

“Strengthening Human Rights in Indonesia”

Report on the side-event to the 61st Commission on Human Rights
FES Geneva Office – German Forum Human Rights (FMR)

05 April 2005

Public Panel and Expert Meeting, Geneva

On 05 April 2005 the *Friedrich Ebert Stiftung, Geneva Office* together with the *German Forum Human Rights (FMR)* organized a side-event to the 61st session of the UN Commission on Human Rights on the human rights situation in Indonesia. The panel discussion was moderated by *Theodor Rathgeber* from the *Forum Human Rights*.

Enny Soeprapto, member of Indonesia’s *National Human Rights Commission (Komnas HAM)*, informed the audience that the People’s Consultative Assembly, Indonesia’s highest state institution and highest political decision making power, had issued a decree in 1998 on Human Rights including a Human Rights Charter. In order to transform this Human Rights Charter into legal norms, in September 1999 Act No. 39 was promulgated by the Indonesian government. Soeprapto explained that besides transforming a declaratory instrument into legal norms, Act No. 39 renewed the National Human Rights Commission which now became an independent institution on the same level as other state institutions. However, “decisions by Komnas HAM are not legally enforceable”, Soeprapto said. He made clear that Act No. 39 conceded Komnas HAM the following functions: study and research, education and information, monitoring and mediation. Concerning its monitoring function, Komnas HAM is to conduct inquiry and examination of events which may be assumed violations of human rights. If relevant data is found, Komnas HAM brings the matter to the competent authorities to take appropriate legal action against the alleged perpetrators. Soeprapto lamented that Act No. 39 did not contain concrete provisions of enforcement for Komnas HAM. Very much depends upon the goodwill of the authorities, he said. “We do not have mechanisms to sue the government if it does not follow our recommendations.”

In order to deal with “gross violations of human rights”, Act No. 26 on “Human Rights Courts” was promulgated in November 2000. Gross violations of human rights are defined in the Act as crimes of genocide and crimes against humanity. Under this act Komnas HAM is conferred with a mandate as pro justitia inquirer. Since 2000, it has carried out its inquiry function in nine cases of alleged gross violations of human rights, Soeprapto said. Three have been or are being examined by a Human Rights Court. The six other cases, of which the inquiries have been completed, are at present still with the investigator, i.e. the Attorney-General.

According to Soeprapto, Acts No. 26 and No. 39 are both insufficient and need to be amended. More competencies are to be given to Komnas HAM as its work does not go beyond inquiries and recommendations. Soeprapto saw the promulgation of those acts as a step forward, but emphasized that there are, however, still many violations of human rights in Indonesia - particularly torture was wide-spread. Another problem in his eyes is the pending of judgement for past human rights violations: Not even the massacres in the wake of Suharto seizing power in 1965/66 have been prosecuted nor tried so far. Soeprapto recognised that there was “some good

will from the government's side". It has evaluated a national Plan of Action for the years 2004-2009 and just recently Indonesia's president Susilo Bambang Yudhoyono had assured his commitment to human rights and fundamental freedoms. Soeprapto emphasized that the ratification of international conventions on human rights was not enough, "crucial is the implementation on the national level. And we have to strengthen the system of monitoring." Therefore, more branch offices of Komnas HAM besides the already existing ones in Aceh, Papua, on the Moluccas, in West-Kalimantan and West-Sumatra, were needed to collect relevant information about human rights violations. To strengthen Komnas HAM the budget had to be increased. "Because of budgetary limitations we cannot establish as many branch offices as we would like to." He concluded: "Indonesia is a well-known champion in making new laws, but the implementation is always very difficult. Therefore there is the urgent need of translating international law into national law."

Johni Sinaga from the *Ministry of Foreign Affairs in Indonesia* referred to violations of human rights in Indonesia particularly in the years 1965 – 1980. Nowadays, however, he wanted Indonesia to be seen in a more positive light within a changed context and asked: "Is it fair to brand Indonesia as a violator of human rights? There is a clear commitment in the Indonesian constitution to the protection and promotion of human rights." He explained failures of the past with the lack of implementation and monitoring of existing provisions for human rights. "In the concentrated power during the Suharto regime lay the source for human rights violations."

Sinaga emphasized the importance of cooperation between developed and developing countries and expressed himself against the superior behaviour of some developed countries and their harsh criticism on the human rights situation in Indonesia. He claimed support instead of pressure from the developed world. Sinaga referred to the Indonesian government's Plan of Action 2004-2009, which in his view is a comprehensive plan with 6 pillars and 134 items. Since 1998 a number of laws had been enacted, he emphasized. Amongst those are the Presidential Decision of 1998 on Violence against Women, the Government Regulations of 2002 on Procedures for the Protection, Compensation, Restitution and Rehabilitation of Victims and Witnesses of Gross Violations of Human Rights, Act No. 23 of 2002 on the Protection of Children and Act No. 24 on the Elimination of Domestic Violence. In 1998, the government had ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and in 1999 the *International Convention on the Elimination of All Forms of Racial Discrimination*.

