

INDONESIA'S SHAKY TRANSITION

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EXECUTIVE SUMMARY

The past two years has been a highly turbulent period for Indonesia. The economic crash of 1997 left many Indonesians shell-shocked and deeply insecure. The mass political uprising of early 1998 reflected profound frustration among the population and produced a political meltdown as Soeharto bowed out after 32 years in power. Since then, President Habibie has struggled in the face of continuing economic problems, a suspicious military and an anxious elite. His efforts to satisfy popular demand for political reform have gone sufficiently far to panic the Javanese establishment but not far or fast enough to win the backing of an increasingly weary and impatient public. The loss of East Timor and international condemnation of the behaviour of Indonesian troops in the province has dealt a blow to national morale and triggered a wave of nationalism that could yet have destructive consequences. The elections of June 1999 – Indonesia's first free elections since the 1950s – have yet to produce a clear outcome, though none of the presidential contenders seems ready to embark on a process of radical reform for fear of opening up a confrontation with the military, which continues to exercise great influence in the political arena, despite recent setbacks.

Meanwhile, the flames of impending crisis continue to burn in Aceh, Irian Jaya, Ambon and other parts of the country. In each case, the instinctive response of the military, to go in all guns blazing, risks dousing fuel on the fire. The time available to resolve these problems peacefully, through a de-escalation of violence and the negotiation of genuine and substantial autonomy, is running out.

The election of a new government presents Indonesians and the international community alike with a window of opportunity to address these problems head on and thereby prevent Indonesia from turning into a major new zone of instability and conflict. For the first time in more than four decades, Indonesia will have a government that has some claim to democratic legitimacy, one probably less attached to the record of the past than its predecessor and so freer to face up to and account for past mistakes. In addition, the incoming government will be anxious to demonstrate an ability to deliver economic recovery, for which international financial support will be vital. By working with the new government, attaching conditions to international financial assistance and channelling funding through to specific priority areas, the international community can help steer Indonesia in the direction of better governance and greater stability.

One of the most urgent tasks, and one of the greatest challenges, awaiting the new government will be to put in place a programme of reform of the military. A number of steps need to be taken to reign in the power of the military and subjugate it to civilian control, including an end to the military's political function; extension of the partial ban on the appointment of serving military officers to posts in the executive and administration; statutory limitation of the powers of the military; permanent withdrawal of the 1999 State Security Bill; the abolition of military representatives in the People's Consultative Assembly; and a review of salaries, recruitment, induction and training programmes. Also critical will be establishing a genuinely independent investigation into past human rights abuses by members of the armed forces. Given the hostility of the military such an initiative, it is proposed that the investigation be conducted along the same lines as the Truth and Reconciliation Commission in South Africa. This would permit an honest appraisal of the past, acknowledgement of wrongdoing and acceptance of responsibility for past human rights abuses, while protecting individuals from prosecution.

Reforms are also needed to tackle chronic corruption and strengthen the rule of law, including an independent investigation into corruption in the public sector; action to prosecute individuals against whom there is substantial evidence of corrupt practice; a review of the working of the commercial court system and of recently-introduced commercial regulatory legislation; and the introduction of the requirement that all judges publish reasons for court decisions. The international community should provide whatever technical assistance is required to implement the above reforms and provide assistance in relation to judge training and support for civil society groups active in investigation and exposing evidence of corruption.

Finally, steps must be taken to defuse local tensions and prevent the present violence in Aceh, Irian Jaya and Ambon from escalating into major destabilising conflicts. Withdrawal of the military to barracks and a thorough investigation into past human rights abuses are both essential prerequisites to solving Indonesia's regional problems. So too is agreement on a new package of autonomy laws which provides the regions with real power of autonomy and a fairer share of the profits from local natural resources. The new government should build on the proposals for greater autonomy developed by the Habibie administration, which are widely seen outside of Java as inadequate, and seek to develop a new model that satisfies the legitimate desire of Indonesia's regions to manage their own affairs.

The international community should leave the new government in Jakarta in no doubt of its willingness to provide both technical and financial assistance to help ensure the smooth and successful passage of these and other necessary reforms. However, at the same time, it should be made clear that failure to move in the directions indicated will have serious consequences, including the withdrawal of political and financial support for the new government.

Jakarta, 10 October 1999



INDONESIA'S SHAKY TRANSITION

I. INTRODUCTION

As East Timor heads rapidly towards separation from Indonesia and United Nations peacekeepers strive to restore order there, Indonesia faces a complex set of problems, which, if not carefully managed, could seriously threaten the country's prospects for stability, continued democratisation and economic recovery.

Years of authoritarian government, military repression, endemic corruption and untrammelled economic development, culminating in the economic crash of 1997 and the political turmoil of 1998, have left the country fragile, bitterly divided and uncertain of its future. The fall of the Soeharto regime exposed afresh the underlying frailty of the ties binding Indonesia together and the inherent weakness of its national institutions. A process of democratisation has been nervously set in train over the past 18 months, but progress is slow and impatience growing among reformers and the population at large. Indonesia's Javanese elite, meanwhile, which benefited enormously from the old system, is resistant to calls for accelerated reform and warns of the risk to Indonesia's national unity if the transition process moves ahead too quickly. In the present climate, fears are rife that the loss of East Timor could trigger a domino effect as other parts of the country press for independence. Secessionist sentiment has already taken root in Aceh and Irian Jaya and for the first time there is talk of secession in Riau, Kalimantan, Ambon, even Bali. Politicians in Jakarta speak darkly of possible "Balkanisation" in reference to the risk that Indonesia – a vast and diverse nation of 210 million people spread across more than 6,000 inhabited islands – could become embroiled in a spate of messy wars of secession.

