

**INFORMATION ON ACTIVITIES OF
KOMNAS HAM
CARRIED OUT DURING THE PERIOD OF
SEPTEMBER 2006 – AUGUST 2007***

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INFORMATION ON ACTIVITIES OF KOMNAS HAM CARRIED OUT DURING THE PERIOD OF SEPTEMBER 2006 – AUGUST 2007

(SUBMITTED TO THE TWELFTH ANNUAL MEETING OF THE
ASIA-PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS,
SYDNEY, AUSTRALIA, 24-27 SEPTEMBER 2007
UNDER AGENDA ITEM “REPORTS FROM APF MEMBERS”)

I. INTRODUCTION

1. Komisi Nasional Hak Asasi Manusia (Human Rights National Commission), known by its acronym “*Komnas HAM*”, is mandated by the following two acts to carry out the following activities:

(a) Under Act No. 39 of 1999 on Human Rights, *Komnas HAM* is mandated to perform the functions of research and study, education, monitoring and mediation on human rights;

(b) Under Act No. 26 of 2000 on Human Rights Court, *Komnas HAM* is mandated to perform the functions of a *pro justitia* inquiry institution for violations of human rights falling under the category of gross violations of human rights, namely crime of genocide and crimes against humanity.

2. (a) The activities of *Komnas HAM* are carried out by its three subcommissions, namely Subcommission of Economic, Social and Cultural Rights, Subcommission of Civil and Political Rights and Subcommission of Protection of Special Groups;

(b) *Komnas HAM* has, currently, twenty Commissioners who are respectively, responsible for groups of themes of human rights or groups of persons whose human rights protection requires special attention due to their vulnerability;

(c) To discharge the functions of *pro justitia* inquiry institution for gross violations of human rights, *Komnas HAM* established an *ad hoc* inquiry team for every case of alleged gross violation of human rights.

3. In addition to the activities under Act No. 39 of 1999 on Human Rights and Act No. 26 of 2000 on Human Rights Court, this report will also refer, briefly, to the activities of *Komnas HAM*, together with the other existing human rights national institutions in Southeast Asia, for the promotion of cooperation among them to address human rights issues of common concern. A more detailed report on this subject is submitted under agenda item “Regional Cooperation between National Human Rights Institutions”.

II. ACTIVITIES UNDER ACT NO. 39 OF 199 ON HUMAN RIGHTS

A. RESEARCH AND STUDY

4. In the fields of economic, social and cultural rights, the following are some of the research and study activities conducted during the reporting period:

(a) Study on the fulfilment of the rights to good environment in connection with the mudflow disaster which took place, and is still taking place in Porong, Sidoarjo, East Java, caused by the gas drilling conducted by P.T. Lapindo Brantas. This study drew a conclusion that rights to good environment, to health, to property, to employment, of workers and to welfare have been violated;

(b) Study on Act No. 23 of 1992 on Health with a view to determining whether the act has ensured the right of everybody to enjoy the highest standard of health. The study concluded that was not the case considering that it does not adequately ensure everyone to the availability, accessibility, acceptability of health services. Consequently, *Komnas HAM* recommended, *inter alia*, that the Government allocate five percent of the national and regional budgets for health services.

5. As to the civil and political rights, studies have been conducted, *inter alia*, on the following topics:

(a) Draft penal code which is intended to replace the existing one, enacted by the Dutch colonial power in 1918, to ensure that punishable human rights violations, including those called for by the human rights international instruments to which Indonesia is a party, are addressed by the draft penal code;

(b) The Optional Protocol to the Convention against Torture and Other Treatment and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 with a view to recommending the Government and/or the Parliament to process Indonesia's accession thereto;

6. With a view to submitting appropriate recommendations to the competent policy-makers to better ensure the protection of human rights and fundamental freedoms of internally displaced persons (IDPs), a study on Government's policy on the subject has been conducted. This study has been completed in July 2007. The causes of internal displacement in Indonesia are either vertical conflicts or horizontal conflicts or natural disasters (tsunami, volcano eruption and earthquakes). At present IDPs in Indonesia number between 150,000 to 250,000.

