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## Indonesia's National Human Rights Commission: A Step in the Right Direction?

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# HUMAN RIGHTS

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# BRIEF

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## A Permanent International Criminal Court: Soon to Be a Reality

By Richard J. Wilson\*

On December 17, 1996, the UN General Assembly adopted Resolution 51/207, which calls for a diplomatic conference in Italy in June 1998 to review and open for signature a convention to establish a permanent international criminal court (ICC). In preparation for that meeting, the General Assembly has called for a continuation of the work of the Preparatory Committee (Prepcom), with three week-long conferences scheduled in 1997 and another three weeks of meetings to be held before April 1998 to complete work on the draft. At the second Prepcom, held in New York from August 12-30 of 1996, it became clear that no states are challenging the need for an ICC or the efforts to create one. Thus, all indications are that a permanent ICC will come into being before the millennium, perhaps becoming the last major international institution to be created in this century.

This short article will give an overview of the proposed structure and powers of the ICC, as it is now conceived, and will address some of the major disputes which must be resolved before the ICC can come into being. Unless otherwise indicated, the analysis here draws from

the draft Statute for an International Criminal Court, prepared by a working group of the International Law Commission (ILC), and the Report of the August 1996 Prepcom meeting.

### Crimes Within the ICC's Jurisdiction

Much of the effort in the creation of an international criminal court has focused on the offenses for which it should assume jurisdiction. Historically, it was assumed that the lack of domestic enforcement capabilities for international crimes such as terrorism, narco-trafficking and related crimes required the creation of a specialized tribunal with international reach. In part because of the attention given to the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY/ICTR), the focus of the ICC has shifted discernibly toward crimes which constitute gross violations of human rights and which often arise in armed conflict. Drawing from what are widely accepted international crimes under existing treaty law, the drafters have generally agreed on the inclusion of three groups of offenses: genocide, crimes against humanity and war crimes. There is less agreement about a second group of crimes which include aggression and an array of other crimes such as air piracy or highjacking, apartheid, drug trafficking, hostage taking, torture, or endangering the safety of UN personnel.

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## Indonesia's National Human Rights Commission: A Step in the Right Direction?

By Monika Talwar

When Indonesia's President Suharto issued a decree establishing the National Commission on Human Rights four years ago, many thought it would amount to nothing more than an ineffectual body that would condone the Government's well-documented human rights violations. Four years later, however, attitudes toward the Commission are changing. The Commission has acted with a fair degree of independence in its criticism of human rights abuses. The question

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remains, however, whether it can change the Government's attitude toward human rights. An examination of the Commission's powers and effectiveness in light of recent developments may hint at what lies ahead for the human rights situation in Indonesia.

The Nobel award will ensure temporary, though possibly substantial, international focus and pressure on the Indonesian Government to peacefully address the situation in East Timor.

### The Government

The regime of President Suharto, who has ruled Indonesia for thirty years, has been associated with egregious human rights abuses and a powerful security force that plays a large role in Indonesian politics. Indonesia's vast linguistic, religious, and ethnic diversity has created a society with many underlying tensions which have, at times, posed a threat to societal stability. To promote a degree of stability, the Government requires all Indonesians to pledge their allegiance to a doctrine known as *Pancasila*, defined as belief in one God, a just and civilized humanity, national unity, democracy, and social justice.

Throughout his reign, Suharto has relied heavily on the police and armed forces, known as Angkatan Bersenjata Republik Indonesia (ABRI), to enforce *Pancasila*, maintain internal security, and suppress all security threats. As a result, most demonstrations, rallies, and meetings have been swiftly crushed. Domestic and international human rights groups have criticized the Indonesian Government for human rights violations such as arbitrary arrests, extra-judicial killings, torture, and restrictions on freedoms of speech, press, assembly, and association. The Indonesian Government has refused to accept the criticism and in some cases has defiantly rejected development assistance from nations that have questioned its practices.

### Origin of the Commission

Presidential Decree Number 50 created the National Commission on Human Rights in June 1993. The Com-

mission was widely thought to be a response to the intense international pressure mounted on the Indonesian Government in the wake of the 1991 massacre in East Timor, where security forces shot and killed over 200 demonstrators.

