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After One Year: A White Paper on the Investigation and Prosecution in the Munir Murder Case

September 7, 2005

INTRODUCTION

Early on the morning of September 7, 2004, one of Indonesia's leading human rights activists became ill and died while flying to the Netherlands to study humanitarian law. An autopsy by Dutch authorities found four times the lethal dose of arsenic in Munir's system. On the one-year anniversary of Munir's murder on Garuda Flight 974, it is time to assess the efforts by the Indonesian government to bring his killers to justice. While the trial of one suspect is still underway, flaws in the investigation and the prosecution's case so far must be addressed promptly by the Indonesian authorities.

Observers from the Indonesian president on down have acknowledged that Munir's murder is a test case for how much Indonesia has changed in recent years. The case is important not just for Munir and his family, but for the larger cause that Munir devoted his life to: the pursuit of the truth and full accountability for those who abuse power.[1]

The progress of the trial cannot be separated from the struggle to achieve an effective investigation over the last year. This report reviews the obstacles faced by the independent fact-finding team (*Tim Pencarian Fakta*, or TPF), the police investigation, and the judicial process, and recommends measures to increase the likelihood of a genuine measure of accountability for the murder that occurred one year ago.

THE INVESTIGATION

As soon as the autopsy results became known, the activist's family and the local human rights community began to push for an official fact-finding team to work in parallel with the police investigation. The need for such a team arose in part because of the fact that his murder was most likely not an ordinary crime. An even more compelling justification was the poor police track record in addressing attacks on human rights defenders. As Usman Hamid, the director of *Kontras*, an NGO that Munir had founded, explained at a November 19, 2004, press conference:

> Violence towards human rights defenders in Indonesia happens frequently, but has never been properly investigated. . . . In the form of terror and the use of bombs or even thugs, our offices, our activists, and Munir himself, have been physically attacked. From all these cases, not one has successfully been resolved in the courts and its perpetrators punished as they should.

A final justification for an independent team was the fear that even if the police identified the direct perpetrator, they would not have the political will to uncover who was ultimately behind the crime.

In a welcome step, President Yudhoyono met with Munir's wife and colleagues on November 24 and pledged to support an independent investigation. The human rights community in Indonesia quickly submitted a proposal to

[1] For more on human rights defenders in Indonesia, see Human Rights First, *Reformasi and Resistance*, May 2005.

the government on the proposed membership and mandate of an independent team. On December 21, NGOs discussed the proposal with the police, the attorney general's office, the Foreign Ministry, and the Ministry of Law and Human Rights. The meeting produced an agreement on the assignment, authority and responsibilities of the team.

The Indonesian government eventually approved an independent team in late December through Presidential Decision No. 111/2004, and it met for the first time on January 13, 2005. The team's three-month term was extended to a second three months in March 2005, and on June 23 it handed over its final report to the president. The government has not yet made the report public, though many of its key findings have been reported in the local and international press.

While the team made important strides in uncovering complicity at the state airline Garuda and in the Indonesian intelligence community, it faced a number of obstacles that ultimately impeded its ability to give a full account of the crime. Obstacles included the mandate and membership of the TPF, obstruction by Garuda officials, obstruction by State Intelligence Agency officials, police failure to follow up, a lack of support from the executive branch, and other efforts to interfere with the investigation.

Mandate and Membership of the Fact-Finding Team

One of the findings of the TPF was that its own mandate was not adequate for the task it was assigned to do. According to the NGOs present at the December 21 meeting, the original agreement with the police accorded the team the authority to provide opinions to police investigators, to question witnesses and experts, to suggest a direction of inquiry and investigation to police investigators, and to monitor and evaluate its developments.[2]

In the December 2004 presidential decree, however, these powers were reduced to a much weaker mandate to "assist the police," although the decree also calls on all government agencies to provide help to the team as needed.[3] The decree also omitted some prominent religious and human rights leaders: Syafii Ma'arif, Sinta Nuriyah Abdurrahman Wahid, and Todung Mulya Lubis. The team's limited scope and curtailed membership disappointed many observers. Several proposed members declined to join the team, describing it as "planned to fail," though most decided to do what they could with the limited mandate.[4] The team was chaired by Police Brigadier-General Marsudhi Hanafi, and included prominent human rights figures such as Asmara Nababan, Kamala Tjandrakirana, Usman Hamid, Rachland Nashidik, Hendardi, and Munarman.

In its first three months, the team reviewed some of the police interrogation records, investigated Garuda management, visited the company responsible for closed-circuit cameras at the airport, and reviewed phone records, exit taxes, and money transfers. The team also worked with the Attorney General, the Foreign Ministry, and the Ministry of Law and Human Rights to reach a legal assistance agreement with the Dutch government. This agreement facilitated the exchange of crucial information relating to the autopsy and the crime scene.

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[2] "Kontras: Tim Investigasi Munir Kurang Sempurna," *Kompas CyberMedia*, December 24, 2004; "Tim Investigasi Diharapkan Mampu Tembus 'Tembok'," *Kompas*, December 22, 2004.

