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Promoting Human Rights: National Human Rights Commissions in Indonesia and Malaysia

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6 | Comparing KOMNAS HAM and SUHAKAM Conclusions on the Socialisation of Human Rights, Organisational Performance and Effectiveness

6.1 INTRODUCTION

The NHRIs KOMNAS HAM and SUHAKAM both have their origins in the international human rights system. They have comparable tasks, and both have been required to operate in less than ideal circumstances, in countries where resistance towards human rights norms and their implementation is common. Both KOMNAS HAM and SUHAKAM have responded to such resistance by consistently referring to international human rights norms. They have thus contributed to the legitimacy of human rights and lent fundamental support to the development of a domestic human rights movement in repressive conditions. The role both KOMNAS HAM and SUHAKAM have played in supporting human rights domestically is in accordance with international expectations of NHRIs, and underlines the important role such organisations can fulfil even in the most trying circumstances.

The previous chapters have looked at KOMNAS HAM and SUHAKAM separately as organisations, described their trajectories, and considered how each has dealt with the rights of freedom of religion, fair trial and adequate housing. In these chapters, we have seen that the performances of KOMNAS HAM and SUHAKAM, and the extent to which they have been able to contribute to the realisation of human rights, differ from one right to the next; and that these differences are due to organisational factors as well as to the environments in which the organisations operate. These findings, and the ways in which the two NHRIs have socialised human rights, will be discussed in this Chapter, which presents a comparison of KOMNAS HAM and SUHAKAM.

The theoretical framework that has guided this research can be divided into two parts. The first is that of human rights and their realisation. Although the notion of universality of human rights has become dominant at the international level, at national levels human rights are often contested both normatively and in their application. This research has considered human rights as a site of political struggle, where continuous negotiation and contestation take place. We have seen that for both KOMNAS HAM and SUHAKAM, contestation has applied in particular to the right to freedom of religion. Disagreements about the ambit of the right in protecting religious minorities have had far-reaching implications for the investigations of both Commissions. Other human rights, however, are less contested, and some have been promoted comprehensively.

Anthropological studies have found that the successful implementation of human rights depends on their embedment in society. Progression towards this situation, or 'vernacularisation', consists of two processes: appropriation and translation. The former refers to the replication of norms and programmes in other settings, while the latter means adjusting the language and structure of the norms to local circumstances. Successful translation includes using local frameworks (whether cultural or religious) in order to increase acceptance of human rights (Merry 2006). This research has shown that the process of translation is often not as prominent as one would expect, if we look at the promotion of human rights by NHRIs. Both KOMNAS HAM and SUHAKAM have hardly used cultural and religious frameworks to promote rights, and have relied on the language of law instead. Such a choice raises questions about the suitability of alternative frameworks for vernacularising human rights in pluralistic countries in general. When a specific human rights issue touches upon communal relations (and thereby places obligations on the behaviour of certain groups), NHRIs do use 'alternative' discourses, but when the issue is mainly about state obligations, the law is central. How NHRIs promote human rights thus depends on the specific characteristics of an issue and the type of right involved.

The second part of the theoretical framework for this research relates to organisational performance and effectiveness. This consists of a number of internal and external factors which influence the performance and effectiveness of NHRIs, including human and financial resources; the roles of individuals; leadership; a differentiation between prescribed and actual work processes; and the influence of interest groups and other social and political actors. The research has found that for both KOMNAS HAM and SUHAKAM, internal structures, personal factors, and the leadership's ability to create a 'sense of mission' within the organisation have been central to their performance. Most crucial are individual commissioners. Particularly in the case of KOMNAS HAM, the combination of relative autonomy and the personality of leading commissioners has determined organisational success and failure. The difference between KOMNAS HAM and SUHAKAM in this respect lies in the higher degree of autonomy of the former's commissioners in comparison to the latter's. This means that KOMNAS HAM may still address issues, even when these attract little support within the organisation as a whole.