In 1975, Indonesia invaded and annexed East Timor, the eastern half of the island of Timor, which had been a colony of Portugal until that country withdrew in 1975. Indonesia claimed that the invasion was necessary to quell the armed conflict between two political parties, Uniao Democratica Timorese (UDT) and the revolutionary guerrilla independence group, Frente Revolucionaria de Timor Leste Independente (FRETELIN), which threatened to spill into the western half of the island, which was a part of Indonesia. Critics of the invasion of East Timor claim that Indonesia was motivated by a desire to seize control of oil reserves and control passage of nuclear submarines through the Timor Gap, which lies between the island and Australia. Despite the invasion, the guerrilla movement continues to survive in the hills of East Timor and occasionally clashes with the ABRI. The East Timorese population in cities and villages also struggle to gain independence from Indone-



sia. Despite international and domestic criticism of human rights violations in Indonesia, the ABRI continues its often brutal repression of the East Timorese separatists, with the November 1991 massacre of several hundred unarmed protesters standing as the most visible example of this problem.

Although the Commission has never formally investigated the 1991 massacre, the National Commission announced in 1995 that it was establishing an office in East Timor. The Commission has conducted several inquiries into human rights abuses in East Timor and has released unexpected findings in a few cases. For example, in March 1995, the Commission released a report that con-



Photo courtesy of Steve Gill

tradicted reports circulated by the ABRI regarding the deaths of six people in East Timor. The ABRI claimed that the people were suspected guerrilla members of FRETELIN, but the Commission concluded that the six were actually non-combatants, and that they had been intimidated and tortured by the ABRI before they were killed.

In October 1996, the Nobel Peace Prize was awarded to two activists in East Timor: Carlos Filipe Ximenes Belo, East Timor's Roman Catholic bishop who has protected his followers from human rights abuses, and Jose Ramos-Horta, formerly tied to East Timor's guerrilla movement and now an exiled publicist for East Timor's twenty-two year struggle for independence. The Nobel award will ensure temporary, though possibly substantial, international focus and pressure on the Indonesian Government to peacefully address the situation in East Timor.

### Function of the Commission

The Commission's mandate is guided by *Pancasila*, the Indonesian constitution, and the United Nations human rights conventions. Accordingly, the Commission has four primary areas of concern: 1) spreading awareness of human rights both nationally and internationally; 2) considering United Nations human rights instruments in order to make suggestions on accession and ratification; 3) monitoring and investigating human rights practices and providing opinions and suggestions to the Government, and 4) encouraging

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regional and international cooperation in the promotion and protection of human rights. The decree, however, does not empower the Commission to undertake investigations into human rights violations, request technical assistance in investigations, hear or consider complaints, subpoena witnesses or documents, visit jails or prisons, or file information with the courts. On paper, it appears as though the National Commission on Human Rights has little power to effect change in Indonesia.

**Effectiveness of the Commission**

Since the Commission was created by presidential decree, many observers are skeptical of its independence and longevity. One fear is that because the Commission was established by decree and is not grounded in law, it can be dissolved at any time by the President. Furthermore, the Government funds the Commission and there are no mechanisms in place to prevent the Government from restricting or influencing the Commission's activities.

There are no legal safeguards to protect the Commission's integrity and independence. The twenty-one Commission members were selected by Suharto himself and many have ties to prior human rights violations by the Suharto regime. These appointments have called into question the impartiality of Commission members. A serious concern arose in 1996, when the Commission announced that only current Commission members would be nominated for the position of chairman. Students protested the proposed internal nominations, arguing that more independent, public figures should be nominated. The internal nominations became effective in October 1996, with the election of Manawir Sjadzali to the chairmanship. Although the Government did not respond specifically to the student's demands, it has allotted

additional staff members to facilitate the work of the Commission.

Despite its weak legal standing, doubts about its independence, and vague mandate, the Commission has surprised domestic and international observers with a candor and incisiveness befitting an independent human rights commission. Although many abuses continue to occur in East Timor, Aceh, Irian Jaya, and Jakarta, the National Commission's work is a step in the right direction for Indonesia.

The National Commission has worked within its limitations to actively investigate incidents involving human rights violations and issue press releases on people injured, killed, arrested, imprisoned, and unfairly tried. Although



Puru Ulu Danau (Temple) on Lake Bratan in central Bali.

Photo courtesy of Steve Gill

many international human rights organizations believe the Commission's press releases are not enough to effect change, its work has sent ripples through the Indonesian Government. For example, in March 1994, when the Commission investigated the abduction and murder of Marsinah, a young labor activist in East Timor who was killed in May 1993, the State Secretary Moerdiono criticized the Commission for overstepping its mandate by investigating the incident and issuing press reports.

In another case, the leader of the Indonesian Democratic Party (PDI), Megawati Soekarnoputri, was ousted from her leadership position in June 1996 in a move believed to be rigged by the Indonesian Government. One month later, on July 27th, supporters of the newly-elected rival leader of the PDI attempted to take over PDI offices. Security forces assisted in the forcible removal of Megawati's supporters. A riot

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ensued in which buildings were destroyed and hundreds of people were injured or killed. In its final report, released in October 1996, the Commission listed 5 people killed, 23 missing, 149 injured, and 136 detained. The Government immediately challenged its findings while maintaining that it had no intention of manipulating the Commission, even though it is the sole source of funds for the Commission's activities.

