

**THE POWER (LESS) OF RATIFICATION:
HOLDING THE STATE RESPONSIBLE FOR HUMAN
RIGHTS RESPECT IN INDONESIA**

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Abstract

Researchers have found that increasing rates of ratification of international human rights treaties do not necessarily imply actual improvement of human rights practice. This discrepancy raises questions about the state's intention to ratify treaties and the impact of ratification on the development of human rights commitments. While most scholars agree on the state's instrumental objective in ratifying treaties, they are still far from being able to make conclusions on the impact of ratification.

This thesis moves forward to explain the reasons why ratification does not always translate into implementation, and to specify the conditions under which the state is likely to implement the treaty it has ratified. Such an explanation is absent from qualitative case studies that do not go beyond the observation that ratification has equipped human rights activists with a legal foundation. Some empirical quantitative studies provide a better explanation on the factors that likely contribute to treaty implementation, but the lack of data has impeded such studies from offering a detailed mechanism of treaty implementation. Meanwhile, the literature on state compliance to international treaties in fact only offers a partial explanation. They largely share the same opinion on the pivotal role of international factors—such as powerful democratic countries, international norms, the UN, and transnational activists—in the process of treaty implementation.

This thesis compares the implementations of three human rights treaties in Indonesia. Adopting a power perspective, it finds that the idea of human rights is

a contested concept, which is resisted and simultaneously pushed by those interested in the application of these norms. In fact, a human rights treaty would be adequately implemented only if it goes in the same direction with the interest of a strong state or a state with high capacity to rule. This type of state would not likely implement unsupportive treaties irrespective of strong pressures from networks of domestic and international activists and social groups. Moreover, the presence of a dense network of activists and influential social groups would only likely succeed in making a partial implementation if the state is weak and has no adequate capacity to rule.

Résumé

Des chercheurs ont trouvé qu'un taux augmentant de ratification des traités de droits de l'homme internationales n'implique pas nécessairement une amélioration de la pratique des droits de l'homme. Cette divergence relève des questions à propos de l'intention de l'état de ratifié des traités et l'impact de ratification sur le développement aux droits de l'homme. Alors que la plupart des chercheurs sont d'accord sur objectif instrumental dans la ratification des traités, ils sont encore loin de pouvoir conclure sur l'impact de la ratification.

Cette thèse se propose d'expliquer les raisons pour lesquelles la ratification ne se traduit pas toujours en implémentation, et de préciser les conditions sous lesquelles l'état inclinerait à implémenter le traité ratifié. Une telle explication est absente des études de cas qualitatives qui ne font qu'observer que la ratification a équipé les activistes des droits de l'homme d'une fondation légale. Quelques études empiriques quantitatives proposent une meilleure explication sur les facteurs qui contribuent probablement à l'implémentation de traité, mais le manque d'information a arrêté l'étude d'offrir un mécanisme détaillé sur l'implémentation de traité.

La littérature sur l'agreement des états aux traités internationaux en fait seulement offre une explication partielle. Malgré les différences, ils partagent largement une même opinion sur le rôle important des facteurs international—

comme les forts pays démocratiques, les normes internationales, les Unions unis, et les activités transnational—dans le procès d’implantation du traité.

Cette thèse propose que l’idée des droits de l’homme est un concept contesté, qui est résisté et simultanément encouragé par ceux qui trouvent intérêt à l’application de ces normes. Adoptant une perspective de pouvoir, cette thèse trouve plutôt qu’un traité de droit humain pourrait seulement être appliqué s’il est conforme à l’intérêt d’un état puissant ou d’un état avec une grande capacité de pouvoir. Ce type d’état ne serait pas incliner à l’implémentation de traités en dépit d’une forte pression des réseaux d’activistes et de groupes sociaux locaux et internationaux. De plus, la présence d’un réseau puissant d’activistes et de groupes sociaux n’arriverait à faire une implémentation partiel que si l’état serait faible et manquant la capacité propre à gouverner.

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List of Abbreviations

ADB	Asian Development Bank
AGO	Attorney General Office
AI	Amnesty International
Bappenas	Badan Perencanaan Pembangunan Nasional (National Development Planning Board)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discriminations against Women
CEDC	Child in Especially Difficult Circumstance
CERD	Convention on racial discrimination
CHR	Commission of Human Rights
CRC	Convention on the Rights of the Child
CPRW	Convention of the Political Rights of Women
DPR	Dewan Perwakilan Rakyat (People's Representative Council)
DRC	Declaration on the Rights of the Child
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council

GAD	Gender and Development
GBHN	Garis-garis Besar Haluan Negara (General Guideline of the State Policy)
Gerwani	Gerakan Wanita Indonesia (Indonesian Women's Movement)
GMNI	Gerakan Mahasiswa Nasionalis Indonesia (Indonesian Nationalist University Students' Movement)
Golkar	Golongan Karya (Functional Groups),
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICPD	International Conference on Population and Development
ILO	International Labor Organization
IMF	International Monetary Fund
IMR	Infant Mortality Rate
INGO	International Non-government Organization
IPEC	International Program for the Elimination of Child Labor

IYC	International Year for Children
JPS	Jaring Pengaman Sosial (Social Safety Net)
Kadin	Kamar Dagang Indonesia (Indonesian Chamber of Commerce)
KNKWI	Komite Nasional Kedudukan Wanita Indonesia (National Commission on the Status of Indonesian Women)
KPP-HAM	Komisi Penyelidik Pelanggaran Hak Asasi Manusia (Commssion of Inquiry into Human Rights Violation)
Komnas-HAM	Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)
Kowani	Kongres Wanita Indonesia (Indonesian Women's Congress)
KUHP	Kitab Undang-undang Hukum Pidana (Indonesian Penal Code)
KUHPM	Kitab Undang-undang Hukum Pidana Militer (Military Criminal Law Book)
LBH	Lembaga Bantuan Hukum (Legal Aid Foundation)
LP3ES	Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial, (Institute

	for Social and Economic Research, Education, and Information)
LSP	Lembaga Studi Pembangunan (Institute of Development Studies)
Masyumi	Majlis Syuro Muslimin Indonesia (Consultative Council of Indonesia Muslims)
MHR	Ministry of Human Rights
MRA	Ministry of Religious Affairs
MWE	Ministry of Women's Empowerment
MWR	Ministry of Women's Roles
MPR	Majlis Permusyawaratan Rakyat (People's Consultative Assembly)
MUI	Majlis Ulama Indonesia (Indonesian Ulama Council)
NCVAW	National Commission on Violence against Women
NGO	Non-government organizations
NKKBS	Nilai-nilai Keluarga Kecil Bahagia dan Sejahtera (Norms of Small, Healthy, and Happy Family)
NU	Nahdlatul Ulama

PAN	Partai Amanat Nasional (National Mandate Party)
PDI	Partai Demokrasi Indonesia (Indonesian Democratic Party)
PKB	Partai Kebangkitan Bangsa (Nation Awakening Party)
PKI	Partai Komunis Indonesia (Indonesia Communist Party)
PKK	Pembinaan Kesejahteraan Keluarga (Family Welfare Education)
PKS	Partai Keadilan dan Kesejahteraan (Prosperous Justice Party)
PNI	Partai Nasionalis Indonesia (Indonesian Nationalist Party)
PPP	Partai Persatuan Pembangunan (United Development Party)
PWRI	Partai Wanita Republik Indonesia (Indonesian Women's Party)
<i>Posyandu</i>	Pos Pelayanan Terpadu (Integrated Health Post)
<i>Puskesmas</i>	Pusat Kesehatan Masyarakat (Community Health Center)

P2W	Peningkatan Peranan Wanita (the Enhancement of Women's Role)
PIR	Personal Integrity Rights
PSI	Partai Sosialis Indonesia (Indonesian Socialist Party)
Sakernas	Suvei Angkatan Kerja Nasional (National Workforce Survey)
SGP	Scholarship and Grant Program
SP	Solidaritas Perempuan (Women's Solidarity)
SPSI	Serikat Pekerja Seluruh Indonesia (Indonesian Workers' Association)
TAN	Transnational Activists Network
TLP	Transnational Legal Process
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Program
Unicef	United Nations Children Foundation
Unifem	United Nations Development Fund for Women
UNHRC	United Nations Human Rights Commission
UPGK	Usaha Peningkatan Gizi Keluarga (Family Nutrition Improvement Program)
USSD	United States State Department

Walhi	Wahana Lingkungan Hidup Indonesia (Friends for the Earth Indonesia)
WB	World Bank
WGCW	Working Group of Convention Watch
WHO	World Health Organization
WID	Women in Development
WIDF	Women's International Democratic Front
WSC	World Summit for Children
WTO	World Trade Organization
YKAI	Yayasan Kesejahteraan Anak Indonesia (Indonesian Child Welfare Foundation)
YPM	Yayasan Perempuan Mardika (Independent Women Foundation)

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Chapter 1

Introduction and Theory:

From Ratification to State Compliance

Despite deep concerns over worldwide political uncertainty, the claim for global acceptance of human rights principles is still justifiable (Donnelly, 1998; Florini, 2000; Khagram, Riker, Sikkink, 2000; Lopez, Smith, Pagnucco, 1998). Indeed, the enormous gap between the ideals of human rights and the increasing rate of violence in many countries casts a serious doubt on the popularity of human rights discourse (Ron, Ramos, Rodgers, 2005). For some, the gap has been perceived as a sign of the state's rhetorical stance towards human rights or, in a rather bold statement, a blatant example of the state's hypocrisy (Falk, 1999; Hafner-Burton and Tsutsui; Hathaway, 2003). However, understanding human rights beyond the confines of civil and political affairs, one could easily find substantial transformations of strategic institutions in which human rights principles have been taken more seriously.

Particularly in the post-Cold War era, strong democratic states increasingly incorporate both political and social rights into their foreign policies. Likewise, multilateral economic institutions such as the World Bank (WB) and the International Monetary Fund (IMF) have included adherence to the principles of human rights as a requirement for cooperation (Abouharb and Cingranelli, 2006). This transformation has been carried out in tandem with the unprecedented growth of local, national, and regional human rights institutions. Except for Asia,

all regions of the world have established regional human rights institutions; though, as in other parts of the world, Asian countries have also established national institutions to deal with various aspects of human rights (Ghai, 2000; Peerenbum, 2003/4). These new trends are further complemented by the role of media, which have shown a growing attention to the issue of human rights (Ron, Ramos, Rodgers, 2005).

Arguably, the acceptance of human rights norms is nowhere better reflected than in the increasing number of states that have ratified the international human rights conventions. At least in theory, ratification constitutes a significant progress from simply endorsing the validity of a treaty to the pledge to implement its provisions (Clark, 1991; Goodman, 2002). The legislation of human rights into international law transforms volatile norms into determinate rules and ratification elevates the status of human rights from a general norm to a set of legally binding provisions. Hypothetically, once the state ratifies a treaty, it not only sends a clear sign about the treaty's legitimacy but also declares its own openness to be bound by the provisions contained in the treaty.

Currently, about three fourths of the state members of the United Nations (UN) have ratified two principal treaties: the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹ There are many more countries that have become parties to specific treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discriminations against Women

(CEDAW), and the Convention on the Rights of the Child (CRC).² As the principal institution of treaty enforcement, the UN continues to strive to achieve universal ratification of all human rights treaties.

Unfortunately, researchers have found that increasing rates of ratification do not necessarily imply actual improvement of human rights practice. Upholding the stipulations and standards of the treaties always lags behind formal acceptance, and in some cases the two events go in opposite directions (Hathaway, 2003). It is not surprising that this discrepancy eventually raises questions about the state's intention to ratify the treaty and the impact of ratification on the development of human rights practice. Nevertheless, while most scholars agree about the state's instrumental objective in ratifying treaties, they are still far from being able to make conclusions about the impact of ratification. A number of pieces of research have found that ratification does not make any difference to human rights practice (Hafner-Burton and Tsutsui, 2005; Hathaway, 2002, 2003; Keith 1999; Neumayer, 2005), whereas others uncovered some gradual impact in the course of long and unstable processes of norm institutionalization (Heyns and Viljoen, 2001; Keck and Sikkink, 1998; Lutz and Sikkink, 2000; Risse, Ropp, Sikkink, 2001; Ron, 1997; Ron, Ramos, Rogers, 2005). Not a single work, however, has come across a strong indication that ratification produces immediate results.

These early findings on the absence of the immediate effect of ratification provide valuable insights; such as that legal and formal acceptance of a human rights treaty is not in itself indicative of the result it is supposed to generate. In

fact, scholars are already aware of the weak enforcement mechanisms of human rights treaties and believe that many more factors are required to have ratification implemented (Cole, 2005; Moravscik, 1995; Tsutsui and Wotipka, 2004).

Unfortunately, it is precisely at this point that the works on treaty ratification have not provided adequate answers as to how ratification actually contributes to the improvement of human rights. Although a number of empirical studies have found strong evidence for the notion that ratification does not generate an actual impact on human rights practices, their conclusions are limited to the case of state violence, and they use flawed measurements and less comprehensive datasets (Goodman and Jinks, 2003). Some case studies provide a more nuanced measurement of impacts and offer more varied cases of human rights practices. Unfortunately, in addition to merely being descriptive and normative, these case studies focus on a single human rights issue within one country. As a result, both cross-country empirical and case studies cannot provide a sound explanation of the mechanisms and conditions by which ratification becomes efficacious or not.

The Study of Ratification and Thesis Questions

The purpose of this thesis is to move beyond previous research, which has largely been concerned with the question of whether ratification has, or fails to have, an impact on human rights practice. Indeed, some empirical studies have tried to explain the success or failure of ratification, but the lack of comprehensive datasets has forced researchers to use broad and vague categories such as civil society, democracy, or per capita income. The present thesis will thus attempt to explain why the ratification of human rights treaties does not always translate into

implementation, and to specify the conditions under which the state is likely to implement the treaty it has ratified. Apart from continuing the work of existing studies, the thesis intends to disclose the mechanisms of the state's successes or failures in complying with treaty obligations. Such an explanation is absent from case studies that do not go beyond the observation that ratification has equipped human rights activists with a legal foundation with which they are able to hold the state accountable. Some empirical studies provide a better explanation of the factors that likely contribute to treaty implementation, but the lack of data has impeded them from offering a detailed description of the mechanism of treaty implementation. To underscore the relevance of the focus of this thesis, I will briefly touch on the development of studies on human rights treaty ratification.

Quantitative cross-country studies

Research on the impact of ratification of human rights treaties can be broadly divided into two models: cross-country empirical studies and qualitative case studies. Needless to say, the two models employ different parameters of ratification impact, which leads to different conclusions in most cases. The cross-country empirical research on ratification is an extension of the study of the state's respect for civil and political rights. This latter approach attempts to delineate specific factors that contribute to the respect of individual rights without reference to international human rights law. Even in these general studies, analysts do not employ the same method and dataset, because these tend to evolve along with new advances in the field. Interestingly, the outcomes of these divergent approaches overlap with each other with only minor differences (Poe,

Carey, Vazquez, 2001). The research has found that democracy, per capita income, and domestic and international conflict, all contribute to the state's respect for personal integrity rights (PIR), defined as freedom from arbitrary detention by the state, torture, forced disappearance, and killing³ (Henderson, 1990, 1993; Mitchell and McCormick, 1988; Poe and Tate, 1994; Poe, Tate, Keith, 1999). The overall findings have become the cornerstone on which subsequent empirical studies on specific aspect of human rights rely.⁴

Research on treaty ratification tries to take the legal dimension of human rights into consideration. In fact, human rights not only constitute a set of normative injunctions but also a compilation of international laws embedded in the UN institution. From a legal perspective, only ratifying countries bear a legal obligation to implement the treaty, and only against these ratifying countries does the UN have the authority to monitor and evaluate their compliance. However, this does not imply that non-ratifying states can legitimately violate the human rights of their citizens; they are simply beyond the jurisdiction of international human rights institutions. It is this status of human rights as a public international law which encourages scholars to explore whether ratification bears any effects on a state's attitude to human rights.

Keith's (1999) ground-breaking research evaluates the state's performances on PIR and civil and political rights.⁵ Introducing ratification of the ICCPR into independent variables, Keith's bivariate analysis reveals a statistically significant influence of ratification on the state's human rights behaviors. Ratifying countries have better records when it comes to all the rights under

consideration as compared to non-ratifying countries. However, another bivariate analysis with a specific focus on ratifying countries shows a starkly different outcome. In these countries, human rights records remain the same before and after ratification, unequivocally revealing that formal acceptance has no influence on human rights practice. More surprisingly, when factors that are known to have affected human rights practice such as democracy, civil wars, and economic growth are controlled, the influence of ratification disappears altogether. This outcome runs contrary to legal and normative expectations that ratification should result in the improvement of state respect towards individual rights.

