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20

COMMEMORATIVE ISSUE
HUMAN RIGHTS IN MOTION



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INTRODUCTION



HUMAN RIGHTS IN MOTION: A MAP TO A MOVEMENT'S FUTURE

Lucia Nader (Executive Director, Conectas)
Juana Kweitel (Program Director, Conectas)
Marcos Fuchs (Associate Director, Conectas)

Sur Journal was created ten years ago as a vehicle to deepen and strengthen bonds between academics and activists from the Global South concerned with human rights, in order to magnify their voices and their participation before international organizations and academia. Our main motivation was the fact that, particularly in the Southern hemisphere, academics were working alone and there was very little exchange between researchers from different countries. The journal's aim has been to provide individuals and organizations working to defend human rights with research, analyses and case studies that combine academic rigor and practical interest. In many ways, these lofty ambitions have been met with success: in the past decade, we have published articles from dozens of countries on issues as diverse as health and access to treatment, transitional justice, regional mechanisms and information and human rights, to name a few. Published in three languages and available online and in print for free, our project also remains unique in terms of geographical reach, critical perspective and its Southern 'accent'. In honour of the founding editor of this journal, **Pedro Paulo Poppovic**, the 20th issue opens with a biography (by João Paulo Charleaux) of this sociologist who has been one of the main contributors to this publication's success.

This past decade has also been, in many ways, a successful one for the human rights movement as a whole. The Universal Declaration of Human Rights has recently turned 60, new international treaties have been adopted and the old but good global and regional monitoring systems are in full operation, despite criticisms regarding their effectiveness and attempts by States to curb their authority. From a strategic perspective, we continue to use, with more or less success, advocacy, litigation and naming-and-shaming as our main tools for change. In addition, we continue to nurture partnerships between what we categorize as local, national and international organizations within our movement.

Nevertheless, the **political and geographic coordinates** under which the global human

rights movement has operated have undergone profound changes. Over the past decade, we have witnessed hundreds of thousands of people take to the streets to protest against social and political injustices. We have also seen emerging powers from the South play an increasingly influential role in the definition of the global human rights agenda. Additionally, the past ten years have seen the rapid growth of social networks as a tool of mobilization and as a privileged forum for sharing political information between users. In other words, the journal is publishing its 20th issue against a backdrop that is very different from that of ten years ago. The protests that recently filled the streets of many countries around the globe, for example, were not organized by traditional social movements nor by unions or human rights NGOs, and people's grievances, more often than not, were expressed in terms of social justice and not as rights. Does this mean that human rights are no longer seen as an effective language for producing social change? Or that human rights organizations have lost some of their ability to represent wronged citizens? Emerging powers themselves, despite their newly-acquired international influence, have hardly been able – or willing – to assume stances departing greatly from those of “traditional” powers. How and where can human rights organizations advocate for change? Are Southern-based NGOs in a privileged position to do this? Are NGOs from emerging powers also gaining influence in international forums?

It was precisely to reflect upon these and other pressing issues that, for this 20th issue, SUR's editors decided to enlist the help of over 50 leading human rights activists and academics from 18 countries, from Ecuador to Nepal, from China to the US. We asked them to ponder on what we saw as some of the most urgent and relevant questions facing the global human rights movement today: 1. Who do we represent? 2. How do we combine urgent issues with long-term impacts? 3. Are human rights still an effective language for producing social change? 4. How have new information and communication technologies influenced activism? 5. What are the challenges of working internationally from the South?

