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***Reformasi* & Resistance**

**Human Rights Defenders and
Counterterrorism in Indonesia**

Edited by Neil Hicks & Michael McClintock

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About Us

For nearly 30 years, Human Rights First (formerly the Lawyers Committee for Human Rights) has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and make sure human rights laws and principles are enforced in the United States and abroad.

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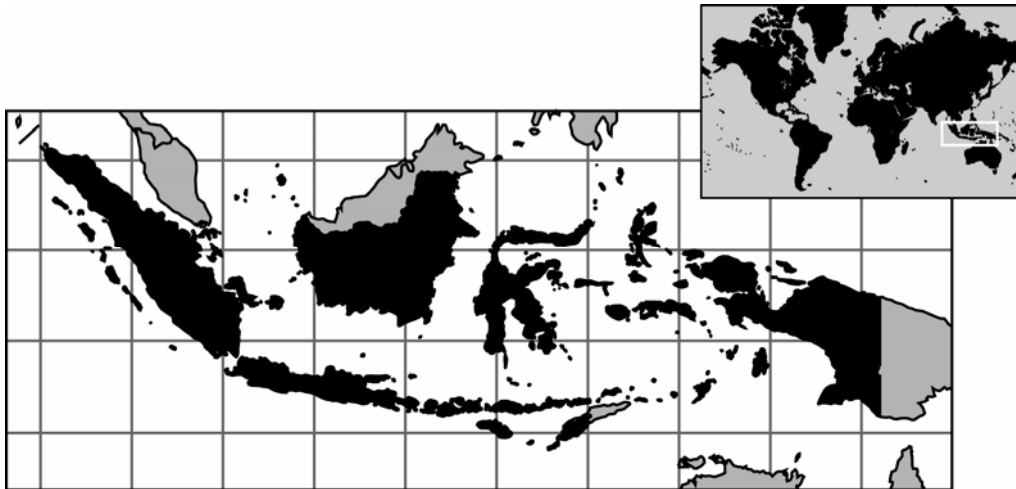
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Reformasi & Resistance



Human Rights Defenders and Counterterrorism in Indonesia

President Suharto's fall from power in 1998 ushered in an unprecedented period of *reformasi*, or political reform. But progress in democratization, such as the first direct presidential elections in September 2004, has been met with resistance from many of those accustomed to power, and the military in particular. The period after September 11, 2001 corresponded with a resurgence in military influence driven as much by internal factors as by the new international environment. Facing the challenges of democratization, the military establishment strove to maintain an influential role in the new Indonesia, while the civilian government walked a tightrope between the contrary pressures of international and domestic politics.

The mutually reinforcing forces of rising military influence and the international environment emphasizing security concerns at the expense of rights and freedoms contributed to renewed conflict in the province of Aceh, new antiterrorism legislation that reversed some of the hard-won safeguards put in place after the fall of Suharto, and continued attacks on human rights defenders. Foreign governments, notably the United States,

also had to balance their interest in security cooperation in the field of counterterrorism with support for human rights and an end to the conflict in Aceh. In many cases, most notably with respect to military ties between the United States and Indonesia, democratization and human rights took a back seat to security concerns.

The government of Indonesia participated in a negotiated ceasefire in the decades-long Aceh conflict in 2002. But by May 2003, confident that foreign criticism would be minimal and driven by the tide of rising army influence, the Indonesian government walked away from faltering peace talks and declared martial law in the province. In justifying this decision, the military noted ceasefire violations by the Free Aceh Movement but also used the language of the "global war on terrorism" and cited the U.S. invasion of Iraq as a precedent.

In the rest of the country, the government was initially reluctant to even admit to the presence of terrorists, let alone mount a crackdown. Over the same years that Indonesia was struggling with

democratic and military reform, domestic terrorist networks with some international linkages were developing. The most prominent was Jemaah Islamiyah, a regional network with links to Al-Qaeda that aimed to create an Islamic state incorporating Indonesia, Malaysia, and parts of the Philippines and Thailand.

The timing was not coincidental: decades of authoritarian rule helped radicalize some Islamic movements and leaders, while the weak state that followed was marked by inter-communal conflict and instability that allowed the free movement of arms, funds, and increasingly radicalized militants. This unfortunate combination of circumstances presents a dilemma throughout the region. A key challenge facing Southeast Asia as it confronts the threat of terrorism is how to strengthen state capabilities and powers without triggering a return to authoritarianism.¹

After the devastating bombing of a Balinese nightclub in October 2002, draft antiterrorism legislation then under debate was rushed through, first as decree and then as law. Enhanced state powers to detain and prosecute anyone suspected of a range of broadly defined acts posed new threats to human rights defenders. Senior security officials labeled human rights advocates a security threat, and several were even sued by the chief of intelligence for suggesting that the authorities' were targeting human rights activists instead of terrorists.

For most of the period after the September 11 attacks, U.S. military cooperation with the Indonesian military has remained restricted due to past human rights abuses, but some military-to-military contact was revived and support to the police increased. In late February 2005, following enhanced military cooperation during the tsunami relief effort, the State Department certified that the conditions had been met to restore a controversial training program. For their part, Indonesian security officials responded to human rights criticism aggressively, pointing to the United States invasion of Iraq and subsequent acts of torture in Abu Ghraib prison to justify Indonesia's own military

operations and question the credibility of American human rights policies.

Indonesia did some things right in its response to the threat of terrorist violence. In addition to the debate on balancing security and liberty that many countries face, the Indonesian government also struggled to balance international pressure to cooperate on counterterrorism with domestic pressure, particularly from political Islam, not to work too closely with the United States. While the antiterrorism law raises many legitimate fears, efforts to revive the feared Anti-subversion Law of the Suharto era or to pass a draconian Internal Security Act never came to fruition. Moves against suspected terrorists have been largely the province of the police and the courts.

But there is no question that counterterrorism measures, in combination with other factors, caused a significant setback for human rights in the aftermath of September 11 and the Bali bombing. A *Jakarta Post* editorial published on International Human Rights Day, December 10, 2002, noted:

In launching its campaign against terror after the Bali tragedy, the government of President Megawati Sukarnoputri has not only relegated human rights from the national agenda, but it may even have forsaken human rights principles. All the evidence throughout the year suggests that as a national political agenda, human rights have not only been put on the back burner, but we seem to have even abandoned all earlier effort at setting our human rights record straight.

President Susilo Bambang Yudhoyono took office in October 2004 following Indonesia's "year of voting frequently," in which three successful nationwide elections culminated in the country's first directly elected president. The new administration has announced a program of anticorruption and democratization down to the local level, but is sure to face significant internal resistance in moving Indonesia forward on the road to military reform and enhanced respect for human rights. Yudhoyono has also pledged to renew efforts to

find a political solution in Aceh, but there has been no firm commitment to end impunity for past abuses. In addition, his background in the military and as Coordinating Minister for Politics and Security, which gave him a role in drafting the antiterrorism bill, has raised concerns in the human rights community.

The current global security environment, permissive towards governments that curtail human rights in the name of combating terrorism, does little to promote respect for human rights principles in Indonesia.

The Indonesian Military & Resistance to Reform

An essential feature of the military apparatus has been the territorial command system, which created structures shadowing the civilian government down to the subdistrict level and had noncommissioned officers posted even at the village level. The military also developed a doctrine called *dwi fungsi*, or dual function, which legitimized its political role in addition to a security function. Together these features allowed for an enormous military influence on Indonesia's political and economic life at all levels. While the doctrine of *dwi fungsi* has been reined in, such as through the elimination of police and military seats in parliament, the concept persists in other forms: a 2004 armed forces law reinstated the practice of posting members of the military to some important civilian positions.²

President Suharto stepped down amidst an economic crisis in 1998 after more than three decades in power. In the *reformasi* period that followed many demanded that the military leave the political arena. B.J. Habibie and Abdurrahman Wahid, who served successively as president in the immediate post-Suharto period, enacted a number of military reforms, initiating the phase-out of military seats in parliament, a ban on active officers in civilian positions, the appointment of a civilian defense minister, and the separation of the police from the military, which was renamed Tentara Nasional Indonesia, or TNI.

Victims of human rights abuses committed under the Suharto regime started to speak out. Media restrictions loosened, reports began appearing

about military abuses, and there was public discussion of the role of state-sponsored violence in fueling separatist movements in Aceh and Papua. The public image of the military declined and human rights and democracy activists publicly identified reining in the military as a central element of the reform agenda.³ Many members of the military were shaken by these dramatic political changes and by the public revelation of its past abuses. They saw the emerging democratic system as a direct challenge to their dominant position in Indonesian political and economic life.

In the end, military reforms proved incremental and incomplete. President Wahid's efforts to reform the military became a factor in his ouster from the presidency in July 2001 following a politically charged impeachment on corruption charges. He was replaced by Vice President Megawati Sukarnoputri, the secular nationalist daughter of Indonesia's first president, Sukarno, who had been toppled by Suharto in 1965. Megawati Sukarnoputri, whose tenure largely coincided with the period after September 11, 2001, presided over a gradual resurgence in military influence.⁴

The military's rising influence has been evident in a range of decisions: more regional military commands were created; officers rebuffed attempts to summon them before the National Human Rights Commission over the 1998 killings of anti-Suharto student demonstrators; martial law was declared in Aceh in May 2003; and tribunals in Jakarta to try crimes committed in the 1999 violence in East

Timor served as a mechanism of impunity for the military and police. Even as the military gave up its seats in parliament, retired officers joined new political parties and the civilian bureaucracy.⁵ The dramatic decentralization of economic and political decision-making allowed the army's territorial structure to retain influence at local levels even as it appeared to yield formal power in Jakarta.

A tendency by some commentators to conflate the wide spectrum of radical Muslim groups in Indonesia has overlooked the connection between the military and some of these groups. Factions within the armed forces played a role in creating some of the radical Muslim groups that appeared in the late 1990s. As described by one expert on Islam in Indonesia:

After the collapse of the Suharto regime in May 1998, Indonesia saw a proliferation of hundreds of locally-based Islamist organizations. However, a few groups, like the *Laskar Jihad* and the Islamic Defenders Front (*Front Pembela Islam*, or FPI), were not purely parochial creations, but were organized by radical Islamists with secret ties to an Islamist faction in the armed forces. Since the mid-1990s, a small number of Indonesian military officers have sponsored Islamist paramilitaries to defend their business interests, attack members of the democracy movement and, more recently, contain regional unrest.⁶

Laskar Jihad openly recruited and armed fighters to participate in the Christian-Muslim violence in Maluku and Central Sulawesi, but did not challenge the Indonesian government. The Islamic Defenders Front, created in part to threaten pro-democracy activists at the end of Suharto's rule, uses extremist language but also engages in raids on nightclubs or entertainment spots in Jakarta in what some observers describe as a protection racket.⁷ Attention to the Islamic Defender's Front's ties to the military revived after members were seen using military transport to carry out relief activities following the December 26 tsunami.⁸

The 'War on Terrorism' & Regional Conflict

The Indonesian military learned a lesson from Iraq, but it was the wrong lesson.

Sidney Jones, International Crisis Group, May 2003⁹

You cannot expect legal accountability in a war situation . . . It is a very difficult situation. The precise rules of humanitarian law just go out of the window once the shooting starts. No Geneva Conventions can apply, as we see also in Iraq at the moment.

Defense Minister Juwono Sudarsono¹⁰

In Aceh, on the northern tip of the island of Sumatra, an armed insurgency and government military operations have been underway since 1976, when the Free Aceh Movement (Gerakan Aceh Merdeka, or GAM) declared independence from Indonesia. The conflict has been fueled by the lack of economic development in the resource-rich area, extensive human rights violations by all sides, and corrupt business ventures by both civilian and military interests.