Hathaway's (2002) work offers another surprising conclusion. She makes use of multiple data sources, mainly the U.S. State Department and Freedom House, to measure civil rights, political rights, due process, women's political participation and PIR. Hathaway also introduces multiple treaties on genocide, torture, women's political rights, and regional human rights instruments in the independent variables. Like Keith, Hathaway observes that the overall means comparison between ratifying and non-ratifying countries is significantly different, with ratifying countries having better human rights records than non-ratifying states. Nonetheless, the results vary greatly when each convention is measured separately. The difference between party and non-party states in terms of the convention against torture is small and there appears to be no difference in the case of the convention against genocide. It is surprising that countries ratifying regional human rights treaties have been shown to be more repressive than non-ratifying states. As Hathaway proceeds to multivariate analyses, she finds that

ratification of the genocide convention had a positive impact, yet unexpectedly, that the ratification of the treaty against torture encouraged states to be even more repressive toward their citizens.

Hathaway's findings are obviously more pessimistic and cynical towards the prospect of ratification. Goodman and Jinks (2003) regard Hathaway's overall conclusions as "wildly counterintuitive" and criticize her for treating ratification as a "magic moment". Nonetheless, Hafner-Burton and Tsutsui's (2005) more recent work on the same topic confirm Hathaway's findings, arguing that "ratification is frequently coupled with non-compliance behavior" and that it "at times leads to radical decoupling". This conclusion is taken from multivariate analyses on the impact of six major human rights instruments on the state's respect for PIR.⁶ However, they do not view ratification as totally inconsequential, because country membership in international NGOs systematically influences human rights performance. This finding, they argue, is in line with the world culture approach, which claims that a country's embeddedness in international institutions increases its likelihood of following the prescriptive scripts contained in world culture, including human rights.

Neumayer's (2005) work on the impacts of the ICCPR on civil and political rights, and of the CAT on PIR better clarifies all of the empirical findings. Neumayer reiterates that ratification *per se* does not have direct correlations to human rights practice. Formal commitment to a treaty will only contribute positively to the upholding of human rights if democracy and a vibrant civil society are already in place. In contrast, if the rulers are authoritarian and the

civil society is weak, the state will be associated with more violence. Such findings confirm several points made in earlier works about the relationship between regime type and respect for human rights, on the one hand, and between ratification and the role of civil society, on the other.

These quantitative analyses have contributed greatly to our understanding of the impact of ratification on actual human rights practice. In some cases, different data sources and methods of analysis have led researchers to arrive at slightly different conclusions. Yet, regarding the role of democracy, income level, war, and civil society, they tend to reach the same conclusions irrespective of the data and methods being employed. However, despite their methodological strength, all these works share three essential weaknesses in their analyses of the impact of ratification. First, all of them pay attention exclusively to civil and political rights, specifically personal integrity rights (PIR), which in fact only represent two human rights treaties, the CAT and the ICCPR.⁷ The second weakness pertains to the use of a single dimension in measuring the impacts of ratification. In this case, the problem of data availability has left authors with no other choice than to take the actual records of human rights violence as the only indicators of the impacts of ratification. As Hathaway herself admits, ideally “compliance with human rights treaties must ... be defined on a continuum based on the degree to which behavior deviates from the legal requirement of the treaties” (2002: 1965).

The last shortcoming is, as often happens in empirical cross-country studies, that the author could not go into details about the actors and mechanisms

of treaty implementation. Hafner-Burton and Tsutsui (2005), for instance, suggest that a state's membership in international NGOs influences treaty implementation, but they do not specify how exactly membership contributes to treaty implementation. Neumayer's (2005) insistence on the role of civil society is also instructive, but he fails to identify the diverse sectors of civil society, which, in reality, are not always supportive of liberal ideas (Berman, 1997). In the end, these weaknesses limit the applicability of the empirical findings to other aspects of human rights outside of civil and political affairs; and these works tend to explain human rights practice using broad and often vague categories such as democracy, population density, or per capita income, and internal conflict.

Qualitative case studies

Arguably, qualitative works might perform better in overcoming data and time constraints. Qualitative analyses usually do not have a problem with the incorporation of the time dimension and with the application of more nuanced parameters of social change. The method should also be more flexible by adopting a comparative approach, not only by contrasting countries or ratification statuses, but also by contrasting two or more conventions, the success and failure of implementation, as well as the length of time a particular convention has been ratified. Unfortunately, aside from only a small number of qualitative works that are specifically devoted to addressing the problem of ratification, the topic of ratification in qualitative research occupies but a minor place within broader themes such as state behavior, norms institutionalization, and the power of globalization.

In his studies of the state's response to human rights norms, Ron (1997, 2003) touches upon the effects of treaty ratification on the interrogation technique adopted by the Israeli security apparatus. Ron's interviews with security officers have disclosed some shifts in the strategy of interrogation, even if these changes are far from what the treaty is anticipating. Prior to ratification, breaking the bones of detainees was a common practice and abusing detainees physically was a routine occurrence during interrogation sessions. After ratification, security officers became more restrained by shifting their strategy to psychological pressure. However, Ron maintains, this behavioral change is not directly linked to the state's commitment to human rights laws. Instead, it is an outcome of concerted pressures from domestic and international human rights activists, combined with the Israeli state's interest in maintaining a good image in the international arena.

A similar qualification to the effects of ratification is also made by Lutz and Sikkink (2000), in their study on shifts in human right practices in some Latin American countries. They observed that ratification of the CAT and ICCPR had created the opportunity for international actors to intervene and simultaneously encouraged domestic victims to make their cause internationally known. Nonetheless, the authors contend that ratification is not the only mechanism by which states have been conditioned to be more respectful of individual rights. Direct pressure from stronger states works just as effectively to compel non-ratifying countries to follow international human rights norms. Thus, given

particular conditions, ratifying states have are equally likely to follow human rights norms as non-ratifying countries.

Ron, Lutz and Sikkink largely share the same pessimism with cross-country empirical studies, in that ratification does not generate readily identifiable and distinctive effects. This is different from Risse and his colleagues' (2001) research on the internalization of human rights norms in the state institution,⁸ which throws some light on the prospect of ratification. They affirm the idea that ratification points to the state's willingness to accept the validity of human rights and its eagerness to be bound by the treaty (2001: 29). In all but one of the cases under consideration, they find the ratification of the CAT has been followed by policy changes and even an actual decrease in the abuse of human rights (2001, 248). It is the role of the transnational activists network (TAN) that contributes the most to the success of pressuring violating states to comply with the treaty. Such a finding sharply contradicts empirical works, which have unanimously found no direct correlations between ratification and actual rights abuse. Given that both approaches employ the same parameters of ratification impact, these differences need further scrutiny.

Other case studies that specifically seek to disclose the effects of ratification show the same optimism. However, instead of measuring the impact of ratification as an actual change in respect for human rights, case studies generally take into account other procedural parameters to demonstrate the subtle effects of ratification. For instance, Heyns and Viljoen's (2001) work that compares 20 ratifying countries lists a variety of impacts that are associated with

the ratification of six human rights treaties. Among other things, ratification has been found to have contributed to the raising of human rights awareness, constitutional change, and legislative reform, as well as civil society empowerment.

Some of these findings by Heyns and Viljoen are confirmed by a few studies on the ratification of the treaty on women (CEDAW), which has different characteristics from civil and political treaties. Afsharipour's (1999) study on Bangladesh, for instance, finds that the obligation of the state party to make a periodic report to the UN opens up the opportunity for local women's NGOs to increase their participation in the state's decision making processes. Women's rights activists use the process of reporting to influence the state's policy on women and simultaneously monitor its compliance. Wiess (2003) makes the same discovery in a case study of Pakistan where women's activists began pressuring the state to administer legal reforms from the moment of ratification onward. Previously, Welch (1993) demonstrated that the conferences conducted by the UN's organs in conjunction with monitoring activities have provided African women's activists with more opportunities to demand accountability toward the treaty since their states ratified the convention. In Asian countries, as Landsberg-Lewis (1998) argues, ratification of the CEDAW has been variously translated into constitutional and legal reforms as well as court and government policies.

These case studies improve the single parameter of the impact of ratification employed in the cross-country empirical approach. Besides actual changes in terms of respect for human rights, a qualitative case study takes into

account legal and policy reforms, as well as the empowerment of activists and civil society groups as elements of treaty implementation. This type of study can also overcome the problem of time constraints by looking at the process of implementation over several years. Unfortunately, qualitative case studies still share weaknesses similar to those found in the cross-country empirical approach, in that they focus on only one type of human rights treaty. Considering the inherent differences between human rights treaties, it becomes difficult to understand the wider problem of ratification on the basis of a single issue. Nonetheless, the more serious weakness of case studies lies in their inability to provide adequate explanations for how the impacts they describe came about and which factors contributed most to making ratification consequential. Such studies simply describe some changes that are associated with the treaty contents in the post ratification period, with no specific explanation about the factors that advance or impede implementations.

Based on this brief discussion, it is clear that cross-country empirical studies on the impact of ratification only indicate that ratification does not produce immediate and actual change in human rights practice. Unfortunately, these studies cannot offer convincing arguments to explain the failure of ratification beyond general accounts of the lack of democracy, low per capita income, internal conflicts and other broad variables. At the same time, while being able to specify the variety of impacts, case studies do not provide adequate explanations for when such impacts are likely to be produced. Given these

weaknesses, this thesis will proceed to find answers to the two following related questions:

1. Why do the ratifications of human rights treaties often fail to translate into implementation?
2. Under what conditions is the ratification of human rights treaties consequential or inconsequential?

By means of these two questions, this thesis will then explain the mechanisms that motivate the state to comply with or evade the commitment it has pledged to the international community.

Literature Review on State Compliance and Hypotheses

Since the root of the problem is how to explain the divergent outcomes of ratification, I would like to review the theoretical approaches that deal with the state's compliance with international treaties. Previous works on the theme have developed a number of perspectives. For a more comprehensive treatment I will sketch an outline of this literature. The following perspectives have developed within different scholarly traditions, yet the variation between disciplines is not as great when compared to their internal differences. Given the level of abstraction, these theories cut across academic divisions and help scholars to communicate their perspectives beyond specific fields. Therefore, it would be more appropriate to classify their thoughts along the lines of theoretical traditions rather than group them according to their respective specialties. Yet, in order to accommodate a variety of ideas, I would like to adopt three broad theoretical categories:

instrumentalist, normativist, and constructivist. These terms have been widely used in the social sciences to elucidate a wide range of opinions emphasizing the relationship between agent and structure. In brief, the normativist approach places the role of norms and institutions above the actor, while the instrumentalist approach gives the actor a central role over institutions. The constructivist approach is a middle way to accommodate the influences of both norms and actors in social action.

Instrumentalist

The term “instrumentalist” covers a number of theoretical approaches to the problem of the state’s compliance with international law. This term refers to the use of instrumental rationality as opposed to value rationality in viewing the relationship between actors and norms (Axelrod, 1986). Instrumentalists assume that states comply with established rules because they are expecting more relevant incentives toward their fundamental interests (Goldsmith and Posner, 2002). States are rational actors and seek to maximize their interests in international relations. According to March and Olsen (1998), the basic logic of the instrumentalist view is consequentialism, by which actors anticipate the outcomes of given actions on the basis of a cost benefit calculation. It is the structure of incentive rather than the quality of norms which determines the orientation of individual actions. Instrumentalists generally believe that no state follows human rights law voluntarily, since the basic mission of this law is to restrain the behavior of the state upon its citizens (Krasner, 1999). Accordingly, states only comply if they are seduced by better incentives and if the cost of non-compliance

is greater than that of compliance. The following is a brief sketch of three variants on the instrumentalist perspective: realism, institutionalism, and liberalism.

Realism. Realist theory was the dominant approach in international relations well into the 1980s. The theory was first constructed after World War II and developed throughout the Cold War era. Basic to the realist theory is the Westphalian proposition that the state is the highest sovereign political institution, making the community of states the primary actors in world politics. This proposition implies the absence of a centralized government at the world level or of a political institution that hierarchically holds a higher status than that of states. The community of states does not interact on the basis of vertical structure, but rather states are connected to each other on horizontal principles (Waltz, 1979). The non-existence of world government has rendered international relations anarchic, which in turn both causes states to be in a self-help situation and simultaneously in competition against each other. As Maersheimer (1994/5) emphasizes, although states are not in a constant war, they are in relentless competitions.

Realists view anarchy as more than an outcome of the absence of world government; it is also a basic condition that shapes the state's preferences and behavior in the international arena. While states might pursue assorted interests, anarchy has compelled state authorities to be more concerned with security and power (Grieco, 1988). Since anarchy has created a self-help situation, all states are preoccupied with the question of survival, which becomes the fundamental requirement for their continued existence. Those who fail to protect vital interests

are automatically pushed to the margins of the world political epicenter, rendering them subordinate to more powerful states (Grieco, Powell, Snidal, 1993). For realists, the grim picture of world politics replete with uncertainty constitutes the foundational structure of international relations, upon which the community of states orients its behavior. In other words, anarchy is not an exception but a fact that has to be taken into account by states in devising a strategy for survival.

In a situation where competition and survival stand as a daily norm, cooperation between states is susceptible to failure. Such cooperation is not deemed impossible, but each state always has to worry about being cheated by the other states (Maersheimer, 1994/5). Being situated in a Prisoner's Dilemma, each state strives to achieve a better position and, since power is not equally distributed, there can never be long lasting cooperation among states. Powerful states automatically dominate the scene, acting as the world regulators in the absence of any supra-state institution and eventually turning themselves into hegemons. For this reason, realists are deeply pessimistic about the prospect of international institutions mitigating the anarchy of international politics. They perceive such institutions as a reflection of the distribution of power in the world, which is typically inhabited by a self-interested community of states (Maersheimer, 1994/5). Therefore, if such an institution were ever to function, it would only marginally decrease the tension between states.

Despite the unprecedented growth of international institutions in the post World War II era, realists persistently maintain the basic framework of the anarchic character of world politics. They call into question the efficacy of

international institutions in dealing with conflicting interests amongst states. In their view, the extent to which such institutions succeed in implementing agreements is a function of the willingness of hegemons to support the institution in question (Krasner, 1997). In other words, international institutions can never be an independent factor in shaping the behavior of states. Success at having states comply with agreements is seen as an outcome of either a coincidence of the institution's interests with those of the hegemons or as something entirely independent from the hegemons. This opinion is applicable to all institutions that work beyond the boundaries of states, irrespective of the areas of interest and the differing enforcement mechanisms each institution adopts.

Krasner's (1997) studies on human rights implementation offer a good example of the pessimistic tone of realists on the future of international institutions. His comparative studies—on religious tolerance, the abolition of the slave trade, the protection of minorities, and the promotion of individual rights—found that the varying successes of human rights movements were best explained through the extent to which powerful states lent them their support. All the cases studied showed that the likelihood of success increased along with growing support from strong states. Given this trend, Krasner concludes that “[o]nly when powerful states enforced principles and norms were international human rights regime consequential” (1997: 141).

Arguably, Krasner's conclusion could be extended to high profile human rights interventions such as the establishment of the International Tribunals for Yugoslavia and Rwanda. The role of powerful states is not only conspicuous, but

is also extremely vital. These cases would never have been addressed without their support. Nevertheless, with the exception of individual rights, Krasner's cases were chosen from historical events that took place several centuries ago. To make sense of the contemporary situation of human rights by recourse to historical events of the 18th century is evidently a weak strategy; for international human rights institutions only formally developed in the second half of the 20th century. However, the main problem with Krasner's analysis is that he overlooks the growing influence of human rights institutions in the post World War II era. As he himself mentions in his later studies, some regional human rights institutions, in particular the European Commission on Human Rights, have succeeded in challenging the realist's dictum on Westphalian sovereignty (Krasner, 1999). The Commission and its concomitant institution, the European Court of Human Rights, have penetrated deeply into the domestic arena, solving more than 15,000 cases and bringing more than 250 cases to the court in the period between 1953 and 1990 (Krasner, 1999:114). Thus, to conclude that the success of international human rights norms is entirely dependent upon the endorsement of powerful states is unwarranted.

In general, criticisms against realist theory have been targeted to two related points. The first is the theory's overemphasis on security and power, which results in undermining the possibility of states pursuing other interests in their relations with other states. However, this criticism does not invalidate the realists' claim that security and power are the primary concern of the state, but simply qualifies the claim by broadening the opportunities of states to adopt other

interests. The second criticism points to the failure of realists to appreciate the growing influence of international institutions; they are too preoccupied with anarchic structure, competition, self-help, and the survival of the state in international politics (Keohane and Martin, 1995). As a consequence, realist proponents offer no satisfactory answer to the changing features of international institutions. Instead, they propose the *a priori* explanation that the success of international institutions is either not clearly defined or happens to coincide with the interests of powerful states (Grieco, 1988; Grieco, Powell, Snidal, 1993; Mearsheimier, 1994/5). Counter cases against the realists' arguments have been proposed by the proponents of liberal institutionalism whose theory came to offer an alternative perspective to that of the realist.