This briefing paper, prepared following a field mission by representatives of the International Crisis Group (ICG) to Indonesia in late September/early October 1999¹, identifies and outlines some of the most pressing dangers confronting Indonesia in the aftermath of the July 1999 general election and subsequent events in East Timor. ICG is currently considering the possibility of mounting a longer-term effort to monitor the situation in Indonesia and develop and promote strategies aimed at underwriting regional stability while and supporting Indonesia's transition to democracy.

¹ ICG representatives visited Jakarta, Medan, Aceh, Bali, Darwin and Canberra, between 21 September and 7 October 1999.

II. A FALTERING DEMOCRATISATION PROCESS

The fall of Soeharto's "New Order" regime

In May of 1998, an estimated one million people took to the streets of the Indonesian capital Jakarta to call for an end to the "New Order" regime of President Soeharto and the election of a new democratic government. Similar protests took place in many other cities and towns across the country. That same month, after 32 years in office, Soeharto agreed to quit, appointing his vice-president B.J. Habibie as head of a transitional government that would pave the way for elections the following year.

The Habibie transition

The public mood of celebration that accompanied Soeharto's fall, however, quickly gave way to disappointment. Soeharto's successor, President B.J. Habibie, has struggled, in most cases without success, to satisfy the hunger for democratic and institutional reform while, at the same time, reassuring those closest to the old power structures, particularly the Javanese civilian elite and the military, that they will not lose too many of privileges they currently enjoy.

Reform, insofar as it has taken place at all, has been half-hearted and partial. Press laws and licensing have been relaxed, but restrictions remain. The government is offering the regions greater autonomy, but the offer does not go far enough to quell demand in many parts of the country for self-rule. Habibie has pledged to crack down on political and financial corruption, but his own government has been beset by fresh scandals, including most recently the Bank Bali scandal, or "Baligate", in which \$US 70 million was paid by Indonesia's largest retail bank to a company linked to the governing Golkar party. The salaries of judges have been raised and various administrative reforms have taken place, in an effort to strengthen the rule of law, but no moves have yet been taken to force greater transparency in the judicial system and to revamp flawed law. Above all, the government has left largely untouched two critically important issues – the central role of the military in Indonesian politics and the lack of accountability on the part of past and present civilian and military leaders for past human rights abuses and corruption.

Nevertheless in one important respect progress has been made. National parliamentary elections – the first free elections to be held for 44 years – took place across Indonesia on 7 June 1999. Voters were allowed a choice between a large number of political parties; candidates campaigned vociferously; and the campaign itself was widely reported by a press recently liberated of many, though not all, of the restrictions imposed upon it by past governments. In spite of evidence of some instances of local irregularities, including vote-tampering², the election process was judged an overall success by most international observers and seen by many as an important opportunity for Indonesia to take a step forward on the path to increased democratisation and political reform.

² See, for example, *Perspectives from the Periphery*, Election Monitors' Report, Australian Council for Overseas Aid (ACFOA), July 1999.

Aftermath of the elections

Some four months after the elections, however, Indonesia is still waiting for a new president and government to emerge. Vote counting dragged through the months of June and July. The final result, when it was finally announced, did little to end the uncertainty – with votes widely spread and no one party in a position to claim an outright victory.

The process of negotiating a government is further complicated by the requirement that whoever is chosen as President must command the support of a majority not just the 500 members of parliament but the broader 700-member People's Consultative Assembly (MPR). The MPR, Indonesia's top legislative body, includes members of parliament alongside appointed representatives of the regions, civil society and the military. Ever since the election result was announced, Jakarta has been immersed in a round of political horse-trading as potential presidential candidates seek to outbid one another for the support of key constituencies. The MPR itself went into session on 1 October 1999 and a vote to select the new President is now expected on 20 October.

The political situation remains extremely fluid in the lead up to the presidential vote with alliances apparently forming and dissolving on an almost daily basis. Jakarta is awash with rumours and reports of private meetings between key party and military figures. It is impossible to predict the outcome with any degree of precision. As the MPR session opened most foreign and domestic commentators were united in their prediction that Megawati, whose party came first in the election in terms of both seats and share of the popular vote, would emerge at the head of a coalition government. However, Megawati's chances of victory may have been set back by developments since 1 October. She and her party appear either unwilling or simply not adept when it comes to striking deals with other parties and interest groups in the MPR. Given that Megawati's party is far short of the majority needed to elect Megawati to the presidency, securing the support of other groups in the run-up to the 20 October MPR vote will be vital.

