

CASE
STUDY
SERIES



international center for
**TRANSITIONAL
JUSTICE**



A MATTER OF COMPLICITY?

Exxon Mobil on Trial for its Role
in Human Rights Violations in Aceh

HRWG

Human Rights Working Group
for International Human Rights Advocacy

imparsial
the independent monitoring service

KontraS
Korupsi, Hak Asasi Manusia, dan
Keberatan Masyarakat

Case Study Series

A Matter of Complicity?
Exxon Mobil on Trial for its Role in Human Rights Violations
in Aceh



About ICTJ

Founded in March 2001, the ICTJ assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

About HRWG

HRWG, Indonesia's NGO Coalition for International Human Rights Advocacy, was established in 2003 by organizations advocating human rights in Indonesia. Its mandate includes ensuring that the government of Indonesia fulfills its constitutional and international obligations to respect, protect, and fulfill human rights.

About Imparsial

Imparsial was established in 2002 by human rights activists in Indonesia concerned about abuses of power by the state. It promotes the fundamental equality of rights of all human beings, with a focus on those most vulnerable. It is committed to assisting victims of human rights abuses regardless of their social origins, gender, ethnicity, or political or religious beliefs.

About KontraS

KontraS (Commission for the Disappeared and Victims of Violence) was established in 1998 by Indonesian human rights NGOs and students' organizations in response to the increase in political violence and abductions committed toward the end of the authoritarian regime. Currently the KontraS Federation includes member organizations in Jakarta, North Sumatera, Aceh, Papua, and Surabaya, working toward a democracy based on people's sovereignty, free from fear, oppression, violence, and human rights violations.

Acknowledgments

This paper was written by Ross Clarke for ICTJ, HRWG, KontraS, and Imparsial, with support from Hivos and Open Society Institute (OSI). The author wishes to express his gratitude to the lawyers of Cohen Milstein Hausfeld and Toll and the International Labor Rights Fund for their continuing dedication to the case. Any errors are the author's own.

A Matter of Complicity?

Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh

Executive Summary

I. BACKGROUND

- A. Current Context**
- B. Exxon Mobil in Aceh**
- C. Exxon Mobil's Relationship with the Indonesian Government and TNI**
- D. Exxon Mobil and the Aceh Conflict**

II. OVERVIEW OF THE EXXON MOBIL CASE

- A. Allegations against Exxon Mobil**
- B. Legal Basis**
- C. Exxon Mobil's Response**
- D. Timeline of Main Procedural Steps to Date**
- E. Forthcoming Trial**

III. IMPLICATIONS OF THE EXXON MOBIL CASE

- A. Transitional Justice in Aceh**
- B. Reforming the Practices of Exxon Mobil and Security Institutions**
- C. Ongoing Scrutiny of Exxon Mobil and the TNI in Aceh**
- D. An Example of Judicial Best Practice**
- E. Advancing Human Rights Legislation**

Executive Summary

In 2001 the International Labor Rights Fund brought a civil case in U.S. Federal Court on behalf of 11 surviving family members of victims of human rights abuses allegedly committed by members of the Indonesian military forces (TNI). These abuses included torture, rape, and killings. The case specifically concerns Exxon Mobil's role in employing the TNI to protect its natural gas facilities in Aceh, Indonesia. It does not examine every aspect of the Aceh conflict and represents the claims of only a small number of victims, yet it is potentially important in achieving some degree of accountability for human rights abuses committed in Aceh.

Following the discovery of vast natural gas fields, Exxon Mobil helped build one of the largest and most profitable natural gas facilities in the world in Arun, North Aceh District, in 1971. Very little of the profit that flowed from these operations remained in Aceh, and this inequality contributed to formation of the Free Aceh Movement (GAM) in 1976. One of GAM's main demands was for Acehnese to retain a greater share of the wealth derived from natural resources extracted in the region.

In its initial contract with the Soeharto family, Mobil (which later merged with Exxon) agreed to hire members of the TNI as private security personnel. As the security situation in Aceh deteriorated, Exxon Mobil increased its reliance on the TNI. According to the plaintiffs' claims, by 2000 Exxon Mobil was paying more than US\$500,000 a month to the TNI. The lawsuit further alleges that Exxon Mobil helped to equip and train TNI members who provided private security to its Aceh operations. The Indonesian government used the threat to the immense revenue generated at the Arun facility to justify its increased militarization of Aceh. This in turn led to escalation of the conflict between the TNI and GAM. Fighting between GAM and the TNI had a severe impact on civilians, especially those who lived near the Exxon Mobil facility.

The lawsuit argues that Exxon Mobil should have been aware of the high degree of risk that TNI security personnel might commit human rights abuses. The corporation should have taken appropriate measures after it became aware that Indonesian military forces acting as its agents were committing serious violations. The plaintiffs initially sought relief under several U.S. laws: the Alien Tort Claims Act (ATCA), the Torture Victims' Protection Act (TVPA), and a state tort law that protects victims of wrongful death, assault, and arbitrary detention. In response to preliminary appeals brought by Exxon Mobil and the U.S. State Department the courts rejected the plaintiffs' action based on the ATCA and TVPA. However, in August 2008 a U.S. district court judge rejected further appeals and decided that the victims' claims that Exxon Mobil's actions had violated applicable tort laws had sufficient merit to be decided at trial.

To date there has been limited judicial accountability for crimes committed by the TNI in Aceh despite compelling evidence of their involvement in mass crimes. Commitments that were part of the 2005 Helsinki Memorandum of Understanding, to establish a truth and reconciliation commission and a human rights court, have not been fulfilled. Also, transitional justice efforts have focused disproportionately on reintegration of former combatants and political prisoners. The failure to address the concerns of victims of crimes by the TNI and bring perpetrators to justice could undermine sustainable peace in Aceh.

