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Komnas HAM and the Politics of Human Rights in Indonesia

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March 1998

A thesis submitted for the degree of Master of Arts (Asian Studies) at the Australian
National University

Except where otherwise indicated this thesis is my own work.

10-3-98

Acknowledgments

This study is the product of research carried out in Canberra and Jakarta between 1994 - 1997. The work is my own, but I would like to record my thanks to those who helped at various stages.

I am grateful for the generous time and advice given by interviewees. Komnas members were helpful and encouraging. I would particularly like to thank Vice-Chairpersons Miriam Budiardjo and Marzuki Darusman, as well as Charles Himawan, (the late) Roekmini Koesoemo Astoeti and Deplu's Hassan Wirayuda.

Thanks to Dr. Harold Crouch who supervised and discussed my work, and offered his learned insight into Indonesian politics.

Finally, my thanks to my husband Shannon, for his patience and support.

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Glossary and Abbreviations

ABRI	Angkatan Bersenjata Republik Indonesia (The Indonesian Armed Forces)
ASEAN	Association of Southeast Asian Nations
DPR	Dewan Perwakilan Rakyat (House of Representatives)
DPRD	Dewan Perwakilan Rakyat Daerah (Regional Legislative Assembly)
GOLKAR	Golongan Karya (The state political party)
KEPRES	Keputusan Presiden (Presidential Decree)
Komnas HAM	Komisi Nasional Hak-Hak Asasi Manusia (National Commission on Human Rights)
NGO	Non-Government Organisation
PKI	Partai Komunis Indonesia (The Indonesian Communist Party)

1

INTRODUCTION

There are some who see no good reason for establishing special machinery devoted to the promotion and protection of human rights. They may argue that such bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur.

Unfortunately, history has taught us differently. An institution which is in some way separated from the responsibilities of executive governance and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the Government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms.¹

United Nations Centre for Human Rights

Indonesia's National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM) was established in June 1993 for the purpose of promoting and protecting human rights. Although by no means a perfect organisation, it surprised many sceptics by maintaining both a real and perceived distance from the government, and has made a unique contribution to Indonesia's efforts to protect its citizens against human rights abuses and to develop a culture and conditions conducive to the promotion and protection of human rights in Indonesia.

The move to establish Komnas was viewed in a positive light by both critics and supporters of the government. Komnas quickly gained the respect of the Indonesian public, the international community, and Indonesian authorities, by balancing competing interests and playing politics in an area which was usually considered taboo on the political agenda.

Komnas was formed in an international and national environment of immense economic, political and social change. In Indonesia, for example, debate over presidential succession, the role of the military in state affairs and the rise of Islam as a political force, had created a climate of political uncertainty beyond the inevitability of change. Economically, thirty years of development in Indonesia had created a better educated and

¹United Nations Centre for Human Rights ; National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No.4, 1995, p 36.

informed population and a burgeoning middle class, but it also created a growing underclass of underpaid factory workers, displaced farmers and politically dissatisfied students and intellectuals.

In international affairs, the end of the Cold War realigned the parameters of bilateral and multilateral partnerships and priorities. Regional trading blocs and international trade wars became more frequent, while human rights, democracy and environmental protection began to replace communism as bargaining chips in negotiations over trade deals and developmental aid. This environment, together with increasing demands (not just conducive conditions) for human rights protection, provided opportunities for new ideas and approaches to human rights protection, both in international and national forums. It was in this context that Komnas was formed.

In one sense, this thesis is a study of the beginnings of Komnas HAM - how and by whom it was formed; how it developed during its formative 12 months; how it interacted with the predominant forces in Indonesian politics, and; how it attained a level of popularity unparalleled by any previous government effort to appease demands for human rights protection. How did Komnas achieve this balancing act? What does this say about the broader outlook for human rights in Indonesia?

In a deeper sense, however, this thesis is a study of the politics of human rights in Indonesia. The New Order government's poor human rights record had been the subject of much criticism by both international and domestic human rights organisations since the 1960s. Until the early 1990s, however, the national and international political and economic climate did not require the government to give serious consideration to the protection of human rights. What changes occurred to alter the government's perception and consideration of human rights? Who and what was responsible for those changes? Alternatively, who and what resisted these changes? Answers to these questions will help to understand why human rights were ignored by the Indonesian government for so long, why human rights are emerging as an accepted part of the domestic political agenda, and how this might influence Indonesia's future human rights record.

The purpose of this study therefore, is to more fully understand the nature of the politics of human rights in Indonesia. In doing so, it also aims to contribute to the broader understanding of Indonesian politics by providing some insights into how the state works and how it is influenced by non-state actors such as the international community and domestic constituents. Indonesia's National Commission on Human Rights (Komnas) provides an insightful case study of this phenomenon.

The motivations, personalities and institutions behind Komnas HAM's formation in the early 1990s points to some of the forces motivating change, and why. The manner in which Komnas operated within the political and bureaucratic process was indicative of the manner in which human rights problems were perceived and handled by Indonesian authorities generally. The interaction between Komnas, the public, the media and other human rights forums illustrated which forces in Indonesia were positive motivators for change, whereas the suspicions of and constraints and limitations placed on Komnas, illustrated which forces were more intent on maintaining the status quo. Most importantly, the relationship between Komnas and Suharto illustrated the level to which its success is dependent upon presidential favour and throws into question how its achievements might endure a change at the top.

The thesis is divided into two parts. The first part looks at the origins of Komnas HAM by examining domestic and international political, economic and social changes which contributed to an environment conducive to the formation of a national human rights commission. It then examines the politicking, negotiations, events and bureaucratic processes which created Komnas HAM. The second part of the thesis looks at how Komnas operated during its first year by assessing the cases it handled, as well as the way it benefited from (or was constrained by) its relationships with government and non-government groups, and how these factors determined its success or failure as a human rights commission.

2

Human Rights in Indonesia : The Domestic Context

There are two main 'streams' in the discussion of human rights issues in Indonesia. Firstly, there is the large volume of literature and discussion in the press on the meaning and value of human rights in Indonesian history, law, politics, society and culture. This debate over an Indonesian view of human rights was shaped by a combination of political, social and historical forces, from colonialism and the struggle for independence, to the constitutional debates, Pancasila ideology and the influence of Islam.

Secondly, the human rights issue in Indonesia has focussed not on what human rights do, or should mean to the Indonesian people, but on how Indonesian people have suffered as a result of human rights violations inflicted by the state and its apparatus, be it military, legal, political, economic or administrative. Throughout the New Order, Indonesia has had a consistently poor record of human rights protection, with regular reports of human rights violations, including arbitrary executions, torture, arrest and detention, as well as land appropriations and exploitation of labour, and restrictions of rights such as freedom of the press, freedom of movement and freedom of association. It is the contemporary practices and operations of these apparatus which are the subject of human rights criticism, rather than their rationale or historical roots.

Political and social change in Indonesia during the early 1990s indicated both that conceptions of human rights were changing (or would soon change) and that 'anti-human rights' practices by the government were becoming (or would soon become) less tolerated by Indonesian people. These changes provided the domestic context for the establishment of the human rights commission in 1993.

A History of Human Rights in Indonesia

Universal human rights, democracy and the constitutional state with provisions effectively limiting and governing its exercise of power, have been considered in Indonesia, since the 1950s, as western concepts, not in harmony with Indonesian culture and identity. In Indonesian culture the interests of society are more important than those of the individual; and, following from this, particularistic rights take precedence over universal human rights which adhere to human beings by virtue of their common humanity. Consequently open

conflict is considered inappropriate, opposition is regarded as taboo and the ballot has been replaced by deliberation leading to the formulation of a consensus by a wise leader.¹

The history of human rights as concepts in the Indonesian psyche has received a relatively large amount of academic, media (and government) attention - particularly from those who were under attack by human rights advocates, or felt that Indonesia was 'treated unfairly' by the international community for its human rights practices. This is evidenced by the volume of literature on 'human rights and Islam', 'human rights and Pancasila' and 'human rights and the 1945 Constitution', and so on.² An overview of how human rights have been conceived, perceived, practised and experienced throughout Indonesian history makes a useful contribution to understanding how Indonesians think (and what they read and write) about human rights, as a precursor to an understanding of how human rights are viewed and managed in the political arena.

Human rights in various traditional cultures of Indonesia have been sufficiently documented as proof that human rights as they appeared in the Universal Declaration of Human Rights (UDHR) were not new to the Indonesian 'world view'. For example, a Buginese testament of the fifteenth century guaranteed "the right to life and to be free, as well as some collective rights and the independence of the judiciary." Minangkabau traditions in West Sumatera included "the right to file joint protests against unjust regulations," and "the right to leave the territory." In international legal terms, Mulya Lubis suggested that these would be akin to the rights to dissent and freedom of movement. Similar traditions existed in Java and "[A]lthough those rights were not called human rights, it is clear that human rights are not entirely alien or un-Indonesian ideas."³

In most traditional societies, political power - and its potential abuse by rulers - was restricted by customary and geographical limits, and technological and administrative constraints. In Indonesia for example, there was a strong concept of power as an authority bestowed on a ruler from above, from the gods, not from the people.⁴ This has commonly been used to explain Indonesians' apathy in demanding accountability from those in power. In many areas, however, such as Aceh and Java, those in power

¹ Adnan Buyung Nasution; "Human Rights and the *Konstituante* Debates of 1956-59", in David Bouchier and John Legge (eds), *Democracy in Indonesia*, (Monash Papers on Southeast Asia No.31, Centre of Southeast Asian Studies, Monash University, 1994).

² For instance, see Prof. Dr. A. Gunawan Setiadjaja ; Hak-hak Asasi Manusia Berdasarkan Ideologi Pancasila (Penerbit Kanisius, Yogyakarta 1993). Dr. H.M. Ridhwan Indra Ahadian ; Hak Asasi Manusia dalam UUD 1945 (CV Haji Masagung, Jakarta 1991). Dr Subhi Mahmassani ; Konsep Dasar Hak-Hak Asasi Manusia : Studi Perbandingan Syariat Islam dan Perundang-Undangan Modern (PT Tintamas Indonesia, Jakarta 1993).

³ T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p50.

⁴ Mochtar Lubis ; Indonesia : Land Under the Rainbow (Manila 1987), p32.

had to be responsive to popular will "if only because [his] decisions would otherwise be ignored".⁵ With the extension of modern technology and administration, and the freedom of governments from customary restraints on power, traditional means for protecting human dignity were no longer effective. As a result, there was little opportunity for political participation at most levels of society.

When Indonesia was fighting militarily against the Dutch during its struggle for independence, it was also striving diplomatically at the United Nations for recognition of its right to self-determination. Department of Foreign Affairs official, Hassan Wirayuda, explained that "[W]hen the Dutch rejected the proclamation of independence and wanted to re-establish their power in Indonesia, they said there was no such right (as self-determination) and that Indonesia was their backyard. It was only in 1961 that the United Nations recognised self-determination as a right."⁶ So, for some human rights at least, Indonesia saw itself as having been ahead of the international community. Indonesia's struggle for independence was often discussed in reference to the human rights debate - i.e. that the struggle for independence was a struggle for human rights. This point was often used by government spokespeople, academics, observers or members of the press, to refute suggestions that human rights were a western concept, or that any moves by the government to improve human rights were solely in response to international pressure.

There were two prevalent views on human rights at the time of Indonesia's independence, which carried on to the constitutional debates of the 1940s and 1950s. Firstly, two of Indonesia's founding fathers, Supomo and Sukarno, believed that "duties to the state were far more important than rights."⁷ In this sense, Supomo and Sukarno saw the Indonesian state as a 'family'. This concept of *kekeluargaan* proposed that the rights of individuals existed as duties to the community and society - and that the President was the father of the Indonesian family. This implied that the explicit protection of human rights in the constitution was not necessary or applicable in an Indonesian context. Sukarno even went so far as to say that a guarantee of rights would create 'a conflict within the soul of the state'.⁸ Sukarno clarified further his reservations about human rights and their inclusion in Indonesia's constitution:

...what is the benefit of such a *grondwet* (constitution) if it cannot feed the people who are about to die of starvation...if we really want to base our nation on the family principle,

⁵J. Holleman ; Van Vollenhoven on Indonesian Adat Law (Lieden 1991), p132.

⁶Interview with Dr N. Hassan Wirayuda (Director for International Organisations, Department of Foreign Affairs and former Counsellor, Permanent Mission of the Republic of Indonesia to the United Nations Office at Geneva - 1989-1993), 9 November 1994.

⁷T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p4.

⁸McDonald, H. ; Suharto's Indonesia, (Fontana, Melbourne 1980), p229.

mutual cooperation and social justice, let us get rid of any idea of individualism and liberalism.⁹

Two other important figures in Indonesia's independence movement, Hatta and Yamin, were strong proponents of human rights, which should be protected from arbitrary interference by the state apparatus.¹⁰ In contrast to Sukarno's disdain for explicit protection of individual rights, Hatta cautioned that:

...We must be aware that the state we are establishing will not become an authoritarian state; we want to have a representative government; we want to build up a society based on mutual cooperation and goals: to reform the society. For this reason we should not grant unlimited power to the state because it might lead to an authoritarian state.¹¹

According to some observers, this diversion of views was a reflection of 18th and 19th century intellectual debates, particularly in Europe, about whether human rights questions were relevant in a state's life, or whether the interests of the community as a whole should take priority. Whatever their origins, the debate was certainly carried over into the constitutional debates in the 1950s and, some say, have shaped the human rights debate in Indonesia ever since.¹²

During the drafting of the 1945 Constitution, the inclusion of a bill of rights was explicitly rejected "by a majority which thought it would place the individual above the corporate good."¹³ The 1950 Provisional Constitution however, was very explicit in protecting human rights, with all of the UDHR provisions included. The 1959 Constitution was shaping up to be even more of a victory for human rights before the *Konstituante* was dissolved by Sukarno and the 1945 constitution was reinstated.¹⁴

The dominant feature of the 1945 Constitution was the 5 principles of Pancasila.¹⁵ Pancasila did not ignore human rights, but allowed that the freedoms it contained "...be regulated by law."¹⁶ As a result, human rights and their protection (along with the

⁹T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p78.

¹⁰T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p4.

¹¹T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p79.

¹²Interview with Dr N. Hassan Wirayuda, 9 November 1994.

¹³McDonald, H. ; Suharto's Indonesia, (Fontana, Melbourne, 1980), p229.

¹⁴For more information on the Constitutional debates of the 1950s, see Adnan Buyung Nasution ; The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Konstituante 1956-1959, Pustaka Sinar Harapan, Jakarta 1992.

¹⁵The five principles of Pancasila are: belief in one supreme God; justice & civility among peoples; the unity of Indonesia; democracy through deliberation and consensus among representatives; social justice for all. Adam Schwarz.; A Nation in Waiting: Indonesia in the 1990's (Allen and Unwin, Sydney 1994), p 10.

¹⁶McDonald, H. ; Suharto's Indonesia, (Fontana, Melbourne, 1980), p229.

powers of the executive, the legislature and the judiciary) were subordinated to national imperatives of social harmony and economic development - and the overriding powers of the President. Mulya Lubis pointed out that:

[A] classic argument has it that human rights were too costly for a newly emerging state which had still to confront an unintegrated country and economic backwardness. By the terms of that argument, in the name of unity and nation building, human rights had necessarily to be put aside.¹⁷

New Order Indonesia's Human Rights Record

The 30-plus years of Suharto's New Order government have brought political stability and economic growth to Indonesia. This has not, however, been achieved without the use of 'unfriendly' human rights practices by the government to eliminate political dissent and to maintain social order.

The very origins of the New Order government lie in the 1965-66 killings in which, according to some estimates, hundreds of thousands of suspected PKI (*Partai Komunis Indonesia* - Indonesian Communist Party) members, their associates and families were eliminated. In fact, the history of the New Order is tainted with some of the worst violations of human rights, including political and social repression, illegal detainment (some for more than 20 years without trial), extra-judicial killings and torture.

Some of the more glaring instances of human rights violations in recent years include : the killing of between 30 and 100 Muslim protesters in Tanjung Priok in 1984; the arbitrary execution of thousands of suspected criminals in the 1983-85 *Petrus* campaign, one that used violence as an instrument of social policy; the shooting of more than 200 East Timorese in Dili in November 1991; the suppression of dissent in Aceh during 1990-1992; the trial and detention of East Timorese rebel leader Xanana Gusmao in 1992; the continued imprisonment and harassment of those suspected of harbouring communist sentiments and connections; and, the banning of prominent academics, human rights activists, opposition politicians, religious leaders and literary figures from speaking at seminars and discussions, publishing and travelling abroad.

There were three main factors which contributed to this poor record: the political system, economic development and the state of Indonesia's judicial and legal system.

¹⁷T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama / SPES Foundation, Jakarta 1993), p74.

The nature of Indonesia's New Order political system

Indonesia's political system is a strongly authoritarian one. Indonesia's legislature (composed of both elected and appointed members) is tightly controlled by the President and primarily acts as a rubber stamp for government policy. Indonesia's bureaucracy is similarly stacked with supporters, on whom the government enforces stringent rules regarding political activity. This has meant that there are few opportunities for political participation by most groups in society, and political activity, decision-making and policy formulation are confined to members of the state apparatus.¹⁸ The laws governing elections and regulating the activities of political parties and opposition have been designed to maintain the President's authority. Old Order and colonial laws are often used by the government to control or punish its critics.¹⁹

Civil society is unable to either influence the policy processes and decisions made by the government or to demand that the government be accountable for its actions. This political system allows Suharto to rule Indonesia according to what he interprets to be the national interest, with little or no recourse to the law, through the bureaucracy, parliament and the tightly controlled judicial system.

ABRI's involvement in the struggle for independence gave it the status of being 'an Army of the people' and it has played a prominent role in Indonesian politics, business and society.²⁰ Although "[C]ivilian leaders such as Hatta and Sjahrir took a traditional view of the armed forces, meaning that there should not be a military involvement in government ... military leaders such as Sudirman and Nasution ... rejected the *dead tool of government* role."²¹ Suharto's rise to power by virtue of the military's backing gave ABRI further and extensive power and influence.²² ABRI has carved a significant role for itself in the processes of government, from national defence and security to the administration of social services in the distant-most corners of the archipelago. Although there was an increased level of discussion about the future of this *dwi-fungsi* (or dual role) of ABRI in the early 1990s, it is unlikely that there will be any significant change to ABRI's role or level of influence in Indonesian politics and society in the coming decade.

¹⁸Jamie Mackie and Andrew MacIntyre ; "Politics" in Hal Hill (ed) Indonesia's New Order: The Dynamics of Socio-Economic Transformation (Allen and Unwin, Sydney 1994), p 1.

¹⁹For example, laws against insulting the head of state, requirements for meeting permits and survey research permits and prevention from travelling abroad. Afan Gaffar ; "Indonesia 1995: Setting the Tone for Transition Towards the Post-Soeharto Era?", in C. Barlow & J. Hardjono (eds) Indonesian Assessment 1995 : Development in Eastern Indonesia (RSPAS, ANU, Canberra 1996), p 45.

²⁰Robert Cribb and Colin Brown ; Modern Indonesia: A History Since 1945 (Longman Group Ltd, UK 1995), p 151.

²¹T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p194-5.

²²Robert Cribb and Colin Brown ; Modern Indonesia: A History Since 1945 (Longman Group Ltd, UK 1995), p 151.

ABRI regards itself as the 'guardian of national security', not just from external threats, but also from internal subversion and, as such, is heavily involved in all aspects of Indonesia's social and political life. It therefore sees protest and political opposition as a threat to stability. For example, following the Dili massacre in November 1991, ABRI Commander (and current Vice-President) General Try Sutrisno, stated that "[I]t is necessary to fire on those who do not follow the official line. ABRI is determined to eliminate whoever disturbs stability."²³ Just one year after the Dili massacre, Sutrisno described Indonesian advocates of civil liberties, democratisation and environmental protection as a 'new generation of communists' who need to be closely watched by the military.²⁴ This attitude is reflected by many in ABRI who see 'anti-government' protest as 'anti-nationalist' and 'anti-Pancasila'. According to the Editor-in-Chief of *Suara Pembaruan*, Albert Hasibuan, the police often equated human rights complaints and demonstrations with anti-government, and thus dangerous, behaviour.²⁵

Just as political protest is seen as a threat by ABRI, increasing protests by factory workers and farmers affected by development projects are also considered a threat to many of ABRI's commercial enterprises - on which ABRI continues to rely for supplementary funding.²⁶ Although less common in the 1990s than in the 1970s, involvement in state-owned enterprises in the manufacturing sector gave ABRI "... an appreciation of the problems of management confronted by labour's demands."²⁷ According to some observers, this conflict of interests transformed ABRI from being an 'Army of the people' to become an 'Army of the elite, employers and business people.'

The nature of Indonesia's political system has allowed the government to create and interpret laws to meet its own political ends. The use of those laws, such as subversion or press regulation, has led to restrictions on freedom of speech and association and the banning of publications (such as *Tempo* magazine in 1994). Moreover, the extensive powers given to ABRI to maintain social order and internal national security, has resulted in the use of violence against protestors (such as in Tanjung Priok and East Timor), extra-judicial killings of suspected criminals (the 1980s *Petrus* campaign) and the intimidation of students, human rights activists, religious and literary figures whom the government considers to be potential political opponents.

²³Michael R.J. Vatikiotis; Indonesian Politics Under Suharto: Order, Development and Pressure for Change (Routledge, London 1993), p185.

²⁴Adam Schwarz; A Nation in Waiting: Indonesia in the 1990's (Allen and Unwin, Sydney 1994), p254.

²⁵Interview with Albert Hasibuan, 11 November 1994.

²⁶Robert Cribb and Colin Brown; Modern Indonesia: A History Since 1945 (Longman Group Ltd, UK 1995), p 153.

²⁷Rex Mortimer (ed); Showcase State: The Illusion of Indonesia's Accelerated Modernisation (Angus & Robertson, Sydney, 1973) p 87. This is a serious conflict of interest and was confounded by a 1986 Ministerial Decree which allowed military involvement in labour disputes before it was annulled in 1994. Richard Robison; "Organising the Transition: Indonesian Politics in 1993/94", in Ross H. McLeod (ed) Indonesia Assessment 1994: Finance as a Key Sector in Indonesia's Development (Department of Political and Social Change, RSPAS, ANU, Canberra 1994), p 63.

Economic development

Since President Suharto came to power, his New Order government has achieved considerable success in economic development, and Indonesia became one of the fastest growing economies in the region. Economic development has brought improvements such as rice self-sufficiency, provision of health services and basic education, and an increase in per capita incomes. For example, political observer Juwono Sudarsono pointed out that "[B]y 1984, Indonesia became self-sufficient in rice, controlled population growth through its successful family planning program and launched its first telecommunication satellite in 1976."²⁸

Economic development has not, however, been achieved without human cost. The government has relied increasingly on "repression and covert political violence" to maintain the stability necessary for economic development to succeed.²⁹

For example, the murder of labour activist Marsinah by security forces in 1992 and, in the same year, the banning of the independent labour union SBSI (and arrest and detention of its leader) indicated how human rights violations were perpetrated to ensure that the government's economic development policies, and in particular the development of the manufacturing sector, were not slowed by political obstacles.

Many Indonesians have also become victims of economic development, rather than beneficiaries, with land expropriation and the exploitation of labour a common side-effect of infrastructure development projects and increased export manufacturing.³⁰ Residents in areas such as Rancamaya or Sei Lapan for example, were deprived of land, homes and food crops - sometimes their entire livelihood - to development projects such as golf courses, luxury housing estates and cash crop plantations. Moreover, Indonesia's workforce was generally paid below minimum wages, worked long hours and in poor working conditions. Even if the government's labour laws demanded better treatment of Indonesian workers, it was either unwilling or unable to ensure compliance with those laws on the factory floor.

Judicial and legal structures

The judiciary has not yet evolved into an independent and vigorous authority. Individuals are still subject to arbitrary incursions by the bureaucracy and the military. The legal

²⁸Juwono Sudarsono : "Indonesia: Domestic Politics and Foreign Policy" (conference paper presented at The Indonesia-Australia Relationship: Towards Greater Understanding and Cooperation, ANU, 23-24 August 1996).

²⁹Jamie Mackie and Andrew MacIntyre ; "Politics" in Hal Hill (ed) *Indonesia's New Order: The Dynamics of Socio-Economic Transformation* (Allen and Unwin, Sydney 1994), p1.

³⁰T.M. Lubis ; *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990* (PT Gramedia Pustaka Utama / SPES Foundation, Jakarta 1993), p13.

system is brittle and unpredictable, and legal codification has proceeded little since the colonial era.³¹

Most observers agree that Indonesia's judicial and legal system are weak and ineffective. There are three main reasons for this. Firstly, laws are complex and often contradictory, combining colonial laws, *adat* (traditional) law and a myriad of Presidential and Ministerial Decrees. Indonesia's legislature is not one which rigorously debates and develops laws - a role reserved for the President and his senior ministers and advisers.

Secondly, the lack of educative and administrative resources means that: "The whole legal apparatus is weak, both in the number and quality of trained investigators, prosecutors and judges."³² This has restricted access to fair and equal legal representation for those in the community (particularly farmers, workers and students with little or no financial resources) whose rights have been violated by a wealthy developer or a powerful bureaucrat.

Finally, Indonesia's judiciary is unable to act independently of government. The 1945 Constitution did not stipulate that Indonesia was to have an independent judiciary, only that it would be run "in accordance with the law".³³ As such, it is subject to prevailing laws and how they are interpreted or developed by the government. The lack of judicial independence in Indonesia has resulted in cases such as the Marsinah trial and the trial of East Timorese rebel leader Xanana Gusmao, where the government and the military were able to craft the outcome to meet political ends.