Sinaga promised that law No. 39 was to be strengthened. The government is planning to review the Act as reflected in the Human Rights National Plan of Action 2004-2009 with the objective of harmonising national legislation in accordance with international human rights instruments. "The government is open to ideas and suggestions from human rights defenders in this regard", he assured. Sinaga saw the necessity of strengthening Indonesia's human rights institutions and instruments and highlighted the importance of qualitative input on the one hand and effective control from civil society on the other hand: "There is the need to reach a new level of engagement comprising the responsibility of all stakeholders."

Rafi Nair from the *South Asia Human Rights Documentation Centre* began with the positive statement that "there is a new confidence and belief in the democratic future of Indonesia and there is room for constructive engagement." He called the attention to the major developments which have been achieved particularly since last year. Amongst those elements was the elimination of the political role of the army and police. Nair mentioned that the Indonesian army (TNI) had finally withdrawn its representatives from the People's Consultative Assembly. Another positive achievement was the reform of the financial control of the Supreme Court through which the Supreme Court had gained greater independence.

Nair then turned to the points which still needed to be improved such as torture and arbitrary detentions. Furthermore he mentioned the inhumane prison conditions as most Indonesian prisons are totally overcrowded. He appealed: "The government needs to engage more in this

respect!” Another point of criticism referred to the prosecutions of the 1998 and 1999 human rights violations in Jakarta and East-Timor respectively, where in his eyes more progress was urgently needed. One of the processes pending before the Ad Hoc Human Rights Court was the massacre committed in Tanjung Priok in the North of Jakarta in 1984, in which dozens of Muslims were killed.

His last point of criticism referred to the “counterproductive restrictions on the foreign media” as in his eyes more transparency concerning the human rights situation in Indonesia was important.

Rafendi Djamin from the *Indonesian NGO Coalition for International Human Rights Advocacy* referred to Sinaga’s statement that more support and less pressure was needed in Indonesia: “All changes that we have achieved until now have been achieved because of pressure on the national and international level!” He acknowledged Komnas HAM’s work and its pressure on the government to improve the human rights situation. Djamin gave emphasis to the victim’s perspective by saying that the seven years of transition from 1998 until 2005 were a long time for the victims burdening the impacts of human rights violations and waiting for justice. As a positive signal he saw the ratification of the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in 1998. He stressed the need for an independent and strong judiciary system and said that there were many laws for the protection of human rights, but those were often inadequate in application and procedure. Djamin picked up Rafi Nair’s statement of the military’s exclusion from the parliament by saying that the army and ex-generals had nevertheless gained political power through becoming members of political parties.

Djamin lamented that the reform of the police was going very slowly and that the culture of militarism was still very strong. Under Suharto the police was part of the armed forces and it was a difficult undertaking to make it a civil police. He criticised sharply the possibility of steep military careers through the war in Aceh. As an example Djamin mentioned the commander in Aceh who had been responsible for the martial law in May 2003 and who was now the second person in charge of the Indonesian army. Another example he gave was of the commander responsible for the kidnapping of student activists in 1998 in Jakarta who now was commander of the regional district of Aceh. He concluded with the conviction: “Changes can only be achieved through pressure.”

François Leger from the *Mission of France* shared some general observations regarding the human rights situation in Indonesia. In his eyes, a considerable progress achieved was the consolidation of the democratic process in Indonesia. He saw this proved through the peaceful presidential and vice-presidential elections in 2004. National standards concerning the promotion and protection of human rights had improved in the transition period, he acknowledged. Regarding the role of the army, Leger said that the old tradition of second, namely political and economic functions meant a source for abuses. A progress in this regard was that since September 2004 economic activities were no longer in charge of the army. “Civil power has to be the prominent power and the only source of legitimacy in a *Rechtsstaat*, a constitutional state under the rule of law”, he emphasized.

Leger referred to the fight against poverty in Indonesia. He recalled that in 1997 the financial crisis had hit Asia strongly and particularly Indonesia had been badly affected as many small and medium sized enterprises had been destroyed. He highlighted the huge effort Indonesia had made to overcome this crisis and saw economic stability as a condition for further progress in the area of human rights. Leger highlighted the importance of a quick ratification of international conventions regarding the protection of human rights. Indonesia should ratify the *Covenant on Civil and Political Rights* as well as the *Covenant on Economic, Social and Cultural Rights* since they are an essential precondition for a sustainable peace, he said.