This relatively strong influence of individuals has several implications. First, the professional backgrounds of commissioners are key to their success in particular tasks. Commissioners with backgrounds as NGO activists or academics are well suited for educational activities, where those with connections with the administration or security forces can play an important role in accessing these bodies and encouraging the implementation of NHRIs' recommendations. This highlights the importance of the appointment procedure for commissioners, as a key to the organisation's success.

This finding also points at the importance of the socio-political context. For NHRIs, neither Malaysia nor Indonesia is an easy country in which to operate. SUHAKAM has to work in an environment in which human rights guarantees are still minimal. On paper, KOMNAS HAM can call upon a strong human rights system; but the implementation of these norms leaves much to be desired. In addition, there are many societal and political actors who actively oppose the implementation of human rights, and have attempted to influence the course of KOMNAS HAM's activities, with varying degrees of success. The case of Indonesia underlines that for the realisation of human rights, law is not enough: political support for those rights remains indispensable (cf. Lev 2000: 336).

The findings discussed above will be addressed further in the following section, which compares KOMNAS HAM and SUHAKAM. This next section will discuss the similarities and differences between the two organisations, and the reasons for these. This will provide the basis for a number of recommendations, both for KOMNAS HAM and SUHAKAM and for their national and international stakeholders, as well as suggestions for further research.¹

6.2 COMPARING KOMNAS HAM AND SUHAKAM

6.2.1 Performance

In this research, performance has been defined as a relationship between inputs and outputs, which refers to the process whereby NHRIs turn their tasks into activities. In the following section, the factors that have influenced the performances of KOMNAS HAM and SUHAKAM will be analysed. These factors have affected the performances of these organisations in two ways. First, they have influenced the Commissions' decisions regarding whether to take on a particular issue; and second, they have influenced how an issue, once taken on, is addressed. In turn, these factors have also influenced the extent to which the organisations have promoted the international human rights framework. Finally, this section will pay attention to the differences between KOMNAS HAM and SUHAKAM, and how these disparities can be explained.

The first factor which has influenced the performance of KOMNAS HAM and SUHAKAM is the commissioners' personal views on a right; which are often in accordance with dominant societal perceptions. As an example, the strong support within SUHAKAM for a fair legal process – which reflected widely-held views within Malaysian society – translated into a detailed inquiry by SUHAKAM into the ISA. The more support which a particular issue (or right) generates, the more likely it is for the Commission to address that concern.

1 See Appendices.

Similarly, the minimal attention which both Commissions have accorded to the right to freedom of religion reflects the general lack of support for this right within society. Further, KOMNAS HAM's responses with regard to freedom of religion show that the behaviour of NHRIs can differ between issues even within a particular right. KOMNAS HAM did nothing about the attacks on the Ahmadiyah, because most commissioners considered its adherents to be members of a deviant sect; but the Commission did produce a report on Interreligious Marriage, and also touched upon that matter in its report on the National Civil Registry. These observations indicate that the means by which an issue is addressed are also important: a research-based report is less confrontational than an investigation, such as may have been required to address the Ahmadiyah attacks.

The second factor influencing the performance of KOMNAS HAM and SUHAKAM is the nature of a particular right, in terms of the demands it places on the state. Both Commissions have preferred to address rights which require negative action from the state. This explains SUHAKAM's efforts with regard to the issues of fair trial and freedom of assembly, and KOMNAS HAM's investigations into gross violations of human rights. In contrast, both Commissions have paid less attention to issues that require positive action from the state, such as the right to adequate housing. Rights which depend on the actions of societal groups for their fulfilment, such as the right to freedom of religion, are even more neglected by both KOMNAS HAM and SUHAKAM – related also of course to the first factor of commissioners' personal views.

