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PRABOWO AND THE SHORTCOMINGS OF INTERNATIONAL JUSTICE

NIKOLAS FEITH TAN*

On 9 July 2014, Joko Widodo became Indonesia's seventh president, winning the election by around six percentage points. The man he defeated, Prabowo Subianto, is suspected of committing a range of human rights offences in Java in 1997–98. While Prabowo failed to win the presidency, his strong candidacy highlights the ongoing impunity for perpetrators of serious human rights violations in Indonesia. Despite a human rights court being legislated for in Indonesia, it is yet to prosecute past human rights abuses by state officials. While Prabowo's crimes may come under the subject matter jurisdiction of the International Criminal Court, temporal jurisdiction renders prosecution impossible. This article explores Prabowo's human rights abuses and how international criminal law has failed to achieve justice for these crimes. It concludes that Prabowo's political rise threatens the aims of international criminal justice.

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I INTRODUCTION

A man of known brutality and ambition.¹

Joko Widodo secured victory as Indonesia's seventh president on 9 July 2014, leading by around six percentage points. His rival, Prabowo Subianto is suspected of committing a range of human rights offences in Java from 1997–98. This article explores the failings of international criminal law in addressing Prabowo's alleged human rights offences.

Indonesia has a long record of serious international crimes that remain unpunished. This includes a series of mass killings, torture, and enforced disappearances potentially amounting to crimes against humanity or war crimes. These crimes were committed during purges of suspected communists in the 1965–66 oppression of rebel forces. They were also committed against civilians in East Timor between 1975–99,² in Aceh between 1989–98, and through violent reactions to pro-democracy demonstrations in 1997–98.

Prabowo is a former head of the Special Forces Command, *Kopassus*, and the chief patron of the Great Indonesia Movement Party, *Gerindra*. Prabowo's political rise threatens the aims of international criminal justice, namely, to end impunity for serious human rights abuses. If Prabowo was elected as president of Indonesia — one of the world's largest democracies and a member of the G20 — this would have highlighted the ongoing impunity for perpetrators of serious human rights violations in the country. While a

¹ Jemma Purdey, *Anti-Chinese Violence in Indonesia, 1996–1999* (University of Hawaii Press, 2006) 156.

² See, eg, Commission for Reception, Truth and Reconciliation, *Chegal!: The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste* (2005) <<http://www.cavr-timorleste.org>>.

human rights court is legislated in Indonesia, it has yet to convict a single case, let alone prosecute past human rights abuses carried out by state officials.³ Against this backdrop, this paper asks how international criminal law can address the alleged crimes carried out by Prabowo.

It is important to note that Prabowo is not merely accused of crimes connected to the May riots of 1998. While stationed in East Timor in the early 1980s, he was also suspected of conducting scorched earth operations that may amount to war crimes or crimes against humanity.⁴ However, this paper focuses on the 1997–98 violence that resulted in allegations of enforced disappearances against Prabowo.

This paper consists of three parts. First, it outlines the history and structure of international criminal law courts. Second, it sets out the events of the 1997–98 violence in Indonesia and Prabowo's alleged role in carrying out enforced disappearances. Finally, it concludes that despite the occurrence of international crimes, justice remains elusive.

II INTERNATIONAL CRIMINAL LAW

International criminal justice was born from the horrors of the Second World War, resulting in the military tribunals at Nuremberg and Tokyo. The tribunals introduced the concept of international crimes such as war crimes and crimes against humanity. A number of international treaties codified these violations. This included the Geneva Conventions of 1949 (applicable during times of war) and more general human rights instruments such as the 1948 United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* and the 1984 United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁵ Currently, international criminal law can be characterised as the body of law dealing with

³ Integrated Regional Information Networks, *Whither human rights in Indonesia?* (26 November 2012) Refworld <<http://www.refworld.org/publisher,IRIN,,IDN,50b5dcfb2,0.html>>.

⁴ Gerry van Klinken, 'Prabowo and human rights', *Inside Indonesia* (online), 28 April 2014 <<http://www.insideindonesia.org/current-edition/prabowo-and-human-rights>>.

⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1486 UNTS 85 (entered into force 26 June 1987).

individual responsibility for genocide, war crimes, crimes against humanity, and the crime of aggression.⁶

Despite the fact that international crimes became defined, enforcement was rare until the end of the Cold War, after which ad hoc tribunals re-enlivened the international criminal justice project.⁷ In response to international crimes committed in the former Yugoslavia in 1991, the United Nations Security Council ('UNSC') authorised the establishment of the International Criminal Tribunal for the former Yugoslavia ('ICTY'). Similarly, following the Rwandan genocide in 1994, the UNSC established the International Criminal Tribunal for Rwanda ('ICTR').

More recently, hybrid courts such as the Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia have assisted in refining the scope of international crimes within circumscribed mandates. An additional autonomous court with United Nations backing is the Special Tribunal, which has a mandate over a single crime. These ad hoc and hybrid tribunals are important as they develop and refine international criminal jurisprudence. Notwithstanding, their geographically limited jurisdictions mean they clearly have no mandate over Prabowo's alleged crimes.

The international community's response to serious human rights violations, including in Indonesia, is best characterised as piecemeal. It was not until 2002 that a global court was established with jurisdiction over the most serious international crimes.

A The International Criminal Court

Impunity has been dealt a decisive blow... a missing link in the international justice system is now in place.⁸

The International Criminal Court ('ICC') was established as a response to atrocities of the 20th century that 'deeply shock[ed] the conscience of humanity'⁹ with the express

⁶ Robert Cryer et al, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 2nd ed, 2010) 4.

⁷ Commission for Reception, Truth and Reconciliation, above n 2; Payam Akhavan, 'The Rise, and Fall, and Rise, of International Criminal Justice' (2013) 11(3) *Journal of International Criminal Justice* 527.

⁸ Kofi Annan, 'Transcript Of Press Conference With President Carlo Ciampi Of Italy And Secretary-General Kofi Annan In Rome And New York By Videoconference, 11 April' (Press Release, SG/SM/8194, 11 April 2002) <<http://www.un.org/press/en/2002/sgsm8194.doc.htm>>.

⁹ *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) ('*Rome Statute*').

purpose of ending impunity for international crimes. The preamble affirms that such crimes ‘must not go unpunished’.¹⁰ The ICC has material jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression.¹¹

There are currently 122 states parties to the *Rome Statute of the International Criminal Court* (*Rome Statute*). In its 11 years of operation, 21 cases from nine situations have been brought to trial, with just one case completed (Thomas Lubanga of the Democratic Republic of Congo was convicted for war crimes in 2012). The ICC faces political pressure following such modest returns since its establishment, amid perceptions of an African bias.¹² The principle of complementarity guides the ICC’s exercise of jurisdiction: it is a court of last resort intervening only when national judicial authorities are unwilling or unable to conduct genuine investigations or proceedings.¹³

Indonesia played a relatively active role in drafting the *Rome Statute* and has committed to joining the ICC.¹⁴ In Indonesia’s statement to the Sixth Committee of the United Nations General Assembly in October 1999, it said: ‘[u]niversal participation should be the cornerstone of the International Criminal Court’.¹⁵

Accession to the *Rome Statute* has been a regular fixture of Indonesia’s national human rights plans for the past decade, with no result. In 2004 the plan included an intention to ratify the *Rome Statute* in 2008.¹⁶ Accession was also included in the 2007–10 plan and similarly, in 2010–14.¹⁷

Domestic politics have played a key role in the ongoing delays, with the national human rights commission, Komnas HAM, repeatedly recommending accession.¹⁸ Senior

¹⁰ Ibid.

¹¹ Ibid art 5.

¹² Nik Tan, ‘Africa and US worry the frayed edges of international criminal justice’, *Eureka Street* (Australia), 5 November 2013.

¹³ *Rome Statute* art 17(1)(a).

¹⁴ *Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2004–2009* [Presidential Decree No 40 of 2004 on the Action Plan on the Human Rights in Indonesia for 2004–2009] (Indonesia).