[3] The decree states, "In carrying out its task, the team is to obtain all assistance needed from all agencies of the central or local government and other parties as needed."

[4] To replace the three who declined, I Putu Kasa, Smita Notosusanto and Bambang Widjojanto, a later decree named Domu P. Sihite, Tini Haddad, and Amiruddin Al Rahab. After the team finished it's work in June, Sihite later joined the prosecution team in the trial of Pollycarpus.

Resistance by Garuda

The main focus of this first three-month period was on the state airline, Garuda Indonesia. A copilot on non-active duty, Pollycarpus Budihari Priyanto, came to the attention of investigators after it was discovered that he had called Munir's phone before the flight to confirm the activist's travel plans, and then later convinced him to take his seat in business class rather than Munir's assigned seat in the coach section. Pollycarpus' reason for being on the flight was unclear, which quickly led to questions about the role of senior officials and any documents they may have provided authorizing his travel.

The airline initially proved uncooperative.[5] Despite three weeks' notice, at the last minute Garuda officials cancelled a reconstruction of the crime planned for January 22. The exercise, a standard step in Indonesian police investigations, was postponed a second time on March 1. TPF chair Police Brigadier-General Hanafi told the press that "Garuda officials were very defensive in the meeting and seemed to be trying to cover up something."[6]

The TPF uncovered documents that had enabled Pollycarpus' presence on the plane and that were inconsistent with Garuda's normal procedures. One document was even backdated to several days before the murder. The key documents include:

August 11 assignment letter (*surat penugasan*): This letter, signed by Garuda Managing Director Indra Setiawan, named Pollycarpus as "assisting staff" with the assignment "to recommend solution to problems at Garuda, especially in Aviation and Internal Security." Significantly, this document is cited in all other documents connected with the trip and therefore provided a basis for Pollycarpus to be at the scene of the crime. The letter was signed close to the time that Munir's plan to go abroad appeared in press reports. It was apparently unprecedented for the Director to issue such a letter directly to a copilot without going through appropriate subordinates such as the Operations Director, Vice President for Flight Operations, and Chief of Pilots.

The backdated "September 4" memo: This interoffice memo was signed by Vice-president for Security Ramelgia Anwar and dated September 4, 2004. It references the August 11 letter and requests that the Chief Pilot allow Pollycarpus to fly as non-active crew from Jakarta to Surabaya, Denpasar, or Singapore. It was later determined that the letter was written on September 15 and was backdated to September 4, a Saturday on which the office was closed.

September 6 Notice of Change (*nota perubahan*): On the day of his travel, the basis for Pollycarpus' presence was the signature of Rohainil Aini as Flight Operation Support Officer. According to the indictment, such an assignment normally requires the permission of Chief of Pilots and permitting a lower-level official to provide it was unprecedented. Prosecutors also noted that Pollycarpus' supposed security assignment was unusual given his lack of qualifications in this area.[7]

Garuda's director, Indra Setiawan, stepped down after the fact-finding team urged that he be investigated for his role in providing Pollycarpus with documents. Two senior officials tied to the documents, Aini and Anwar, were summoned by the police for questioning in March. These senior officials are mentioned in the document forgery charges against Pollycarpus and they may still be charged separately in connection with the case.

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[5] See Human Rights First, "Indonesian Airline Not Cooperating with Investigation of Activist's Death," Media Alert, March 3, 2005.
[6] "Team questions Garuda's commitment in Munir probe," *Jakarta Post*, March 1, 2005.
[7] Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, July 27, 2005, p. 7.

His replacement Emirsyah Satar, agreed on March 31 to create a "Munir Desk" as part of a pledge to cooperate fully with the investigation. Garuda also pledged to carry out an internal investigation.[8] However, no investigation results have been provided to the TPF or made public.

Resistance by the State Intelligence Agency

Beginning in March, the fact-finding team used its three-month extension to turn its attention to the State Intelligence Agency (*Badan Inteligen Negara*, or BIN). They were able to demonstrate contacts between Pollycarpus and the agency, but were never able to prove that he was a BIN agent or was acting on orders from BIN. This lack of proof may have been due to the failure of BIN officials to honor pledges to provide access to relevant personnel and documents.

The primary evidence of a link between Pollycarpus and the agency was a series of phone calls, at least 35 according to press accounts, made between both Pollycarpus' home and cell phone and an office phone and cell phone linked to a man named H. Muchdi Purwopranjono (known widely in Indonesia as Muchdi). Muchdi was a career soldier who had moved to BIN in 2001. One of his last military positions was as head of the Special Forces (Kopassus) in 1998, a time of intense power struggles and human rights abuses, including the disappearances of numerous pro-democracy activists. Munir founded Kontras as a response to these disappearances, and his investigations linking the abuses to Kopassus may have contributed to Muchdi losing his job soon after.