B. EDUCATION

7. The reporting period has been marked by a significant number of activities in the fields of human rights education, dissemination of information relating to human rights and increasing human rights awareness to various segments of the society. They were, among others, as follows:

(a) Publication of monthly and quarterly magazines, special publications on various themes of human rights as well a manual for basic human rights training;

(b) Further development of *Komnas HAM's* library towards the attainment of the goal to make it as a centre of excellence on human rights documentation and information. At present, the library has a collection of over 4,900 titles, some 400 periodicals and articles as well some 900 articles on-line. The library continues to develop the collection of periodicals consisting eleven academic journals accessible on-line. The library has currently a collection of some eighty titles of audio-visual materials on human rights

(c) Development of *Komnas HAM's* website in order to provide information; on human rights issues to the public by internet;

(d) Commemoration of International Human Rights Day (10 December) through a series of activities, such as moot court competition on gross violations of human rights, photograph exhibit, discussion with school children, launching of cartoon on human rights which children of school age as targets and show of films on human rights.

8. During the reporting period the following trainings on human rights issues have been organized:

(a) Trainings on *pro justitia* inquiry (for gross violations of human rights);

(b) Training on migrant workers;

(c) Basic training on right to health for local government officials.

9. Seminars, workshops, focused group discussions, roundtable discussions and other similar forms of discussions on various human rights themes have been organized during the reporting period. They consist, *inter alia*, of the following:

(a) (i) Free and good quality education through the implementation of allocation of 20 per cent the national budget for education;

(ii) Sights of non-permanent workers employed in large-scale project;

(iii) Rights to health;

- (iv) ILO Conventions to which Indonesia is a party (totalling fifteen);
 - (v) Implementation of Indonesia's accession to the International Covenant on Economic, Social and Cultural Rights, 1966;
- (b)
- (i) Freedom of religion and freedom to exercise religion or belief;
 - (ii) Fulfilment and protection of the rights of the elderly;
 - (iii) Implementation of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 as an obligation under both national and international laws;
 - (iv) Advisability of Indonesia's accession to the Optional Protocol to the Convention against Torture (OPCAT), 2002;
 - (v) Implication of Indonesia's accession to the International Covenant on Civil and Political Rights (ICCPR), 1996.

C. MONITORING

10. (a) During 2006 *Komnas HAM* received 1,351 individual complaints consisting of 345 complaints relating to alleged violations of economic, social and cultural rights (ESCR), 825 relating to alleged violations of civil and political rights (CPR) and 181 relating to alleged violations of the rights of vulnerable groups;

(b) During the first seven month of 2007 (1 January-31 2007) *Komnas HAM* received 2,041 individual complaints.

11. In addition to the handling of individual complaints referred to in para 10 above, which required, as appropriate, onsite visits, *Komnas HAM* conducted monitoring activities on cases mentioned below which gained national attention, with a view to determining possible human rights violation for appropriate recommendations to the parties or competent authorities concerned:

- (a)
 - (i) Violence resulting from land ownership disputes between farmers and plantation companies;
 - (ii) Fulfilment of the rights to education of children in areas affected by earthquake.
- (b)
 - (i) Violent acts directed against followers of Ahmadiyah religious groups which occurred a number of places in the country by segments of the society who the disapproved the claim of the followers of Ahmadiyah that Ahmadiyah is an Islamic religion;

(ii) Conditions of detainees relating, particularly, to those whose period of detention was extended beyond the maximum period stipulated by the Code of Penal Procedure;

(iii) Human rights aspects of the legal process of three persons convicted for having committed murder during the inter-communal conflict in Poso, Central Sulawesi with a view to reconsidering the case to enable the Court to question the sixteen other persons (Fabianus Tibo, Marinus Rewu and Dominggus da Silva) to have been involved in the alleged crime;

