



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## **Indonesia: No justice for past human rights abuses as the government aims to avoid the Human Rights Court**

The Asian Legal Resource Centre (ALRC) wishes to inform the UN Human Rights Council (UNHRC) of the following: No progress is being made. There is an unwillingness on the part of the government to resolve past human rights abuses using proper mechanisms. These mechanisms are under the standard of fair trial principles, the rule of law and international human rights instruments to which Indonesia is a State party. For the past two years, under President Joko Widodo's administration, the government has aimed at avoiding judicial mechanisms and introduced a new alternative mechanism. It is called the National Council. It would settle disputes between victims and perpetrators of past human rights abuses, by compromise and consensus. The National Commission on Human Rights (Komnas Ham) has issued an investigative report that concluded seven cases fall within the allegations of gross violations of human rights. However, the Attorney General (AG) is reluctant to bring the cases to the ad hoc Human Rights Court as mandated by Law No. 26 of 2000 on Human Rights. These seven cases are: student shootings in Trisakti and Semanggi 1998-1999, enforced disappearances of student activists 1997-1998, May tragedy 13-15 May 1998, Talangsari massacre 6-7 February 1989, 1965-1966 massacre, Mysterious shooting 1981-1983, Wasior and Wamena Papua 2001-2003.

Recently, the government through the Coordinating Minister of Politics, Law and Security, retired Army General Wiranto, introduced a National Council. It is to bring back assembly and consensus (Dewan Kerukunan Nasional) in resolving past human rights abuses under Suharto. Moreover, the government wants to set up a reconciliation mechanism without having a clear concept of what kind of justice for the victims. Ironically, this idea is supported by the National Commission on Human Rights. It has a specific mandate under Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on the Human Rights Court. Their task is to investigate and submit an investigative report to the Attorney General. To further complicate matters, the Attorney General does not agree to the government proposal to resolve past human rights abuses through a non-judicial-process.

This year, the government, through Army General Wiranto (retired) and Komnas HAM, announced that the case of student shootings in Trisakti and Semanggi 1998-1999 will be resolved through a non-judicial process. The decision has been made without a clear reason and due consideration. There is no explanation about the investigative report issued by Komnas HAM in this case. The report concluded that there is an alleged gross violation of human rights in the case of student shootings in Trisakti and Semanggi 1998-1999. Moreover, the report clearly stated that the case falls within the requirements of crimes against humanity. The announcement of a non-judicial process to be followed was made by Army General Wiranto (retired). He is a person with a dubious human rights record who should be prosecuted for his actions, rather than awarded a seat in government. This appointment created a controversy as the National Commission on Human Rights (Komnas HAM) had issued a final investigative report on the alleged involvement of Wiranto in the shooting of student activists at Trisakti and Semanggi 1998-1999. One can add to this: State negligence in handling the riots and mass rapes against Indonesian Chinese 13-15 May 1998 plus Crimes against Humanity in East Timor after the referendum in 1999.

An arrest warrant was filed at the Dili district court by the Attorney General of East Timor against retired Army General Wiranto. But President Widodo gave no consideration to this matter.

Parliament issued four recommendations in the case of the enforced disappearances against student activists 1997-1998. One of the recommendations was the setting up of an ad hoc Human Rights Court for this case. It has never been implemented. During his presidential campaign, President Widodo promised to initiate a search for the missing persons-it never took place. In fact, President Widodo has shown his reluctance to bring the case to the ad hoc Human Rights Court.

A basic problem that the government has yet to resolve in the last ten years is: how to address sluggish communication and coordination between the National Commission on Human Rights (Komnas HAM) and the Attorney General (AG). The President has authority over the Attorney General but has yet to show any intention of comprehensively evaluating the AG's reluctance to continue the Komnas HAM's investigative report. There was no clear information and direction provided by the AG for Komnas HAM as to which part of the report needed further clarification or additional information. Instead of addressing this problem, the AG and Komnas have changed their stance. They prefer to bring past abuses to a compromise mechanism and avoid the judiciary process altogether.

In the last few months, President Widodo has shown to the public and the media his close relationship to Prabowo Subianto. He was a former commander of the Special Armed Forces (Komandan Jendral Kopassus) and of Army Strategic Reserve (Panglima Kostrad). According to the Komnas HAM's investigative report, Prabowo was allegedly involved in the case of the enforced disappearances of student activists in 1997-1998. Prabowo who was dismissed from military service has never been brought before the Human Rights Court. In contrast, an examination process, conducted by the Soldiers' Honorary Council (DKP) in August 1998, imposed punishments as follows: Lieutenant General Probowo Subianto, Major General Muchdi PR and Colonel Chairawan K. Nusyirwan, all relieved of their military duties; Jakarta Military Commander (Pangdam Jaya), Major General Sjafrie Syamsudin, allegedly involved in the case, remains unaffected.

The ALRC recommends that the Government should take all necessary measures to ensure that past human rights violations are redressed. Therefore the government needs to:

- a. Evaluate and stop any decisions to set up a compromise mechanism, without a clear concept of justice with compensation for victims.
  - b. Evaluate and replace the Attorney General as Chairperson. Choose a new person with strong motivation and commitment to continue the investigative report of past human rights abuses.
  - c. Implement, consistently, the Nawacita Document (vision and mission). Prioritize the following items--past human rights abuses, compensation for victims, guarantees of non-recurrence and a stop to impunity.
  - d. Use the judicial process under Law No. 26 of 2000 on the Human Rights Court. Support judicial and reconciliation mechanisms which should be complementary. They cannot replace or avoid each other in the fight against impunity of past human rights abuses.
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