The election on 3 October of reform-minded Amien Rais as Chairman of the MPR served as a further reminder that the outcome of the presidential vote is not a foregone conclusion. Rais, a key figure in the Poros Tengah or Central Axis coalition of eight moderate Muslim parties, has so far refused to endorse Megawati's bid for the presidency. Instead Central Axis is supporting its own candidate – Abdurrahman (Gus Dur) Wahid. While few predict victory for Wahid in the presidential vote, Rais' election as MPR Chairman does demonstrate the ability of Central Axis, which holds only 125 of 500 seats in the parliament, to mobilise a broad majority in the MPR. Rais' win also suggests that were it minded to do so, Central Axis could combine forces with Golkar and block Megawati's path to the presidency.

Further adding to the confusion is speculation that Golkar – which is having trouble attracting support in the MPR for its current presidential candidate, B.J. Habibie – may seek to switch candidates in favour of someone more acceptable to both the military and other key voting blocs. Habibie's credibility has been badly dented by the perceived poor performance of his transitional government, Golkar's second-place showing in the elections, the "loss" of East Timor and

continuing party corruption scandals.³ A decision by Golkar to drop Habibie and either nominate an alternative candidate from within Golkar ranks or throw its support behind another party's candidate would represent a major set-back for Megawati and could alter the outcome of the 20 October presidential election.

On the other hand, should Habibie prevail in his battle to retain the Golkar nomination, many fear that he may seek to buy the support of wavering MPR members. Estimates of the amount of cash in the president's "war chest" range from 700 billion rupee to 1,000 billion (\$US 82 million to 117 million). Even on the basis of the lower estimate, he could afford to offer 2 billion rupee (\$US 235,294) each to 350 MPR members, (the number of members whose support is required to command a majority in the MPR and win the presidency). One of Habibie's opponents within Golkar, party Vice-Chairman Marzuki Darusman, believes such a scenario is highly likely. "I have no doubt money politics is involved and that people around Habibie are using money politics to win the presidency", he said recently. "It's not easy to corroborate in terms of real evidence, but transactions are happening, there is no doubt".⁴

If Habibie does manage to win on 20 October the public would likely see it as a victory for corruption over democracy. The result could trigger massive public anger and widespread urban unrest as well as increased demands for autonomy or even independence in Aceh, Irian Jaya, Bali and other areas. In the words of one diplomat, "Indonesia will explode if Golkar get back in again".

III. THE ROLE OF THE MILITARY

Traditional dual role

The Indonesian constitution grants the country's armed forces a dual function, which gives it a role in Indonesian politics alongside its defence duties. The military is responsible for preserving national unity and is often credited with being the one national institution capable of holding Indonesia together. Accordingly, the armed forces chief is a key powerbroker in Jakarta, as evidenced by the efforts of the current round of presidential hopefuls to win the backing of the army's commanding officer General Wiranto. Until recently, serving military officers were routinely appointed to key posts in government, including as governors of regencies (local districts). The military's influence in the legislative process is reflected in the make-up of the MPR, where it is guaranteed a set number of seats, (although the number has steadily decreased from 100 to 38 today).

³ A recent opinion poll published in *Tempo* magazine and quoted in the *Far Eastern Economic Review* of 9 September 1999, page 18, showed that just 9% viewed Habibie as a "fit and proper person" to serve as president. Before the scandal broke, the figure had been 39%.

⁴ *Far Eastern economic Review*, "Habibie Feels the Heat", pages 18-20.

Military under attack – the East Timor effect...

The prominent role of the military in political life and its reluctance to submit itself to civilian control is increasingly under attack both at home and abroad.

The trigger for much of the recent international criticism of the military has been the behaviour of Indonesian soldiers in East Timor. There is substantial evidence of the involvement of elements of the military in the destruction and depopulation of East Timor that took place in the aftermath of the August vote by the East Timorese in favour of independence.⁵ But while the attitude of Western governments and public opinion have been strongly influenced by reports of military complicity in atrocities committed in East Timor, public opinion within Indonesia appears to be more divided and difficult to read. Large rallies have taken place in Jakarta protesting the army's violence in East Timor but at the same time the loss of East Timor and verbal attacks on Indonesia and its military by other governments have led to a wave of nationalist sentiment and a backlash against "foreign intervention" which may have had the short-term effect of hardening support for the military in some quarters of public opinion.⁶

As far as the military is concerned, the loss of East Timor is a major blow to morale. For years, the province had been regarded as an army stronghold and served as an ideal training ground for the force's rising young stars. Many senior officers served there in the past; indeed many may be implicated in past human rights abuses committed against the East Timorese by the army.⁷

Hostility to the military is exacerbated by what is seen as its heavy handed and violent response to peaceful demonstrations in Jakarta and other regions, including Aceh, Irian Jaya and Ambon. Poorly trained soldiers have repeatedly fired live ammunition into crowds of protesters – killing and maiming civilians. Seven protestors were shot dead during street protests in Jakarta on 23 and 24 September 1999 alone.⁸

In Aceh, Indonesia's northernmost region, the military stands accused of aggravating local tensions, even of covert collaboration with separatist militias, in a deliberate attempt to stoke a sense of crisis and thereby be able to justify maintaining tight military control of the region, (see section below on Aceh). Between 1989 and 1998, the military declared a Military Operational Zone (Daerah Operasi Militer or DOM) in Aceh and assumed sweeping powers to attack, arrest, detain and pillage without recourse to legal process. Since the end of DOM, the military has continued to use strong-armed tactics to crackdown on dissent. In late July 1999, 41 people, including a prominent former political prisoner, died after a military attack on an Islamic boarding school in Beutong,

⁵ See ICG East Timor Briefing, 6 October 1999. Evidence includes intercepts of communications between military commanders and militia members, armaments employed, the systematic patterns of destruction, the mass deportation by truck or by ship to West Timor and warnings given to relatives and friends by sympathetic members of the police and military.

