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SHORT BRIEFING

**HUMAN RIGHTS COURT MECHANISM
AND THE 2014 PANIAI PAPUA CASE**



SHORT BRIEFING ON HUMAN RIGHTS COURT MECHANISM AND THE 2014 PANIAI PAPUA CASE

AJAR (Asia Justice and Rights), KontraS (the Commission for the Disappeared and Victims of Violence) and TAPOL

I. Background

On 16 April 2022, Indonesia's Attorney General announced that they were preparing prosecution of a suspect allegedly responsible for unlawful killings in Paniai, Papua in 2014, under the 'Human Rights Court' mechanism (under Law No. 26/2000). This mechanism is the country's special criminal tribunal dealing with cases of gross violations of human rights. If the case is brought before a special court under Law No. 26/2000, which is planned to be held in Makassar, South Sulawesi, the Paniai Case would be the first case tried at a Human Rights Court for 18 years. Eleven other cases of gross violations of human rights are still pending for prosecution under the remit of the Attorney General's Office (AGO). The last case tried under the Human Rights Court mechanism was in May 2004, and held also in Makassar, South Sulawesi, was the unlawful killings in Abepura, Papua (2000). Before that, the Human Rights Court had dealt with two other gross violations of human rights: the 1999 East Timor Atrocities; and Unlawful Killings in Tanjung Priok, Jakarta in 1984.

In this briefing, AJAR (Asia Justice and Rights), KontraS (the Commission for the Disappeared and Victims of Violence) and TAPOL, members of the Coalition of Civil Society for Monitoring of the 2014 Paniai Case which also consists of a number of human rights organizations in Papua, Indonesia and internationally, explain how Indonesia's Human Rights Court mechanism works and its past record.

The Attorney General's statement about bringing the Paniai Case to the Human Rights Court may represent a breakthrough for the impunity which still exists in Papua and other regions in Indonesia. The Government promised to end impunity in Papua during the UN's Universal Periodic Review (UPR) in May 2017, when it also said it was preparing the Human Rights Court in Makassar for the Wasior-Wamena, Papua Cases.¹

However, since then, no further actions have been taken. Unfortunately, the Human Rights Court mechanism has shown many flaws resulting in a zero-conviction rate of defendants in all three previous trials.² Furthermore, families of the Paniai victims and human rights organisations are highly concerned

¹ The Wasior case was about unlawful killings, torture, enforced disappearances and rape by members of police forces after an attack on police post killing six men, including five police officers in June 2001. The Wamena case was about unlawful killings, forced evictions, torture and arbitrary detention by members of police forces after a group of unknown people attack police arsenal and stole weapons in April 2003. The National Human Rights Commission (Komnas HAM) investigated the two cases with one combined report concluding that the two cases amounted to crimes against humanity.

² ICTJ (International Center for Transitional Justice) and KontraS (the Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, March 2011, p. 39, available at: <https://www.ictj.org/publication/derailed-transitional-justice-indonesia-fall-soeharto-report>.

by the initial efforts undertaken by the AGO which has only named one retired low ranking military personnel as a suspect. This reflects neither the gravity of the Paniai Case nor does the substance of the prosecution's case follow the findings and conclusions made by the National Human Rights Commission (Komnas HAM), the body authorised by Law No. 26/2000 to conduct the judicial inquiry.³

Summary of the 2014 Paniai Case

On the morning of 8th December 2014, hundreds of Papuans staged a protest near the local military and police headquarters in the town of Enarotali in Paniai District, Papua Province. The protest was a response to a violent incident the day before when some military personnel allegedly beat and kicked 11 Papuan children. When protesters started throwing stones and pieces of wood at some state buildings, members of the security forces opened fire on the crowd from different directions, killing four people and injuring dozens of others.

Several weeks later, at a national Christmas ceremony in Papua, newly elected President Joko "Jokowi" Widodo made a statement to the effect that he was committed to bringing those responsible for the killings to justice as soon as possible. Subsequently, the police and military announced that they had set up separate internal investigation teams but no result was made public. Komnas HAM also set up a different investigation team within months of the incidents, but only in February 2020 did it finalize its judicial inquiry, concluding that there was enough evidence to call the 2014 Paniai shootings crimes against humanity.⁴

II. The Human Rights Court Mechanism

Background of the Establishment of the Human Rights Court

After the fall of the Soeharto military government (1966-1998), Indonesia endured legal and institutional reforms that have incorporated international human rights norms and standards. However, the establishment of the Human Rights Court mechanism was driven more by international pressure on Indonesia after the mass atrocities committed by Indonesia's security forces and their auxiliary militia groups in East Timor during the 1999 referendum. The new Government of Indonesia led by then President BJ Habibie and his successor President Abdurrahman Wahid managed to convince the UN Security Council not to set up an international criminal tribunal and instead to set up a national tribunal to try those responsible for the 1999 East Timor mass atrocities.⁵

³ Komnas HAM's Summary Briefing of Gross Violations of Human Rights Cases, *Merawat Ingatan Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat*, November 2020, p. 684-686.