After September 11, 2001, Indonesian officials incorporated the term "terrorist" into their rhetoric when talking about the GAM. In July 2002, then-Coordinating Minister of Political and Security Affairs Susilo Bambang Yudhoyono (subsequently elected president) accused GAM of carrying out acts of terrorism.¹¹ Five GAM negotiators who had participated in the peace talks were arrested on their way to the airport to join internationally-sponsored negotiations in Tokyo. They were later convicted of treason and acts of terrorism.¹² GAM also played a role in undermining the agreement by using the cease-fire period to re-equip and build up its forces.¹³

The government imposed martial law in Aceh on May 19, 2003 and launched the largest military operation in Indonesia since the invasion of East Timor in 1975. Martial law gave the military formal

control over all aspects of governance in the province and signaled that the government would again seek a purely military resolution to the long-running conflict.¹⁴

Parallels to the invasion of Iraq are extensive. In Aceh, journalists were briefly "embedded" with the Indonesian government forces, a tactic later praised by a U.S. Pacific Command public affairs officer.¹⁵ The Indonesian military has also followed the American model in establishing a media center to control the flow of information. One expert on press freedom in Asia described the conditions:

Journalists trained in combat awareness and embedded with military units. Daily press briefings detailing the latest government victories. Official appeals encouraging journalists to be patriotic. Strict controls preventing journalists from entering enemy territory. Sound familiar?¹⁶

There was no question that this was an American model, adapted to Indonesia's domestic conflict. TNI spokesman Major General Sjafrie Sjamsuddin told foreign journalists at a June 20, 2003 press briefing, "These regulations were sent to us by the U.S. Pacific Command. It is what they used in Iraq. . . . Of course, we have adapted them to our local environment."¹⁷

The massive mobilization of forces was widely viewed as a replication of the U.S. “shock and awe strategy,” complete with sonic booms, amphibious assaults, paratroopers, and 50,000 troops.¹⁸ In one direct comparison between the U.S. war in Iraq and the new Indonesian offensive in Aceh, Indonesia's Foreign Minister, Hassan Wirayuda, said, “Honestly, what we are doing or will do in Aceh is much less than the American power that was deployed in Iraq. We aren't violating anyone's sovereignty.”¹⁹

While also driven by the unraveling peace process and the increasingly confident military, the renewed push in Aceh appeared to be timed to take advantage of the global mood in the aftermath of the U.S. invasion of Iraq. “This is the right time to go back to war,” an expert on insurgencies in the region observed as the operation began. “In the context of the war against terrorism, there are few, if any, diplomatic costs to seeking a military solution.”²⁰

In November 2003, the government extended martial law in Aceh for six months, and six months later it was downgraded to civil emergency status. In November 2004 the government extended civil emergency status for another six months, and despite the impact of the tsunami it remained officially in place pending review on May 19, 2005.

A surge in attacks on human rights defenders, described below, came at a time when the activists were most needed. The National Human Rights Commission of Indonesia has reported numerous human rights violations by security forces, including summary killings, arbitrary arrests, torture, sexual harassment, rape, and forced displacement during this period of extraordinary military powers.²¹

By the military's own account, 565 civilians were killed in the year of martial law ending May 19, 2004. Acehnese NGOs also tabulated 312 civilian deaths last year related to the conflict, almost half the total number of deaths. The figures were not disaggregated by perpetrator.²²

Many suspected GAM members have received lengthy prison terms after cursory trials lasting less than one hour. Many of them have been denied access to lawyers and convictions were often based on confessions obtained under torture.²³ The chief judge of the Pidie district court noted that her court ruled on 72 cases in six weeks, while a lawyer for the Legal Aid Foundation observed that 40 percent of those detained have no access to a lawyer.²⁴ In addition, suspected GAM members who surrendered themselves were sent for shorter periods to reeducation camps without trial.

Government statements may have encouraged violations of human rights by the military in Aceh. In December 2001 President Megawati told soldiers: “Armed with the soldiers' oath and existing laws, carry out your duties and responsibilities in the best possible manner without having to worry about human rights abuses.”²⁵ There was little fear of domestic accountability, and foreign governments were reluctant to criticize Indonesia. The traditional emphasis on sovereignty in the Association of Southeast Asian Nations (ASEAN) was reinforced by new allies in the “war on terrorism.” Among them, Australian Foreign Minister Alexander Downer came out strongly in support of Indonesia's right to mount a crackdown on the rebels.²⁶

Prior to the collapse of negotiations over Aceh, the United States government was supportive of a political solution through its public statements and backing of the talks. Although the former U.S. special envoy to the Middle East, retired General Anthony Zinni, participated in his personal capacity, his presence sent a message of American support for the process. The United States also issued statements in support of the peace process and critical of attacks on ceasefire monitors and human rights defenders; some statements were issued jointly with Japan, the World Bank, and the European Union.²⁷

The Tsunami, the Military, and Human Rights

Aceh was devastated by the tsunami of December 26, 2004, accounting for most of Indonesia's current estimate of 128,000 deaths. More than 40 NGO activists, including several leading human rights defenders, are missing or dead, as well as journalists, teachers, religious figures, and other community leaders. Many human rights organizations lost their offices and their records. Several prisons were also washed away, and among those who died in detention were many accused GAM supporters who had been denied access to a lawyer, subjected to torture, and convicted in trials that did not meet international standards.

The tsunami also brought an international presence and global attention that is without precedent for Aceh, and raised hopes for a settlement of the conflict and an end human rights abuses. But despite this period of openness in a province that had been virtually closed to foreigners since the May 2003 declaration of martial law, concerns remain:

The dominant role of the Indonesian military: The Indonesian military has played an often welcome role in relief operations, including the transport of aid and the recovery of bodies. But especially as the emergency phase shifts to reconstruction, military participation in the context of Aceh raises serious questions. In Meulaboh, the city closest to the epicenter of the earthquake and a major hub of humanitarian activity, one colonel has performed both security and relief functions. This meant he has run the nightly relief coordination meetings at the base while simultaneously bearing responsibility for ensuring that GAM is defeated militarily. This dual role raises fears that food aid or relocation programs could be subordinated to military aims.

In addition there have been several credible reports that local military commanders have required that aid be handed over in whole or in part to be distributed by the armed forces, citing fears that the aid would otherwise end up in guerrilla hands. But this practice could also lead to discrimination, bottlenecks in aid, and corruption. The government program of massive relocation into semi-permanent barracks also raised fears. Although officials stated there would be no army role beyond "securing" the barracks, in practice armed soldiers were involved in the relocation in some areas. In East Aceh there were reports that communities who demanded to return home rather than move to the barracks were accused of being GAM sympathizers.

Military-linked businesses have played an enormous role in Aceh's economy, and may benefit from the massive influx of reconstruction money. Several such firms have already received contracts to build barracks for displaced Acehnese. The conglomerate Artha Graha, partly owned by the military, was invited by the local government in Meulaboh to develop a master plan for reconstruction of the city. As of April 2005 the Artha Graha plan was one of several under consideration. Artha Graha's efforts in Aceh are chaired by retired general Kiki Syahnakri, who was indicted for crimes against humanity by a U.N.-backed court in East Timor for his actions as martial law commander in East Timor in 1999.

Mixed signals on access: Given the long track record of hostility towards displaced Acehnese and those working to help them, fears of intimidation or unwarranted restrictions are high. Local and international NGOs have not reported significant restrictions on their ability to operate within the tsunami-affected area. However, there was little humanitarian activity away from the coast and the status of people displaced or otherwise affected by the conflict was unclear. Initial moves to require foreigners to register and seek permission to travel appeared to be an effort to monitor rather than control movement. Many NGOs worried they were a first step towards tighter controls, and in April the government intensified efforts to begin to screen NGOs operating in the area. The director of the state intelligence agency warned that some NGOs were being monitored for "irregular" activity, adding ominously, "I can only say that their activities could harm the security situation in Aceh, as well as the unity of our country." There are signs that the military is uneasy with the role played by NGOs, especially local ones. Human Rights First has learned of isolated, but nevertheless worrisome, efforts to intimidate local NGOs.

- According to press reports on January 10 in the Mata le section of Banda Aceh, a volunteer was beaten by soldiers, causing wounds that needed stitches.
- Local NGOs have been visited by security officers demanding information on aid distribution activities. Two NGOs in Banda Aceh were visited on the night of January 22, one by police and one by plainclothes soldiers from the regional military command.
- Students carrying out a health assessment at a camp in Bireuen on January 25 were approached by soldiers. The soldiers later came to their office, took them to Batee-ilek military post, and questioned them for hours before they were released.
- The head of the watchdog organization Government Watch, Farid Faqih, was detained on January 27 in Meulaboh, accused of stealing supplies donated by army wives. He was badly beaten by soldiers, including an army captain.

New Legislation

The government's response to terrorism and acts of terror is simply to expand State authority without simultaneously balancing it with stronger guarantees of the rights of citizens. . . . Will we allow the passage of anti-terrorism laws that oppose civil liberties, the freedom that we have only just striven for in the 1998 struggle for reform? We must remember that preventing and tackling "terrorism" at its heart is the business of protecting human freedom and safety.

Human rights lawyer T. Mulya Lubis²⁸

If September 11, 2001, marked the beginning of the U.S. "war on terrorism," the bombing of a nightclub in Bali a year, a month, and a day later marked the start of Indonesian participation in earnest. Bomb attacks were not unusual in Indonesia, especially in the several years following Suharto's decision to step down.²⁹ Some of these explosions have since been linked to Jemaah Islamiyah, while others are thought to have been the work of Suharto allies seeking to enhance their powers by fomenting instability.³⁰

However, the October 2002 Bali bombings were on a larger scale than any of these, killing 202 people and injuring many others. The blast blew away the fragile foundations of a critical discourse about state-sponsored violence that had been developing in Indonesia since the end of the Suharto regime. The national and international focus on counterterrorism reinforced an existing dynamic of opposition to military reform. As Sidney Jones of the International Crisis Group described it, the military "used the post-Bali climate to push for a strengthening of its own intelligence capacity down to the village level, in a way that would serve only to reinforce the existing territorial command structure – the gradual dismantling of which had generally been seen as an essential step towards moving the army out of daily political life."³¹

The most immediate human rights impact of the bomb was on legislation. Short-circuiting months of debate on draft legislation, President Megawati issued an antiterrorism decree on October 18,

2002, just days after the Bali bombing.³² The decree, together with a second one making it retroactive to cover the Bali bombing, was approved in its entirety by the parliament in March 2003, as Law No. 15/2003 on the Elimination of Terrorist Crimes.³³

Critics argue that the decrees were born of panic and ripe for misuse, inserting security institutions into the judicial process where they do not belong.³⁴ Major concerns about the law include:

- **An overly broad definition of terrorism:** The law defines terrorism in a way that could include ordinary crimes or even legitimate political expression.³⁵ Activists in Aceh and Papua are especially fearful that the decree will be used against both insurgents and nonviolent critics of the government alike.
- **Detention:** The law allows authorities to detain individuals for seven days without charge on preliminary evidence, compared with the single day allowed by the Code of Criminal Procedure. Suspects can then be detained for six months while the investigation is pending.³⁶ The denial of access to lawyers during initial stages of interrogation heightens the risk of torture and forced confessions.
- **The role of intelligence:** Uncorroborated intelligence reports produced by agencies run by the armed forces, police, and the State Intelligence Agency (BIN) may be used to initiate investigations and order

detentions. The language vaguely states “To obtain sufficient preliminary intelligence, investigators may use all intelligence reports.”³⁷ It is unclear what kind of reports can be used, or if the reports themselves constitute such evidence.

- **Freedom of Expression:** Critics have pointed to “rubber clauses” that are dangerously vague. For example under Article 20, anyone responsible for bothering or intimidating an investigator can be sentenced to up to 15 years imprisonment. But the terms “intimidation” and “bothered” (*terganggu*) could be interpreted to include activities as innocuous as a press release or a peaceful demonstration.³⁸ Article 14 provides for the death penalty for anyone who incites (*menggerakkan*) others to carry out acts, a vague formulation that could interfere with freedom of expression.