Many of these calls occurred in the days just before and after Munir's death, as well as in the days after the police announced an investigation. Muchdi has told the press that he did not know Pollycarpus and that his cell phone must have been used by someone else while he was in a meeting.[9]

Pollycarpus' travels to conflict areas provided a further indication of possible intelligence links, and are deserving of further attention. Travel documents provided to the fact-finding team reportedly showed that Pollycarpus flew to Aceh for a week just as martial law was declared in March 2003.[10] Several journalists also remembered seeing him in North Aceh at the time. Pollycarpus has also stated that he was in East Timor at the time of the referendum and the mass expulsion that followed, and he is also known to have spent time in Papua. His lawyers confirmed his presence in these conflict areas, but contend that in each case he was doing humanitarian work as a missionary pilot.[11]

On June 14, the fact-finding team disclosed that they had uncovered documents revealing four scenarios to kill Munir. The first two plans included killing him by black magic and assassinating him while in a car. The third and fourth methods both involved poisoning, but the third allegedly failed. On the day his food was to be poisoned at Kontras, Munir did not go to work. It was the fourth scenario that succeeded: poisoning him with arsenic while on board his flight to Amsterdam.[12] The team did not include the document in the final report because it was already in the President's hands, and because BIN's refusal to cooperate made it difficult to interpret or confirm its authenticity. However, team member Usman Hamid felt it was an important piece of

[8] "PT Garuda Akan Bentuk Desk Munir," *Kompas CyberMedia*, March 21, 2005.
[9] "Munir Bukan Target Operasi BIN," *Ekspos*, June 2005, Edition 01/1, p. 11.
[10] He reportedly traveled with BIN agent named Bambang Irawan. "Polri Periksa Eks Perwira Kopassus Pekan Ini Soal Munir," *Detikcom*, May 30, 2005.
[11] Kontras, "Monitoring Persidangan Pembunuhan Munir IV," undated.
[12] Eva C. Komandjaja and Tiarma Siboro, "The Plot Thickens: Documents Reveal Four Plans to Kill Munir," *Jakarta Post*, June 15, 2005; "Team Finds Conspiracy behind Indonesian Rights Activist's Death," Deutsche Presse-Agentur, June 14, 2005.

evidence deserving of further investigation, and was disappointed that there had been no follow-up by police or prosecutors.[13]

BIN officials denied that Munir was ever targeted for attack, but acknowledged that he was a target of "indirect" BIN pressure. They noted that on several occasions senior human rights figures were asked to tell Munir to be less vocal, but that he had failed to tone down his criticism of the government.[14]

The TPF found that Munir had angered BIN officials through his work on democratization and human rights, including his criticism of a draft intelligence bill that would expand the agency's power.[15] Munir and colleagues had also brought suit against President Megawati Sukarnoputri for appointing retired general Hendropriyono to head BIN in 2001 despite his human rights record.[16]

During much of the fact-finding team's activities a chief obstacle was the lack of a mechanism or agreement to ensure access to BIN officials and documents. However, after much effort and several meetings with President Yudhoyono, on May 2 the two parties signed a protocol in which BIN agreed to cooperate with the TPF in compiling information and documents, and to grant the TPF access to do document research and compile information relevant to Munir's death. Both sides pledged mutual respect for the other party's work and authority, as well as for the law and protection of state secrets.[17]

While the May 2 protocol resulted in interviews with lower-ranking intelligence officials, it has not produced the results the fact-finding team hoped for. One member of the team told Human Rights First:

> Not a single document was given to the TPF by BIN. It is clear that BIN has failed to work with TPF. . . At three meetings with President Yudhoyono, BIN promised greater access, but the fact is that it did not give access to documents and it failed to arrange for officials to testify to the TPF.[18]

In many cases past and present BIN officials did not entirely reject meetings outright, but appeared to use delaying tactics to avoid providing information to the TPF. Muchdi, Hendropriyono, and Bambang Irawan each negotiated appearances before the TPF and then missed appointments due to missed planes, unexpected travel, or other excuses. Hendropriyono was invited to appear on three occasions, Muchdi four times, and Irawan twice, all without results. The intelligence officials delayed meetings until the TPF's mandate expired on June 23.[19]

The fact-finding team also failed to obtain numerous documents they had requested. There are strong indications that the head of the agency specifically ordered his staff not to show or give any documents to the TPF.[20]

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[13] Human Rights First interview, September 6, 2005.
[14] Human Rights First interview with Asmara Nababan, August 16, 2005.
[15] Human Rights First interview with Asmara Nababan, August 16, 2005.
[16] Hendropriyono was intelligence chief from 2001 to 2004, after a long career in the military. As a colonel, his role in a 1989 massacre of villagers earned him the nickname "the Butcher of Lampung." As Minister for Transmigration and Resettlement he is thought to have played a key role in funding and organizing both the East Timorese militias and the forced population transfer into West Timor after the 1999 referendum.
[17] "TPF, BIN Teken Kerja Sama Ungkap Kasus Munir," Media Indonesia, May 3, 2005.
[18] Human Rights First interview with TPF member Asmara Nababan, August 16, 2005.
[19] See for example, "Muchdi PR Tak Penuhi Panggilan TPF Munir," *Detikcom*, June 2, 2005; "Hendro Belum Nongol, Pengacaranya Tiba di Kantor TPF," *Detikcom*, June 6, 2005. Hendropriyono also invited the TPF to come to him on June 15, and held a press conference when they did not "Hendro Kecewa Berat TPF Tidak Hadiri Undangannya," *Detikcom*, June 15, 2005. The three were eventually questioned by police investigators, though the interviews and results were closely guarded.
[20] "Kepala BIN Larang Buka Akses untuk TPF Munir," *Detikcom*, June 15, 2005.