Prominent academic Daniel Lev pointed out that :

Indonesian judges ... conceive themselves as *pegawai negeri*, officials, and as such, members of the bureaucratic class to which high status has always attached. One implication of the role of *pegawai negeri* is that it is patrimonially associated with political leadership, to whose will it must always be responsive. It is this as much as anything else that underlies the issue of judicial independence. Whatever the daily effects of the Ministry's responsibility, it is symbolically important as a reminder of the judiciary's conceptually limited autonomy and the direction of its loyalties.³⁴

As members of the public service, judges are subject to political pressure and the majority are also subject to bribery, although recent cases suggest that judges might be more able

³¹Hal Hill (ed) ; Indonesia's New Order. The Dynamics of Socio-economic Transformation. (Allen & Unwin, Sydney 1994), p xxix.

³²McDonald, H. ; Suharto's Indonesia. (Fontana, Melbourne 1980), p230.

³³T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p97.

³⁴T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p103.

to counter the prevailing government interests or pressures.³⁵ As with *keterbukaan* however, this 'trend' has been slow, erratic and not without doubts as to its control by government.

The nature of the political system, economic development and judicial and legal structures in Indonesia have been responsible for the violation of an array of internationally recognised human rights. For example, banning of *Tempo* and other magazines restricted rights to freedom of opinion and expression (UDHR Article 19), and the arrest of SBSI leader Mochtar Pakpahan for holding an illegal meeting restricted freedom of peaceful assembly and association (UDHR Article 20). Countless factory workers have been denied their right to just and favourable conditions of work (UDHR Article 23), while the illegal detainment of political prisoners in Lhok Sumawae in North Sumatra was a clear case of arbitrary arrest and detention (UDHR Article 9). Finally, the numerous incidents of forced eviction of farmers by developers and the exploitation of factory workers has denied many Indonesian's their right to actively participate in, and benefit from, economic development (Declaration of the Right to Development, Article 2).

Political and social change

The political stability ... along with the policies of economic development ... opened new opportunities for social change. Suharto's attempt to reshape Indonesian society in the image of a Javanese kingdom took place in the face of social change on a scale not seen since the massive transformations of the colonial era. Indonesian society today is significantly different from the society which Suharto inherited in 1966.³⁶

In the early 1990s, political and social change threw human rights into the fore of issues confronting the Indonesian government.³⁷ Noticeable among these included the growth of the middle class; increasing protests by, and the political visibility of, groups like farmers and factory workers, and; an increasingly sophisticated press and NGO network.

Various assessments have put a great deal of emphasis on Indonesia's growing middle class and its demands for greater political responsibility, accountability and adherence to the rule of law.³⁸ It has been suggested that the swelling ranks of educated professionals

³⁵Charles Humana ; *World Human Rights Guide*, (Oxford University Press, 1992), p 143.

³⁶Robert Cribb and Colin Brown ; *Modern Indonesia: A History Since 1945*, (Longman Group Ltd, UK 1995), p 144.

³⁷Groups like Indonesia's legal aid foundation (LBH) have monitored and published reports on the human rights situation in Indonesia for many years, with continued calls for improvements to human rights protection. Until the early 1990s however, there were few instances, such as the release of thousands of PKI prisoners in the 1970s, in which the government heeded these calls.

³⁸ Soetjipto Wirosardjono ; "Interpretation of the Current Scene", in D. Bouchier & J. Legge (eds) *Democracy in Indonesia: 1950s and 1990s* (Centre of Southeast Asian Studies, Monash University, Melbourne 1994), p246.

were becoming frustrated by "arbitrary personalised decision making" which characterised Indonesian political economy, and that these changes would lead to demands for greater press freedom, freedom to form political associations, an independent judiciary and a strong legislature.³⁹ Mulya Lubis, however, believed that the potential for Indonesia's middle class to become a significant political force in Indonesia is still a decade or so away.⁴⁰ Moreover, not all observers agree on the inclination of the middle class to affect change. Historians Robert Cribb and Colin Brown noted that:

They [the middle class] are not likely to be interested in giving support to movements or leaders whose actions endanger [that] development and stability...It is extremely unlikely, for instance, that there will be any significant push for economic policies which are more equitable or seek to close the yawning gap between rich and poor.⁴¹

A desire for change was not, however, limited to those of rising affluence and higher levels of education. Those demanding protection of economic rights in the early 1990s also received considerable and favourable media, NGO, international and academic attention. For example, there were countless protests by farmers and residents in areas affected by dam projects, the building of residential estates, industrial estates, luxury hotels and golf courses, as well as an increasing number of protests by factory workers against unfair dismissals and demands for decent working conditions and minimum wages. The government sanctioned 'era' of *keterbukaan* gave added momentum to the opinions of the middle class and protest groups such as farmers and factory workers, although the 'process' or 'trend' of *keterbukaan* has been slow and uneven.⁴²

Education and information technology made it increasingly difficult for the government to hide or justify human rights violations. Through an increasingly sophisticated press, and the extension of telecommunications services to even the remotest parts of Indonesia, the community was more aware of what went on across the country and overseas, and more able to let others know what was happening to them. Whereas the press once had a lack of financial and reporting skills to risk closure, today they are more professional and can make press bans, corruption, political conflicts of interest, etc, embarrassing to the government.⁴³ For example, Jamie Mackie and Andrew MacIntyre noted that:

³⁹David Bouchier ; "The 1950's in New Order Ideology and Politics," in D. Bouchier & J. Legge (eds) ; Democracy in Indonesia: 1950s and 1990s (Centre of Southeast Asian Studies, Monash University 1994), p58.

⁴⁰Interview with T. Mulya Lubis, 16 August 1994

⁴¹Robert Cribb and Colin Brown ; Modern Indonesia: A History Since 1945 (Longman Group Ltd, UK 1995), p 151.

⁴²Government support for the concept of openness (*keterbukaan*) began in Dec 1989, with statements to that effect from Suharto, ABRI officers and ministers. Adam Schwarz ; A Nation in Waiting: Indonesia in the 1990's (Allen and Unwin, Sydney 1994), p 232. Hal Hill (ed) ; Indonesia's New Order: The Dynamics of Socio-economic Transformation, (Allen & Unwin, Sydney 1994), p xxix.

⁴³Hamish Macdonald ; Suharto's Indonesia (Fontana Books, Melbourne 1980), pp 229-30.

...several editors have learned how to approach the limits of permissible with admirable skill and courage, publishing critical reports and comment indirectly, or obliquely...⁴⁴

Political and social change in Indonesia during the early 1990s was both the result of government policies and economic development over the past 30 years, as well as an indication that government policy and development needed to be more responsive to the needs and aspirations of Indonesian society. Indonesia's political system ensured that the government did not need to address these problems to remain in power. However, with the looming issue of presidential succession, and the changing attitudes and needs of society (including those of government and military officials), how the government responded to these issues and pressures will determine the degree of political stability, economic prosperity and social cohesion which is maintained in Indonesia in the years to come.

Mulya Lubis noted in 1993 that human rights debates in Indonesia have been characterised by "ambiguity, vagueness and inconsistency".⁴⁵ Competing and conflicting political, ideological and economic interests contributed to this and resulted in 'ambiguity, vagueness and inconsistency' in human rights protection. As a result, the Indonesian government earned a poor human rights record which (however much it is disputed by government officials) could not be ignored if President Suharto was to preside over a peaceful transition to power and retain his 'desired' title as 'bapak', or 'father', of the nation. From the early 1990s, political and social change created an environment in which the protection of human rights became a legitimate political consideration for the government. Coinciding with the reorientation of foreign policy to respond to increasing international demands for human rights protection, the government was led to rethink the issue of human rights in domestic policy.

⁴⁴Jamie Mackie and Andrew MacIntyre ; "Politics" in Hal Hill (ed) Indonesia's New Order: The Dynamics of Socio-Economic Transformation (Allen and Unwin, Sydney 1994), p 26.

⁴⁵T.M. Lubis ; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama / SPES Foundation, Jakarta 1993), p4.

3

Human Rights in Indonesia : The International Context

Following the establishment of the United Nations, human rights became an important and prevalent issue in international relations. It was not, however, until the end of the Cold War that Indonesia and other developing nations with poor human rights records found themselves the focus of intense criticism as increased attention began to be paid to human rights in multilateral as well as bilateral forums. As the glare of international attention began to develop broader political and economic implications in the early 1990s, these countries sought legitimization of an 'alternative view' on human rights to counter the criticisms.

Human rights in international relations

Since human rights appeared as a component of international relations in 1945, they have been welcomed, rejected, praised and loathed, both by peoples and governments around the world. From their inception in United Nations documents, through the Cold War period and into the 1990s era of 'global awareness' and international trade disputes, human rights have been the subject of vigorous debate and often conflict, between and within nations.

The emergence of human rights on the international agenda

Human rights became a major issue in international politics following World War II. The United Nations (UN), created in 1945 as a response to the atrocities of the war, was part of a 'global' strategy to ensure that such events were not repeated. Article 1 of the United Nations Charter, to which all members of the UN had to subscribe, stressed the importance of "respect for human rights and for fundamental freedoms for all..."¹. As a result, all nations joining or seeking membership of the UN had to accept international human rights principles, and human rights became an important and legitimate component of international relations.

In 1948, the Universal Declaration of Human Rights (UDHR) was drawn up by the UN. The UDHR defined basic human rights and fundamental freedoms, and outlined standards for their protection. It has since become a 'common standard of achievement' for all nations. However, while the UN has developed an array of detailed instruments to define and protect human rights, it has no power to obligate or enforce states to comply

¹United Nations ; Basic Facts about the United Nations (United Nations, New York 1980), p 81.

with its provisions.² According to the UN, 'implementation' of human rights instruments is a system involving reporting by states on their "fidelity to their engagements" (i.e. their adherence to instruments) and review by states' peers.³ Effective implementation is difficult for two reasons. Firstly, self assessment is something which governments do not normally engage in. Secondly, newly independent states are suspicious of any threats to state sovereignty - such as external criticism.

Whilst human rights have always been respected and upheld in the rhetoric of international relations, and at the UN, the political and economic interests of states have often taken precedence at the expense of human rights protection. In particular, the Cold War period witnessed the primacy of political and strategic interests over human rights, which were used by the Soviet Union and the United States (US) as a basis upon which to criticise each other, in what Donnelly described as "tactical manoeuvres in a broader political and ideological struggle."⁴ Moreover, at the same time that the West was criticising human rights violations in communist countries, it was conveniently overlooking human rights violations in anti-communist authoritarian regimes.⁵

Human rights in the post - Cold War environment

With the end of the Cold War, human rights criticism was no longer confined to political and ideological boundaries, and non-aligned and pro-western countries increasingly came under fire from former allies. This is not to say that there was no criticism of human rights violations during the Cold War period, but that human rights attained a heightened prominence in the post- Cold War period. This was to elicit a strong response from those countries who came under increased criticism for their human rights conditions.

Governments were particularly defensive of human rights criticism which they perceived as a threat to state sovereignty. Many, mostly developing, countries felt that they were being unfairly criticised and publicly refused to be 'pushed around'. Typical was Indonesia's President Suharto who made it clear that although Indonesia wanted to build friendship with all nations, Indonesia did not want interference in its domestic affairs:

In a world where domination of the strong over the weak and interference between states is still a painful reality, no country or group of countries should arrogate unto itself the role of judge, jury and executioner over other countries...⁶

²James Donnelly; International Human Rights (Westview Press Inc, USA 1993), p 10.

³R.J. Vincent; Human Rights and International Relations (University Press, Cambridge 1986), p 94.

⁴James Donnelly ; International Human Rights (Westview Press Inc., USA 1993), p 8.

⁵James T.H. Tang (ed) ; Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 3.

⁶Amitav Acharya ; "Human Rights and Regional Order: ASEAN and Human Rights Management in Post-Cold War Southeast Asia", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 170. See also Soeharto ; Soeharto : My Thoughts, Words and Deeds (PT Citra Lamtoro Gung Persada, Jakarta 1991), p 418.

Others, however, rejected claims that human rights were purely a domestic issue. At the 1993 World Conference on Human Rights in Vienna, the UN Secretary General stated that: "The international community must take over from the states that fail to fulfil their obligations", and that the role of the international community in pressuring for human rights protection does not "harm our contemporary notion of sovereignty."⁷

Another reaction to criticism was to counter-criticise other countries. For example, many observers stressed that the US was not a desirable model for democracy and human rights, pointing to the prevalence of guns, gangs and terrorism.⁸ Others expressed concern over the political, economic and social instability which accompanied democracy in non-Western countries such as the Philippines and Russia.⁹

Increased criticism of human rights protection not only damaged the national pride of countries in the spotlight but also had economic effects. During the Cold War period, it was more beneficial for the US to provide economic and military aid to support anti-communist regimes than it was to encourage political reform and human rights protection. After the Cold War, however, the value of 'friendly authoritarian' governments in international relations diminished, and conditions applied to the granting of development aid and foreign loans increasingly became tied to democracy, human rights and the environment. As a result, many developing countries became susceptible, by virtue of economic necessity, to western pressures for human rights improvements.¹⁰ Many observers question the effectiveness of linking aid and trade relations to human rights conditions, and it has been argued that sanctions harm people, not governments, and are therefore an ineffective way to address the issue.

While many developing countries understood the economic consequences of aid and trade relations being tied to democracy, the environment and the like, they were not prepared to unconditionally accept these new 'rules of the game'. Many nations saw human rights issues as a 'cover' for other economic and political interests. Those in Asia even

⁷Jakarta Post, 15 June 1993.

⁸James T.H. Tang ; "Towards an Alternative Approach to International Human Rights Protection in the Asia-Pacific Region", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 200.

⁹James T.H. Tang ; "Towards an Alternative Approach to International Human Rights Protection in the Asia-Pacific Region", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 200.

¹⁰Harold Crouch ; "Democratic Prospects in Indonesia", in D. Bouchier and J. Legge (eds) Democracy in Indonesia: 1950s and 1990s (Centre of Southeast Asian Studies, Monash University, Melbourne 1994), p 124.

considered the increased links between aid, trade and human rights as an attempt to contain Asia's rapidly growing economies.¹¹ For example:

A former Bush administration official told [the REVIEW] that human-rights activists are aware that abuses in countries with high levels of foreign investment tend to attract the attention of protectionist minded legislators. The former official gave as one example the targeting of labour rights in sports-shoe factories in Indonesia. 'They went after these particular factories even though conditions compared favourably with other factories in Indonesia,' he said, adding that there was a sizeable lobby in the US which wanted to protect American shoe makers.¹²

The suggestion that Asian and other developing nations believed human rights were used for explicit economic ends was confirmed in the joint communique issued following the July 1994 Association of South East Asian Nations (ASEAN) Foreign Ministers' Meeting, at which "ASEAN members rejected the idea of social clauses in international trade agreements and called the effort to link worker rights and trade in the WTO a 'new pretext for protectionism'."¹³ However, not all would agree. A letter to the editor of the *Jakarta Post* pointed out that, "... the greatest economic trade threat to the United States is Japan, and to a lesser extent, South Korea and Taiwan. We do not see a human rights offensive being waged against these countries."¹⁴

Although the UDHR is described as a 'common standard of achievement' for all nations, few nations have actually achieved full implementation of these standards. In the early 1990s, however, the UN came up with new ideas and approaches to encourage greater promotion and protection of human rights, including the provision of strategic (financial and technical) assistance to approved government projects aimed at improving human rights protection. The Vienna Declaration in June 1993 formally announced that:

The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available

¹¹Lawrence T. Woods ; "Economic Cooperation and Human Rights in the Asia-Pacific Region: The Role of Regional Institutions", in James T.H. Tang (ed) *Human Rights and International Relations in the Asia Pacific* (Pinter, London and New York 1995), p 152.

¹²*Far Eastern Economic Review*, 17 June 1993.

¹³Sidney Jones ; "Regional Institutions for Protecting Human Rights in Asia" *Australian Journal of International Affairs*, Vol.50, No.3, (1996), p 272.

¹⁴*Jakarta Post*, 22 April 1997.

to States assistance for the implementation of plans of action for the promotion and protection of human rights.¹⁵

Whilst this did not result in any rapid turn-around in the human rights practices of most countries, it did provide some positive stimuli to encourage developing countries to pay more attention to human rights.

The increased attention paid to human rights in international forums, and the accompanying links with aid and trade, generated new tensions between developed and developing nations. Coupled with positive incentives from the UN as outlined above, the result was that many developing countries made a conscious effort to deal with the new parameters of international relations.

Human rights in the 1990s: broadening the definition & debate

Many developing countries were adversely affected by increased criticism of their human rights records, both domestically and internationally. Given the failure of defensive strategies to stem criticism - denial of incidents or violations was no longer an option in the context of global technological and communications advances - they developed various offensive strategies. Groupings such as the Non-Aligned Movement (NAM) and the Association of South East Asian Nations (ASEAN) began to deliver considered and comprehensive responses to the international human rights debate which focussed on two main themes. The first was the primacy of the right to economic development - many developing countries insisted that they could not afford to fully implement human rights until economic development goals had been achieved. The second was cultural relativism - the insistence that non-western countries had a different approach to human rights.

The right to economic development

Many developing countries insist that civil and political rights, such as the right to vote or freedom of the press, are meaningless to those who live in poverty.¹⁶ As such, poverty alleviation and economic development must be achieved in order for human rights (particularly civil and political rights) to be enjoyed. For example, the vice-Foreign

¹⁵The Vienna Declaration, World Conference on Human Rights, 14-25 June 1993.

¹⁶Yash Ghai : "Asian Perspectives on Human Rights", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 58. R.J. Vincent ; Human Rights and International Relations (University Press, Cambridge 1986), p 78.

Minister of China claimed that "[when] poverty and lack of adequate food and clothing are commonplace... priority should be given to economic development."¹⁷

The argument, however, is not straightforward and suffers from a number of weaknesses. Firstly, violations of the right to freedom from fear and the right to freedom from arbitrary arrest, torture and killing cannot simply be defended as justifiable or less costly paths to economic development. The UN Declaration on the Right to Development (1986) stated that it is inappropriate for countries to pick and choose which (and when) human rights are applicable: "the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms".¹⁸ The Vienna Declaration reiterated this in 1993 by stressing that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognised human rights."¹⁹

Secondly, while there is no doubt that poverty and lack of economic development can prevent the enjoyment of civil and political rights, the enjoyment of economic rights can also be hampered by the processes of economic development. For example, the expropriation of land for an infrastructure development project, or low wages for workers to stimulate the generation of foreign investment in the manufacturing sector, can deny communities adequate standards of living and the benefits of economic development.

Thirdly, belief that the enjoyment of human rights will 'trickle down' as a by-product of development is considered naive by most analysts, particularly considering the evidence to the contrary from wealthy newly-industrialised states such as Singapore, where the press is controlled and arbitrary detention and nepotism are still common practices.²⁰

Finally, the view that human rights must be sacrificed in order for economic development to succeed is not subscribed to by non-government organisations in developing countries. For example, the Joint Declaration on Human Rights - signed by 52 NGOs and 109 human rights activists in Bangkok in 1993 - stressed that economic growth is not the be-all and end-all for everyone and that people in developing countries "do not want their

¹⁷J. Chan ; "The Asian Challenge to Universal Human Rights: The Philosophical Appraisal", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 32.

¹⁸"Declaration on the Right to Development" in UN Centre for Human Rights Geneva ; The Realization of the Right to Development: Global Consultation on the Right to Development as a Human Right (Report prepared by the Secretary General pursuant to Commission on Human Rights Resolution 1989/45, 1991).

¹⁹The Vienna Declaration, World Conference on Human Rights, 14-25 June 1993.

²⁰T.M. Lubis; In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (PT Gramedia Pustaka Utama /SPES Foundation, Jakarta 1993), p 13.

civil and political rights traded away in the name of development"²¹ While governments argue on the international stage that the right to development necessarily involves violations of human rights, the Indonesian citizens whose rights are being violated do not agree.

Cultural relativism

Proponents of cultural relativism argue that conceptions of human rights differ between cultural and social contexts and as such, international human rights neither derive from, nor are applicable to the cultures and societies of non-Western countries. For example, as the UN was dominated by Western powers at the time of its establishment, it is often argued that the UDHR is rooted in the cultural and historical experiences of Western nations, and therefore less relevant to non-Western nations.²² As a result, international debate has often focussed on the meaning and definition of human rights and the differences between cultures, particularly those of Asia and 'the West'.²³

However, there are criticisms of the cultural relativist argument. Firstly, the assumption that there is a non-Western approach to human rights, an 'Asian way' or a set of 'Asian values' is fundamentally flawed. Asia is heterogeneous in all its connotations. Geographically, Asia includes countries from Syria through to India, from Japan to Indonesia. The Asian region is as diverse in religion, culture and tradition as any other region of the world. Politically, Asia includes parliamentary democracy (India), monarchy (Brunei), authoritarianism (Indonesia) and communism (China). Economically, Asia includes developed nations such as Japan, newly industrialised countries such as Singapore, Hong Kong and Taiwan, and a large proportion of the world's developing and poor nations such as Laos and Burma. Any notion of an 'Asian' view of human rights therefore obscures the region's diversity in pre-colonial and modern history, political, constitutional and economic systems, cultural and social systems and language.

An 'Asian view' therefore reflects commonalities between the human rights policies of Asian governments, rather than the traditions and cultures of the peoples of Asia. According to Ghai,

What conveys an apparent picture of a uniform Asian perspective on human rights is that it is the perspective of a particular group, that of the ruling elites, which gets international

²¹The Joint Declaration was a response to the so-called Bangkok Declaration drawn up by the region's government representatives in April of that year. Adam Schwarz ; *A Nation in Waiting: Indonesia in the 1990's* (Allen and Unwin, Sydney 1994), p 253.

²²In July 1997, Malaysia's Prime Minister Dr Mahatir called for a review of the UDHR. Supporting the call, Indonesian Foreign Minister Ali Alatas stated that "...there are now some 120-odd developing and newly independent countries which did not participate in the debate to draft the 1948 Declaration." *Business Times* (Malaysia), 30 July 1997.

²³Adam Schwarz ; *A Nation in Waiting: Indonesia in the 1990's* (Allen and Unwin, Sydney 1994), p 250.

attention. What unites these elites is their notion of governance and the expediency of their rule.²⁴

Secondly, cultural relativism ignores the fact that "the target of human rights concerns is much more commonly the actions of governments than the cultural practices of their peoples."²⁵ Disagreement on the universal applicability of human rights is therefore less a question of east and west and more a division between civil societies and their governments.²⁶ People in developing countries do not always agree with their governments' interpretation of their cultural history. Human rights advocates across Asia maintain that whilst diversity exists, universal human rights are 'equally rooted in different cultures'.²⁷ The NGO Bangkok Conference insisted that human rights "...should be viewed as a whole and as being indivisible. Any trade of human rights ...is unacceptable."²⁸ Of the NGO Conference, one observer noted that:

... no one could have imagined that precisely by the democratic methods that their governments find 'un-Asian', such a diverse group of people...would hammer out a consensus declaration that refuted or contested every major premise of the 'Asian concept' of human rights...²⁹

Finally, there are certain human rights which no person could claim as cultural heritage. While cultural relativism is helpful to understand how human rights and fundamental freedoms are perceived in different cultural contexts - for example, a man's right to up to four wives might be considered fundamental in a Muslim society, while a woman's right to a monogamous marriage might be fundamental in another society - cultural contexts are not synonymous with states. They should not, therefore, be invoked by governments to justify violations of human rights and fundamental freedoms as they are contained in the UDHR. Cultural relativism is therefore a weak defence of practices such as intimidation, abuse of power, torture and killing by a government's forces against its citizens. Australian Senator, Chris Schacht, pointed out that,

I am yet to come across anyone who likes to be summarily executed, or taken off and tortured, or have their kids conscripted into the army, or be beaten up without recourse to

²⁴Yash Ghai ; "Asian Perspectives on Human Rights", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 55.

²⁵M. Freeman ; "Human Rights: Asia and the West", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 21.

²⁶Amitav Acharya ; "Human Rights and Regional Order: ASEAN and Human Rights Management in Post-Cold War Southeast Asia", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 179.

²⁷Yash Ghai ; "Asian Perspectives on Human Rights", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 63. Adam Schwarz ; A Nation in Waiting: Indonesia in the 1990's (Allen and Unwin, Sydney 1994), p 253.

²⁸P.J. Eldridge ; Non-government Organisations and Democratic Participation in Indonesia (Oxford University Press, New York 1995), p 104.

²⁹Adam Schwarz ; A Nation in Waiting: Indonesia in the 1990's (Allen and Unwin, Sydney 1994), p 253.

the law. No matter which culture you come from, I am yet to discover anyone who thinks cultural relativism is a good idea if it allows you to do that to your own people.³⁰

Despite arguments against cultural relativism, governments of the Asia-Pacific region have called for human rights to be implemented according to "national and regional particularities and various historical, cultural and religious backgrounds".³¹ The Bangkok Declaration made it clear that while governments recognise the universality of international human rights standards in principle, they also claim a distinct approach to the interpretation and implementation of those rights.³² Practical solutions for taking account of particularities have, however, not been outlined.³³

While the June 1993 Vienna Declaration (which followed the April 1993 Bangkok Declaration) accepted that there were different but equally legitimate historical, cultural and religious backgrounds, it did not accept that this legitimised the denial or postponement of any of the human rights or fundamental freedoms contained in the UDHR. Essentially the Vienna Declaration agreed that while developing and non-western nations have the right to not be 'pushed around' by other countries, they similarly do not have the right to 'shirk' their responsibilities to the protection of human rights:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.³⁴

Indonesia and the international human rights debate

The revitalised focus on human rights on the international agenda prompted a general shift in Indonesian foreign policy to accommodate 'human rights conscious' diplomacy. The reorientation of Indonesia's foreign policy included the development of strategies to

³⁰Senator Chris Schacht ; "Opening Address", in Harold Crouch and Hal Hill (eds) Indonesia Assessment 1992: Political Perspectives on the 1990's (Department of Political and Social Change, Research School of Pacific Studies, Australian National University, Canberra 1992).