Institutionalism. The liberal institutionalist perspective does not constitute a radical turn from the realist approach. It shares some of the realists' fundamental assumptions, and even embarks from the same foundation before splitting into different directions. Institutionalists also perceive anarchy as the very character of international relations, a restless situation that results from the absence of world government and the competition between states. In this context, liberal institutionalists also share with the realists the same utilitarian perspective that the state is a self-interested actor. A different path emerged when institutionalists began to work beyond the Prisoner's Dilemma to find a way of reducing tension between states. They found that international institutions could provide alternative solutions by which states could maximize their gains while mitigating the anarchic situation.

The optimism of relying on international institutions is based on the observable fact that states are increasingly committed to building cooperation through the establishment of various institutions. They not only handle security and military issues, but also work on the economy as well as environmental affairs. For this reason, institutionalists believe that the interests of the state in the international arena do not necessarily come in the form of security and military, but can also manifest themselves in the economy, education, or culture. Therefore, instead of always placing states in a relational position, which would unavoidably lead to the realists' preoccupation with security issues, institutionalists position the state in an atomistic way. Each state has its own interests and all try to maximize their interests in international relations.

Institutionalists argue that the potential for international institutions to go beyond seemingly eternal anarchy lies in the functions they can carry out. They emphasize that institutions can create iteration, cut transaction costs, provide more comprehensive information, and more easily punish cheaters (Keohane and Martin, 1995). With all these advantages, international institutions create opportunities to alter the structure of the incentives by which states recalculate the costs and benefits of cooperation. At this point, institutionalists do not dismiss the fundamental assumptions of realists, but step forward to find solutions to the imminent potential for conflict between states. According to Krasner (1997), the contrast between the realist and institutionalist perspectives lies in their different perceptions about the situation of world politics. While realism views international relations as having already arrived at the frontiers of Pareto's

coefficient, institutionalism treats the situation as still open to a maximization of Pareto's coefficient. Thus, for realists, states are trapped in the Prisoner's Dilemma, where cheating is most likely, whereas institutionalists feel that states could avoid this dead end if they overcome the problem of coordination.

Although the differences between these two theories are not fundamental, the institutionalist perspective explains the emergence of international laws, conventions, contracts, and treaties better than that of the realists. The burning question that the realists could not answer was, given the privileges that powerful states enjoy, why would they be willing to spend resources on constructing international institutions? Rather than simply reducing the overlap between institutions and the interests of hegemons to a mere coincidence, institutionalists offer empirical evidence that such institutions really generate incentives that make states prefer to comply with particular agreements rather than becoming renegades. They found this trend in a plethora of international institutions, when it came to energy, the environment, money regimes, and trade institutions (Keohane and Martin, 1995; Mitchell, 1994; Simmons, 2000). In these cases, international institutions were not simply an epiphenomenon reflecting the distribution of power, but autonomous institutions that were able to compel state parties to comply with particular rules. The key to compliance was indeed utilitarian, in that states could maximize their gains by following the rules upon which they had agreed.

Undoubtedly, compliance with international institutions is closely associated with the presence of enforcement mechanisms that apply a stringent

reward and punishment system. Without powerful enforcement, international institutions cannot alter the incentive structure that leads the state to embrace the outlined norms. Such mechanisms are arguably more frequently found in the field of trade, money regimes, energy, and security than when it comes to the environment and human rights. For instance, states violating trade agreements quickly face punishment, either through retaliation or collective sanction by the World Trade Organization (WTO). Even if sanctions from international institutions are less stringent, other states might apply boycotts unilaterally. The same case can happen in security affairs, where treaty violation can end up in war. However, this is not necessarily the case with the environment and human rights, where infringement by a particular state does not directly affect the interests of other states. This is especially true in the case of human rights, for even though their status is covered by international law, they are primarily a matter of the domestic relationship between ruler and ruled.

The position of realists is obvious: human rights implementation is dependent on the good will of powerful states. Although this opinion is only valid in extreme cases, it explains the potential for strong states to either support, or be detached from, human rights implementation. In contrast, the institutionalist perspective views human rights implementation as dependent on the ability of international institution to increase the incentive for compliance and the cost for noncompliance. Nonetheless, it is evident that the incentive structure of the international human rights regime cannot easily increase the likelihood of their implementation. Besides the lack of interstate coordination, the UN's weak

enforcement mechanisms provide little incentive for states to comply with the norms. Unlike other international institutions, the UN's Commission of Human Rights (CHR) does not function to cut transaction costs, because most states are not really concerned with the practice of human rights in other countries. The Commission cannot promise to punish cheaters either, since the UN only adopts a constructive dialogue approach rather than real political and economic sanctions. Given this weak enforcement system, international human rights institutions can find it difficult to transform the structure of incentives and encourage states to implement international human rights laws.

Nevertheless, weak international human rights institutions do not directly translate into a massive rejection of human rights conventions. To the contrary, researchers found strong indications that the international community increasingly accepts human rights principles at least at the level of discourse (Ron, Ramos, Rodgers, 2005). As signaled by the nearly universal ratification of treaties, human rights norms are no longer treated as alien values. However, despite the gap between formal acceptance and the real practice of human rights, the question still lingers on whether the acceptance of states was due to the growing influence of international human rights institutions or to different causes. Research on the ratification of human rights treaties instead found a variety of motives that motivated states to accept the norms. Among other things, states use ratification as a means of deception, a strategy to cover up bad human rights records, or to prevent the comeback of an authoritarian regime. This variety of motives is rational-instrumentalist in character, even if it does not result from the growth of

international institutions. In other words, the institutionalists' attempt to offer an alternative explanation to the problem of compliance, by pointing to the role of international institutions, still leaves some crucial questions unanswered.

Theorists have yet to explain how institutions could modify the incentive structure of international human rights so as to pressure states to comply with the rules.

Liberalism. The third variant on the rational-instrumentalist perspective on international law is Moravcsik's liberal approach. In his study on the European Convention on Human Rights (ECHR), Moravcsik (1995) argues that the compliance of European states with the ECHR cannot be explained by the influence of powerful states. The United States (US) and the Soviet Union, as the prime hegemon of the post war period, never compelled other countries to uphold human rights principles. In fact, by the time the ECHR was adopted, this Convention developed more comprehensive provisions than those of the UN human rights conventions. This pushed European states ahead of other nations in the legislation of human rights norms. However, Moravcsik also found that this compliance could not be attributed to the power of the ECHR either, since it was not buttressed by any supranational coercive institution having the capacity to subdue state members. The Council of Europe's European Convention on Human Rights does not apply sanctions to violating members; it mostly adopts a "shaming" strategy and, in very extraordinary circumstances, an expulsion policy. In fact, Moravcsik argues, compliance with the ECHR is conditioned by a domestic liberal system that largely protects individual rights and allows civil society groups to control the state. For this reason, even though pressure from the

international community and supranational institutions was weak, states felt obliged to comply with the Convention.

In contrast to realists and institutionalists, the liberal approach seeks to explain state compliance by focusing on domestic factors. This approach emphasizes that the important elements in state compliance is neither derived from power relations between states nor from international institutions, but from the convergence of national preferences with transnational aspirations. International laws can be effective if they have roots not only in transnational groups but, more importantly, in domestic associations as well. Laws do not operate by altering external incentives in relations between states, but by changing internal incentive structures between the state and society. As such, state compliance with international law was born out of a commitment to domestic groups more than to the international community. In the whole constellation, supranational or international institutions simply function to strengthen the already established human rights aspirations among domestic civil society.

Moravcsik asserts that before achieving such an ideal situation, some preconditions need to be in place beforehand. Effective control against the state presupposes a strong and independent civil society that has internalized human rights norms. In addition, it also requires robust and independent legal institutions that are not easily subordinated by the executive. Combined with the presence of domestic constitutions that guarantee individual rights, all these preconditions lead to the convergence of preferences between domestic and international human rights institutions. Unfortunately, as Moravcsik admits, not all states are able to

come up with these standards and, in regional terms, European countries are likely the only nations that can effectively implement a regional human rights convention.

Undoubtedly, the liberal approach offers an alternative explanation to the realist and institutionalist perspectives on state compliance. Given the weakness of the supranational adjudication institution in the implementation of international human rights law, taking domestic factors into consideration promises a different breakthrough. The only problem resides in the prospect of its applicability. Since the European case is unique, it cannot be replicated in other regions. Meanwhile, to avoid running the risk of becoming irrelevant, any theoretical approach should be applicable to the widest cases possible. What would be the outcome, for instance, if a country has an independent judiciary system but a civil society that is less focused on human rights? Or, what would be the result if domestic civil society strongly supported human rights law but the state was authoritarian? It is in relation to this variation within domestic political institutions and their relationship with international human institutions that the liberal perspective needs to be further developed.

Normativist

The normativist school in international law arose as an attempt to criticize the instrumentalist perspective and realism in international relations and in law. According to the 19th century legal theorist, John Austin, law is to be distinguished from other regulations by the presence of a sovereign, who functions as a legal source and more importantly as an underwriter of law

implementation. With political legitimacy and authority in hand, the sovereign is empowered to force society to obey the law. For Austin, law is about “enforced command of sovereign to subject”, the implementation of which depends entirely on the power of the enforcement institution (Koh, 1997: 2609). This opinion is not uncommon, although its consequences for international law are pervasive.

Austin’s basic premise that there is “no law without prince” has been extended to the idea that international law is “not really law”. The sovereign only exists at the state level and not beyond this political realm, hence rendering international law a mere “positive international morality”. International law is nonexistent, and by definition, the community of states never obeys international law.

Austin’s view of the law seems to better explain the ineffectiveness of international law, but fails to consider some of its positive impacts. Normativists are generally puzzled by the fact that states do not always violate international norms, even if these norms are not buttressed with a definite system of reward and punishment. According to Louis Henkin (1979), a prominent critic of the Austinian tradition, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time”. This statement is empirically untested, yet, for normativists, the problem is how to explain why states comply with international norms even in the absence of a powerful enforcement mechanism. Henkin’s statement is the one that mostly inspired the development of the normativist approach to the problem of state compliance, as demonstrated by the following concepts: legal fairness and managerialism.

Legal fairness. The legal fairness theory constitutes one of the most influential perspectives within the normativist school. Elaborated by Thomas Franck (1988, 1992), the theory offers an alternative approach to the problem of state compliance by stepping aside from the formal legal procedural perspective. It does not utterly reject the role of a coercive institution, but merely criticizes the realist perspective for failing to explain the state's voluntary compliance with international law. Franck is firmly of the opinion that "rules, to a varying degree, contain the determining elements of their own legitimacy" (Franck, 1988: 711), and "each rule has an inherent pull power that is independent of the circumstances in which it is exerted, and that varies from rule to rule" (Franck, 1988: 712). The potential for rule to generate "pull power" opens up the possibility of stepping aside from explaining state compliance through external push factors and utilitarian motives. Franck asserts that disobedience to international law is not always attributable to the absence of coercive power or benefits, but might also be driven by a lack of legitimacy in terms of the legal aspects. The contradictory trend between weak enforcement and the success of international law implementation attests to the minimum influence of coercive power on the state's decision to comply.

According to Franck, there are four qualities that become the source of legitimacy for a rule to generate pulling power. These qualities cover the linguistic dimension of a rule as well as its normative status and cultural anchorage. Textual determinacy is the most elementary requirement for a rule to be able to deliver a clear message of "what conduct is permitted and what conduct

is out of bound” (Franck, 1988: 716). Lack of determinacy will lead to multiple interpretations, thereby opening up the opportunity for contriving a rationale of disobedience. The second quality is coherence, meaning that the rule treats similar cases alike, non-discriminatively, and relates to other rules in harmonious and mutually supportive ways. The latter point is closely related to another quality, that is, adherence to the hierarchy of normative order. It asserts that legitimacy of rule increases when it is buttressed by an already established and accepted fundamental norm. Therefore, coherence and adherent principles assume that a rule will run the risk of being self-invalidating if it is in contradiction with other rules or is not in line with more substantial norms; a situation that renders such a rule illegitimate. In addition to the three legal qualities, the last quality that a rule must also possess is pedigree, which largely means that a rule is deeply rooted in the broader system of social norms. Together, these four internal qualities determine the extent to which a rule can generate a pulling power and obtain legitimacy.

Especially in the absence of external pressure or anticipated incentive, Franck's normativist perspective offers an alternative explanation to the state's noncompliance with international law. In human rights cases, lack of legitimacy has become one of the main reasons why states do not ratify a treaty or express reservations against unwanted provisions. Although politically motivated, the majority of developing countries hide behind several kinds of cultural legitimacy to turn away from international law. For these states, international human rights laws either contradict local culture and religion or are not in accordance with the

national constitution. However, democratic and developed states also use the same arguments to release themselves from international legal obligations.

France, Israel, and Singapore, for instance, refer to religious reasons when making reservations against some articles of the CEDAW. The perception of a lack of legitimacy by domestic groups, therefore, could turn out to be a strong hindrance to the state's compliance with international law.

Unfortunately, the normativist perspective only seems to be effective in explaining noncompliance, but not state compliance. When the state adopts international law because said law is argued to have legitimacy according to domestic standards, the action can hardly be called compliance. Indeed, given this legitimacy, the state would likely keep doing what it is doing even in the absence of international law. Meanwhile, the very idea of compliance is to make the state do what it otherwise would not do in the absence of a particular legal command. The idea of constructing international law is to call for states to comply with certain standards of behavior that have not been achieved, thereby implying that the introduction of the law will necessarily confront the problem of legitimacy. Therefore, explaining compliance according to the normative quality of rule is tantamount to a tautology, for there is no clear causal mechanism that explains whether the state adopts international law because the law has a strong “compliance pull” or whether it simply appears to have a “compliance pull” because the state does not find any problem with regards to legitimacy. In this context, Keohane (1997) rightly criticizes the normativist approach for yet another instance of circular reasoning concerning the relationship between legitimacy and

compliance pull; namely, whether compliance pull generates legitimacy or whether legitimacy creates compliance pull. Unless this problem is resolved, Franck's normativist perspective cannot provide a better explanation than that of the rationalist-instrumentalist approach.

Managerialism. Given the perceived limitations of rationalist-instrumentalist accounts, finding an alternative explanation for state compliance beyond international power calculations becomes challenging. Chayes and Chayes (1993) propose the widely known managerial perspective to explain both state compliance and disobedience to international law. Chayes and Chayes share the same puzzle with Franck, namely, that most states comply with international law despite weak enforcement institutions. Like Franck, they contend that in this case compliance cannot be explained with reference to power relations between states in the international arena. Nevertheless, while Franck avoids the issue by referring exclusively to the internal quality of law, Chayes and Chayes combine international norms, the quality of legal texts, and institutional capacity as the fundamental factors that cause states to comply.

According to Chayes and Chayes (1993), like all legal documents, an international treaty has varying degrees of specificity and textual clarity. Broad wordings of legal texts tend to encourage multiple interpretations, yet highly specified regulation tends to create difficulties when it comes to its incorporation with the domestic legal system. In addition, at any given moment, the contents of a treaty can be rendered irrelevant if unanticipated social changes occur abruptly. Chayes and Chayes emphasize that such legal complexity is exacerbated by the

fact that not all states have the same capacity to implement an international treaty. Even when the rules have been formulated cautiously, the low capacity of the state bureaucracy is not able to translate the law into practice.

Chayes and Chayes further explain that participation in international law is based on a voluntary principle that allows states to freely join or not join the cause. Because it is voluntary, once the law is accepted, international norms emphasize that treaties are to be obeyed (*pacta sunt servanda*). This principle does not offer any motive for states to cheat, because they could simply reject or decline a relationship with the law any time they wished. States joining international law instead indicate that they agree with the normative contents of the law in question and that they are willing to implement it accordingly. Therefore, while agreement with the law is the driving force behind compliance, failure to comply does not necessarily stem from disagreement. If it is disagreement, the state would have refused joining international law in the first place. Thus, Chayes and Chayes argue, a state's incompletion is rather caused by managerial problems, such as the state's inability to execute programs, the ambiguity of treaty language, or the changing environment in which the treaty is adopted. At this point, they dispute the assumption that states would undermine international norms whenever it is in their interest to do so. On the contrary, “nations generally comply with international agreements” and “compliance problems often do not reflect a deliberate decision to violate an international undertaking on the basis of a calculation of interests” (1993: 176).