¹⁵ Amnesty International, *Fact sheet: Indonesia and the International Criminal Court* (2006) <www.amnesty.org/pages/icc-factsheets-eng>.

¹⁶ Ibid.

¹⁷ *Peraturan Presiden Tentang Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2011–2014* [The Presidential Decree No 23 of 2011 on the National Action Plan for Human Rights in Indonesia for 2011–2014] (Indonesia).

¹⁸ Margaret S Arintonang, ‘Komnas HAM Renews Calls for ICC ratification’, *The Jakarta Post* (Indonesia), 20 July 2013; The Indonesian Civil Society Coalition for the International Criminal Court, ‘Civil Society collaborates with the Indonesian National Human Rights Commission (Komnas HAM) to commemorate the World Day of International Justice, July 17, 2013’ (Press release, 17 July 2013).

government figures have resisted these calls, specifically on the grounds that it will threaten the immunity of former generals and current politicians Prabowo and Wiranto.¹⁹

Attempts have been made to balance the need to bring perpetrators of serious crimes to justice against Indonesia's desire to handle its own affairs domestically. Law No 26 of 2000 created a Human Rights Court with jurisdiction over crimes against humanity and genocide,²⁰ seemingly in direct acknowledgement of the *Rome Statute*. This law empowers Komnas HAM to conduct initial investigations into alleged crimes against humanity and genocide and to make recommendations for prosecution to the Attorney General's Office.²¹

Even if Indonesia were to accede to the *Rome Statute*, Prabowo's crimes would not fall under the ICC's temporal jurisdiction as the relevant crimes were carried out in 1998. This leaves Prabowo effectively immune from prosecution on the international stage.

III THE CRIMES

The May violence exceeded limits of what was perceived as justifiable or explainable.²²

Protest and violence in 1997–98 led to the greatest shift in Indonesian politics in over 30 years — the resignation of Suharto and the beginning of the *reformasi* (reformation) movement that brought democracy to Indonesia.²³

On the back of the 1997 Asian economic crisis and corrupt elections, Indonesian civil society and university students began a series of demonstrations calling for democratic reforms. Protests were met with state crackdowns, mostly through military measures including killing, torture, rape, and enforced disappearances. Indonesians of Chinese descent were targeted and lootings and property damage to Chinese interests were

¹⁹ Wiranto is also a former general suspected of committing human rights violations in 1997–98 and while in command of the Indonesian military in East Timor when post-referendum violence required United Nations intervention in 1999; Commission for Reception, Truth and Reconciliation, above n 2.

²⁰ *Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia* [Law No 26 of 2000 concerning the Establishment of the Human Rights Court] (Indonesia).

²¹ Christoph Sperfeldt, *The Long Way from Rome to Jakarta: Prospects of Ending Impunity for International Crimes in Southeast Asia* (28 June 2013) *Regarding Rights* <<http://asiapacific.anu.edu.au/regarding-rights/2013/06/28/the-long-way-from-rome-to-jakarta-prospects-of-ending-impunity-for-international-crimes-in-southeast-asia/>>.

²² Purdey, above n 1, 143.

²³ *Ibid* 94.

common.²⁴ Throughout 1997 and 1998, the Indonesian military targeted student activists, seeking to dissuade them from agitating for change. Enforced disappearances were carried out systematically, often accompanied by other human rights violations such as torture. Several activists who were released said they were kidnapped by *Kopassus* under the leadership of Prabowo.²⁵

This volatility reached crescendo and exploded in mass violence in mid-May 1998 when rioting throughout Jakarta left more than 1000 people dead.²⁶ Between 13–15 May, enforced disappearances of students were carried out. The events in Jakarta were felt across Indonesia:

The violence of May 1998 brought terror into the entire nation. Its victims were mainly women, urban poor and Chinese Indonesians, but the audacity and impunity assumed by its perpetrators shocked all of Indonesia and much of the international community.²⁷