A Matter of Complicity? **Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh**

“Local security forces [are] ineffectual and often present as great a threat as the activists. The military presence is a double-edged sword, with some military personnel acting as information brokers, thieves, extortionists, and intimidators.”—Exxon Mobil internal report on security in Aceh¹

I. Background

A. Current Context

In the 10 years since the fall of Soeharto in 1998 it has become increasingly clear that there is a lack of political will in Indonesia to bring to account those responsible for mass violations of human rights. Despite impressive constitutional and legislative changes and the establishment of courts with specific jurisdiction over mass crimes, not one individual has been successfully prosecuted for widespread human rights violations. All 18 defendants in Indonesia’s ad hoc Human Rights Court for East Timor were either acquitted or had their convictions overturned on appeal in a process widely regarded as a whitewash. Similarly, human rights trials on the Tanjung Priok massacre and the Abepura case have not resulted in any convictions.² This unacceptable outcome can be attributed to the powerful political position of the Indonesian security forces, a notoriously corrupt judiciary, and the absence of a forward-looking government agenda.

The lack of judicial accountability for human rights violations has seriously weakened Indonesia’s democratic transition. Other transitional justice mechanisms, such as truth-seeking, reconciliation, and institutional reform, have taken place with varying levels of success; but victims’ internationally recognized right to justice has been all but ignored. The result is that military impunity persists for past human rights violations throughout Indonesia.

The Aceh peace process provides an important example of a failure to achieve any level of accountability, as well as continuing impunity.³ Following the 2005 Helsinki Memorandum of Understanding (MoU) between the Indonesian government and the

¹ Exxon Mobil internal report on security in Aceh, describing issues related to the Indonesian military’s security role in Exxon Mobil operations. See *John Doe I, et al. v Exxon Mobil Corp., et al.*, No. 01-CV-1357 (D.D.C.), Memorandum and Opinion on Summary Judgment, August 27, 2008, 19, http://www.cmht.com/cases_exxonmobilaceh.php. Throughout this paper Exxon Mobil collectively includes Exxon Mobil Corporation, along with its subsidiary, ExxonMobil Oil Indonesia.

² An appeals court decision acquitted 12 soldiers convicted in 2004 by an ad hoc human rights court for killing at least 33 civilians demonstrating in Tanjung Priok in 1984. See *Human Rights Watch News*, July 12, 2005, “Indonesia: Acquittals Show Continuing Military Impunity,” retrieved September 1, 2008, www.hrw.org/english/docs/2005/07/12/indone11309.htm. In September 2005 the human rights court based in Makassar acquitted two senior police officers for killing three students and torturing others during the Abepura incident in December 2000. See Human Rights Watch, “Out of Sight: Endemic Abuse and Impunity in Papua’s Central Highlands,” <http://hrw.org/reports/2007/papua0707/7.htm> (accessed September 1, 2008).

³ For an overview of the Aceh conflict and explanation of current transitional justice initiatives see the ICTJ report, “Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective,” January 2008.

separatist Free Aceh Movement (GAM), the prospects for justice appeared promising. A Human Rights Court for Aceh had been included in the peace agreement and also in subsequent national legislation, the Law on Governing Aceh (LOGA). However, initial optimism faded when the LOGA restricted the jurisdiction of the Human Rights Court to crimes committed after the Helsinki MoU. Despite this political compromise the Court has yet to be established. Under Law 26/2000 on the Human Rights Court, violations committed before 2000 could be dealt with through the establishment of an ad hoc tribunal with a specific mandate over past violations in Aceh (similar to that established for East Timor and Tanjung Priok). However, no steps have been taken to establish this mechanism, either. The failure to hold human rights trials for Aceh, even though a strong legal and evidentiary basis exists, raises significant doubts as to whether fair and independent trials for past violations in Indonesia will ever take place.

Demands for the prosecution of Indonesian military officials responsible for crimes against humanity in an international forum have also produced no tangible result. A UN-sponsored hybrid court in Timor-Leste brought convictions of a significant number of low-level East Timorese militiamen but did not have the jurisdiction to target their Indonesian military masters, who moved across the border into Indonesia when international peacekeepers arrived in Dili. A number of international and domestic inquiries have found Senior TNI commanders responsible for the mass violations committed in East Timor in 1999.⁴ Even so an independent judicial examination has yet to take place of their role in widespread, systematic human-rights violations committed in Timor and various areas of Indonesia.

However, a civil case in the U.S. courts, originally filed in 2001 by the International Labor Rights Fund on behalf of 11 surviving family members and victims of rape, torture, killings, and beatings, may offer a rare opportunity to obtain some degree of judicial accountability for crimes committed by the TNI. A court document in the case accuses the Exxon Mobil Corporation, two of its U.S. affiliates, and its Indonesian subsidiary, ExxonMobil Oil Indonesia (EMOI), of “killings and torture committed by military security forces protecting and paid for by EMOI.”⁵

On August 27, 2008, U.S. District Court Judge Louis Oberdorfer ruled that the plaintiffs had provided “sufficient evidence, at this stage, for their allegations of serious abuse” for the case to go to trial. Judge Oberdorfer rejected a request by Exxon Mobil and EMOI to throw out the case but dismissed a suit against two of the company’s U.S. affiliates.

The violations are related to the protection of Exxon Mobil’s natural gas installations in Arun, North Aceh District, a region severely affected by Aceh’s separatist conflict of some 30 years. Exxon Mobil strongly denies the allegations, and its legal team has

⁴ Domestic inquiries include *Chega! The Report of the Commission for Reception, Truth, and Reconciliation in Timor Leste* (2005) and *Report of the Indonesian Commission of Investigation (KPP HAM) into Human Rights Violations*, <http://www.jsmp.minihub.org/Resources/2000/KPP%20Ham%20%28e%29.htm> (partial English version). UN reports include “Situation of Human Rights in East Timor,” UN Doc. A/54/660 (December 10, 1999) and “Report of the International Commission of Inquiry on East Timor to the Secretary-General,” UN Doc. A/54/726, S/2000/59 (January 31, 2000). See also the recent bilateral Commission for Truth and Friendship report, *Per Memoriam ad Spem* (“Through Memory to Hope,” July 15, 2008).

⁵ “ExxonMobil case said to highlight Indonesia rights abuse,” *Agence France Presse*, August 28, 2008, <http://afp.google.com/article/ALEqM5iDxeFYVtc4rpRVbAKYP2YIKQytdw>.

employed various tactics, including two appeals to the U.S. Supreme Court, seeking to have the case terminated or delayed. To date all such attempts have failed.