As also emphasized by Franck, Chayes and Chayes rightly assert that the lack of textual determinacy can lead to multiple interpretations and hence encourage states to develop their own understanding of the law. They also correctly underline that states can also face managerial problems when they experience a changing environment and consequently cannot fulfill the ideal expectations of the treaty. Nevertheless, as Downe, Rocke, and Barsboom (1996) have pointed out, assuming state compliance based entirely on the voluntary principle and the norm of *pacta sunt servanda* in international law is misleading. Such a view presupposes that the state is a principally complying actor rather than a self-interested agent whose observance of international law always results from the rational calculation of cost and benefit.

In fact, states tend to join an international treaty when they do not have to incur a high cost or can obtain benefits, and this is also the reason why they have to implement the treaty (Hafner-Burton and Tsutsui, 2005; Hathaway, 2002, 2003). Such criticism nicely describes the tendency of democratic states to be more willing to ratify human rights law than authoritarian countries (Keith, 1999). Even if both types of countries increasingly have the same rate of ratification, respect towards human rights is obviously better in the first than in the second category of states (Hathaway, 2003; Keith, 1999). Implicit in this contrasting trend is that democratic states are more obedient to the law as compared to authoritarian countries. Unfortunately, what has been shown by democratic states is not compliance but a costless commitment to the international community. These countries do not have to exert extra effort since their domestic political

systems have already guaranteed individual rights and this differs from authoritarian regimes that have to conduct radical changes if they want to comply with human rights law. For this reason, Downs, Rocke, and Barsoom (1996) assert that compliance should be evaluated from the “depth of commitment” that the state has given to international law, rather than from the regime's formal political performances.

Besides contradicting empirical findings, therefore, the managerial perspective is not able to substantiate the role international norms play in motivating states to comply. Theoretically, the principle of voluntary participation and the norm of *pacta sunt servanda* in international law could open the widest opportunity possible for states to freely pick their own preferences. Nevertheless, the mission of international law is to maximize utility function by means of cooperation, from which all the participating states expect to obtain particular outcomes. This condition creates a problem of collective behavior as well as cheating, for which norms could not stand independently. Arguably, the norm to obey a treaty would only be influential to the extent that it does not contradict the fundamental interest that becomes the rationale for cooperation. Moreover, commitment to norms is only given by states if it constitutes the most beneficial preference. Thus, like the normativist approach, the managerial perspective works better in elucidating some possible reasons for noncompliance, but its reliance on international norms and procedures does not offer a convincing argument as to why states comply.

Constructivist

Constructivism develops a middle way between the role of norms, culture, and institutions on the one hand, and the role of an actor's preferences on the other. Similar to the normativist, constructivist theorists view norms, regulations, law, regimes, and other ideational constructs as essential determinants of social behaviors (Finnemore and Sikkink, 1998, 2001). Actors are not seen as free-standing agents who can orient their entire conduct towards maximizing interests in any form. They are social agents whose identities are constituted within a larger environment and whose preferences are shaped by their surrounding milieu. However, an actor's actions are not born involuntarily but are part of the strategic choices made to meet particular interests.

In the case of human rights, the constructivist perspective is not only concerned with explaining the variety of state attitudes toward international treaties, but also with the processes of how this variation comes about. This starting point encourages constructivists to simultaneously consider the role of institutions and an actor's choice in shaping social actions. An institution⁹ is generally understood to enable and constrain the factors in which actors are embedded and by which they choose the most strategic choice given the maximum benefits. For constructivists, an actor's identity and institutions are mutually constituted and the actor's interests are subject to the influence of a broader social environment (Checkel, 2001; Finnemore and Sikkink, 2001). Thus contrary to the instrumentalists, constructivists do not perceive change in behavior as caused by a shift in the incentive structure, but as a consequence of the

transformation of the actor's identity. The following are three variations on the constructivist approach to state compliance.

Transnational legal process (TLP). Coined by international legal theorist, Harold Hongju Koh (1996, 1997), the transnational legal process perspective regards the state's observance of international law as a constructive activity, or the dynamic effort "to modify domestic law, reshape domestic bureaucracy, and change the attitudes of domestic decision makers". The entire process involves interactions between transnational actors, constructions of shared normative principles, and internalizations of international norms within the domestic system. Koh contends that the repeated cycles of these activities will eventually encourage states to follow international laws not only as an element of the domestic legal system, but also as an inseparable part of routine activities. Given this interconnectedness, the engagement of domestic lawyers in these transnational events is perceived to increase the probability that states will adopt international laws.

According to Koh, human rights laws have distinctive characters as compared to other international treaties. These rules are "largely declaratory and precatory, and the few mechanisms created had virtually no enforcement" (1997: 1408). They are also less binding because the existing enforcement mechanisms are incapable of forcing all states to comply. Even so, human rights have increasingly become a barometer of social and political conduct all over the world. For this reason, Koh maintains that success should not be attributed to the role of formal international organizations and strong states, but instead to

transnational actors whose influence is not generated by power politics and military might but by persuasion.

Although human rights law is formally within the jurisdiction of the UN, whose membership is confined to the community of states, Koh (1999) emphasizes that non-state actors have been the backbone in the entire processes of their institutionalization. At the onset, it was transnational norms entrepreneurs who engaged in transnational networking to promote principled norms. Through intensive interactions, they produce shared general norms, which are officially manifested in the form of declarations. In the subsequent stage, the role of legal experts became more pivotal, especially in the interpretation and transformation of norms into a set of binding rules. These lawyers end up forming an “interpretive community” whose role is to construct international human rights laws and bring them home to their respective countries. They will establish communications with local lawyers, NGO activists and state actors to inculcate the norms into domestic practices. It is this central role of transnational lawyers that should encourage the state to eventually internalize international human rights laws into the existing legal system.

Transnational advocacy network (TAN). This perspective uses the same term “transnational”, as seen in the Transnational Legal Process approach, to refer to networks and actors that operate across state boundaries. The transnational advocacy network caters to a plethora of figures with a variety of backgrounds such as NGO activists, religious dignitaries, politicians, and community leaders. According to Keck and Sikkink (1998), these actors are united by a common

concern to promote public good for human beings. TAN is private and not-for-profit in orientation, thus excluding the state and business actors. The history of TAN dates back to ancient times when networks of religious leaders began to disseminate universal values, yet a similar network with global reach has only appeared following the invention of modern communication and transportation technologies.

The TAN perspective argues that states always comply with human rights norms under certain conditions, even though these conditions are not always external to state interests. The early acceptance of human rights by states is instrumental, in that they have to surrender some sovereignty in return for international legitimacy. Nonetheless, as socialization processes intensify, the state will eventually inculcate norms into identity, hence turning the previous instrumentalist compliance with international laws into a normative commitment (Lutz and Sikkink, 2000; Risse, Ropp, Sikkink, 2001) To achieve this goal, the strategy of direct pressures is as important as persuasive argumentations in motivating the state to respect human rights.

According to the TAN perspective, the process of transformation follows a spiral mechanism of interaction in which transnational activists, by capitalizing on the power of strong democratic states and the information of local activists, continually exert pressure upon the target state (Risse, Ropp, Sikkink, 2001). In the earliest stage of the campaign, the authoritarian regime will always reject the validity of human rights and conceal its repressive behaviors from the international community. However, networks of activists will disclose such

repression and expose the issue in the international arena so as to generate pressure upon the violating states. As pressures increase, authoritarian states usually agree to make compromises through symbolic actions by formally accepting norms. Some states move on to ratifying a human rights accord, either to deflect international monitoring or to signal their acceptance of the validity of human rights. If the network of transnational activists is able to sustain its movement, the likelihood that the state will internalize norms increases accordingly. On the contrary, if the state is left unmonitored, the chance of translating ratification into actual implementation will likely diminish. For this reason, proponents of this perspective believe that the presence of TAN is indispensable in the whole process of human rights institutionalization.

At this point, both TAN and TLP share a great deal of similarities by virtue of highlighting the growing influence of non-state transnational actors in both the international and national arenas. Moreover, like that of the normativist approach, the use of the constructivist perspective by the TLP and TAN is an attempt to explain the apparently unconventional phenomenon of state compliance with international law in the absence of a coercive institution. The only difference between the two perspectives lies in the actors and the subjects to be emphasized. Whereas TLP focuses on the role of lawyers and considers human rights purely as international law, TAN incorporates non-state activists as part of the network, taking the human rights corpus as broader norms that extend beyond their legal formal status, being shared by the community of transnational activists.

World culture. Similar to the normativist approach, the TLP and TAN perspectives base their explanations on the logic of appropriateness. According to this logic, individuals do not cast their actions in terms of a cost-benefit framework, but orient their actions towards fulfilling normative expectations (March and Olsen, 1998). In other words, given the differences in actors' identities, we are not able to understand individual behaviors through the lenses of instrumentalist views. In their studies on the diffusion of human rights norms, Goodman and Jink (2004) argue that, while the proponents of the TLP and TAN only recognize social actions as either interest-oriented or norm-oriented, there is another possibility of action that is pursued on the basis acculturation, in which actors adopt particular normative scripts simply as an attempt to mimic a reference group. Although this type of action is also motivated by the logic of appropriateness, it neither assumes a fundamental change of identity nor rational calculation.

According to world culture theory, there is a great tendency for actors to follow the behaviors of others whose status is considered to be superior to their own (Finnemore, 1996; Meyer et al., 1987, 1997). By associating with reference groups, actors could subjectively feel that they have fulfilled the expectations of an ideal normative script. For example, nowadays, the discourse of development reveals the tendency of societies all over the world to increasingly take modern institutions for granted (Boli, 1997, Boli, Loyola, Loftin, 1999). This is not because of the intrinsic value of these institutions, but because the West is conceived of as having a higher status. Consequently, we find remarkable

structural similarities (isomorphism) in institutional fields such as schools, NGOs, states, as well as human rights (Ramirez and Boli, 1997; Boli, Loyola, Loftin, 1999). Yet, at the same time, we also witness the decoupling phenomenon of these institutions, where formal rules do not match actual functions and organizational procedures do not relate to routine activities (Meyer and Rowan, 1977).

In contrast to other constructivist perspectives, the acculturation of human rights does not necessitate persuasive strategies to convince target actors about the validity of these norms (Goodman and Jinks, 2004). Actors in this framework are attracted to following the rules because of their relationship with the reference group, not because of their beliefs in the truth of the norms. To a certain extent, acculturation changes the incentive structure as outlined by the instrumentalists, and shifts the actor's preference the way the constructivist does. However, these incentives and preferences are neither generated through instrumentalist relations with the reference group nor through a genuine shift in identity, but instead through an act of association with groups of higher status. In acculturation, peripheral actors actively seek to adopt normative models without assuming the presence of coercive pressure or persuasive argumentation with more powerful groups. The role of transnational actors, which in world culture theory is labeled "world society", is limited to disseminating world cultures throughout the globe.

Compared to other constructivists, the world culture approach appears to better explain the discrepancy between ratification and actual human rights practices. Rapid increase in ratification rates may suggest that the acculturation

process has been gaining momentum, given that many countries follow the steps of developed nations to formally adopt human rights laws. However, lack of organizational capacity and cultural compatibility has led ratification in non-liberal countries to decouple from actual practices. Unlike the TLP and TAN approaches, the world culture perspective considers domestic institutional capacity as a contributing factor to the problem of human rights implementation. However, irrespective of such a variation, all approaches within the constructivist framework share the understanding that transnational non-state actors are increasingly influential and that because of their strategic roles, human rights norms gain an important place in many parts of the world.

Power perspective

As we have seen, the three schools of thought on the issue of state compliance not only offer different perspectives in approaching the problem of treaty implementation, but also emphasize different factors that determine a state's likelihood in fulfilling its promises. Despite the differences, however, they are of the same opinion that the role of international actors and institutions are pivotal in the process of treaty implementation. The instrumentalists put much emphasis on strong states and international institutions; the normativists highlight the primacy of international norms; while the constructivists point to the network of non-state actors. Unfortunately, with the exception of transnational activist network analysis, the theories above have yet to explain the mechanisms of how international human rights norms penetrate into the domestic sphere. The instrumentalists only highlight the influence of strong states and international

institutions, without specifying the conditions that make their influence effective. The fact that human rights violations continue to take place in countries that have close relationships with strong states poses a question about the effectiveness of this influence. The normativists also tend to be simplistic in their assumption that the legitimacy of norms automatically translates into implementation. Some of them even naively believe that the problem of the state's noncompliance is administrative in nature, only because membership in international institutions is voluntary.

Arguably, by placing too much emphasis on international actors, these theories face the problem of applicability when trying to explain the outcome of treaty ratification. On the one hand, the status of international human rights treaties is no different from other international laws, but, on the other hand, its function resembles national law. Instead of regulating the community of states, a given treaty intends to regulate the relationship between the state and society like in the case of domestic law. The state is the duty bearer of the treaty, but unlike international law, the rights holders of the treaty are the citizens instead of the members of the state-community. Given this framework, the position of domestic actors should not be regarded as less crucial than that of international agents. In the instrumentalists' words, domestic actors should have more at stake in the success or failure of the implementation of human rights treaties.

Considering that human rights law wants to regulate national affairs, resistance from domestic actors will always be an inevitable response. This is the case not only because international actors exert their power over domestic

institutions, but also because human rights law itself arrives as a distinct and often foreign ideological package. It lists specific details about how the state should behave and how individuals should act in order to achieve their interests (Mutua, 1996). This ideological package asserts, for instance, the primacy of the individual's position in the social and political realms and the duty of the state to ensure that all institutions within its jurisdiction respect and promote the rights to which individuals are entitled (Vincent, 1991). For this reason, the UN and the transnational activists who draft human rights treaties detail a list of rights that individuals can claim and outline the responsibilities of states toward the fulfillment thereof. It is at this point that human rights law might come into conflict with other ideologies and cultures that nurture different worldviews (Kausikan, 1993; Poe, 2003; Poe, Wendel-Blunt, Karl Ho, 1997).

As a contested concept, human rights law always involves power relations throughout the stages of its drafting and implementation. The early process of human rights legislation in the UN clearly demonstrates how activists, state representatives, and lawyers mobilize resources to ensure that their special interests are provided for in the enacted law (Clark, 2001). Once the UN General Assembly approves a law, networks of activists and the UN apparatuses begin the work of persuading or pressuring state members to ratify the treaty. This lobbying continues all the way to the final stage of drafting human rights norms, which the ratifying states are required to uphold. At any stage of the process, the probability that the norms will be implemented is largely dependent on the power constellations among the actors involved in the initial drafting processes. For

example, in the 1940s, the UN failed to incorporate systematic rape into the category of war crime. This was not because the practice was acceptable back then, but because many Soviet soldiers had committed the crime against German women (Cmiel, 2004). As a victor of World War II, the Soviet government had had the necessary political clout to dictate the discussions in the UN in order to suit its own interests.

It is in this line of thought that this thesis would like to adopt a power perspective in explaining the outcomes of treaty implementation. Like the legislation stage, the success and failure of the implementation of human rights treaties is conditioned by particular power configurations among the parties involved. The stronger the influence wielded and exercised by human rights proponents, the greater the probability that human rights treaties will be implemented. By looking the issue of treaty implementation as a question of power relations, this thesis maintains three basic assumptions. First, we share the instrumentalists' fundamental premise that the state's willingness to implement treaties is not voluntary, but a calculated strategy to obtain greater benefits while minimizing risks. Second, we hold that actors—including the state, social groups, international institutions, and multilateral organizations—are self-interested agents whose behaviors are motivated by cost and benefit calculus. Third, in contrast to the normativist and constructivist perspectives, we hold that norms do not contribute directly to an actor's behavior, but merely shape that actor's preferences. These three assumptions will guide the thesis in analyzing the

patterns of power relations between actors and the outcomes produced throughout the processes of treaty implementation.

The power perspective has been applied to explain the outcomes of a number of social issues. A classic work by Robert Dahl (1961), *Who Governs? Democracy and Power in an American City*, provides a good example of how citizens exert their power to pressure the government to accommodate their demands and interests. In this case, any decision taken by the government is likely to be biased, privileging particular groups at the expense of others. Hall (1985) applies this perspective to analyze different outcomes of power relations in the world's civilizations and to explain the mechanisms by which Western civilization has been able to endure longer than other world civilizations. In the same vein, Mann (1986) applies a power perspective to explain the historical development of a number of institutions, such as the state, class, and nation-state, the emergence of which are not evenly replicated in other parts of the world. Another sociological inquiry within this tradition is Rueschemeyer, Stephens, and Stephens' (1992) work on capitalism and democracy. Based on comparative historical analysis, the authors look at patterns of power relations between the state, social classes, and transnational structures of power to explain the establishment and consolidation of democracy. Central to the authors' premise is that democratization is both "resisted and pushed forward by class interest", and democracy is not "extended because of universalist logic of this idea that gave it rationale and legitimation" (1992: 46). In other words, through the lens of a power perspective, the success or failure of democratization can be explained by an

examination of the power configurations that are distributed among those supporting and opposing the idea of democracy.