Suharto resigned on 21 May. Immediately, a Joint Taskforce was established to identify the organisers and perpetrators of the violence. The Joint Taskforce's report released in November 1998 failed to identify perpetrators of the violence, stating: '[t]he 13–15 May 1998 incidents could not be parted from the social, political condition and dynamics of the Indonesian society during the period, as well as succeeding impacts.'²⁸

In 2006, Indonesia's national human rights commission submitted its Final Report on the Inquiry on Enforced Disappearances, which revealed that at least 13 pro-democracy activists remained unaccounted for from among the abductions that occurred in 1997 and 1998.²⁹ The report recommended the establishment of an ad hoc court to prosecute the alleged perpetrators of the enforced disappearances. In September 2009, the People's Representative Council (DPR) issued recommendations echoing those made by

²⁴ Ibid 143.

²⁵ Office for Justice and Peace of Jayapura et al, *The Practice of Torture in Aceh and Papua 1998-2007 Office of the High Commission of Refugees with an Annex on the Situation of Human Rights in Timor Leste* (2007) <<http://www2.ohchr.org/english/bodies/cat/docs/ngos/ShadowReportIndonesia40.pdf>>.

²⁶ Purdey, above n 1, 146.

²⁷ Ibid 143.

²⁸ Ibid 122.

²⁹ These people are identified as Sonny, Yani Afri, Ismail, Abdun Nasser, Dedi Hamdun, Noval Alkatiri, Wiji Thukul, Suyat, Herman Hendrawan, Bimo Petrus Anugerah, Ucok Munandar Siahaan, Yadin Muhidin and Hendra Hambali.

Komnas HAM. It also recommended providing rehabilitation and compensation to the families of the victims.³⁰ No such measures have been carried out.

A Prabowo's Role

To be frank, I am not your mastermind.³¹

Prabowo was appointed commander of *Kostrad* (Army Strategic Reserve Command) in March 1998, giving him considerable control over military operations in Jakarta throughout the violence in May.³² Prabowo had risen through the ranks of the Indonesian military, leading a battalion in East Timor in the 1980s and reaching the rank of colonel in 1992. He became Suharto's son-in-law. By the age of 47, he was a three-star general.

Before taking charge of the 27 000 strong *Kostrad*, Prabowo was suspected of orchestrating a series of disappearances of activists and students in the lead-up to the 1997 elections as leader of *Kopassus*.³³ While it is likely Prabowo ordered or carried out multiple enforced disappearances, the key crime is the abduction of 13 activists in May 1998, all of whom remain unaccounted for. Prabowo has never been charged with the enforced disappearances, having publicly admitted to carrying out the abductions, but not the activist killings.³⁴ Following Suharto's resignation, a military review board recommended Prabowo's discharge from service because of his involvement. He was discharged from military service on 24 August 1998.³⁵

In 2000, Prabowo became the first person to be denied entry into the United States under the provisions of the *United Nations Convention against Torture and other Cruel*,

³⁰ International Commission of Jurists, 'Alternative Report to the UN Human Rights Committee on the Initial Report of Indonesia under the International Covenant on Civil and Political Rights' Submission to the Human Rights Committee, *108th Session of the UN Human Rights Committee*, 8–26 July 2013, 2.

³¹ Prabowo Subianto quoted in Purdey, above n 1, 150.

³² Purdey, above n 1, 107.

³³ Terence Lee, 'The Armed Forces and Transitions from Authoritarian Rule: Explaining the Role of the Military in 1986 Philippines and 1998 Indonesia' (2009) *42 Comparative Political Studies* 640, 657.

³⁴ Prabowo created a covert team of soldiers from Kopassus to kidnap activists in February and March 1998. See, eg, 'What Guarantees do People want from me?', *Tempo English Magazine* (Indonesia) 3 November 2013; Per Liljas, 'Here's why some Indonesians are Spooked by this Presidential Contender', *Time Magazine* (online), 12 June 2014 <<http://time.com/2836510/prabowo-subianto-human-rights-indonesia-elections/>>.

³⁵ Purdey, above n 1, 154.