⁴ Komnas HAM's Summary Briefing of Gross Violations of Human Rights Cases, p. 677.

⁵ Report of the International Commission of Inquiry on East Timor to the Secretary General, January 2000 (UN Docs. A/54/726 and S/2000/59). See ICTJ & KontraS, *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, p. 37-38 and ICG (International Crisis Group), *Indonesia: Impunity Versus Accountability For Gross*

This led to the passage of Law No. 26/2000 on Human Rights by Indonesian lawmakers in November 2000. Hence, the Human Rights Court is a criminal tribunal specific to 'gross violations of human rights' and not to be confused with other human rights courts such as the European Court of Human Rights Court (ECHR), Inter-American Court of Human Rights (IACtHR) and African Court of Human and Peoples' Rights which are not criminal courts.

The Human Rights Court Law was drafted by the Indonesian lawmakers, taking many definitions of crimes of genocide and crimes against humanity from the Rome Statute of the International Criminal Court but left out war crimes. It is believed that the omission of war crimes from the Law was intentionally done by lawmakers who foresaw military operations in Aceh, then an area that was experiencing a secessionist armed insurgency led by the Free Aceh Movement (GAM).

Institutional Framework of the Human Rights Court

Most cases of human rights violations committed by Indonesian security forces (the police and military) in Papua are dealt with by their own internal accountability mechanism with a significant number of the cases not having been investigated at all.⁶ When the police or military proceeded with the report, most of the police and military personnel accused of committing abuses in Papua have only received disciplinary sanctions which fell under the outdated Indonesian Criminal Code (KUHP) and Criminal Procedure Code (KUHAP).

Under Indonesia's criminal justice system, military personnel can only be tried in military courts, including serious human rights violations such as extra-judicial killings or torture. All parties in the military criminal justice system, from judges, prosecutors to legal defence, are military officials. Similar proceedings apply for allegations of human rights abuses committed by the police, so that the investigation is also carried out by the police. External independent oversight institutions such as the National Human Rights Commission (Komnas HAM) can carry out investigations on any allegation of human rights violations committed by the security forces but their final findings and reports only serve as recommendations and may not directly be used for prosecutions.

The main concerns on these internal accountability mechanisms include a lack of transparency of the process: from the investigative stage to the prosecution stage; light sentences compared with the gravity

Human Rights Violations, February 2001, p. 6-9 and p. 13-15, available at

<https://www.crisisgroup.org/asia/south-east-asia/indonesia/indonesia-impunity-versus-accountability>.

⁶ Some example of these are Amnesty International's Report, "Don't Bother, Just Let Him Die": Killing with Impunity in Papua, July 2018, available at: <https://www.amnesty.org/en/documents/asa21/8198/2018/en/>; Human Rights Watch's Report, Out of Sight; Endemic Abuse and Impunity in Papua's Central Highlands, July 2007, available at: <https://www.hrw.org/sites/default/files/reports/papua0707webwcover.pdf>. See also ICP (International Coalition for Papua), Human Rights Quarterly Update West Papua – April 2021, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_April_2021.pdf; Human Rights Quarterly Update West Papua – October 2020, available at: https://humanrightspapua.org/images/docs/Human_Rights_Update_West_Papua_October_2020.pdf.

of the crimes; only implicating low rank personnel; excluding those with command responsibility; and convictions not being taken into account and used as a vetting (promotion and dismissal) policy.⁷

Against the weak human rights accountability mechanisms under the Criminal Procedure Code, most victims and human rights organisations in Indonesia would prefer to bring serious human rights cases before the Human Rights Court where at least cases can be investigated by an independent institution, namely the National Human Rights Commission (Komnas HAM). Under the Human Rights Court Law, any allegations of gross violations of human rights (genocide and crimes against humanity) should only be investigated by a *pro justitia* team (KPP HAM) set up by Komnas HAM.⁸ In its inquiries, Komnas HAM can summon and interrogate any relevant individuals and collect evidence.⁹ If the *pro justitia* team concludes that there is sufficient preliminary evidence that gross violations of human rights has occurred, Komnas HAM delivers an inquiry report to the AGO¹⁰ to recommend continuing the criminal investigation and prosecution.¹¹ To date Komnas HAM has already submitted 15 inquiry reports of gross violations of human rights to the AGO and only three cases have been brought by the AGO to the Human Rights Court.¹² The 2014 Paniai case would be the fourth case that the AGO proceed to the Human Rights Court.

The Human Rights Court (tribunal), that deals with trying cases of gross violations of human rights, consists of five judges in a panel of which three are independent judges (known as *ad hoc* judges). *Ad hoc* judges are appointed from a pool of law experts from outside Indonesia's judiciary.¹³ The trials' procedure follows legal proceedings under the Criminal Procedure Code. Under the Human Rights Court

⁷ ICTJ (International Center for Transitional Justice) and KontraS (the Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, March 2011, p. 50-51. The plan to amend the military court system was officially confirmed in 2004 to address its flaws, but it has never been finalised. Law on Indonesian Military Force (No. 34/2004) mandated the reform of the military court system so that military personnel committing criminal offenses, including human rights violations, can be brought under the civilian court's jurisdiction. The 2004-2009 national parliaments had discussed a draft law on the amendment of the military court system and almost passed it in 2009, but the Minister of Defence asked for a delay. There has been no plan in the near future to amend the Military Court Law.