⁶ It is worth bearing in mind that nationalism often rises in the immediate aftermath of military defeat, only to subside as the public turns against the authorities and demands political change, (an example is Argentina in the aftermath of the Falklands War of 1982).

⁷ For a fuller discussion of past record of senior military commanders who served in East Timor see *Far Eastern Economic Review*, 2 September 1999, "Military Challenge", pages 18-20.

⁸ *Jakarta Post*, "Students Vow to Take to the Streets Again", page 1, 27 September 1999.

West Aceh.⁹ As the level of military violence rises, so does public anger and unrest. "The situations in Aceh and East Timor are the result of the incompetence of the armed forces," commented Indonesian military expert Salim Said. "It's a disaster. The military are in very bad shape. They don't know what to do."¹⁰

The State Security Bill, which provoked an angry outburst of public opposition when it was pushed through Parliament in September 1999, provides the military with sweeping new national powers in the event of further public unrest or serious disturbances. The Bill was withdrawn after several days of violent scuffles between police and protesters in the streets of Jakarta but remains on hold and can be brought into force simply by means of a presidential signature.

Subjugating the military to civilian rule

An end to military violence, the expulsion of the military from the political arena and a full and thorough investigation into past human rights abuses perpetrated by the military are regarded by Indonesian human rights groups, students associations and most international observers as prerequisite to Indonesia's further democratisation. "The military must go back to the barracks and stay there. They have no place in the president's palace nor in the parliament", said one leading figure in Indonesian civil society.¹¹

While some limited steps have been taken to reign in the involvement of the military in politics, (ending the practice of appointing local military governors to oversee civil administration at the district level and reducing the number of seats allocated to representatives of the military in the Parliament), the process is far from complete. The continuing influence of the military, particularly at the upper levels of government, is reflected in the fact that it was General Wiranto and not the President who announced on 24 September 1999 the suspension of the State Security Bill following two days of student-led protests against the legislation. On 28 September, with negotiations on the formation of a new government accelerating ahead of the opening session of the MPR, it was left to Wiranto to convene a meeting of the leaders of six of the main parties to discuss political strategy. As Wiranto shuttles between meetings with various political leaders, speculation has mounted regarding which presidential candidate will receive the political backing of the military. Wiranto has reportedly been offered the vice-president slot both by Habibie and by Megawati's party.

A former army officer, retired Lieutenant-General Harsudiono Hartas, recently questioned the continuing political role played by military leaders, remarking that the military "should not get involved in the new government. Wiranto should think (his vice-presidential bid) over a thousand times because the psychological condition at home and abroad is not beneficial ... for him".¹² In a fiercely critical editorial, the English-language Jakarta Post newspaper argued that "The military has become too much of a political player. Rather than extinguishing fires, it has been starting its own, East Timor and ... (the recent street) violence two cases in

⁹ *Far Eastern Economic Review*, 2 September 1999, page 16, "Captives of the Cause".

¹⁰ *The Australian*, 6 October 1999, "Indonesian Army Faces New Order", page 11.

¹¹ ICG interview with human rights activist, Jakarta, 30 September 1999.

¹² *The Australian*, "Indonesian Army Faces New Order", 6 October 1999, page 11.

point. Which begs the question: If the firemen become arsonists, who will put out the fires?"¹³

Achieving reform

Indonesian civil society activists and foreign observers interviewed by ICG were circumspect in their assessment of the prospects of reforming the military's role and of the time-frame for achieving change. Most saw reform as a gradual process that would take between five and ten years to complete. This is broadly in line with indications given by Megawati Soekarnoputri, Abdurrahman Wahid and Amien Rais.

Steps yet to be taken include constitutional changes to end the military's dual socio-political role, the elimination of the bloc of seats earmarked for representatives of the armed forces in the MPR and the enforcement and extension of the ban on serving military officers being appointed to key administrative posts. In addition, some kind of independent and serious investigation into alleged human rights abuses perpetrated by the military will also be essential if a clear line is to be drawn under the past and a new regime of accountability created. This is likely to be one of the most sensitive and difficult steps of all to achieve. The military will not welcome any attempt to open the book on its past behaviour, and senior officers can be expected to fight hard to prevent any investigation that could lead to prosecutions of individuals for their involvement in atrocities.

Opinion varies concerning the best means of bringing about change within a reluctant military. Some, like Ana Gomes, the Portuguese envoy to Jakarta, believe that the military must be isolated as far as possible and call for an end to all sales of arms and military equipment to Indonesia and the suspension of military training programmes.¹⁴ International financial assistance and other forms of support should be made contingent upon progress in reforming the military and getting it out of politics.