³¹Bangkok Declaration, Article 8

³²M. Caballero-Anthony ; "Human Rights, Economic Change and Political Development: A Southeast Asian Perspective", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 41.

³³J. Chan ; "The Asian Challenge to Universal Human Rights: The Philosophical Appraisal", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 26.

³⁴The Vienna Declaration, World Conference on Human Rights, 14-25 June 1993.

assert a non-western and developing countries' approach to human rights in forums such as the Non-Aligned Movement and ASEAN. It also involved participation in international human rights forums such as the United Nations Human Rights Commission (UNHRC) and the opening of its doors (including to East Timor) to official visitors, journalists and independent human rights observers.

From reaction to 'pro-action'

With a chronically poor human rights record, Indonesia was a prime target for international criticism. The government's often defensive and reactionary approach to human rights criticism was commonly interpreted (even within government circles) as an 'allergy' to human rights. Former Indonesian delegate to the United Nations, Dr N. Hassan Wirayuda, reflected that the government misread international feeling on the issue of human rights and handled it poorly.³⁵ Prompted by the experiences of those who spent much of their time deflecting this criticism, the government reoriented its foreign policy regarding human rights.³⁶ Department of Foreign Affairs Official, Drs. R.M. Soelaeman Pringgogidgo, summed up the shift: "Indonesia is responsive and no longer defensive on human rights." ³⁷

The Indonesian government's position that economic development, cultural relativism and state sovereignty were legitimate and important considerations in the international human rights debate has not changed. What has changed is the way that Indonesia argues these issues in international forums. The late 1980s was dominated by claims that Indonesia 'won't be pushed around' and 'won't tolerate interference in its domestic affairs', but whilst similar statements still emanate from time-to-time (witnessed by the dissolution of IGGI in 1992 and the rejection of Dutch aid³⁸), Indonesia now focuses its attention on diplomacy and multilateral forums, where its position can be carefully argued and where it can gain the support of other countries facing similar problems.

Indonesia's foreign policy makers recognised that effective human rights diplomacy could not consist only of reactions to the concerns voiced by other countries, but must more actively and openly be involved in international human rights forums, such as the

³⁵Interview with Dr N. Hassan Wirayuda (Director for International Organisations, Department of Foreign Affairs and former Counsellor, Permanent Mission of the Republic of Indonesia to the United Nations Office at Geneva - 1989-1993), 9 November 1994.

³⁶Michael R.J. Vatikiotis ; *Indonesian Politics Under Suharto: Order, Development and Pressure for Change* (Routledge, London 1993), p182. Interview with Dr N. Hassan Wirayuda, 9 November 1994.

³⁷*Suara Pembinaan*, 15 August 1991.

³⁸The Inter Governmental Group on Indonesia (IGGI), chaired by Holland, was a consortium of countries providing development aid to Indonesia. Indonesia objected to criticism from Holland's Development Minister, which it saw as the 'high-handed ways' of its former colonial ruler. Correspondence with Sidney Jones. IGGI was replaced by the Consultative Group on Indonesia (CGI), chaired by the World Bank.

Bangkok and Vienna Human Rights Conferences and the United Nations Human Rights Commission (UNHRC), as well as political forums such as NAM and ASEAN.

International human rights forums

Indonesia was elected to become a full member of the UNHRC in 1991. While membership of the Commission brought with it a greater level of scrutiny of the country's human rights record and potentially provided the basis for more intense criticism of Indonesia, it also placed Indonesia in a more prominent (and positive) position from which to voice its own opinions on human rights and to influence the direction of international policy-making in an area that was affecting Indonesia and other developing countries.³⁹

Indonesia's efforts to rally support for its position - that non-Western and developing countries were entitled to adopt a unique approach to implementation of international human rights - were rewarded by the United Nations in its 1993 Bangkok and Vienna Declarations and have garnered much support from other non-Western nations. Foreign Minister Ali Alatas' rejection of moves by some developed countries to voice their human rights concerns through economic sanctions was also publicly supported at the 1993 World Conference on Human Rights.⁴⁰

International political groupings

Indonesia's chairing of the Non Aligned Movement (NAM) between 1992-1995 signalled its "re-emergence as a leader of the developing countries" and not only generated a great deal of pride domestically, but also provided it with an additional avenue through which to positively and unequivocally assert Indonesia's position on human rights.⁴¹ This position included the rejection of international pressure, in particular the linking of aid and trade benefits to human rights, which NAM members saw as confrontational and tinged with undemocratic 'big-brother tactics'. Instead, it advocated constructive engagement, increased interaction, economic development and middle class growth as preferable alternatives for addressing human rights problems in developing countries.⁴²

³⁹As the UNHRC is the primary human rights body in the United Nations - responsible for preparing human rights instruments and monitoring their implementation in member countries - the move was significant. (New Zealand Ministry of Foreign Affairs and Trade ; United Nations Handbook 1994, New Zealand Ministry of Foreign Affairs and Trade, Wellington 1994, p 91). Up until the mid-60s, the UNHRC was largely controlled by Western countries. However, by the early 1990s it included a greater proportion of developing countries from Asia, Africa and Latin America, including Indonesia. James Donnelly ; *International Human Rights* (Westview Press Inc, USA 1993), p 61.

⁴⁰M. Caballero-Anthony ; "Human Rights, Economic Change and Political Development: A Southeast Asian Perspective", in James T.H. Tang (ed) *Human Rights and International Relations in the Asia Pacific* (Pinter, London and New York 1995), p 48.

⁴¹*Kompas*, 15 September 1992. Dewi Fortuna Anwar ; "Indonesia's Foreign Policy After the Cold War" *Southeast Asian Affairs 1994* (ISEAS, Singapore 1994), pp 156-9.

⁴²James T.H. Tang ; "Towards an Alternative Approach to International Human Rights Protection in the Asia-Pacific Region", in James T.H. Tang (ed) *Human Rights and International Relations in the Asia Pacific* (Pinter, London and New York 1995), p 200.

This new approach was outlined at the NAM Summit held in Jakarta in 1992 which produced "The Jakarta Message: A Call for Collective Action and the Democratisation of International Relations".⁴³ The Message stressed that while human rights concepts were universal, their implementation should be in accordance with local conditions. This 'universality but...' rhetoric was somewhat a concession to the UN and international human rights language but also allowed for qualification and interpretation by national governments. This approach became commonplace in various human rights forums in the 1990s and went some way to putting human rights onto the agendas of developing countries.⁴⁴

An important part of Indonesia's strategy for dealing with human rights issues in international forums was to confirm to critics and other governments that Indonesia and ASEAN were genuinely concerned about human rights - even though their approaches to improving human rights might differ to those employed by developed, or western nations. Following the July 1993 Ministerial Meeting in Singapore, ASEAN issued a joint communique which stressed the value given to human rights by ASEAN governments and proposed the establishment of a regional human rights mechanism:

The Foreign Ministers reviewed with satisfaction the considerable and continuing progress of ASEAN in freeing its peoples from fear and want, enabling them to live in dignity. They stressed that the violations of basic human rights must be redressed and should not be tolerated under any pretext. They further stressed the importance of strengthening international cooperation on all aspects of human rights and that all governments should uphold humane standards and respect human dignity...in support of the Vienna Declaration and Program of Action of 25 June 1993, they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.⁴⁵

It has been suggested, however, that the steps taken by ASEAN were no more than "a way of joining ranks against Western pressure than as a serious tool for protecting

⁴³Dewi Fortuna Anwar ; "Indonesia's Foreign Policy After the Cold War" *Southeast Asian Affairs 1994* (ISEAS, Singapore 1994), p 158.

⁴⁴*Kompas*, 15 September 1992.

⁴⁵ASEAN Secretariat ; *Joint Communique, Twenty-sixth ASEAN Ministerial Meeting*, (Singapore 23-24 July 1993), p 13. This proposal was followed up by a couple of initiatives. Firstly, the ASEAN Inter Parliamentary Organisation (AIPO) drafted a declaration on human rights. The ASEAN Declaration, as it came to be known, aimed to encourage ASEAN nations to implement the Vienna Declaration and to pay more attention to the issue of human rights. *Suara Pembaruan*, 22 September 1993. *Merdeka*, 17 August 1993. The Declaration has since become a point of reference for Komnas. Komisi Nasional Hak Asasi Manusia ; *Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994*, Sekretariat Jenderal, 20 Juli 1994, p 13. Secondly, the ASEAN Institute of Strategic Studies (ASEAN-ISIS) proposed the establishment of a regional human rights body to act as a centre for the dissemination and sharing of information, and where necessary as a fact-finding body to determine cases of human rights violations. M. Caballero-Anthony ; "Human Rights, Economic Change and Political Development: A Southeast Asian Perspective", in James T.H. Tang (ed) *Human Rights and International Relations in the Asia Pacific* (Pinter, London and New York 1995), p 50.

internationally recognised rights."⁴⁶ Moreover, an ASEAN human rights body faces several potential problems. Firstly, there are fears that a regional human rights convention or commission would be "overwhelmed by the representatives of authoritarian regimes," and thus be steered clear of substantive human rights issues in both policy and actions.⁴⁷ Secondly, the extension of intra-ASEAN disputes highlights the kinds of potentially divisive problems a human rights body might face. For instance, following the 1994 execution of a Filipina domestic worker in Singapore, The Philippines accused Singapore of inhumanity and of not being representative of Asian values. The dispute brought into question the notion of an 'Asian way'.⁴⁸ An ASEAN human rights body may only serve to highlight differences and problems between member nations.

Coinciding with a more prominent role in the international human rights debate, Indonesia also demonstrated its concern for human rights by opening its doors more frequently to foreign visitors, journalists and officials to look at human rights in Indonesia and East Timor. Many of these followed official invitations and have included UN delegates and special rapporteurs, as well as parliamentary delegations from Germany, the United States, Australia and Sweden.⁴⁹

Indonesia made a conscious effort to respond to the changing parameters of human rights issues in international relations and while still often criticised for human rights violations, its involvement in the UNHRC, active participation in the Bangkok and Vienna Conferences, and encouragement of a human rights dialogue in NAM and ASEAN, was praised by many in the international community who viewed the shift as an indication that Indonesia intended to seriously address the issue of human rights.

⁴⁶Sidney Jones ; "Regional Institutions for Protecting Human Rights in Asia" Australian Journal of International Affairs Vol.50, No.3, (1996), p 272.

⁴⁷James T.H. Tang ; "Towards an Alternative Approach to International Human Rights Protection in the Asia-Pacific Region", in James T.H. Tang (ed) Human Rights and International Relations in the Asia Pacific (Pinter, London and New York 1995), p 193. As Indonesia's largest aid donor, Japan's approach to expressing human rights concerns is noteworthy.

⁴⁸It followed a diplomatic row between the US and Singapore over the corporal punishment of an American teenager for vandalism which pitted east against west over human rights.

⁴⁹Amnesty International ; Indonesia and East Timor. Power and Impunity: Human Rights under the New Order (Amnesty International Publications, UK 1994), p 115.

4

The Creation of Komnas HAM

The establishment of Indonesia's National Commission on Human Rights (Komnas HAM) followed several years of increasing discussion of human rights in international and domestic forums, and months of internal government debate, mainly initiated by the Department of Foreign Affairs (Deplu). Deplu's efforts to transfer human rights issues from the foreign to domestic policy agenda culminated in a series of workshops and committees designed to hammer out a framework for the establishment of a national commission for human rights.

The announcement of Komnas HAM was received with varying degrees of enthusiasm, domestically and internationally. There was a level of optimism which had not accompanied previous government initiatives to address human rights, as many observers felt that the move indicated the government planned to seriously address the issue. However, given Indonesia's rigid, authoritarian political system, there were also serious doubts as to whether Komnas could operate independently and effectively.

The Background to Komnas

The reorientation of Indonesian human rights diplomacy and its increased participation in human rights forums was welcomed by the international community. The Department of Foreign Affairs was aware, however, that "good public relations cannot be a substitute for political reforms".¹ Domestic initiatives were required to consolidate and maintain Indonesia's improved image abroad. Vatikiotis suggested that, by the early 1990s,

...the foreign ministry, aided by more enlightened advisers to Suharto, persuaded the President that there was little point in seeking international laurels if there were to be no concessions to international opinion.²

In 1989, the Department of Foreign Affairs invited colleagues from various government agencies, including ABRI, the Department of Justice and the DPR, to learn more about international human rights and how to defend Indonesia against international criticism.³ This was followed in 1990 by a Supreme Advisory Council (Dewan Pertimbangan

¹Dewi Fortuna Anwar ; "Indonesia's Foreign Policy After the Cold War" *Southeast Asian Affairs 1994* (ISEAS, Singapore 1994), p 162.

²Michael R.J. Vatikiotis ; *Indonesian Politics Under Suharto: Order, Development and Pressure for Change* (Routledge, London 1993), p 185.

³Interview with Dr N. Hassan Wirayuda, 9 November 1994.

Agung - DPA) working group on human rights, established to prepare 'Draft Advice on Efforts to Improve the Upholding of Basic Human Rights Based on Pancasila and the 1945 Constitution' for submission to President Suharto.⁴

The first public indication that human rights policies were being discussed by the government was at the First National Workshop on Human Rights, held in January 1991 (in conjunction with the UN Centre for Human Rights). It was a significant first step in bridging the gap between foreign and domestic human rights policies.⁵ Foreign Minister Ali Alatas later referred to the First National Workshop as an "important milestone for government policy on human rights because it laid the foundations for a proactive policy, compared with previous policies that were inclined to be reactive."⁶ The Workshop recommended that the government establish a permanent inter-agency committee on human rights; the government establish a national commission for human rights; and, Indonesia should take an active part in regional and international forums and discussions.⁷

Possibly in response to 1989 discussions with Deplu, ABRI made its position on human rights clear, in a series of seminars held by the National Council for Defence and Security (Dewan Pertahanan Keamanan Nasional - Wanhankamnas) through 1992 and 1993.⁸ It proposed a national declaration on human rights in September 1993, incorporating the Universal Declaration of Human Rights and Indonesia's own human rights concept, which was based on the assumption that "although a human being is born free, they live as a social being because they live as a community".⁹ This was clearly an attempt to give tangible substance to the rhetoric of 'Indonesian-style human rights' (and to contribute to Deplu's request that government agencies 'learn more about international human rights and how to defend Indonesia against international criticisms'), but did not suggest how an Indonesian 'model' for human rights might be achieved.

The first recommendation of the 1991 Workshop was realised just one month after the Workshop, with an Inter-agency Permanent Human Rights Committee (Panitia Tetap HAM) established to address human rights, chaired by the Director General for Political

⁴Interview with Dr N. Hassan Wirayuda, 9 November 1994. Jakarta Post, 15 January 1991.

⁵Interview with Dr N. Hassan Wirayuda, 9 November 1994.

⁶These comments were made by Ali Alatas in his opening address at the 2nd National Workshop on Human Rights, 24-26 October 1994. Risalah Persidangan No.1, Lokakarya Nasional Kedua Hak Asasi Manusia, Jakarta, 24-26 Oktober 1994

⁷The idea for a national commission for human rights was not new. It had been discussed at an internal government meeting as early as 1990, and Indonesian human rights advocates had been calling for a national commission for some years before the government announced its plans. Interview with T. Mulya Lubis, 16 August 1994. It was however, the first time that the idea had been officially put to government. Interview with Dr N. Hassan Wirayuda, 9 November 1994.

⁸Angkatan Bersenjata, 2 December 1992. Suara Karya, 3 March 1993.

⁹Jakarta Post, 30 September 1993.

Affairs in Deplu. Plans were also made to hold a regional human rights workshop in Jakarta in December 1991 - in order to realise the second recommendation.¹⁰ The intention of the workshop was to provide an opportunity for Indonesia to garner input from other countries on how to properly set up a national human rights commission. According to senior foreign affairs official Hassan Wirayuda:

We wanted to tap the knowledge and expertise of others to help us develop the proper infrastructure for dealing with human rights.¹¹

Postponed in the wake of the November 1991 Dili incident, the regional human rights workshop was finally held in January 1993.¹² The workshop was devoted to exploring the role and function of national human rights commissions and included official speakers from human rights commissions in Australia, the Philippines, New Zealand, Italy and Pakistan.¹³ The Workshop, however, held more significance for the fact that Foreign Minister Ali Alatas pre-empted it with an announcement that the government intended to establish an independent commission on human rights.¹⁴

Following the workshop, a committee was established by Deplu to draft a law on which the formation of Komnas would be based. The committee consisted of academics and officials from the Department of Foreign Affairs, the Department of Justice, State Secretariat and the DPR (the Muslim PPP faction).¹⁵ Most of the committee members subsequently joined Komnas and they represented a cross-section of opinions and skills necessary to establish legal foundations compatible with both domestic ideology and international standards, without being politically or bureaucratically complicated. According to committee member, Ismail Suny, the aim was to complete preparations in time for the Second World Conference on Human rights in June 1993.¹⁶

Although ABRI did not participate in the committee, the State Secretariat's (Sekretariat Negara, or Sekneg) key involvement in the formation of Komnas was significant. As the

¹⁰Suara Pembaruan, 15 August 1991. Interview with Dr N. Hassan Wirayuda 9 November 1994.

¹¹Interview with Dr N. Hassan Wirayuda, 9 November 1994.

¹²Far Eastern Economic Review, 10 June 1993, p 30. The main sponsor for the Workshop was the UN Centre for Human Rights. Following a withdrawal of funding, Japan, Australia, New Zealand and the UK contributed (via UN channels) to funding the Workshop. Interview with Dr N. Hassan Wirayuda 9 November 1994.

¹³Centre for Human Rights Geneva; United Nations Workshop for the Asia-Pacific Region on Human Rights Issues: Report, Jakarta 26-28 January 1993 (United Nations, New York 1993), pp 20-22.

¹⁴Jakarta Post, 11 December 1992. Workshop sessions included: "national implementation of international human rights standards"; "activities of national institutions for the protection and promotion of human rights"; "issues of jurisdiction and competence - which rights to protect and how"; "relations between national institutions and the State: issues of autonomy and independence"; "relations between national institutions and other partners"; "what makes an effective national institution for protection and promotion of human rights?"

¹⁵Members of the committee were Miriam Budiardjo, Satjipto Rahardjo, Hassan Wirayuda, Baharuddin Lopa, Ismail Suny and Aisyah Amini. Interview with Miriam Budiardjo, 19 August 1994.

¹⁶Jakarta Post, 13 May 1993.

closest office to the President, Sekneg played an important role in consulting with necessary ministries and generating support for the plan, while Deplu was responsible for setting the agenda and running the show. Former Foreign Minister, Mochtar Kusuma-Atmadja, saw the government being more or less guided by what the foreign office said on the human rights issue and that this was a positive sign: "If it were a really repressive regime as people say...they would never listen to the foreign service."¹⁷

Objectives and Activities of the Commission

Komnas HAM was announced through Presidential Decree No.50 in June 1993. The objectives and activities were comprehensively spelled out. Whilst the objectives recognised the universality of the United Nations Charter and the Universal Declaration of Human Rights, they also stressed the importance of Indonesian 'particularities' such as Pancasila, the 1945 Constitution and economic development, clearly reflecting government sentiment that it was entitled to an Indonesian view of what human rights were, and how they should be implemented.

The Decree outlined Komnas' philosophical basis, status, objectives, activities, organisation and membership. According to the Decree, the objectives of Komnas were to:

- a) assist in the development of conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter and the Universal Declaration of Human Rights;
- b) improve the protection of human rights in order to realise the goals of national development, those being the full development of the Indonesian person and Indonesian society as a whole.¹⁸

The Decree also stipulated that Komnas be involved in four main areas of activity:

- a) to spread and relate national and international concepts of human rights to the Indonesian and international communities;
- b) to examine various United Nations instruments on human rights with the aim of making proposals [to government] on the accession to or ratification of those instruments;
- c) to monitor and investigate the implementation of human rights as well as to provide [the Commission's] opinions, considerations and suggestions to government agencies on the implementation of human rights;

¹⁷Interview with Mochtar Kusuma-Atmadja, 26 October 1994.

¹⁸Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 (June 1993).

d) to establish further regional and international cooperation in the promotion and protection of human rights.¹⁹

These activities clearly reflected international standards and were in fact based on a set of recommendations which emerged from the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris in October 1991.²⁰

The Reaction to Komnas

Following the creation of Komnas HAM, there was a flurry of debate about Komnas in national and international circles, which was well-covered in the media. Responses ranged from cynicism about Komnas' ability to be independent and effective, to praise that the Indonesian government was making a genuine attempt to address human rights. Internationally, the move won much favour with the UN and countries with which Indonesia enjoyed close, and even not so close, bilateral relations.

Domestically, despite apprehension in some circles, it was considered a positive step, one that indicated governmental concern for human rights.²¹ Some observers were suspicious of the government's motivations and Komnas' formation was often discussed in terms of its international (legal and political) implications. For instance, prominent academic, Satjipto Rahardjo, said that "the formation of the Commission shows the outside world that we are serious about implementing human rights".²² Former parliamentarian, Marzuki Darusman, commented that the creation of Komnas demonstrated Indonesia's resolve to improve and protect human rights, and that it was a useful step in the lead up to the Vienna conference.²³ The Minister for Justice, Oetoyo Oesman, acknowledged that the government recognised a shortfall between human rights standards and their implementation: "If everything was fine there would be no need for a commission."²⁴

¹⁹Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 (June 1993).

²⁰Indonesia attended the workshop as an observer. United Nations ; "Principles relating to the status and functioning of national institutions for protection and promotion of human rights", Human Rights Fact Sheet No.19. Interview with Hassan Wirayuda, 9 November 1994. The recommendations were endorsed by the United Nations Commission on Human Rights in March 1992. The Philippines Commission for Human Rights has similarly outlined activities, although it is more specific in its mandate and powers. Republika ng Pilipinas Komisyon ng Karapatang Pantao ; Blazing Trails for Human Dignity and Justice: The Philippine Experience

²¹Kompas, 9 June 1993. The Jakarta Post, 9 June 1993. Kompas, 10 June 1993. Suara Karya, 10 June 1993. Kompas, 19 June 1993.

²²Suara Karya, 10 June 1993.

²³Kompas, 9 June 1993.

²⁴Reuters News Service, 11 December 1993.

For members of the drafting committee, the choice of Presidential Decree (instead of parliamentary legislation) was simply a matter of speed and convenience.²⁵ However, many lawyers and human rights activists criticised this method of establishment as it undermined Komnas' ability to remain independent. According to Marzuki Darusman, "the National Commission should be set up by legislation, not by Presidential Decree, so that it is stronger."²⁶ If Komnas could be established by Presidential Decree, it could just as easily be abolished by the same method.

Many observers saw the establishment of Komnas specifically as an instrument of international diplomacy. Indonesian political scientist, Dewi Fortuna Anwar, insisted that: "There is no doubt that besides responding to greater [domestic] demands for democracy and the protection of human rights, the recent initiative to create a National Human Rights Commission is also an important foreign policy move to help restore Indonesia's foreign image abroad."²⁷ While Human Rights Watch/Asia rightly noted that "foreign pressure is not a sufficient explanation for why Decree No.50 was issued" (i.e. that there were also significant domestic forces at play), the formation of Komnas was clearly intended to get as much public relations mileage as possible.²⁸

As Komnas was formed just before the World Conference on Human Rights, parallels were drawn with the DPR Group on Human Rights, which was created prior to the September 1992 Non-Aligned Movement summit meeting in Jakarta and which turned out to be a disappointingly inactive body.²⁹

However, Coordinating Minister for Politics and Security, Soesilo Soedarman, disagreed with the view that there was a connection between the formation of Komnas and international pressure, even though there appeared to be general consensus to the contrary.³⁰ State Secretary, Moerdiono, claimed that human rights were not an international import, since Indonesia's human rights traditions stretched back to its struggle for human rights during the fight for independence.³¹

²⁵Interview with Miriam Budiardjo, 19 August 1994.

²⁶*Kompas*, 9 June 1993.

²⁷Dewi Fortuna Anwar ; "Indonesian Foreign Policy After the Cold War" *Southeast Asian Affairs 1994* (ISEAS, Singapore 1994), p 162.

²⁸Human Rights Watch / Asia ; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, USA, September 1994), p 124.

²⁹*Kompas*, 10 June 1993. The Parliamentary Working Group on Human Rights was created in August 1992. The move followed the 82nd Inter-Parliamentary Union (IPU) conference which issued a resolution urging all IPU-member parliaments to set up special bodies to deal with human rights. *Antara*, 21 August 1992. Although widely publicised as a sign that the government was finally paying necessary attention to human rights, the group has been inactive and considered a failure by some observers. *Republika*, 16 May 1993.

³⁰*Republika*, 10 June 1993.

³¹*Kompas*, 9 June 1993.

It is important to make the distinction between responding to international pressure and complying with international/United Nations standards and resolutions. For instance, Mulya Lubis acknowledged that it was a positive step in light of United Nations proposals for all countries to establish such institutions. He also stressed that it was important for the formation of Komnas not to be merely a concession to international opinion, but instead "based on pure national aspirations" in order for it to truly be a genuine attempt by the government to address human rights.³²

Getting Started

Komnas, however, existed initially in words only. There was a Presidential Decree and a lot of debate about what its establishment meant and whether it could be effective. The next step was to appoint 25 'prominent national figures' as members and to find it a 'home' (an office and administrative facilities).³³

Membership

Apart from its chairman, Ali Said, the membership of Komnas was not announced until December 1993, following a lengthy selection process conducted by Ali Said, with considerable guidance from Deplu and Sekneg.³⁴ There was much debate over who the members would be - in particular, whether vocal human rights advocates would be included in the composition of Komnas.³⁵

Human rights lawyer Mulya Lubis rejected an offer to join because he believed that it could not be independent.³⁶ Lawyers from Indonesia's legal aid foundation (Lembaga Bantuan Hukum - LBH), Luhut Pangribuan, Frans Hendra Winarta and Abdul Hakim Garuda Nusantara also declined offers. Whilst there was good reason to be sceptical, one observer suggested that:

"It would perhaps be better for them to give the government the benefit of the doubt and agree to serve. Later, if the commission turns out not to be a watchdog with teeth but a government lap dog, then they can announce their resignations and publicise their reasons for quitting."³⁷

³²Kompas, 9 June 1993. Jakarta Post, 9 June 1993.