(iv) Human rights aspect of security apparatus operation for arrest of twenty nine persons suspected for having committed serious crimes such as use of firearms, bombing, mutilation and robbery during the inter-communal conflicts in Poso, Central Sulawesi;

(v) Human rights aspect of an incident between a group of farmers and the military which resulted in a number of persons dead and injured on the farmers which occurred in Alas Tlogo village, Pasuruan, East Java. This incident was caused by the claim of the military that the land used by the farmers to grow vegetables and other agricultural plantation is a combat training area and that, consequently, agricultural activities in the area are strictly forbidden. On the other hand the farmers claimed that they have been engaged in agricultural activities in the land concerned for a long period of time that the destruction of their agricultural plantation was most inopportune as it was close the harvest time

D. MEDIATION

12. With a view to seeking acceptable non-judicial solutions of human rights cases of civil nature, during the reporting period, *Komnas HAM* carried out its mediation role, *inter alia*, in the following cases:

(a) Conflict between the local Government of Manggarai, East Nusa Tenggara, in connection with the destruction of plantation grown the local farmers in a state-owned forest, which resulted in a number of farmers lost their life and injured. The solutions agreed upon by both parties were as follows:

- (i) The farmers were allowed to grow their plantation in the area concerned pending further solution;
- (ii) As to the need to conserve the critical areas and forest aimed at forest restructuring through, *inter alia*, development of communal forest, would need further consultations;

(b) Non-judicial solution has been also sought by *Komnas HAM* in connection with conflict between a plantation company and local population in the Batanghari Regency, Jambi Province. The local population claimed that the plantation company exploited part of the community-owned land. Solution was reached whereas the plantation company concerned was prepared to make available some 1.000 hectares of land for the complainants.

III. ACTIVITIES UNDER ACT NO. 26 OF 2000 ON HUMAN RIGHTS COURT

13. During the reporting period, in the discharge of its function as the sole institution mandated to conduct *pro justitia* inquiry for gross violations of human rights, *i.e.*, genocide and crimes against humanity. *Komnas HAM* has either completed or started its *pro justitia* inquiry of the following cases:

(a) The case of enforced disappearance of persons occurring during the period of 1997-1998 the inquiry of which was completed in October 2006 and the dossier concerned has been subsequently submitted to the Attorney-General, as the investigation institution, for investigation;

(b) The case of Talangsari 1989 (Talangsari is a village located in Lampung Province) which relates to the assault by the military or recover one of their officers killed in and by the religious group who resisted by using sharp weapons such as arrows and spears from their compound. The incident has resulted in a significant number of persons in the compound concerned dead and injured. The *pro justitia* inquiry has started in June 2007 and is currently still on-going.

14. *Komnas HAM* notes with dismay that other cases of gross violations of human rights on which *Komnas HAM* had completed its *pro justitia* inquiry long time ago, namely the cases of “Trisakti 1998, Semanggi 1998, and Semanggi 1999”, “May Riot of 1996” as well as “Wasior 2001-2002 and Wamena 2003”, have not been followed up by the Attorney-General with investigation.

IV. AMENDMENT OF ACT NO. 39 OF 1999 ON HUMAN RIGHTS AND ACT NO. 26 OF 2000 ON HUMAN RIGHTS COURT

15. In 2004, *Komnas HAM* has decided to initiate amendment of the above acts for appropriate recommendations to the Government and/or Parliament. The status of this initiative is, at present, as follows:

(a) Due to other priorities to be addressed and limited competent human resources, it is only recently that the exercise for the amendment of Act No. 39 of 1999 on Human Rights by the drafting of an “academic paper”, in the light of which the draft amendment bill itself could be drafted. The drafting of this academic paper is not expected to be able to be completed before the expiry of the terms of office of the current

Commissioners (30 August 2007). Consequently, it would be up to the new Commissioners to either continue the initiative or otherwise;

(b) The exercise to initiate the amendment of Act No. 26 of 2000 on Human Rights Court has reached an advance stage. The required academic paper for this purpose has been discussed in a series of roundtable discussions in various place of the country involving academicians, prosecutors, judges, NGOs and the media with a view to soliciting inputs from the participants. In the light of these roundtable discussions a revised academic paper is under preparation and, subsequently, the draft amendment bill would be prepared. Both documents are expected to be completed by the end of the 2006. However, since the tenure of office of the current Commissioners will expire on 30 August 2007, it would be up to the new Commissioners to either continue the initiative or otherwise.