Others believe that such sanctions are unlikely to work unless they are accompanied by inducements to co-operate with a process of reform. As Jeremy Wagstaff, Jakarta correspondent for *The Asian Wall Street Journal*, points out, the policy of banning the sale of rubber bullets to the military has backfired; soldiers policing demonstrations have simply turned to live ammunition instead.¹⁵ Wagstaff argues that pressure on the military needs to be combined with a policy of selective engagement that targets younger officers and offers training in, for example, human rights, English language and, at a practical level, modern, non-violent crowd control methods.¹⁶ In this way the international community may be able to encourage and assist the Indonesians to create a more effective, professional army, better equipped to manage its legitimate defence and civil order responsibilities.

¹³ *Jakarta Post*, 28 September 1999, page 4, "Who Started the Fire?".

¹⁴ ICG interview with Ana Gomes, Jakarta, 29 September 1999.

¹⁵ ICG interview with Jeremy Wagstaff, 28 September 1999.

¹⁶ U.S. Admiral Blair caused some controversy when he announced that he planned to invite senior Indonesian military commanders to Hawaii to participate in a training programme.

If a transition to a more professional army is to be achieved, the issue of salaries for members of the armed forces will also need to be addressed. Present salaries are pitched very low, particularly for junior officers. A corporal, for example, typically receives approximately 250,000 rupee a month (\$US 29); a Brigadier General, closer to 4,000,000 rupee (\$US 465). According to some observers, low salary levels encourage corruption and may also lead some soldiers to participate in attacks on private property carried out by private armed gangs as a means of supplementing their meagre army income.

Finally a means must be found to conduct a full, open and far-reaching investigation into past human rights abuses perpetrated by the military or by militia with military support not just in East Timor but also in other parts of Indonesia. The military can be expected to oppose such an investigation vigorously and will be unlikely to co-operate, particularly if individual commanders are threatened with the prospect of prosecution. Given the need to proceed without delay and to avoid provoking confrontation with the military on this issue, one option would be to base any investigation on the model of the Truth and Reconciliation Commission in South Africa. This would permit an honest appraisal of the past, acknowledgement of wrongdoing and, importantly, acceptance of responsibility for past human rights abuses, while protecting individuals from future prosecution.¹⁷

IV. CORRUPTION

Corruption can be found in virtually every corner and crevice of Indonesian public and commercial life – from politics to the administration, business and international trade.¹⁸ For many years, the problem went largely unchecked and unnoticed. Rapid, often-unregulated economic development took place within the context of a vast state with weak institutions, no tradition of political accountability and a judiciary whose support could be bought by the highest bidder. Under-the-counter payments, special commission fees and ‘sweetener’ payments are ubiquitous at all levels of Indonesian society.¹⁹

The relaxation of press licensing and censorship practices and the growth of civil society over the past two years have already helped to create a check on further corruption. Corruption scandals that in the past might have been covered up are now front-page news. Earlier this year Indonesia’s attorney general was forced to resign following the publication of evidence that he had received in his personal bank account a substantial payment from a businessman under investigation. The minister claimed the money was not for him but was a donation to the national wrestling federation, of which he was a senior officer.

¹⁷ See Chile and Argentina where military leaders were offered immunity from prosecution as a means of facilitating transition to democratic government.

¹⁸ According to one diplomatic representative interviewed, a leading aircraft manufacturer routinely factors in a margin of up to 30% in the price of aircraft sold to Indonesian airlines to cover required “administrative” payments and other “processing” costs.

¹⁹ An anecdote illustrates the point: ICG staff exiting Indonesia were temporarily prevented from leaving by a customs officer who offered to help arrange permission to leave in return for a bribe. Such practices are commonplace across the Indonesian public service, where extra payments are often demanded before simple administrative requests can be processed.

On 20 July 1999, news broke of a payment of 546 million rupee (\$US 70 million) by Bali Bank to a company controlled by Golkar Deputy Treasurer Setya Novanto and apparently set up to collect funding for Golkar. The payment was made in return for the government's assistance in retrieving 904 million rupee (\$US 120 million) in defaulted loans paid by Bank Bali to a bankrupt financial institution. A House of Representatives inquiry concluded that seven senior government officials were either directly or indirectly involved in the scandal, although no charges have been filed against any of the individuals concerned. President Habibie has refused to suspend any of those accused of involvement, several of which are his close aides, until a court has pronounced them guilty.

These and other recent scandals illustrate both the progress that has been made and the distance still left to cover before the lid can be said to have been put on corruption in Indonesia. The fact that the scandals broke at all – thanks mainly to the press and civil society groups, among them Indonesia Corruption Watch, an anti-corruption NGO – is encouraging, and the details have played out in public view in the pages of the Indonesian press and on television and radio. However, while the process has been more transparent than it would have been in the past, neither scandal has led to those responsible being held to account for their deeds. In the case of the former attorney general, no charges have been pressed, and he remains a senior officer in the Indonesian army. In the case of the Bank Bali saga, all the individuals named in the House of Representatives probe remain in their positions, and to date, neither the police nor the new attorney general have sought to press charges.

V. RULE OF LAW

Reforming the judiciary and legal system and establishing a rule of law are probably the greatest and most important challenges ahead if Indonesia is to negotiate successfully the transition to democracy as well as revive its flagging economic fortunes. All of those interviewed by ICG believed that the present judicial system was failing, and there was universal agreement that judicial and legal reform should be treated as a top priority by the incoming government.