Some of the fears about the increased powers of the State Intelligence Agency were linked to concerns about its director at the time the law was promulgated. A.M. Hendropriyono, a retired general, was nicknamed the Butcher of Lampung for his role as local military commander during an attack that killed hundreds of members of a Muslim community in 1989. Before stepping down at the end of Megawati’s tenure, Hendropriyono used his office to mount several threats against human rights defenders, through rhetorical attacks and libel suits. His open hostility to human rights defenders raised fears that intelligence reports might be used to persecute government critics.

But concern centered not only on the director but on the agency itself. As one critic of the law observed:

The nature, culture and character of BIN under the New Order, functioning as a tool to guard Suharto’s legacy and to control movements opposing the New Order, has become a tradition stretching into the period of transition.³⁹

The Yudhoyono administration is expected to undertake some restructuring of the agency, and a draft law now circulating may change its mandate.

The draft has been revised several times; in its current form the law may still restore the agency’s Suharto-era intrusion into private life and the judicial system.⁴⁰

The Minister of Justice and Human Rights, Yusril Ihza Mahendra, who, with Susilo Bambang Yudhoyono, as Coordinating Minister of Political and Security Affairs, drafted the antiterrorism decree, argued that the Criminal Code was not adequate to fight terrorism.⁴¹ Many of Indonesia’s leading human rights lawyers, however, maintain that there is no need for a special decree. According to them, the Criminal Code and other legislation on explosives and money laundering, with a few amendments, would be sufficient to deal with terrorist crimes.⁴²

The Minister of Justice and Human Rights had promised to amend the antiterrorism law, including article 26 on the role of the State Intelligence Agency.⁴³ But after each major bombing in successive years, the tendency was to strengthen state powers rather than safeguards. After a deadly car-bomb exploded at Jakarta’s Marriot Hotel in August 2003 there was even discussion of the need for a draconian Internal Security Act (ISA) similar to the laws based on colonial prototypes still in force in Malaysia and Singapore (and to Indonesia’s now-repealed Anti-Subversion Act, a hallmark of the Suharto era).⁴⁴ Opposition to the ISA prevented that idea from moving ahead, but after a September 2004 suicide bombing outside the Australian embassy in Jakarta killed ten people, the Megawati administration again said it wanted to strengthen the anti-terror law.⁴⁵ These amendments would allow suspects to be held for 30 days, not seven, without formal charges, while police would have greater powers to arrest on the basis of suspicion alone. Comments by the new justice minister in early November 2004 indicated his support for toughening the antiterrorism law.⁴⁶

The Antiterrorism Law in Practice

State practice under the anti-terror decree and law has confirmed many of the fears of its critics. First, the broad definition of terrorism has allowed civil-

ian and military officials to threaten religious activists, farmers' groups, separatist movement negotiators, and students with prosecution under the law. Second, the troubling provisions allowing detention without charge have been put into practice and broadly interpreted to allow arrest without warrants, access to a lawyer, or other safeguards found in the Code of Criminal Procedure. Finally, relaxed detention safeguards have exacerbated already widespread disregard for due process, leading to practices not allowed by the law, such as detention of a suspect's family members and, according to several suspects, torture.

While still a decree, the provisions were used to intimidate local activists involved in one of Indonesia's major sources of conflict—land rights. Human rights organizations have identified several cases in which local communities engaged in conflicts over land or other resources have been falsely accused of being “terrorists” by security officials.

Local community members protesting the reopening of a controversial pulp and paper factory in Porsea, North Sumatra were labeled terrorists by police and intelligence officers and threatened with sanctions under the antiterrorism decree. In West Java, farmers' groups in Pasundan and Cianjur who challenged land claims of the state-owned forestry and plantation agencies were also threatened by security officers with the decree. In a similar case, the local government of Blitar, East Java called in local organizations that were challenging state owned and private commercial plantations to a meeting on terrorism. At the meeting intelligence agents accused the farmers' movement of being similar to communists and of supporting terrorism.⁴⁷ Even the well-respected Bali police chief I Made Mangku Pastika once described a local political party conflict as a form of “small terror” (*teror kecil*) that fell under the antiterrorism law.⁴⁸

In Aceh, just two months after the anti-terror law was enacted, five long-time GAM civilian negotiators were arrested and charged under the antiterrorism law.⁴⁹ The negotiators, Sofyan Ibrahim Tiba, Amni bin Ahmad Marzuki, Nasirruddin

bin Ahmed, Tengku Muhammed Usman Lampoh Awe, and Teuku Kammaruzzaman, were eventually sentenced to between 12 and 15 years of imprisonment.⁵⁰ During their pre-trial detention, the negotiators had limited access to lawyers and reported that they were subject to threats and ill-treatment.⁵¹ Their appeals were denied by the Indonesia Supreme Court along with the petitions of a pro-referendum women's rights activist, Cut Nur Asikin, two pro-referendum organizers, and an Acehese lecturer.⁵² The former chief negotiator Tiba and the activist Asikin were among the many prisoners who died when the tsunami destroyed several of Aceh's prisons.⁵³

Many of the complaints on implementation of the law came from Muslim groups and defense lawyers, who claim that in mid-2003 police began rounding up Muslim activists and graduates of religious boarding schools with no evidence of wrongdoing. In September 2003, a coalition of nongovernment organizations named the Defense Team of the Victims of Antiterrorism Law (*Tim Pembela Korban Undang-undang Antiterorisme*, or Tim KUAT) announced a lawsuit against the police on behalf of 21 people arbitrarily detained by the police. Eleven of the 21 people had already been released due to insufficient evidence at the time of the suit.⁵⁴

Violations of due process were common under the ordinary criminal code, and the looser provisions of the antiterrorism law may have exacerbated the problem. Police have interpreted the seven-day preliminary investigation rule as giving them license to withhold information that an arrest has occurred,⁵⁵ whereas ordinary criminal procedure requires police to contact the family within 24 hours of the arrest. In September 2003 a member of parliament noted that the police were misinterpreting this provision. A police spokesman acknowledged mistakes, claiming that “if we announce the suspects we're seen as violating the presumption of innocence.”⁵⁶ In one case, Abdullah Azzam, a medical volunteer, claimed that police detained and questioned him for 26 days without charge or notification.⁵⁷ In another case, police detained three family members of bombing

suspect Usman Nur Affan, including two minors, apparently to intimidate him into giving a confession.⁵⁸ In its 2004 report on activities, the Legal Aid Foundation identified victims of the implementation of anti-terrorism laws in Medan and Surabaya.⁵⁹

Several of those convicted for participation in terrorist bombings claimed at trial to have confessed under torture. The question of warrants and legal access under the antiterrorism law needs immediate clarification. Police must be better trained and held accountable for deviations from the law.

Other Legislation

The antiterrorism law is not the only legislation that threatens to reverse hard-won freedoms. An army law passed on September 30, 2004 demonstrates the tenuous nature of military reform in Indonesia. The law maintains the territorial system and returns to the Suharto-era practice of allowing active duty officers to serve in the civilian government, although not in all posts. The law also establishes an undefined military role in “overcoming terrorist acts.”⁶⁰ On the positive side, it also requires the eventual phase-out of military businesses, a crucial element of military reform, although no mechanism has been determined.

The intelligence apparatus has also referred to the threat of terrorism in order to expand its reach. On January 7, 2004, the head of Indonesia’s State Intelligence Agency, Hendropriyono, announced a plan to expand the agency’s offices across the country, extending their reach to the district level. He referred to the Bali and the subsequent Marriott hotel bombings as a justification for the decision.⁶¹

After years of pressuring the parliament to expand the agency’s powers, Hendropriyono held a closed meeting with members of parliament after the September 2004 bombing at the Australian embassy in Jakarta. He argued for an increase in BIN’s authority to arrest and detain terrorist suspects in the name of preventing future terrorist attacks. BIN had enjoyed these powers under the Anti-

Subversion Law, an important Suharto-era law that was repealed under *reformasi*, and had reportedly hoped to recover this authority in the antiterrorism bill.⁶²

An intelligence bill had been submitted to the DPR in September 2003 but was rejected in part due to fear of human rights abuses. When it was reintroduced, NGOs continued to express concern at the secrecy of the drafting process and the expansion of BIN authority at the expense of the criminal procedure code and the authority of the police. The bill would also allow BIN to buy its own weapons on the international markets. And while the agency’s funding could come from the State Budget, provisions allowing a special budget allocation from the president or “funding through its own endeavors” would be a blow to financial transparency.⁶³ The bill was not on the list of legislation to be debated in 2005, but may be enacted in the future.

With the change of administrations in October 2004, Hendropriyono was replaced by the former head of army intelligence, retired General Syamsir Siregar, sparking criticism from members of parliament who had hoped for a civilian as head of BIN. The new director said his main goals would be fighting separatism and terrorism, and that a priority would be getting the intelligence bill passed. While an effective intelligence agency is an important part of combating the very real threat of terrorism in Indonesia, the expansion of the powers of the intelligence agency and the weakening of already tenuous mechanisms of accountability pose a threat to human rights.

Attacks on Defenders

At least 15 human rights activists have been killed since 2000 and none of the perpetrators have been brought to justice.⁶⁴ The human rights organization Imparsial reported that at least 165 local human rights activists had been victims of threats and violence in 2004 alone.⁶⁵ Defenders in Aceh and Papua are particularly vulnerable.

On November 2001 leading human rights figures signed the Indonesian Human Rights Defenders Declaration. They noted the recent killings of Acehnese activist Jafar Siddiq Hamzah and Papuan leader Theys Eluay, and attacks on Jakarta organizations. The declaration called for an end to the stigmatizing of defenders as insufficiently nationalist or as using human rights for political purposes.⁶⁶

Under martial law, the worst military violence was focused on suspected GAM activists and sympathizers. But many of those fleeing Aceh described indiscriminate violence at the hands of the military in conflict areas, as young male Acehnese were assumed to be GAM sympathizers.⁶⁷

Activists with no known GAM connection were also targeted soon after martial law was declared. Some were affiliated with organizations working nonviolently for a referendum on independence. The chief of the martial law administration in Aceh, Major General Endang Suwarya, threatened to arrest all activists from the Aceh Referendum Information Center (Sentral Informasi Referendum Aceh, or SIRA) and Student Solidarity for the People (Solidaritas Mahasiswa Untuk Rakyat, or

SMUR) if they continued to support the separatist movement.⁶⁸ Muhammad Nazar, the chairman of SIRA, had previously been detained and tortured, and he was again detained and put on trial. Cut Nur Asikin, a referendum supporter as well as a women's rights activist, was arrested and later convicted of treason for her public statements.

Even human rights organizations that took no stand on a referendum on Aceh's status closed their offices, and their staff fled to Jakarta. Several NGOs, such as the Legal Aid Foundation (LBH), Human Rights NGO Coalition (Koalisi HAM), and Legal Aid and Human Rights Post (Pos Bantuan Hukum dan HAM, or PB-HAM), bravely remained open to monitor abuses and even to help represent accused separatists to the extent allowed by the restrictions. However, organizations were increasingly hesitant to send staff to the field out of fear for their safety, and information was still quite limited.