³³See Article 7. Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 (June 1993).

³⁴The composition of Komnas was submitted to the President in early November and was finally announced in December 1993. Kompas, 12 November 1993.

³⁵Deplu and Sekneg officials were most closely involved in choosing members for the Commission. Interview with Dr N. Hassan Wirayuda, 9 November 1994. Kompas, 14 June 1993.

³⁶Interview with Mulya Lubis, 14 August 1994.

³⁷Far Eastern Economic Review, 23 September 1993.

Nevertheless, they recognised that it could benefit from the inclusion of someone who could adequately represent the views of non-government organisations. Mulya Lubis suggested to Ali Said that Asmara Nababan (Secretary of INFID - International NGO Forum on Indonesian Development) be invited to join and Pangribuan, Frans Hendra and Abdul Hakim all encouraged Asmara to accept the offer.³⁸ However, others in the NGO community saw Asmara Nababan's membership of Komnas very differently: "When (NGO leader) Asmara Nababan joined, everyone was mad, and thought he was joining a state institution."³⁹

Despite open consultation with the non-government 'sector', and an obvious desire to include an NGO representative, there were indications that Komnas' membership was subject to limitations, or censorship. For example, lawyer and vocal government critic Adnan Buyung Nasution was not even considered as a candidate. One observer suggested that this was because he would have been too difficult to control.⁴⁰ It was also reported that the government had rejected a proposal that Marzuki Darusman be made Secretary General of Komnas - supposedly due to his outspokenness during his time as a member of the DPR.⁴¹

Although there were no peasants or factory workers in the line-up, Komnas represented a cross section of Indonesian (elite) society and appeared to reflect the 'unity in diversity' motto of Indonesia.⁴² Members included current and former bureaucrats, members of parliament, ABRI officers, academics and lawyers (including commercial law), a private businessman, respected Muslim and Christian religious figures, a newspaper editor and the secretary of a major non-government organisation - with many falling into more than one category. Geographically, the membership of Komnas spanned Java, Sumatra, Sulawesi, Kalimantan and East Timor. Many members also had extensive experience in international affairs and diplomacy (see Appendix A).

The most important and influential positions on Komnas were those of Chairman and Secretary General. First and foremost, Ali Said was one of Suharto's oldest and most loyal associates, and this would have been the primary factor in his appointment as Chairman. Whatever situation Komnas found itself in, Suharto trusted Ali Said to be in control. As a former lawyer, judge and high ranking military officer, Ali Said also had a legal background and political support which was useful for Komnas.

³⁸Interview with Asmara Nababan, 4 November 1994.

³⁹"Human What?" *Inside Indonesia* (March 1996).

⁴⁰Interview with Arief Budiman, 31 October 1995.

⁴¹*Media Indonesia*, 18 November 1993.

⁴²Whilst this may indicate that the commission's members were not representative of Indonesian society, there are also no peasants, farmers or factory workers on Australia's human rights commission.

There was some criticism of Ali Said's appointment by international groups - in particular his role as Chief Justice of the Extraordinary Military Tribunal which oversaw the trials of former foreign minister Subandrio and PKI leader Nyono, following the 1965 coup attempt.⁴³ Within Indonesia, however, there was little or no criticism of his appointment to head the commission. Apart from Haji Princen's comment that Ali Said was a poor choice because he had abused human rights, most reports described Ali Said as a 'man of integrity' and a 'good choice' for the position.⁴⁴

At the time of his appointment as Secretary General (and for the first few years of its operation), Baharuddin Lopa was the Director General of Corrections in the Ministry of Justice. His appointment was not a suggestion that human rights were respected in Indonesian prisons in such an exemplary way that the head of the prison system was considered an expert on the implementation of human rights. Nonetheless, Lopa had previously served as Attorney-General in Aceh, Southeast Sulawesi, Western Kalimantan and South Sulawesi, and his attempts to stop corruption in the South Sulawesi court system in the 1980s earned him a great deal of respect among human rights groups, even though he was little known outside of Indonesia.⁴⁵

Whilst the line-up was not a radical bunch of human rights activists, the 25 members were generally highly regarded and well-respected figures in the community, many of whom were known for their honesty and integrity in the area of human rights.⁴⁶ Some were critical of the government's human rights record but had lacked the desire, courage or the opportunity to take a public position. Overall, the appointed members were a group of 'well-meaning' advocates for better protection of human rights in Indonesia. To what extent they would pursue change was difficult to gauge initially, because of unknown variables, such as funding, political pressures and so on.

Former foreign minister Mochtar Kusuma-Atmadja described the overall composition of Komnas as an interesting mix of positions and temperaments.⁴⁷ Whilst members would insist that they did not represent factional interests, their personal resources and networks

⁴³Lawyers Committee for Human Rights; One Step Forward, Two Steps Back: Indonesia's National Commission on Human Rights (USA, July 1993).

⁴⁴Suara Pembinaan, 9 June 1993. Jakarta Post, 11 June 1993.

⁴⁵Interview with Haji Princen, 18 August 1994. Lopa once requested in a newspaper announcement that the community not pay any bribes to his *anak buah* (people or employees). Soon after, he prosecuted a high-flying businessman (Tony Gozal) on corruption charges involving Rp7 billion earmarked for reforestation programs. Lopa announced that there was "no-one who is above the law" and was shocked when Gozal was cleared of all charges. Lopa secretly investigated the verdict and discovered that it had been 'bought' by Gozal. Before he was able to complete his investigation however, Lopa was assigned to the Ministry of Justice in Jakarta as a *staf ahli*, or special adviser. Apa & Siapa: Sejumlah Orang Indonesia 1985-1986, compiled by Tempo magazine (Grafiti Pers, Jakarta 1986), pp 449-450.

⁴⁶Lawyers Committee for Human Rights; In the Name of Development: Human Rights and the World Bank in Indonesia, A Joint Report of The Lawyers Committee for Human Rights and The Institute for Policy Research and Advocacy (ELSAM) (United States of America, 1995).

⁴⁷Interview with Mochtar Kusuma-Atmadja, 26 October 1994.

would assist in the procedures of investigation and negotiation, as well as generating support from as many groups as possible in Indonesian society.

Apart from a loosely defined list of objectives and activities, there was little certainty about what Komnas would do, and without a constitution and working mechanisms for the first year there was even less certainty about how it would operate. It seemed that the shape of Komnas would depend on what its members decided to make of it. This broad range of backgrounds and experience was a 'safe bet' for Komnas' first plenary membership and was an important factor in the relationships it developed with government agencies and non-government groups. Although Komnas was quick to open its doors for business soon after its first meeting in December 1993, it was some time before Komnas overcame a number of financial and administrative constraints.

Finance and administration

Komnas held its first plenary meeting on 10 December 1993 (at Hotel Indonesia as it did not yet have an office of its own).⁴⁸ The Deputy Chairpersons (Miriam Budiardjo and Marzuki Darusman) and Secretary General (Baharuddin Lopa) were elected at this meeting.⁴⁹

Whilst the Decree stated that the Secretary General "shall work on a full-time basis", this was not the case in practice.⁵⁰ Nonetheless, whilst Baharuddin Lopa was also Director General for Corrections in the Department of Justice, Komnas was based in that same office for the first 18 months.⁵¹ Lopa's '*dwi-fungsi*' posed a serious conflict of interest (as well as a heavy workload) and many members considered the situation 'undesirable'.⁵² Ali Said's ill health during this time also contributed to various delays and practical obstacles for Komnas.

Komnas did not have a guaranteed source of funding from the national budget but received 1.5 billion rupiah per year, allocated by Sekneg.⁵³ The annual budget covered administration costs, travel expenses, salaries, etc.⁵⁴ The salaries of Komnas members were considered honorary, ranging between Rp2-4 million (approx \$A1250-2500) per

⁴⁸Suara Pembaruan, 11 December 1993. Plenary sessions were held on the first Monday of every month. Sub-Commission meetings were also held regularly, although their frequency varied depending on the workload.

⁴⁹Media Indonesia, 11 December 1993. Suara Pembaruan, 11 December 1993.

⁵⁰See Articles 10 and 12. Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 (June 1993).

⁵¹The use of Lopa's offices at the Department of Justice was viewed as a temporary arrangement and although a permanent office was not found until 1996. Interview with Charles Himawan, 24 July 1995. Interview with Marzuki Darusman, 15 November 1995.

⁵²Lopa became full-time Secretary General - in accordance with Article 12 of Decree No. 50 - when his term as Dirjen Pemasyarakatan expired in late 1995. Interview with Charles Himawan, 24 July 1995.

⁵³Jakarta Post, 27 June 1994.

⁵⁴Interview with Clementino Dos Reis Amaral, 17 August 1994.

month.⁵⁵ As 'prominent national figures', these salaries were insignificant compared with what members could, and often did, receive in other occupations. This no doubt explained why not all members were able to devote 100% of their time and effort to Komnas activities.⁵⁶

Financial and administrative constraints made life difficult for Komnas and while they were not unlike the difficulties faced by many (government and non-government) organisations in Indonesia, they meant that the fledgling national human rights commission was ill-equipped to receive the flood of complaints when it declared itself 'open for business'.

Whilst many observers, lawyers, human rights advocates and government critics were sceptical of Komnas' ability to be effective and remain independent, the new commission was given a chance to prove itself. There were many problems facing Komnas, such as the lack of a constitution and working mechanisms, the lack of its own office and adequate administrative facilities such as staff, the absence (or presence) of existing relationships with government and non-government agencies, and questions over its funding arrangements. Nevertheless, Komnas began operations the following month and addressed these issues as it went. Due to time constraints and other priorities during its first year - such as hearing complaints, handling cases and settling disputes - it was almost 12 months before a constitution and working mechanisms for Komnas were finalised.⁵⁷

While the temporary lack of an organisational framework highlighted the *ad hoc* approach to operations in the beginning, the delay actually gave Komnas time to settle in and to 'discover' the best working mechanisms, to some degree through trial and error. As none of the members had previously worked on a human rights commission, this approach was not an illogical one and allowed Komnas to carve out its niche before 'setting itself in stone'.

⁵⁵Media Indonesia, 4 January 1994. Interview with Komnas member, 28 October 1994.

⁵⁶Interview with Clementino Dos Reis Amaral, 17 August 1994. Interview with Komnas member, 28 October 1994. *Jakarta Post*, 22 September 1996. Its heavy (and increasing) workload will necessitate a re-evaluation of the salary levels as well as the performance criteria for members when they are re-elected for the next term.

⁵⁷Soon after its establishment, a committee was formed within Komnas, with the task of formulating the Constitution and Articles of Association, as well as a set of working mechanisms for each Sub-Commission. The committee was headed by Vice Chairperson Miriam Budiardjo. The Constitution of Komnas was essentially an elucidation of Decree No.50. It outlined the ideological basis, objectives and structure of Komnas. It also included procedures for internal decision making, replacement of members and so on. Interview with Clementino Dos Reis Amaral, 17 August 1994. Interview with Miriam Budiardjo, 19 August 1994.

Komnas' operations during the first 12 months were subject to a liberal interpretation of its mandate by members. The activities of Komnas were therefore determined less by prescription than by the nature of the complaints it received and the nature of its relationships with government and non-government agencies.

5

Komnas HAM : The Cases

The nature of the complaints received, and the issues addressed, by Komnas during its first year of operations were indicative of the nature of human rights problems in Indonesia - both the persistent problems and future challenges. The rising prevalence of land and labour disputes indicated growing social problems resulting from rapid economic development, while the persistence of human rights abuses by the armed forces indicated the entrenchment of political repression and physical force as tools for maintaining political stability and social control.

The details of the cases handled by Komnas also put into perspective what Komnas was trying to do and how it went about the task of promoting and protecting human rights. They indicated not only the reality of human rights problems, but also alluded to the political, legal and administrative environment in which they occurred, and in which Komnas operated to address them.

Vice-Chairperson Marzuki Darusman said of the complaints received by Komnas that: "...three categories have stood out - land negotiation cases, labour disputes and what we officially call transgressions of human rights by state apparatus..."¹ The following cases are grouped according to these categories, but also included is a separate discussion of East Timor as it was not a 'case' as such and was handled differently to other complaints. A cursory look at the characteristics of each case and the role played, or approach taken, by Komnas to deal with them is important in its own right. In following chapters, a fuller examination of the political factors at play behind the way in which Komnas operated is made.

Land disputes

Political observer, Juwono Sudarsono, pointed out in 1996 that "[M]ore than 70% of grievances addressed to the national parliament and local legislatures involved disputes over land titles."² With an increasing awareness of their rights, many affected communities sought the help of LBH, other NGOs and student groups in their struggle for appropriate levels of compensation for land appropriation, and to share in the benefits of national economic development. INFID Secretary and Komnas member, Asmara Nababan, pointed out that,

¹"Human What", *Inside Indonesia* (March 1996).

²Juwono Sudarsono ; "Indonesia: Domestic Politics and Foreign Policy", conference paper presented at *The Indonesia-Australia Relationship: Towards Greater Understanding and Cooperation*, (23-24 August, Australian National University, 1996).

"... legal infrastructure is too weak to protect the people who are simply ousted from their land. In the past, people used to just accept this. They used to have an attitude of 'well, what can we do?' But over the last five years, people do not want to just accept it any more. There is a new awareness among the people that they have the right to fight for their own rights, for their land."³

There are a number of reasons why land disputes became such an escalating problem in Indonesia, including population growth, the government's transmigration program, and rural encroachment into forest lands. Rapid industrialisation and urban sprawl also dramatically increased the demand for, and the value of, land. The development of industrial complexes, housing estates, golf courses, expanding urban areas, business centres and associated infrastructure all required huge tracts of land in often densely populated areas. Vatikiotis pointed out that in the early 1990s "respect for legal title [of land ownership] declined and incidents of land-grabbing increased."⁴

Compounding the problems was the government's ability to override traditional claims to land ownership, which were "subject to manipulation and arbitrary decision-making by authorities at different levels."⁵ Compensation was determined by committees of district and provincial authorities which did not include lease-holders or land-holders and, according to Eldridge:

...usually fixed at well below market levels. Sometimes alternative land is offered, though this is usually not comparable in size, fertility, or economic location. Transmigration is often proposed as a solution, or threatened as punishment.⁶

If farmers refused to comply with eviction orders, developers 'requested the assistance' of local government authorities, including the military.⁷ Political observer, Arbi Sanit, noted that "...authorities resort more frequently to violence when evicting residents to make way for development projects."⁸ Hundreds of farmers and residents affected by land disputes found their way to Komnas to voice their complaints and to seek assistance.

Rancamaya

³"Human rights belong to us" Inside Indonesia (July-September 1996), p 11.

⁴Michael R.J. Vatikiotis ; Indonesian Politics Under Suharto: Order, Development and Pressure for Change (Routledge, London 1993), p 180.

⁵Yayasan Lembaga Bantuan Hukum Indonesia ; What Price Freedom?: A Profile of the Indonesian Legal Aid Foundation 1993 (Jakarta, November 1993), p 25. Eldridge P.J. ; Non-government Organisations and Democratic Participation in Indonesia (Oxford University Press, New York 1995), p 115.

⁶P.J. Eldridge ; Non-government Organisations and Democratic Participation in Indonesia (Oxford University Press, New York 1995), p 115.

⁷Interview with Roekmini Koesoemo Astoeti, 24 August 1994.

⁸Jakarta Post, 2 December 1996.

A major development comprising a golf course and luxury housing estate was planned for the Rancamaya district near Bogor in West Java.⁹ Residents, mostly farmers, had already complained to the DPR and other official bodies, but without success.¹⁰ According to Amnesty International,

Some 300 farmers from the villages of Cijayanti and Rancamaya in West Java, and several human rights activists, were detained by military authorities after a peaceful demonstration outside the office of a government minister in Jakarta on 24 September 1993 ... The protest followed more than a year of intimidation and one case of attempted murder by company officials against the farmers. Although most were released without charge after questioning, some were ill-treated and threatened with death, and at least two were re-arrested.¹¹

The Rancamaya story was a complicated one, as the land had changed hands several times since the 1950s, and there was much confusion over exactly how many residents were affected by the development and entitled to compensation.¹² Thumb prints and signatures of residents were collected by village authorities in 1993, on the pretence of helping to legally validate land so that farmers would not have to move. The prints and signatures were instead used to draw up a certificate of ownership which was sold to the developer.¹³ The residents subsequently demanded that either the land be returned, or appropriate compensation be paid.¹⁴

Komnas visited the site on a number of occasions to meet with residents and local authorities.¹⁵ They gathered information about how many families were involved, how much land was in dispute, how many plants (such as papaya and cassava trees) were lost, and what the residents wanted as compensation.¹⁶ Komnas held meetings with as many people as possible in order to establish which farmers were actually entitled to the land and compensation, and to negotiate acceptable levels of compensation for those affected.¹⁷ The settlement agreed to was that compensation be paid on the basis of the

⁹The developer was PT Suryamas Duta Makmur. *Kompas*, 3 February 1994.

¹⁰*Suara Karya*, 3 February 1994. *Suara Pembaruan*, 29 January 1994.

¹¹Amnesty International; *Indonesia and East Timor: Power and Impunity: Human Rights under the New Order* (Amnesty International Publications, London, September 1994), p 99.

¹²The most often reported figures were that the dispute involved claims by 535 families covering an area of 257 hectares. *Kompas*, 3 February 1994. *Suara Pembaruan*, 9 February 1994.

¹³The person who collected the prints and signatures of residents is now deceased. The authorities apparently received Rp92 billion from the developer, passing nothing on to the farmers. *Kompas*, 3 February 1994.

¹⁴*Kompas*, 3 February 1994.

¹⁵*Kompas*, 3 February 1994. Komisi Nasional Hak Asasi Manusia ; *Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994* (Sekretariat Jenderal, 20 Juli 1994), p 2.

¹⁶*Suara Pembaruan*, 29 January 1994.

¹⁷*Kompas*, 10 February 1994. Those Komnas consulted with included the Deputy Bupati (H Eddy Gunardi); Muspida staff (members of the local council); Danrem (komandan resort militer); 061/Suryakencana Kol Inf Soetiyoso; Kapolwil (kepala kepolisian wilayah) Bogor Kol Pol Drs Agus Saleh; Kajari Bogor (kepala kejaksaan negeri), Ramelan SH; Kepala Kantor BPN Bogor (badan pertanahan

food-bearing plants (cassava, papaya, etc) that were lost, not the land itself, since (despite questions of legality) the developer held the certificates of ownership of the land.¹⁸

Whilst the matter was essentially a civil dispute between residents and the developer, Komnas was able to act as an independent mediator and, in this role, was effective in resolving the dispute.

Sei Lapan

The Sei Lapan case in North Sumatra began with a dispute over the rights to use and own land which had been farmed by local residents since the early 1970s.¹⁹ Many of the farmers had bought the land from the *kepala lorong* (sub-village head). However, they were not given land titles and many plots overlapped. When the land was sold to a palm oil company (PT Anugerah Langkat Makmur - PT ALM), the overlapping plots meant that PT ALM actually received around 1000 ha. less than it had paid for. The company tried to make up for the loss by attempting to claim other land through intimidation - with the complicity of local government, police and military authorities.

Farmers were forced by PT ALM to plant cash crops instead of food crops and shortages caused many to leave the area in search of food and income. During this time houses were destroyed and returning residents were fenced out of the area. Many residents, including women and children, were arrested and detained, and residents sought assistance from various ministries, regional and central parliaments, and a number of NGOs in Java and North Sumatra. When Komnas arrived to investigate, residents were camped in the car park of the North Sumatra Legislative Council in protest over their treatment, and because they had nowhere else to go. Komnas held meetings with the local Legislative Council, local police authorities and military intelligence (*Bakorstanas*), representatives of PT ALM, and residents. After a three day investigation of the Sei Lapan dispute, including negotiations with PT ALM and the local government (*Pemerintah Daerah - Pemda*), it was agreed that a new location and housing would be provided for the 88 displaced families.²⁰

national) Solich Barnas; Ketua DPRD Bogor Esso Soekarso, and; Kapolres Bogor (kepala kepolisian resort) Letkol Pol Nono Supriyono. *Media Indonesia*, 9 February 1994.

¹⁸The levels of compensation promised to the residents were in fact quite substantial - Rp70,000 was paid for each cassava tree and Rp100,000 was paid for each papaya tree. *Jakarta Post*, 27 June 1994.

¹⁹Yayasan Lembaga Bantuan Hukum Indonesia ; *Demokrasi Antara Represi dan Resistensi: Catatan Keadaan Hak Asasi Manusia di Indonesia 1993* (YLBHI, Jakarta, January 1993), p 171.

²⁰*Suara Karya*, 26 February 1994. *Suara Pembaruan*, 26 February 1994. *Suara Pembaruan*, 28 February 1994. *Suara Karya*, 1 March 1994. Wahana Informasi Masyarakat (WIM) ; "Translok Sei Lapan Case" *Momentum* (1/Eng/May 1994, Medan 1994). This report provides a full and comprehensive account of the Sei Lapan land dispute. Yayasan Lembaga Bantuan Hukum Indonesia ; *What Price Freedom? A Profile of the Indonesian Legal Aid Foundation 1993* (Jakarta, November 1993), p 20.

As with the Rancamaya dispute, Komnas was able to act as an independent mediator and to elicit an agreement between residents and PT ALM. The common factor between these two cases was that while local government and military officials may have been involved in the periphery of the dispute - by maintaining order and providing security at the sites for example - they were not adversely affected (economically or politically) by the outcome.

Tanah Lot

Tanah Lot is an important Hindu temple and popular tourist attraction on the east coast of Bali. The land adjacent to the temple was being developed by PT Bakrie Nirwana Resort (BNR) as a hotel resort and golf course. The dispute involved not only compensation for land, but also the effect that the development would have on religious practices at the temple. Komnas met the Governor of Bali, the Bupati of Tabanan, the manager of the BNR project, local residents and representatives of the Balinese parliament.²¹ They also visited the site and met student representatives of the Hindu Youth and Student Solidarity Forum (*Forum Solidaritas Mahasiswa dan Pemuda Hindu*) who had been protesting the development.²² However, Komnas suspected that students had urged the investigation because they were angry at being harassed by police during a protest of the project, rather than because of genuine concerns with the project and the rights of local residents.²³ Komnas found that most residents had no objections to the project and concluded that,

The developer promised not only to maintain religious harmony, but also renovate the existing temples around the BNR project, maintain the ecological environment and build new roads leading to the temples.²⁴

The distinguishing factor in this case, compared with Rancamaya and Sei Lapan, was that residents and the developer appeared to already have come to an agreement over compensation and the protection of religious rights. It was the Student Forum which had actually lodged the complaint with Komnas and, as PT BNR was owned by the Bakrie Brothers Corporation (a politically well-connected Jakarta-based conglomerate), the students' complaints could have been more a demonstration of general dissatisfaction with the government, than with the project itself.

Cimacan

²¹Republika, 24 February 1994.

²²The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15 1994), p 13.

²³Merdeka, 24 February 1994.

²⁴The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994 (Office of the Secretary General, National Commission on Human Rights, Jakarta 15 July 1994), p 13. Suara Karya, 24 February 1994.

Farmers near Cimacan in West Java lost their land to a golf course development in 1987.²⁵ The land was apparently owned by Kowara, the father-in-law of Siti Hardiyanti Rukmana, the President's daughter.²⁶ Farmers received only Rp30 per square metre in compensation, whereas the estimated market value was around Rp10,000-15,000.²⁷ The complainants reported to the press that they were disappointed to find Komnas reluctant to discuss their case.²⁸

The Cimacan case was similar to the Tanah Lot dispute in that it involved a developer with close connections to the President. Komnas' reluctance to get involved suggested to some observers that Komnas did not want to handle cases which risked any political sensitivity or official resistance.

The majority of land cases handled by Komnas had similar characteristics to the Rancamaya dispute, where Komnas was able to act as an independent mediator. Komnas was often able to elicit an agreement and reach a resolution. In the few instances where land disputes involved the interests of the military or well-connected businessmen, involvement in, let alone resolution of, the cases proved to be more difficult.

These land cases indicated some of the pressure Komnas was under from human rights organisations to prove its independence, as well as the political barriers it faced.

Labour disputes

An abundant supply of inexpensive labour was a key factor behind Indonesia's rapid economic development and was a drawcard for foreign investors in the manufacturing sector. Despite government-set minimum wage levels, which themselves were not always sufficient to cover basic living costs, many companies did not comply with the regulations. Furthermore, laws under which workers were able to dispute non-compliance with minimum wage laws, poor working conditions, unfair dismissals and so on, were both limited and complex. Adam Schwarz noted that, "It is little exaggeration to say that the vast majority of Indonesian workers has no idea of the rights that workers are entitled to under the law."²⁹ However, political observer, Juwono Sudarsono, noted that,

²⁵The developer was PT Bandung Asri Mulia.

²⁶Interview with Arief Budiman, 31 October 1994.

²⁷*Merdeka*, 14 April 1994. Lembaga Bantuan Hukum ; *The Rarahan Land Dispute, Village Cimacan, Subdistrict Pacet, District of Cianjur, West Java, Indonesia* (Jakarta).

²⁸*Kompas*, 14 April 1994.

²⁹Adam Schwarz ; *A Nation in Waiting: Indonesia in the 1990s* (Allen & Unwin, Sydney 1994), p 259.