The result, which you now hold in your hands, is a **roadmap for the global human rights movement** in the 21st century – it offers a vantage point from which it is possible to observe where the movement stands today and where it is heading. The first stop is a reflection on these issues by the founding directors of Conectas Human Rights, **Oscar Vilhena Vieira** and **Malak El-Chichini Poppovic**. The roadmap then goes on to include **interviews** and **articles**, both providing in-depth analyses of human rights issues, as well as **notes from the field**, more personalized accounts of experiences working with human rights, which we have organized into **six categories**, although most of them could arguably be allocated to more than one category:

Language. In this section, we have included articles that ponder the question of whether human rights – as a utopia, as norms and as institutions – are still effective for producing social change. Here, the contributions range from analyses on human rights as a language for change (**Stephen Hopgood** and **Paulo Sérgio Pinheiro**), empirical research on the use of the language of human rights for articulating grievances in recent mass protests (**Sara Burke**), to reflections on the standard-setting role and effectiveness of international human rights institutions (**Raquel Rolnik**, **Vinodh Jaichand** and **Emílio**

Álvarez Icaza). It also includes studies on the movement's global trends (**David Petrasek**), challenges to the movement's emphasis on protecting the rule of law (**Kumi Naidoo**), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (**Samuel Moyn**).

Themes. Here we have included contributions that address specific human rights topics from an original and critical standpoint. Four themes were analysed: economic power and corporate accountability for human rights violations (**Phil Bloomer, Janet Love and Gonzalo Berrón**); sexual politics and LGBTI rights (**Sonia Corrêa, Gloria Careaga Pérez and Arvind Narrain**); migration (**Diego Lorente Pérez de Eulate**); and, finally, transitional justice (**Clara Sandoval**).

Perspectives. This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (**Maria Lúcia da Silveira**), Brazil (**Ana Valéria Araújo**), Cuba (**María-Ileana Faguaga Iglesias**), Indonesia (**Haris Azhar**), Mozambique (**Salvador Nkamate**) and Nepal (**Mandira Sharma**). But they all share a critical perspective on human rights, including for instance a sceptical perspective on the relation between litigation and public opinion in Southern Africa (**Nicole Fritz**), a provocative view of the democratic future of China and its relation to labour rights (**Han Dongfang**), and a thoughtful analysis of the North-South duality from Northern Ireland (**Maggie Beirne**).

Voices. Here the articles go to the core of the question of whom the global human rights movement represents. **Adrian Gurza Lavalle** and **Juana Kweitel** take note of the pluralisation of representation and innovative forms of accountability adopted by human rights NGOs. Others study the pressure for more representation or a louder voice in international human rights mechanisms (such as in the Inter-American system, as reported by **Mario Melo**) and in representative institutions such as national legislatures (as analysed by **Pedro Abramovay and Heloisa Griggs**). Finally, **Chris Grove**, as well as **James Ron, David Crow and Shannon Golden** emphasize, in their contributions, the need for a link between human rights NGOs and grassroots groups, including economically disadvantaged populations. As a counter-argument, **Fateh Azzam** questions the need of human rights activists to represent anyone, taking issue with the critique of NGOs as being overly dependent on donors. Finally, **Mary Lawlor and Andrew Anderson** provide an account of a Northern organization's efforts to attend to the needs of local human rights defenders as they, and only they, define them.

Tools. In this section, the editors included contributions that focus on the instruments used by the global human rights movement to do its work. This includes a debate on the role of technology in promoting change (**Mallika Dutt and Nadia Rasul**, as well as **Sopheap Chak and Miguel Pulido Jiménez**) and perspectives on the challenges of human rights campaigning, analysed provocatively by **Martin Kirk** and **Fernand Alphen** in their respective contributions. Other articles point to the need of organizations to be more grounded in local contexts, as noted by **Ana Paula Hernández** in relation to Mexico, by **Louis Bickford** in what he sees as a convergence towards the global middle, and finally by **Rochelle Jones, Sarah Rosenhek and Anna Turley** in their movement-support model. In addition, it is noted by **Mary Kaldor** that NGOs are not the same as civil society,

properly understood. Furthermore, litigation and international work are cast in a critical light by **Sandra Carvalho and Eduardo Baker** in relation to the dilemma between long and short term strategies in the Inter-American system. Finally, **Gastón Chillier and Pétalla Brandão Timo** analyse South-South cooperation from the viewpoint of a national human rights NGO in Argentina.