Both factors discussed above are closely related to a third factor: the level of resistance or controversy which a right evokes. The more contested a right, the less likely that KOMNAS HAM and SUHAKAM will address it. The degree of contestation of a right within the Commission often reflects general attitudes towards the issue, and is particularly evident in the case of freedom of religion. Such reluctance to address controversial issues can be explained by the fear amongst commissioners that engaging in such issues will jeopardise the organisation's survival, either from within or outside. This is particularly so in the case of SUHAKAM, which has defined its role strongly in terms of becoming a contributor to national harmony and avoiding possible controversies.

It is important to differentiate between societal and political controversy, as the latter has had less of a negative impact on the Commissions' performances. For instance, the ISA was strongly supported by the Malaysian government, and thus SUHAKAM's report on the law was politically controversial; yet the Commission opened the inquiry because there was strong societal support. Similarly, KOMNAS HAM has opened investigations in politically sensitive cases, such as the disappearances of human rights activists (1997/1998), and the shooting of students by security forces in May 1998. Even during the Suharto years, KOMNAS HAM consistently demanded attention for human rights violations by the security forces, although the latter were strongly supported by the political elite. Of course, in some instances political contro-

versy may have a negative impact on performance. KOMNAS HAM's inaction with regard to the Ahmadiyah case was due largely to societal resistance, but was no doubt reinforced by the political ties established between commissioners and political parties through the election procedure. In SUHAKAM's case, political considerations have played a role more generally in avoiding cases that have the potential to increase tension or upset racial or religious relations. These examples indicate that it is usually a combination of considerations that determine a Commission's decision not to intervene – political controversy alone is not enough.

Finally, the performances of KOMNAS HAM and SUHAKAM have been influenced by strategic consideration of opportunities. This means that both Commissions have focused on issues for which they were of the opinion that their activities could lead to improvements. KOMNAS HAM's success with its report on the National Civil Registry was due largely to the fact that parliament was debating a related Bill. In choosing to publish a report on the National Civil Registry, KOMNAS HAM connected with existing concerns, thereby increasing its chances of success. Similarly, the ISA had been a long-standing concern for Malaysian civil society, which had exerted pressure on the government for many years. Given this context, SUHAKAM considered that a report on the matter could lead to concessions by the government, which indeed it did.

Similarly, a low perceived likelihood of success may be sufficient reason not to address a particular issue. KOMNAS HAM did not participate in revising the Code of Criminal Procedure, because it knew that these revisions would not be passed by parliament, since they were not a legislative priority. With respect to freedom of religion, both KOMNAS HAM and SUHAKAM have held the opinion that improvements in the area are unlikely, given the controversial nature of the right; and this has contributed to the silence of both Commissions on the issue.

The four factors discussed above do not only affect decisions about whether a right will be addressed, but also how this will be done. As identified above, the research into KOMNAS HAM and SUHAKAM indicates a general rule of thumb: a right is more likely to be addressed when (1) it is supported by commissioners; (2) it requires primarily negative action by government; (3) it is relatively uncontroversial at societal levels; and (4) commissioners perceive that taking action will have a relatively high chance of success. It is when these requirements are met that Commissions are more likely to develop activities that address the core of the particular human rights issue – SUHAKAM's report into the ISA is an excellent example.

The factors identified above also influence the ways in which the Commissions refer to the international human rights framework. Although in general both SUHAKAM and KOMNAS HAM have framed their arguments within a discourse about international and national human rights norms, they have tended to do this more comprehensively when the issue in question is widely supported. For more controversial issues, notably the freedom of religion, the

Commissions have either used alternative frameworks to complement the legal discourse (KOMNAS HAM), or have minimised any reference to the international regime (SUHAKAM). Likewise, with SUHAKAM we have seen that the greater the acceptance of a particular issue within society, the more willing the Commission will be to include a wide range of international human rights norms as part of its assessment. The limited support for the right to adequate housing meant that the Commission, when building its argument, focused much less on the international human rights discourse than it did in the case of the ISA.

The observation that Commissions have chosen to frame their arguments within international and national human rights norms is particularly remarkable in the case of SUHAKAM, as this Commission – in comparison to its Indonesian counterpart – is obliged to engage with a more restricted human rights framework. By referring to international norms that have yet to be ratified by Malaysia, SUHAKAM has used a rights framework that does not legally apply to Malaysia.