The fear was well placed. A number of those who remained were arbitrarily detained. Six activists from PB-HAM were held for questioning including the center's director, Yusuf Puteh, and five staff members named Nur Syamsiah, Fitri, Nazariah, Arma and Fida. On June 19, 2003 in Pidie sub-district a joint military and police squad arrested Nuraini, a twenty-nine-year-old volunteer coordinator for Kontras Aceh, together with her sixty-five-year-old father, Zakaria Ismail and her neighbor, Zulkifli. Members of the military and police from Delima Subdistrict blindfolded and beat them and

searched their house. They were denied access to family members or lawyers for at least a week.⁶⁹

In October 2003 police armed with rifles broke up a human rights training session organized by the official National Human Rights Commission. Organizers denied they had failed to report the program to authorities and pointed out that police officers were among the participants in the training.⁷⁰

Other defenders paid a much higher price. While the perpetrators remain unknown, the victims all worked with human rights groups critical of military abuses, and the security forces are suspected of complicity in their death or disappearance. In some cases, the bodies were never found; in others, bodies mutilated by torture were clearly intended to be seen, as a threat to others.⁷¹ Such cases include the following:

- More than a week before martial law began, Abdussalam Muhamad Deli, a twenty-three year old activist for PB-HAM, was reported missing on May 11, 2003. Deli was traveling from the town of Langsa by bus to his village when men in civilian dress stopped the bus on the main Banda Aceh-Medan road, two kilometers from Langsa. They forced him into an Indonesian-made minivan called a Kijang heading back toward Langsa. His whereabouts have never been determined.
- The same day, Raja Ismail a fifty-year-old PB-HAM volunteer, left his house in Kuala Simpang, Aceh Tamiang district to bring data on human rights abuses to PB-HAM's office in Langsa. He never arrived; two days later his body was found in the Titi Kembar River in Langsa Lama village with signs of strangling, knife wounds, and bruises.⁷²
- On June 7 a volunteer with Kontras, Saiful Bachri, was found shot dead in East Aceh. Kontras' founder, Munir, said they couldn't investigate the circumstances of the death due to restrictions on movement.⁷³

- A Kontras volunteer, 21-year old Muzakkir Abdullah, was abducted on June 16, 2003 by unknown attackers in North Aceh on June 16, 2003. He was found dead the following day, tied to a palm tree, gagged and showing evidence of torture.⁷⁴

Defenders in Papua have also been targeted by threats, intimidation, and attacks. After numerous death threats targeting Mr. Johanis Bonay, the Director of the Institute for Human Rights Studies and Advocacy in Papua (ELSHAM), the activist's wife, twelve-year-old son, and another relative were wounded by gunfire while driving near the border with Papua New Guinea on December 12, 2002. Several ELSHAM staff members, including Mr. Bonay, were also named in a libel suit for their comments linking the military to killings near the Freeport mine. On December 1, 2004, an ELSHAM staff member photographing an armed police attack on peaceful demonstrators was beaten by police.⁷⁵

In addition to the harassment and killing of defenders in Aceh and Papua, rights defenders in Jakarta have come under pressure from the State Intelligence Agency and civilian groups linked to the armed forces. In May 2004 intelligence chief Hendropriyono told the House of Representatives that 20 local and foreign NGOs working on human rights and democratization were a threat to security in the run-up to the July 5 presidential elections. He warned that the country might need to return to "old measures" against people who "sell out their country."⁷⁶ Soon after, Sidney Jones, a leading Indonesia analyst and regional director of the International Crisis Group, was forced to leave the country.

In July 2004 one of Indonesia's foremost human rights lawyers, Hendardi, told the press that the State Intelligence Agency was preoccupied with harassing government critics instead of chasing terrorists. He urged the president to fire Hendropriyono. Hendropriyono filed a libel suit for 1.1 million dollars, demanding that Hendardi's house be seized as a guarantee against possible damages. A prominent environmentalist named Indro Cahyono, who also made comments critical of the

intelligence agency on Dutch radio, found men measuring his house for confiscation (*hak sita*) requested by a second Hendropriyono lawsuit.⁷⁷

Similar libel suits by military, civilian, and intelligence officials have been filed in Jakarta, and in the provinces of Papua and East Nusa Tenggara, in an attempt to silence criticism of public officials. The use of legal proceedings to silence dissent has become a common form of repression in the region, most prominently in Singapore and Malaysia.

Continuing a trend from the previous year, mobs with suspected or known links to the security forces attacked the offices of Jakarta-based NGOs and human rights institutions in 2003. On May 20, 2003, a mob formed at the National Human Rights Commission and threatened to attack if the Commission continued with its investigation of the 1965 mass killings. They forced several members of the commission to sign a pledge not to investigate the killings.⁷⁸

On May 26, 2003, members of a paramilitary group known as the Pemuda Panca Marga demonstrated at the Commission for Disappearances and Victims of Violence (Komisi untuk Orang Hilang dan Korban Kekerasan, or Kontras) and attacked the organization's founder, Munir, citing the organization's criticism of abuses in Aceh. The next day the same group, which is made up of youths with parents in the military and is headquartered at the district military command, gathered again at the Kontras office, interrupting a press conference on the International Week of the Disappeared. They attacked staff members and destroyed office equipment before moving on to the offices of the Indonesian Legal Aid and Human Rights Association (Perhimpunan Bantuan Hukum dan Hak Azasi Manusia Indonesia, or PBHI), where they assaulted a staff member who went out to listen to their grievances. Eyewitnesses reported that the police arrived in advance of the mob, but failed to prevent the attack by the group. Prosecutors have yet to take action despite extensive eyewitness testimony and other evidence.⁷⁹

The Poisoning of Munir

In what one NGO described as the nadir of the government's failure to protect human rights defenders, one of Indonesia's leading activists, 38-year-old Munir, died early on September 7, 2004 while flying to the Netherlands to continue his studies. An autopsy by the Dutch Forensic Institute later found a lethal dose of arsenic in his system. While attacks on defenders are not uncommon, especially in conflict areas, the poisoning death of such a high-profile activist is unprecedented and left the human rights community feeling particularly insecure.

There were many powerful people with a grudge against Munir. He founded the Commission for Disappearances and Victims of Violence (Kontras) in 1998 after the "disappearance" of pro-democracy activists during the transition from authoritarian rule. The organization went on to investigate the role of state-sponsored violence in East Timor, Maluku, and Aceh. Munir also served on an official inquiry into the violence in 1999 that uncovered evidence of military responsibility for the violence and recommended the prosecution of high-ranking officers.

A police investigation was joined by a parallel fact-finding team authorized by a presidential decree at the end of 2004. On March 18 a pilot for the state airline Garuda, Pollycarpus Budihari Priyanto, was named as a suspect by police, soon followed by two members of the air crew. The fact-finding team urged that the investigation must determine who had the motive and means to utilize the state airline in an assassination. Attention focused on the state intelligence agency BIN. However as of April 2005 the fact finding team was meeting repeated obstacles in their efforts to interview past and present employees of the agency.

The Role of the United States

After September 11, 2001, U.S. policy towards Indonesia became increasingly driven by the priorities of the “war on terrorism,” leading to stronger military ties and pressure on Indonesia to crack down on suspected terrorists. A former American military attaché previously posted in Indonesia wrote in the journal of the National Defense University:

The forces of the largest and most moderate Muslim country became an important player in the global war on terrorism after 9/11. Counter-terrorist cooperation began to trump human rights in the formulation of American policy toward Indonesia. Once again effective military-to-military relations became important to U.S. objectives.⁸⁰

President Megawati was the first foreign leader to meet with President Bush after the World Trade Center and Pentagon attacks. The previously scheduled meeting went ahead just days after September 11, partly due to the important symbolic value of meeting with a Muslim leader to demonstrate that the “war on terrorism” was not a war on Islam. The joint statement issued on September 19 included a pledge for expanded military-to-military relations, including easing the commercial sale of non-lethal defense items, increasing military contacts, and creating a civilian-led security dialogue.⁸¹

But the relationship continued to face obstacles. A significant dimension of U.S.– Indonesian relations is in the area of military ties, which have been subject to a variety of restrictions since the Santa

Cruz Massacre in East Timor, in which Indonesian soldiers opened fire on unarmed demonstrators in 1991. Restrictions were tightened following the violence in East Timor in 1999 and the killing of three teachers near the Freeport mine in the province of Papua in 2002. While the Bush Administration indicated a desire to restore full military ties with Indonesia, its flexibility was limited in part by Congressional restrictions.

The impact of the “war on terrorism” on these policies has been two-fold. First, it facilitated the partial bypassing of restrictions. Second, the need to cooperate on counterterrorism is part of the argument made by government officials for lifting some or all of the restrictions.

Most U.S. counterterrorism funding has gone to the police, including a special counterterrorism unit to “substantially enhance the Indonesian Government’s capability to neutralize terrorist cells and conduct terrorism-related criminal investigations.”⁸²

The country is one of five receiving long-term in-country training under the State Department’s Antiterrorism Assistance (ATA) program, including surveillance, bomb detection, crime scene detection, hostage negotiations, and protection of infrastructure and support for a special police counterterrorism unit, Special Detachment 88.⁸³ A State Department release notes ATA successes such as the October 15, 2004 decision to bring new charges against the cleric Abubakar Baasyir

and the arrest of 110 terrorism suspects by Detachment 88 since its formation in 2002.⁸⁴

The decision to work with police in the form of Special Detachment 88 has allowed the U.S. to avoid legitimizing military intrusion into judicial matters. The policy has helped improve police capacity, which is a necessary measure to reduce the role of the military in internal security. At the same time some of those arrested by police have been tortured, denied due process such as warrants, or targeted because of their religious beliefs.⁸⁵ In addition to the cases mentioned above, critics point to the case of Syaifuddin Umar, a religious teacher reportedly detained, tortured, and released in early August 2004.⁸⁶ Some of those charged in connection with the Bali bombing and another attack in Makassar have alleged being tortured during police interrogation as well.⁸⁷ Assistance to the Indonesian police is an appropriate response to the threat of terrorism only insofar as it is accompanied by mechanisms to monitor implementation and prevent human rights violations.

Counterterrorism funds have also been designated especially for the military in the form of a Counterterrorism Fellowship Program and the U.S. Army's Theater Security Cooperation Program.⁸⁸ The Fellowship program, which has no human rights conditionality, was created in late 2001 when the senate inserted language into the Defense Appropriations Act even as the IMET conditions in the Foreign Appropriations Act were being strengthened.⁸⁹

The Indonesian ambassador to the U.S. recently observed "there are other areas of cooperation that are not in violation of the Congressional restrictions. There are now Indonesian military officers . . . in the U.S. for training."⁹⁰ In combination with domestic factors, these policies have reduced the pressure on the military to meet the accountability requirements set out for them to restore all training and arms transfers, let alone commit to reform more broadly.

Congressional restrictions on military ties have taken on important symbolic value as a "barometer" of U.S. attention to human rights and military reform in Indonesia.⁹¹ They have had practical consequences as well, restricting access to arms and equipment and eliminating one important route to advancement within the TNI for some officers.

Counterterrorism cooperation has allowed the strengthening of these ties after years of restrictions. Secretary of State Colin Powell visited Indonesia in August 2002, explaining, "What we are trying to do is to help President Megawati and her leaders and the TNI to enhance their capabilities and be better able to deal with the threats that President Megawati and the leaders of Indonesia have determined exist within the country."⁹²

Within months of Powell's statement, the complex nature of counterterrorism in Indonesia was revealed by a series of events. These events, together with the conflict in Aceh, reveal the contradictions of Indonesian and international responses to the threat of terrorism. Two chief sources of violence—radical Muslim militants and an unaccountable military—are contributing to the perpetuation of political violence in the country. The international community risks throwing in its lot with the latter, downplaying military abuses while conflating global terrorism and local separatism.

In August 2002, two Americans and an Indonesian working for an international school were killed in an ambush on a private road leading to an immense copper and gold mine run by a subsidiary of the American company Freeport MacMoRan, in Indonesia's easternmost province of Papua.

Just two months later a massive bombing in Bali killed over 200 Indonesians and foreign tourists. In October 2002 the United States designated *Jemaah Islamiyah* a terrorist organization, a move that was soon followed by the United Nations. Police investigations, supported by U.S. and Australian expertise, led to trials that confirmed

that the Bali bomb was the work of Muslim radicals associated with Jemaah Islamiyah.