The matter has attracted significant attention from the U.S. State Department, which also sought to have the courts dismiss the case. Indonesia is considered to be a key U.S. ally in combating terrorism, although international human rights groups have long advocated inclusion of state-sponsored terror in the definition of terrorism. Judicial decisions following applications by the State Department reduced the scope of the case but did not prevent it from proceeding. The Exxon Mobil case will be the highest-level judicial examination to date of crimes allegedly committed by the TNI in Aceh. Although the suit aims to hold Exxon Mobil liable and concerns only 11 Acehnese victims, it nevertheless represents an important milestone in Aceh's and Indonesia's struggle to obtain fair and independent trials of state-sponsored human rights violations.

B. Exxon Mobil in Aceh

MOI, a wholly owned subsidiary of Mobil Oil Corporation, commenced operations in Indonesia in late 1967. In 1971 Mobil discovered one of the largest natural gas fields in the world in Arun, North Aceh. From that time on the Indonesian government granted Mobil exclusive rights to explore and extract natural gas in the area around Arun. A local company, PT Arun, was established to process and liquefy the natural gas for shipping. It was set up as a joint venture between MOI (35 percent), the Indonesian state-owned oil and gas company, Pertamina (55 percent), and the Japanese-Indonesian LNG Company (10 percent). Following a global merger with Exxon in 1999, Exxon Mobil became the largest petrochemical company in the world and took control of Mobil's Arun operations. A year later it reported the biggest corporate profits in the world.⁶

Exxon Mobil continues to oversee the extraction of natural gas in Arun. It also holds exclusive contracts to provide 100 percent of the natural gas processed into liquefied natural gas (LNG) by PT Arun. And through its 35 percent share in PT Arun Exxon Mobil continues to play a leading role in gas processing and the export of LNG by that company. Exxon Mobil therefore exercises significant control over extraction and processing operations throughout the Arun area.

During the 1990s Arun was the "jewel in the company's crown," accounting for approximately 25 percent of Mobil's worldwide revenues.⁷ It has been estimated that between 1996 and 2006 Exxon Mobil extracted up to US\$40 billion worth of gas from the Arun plant.⁸ Significant investment was made in and around Lhokseumawe, the center of North Aceh District, where Exxon Mobil developed a large industrial site, complete with processing facilities, extensive pipelines, roads, offices, and accommodation for a large number of expatriate staff. In 2002 Exxon Mobil employed more than 2,000 Indonesian nationals. In an attempt to build community relations the company implemented a limited number of community development projects,

⁶ Down to Earth, "Aceh: Lawsuit Accuses Exxon Mobil of Complicity in Abuses," *Newsletter No. 50*, August 2001.

⁷ Jay Solomon, "Mobil Sees its Gas Plant Become Rallying Point for Indonesian Rebels," *Wall Street Journal*, September 7, 2000.

⁸ Michael Renner, "Exxon Mobil in Aceh," *Global Policy Forum*, April 17, 2006.

including the construction of schools, hospitals, and mosques. The 2004 Indian Ocean tsunami, which devastated Aceh, resulted in up to 170,000 deaths but caused only minor damage to Exxon Mobil's installations. The company donated US\$5 million toward reconstruction efforts.⁹

For local residents, however, the presence of Exxon Mobil and PT Arun was controversial: They claimed that land was expropriated without adequate compensation; operations caused significant environmental damage; and despite initial construction-related employment, the gas operations failed to reduce widespread poverty in surrounding areas. Above all, Exxon Mobil and PT Arun, through their relationship with the TNI, remained inextricably linked to the conflict that had plagued Aceh since the 1970s.¹⁰

C. Exxon Mobil's Relationship with the Indonesian Government and TNI

The Arun gas plant became one of the largest and most profitable in history. It also played an instrumental role in making Indonesia the world's largest exporter of LNG by the late 1970s.¹¹ By 1978 LNG from Arun was being exported to Japan and South Korea, and by 2001 LNG amounted to a fifth of Indonesia's total exports and 5 percent of the national budget.¹² LNG from Arun also served the domestic market, including a fertilizer plant in Aceh.¹³

Under Mobil's initial revenue-sharing agreement the Indonesian government received 70 percent of profits generated from natural gas extraction, and Mobil received 30 percent.¹⁴ Both parties also had a large stake in PT Arun, the processing company. Yet although revenue flowed in unprecedented amounts to Exxon Mobil and the Indonesian government, the Acehnese received minimal benefit. The provincial administration and local communities received no direct revenue from the massive Arun operation. Under Soeharto's heavily centralized regime, only 5 percent of the vast revenue generated was channeled from Jakarta back to Aceh.¹⁵

The importance of Exxon Mobil's operations for the Indonesian government, particularly as it tried to attract additional foreign investment and navigate the 1997 Asian financial crisis, is difficult to overestimate. Because of the Arun project's economic significance the government made moves to classify it as a "strategic industry," requiring military security for its operations.¹⁶

Under the initial contract Mobil agreed to provide members of the Soeharto family with an unspecified amount of shares in its Indonesian subsidiary and to hire members of the TNI as security personnel. Mobil contracted the TNI to provide security and protect its

⁹ *Asia Times Online*, "U.S. Ties and Challenges to Peace in Aceh," January 21, 2005, http://www.atimes.com/atimes/Southeast_Asia/GA21Ae01.html.

¹⁰ Lesley McCulloch, "Greed: The Silent Force of the Conflict in Aceh," Deakin University, Melbourne, Australia (October 2003), 4, <http://www.preventconflict.org/portal/main/greed.pdf>.

¹¹ Worldwatch Institute, "Conflict and Peacemaking in Aceh: A Chronology," May 17, 2006.

¹² *New York Times*, "Exxon Mobil in Fear, Exits Indonesian Gas Fields," March 24, 2001.

¹³ Reuters, "Indonesian LNG Exports to Fall 4 Pct, Maybe More," November 22, 2007.

¹⁴ Down to Earth, "Aceh: Exxon Mobil Shuts Down," *Newsletter No. 49*, May 2001.