Multipolarity. Here, the articles challenge our ways of thinking about power in the multipolar world we currently live in, with contributions from the heads of some of the world's largest international human rights organizations based in the North (**Kenneth Roth** and **Salil Shetty**) and in the South (**Lucia Nader**, **César Rodríguez-Garavito**, **Dhananjayan Srisikandarajah** and **Mandeep Tiwana**). This section also debates what multipolarity means in relation to States (**Emilie M. Hafner-Burton**), international organizations and civil society (**Louise Arbour**) and businesses (**Mark Malloch-Brown**).

Conectas hopes this issue will foster debate on the future of the global human rights movement in the 21st century, enabling it to reinvent itself as necessary to offer better protection of human rights on the ground.

Finally, we would like to emphasize that this issue of Sur Journal was made possible by the support of the Ford Foundation, Open Society Foundations, the Oak Foundation, the Sigrid Rausing Trust, the International Development Research Centre (IDRC) and the Swedish International Development Cooperation Agency (SIDA). Additionally, Conectas Human Rights is especially grateful for the collaboration of the authors and the hard work of the Journal's editorial team. We are also extremely thankful for the work of Maria Brant and Manoela Miklos for conceiving this Issue and for conducting most of the interviews, and for Thiago Amparo for joining the editorial team and making this Issue possible. We are also tremendously thankful for Luz González's tireless work with editing the contributions received, and for Ana Cernov for coordinating the overall editorial process.



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Human Rights in Motion

Perspectives

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"The Particularities in Cuba Are Not Always Identified nor Understood by Human Rights Activists from Other Countries"



HARIS AZHAR

Haris Azhar is the coordinator of KontraS - Commission for Disappearances and Victims of Violence, Indonesia, since 2010. At this organization since 1999, Azhar's main areas of expertise are Indonesian human rights and constitutional law, security sector reform, NGO governance, transitional justice, conflict resolution, and ASEAN relations. He holds a Master of Art (MA) in Human Rights Theory and Practice, from the University of Essex,

UK, as well as a Diploma in Transitional Justice from the International Center of Transitional Justice in Cape Town/New York. His twitter is: @haris_azhar.

ABSTRACT

After the fall of Suharto's authoritarian regime, in 1998, human rights have only been formally recognized in Indonesia, both by law and in the Constitution. Yet, civil society in that country has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. In this article, the author describes the challenge of impunity for human rights violations in present Indonesia, the role of civil society organizations at national and international levels to resist the perpetuation of human rights abuses, and finally the author reflects on the role of Indonesia at the international scenario as emerging power and what it means for human rights protection on the ground.

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KEYWORDS

Indonesia – Impunity – KontraS – Resistance – Media



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ESSAY

THE HUMAN RIGHTS STRUGGLE IN INDONESIA: INTERNATIONAL ADVANCES, DOMESTIC DEADLOCKS

Haris Azhar

Human rights have only been formally recognized in Indonesia, both by law and in the Constitution, after the fall of Suharto's authoritarian regime, in 1998. Civil society has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. Several entities have been outspoken in this situation, from government agencies to NGOs and international actors, including international NGOs that shifted their focus to South cooperation.

The achievements of the government of Indonesia in dealing with human rights are limited to formal respect for, and recognition of, human rights in the national law. This was started during the consolidation process soon after the transition period, in the early years of post-Suharto regime. Human rights have been "re-recognized" in an Amendment to the Constitution of Indonesia in 2000 (INDONESIA, 2000a).¹ This recognition can be seen as in accordance with the international conception of human rights standards where the State has the duty to protect the rights of every citizen. Civil liberties, which had never been respected during the Suharto regime, now became 'constitutional rights'. This constitutional promise has backboned and enriched the setting of human rights protection in Indonesia (SYA'FEI, 2012, p. 687). Indonesia is a State Party to eight core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 2005 (INDONESIA, 2013). At the national level, laws on issues related to human rights started to be enacted, the basic one being Law No. 39/1999 on Human Rights. In the context of criminal law, a law was enacted that created the Human Rights Court, which is considered as *lex specialis* to try genocide and crimes against humanity (INDONESIA, 2000b). These standards led to setting up [new] institutions to carry out human rights policies.

Notes to this text start on page 234.