The use of legal frameworks contrasts with the argument that alternative frameworks, such as those based on culture or religion, are particularly effective in socialising human rights. While in some cases² both KOMNAS HAM's and SUHAKAM's reports have made reference to religious norms, they have always emphasised legal interpretations of human rights. Both Commissions have thus relied primarily on the language of law. Representatives from both Commissions have argued that using alternative frameworks carries the risk of alienating groups which do not identify with those frameworks, which in turn may promote hostility towards the Commission. As such, they have preferred to use a framework that applies to all citizens, irrespective of ethnicity or religion; and hence national laws are their primary source of reference. Further, both organisations have also wanted to assert their status as a *national* organisation, which means that they do not associate with a particular ethnic group or religion. The use of legal frameworks, which apply to all citizens, has therefore been a logical choice for both Commissions.

While there are many similarities between KOMNAS HAM and SUHAKAM, and many of the identified factors which influence their performance are the same, there are also several differences between the two Commissions. First, personal initiative has influenced KOMNAS HAM's performance far more than that of its Malaysian counterpart. None of the KOMNAS HAM reports discussed in this research would have been published without the personal attention of a particular commissioner. Within SUHAKAM, conversely, the decision to take up an issue is more dependent on the support which a particular human right commands among the commissioners as a team. The advantage of the individual approach within KOMNAS HAM is that a wide range of issues can potentially be addressed; but there are no guarantees of continuity of a pro-

2 This was particularly evident in KOMNAS HAM's report on Interreligious Marriage, see 3.2.2.

gramme when a commissioner stops working on it, or when those members leave the Commission. For example, today KOMNAS HAM's report on Interreligious Marriage is just another book in the library, rather than a starting point for other activities.

The different relative weights of personal initiative and support in the performance of KOMNAS HAM and SUHAKAM can be explained by their respective organisational structures. Although KOMNAS HAM commissioners are required obtain formal approval for their programmes, in practice they initiate programmes regardless, and in some instances they have decided to continue with a programme even without approval. Individual initiative is thus an inherent aspect of how KOMNAS HAM functions, with an additional difference between prescribed and actual work processes.

At SUHAKAM, programmes are decided upon by the Commission as a whole, and it would be almost impossible for a commissioner to conduct any programme simply because he or she desires so. In the case of the Sky Kingdom case, commissioners who were willing to investigate the case further eventually acquiesced to the wish of the majority not to do so. This difference between KOMNAS HAM and SUHAKAM is reinforced by the composition of their membership, as a result of their respective appointment procedures: in SUHAKAM's case all commissioners are elected by the same committee, whereas in KOMNAS HAM's case they are elected by parliament, after a process of political negotiation, which means that KOMNAS HAM's composition is more diverse. Negotiation and compromise are hence an inherent part of KOMNAS HAM's working processes, as shown for instance by the way in which recommendations were formulated in the report on Interreligious Marriage.

The election procedure for KOMNAS HAM also means that the political external influence on the Commission's performance has become more direct and substantial: it has resulted in a degree of politicisation that at times has negatively influenced its proceedings. Examples are the concessions made in the case of the report on Interreligious Marriage, and the Commission's refusal to open an investigation into the Ahmadiyah case. As a consequence of this politicisation, KOMNAS HAM has sometimes closed its eyes to crucial information in investigations into gross human rights violations, for instance in the case of the activists who disappeared in 1997 and 1998. In these instances, it would have been desirable for the Commission's leadership to take a more proactive role in limiting the negative influences of the politicisation. In practice, however, this has been hampered – particularly between 2002 and 2007 – by internal factors, including the leadership's inability to command authority over other members. This can be explained by the contrasting backgrounds of the Chairperson – a former NGO activist – and many other commissioners who were former government officials or members of the security forces. KOMNAS HAM's structure also plays a role, in that the chairperson do not have a higher official status than fellow commissioners, and therefore does not automatically command more authority.