¹⁵ Down to Earth, "Aceh: Lawsuit Accuses Exxon Mobil of Complicity."

¹⁶ Jesuit Refugee Services, "Understanding Aceh: The Roots of Armed Conflict," occasional paper no. 5 (2003).

Arun facilities.¹⁷ According to the claim filed in court by the victims' representatives, by 2000 Exxon Mobil was paying more than US\$500,000 per month to retain the services of the TNI, an institution widely regarded as responsible for serious human rights violations in East Timor and across Indonesia.¹⁸ These payments reportedly supported at least 1,000 security personnel from 17 military and police stations.¹⁹

For Exxon Mobil paying security forces also allowed the company to control and direct their operations. Internal Exxon Mobil documents detailed the deployment of military resources and stated that the company "has the right to influence the security plan and the development strategy."²⁰ The victims claim that despite knowledge of the TNI's reputation for violence against civilians, corruption, and extortion, Exxon Mobil developed a close relationship with the security personnel assigned to the project, providing training, supervision, and equipment. TNI Unit 113 had the sole and specific purpose of protecting the Arun operations.

The massive revenue for the central government from the Arun project resulted in relations with Exxon Mobil weighing heavily on Jakarta's Aceh policy. For example, in March 2001 a deteriorating security situation in Aceh, including targeted attacks against Exxon Mobil staff and infrastructure, led the company to suspend operations and evacuate staff not local to the Arun area.²¹ On the same day as Exxon Mobil's withdrawal, the Jakarta government announced that 3,000 additional troops would be deployed in Aceh, specifically to protect the Arun project.²² Around the same time Pertamina, the state-owned company involved in PT Arun, reported it could lose up to US\$100 million for each month the Exxon Mobil plant was not operational.²³ Senior TNI figures had long sought an increased military presence to crush the GAM insurgency; it was the closure of Exxon Mobil's gas fields that provided the impetus for a sharp escalation in troop numbers.²⁴

During the project's temporary closure, Exxon Mobil assured the central government that operations would restart as soon as security could be guaranteed. With the increased TNI presence the Arun plant resumed limited operations in July 2001. Full-scale production resumed by December of that year. Exxon Mobil's temporary withdrawal from Aceh and the immediate military response it triggered underscores the Arun project's influential role in shaping the Aceh conflict and reveals the close relationship between Exxon Mobil and the TNI. Indeed, a news report at the time

¹⁷ Down to Earth, "Aceh: Lawsuit Accuses Exxon Mobil of Complicity."

¹⁸ First Amended Complaint for Equitable Relief and Damages in *Doe v Exxon Mobil*, filed February 16, 2006, http://www.cmht.com/cases_exxonmobilaceh.php.

¹⁹ Down to Earth, "Mobil Aceh Rights Abuse Investigation," *Newsletter No. 48*, February 2001.

²⁰ See *John Doe I v Exxon Mobil Corp., et al.*, Memorandum and Opinion on Summary Judgment, August 27, 2008, 13.

²¹ In the two years preceding Exxon Mobil's withdrawal in 2001, armed gunmen had hijacked company vehicles on approximately 50 occasions; two aircraft were shot at while trying to land at the company's airstrip; and four off-duty employees were shot and killed. See *New York Times*, "Exxon Mobil in Fear, Exits Indonesian Gas Fields," March 24, 2001.

²² *Associated Press*, "Indonesia Sends Troops To Aceh To Defend U.S. Co's Facilities," March 17, 2001.

²³ Amended Complaint in *Doe v Exxon Mobil*.

²⁴ Robert Jereski, "The Conflict in Aceh and U.S. Interests in Promoting a Free Market, Stability, and Human Rights in South East Asia: An Examination of the Context and Impacts of Exxon Mobil's Security Arrangements with the Indonesian Armed Forces," *Conflict Prevention Initiative*, June 2001.

claimed, "Exxon Mobil's less-than-arm's length detachment from the military must be judged a short-term gain and a long-term miscalculation."²⁵

D. Exxon Mobil and the Aceh Conflict

Control over the vast revenue from the Arun gas fields was a key factor in GAM's formation in 1976 and was a prominent issue throughout Aceh's protracted conflict. From its formation GAM prioritized rectifying the grossly inequitable distribution by which the central government received the lion's share of revenue from Acehese natural resources such as gas, oil, timber, and minerals.²⁶ A clear objective of GAM was to gain greater control of Arun revenues for the benefit of the Acehese. As the initial revenue-sharing arrangements remained fixed and Aceh continued to receive only a minor portion of the direct revenue from the project, it became a generally accepted view among many Acehese that Exxon Mobil's presence only benefited the TNI and the central government. The most lucrative positions went to expatriates, and national employees at the Arun plant were mostly recruited from outside Aceh, especially from Java. Local residents complained of environmental degradation, attacks, and the destruction of infrastructure as a result of TNI operations aimed at cracking down on GAM and its sympathizers. Grievances over Exxon Mobil's presence therefore became an influential factor in consolidating GAM's strong position in North Aceh.

As the security situation deteriorated in Aceh, Exxon Mobil came to rely more heavily on the TNI for security. Senior management was informed that this was a risky strategy. A December 1999 internal memorandum to Mobil's CEO stated, "The presence of troops, however, only serves to inflame the population and results in suspicions that Mobil Oil Indonesia is linked to the military."²⁷

GAM commanders did not officially target Exxon Mobil installations, but Indonesian military assigned to secure the Arun facilities were considered legitimate targets. Even so, as of 2001 several Exxon Mobil employees had been abducted and a number of vehicles, refineries, and a helicopter had been attacked.²⁸ GAM even sought protection payments from Exxon Mobil to cease these attacks. In response the Indonesian military presence gradually scaled up, and one estimate placed the total number of troops in late 2001 at 10,755 in North Aceh alone.²⁹ By 2002 military checkpoints had been established every 500 meters near Exxon Mobil's operations.³⁰

The increased militarization of the area around Arun allegedly resulted in Exxon Mobil making additional payments to the TNI. This in turn led to an increase in military business, which provided important sources of revenue for the under-resourced Indonesian armed forces. Local commanders allegedly benefited, not only through the

²⁵ Bloomberg, "Exxon's Indonesian Exit Could Have Been Avoided," March 25, 2001.

