

Law reform and human rights in Indonesia-Myanmar

National Human Rights Commissions have the potential to make a significant contribution to the process of acknowledging and addressing past abuses of human rights. The experience of Indonesia has important lessons for countries such as Myanmar/Burma.

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Indonesia's Human Rights Commission: acknowledging the 1965 killings

In July 2012, the Indonesian National Human Rights Commission ('Komnas HAM') made its most significant findings to date. It issued a report that was the result of a three-year investigation into the alleged attempted Communist coup of 30 September 1965 and subsequent mass killings.¹ It concluded that military officials were involved in the widespread detention and extra-judicial killings of members, or suspected members, of the Indonesian Communist Party in the 1960s-70s. This is the first time that these killings, with an estimated 200,000 to 3 million victims,² have been formally acknowledged as a gross violation of human rights by an institution recognised by the state.

Komnas HAM's report effectively rewrites Indonesian history, forcing the current government to confront one of the most horrific events of the country's past. The report demands the establishment of a truth and reconciliation commission, and urges the government to issue an official apology to all victims and their families and to provide appropriate compensation. Such a report and the claims it makes would have been unthinkable prior to 1998, when Indonesia transitioned from authoritarianism to democracy. The findings directly implicate the regime of the late former president, Suharto. In the 1960s, Suharto was head of the Command for the Restoration of Security and Order, and then in 1967 he became President. He was never prosecuted for any crime during his lifetime.

Indonesia is one example of a country that established a National Human Rights Commission while still under a military regime. Komnas HAM was established in 1993 in the final years of Suharto's New Order. At the time, there were real concerns that the establishment of this institution was an attempt to legitimise the Suharto government. Despite its initial critics, after the downfall of Suharto and the transition to democracy in 1998, the mandate and authority of Komnas HAM was strengthened. Its powers and independence were established by Law 39/1999 on Human Rights (art 75-99). The reaffirmation of the responsibility and importance of Komnas HAM was crucial to the future credibility of its investigations.

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Below: Mosque in Myanmar, photo taken by author.

There are interesting parallels between Indonesia, often upheld as a model country that has made the transition to democracy, and Myanmar, which claims to be in the process of reform. Part of any state transition to democracy inevitably involves the adoption or transplant of global ideas and legal institutions. One example is the proliferation of National Human Rights Commissions, which ideally should comply with international standards (known as the Paris Principles).

Despite early questions about the motives for its establishment, Komnas HAM has made a significant contribution to the protection and promotion of human rights in Indonesia. It has played a key role in conducting investigations and reporting on incidents post-1998. For example, in 2005 it issued a major report to the government on the violence against the Ahmadiyah community, a minority group that has experienced increasing levels of violence from vigilante groups.

In addition to recent violations, Komnas HAM has also conducted investigations into past events, such as the Petrus 'mysterious killings' of 1982-1985. The recent report on the 1965 killings is perhaps the most important in terms of Komnas HAM's investigations into, and recommendations concerning, past abuses and violations that implicated the former Suharto regime.

Myanmar in transition

If we turn to Myanmar, it is clear that the Myanmar National Human Rights Commission has just begun to embark on the journey of investigating violations of human rights. The Myanmar Commission was established in September 2011, which makes it the fifth such Commission established in an ASEAN country.

The Myanmar Commission consists of 15 members and has been given the broad mandate to conduct inquiries and make recommendations on compliance with international human rights. It has already attracted many of the criticisms that Komnas HAM did in its early years. For example, questions have been raised about the independence of its members and their previous connections to the military regime.

There are also concerns that the Myanmar Commission does not comply with the Paris Principles because, for example, it has not been officially established by legislation. There are, however, efforts underway to introduce such a law. This was prompted by the refusal of the Pyidaungsu Hluttaw (national parliament) in March 2012 to give its consent to the government's budget proposal for the Commission.³ Despite these concerns, the Myanmar Commission has already conducted investigations and issued statements on incidents that have occurred since it was established. For example, in late 2011 it issued a statement condemning the violence in Kachin state and then in August 2012 it conducted a follow-up investigation into the conflict and communities who have been displaced.⁴ In November 2011, it sent an open letter to the president to release all political prisoners.

Its responses to recent incidents have been perceived by many as inadequate and it has been criticised for its failure to investigate the Buddhist-Muslim violence in Rakhine state. The chairperson claimed that it would not investigate because the government has established its own special committee to investigate the violence.⁵

Further, the Myanmar Commission has not yet made attempts to address past human rights abuses. Whether past incidents will be investigated and, if so, how, remains critical to the quality and depth of Myanmar's democratic transition. There are a wide range of past incidents that could be investigated, such as the brutal violence against students in the 8-8-1988 democratic uprising, and the 2007 crackdown against the monks who conducted protests in support of democracy, in what was dubbed the 'Saffron Revolution'.

Long-term potential

Efforts must persist to ensure that violations of human rights do not continue. The Myanmar Commission, however, must also be considered for its long-term potential. If efforts were made to bring it in line with the Paris Principles, it has the potential to become an independent and credible institution that could be an important mechanism for receiving complaints and investigating violations.

This potential is evident when we look to the Indonesian experience. The 14 years since Indonesia made its transition to democracy has been nothing short of remarkable. It has included a complete makeover of the Constitution and the holding of fair elections. It has seen the affirmation of an independent judiciary and a free press. The strengthening of the role and credibility of Komnas HAM has been a crucial part of this process. It has not only demonstrated its willingness to investigate and address highly sensitive political issues, such as the position of Ahmadiyah, but also to deal with past abuses of human rights connected to the former Suharto regime, such as the 1965 killings.

Of course, we now await the response of the Indonesian Attorney General's Office to the recommendations of Komnas HAM on the 1965 killings. Regardless of the outcome, it does not diminish the importance of the fact that a gross violation of human rights, denied for over 47 years, has now been recognised publicly.

Pressure on Myanmar to address current human rights abuses must continue. If the experience of the Indonesian Komnas HAM is any guidance, there is also hope that past violations of rights can be investigated in the long term. Ten or fifteen years from now, we might see significant recommendations from the Myanmar Commission on past violations, as we have just seen from Komnas HAM in the context of Indonesia.

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Notes

- 1 M. S. Aritonang, 'Komnas HAM declares 1965 purge a gross human rights violation', *The Jakarta Post*, 23 July 2012.
- 2 'The killings now can be told of', *The Jakarta Post*, 25 July 2012.
- 3 Soe Than Lynn, 'Hluttaw refuses human rights body budget', *The Myanmar Times*, 26 March-1 April 2012, www.mmtimes.com.
- 4 H. Hindstrom, 'Human rights commission recognises Kachin abuses', *Democratic Voice of Burma*, 7 August 2012, www.dvb.no/news.
- 5 A. Gayathri, 'Myanmar Commission to probe clashes between Buddhists and Rohingyas', *International Business Times*, 19 August 2012, www.ibtimes.com.