In the case of SUHAKAM, the Chairperson is specifically appointed to his position by the Prime Minister, which immediately gives him some authority. SUHAKAM commissioners, even when they were known to disagree with the Chairperson, would not comment on this in public. They were also very discreet: even former commissioners were unwilling to talk about their experiences in this regard. This is different from the case of KOMNASHAM, where both present and past commissioners were quite open in criticising their (former) colleagues, including the Commission's leadership.

SUHAKAM's strong outcomes in the case of the ISA demonstrate what the Commission can achieve, given a long-term plan and a focus on issues that are widely supported within the organisation. As we have seen, the situation is different in KOMNASHAM, which relies heavily on individual initiative. Both modes of operation have their advantages and disadvantages. SUHAKAM's structural approach has clearly been effective, even though it took quite some time. The disadvantage of this approach is that some issues are not addressed, simply because a majority of the commissioners do not want to address those particular topics. In contrast, KOMNASHAM's commissioners have addressed cases and developed programmes against the wishes of other members; albeit with the risk that such programmes become incidental projects which are forgotten once the commissioners in charge of them leave. NHRIs therefore might wish to combine these two approaches, allowing both individual initiative as well as a long-term plan to focus on issues that are widely supported within the organisation.

When the performances of KOMNASHAM and SUHAKAM are compared, it appears that the latter has taken a much more careful, or selective, approach. SUHAKAM has avoided cases which are controversial because of a racial or religious dimension. Although religious sensitivities are also a concern for KOMNASHAM, it has looked into the controversial topic of interreligious marriage. It did so through research, which attracts less public attention and therefore opposition than investigations. Where gross human rights abuses were suspected, however, KOMNASHAM has consistently opened investigations.

The fact that KOMNASHAM has dealt more comprehensively with human rights issues than its Malaysian counterpart is related directly to the different socio-political environments in which they operate. Since the fall of the New Order in 1998, KOMNASHAM's environment has changed dramatically, and although serious challenges to the implementation of human rights remain, the organisation has much more leeway than SUHAKAM, which operates in more restrictive conditions. The changes that have taken place in Indonesia since 1998, including the development of a vibrant civil society, have also put more pressure on KOMNASHAM to actively address human rights issues.

The different socio-political contexts, including the human rights climate, may also explain why human rights in general are more contested within SUHAKAM. While adequate housing is relatively uncontested within KOMNASHAM, it is a problem for SUHAKAM. This contestation of human rights may also

be a reflection of SUHAKAM's composition. While KOMNAS HAM includes many representatives with an NGO or academic background – whose perceptions of human rights norms tend to be more in line with international interpretations – SUHAKAM is dominated by former government officials.

Another difference in the performances of KOMNAS HAM and SUHAKAM is that the latter has a stronger focus on amending laws and reforming institutions, which correlates with the advocacy approach in human rights promotion as identified by Merry. In the case of SUHAKAM, the strong legal focus is reinforced by the Commission's main constituency – primarily lawyers. This conforms to Merry's third dimension of translation.³ Moreover, SUHAKAM's legal orientation can also be explained by Malaysia's legal culture, which – following British tradition – is more concerned with legal procedure than Indonesia's. While the Malaysian judiciary has its problems,⁴ in comparison to Indonesia, the judiciary is still known for its competence and good performance (Harding 1996: 152; Lev 2000: 331). It is therefore unsurprising that SUHAKAM has focused mainly on legal reforms. By contrast, Indonesia is still struggling with the legacy of 40 years of authoritarian rule, which has seriously undermined Indonesia's legal system, elevating political over legal norms and making legal process peripheral to discretionary authority (Lev 2000: 170, 326). During the New Order, the Indonesian judiciary became a loyal servant to the government, resulting in a steady decline of judicial autonomy (Pompe 2005: 171).