²⁶ Jeremy Schanck, "The Acehese Resistance Movement and Exxon Mobil," *Inventory of Conflict and Environment*, case study no. 85, May 2001, http://www.aceh-eye.org/data_files/english_format/analysis/analysis_others/analysis_others_2001_05_00.asp.

²⁷ See *John Doe I, et al. v Exxon Mobil Corp., et al.*, Memorandum and Opinion on Summary Judgment, August 27, 2008, 4.

²⁸ See Schanck, "The Acehese Resistance Movement and Exxon Mobil," 1.

²⁹ Tapol, "Troop Deployment to Guard Exxon and Other Vital Enterprises," report received from Aceh November 6, 2001, http://tapol.gn.apc.org/reports/r011106_acehtroops.htm.

³⁰ Down to Earth, "Exxon Mobil under Fire," *Newsletter No. 52*, February 2002.

official payments from Exxon Mobil but also from the additional opportunities the extensive military deployment offered for criminal profiteering through extortion, arms trading, drug trafficking, and illegal logging. A mutually beneficial relationship therefore developed whereby the TNI provided security services in a volatile area subject to attacks from separatist rebels, while Exxon Mobil's operations justified and supported the TNI's continued strong deployment in North Aceh.³¹

Thus Exxon Mobil's presence had two important effects on the Aceh conflict. First, it facilitated the grossly disproportionate distribution of revenues from Acehnese natural resources to the central government. Significantly, rectifying this imbalance was a key GAM demand during peace negotiations. The current peace agreement includes an agreement that 70 percent of the revenue from Aceh's natural resources will be allocated to a directly elected provincial government. Second, Exxon Mobil's operations justified extensive militarization in North Aceh. This in turn led to increased GAM-TNI attacks, related reprisals, and increased conflict-related criminal activity. All these events most severely affected civilians, particularly the poor and vulnerable who happened to live in the vicinity of the Arun plant.

II. Overview of the Exxon Mobil Case

A. Allegations against Exxon Mobil

The plaintiff victims allege that Exxon Mobil contracted Indonesian security forces to provide security for its operations and thereby aided and abetted human rights violations committed by the TNI in and around the Arun gas plant. Receiving regular financial payments and other material support, such as weapons, training, equipment, and facilities, the TNI forces assigned to secure the Arun facilities were either employees or agents of Exxon Mobil. The company is therefore liable for human rights violations that members of the TNI committed while acting on behalf of Exxon Mobil. A major claim of the plaintiffs is that Exxon Mobil's support aimed to increase TNI capacity to use repressive tactics against GAM. This support allegedly ranged from provision of land and facilities used to interrogate, torture, and murder civilians suspected of separatist activities, to the use of heavy equipment to dig mass graves.

The case further alleges that as Exxon Mobil supervised, controlled, and directed the actions of TNI security personnel assigned to the project, the corporation should have been aware of the human rights violations at the time they were committed. And given the TNI's deplorable human rights record, as well as extensive media coverage of abuses regularly occurring near the Arun plant and complaints by Indonesian human rights organizations, Exxon Mobil cannot realistically claim to have been unaware of the situation. The plaintiffs further allege that even if Exxon Mobil only became aware of the incidents after they occurred, the company should have taken action to rectify the situation, including investigations and disciplinary action. Despite mounting evidence of ongoing atrocities committed by the TNI at Arun against local civilians, the plaintiffs allege Exxon Mobil continued and even increased its reliance on the TNI for security.

The complaint details Exxon Mobil's centralized decision-making structure, in particular how senior management based in Texas exercised a large degree of influence

³¹ McCulloch, "Greed: The Silent Force of the Conflict in Aceh," 9, 16.

over activities in Indonesia, including those of subsidiary companies, and made key decisions on security for the Arun plant. These activities included coordinating security with the TNI and directing Indonesian forces according to Exxon Mobil's needs.

The victims allege that Exxon Mobil is liable for damages for murder, torture, sexual violence, and other crimes perpetrated by TNI personnel assigned to the Arun plant. The following are three examples of specific events alleged in the lawsuit:

- In July 2000 plaintiff John Doe IV, who lived near the Arun plant, was accosted by Exxon Mobil security personnel who beat, handcuffed, and blindfolded him. They took him to Exxon Mobil's property, where they tortured him by beating, threatening to kill him, and accused him of being part of GAM. The plaintiff denied the allegations. The security personnel nevertheless threw him to the ground and using a knife carved the letters "GAM" into his back. Exxon Mobil security personnel kept him in custody for several weeks, regularly torturing him and severely injuring him. He was eventually released.
- While riding his motorbike in August 2000 plaintiff John Doe II was stopped by Exxon Mobil's security personnel. They put his motorbike in their truck and beat him severely on his head and body. They then tied his hands behind his back, blindfolded him, threw him in the truck, and took him to what he later learned was Rencong Camp. The security personnel detained and tortured him there for three months, all the while keeping him blindfolded. He sustained severe injuries as a result of the beatings and was tortured with electricity applied to his genitals. After approximately three months the security providers took off his blindfold and showed him a pit containing a large pile of human heads. Exxon Mobil's security personnel threatened to kill him and add his head to the pile. The plaintiff was eventually released and returned home. Shortly after this Exxon Mobil security personnel came to his house. He escaped but they burned down the house.
- In March 2001 plaintiff Jane Doe I, who was pregnant at the time, was assaulted by an Indonesian soldier assigned to Exxon Mobil. The soldier forced his way into her house and threatened to kill the woman and her unborn child. He then beat and sexually assaulted her.

B. Legal Basis

The International Labor Rights Fund (ILRF) initiated the case and sought relief based on three possible causes of action:

1. Alien Tort Claims Act (ATCA);
2. Torture Victims' Protection Act (TVPA);³²
3. Common law tort for wrongful death, assault, and arbitrary detention, among other offences.