It was especially important to question current and former senior officials, such as Muchdi and Hendropriyono, because of the BIN strategy of compartmentalization. According to BIN officials "non-organic" agents–those recruited from outside the agency– are known only to their handlers. There is no formal assignment letter or other paperwork, and they may be registered by their code names or not at all. It is the responsibility of deputies, such as Muchdi, to monitor their activities.

The TPF was able to meet with six BIN staff, but failed to meet with three former senior officials: Hendropriyono, Muchdi, and Irawan.[21] The information was collected from other staff members remains contradictory and incomplete. It was unclear, for example, whether civil servants, such as Garuda employees, could be BIN agents, or where and how the names of BIN agents are recorded. In his public statements, Hendropriyono gave conflicting information, stating in one interview that he had confirmed that Pollycarpus was not an agent, but also that only their "handlers" knew agents' true identities.[22]

Police failure to follow up

The fact-finding team was designed to work in conjunction with the official police investigation. However, doubts about the capacity or will of the police to solve the case proved well-founded. The police made little headway in building the case against Pollycarpus, let alone the alleged masterminds of the plot.

The police did take some early actions, and even before the fact-finding team was named police investigators had questioned at least 77 people, including airline employees, family members, and others who came into contact with Munir during his final trip. After the TPF began its work and found links to Garuda and BIN, police interviewed officials from both institutions.

However, the police interviews were often brief and insubstantial. Many of the interview transcripts were not given to the TPF. The TPF concluded that the police were unwilling to fully investigate and recommended an audit of the police investigation team. The conclusion was based on several weaknesses in the police team's work:

- Poor technical capacity on aviation, aviation security, and forensic analysis;
- Inadequate independence from the police bureaucracy, leading to slow decision-making;
- Poor coordination with other ministries and agencies as seen in the delays in securing a mutual legal assistance agreement with the Dutch government;
- Failure to share information. For example, the TPF received less than 20 of the 100 witness interview transcripts. The team was also not invited to a closed reconstruction of the crime held by the police on June 23, the day the team handed its report to the president;
- Failure to follow up on TPF recommendations to the police team, such as in-depth investigation of Garuda officials, possibly leading to suspect status, and an investigation of Pollycarpus's activities in Singapore.[23]

[21] Although Hendropriyono and Muchdi have left their positions as director and Deputy Director 5 respectively, both remain influential at the agency. As Muchdi explains in the sympathetic magazine *Ekspos*, it is the "tradition" at BIN for him to continue to remain a "member" of BIN and to go to the office although he no longer holds his official position. *Ekspos*, June 2005, Edition 01/1, p. 8.

[22] "A.M. Hendropriyono: Munir Was Not on Our Radar Screen," *Tempo*, June 7-13, 2005.

[23] Human Rights First interview with TPF member Asmara Nababan, August 16, 2005

Lack of support from the executive branch

President Yudhoyono met with Munir's wife and colleagues soon after the nature of his death was revealed. When he issued the Presidential Decree creating the fact-finding team, a spokesman stated, "This shows the President's commitment to solve this case. The President will do whatever it takes to solve this case."[24]

President Yudhoyono continued to meet with the team, sometimes in tripartite meetings with BIN officials. These signs of support were welcome and helped advance the investigation. However, the failure of the team to get access to key BIN officials and documents, as well as the lack of charges to date against Garuda officials, indicate that the President's authority, or his willingness to enforce it, is limited. A member of the fact-finding team told Human Right First:

> We failed to find documents to prove Polly's formal status [as a BIN agent]. This is not our fault, but BIN's and President Yudhoyono's failure to ensure full cooperation. The key point is the president. If he wants to crack open the case, he has to do something to pressure the chief of BIN and open up access to investigators."[25]

At a May 18 meeting with the President, which followed the signing of the protocol by BIN and the TPF, the agency again promised to ensure access to documents and officials. However, despite this pledge the team was still refused access.[26]

The government also failed to provide funding to the TPF as provided for in the Presidential Decree. The team submitted budget requests, but never received funds. Lack of funding meant that some TPF investigative activities were not possible, including travel for team members to Singapore, the Netherlands, East Timor, Aceh, and Papua.[27] Their inability to travel left them unable to fully investigate Pollycarpus' relationship to BIN or to trace Munir's final hours.

