Rather than attempting to catalogue progress and deficiencies across the Indonesian archipelago, extensively covered by Amnesty International, Human Rights Watch, U.S. State Department country reports and numerous local human rights NGO reports, this short essay will assess the potential influence of international human rights law, mediated through United Nations covenants and conventions, on the development of human rights in Indonesia. Progress and regression in this field are determined by complex combinations of domestic and external causes, though primary focus will be on responses by the Indonesian state.

Indonesia, Democracy, and Universal Human Rights

Indonesia, though a member of the United Nations since its inception, and therefore theoretically bound by the Universal Declaration of Human Rights (UDHR), has only acceded to a limited number of human rights instruments carrying the status of treaties. The UN, as a system of states, is built on the foundation of respect for national sovereignty. Acceptance and implementation of treaties is therefore voluntary, subject only to procedural protocols and the prospect of adverse reports. The language of universal rights, embodied in UN human rights treaties, nevertheless pervades human rights discourse within and between countries, providing a conceptually legitimate frame of reference for many civil society groups, albeit filtered through their different cultural and
ideological outlooks, experiences, and action concerns. While Indonesia’s complexity and diversity can never be reduced to any single explanation, it is argued that international human rights law must represent an essential component in efforts to achieve an effective democratic transition.

Concepts of universal human rights embrace social, economic and cultural as well as political dimensions. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, represents the foundation for many declarations, covenants and conventions relating to specific fields. To some extent a false antithesis has emerged between civil-political and economic-social-cultural rights, expressed during the 1990s in terms of polemic between so-called “Asian” versus “Western” values. The United Nations, has nevertheless asserted the “universality, indivisibility and interdependence” of every kind of human right in all major pronouncements since its foundation, thus rejecting both culturally relativist perspectives of Asian governments and western marginalization of economic human rights.

Democratic norms are integral to overall realization of human rights. Nevertheless, human rights cannot be simplistically equated with any style of democracy or governance. Minority rights and even basic legal due process can be overridden by unfettered majority rule, while constitutionally entrenched rights can be set aside by security laws passed by elected legislatures where executive power predominates over electoral processes.

Human Rights and Democratic Transition in Indonesia

Indonesia has unfortunately faced simultaneous challenges of political change and economic crisis. Dependence on external support on both fronts has generated strong nationalist reactions, intensified by the loss of East Timor and perceived western sympathies for separatist movements in Aceh and Papua (Irian Jaya). Elements loyal to Suharto are alleged to have aggravated and even initiated several conflicts in order to exploit such sentiments.

Human rights prospects in Indonesia are deeply affected by issues of poverty, culture, religion, national stability, and order, which all bear strongly on processes of democratic transition and consolidation. While no clear link can be established between either authoritarian or democratic systems and economic performance, large-scale economic suffering can certainly undermine support for governments of any political hue. The legacy of the 1997-98 regional economic crisis that triggered Suharto’s resignation in May 1998, continues to slow down reform of political, legal, judicial, and administrative institutions and processes, in turn weakening their popular legitimacy. Political and economic discontent influences religious and ethnic conflict in Maluku, Kalimantan, and Central Sulawesi; and they fuel separatism in Aceh and Irian Jaya. Devolution
Human Rights in Post-Suharto Indonesia

is essential to overcoming regional grievances, but ineffective implementation can aggravate tensions.

Suharto’s Legacy

The New Order established by President Suharto, who assumed power in a period of bloody upheaval between October 1965 and March 1967, extended territorial control across the country with functional ministries integrated at local and regional levels. Parallel military command structures, and military-controlled intelligence agencies—now officially dismantled—monitored civilian groups and provided “guidance” at every level of government. Military officers were increasingly appointed to non-military administrative and technical posts. Civil servants, military, police, labor, business, farmers, women, youth, lawyers, journalists, and other professional and special interest groups were grouped in affiliated associations, which monopolized representation in their fields, in which leadership, organization, and activities were all tightly controlled. These “functional groups” (Golkar) were combined into a political organization that dominated every election between 1971 and 1997.