ATCA, a U.S. law passed in 1789, gives federal courts jurisdiction to hear claims from non-U.S. citizens seeking relief for a violation of "the law of nations or a treaty of the

³² The second cause of action in the Exxon Mobil case under the TVPA operates similarly to the ATCA. It "provides for a federal cause of action for torture and execution committed anywhere in the world."

United States.” It has recently been used to sue transnational corporations for violations of international law outside U.S. territory. Examples of important ATCA cases include a suit Burmese citizens brought against Unocal, a U.S. energy firm. The plaintiffs alleged Unocal had contracted the Burmese military to provide security for a gas pipeline, and these forces committed a range of human rights abuses, including the use of forced labor. This case was settled out of court in late 2004 for an undisclosed amount.

Another relevant ATCA case is the suit filed against Major General Johnny Lumintang, the TNI deputy commander at the time of East Timor’s referendum for independence.³³ Six victims sued Lumintang in federal district court for human rights violations perpetrated by troops under his command in 1999. In 2001 the plaintiffs were awarded US\$66 million in compensatory and punitive damages. Although it was a positive decision for the victims, the award was by and large symbolic, as payment of the damages can only be made from financial assets in the United States, and no practical steps to enforce the court’s order can be taken unless Lumintang enters the country. These jurisdictional limits are unlikely to be relevant to any outcome in the Exxon Mobil case because of the existence of considerable assets of the corporation within the United States.

Despite the similarity with previous cases filed under the ATCA and TVPA, the federal district court held that claims against Exxon Mobil under these laws could not proceed, primarily because of political concerns. The court ruled that adjudicating allegations involving the Indonesian government’s conduct and “assessing whether Exxon is liable for these international law violations would be an impermissible intrusion in Indonesia’s internal affairs.”³⁴

The political sensitivity of the Exxon Mobil case has been a constant factor in the progress of the case. On three occasions the U.S. government submitted statements arguing the matter should not proceed because key U.S. foreign policy interests would be affected. These included ensuring the Indonesian government’s cooperation in combating terrorism and facilitating U.S. competitiveness in overseas markets. The U.S. government argued that these interests overrode claims under the ATCA and TVPA to uphold international law. The influence of the State Department, often acting in conjunction with the Indonesian ambassador to the United States, was persuasive in convincing the court to dismiss the plaintiffs’ ATCA and TVPA claims.

The district court did, however, allow the plaintiffs’ claims based on tort law to proceed. These were based on state rather than federal laws; and it was held that if the discovery of documents were carefully managed the case would not intrude on Indonesian sovereignty. The State Department did not appear in the appeals court to dispute this issue and did not express concern over the litigation once the ATCA and TVPA claims had been dismissed. Accordingly the discovery of documents was limited to outside Indonesia, and the trial—based on common-law tort claims such as wrongful death, assault, battery, arbitrary arrest, and detention—was allowed to proceed.

³³ *Doe v. Lumintang*, Civil Action no. 00-674 (D.D.C. 2001).

³⁴ *Doe v Exxon Mobil Corp.*, 393 F. Supp. 2d. 20 (D.D.C. 2005).

C. Exxon Mobil's Response

Exxon Mobil has emphatically denied the allegations against it, basing its defense on three primary claims: It was forced to use the TNI to provide security; it did not intend for the human rights violations to occur; and it exercised no control over TNI forces at Arun.³⁵ Thus although Exxon Mobil generally concedes that the TNI were providing security in a volatile human rights environment, it claims that the security forces were acting on their own initiative when the attacks took place.

A secondary argument raised by Exxon Mobil is that post-conflict initiatives in Aceh following the 2005 Helsinki MoU have provided a suitable framework for redress and compensation. As a result lawyers for Exxon Mobil argue it is inappropriate for the U.S. litigation to proceed, since it could result in a disparity in outcome for the 11 plaintiffs over other Acehnese victims. The ensuing imbalance, the company argued, might undermine post-conflict reconciliation. Lacking understanding of the extent to which Aceh's Truth and Reconciliation Commission, Human Rights Court, and reintegration assistance have been implemented on the ground, Exxon Mobil argues that the litigation would undermine the success of post-Helsinki initiatives and have negative impacts on Aceh's fragile peace process.

D. Timeline of Main Procedural Steps to Date

June 2001	International Labor Rights Fund files complaint in the U.S. Federal District Court of Columbia for relief under the ATCA, TVPA, and common law tort for wrongful death, assault, arbitrary detention, among others.
October 2001	Exxon Mobil submits a motion to dismiss the complaint on grounds that the case covers political issues that would interfere with U.S. foreign policy interests.
July 2002	U.S. State Department submits a legal opinion that the case "would in fact risk a potentially serious adverse impact on significant interests of the United States," particularly because Indonesia is a key ally in the war on terrorism and the case would discourage foreign investment in Indonesia.
October 2005	Federal District Court decision on the motion to dismiss allows the common law tort claims to proceed but dismisses all claims under the ATCA and TVPA because of the political sensitivity of "evaluating the policy or practice of another state." All claims against PT Arun (55 percent owned by the Indonesian government) are dismissed because of the risk of involvement in Indonesian affairs and related U.S. foreign policy concerns. The court notes that the discovery of evidence for the tort claim must proceed with caution and be limited to documents outside Indonesia. Exxon Mobil appeals.
January 2006	Amended complaint submitted on behalf of the plaintiffs, based solely on civil torts claim.
March 2006	Amendments allowed; Exxon Mobil's motion to dismiss the amended complaint is rejected.

³⁵ Terry Collingsworth, "The Key Human Rights Challenge: Developing Enforcement Mechanisms," *Harvard Human Rights Journal* (Spring 2002), 183.

May 2006	District Court orders the parties to proceed toward discovery of evidence; documents located in Indonesia excluded from the discovery process.
January 2007	U.S. Court of Appeals denies Exxon's appeal to dismiss the lawsuit, citing lack of jurisdiction to hear the appeal.
July 2007	Exxon Mobil petitions the U.S. Supreme Court to review the District Court's decision not to dismiss the case.
January 2008	Exxon Mobil appeals to Chief Justice Roberts of the Supreme Court to stay the case until the court decides whether to hear Exxon Mobil's appeal. Justice Roberts denies Exxon Mobil's motion for stay.
June 2008	Supreme Court declines to hear Exxon Mobil's appeal, allowing the case to proceed in the District Court.
August 2008	District Court of Columbia denies Exxon Mobil's motion for summary judgment, thereby clearing all major hurdles before trial.