A recent World Bank report found that “there are widespread perceptions that corruption is rampant in the judiciary and that disputes are not adjudicated swiftly and competently ... To root out corruption while ensuring judicial independence is a difficult challenge”.²⁰ The bank is pushing for higher salaries; new recruitment, promotion and disciplinary practices; and a greater degree of openness, with judges required to publish the reasons for court decisions.

The Habibie government has already made a number of changes in relation to the judicial system, but to little effect. According to Gregory Churchill, of Counsel at a major Jakarta-based law firm and a prominent commentator on legal issues, the emphasis to date has been mainly on administrative reforms to create a clearer delineation between the judicial and executive branches of the state. Responsibility for administration of the judicial system, which was previously split between the interior minister and the Supreme Court, has been consolidated

²⁰ *Far Eastern Economic Review*, “Changing Times”, 19 August 1999, pages 20-23.

within the Supreme Court. While many welcome this development as vital to creating a more independent judiciary, there is some anxiety among Indonesian officials that without any political control, the judges would be freer to accept bribes and entrench their own privileges.²¹

In addition to reorganising administration of the judiciary, the Habibie government has also acted on an IMF recommendation to significantly increase judges' salaries. Salaries for all but Supreme Court judges are now between two and two-and-a-half times their previous levels.²² The move, which is intended to reduce the incentive for judges to accept bribes, has been widely welcomed. As one commentator points out, however, its impact may be less dramatic than is hoped. In the view of Roland Rich, Director of the Australia-based Centre for Democratic Institutions, judges have never accepted bribes out of necessity, since their income, even before the recent salary rises, has always been sufficient to cover basic living, housing and food costs. Instead, most judges see bribes as a means of maintaining the relatively luxurious lifestyle that they came to expect during the Soeharto years. The problem can only really be tackled, according to Rich, if we succeed in changing expectations, not just salaries. To this end, he advocates measures aimed at boosting judges' status and injecting greater *esprit de corps* and training programmes aimed at raising awareness of issues of transparency and judicial accountability.

Finally, another recent initiative, the creation of commercial courts, also appears to be floundering. The courts, conceived in April 1998 and opened in September 1998, were part of the government's bankruptcy law reform. Special court procedures were drawn up with the aim of ensuring that the new courts operated with greater transparency than was the case in the rest of the judicial system, (for example, for the first time, commercial court judges are required to justify their decisions and publish their reasoning). However, a year after the courts were created, greater transparency has yet to lead to a cleaner, more impartial process. Instead the flaws and failings of judges are simply more public than was the case in the past. Over time, the situation may improve, as public pressure grows on the judges to observe due legal process and adopt a more independent position.

Churchill and other advocates of legal and judicial reform are now waiting to see how reform-minded the new government will be. A meeting of legal professionals is scheduled in October to discuss a possible reform agenda. Attention will cover the broad range of areas requiring reform, including the police, prosecution, law schools, court procedure, recruitment and legislation.

The political parties themselves have agreed that a policy platform for the new government, including a position on legal and judicial reform, should be negotiated before the new president and government take office. The terms of any commitment to such reform are likely to be broad, but reformers see the development as potentially significant since it will lock the principle of legal and judicial reform into the policy priorities of the new government.

²¹ ICG interview with students in Jakarta, 30 September 1999.

²² Interview with Gregory Churchill, Jakarta, 30 September 1999. The increases fell short of those recommended by the IMF.

VI. MEDIA

Having had many of the restrictions placed upon it removed over the past eighteen months, the media is now freer than ever before to stimulate public debate and investigate abuses of government power. The relaxation of licensing practices has led to an explosion in the number of newspapers and local radio and television stations. Many, however, according to Jakarta Post General Manager Raymond Toruan, are already in financial difficulty and lack the resources to provide effective and investigative news coverage. They are also still subject to some remaining government restrictions designed to limit their ability to provide an independent news service. Radio stations, for example, are not entitled to broadcast their own news programmes but must carry the official daily state news programme (which contains accounts of important government initiatives, statements, speeches etc.) In fact, many stations get around this requirement by broadcasting the official state news as required alongside their own programmes which are carefully not called “news” but rather “Daybreak” or “Morning Bulletin”.

But while the changes in media licensing and censorship have opened up the media sector as never before, there are signs that some journalists remain hesitant when it comes to challenging the decisions or behaviour of senior government officials and lack professionalism when it comes to covering politically sensitive issues.²³ In late September 1999, for example, with Australian-led UN peacekeepers moving to take control of East Timor, some Jakarta newspapers launched into a jingoistic attack on foreign intervention. Photographs of East Timorese who had been burnt to death by pro-integration militias and discovered by incoming Australian troops were carried with the headline “Australia burns our people” beside a story alleging that the Australians were bent on killing as many Indonesians as possible.