Both Presidents Sukarno (1945-65) and Suharto strongly rejected western style liberal democracy, which Indonesia had experienced during the 1950s. Instead, they turned to the national ideology of Pancasila (five principles) and the 1945 Constitution, which they thought more compatible with Indonesian cultural norms. These affirm belief in one God, national unity, civilized humanitarianism (or internationalism), representative government and social justice. Decisions are to be made and disputes resolved on the basis of deliberation (musyawarah) and consensus (mufakat), avoiding competitive voting and associated conflict between majorities and minorities. Cooperative principles are to extend to all economic and social spheres.

While Pancasila can be interpreted in relatively open and pluralist ways, it is also open to corporatist, authoritarian uses. Integralist doctrines, first propounded in 1945, assume unity between government and people, thereby denying notions of individual or group rights towards the state, which is conceived of as a large family. Key protagonists acknowledged parallels with European and Japanese fascist concepts of the organic state. Though originally rejected, they were incorporated into New Order ideology and practice. Thus, the 1985 Law on Social Organizations required organizations to define their objectives in terms of Pancasila as their “sole foundation.” Christians and Muslims perceived threats to core tenets of their religious faith, but the government denied any such intent.
Seeds of Change Under Subarto

Gradual empowerment and mobilization originating from initially small groups in civil society, and modest reforms initiated from within the government, have built a strong popular base from which momentum for change can be sustained against residually strong New Order structures and interests.

By the end of the 1980s the strength and diversity of civil society groups—which included non-government organizations (NGOs), students, journalists, lawyers and other professionals, intellectuals, and educational and religious movements—was reaching out to farmers, landless, labor, women, minorities, and other marginalized groups. Civil and political rights concerns, conventionally associated with the middle class, have been popularized by being linked to issues affecting people’s daily lives relating to land, wages and working conditions, environment, violence and harassment against women, and corruption at all levels. Approaches range from low profile encouragement of community development among disadvantaged groups to mass mobilization to demand rights, with advocacy networks linking local, national, and international levels.

Civil society opponents of Suharto by no means automatically supported Western liberal-democratic ideas. Many focused equally on socio-economic as on political aspects of human rights. However, wide-ranging debates across groups over goals and approaches, together with experience of internal self-management, also served to strengthen popular democratic capacity.

Habibie transition

President B.J. Habibie’s seventeen-month tenure produced extensive legislative changes covering regional devolution; dismantling of media licensing arrangements, strengthened further by President Wahid’s abolition of the Ministry of Information; ratification of International Labor Organization (ILO) conventions regarding rights to organize; gender-based discrimination, and elimination of forced labor and minimum age of workers. Nevertheless, Habibie sought to interpret media and labor changes according to Pancasila values of balance and cooperation.

In a climate of great turbulence, the MPR appointed under Suharto was persuaded to democratize its composition and provide for genuine elections in which parties could form and operate freely. Forty-eight parties contested elections in June 1999, which were judged by most observers as broadly free and fair. Constitutional change has been effected by ongoing amendment to the 1945 Constitution, rather than attempting an entirely new draft. The ideological monopoly of Pancasila was abolished, although it remains integral to the Constitution.

Military representation was reduced and is currently planned to end in 2004 in the DPR and in 2009 in the MPR. Transition to civilian-controlled
government is by no means complete. Military leaders have broadly supported processes of constitutional change. Armed Forces Commander-in-Chief, General Wiranto, provided crucial support to President Habibie, in the face of disruptive elements probably linked to ex-President Suharto. He also encouraged the appointment of a civilian Minister of Defense. Correspondingly, a gradual process of change in the military's overall role was unpopular with students, human rights and other peaceful advocacy groups that had experienced killings, torture and disappearances during many years of struggle. These practices continue in many parts of Indonesia, especially in Papua (Irian Jaya) and Aceh.