The human rights trajectories of Indonesia and Malaysia have influenced both KOMNAS HAM and SUHAKAM. As argued earlier,⁵ Indonesia has a violent history in which there was little respect for the rule of law. Consequently, KOMNAS HAM has concentrated mainly on legal reform in response to the abuse of law in the past, and has given much attention to gross violations of human rights involving the security forces. Repression in Malaysia has been of a different order, and while the country has experienced human rights challenges, its legal system is stronger than Indonesia's. This explains why SUHAKAM has chosen to focus on defending and strengthening the existing constitutional order, as well as the Commission's concern with classic human rights issues such as fair trial.

The experiences of both SUHAKAM and KOMNAS HAM have shown us that their performance depends strongly on internal factors, or how a particular right is perceived within the organisation. This is in line with the general insight that individuals' views play a particularly important role in how tasks are defined, and thus how work is done when the individual's role is not strongly defined by laws, rules and circumstances (Wilson 1989: 54), leaving

3 See 1.2.2.

4 See 1.1.5.

5 See 1.1.5.

them free to develop their role to their liking. Likewise, this finding emphasises the importance and effects of NHRIs' composition.

This finding adds to the existing literature on NHRIs which, following the Paris Principles, has defined internal factors primarily in terms of composition of membership, with more recent studies calling for an inclusion of day-to-day operations (Murray 2007; Mertus 2009), as well as identifying independence and accountability (Smith 2006) as the crucial factors underlying NHRI performance and subsequent legitimacy and effectiveness. While independence and accountability give information about an NHRI's position and its actions with regard to its constituencies, these factors tell us little about how decisions are made within the organisation, or why a particular rights issue is or is not addressed. Such an analysis will generate more knowledge about the exact degree of NHRI independence and accountability, and lead to a more detailed appraisal of internal factors influencing performance in general.

The findings of this research into KOMNAS HAM and SUHAKAM also demonstrate that the two NHRIs have developed their human rights programmes in distinct ways, in response to Indonesia's and Malaysia's differing legal, political and social histories. This illustrates how NHRIs adapt to the specific circumstances in which they have to operate.

6.2.2 Effectiveness

In this section, attention will be paid to the effectiveness of KOMNAS HAM and SUHAKAM and the factors underlying it. Effectiveness has been defined as the extent to which an organisation is able to make a contribution to the realisation of human rights, whether in the form of legislative protections, holding perpetrators to account, or increasing human rights awareness. Effectiveness is supported, but not guaranteed, by good performance of the NHRI. Effectiveness depends strongly on external factors; as NHRIs are advisory bodies and therefore depend on other organisations for their recommendations to be implemented.

The experiences of KOMNAS HAM and SUHAKAM demonstrate that in order to generate support, both organisations have had to strike a balance between doing their work fully – including addressing controversial human rights issues – and retaining sufficient support to ensure their organisational survival and increase their chances of achieving some of their goals. NHRIs thus find themselves in constant tension between the need to avoid antagonising government organisations, and the need to scrutinise governments sufficiently to obtain societal support. Their position between state and society is therefore both enabling and constraining. As a result, several highly relevant and pressing human rights issues in Indonesia and Malaysia have often not been addressed by their NHRIs; leaving unprotected people in need of support.

This research has also shown that the effectiveness of NHRIs differs considerably from one right to the other. The major determining factor is whether a particular right is controversial -and then socially rather than politically. The effectiveness of an NHRI also depends on whether its efforts connect to existing concerns and willingness for change. KOMNAS HAM's Report on the National Civil Registry was effective because the issue was already part of the legislative agenda. In this situation, a report meets far less resistance than an official investigation, as illustrated by SUHAKAM's report on the ISA; which blended in well with existing pressure exerted by the *Reformasi* movement on the Malaysian government.