The perpetrators of the Freeport killings remain more obscure. An initial police investigation pointed to members of the military, who were alleged to be unhappy about declining security payments from Freeport.⁹³ But the respected police chief running the Freeport investigation was transferred to the Bali bombing case. In Papua, the preliminary investigation was effectively overturned by a joint military-police inquiry under a new police chief, Timbul Silaen. Silaen had previously been indicted for crimes against humanity by a U.N.-backed court in East Timor for his actions as police chief in the territory during the violence of 1999. Instead of handing him over to the U.N. court for trial, the Indonesian government tried him in their own severely flawed tribunal in Jakarta, where he was acquitted. Because of the American casualties, the FBI traveled to the site. After several visits and persistent reports of a lack of cooperation by the Indonesian authorities, the FBI handed over a report to the Indonesian government.

The FBI report, which has not been publicly released, became the basis of a United States grand jury indictment of Antonius Wamang, an alleged separatist widely reputed to have business ties to the military.⁹⁴ At a press conference on June 24, 2004, Attorney General Ashcroft announced, "The U.S. government is committed to tracking down and prosecuting terrorists who prey on innocent Americans in Indonesia and around the world. Terrorists will find that they cannot hide from U.S. justice - whether in the world's largest cities or in the most remote jungles of Asia." Assistant Attorney General Christopher A. Wray of the Criminal Division added, "The brutal terrorist attack charged in this indictment was an unprovoked ambush of an innocent group of Americans who were in Indonesia to teach school. The Department of Justice will work tirelessly to see that those responsible for such terrorist acts are brought to justice."⁹⁵ Some local activists are concerned that the U.S. indictment, which fails to mention Wamang's reputed army links, will deter further

investigation, facilitate an ongoing cover-up, and embolden the military.⁹⁶ Wamang's whereabouts are currently unknown.

The American indictment appears to contradict earlier comments by U.S. officials. While urging caution in any definitive judgment until the investigation was complete, Deputy Assistant Secretary of State Matthew Daley told Congress in March 2003 that "the preponderance of evidence appears to indicate that elements of the Indonesian Army were responsible for the crime." He added that "anything short of a full accounting and punishment for those responsible will hurt our entire relationship."⁹⁷ The *New York Times* cited a senior administration official that "there is no question there was military involvement. There is no question it was premeditated."⁹⁸

There was no clear precedent for the identification by a U.S. official of a member of the small, poorly armed Papuan guerrilla movement as a terrorist. The U.S. government's Patterns of Global Terrorism report for 2002 does not include the incident or the rebel group in their listing of terrorist attacks.⁹⁹

The Timika killings were of particular interest because after 2002 they obstructed the resumption of the military ties that the Bush administration was promoting as part of its counterterrorism strategy in the region. Training was restricted to Expanded IMET, which focuses on human rights and civilian control. Resumption of full IMET became contingent on cooperation on the Timika case.¹⁰⁰

The other two major restrictions are restrictions on export licenses for lethal weapons to Indonesia and Foreign Military Financing of arms and training. The Fiscal Year 2003 Foreign Operations Appropriations Act maintained a shortened list of conditions for resumption of export licensing and Foreign Military Financing: 1) Suspension of members of the military who "have been credibly alleged to have committed gross violations of human rights, or to have aided or abetted militia groups"; 2) Prosecution of the guilty parties with

full military cooperation; and 3) Public audits of the armed forces including their private enterprises and foundations.

These restrictions further complicated a continuing tension in U.S. policy posed by the desire to work with the best-resourced security institution in Indonesia and the realization that the army is an unaccountable organization responsible for significant human rights abuses. The U.S. Congressional Research Service recently considered the limits to counter-terrorism cooperation in Indonesia. Many of these constraints derived from problems with the military, including the failure of the Jakarta trials on the violence in East Timor, fear of human rights abuses in Aceh, and concern over lack of cooperation on Timika. But the study also noted the practical reality that the “resources of the military far outweigh those of the police in Indonesia.”¹⁰¹ Similarly, the State Department told Indonesia that “effective and credible prosecutions” were a prerequisite for closer ties. At the same time, Deputy Assistant Secretary of State Daley noted that despite its poor record of accountability, interaction with the TNI was necessary to influence them and promote U.S. interests.¹⁰²

The U.S. has not abandoned the need for accountability. In his departing words, American Ambassador Ralph Boyce expressed sadness that the Indonesians hadn’t been able to meet the requirements for renewed ties. He also noted their expectations that after September 11 the standards would change:

But we don't have the material with which to seriously go to Congress and do that. It's a regret on my part. . . . When I arrived, a lot of Indonesians said that now that you're totally absorbed with the war on terrorism, presumably you won't be all over us on human rights the way you have been.¹⁰³

Due largely to legislators such as Senator Patrick Leahy pressure did not evaporate. Restrictions on both the Foreign Military Financing for arms transfers and IMET training were retained in the

appropriations bill passed in November 2004, and remained an important mechanism for promoting human rights and democratic reform in Indonesia.

Policy-makers in both countries perceived Indonesian-U.S. military cooperation in tsunami relief as an argument for the expansion of ties. In a series of press conferences and interviews in Indonesia, Deputy Secretary of Defense Paul Wolfowitz argued for a full resumption of military ties, citing both the tsunami and Indonesia’s democratic progress. He noted “these are issues that people feel deeply about, but I hope they will perhaps see them in a new light, not only because of what we need to do in Aceh, but equally importantly because of what’s happening here on the political front.”¹⁰⁴ In a March 14 speech in Washington the Indonesian Defense Minister Juwono Sudarsono echoed this view. He also told the press, “Pictures of American servicemen helping out in Aceh impressed on minds in the US that it was worth making some sort of cultural accommodation with the world's largest Muslim country.”¹⁰⁵

In late February 2005, the State Department announced that Indonesian cooperation with the FBI on the investigation into the Timika killings had been sufficient to restore IMET. The failure to address widespread allegations of TNI involvement, or to indict and arrest Antonius Wamang, calls this assessment into question. The decision is also a setback for reform in Indonesia, as civilian and military officials immediately took the decision as an indication not just of cooperation on the Timika case but of recognition of efforts to reform. The Voice of America echoed this assessment, noting that the move was “a sign that Washington believes Indonesia has moved away from its brutal and authoritarian past.”¹⁰⁶

Indonesia has made important strides such as direct presidential elections and an ambitious program of decentralization. But supporters of stronger military ties overlook the fact that civilian control of the military has not been achieved, as the defense minister himself acknowledges.¹⁰⁷ The decision to restore training gives the military credit for progress that has often been made *despite* the

military's efforts to ensure impunity and continued influence.

There has clearly been some weakening of the real and symbolic limits on U.S.-Indonesian military ties. Statements by Pentagon and White House officials, the certification of IMET, and counter-terrorism programs to train the military may have encouraged resistance to reform by the military.¹⁰⁸

As a final complication to the U.S.-Indonesia relationship, the Abu Ghraib scandal and Guantanamo Bay detentions have taken a toll on U.S. credibility on human rights issues. Indonesian opinion of the United States has also suffered due to Indonesian views of American policies in the Middle East and the onerous restrictions on entry to the United States. American officials have expressed hope that the nation's significant role in tsunami relief in Aceh would boost its standing in public opinion, but the bad feeling over these ongoing policies should not be discounted.

The torture scandal has taken a particularly high toll on U.S. credibility. In May 2004 a spokesman for the Foreign Affairs Ministry stated, "The U.S. government does not have the moral authority to assess or act as a judge of other countries, including Indonesia, on human rights, especially after the abuse scandal at Iraq's Abu Ghraib prison."¹⁰⁹

A spokesman for the special forces branch, Kopassus, which stands out for its record of abuses in Aceh, East Timor, and Papua commented on Abu Ghraib:

It is ironic that torture and sexual abuse were committed by the military of a country that always claims to be the world's human rights guardian. . . . The United States has criticized the Indonesian army and Kopassus as human rights abusers, but now that their own immoral soldiers have ignored the universal values of human rights and insulted human beings like that, where are their principles? . . . If the United States wants to preach to the world about how to respect the values of human rights, they should first set a good example.¹¹⁰

Conclusion

The international focus on counterterrorism has had a strong impact on the struggle to promote human rights in Indonesia, which was already dealing with both a growing terrorist threat and a military eager to reassert its authority in a more democratic nation. Although the timing of martial law in Aceh was also driven by domestic politics, the global “war on terrorism” and the war in Iraq provided an opportunity to launch a full-fledged attack with little fear of international criticism. Many human rights defenders fled the region or limited their work, further increasing the risk of abuses against the civilian population.

At the national level, dangerously vague laws with inadequate protections were rushed through without debate, quashing months of public discussion. Despite government promises to amend the law to increase rights protections, the only amendments proposed to date would increase the risk of abuse. Defenders were labeled security threats in language reminiscent of the Suharto regime and threatened with violence and lawsuits if they criticized security agencies. The international community relaxed some restrictions on military aid and training, and the U.S. in particular lost much of its credibility as an advocate for human rights. The result has been a climate in which defenders feel a sense of threat they have not experienced since the *reformasi* period began in 1998.

Recommendations

To the Government of Indonesia

Counterterrorism Legislation

1. Amend the antiterrorism law to address the weaknesses described above, ensuring that it is consistent with the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, particularly those provisions regarding arbitrary arrest and detention, fair trials, and freedom of expression. The amendments to the law should ensure that:
 - An overly broad definition of terrorism cannot be used against non-violent farmers' groups, religious or political activists, or other government critics with no links to terrorism.
 - The rights of the accused, including access to a lawyer, are clearly protected during the seven day period of detention without charge, and thereafter.
 - Provisions barring interference or disturbance with an investigation cannot be used to restrict freedom of expression, including advocacy efforts of human rights defenders.
2. Undertake a review of all arrests and prosecutions carried out under the law to ensure accountability for abuses by police or prosecutors, including torture and ill-treatment. It is appropriate for the police to take the lead role in domestic security but it is important that any abuses are identified and addressed early in the development of their capacity in this area.
3. Any new national security laws under consideration, such as the draft intelligence law, should adhere to the following principles¹¹¹:
 - Political independence of intelligence machinery. Policy decisions should be left to officials directly accountable to the public.
 - Democratic oversight by parliament.
 - Transparency that takes into account the sensitive nature of intelligence without compromising the public's right to be informed about government operations. Periodic reports about how information is collected and used should be available.
 - Judicial review of investigatory powers to ensure that minimum requirements for reasonable suspicion are met, and that measures are necessary and proportionate to the threat. Surveillance activities should take place within an established legal framework and be limited in scope and duration. Protected relationships should be respected (e.g. lawyer-client, doctor-patient, religious advisors).
 - Access to a remedy when rights violations occur, including mechanisms for bringing a complaint and seeking restitution. Rules of evidence should preclude the use of evidence derived from coercive interrogation or illegal search and seizure.

Human Rights Defenders

4. Indonesia should affirm the U.N. Declaration on Human Rights Defenders, ensure domestic laws are consistent with the declaration, and invite the Special Representative of the Secretary-General on Human Rights Defenders to make an official visit.
5. The Declaration on Human Rights Defenders calls on states to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.” The Indonesian government should ensure accountability for past cases of killings and other attacks on human rights defenders, including Jafar Siddiq Hamzah and the RATA killings in Aceh. As President Yudhoyono has noted, the Munir investigation will be a test case for the nation’s commitment to human rights, and the official fact-finding team must be given full and immediate access to all relevant sources of information.

Aceh

6. Government pledges to revoke Civil Emergency status on May 19th must be accompanied by real improvements on the ground. A shift in status must reduce the role of the military in public life and ensure broad access by journalists and humanitarian workers. The government should use this opportunity to clarify and minimize the role of the military, including military-linked businesses, in all relief and reconstruction efforts.
7. Ensure access to all parts of Aceh requiring humanitarian aid, not just those parts affected by the tsunami.
8. Ensure the civil and political rights necessary for full and free participation in planning and executing relief and reconstruction.