[L]abour relations, always in the headlines over the past 15 years, are particularly strained as workers demand minimum pay and as human rights issues are taken up by non-governmental organisations at home and abroad.³⁰

One of the biggest problems with labour issues in Indonesia was the involvement of the military and local authorities in the negotiation of wages and conditions and, for a fee, the provision of security services and operating licences.³¹ Mulya Lubis has pointed out that the payment of unofficial levies to the authorities by employers was a serious constraint on the willingness and ability of companies to raise wages to more respectable levels.³² Despite the repeal of regulations which facilitated the military's interference in labour disputes, it was unlikely the move had much effect in practice.

The first step in a work-place dispute was to seek union involvement. The All Indonesian Workers Union (Serikat Pekerja Seluruh Indonesia - SPSI), formed by the enforced merger of all trade unions in 1973, is the only government-recognised union.³³ As most work-place SPSI representatives were chosen by company management however, they were generally not representative of, or sympathetic to, workers' complaints.³⁴ If a dispute was not settled through negotiation, it was handed over to arbitration tribunals and government mediators, including the government's Central Labour Dispute Resolution Committee (Panitia Penyelesaian Perselisihan Perburuhan Pusat - P4P). If all procedures were exhausted, workers were allowed - after approval from the Department of Manpower (Departemen Tenaga Kerja - Depnaker) - to hold a strike. Because of the difficulty in obtaining such approval, it is not surprising that most labour strikes were held illegally.

PT Duta Busana Danastri (PT DBD)

This dispute was typical of many of the labour disputes handled by Komnas. Workers at PT DBD in Jakarta complained that the company did not pay Idul Fitri bonuses.³⁵ The workers complained to the DPR and Depnaker without result, and South Jakarta police intimidated workers during strikes and protests at the factory. Following their complaint

³⁰Juwono Sudarsono ; "Indonesia: Domestic Politics and Foreign Policy", conference paper presented *The Indonesia-Australia Relationship: Towards Greater Understanding and Cooperation* (23-24 August, Australian National University, 1996).

³¹Indonesian Legal Aid foundation; A Preliminary Report on the Murder of Marsinah (March 1994), p 5.

³²The Jakarta Post, 28 May 1994.

³³Yayasan Lembaga Bantuan Hukum Indonesia ; What Price Freedom?: A Profile of the Indonesian Legal Aid Foundation 1993 (YLBHI, Jakarta 1993), p 20.

³⁴Yayasan Lembaga Bantuan Hukum Indonesia ; What Price Freedom?: A Profile of the Indonesian Legal Aid Foundation 1993 (YLBHI, Jakarta 1993), p 20.

³⁵It was also claimed that the company mistreated female employees by demanding that they remove their underwear as proof to claim menstruation leave. Jakarta Post, 4 March 1994. Sinar Pagi, 4 March 1994.

to Komnas, the workers were also threatened with dismissal.³⁶ Baharuddin Lopa phoned the company to discuss the complaints and seek a resolution, eliciting a verbal agreement from company management that Idul Fitri bonuses would be paid and workers would not be unfairly dismissed.³⁷

As with many land cases, Komnas' role in the PT DBD and similar labour disputes was as an independent mediator between workers and their employers. It is interesting to note, however, that whereas most land cases were essentially civil disputes - where existing laws were unclear or contradictory - most labour disputes were clear cases of non-compliance of existing labour laws such as minimum wage levels, etc. Yet Komnas did not have the authority to 'discipline' employers or to demand compliance with relevant laws. Instead, employers had to be engaged in a process of negotiation.

Marsinah affair

While Komnas was not involved in the Marsinah case until it became a question of legal procedure, the circumstances surrounding Marsinah's murder illustrated the scope and potential for human rights violations in labour affairs. Marsinah, a worker at a local watch factory, went missing on 5 May 1993 and her tortured body was found three days later. Marsinah had participated in strikes and negotiations over wages and conditions. After friends were pressured to resign following the strike, Marsinah wrote a letter to the company, protesting the matter and threatening to inform a relative in the Surabaya judiciary. As Marsinah was not a main player in the strike action, her letter was the most likely motive for her murder.³⁸

Marsinah became a martyr for the Indonesian labour movement and the case attracted considerable attention to the plight of Indonesian workers among the international community. With the arrest of company employees suspected of involvement in the murder, Komnas became involved when the defendants complained of irregular detentions and forced confessions.

The murder of Marsinah was an indication of the lengths to which government forces were prepared to go in order to silence dissent among Indonesian workers. As is discussed later, it also indicated the political pressures Komnas faced in conducting its own investigation of the murder trial, as well as its own credibility in releasing findings which were critical of ABRI.

³⁶The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15 1994), p 13. Merdeka, 11 April 1994. Jakarta Post, 4 March 1994.

³⁷Media Indonesia, 7 April 1994.

³⁸Indonesian Legal Aid foundation; A Preliminary Report on the Murder of Marsinah (March 1994), p 18.

Transgressions by the state apparatus

Transgressions by the state apparatus ranged from the banning of literature to arbitrary arrest, detention and torture. The common thread in the following, seemingly disparate, cases is the direct involvement of the government or military authorities in complaints of human rights violations. For political or security reasons, students were jailed, a major weekly magazine was banned, official involvement in the murder of a labour activist was covered up, and a former parliamentarian and government critic was barred from leaving the country. Komnas' role in these cases is therefore not as easily defined as it was in many of the land and labour disputes discussed earlier, as it had to operate within the legal and political parameters of each individual case. A few patterns did, however, ultimately emerge.

21 Students

A group of twenty-one students protested outside the DPR building in Jakarta, demanding that Suharto be called to account for his leadership, and were subsequently charged with insulting the President.³⁹ Komnas visited the students in Cipinang prison and later held a meeting with Chief Justice Singgih of the Supreme Court to discuss the case, and the possibility of an early release for students. Komnas requested that the students be detained under house arrest rather than in prison, and questioned whether the case really needed to go to court at all, as the DPR was the correct forum for public protests.⁴⁰ It was not until the following month that Komnas announced it had contacted the Chief Justice who said that he would consider the issue.⁴¹

Komnas' approach in this case was to negotiate directly with authorities on behalf of the students. By visiting the students to ensure that they were being treated properly, Komnas was also carrying out its official role as a human rights monitoring body (as spelled out in Presidential Decree 50/1993). While Komnas was not able to secure the release of the students, its visit and the accompanying publicity provided the students with a great deal of moral, and political, support. As its first 'public' activity, the visit was well received by many in the media who saw it as an indication that Komnas was going to be a proactive body.⁴²

Lhok Seumawe

Komnas members Asmara Nababan and Clementino Amaral visited Lhok Seumawe Prison in Aceh in February 1994 without prior notice, and found that 11 people had been

³⁹The protest was held in December 1993. Suara Pembaruan, 5 January 1994.

⁴⁰Jakarta Post, 27 May 1994.

⁴¹While the judiciary in Indonesia was by no means independent, Komnas itself was attempting to shortcut legal procedures through direct lobbying and exerting political pressure through the press.

⁴²Suara Pembaruan, 5 January 1994.

unlawfully detained.⁴³ Komnas requested that the prisoners be released and given rehabilitation and compensation.⁴⁴ After 'negotiations' with prison and regional authorities failed, Asmara Nababan 'threatened' that Komnas would contact the ABRI chief of staff if local authorities did not cooperate. Eventually, six detainees were released.⁴⁵ Human Rights Watch / Asia noted that the surprise visit was a deliberate move by Komnas so that officials "would have no time to prepare".⁴⁶

This case was similar to the students' case in that Komnas negotiated with authorities on behalf of illegally detained prisoners. The difference in this case was that Lhok Sumawae prison officials were unprepared for the visit and this allowed Komnas to negotiate with authorities in a way in which it was not able to do with the Chief Justice of the Supreme Court.

Marsinah trial

The police were initially slow to investigate the murder of Marsinah. As domestic and international pressure mounted for those responsible to be brought to justice, however, investigation of the case got under way, presided over by the military. Nine people were arrested, detained and charged.⁴⁷ Despite denial of military involvement in the arrest of defendants, at least one defendant's arrest warrant was signed by the Brawijaya Regional Military Commander and the defendants were detained at the East Java Military Intelligence Headquarters for 19 days before being transferred to a local police detention centre and formally charged.⁴⁸ All of the defendants retracted their statements of confession at the commencement of the trial, claiming that they had been tortured and forced to confess.⁴⁹

Defence lawyer Trimoeljo Soerjadi, complained to Komnas that the human rights of his client, and the prime defendant in the case, Yudi Susanto, had been violated. Trimoeljo requested that Komnas form a fact-finding team to look into the whole affair.⁵⁰

⁴³Interview with Asmara Nababan, 4 November 1994. *Kompas*, 25 February 1994. Human Rights Watch / Asia; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, United States of America, September 1994), p 128.

⁴⁴*Kompas*, 25 February 1994.

⁴⁵Komisi Nasional Hak Asasi Manusia ; *Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994* (Sekretariat Jenderal, 20 Juli 1994), p 1.

⁴⁶Human Rights Watch / Asia ; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, USA, September 1994), p 128.

⁴⁷*The Australian*, 16 May 1994.

⁴⁸*Kompas*, 2 February 1994. *Media Indonesia*, 24 February 1994. Indonesian Legal Aid foundation; *A Preliminary Report on the Murder of Marsinah* (March 1994), pp 21-22.

⁴⁹*Suara Karya*, 2 February 1994. *Jakarta Post*, 2 February 1994.

⁵⁰*Suara Karya*, 2 February 1994. Komisi Nasional Hak Asasi Manusia ; *Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994* (Sekretariat Jenderal, 20 Juli 1994), p 10.

Komnas wrote to the relevant police, military and court authorities asking about the accusations.⁵¹ The head of the Brawijaya Military Command (*Pangdam*), Mayjen TNI Haris Sudarno admitted 'mistakes' in arrest procedures, but denied that there had been any persecution of the defendants, adding that he would "'borrow' and interrogate the accused to establish whether there was involvement by any persons from ABRI."⁵² He considered Ali Said's request for an explanation as an appeal, and suggested that appeals should be directed to the Chief Justice of the Supreme Court and the Chief of Staff of the East Java Police, not to the Brawijaya military command which was not handling the case.

Ten Komnas members travelled to Surabaya to investigate the arrest and trial procedures.⁵³ Over three days of investigation, Komnas interviewed army and police officers, defendants and witnesses and its findings were announced on 4 April 1994.⁵⁴ The statement was described as "cautiously phrased," but nevertheless their "most critical statement so far."⁵⁵ It found that there was evidence: a) of physical and mental torture of the defendants; b) of involvement of the local military authorities, and; c) that it was likely that there were other persons involved in the murder of Marsinah (other than those who had been accused).⁵⁶ Many believed that the statement illustrated the independence of Komnas, and had 'saved their reputation'.⁵⁷

Whilst Komnas claimed to know who was responsible for the murder, the police were unable to take the person to court unless he confessed - he was a military officer. Even if he did confess however, he would be tried by a military tribunal and not the state criminal court. There were certainly others who were also involved in the murder, but through the course of the investigation and trial, their role was obscured.⁵⁸ The essential problem

⁵¹Kompas, 15 February 1994. Media Indonesia, 17 February 1994. Republika, 21 February 1994.

⁵²Kompas, 1 March 1994. Kompas, 22 February 1994.

⁵³Suara Pembaruan, 26 March 1994. The members of the team were Baharuddin Lopa, Marzuki Darusman, Bambang Soeharto, A. Hamid Attamini, Muladi, Satjipto Rahardjo, Clementino Dos Reis Amaral, Djoko Soegianto, Soetandyo Wignjosebroto and Roekmini Koesoemo Astoeti. Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 2.

⁵⁴Kompas, 29 March 1994. The National Commission on Human Rights ; The National commission On Human Rights Indonesia: Practices Jan.1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15 1994), p 16.

⁵⁵Jakarta Post, 6 April 1994.

⁵⁶Komisi Nasional Hak Asasi Manusia ; Keterangan Ketua Komisi Nasional Hak Asasi Manusia, (2 April, Jakarta 1994).

⁵⁷Suara Pembaruan, 8 April 1994. Interview with Marzuki Darusman, 28 September 1994. Interview with Haji Princen, 18 August 1994.

⁵⁸The person accused of masterminding the plot to kill Marsinah was Yudi Susanto, the Managing director of PT CPS. The civilians arrested were not entirely innocent. In fact, it was suggested that Yudi Susanto was freed because he 'paid off' authorities at the Brawijaya Regional Military Command. It would be reasonable to assume that he would be unwilling to testify in any new hearing. Only one military officer was charged, relieved of his post and tried in a military tribunal for his alleged part in the murder.

was that the defendants were arrested and detained in violation of legal procedures and tortured, or otherwise coerced, into confessions. All nine defendants were eventually acquitted in March 1995, although the Komnas findings were not cited by the Supreme Court in the reasons given for the acquittal.⁵⁹

Komnas tried initially to negotiate (albeit unsuccessfully) with military and court authorities to elicit a follow-up investigation of the allegations of Yudi Susanto. It would not have been possible or appropriate, however, for Komnas to mediate a solution to a criminal trial and, aware of the high profile and political sensitivity of the case, Komnas conducted its first full-scale investigation and released its findings to the public. Its role on this occasion - as an independent monitoring body - was more like that of other national human rights commissions, and in accordance with UN guidelines.

SBSI - The Indonesian Prosperous Labour Union

The Indonesian Prosperous Labour Union (SBSI) was not recognised by the government and worked to provide more effective representation of workers rights than that which was provided by the government-recognised SPSI. Members of SBSI complained to Komnas about intimidation and the arrest of SBSI leader, Mochtar Pakpahan.⁶⁰ Komnas member, Muladi, approached the East Java Police Commander about the arrest - not because Pakpahan was arrested, as "there is a law against illegal meetings and he broke it", but because the Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana - KUHP*) had not been adhered to correctly during the arrest.⁶¹ Pakpahan was subsequently freed.

Direct negotiation with authorities was again the first response from Komnas and it was successful.⁶² Mochtar Pakpahan's freedom did not last long however, as he was then re-arrested for inciting labour riots.⁶³

Surabaya seminar

Just one month after the release of Komnas' findings on the Marsinah trial, Komnas member Roekmini was banned from speaking about Komnas at a seminar in Surabaya,

⁵⁹Following the release of its findings, Komnas continued to liaise with the authorities and indicated that it would be recommending an acquittal when the case went to appeal. *Kompas*, 4 May 1994. Interview with Marzuki Darusman, 28 September 1994.

⁶⁰Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), pp 9, 19.

⁶¹Interview with Muladi, 18 November 1994.

⁶²Interview with Muladi, 18 November 1994.

⁶³*Jakarta Post*, 21 May 1994.

where she intended to 'popularise' the work of Komnas.⁶⁴ Although Komnas was disappointed with the decision, it did not try to reverse it.⁶⁵

The banning of seminars was a common practice used by the government to silence its critics, although the failure of seminar organisers to obtain the legally required permit was usually the reason given by the government for banning speakers and events.⁶⁶ The reason why this particular seminar was of interest was that a Komnas member appeared to be the subject of a government 'gag'.

It could not be seen as simply coincidental that Roekmini, a former ABRI officer who had participated in Komnas' investigation of the Marsinah trial, was banned from speaking in public, in the same place, less than a month after the Marsinah report had been released. According to Human Rights Watch / Asia, "the consensus of most Indonesian observers was that Roekmini had been banned in order to send an unmistakable signal to Komnas that it was getting out of line."⁶⁷ Political observer, Arief Budiman, agreed that Roekmini, "...was refused permission to attend a meeting in Surabaya over the Marsinah case."⁶⁸

This case clearly indicated the political boundaries within which Komnas operated. Whereas cases such as Lhok Sumawae and the Marsinah trial showed how far Komnas could go in scrutinising and criticising the government, this case indicated that they were not without consequences if certain authorities felt that Komnas had, in fact, gone 'too far'.

Press bans

The government banned three publications in June 1994, including the major weekly magazine, Tempo. The bans generated domestic and international condemnation and were considered a serious set-back to the much touted trend towards openness. According to the Ministry of Information, the government was "...forced to take this step for the sake of the development of a free, healthy and responsible press, and in the name of national stability."⁶⁹ It was evident that the government was displeased with the

⁶⁴The topic of the seminar was "Efektivitas Fungsi Komnas HAM" (The Effectiveness of Komnas HAM). *Suara Pembaruan*, 2 May 1994. *Jakarta Post*, 4 May 1994.

⁶⁵Baharuddin Lopa is on record for saying that as long as there was no proof that the speaker would be a threat to security, then they should not be banned from speaking. *Media Indonesia*, 5 January 1994. *Jakarta Post*, 3 May 1994.

⁶⁶*Kompas*, 30 May 1994. Obtaining permits is a difficult and expensive process. As a result, many organisers will simply not tell authorities about seminars or particular speakers because there aren't enough security personnel to control, arrest and punish everyone. However, the practice of banning seminars and discussions is still common enough to constitute a serious restriction to freedom of speech.

⁶⁷Human Rights Watch / Asia ; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, USA, September 1994), p 133.

⁶⁸"Human What?" *Inside Indonesia* (March 1996).

⁶⁹*Jakarta Post*, 22 June 1994.

growing tendency of the press to highlight divisions and conflict occurring within the government, especially between certain senior ministers and government agencies.

Immediately following the press bans, and in a possible attempt to encourage the Information Minister to come to the negotiating table, Komnas issued a statement saying that the bans were a step backwards for democratisation. Some observers saw this as "...a surprisingly blunt attack against the government".⁷⁰ Not all members were involved in formulating the statement and some were deliberately not contacted before it was issued, as it was expected that they would not be in favour of it.⁷¹

Tempo representatives complained about the ban and Komnas offered its 'services' as a mediator between them and the government.⁷² In contrast to previous cases, however, the authorities simply refused to be involved in any discussions with Tempo representatives. As with the Surabaya seminar, this case indicated the political boundaries to Komnas' operations and effectiveness.

Tempo also took its case to the State Administrative Court (*Pengadilan Tata Usaha Negara* - PTUN). The function of the PTUN is to review administrative decisions and in March 1995 surprised observers and the government, by declaring the banning of Tempo 'illegal'.⁷³ Whilst this did not necessarily mean that Tempo could be revived, it was considered a huge step towards improving the credibility of the judiciary.

Sri Bintang Pamungkas

Sri Bintang Pamungkas was charged with insulting President Suharto by allegedly orchestrating a demonstration in Germany during Suharto's visit in early 1995. The President was apparently personally outraged by Sri Bintang's actions and, following his return to Indonesia, Sri Bintang was sacked from Parliament, banned from travelling abroad, repeatedly summoned by the police and harassed and intimidated by authorities.⁷⁴ Ali Said requested assurances from the Chief of the Police Force that Sri Bintang and his family would be protected from intimidation during the police investigation.⁷⁵ Komnas was unable however, to halt the government's retribution against Sri Bintang, even though it believed that protests conducted outside of Indonesia were not punishable under Indonesian law.⁷⁶

⁷⁰Komisi Nasional Hak Asasi Manusia; Pernyataan Komisi Nasional Hak Asasi Manusia Tentang Pencabutan SIUPP Terhadap Penerbitan Tempo, Editor dan Detik (Jakarta, 22 June 1994). Jakarta Post, 23 June 1994.

⁷¹Interview with Muladi, 18 November 1994.

⁷²Interview with Muladi, 18 November 1994. Interview with Albert Hasibuan, 11 November 1994.

⁷³Section 145, Administrative Justice Act 1986

⁷⁴The Bintang Case Rounded-Up, apakabar, 30 October 1995.

⁷⁵The Bintang Case Rounded-Up, apakabar, 30 October 1995.

⁷⁶Interview with Charles Himawan, 24 July 1995.

As in the case of the 21 students, Komnas stepped in to act as a negotiator on behalf of Sri Bintang. As with the Tempo case, however, the political aspects of the case meant that its efforts were largely unsuccessful.

HKBP - The Batak Protestant Church

The HKBP (*Huria Kristen Batak Protestan* - The Batak Protestant Church) is the largest Protestant congregation in Indonesia.⁷⁷ An internal dispute developed after a military sponsored grand synod replaced the church leadership of Bishop S.A.E. Nababan with that of P.W.T. Simanjuntak.⁷⁸ The division led to clashes between the rival factions over the rights to use church facilities, often resulting in violence and numerous human rights abuses. According to Human Rights Watch/ Asia:

"Beginning in January and continuing throughout the year, protests against the government-installed ephorus or archbishop led to over 100 arrests, many of them involving physical abuse."⁷⁹

However, with billions of rupiah involved in the organisation, the case involved more than the right to freedom of religion, or association. Moreover, under the leadership of Bishop Nababan, HKBP had strong ties with local non-government organisations, which was also of concern to authorities.⁸⁰ Despite these factors however, Komnas was only concerned with the issue of freedom of religion.⁸¹

A group of HKBP members complained to Komnas that they were being denied access to church facilities and that they were being persecuted and intimidated by security personnel.⁸² Komnas held meetings in Medan with members of the HKBP and local authorities - such as the head of the North Sumatra regional police, local military authorities and the head of local intelligence.⁸³ Komnas also met with the State Minister for Control of State Apparatus (*Menteri Negara Penertiban Aparatur Negara*) in Jakarta to discuss possible solutions.⁸⁴ Komnas recommended to the Minister for Religious

⁷⁷ Asia Watch ; Human Rights in the APEC Region, November 1993. Asia Watch is an independent organisation created in 1985 to monitor and promote internationally recognised human rights in Asia. Asia Watch is a division of Human Rights Watch, which also includes Africa Watch, Americas Watch, Helsinki Watch and Middle East Watch.

⁷⁸ Jakarta Post, 31 March 1994. Bishop Nababan was the brother of Komnas member Asmara Nababan.

⁷⁹ Asia Watch ; Human Rights in the APEC Region (November 1993).

⁸⁰ Bishop Nababan is the brother of Komnas member Asmara Nababan.

⁸¹ Interview with Charles Himawan, 18 October 1994. Interview with Sidney Jones, 7 November 1994.

⁸² The National Commission on Human Rights ; The National Commission On Human Rights Indonesia: Practices Jan. 1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15 1994), p 18. Merdeka, 31 March 1994.

⁸³ Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 15.

⁸⁴ Jakarta Post, 31 March 1994. Suara Pembaruan, 16 April 1994. The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan. 1 - July 11, 1994

Affairs that another grand synod be held and another leader be elected from nominees other than Nababan and Simanjuntak.⁸⁵ Despite extensive consultations however, there was no real resolution to the dispute.

Komnas once again assumed the role of negotiator and met with a large number of protagonists in the HKBP dispute. Despite its efforts to find a solution, its suggestions were not adopted and the case was never satisfactorily resolved. As with the Tempo and Sri Bintang Pamungkas cases, the shadow of surrounding political issues was too great to effect a wholly satisfactory outcome.

East Timor

Komnas was initially criticised for avoiding issues that were politically sensitive and East Timor would have been an obvious example. However, the inclusion of East Timorese, Clementino Amaral, as a member of Komnas indicated that East Timor was on Komnas' agenda from the beginning. Komnas was not comfortable simply defending the government position on East Timor and therefore decided to independently monitor human rights in the province, beginning with a visit by Baharuddin Lopa and Clementino Amaral in October 1994.⁸⁶ Getting first hand knowledge and developing networks - in the government, military, universities and the local community - laid the foundations for a comprehensive approach to dealing with the East Timor issue and led to plans to establish a branch office in the province - the first outside of Jakarta.⁸⁷

Despite some specific attention to East Timor as a region or 'hot spot', most members did not see it as a priority. They claimed that government security forces did not discriminate between provinces when it came to the treatment of dissidence and opposition and, as a result, human rights violations which occurred in East Timor were no different from those that occurred in the rest of Indonesia. The difference was that there was a bigger concentration of dissidence in East Timor and that it attracted a higher international profile. Komnas 'policy' on East Timor was not that it should receive special provincial status or autonomy, but that it was nonetheless in need of special treatment in order to bring peace and reconciliation, and to stop the excessive levels of human rights violations that were committed.⁸⁸

(Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15 1994), p 18. Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 17.

⁸⁵Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 17.

⁸⁶Interview with Baharuddin Lopa, 14 September 1994.

⁸⁷Interview with Miriam Budiardjo, 19 August 1994. The office is located in the Akait Building in the office complex of the provincial administration and opened its doors in March 1996. Jakarta Post, 25 January 1996.

⁸⁸Interview with Marzuki Darusman, 15 November 1995.

The main purpose of the Komnas office was to act as an intermediary between the authorities and residents about human rights violations. Until the establishment of the Komnas office, the International Committee of the Red Cross (ICRC) was the only body performing this role and its representatives accompanied East Timorese residents to the offices of local authorities when required. Marzuki Darusman felt that the use of an international body as an intermediary between the community and Indonesian authorities had the (undesired) effect of politicising the ICRC.

The Komnas office was also intended to become a central point for information on human rights violations in East Timor. This information would also be useful for the Department of Foreign Affairs, which relied on information gathered by other government agencies, with very different information needs and priorities from their own. Marzuki Darusman considered the availability of accurate and independent information as essential to allowing the general public and the international community to make reasoned judgements about East Timor.⁸⁹

Establishing an office in East Timor was a difficult task and involved considerable negotiations with (and placating of) the military about what the office would do, where it was located and who would staff it. Although political constraints, and the government's security concerns were clear, that the office opened at all was both a significant concession to Komnas, as well as an indication of Komnas' persistence and dedication to human rights protection in East Timor.

What did the cases mean for Komnas' operations?

There were dominant patterns in both the nature of the cases handled by Komnas and how Komnas handled them. The nature of the complaints received by Komnas indicated the prevalence of land and labour disputes and the persistence of human rights abuses by state apparatus. The predominance of land and labour complaints in Komnas' operations - in contrast to that of extrajudicial killings and political imprisonment in the reports of Amnesty International and other international organisations might suggest an 'Indonesian view' of what constitutes a human rights violation.⁹⁰ However, it might also lead to other conclusions about human rights problems in Indonesia and about Komnas' role in addressing those problems.