V. COOPERATION AMONG NHRIs IN THE SUBREGION

16. In an informal meeting held in Jakarta in June 2004, the delegations of the Human Rights National Commission of Indonesia, the Human Rights Commission of Malaysia, the Commission on Human Rights of the Philippines and the National Human Rights Commission of Thailand, agreed that, in paralleled with the continued endeavours of the Governments of ASEAN to established an ASEAN Human Rights Mechanism, the four NHRIs should promote their own cooperation in the dealing of human rights issues of common concern, within their respective mandate and competence.

17. The Jakarta meeting of June 2004 was followed up by the first official meeting of the four NHRIs held in Bangkok, Thailand, in October 2004 during which five human rights issues of common concern were identified, namely terrorism and human rights, human trafficking, migrant workers, human rights education and economic, social and cultural rights with emphasis on the right to development. The Bangkok meeting also agreed that each NHRI had to prepare a working paper on the subject or subjects assigned to it for further submission to and consideration by the next meeting of the four NHRIs. The second meeting was held in Kuala Lumpur, Malaysia, in March 2006, during which five working papers were submitted and discussed, namely working papers on terrorism and human rights prepared by the Human Rights National Commission of Indonesia, human trafficking by the Commission on Human Rights of the Philippines, migrant workers by the Human Rights Commission of Malaysia, human rights education by the Commission on Human Rights of the Philippines and the National Human Rights Commission of Thailand and economic, social and cultural rights with emphasis on the right to development by the National Human Rights Commission of Thailand. The Kuala Lumpur meeting agreed to further discuss in the next meeting the areas, forms and modalities of various recommendations contained in the working papers for the promotion of cooperation among the four NHRIs.

18. The third meeting of the four NHRIs was held in Bali, Indonesia, in June 2007 which agreed and/or adopted the following:

(a) Lists of areas, forms, time-frame and modalities of cooperation on every of the five human rights themes of common concern identified in the first and second meetings;

(b) Submission of a position paper reflecting the common position of the four NHRIs on human rights provisions that should be included in the ASEAN Charter for submission to the High Level Task Force for the Drafting of the ASEAN Charter which happened to meet in Bali, Indonesia at the same time as the third meeting of the four NHRIs;

(c) A document signed by the four NHRIs entitled “Declaration of Cooperation” which constitutes a basic instrument for future cooperation among NHRIs in the subregion.

19. A more detailed information paper on the cooperation among the four NHRIs in the subregion of Southeast Asia will be separately submitted under agenda item “Regional Cooperation between National Human Rights Institutions”.

VI. MEMBERSHIP OF KOMNAS HAM

20. After five years of services since 31 August 2002, the current Commissioners tenure of office will expire on 30 August 2007. The membership of *Komnas HAM* for the period on 31 August 2007 through 30 August 2012 will consist of new persons. No one of the current Commissioners would serve again for the new period. Act No. 39 of 1999 on Human Rights, which also set forth provisions relating to *Komnas HAM*, does stipulates that Commissioners could serve for two consecutive periods. In line with this stipulation, the independent selection committee did recommend three current Commissioners for re-election. However, the Parliaments decided not to elect any of these three current Commissioners to serve for the period 2007-2012

VII. CONCLUSION

21. The activities and information mentioned in the preceding paragraphs refer, naturally, to some of the activities of *Komnas HAM* carried out during the reporting period under both Act No. 39 of 1999 on Human Rights and Act No. 26 of 2000 on Human Rights Court. It is hoped that the above information would be able to give some ideas to the members of the APF on the magnitude of human rights issues that have to be addressed by *Komnas HAM* and the problems that in encountered in the discharge of its mandate.