Conversely, political pressures to stand back from incidents of civil disruption soon led to complaints of inaction from many sections of the community that had long looked to the military to maintain basic security. Reform processes have been set in train to establish an effective police force, autonomous from the military. This is an inevitably long-term project. In the interim, entrenchment within the territorial structure of Indonesian government enables the military to retain considerable strength at local and regional levels, and set limits to regional autonomy conceded to Aceh or Papua. Here, the military's self-belief in its role as ultimate protector of Indonesian sovereignty and national integrity still finds resonance with many, if not most Indonesians.

Indonesia and the UN Human Rights System Since 1998

The Suharto government largely ignored the UN human rights system, and responded to external criticism with blanket defenses based on national sovereignty and non-interference in Indonesia's internal affairs. It nevertheless, ratified the Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW) and that on the Rights of the Child in 1984 and 1990 respectively. In January 1998, Foreign Minister Alatas announced a National Plan of Action on Human Rights covering 1998-2003, and a general statement envisaging future legal action was incorporated into the Guidelines of State Policy by the MPR. Torture and disappearances, however, continued unabated in response to student protests prior to Suharto's fall. The Plan focuses on incorporation of UN human rights instruments into national laws—a necessary step prior to their ratification. Indonesia acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments (CAT) in November 1998 and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in July 1999. The timing of each represented important statements of intent soon after Suharto's fall and eruptions of anti-Chinese sentiment probably coordinated by elements within the military and some Islamic groups.
Momentum for implementing the Plan appears to have been slowed by upheavals surrounding the dismissal of President Wahid, and the replacement by President Megawati Sukarnoputri of energetic Attorney General, Marzuki Darusman, with an appointee from within that poorly regarded Department. With only one year to the end of the Plan period, Indonesia appears unready to ratify the International Covenant on Civil and Political Rights (ICCPR). Administrative initiative for preparing plans and promoting human rights appears to rest substantially in the hands of the Foreign Affairs Ministry, while the role of the Human Rights Ministry created by President Wahid remains unclear.

Mohammed Hatta, Indonesia's first Vice-President, urged the need to limit state power. His ideas were enshrined in Article 28 of the 1945 Constitution, guaranteeing freedom of expression, assembly and organization. But the Article's practical effect was weakened by the qualifying words “according to law.” A new Chapter XA greatly expanded Article 28 of the Constitution in the form of a Bill of Rights. The development of Indonesian human rights jurisprudence will be significantly influenced by future court interpretations of this historically contested article. The Bill's language follows substantially the Universal Declaration on Human Rights, with a strong focus on individual rights. However, Pancasila remains the primary source of national law. Though the Ministry of Foreign Affairs and other apologists have vigorously attempted to harmonize this ideology with universal human rights, these do not fit easily with its essentially corporatist outlook. Nor is emphasis on a single Deity easily reconciled with freedom of religion, including the right to hold no religion.

National Human Rights Commission

In a surprising initiative, the National Human Rights Commission (Komnas HAM) was established in 1992. Requirements of external diplomacy in a changing international environment were cited as prime reasons for its establishment, prompting skepticism about the Commission’s likely effectiveness. But its unexpectedly critical reports, and extensive though uneven outreach, have contributed significantly towards increasing public awareness and legitimacy of human rights issues. Critics, nevertheless, point to contradictions in the Commission's composition, structures and operating style that weaken its effectiveness.

Its primary objectives are to spread human rights awareness, and to monitor and advise the government on Indonesia’s stance on UN human rights treaties. But emphasis on Pancasila values of harmony and consensus, on which the Commission’s mandate is based, probably explains its focus on conciliation. Some complainants report pressures to accept settlement in land and labor disputes, which constituted over 40 percent of the cases before the Commission in 1999. Provisions in the 1999 Human Rights Act, granting the Commission
discretion in disclosing information from complainants without their consent, appear to breach confidentiality provisions in the Paris Principles, the UN guidelines governing national human rights institutions. Preference for conciliation may also hold back references to courts or other authorities. These require sustained public advocacy, forwarding of detailed evidence, and citing of relevant domestic and international laws.