⁸⁹When the opening of the office was announced in January 1996, Komnas member B.N. Marbun said that "...the branch office of the Commission will enable a more balanced inflow of information about human rights violations found either by the Commission, the International Committee of the Red Cross, the Roman Catholic Church or other private parties," *Jakarta Post*, 25 January 1996. Interview with Marzuki Darusman, 15 November 1995.

⁹⁰For instance, see Amnesty International ; *Indonesia and East Timor: Human Rights in 1994 - A Summary* (Amnesty International Secretariat, London 1995).

Firstly, land and labour disputes are a growing side-effect of economic development and one for which there are few (and no effective) legal or administrative mechanisms by which the *rakyat kecil* can seek redress or fair settlement. Secondly, Komnas' involvement in dispute resolution during its first 12 months was an easy 'entree' into its role as a human rights commission. Komnas was able to provide relief to many Indonesians who were affected by these problems and the success and publicity it received generated an enormous amount of community goodwill. However, it also meant that Komnas was flooded with these types of complaints, raising questions as to what Komnas' role should be. Human Rights Watch Asia argued that if "property squabbles are given the same priority as torture, the result is to diminish the gravity of the latter."⁹¹

The persistence and variety of human rights transgressions by the state - from press bans to political detention and interference in criminal trials - indicated the extent, and the structural nature, of human rights violations in Indonesia. Not only did the transgressions highlight the need to improve human rights protection, they also highlighted the political, legal and administrative barriers and problems which Komnas faced in trying to seek resolution.

Patterns also emerged in how Komnas handled land and labour disputes, and transgressions by state apparatus. Firstly, Komnas investigated and negotiated each complaint or issue according to the circumstances of each case. Where information was patchy or unreliable, it conducted a fact-finding mission. Where local authorities were involved, it conducted extensive consultations. Whilst Komnas was able to seek redress in some cases (such as Rancamaya and Lhok Sumawae), other cases were too politically sensitive and apparently beyond Komnas' sphere of influence (such as the treatment of Sri Bintang Pamungkas and Tempo magazine). Komnas was, however, able to voice its concerns in these cases in an attempt to inform government and non-government agencies, as well as the general public, of the extent to which human rights were protected in Indonesia. It was suggested by some observers and human rights activists for example, that the release of Komnas' findings in the Marsinah case was a deliberate move to highlight the inadequacies of the judicial system.

The complaints that Komnas received during its first 12 months of operation reflected the nature of human rights problems in Indonesia in the 1990s. Escalating land and labour disputes were a serious social and economic problem for the government. At the same

⁹¹Human Rights Watch / Asia; The Limits of Openness: Human Rights in Indonesia and East Timor (Human Rights Watch, United States of America, September 1994), p 127.

time, persistent human rights abuses by the state apparatus indicated that the government was either unwilling or unable to improve its record of human rights protection, at least in the short term.

The most frequent approach taken by Komnas in land and labour disputes was a non-confrontational process of investigation and mediation, usually (but not always) with positive results. For cases involving transgressions by state apparatus, Komnas initially sought an official explanation, or 'consultation'. Increasingly, however, and depending on the political circumstances of the case, Komnas began to independently investigate allegations of human rights abuses, sometimes releasing its findings to the public, but often with less satisfying results than in most civil - land and labour - disputes.

The nature of the cases and the approach taken by Komnas to handle them allude to the political, legal and administrative environment in which Komnas operated. Combined with a close examination of Komnas' relationships with government and non-government agencies in the next chapter, these details provide essential background with which to better understand the role that Komnas played in addressing human rights problems in Indonesia.

6

Komnas HAM : Building Relationships

Komnas needed to establish and develop relationships with a range of government agencies and non-government groups in order for it to be effective. The nature and relative importance of each relationship differed enormously, but together, they provided Komnas with functional and strategic means by which to operate.

As a government-funded body, Komnas surprised most observers with its independent investigations, critical statements and involvement in politically sensitive cases. As a result, it gained some popular public support and the respect of many human rights groups in Indonesia and overseas. That respect from the non-government sector was important because it validated Komnas as a genuine human rights organisation.

However, without the support of government agencies, Komnas would not have been able to conduct its investigations, release critical statements (without retribution) or involve itself in politically sensitive issues such as East Timor. Komnas received the cooperation of most government agencies, including the armed forces and (most importantly) President Suharto.

Understanding the nature of the relationships Komnas built with government and non-government groups helps to better understand the common and competing interests that Komnas had to balance in order to operate effectively. At a broader level, the relationships were indicative of how the politics of human rights is played out in Indonesia and the unique role which Komnas plays in this political environment.

Relationships with the non-government sector

Komnas' relationship with non-government agencies/sector was not clearly defined. However, lack of definition belied the importance of the Komnas - non-government relationship, because the non-government sector was both the subject of its operations and the source of its legitimacy as a human rights organisation. This non-government 'sector' included non-government organisations, the press and the general public. The international community is also included here as it is a subject of Komnas' operations (according to the Decree), as well as a source of legitimacy.

Non-government organisations (NGOs)

To begin with, the relationship between Komnas and NGOs was an uneasy one. In particular, the formation of Komnas was received with some scepticism by the NGO community. According to the only Komnas member with an NGO background, Asmara Nababan: "We started out being doubted by the NGO community."¹

Similarly, the NGO community was viewed warily by most of members of Komnas. Asmara Nababan recalled:

In the Commission's first year, many of its members were cynical about NGOs. They had stereotyped perceptions of NGOs, similar to those of the government. They were reluctant to cooperate with NGOs ... [but] a new understanding has emerged in most members about the function of NGOs. Most recognise the need to cooperate with the NGO community.²

Indeed, the relationship did develop and improve, and perhaps more than any other relationship Komnas had, was based on mutual need. There were a number of benefits from the relationship for both Komnas and NGOs, particularly access to information and networks, although there was also occasional conflict.

The established networks and facilities of NGOs (particularly well-organised and well-funded ones such as the Legal Aid Foundation - LBH³) were a valuable information resource for Komnas, which, particularly in its early months, had few resources of its own to gather reliable and extensive data in regional areas and in long-running disputes. For example, the Sei Lapan land dispute in North Sumatera had been going for almost 10 years before Komnas arrived to investigate. Detailed data, such as how many residents lived in the area, was made available by local NGOs and saved Komnas a great deal of leg work during its investigation.

The reliability and accuracy of NGO reports was not however, always guaranteed. In the Rancamaya case for example, reports received by Komnas were conflicting and unreliable, forcing Komnas to sift carefully through the details of exactly who was claiming (and entitled to) what from the developer. In the Marsinah case on the other hand, LBH provided Komnas with its interim report on the trial (LBH had formed their

¹"Human What?" *Inside Indonesia* (March 1996).

²"Human rights belong to us" *Inside Indonesia* (July-September 1996), p 11.

³There are a range of NGOs in Indonesia, from well-established, well-connected and well-funded national organisations like the Legal Aid Foundation (LBH) which is macro-political in its outlook, to small, grass-roots, 'issue specific' groups which are more 'micro-developmental'. Generally, NGOs try to assist workers, farmers and others who suffer from human rights violations by providing legal advice and assistance, and by promoting education and awareness of rights, whether they be worker rights, rights to land ownership and so on.

own fact-finding team) and the report was a principal source of information for Komnas in its investigation.⁴

Good relations between Komnas and NGOs helped to foster good relations between Komnas and the community. NGOs were 'in the same business' as Komnas - i.e. providing assistance to people affected by human rights violations - but NGOs had been 'in the business' for a great deal longer and were known and trusted by the people they assisted (farmers, factory workers, political dissidents, etc). The support and cooperation of NGOs provided Komnas with an enormous amount of goodwill and credibility as a human rights organisation.

This process of legitimisation through NGO support was mostly a side-effect of Komnas-NGO cooperation on particular cases. However, Komnas sought the direct support and assistance from non-government agencies in East Timor when it established a branch in the province in 1995. Komnas hoped that an East Timor office would receive complaints of human rights violations from the local community but this was dependent on its ability to gain the trust of local Timorese - which was difficult given that it also needed the cooperation of local police and military authorities.⁵ As a result, Komnas elicited the support of local NGOs and institutions, including the Catholic Church, universities and ICRC officials.

Cooperation with Komnas also benefited NGOs. Firstly, the high national and international profile of Komnas meant that many of the cases it investigated attracted media attention. In the Rancamaya dispute for example, Komnas generated an enormous amount of media coverage, which assisted in bringing the developer and local authorities to the negotiating table. Secondly, Komnas' access to senior officials in the bureaucracy gave NGOs an added avenue through which to seek resolution.⁶ Although many in the NGO community had personal connections with 'enlightened' ABRI and other government officials, and these were important, Komnas' access and support made Komnas a valuable asset to NGOs.⁷

Despite general acceptance and cooperation, the relationship between Komnas and NGOs was not without conflict. Komnas occasionally faced public criticism from NGOs which did not feel that its reports were comprehensive, or went far, enough in criticising the government. In the Marsinah case, defence lawyer Trimoeljo pre-empted this possibility

⁴*Jakarta Post*, 27 June 1994. *Kompas*, 5 February 1994. *The Age*, 9 March 1994. *Media Indonesia*, 10 March 1994. Interview with Mulyana W. Kusumah, 17 October 1994.

⁵Komnas member B.N. Marbun announced in January 1996 that the new office had received support from Dili Bishop Felipe Ximenes Belo, the district attorney office, the district Court, Governor Jose Osorio Soares and military authorities. *Jakarta Post* 25 January 1996.

⁶Interview with Mulyana Kusumah, 17 October 1994.

⁷"Human What?" *Inside Indonesia* (March 1996).

by stating publicly that Komnas would fail in its mission if it did not hold an investigation of the trial.⁸ Agreeing to investigate the case was considered by NGOs a test of Komnas' independence and courage.⁹

Komnas also fell out of favour with their NGO counterparts by 'stealing the limelight' of international attention from the activities, reports and statements of more activist or critical NGOs. This was clear during the November 1994 APEC meeting in Indonesia, when leading NGOs boycotted a meeting with US Assistant Secretary of State Winston Lord because they felt they were given a lower status than Komnas, which met with Secretary of State, Warren Christopher.¹⁰ It seemed to many observers and NGOs that Komnas was becoming a diplomatic, or official, 'substitute' for more activist NGOs.

Despite initial suspicion and scepticism on both sides, and occasional disagreements, the Komnas-NGO relationship developed into a solid one - based on common interests and objectives, and mutual need. There is now useful cooperation on a practical level in the provision of information and access to networks.

The press

There was frequent coverage of Komnas by the press, from routine reporting of its activities and publication of its press statements, to analysis and editorials of its operations and the issues it addressed. Like the relationship with NGOs, that between Komnas and the press was mutually beneficial.

The press provided Komnas with an essential link to its constituents, with three main spin-offs. Firstly, the press provided the community with access to Komnas. For example, people read about Komnas and asked the newspapers how they could be contacted.¹¹

Secondly, daily coverage of Komnas and its activities made the public more aware, not only of Komnas, but of human rights and what they meant. The more that Komnas was able to point out the weaknesses of the legal apparatus, the more the community became aware of them.¹² Asmara Nababan saw the role of the press as extremely important in educating people about human rights and that Komnas could assist in this process:

⁸Kompas, 1 March 1994.

⁹Kompas, 2 February 1994. Kompas, 26 February 1994.

¹⁰Correspondence with Sidney Jones, 1996.

¹¹Interview with Charles Himawan, 18 October 1994.

¹²Kompas, 19 February 1994.

...the main role of the Commission ... is to promote understanding of human rights in the public. Our statements appear every day in the newspapers. They are bringing about a kind of legitimization of the issue of human rights.¹³

Thirdly, positive reporting by the press generated an enormous amount of goodwill and public legitimacy for Komnas. For example, Komnas' success in settling disputes like Rancamaya and Sei Lapan, and the public release of its findings in the Marsinah case, endeared it to the public as a body which was genuinely concerned about human rights and the 'rakyat kecil', and which was not automatically on the side of the government.

The relationship with the press, however, was reciprocal. In particular, Komnas provided a daily source of information, whether it be statements on particular issues, reports on investigations or interviews with members.¹⁴ Articles about Komnas may even have increased circulation / readership of newspapers and magazines - particularly when local issues were involved - although this is difficult to measure.¹⁵

In a deeper sense, Komnas was also an advocate of greater press freedom in Indonesia (as indicated by Komnas' critical press statement following the banning of Tempo in June 1994) and, as such, Komnas and the press had a common interest. As with the NGO community however, many members of the press were initially sceptical of Komnas and its ability to be independent and effective. Although Komnas was generally successful in proving itself 'worthy of respect', the press did not neglect highlighting potential conflicts of interest, or weaknesses. In the Cimacan land dispute, for example, Komnas decided not to get involved. As the land was owned by a member of the President's family, questions were asked whether Komnas would only take on cases which were 'easy to solve'. The press also pointed out on occasion that, although Komnas may make strong statements, it was often powerless to provide real redress or change. Following the Marsinah report for example, the press described Komnas as a 'toothless tiger'.

Komnas' relationship with the press was a healthy one. There were benefits in cooperation but scepticism and criticism from the press kept Komnas 'on its toes'. It also helped observers to understand some of the parameters and constraints which Komnas faced in its operations and its role as a player in the politics of human rights in Indonesia.

The public

The relationship between Komnas and the public was important because if Komnas 'fell out of touch' with its constituents, it would not be serving the interests of the people

¹³"Human rights belong to us" *Inside Indonesia* (July-September 1996), p 11.

¹⁴Komnas news appears almost daily in Indonesian newspapers.

¹⁵Readership of newspapers in Indonesia is difficult to measure because, as newspapers are read by more people than actual buyers, circulation numbers are not easily equated to actual readership.

whose human rights it was established to protect. Komnas also relied on public legitimisation and support as a balance against the competing interests and demands of the government, its apparatus and vested interests. In order for Komnas to gain public legitimisation, all groups in society needed to be able to both identify with Komnas and to feel that Komnas represented their views and interests. This is where the backgrounds and personalities of Komnas members were important.

The choice of Komnas members was strategic in this sense, for the membership represented many sections of Indonesian society. For example, INFID Secretary Asmara Nababan was of Batak origin and maintained close ties with North Sumatera (and was subsequently involved in many cases in that area) as well as NGOs.¹⁶ Similarly, East Timorese member Clementino Dos Reis Amaral was heavily involved in East Timor-related issues. As Chief Editor of the daily newspaper *Suara Pembaruan*, Albert Hasibuan was in constant contact with journalists. Nurcholis Madjid, Baharuddin Lopa and Hasan Basri maintained relationships with Islamic organisations, and Djoko Moelyono with Catholic organisations. Secretary-General Baharuddin Lopa was described as sympathetic to, and popular among, nationalist groups in Indonesia and therefore in a position to maintain credibility for Komnas with those elements in Indonesian society.¹⁷ Charles Himawan, Satjipto Rahardjo, Professor Muladi and Miriam Budiardjo were among many members who held senior positions in universities, providing important links with students and intellectuals, while commercial lawyer Gani Djemat and businessman Bambang Soeharto were well-respected figures in the business and professional community.

Links between members and their various 'constituents' were extremely valuable to Komnas in its investigations of cases and negotiation of disputes, as well as in its role in raising awareness about human rights. According to Vice Chairperson, Miriam Budiardjo, while the 'connections' which some members may have had with government agencies could seem as a liability to Komnas' independence, they were an asset to Komnas' operations.¹⁸ All Komnas members were involved in raising awareness about human rights - whether they were giving a lecture to students, speaking at a business function, discussing a land case with farmers and local authorities, or talking to the press. Their credibility as prominent intellectuals, businessmen, journalists, Christians, Moslems or East Timorese helped Komnas to convey messages to and receive messages from the community.¹⁹

¹⁶He was not involved in the HKBP dispute however, because one of the main disputants was his brother. Interview with Sidney Jones 7 November 1995.

¹⁷Interview with Haji Princen, 18 August 1994.

¹⁸Interview with Miriam Budiardjo, 19 August 1994.

¹⁹Interview with Charles Himawan, 18 October 1994. Interview with Asmara Nababan, 4 November 1994. Interview with Miriam Budiardjo, 19 August 1994. Interview with Muladi, 18 November 1994. Interview with Mulyana W. Kusumah, 17 October 1994.

It was suggested by several observers that the more the general public and community became aware of the extent to which human rights were protected (and violated), the more officials would be reluctant to violate human rights, or would at least be more conscious of their actions.²⁰ Many members in fact measured their success by their ability to change views on human rights in Indonesia. According to Asmara Nababan:

"Our work shows the public that human rights belong to us, that they are not an alien concept. Five years ago, if a group raised the human rights issue they were accused of spreading 'Western' ideas and subversion. Now it is legitimate to discuss human rights. This is a major step forward, a real change. Now you hardly even find any generals or ministers who will say that human rights are an alien or Western concept." ²¹

The international community

As Komnas became the public face of Indonesia's human rights image abroad, it developed important relationships with the international community. Komnas benefited in a number of ways from these relationships but at the same time, had to accommodate international considerations in its activities.

By representing Indonesia at international conferences, visiting other national human rights commissions and participating in the United Nations and other multilateral forums, Komnas members were able to update their knowledge on international human rights (including legal and political developments), learn from the experiences of other human rights commissions, obtain technical and financial assistance from other countries, and raise the profile of Komnas, not to mention Indonesia's human rights image.²²

The Komnas office also accommodated a continual stream of international visitors, relieving pressure on Deplu which began to refer most visitors and embassy officials to Komnas.²³ During the first few months, visitors included Portuguese government officials, special envoys from the office of the United Nations Secretary General, the French Ambassador, the political counsellor for the European Community, an ASEAN student group and various representatives of embassies such as the United States and Australia.²⁴

²⁰Suara Merdeka, 6 April 1994. Suara Pambuan, 14 April 1994. Interview with Muladi, 18 November 1994. Interview with Charles Himawan, 18 October 1994.

²¹"Human rights belong to us" Inside Indonesia (July-September 1996), p11

²²For example, a visit by Komnas Vice Chairpersons Marzuki Darusman and Miriam Budiardjo to the United Nations in 1994 received a positive response - as a demonstration of the seriousness of the Indonesian government to set up internal mechanisms to address human rights. Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 4. Interview with Marzuki Darusman, 28 September 1994.

²³Interview with Marzuki Darusman, 28 September 1994.

²⁴Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994 (Sekretariat Jenderal, 20 Juli 1994), pp 4, 5, 12, 18, 27.

The importance which Komnas accorded to its international activities and relationships was evidenced by the key involvement of Deplu in its administration. Although there was not a Deplu member on Komnas, Dr Hasan Wirayuda (Director General for International Organisations in the Department of Foreign Affairs) regularly attended plenary sessions as 'an observer' and 'resource person' on foreign policy matters and international law.²⁵

Komnas' international profile demanded that it be 'literate' or 'up to date' on domestic human rights issues, particularly the situation in East Timor. Whilst a focus on East Timor was a response to the attention of the international community, Komnas was not simply catering to the international mood. Just as Komnas preferred to investigate first hand the many land and labour cases that were brought before it, it was only natural that they would apply the same approach to issues such as East Timor, which were brought before it by foreign officials, the media and NGOs.

Just as Komnas developed relationships with NGOs and the press at home, it also fostered open communication with the international media and international human rights organisations. The relationship between Komnas and the international community was important, particularly considering the foreign policy origins of Komnas. The international community, including government, the media, human rights groups, other national commissions and the UN were valuable sources of information and legitimacy for Komnas. The more praised and accepted Komnas became, the more protected it was from arbitrary interference by the government.

Relationships with government agencies

Komnas' relationship with government agencies was more clearly defined than with the non-government sector. Komnas not only required the cooperation of specific departments and agencies in addressing complaints, it also needed the support of government officials, just as it did from the community. High level support from the government was a crucial factor in determining the effectiveness of Komnas. Asmara Nababan pointed out that :

"Because of our limited mandate, we must cooperate with the government. We can't confront the government. The Commission is too weak, in terms of our legal basis, our capacity and so on. So we take a cooperative approach."²⁶

²⁵However, both Deplu and Komnas insist that Deplu does not steer the agenda of the Komnas in any way. Interview with Hasan Wirayuda, 9 November 1994. Interview with Marzuki Darusman, 28 September 1994. Hasan Wirayuda was been described by Miriam Budiardjo as the 'guiding light' behind Komnas and its formation. Interview with Miriam Budiardjo, 19 August 1994.

²⁶"Human rights belong to us" *Inside Indonesia* (July-September 1996), p11.

Government departments and parliament

Komnas developed contact with a number of government agencies during the course of its operations. For example, it met with the Minister for Manpower early on in its working life, taking the initiative to 'introduce itself' to the Minister. Discussions focussed on concern for workers' rights, with a tacit agreement to cooperate in labour cases. This indicated that Komnas foresaw the importance of labour issues in its operations.²⁷ Komnas and the Ministry of Manpower did in fact cooperate on a number of labour cases, such as the PT DBD dispute.

Komnas also met with the Minister for Education and Culture, not an unexpected move as the Decree explicitly specified education and awareness of human rights as among its activities; the Minister for Religion, whose assistance Komnas sought in the HKBP dispute; and, the Minister for Information, whom Komnas approached in the hope of negotiating over the banning of Tempo magazine. Although it was important that Komnas maintain good working relations with government agencies, they were not crucial to its independence and effectiveness.

Although Komnas members included current and former members of the DPR, Komnas saw no necessity in directly consulting the DPR or to actively seek the support of its members. This indicated the relative unimportance of the DPR in formulating or influencing human rights policy.

Most government departments and the DPR, although part of the government apparatus, played little role in the politics of human rights in Indonesia and were subsequently of secondary importance to Komnas. Without a doubt the two most important and influential agencies in this respect were ABRI and President Suharto.

ABRI

A good relationship with ABRI was important to Komnas because ABRI was both the main perpetrator of human rights violations in Indonesia (and therefore the main subject of Komnas' attention) as well as the most important political institution in New Order Indonesia. Marzuki Darusman credited much of Komnas' success to its acceptance by ABRI:

The work the Commission has done has only been possible because of army openness, even though our findings may have gone against their interests.²⁸

²⁷This meeting was held on 17 February 1994 at the Department of Manpower. *Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994* (Sekretariat Jenderal, 20 Juli 1994) p 13. The National Commission on Human Rights ; *The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994* (Office of the Secretary General, National Commission on Human Rights, Jakarta, Indonesia, July 15, 1994), p 6.

²⁸"Human What?" *Inside Indonesia* (March 1996).

The relationship between Komnas and ABRI began with the appointment of Ali Said as Chairman of Komnas. As a retired Lieutenant-General in the armed forces, his appointment was received well in military circles.²⁹ ABRI trusted Ali Said, even if it was not comfortable with other members of Komnas.³⁰

Other Komnas members were also conducive to establishing contact with ABRI. For example, former Brigadier-General in the Police Force, Roekmini Koesoemo Astoeti, was a valuable facilitator of Komnas-ABRI relations, as was Baharuddin Lopa, who held a senior bureaucratic position in a portfolio which had close connections with the police and armed forces. Professor Muladi's position as an expert on criminal law also placed him in close and constant contact with the Ministry of Justice, regional police and security forces. Komnas also utilised the established contacts which some NGOs had with military officials:

They open channels of communication with people who happen to be in the army but who are somehow enlightened. There are people like that in the army. We can focus on these people, and that's how we get things done."³¹

Komnas sought to foster the highest level support within the government's security apparatus. Soon after its formation, Komnas attended a Coordinating Meeting for Politics and Security (*Rapat Koordinasi Khusus Polkam*) which included Coordinating Minister for Politics and Security, Soesilo Soedarman, Minister for Defence and Security, General TNI Edi Sudradjat, Minister for Foreign Affairs, Ali Alatas, Minister for Justice, Oetoyo Oesman, Commander in Chief of the Armed Forces, General TNI Feisal Tanjung, and State Secretary, Moerdiono. Following the meeting, Moerdiono made a statement which indicated that high level support had been granted - "I guarantee the independence of Komnas".³²

Intermediate level support from within ABRI was also sought. A Komnas-ABRI meeting attended by over 250 ABRI officers, including the Commander in Chief of the Armed Forces, the Chief of Staff of the Army, Head of the Police Force and Territorial Commanders, was held on 23 April 1994.³³ Komnas explained to the participants its function and working mechanisms and its approach to the development of human rights in Indonesia. Komnas concluded from the meeting that:

²⁹Interview with Marzuki Darusman, 28 September 1994.

³⁰Interview with Roekmini Koesoemo Astoeti, 24 August 1994.

³¹"Human What?" *Inside Indonesia* (March 1996).

³²*Suara Karya*, 14 June 1993.

³³The National Commission on Human Rights ; *The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994* (Office of the Secretary General, National Commission on Human Rights, Jakarta 15 July 1994), p 6. Interview with Roekmini Koesoemo Astoeti, 24 August 1994.