Monika Schlicher from the German NGO *Watch Indonesia!* – founded in 1991 for the promotion of Indonesian democracy, human rights and environmental issues – started straight forward with the statement: “The human rights situation in Indonesia has not improved significantly!” As

reasons she named the strong role of the military as well as the lack of political will. She strongly criticised the impunity for passed and present violations of human rights and appealed to continued efforts to end impunity. Concerning the role of the international community Schlicher disapproved of the fact that there has never been issued a resolution nor a chairperson statement on the human rights situation in Indonesia in the Commission on Human Rights. The only achievement Schlicher saw concerning the rule of law was the progress that has been achieved towards an independent judiciary system.

Schlicher explained that a Special Autonomy Law for the Province of Papua is foreseen by the Indonesian government, which meant a step towards further democratisation. For civil society, she said, there was no alternative to autonomy. But implementation was lacking far behind what made Schlicher ask: "Is this Special Autonomy Law a real opportunity for Papua or just an illusion?"

In her view Indonesia needed a peaceful conflict resolution for Aceh, mutual trust and understanding between government, civil society and the military combined with a constructive dialogue. The international community had to play a role in those efforts. True democratization only became evident if Indonesia managed to solve its internal problems peacefully, she said.

After the panellist's statements, questions from the audience addressed particularly the human rights violations in East Timor committed in 1999 and the human rights situation in Aceh.

An NGO representative referred to the atrocities in East Timor when in 1999 the East Timorese people voted for independence from Indonesia. She reminded that the United Nations Transitional Administration in East Timor (UNTAET) ended in May 2005 according to an UN Security Council decision leaving little hope that perpetrators who bear the greatest responsibility will be brought to justice. Two new mechanisms were proposed, she explained: The UN Secretary-General suggested a Commission of Experts to evaluate the judicial processes concerning the human rights crimes of 1999, which is to start its work soon. This Commission of Experts is to analyse the previous achievements of both the Indonesian court system and of the UN court in East Timor and make recommendations on how best to proceed. The governments of Indonesia and East Timor on the other hand prefer a Commission on Truth and Friendship (CTF). The NGO representative explained that the CTF is opposed by victims' families and East Timorese civil society as it perpetuates impunity. The NGO representative asked: "Will the UN Commission of Experts be able to work freely or is resistance concerning its work to be expected from the government's side?"

Rafendi Djamin commented that "East-Timor has to be a good boy with his bigger brother Indonesia particularly because of the economic dependencies", which he saw as an explanation for the fact that also East-Timor backed the CTF and not the independent UN Commission of Experts. Johni Sinaga said that the Indonesian government preferred the Commission on Truth and Friendship to Annan's Commission of Experts as the government is strictly against pressure from outside. He was aware that transparency was needed and had the feeling that "now there is a new spirit to address these problems!"

A number of other questions referred to the situation in the province of Aceh. From May 2003 until May 2004, Aceh was under martial law. After May 2004, martial law was replaced by a state of civil emergency. An informal cease fire following the December 26 tsunami eased tensions temporarily and the Indonesian government and the Free Aceh Movement (GAM) held peace talks in Helsinki, Finland. Johni Sinaga commented that the situation in Aceh had improved and that the local government was functioning. He saw the "natural disaster as a blessing disguise to end the conflict."

An NGO representative criticised that the presence of aid agencies in Aceh was not welcomed by the Indonesian government who forced them to leave the region against the will of the Acehnese population. “Are there any possibilities for the EU to use its influence to convince the Indonesian government that international experts are needed?” François Leger explained that while Aceh was under martial law, independent observers had completely been denied access to the province. The province was still sealed off when the tsunami disaster struck. Although foreign troops and aid workers were eventually allowed access to the province, the state of civil emergency was not revoked leaving the Indonesian military in Aceh room for manoeuvre, which made NGO’s work difficult. However, Leger said, Indonesia was a sovereign state and therefore NGO presence could not be imposed. The EU’s arms were tied in this respect. Leger saw as a progress that the Indonesian government and the rebel movement GAM were meeting for peace talks in Helsinki.

The problem of internally displaced people (IDP) was also addressed by the audience. Enny Soeprapto told the audience that IDP had not been in the centre of interest in the past years and admitted that also Komnas HAM had neglected this problem. Before the tsunami hit it was estimated that there were 600 000 IDP in Indonesia. Now, after the tsunami, the number was estimated to be as high as 1.3 million, which constituted a severe humanitarian problem in Indonesia, Soeprapto said. He saw Indonesia confronted with a refugee-like situation and said that the treatment of IDP should be in full compliance with the *UN Guiding Principles on Internal Displacement* and other corresponding international standards. Johni Sinaga added that the Indonesian government had appointed a coordinating minister for the problem of internally displaced people. “We are open to international assistance”, he assured.