E. Forthcoming Trial

At the time of writing the case was slowly moving toward trial. Since 2001 only pre-trial steps have taken place, with the substance of the case yet to be examined. Overcoming motions to dismiss and related appeals, however, does represent a significant victory for the plaintiffs. Most important, the arduous, time-consuming pretrial procedure has determined that Exxon Mobil has a case to answer.

Two recent decisions have cleared the way for a trial date to be set. First, the District Court declined to dismiss one of the defendant's subsidiary companies (Exxon Mobil Oil Indonesia) for lack of jurisdiction. Second, Exxon Mobil's motion for summary judgment—a court decision without trial—was denied. On August 27, 2008, the District Court held that a full trial is necessary to determine the accuracy of all factual allegations against Exxon Mobil. With this result the plaintiffs overcame perhaps the last hurdle before the case can go to trial. It therefore appears a trial will soon be scheduled, most likely for late 2008 or early 2009.

III. Implications of the Exxon Mobil Case

A. Transitional Justice in Aceh

Following the Helsinki MoU, those involved in the negotiations were optimistic about the role transitional justice mechanisms might play in the Aceh peace process. Both a Truth and Reconciliation Commission (TRC) and a Human Rights Court were envisaged, signifying some recognition of the interests of victims. Some three years into the peace process, however, the initial optimism has faded. Neither a TRC nor a court has been established (except on paper) or is likely to be fully operational in the short to medium term. Legislative and political reasons might account for this, but the fact remains that key transitional justice elements of the Helsinki MoU have not been implemented.

Post-conflict initiatives in Aceh have focused on the reintegration components of the Helsinki MoU rather than a more broad-based transitional justice approach. Significant assistance has been provided to former combatants and political prisoners to assist their transition to civilian life. Limited support has gone to conflict victims; however, it has failed to give sufficient recognition to specific violations and harms suffered. The only

exception is *diyat*—compensation for the conflict-related death of a close family member. *Diyat* payments represent the only large-scale example of the Indonesian state directly compensating conflict victims. However, ICTJ research has shown that this effort has yet to reach the most vulnerable. More broadly, the overwhelming attention given to former combatants has resulted in the marginalization of victims' interests, especially those concerning truth, justice, and accountability. Overall, it is widely accepted that an overemphasis on reintegration has threatened to undermine Aceh's fragile peace.³⁶

There can be little doubt that justice has been a key element lacking in the Aceh peace process. The most important aspect of the Exxon Mobil case from a transitional justice perspective, therefore, is that it represents the highest-level judicial examination of the Aceh conflict ever undertaken. Although the case primarily concerns Exxon Mobil's liability for the actions of TNI personnel protecting its facilities, it also examines in detail the hardship and suffering experienced by 11 Acehnese who lived near the Arun plant.

Regardless of its outcome, the trial will also provide the 11 plaintiffs with a forum where judges from one of the world's most respected judicial traditions examine the violations committed against them. Because of the long history of impunity for perpetrators of human rights violations in Aceh, the trial could provide long-awaited public recognition of the victims' suffering. Thus the Exxon Mobil case would represent a milestone in Acehnese victims' struggle for justice and accountability. While undoubtedly falling short of the overall objective of determining state responsibility and implementing a comprehensive reparations program, the case, if it goes to trial, may provide meaningful international acknowledgment of victims' suffering and hardship.

Beyond its importance for the individual plaintiffs, the matter also has broader significance for Acehnese victims. Sadly the claims detailed in the Exxon Mobil case reflect similar experiences of Acehnese civilians caught between TNI and GAM in the province. The litigation provides a snapshot of the province-wide conflict that plagued Aceh for more than 30 years. However symbolic the case is for Acehnese society, it still stands in stark contrast to the continued impunity in Indonesia. International attention focused on the Exxon Mobil case should lead to benefits for all Acehnese conflict victims. By raising awareness of their unfulfilled rights to justice and reparations, the case could provide much-needed impetus to reorient the Aceh peace process toward victims and justice.

B. Reforming the Practices of Exxon Mobil and Security Institutions

The Exxon Mobil case demonstrates that foreign corporations that contract with the Indonesian military cannot operate with impunity. As a result, reform of security practices is crucial to reaffirming corporate liability, ensuring constructive public relations, and even safeguarding the company's profitability. For Aceh the case also demonstrates the crucial need for security sector reform, a process receiving

³⁶ ICTJ report, "Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective," January 2008.

insufficient attention in post-conflict Aceh and one crucial to maintaining the fragile peace.

Despite the fact that the events in question occurred in 2000–2001, the case still has great relevance today, especially in guaranteeing the non-recurrence of past violations. Since the height of the conflict in 2003 seismic changes have transformed Aceh. The immense destruction caused by the 2004 tsunami became the catalyst for the Helsinki MoU. Politically Aceh has gained significantly more autonomy, including greater control of its natural resources, and Exxon Mobil's operations have downsized considerably as the gas fields become depleted. Despite these sweeping changes, reform of Exxon and other corporations' security practices, and of the security institutions themselves, is as crucial as ever.

First and foremost, the allegations in the Exxon Mobil case demonstrate the necessity for a complete overhaul of the company's security practices and the cessation of all ties to the TNI. This need is particularly acute given the complex post-conflict dynamics currently at play in Aceh. Of most concern are the damning allegations regarding senior management's role in directing security operations, facilitating human rights violations through the provision of equipment and support, and failing to prevent such abuses from recurring. The Exxon Mobil plaintiffs further allege that the company was aware of the TNI's negative human rights record. In particular, an internal e-mail on security at Exxon Mobil facilities referred to "the poor reputation of the Indonesian military, especially in the area of respecting human rights and in their predilection for 'rogue'/clandestine operations."³⁷ Even so, Exxon Mobil sometimes increased its use of TNI personnel.