A genuine understanding was reached that cooperation is needed between the two bodies in order to promote the observance of human rights and to prevent human rights violations.³⁴

The cooperation of ABRI was apparent in a number of cases it investigated. It is likely that Komnas sought the prior approval of, and consultation with, the central government and armed forces authorities, before arriving in Rancamaya and demanding an audience with local police, council officials and military intelligence officers. In cases like Rancamaya, however, ABRI was not the main focus of the investigation, or cause of the dispute, and thus it was suggested that such cases were 'easier to solve' for Komnas.³⁵ Nevertheless, Komnas also received ABRI's cooperation in more politically sensitive, and ABRI-centred cases such as the investigation of the Marsinah trial.³⁶

Komnas was also praised for its 'courage' in criticising ABRI, although in some cases ABRI saw and edited Komnas' statements. In fact, during the first year the usual passage of Komnas reports and statements was through ABRI and the President, before being released if they were intended for public consumption.³⁷ For example, ABRI was consulted prior to the release of Komnas' findings in the Marsinah investigation and apparently made changes to the wording of the statement, though not to its substance.³⁸ Similarly, following Lopa and Amaral's exploratory visit to East Timor in October 1994, the prepared press statement was also passed through ABRI headquarters before public release.³⁹

Whilst it is clear that, despite having influence, ABRI did not have control, or the power of veto, over Komnas' public statements, Komnas adopted specific procedures to ensure that ABRI was kept informed of its plans and consulted on its activities:

...there is no doubt that the set procedures of the Commission are known to the army. We go through the stages of investigation, analysis, conclusion, and public announcement. The procedures are so transparent that the government and the armed forces realise that we cannot adopt any other procedures besides what has been done.⁴⁰

³⁴Komnas presented a paper at the meeting which was prepared in conjunction with Deplu and delivered by Ali Said. "Kata Pengantar", in Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 Tentang Komisi Nasional Hak Asasi Manusia dan Gerak Pelaksanaannya (Jakarta, 23 April 1994). The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan. 1 - July 11, 1994 (Office of the Secretary General, National Commission on Human Rights, Jakarta 15 July 1994), p 6.

³⁵Interview with Baramuli, 18 November 1994.

³⁶Interview with Baramuli, 18 November 1994.

³⁷Interview with Marzuki Darusman, 28 September 1994. Interview with Muladi, 18 November 1994.

³⁸Interview with Asmara Nababan, 4 November 1994.

³⁹Interview with Muladi, 18 November 1994.

⁴⁰"Human What?" Inside Indonesia (March 1996).

This did not mean, however, that ABRI was entirely pleased with Komnas or its activities. Marzuki Darusman noted that 'ABRI was surprised at Komnas' assertiveness'⁴¹. In fact, various Komnas members suggested that ABRI found it difficult to come to terms with the Commission at first and, although there was cooperation, there was not always agreement. When the relationship broke down, or issues could not be resolved, both ABRI and Komnas turned to the President as the final arbiter.

The Presidential office

President Suharto had the power to decide whether Komnas existed or not - simply because it was established by Presidential Decree - and his support for Komnas was the key to its effectiveness. The Komnas-Suharto relationship was therefore Komnas' most important and was fostered through the Supreme Advisory Council (DPA), State Secretariat (Sekneg) and Komnas Chairman Ali Said's personal association with Suharto.⁴²

Supreme Advisory Council (DPA or *Dewan Pertimbangan Agung*)

As with the armed forces and other government agencies, Komnas introduced itself to the DPA during its first few months of operation. Touted as a body of advisory experts, the DPA was essentially a prestigious body of Presidential appointees. As the DPA had the close confidence of the President, it was therefore understandable that Komnas felt it "necessary to establish a good relationship with the Council."⁴³ Komnas shared functional similarities with the DPA - "the job of the Commission ... is not all that different from the things that the DPA does, i.e. making recommendations to government on the implementation of human rights. Whether the proposals are implemented or not depends on the government."⁴⁴ However, the Komnas-DPA relationship was more a strategic one than a functional one.

State Secretariat (Sekneg or *Sekretariat Negara*)

The relationship between Komnas and Sekneg, however, was a more functional and important one. As the 'gateway to the Presidential office', Sekneg was the first port of call for access to Suharto. It was also a channel for the dissemination of information from the President.

⁴¹Interview with Marzuki Darusman, 28 September 1994, Interview with Roekmini Koesoemo Astoeti, 24 August 1994. Interview with Asmara Nababan, 4 November 1994.

⁴²Ali Said and Suharto were in regular contact.

⁴³The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994, The Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15, 1994, p 6.

⁴⁴Media Indonesia, 20 December 1993.

Komnas was funded through Sekneg's budget and one of its members was a former Sekneg official, who acted as administrator of funding. Deputy Cabinet Secretary, Hamid Attamini, provided an essential link between Komnas and its source of funding.⁴⁵ Whilst State Secretary Moerdiono's occasional criticism of Komnas led some observers to question whether there were potential difficulties in Komnas' funding, there were no problems in the first two years of operation.⁴⁶

Suharto made no public reference to Komnas in its early months - it was suggested that this was because he did not want to 'jeopardise its independence'.⁴⁷ During this period, and on subsequent occasions, the President's views on Komnas and its activities were conveyed via Sekneg. In the Marsinah case for example, Moerdiono suggested that Komnas had overstepped the boundaries and should not attempt to 'take over' the jobs of investigators or the role of the courts.⁴⁸ Whilst Moerdiono's public comments were considered by many a slap in the face for Komnas, others suggested that the rebuke was somewhat of 'a show' by the government to further endear Komnas to the public, human rights groups and activists.⁴⁹

President Suharto

Komnas' relationship with Suharto accorded an unprecedented level of authority - which legal guarantees or establishment by Parliament could not have done⁵⁰ - for a human rights organisation in Indonesia. Komnas members sometimes referred to Komnas as a 'lembaga presiden' ('presidential institution') and claimed that this status accorded them a particular level of influence.⁵¹ One observer noted that:

⁴⁵When he passed away in 1994, he was replaced by Saafruddin Bahar, who was also his successor in Sekneg. Interview with Charles Himawan, 18 October 1994. Marzuki stressed that Saafruddin Bahar was elected by the members of Komnas (not appointed), but it was clearly preferable to have a Sekneg official as a member. Interview with Marzuki Darusman, 15 November 1995.

⁴⁶ Interview with Marzuki Darusman, 15 November 1995. UN principles recommend that national institutions should have adequate funding "...in order to be independent of the Government and not be subject to financial control which might affect its independence." (Centre for Human Rights ; National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (Professional Training Series No.4, 1995), p 37.

⁴⁷The first time that Suharto addressed Komnas was at the 2nd National Workshop on Human Rights in October 1994. Komnas viewed the President's praise as an indication that they were on the right track. The workshop - held jointly with the Department of Foreign Affairs - was principally designed to showcase and evaluate Komnas and its work. Interview with Muladi, 18 November 1994.

⁴⁸Terbit, 6 April 1994. Media Indonesia, 6 April 1994.

⁴⁹Tiara (No.106) 5 June 1994. Interview with Arief Budiman, 31 October 1995.

⁵⁰The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan 1 - July 11, 1994 (Office of the Secretary General, National Commission on Human Rights, Jakarta 15 July 1994), p 6.

⁵¹The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan 1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, 15 July 1994), p 6.

[Komnas] holds an honoured position in the strata of social organisations ... [because] the Chairman and Deputy Chairpersons were endorsed by the President.⁵²

President Suharto's (albeit not unqualified) support gave Komnas a great deal of strength, particularly in its dealings with ABRI. For example, when ABRI disagreed with Komnas' findings of ABRI responsibility in the Licquicia case, Komnas wrote directly to President Suharto, seeking his support. Komnas was successful, the statement was released, and ABRI was told by the President to 'discipline' those responsible.⁵³

Presidential backing also gave Komnas considerable leverage with which to negotiate with government ministries and regional/local authorities. His support, however, was not unconditional and there were a few cases which proved difficult for Komnas, particularly where they involved Suharto's personal, political, or family business, interests. This was apparent in the Cimican and Tanah Lot cases, where Suharto-connected business interests were involved and where Komnas either did not become involved, or was not critical in its findings.⁵⁴

Divided loyalties were particularly apparent in the Sri Bintang Pamungkas case. President Suharto was said to have been personally outraged by Sri Bintang, who was sacked from Parliament, repeatedly summonsed by the police and harassed and intimidated by authorities.⁵⁵ Komnas respected Sri Bintang's position and rights under law, but was also acutely aware of the necessity to remain 'on side' with Suharto.⁵⁶ In April 1995, Ali Said wrote to the Chief of the Police Force requesting assurance that Sri Bintang and his family would be protected from intimidation during the police investigation.⁵⁷ However, Komnas did not question the validity of the investigation itself, even though they were aware that any actions of Sri Bintang outside of Indonesia were not punishable under Indonesian law.

For President Suharto, a strong national human rights commission not only provided a positive boost for his international image as an 'elder statesman', and his domestic image as *Bapak Pembangunan*, but was also a tool for moderating the excesses of ABRI

⁵²"Dilihat dari mekanisme penyusunan perangkat organisasi pun jelas, komisi ini memiliki kedudukan yang terhormat dalam strata organisasi kemasyarakatan. Sebagaimana dijelaskan Mensesneg, Ketua dan wakil Ketua Komisi akan dikukuhkan oleh Presiden." *Media Indonesia*, 10 June 1993.

⁵³Interview with Charles Himawan, 24 July 1995.

⁵⁴Interview with Mulyana W. Kusumah, 17 October 1994. Farmers from Cimacan complained to the press that Komnas did not want to even discuss their case. *Kompas*, 14 April 1994. Komnas was not critical of the developer of the BNR Tanah Lot project in Bali. *Republika*, 24 February 1994. *Merdeka*, 24 February 1994. *Kompas*, 21 February 1994.

⁵⁵*The Bintang Case Rounded-Up*, apakabar, 30 October 1995.

⁵⁶Interview with Charles Himawan, 24 July 1995.

⁵⁷*The Bintang Case Rounded-Up*, apakabar, 30 October 1995.

hardliners whose staunch adherence to internal security at any human cost was becoming costly on the political front.⁵⁸

Suharto's support for Komnas was a prerequisite for its establishment, and there was no doubt that Komnas could not have achieved the level of 'independence' and effectiveness it was praised for, without the backing of the President. Although this is somewhat of a contradiction in terms, it is indicative of how Indonesian politics works, and of the supremacy of Suharto's personal authority.

It is difficult to be certain of Suharto's motivations for empowering Komnas with his authority but so far it has not caused him political damage. It seems that as long as this is the case (and cases like Sri Bintang Pamungkas do not proliferate), then Komnas will prosper, despite ups and downs in its relationship with the armed forces. The necessity of Suharto's approval indicated that the politics of human rights was no different from the politics of any other issue in Indonesia - i.e. Suharto makes the key decisions.

All of Komnas' relationships were important components of its position in Indonesia's political landscape. Clearly, however, the most crucial parts of Komnas' relationship network was the support it received from President Suharto (which afforded it valuable bargaining power with ABRI) and the goodwill it received from the community (for if the *rakyat kecil* did not see Komnas as a credible human rights organisation, then it would not be one). Vice Chairperson Marzuki Darusman believed that:

"People trust the Commission's independence and the government shows its goodwill [not to interfere with the Commission's activities]."⁵⁹

Relationships were therefore not so much a question of independence for Komnas, but more a question of balancing competing interests. Komnas was independent in choosing what it did and what it said but its choices were guided by political considerations and the need to balance the competing demands of both government agencies and the non-government sector. Komnas needed good relationships with both to be effective. This 'balancing act' determined the nature of Komnas' operations - what it was involved in and how it operated, as well as how it achieved success in some cases and why it found others difficult to resolve.

⁵⁸Human Rights Watch / Asia; The Limits of Openness: Human Rights in Indonesia and East Timor, (Human Rights Watch, USA, September 1994), p 126.

⁵⁹Jakarta Post, 6 December 1996.

7

Komnas HAM : Operational Influences

The nature of Komnas' operations was influenced both by the nature of the complaints it received and the nature of its relationships with government and non-government agencies. Chapter Five demonstrated the diversity of cases handled by Komnas as well as their varying degrees of political sensitivity, or 'public' profile. Chapter Six demonstrated that Komnas needed to tread a fine line of credibility with the public, NGOs, activists and the international community, whilst also maintaining a high level of support from the government bureaucracy, the military and President Suharto. This balancing act determined the role which Komnas played in the politics of human rights in Indonesia.

According to UN guidelines and Presidential Decree No.50, this role included the examination of international human rights instruments as well as activities to promote education and awareness of human rights. There is no doubt that these functions were an essential component of a comprehensive and long-term strategy for addressing Indonesia's human rights problems. These functions also required a careful approach by Komnas, one which balanced competing political interests, and therefore provides useful insights into how Komnas operated. However, it was the monitoring and investigatory role which presented the most immediate and difficult political dilemmas for Komnas, and which illustrated both the unique and unprecedented powers, as well as the predictable and unavoidable constraints which it experienced.

Examination of international instruments

The examination of international instruments was an internal activity and therefore appeared to be more affected by various administrative difficulties than by political considerations. For example, although there were a number of lawyers and legal experts on Komnas, none had expertise in international human rights instruments.¹ It was also difficult for the Sub-Commission to study instruments without a proper office, researchers and adequate facilities.²

¹Interview with Hasan Wirayuda, 9 November 1994.

²At least one of the Sub-Commission's meetings was held in a city hotel. *Komisi Nasional Hak Asasi Manusia : Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester 1 / 1994* (Sekretariat Jenderal, 20 Juli 1994), p 31.

As the purpose of examining international instruments was to make proposals to government on ratification, the process of examining international human rights instruments was not wholly an internal process. It was therefore not completely apolitical either and Komnas played its hand carefully. With little or no expertise among Komnas members in the area of international human rights law, Deplu's Hassan Wirayuda (the 'silent member' of Komnas) was a valuable technical resource. More importantly, however, he was most likely also a source of advice on the government's position and possible limitations regarding any proposals for ratification.

Komnas members did not agree on the value of ratification of international instruments as a means for improving human rights conditions. Miriam Budiardjo pointed out that ratification was not always the answer to improving a country's human rights situation. Other countries have ratified many more UN instruments than Indonesia has, while their human rights situation were "worse than ours".³

The Sub-Commission for the Examination of Human Rights Instruments focussed on 'gross violations' and examined the UN Convention on the Elimination of all Forms of Discrimination (1966) and the UN Convention against Torture and other Cruel, Inhuman and Degrading Punishment (1984).⁴ It was reported in Komnas' first semester that the two instruments had been proposed for ratification and Komnas announced this publicly at the 2nd National Workshop on Human Rights in November 1994. Suharto announced at the time that the government would consider the proposals but there has been little indication since that the instruments have, in fact, been ratified - let alone whether the move has had any positive effect in practice.

Education and awareness

Education and awareness activities ranged from the development of curriculum to the presentation of seminars and talking to the press. Komnas' Constitution stipulated that formal education activities such as the development of curriculum were to be conducted in consultation with a myriad of government agencies, from Depdikbud and Deplu to BP7 (the agency responsible for the implementation of Pancasila), the Supreme Court and ABRI.⁵ It also stipulated that 'informal' education activities, such as the presentation of

³Interview with Miriam Budiardjo, 19 August 1994.

⁴Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 13.

⁵Agencies listed in the working mechanisms include: the Department of Education and Culture; the Board for the Development, Education, Implementation, Guidance, Understanding and Experience of Pancasila (Badan Pembinaan Pendidikan Pelaksanaan Pedoman Penghayatan dan Pengalaman Pancasila - BP7), the Department of Internal Affairs; the Supreme Court, and; ABRI. Komisi Nasional Hak Asasi Manusia ; Mekanisme Kerja Sub Komisi Pendidikan dan Penyuluhan.

seminars and the development of general literature on human rights be conducted in consultation with the National Security Agency (*Badan Pertahanan Nasional*), the Department of Manpower, the Department of Information, the Department of Justice, ABRI and non-government and other social-political organisations.⁶

This choice of 'partners' indicated which government agencies had the most control over (and the highest stake in) how human rights were understood and interpreted in Indonesia. Moreover, that these agencies were chosen by Komnas itself, indicated its awareness of the need to both consult and 'cajole' the government in the course of its operations.

From early in 1994, Komnas negotiated with the Ministry of Education about the inclusion of human rights in national school and university curriculums and, in 1997, Komnas announced the development of a human rights curriculum for universities.⁷ It seems less likely, however, that human rights components will be included in the curriculums of armed forces academies and training institutes, although Komnas 'made itself available' to the military for this purpose.⁸

Conciliation and dispute resolution

Cases where Komnas sought to mediate between the complainant and the perpetrator of a human rights violation usually involved disputes over land or wages and working conditions. Not only were there no other administrative mechanisms which could perform this role, but the authority of Komnas as a government-backed institution and the (high level) networks of its members, combined with Komnas' need for public legitimation, meant that Komnas was able, and committed, to achieving a positive result. The approaches taken, and the level of success achieved, by Komnas in these cases were determined by the nature of the complaints on the one hand and the nature of Komnas' relationships with government and non-government agencies on the other.

How it worked

In the Rancamaya case for example, the complexity and history of the dispute forced Komnas to conduct a detailed fact finding investigation and extensive consultations before it could seek a resolution. Its relationships were important in this process because it was unlikely that Komnas could have just arrived in Rancamaya and demanded an

⁶Komisi Nasional Hak Asasi Manusia ; Mekanisme Kerja Sub Komisi Pendidikan dan Penyuluhan.

⁷A workshop was held to "hammer out the curriculum" and included participants from NGOs, the government, universities, the military, Komnas and the Canadian Human Rights Commission, which is assisting Komnas in the process. *Jakarta Post*, 19 March 1997.

⁸Interview with Charles Himawan, 18 October 1994.

audience with numerous local police, administrative council officials and military intelligence officers without the prior approval of, and consultation with, the central government and armed forces authorities. Although the developer and local authorities were initially wary of Komnas' involvement in the case, they were keen to participate as an amicable solution presented itself.

The Sei Lapan case was similar in nature to Rancamaya, and Komnas employed the same approach of data collection, consultation and negotiation. It was reported that local authorities were unwilling to cooperate with Komnas until they had spoken to their central authorities to confirm Komnas' support from senior officials and the President. Once Komnas had been 'approved', it was able to negotiate a settlement which was acceptable to all parties. In the PT DBD dispute, Komnas negotiated with company officials on behalf of the complainants and solicited support of Depnaker to help persuade the company to agree to the workers' demands.

Conciliation has been described by the UN as "...bringing the two parties together in an effort to ascertain the facts of the case and to effect a mutually acceptable resolution."⁹ The success and popularity of conciliation as a method for resolving disputes was a result of many factors. Firstly, the nature of the cases was such that they did not (directly) involve members of the state or security apparatus and were therefore not in conflict with matters of national security.

Secondly, conciliation was a non-confrontational process, employing principles of consultation and consensus to reach a settlement, rather than arbitration (compatible with Indonesia's process of *musyawarah dan mufakat* used in the development of government policy).

Thirdly, many Komnas members felt that its involvement in dispute resolution through conciliation was important because it educated the populace. According to Secretary General, Baharuddin Lopa, Komnas used an educative approach to solve disputes, so that parties would be able to solve future disputes without outside assistance.¹⁰ UN guidelines for national human rights institutions accord with Komnas' own experience:

Conciliation obviates the need for a formal investigation, which can be both expensive and time-consuming. It is also less confrontational in procedure and effect.¹¹

⁹United Nations Centre for Human Rights ; National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (Professional Training Series No.4, 1995), p 31.

¹⁰Kompas, 6 May 1994.

¹¹United Nations Centre for Human Rights ; National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (Professional Training Series No.4, 1995), p 31.

Finally, and although difficult to measure, it was also suggested that Komnas' activities and approach to resolving disputes educated or encouraged developers and employers to think more responsibly when dealing with local residents.¹² Marzuki Darusman pointed out for example that:

In business cases and labour disputes, suggestions are made that local people be given the priority in employment in the project. Sometimes they agree to bring the people who have lived there for twenty years into the shareholding structure.¹³

An added sweetener to Komnas' success in dispute resolution during the first 12 months was the enormous amount of personal satisfaction which Komnas members felt by being able to help the *rakyat kecil*. For example, Marzuki Darusman commented that Komnas tried to "...do what we can...".¹⁴ Whilst Komnas member Bambang Soeharto once claimed that Komnas' task was not to settle disputes but to ensure that human rights were being protected, he and other members later admitted that Komnas always tried to solve a dispute - to help the *rakyat kecil* - wherever possible.¹⁵ This community spirit and social concern by Komnas members also boosted Komnas' credibility as an organisation which was concerned about human rights. So, conciliation and dispute resolution was not only a relatively easy area for Komnas in terms of its relations with government agencies, it was also a profitable exercise in terms of its relations with the public, the press and NGOs.

Where it failed

The business of conciliation and dispute resolution was not, however, all smooth sailing. Komnas was not always able to bring parties together, to ensure that its settlements were comprehensive and sustainable, or to look beyond the immediate cause of disputes to examine their root causes and how they might be prevented in the future.

In the Rancamaya settlement for example, Komnas did not address the questionable arrest, detention and treatment of those who protested the development in 1991. In the case of Sei Lapan, the settlement did not address the irresponsible practices of the local authorities in administering the land, the material losses of the displaced families who lost houses and possessions and had to wait five years for new crops to mature, or the legality of the numerous arrests which had occurred during protests of the development. In the Tanah Lot case, student complaints of harassment by police during a protest of the project was not subject to Komnas investigation, and in the PT DBD dispute, intimidation

¹²Kompas, 21 February 1994.

¹³"Human What?" *Inside Indonesia* (March 1996).

¹⁴"Human What?" *Inside Indonesia* (March 1996).

¹⁵Interview with Bambang Soeharto, 19 September 1994. Interview with Baharuddin Lopa, 14 September 1994. Interview with Miriam Budiardjo, 19 August 1994. *Jayakarta*, 17 May 1994. *Jakarta Post*, 26 December 1993.

of workers by South Jakarta police during strikes and protests at the factory was not among the issues addressed by Komnas in its report on the case.¹⁶

Another shortcoming was that Komnas could not always ensure that the settlement it did reach was actually implemented. In Sei Lapan, it was reported up to six months afterwards that the agreement had yet to be fully implemented.¹⁷ According to a report by a local NGO group,

Komnas Ham promised to follow up on the steps taken by Pemda and to ensure that the Translok [displaced] families are given their land. However, Komnas' power to see the case through to the end is limited because of its investigative and advisory role.¹⁸

According to NGOs in the Rancamaya district, the levels of compensation were insufficient and Komnas members themselves noted that there were problems in the implementation of the settlement.¹⁹ In the Tanah Lot case, there were no mechanisms to ensure that the developer's promises would be implemented, and it was reported up to twelve months later that many residents were unhappy with the development.²⁰ In the dispute between workers and management at PT DBD, the company later denied that it had agreed to comply with the workers' demands, as had been negotiated by Baharuddin Lopa.²¹

Gaps or weaknesses in the solutions engineered by Komnas may have been related to the political difficulties in demanding retrospective accountability for abuses by local police and military authorities, and Komnas might have made a conscious decision to avoid these elements of the cases. Gaps or problems were also exacerbated by administrative weaknesses - in Komnas' ability to address every human rights complaint it received, and to ensure that every detail of its settlements was implemented.

Komnas sometimes failed altogether to reach agreement or to even bring the parties together. In these cases, it was more apparent that political circumstances were the determining factor. In the Tempo case for example, Komnas tried to conciliate between the magazine's representatives and the Minister for Information, Harmoko. Harmoko however, simply refused to participate and the case exemplified the fact that Komnas

¹⁶The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan 1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15, 1994), pp 13-14.

¹⁷Jawa Pos, 14 June 1994. Interview with Mulyana W. Kusumah, 17 October 1994.

¹⁸Wahana Informasi Masyarakat (WIM) ; "Translok Sei Lapan Case" Momentum (1/Eng/May 1994, Medan 1994), p 12.

¹⁹Interview with Mulyana W. Kusumah, 17 October 1994. Interview with Sidney Jones, 7 November 1995. Interview with Miriam Budiardjo, 19 August 1994.

²⁰Dateline (SBS Television), 6 September 1995.

²¹Media Indonesia, 7 April 1994.

wielded little power to compel a government agency to even come to the negotiating table, let alone to implement a settlement.

In the HKBP dispute, Komnas had considerable difficulty in bringing together the opposing factions, despite numerous separate meetings with HKBP members, local authorities, the Minister for Religion and the State Minister for the Control of State Apparatus (*Menteri Negara Penertiban Aparatur Negara*). Komnas offered to mediate between the parties, and even offered a formal solution, but it seemed that control of the HKBP by the government and security forces (hinted at by the inclusion of the State Minister and local military intelligence authorities in Komnas' meetings) was more important politically for the government than a positive outcome for Komnas. The failure of Komnas to negotiate an early release or lenient treatment for the 21 students also demonstrated how Komnas' operations were limited by the political context of the cases it addressed.

Komnas' reports provided neat figures of how many complaints had been received, handled, investigated and settled.²² However, quantitative figures did not illustrate how effective Komnas was in fulfilling its objective to 'improve the protection of human rights' in Indonesia. Many observers and human rights organisations questioned the apparent reluctance by Komnas to address the root causes of human rights violations in Indonesia and to propose appropriate legal and political reforms.

In land and labour disputes for example, Komnas did not (or was not able to) conduct an analysis of relevant laws or consider how these disputes could be prevented from escalating further. In the HKBP dispute, Komnas did not look beyond the dispute itself, to the involvement of the military and authorities in civilian and religious affairs. In the case of the arrested students, Komnas did not question the human rights merits of the law which they had allegedly violated.

Some of the members of Komnas, such as prominent Muslim intellectual Nucholis Madjid, felt that "...the Constitution needs to be revised in order to better arm the nation to face social and political change, particularly in the field of human rights protection."²³ However, those reformist views were countered by the views of other members who pointed out that human rights problems in Indonesia stem from the practices of

²²From 1 January 1994 - 11/7/94, Komnas received 1056 letters and 'handled' 248 cases of violations. The National Commission on Human Rights ; The National Commission on Human Rights Indonesia: Practices Jan.1 - July 11, 1994 (Office of the Secretary General, The National Commission on Human Rights, Jakarta, Indonesia, July 15, 1994), pp 9-11. Komisi Nasional Hak Asasi Manusia ; Kegiatan Komisi Nasional Hak Asasi Manusia: Laporan Semester I / 1994 (Sekretariat Jenderal, 20 Juli 1994), p 32.