Commission membership appears to be dominated by Suharto era appointees and insufficiently diverse in terms of gender, region, and social background. The 1999 Human Rights Act assigns responsibility for new appointments to the House of Representatives, which selects from a list drawn up by the Commission. Funds depend on allocations by the Parliament, plus external technical and financial assistance. While members travel extensively and many groups from remote locations access the Commission, outreach outside Java is patchy. Only Aceh has a permanent office outside Jakarta.

Despite its generally high standing, leading human rights groups have built a strong critique of the Commission’s perceived inability to achieve executive and judicial outcomes. Paradoxically, such failure becomes more glaring in light of its reports condemning government performance. Strong efforts are therefore necessary to improve transparency in inquiry and reporting processes, effective use of subpoena powers and action recommendations. Above all, extensive corruption and weaknesses in Indonesia’s judiciary system require sustained scrutiny and reform.

**Human rights tribunals**

Law No. 39/1999 on Human Rights set out a long list of internationally recognized breaches of human rights, including “crimes of omission,” whereby those in authority who knew of, but failed to prevent violations committed by subordinates, can be prosecuted along with direct perpetrators. Human rights courts were set up to by-pass inadequacies in the Criminal Code and overcome delays and poor performance by ordinary courts. Events in East Timor led Habibie’s government to fast track their establishment by issuing a regulation in lieu of a law.

Provisions forbidding prosecution based on laws not in force at the time of the alleged crime have attracted strong controversy in the Indonesian Parliament and internationally, as they potentially frustrate trials of those responsible for East Timor violations. Ironically, military and Golkar representatives in the DPR invoked international law principles opposing retroactive trials. A compromise provided for special ad hoc human rights courts to try human rights violations occurring before the new law came into force. Such courts must be established in each case by the President on the recommendation of the DPR, thus ensuring politicization of the process.
Whether by design or inattention to detail, inclusion by the MPR in August 2000 in the new Article 28I of the Constitution—of the right not to be prosecuted on the basis of retroactive laws, among human rights “that cannot be diminished under any circumstances”—undermined the validity of such courts. Attempts to find other clauses, which might validate ad hoc courts, are futile, as the Constitution takes precedence over specific laws. The provision in Clause 7.2 of Law No. 39/1999 on Human Rights for international human rights law accepted by Indonesia to become national law, offers a more promising means of prosecuting past abuses. While Article 15 (1) of the ICCPR prohibits application of retroactive law, Article 15 (2) allows trial and punishment for acts of omission recognized internationally at the time as crimes against humanity. However, Indonesia is not a party to the ICCPR and its courts are unlikely to uphold this principle. The amended Article 28 of the Constitution also makes no mention of the UN system or international human rights law.

International pressure for retrospective prosecution has diminished, as some countries fear upsetting Indonesia’s fragile political balance. It is argued that nationalist backlash could reverse democratic gains if the military is pushed too hard. Conversely, failure to end impunity for human rights crimes will further weaken respect for law, fail to deter continuing violations, and even destroy Indonesia’s territorial integrity. A middle view argues for avoiding premature prosecution of senior military officers until the effectiveness of the new human rights laws has been established and new legislation adopted to make military personnel subject to civilian courts in criminal cases.

Recognizing that not all past human rights violations can be resolved judicially, establishment of a Truth and Reconciliation Commission (TRC) is being planned. It is to provide a forum where human rights transgressors can express remorse and confess crimes in exchange for amnesty, for which the Commission will determine criteria. The TRC concept is based on the belief that reconciliation requires full exposure of the truth. It is argued that traditional and localized methods may prove more successful in situations where victims and perpetrators live in close proximity. Criteria for deciding whether a case should be heard by an ad hoc court or by the TRC remain unclear, though TRC is likely to concentrate on major events where the passage of time makes successful prosecution unlikely. However, resistance remains strong to extending such processes to victims of anti-communist massacres and detention without trial, as well as to associated injustices to their families throughout Suharto’s rule.

Presidential decree 96/2001 mandated establishment of special human rights courts to investigate alleged human rights abuses in East Timor and the Tanjung Priok shootings in 1984, which were previously expected to be covered by the Truth and Reconciliation Commission. Serious deficiencies are reported
in processes for selecting judges and prosecutors, establishing court procedures, and ensuring protection of witnesses.  