Inhuman or Degrading Treatment or Punishment.³⁶ A combination of ‘foreign policy considerations, a reasonable belief that he was involved in the 1998 violence and coincidental timing’ were reasons put forwarded for the visa ban.³⁷

In the lead-up to the 2014 election, Prabowo had ‘an image problem.’³⁸ He sought to distance himself from the allegations of human rights violations and, perversely, a number of surviving victims of the 1997–98 violence became members of Prabowo’s party in an attempt to tidy his tainted image.³⁹

B *Enforced Disappearance As An International Crime*

Enforced disappearances can amount to crimes against humanity under international law.⁴⁰ Article 7 of the *Rome Statute* defines enforced disappearance as:

the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.⁴¹

This definition reflects the *International Convention for the Protection of All Persons from Enforced Disappearance*, to which Indonesia became a signatory in October 2010. The Convention expressly excludes exceptional circumstances such as a state of war or internal political instability as a justification for the crime.⁴²

Other international law instruments on enforced disappearances reflect similar standards. The preamble to the *Inter-American Convention* (‘the Convention’) *on the Forced*

³⁶ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1486 UNTS 85 (entered into force 26 June 1987); ‘What guarantees do People want from me?’, *Tempo English Magazine* (Indonesia) 3 November 2013.

³⁷ Susan Sim, ‘Prabowo Denied US Visa under Torture Agreement’ *The Straits Times* (Singapore) 31 December 2000.

³⁸ Gerry van Klinken, ‘Prabowo and human rights’, *Inside Indonesia* (online), 28 April 2014 <<http://www.insideindonesia.org/current-edition/prabowo-and-human-rights>>.

³⁹ ‘What Guarantees do People want from me?’, *Tempo English Magazine* (Indonesia), 3 November 2013.

⁴⁰ Article 7 of the Rome Statute states ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

⁴¹ *Rome Statute* art 7(2)(i).

⁴² *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 20 December 2006, 2716 UNTS 3 (entered into force 23 December 2010) art 2.

Disappearance of Persons states 'forced disappearance of persons is an affront to the conscience of the Hemisphere and a grave and abominable offence against the inherent dignity of the human being'.⁴³

The *Convention* goes on to describe the systematic practice of forced disappearance as constituting a crime against humanity.⁴⁴ Indonesia's 1995 Directive on Human Rights, in what was then known as Irian Jaya and Maluku, instructs soldiers not be involved in or permit the disappearance of people.⁴⁵ Enforced disappearances are in the class of continuing crimes. In the present case, Prabowo's crime against humanity was committed when he abducted his victims. Its duration continues 'for as long as the abductee is unaccounted for, even after death.'⁴⁶ Indonesia has not been proactive in dealing with allegations of enforced disappearance. Despite repeated requests from the UN Working Group on Enforced and Involuntary Disappearances ('WGEID') to undertake an official visit to the country, Jakarta has not responded.⁴⁷

While it is clear that enforced disappearance falls under the ICC's subject matter jurisdiction as a crime against humanity, Prabowo's crimes do not fall under the temporal jurisdiction of the *Rome Statute*. The ICC's jurisdiction entered into force with the *Rome Statute* on 1 July 2002. Prabowo's crimes occurred in May 1998. Further, the Court's jurisdiction is generally only triggered when a state accedes the *Rome Statute*, which Indonesia has not yet done.⁴⁸ In accordance with the non-retroactivity principle, the *Rome Statute* provides for prospective application only. Article 11 states '[t]he Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.' Article 24 further states that '[n]o person shall be criminally responsible... for conduct prior to the entry into force of the Statute.'

⁴³ Inter-American Convention on Forced Disappearance of Persons, adopted 9 June 1994, OAS Doc OEA/Ser.P/AG/Doc 3114/94 (entered into force 28 March 1996) preamble.

⁴⁴ *Ibid* art 5.

⁴⁵ *Directive on Human Rights in Irian Jaya and Maluku* (Indonesia) issued by the Commander of the Regional Military Command of Irian Jaya and Maluku 1995, cited in Jean-Marie Henckaerts and Louise Doswald-Beck (eds) *Customary International Humanitarian Law* (Cambridge University Press, 2005) 2304.