²³Jakarta Post, 26 October 1995.

authorities in implementing the laws and not from flaws or deficiencies in the laws themselves.²⁴

Komnas was not, however, unaware of the need to consider the causes of human rights problems and its role in examining international human rights instruments indicated that a measure of legal reform, or improvement, was accepted by Komnas members. For example, it suggested that the cases it handled and the nature of its operations were deliberately chosen or managed in a way which might encourage the government to recognise human rights problems or the legal/policy deficiencies which exacerbated the problems. Komnas member, Muladi suggested that, "We handle those cases whose solutions have positive effects on related government policies..."²⁵ Komnas also recognised that, "...in the long term, the Commission needs to go into structural problems, into the laws."²⁶

In cases where Komnas was able to mediate in a dispute and to reach a mutually agreed resolution, its success was due to the nature of the cases themselves, as well as the support it received from both government and non-government agencies. However, Komnas was just as often not able to succeed as a result either of political pressures, or of legal and administrative weaknesses.

Monitoring and investigation

Conciliation and dispute resolution was not always appropriate or possible. In the Marsinah trial for example, it was not appropriate for Komnas to negotiate between the prosecution and defence to seek a resolution. In this case, it was the defendants' complaint of irregular arrests, torture and forced confessions that led Komnas to conduct a formal investigation.²⁷

The decision to conduct the investigation was (no doubt) influenced by its relationship with NGOs and the press, who felt that Komnas would fail in its mission as a human rights commission if it did not investigate.²⁸ Conducting an investigation was considered

²⁴Interview with Marzuki Darusman, 28 September 1994. Interview with Albert Hasibuan, 11 November 1994. Interview with Muladi, 18 November 1994. Interview with Clementino Dos Reis Amaral, 17 August 1994. Interview with Charles Himawan, 18 October 1994. Interview with Baharuddin Lopa, 14 September 1994.

²⁵*Jakarta Post*, 6 December 1996.

²⁶"Human What?" *Inside Indonesia*, March 1996.

²⁷*Suara Karya*, 2 February 1994.

²⁸*Kompas*, 1 March 1994.

a test of Komnas' independence and courage.²⁹ The nature of the investigation, however, was clearly shaped by Komnas' relationship with ABRI and the government.

Komnas Chairman, Ali Said, announced the investigation on 23 March but added that it was not a 'superbody', while Chief Justice Poewerto Gandasubrata warned that Komnas should not try to influence the course of the trial.³⁰ Ali Said's 'clarification' was no doubt made to quell any concern in ABRI circles, while the Chief Justice remarks set clear boundaries for Komnas and the investigation.

Komnas did not encounter any difficulties during the course of the investigation, although it was required to clear its public statement (of its findings) with ABRI before it was released.³¹ Komnas members insisted that ABRI did not alter the substance of the statement, but the necessity of clearance by ABRI no doubt imposed a measure of self-censorship.³²

Although the Marsinah investigation was considered objective, and Komnas' findings were considered surprisingly (and courageously) critical of ABRI, many observers questioned what Komnas had actually been able to achieve. The findings were not admissible as evidence in the trial, and the defendants received sentences of up to 12 years imprisonment.³³ Even though Komnas won in the publicity and integrity stakes - and the defendants were eventually released - Komnas was unable to bring action against those authorities who were truly responsible. They were subsequently described as a 'toothless tiger'.

The Marsinah investigation was a clear example of Komnas' balancing of competing interests. It highlighted the fine line which Komnas tread in balancing the political interests of the security apparatus with the political interests of its own domestic and international reputation as a credible human rights organisation.

In other cases, Komnas operated more as a monitoring body than an investigatory one. Although the role was slightly altered, however, there was little difference in how Komnas' operations were influenced by the nature of the cases, and how Komnas used, or was influenced by, its relationships with government and non-government agencies to seek redress.

²⁹Kompas, 2 February 1994. Kompas, 26 February 1994.

³⁰Jakarta Post, 23 March 1994.

³¹Interview with Marzuki Darusman, 28 September 1994.

³²Interview with Asmara Nababan, 4 November 1994.

³³Media Indonesia, 6 April 1994. Suara Karya, 6 April 1994. Suara Merdeka, 6 April 1994. Jakarta Post, 6 April 1994. Kompas, 4 May 1994.

In the Lhok Seumawe case, for example, Komnas members arrived unannounced, touting their credentials as a 'lembaga presiden' and their authority bestowed from the highest echelons of ABRI. They demanded that the detainees be released, and they were successful. This surprise tactic was not however, repeatable. Although its actions did not invite retribution from the authorities, it was apparent that this was not an acceptable activity for Komnas. Human Rights Watch/Asia subsequently noted that regional visits "have been marked by a high degree of formality and sufficient lead time for all necessary preparations to be made".³⁴

Following its visit to the 21 jailed students, Komnas met with the Chief Justice of the Supreme Court to try to negotiate an early release or more lenient treatment of the students. Because of the status of Komnas Chairman and former Chief Justice, Ali Said, Komnas was able to hold lengthy talks with Chief Justice Singgih. It was not, however, able to affect any changes to the students' case and the failure highlighted the relative weakness of Komnas when up against greater political forces.

Drawing on the authority of Suharto in some cases provided Komnas with the power to investigate human rights abuses and even to release statements critical of the armed forces. The down-side to this, however, was that Komnas was sometimes muted by the necessity to remain on-side with Suharto. The most obvious example was the case of Sri Bintang Pamungkas, for whom Komnas was unable to seek any effective redress, even though it considered the state's actions against him unfair and unlawful.

The opening of a branch office in East Timor demonstrated that Komnas had gained a high level of trust from ABRI and Suharto - something which Human Rights Watch/Asia initially did not expect: "Komnas was unlikely to get anywhere near such a sensitive issue [as East Timor]"³⁵ On the other hand, whilst the East Timor office was able to receive complaints and report to the central office in Jakarta, it had no authority to involve itself, or liaise directly, with local authorities.³⁶ Moreover, it was reported in early 1997 that "East Timorese are scared to report possible violations to the local representative of the human rights commission because the office is near a military base."³⁷ The narrow mandate of the East Timor office and its necessity to remain on-side with security forces highlighted a major obstacle to the effectiveness and credibility of the office and posed a significant political dilemma for Komnas.

³⁴Human Rights Watch / Asia ; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, USA, September 1994), p 128.

³⁵Human Rights Watch / Asia ; *The Limits of Openness: Human Rights in Indonesia and East Timor* (Human Rights Watch, USA, September 1994), p 124.

³⁶*Jakarta Post*, 25 January 1996.

³⁷Some locals complained of the location and procedural requirements for filing complaints. *Jakarta Post*, 19 March 1997.

There were a number of factors which influenced the choice of cases, the processes employed and the outcomes which Komnas was able to achieve in addressing human rights problems and complaints during its first year. Firstly, Komnas' operations were affected by the nature of the complaints it received, and the issues it addressed. For example, the complexity and history of long-running land disputes meant that Komnas needed to conduct extensive consultations and detailed fact-finding investigations. The initiative to open an office in East Timor was made because of the specific circumstances surrounding the extent, complexity and profile of the whole East Timor problem.

Secondly, Komnas' operations were affected by the nature of the relationships it developed with government and non-government agencies. For example, it conducted a formal investigation of the Marsinah trial in response not only to complaints from defendants, but also claims by human rights lawyers and NGOs that Komnas' involvement would be a test of its independence and courage - essentially a question of credibility. Komnas was unable on the other hand to assist former parliamentarian Sri Bintang Pamungkas in seeking redress because his offence against the state was one of personal significance to President Suharto.

8

Conclusion

The purpose of this study was to examine the creation and development of Indonesia's National Commission on Human Rights and, in doing so, to draw some conclusions about the politics of human rights in Indonesia, as well as the broader outlook for human rights protection.

Although by no means a perfect organisation, Komnas surprised many sceptics by maintaining both a real and perceived distance from the government, and made a significant contribution to Indonesia's efforts to protect its citizens against human rights abuses as well as to develop a culture and conditions conducive to the promotion and protection of human rights in Indonesia. Komnas quickly gained the respect of the Indonesian public, the international community, and Indonesian authorities, by balancing competing interests and playing politics in an area which was usually considered taboo on the political agenda.

Komnas was born out of a combination of domestic and international pressure. Political and social change in Indonesia during the early 1990s indicated both that conceptions of human rights were changing (or would soon change) and that 'anti-human rights' practices by the government were becoming (or would soon become) less tolerated by Indonesian people. From the early 1990s, political, economic and social change created an environment in which the protection of human rights became a legitimate political consideration for the government. These changes provided the domestic context for the establishment of the human rights commission in 1993. However, the reorientation of foreign policy in response to increasing international demands for human rights protection also led the government to rethink the issue of human rights in domestic policy.

As the glare of international attention began to develop broader political and economic implications for poor human rights practices in the early 1990s, many countries sought legitimisation of an 'alternative view' on human rights to counter criticism. Indonesia made a conscious effort to respond to the changing parameters of human rights issues in international relations and, while still criticised for human rights violations, its involvement in international human rights forums earned praise from many in the international community who viewed the shift as an indication that Indonesia intended to seriously address the issue of human rights. Many observers agreed with Arief Budiman at the time that,

"[Komnas]...was created to defend the government against international pressure."¹

The creation of Komnas HAM was received with varying degrees of enthusiasm, domestically and internationally. There was a level of optimism which had not accompanied previous government initiatives to address human rights, as many observers felt that the move indicated the government planned to seriously address the issue. However, given Indonesia's rigid, authoritarian political system, there were also serious doubts as to whether Komnas could operate independently and effectively.

As a government-funded body established by Presidential decree, and with no legal mechanisms to ensure its independence, many observers were sceptical of Komnas' ability to be effective. It came as a surprise to many then, that Komnas was able to deal effectively with human rights complaints, issue statements critical of the government and the armed forces, and be seen by many as a dedicated advocate for the promotion and protection of human rights in Indonesia. Nonetheless, it was clear that Komnas' activities, role, achievements and failures were defined by the political environment in which it operated.

It was clear that Komnas' success could not have been achieved without the support of the President. Suharto's support provided the 'power' and 'freedom' Komnas needed to encourage cooperation from businesses and local authorities in cases such as Sei Lapan and Rancamaya (where it was able to resolve complicated and long-running disputes), as well as to criticise the military in cases such as the Marsinah investigation. However, remaining 'on-side' with Suharto also caused problems for Komnas. For example, it was unable to assist former parliamentarian Sri Bintang Pamungkas, and a handful of unresolved disputes also suggested to some observers that Komnas avoided cases which involved Suharto-connected business interests, such as the Cimacan and Tanah Lot land disputes.

Success or failure for Komnas was determined by a combination of the nature of the complaints it received and the nature of its relations with government agencies and non-government groups. For example, the political sensitivity of the Tempo and the HKBP disputes prevented Komnas from influencing either case, let alone resolve them. Whereas the relationship with Suharto was an important factor, and sometimes constraint, on Komnas' success, the need for Komnas to remain on-side with the non-government community meant that it was also sensitive to pressure from the media and NGOs to 'perform'. The pressure put on Komnas by LBH to visit East Timorese rebel leader Xanana Gusmao was a prime example of this. In this case, Lopa (in his capacity as head of the prison system) banned visitors from visiting Xanana. The issue drew

¹"Human What?" *Inside Indonesia* (March 1996).

attention to the dual function of Lopa, highlighting potential conflict between the two positions and the question of Lopa's independence.² LBH capitalised on the negative publicity of Lopa's dilemma and successfully negotiated with Komnas to be allowed to visit Xanana at Cipinang Prison.

Two main patterns emerged in the way Komnas operated during its first 12 months and these appeared to have changed in following years. Firstly, the frequency of complaints relating to land and labour disputes has not diminished. However, whilst it was important for Komnas to take on many of these cases in the first 12 months, as a 'public relations exercise' to let everyone know that Komnas existed and because it was genuinely concerned about human rights, it has more recently developed a set of guidelines on land ownership and dispute resolution, and is looking at the possibility of establishing land and labour tribunals to deal with the massive demand for dispute resolution services.³ Komnas' weaknesses in these cases have also persisted. In particular, Komnas was often criticised for focusing on whether correct procedure has been carried out, rather than examining the laws in question and to making recommendations for their reform.

There are recent indications however, that this may change. For instance in November 1997, Lopa criticised the courts for a "...tendency to favour the rich and powerful in land conflicts... [M]ost judges only looked at the legal formalities of a conflict, particularly the possession of land titles."⁴ This was the first time that Komnas criticised the role which the courts played in land and labour disputes and indicated that Komnas also saw a need for legal reform. Furthermore, at the height of the currency crisis in January 1998, and in what was described as a 'remarkably frank' statement, Komnas criticised the government for its lack of commitment to political reform. According to one newspaper report, "[T]he commission said that attempts to reform the economy had to be accompanied by wide-ranging political change which would allow parliamentary and legal institutions to function in a democratic manner."⁵

Secondly, Komnas' role as a monitor and investigator of human rights violations has changed little since the Marsinah investigation. For example, in its investigation of extrajudicial killings by the military in Timika and Liquicia, it conducted independent investigations (consulting with a wide range of government and non-government players) and released its findings to the public.

²Suara Pembaruan, 9 January 1994.

³Jakarta Post, 7 October 1996. Interview with Marzuki Darusman, 15 November 1995.

⁴Jakarta Post, 7 October 1996.

⁵The Australian, 14 January 1998.

Changes have, however, been evident in the substance of Komnas' statements and the strength of its criticism (particularly of the armed forces), as well as its ability to have those responsible dealt with appropriately. In the Timika case, for example, Komnas concluded that "clear and identifiable human rights violations occurred...[including]...indiscriminate killings, torture,...unlawful arrest and arbitrary detention, disappearance...and destruction of property."⁶ Moreover, and in contrast to the Marsinah case, the military officers responsible were dismissed, tried and sentenced for their role in the killings.⁷

The subject of Komnas criticism in both the Liquicia and Timika cases was primarily the military. Moreover, the criticism was aimed at military officers in the farthest reaches of the country - not at any central military figures or activities of the central government. It is interesting to note that, in contrast, the July 27 riots following police raids on the headquarters of the Indonesian Democratic Party (PDI) in 1996, was a very different scenario - and the media, the public, the international community and the government eagerly awaited the Komnas report. Komnas' final report on the riots strongly criticised the government for its role in the incident and Komnas was praised by ousted PDI leader, Megawati Sukarnoputri (among others), for its 'independence and bravery'.⁸ Komnas reported that:

[T]he takeover of the (PDI) secretariat on July 27 was an action that was carried out violently by the executive board of the Medan congress and a group of its supporters, together with the security forces,... This was the result of the creation of open conflict in the PDI, where the government had involved itself excessively and in a biased way out of proportion to its function as a manager of politics and security.⁹

The formation and operation of Komnas HAM highlights several key factors in the politics of human rights in Indonesia. Firstly, the principal policy-makers (and political stakeholders) when it comes to human rights issues in Indonesia are President Suharto and ABRI. The freedom enjoyed, as well as the constraints placed on, Komnas by its relationship with President Suharto was consistent with the dominance of Suharto in the broader political landscape. Few (if any) government policies are formulated without Suharto's approval and few (if any) government activities occur without Suharto's support. Yet, whilst Suharto was all important, keeping ABRI informed and on-side was just as important to Komnas' success in certain cases, such as the opening of an office in East Timor.

⁶Press Release (Jakarta, 22 September 1995).

⁷Four soldiers were tried and sentenced in a Jayapura military court for killing the three villagers. They received between one and three years jail and were dismissed from the armed forces. *Jakarta Post*, 28 February 1996.

⁸Reuters News Service, 19 October 1996.

⁹Reuters News Service, 12 October 1996.

Secondly, the involvement of Deplu in the formation of Komnas indicated how international concerns could affect domestic policy. Despite whatever other motivations contributed to the government's (particularly domestic) acceptance and relative accommodation of Komnas, Deplu's close involvement in the creation of Komnas and its teething period indicated a growing degree of openness to the processes and demands of globalisation. Most interesting was the fact that the Department of Foreign Affairs had influence over domestic policy.

Finally, the influence of the non-government sector on the government's human rights agenda has been raised by Komnas. NGOs are an important source of information for Komnas reports, which receive wide public and international attention. NGOs also place political pressure on Komnas, particularly via the media, to remain independent and to continually test the bounds of acceptable criticism of the government's human rights record.

The government's tolerance of Komnas suggests that, unlike the press or other human rights groups, the domestic and international standing of Komnas gave it more freedom to be 'independent' and 'brave'. For example, if Komnas members resigned on the basis that government pressure had restricted its activities, it would be a serious embarrassment to the government. Similarly, to disband Komnas would be seen as reprehensible by the international community and would also damage the government's standing domestically.

The rumoured appointment of Lopa as Ambassador to Saudi Arabia in late 1997 suggested that Komnas may still have been subject to retribution from the government if it 'went too far'. It was reported that Lopa's appointment was a response to his criticism of the government and ABRI and, in particular, that Suharto was offended by Lopa's comments to a university gathering that Komnas should be dissolved if it couldn't conduct investigations of human rights violations.¹⁰ That the appointment was still not officially confirmed more than four months later - and that Lopa still held the position of Secretary General - suggested either that Lopa was either able to turn down the appointment, or that the rumour was simply a veiled warning to Komnas of its political constraints.

The government's tolerance allows Komnas to benefit from the respect and attention it commands from the public, the media and the international community. Komnas has become an important vehicle through which the government can legitimise itself domestically as more open and caring, particularly amidst growing dissatisfied sections of Indonesian society. Komnas was also a timely boost to Indonesia's international

¹⁰SiaR, 31 October 1997.

human rights image. Whilst the importance of Indonesia's international image was played down at the time of Komnas' formation, Foreign Minister Ali Alatas said three years later that "[Komnas]...had contributed to Indonesia's diplomatic efforts at a crucial time when the country has come under criticism on human rights issues."¹¹

In addition to its 'public relations' role, Komnas has provided very practical assistance to the government to deal with massive problems such as labour disputes. For example, Minister for Manpower, Abdul Latief, remarked in 1996 that: "Thanks to the commission's help, ...[I] can identify labour disputes more quickly."¹² The establishment of a hotline for labour disputes is an example of the practical way in which Komnas can help the government to become more human rights 'friendly'.

Possibly the main factor behind Komnas' acceptance by the government is that it works within the prevailing political environment - not in confrontation with it. As one Komnas member pointed out, "[T]he procedures are so transparent that the government and the armed forces realise that we cannot adopt any other procedures besides what has been done."¹³

In short, Komnas did not spring any surprises and did not make (politically) unrealistic demands (which is a typical trait of most human rights groups) - it did not try to change too much too quickly. Komnas will not, however, be content to wallow within the bounds of 'comfortable politics'. In a January 1998 statement calling for political reform, Vice Chairperson Marzuki Darusman explained that the Commission needed:

...to see how far we can go without putting ourselves in a marginalised position vis-a-vis the Government. At certain times you need to be out there otherwise you risk being left behind and made redundant.¹⁴

¹¹Jakarta Post, 9 December 1996.

¹²Jakarta Post, 9 December 1996.

¹³"Human What?" Inside Indonesia (March 1996).

¹⁴The Australian, 14 January 1998.

Appendix A - Komnas Membership

The 25 members appointed to Komnas HAM in December 1993¹ were :

Hj. Aisyah Aminy, SH

- member, DPR (FPPP); member, 1992 DPR Group on Human Rights.

Dr. Albert Hasibuan, SH

- member, DPR (FKP); Chief Editor of Suara Pembaruan (daily newspaper).²

Ali Said, SH

- Supreme Court Chief Justice (ret); ABRI Lt.Gen. (ret); Vice Chairman, Yayasan Amal Pelayanan Hukum.

Asmara Nababan, SH

- Secretary, INFID (International NGO Forum on Indonesian Development); member, PGI (Persatuan Gereja-Gereja Indonesia or Indonesian Churches Association).³

Prof. Dr. Baharuddin Lopa, SH

- Director General for Correctional Institutions, Department of Justice.⁴

Drs. Bambang W. Soeharto

- private businessman.⁵

Dr. H. A.A. Baramuli, SH

- member, DPR (FKP); former Governor of South Sulawesi.⁶

Clementino Dos Reis Amaral

- former member, DPR; member, National Investigative Committee (KPN) into the Dili incident.⁷

Ig. Djoko Moelyono

¹In December 1996, Komnas elected new members to replace those who had died or resigned. Those appointees included : Saparinah Sadli - psychologist, Maj. Gen. (ret) Koesaparmono Isran, Maj. Gen. (ret) Samsudin - former DPR member (FABRI), Mohammad Salim - former secretary general of Ministry of Justice. *Jakarta Post*, 2 December 1996.

²Also a lawyer and founding member of LBH. *Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986*, compiled by Tempo magazine, Grafiti Pers, Jakarta 1986, pp 296-297.

³*Republika*, 8 December 1993.

⁴Professor of Law at Hasanuddin University and member of Dewan Pakar ICMi Pusat (Indonesian Muslim Intellectuals Association's Central Council of Experts). Also former Attorney General in Aceh, Southeast Sulawesi, West Kalimantan and South Sulawesi. *Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986*, compiled by Tempo magazine, Grafiti Pers, Jakarta 1986, pp 449-450.

⁵Former intelligence agent. *Suara Pembaruan*, 29 December 1993. Interview with Indonesian academic, 5 November 1995.

⁶Interview with Dr. H.A.A. Baramuli, 18 November 1994. Also a long history of business ventures in manufacturing industries. *Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986*, compiled by Tempo magazine, Grafiti Pers, Jakarta 1986, pp 113-114.

⁷*Media Indonesia*, 20 December 1993.

- former Director General, Bimas Katholik (Catholic Social Organisation).⁸

H.R. Djoko Soegianto, SH

- Supreme Court Chief Justice (ret); Administrator, Yayasan Amal Pelayanan Hukum.⁹

Gani Djemat, SH

- lawyer; Chairman, AAI (Asosiasi Advokat Indonesia or Indonesian Advocates Association).¹⁰

Prof. Dr. A. Hamid S. Attamini, SH

- Deputy Secretary of Cabinet.¹¹

K. H. Hasan Basri

- Chairman, Indonesian Ulema Council (since 1985).¹²

Prof. Dr. Charles Himawan

- former Dean, Faculty of Law, University of Indonesia.

B.N. Marbun, SH

- member, DPR (FPDI); member, DPR Komisi I on Information, Defence and Security.¹³

Marzuki Darusman, SH

- former member DPR (FKP); former Chairman, Golkar Working Group on Foreign Affairs.¹⁴

Prof. Miriam Budiardjo

- Professor, Department of Political Science, University of Indonesia (UI).¹⁵

Prof. Dr. Muladi, SH

- Rector, Diponegoro University.

Munawir Sjadzali, M.A.

- former Minister for Religious Affairs.¹⁶

Dr. Nurcholis Madjid

- Muslim intellectual¹⁷

⁸Republika, 8 December 1993.

⁹Interview with H.R. Djoko Soegianto, 25 July 1995.

¹⁰Media Indonesia, 9 December 1993.

¹¹Republika, 8 December 1993. Interview with Gani Djemat, 9 November 1994. Held a Director-General level position in Sekneg. Died in 1994 and was replaced by Saafruddin Bahar, also from Sekneg. Interview with Charles Himawan, 18 October 1994.

¹²Jakarta Post, 8 December 1993. Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986, compiled by Tempo magazine, Grafiti Pers, Jakarta 1986, pp 116-117.

¹³Kompas, 17 January 1994.

¹⁴Chair of the Inter-Parliamentary Union (IPU) Commission on Human Rights 1990-1992. Forum Keadilan, 20 January 1994.

¹⁵Former Dean of the Faculty of Political and Social Science (Fisipol) at UI, lecturer at the Military Law Academy (Sekolah Tinggi Hukum Militer) and resource person for the Central ABRI Council for Social and Political Affairs (Dewan Sosial Politik ABRI Pusat). Riwayat Hidup (CV) Miriam Budiardjo.

¹⁶Republika, 8 December 1993. Also served for 33 years in the Department of Foreign Affairs (1950-1983). Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986, compiled by Tempo magazine, Grafiti Pers, Jakarta 1986, pp 872-874. Munawir became chairman of Komnas following the death of Ali Said in 1996.

¹⁷Lecturer at Syarif Hidayatullah State Institute for Islamic Studies, former chair of HMI (Himpunan Mahasiswa Islam or Islamic Students Association) and founder of Yayasan Paramadina (an organisation catering to middle-class Muslims). Jakarta Post, 26 October 1995. He has been described as the "most

Dra. Roekmini Koesoemo Astoeti

- former member, DPR (FABRI) and Police Brigadier General (ret).

Prof. Dr. Satjipto Rahardjo

- Professor of Law, Diponegoro University.¹⁸

May Jen TNI Soegiri, SH

- former Assistant Attorney General.¹⁹

Prof. Dr. Soetandyo Wignjosebroto, MPA

- Professor of Law, Airlangga University.

Prof. Dr. H.R. Sri Soemantri Martosoewignjo, SH

- Professor of Administrative Law and Rector, 17 Agustus 1945 University.²⁰

important Neo-Modernist thinker" and proponent of Islamic Neo-Modernism which is "in a position to become a major political and intellectual force." Robert Cribb and Colin Brown ; Modern Indonesia: A History since 1945 (Longman Group Ltd, UK 1995), pp 159-160.

¹⁸Republika, 8 December 1993. Also a former public servant. Apa & Siapa: Sejumlah Orang Indonesia, 1985-1986, compiled by Tempo magazine, Grafiti Pers, Jakarta, 1986, pp 694-695.

¹⁹The Jakarta Post, 8 December 1993.

²⁰Republika, 10 December 1993. Republika, 8 December 1993.

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Pelita

Radio Republik Indonesia

Republika

Sinar Pagi

Suara Karya

Suara Merdeka

Suara Pembaruan

Tempo

Terbit

The Jakarta Post

Tiara

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ABC News

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