Other measures to hamper the investigation

From the beginning there were threats against Munir's family. On September 9, 2004, Munir's mother received an anonymous letter that said "Congratulations on the death of Munir, I hope he is not beaten by the spirits of the nation's heroes who died defending the country."[28] In November 2004, Munir's wife Suciwati received a package containing a decaying, mutilated chicken carcass in the mail with a note "Be careful!!!!! Do not connect the [Indonesian Army] to the death of Munir. Do you want to end up like this?!"

On May 4, Suciwati received threats warning that she would be kidnapped and blinded if she continued to "pry into Munir's death." The two handwritten letters were postmarked April 27, several weeks after Suciwati traveled to Geneva to help focus attention on her husband's case at the annual meeting of the United Nations Commission on Human Rights.

Human Rights First has also received a report that around the time the TPF submitted its final report, police investigators twice told a journalist for an Indonesian language daily newspaper not to pursue the Munir case because it involved a very powerful person.[29]

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[24] "Presiden Bentuk Tim Investigasi Independen Kasus Munir," *Kompas CyberMedia*, December 23, 2004.
[25] Human Rights First interview with TPF member Asmara Nababan, August 16, 2005.
[26] Human Rights First interview with TPF member Usman Hamid, August 16, 2005.
[27] Human Rights First interview with TPF member Asmara Nababan, August 16, 2005.
[28] "Istri Munir: Bisa Jadi Pelaku Teror Ini Benar TNI," *Detikcom*, November 21, 2005.
[29] Personal communication, [name withheld upon request], September 6, 2005.

According to someone who has reviewed the TPF report, the team also found that even members of the police investigation received pressure and intimidation, including by anonymous phone and text messages.[30]

Media Offensive against the Investigation

Those implicated in the case also responded aggressively through the media, attacking the TPF and its findings.[31] In June 2005, the very first issue of an investigative magazine linked to supporters of the Suharto regime, *Ekspos*, was devoted entirely to the case, just as the TPF was wrapping up its work. The cover featured Muchdi, with a quote that Munir was not a terrorist or a separatist, and, by implication, not a concern for BIN. Denials by Muchdi, Hendropriyono, and Pollycarpus were repeated throughout the magazine, as well as graphics, interviews, and charts disputing findings of the TPF and the autopsy by the Dutch Forensic Institute. Articles in the magazine suggested that Munir might have been killed by foreign agents hoping to hurt Indonesia's reputation, or even by rivals within the NGO community.[32]

Legal Attacks

Of much more concern than the media offensive was a legal attack on two members of the independent fact-finding team. In 2004, BIN chief Hendropriyono had filed libel suits against two NGO activists after being accused of targeting human rights defenders instead of terrorists.[33] While he dropped those suits later that year, in May 2005 he took the tactic a step further, filing a complaint with the police accusing TPF members Rachland Nashidik and Usman Hamid of criminal defamation. The two he accused, in addition to being members of the fact-finding team, are directors of two NGOs founded by Munir, Imparsial and Kontras. The complaint accused them of violating sections 310, 311 and 355 of the Criminal Code by damaging Hendropriyono's good name through statements to the press that he was being uncooperative and had traveled to the United States in an effort to avoid meeting with the team.

The police took quick action on the complaint. They questioned journalists, named the two men as suspects, and in August summoned Hamid to come in for questioning. (Neither man had met with the police as of early September.) Significantly, the police summons of Usman Hamid is in his capacity as "Secretary of the Fact-Finding Team," rather than as director of Kontras.[34]

The complaint and the police investigation appear to be another means to intimidate investigators and discredit the findings of the team. The use of these broad criminal provisions, often described as "rubber clauses," recalls the abuses of the Suharto regime against its critics.

The Conclusions of the fact-finding team

On June 23, 2005 the TPF wrapped up its activities term and handed over its final report to the government. Despite the many obstacles it had faced throughout its tenure, the team reached a number of significant

[30] Personal communication, [name withheld upon request], August 30, 2005.
[31] "Hendropriyono trying to divert attention away from Munir case" *Detikcom*, June 1, 2005.
[32] *Majalah Investigasi Ekspos*, June 2005.
[33] See Human Rights First, "Head of Indonesian Intelligence Agency Targets Human Rights Advocates," Defender Alert, October 13, 2004. http://www.humanrightsfirst.org/defenders/hrd_indonesia/alert021605_hendardi.htm.
[34] Surat Panggilan No. Pol. S. Pgl/10966/VIII/2005/Dit Reskrimum. Dated August 9 and signed by Jakarta Director of General Criminal Investigations (Reskrimum Polda Metro Jaya), Tomsi Tohir.

conclusions. Although the report has not been released, its findings have been widely cited in the media, including the following:

- The crime is suspected of involving certain parties from Garuda and BIN circles.
- Munir's death was linked to his work on democracy and human rights, including criticism of BIN.
- The delays in solving the crime were caused by a failure of will by police investigators.
- The mandate of the TPF was not adequate to the task, and therefore, the work of the team should be viewed as just the first step.

The team was disbanded with the issuance of its report, and its recommendation to create a successor body with a stronger mandate has not yet been acted upon. Police General Hanafi was assigned to head the police investigation team, and another member of the team was assigned to lead the prosecution of Pollycarpus.