To the Government of the United States

9. The U.S. State Department restored Indonesia’s eligibility to participate in the IMET training program in February 2005 based in part on an argument that it would help professionalize the Indonesian military. The burden is now on the State Department, the Pentagon, and Congress to ensure that all counterterrorism and other military assistance, including IMET, is carefully monitored, including vetting of participants, tracking of their subsequent performance, and content of the training. This monitoring must be carried out in a transparent manner so that the impact of U.S. military assistance can be assessed and debated openly.
10. Maintain the restrictions on Foreign Military Financing and export licenses for lethal defense articles until all conditions have been met, including financial transparency of the military as well as accountability for crimes against humanity in East Timor and gross human rights violations elsewhere. The bilateral Commission of Truth and Friendship recently announced by East Timor and Indonesia is sufficiently flawed that, unless its terms of reference are revised dramatically, it should not be considered a way to meet these conditions.
11. The restoration of IMET removed the best leverage to ensure progress on the August 2002 Timika killings. The State Department must make the full resolution of this case, including the investigation of allegations of military involvement and delivery of justice in a manner consistent with international standards, a continued priority. Considering the ongoing lack of cooperation in the case, reinstatement of IMET restrictions in the fiscal year 2006 legislation should remain an important option.

Acronyms & Terms

BIN	State Intelligence Agency (Badan Inteligen Negara)
DOM	Military Operation Area (Daerah Operasi Militer)
DPR	House of People's Representatives
GAM	Free Aceh Movement
Kopassus	Special Forces
LBH	Lembaga Bantuan Hukum, or Legal Aid Foundation
PBHI	<i>Perhimpunan Bantuan Hukum dan Hak Azasi Manusia Indonesia</i> , or Indonesian Legal Aid and Human Rights Association
SIRA	Sentral Informasi Referendum Aceh, or Aceh Referendum Information Center
SMUR	Student Solidarity for the People (Solidaritas Mahasiswa Untuk Rakyat)
TNI	National Army of Indonesia

Endnotes

- ¹ See Seng Tan and Kumar Ramakrishna, "Interstate and Intrastate Dynamics in Southeast Asia's War on Terror," *SAIS Review*, Volume 24, No. 1 (Winter-Spring 2004).
- ² The *dwi fungsi* concept also survives in the argument that the army must continue to play a strong role until civilian capacity improves, as in a speech by Minister of Defense Juwono Sudarsono at the Cosmos Club, Washington, D.C., March 14, 2005.
- ³ International IDEA, *Democratization in Indonesia: An Assessment* (Stockholm: 2000).
- ⁴ The largely anti-American demonstrations throughout Jakarta in October 2001 may have pushed the untested president closer to the military out of fear of the other potential source of power, political Islam.
- ⁵ Syamsuddin Haris, "Young, Dying Reform," *Tempo* (Indonesia), no. 15/IV, December 16-22, 2003.
- ⁶ Robert W. Hefner, "Islam and Asian Security," in *Strategic Asia 2002-3*, available at <http://strategicasia.nbr.org/Report/pdf/ShowReportPDF.aspx?ID=18&f=1> (accessed January 12, 2005). The International Crisis Group notes that the "conclusion is unavoidable that the LJ received the backing of elements in the military and police. It was obviously military officers who provided them with military training and neither the military nor the police made any serious effort to carry out the president's order preventing them from going to Maluku. And, once in Maluku, they often obtained standard military arms and on several occasions were openly backed by military personnel and indeed units." International Crisis Group, *Indonesia: Violence and Radical Muslims*, October 10, 2001, available at http://www.crisisgroup.org/library/documents/report_archive/A400455_10102001.pdf, (accessed January 12, 2005).
- ⁷ See, for example, the comments of academics Jeffrey Winters and William Liddle on *The NewsHour with Jim Lehrer*, January 12, 2005, available at http://www.pbs.org/newshour/bb/asia/jan-june05/curbs_1-12.html (accessed February 14, 2005).
- ⁸ Personal observation, Human Rights First, January 2005.
- ⁹ Dan Murphy, "SE Asia tries 'shock and awe'," *Christian Science Monitor*, May 20, 2003, available at <http://www.csmonitor.com/2003/0520/p01s04-woap.htm> (accessed December 15, 2004).
- ¹⁰ Interview with Juwono Sudarsono, *BBC World Service*, "East Asia Today," December 17, 2003. Transcript and audio available at <http://www.hrw.org/press/2003/12/bbc-interview121703.htm> (accessed January 12, 2005). At the time Sudarsono was Indonesia's ambassador to the United Kingdom.
- ¹¹ "Indonesia Brands Aceh Rebels 'Terrorists,'" Reuters, July 4, 2002. The Indonesian government has previously pressured the U.N. to put GAM on its list of terrorist organizations (though some in Jakarta, including Yudhoyono, reportedly preferred to keep the conflict an internal matter). At least one Indonesia expert predicted this outcome within weeks of September 11, 2001. Academic Don Emmerson noted at a public forum that "around the world, every government that has a breakaway movement, a secessionist movement is going to try to identify its enemies as terrorists in order to obtain American support. I leave it to you to figure out the implications for Aceh and for American policy towards Indonesia with regard to Aceh. But it does seem to me that Aceh belongs, at least potentially, on this list of zones of possible misinterpretation." "United States-Indonesia Bilateral Policy Dialogue," September 27-28, 2001, United States-Indonesia Society (USINDO) and Centre for Strategic and International Studies (CSIS-Jakarta), September 2001, available at <http://www.usindo.org/miscellaneous/US-Indonesia%20Bilateral%20Policy%20Transcript1.htm> (accessed January 11, 2005).
- ¹² The terrorism verdict was based on the defendants' alleged knowledge of and failure to report GAM killings, bombings, and abductions to the authorities; the treason verdict was based on their role as GAM negotiators. Nani Farida, "GAM Negotiators, Activist Get Long Sentences," *Jakarta Post*, October 22, 2003, available at <http://www.thejakartapost.com/yesterdaydetail.asp?fileid=20031022.@01> (accessed March 15, 2005).
- ¹³ International Crisis Group, *Aceh: Why the Military Option Still Won't Work*, May 9, 2003, available at http://www.crisisgroup.org/library/documents/report_archive/A400970_09052003.pdf (accessed January 11, 2005).
- ¹⁴ Martial law is regulated by Law No. 23/1959, which gives the military the authority to control all means of communication including radio and telephone, prohibit the distribution of goods, carry out surveillance by land, sea, and air, prohibit all public information, intercept and destroy private letters, prohibit the transfer of money into the territory, control or ban all media publications, remove, detain, or prohibit inhabitants from leaving the territory, promulgate regulations as required, order civilian inhabitants to assist military operations, and detain persons for up to twenty days without charge, extended to fifty days if necessary. Civil emergency status shifts some responsibilities from the military but maintains curfews, press restrictions, and house searches. English translation available at <http://www.law.qub.ac.uk/humanrts/emergency/timor/ti3.htm> (accessed February 14, 2005).
- ¹⁵ In December 2004, 30 information officers from the U.S. Army, Navy, and Air Force and six officers from the U.S. Pacific Command shared experiences in dealing with the media. Public affairs chief of the U.S. Army Pacific Command Lt. Col. John Williams praised the embedding of journalists in Aceh, noting "We did the same in Iraq." *Jakarta Post*, "RI, U.S. Militaries Maintain Cooperation," December 3, 2004, available at http://www.acheh-eye.org/data_files/english_format/issues/issues-documents_foreign-military-ties-eng/issues-documents_foreign-us-eng/issues_data_foreign-military-ties_us-eng_032-2004.html (accessed January 14, 2005).
- ¹⁶ A. Lin Neuman, "Out of Sight," Committee to Protect Journalists, July 16, 2003, available at http://www.cpj.org/Briefings/2003/aceh_03/aceh_03.html (accessed March 3, 2005).
- ¹⁷ The head of the Indonesian Journalists Association described the result: "I can say that for the last several weeks, all the newspapers—or most anyway—and the TV are just quoting TNI, just carrying the TNI side . . . It is not sitting well with the journalists. They are all asking, 'Why should we be patriotic? Why should we follow this crap policy from the United States that the TNI is using?'" In *ibid*.
- ¹⁸ Dan Murphy, "SE Asia tries 'shock and awe'," *Christian Science Monitor*, May 20, 2003.
- ¹⁹ "Aceh rebels warn of 'war'," BBC, May 9, 2003, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3013787.stm> (accessed February 14, 2005).
- ²⁰ Andrew Tan, in Dan Murphy, "SE Asia tries 'shock and awe'," *Christian Science Monitor*, May 20, 2003.
- ²¹ "Komnas HAM reveals rights abuses under martial law," *Jakarta Post*, June 11, 2003, available at http://www.indonesia-house.org/PolitikHR/061103Komnas_Aceh_reveal.htm (accessed January 12, 2005).