In addition, this research has demonstrated that the effectiveness of NHRIs has a temporal dimension. This has been particularly evident in SUHAKAM's review of the ISA. In this case, it took eight years before the recommendations were followed by the desired result. This time frame illustrates, first, that perceptions of what is right and wrong can change over time, and second, how important it is for an NHRI to call continuously for change. During the eight years between the publication of the Review and the announcement of the ISA's repeal, SUHAKAM – together with civil society groups – kept insisting on abolishing the law. During this time, SUHAKAM had three different Chairs and experienced several changes in the composition of its membership. The review of the ISA was thus obviously not a programme belonging to a particular commissioner, but a primary focus of the Commission as a whole.

Both KOMNAS HAM and SUHAKAM have struggled with the implementation of their recommendations, which highlights the point that even when a Commission performs well, this did not necessarily translate into effectiveness. However, there are differences between the two organisations, notably with regard to the socio-political contexts in which they operate. While Malaysia's legal framework of human rights is weak, in general the Commission has not been hindered in its work. The Malaysian government may not, as yet, have responded formally to SUHAKAM's annual reports; but at public inquiries SUHAKAM has not encountered resistance from summoned parties. By contrast, in Indonesia – where on paper the legal framework of human rights is much stronger – KOMNAS HAM is faced with a variety of obstructions. The military has refused repeatedly to answer summons; in which, at least on one occasion, it was supported by the government. Nor has KOMNAS HAM been able to count on the courts to coerce the military into attending the inquiries. KOMNAS HAM has also struggled in its relationship with the Attorney General's Office, which has felt threatened by the Commission's role in conducting preliminary investigations.

In comparison to SUHAKAM's situation, the opposition which KOMNAS HAM faces from government and other state agencies is more diverse and frag-

mented.⁶ The end of the New Order has completely changed the number and nature of groups confronting KOMNAS HAM. Before 1998, the situation was straightforward, in that the Commission could expect opposition from the government and security forces. After 1998, this became less clear-cut. The Commission may now also expect opposition from political parties and other interest groups. Through the enactment of the HRCL, the Attorney General's Office has become an important stakeholder for KOMNAS HAM, with which it is often at loggerheads. Likewise, since the fall of the New Order, human rights NGOs in Indonesia have become much stronger. To some extent, they have even usurped the monopoly KOMNAS HAM had on human rights promotion before 1998, and they have become increasingly critical of the Commission and its work. Since the end of the New Order, liberalisation and decentralisation have divided power in Indonesia among many groups, which all seek to influence the course of human rights reforms. This means that KOMNAS HAM has to consider far more, and more diverse, external organisations than before.

Although political opposition towards the incumbent BN Government is rapidly increasing, Malaysia has not yet seen political change similar to that which Indonesia experienced in 1998. SUHAKAM still operates in circumstances similar to those in its early years. It has to confront fewer and more homogenous external organisations, and in general only has to deal with one opponent: the BN-led government.

As calls for the democratisation of the Malaysian government continue, SUHAKAM may find itself in a situation similar to that of KOMNAS HAM. Most likely this will not be the case, as Malaysia and Indonesia have different starting points for change, in terms of constitutionalism, legal culture and human rights. Authoritarianism has been shaped in different ways in each country, and human rights violations in Indonesia have been far more severe than in Malaysia (Heryanto and Mandal 2003). Moreover, as Lev (2000) has argued, Malaysia's tradition of constitutionalism and its respect for legal process are far stronger than Indonesia's. The Malaysian political elite has also generally been supportive of constitutionalism. While at present human rights guarantees in Indonesian laws dwarf those in Malaysia, their implementation is hampered by many factors, not least an ill-functioning judiciary. This could not be more different in the Malaysian context, where the judiciary – despite many challenges – has remained strong (Harding 2010: 504). This situation has given Malaysia and SUHAKAM a clear advantage when the time has come for a government that is more responsive to human rights issues.