The Expert Meeting

In the afternoon the *Friedrich Ebert Stiftung Geneva Office* and the *Forum Human Rights* organized an expert meeting on the human rights situation in Indonesia. Enny Soeprapto from Indonesia’s National Human Rights Commission Komnas HAM participated in this workshop as well as NGO representatives from the *Friedrich Ebert Stiftung Geneva Office*, the *German Forum Human Rights*, the *United Evangelical Mission*, the *Network West-Papua*, the *World Council of Churches*, *Indonesia’s NGO Coalition for International Human Rights Advocacy* and the *NGO Geneva for Human Rights*.

Enny Soeprapto went more into detail concerning Indonesia’s human right’s Acts No. 39 and 26. He explained that Act No. 39 defined the term “violations of human rights”, but it did not provide procedures for judicial processes of such violations and it did not clarify which court was responsible for such cases. “No penal provisions applicable to such violations exist”, he lamented. As a result, more than five years after the promulgation of Act No. 39 not a single case of alleged violations of human rights had ever been judicially processed. Acts which might fall under the definition of human rights violations were dealt with as ordinary crimes and processed in accordance with the Code of Penal Procedures and the Penal Code applicable to ordinary crimes.

Soeprapto added that Act No. 26 of 2000 dealing with gross violations of human rights did not provide complete rules of procedure and evidence either. The rules of procedure applicable are again those provided for ordinary crimes, which are not at all designed for gross violations of human rights, he emphasized. “Therefore amendments to both laws are urgently needed.”

He noted that in Indonesia, the criminal judicial process consisted of four phases of actions: inquiry, investigation, prosecution and court examination. In cases of ordinary crimes, the inquiry and investigation functions are carried out by the police. The competence of inquiry for gross violations of human rights however is conferred to Komnas HAM as an independent body.

Soeprapto emphasized that the inquiry had to be objective and could therefore only be effected by Komnas HAM as there is not enough trust in the official organs.

Amongst other difficulties in Komnas HAM's daily work is the problem of identifying the commanders responsible for human rights violations as killings can hardly be proved in military operations. If the governments stated that during events like the 1998 or 1999 killings no violations of human rights took place, Komnas HAM does not even have the mandate to inquire those acts, Soeprapto said. Obstacles to prevent that Komnas HAM takes up or proceeds with its investigations are frequent. Other techniques often used by Indonesian authorities are the excuses of formal errors in Komnas HAM's reports without taking into consideration the contents of Komnas HAM's findings.

NGO representatives present at the workshop thought about possible ways to improve the human right's situation in Indonesia. For a follow-up of the meeting they suggested to take the following measures:

The *Institute for International Criminal Investigation (IICI)*, an international organization dedicated to training professionals on the investigation of war crimes and crimes against humanity should be contacted to learn about their training offers.

Furthermore, it was mentioned that the *European Parliament* could be contacted as it facilitates courses for the accomplishment of international law and the strengthening of the Rule of Law. Specialised lawyers were urgently needed in Indonesia, Soeprapto emphasized.

The *International Criminal Tribunal for former Yugoslavia (ICTY)* might be of interest as well as it has over ten years of experience with bringing justice to victims. Apparently the ICTY also offers courses, e.g. on how to investigate professionally.

There is the necessity of further elaborating techniques concerning the handling with testimonies and their protection in Indonesia. To discuss this and other urgent topics, Tom Koenigs, the German Commissioner for Human Rights at the Foreign Office as well as the *German Menschenrechtsinstitut*, founded in 2000, should be contacted by Komnas HAM in order to find out about possible ways of collaboration.

The idea was put on the table that Komnas HAM met with the Special Committees of the UN Treaty Bodies as those were working throughout the year and could give assistance concerning the implementation of human rights laws.

Soeprapto said that Komnas HAM had planned a national activity in Indonesia at the International Day on Torture on the 26 of June to increase the awareness in Indonesian civil society on this issue. This event could be a good opportunity for collaboration with the Friedrich Ebert Stiftung Office in Jakarta.

Finally Soeprapto told the present NGOs that Komnas HAM was struggling for regional mechanisms in Asia and collaborations between the national human rights commission in Malaysia, Thailand, the Philippines and other Asian countries: A common agenda for the discussion of human rights, terrorism, migrant workers, trafficking of human beings as well as development issues in general had already been established, Soeprapto said.

*By Isabelle Maag,
rapporteur for the FES Geneva Office during the 61st session of the CHR 2005.*