Kamala (Nana) Chandrakirana, Secretary General of the National Commission on Violence Against Women, described how the media played down evidence of the rape of 66 women during the May 1998 disturbances. When the women concerned refused to be interviewed by journalists, the press raced to proclaim that there was “no proof” to the allegations, suggesting that the story was “a fabrication” by Christians, thereby not only showing scant regard for the truth and the victims but also gratuitously introducing the issue of religious hatred.²⁴ Despite a recommendation by a government-established fact-finding team that those responsible for the rapes be brought to justice, no charges were ever brought.

Training programmes and exchanges that allow Indonesian journalists to spend time working in media organisations in the region and the West could play an important role in helping to change such attitudes and create a more dynamic and vigilant press corps. As the confidence and professionalism of the media grows, the effect on the Indonesian political scene promises to be profound.

²³ ICG interview with Ana Gomes, Portuguese envoy to Jakarta, 27 September 1999.

²⁴ ICG interview with Kamala (Nana) Chandrakirana.

VII. CIVIL SOCIETY

Emboldened by its success in mobilising public anger towards the old Soeharto regime and in helping to bring about the regime's fall in May 1998, civil society is growing in confidence, capacity and effectiveness. While the civil society sector is still relatively new, a wide range of groups are already up and running - from students movements to human rights groups, women's associations, counter-corruption groups and other groups espousing democracy, regional autonomy, an end to military violence and other causes. In North Sumatra, in particular, trade unions and association are flourishing – as people discover the benefits of mass organisation as a means of expressing their interests and demands.

But if the climate for civil society has improved in the past two years, it remains far from hospitable. Several activists interviewed by ICG described incidents of intimidation by members of the military, one had suffered imprisonment as a result of his participation in protests against the government. Amnesty International reports that “330 people were arrested for peaceful political activities in connection with the March (1998) presidential election. Many had the charges against them dropped and the remaining prisoners were released after President Soeharto resigned ... In September and October 1998, six men were arrested in Irian Jaya for peaceful political activities ... they were alleged to have arranged a meeting to discuss the political status of the province”.²⁵

VIII. REGIONAL ISSUES – NATIONAL UNITY AT RISK?

There has been much talk in Jakarta and across Asia of the risk of Indonesia going the way of the Balkans, with national unity giving way to a series of messy wars of secession. It is a prospect that causes deep anxiety in capitals around the region where many observers would prefer to see Indonesia – with its 210 million people and massive potential to export instability throughout Southeast Asia – stay in one piece.

The two areas where separatist support is strongest are Aceh, (in the far north of Sumatra), and Irian Jaya, (in the extreme east, bordering Papua New Guinea). In both places, armed rebellions, launched with the express intent of achieving independence from Indonesia, have met with a fierce and bloody response from the military. There has been significant bloodshed too in Ambon, where tensions are running high between local Christians and Muslims. Elsewhere, including in North Sumatra, in Kalimantan and Bali, there is growing demand for greater regional autonomy and control over local natural resources.

Jakarta's response to the growing sense of restlessness has been two-pronged. First, in Aceh and Irian Jaya, the military have mounted elaborate and intensive operations, justified on the basis of counter-terrorism and defence of national unity. In both cases, human rights groups and others on the ground have accused the military of deliberately stoking up conflict in order to justify a continued military presence and repression, (see below, Aceh case study).

²⁵ *Amnesty International USA Annual Report 1999*, “Indonesia and East Timor”, Amnesty International USA.

The second element of the government's two-pronged response has been to offer all the regions a new package of autonomy measures. The measures include the devolution of decision-making to the local level on issues affecting local people and a larger share of the profits from the extraction of natural resources to be ploughed back into local communities. While the autonomy package may just be sufficient to quell discontent in some parts of the archipelago, it is most unlikely to defuse the escalating crises in Aceh and Irian Jaya. The proposed measures do not include the withdrawal of Jakarta's military forces to barracks nor the right to mount thorough, independent investigations into past human rights abuses perpetrated by the military – both of which are seen as prerequisites to a solution in Aceh and Irian Jaya.

Aceh case study

Aceh lies on the northernmost tip of Sumatra, across the Straits of Malacca from the border between Thailand and Malaysia. Devout Muslims, the Acehnese have long enjoyed a reputation of proud independence – having fought tooth and nail to resist domination first by the Dutch colonialists and later by “the Javanese”.

The present round of conflict dates back to the discovery, in 1974, of major gas reserves in Aceh. Shortly after the discovery, Hasan di Tiro, a veteran of the previous Acehnese Islamic uprising of 1953, returned from the US. According to sources interviewed in Aceh, di Tiro's return was orchestrated by the Indonesian military, who were anxious to create a pretext for stepping up their operations in the area. On 4 December 1976, di Tiro launched the Acehnese independence movement (Free Aceh).

For the next thirteen years, Free Aceh went virtually nowhere. Di Tiro himself left Aceh for Sweden just over two years after the movement's creation. Despite sporadic attempts in 1982 and 1987 to attract attention to the cause in the lead-up to elections, Free Aceh never developed a clear ideology and failed to attract much support among the local population.

Nevertheless, during the intervening years, disenchantment with Jakarta grew as calls for greater autonomy went unheeded and Aceh failed to receive a fair share of the benefits to flow from the extraction of natural resources in the area. Adding to the sense of mounting frustration, for many years Jakarta also resisted popular pressure to permit the observance of Islamic law in Aceh, even going as far as to ban the wearing of the Muslim veil in public.