Significantly, in February 1996, the Commission recommended the Government revoke the Eliminating Subversive Action law of 1963 because it contradicts present-day international democratic principles. This law allows a person to be sentenced to death for acts that distort, undermine, or deviate from state ideology, or which could arouse unrest among the population. The Government has used this law to justify prosecution for acts of peaceful expression such as distributing books. In addition, any item used by a suspect can be confiscated, which violates the principle of innocent until proven guilty. Unfortunately, the Government only viewed the Commis-

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sion's proposed plan as input rather than a serious proposal for change. While the Commission has been quite active in investigating a number of incidents, the next step in the Commission's promotion of human rights is to get the Government to act on its findings.

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governments will have to rethink the ethical implications of genetic technology and rewrite existing laws accordingly. Regulation requires language, language requires definitions, and definitions change with technological capability. Genetic technology magnifies human rights violations conceptually: it shifts power from few hands to many, raises stakes from an individual to a collective level and affects the health of families for centuries to come. Whether governments employ human rights principles to restrict or widen access to genetic technology, they need a human rights language that accommodates the spacial and temporal dimensions of technological advancement. That is, governments need a language that is as state-of-the-art as the technology itself.

Genetic technology allows human rights organizations to play an active role in preventing human rights violations. Because scientists can often predict the development of techniques years in advance, human rights organizations have time to reassess and upgrade their language, organize them-

Governments need a language that is as state-of-the-art as the technology itself.

selves and promote their agenda before human rights violations occur. Rather than responding to violations, they can use the lag-time to help states formulate policies that prevent violations from occurring. The scientific community's ability to foresee potential misuses of genetic technology may therefore bring

about the 'rebirth' of human rights organizations by transforming them into effective players in the policy-making process. Through science, human rights organizations can learn some preventive medicine of their own.

Scholars often compare geneticists to the Apollo astronauts who bravely explored the unknown frontiers of outer space. Ironically, the genetics race is more dangerous because it is local. Future development and application of genetic technology will ultimately affect how humans value themselves and treat one another. Behind all attempts to decode or alter the human genome is a global search for human identity. By spearheading this search, the scientific community can redefine life as humans know it. By providing a dynamic language, human rights organizations can redefine life as humans want to know it. ☉

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Mr. Stanković lodged a complaint with UN police in Bosnia alleging that *he* was being harassed by the Bosnian government. He apparently had no anxiety about being arrested when he filed his complaint, despite the fact that he had

The fact that crimes of sexual assault heretofore have been largely neglected in international law has meant that prosecutors in The Hague have had scant precedent to draw upon in shaping charges appropriate to crimes of sexual assault.

been indicted by the War Crimes Tribunal in The Hague.

In the wake of these and other reports, the United States, France and Britain have recently endorsed the idea of creating a special unit to apprehend war criminals. Let us hope that the Administration and its Allies intend to talk less and do more.

In a recent column in the *New York Times*, Abe Rosenthal wrote:

"There is no lesson to be learned in the Holocaust except this: Evil beyond evil was done and can be done again, unless the living remember."

Of course, we must never forget. But when genocide occurs in our time, we must do more than remember.

My father taught me that the chief lesson of the Holocaust is that evil does not restrain itself. We must stop it. And we *can* stop it.

I hope that we do not find ourselves pondering half a century from now how it came to pass that we allowed a handful of genocidal bullies to cow *us* into silence. And, make no mistake about it, they are counting on us to be silent. If Jadranka Cigelj and Nusreta Sivač found the courage to stand up to Željko Mežakić, surely we can as well. ☉

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### Conclusion

The National Commission on Human Rights is a small step toward the recognition of international human rights norms in Indonesia. While the Commission itself was not created in the best political atmosphere and is lacking in many respects, its existence provides hope for change in Indonesia. In fact, the Commission's establishment is timely because it provides Indonesia's emerging middle class with reason to expect and demand respect for civil liberties. As Indonesia's economy grows, the middle class will become a greater political force for change and its voice, combined with the National Commission's findings, could eventually cause the Government to respond to its demands. The general elections for parliament which are proposed to be held on May 29, 1997, may be the harbinger of that change and the Commission could be the beginning of a path toward a freer, more vibrant Indonesia. ☉

More information may be found at the Commission's web site: <http://engine2.dnet.net.id/specialsites/kommasham/>