Likewise, this thesis shares the assumption that the idea of human rights is contested, resisted, and pushed by those interested in the application of these norms. Like democracy, human rights are not implemented because of their universalistic claims, but because of certain political configurations that generate enough power to motivate the state to be compliant. The following is a list of major actors and their respective interests that are directly involved in the implementation of human rights treaties:

The United Nations (UN). The UN is the institution most concerned with having human rights law implemented by its member states, including both ratifying and non-ratifying states. For this reason, the UN stands at the forefront of promoting human rights, actively setting up a number of mechanisms to ensure the dissemination and implementation of the law. It encourages its member states to ratify treaties and monitors their implementation through “constructive dialogue”. The UN also establishes panels of independent experts to evaluate self-authored reports submitted by state parties and recommends improvements based upon their findings (Bayefsky, 1997). However, knowing that no one at the UN can guarantee the accuracy of information provided by state parties, the panel also encourages NGOs to submit shadow reports offering alternative voices (Gaer, 2003). This strategy is widely believed to be an effective way to monitor states and ensure accurate evaluations.

To make the enforcement procedure more effective, the UN has also introduced yet another mechanism by setting up thematic rapporteurs and working groups with the mandate to collect data about cases of human rights violations in both ratifying and non-ratifying countries (Weissbrodt, 1982). The special rapporteur system is generally operative in emergency situations and can only be dispatched with the consent of host states (Bayefsky, 1997). Unfortunately, despite these multiple enforcement mechanisms, the UN has no power to muster political and economic sanctions against violating states beyond criticizing them in the forums of the UN General Assembly and its Treaty Bodies. As such, the UN often has to mobilize support from strong states when it intends to put strong pressure upon violating regimes.

Powerful democratic states. Since the end of the Cold War, strong democratic countries have been more and more concerned with human rights practices in other countries (Hafner-Burton and Tsutsui, 2005). Their attention has mostly been a response to domestic pressure from their civil society organizations. This pattern is mirrored in the actions of institutions that come under the influence of powerful states, such as the International Monetary Fund (IMF), the World Bank (WB), and Asian Development Bank (ADB), which increasingly attach the promotion of human rights to development assistance. These multilateral institutions are inclined to give assistance to countries with better human rights records than to those known for violations (Abouharb and Chingranelli, 2006).

On a number of occasions, powerful democratic states initiate direct intervention to protect a people from being abused by authoritarian or repressive regimes, such as was the case in Yugoslavia, Rwanda, and East Timor (Kivimaki, 1993, 1994). Strong countries also allocate a special budget to promote human rights worldwide by providing support to international non-government organizations (INGOs) and domestic social groups with the same interests. Nevertheless, unlike the UN and transnational activists, strong democratic states also harbor a set of interests that must be prioritized even if that entails overriding or ignoring their commitment to human rights causes. As Keck and Sikkink (1998) clearly state, the power and economic interests of strong states can seriously weaken the role of transnational activist network. The latter could then no longer rely on the leverage of strong states to put pressures on violating states. Thus, the interest that strong states may have in implementing human rights law is largely contingent upon the immediate interests that they face.

Transnational activists. In comparison with the UN and powerful democratic states, the role of transnational activists is well acknowledged and assessed by contemporary literature on international human rights norms (Finnemore and Sikkink, 2001; Keck and Sikkink, 1998; Krasner, 1999; Koh, 1996; Meyer et al., 1997). This is not particularly surprising, given that their status as norm entrepreneurs is to articulate and draft the international standards on a given norm and struggle for its implementation. On the issue of human rights in particular, their contributions are far greater than those of the community of states (Risse, Ropp, Sikkink, 1999). All international human rights laws are

almost entirely the product of activists, who articulate their content and promote their implementation in states and societies (Burghers and Danelius, 1988; Clark, 2001; Jacobson, 1992).

Outside of their activities at the UN, transnational activists help local proponents of human rights to disseminate the norms they embrace through training programs, conferences, and other advocacy activities (Jiminez et al., 2001). Mutua (1996) and Dalmayr (2002) juxtapose human rights activists with missionaries in religious institutions, who feel obliged to disseminate their beliefs to the entire world. Not surprisingly, transnational activists not only lobby strong states to exert pressure against violating regimes, but also mobilize funds for the promotion of human rights in non-democratic countries. Besides the UN, transnational activists are the international actors who have the most interest in promoting human rights law. Nevertheless, despite their commitment to their ideology, human rights activists are economically and politically dependent on business circles and strong states, both of which do not always share the same vision and interest in the promotion of human rights.

Domestic human rights activists. To some extent, domestic activists are an extension of their patron counterparts in the international arena. They become the subordinate missionaries of their superiors in developed countries, mostly by adhering to the agendas that have been set up beforehand by the UN or INGOs. However, despite their dependence on transnational activist networks, the position of domestic activists with respect to treaty implementation is more pivotal than that of transnational activists. They engage in daily advocacy activities and

directly confront the state's power and social groups that are against the norms that they and their international counterparts advocate. This implies that the influence of transnational activist networks is only effective if it also nurtures a strong domestic activist network. In other words, transnational activists are highly influential in the international arena, but it is domestic activists who ensure the institutionalization of human rights treaties at the national and grassroots levels. Unfortunately, in addition to being financially and ideologically dependent on transnational activist networks, the power of domestic activists is also dependent on the pattern of their relationships with other influential groups within society.

Social groups. The term “social groups” covers a plethora of associations in society also known as civil society groups or social forces. These social groups encompass religious and cultural organizations, economic cooperatives, women's organizations and other types of associations that intend to organize members for collective action. Although the rights-based perspective considers members of associations to be rights holders, different social groups will respond differently to human right treaties. Each treaty carries specific messages that might not be beneficial to all segments of society. For example, traditional groups are the more likely to oppose women's rights treaties than the educated urban middle-class. Likewise, poor families are more likely to oppose the idea of eliminating child labor than middle-class families. Consequently, opposition from influential groups against human rights treaties can weaken the position of human rights activists. On the contrary, support from these groups tends to greatly increase the power of activists. The variety of responses from social groups has been largely

ignored in treaty literature, which mostly takes the support of social groups for human rights for granted.

The state. As the duty bearer of human rights law, the state may simultaneously be the chief antagonist against, or the most influential agent for, the implementation of human rights. Indeed, many states have demonstrated their proclivity to abuse their power against their own citizens, or to extort the country's resources at the expense of the people's well-being. However, as the highest institution governing particular territories, the state holds the key to the success or failure of treaty implementation. For this reason, the human rights perspective feels that the state not only has to be responsible for its own conduct, but also for the behavior of other actors operating within its jurisdiction. If human rights violations are committed by certain groups within society, it is the state that should assume responsibility for failing to prevent such violations from taking place. This double-burden of the state makes both developed-developing and democratic-nondemocratic regimes hesitant to voluntarily agree to human rights treaties.

Besides the overriding prerogative of maintaining power, the state's response to human rights varies according to the political structures and the ideological configurations of society. Researchers have found democratic regimes more willing to commit themselves to treaties than authoritarian regimes. However, different types of human rights treaties also attract different responses from states. Comparative studies on the relationship between civilizations and human rights practice found that the Islamic, Chinese, and Buddhist civilizations

are the least appreciative of political rights. The Japanese were found to be the lowest in rank along with Hindu and Muslim societies in terms of their respect for women's rights, far below the Chinese and other civilizations (Richards, 2003; Poe, 2003). Yet, different responses might also arise from within the institution of the state. In the United States (US), a ratified treaty often fails to be implemented due to its rejection by Congress and the latter's failure to legislate it into the national law. The military in non-democratic countries might also be more resistant to the adoption of the Convention against Torture (CAT) than the Ministry of Foreign Affairs, which is exposed directly to the pressures of the international community.

Nevertheless, given the centrality of the state's position, the regime's interest-at-stake in human rights norms will always exert much influence in the move for or against treaty implementation. For strong states in particular, the rejection of human rights norms will automatically lead to the failure of treaty implementation. Yet, even so, the state's interest is not likely to be the only determining factor in the process of implementation. If the state is willing to embrace human rights norms, it must have a strong capacity to enforce its decision in order to materialize its commitment. It is due to the lack of power to rule that weak states will always fail in fulfilling their promises to the international community.

Thesis Hypotheses

To reiterate, this thesis poses two main questions: first, why does the ratification of human rights treaties often fail to translate into implementation?

Second, under which conditions is the ratification of human rights treaties consequential or inconsequential? Linking these questions to the interests and ruling capacities of the aforementioned actors, this thesis will draw the following hypotheses about the likelihood of ratified treaties being implemented:

1. A ratified treaty will likely be implemented fully if it is consistent with the interests of strong states with a high capacity to rule;
2. A ratified treaty is still likely to be implemented fully even if it is against the interests of strong states, provided that it is supported by powerful democratic states, networks of domestic-transnational activists, and influential domestic social groups, whereas the state in question is dependent on international resources
3. A ratified treaty is not likely to be implemented if it runs counter to the interests of strong states, even if it is supported by strong networks of transnational and domestic activists but not by powerful democratic states;
4. A ratified treaty is likely to be implemented partially if the state has a low capacity to rule, regardless of the pressures from powerful democratic states, networks of activists, and influential domestic social groups;
5. A ratified treaty is not likely to be implemented if networks of activists are weak or are in conflict with influential domestic social groups.

Research Design

Methodology

With regards to the main questions, this thesis seeks to identify factors that contribute to the success of treaty implementation, as well as unpack the processes

whereby treaty implementations are negotiated and end up with different outcomes. Of the various methods that could be employed, comparative historical analysis (CHA) offers a viable tool for carrying out these objectives. As explained by Mahoney and Rueschemeyer (2003), CHA comes as a research tradition with a number of distinctive features. CHA shares the interests of the quantitative method to the extent that it attempts to establish causality to explain the outcome variables of interest. However, CHA is also concerned with capturing historical sequences and processes in the same way as general historical sociology methods (Skocpol, 1984).

In a sense, this thesis is a case study since it investigates the experience of treaty implementation in one country, Indonesia. However, at a disaggregated level, the thesis follows the within-case method of the CHA tradition. It compares the implementation of three different treaties to establish causal explanations on the success and failure of treaty implementation. Mahoney (1999, 2000) clearly outlines that the within-case method only differs at the level of aggregation from cross-case studies, but shares the same procedures of analysis. In particular, this thesis adopts narrative analysis to investigate the complex processes and sequences leading to the implementation of each treaty under study. In addition, it uses qualitative comparison of each case of treaty implementation to explore similarities and differences in the processes and sequences.

This method differs from general case studies of human rights treaties which focus on one case or small-*N* with only one particular treaty (Afsharipour, 1999; Landsberg-Lewis, 1998; Lutz and Sikkink, 2000; Risse, Ropp, Sikkink,

2001; Weiss, 2003; Welsch Jr., 1993). It also differs from the quantitative cross-case approach that employs large-*N* and uses cross-sectional analyses to identify the causal mechanisms and explain away the outcome variables (Keith, 1999; Hathaway, 2002, Hafner-Burton and Tsutsui, 2005; Neumeyer, 2005). By comparing three treaties and placing them in a historical perspective, the within-case method will provide causal analyses of treaty implementations and investigate the processes that lead implementations to produce different outcomes.

Case selection

This thesis selects the experience of the Indonesian government in implementing human rights treaties as the case to study. The selection is based on a number of characteristics that make Indonesia representative for the study of treaty implementation. First, Indonesia carries ideological and cultural traits well known for their strong opposition to the idea of human rights: Islam and Asia. Traditionalist Muslim religious leaders (*ulama*) have long opposed many formulations of a number of categories of human rights on various metaphysical grounds (Arat, 2004; Mayer, 1991). Meanwhile, the opposition to human rights has also been loudly voiced by state leaders in Asian countries on the basis of cultural relativity (Peerenbum, 2003/4). These ideological and cultural oppositions make Indonesia a good case for understanding the processes by which human rights treaties are negotiated, opposed, and embraced, not only by the state but by social groups as well.

Secondly, Indonesia is among the few states included within the categories of Islamic and Asian that have ratified international human rights conventions.

Compared to Southeast Asian countries, Indonesia is only second to the Philippines in the number of treaties that have been ratified. Among Muslim countries, Indonesia also seems to be one of very few countries that endorse international human rights treaties. The willingness of the Indonesian government to support human rights treaties provides a better ground for studying the interplay between human rights opponents and proponents, both in the international and domestic arenas.

Thirdly, Indonesia has experienced both authoritarian and democratic regimes during the implementation stage of the ratified human rights conventions. As a number of research studies have found, regime type has a significant influence on the likelihood that ratified treaties will be implemented (Hathaway, 2003; Neumeyer, 2005). Democratic regimes are more likely to be compliant with their promises than authoritarian ones. Therefore, examining the situation during the governance of these two different systems, and the transition in between, is deeply revealing about the dynamics of treaty implementation.

Lastly, the Indonesian experience of treaty implementation did not result in similar outcomes across different issues. During the authoritarian era, the treaty on women's rights was better implemented than the treaty on children's rights. During the democratic era, the women's treaty was still better implemented, yet the treaty on torture that was ratified more recently fared better than the treaty on children's rights. Such variations in outcome pose an intriguing question about the conditions under which treaty implementation is more likely to succeed.

While all case studies on the implementation of human rights treaties focus on only one particular treaty, this thesis will analyze three different treaties¹⁰: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). The different natures of these treaties would arguably imply different consequences for the state and simultaneously elicit different reactions from society. Thus, an authoritarian state might be more willing to grant the social and cultural rights of women citizens than to give up using torture; but traditional groups within society might be reluctant to adopt gender equality principles even if the state agrees to do so. Moreover, in the context of methodology, presenting multiple samples allows the findings of the current thesis to be replicated in more cases in the same category and simultaneously enhances their generalizability (Eisenhardt, 1989).

Variables and measurement

The dependent variable of this thesis is the implementation of ratified treaties, measured to the extent to which the state implements the treaties it has ratified. As for independent variables, this thesis will incorporate factors that can potentially influence the direction of treaty implementation. Previous studies have found that strong democratic countries, international organizations, transnational NGO networks, civil society, and the type of political regime influence the likelihood that the state will be compliant (Hafner-Burton and Tsutsui, 2005; Hathaway, 2002; Neumayer, 2005). This thesis will pay special

attention to power interactions between these actors in terms of having an influence over the implementation of human rights treaties.

As discussed earlier, cross-country quantitative studies adopt actual human rights records as the only parameter of treaty implementation. In the end, they almost always come up with two extreme conclusions: ratification is either inconsequential or influential. This simple measure runs the risk of undermining other types of change associated with ratification. Unfortunately, although case studies apply a variety of parameters, no systematic outline has been introduced to measure the extent to which treaty implementation is considered to be successful. Following Koh (1998), thorough human rights internalization should cover legal, political, and social dimensions. An accomplished internalization assumes that the provisions of human rights law have been inherently embedded in the routine activities of these three institutions.

The incorporation of human rights into a legal system may predate similar adoptions in political and social institutions. The government is only likely to initiate policy change after legal reforms have already been initiated. In most cases, however, human rights law is first embraced by the proponents of human rights in society, who then demand that the state accommodate the law. In either form, this thesis will adopt these three institutional domains as the indicators of coverage in the implementation of human rights treaties. In this context, Hathaway's (2002) division of a treaty's impact into procedural and actual changes is particularly helpful, although she does not delve further into what these two changes imply. I define procedural change as a range of policy initiatives by

the state to incorporate international laws into the domestic system, from legal reforms and institutional set up, to the introduction of government programs. Actual change begins when related rules have brought about improvements in human rights records. Details of the schema are as follows.

- Legal reforms. As mandated by all conventions, the first step the state must take is to incorporate or adopt human rights laws into the domestic legal system. This step includes the harmonization of domestic law, legislation of new relevant laws, and setting up procedures and organizations for their implementation.
- Political reforms. Similar to the legal aspect, early incorporation of human rights laws by the executives appears in the form of policy change. Governments may begin with introducing new regulations, setting up supporting organizations and designing implementation procedures. Further policy reform covers various initiatives for redesigning budget policy, focuses on the method of recruitment, and introduces national action plans.
- Actual change. This type of change happens when the procedural stages in the legal and political domains have been applied systematically to actual activities. For instance, the new law or policy has been applied in routine courts and in the government's activities.

Indeed, there are still many other forms of changes that this scheme cannot cover. The strategy of classifying the impact of ratification in terms of coverage

and level of influence is intended to provide a more systematic method of measuring the successes and failures of human rights ratification.