⁸ Human Rights Court Law (No. 26/2000), Article 18. Under the Law, Komnas HAM can also appoint members of the KPP HAM, usually prominent human rights activists or lawyers, from outside the institution. However, for KPP HAM in the Paniai case, all of the members were from Komnas HAM.

⁹ Human Rights Court Law, Article 19.

¹⁰ AGO is part of the government (executive) body working under the President. The Human Rights Court Law does not provide any provision that could challenge the decision of the AGO not to proceed a case to the Human Rights Court.

¹¹ Human Rights Court Law, Articles 21-23. AGO can also appoint members of prosecutors from outside of their office, but in practice there has been no independent prosecutor involved in any trials under the Human Rights Court mechanism.

¹² These were the 1999 East Timor Atrocities, 1984-85 Shootings in Tanjung Priok-Jakarta and 2000 Abepura-Papua.

¹³ Human Rights Court Law, Articles 28-29. Recently the Supreme Court appointed eight *ad hoc* judges as the preparation for the Paniai case trial. Detik.com, *MA Loloskan 8 Nama Calon Hakim Ad Hoc Pelanggaran Berat HAM*, 25 July 2022, available at <https://news.detik.com/berita/d-6197729/ma-loloskan-8-nama-calon-hakim-ad-hoc-pelanggaran-ham-berat>.

Law, there should be four Human Rights Courts established within the District Courts of Medan (North Sumatra), Jakarta, Surabaya (East Java) and Makassar (South Sulawesi). However, the Law does not prevent any new court in other cities.¹⁴ Verdicts delivered in the first Human Rights Court can subsequently be appealed in the High Court (in Jakarta, Medan, Surabaya or Makassar) with the possibility of eventually appealing to the Supreme Court.

III. Overview of the Track Record of the Human Rights Court Mechanism

The Human Rights Court has been used to try perpetrators of gross violations of human rights in three cases: the atrocities in East Timor (now Timor-Leste) surrounding the 1999 Referendum; atrocities in Tanjung Priok, Jakarta in 1984 against Islamist activists; and unlawful killings, arbitrary and torture against in Abepura, Papua, in 2000. In the three cases, the AGO prosecuted a total of 34 individuals, although Komnas HAM’s inquiry reports suggested that more individuals be indicted and the Human Rights Court at the first instance convicted 16 individuals. However, the final outcomes on appeal to the Supreme Court resulted in zero convictions.

Results of the Human Rights Court

	East Timor Court	Tanjung Priok	Abepura, Papua
Crimes committed	Crimes against humanity before and after the Referendum in East Timor in August 1999	Crimes against humanity against Islamic activists and protesters in Tanjung Priok, Jakarta in September 1984	Crimes against humanity against the Papuans by Police personnel after an attack against a police post in Abepura, Jayapura in December 2000
Court established	2002 in Jakarta	2003 in Jakarta	2004 in Makassar, South Sulawesi
Suggested indictment by Komnas HAM	22 individuals	23 individuals	25 individuals
People indicted by the AGO	18 individuals	14 individuals	2 individuals

¹⁴ Human Rights Court Law, Article 45. The Paniai victims’ families and human rights organizations have called for the Human Rights Court for Paniai Case be established in Papua so that the victims can have better access to the trials. So far the trials of gross violations of human rights have only been carried out in Jakarta (for the East Timor and Tanjung Priok-Jakarta cases) and Makassar (for Abepura-Papua case).

Conviction at the First Court	6 individuals	12 individuals plus final compensation for the victims	0
Conviction at the Appeal/High Court	2 individuals	0	0
Conviction at the Supreme Court	0		

Early concerns by the human rights organizations on the prosecution initiative by the AGO for the Paniai case showed similar problems that the prosecution did not follow the Komnas HAM's inquiry report suggesting at least 8 individuals be indicted. So far the AGO has only named one person, who is a retired low rank military personnel, as sole suspect and soon to be tried by the Human Rights Court in Makassar. The nature of crimes against humanity suggests that the crime involves both those who have command responsibility and those who directly committed the crimes must be brought to justice.¹⁵

However, other human rights organizations see that the upcoming Paniai trial under the Human Rights Court could trigger further trials for the pending 11 other cases of gross violations of human rights in Papua and elsewhere in the country under the AGO's hand. During the Universal Periodic Review on Indonesia at the UN Human Rights Council in May 2017, the Minister of Foreign Affairs promised that the Attorney General would finalize a criminal investigation into Wasior and Wamena, Papua cases and bring them before the Human Rights Court; a promised that has not been fulfilled to date.

¹⁵ See Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Principle 27 Restriction on Justifications Related To Due Obedience, Superior Responsibility, and Official Statutes, 8 February 2005, UN Doc. E/CN.4/2005/102/Add.1, available at <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2F2005%2F102%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.