However, neither appointment was able to ensure continuity with or follow-up to the TPF's work. In fact, as explained below, the prosecution does not make any reference to the findings of the TPF. If there are no further charges, arrests, or prosecutions, this omission raises the question of whether the exercise had any meaningful impact on the judicial process.

THE TRIAL OF POLLYCARPUS

The trial of Pollycarpus opened on August 9 and is unfolding at the Central Jakarta District Court each Tuesday for up to six months. In the first stage, each side presents a preliminary case, and the panel of judges decide whether to proceed with witnesses or to drop all charges. Human Rights First had an observer present on the second session held on September 16, and continues to monitor the trial through the work of Indonesian human rights organizations and local and international press reports.

On August 9 the trial of Pollycarpus opened in Jakarta with a reading of the indictment (*surat dakwaan)* prepared by the prosecution team. The courtroom was filled with Munir's supporters, families of victims of past abuses, journalists, and curious onlookers. Some demonstrators shouted "murderer!" when Pollycarpus was brought in.[35]

The Surat Dakwaan

The primary charge against Pollycarpus is that, either alone or with two other airline crew members, he carried out, ordered, or joined in the intentional and premeditated killing of another person. Under section 340 of the Criminal Code, if convicted he would face up to life in prison.[36] The two other suspects, Oedi Irianto and Yeti Susmiarti, have not been formally charged and are not in custody.[37]

More specifically, the indictment states that after offering Munir his own seat in business class, Pollycarpus went to the galley while welcome drinks were being prepared. He ensured that arsenic was placed in the orange juice because he knew Munir would not choose an alcoholic drink. Once he was sure that Munir had drunk the juice, Pollycarpus returned to premium class and then to the cockpit to chat with the pilot.[38]

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[35] "Trial Opens in Case of Murdered Indonesian Rts Activist," Associated Press, August 9, 2005; "Masuki Ruang Sidang, Polly Diteriaki Sebagai Pembunuh," *Detikcom*, August 8, 2005.
[36] As part of a mutual legal assistance agreement the Indonesian and Dutch governments concluded to facilitate the transmission of autopsy and other investigation results, the Indonesian government agreed not to seek the death penalty.
[37] Another passenger in the plane was arrested in August 2005 and charged with document fraud for flying with a falsified passport. At this time, there is no known connection between the trade lawyer, Ery Bunyamin, and the death of Munir. "Police detain man on Munir flight," *Jakarta Post*, August 13, 2005.
[38] Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, July 27, 2005.

The prosecution's case faces difficulty on the question of motive. Much of the fault for this appears to rest with the police. Prosecutors rely heavily on the police for the information in the *berkas*, or dossier. The police handed over the results of their investigation in mid-July, and prosecutors assembled their case over the next two weeks, submitting their dossier to the court on July 29.[39]

The eight-page indictment may be as weak as it is due to failure by the police to follow up on the leads generated by the fact-finding team. Despite hopes that Marsudhi Hanafi's assignment to the main police investigation would lead to action, the prosecution appears to have received a dossier lacking in key information.

There is no mention of the TPF or its findings. Procedurally, there may have been an obstacle in that the police reportedly did not include the TPF report in the documents they submitted to the prosecutor's office. However, it also appears that the prosecutors made a decision not to use the results of the TPF. Domu P. Sihite (who took over the prosecution team only after the indictment was drawn up) offered a partial explanation: "We could not evaluate what the TPF's findings were—the prosecution eventually decided to only use the results of the police investigations."[40]

Even the TPF report acknowledges that it is just the first step. However, some of the evidence it collected would have been useful in constructing a more plausible theory for the motive of the accused. Pollycarpus' phone calls to a BIN number and a cell phone in Muchdi's possession are never mentioned in the indictment, even though they are well-documented in the TPF report. Usman Hamid, the secretary of the TPF, points out that there is "no mention of BIN or Muchdi in the indictment. They want to transfer the blame to Pollycarpus. Of course, it is possible for one man to carry out a murder, but this murder took an extraordinary plan."[41]

Moreover, the decision to omit TPF findings was not applied consistently. While BIN is never mentioned, senior Garuda officials are named and implicated in the forgery charges against Pollycarpus. However, even these acts are not presented as part of a larger conspiracy to commit a murder, and are presented only as limited acts of forgery.

Not only does the failure to mention BIN raise questions about the willingness to prosecute intelligence officials in the future, it also imperils the prosecution of Pollycarpus himself. Without the connection to BIN, Pollycarpus' motive and other elements of the crime no longer make sense–something the defense has pointed out. As discussed below, a major argument of the defense is that the prosecution's description of Pollycarpus' motive is not clear or consistent. In fact, much of the defense response to the charges is based on weaknesses in the investigation that could have been avoided if there had been more political will by the police and the executive branch.[42]

The prosecution claims that since 1999 Pollycarpus had carried out activities to support the *Negara Kesatuan Republik Indonesia* (a phrase that translates to the Unitary Republic of Indonesia, and refers to the opposition to any separatist, or even federalist, efforts). According to the prosecutors, Munir's activities "were seen by the

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[39] "Pollycarpus Resmi Tahanan Kejati DKI Jakarta," *Detikcom*, July 15, 2005; "Berkas Dilimpahkan, Pollycarpus Segera Disidang," *Detikcom*, July 29, 2005.