**East Timor**

In late 1999, both Indonesia and the United Nations Commission for Human Rights (UNCHR) launched parallel investigations into human rights violations in East Timor by the Indonesian military and militia under their control. Indonesia’s primary motivation throughout has been to preempt international action and protect national pride and sovereignty. The government initially indicated that it would not cooperate with the UN investigation, pointing out that the UNCHR resolution establishing it was not binding, because it was not dictated from the Security Council and East Asian countries represented on the UNCHR opposed it. Nevertheless, the UN team was received in Jakarta from 5-8 December, for purposes of dialogue rather than investigation. Requests to visit camps in West Timor, to establish conditions and the true wishes of East Timorese held there, were refused.

The report by a five-member UN team—drawn from Costa Rica, Nigeria, India, Papua-New Guinea, and Germany—identified military collusion with militias; systematic intimidation and terror directed primarily at pro-independence groups; rape and sexual assault against women from families of independence fighters or men who had fled to the hills; damage to both public and private property ranging from 60 to 80 percent across the whole territory; forcible displacement of people to West Timor; and continued prevention of their return. These actions all violated Indonesia’s responsibilities as a member of the UN and as a party to various agreements. However, the team was unable to confirm killing of many thousands, as widely alleged in international media. It urged capacity for forensic storage as essential for future investigation, anticipating displaced persons returning from West Timor, information from remoter regions, and possible dumping of bodies at sea.

Foreign Affairs Minister Alwi Shoaib declined to respond substantively to the report and rejected both its methodology and conclusions. This rejection was made on the grounds of failing to crosscheck hostile testimonies with pro-integration groups or to give weight to their testimony alleging violations by pro-independence groups. Such objections carry little weight, as the team had no access to West Timor, nor rights of investigation in Indonesia. Nevertheless,
the UN team enjoyed two detailed exchanges with the Komnas HAM investigating team in Jakarta and Darwin.

Initially, there were grounds for doubting the national inquiry’s autonomy and effectiveness. Leading Indonesian human rights groups considered that Komnas HAM lacked credibility among East Timorese. Military objections to the team questioning senior generals were overcome, but excluded General Wiranto. Despite different approaches and constraints on both inquiries, they reached broadly similar conclusions. Komnas HAM found evidence of mass murder, torture, false evidence, forced disappearances, sexual slavery and rape, scorched earth, abduction as refugees, destruction, and property theft. The civilian, military and police apparatus created conditions for these humanitarian crimes in deliberate and systematic fashion.

Komnas HAM named General Wiranto ultimately responsible for the failure to effectively protect human rights following the 30 August ballot. Several other generals and high ranking officers were cited, as well as former provincial governor Abilio Soares, and key militia commanders. The report acknowledged killings at Liquica Church on 6 April, in Dili diocese on 5 September, and destruction of some 80 percent of the buildings in the town of Maliana on 4 September 1999. The Subdistrict Military chief was alleged to have participated in looting and arson during an attack on a church complex in Suai, killed over 50 people, removed 26 bodies, and later secretly buried them in East Nusa Tenggara. The inquiry also recommended full research into human rights violations during Indonesia’s twenty-four year occupation of East Timor, for possible prosecution and purposes of historical documentation.

The Komnas HAM team forwarded its report and recommendations for further investigation and prosecution to the Attorney General. The DPR Legal Affairs Commission rejected the suggestion that naming TNI officers was libelous, as they had not been pronounced guilty. President Wahid eventually persuaded General Wiranto to step down as Minister for Political and Security Coordination due to pending investigations. Nineteen persons were eventually cited by the Attorney General’s office, including thirteen military officers and seven militia leaders. General Wiranto was not named.