⁴⁶ Alan Nissel, 'Continuing Crimes in the Rome Statute' (2003–04) 25 *Michigan Journal of International Law* 653–654.

⁴⁷ International Commission of Jurists, *Alternative Report to the UN Human Rights Committee on the Initial Report of Indonesia under the International Covenant on Civil and Political Rights* (2013) 2.

⁴⁸ Bagus BT Saragih, 'Prabowo could escape int'l rights tribunal', *The Jakarta Post* (Indonesia), 19 March 2013.

Notwithstanding the status of enforced disappearances as a crime against humanity, no international court has jurisdiction over the crimes committed in Indonesia in 1997–98.

IV CONCLUSION

'I am the toughest human-rights defender in the republic'⁴⁹

This paper has sought to address the question of whether Prabowo's alleged crimes in 1998 can be addressed by international criminal law. The paper has argued that while enforced disappearances can amount to crimes against humanity, no international court has jurisdiction over the events in Indonesia in 1997–98.

As the jurisdiction of the International Criminal Court does not extend to Prabowo's crimes, one available option to bring him to justice is an ad hoc tribunal. However, the possibility of the establishment of a criminal tribunal for Indonesia along the lines of the ICTY and ICTR seem extremely remote. The violence of 1997–98, while widespread, is not of comparable scale to the civil war in former Yugoslavia and genocide in Rwanda and, further, the Indonesian case lacks the urgency given the passage of almost two decades.

Perhaps a more realistic solution would be the establishment of a hybrid court along the lines of the ECCC in Cambodia. Despite domestic legislation providing for a human rights court with jurisdiction over crimes against humanity on the books,⁵⁰ the Indonesian national legal system has proven unable or unwilling to tackle the status quo of immunity. A hybrid court would allow a level of Indonesian judicial control with international oversight. However, a similar model following crimes in East Timor around the time of the 1999 referendum failed to deliver justice.⁵¹ At this stage, international criminal justice lacks the reach and political backing to make even a hybrid human rights court in Indonesia a reality.

⁴⁹ Prabowo Subianto quoted in 'Prabowo "ordered by Soeharto to kidnap activists"', *The Jakarta Post* (online), 11 June 2014 <<http://www.thejakartapost.com/news/2014/06/11/prabowo-ordered-soeharto-kidnap-activists.html#sthash.aMwtaB9g.dpuf>>.

⁵⁰ *Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia* [Law No 26 of 2000 concerning the Establishment of the Human Rights Court] (Indonesia).

⁵¹ Sperfeldt, above n 21; David Cohen and Paul Seils, 'Intended to fail: the trials before the ad hoc human rights court in Jakarta' (Report, International Center for Transitional Justice, August 2003).

Prabowo's political rise threatens the aims of international criminal justice. While he was not elected president of Indonesia, he remains a key political leader with ongoing impunity from allegations of serious human rights violations. What is clear is that there remain significant gaps in the international criminal justice project. Developments have been sporadic but significant since World War II, but immunity effectively remains in place in states like Indonesia. Against this backdrop, the prospects of Prabowo's crimes being tried in an international court remain remote.

REFERENCE LIST

A Articles/Books/Reports

Akhavan, Payam, 'The Rise, and Fall, and Rise, of International Criminal Justice' (2013) 11(3) *Journal of International Criminal Justice* 527

Cohen, David and Seils, Paul, 'Intended to fail: the trials before the ad hoc human rights court in Jakarta' (Report, International Center for Transitional Justice, August 2003)

Cryer, Robert, et al, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 2nd ed, 2010)

Henckaerts, Jean-Marie and Louise Doswald-Beck (eds) *Customary International Humanitarian Law* (Cambridge University Press, 2005)

Lee, Terence, 'The Armed Forces and Transitions from Authoritarian Rule: Explaining the Role of the Military in 1986 Philippines and 1998 Indonesia' (2009) 42 *Comparative Political Studies* 640

Nissel, Allan, 'Continuing Crimes in the Rome Statute' (2003–04) 25 *Michigan Journal of International Law* 653