[40] "Curiouser and Curiouser," *Tempo*, August 16 - 22, 2005.

[41] Human Rights First interview with Usman Hamid, August 16, 2005.

[42] The leading weekly Tempo was not optimistic: "What can we say about the trial of Pollycarpus Budihari Priyanto-the man accused of murdering human rights activist Munir-which starts on Tuesday? Misdirected? Concocted? A trial engineered to free the suspects? Even before it has begun, the initial indications are that the court proceedings, which many hope will reveal the identity of Munir's killer and the organization behind him, will not proceed well at all." " Opinion: Exercise in Futility?" Tempo, August 9-15, 2005.

accused and by certain parties as severely disturbing and posing a hindrance to the implementation of government programs . . .This background of belief and values pushed the suspect to feel the need to stop the activities of the victim, Munir."[43]

This argument by prosecutors is a traditional one used in Indonesian trials. Members of the special forces *Kopassus*, linked to the kidnapping of Jakarta activists and to the killing of Papuan leader Theys Eluay, claimed that they were not following orders, but rather simply saw the activists as a threat and took action on their own as an act of patriotism. Such reasoning insulates high-ranking officers and institutions from accountability. In this case, it also undermines the prosecution, and ignores evidence that the TPF compiled showing links to more senior officials.

The second charge brought against Pollycarpus is that alone or with Garuda officials he carried out, ordered, or joined in the intentional creation of fake or falsified letters, and that such letters caused a loss to another party. The charges, falling under section 263 (2) of the Criminal Code, are based on the claim that Flight Operation Support Officer Rohainil Aini did not have the authority to sign off on the Notice of Change allowing Pollycarpus to fly on Garuda flight GA 974. According to the indictment, after Pollycarpus' expenses on the Singapore trip came to the notice of the Chief of Pilots, he called Pollycarpus, who then asked Vice-President for Corporate Security Ramelgia to provide a letter. Ramelgia did so on September 15, and even backdated it to September 4 in accordance with a request from Pollycarpus.[44]

While these documents are an important part of the case against Pollycarpus, and perhaps against Garuda officials in the future, the key concern is not simply the act of forgery but the fact that the falsified letters were part of a murder plot. There is still more investigation needed to determine why senior Garuda officials were assisting Pollycarpus at all, including the possibility of links with BIN officials. Meanwhile, the defense argues that signing a letter based on false pretenses or without the proper authority is not necessarily forgery.

The Petition to Dismiss (Eksepsi)

On August 16, one week after the trial opened, the court reconvened for a second day for the reading of the defense's petition to dismiss, also known as the *nota keberatan* or the *eksepsi.* The judge opened the session by asking the packed crowd not to wear their Munir masks in the courtroom. Pollycarpus' wife sat in the back row with flowers presented by several people who felt bad about the emotional behavior of the crowd the week before. Outside, demonstrators wearing Munir masks held aloft a sign that read "Expose the masterminds: we don't need scapegoats." Again, a row of news cameras filled the front row of the gallery. On either side of the courtroom the two teams of lawyers were lined up at tables in black robes. Darsono, assistant chief of BIN and former contact person for the TPF, was also in the courtroom.[45]

A group of students calling themselves the Eastern Indonesia Students Forum passed out fliers expressing support for the accused, together with Hendropriyono, and attacking NGOs. A second flier, over the name Wawan Purwanto, identified as an intelligence scholar, alleged that Munir's death was linked to a dispute over NGO funding.[46]

The defense team took turns reading from the *eksepsi*. The team included several well-known attorneys. Muhammad Assegaf is a prominent lawyer most known for representing some of those accused in the October

[43] Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, July 27, 2005.
[44] Surat Nomor : IS/1177/04
[45] Personal observation, Human Rights First, Central Jakarta District Court, August 16, 2005.
[46] Kontras, "Monitoring Persidangan Pembunuhan Munir II," undated. An interview with Purwanto in the magazine *Ekspos* makes similar allegations that Munir might have been killed by his colleagues or by foreign intelligence agencies.

2004 Bali bombing. Suhardi Somomoeljono represented East Timorese militia leader Eurico Gutteres before the failed ad hoc tribunals on East Timor, as well as militia members accused of killing three United Nations workers in Atambua in 2000. He is rumored to have close links to BIN, and is the author of a book on the "international conspiracy on East Timor."