Data sources

Since its objective is to explain the processes of treaty implementation, this thesis will mainly investigate various documents on Indonesia's human rights record. Unfortunately, like other human rights data, existing documents on the subject are incomprehensive, inadequate, and low in quality. As emphasized by Poe, Carey, and Vasques (2001), even Amnesty International's reports and the US' *Country Reports on Human Rights Practices*, generally recognized as the most widely read and distributed human rights documents, suffer from these shortcomings. The reluctance of governments to reveal their own human rights weaknesses compels monitoring groups to rely on various alternative sources of information without an adequate standard of validity (Mitchell and McCormick, 1988). Moreover, the different situations that monitoring groups encounter also invariably means that the coverage and quality of reports vary across countries and periods (Stohl et al., 1986).

Landman (2006) urges researchers to use other documents, such as the Human Development Index (HDI) of the UNDP, to overcome the shortcomings of human rights reports. While this suggestion might solve some of the problems, more data is still required, especially when it comes to the issue of power interactions between the state and other actors that is the focus of this study. The data provided by international organizations mostly come from the aggregate country level; hence, such data need to be supplemented with other documents

from domestic institutions. Moreover, given the usual problem of data availability in developing countries, printed documents from both international and domestic sources also need to be complemented with information acquired from interview activities. It is in this context that this thesis combines secondary resources with first-hand information from interviews with relevant respondents. This strategy can further minimize the weakness of the data typically found in studies of human rights implementation.

The type of interview adopted in this thesis is semi-structured with open-ended questions. This is in line with the purpose of the interview as a strategy to obtain more information on particular subjects that have been alluded to in secondary sources. Semi-structured interviews employ an open-ended style that allows the interviewer to freely probe the interviewee's answer without having to stick to a pre-established set of answers (Graham, 2005). This method supports data analysis in a number of different ways. At the basic level, interviews with concerned actors afford an opportunity to understand in more detail crucial events that are only mentioned briefly in secondary sources. For example, we can disclose the reasons why the Indonesian authoritarian regime was finally willing to be a member of the UN Human Rights Committee in 1990; or how this regime conducted extra-judicial killings against 4,000 suspected criminals in the early 1980s.

Meanwhile, information acquired across interviews helps to find the relationship patterns between concepts, themes, or events that are not visible in the secondary data. As Ritchie, Spencer, and O'Connor (2003) underline,

outlining the linkages between these phenomena will provide us with a good foundation for making explanatory accounts. As an example, it was revealed through interviews that women's and children's movements are intertwined, even though the concept of women's and children's rights are treated separately in the legal domain. Many children's activists have backgrounds as women's activists and many children's organizations are established by women's activists.

The last function of interviews is to refine the hypotheses that are built through theoretical inferences on secondary data. For instance, the existing literature tends to understand civil society and women's activists as a single category, yet, interviews with different types of human rights proponents clearly indicate that is not the case. Women's activists are comprised of various groups with different ideological orientations that are not necessarily compatible with one another. Therefore, instead of only focusing on the strength of women's activist networks, it is crucial to also take the cohesiveness of the networks into account when explaining the role of women's activists in treaty implementation.

This thesis conducted interviews with key persons who have been involved in the ratification and implementation of the treaties under study. In total, 42 interviews were conducted during fieldwork carried out in some cities in Indonesia between January – April 2006 and January – March 2007. The length of the interviews varied from 30 minutes to two hours; some of them were recorded while others were not upon respondents' requests or due to technical difficulties. Respondents were selected from three institutions: the state, three national

commissions working on children's issues, women and human rights affairs¹¹, and international and national NGOs.

At the state institutions, interviews were conducted with some high officers from the Coordinating Ministry of Social Welfare, the Ministry of Foreign Affairs, the Ministry of Women's Empowerment, as well as from police and military departments. Given its institutional status as the duty bearer of the treaty, the interviews were mostly intended to collect data on the state's policies and programs. This is quite different from the interviews with commissioners from the three human rights commissions, which were oriented toward gathering information on their monitoring activities regarding state compliance. This type of information was complemented by interviews with NGO activists, which were mainly intended to collect data on their advocacy activities.

Typically, access to sensitive information is very hard to obtain in human rights research. In this case, the author was quite fortunate to have known a number of activists for a couple of years prior to conducting this research. They helped to link the author to their networks, especially to their fellow activists and commissioners in human rights institutions. Access to the state was not as easy, but access to the military and police departments was even harder. The author's requests for interviews were simply turned down for various reasons; therefore, interviews with officers and retired officers were conducted through informal channels. Again, some activists helped the author via their networks in the media to gain access to these officers. As such, most of the access to respondents was acquired through personal networks rather than formal procedures.

The secondary sources of this thesis on Indonesia's human rights record are collected from the routine reports of the following institutions:

- The US State Department *Country Reports on Human Rights Practices* (1993-2006)
- Amnesty International Reports (1993-2006)
- Human Rights Watch/Asia Reports (1989-2005)
- Unicef's *The State of the World's Children* (1997-2006)
- The Indonesian Government's *Country Reports* to the UN Commission on Human Rights (CHR), the CEDAW Committee, and the CRC Committee.
- The Indonesian Commission on Human Rights' *Annual Report* (1994-2006)
- The Indonesian Legal Aid Institute (LBH), *Human Rights Conditions in Indonesia* (1979-2006)

In addition to these routine reports, the thesis also utilizes documents provided by other international institutions such as the UN Economic and Social Council's documents on Indonesia, the World Bank (WB), and the International Labour Organization (ILO). From the domestic arena, much of the data was collected from state institutions and local NGOs that specifically work on the aspects of human rights as contained in the three treaties under study: torture, women's rights, and children's rights. Other printed materials include court decisions, newspapers, and special human rights reports.

Chapter Plan

This thesis on the impact of ratification of human rights treaties will be presented in six chapters. Chapter 1 is an introduction addressing the statement of the problem, literature reviews on ratification and state compliance, and research design. Chapter 2 provides an overview of human rights practice and human rights law in Indonesia. Included in this chapter is an outline of the Indonesian state with the goal of describing a number of relevant data related to the topic of human rights.

Chapters 3, 4, and 5 discuss the results of the ratification of the CEDAW, CAT and CRC respectively. In these chapters, we will describe the conditions that drove the state to ratify each particular treaty, present the existing records on each treaty's implementation, apply the scheme of measurement to disclose the implementation achievements, and delineate the mechanisms by which the processes of implementation either succeeded or failed. Chapter 6 is the conclusion, intended to wrap up the entire discussion regarding the impact of ratification. In this final chapter, I will further substantiate my theoretical contribution to the problem of the implementation of human rights treaties, based on the empirical findings of the preceding chapters.

¹ The UN system allows various stages of treaty commitment by the state. The first stage is signing, which simply means that states agree and endorse a particular treaty. When they are ready to be legally bound by the treaty, they can declare their intention through accession, for those who have already signed, and through ratification, for those states that did not complete the signing process. As of 2008, there are 159 states who ratified the ICESCR and only 69 who signed. For the ICCPR, there are 72 states that signed and 163 that ratified. See, <http://www2.ohchr.org/english/bodies/ratification/3.htm> and <http://www2.ohchr.org/english/bodies/ratification/4.htm>

² Currently, the UN has eight core international human rights conventions. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on Migrant Workers (CMW), and the Convention on the Rights of Persons with Disabilities (CRPD). See, <http://www2.ohchr.org/english/bodies/treaty/index.htm>

³ Scholars working in this field do not use the same datasets. Mitchell and McCormick construct the data from the *Amnesty International Reports*, to specifically measure the state's respect towards personal integrity rights (PIR). They use a five-point ordinal scale to indicate the level of respect. A score of 0 indicates countries with no violations and a score of 4 points goes to countries with numerous violations. Henderson (1990) measures PIR by coding the information provided by the United States State Department's *Country Reports on Human Rights Practices*. More recent scholarship, such as Poe and Tate (1994) and Keith (1999), use the Political Terror Scale (PTS) to measure PIR. This dataset combines reports by the US State Department and Amnesty International as the basis of information. Poe et al. (2001) find no significant difference between the information of the US State Department and that of Amnesty International.

⁴ More specific research includes the influence of democracy on the state's respect toward PIR. As has been largely confirmed, democracy contributes significantly to human rights practice. However, the existing research does not specify the mechanisms of how democracy influences human rights. Fein (1995) analyzes the state's respect for life integrity rights from the perspective of regime type. She finds that partly free regimes have the worst human rights records compared to free and not free regimes. Her findings concur with the idea that political transitions from and towards democracy tend to increase the use of repressive means, thereby encouraging more violence (Zanger, 2000; Hegre et al., 2001). Davenport and Armstrong II (2004) come up with an alternative perspective by using a threshold model of democratic influence. Employing the Polity IV dataset, which ranges democracy into 10 points, they do not find any evidence that democracy at all levels is always supportive of personal integrity rights. There is no systematic relationship between respect for individual rights and democracy at a level of 1 to 6, and only when states achieve level 7 is democratic influence on human rights practice conspicuous. All of these findings improve the simple model charting the linear influence of democracy to PIR.

⁵ Keith uses a PTS dataset to measure PIR with additional data from the Freedom House to evaluate a country's civil and political freedoms. These two datasets overlap greatly since all the indices of PIR have been covered in the Freedom House rankings.

⁶ It is in this context that their strategy is problematic, since only the treaty on torture, civil, and political rights has something to do with PIR. It is difficult to connect how the CEDAW and CRC influence the level of state violence.

⁷ Some authors legitimize this preference based on the idea that abuse against PIR constitutes the gravest of violence against humanity and that the states' obligations in the ICCPR are delineated more clearly than in the ICESCR (Keck and Sikkink, 1998; Keith, 1999; Poe and Tate, 1994). While these reasons might be valid, applying the findings from the ratification of civil and political treaties to other aspects of human rights such as economic and cultural rights runs the risk of being reductive, for each of these treaties poses different challenges to the state and society.

⁸ *The Power of Human Rights* (2001) is a collection of comparative case studies devoted to explaining the state's respect towards life integrity rights (PIR), a set of obligations required by the CAT.

⁹ The term 'institution' is usually used in sociology to refer to a collective set of norms while the term used most often in international relations is "norms". However, scholars often employ the two terms interchangeably. See Finnamore (1996) and Finnemore and Sikkink (1998).

¹⁰ After the UN issued the Universal Declaration of Human Rights (UDHR) in 1948, it formed a special committee to legislate human rights norms into a binding treaty. The committee drafted a comprehensive covenant to cover a range of issues including civil, political, economic, social, and cultural affairs. However, ideological disputes during the Cold War compelled the UN to make a compromise by issuing two separate covenants; first, the International Covenant of Civil and Political Rights (ICCPR) and second, the International Covenant of Economic, Social, and Cultural Rights (ICESCR), both of which opened for signature in 1966. In the periods that followed, the UN issued some more specific conventions. These conventions were not new in the sense that their general contents had been addressed in the two covenants, the ICCPR and ICESCR. However, due to the broad coverage of the covenants, these conventions outline particular themes of rights in more detail.

¹¹ The three human rights commissions are: the National Commission on Human Rights of Indonesia (Komnas HAM), the National Commission on Violence against Women (Komnas Perempuan), and the Indonesian Commission for Child Protection (KPAI).

Chapter 2

Indonesia:

The State, Society, and International Human Rights Treaty

As outlined in chapter 1, this thesis will compare the implementation of three international human rights conventions in Indonesia. These are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). To understand the context in which these conventions were adopted, chapter 2 will provide background information about Indonesia and its response to human rights norms. The first part will describe general information pertaining to demographic and other related cultural issues. It will be followed by a discussion of the patterns of the relationship between the state and society that developed since the country's independence in 1945. The issues to be highlighted in this section cover regime types, social forces, and the interactions between various actors in the state and society. The last part will be devoted to a review of the country's commitment to international laws on human rights.

From Physical Diversity to a Plural Society

Basic features

According to The World Factbook,¹ Indonesia is the largest archipelagic state in the world. Although only about 6,000 of its islands are inhabited, it is estimated that the country is comprised of a total of 17,508 islands. The land mass is approximately three times the size of Texas and its length would span roughly

from London to Moscow, an expanse divided into three different time zones. However, despite its size, more than half of the total population resides on Java Island, which has been the administrative center since the Dutch colonial period (17th – 20th century). The remaining population is distributed between the larger islands of Sumatra, Kalimantan, Sulawesi, and Papua, as well as the smaller ones such as Lombok and Bali.

The archipelagic character of this region has influenced the development of a variety of different cultural systems among its inhabitants. Not surprisingly, Indonesia's numerous ethnic groups speak their own vernaculars, yet all are connected by a single national language, Bahasa Indonesia [lit. the Indonesian language]. This language initially developed as the *lingua franca* among Southeast Asian peoples before the coming of European conquerors in the early 16th century. Bahasa became a distinct language following its adoption as the Indonesian national language. In its current form, Bahasa Indonesia reflects the significant influence of languages such as Hindi, Arabic and various European languages, especially English.

To a great extent, the ethnic composition of the country mirrors the physical territorial diversity. The Javanese and Sundanese on Java Island are the majority, comprising about 40% and 15% respectively of the entire population. Other major ethnic groups are the Minangkabau, Acehnese, Batak, and Malay on Sumatra Island; the Banjar and Dayak on Kalimantan Island; in addition to the Balinese, Madurese, Ambonese and many others. There are also Chinese, Arab, and Indian descendents, who reside mainly in the larger cities throughout Indonesia. Apart from the Javanese and Sundanese, each ethnic group comprises

less than 5% of the total population. With over 230 million people, Indonesia is the fourth most populous country in the world after China, India, and the United States (US).

Culturally, Indonesian societies have been influenced by the major world civilizations. For centuries, along with other Southeast Asian nations, Indonesia was heavily influenced by Indian civilization (Coedes, 1968). The early kingdoms that emerged in Java, Sumatra, Kalimantan, and other minor islands were Hindu and Buddhist in character. Although Muslim traders *cum* proselytizers from the Middle East came to the region as early as the 13th century, kingdoms demonstrating an Islamic influence only appeared some centuries later (Ricklefs, 1981). The coming of various European groups in the 16th century -- first the Portuguese and then the Spanish, English, and the Dutch -- added to the cultural diversity. However, instead of converting local kingdoms to Christianity, the Europeans placed such kingdoms under their power without changing the characters of their local religions. Colonialism seemed to motivate the European conquerors to pay more attention to the economic and political spheres rather than religious affairs. Thus, the greatest contribution made by Dutch colonialism was the establishment of a relatively centralized political administration on which modern day Indonesia depends (Anderson, 1983; Berger, 1997). In addition, colonialism also linked the local economy to international markets, especially through the introduction of cash crops (Geertz, 1963).

The influence of major world civilizations is clearly seen in the plurality of religions adhered to by the Indonesian people. Although Muslims constitute the majority (86.1%), other Indonesians adhere to Protestantism (5.7%), Roman

Catholicism (3%), Hinduism (1.8%), as well as Buddhism, Confucianism, and some local religions. Despite the predominance of Islam, the Muslim community does not constitute a homogenous entity. Some members of the community identify themselves as puritans, while others view themselves as traditionalists, syncretists, or even nominal Muslims (Nakamura, 1983; Peacock, 1973). It is worth noting that the influence of Hinduism and Buddhism is quite strong among some Muslims and Christians, despite the fact that the number of formal followers of Hinduism and Buddhism is declining. Some Muslim and Christian groups still practice aspects of Hinduism and Buddhism that are perceived as not being in contradiction with their core beliefs, such as some arts and ethical values (Geertz, 1960).

Social and cultural cleavages

With regards to cultural diversity, the basic question is how to understand Indonesian society in a less complex way. Like other traditional societies, social status has been a common way to categorize group identity. Among the Javanese, who represent about a half of the population, individuals fall either into the category of *wong cilik* (commoners) or *priyayi* (aristocrats) (Emmerson, 1976; Koentjaraningrat, 1985). This simple division is presumably a universal phenomenon within traditional societies where a small stratum of elites resides above the mass of peasant commoners (Gellner, 1989; Hall, 1986). The other important social category in the Javanese context is religious affiliation. However, since Indonesia is predominantly Muslim, the category of religion refers exclusively to the internal Muslim community, that is, *santri* and *abangan* (Koentjaraningrat, 1985). The term *santri* points to devout and practicing

Muslims, whereas *abangan* to those who are nominal Muslims. Interestingly enough, although religion and social status belong to different domains, the two tend to overlap. One cannot simply divide commoners and aristocrats into devout and nominal Muslims, because each category cuts across several domains.

In this context, Clifford Geertz (1960) offers a powerful analysis by indentifying three out of four categories, *santri*, *priyayi*, and *abangan*, as the core sub-cultural variant of Javanese society. He demonstrates that these categories cover social and religious affairs as well as occupational and political aspirations, for which they should be understood as a system of value. According to Geertz, in addition to being devout Muslims, the occupational activities of *santris* are centered around the marketplace where they work as traders and are inclined to adopt Middle Eastern arts. This is different from *priyayi* who dominate the bureaucracy and adopt an Indian style mystical religious orientation, as well as from the *abangan* who are mainly peasants with syncretistic religious practices. Given this vast identity coverage, Geertz is of the opinion that Javanese society is better described in terms of a cultural variant rather than class, political affiliation, or traditional social status.