Purdey, Jemima, *Anti-Chinese Violence in Indonesia, 1996–1999* (University of Hawaii Press, 2006) 156

B Legislation

Peraturan Presiden Tentang Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2011–2014 [The Presidential Decree No 23 of 2011 on the National Action Plan for Human Rights in Indonesia for 2011–2014] (Indonesia)

Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2004–2009 [Presidential Decree No 40 of 2004 on the Action Plan on the Human Rights in Indonesia for 2004–2009] (Indonesia)

Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia [Law No 26 of 2000 concerning the Establishment of the Human Rights Court] (Indonesia)

C Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951)

Inter-American Convention on Forced Disappearance of Persons, adopted 9 June 1994, OAS Doc OEA/Ser.P/AG/Doc 3114/94 (entered into force 28 March 1996)

International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature 20 December 2006, 2716 UNTS 3 (entered into force 23 December 2010)

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002)

D Other

Amnesty International, *Fact sheet: Indonesia and the International Criminal Court* (2006) <www.amnesty.org/pages/icc-factsheets-eng>

Annan, Kofi, 'Transcript Of Press Conference With President Carlo Ciampi Of Italy And Secretary-General Kofi Annan In Rome And New York By Videoconference, 11 April' (Press Release, SG/SM/8194, 11 April 2002) <<http://www.un.org/press/en/2002/sgsm8194.doc.htm>>

Aritonang, Margareth, 'Komnas HAM Renews Calls for ICC ratification', *The Jakarta Post* (Indonesia), 20 July 2013

Commission for Reception, Truth and Reconciliation, *Chega!: The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste* (2005) <<http://www.cavr-timorleste.org>>

Integrated Regional Information Networks, *Whither human rights in Indonesia?* (26 November 2012) Refworld <<http://www.refworld.org/publisher,IRIN,,IDN,50b5dcfb2,0.html>>

International Commission of Jurists, 'Alternative Report to the UN Human Rights Committee on the Initial Report of Indonesia under the International Covenant on Civil and Political Rights' Submission to the Human Rights Committee, *108th Session of the UN Human Rights Committee*, 8–26 July 2013

Office for Justice and Peace of Jayapura et al, *The Practice of Torture in Aceh and Papua 1998–2007 Office of the High Commission of Refugees with an Annex on the Situation of Human Rights in Timor Leste* (2007) <<http://www2.ohchr.org/english/bodies/cat/docs/ngos/ShadowReportIndonesia40.pdf>>

'Prabowo "ordered by Soeharto to kidnap activists"', *The Jakarta Post* (online), 11 June 2014 <<http://www.thejakartapost.com/news/2014/06/11/prabowo-ordered-soeharto-kidnap-activists.html#sthash.aMwtaB9g.dpuf>>

Saragih, Bagus, 'Prabowo could escape int'l rights tribunal', *The Jakarta Post* (Indonesia), 19 March 2013

Sim, Susan, 'Prabowo Denied US Visa Under Torture Agreement', *The Straits Times* (Singapore) 31 December 2000

Sperfeldt, Christoph, *The Long Way from Rome to Jakarta: Prospects of Ending Impunity for International Crimes in Southeast Asia* (28 June 2013) *Regarding Rights* <<http://asiapacific.anu.edu.au/regarding-rights/2013/06/28/the-long-way-from-rome-to-jakarta-prospects-of-ending-impunity-for-international-crimes-in-southeast-asia/>>

The Indonesian Civil Society Coalition for the International Criminal Court, 'Civil Society collaborates with the Indonesian National Human Rights Commission (Komnas HAM) to commemorate the World Day of International Justice, July 17, 2013' (Press release, 17 July 2013)

Tan, Nik, 'Africa and US worry the frayed edges of international criminal justice', *Eureka Street* (Australia), 5 November 2013

Van Klinken, Gerry, 'Prabowo and human rights', *Inside Indonesia* (online), 28 April 2014 <<http://www.insideindonesia.org/current-edition/prabowo-and-human-rights>>

'What guarantees do people want from me?', *Tempo English Magazine* (Indonesia) 3 November 2013