The national human rights commission (Komnas HAM) was granted power and authority by Law No. 39/1999, a Constitutional Court was established to protect people's constitutional rights (SYA'FEI, 2012, p. 706), and other auxiliaries bodies known as commissions were created, like the National Police Commission, the National Law Commission, etc.

1 Impunity and recurrence of violations

The progress as described above was instrumental to Indonesia's achievements on discussing human rights issues during the reformation era. It was partially an reaction in the early years to the past violations, where hundred of thousands of people suffered and were sacrificed for the sake of 'development' by the military and corrupt regime, since 1965 (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11). However, such achievements do not necessarily provide protection to the people. They confirmed that all repression, injuries, and suffering needed to be repaired. Any violation, harm or abuse of individual rights and social justice should be punished according to the law. However, this seems to be held mostly on paper, not in practice. Many victims of past or current human rights violations have tried to utilize human rights-related laws and institutions. Unfortunately, the victims' efforts have failed to drive the institutions to initiate legal processes for the protection of human rights. During the transition period, laws and institutions failed to deal completely with the past (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11) and were overridden by other actors in the new political battle dealing with human rights abusers. The legislative reform in the transition period often ignored laws that contradict human rights standards, such as repression of the rights of women.

Currently, civilians do have democratic control in the parliament but are reckless. Indonesia is facing the dilemma of human rights protection in the form of a gap between policy and practice. Although the country has laws on human rights, violations and violence have increased year by year, without remedies. The lack of punishment for perpetrators and land grabbing for business interest is highly widespread. Local residents or indigenous groups were killed and jailed for their resistance and complaints. Minorities are unprotected. Corruption spreads out among local governments. Injustice is the norm in conflict areas such as Aceh, Papua, and East Timor. The UN Human Rights Committee expressed their concern about the aforementioned situations during their session with Indonesian government in July 2013. The Committee concluded, *inter alia*, that Indonesian government and its officers were unable to understand and refer to the International Covenant on Civil and Political Rights (ICCPR) for human rights violations in Indonesia (UNITED NATIONS, 2013). Thus, the problem is not merely impunity being derived from the State's unwillingness, but also from its inability.

2 Resistance and deadlock

The government tends to forget many important aspects of human rights protection. The more the State performs unduly and maintains impunity, the more people struggle to find justice for their rights which were violated. When the number of violations – and hence the number of victims – increases, solidarity, resistance and advocacy for compensation are strengthened. The feeling of disappointment toward government officials and judicial decisions is widespread. People resort to legal mechanisms, massive campaigns and strikes, including social media campaigns, rely on international pressure, and can count on a handful of journalists (while big media is at the most indifferent), to no or scarce results. Perpetrators' and the State's contra-advocacy, and government's attitudes lead to deadlocks, which disseminate widespread desperation among people.

The human rights law and other related laws provide complaint mechanisms, which victims use to report their cases or situations. Regrettably, these mechanisms have shortfalls to act appropriately and require a lengthy time.² Courts, in many regions, have similar poor performance. On the other hand, NGOs, civil society organizations, and survivors have scarce means to defend themselves and often lack concrete evidence. Satisfactory results are very few. The most successful case was the trial of crime against humanity in East Timor (Timor Leste), but in the end the wrongdoers were acquitted (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 49-50).

International mechanisms, lobby and pressure are other possibilities to be used (JESTKE, 1999, p. 148-150). With regard to the "Munir case", where a leading human rights activist was killed by poisoning by an Intelligence operation in 2004 on a flight from Indonesia to Amsterdam, Suciwati, Munir's wife, received an enormous support from governments, international organizations, and international NGOs. The European Parliament issued a Declaration [No.98/2007] (EUROPEAN PARLIAMENT, 2008), so did 68 members of U.S. Congress (2005), exerting pressure on the Indonesian president, Susilo Bambang Yudhoyono, to fairly uphold justice in this case.³

The United Nations also provides mechanisms that can alternatively be used. During the 2nd cycle of the Universal Periodic Review (UPR) session on Indonesia, the country was bombarded with many questions and recommendations from members of the UN Human Rights Council, including on religious intolerance (EVANTY, 2013). The Indonesian government replied and argued selectively at the international fora. Its responses varied in tone and intensity, according to its interests, from active answers on religious intolerance, through proudly presenting the legal and institutional reform in the country, to silence – which usually happened for impunity cases, like in relation to the Munir one.