Indeed, Geertz's (1960) concept of cultural variants was drawn exclusively from the Javanese community and hence potentially excludes many other ethno-language communities in the country. At the same time, other major ethnic groups such as the Sundanese, Sumatrans, and some Kalimantanans were heavily influenced by Javanese culture. They were connected to the Javanese through political domination, religious networks, and more intensively through Dutch colonialism, which centered on the island of Java (Ricklefs, 1981). Thus,

even though the category of cultural variant might exclude communities located in remote areas far from Java, it remains applicable to the majority of Indonesian society. Nevertheless, Geertz conducted his fieldwork in the 1950s when Indonesia had just begun to build up the institution of the state. Major social and political events that occurred thereafter have transformed people's social identities. Therefore, as some scholars have rightly underlined, the three variants might not be as relevant as they were two or three decades ago (Bush, 2002; Effendy, 2003; Ramage, 1995).

Despite the possibility that they may be outdated, however, the three variants can be taken as a basic way to understand the changing characters of the state and society in Indonesia. This is not to say that the variants were the only elements to have influenced the state's orientation, given that other factors such as modern ideologies – nationalism, communism, and socialism – also contributed greatly to the process of change. Likewise, ethnicity and religious diversity need to be considered, despite the fact that all these factors were largely connected to basic cultural variants. Apart from their institutional character, the three cultural variants could also be taken as a basis for understanding the pattern of relationships between the state and society. As will be discussed below, the nature of the early Indonesian state was a reproduction of social cleavages in the political realm. Political parties were divided along the lines of cultural variants, a phenomenon that Indonesianists call *politik aliran* (politics based on cultural streams). Nonetheless, the increasing power of the state along with the emergence of authoritarian regimes has in turn reshaped social identity away from its original

patterns. As such, both the state and society experienced mutual transformations despite the fact that they did not necessarily share equal power.

The State and Society

As has been discussed in the previous chapter, the implementation of a human rights convention always involves power interactions between the state, society, and international actors. The character of the state and society inevitably shapes the responses made by rulers towards human rights laws (Hafner-Burton and Tsutsui, 2005; Moravcsik, 1995; Neumeyer, 2005). Under certain conditions, international actors can also become a powerful pressure group against the state (Risse, Ropp, Sikkink, 2001). The following section will discuss the changing interactions between the state and society in Indonesia. After that, we will provide further analysis of the impact of regime types on the state's commitment to international human rights laws. To do so, I will divide the discussion into three successive periods. The first covers the Old Order regime (1945-1965) when the state was in its early stages of formation. The second was during the New Order regime (1966-1998) when the state experienced intensive institutionalization. The last period is when the country entered the democratization processes (1998-2006).

There is a common tendency among Indonesianists to employ the concept of "civil society" to describe the relationship between the state and society (Budiman, 1990; Bush, 2002; Kohno, 2003; Nyman, 2009). This is particularly apparent when they discuss state behavior and democracy, where the role of a particular group in society is perceived as a crucial factor. Unfortunately, civil society as an analytical concept contains different kinds of normative baggage that

cannot be easily reconciled. Voluntary membership is often emphasized, but some scholars also highlight autonomy from the state, civic spirit, and non-economic and non-political orientation as other important criteria. Applied in the Indonesian context, where the institution of state and social association have a different historical trajectory from that in the West, Indonesianists are compelled to adjust and redefine the concept of civil society. They have to expand coverage of the concept to include less autonomous associations, political parties, and even individuals (Nyman, 2009). Thus, instead of adopting this unspecified concept, the following discussion will loosely use the term “society” to refer to the social realm outside the state. The discussion that follows will analyze the interaction between the state and society under the three aforementioned periods or successive political regimes.

Old Order regime (1945-1965)

In the first four years of independence, the Indonesian state did not function as a proper political organization. The unilateral declaration of independence by nationalist leaders in 1945 was not immediately followed with political recognition by the Dutch colonial government (Anderson, 1983). Instead, having retreated for three years due to the Japanese invasion of Indonesia in 1942, the Dutch attempted to return after the Japanese surrendered to the Allied Forces in 1945. The Dutch were successful in recapturing some provinces, established satellite states, and even arrested the president, vice president and other leaders of the newly declared Republic of Indonesia. However, this success did not automatically entail a return to power by the Dutch. On the contrary, four years

after the declaration of independence, the Dutch had to recognize the legitimacy of the Indonesian state and transfer sovereignty to its leaders.

According to Anderson (1983), the Dutch withdrawal from Indonesia had little to do with the newly created state and more to do with the aspirations for independence that had been developing in Indonesian society since the early 20th century. The declaration of independence in 1945 that marks the birth of the new state was simply a further stage of the nation building that had started much earlier among the people. This is in line with Shiraishi (1990) who argues that nation building in Indonesia began much earlier than state building. He considers the early decades of the 20th century as an age of movement for Indonesia, one during which indigenous societies began to mobilize resources for the improvement of living conditions. A plethora of social, economic, political, and religious organizations at district, provincial as well as national levels were created. For example, the modernist *santri* community established a socio-religious association, the Muhammadiyah, whereas the traditionalist faction created Nahdlatul Ulama (NU). The *priyayi* circle formed Boedi Oetomo, while the communists mobilized the *abangan* peasants and labors (Ingleson, 2001; Noer, 1973).²

As the growing social associations crystallized into an independence movement, many of them created militias to launch military resistance against the colonial government. Major organizations such as the Muhammadiyah, NU, or Boedi Oetomo in particular had vast networks down to the grassroots level. It was the large number of social associations among the indigenous people that allowed the resistance to proceed even without formal state coordination. Not surprisingly,

the success of the Dutch in defeating the new state leadership during the early years of independence did not lead to the end of the independence movement. On the contrary, the Dutch claim to have taken control of the country was challenged by widespread military resistance by indigenous militias. With the international cry for ending colonialism around the world, the Dutch eventually had no choice but to withdraw from their colonial territories (Kivimaki, 1993).

Given the pivotal role of social associations in the movement against colonialism, the new state was very much influenced by the dynamics of society. As the historical records show, heated debates had been going on between social factions during the preparations for independence. For example, the Islamist faction wanted Islam to be enshrined as the official religion, whereas secular groups preferred to construct a religiously neutral state (Effendy, 2003). In the end, the participants came out with a compromise formulation to accommodate the widest aspirations possible. The state ideology *Pancasila* (lit. five principles) attests to the tendency toward compromise, combining such basic principles as the belief in God, humanity, nationalism, and democracy with socialism. The 1945 Constitution is not very different, stipulating the state's obligation to grant a number of individual rights as well as to ensure social welfare.

Compromise between social forces also extended to the preference for a system of governance. The founders of the Republic agreed to install parliamentary liberal democracy as the state's political system. This choice has been widely perceived by contemporary activists as evidence for the democratic leanings of the early leadership as compared with the authoritarian leaders who ruled the country between 1966-1998 (Lubis, 1993; Nasution, 1992). However,

this can be misleading, since the founders of the Republic came from divergent ideological backgrounds, ranging from the totalitarian communist left to the Islamist right. As succinctly emphasized by Anderson (1983), the preference for parliamentary democracy was not solely due to individual leaders, but to the need to accommodate social forces, which rendered this system the only viable alternative. The state was still in its infancy and society was divided along deep socio-political lines, making liberal democracy the best choice available. Neither the state nor any particular group in society was thought to be capable of dominating the others, thereby forcing all interest groups to compete or make compromises through coalitions.

The outcome of the first general election in 1955 clearly points to the overwhelming influence of social and cultural cleavages on political divisions. The four big winners were the Indonesian Nationalist Party (PNI), the modernist Muslims, Masyumi, the traditionalist Muslims, Nahdlatul Ulama (NU), and the Indonesia Communist Party (PKI) (Liddle, 1970).³ Obviously, the constituents of these parties overlapped greatly with the social cleavages described by Geertz. The supporters of PNI mainly came from the *priyayi* community, while the Masyumi and NU from the *santri*, and PKI the *abangan*. This close connection between cultural and political institutions intimately connects political parties with networks of social associations, religious institutions, and even militias.

To the extent that all groups agree on a common political platform, different ideological orientations do not necessarily lead to radical conflict. However, the weak institutionalization of the state during the early years of independence left social forces to engage in fierce competitions. Each faction was

not only motivated to gain access to state power, but also to have outright control over public institutions. Goh (1972: 232) noted that the existing leadership failed “...to evolve an effective mechanism to regulate and reconcile differences within Indonesia’s plural society”. As a result, due to extreme political maneuvers by each party, the state did not have a stable government. Such a delicate political situation eventually created a downward spiral effect when it came to the worsening of broader political and economic stability. Disappointed as they were, the radical factions of communist, Muslim, and military groups launched rebellions against the central government (Feith and Lev, 1963). In the late 1940s, the radical communists launched a coup attempt against the central government, as did the radical Muslims who desired a separate state (Dijk, 1981). In the mid-1950s, radical army officers collaborated with the modernist Muslims and socialist groups to launch regional rebellions to protest the privileges granted to the communist party (PKI) by the charismatic first president, Sukarno (Harvey, 1977).

Sukarno, the first president, was fortunate that he received full support from the mainstream military, which enabled him to contain all rebellions. However, success in salvaging the state and defending territorial integrity did not automatically produce a stable government. The liberal parliamentary system continued to provide numerous occasions for unleashing uncontrolled competition. The political squabbling only ended in 1957 when, after being persuaded by the army, President Sukarno declared martial law. Two years later, he dissolved the parliament, discarded the liberal democracy, and introduced a new system of Guided Democracy (Lev, 1966).

Although the army was severely underfunded, its experience in the struggle for independence made this institution one of the most efficient state organizations. Many of its officers were recruited from freedom fighters and militias during the independence revolution, but its commanders were trained in either Dutch or Japanese military schools (Crouch, 1978). It should be underlined that the organizational superiority of the military not only led to the successful curbing of rebellions, but also elevated the military's position within the state. As President Sukarno gained more power based on the military's support, the military itself also obtained significant benefits from the demise of the liberal democratic system. It could exert more influence upon the state without having to go through democratic processes in the parliament.

At this point, for better or worse, the role of the army in motivating the president to exert state power suggests that the existence of an autonomous group within the state was necessary to block any direct intrusions by social and political organizations. In other words, in the absence of an agreed upon political platform among social and political groups, the institutionalization of the state would depend on the strength of internal groups within the state.

Having declined liberal democracy, Sukarno introduced a syncretistic political manifesto to assemble three main ideological factions called the Nasakom,⁴ an acronym for nationalism, religion, and communism. Based on this political doctrine, Sukarno gave the leaders of major loyalist parties — NU, PNI and PKI — access to participate in the state (Feith, 1962). In addition, Sukarno conducted a political trade off with the military by granting them licenses to nationalize ex-Dutch companies and participate in civil affairs (Crouch, 1975-6;

Lev, 1963-4). This maneuver placed Sukarno at the center of power, surrounded by three competing factions: the nationalists (PNI and the army), the Muslims (NU) and the communists (PKI). At the same time, however, he dissolved the modernist Muslim party (Masyumi) and the socialist party (PSI) over their involvement in some regional rebellions. The ability of the central government to curb regional rebellions and punish opposition parties suggests a shift in the balance of power, one in which the state began to take control of society.

Nevertheless, the absence of Masyumi and the growing power of the military only slightly changed the political cleavage. The three main parties remained a reflection of the old cultural variant of *santri*, *priyayi*, and *abangan*; only the power basis of each faction experienced significant transformation. The military was becoming stronger with their success at fighting rebellions and the PKI could claim similar success with widening mass support. This party was known for its discipline and progressive outlook in comparison with its rivals (Hindley, 1967). A serious decline of the NU and PNI occurred, parties that largely relied on traditional supporters from the rural *santri* and the tiny *priyayi* community. Some of the NU's constituents became aligned with the PKI and, with the dissolution of Masyumi, the *santri* faction experienced a regress. As a result, the increasing concentration of power in the hands of Sukarno left the army and PKI as the main political players while the NU and PNI were on the margins of the political arena (Lev, 1963-4).

President Sukarno, skilful and charismatic, was adept at balancing power between these competing groups and this allowed him to retain his central position even in the midst of the state's economic bankruptcy. Nevertheless, since

each faction had its own irreconcilable political ideology, this strategy left a time bomb that could explode at any time if he lost political control. All factions were highly suspicious of each other and therefore tried to enhance their survival by extending their networks to the grassroots level. They built a variety of associations to attract followers, from labor unions, militias, teachers' unions, and artisan guilds, to women and youth organizations.⁵ Not only did people become highly politicized, but even voluntary associations that were supposed to be less political also became entrenched in the political cleavages (Riker, 1998). In the end, even though the state experienced substantial institutionalization during the Guided Democracy period, it was still highly fragmented. Moreover, the intensifying political mobilization by all political factions finally unleashed bloody conflicts more severe than those of the regional rebellions in the 1950s.

In 1965, fearing that the military might assume control, the PKI tried to seize power after learning that Sukarno was in dire health (Palmier, 1971). It declared the establishment of the Revolutionary Council that would take over the government's duties in order to save the president from a coup plot by the Council of Generals. As a response, the army mobilized its forces to curb the coup movement and followed this with a nationwide order to its officers to hunt down the PKI's followers. The military also encouraged the Muslim community to join their cause and provided them with training and weapons. Within less than one year, some 500,000 of PKI's leaders, followers, and sympathizers had died at the hands of the army and Muslim factions (Cribb, 1990). Hundreds of thousands more were detained, tortured, and exiled without trial. This tragedy marked the

fall of Sukarno and his fragile regime that was popularly called the Old Order, and was followed by the rise to power of General Suharto and his New Order regime.

New Order regime (1966-1998)

The rise of Suharto to the presidency marks a new era of 32 years of full-fledged authoritarianism. Unlike the previous regime, the New Order began with economic and social development as the core agenda of the state. Suharto was more pragmatic than his predecessor and chose to invite international capital investment rather than nationalizing foreign companies in order to satisfy the revolutionary agenda. It is worth mentioning that President Sukarno had been well known for his policy of economic nationalization and indigenization (Coppel, 1983). Suharto reversed this strategy by opening up the country's economy to international markets and capital (Clear, 2003). Obviously, the shift in the state's orientation from political revolution to economic development carried far-reaching consequences for the relationship between the state and society.

Reflecting on the journey of the New Order regime, one sees that Suharto adopted a set of comprehensive strategies to secure the implementation of his development program. The first step was strengthening the institution of the state by placing technocrats and military officers in the bureaucracy (Liddle, 1973). This policy was simultaneously accompanied by an effort to control the activities of political parties. In fact, after the destruction of the Communist PKI, the secular traditionalist PNI and religious traditionalist NU were the only major political parties left. The modernist Muslims wanted to revive the Masyumi previously dissolved by Sukarno, but Suharto then denied permission (Samson, 1971/2). Instead, the New Order forced all the existing political parties to merge into two

simplified parties, the PPP (the United Development Party) for Islamic parties and the PDI (the Indonesian Democratic Party) for the rest.⁶ At the same time, the regime promoted its own political machine, the Golkar (functional group), which was established by the army during the Old Order period. Furthermore, to implement the concept of “floating mass” that was intended to minimize people’s participation in politics, the state banned political parties from establishing branches lower than the district level.⁷

The process of driving society away from politics, which was known as de-politicization, did not go on without resistance. However, the military-backed regime was heavy-handed and ready to crush any political movements that challenged its policies. The New Order went further in introducing other policies to society. In the mid-1980s, it issued the regulation to enshrine the state ideology, *Pancasila*, as the single ideology for all political and mass organizations.⁸ This policy was known as a de-ideologization program that was intended to encourage society to share the same vision about statehood and nationhood by disposing of ideological differences. The New Order regime firmly believed that the political and economic failures of the Old Order were mainly caused by ideological bickering, the potential for conflict of which should be reduced through the process of de-ideologization.

To make the state’s control over its citizens even more effective, the New Order introduced yet another measure. Following its de-politicization and de-ideologization agenda, the regime made an important decision to oblige each professional and functional association to build a single umbrella organization (Nyman, 2009). This strategy allowed the state to control and co-opt all kinds of

social organizations by intervening directly with the internal leadership. Like the political parties, the regime also sponsored its own new version of civil associations to weaken the old ones. It is in this context that under the New Order regime Indonesia became a corporatist state, in which no organization was capable of escaping state intervention (Lubis, 1993; Nyman, 2009).