- ²² "Military Emergency Rights Abuse Data Indefinite," *Aceh Kita*, August 2004; Koalisi NGO HAM, "Kasus Pelanggaran HAM 2004 versi NGO HAM Aceh," May 4, 2005.
- ²³ Human Rights Watch, *Aceh at War: Torture, Ill-Treatment, and Unfair Trials*, Vol. 16, No. 11, September 2004, available at <http://hrw.org/reports/2003/indonesia1203/indonesia1203.pdf> (accessed December 12, 2004)
- ²⁴ Lely T. Djuhari, "Courts in Indonesia's restive Aceh province hand down 'lightning quick justice' in rebel case," Associated Press, December 15, 2003, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/12/14/international1342EST0571.DTL> (accessed February 23, 2005).
- ²⁵ "Indonesia's Megawati tells troops not to worry about rights abuses," Agence France Presse, December 29, 2001.
- ²⁶ Mark Baker, "Aceh Crackdown Justified, says Downer," *Sydney Morning Herald*, June 19, 2003, available at <http://www.smh.com.au/articles/2003/06/18/1055828382956.html> (accessed January 15, 2005).
- ²⁷ "Joint Statement by the Co-chairs of the Tokyo Conference on Peace and Reconstruction in Aceh," May 14, 2003, available at <http://tokyo.usembassy.gov/e/p/tp-20030516a5.html>; U.S. Department of State, Statement by Deputy Spokesman Philip T. Reeker, "Indonesia: Attacks on Monitoring Offices," April 7, 2003, available at <http://www.state.gov/r/pa/prs/ps/2003/19403.htm>; U.S. Department of State, Statement by Spokesman Richard Boucher, "Conviction of Muhammad Nazar by Indonesian Court," July 2, 2003, available at <http://www.state.gov/r/pa/prs/ps/2003/22201.htm>. In a March 2004 statement the State Department said, "The United States is deeply concerned by the recent arrests of non-violent Acehnese activists. This is the latest in a series of actions apparently intended to intimidate independent observers who would be in a position to monitor and report on serious human rights abuses in Aceh." U.S. Department of State, Statement by Deputy Spokesman Adam Ereli, "Indonesia: Arrests and Treatment of Activists in Aceh," March 5, 2004, available at <http://www.state.gov/r/pa/prs/ps/2004/30202.htm>.
- ²⁸ T. Mulya Lubis, "Masyarakat Sipil dan Kebijakan Negara," in Rusdi Marpaung & Al Araf, eds., *Terorisme: Definisi, Aksi, dan Regulasi* (Jakarta, 2003), pp. 81 [hereinafter *Terorisme*].
- ²⁹ In the first half of 2001 alone 81 bombings were reported in Indonesia. Joint press release signed by 93 NGOs on "Kegagalan Negara dalam Pengungkapan BOM" ("State Failure in Solving Bombings"), July 21, 2001, available at <http://www.infid.be/jointstatement010724terorbom.html> (accessed January 15, 2004).
- ³⁰ Ibid.; "Indonesian soldiers held over bombings," BBC, September 26, 2000, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/941349.stm> (accessed December 4, 2004).
- ³¹ In Vedi Hadiz, "Indonesia: Order and Terror in a Time of Empire," Southeast Asia Research Center Working Paper Series, No 73, October 2004, available at <http://www.warc.murdoch.edu.au/wp/wp115.pdf> (accessed February 14, 2005).
- ³² Peraturan Pemerintah Pengganti Undang-undang No. 1/2002 Tentang Tindak Pidana Terorisme, or Government Regulation in Place of Law No. 1/2002 on Terrorist Crimes.
- ³³ The second decree, Perpu No. 2/2002 Tentang Pemberlakuan Perpu Nomor 1 Pada Peristiwa Peledakan Bom Bali 12 October 2002 (Government Regulation in Lieu of Law No. 2/2002 on the Application of Government Regulation in Lieu of Law Number 1 to the Incident of the Bali Bomb Explosion of October 12, 2002), was struck down by a constitutional court in July 2004 due to its retroactive application.
- ³⁴ Marpaung and Al Araf, eds., *Terorisme*.
- ³⁵ Article 7 states: "Any person who intentionally uses violence or the threat of violence intended to cause an atmosphere of terror or fear for people widely or causes mass victims by confiscating their liberty or taking the lives and belongings of others, or by causing damage or destruction of strategic, vital objects, or the environment, or public facilities, or international facilities, will be imprisoned for up to a life sentence" (translated by Human Rights First).
- ³⁶ Article 28 states "Investigators may arrest anyone strongly suspected of carrying out terrorist crimes based on sufficient evidence as intended in Article 26 clause (2) for at most 7 x 24 (seven times twenty-four) days." Article 25 states "in order to carry out the police investigation and prosecution, the investigating officer is given authority to detain the suspect for a maximum of 6 months." (translated by Human Rights First).
- ³⁷ Article 26, 1 states imprecisely, "to obtain sufficient preliminary evidence, investigators can use all intelligence reports" (translated by Human Rights First).
- ³⁸ Marpaung and Al Araf, eds., *Terorisme*.
- ³⁹ Al Araf, "Perpu Anti-terorisme: Ancaman Transisi di Indonesia," in Marpaung and Al Araf, eds., *Terorisme*, p. 103. The agency's website explains that "BIN's intelligence collection and analysis mandate has not changed in a significant manner since 1998."
- ⁴⁰ For a review of the versions, see International Crisis Group, *Indonesia: Rethinking Internal Security Strategy*, December 20, 2004, p. 13-14.
- ⁴¹ Tapol, "Indonesia's Antiterrorism Decree a Threat to Basic Rights," October 28, 2002, available at <http://tapol.gn.apc.org/press/files/pr021028.htm> (accessed January 13, 2005).
- ⁴² KontraS, "Analisis Kasus Peladakan Bom di Bali," in Marpaung & Al Araf, eds., *Terorisme*, p. 35. See also the alternative antiterrorism law proposed by Imparsial and the Coalition to Preserve Civil Liberties, in *RUU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat*, (Jakarta: 2003), available at http://imparsial.org/report/Buku_uu_terrorisme.htm.
- ⁴³ Sixth Statement of the Coalition to Preserve Civil Liberties (Koalisi Untuk Keselamatan Masyarakat Sipil)..
- ⁴⁴ Kurniawan Hari and Fabiola Desy Unidjaja, "Govt, legislators differ on draconian law," *Jakarta Post*, August 12, 2003, available at <http://www.thejakartapost.com/detailweekly.asp?fileid=20030812.@01> (accessed March 5, 2005); "Opposition grows to government-proposed draconian security law," *Jakarta Post*, August 13, 2003, available at <http://www.thejakartapost.com/detailweekly.asp?fileid=20030813.@03> (accessed March 5, 2005).
- ⁴⁵ A previous effort had emerged after the Marriot bombing on August 5, 2003.
- ⁴⁶ Achmad Sukarsono and Dean Yates, "Indonesia Minister Backs Tougher Anti-Terror Laws," Reuters, November 1, 2004.
- ⁴⁷ Imparsial and the Coalition to Preserve Civil Liberties, *RUU Anti Terorisme: Antara Kebebasan dan Keamanan Rakyat*, (Jakarta: 2003); *Imparsial* (The Indonesian Human Rights Monitor), "Evaluasi Kondisi HAM Indonesia 2003 (Ringkasan Laporan)," December 10, 2003,

available at <http://www.imparsial.org/report/Ringkasan%20Eksekutif-2.htm> (accessed March 24, 2005); Human Rights Working Group, "Anti-terrorism Politics in Indonesia: the continuing politics of violence and impunity," Background paper prepared for 60th session of UN Commission for Human Rights, 2004.

⁴⁸ *Berita Kota*, 27 October 2003, in Sixth Statement of the Coalition to Preserve Civil Liberties (Koalisi Untuk Keselamatan Masyarakat Sipil).

⁴⁹ Robert Go, "Jakarta Wants to Tag Aceh Rebels as Terrorists," *Straits Times*, May 22, 2003.

⁵⁰ Tiarna Siborno and Muninggar Sri Saraswati, "GAM Leaders Released by Swedish Court," *Jakarta Post*, June 19, 2004.

⁵¹ Amnesty International, "New Military Operations, Old Patterns of Human Rights Abuses in Aceh," Oct. 7, 2004, p.25, available at <http://web.amnesty.org/library/Index/ENGASA210332004> (accessed January 13, 2005).

⁵² Siborno and Saraswati, June 19, 2004.

⁵³ Chris Brummitt, "Aceh Inmates Stood No Chance in Tsunami," Associated Press, January 6, 2005.

⁵⁴ See "Kapolri: Polisi Hanya Tangkap 17 Orang," *Kompas Cyber Media*, September 2003.

⁵⁵ Lily Bertha Kartika, "Da'i: Polisi Menangkap Sesuai Prosedur," *Kompas Cyber Media*, September 15, 2003.

⁵⁶ "Polri Serba Salah, Tangkap Tersangka Teroris," Bali Post, September 21, 2003, available at <http://www.balipost.co.id/balipostcetak/2003/9/21/n2.html> (accessed March 17, 2005).

⁵⁷ MER-C Press Release, "Relawan Mer-C Bebas karena Terbukti Tidak Bersalah," September 27, 2003, available <http://www.mer-c.org/mc/ina/general/ambon.htm> (accessed March 17, 2005). The 2003 U.S. Department of State Country Report on Human Rights Practices describes the case of two men: "Police planned to hold them for up to 7 days, the period allowed by the Anti-Terrorism Law for detention without charge; however, police failed to notify the families of the detainees within 24 hours of their arrest, in accordance with criminal law." U.S. Department of State, "Country Report on Human Rights Practices, 2003: Indonesia" released February 4, 2004.

⁵⁸ Yophiandi Kurniawan, "Korban Salah Tangkap Bom Makassar Mengadu," *Tempo Interaktif*, November 6, 2003.

⁵⁹ "Table on the Violation of Civil and Political Rights in 2004," *Human Rights Report*, Legal Aid Foundation, January 2005.

⁶⁰ "Indonesia Endorses Bill on Powerful Military," Associated Press, September 30, 2004.

⁶¹ "BIN's potential overlap with Army Commands Queried," *Jakarta Post*, January 10, 2004.

⁶² "Indonesia's New Secret Police?" *Tempo Magazine*, November 9-15, 2004.

⁶³ *Ibid.*

⁶⁴ In 2003 the National Human Rights Commission identified 14 defenders killed since 2000, and Munir's death in September 2004 has been added to that figure. Amnesty International also cited 14 defender deaths between 2000 and June 2003. The organization Frontline identified 10 defenders, and four prominent figures who spoke out on human rights, who were killed or "disappeared" from 2000 to 2002; four more were killed around the declaration of Martial Law in Aceh. Human Rights Watch identified seven defenders killed in its 2001 annual report alone. Nearly all have been in Aceh. U.S. Department of State, "Country Report on Human Rights Practices, 2003: Indonesia"; Amnesty International, "Protecting the protectors: human rights defenders and humanitarian workers in Mangrove Aceh Darussalam, June 3, 2003; Front Line and Imparsial, *Front Line Indonesia: Murders Death Threat and Other Forms of Intimidation of Human Rights Defenders, 1998-2002*, 2002, available at http://www.frontlinedefenders.org/pdfs/56_Front%20Line%20Indonesia.pdf (accessed May 2, 2005); Human Rights Watch, *Annual World Report 2001*, released January 16, 2002.

⁶⁵ Imparsial, "Keamanan Mengalahkan Kebebasan: Laporan Kondisi HAM Indonesia 2004," February 1, 2005.

⁶⁶ "Pembela HAM Bikin Deklarasi," *Duta Masyarakat*, November 22, 2001, available at <http://www.hamline.edu/apakabar/basisdata/2001/11/21/0031.html> (accessed May 4, 2005). Jafar Siddiq Hamzah was a U.S.-based Acehese lawyer working to inform the international community of human rights abuses in his home province. Hamzah, whose picture appears on the cover of this report, disappeared off the street in Medan, North Sumatra in August 2000. His body was found one month later with four others, all bearing signs of severe torture. No-one has ever been prosecuted for his death.

⁶⁷ Human Rights Watch, *Aceh Under Martial Law: Inside the Secret War*, vol. 15, no. 10, December 2003. One lawyer who has defended those accused of GAM membership told Human Rights First, "You give one cigarette to someone and you're considered GAM. Or there's a firefight and there's no GAM so they arrest whoever's there. . . Or you're forced [by GAM] to swear an oath, but you're really just a farmer." Human Rights First interview, Meulaboh, January 27, 2005.

⁶⁸ Muninggar Sri Saraswati, "Aceh police targeting rights activists, offices," *Jakarta Post*, June 10, 2003, available at <http://www.thejakartapost.com/yesterdaydetail.asp?fileid=20030610.B01> (accessed December 11, 2004); "Human Rights Monitors Under Pressure to Leave Aceh," *Jakarta Post*, June 18, 2003.

⁶⁹ "Rights Activists Fleeing Aceh to Avoid Arrests," *Jakarta Post*, June 20, 2003, available at http://www.asia-pacific-action.org/southeastasia/indonesia/netnews/2003/ind_24v7.htm (accessed December 14, 2004); "Report of the Special Rapporteur, Theo van Boven; Addendum: Summary of information, including individual cases, transmitted to Governments and replies received," E/CN.4/2004/56/Add.1, March 23, 2004; Kontras, *Report on Martial Law or Military Emergency in Aceh: Violence against civilians in Aceh*, June 2003, available at http://www.acheh-eye.org/data_files/english_format/ngo/ngo_kontras-documents-eng/ngo_kontras_data-eng_002-2003.html (accessed February 17, 2005).

⁷⁰ "Police Break Up Rights Commission Session in Aceh," *Jakarta Post*, October 21, 2003.

⁷¹ Kontras, *Report on Martial Law or Military Emergency in Aceh: Violence against civilians in Aceh*, June 2003.

⁷² Asian Human Rights Commission, "Indonesia: Human Rights Activists Abducted and Killed," May 27, 2003, available at <http://www.ahrchk.net/ua/mainfile.php/2003/450/> (accessed December 11, 2005).

⁷³ Muninggar Sri Saraswati, "Aceh police targeting rights activists, offices," *Jakarta Post*, June 10, 2003.

⁷⁴ Kontras, *Report on Martial Law or Military Emergency in Aceh: Violence against civilians in Aceh*, June 2003.