Public intervention also took the form of symbolic campaigns, massive strikes, land or sea occupation⁴ by local or indigenous residents. Artists were involved in solidarity events and art groups voiced social problems and injustice (SARI, 2014). Social media was used as a tool to spread slogans and demand changes. Twitter,

Facebook, Instagram and online petition sites like Avaaz.org and Change.org have offered more options for people to express their concerns. Social media eases the way for people to engage in campaigning; and Jakarta is the world's most active city in terms of posted tweets (LIPMAN, 2012).

Massive demonstrations were used by labour groups or groups of stakeholders in natural resources issues like farmers, indigenous peoples or fishermen (KONSORSIUM PEMBARUAN AGRARIA, 2013), in an attempt to attract the government's attention, in view of poor mediation or negligence by official institutions. Frustration and disrespect have led some to the use of force; some reclaimed a disputed land, blocked big ships of a fish company in the traditional water zone or conducted strikes in many industrial areas. Sadly, in many occasions the police, or security officers, or thugs, or intolerance groups opposed to the manifestations. The leaders or followers of the actions were criminalised and considered provocateurs in the public space. They were arrested and subjected to harmful treatment.

A pacific demonstration, in turn, has been running for more than seven years (YUNIAR, 2014). In an initiative to institutionalize memory, a group of people, wearing black shirts and umbrellas, silently stand facing the presidential palace every Thursday for one hour, from 4-5 pm, in a demonstration known as *Kamisan* (*Kamis* means Thursday). They protest against a range of human rights abuses, such as the mass killings in 1965-66, and the disappearances and murders of activists in 1998, prior to the fall of former president Suharto, in an effort to stop the nation forgetting these past abuses. Some families also attempt to keep alive the memory of human rights abuse: Munir's family has set up a human rights museum related to him and other murdered or disappeared activists (HEARMAN, 2014); the mother of Hafidin Royyan, a student who was shot to death in a big rally at Trisakti University ten days before Suharto resigned in 1998, has kept his room untouched.

Government and Parliament have shown resistance by adopting legislation that limits freedom and demand 'responsibility and respect' for human rights. In addition, to speak of human rights has been named "anti-religious". The use of social media also faces some challenges. Beside the new law on Electronic Information and Transaction (INDONESIA, 2008), the minister of Communication and Information has repeatedly shown his unwillingness in speeding up access to the internet (WAHYUDI, 2014). So, legally and technically, information is free but its access is liable to be infringed.

As far as mainstream media is concerned, it has hardly been attested to play the watchdog role for the public. Nevertheless, many journalists have been harassed or mistreated by police or government agents, as well as by organized crime or businessmen (COMMITTEE TO PROTECT JOURNALISTS, 2014). One way or the other, they succeeded in turning information part of the democratic debate. The media has a key role in promoting human rights. On the other hand, in general it has also distorted the meaning of human rights. There are exceptions but most media outlets operate using the business logics, apparently moved primarily by commercial interest. An increasing number of them belong to very few owners (NUGROHO, 2012, p. 7, 12).

Human rights are not on the headlines, but are still an issue of interest. It's the language and the exercise of many people, especially those who were impacted by extensive and persistent abuses. It is the language of freedom and claims for justice, truth and remedies. Although people at large are aware of their rights, there is skepticism when human rights mechanisms do not present an urgent and quick response to the situation. On the other hand, we can see how many alternatives have been taken by victims to survive and maintain the hope for justice.

