rights defenders inside and outside of the country have called for an international tribunal in response to the failures of the Indonesian judicial system.¹² Human

Rights Watch attributes the failures in the judicial system and Indonesia's inability to reform to "the administration's lack of political will to resist former supporters and beneficiaries of the Suharto government, including TNI."¹³ According to Human Rights Watch, the government itself is split between reformers and pro-militia groups still defending old interests. They argue that many of the perpetrators of previous crimes remain active in politics or continue to be involved in the military with no acknowledgment of past abuses or violations in which they may have played a role. The army, Human Rights Watch notes, still largely operates beyond the reach of the law and has regained much of the political power it lost with the 1998 ouster of dictator and former General Suharto.¹⁴

Massive internal displacement of populations due to political, ethnic, and religious conflict is also of serious concern in various regions in Indonesia and repression of pro-independence movements continues. Civilians in the areas of Aceh, East Timor (before its independence in 1999) and Papua and more recently in the Moluccas have been subjected to severe human right violations reportedly by security forces in places where military operation zones (DOM) have been established. According to Human Rights Watch, many human rights activists and other peaceful political activists have been accused of "spreading hatred toward the government" and have been consequently killed, imprisoned or have disappeared.¹⁵ Leading figures in the pro-independence movements in both Papua and Aceh have been imprisoned.¹⁶

One of Asia's longest-running separatist wars is in the Muslim province of Aceh, which is also rich in oil and gas. The Indonesian government has tried to suppress the movement for 27 years. Overall, the conflict has reportedly cost a total of 10,000 lives.¹⁷ Civilians suspected of being sympathizers of the armed separatist Free Aceh Movement (GAM) have reportedly been tortured, imprisoned or extrajudicially executed.¹⁸ Local and international governmental organizations working in Banda Aceh told Human Rights Watch in January 2002 that suspected rebels were routinely found shot after having been taken into custody and only in rare cases are

they prosecuted through the courts. However, many incidents of extortion and kidnapping by GAM against the civilian population have also been reported.¹⁹

The Indonesian government and Aceh rebels attempted to achieve a ceasefire through peace talks. However, on May 19, 2003, peace talks collapsed and President Sukarnoputri signed Decree 28, authorizing Indonesia's security forces to launch full-scale military operations against the GAM. Senior Indonesian military officers have stated publicly that they intend to "crush" the separatist movement. According to Human Rights Watch, since the fighting resumed, the Indonesian government has blocked the flow of information from the province and has denied access to Aceh to diplomats, international observers, and international human rights NGOs.²⁰

In addition, political, ethnic, and religious conflicts persist in other regions throughout Indonesia, such as Maluku and Poso. Massive internal displacement of populations is also of serious concern to Indonesia and its neighbors.

Finally, as a country that is more than 90 % Muslim and generally characterized by a moderate Islamism and a separation of state and church, Indonesia is currently experiencing a surge of national actions by extremist religious groups. On October 12, 2002, two car bombs exploded in South Bali, killing at least 188 civilians. Most of those killed were foreign tourists but an estimated quarter of the fatalities were Indonesian. The organization suspected to be responsible, Jemaah Islamiyah, has been designated a terrorist organization by the United Nations.²¹ In August 2003, another car bomb exploded at the Marriott hotel in Jakarta, a place seen by many as symbol of American interests and a gathering spot for elite expatriates. The bomb killed at least fourteen and wounded more than one hundred people. The links between these two episodes, the U.S. war on terror and Al Qaeda branches in South East Asia are part of a debate that exceeds the scope of this report.

Several changes to Indonesia's constitution were approved in August 2002 establishing direct presidential and vice-presidential elections beginning in 2004. A second

amendment establishes a bicameral legislative system comprised of a House of Representatives and a Regional Representative Council. It is hoped that these reforms will aid in restoring some margin of political stability to Indonesia as it abolishes the formal participation of the military in civilian government by eliminating the thirty-eight seats previously reserved for the armed forces.²²

EAAF WORK

At the request of TIFA, a local human rights foundation, and the Burma and South East Asia Projects at The Open Society Institute, based in New York, EAAF member Mercedes Doretti traveled to Indonesia between March 30th and April 13th.

The purpose of the trip was to assess the need and possibilities for conducting training sessions on forensic anthropology, archaeology and related fields, improving criminal investigations in general but particularly the investigation of human rights cases. To gather information Doretti met with local forensic pathologists, lawyers, government officials, associations of victims' families, legal aid NGOs, and national and international human rights organizations, and discussed possible routes forward.

The need for and interest in training in forensic anthropology and associated disciplines was clearly and strongly expressed by most forensic doctors, NGOs, and civil society organizations we encountered.

Indonesia has a dozen universities that provide residencies in forensic pathology and approximately 80 active forensic pathologists. Residency in forensic pathology lasts three years.