Exxon Mobil's current production-sharing contract with the Indonesian government extends until 2018, and on this basis major gas exploration has occurred across Aceh.³⁸ Thus, although production at Arun is currently declining, the possibility remains that new discoveries could lead to a rapid expansion of operations. Exxon Mobil must therefore make every effort to distance itself from the TNI, prevent the recurrence of past violations, and ensure that securing its facilities does not adversely affect local communities.

More broadly, greater scrutiny is necessary of security sector institutions in Aceh and their interaction with third parties. In post-tsunami Aceh many international organizations, either knowingly or otherwise, have contracted members of the Indonesian police, military, or former combatants to provide security for their operations.³⁹ Although alternative options may be limited, these kinds of practices confuse the legitimate and improper roles of security forces personnel, add to the complexity of post-conflict dynamics, and contribute to a potentially volatile security environment. The Exxon Mobil case should serve as a timely reminder that although reform of the Indonesian police and military is slowly taking place, these are institutions with deplorable human rights records, particularly in Aceh. Any organization that obtains security services should be aware of the complex issues

³⁷ See *John Doe I, et al. v Exxon Mobil Corp., et al.*, Memorandum and Opinion on Summary Judgment, August 27, 2008, 19.

³⁸ Entrepreneur.com, "Indonesia—North Sumatra/Aceh—ExxonMobil & Arun LNG," March 12, 2007, <http://www.entrepreneur.com/tradejournals/article/160680109.html>.

³⁹ See, for example, the Nisam incident described in ICTJ report, "Considering Victims," 39.

involved in the use of current or former members of the security forces in private roles, and therefore must undertake careful vetting of all staff and contractors.

Today these concerns are even more relevant, given Aceh's current push for international investment. After an extended period of conflict-related isolation, when Exxon Mobil was one of very few large-scale multinational corporations operating in the province, Aceh is now open for business. The current administration in Aceh is actively seeking large-scale foreign investment, particularly in the extractive industries and agriculture. New operators in the region must take extreme care to avoid entering into business relationships with institutions or individuals implicated in past human rights abuses.

C. Ongoing Scrutiny of Exxon Mobil and the TNI in Aceh

Regardless of how the case proceeds, it has already generated significant publicity about the practices of Exxon Mobil, violations committed by the TNI, and the plight of Acehese conflict victims. Since 2001 international media have run hundreds of stories detailing the allegations and the legal process. In response the City of New York, an institutional investor in Exxon Mobil, introduced a shareholder resolution in late 2004. The resolution referred to the District Court litigation and requested that company management review and report back on security arrangements in Aceh.⁴⁰ At the 2005 annual meeting the resolution was defeated but did gain the support of more than 7 percent of investors, representing more than US\$27 billion of Exxon Mobil shares.⁴¹

The case has also influenced the development of Exxon Mobil's framework for security and human rights, a policy that details how the company should work with private-sector and government-assigned security providers. This process culminated in a Memorandum of Agreement in 2006 with Indonesia's Oil and Gas Regulatory Body for Upstream Business (BPMIGAS) on expectations of government-assigned security personnel in Aceh.⁴²

While gradually making its way through different stages of procedure and appeal, the Exxon Mobil case has also served to keep the spotlight on continuing human rights violations in Aceh and put significant pressure on the company's management to change its practices. As a trial date approaches, publicity on the case will continue to play an important role, providing greater impetus for Exxon Mobil to protect its corporate image, avoid negative publicity, and possibly enter negotiations for a pretrial settlement.

D. An Example to Local Law Enforcement Agencies.

A significant obstacle to transitional justice in Aceh is the weak capacity of law enforcement agencies and judicial institutions. Independent, impartial, and professional courts are a necessary precondition for effective human rights trials, but the judicial

⁴⁰ William Baue, "The Ghost of a Shareholder Resolution Haunts ExxonMobil Annual Meeting," *Sustainability Investment News*, May 26, 2005, <http://www.socialfunds.com/news/article.cgi/1717.html>.

⁴¹ Press release, International Labor Rights Fund, "ExxonMobil Investors Tell Management to Review Relationship with Indonesia's Criminal Military," May 25, 2005, http://www.stopexxonmobil.org/pressreleases/2005_may25_shareholder%20press%20release.htm.

⁴² Exxon Mobil, "Framework on Security and Human Rights," http://www.exxonmobil.com/Corporate/community_local_rights_framework.aspx.

system in Indonesia is not yet capable of adjudicating politically sensitive cases and guaranteeing fair-trial standards. For this reason the plaintiffs in the Exxon Mobil case were forced to seek justice in a U.S. district court.

Despite gains following democratic reform, Indonesian courts, including those in Aceh, are widely regarded as biased, corrupt, and lacking competent, independent staff. The primacy of the rule of law is of fundamental importance to the reform process, and yet the role of police, prosecutors, and the courts in human rights cases continues to be strongly influenced by political factors. The progress to date in the Exxon Mobil case provides an example of a court upholding the rule of law and placing judicial independence above political concerns. Despite the political sensitivity and numerous attempts by the U.S. government and Exxon, one of the world's most powerful corporations, to have the case dismissed, the court ruled that it could proceed, albeit in a scaled-down form. Although the merits of the case have yet to be ruled upon, the 11 Acehnese victims will, it seems, have their day in court.

E. Advancing Human Rights Litigation

The Exxon Mobil case may establish an important precedent. Previously the Alien Tort Claims Act has provided the primary vehicle for attempts to hold individuals or corporations liable for human rights violations perpetrated outside the United States. The Exxon Mobil case, however, illustrates that state-law tort claims, such as wrongful death, assault, and battery, can proceed, provided that a link to the court's jurisdiction can be demonstrated. In this case it has been sufficient to show that Exxon Mobil has conducted business in the District of Columbia and made key management decisions in the United States. The Exxon case may mark the first time a U.S. corporation faces trial exclusively for breaches of tort law in relation to human rights violations perpetrated in foreign territory. It could provide a valuable precedent for future international human rights cases, as many of the restrictions applicable to claims under the ATCA or TVPA do not apply to the laws relating to torts cases.