On the State side, it is well proven that, as far as standard setting is concerned, although it does use the universal 'human rights' language, in reality it shows lack of sufficient willingness and ability. Therefore, the State's obligations as stipulated in many international conventions become meaningless. Interesting to note, the current government does not have the same grip on society as did the military regime, when so many human rights violations occurred and deprivation of rights was widespread. Now, instead, violations of rights occur less as directed by central government policy and more due to a generalized corrupt, abusive and violent mentality among both the public and high level or security officials, in what can be seen as derived from government's weakness or unwillingness to uphold human rights. Aspinall (2010) underlines a pervasive disenchantment towards "the entrenchment of corrupt and authoritarian actors and practices within the new, formally democratic State".

3 Human rights in Indonesia and international relations

It is important to locate the human rights situation in Indonesia in the global human rights scenario. While local processes are weak and slow, foreign contribution is complementary and welcome; Indonesian human rights promoters got much encouragement at this level. However, the country has undergone striking changes, with implications to the way it is internationally seen, to the kind of assistance it receives, and to the internal human rights situation.

In general, changes within Indonesia are internationally seen as a fascinating development of democratic process. Abuse survivors and civil society organizations are highly praised. Millions of dollars, expertise and knowledge have been made available to foster the democratic transition.⁵ The world, through technology, is being opened for Indonesia.

For the Indonesian government, this situation makes it more comfortable to talk about human rights, especially with the foreign affair diplomats abroad. International actors, such as the U.S. government and the EU, have pointed to Indonesia as a key player or champion of the biggest Muslim democratic country. Within ASEAN, Indonesia led the accomplishment of two important goals, namely the adoption of the ASEAN Charter and the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR). At the international level in the United Nations, Indonesians get more recognition and some managed to be elected to key posts: Mr. Makarim Wibisono was elected president of the Human Rights Council (2005) with the support of countries that have dubious human rights records, like China and India; other individuals were chosen as special rapporteurs.

Indonesia has taken an advanced position on Myanmar (Burma) and on Middle East issues. The country has been recognised as a great economic power and joined the G20, the extension of G8, along with Mexico, South Africa, Brazil, Argentina, India and other countries. These internationally acclaimed achievements overshadow human rights issues. The government's understanding and dealing with human rights is the same. When the Indonesian president spoke at the United Nations Post-Millennium Development Goals forum, he proposed the idea of an international standard for religious slander. At the ASEAN forum, Indonesia signed the ASEAN Human Rights Declaration, which contains many flawed provisions – on national security, cultural relativity, national interest, consensus principles, non-interference (CIVIL..., 2012). These provisions undermine the Constitution and international human rights conventions.

Due to the country's growing weight in world affairs and to the economic growth — the country made the transition from poor to middle-income status —, the world is looking at Indonesia as a new key player. The pattern of foreign assistance has changed. Big donor agencies shift their assistance from civil society to government offices. Some foreign NGOs operating in Indonesia often produce sophisticated reports without having an influential advocacy inside the country, or with loose collaboration with local entities. They end up by competing with local NGOs to gain support from donors.

Abuse impunity and the government weakness do not drive international attention. In fact, in the case of Indonesia, after 16 years of political transition, some international entities are looking at the Indonesian government as a key player to deal with others' 'worst' situation, like Burma. Imagine that Indonesia —with its unsolved businesses on democratisation— should export the democratic transition experience to another country. They seem to forget the millions of victims and the survivors who still lack compensation. In the case of Indonesia, it is very clear that the rights of people are still ignored and neglected, both internally and internationally.

Can we expect a humanitarian intervention to put an end to steady impunity? Which would be the best way to mitigate the unrecognized, but persisting violations of human rights in Indonesia?

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NOTES

- Chapter XA is dedicated to human rights.
- For a criticism on Indonesian National Human Rights Commission, see Wiratraman (2014).
- A suspect was brought to trial and convicted, but the conviction was later invalidated. In 2007, a court found that the state-owned airline owed the widow a compensation, but this was never paid.
- Indonesia is an archipelago (13,466 islands) where 2/3 of the jurisdiction are coastal and sea areas. Many people, mostly indigenous residents, access the sea for their daily survival.
- For an interesting description on the assistance for the democratization panorama in Indonesia, see Aspinnal (2010).

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