The defense team and the human rights community agree on many of the weaknesses in the case against Pollycarpus, although for very different reasons. For the human rights community the case against Pollycarpus is weak because it fails to demonstrate his part in a broader conspiracy to kill Munir. For the defense team, the lack of clear motivation, absent the references to Pollycarpus's connections to BIN, enable them to cast doubt on the case against their client. The central argument in the defense's petition to dismiss is that naming Pollycarpus as the sole perpetrator does not make sense, and is the result of the inability of the police and the TPF to find the real killer.[47]

In particular, the defense questions the prosecution's description of motive, arguing that Pollycarpus is not political: "the murder of Munir was of course done or ordered by a person or a group that indeed has direct interests, strong motivation, and logically [wanted] to end the life of Munir, the human rights defender. Pollycarpus does not fit these criteria at all."[48] Due to the lack of a clear motive, they argue, the charges should be dropped.

The defense also argues that the fact that the TPF recommended continuing the investigation indicates that the real killer has not yet been identified: "If the there are indeed certain parties that also felt extremely disturbed with the progress of the work of the deceased, couldn't it have been these 'certain parties' that wanted to kill Munir rather than a pilot named Pollycarpus?"[49]

The claim that Pollycarpus is not political does not stand up to scrutiny. The prosecution may not ever raise it in court, but as noted above, the TPF found evidence that he was in Aceh at the declaration of Martial Law in May 2003 and in East Timor in 1999, as well as in Papua at various times.

The defense also has complained in court about the TPF's public discussion of findings and its effect on the public opinion, noting that the December 2004 Presidential Decree only mandates the team to "assist the police." Because findings were given to the media, it "created an opinion" that BIN officials were involved.[50] This was perhaps the only mention of BIN in the courtroom, and seems more designed to be protective of BIN's reputation than a defense of Pollycarpus.

Other elements of the defense case include highlighting the same gaps in the police investigation that the TPF and human rights organizations had raised, such as the failure to pinpoint the precise time and place of the crime. In many of these arguments the problem again centers on the failure to investigate fully, including failing to obtain detailed information from witnesses and suspects.

Some of these questions may become clearer as witnesses are called, beginning on September 6. But many of them spring from the failure to develop a full picture of a possible conspiracy involving BIN, Garuda, and Pollycarpus.

On August 30, having heard the prosecution and defense statements, the court rejected the defense petition for dismissal and ruled that the prosecution of Pollycarpus should proceed.

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[47] Nota Keberatan atas Surat Dakwaan No. Reg Perkara PDM-1305/JKT.PST/07/2005.
[48] Ibid. p. 4.
[49] Ibid. p. 16.
[50] Ibid. p. 8.

On September 6, the prosecution opened its case with the first of 36 witnesses, beginning with Munir's wife, Suciwati, and former Garuda Managing Director Indra Setiawan. Suciwati was cautioned by the judge not to raise TPF findings because they were not in the official dossier submitted to court, while Setiawan was reprimanded by the judge for giving testimony that differed from his earlier statements to the police. There were also numerous unidentified people that one witness described as "thugs" in the gallery.[51]

CONCLUSIONS AND RECOMMENDATIONS

A full resolution of the murder is in the interests of justice for Munir and his family. But such an outcome also has much larger implications for the future of human rights in Indonesia. Leading human rights lawyer Hendardi, also a member of the fact-finding team, notes that "If the one who pulled the strings in the death of Munir is not uncovered, then what Munir experienced will continue to happen. If this happens, then democracy in Indonesia will not grow."[52]

Another Indonesian human rights lawyer told Human Rights First that he worried that the Munir case was a demonstration that the judicial process could be compromised. It showed that some people remained "untouchable" regardless of their crimes.[53] To help ensure that this does not happen, Human Rights First makes the following recommendations:

1. Consistent with Presidential Decree No. 111 of 2004, the government should immediately release the full final report of the Fact-Finding Team: the Decree in fact states that "It is the government that will subsequently announce the results of the team's investigation to the public."

2. If Garuda has actually conducted the internal review it pledged to carry out, this should also be released immediately and in full.

3. The police and the prosecutor's office must continue to build a case against any Garuda and BIN officials for whom there is evidence of involvement.

4. Recognizing that the police have not implemented the recommendations of the fact-finding team to date, and the continuing danger of a politicized process, an independent body with presidential authority to continue the work of the team remains necessary. Such a body should have the full support of the President of Indonesia and the authority to interview past and present senior BIN officials and obtain any documents it deems relevant to the investigation.

5. The parliamentary committee monitoring the Munir case must maintain maximum pressure on the investigation and prosecution of anyone involved in the ordering, planning, or execution of the crime.

6. While BIN's role in the death of Munir has yet to be proven, there are clear links between the agency and Pollycarpus. As debate on an intelligence law moves forward in the coming months, any legislation must address the roles and responsibilities of an agency that is not adequately regulated by law, is unaccountable to the public or the legislature, and therefore should not be given expanded powers to arrest and detain suspects.

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[51] Personal communication, September 6, 2005; "Mantan Dirut Garuda Tak Tahu Pollycarpus ke Singapura," *Detikcom*, September 6, 2005.
[52] "Dua Tersangka Kasus Munir Ditangkap," *Suara Pembaruan Daily*, August 8, 2005.
[53] Human Rights First interview [name withheld upon request], August 22, 2005.