As previously discussed, processes surrounding human rights courts are encountering serious constitutional and political obstacles. President Wahid, weakened by growing demands for his impeachment, was obliged to compromise with the DPR, where there is strong cross-party support for regarding accused military and militias as patriots rather than war criminals. Initially, the Court was only granted powers to try alleged offences following the ballot on 30 August 1999, thus excluding major violations preceding this date. The Security Council currently appears reluctant to intervene despite mounting pressures for an international tribunal.
Indonesia’s failure to end militia impunity in West Timor culminated in the murder of three UN High Commissioner for Refugees (UNHCR) personnel in Atambua. They were hacked to death and their bodies burned after several militia members, inflamed by speeches at a funeral for one of their leaders, entered the UN compound. The UN Security Council Resolution on 8 September 2000 named this an, “outrageous and contemptible act against unarmed international staff,” and stressed there would be no return of UN workers without credible security guarantees, including “real progress,” toward disarming militias. Even China and Malaysia, Council members normally supportive of Indonesian sovereignty, condemned its failure to control militia groups. President Wahid strongly condemned the killings in a letter to the Security Council on 7 September. But Defense Minister Mahfud asserted that a foreign intelligence operation, coordinated by Australia, was behind the Atambua killings. Eurico Gutteres, named as a key organizer in Komnas HAM’s report on atrocities in East Timor, was sentenced to six month’s jail for weapons offences, but was released soon after. He has now joined the youth wing of President Megawati Sukarnoputri’s Democratic Party of Struggle (PDI-P).

Conclusion

This account has unfortunately omitted, or dealt with only minimally, many important aspects of human rights in Indonesia, notably poverty, women’s rights, Islamic perspectives on democracy and human rights, issues of religious freedom, and ethnic and religious conflict. This last aspect highlights the need to renew the culture of tolerance, for which Indonesia has at earlier times been noted. Unfortunately, values of cooperation and harmony have often been formulated in terms unfavorable to universal human rights principles, especially freedom of belief, expression, and association. Opening doors to such freedoms has unfortunately been associated, during the initial stages of democratic transition, with major disruptions of social and economic order, pointing to the need for more comprehensive understanding and application of democratic values and processes.

Uneven progress in ratifying key UN instruments reflects Indonesia’s overall ambivalence towards universal human rights. The government has yet to implement the comprehensive legal and administrative changes necessary for ratifying the International Covenant on Civil and Political Rights. Commitment to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is similarly beyond Indonesia’s political will at this stage. To balance the picture, the United States has never ratified the ICESCR and has heavy reservations in adhering to the ICCPR. Serious breaches of the anti-torture convention and deficiencies in treatment of ethnic minorities—contrary to the
anti-racial discrimination convention—indicate that ratification does not guarantee their implementation. Indonesia is by no means alone in this, nor in fostering nationalist resistance to external scrutiny. Nevertheless, international human rights law nevertheless continues to promote strategic agendas for change in Indonesia, by both legitimizing public demand for and assertion of rights and spurring incrementally positive governmental responses.

Notes

2. Articles 21 of the UDHR and 25 of the International Covenant for Civil and Political Rights (ICCPR) assert equal rights of citizens to take part in the conduct of public affairs, either directly or through freely chosen representatives; to vote and nominate as candidates at genuine periodic elections based on universal and equal suffrage and secret ballots.
4. International Crisis Group, “Indonesia: The Search for Peace in Maluku,” (Jakarta and Brussels: ICG Asia Report No. 31, 8 February 2002). (ICG reports can be accessed by following links from www.crisisweb.org) A peace agreement has recently been reached in Ambon, at least, which enjoys widespread popular support, but is opposed by non-local groups such as the Laskar Jihad.
13. Law 9 of 1998 on the Freedom to Express One’s Views before the Public.
15. Ibid.
26. The DPR has recently called for a new list of thirty-six members to be submitted. T. Simanjuntak, “Govt, DPR drag their feet in supporting human rights,” (The Jakarta Post, 4 March 2002).
31. South Asia Human Rights Documentation Center (SAHRDC), op. cit.
34. Olivio Moruk, allegedly responsible for the murder of priests at Suai, East Timor, on 16 September 1999, was due to give evidence to the Komnas HAM investigation team. J. Fox, “Was this revenge for death of priest?” (The Australian, Sydney), 8 September 2000.