⁷⁵ "Penembakan Istri Aktifis HAM Diduga Terkait Kasus Timika," *Tempo Interaktif*, December 28, 2002, available at <http://www.tempointeraktif.com/hg/nasional/2002/12/28/brk,20021228-11.id.html> (accessed May 4, 2005); RFK Center for Human Rights,

"The West Papua Report," November-December 2004, available at

http://www.rfkmemorial.org/human_rights/1993_Bambang/RFK_Papua_Report_11_12_04.pdf (accessed May 4, 2005).

⁷⁶ Michael Vatikiotis noted that before he began to lose influence Hendropriyono "effectively re-created the intelligence network that hardened Suharto's New Order regime. And because of his belief in fighting the terrorist threat in Southeast Asia while others disputed its seriousness, Hendropriyono gained the trust of United States officials following the September 11, 2001, attacks." Michael Vatikiotis, "Hendropriyono: A Dinosaur in the Terror War," *Far Eastern Economic Review*, June 10, 2004, available at http://www.infid.be/cs_hendropriyono.htm (accessed March 17, 2005).

⁷⁷ Interview with Jakarta NGO, September 2004.

⁷⁸ "Penyelidikan Pelanggaran HAM Berat Soeharto," *Jawa Pos*, February 17, 2004; Asian Human Rights Commission, "Update (Indonesia): Renewed attack on Komnas HAM to stop 1965 inquiry," May 26, 2003, available at <http://www.ahrchk.net/ua/mainfile.php/2003/448/>.

⁷⁹ Interview with Jakarta NGO, September 2004; "Kontras Under Attack Again," *Laksamana.Net*, May 28, 2003, available at http://laksamana.net/vnews.cfm?ncat=1&news_id=5423 (accessed December 11, 2005).

⁸⁰ Colonel John B. Haseman, USA (Ret.), "National Interests and Mil-to-Mil Relations with Indonesia," *Joint Force Quarterly*, Autumn 2002, available at http://www.dtic.mil/doctrine/jel/jfq_pubs/0632.pdf (accessed January 12, 2005).

⁸¹ The joint statement noted, "President Bush recognized the important role of the Indonesian military (TNI) as a national institution and both leaders observed the importance of military reforms in Indonesia's democratic transition. In that regard, the two Presidents agreed to expand modest contacts and resume regular meetings between their militaries to support Indonesia's efforts at military reform and professionalization. Upcoming activities will include Indonesian participation in a variety of conferences, multilateral exercises, subject matter exchanges on issues such as military reform, military law, investigations, budgeting and budget transparency, as well as humanitarian assistance and joint relief operations." "U.S. and Indonesia Pledge Cooperation," Joint Statement Between the United States of America and the Republic of Indonesia, September 19, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/20010919-5.html> (accessed January 11, 2005).

⁸² Matthew P. Daley, Deputy Assistant Secretary of State, "U.S. Interests and Policy Priorities in Southeast Asia," testimony before the House International Relations Committee, Subcommittee on East Asia and the Pacific, March 26, 2003, available at <http://www.state.gov/p/eap/rls/rm/2003/19086.htm> (accessed March 17, 2005) [hereinafter "U.S. Interests and Policy Priorities"].

⁸³ The International Crisis Group has reported that the designation "88" comes from the sound of "ATA," the acronym for the U.S. Antiterrorism Assistance program. International Crisis Group, *Indonesia: Rethinking Internal Security Strategy*, December 20, 2004.

⁸⁴ The statement also noted that "ATA has a part to play in changing entrenched attitudes towards civil and human rights. . . . Many nations that have transitioned from authoritarian governments have had to reorient their security forces to function in a democracy – a challenge that can be much tougher than obtaining better equipment and tactics." Rebecca Ford Mitchell, "Comprehensive U.S. Program Aids Fight Against Terrorism Abroad," October 21, 2004, available at <http://usinfo.state.gov/is/Archive/2004/Oct/21-21820.html> (accessed January 12, 2005).

⁸⁵ Human Rights First interview with Jakarta NGO, September 2004; "Detasemen Khusus 88," *Republika*, August 31, 2004.

⁸⁶ The U.S. Department of State's 2004 Country Report on Human Rights Practices notes, "In early August, suspected JI [Jemaah Islamiyah] member Saifudin Umar, alias Abu Fida, was found seriously injured in an East Java hospital. He claimed to have been secretly arrested and tortured by police." U.S. Department of State, "Country Report on Human Rights Practices, 2004: Indonesia," released February 28, 2004.

⁸⁷ "Prime Bali suspect's confessions on Bashir made under torture: lawyer," *Agence France Presse*, February 25, 2003; "Imam Samudra: Baasyir Tidak Pernah Suruh Lakukan Pengeboman," *Kompas Cyber Media*, May 28, 2003.

⁸⁸ David Isenberg, "US back in step with Indonesia," *Asia Times*, March 2, 2005, available at http://www.atimes.com/atimes/Southeast_Asia/GC03Ae01.html (accessed March 17, 2005).

⁸⁹ East Timor Action Network and Indonesia Human Rights Network, "Rights Groups Condemn End Run on Military Training Restrictions for Indonesia," December 20, 2001. In a controversial earlier effort to avoid restrictions, in 1998 it was discovered that the Pentagon had avoided IMET restrictions by providing training for TNI, including the notorious special forces branch Kopassus, through a separate Joint Combined Exchange Training. Congress held hearings and soon passed restrictions to close the loophole.

⁹⁰ Yenni Djahidin, "Bush is Back and It's Time to Expand, Says RI Envoy," *Jakarta Post*, November 9, 2004.

⁹¹ Rosemary Foot, Human Rights and Counter-terrorism in America's Asia Policy, (Oxford: 2004), p.50; International Crisis Group, *Resuming U.S.-Indonesia Military Ties*, May 21, 2002, available at <http://www.crisisgroup.org/home/index.cfm?id=1768&l=1> (accessed).

⁹² "Taking the war against terror to Indonesia," *The Age*, October 26, 2002, available at <http://www.theage.com.au/articles/2002/10/25/1035504882464.html?oneclick=true> (accessed December 12, 2004).

⁹³ Arguments for military involvement include the location of the attack on a road well-guarded by TNI posts, the nature of the firepower contrasted with the separatist group OPM's limited arsenal, and the discovery of a corpse at the site first said to be a perpetrator but later shown to be the body of a military informer who had been killed prior to the attacks and transported to the scene.

⁹⁴ The Papuan NGO ELSHAM says it has provided the FBI with evidence of Wamang's links to the TNI. In an interview with Australian radio, Wamang says he fired on the car believing it to be Indonesian soldiers. But he also notes of the TNI that he had "a business relationship with them for purchasing ammunition." "Ambush in Papua," *Australian Broadcasting Corporation*, August 7, 2004, available at <http://abcasiapacific.com/focus/stories/s1171895.htm> (accessed March 5, 2005).

⁹⁵ "Papuan Separatist Charged With the Murders of Two Americans, Attempted Murders of Others During 2002 Ambush In Indonesia," FBI National Press Office, June 24, 2004, available at http://www.usdoj.gov/opa/pr/2004/June/04_crm_439.htm (accessed December 9, 2004).

⁹⁶ Human Rights First interview, name withheld upon request, September 2004.

⁹⁷ Daley, "U.S. Interests and Policy Priorities."

⁹⁸ Raymond Bonner, "U.S. Links Indonesian Troops to Deaths of 2 Americans," *New York Times*, January 30, 2003.

⁹⁹ U.S. Department of State, Appendix A: Chronology of Significant Terrorist Incidents, 2002 in "Patterns of Global Terrorism, 2002," released April 30, 2003, available at <http://www.state.gov/ct/rls/pgrtrpt/2002/> (accessed January 11, 2005).

¹⁰⁰ According to the State Department. "The United States encouraged the military to improve from the inside out, through continued exposure to the Expanded International Military Education and Training program. This program, which also involved a number of civilians, highlighted ways to strengthen civilian oversight of the military and promote respect for human rights. Some courses sought to improve the military justice system, while others boosted the investigative capacity of military police." Supporting Human Rights and Democracy: The U.S. Record 2003-2004, Bureau of Democracy, Human Rights and Labor, May 17, 2004. Online at: <http://www.state.gov/g/drl/rls/shrd/2003/31020.htm>.

¹⁰¹ Congressional Research Service Report for Congress, "Terrorism in Southeast Asia," updated August 13, 2004.

¹⁰² See Rosemary Foot, Human Rights and Counter-terrorism in America's Asia Policy, (2004), footnotes 29 and 31.

¹⁰³ Michael Casey, Associated Press, October 11, 2004. Deputy Assistant Secretary of State Matthew Daley was similarly realistic: "There is no question that the military-to-military relationship is one of the most controversial aspects of our bilateral partnership. Reforms in the Indonesian military have not kept pace with Indonesia's broader democratic development. The lack of a track record on accountability for human rights abuses is of particular concern." Daley, "U.S. Interests and Policy Priorities."

¹⁰⁴ Joint Press Conference, Deputy Secretary of Defense Paul Wolfowitz and Republic of Indonesia Minister of Defense Juwono Sudarsono, January 16, 2005, available at <http://www.defenselink.mil/transcripts/2005/tr20050116-depsecdef1989.html> (accessed March 17, 2005).

¹⁰⁵ John Mcbeth "New Era for Jakarta Military," *Straits Times*, March 10, 2005, available at http://www.infid.be/military_new_era.htm (accessed March 20, 2005).

¹⁰⁶ Tim Johnston, "US Resumes Joint Military Training with Indonesia," *Voice of America News*, February 27, 2005, available at <http://www.voanews.com/english/2005-02-27-voa4.cfm> (accessed March 1, 2005).

¹⁰⁷ Sudarsono recently noted that the military "retains the real levers of power." He continued, "From the political point of view, the military remains the fulcrum of Indonesia." Jane Perlez, "U.S. Takes Steps to Mend Ties with Indonesian Military," *New York Times*, February 7, 2005.

¹⁰⁸ Particularly after the large number of Australians killed in the 2002 Bali bombing, Indonesia's neighbor has been eager to increase cooperation with the Indonesian military. Despite heavy criticism from human rights groups, the Australian government has recently made moves to reestablish ties with the Special Forces (Kopassus) that had been cut due to its notorious human rights record. The Australian Defense Minister noted "Kopassus does not have a good human rights record, but it is Indonesia's most effective response to terrorism. It really is its only counter-terrorism capability . . . You can therefore argue that it's in Australia's best interests to be working with them to protect Australia and Australian interests in Indonesia." In November 2004 the Australian Prime Minister urged the U.S. to cooperate more closely with Indonesia and soon after Australia's top policeman went a step further, suggesting that Australia adopt Indonesia's system of interrogation., "Taking the war against terror to Indonesia," *The Age*, October 26, 2002; Associated Press, "Australian foreign minister says U.S. should build closer ties with Indonesia." November 7, 2004; "New powers needed to fight terrorism, Australia's counter-terror chief says," *Agence France Presse*, December 7, 2004.

¹⁰⁹ "U.S. has no authority to assess RI's rights record: Govt," *Antara News Service*, May 21, 2004.

¹¹⁰ "Kopassus Denounces Iraq Prisoner Torture," *Laksamana.Net*, May 19, 2004, available at http://www.laksamana.net/vnews.cfm?ncat=48&news_id=7048, (accessed December 3, 2004).

¹¹¹ These principles draw on Ian Leigh, Geneva Center for the Democratic Control of Armed Forces (DCAF), "National Legal Dimension of the Democratic Control of the Security Sector: Values and Standards in Developed Democracies," August 2002, available at http://www.dcaf.ch/publications/Working_Papers/80.pdf; International Crisis Group, *Rethinking Internal Security Strategy*. Asia Report N°90, Jakarta/Brussels, December 20, 2004; Sandy Africa and Siyabulela Mlombile, "Transforming the Intelligence Service: Some Reflections on the South African Experience," Project on Justice in Times of Transition, Harvard University, October 15, 2001.



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