6 See also 2.6.

6.3 PROMOTING HUMAN RIGHTS

National Human Rights Institutions have been promoted by the international human rights regime as organisations which can contribute substantially to the realisation of human rights, by embedding international norms in domestic structures. They have been perceived as bridge-builders between the international community on the one hand, and national governments on the other. In this study we have seen that the manner in which NHRIs promote human rights differs between categories of rights. Within KOMNAS HAM and SUHAKAM, the promotion of international human rights standards is often hampered by the contestation of these norms. This has sometimes led to half-hearted approaches and even inaction or silence on the part of the NHRIs. While one may understand such behaviour, it is also deeply concerning. The performance of NHRIs is thus influenced by factors specific to the organisation and the environment in which it operates, illustrating that the role of 'bridge builder' is not as straightforward as has been hoped by the international community.

The effectiveness of both organisations leaves much to be desired due to their socio-political contexts. The political and social circumstances in which SUHAKAM operates have inevitably placed limitations on what the Commission can achieve. While since 1998 KOMNAS HAM has operated in a (new) democracy, where legislative protection of human rights has rapidly improved, the Commission has not been able to improve its effectiveness accordingly. KOMNAS HAM's performance and effectiveness has suffered from internal problems, most notably politicisation, as well as opposition from powerful political and societal groups to certain human rights reforms. The experiences of SUHAKAM and KOMNAS HAM tell us, perhaps unsurprisingly, that bringing international human rights norms home to the national and local levels is challenged by organisational and environmental constraints.

Although many challenges remain, it should be acknowledged that in general both KOMNAS HAM and SUHAKAM have used an international human rights framework in national conditions, and therefore comply with the basic purpose for NHRIs as envisaged at the international level. Their acceptance of many international rights norms also illustrates that human rights are *adopted* by organisations, and subsequently into societies, rather than imposed (cf. Merry 2006: 225-227). Furthermore, the extent to which both NHRIs have relied on and promoted the international human rights framework shows that this framework carries weight, even in more authoritarian contexts.

Both Commissions have made significant contributions towards realising human rights. KOMNAS HAM and SUHAKAM have played important roles in supporting and furthering domestic human rights movements under repressive circumstances, an achievement that should not be underestimated. However, as time has passed, and particularly after a radical change in the socio-political context (as in Indonesia), increasing demands have been placed on the NHRIs, to which the organisations have had difficulty adjusting. The story of KOMNAS

HAM illustrates that even when mandates are strengthened and human rights are guaranteed in law, this does not necessarily translate into better performance, let alone effectiveness of the organisation. Rather, the performance and effectiveness of NHRIs depend on the interplay of both internal and external factors, which are unique to every organisation.

Although the responses of governments and other state agencies towards KOMNAS HAM and SUHAKAM have often been unsupportive and obstructive, both Commissions have made an important contribution in that they have consistently demanded attention for human rights, and in so doing, have supported the claims of human rights NGOs. By addressing human rights issues and calling for violators of human rights to be held accountable, the Commissions have legitimised the very notion of human rights. This is an important achievement in countries with a history of disdain for human rights as a 'western' concept, and where still the legal protection of human rights is limited (Malaysia) or where their implementation leaves much to be desired (Indonesia). The experiences of KOMNAS HAM and SUHAKAM underline the potential and relevance of NHRIs in authoritarian states, and in new democracies where legal protections are relatively new and where there are many challenges with regard to their implementation.

This research has shown that KOMNAS HAM and SUHAKAM have engaged in various activities to promote human rights in their respective countries. In some cases, they have had success, although these achievements may seem small in comparison to the human rights challenges people in Indonesia and Malaysia actually face. Yet, their contributions have been significant. The most important achievement of both KOMNAS HAM and SUHAKAM is that, despite adversity, both Commissions have been able to create a space both for themselves and for broader human rights movements in their respective countries. Their presence and their actions will at the very least continue to remind the state of its human rights obligations, and may very well continue to lead to better protection of human rights. The invaluable support which KOMNAS HAM and SUHAKAM have given to their domestic human rights movements shows that there is a crucial role for NHRIs to play in making human rights an integral part of both the state and society, so that they are impossible for even the strongest opponents of human rights to deny.