In 1989 the situation lurched closer to crisis when the military launched a major offensive, ostensibly to crackdown on alleged terrorist activities in Aceh. The military's initiative, initially intended to last for 12 months, was extended and ran for nine years, ending in August 1998. During that time, the military assumed sweeping powers of search, arrest and detention that effectively permitted them to pillage and kidnap people without recourse to any legal process. Public anger at the military's strong-arm tactics fuelled hostility towards Jakarta and helped strengthen the Free Aceh movement at a time when support had been flagging.

In August 1998, following the fall of the Soeharto regime and the arrival of President Habibie, the military was forced into suspending its special operations in Aceh. Rather than withdraw from the area, however, force commanders ordered an "assault" on the Free Aceh movement. According to local sources, the assault involved close collaboration between Free Aceh militia and the military, with the latter often turning a blind eye and sometimes actively participating in the activities of the former. Amnesty International staff described soldiers from the Indonesian military routinely bypassing militia training camps, feigning ignorance.²⁶ Local sources in Aceh reported a number of incidents in which the police and military have failed to intervene to prevent car theft, house looting or extortion rackets by Free Aceh militia. Cars stolen during raids apparently carried out by Acehese militia later turned up as official Kopassus (Special Forces Command) vehicles. In one incident, anti-riot police arrived hours after a reported attack on a family by alleged Free Aceh militia only to beat up neighbouring residents "for hiding the perpetrators".²⁷ According to Acehese human rights activists interviewed by ICG, such incidents are engineered to show that the situation is out of control and that a police and army crackdown is necessary. For some junior soldiers there may be an additional incentive. Collaboration with the Acehese "freedom fighters" can provide a lucrative source of extra income from extortion and looting to supplement meagre army salaries.

Caught in the crossfire is the civilian population. Six hundred out of 900 village heads in Pidie province of Aceh resigned in protest at being held responsible by the military for independentist activities, while at the same time being threatened by Free Aceh extortion racketeers.

It may not be too late to prevent the violence in Aceh from escalating into war – though most agree that war is where the situation is heading unless Jakarta agrees to change tack. It is possible that, even after the violence and trauma of the past ten years, the Acehese themselves are still willing to live within Indonesia, provided a set of minimum conditions are met. Substantial autonomy, a greater share of the profits from the extraction of local natural resources (above and beyond that proposed in the present autonomy legislation) and the right to observe Islamic law will all need to be discussed and agreed as part of this process. But even more important, for those Acehese consulted in the preparation of this report, is for Jakarta to reign in its security forces and permit a full investigation into human rights abuses in Aceh. Only the truth, say the Acehese, can pave the way to peace and reconciliation.

IX. RECOMMENDATIONS

The following recommendations emerged from discussions with foreign observers and civil society activists in Indonesia in late September/early October 1999. It is not intended to be a comprehensive list of proposals. Some of the ideas presented below may be developed in greater detail by ICG over the coming months.

²⁶ ICG interview with Amnesty International staff, 28 September 1999.

²⁷ ICG interview with Acehese human rights activists.

Engaging the new government

- That the international community should seek to engage the new Indonesian government on a range of issues central to Indonesia's transition to democracy;
- That the prospect of significant financial and technical support should be held out, contingent upon the government committing itself to a series of specific reforms essential to the success of transition (see below).

The military

- That the international community should encourage and assist the new government to draw up, enact and implement a package of reforms relating to the military, including:
 - The withdrawal of the military from politics;
 - An extension of the presently partial ban on the appointment of serving military officers to posts in the executive or administration;
 - Statutory limitation to the powers of the military and the permanent withdrawal of the 1999 State Security Bill;
 - The abolition of military representatives in the MPR;
 - A review of salaries for all members of the armed forces;
 - A review of induction and training programmes; and
 - A genuinely independent "Truth Commission" into past abuses of human rights by members of the armed forces.
- That the international community should make it clear that failure to reform the military will lead to the withdrawal of support for the new government and harsh sanctions directed against senior military leaders, including the suspension of all military-to-military contacts, continuing ban on sales of all weapons and equipment, travel restrictions for all members of the armed forces and the targeting and freezing of overseas-held assets of senior military commanders.

Cracking down on corruption and strengthening the rule of law

- That the new government order a full, open and far-reaching investigation into allegations of corruption in the public sector.
- That action be taken to prosecute individuals against whom there is substantial evidence of corrupt practice.
- That the workings of the commercial courts be reviewed and proposals developed for improving the independence and effectiveness of the courts.
- That the requirement, first introduced in the commercial courts, for all judges be required to publish the reasons for court decisions be extended to include all judges in all courts.
- That international technical assistance be provided in relation to the induction, training and development of judges.
- That funding be stepped up to civil society groups active in investigating and exposing evidence of corruption.

Defusing local tensions

- That the new government build on the package of autonomy laws offered to the regions by the outgoing government with a view to meeting demands for a greater degree of local autonomy and a fairer share in the profit from local resources than has hitherto been offered.
- That the government order the immediate withdrawal to barracks of the military and meets with local authorities and civil society to discuss ways of maintaining order without recourse to military means.
- That the government establish a "Truth Commission" into past abuses of human rights by members of the military (see above).