As part of the Faculty of Medicine of the University of Indonesia, the Department of Forensic Medicine has close ties to the forensic unit of Jakarta's principal general hospital (RSCM). In Jakarta, the residency program takes place at the RSCM. The department includes thirteen forensic pathologists, one obstetrician-gynecologist, one pediatrician and one lawyer. It was created in 1972. Forensic pathology training is, as elsewhere, largely based

on soft tissue; little or no bone analysis is covered. No training in exhumations is provided in any of the residency programs.

In past years, the Asia Foundation conducted a number of training programs related to forensic sciences and human rights investigations in Indonesia. Among them, the Foundation co-sponsored a one week workshop with Physicians for Human Rights (PHR), USA in 1998. Participants included forensic doctors from the University of Indonesia, representatives from NGOs, Komnas HAM and the Ministry of Justice, police forensic experts, lawyers and activists. In 2000, Dr William Haglund of PHR directed a one-day seminar in Jakarta for medical professionals on *The Role of Forensic Anthropology in Examining Human Rights Violations Cases*. This previous training, according to the doctors interviewed, gave them an important theoretical and practical background, though more training is necessary.

The Department of Forensic Medicine has provided very limited assistance to Komnas HAM in a very limited number of cases.

The mission also focused on problems with current legislation or its interpretation and the possibility of conducting fair and reliable forensic work in criminal cases including human rights abuses. Many of the individuals interviewed described the problem of the predominance in criminal investigations of the police, who most often decide whether an autopsy will be performed and rule on the manner of death. In cases involving possible human rights violations where state institutions may be accused of the crime under investigation, this could clearly lead to a conflict of interest.²³ Also, the determination of manner of death often involves a number of technical and scientific, mostly medical issues that the police may not be technically qualified to interpret. In addition, the Police have their own forensic pathologists. Autopsies may be performed either by police or university pathologists depending upon local arrangements. This can eventually complicate matters even further in human right cases.

Yet another issue concerns religious beliefs. According to the Muslim faith, the body of a deceased person should be buried within the first twenty-four hours of his/her death and should not be damaged or cut. Autopsies and even exhumations are not, in principle, acceptable to Muslims, at least in Indonesia. This issue came up in every conversation we had with human rights organizations, lawyers, and doctors, among others. Representatives of NGOs and civil society for the most part argued that the biggest objection to autopsies is that the families of the victims know that a proper investigation or judicial intervention is not forthcoming. Therefore, because autopsies generally lead nowhere at the current time, there is no point in reinterpreting religious rules. However, they agreed that if the situation were to change, a campaign explaining the importance of the investigation and documentation for future cases may be effective. During discussions with three religious leaders, one of them commented that "If we explain to our people that there is a documentation process that may ultimately lead to justice, they will accept it." These leaders suggested we give a talk to a group of mullahs (religious leaders), providing them with the chance to understand why the process is so important, and what can potentially be achieved through autopsies. EAAF considers that these religious concerns should be taken into account in any future plans.

FOOTNOTES

1. *A History of Modern Indonesia Since c.1300, 1993*, M.S. Ricklefs, p.288.
2. Amnesty International "Indonesia" Report 2002
3. International Crisis Group, Indonesia: project overview, www. crisisgroup.org 2003
4. Human Rights Watch "Indonesia" World Report 2003
5. East Timor was a former Portuguese colony. It recovered its independence only to be invaded months later in 1975 by Indonesian troops that remained there until 1999.
6. Report for the High Commissioner of Human Rights, United Nations Economic and Social Council, Commission on Human Rights. Fourth Special Session September 23-24 1999.
7. Amnesty International News Release ASA 21/011/2002, March 14, 2002.
8. Amnesty International, April 25, 2001: Indonesia: struggle against impunity-one step forward, two steps back".
9. HRW/Asia Division. March 2002, Accountability for Human Rights Violations in Aceh, p. 3-4.
10. See Human Rights Watch, "Indonesia," in World Report 2002, p.235.
11. Ibid.
12. Human Rights Watch "Indonesia" World Report 2003
13. Ibid
14. Human Rights Watch, "Indonesia: Transition and Regional Conflict"
15. Human Rights Watch "Indonesia" World Report 2002
16. Amnesty International "Indonesia" Report 2002
17. "Aceh Under Martial Law: Human Rights Under Fire", June 2003, Human Rights Watch Briefing Paper.
18. Amnesty International "Indonesia" Report 2002
19. Human Rights Watch, "Accountability for human rights violations in Aceh" 2002
20. "Aceh Under Martial Law: Human Rights Under Fire", June 2003
21. Human Rights Watch "Indonesia" World Report 2003
22. ibid
23. In other countries, judges or medical examiners doctors order autopsies based on general laws and ordinances, which establish that certain types of deaths-typically those that are violent, unattended, sudden or suspicious, under custody and others where a crime may have been committed-must be routinely taken for examination at a medical legal facility, and if necessary, the body will be autopsied. In relation with the manner of death, in other countries, it is a judge, a medical examiner or a combination of judiciary, police, and forensic experts who decide the manner of death after considering data provided by forensic experts in conjunction with other evidence.