Unavoidably, the concentration of power in the institution of the state devastated the autonomy and freedom of society. Under the Suharto regime, political participation increasingly became a story of the past and ideological competition a social anathema. As a result, the social and cultural cleavages from which political aspirations used to be drawn ceased to impact the institution of the state. On the contrary, the state was constantly intervening with the civil associations that had been created around the cleavages. With the dissolution of previous political parties and their associate organizations, these cleavages no longer had a crucial function in defining group identity. The policy of de-ideologization further weakened the cleavages and simultaneously contributed to making society less political and ideological. The government effectively used its development agenda as a means of drawing people's attention away from politics and encouraging them to pay more attention to education, the economy, health, and family affairs.

The success of the New Order regime at altering the relationship between the state and society was not without cost. Indeed, the authoritarian regime combined repression and shared economic growth as the strategy for its rule (Liddle, 1987). Opposition and resistance to the heavy-handed policies of Suharto existed, but his regime was willing to use cruel and brutal means to silence any

opposition. After the communist purge, the New Order also crushed radical Islamist groups and critics who mounted strong opposition against the de-politicization and de-ideologization policies (Burns, 1989). Nevertheless, this regime also realized the promise of its development program. Over the course of about three decades, the regime consistently recorded an annual economic growth of no less than 6%, which was translated into the improvement of a variety of development indexes (Hall, 2000). Therefore, it should not come as a surprise that these substantial economic and social welfare developments further convinced the regime that its authoritarian strategy was justified.

In an environment where political parties and social organizations were practically controlled by the state, voices of opposition could not be transmitted through regular channels. The growth of non-governmental organizations (NGOs) in the early 1970s offered an opportunity for opposition activities to be conducted in the absence of normal channels for political participation (Riker, 1998).⁹ Included in the early NGO network was the Legal Aid Institute (LBH), which acted as the pioneer for the human rights movement in the country (Kohno, 2003). The other available avenue through which to voice opposition was on university campuses, where small and loosely connected organizations could escape from government regulation (Eldridge, 1995; Kraince, 2003).

However, although NGOs were quite independent, they could not perform opposition activities as effectively as the political parties and social associations did during the Old Order period. Until the early 1990s, the majority of NGOs worked on development issues with a prime objective of balancing the government's top-down model with the bottom-up approach through the

empowerment of rural people (Riker, 1998). The regime did not resist the activities of NGOs because they complemented the existing development project. To the extent that the NGO movement was intended to improve social welfare, the regime tended to be accommodative. The regime also often capitalized on social associations in order to implement development projects, such as family planning, farming, cooperatives, fisheries, and various cottage industries.

The turning point for NGO and campus organizations becoming the main opposition took place in the early 1990s. The shift was facilitated by a number of factors, including changes in international politics. By this time, the regime felt that the state's development programs had successfully ended ideological conflicts and improved political stability and social welfare. For that reason, the regime decided to introduce the policy of "political openness" by allowing society to voice constructive criticism (Hein, 1990). At almost the same time, the world witnessed the end of the Cold War, which indirectly increased international criticism against Indonesian authoritarianism. For instance, donor countries began to question some of the government's violent practices (Baehr, 1997). In response to these political opportunities, NGOs and campus activists increased their advocacy agendas. They established assorted coalitions for the advocacy of labor rights, women's rights, political participation, as well as human rights (Eldridge, 1995; Hadiwinata, 2003; Kraince 2003). These activists created a bandwagon effect that encouraged critical elements in social organizations and opposition parties to join the movement.

The increasing influence of NGOs could not be separated from the growing presence of international NGOs and philanthropic organizations in the

country. Various international foundations such as the Friederick Naumann Stiftung (Germany), Novib (the Netherlands), Oxfam (England), the Ford Foundation and the Asia Foundation (United States) provided substantial financial and technical support to domestic NGOs (Clear, 2003; Eldridge, 1995; Riker, 1998). In this context, the centrality of NGO and campus activists suggests that the old social and cultural variants had weakened significantly. The New Order regime had destroyed their political organizations while co-opting their social associations.

However, the contribution of NGOs to voicing criticisms against the regime could not immediately alter the state's attitudes. In a context where the state monopolized political, economic, and ideological sources, the coalition of NGOs was not strong enough to balance the state's power. Consequently, the fall of the authoritarian regime in 1998 cannot be attributed to the role of social groups and NGOs. Some researchers pointed to the internal friction among political elites as the factor responsible for bringing down the regime (Honna, 2003; Vitikiotis, 2000). Nevertheless, as Pincus and Ramli (1998) succinctly argue, the prime factor that brought down the New Order regime was the combination of a severe financial crisis and the corrupt domestic system. The crisis was triggered by regional economic conditions, but Suharto's patrimonialism had created acute cronyism that exacerbated the economic crash. The crisis seriously damaged the country's economic fundamentals, and hence destroyed the regime's primary source of legitimacy (Aspinall, 2005). Suharto could no longer claim to be "the father of development," and he was forced to resign in 1998.

Democratization (1998-2006)

When the Suharto regime fell and the country entered a democratization period, the often-proposed question was: Will the old social and political cleavages return? Apparently, after a democratization process that has been going on for a little more than seven years, the prediction of a return to the old patterns of the state and society relationship can only be tentatively affirmed.

The outcome of the first democratic general election conducted a year after the regime's fall strongly suggests the lasting impact of the New Order's political policies. Similar to the general election in 1955, no single party dominated, but the winners in no way reflected the old cultural cleavages. Three of the five largest winners were parties created during the New Order regime. The other two were new parties closely associated with major Muslim social organizations, the modernist Muhammadiyah and traditionalist NU (Qodari, 2005). The composition of popular support disputes the assumption that political parties during the authoritarian regime were not really anchored in society. In fact, the parties created by the New Order succeeded in building their own constituents and continued to be connected despite radical political changes. This implies that the constituents of pre-New Order parties underwent a radical reorientation. They no longer identified themselves politically along the lines of the old cultural and ideological variants of *santri*, *priyayi*, *abangan*.

Pessimism about the proper function of political parties during the authoritarian regime was obviously well founded. In every general election, the authoritarian regime manipulated the outcome. It had never conducted an open and fair election, while persistently engineering the loss of opposition parties

(Liddle, 1973). However, the domination of the Golkar, PPP, and PDI, all established during the New Order period, provides good evidence for the broad acceptance of these parties. Moreover, since the parties did not have any agenda other than economic and social development, accepting their presence also indicates acceptance of the state institution. This suggests that the policy of de-politicization and de-ideologization initiated by Suharto had firmly taken hold. People no longer questioned the ideological platforms of these parties, despite the fact that all of them continued to implement the New Order's development agenda.

Further evidence that the New Order had transformed the state and society relationship is demonstrated by the characteristics of the other two winning parties, the National Mandate Party (PAN) and the Nation Awakening Party (PKB). These new two parties are associated with the Muslim modernist and traditionalist organizations, the Muhammadiyah and NU. The emergence of these two parties might be interpreted as meaning that the existing Muslim party (PPP) created by the Suharto regime did not represent the interests of Muslims. Interestingly, even though PAN and PKB could be categorized as *santri* parties, they did not carry an Islamist agenda, such as the former Masyumi and NU (National Government Publication, 1999; Suryadinata, 2005). On the contrary, the two parties were declared to be open and non-denominational, recruiting candidates from both Muslim and non-Muslim communities.

Indeed, attempts at reviving old parties and their ideological agendas were made during the general election. Some newly created parties also tried to promote the ideas of Islamism, socialism or popular-nationalism like in the old

days. Nevertheless, the majority of these parties did not even have sufficient votes to have a seat in the parliament. With the exception of the Prosperous Justice Party (PKS), which was largely regarded as a hard-core Islamist party, the second democratic general election in 2004 did not substantially change the composition of the first general election, in which the Golkar party moved from its previous position of runner-up to become the winner. Given the outcomes of the two general elections, it became apparent that cultural and ideological cleavages no longer dominated the political arena (Qodari, 2005; Liddle and Mujani, 2006). Considering that the opportunity for such cleavages to reappear was available, their absence in the national political scene seems to indicate that the old cultural cleavages have weakened significantly.

The marginal demand for a revolutionary political overhaul attests to the predominant tendency to accept the legitimacy of the existing state model. For this reason, the reforms that were conducted against the institution of the state were aimed at increasing political participation and widening access to economic resources for the people. Right after the fall of the authoritarian regime, the parliament agreed to amend the Constitution. Some substantial modifications include the reduction of executive power and the empowerment of the bargaining position of parliament (Lindsey, 2002). The legal reform also revoked the privileges of representatives appointed by the military in the parliament and in civil positions.¹⁰ The other important decision was the distribution of state power through a decentralization policy.¹¹ Governors and district leadership were no longer appointed by the central government, but directly elected by the people. Implicit in this new system was that the district administration had the right to

design and implement its own development agendas, while the central government was merely to act as a manager and coordinator.

However, the implementation of state reforms was in no way running smoothly. The military hardliners, for instance, were reluctant to immediately relinquish the privileges they had enjoyed for decades (Maitzner, 2006). Furthermore, the greater challenge to state reform came mainly from the decentralization processes, during which a lack of coordination caused fragmentation in the state bureaucracy (Bunte and Ufen, 2009; Davidson and Henley, 2007; Schulte Nordholt and van Klinken, 2007). While at the national level the authority of the executive branch of government was reduced by the transfer of more power to the parliament, it was weakened even further by the increasing authority of district administrations. Coupled with the absence of a majority party in the parliament, the central government was often compelled to accommodate conflicting interests from different political factions. Not surprisingly, the government was often inconsistent with its policies,¹² since it had been conditioned to secure its own position as the top priority.

At this point, although the transition to democracy did not de-legitimize the institution of the state, it brought about the weakening of the government's capacity to rule. However, the weakening of the state was not caused by the invasion of social forces as had happened in the Old Order but was rather due to internal organizational transformation. It appears that one of the outcomes of the New Order's political policies was reduction in the ideological tensions within society. Therefore, the new opportunities created by democratization only

increased the incentive for people to participate in politics, but they still had to work with the existing system.

The following table outlines the state and society relationship during three periods of governance. The first period of the Old Order regime was characterized by a weak state institution and a strong society. The state was still in its formative stage, confronted by a deeply divided society along the lines of cultural and ideological orientation. Towards the end of the Old Order regime, social division was still prevalent despite the growing autonomy of the state.

Radical transformation occurred during the New Order period when the state was getting stronger at the expense of societal autonomy. The regime co-opted and subjected all political and social associations under the tight control of a centralized government. As a result, some of the old social associations that were tied to political parties became less ideological and some of them even became inoperative. This period also marked the emergence of state-sponsored social organizations as well as more autonomous NGOs. When Indonesia underwent democratization in 1998, it was the NGOs that ushered in the return of autonomous social associations.

Table 1: 1 The State and Society in Indonesia

The State	Society	Social Associations
<p>Old Order (1945-1965)</p> <p><i>Liberal Parliamentary:</i> Lack of autonomy Ideologically divided party (PNI, Masyumi, NU, PKI)</p> <p><i>Guided Democracy:</i> Limited autonomy Limited centralization (role of military) Ideologically divided party (PNI, Masyumi, NU, PKI)</p>	<p>Autonomous, deeply divided, (<i>santri, priyayi, abangan</i>)</p> <p>Idem</p>	<p>Associated with cultural and political institutions (Wanita Demokrat, GMNI, Muhammadiyah, NU, Gerwani etc.)</p> <p>Idem</p>
<p>New Order (1966-1998)</p> <p>Autonomous Centralized Single Party-like (Golkar, PPP, PDI)</p>	<p>Weak, lack of autonomy, co-opted and incorporated by the state</p>	<p>Less ideological and political old associations. (GMNI, Muhammadiyah, NU)</p> <p>Quasi state organizations (MUI, Kadin, SPSI)</p> <p>Relatively autonomous NGOs (LP3ES, Walhi, LSP, LBH)</p>
<p>Democratization (1998-)</p> <p>Relatively autonomous Fragmented Decentralized Multi-party system</p>	<p>Autonomous Plural</p>	<p>Plural</p>

Commitment to International Law

Although this issue goes beyond the confines of this thesis, a brief description of the state's response to international human rights law will provide a background for our later discussion of treaty implementation, which is to be the

focus of this work. To this end, I would like to highlight Indonesia's relationship with the UN Human Rights Committee (UN-HRC) and International Labor Organizations (ILO).

From the early years of independence onward, Indonesia maintained close relationships with the UN and ILO, which both deal with international human rights law. As a newly independent country, Indonesia eagerly supported the first document of international human rights, the Universal Declaration of Human Rights (UDHR). The preamble of the 1945 national constitution underlines that "independence is the right of all nations".¹³ However, not only was the collective right to independence highlighted, its founding fathers also addressed six other human rights principles in the 1945 Constitution.¹⁴ This initiative was quite exceptional, since the 1945 Constitution lays out an integralistic model of state where individuals only occupy a marginal position (Lubis, 1993). The 1945 Constitution rejects the separation between the individual and the state and instead perceives individuals as being subsumed in the state institution. The government is believed to act on behalf of individuals and thereby possesses unlimited power (Lindsey, 2006).

The adoption of 1945 Constitution was postponed as the country was involved in the war of independence until 1949. Even when the war was over, the Constitution could not be adopted immediately. The 1945 Constitution was considered less democratic and so the state made compromises with social forces and political parties to enact the Provisional Constitution that suited the liberal system (Lubis, 1993; Nasution, 1992). Unlike the 1945 Constitution, the Provisional Constitution was considered liberal and might have been too liberal

for a country with no experience with self-government. The Provisional Constitution incorporated 75 human rights provisions contained in 37 articles, ranging from political, economic, cultural, and religious rights (Lubis, 1993). It virtually accommodated all of the contents of the UDHR by making highly idealistic provisions. The liberal atmosphere that all political factions enjoyed seemed to force the state to accommodate even unrealistic aspirations. Needless to say, these constitutional mandates could not be implemented.

At a stage when bureaucracy did not have the capacity to infiltrate society, the state was too weak to assume idealistic duties. Ironically, it was this weakness that compelled the state to make various compromises with labor movements, leftist parties, as well as civil and political activists (Anderson, 1983; Ingleson, 2001). For this reason, in addition to signing the UDHR, the state also ratified a number of important ILO conventions. These included the conventions on Equality of Treatment (1950), Forced Labor (1950), Underground Work (1950), the Right to Organize and Collective Bargaining (1957), and Equal Remuneration (1958).¹⁵ Just as in the case of the UDHR, the weak capacity of the state and the scarcity of resources left the provisions contained in these conventions unimplemented.

As mentioned earlier, when the liberal system was deemed to be responsible for political instability, the charismatic President Sukarno declared a state of emergency. With the full support of the growing military force, he issued a presidential decree to suspend the liberal system, replaced it with Guided Democracy, and called for a return to the 1945 Constitution. Sukarno gained more power with the adoption of this Constitution, through which he began to silence

the opposition. The Constitution gave a huge authority to the president who acted simultaneously as the head of the state and the government. He also reaped more power from Guided Democracy, which granted only limited freedom to political parties. However, the more important effect of the re-enactment of the 1945 Constitution was that it revoked the long list of individual rights stipulated in the Provisional Constitution (Lubis, 1993).

During the Guided Democracy era (1959-1965), Sukarno not only turned out to be an authoritarian leader, but he also shifted the country's international orientation towards the Eastern bloc. He initiated various political maneuvers, one of which was the nationalization of ex-Dutch companies to provide economic resources for the military (Crouch, 1973). His anti-colonial and imperial political rhetoric inevitably placed him in fierce confrontation with Western powers. Sukarno withdrew the country's membership in the UN, which was regarded as an extension of imperialist interests. It is likely for this reason that his regime was discouraged from actively engaging in international organizations, including the ILO. Throughout the Guided Democracy period, Indonesia ratified neither the ILO nor the UN-HRC conventions.

The rise of Suharto's New Order regime radically shifted the state's orientation, from being one of the socialist bloc's comrades to becoming a close acquaintance of Western countries. Accordingly, the New Order resumed its membership in the UN and began to follow its recommendations in order to devise long-term economic and social development plans. Interestingly, the New Order regime preferred to retain the 1945 Constitution just as its predecessor had done, arguing that the document constituted the true Indonesian constitution. Like

Sukarno, Suharto and his regime regarded the Provisional Constitution of the parliamentary democracy era (1950-1957) as being too liberal. The simple fact is that the 1945 Constitution provided greater power to the government and gave little attention to individual rights. For the military-backed regime that had just begun to rule, obtaining a legal foundation that could generate more power was a paramount issue.

The New Order was more authoritarian than the Old Order, but its orientation to Western countries motivated its leaders to pay attention to the UN and the ILO. These two international institutions could not simply be regarded as an extension of Western power, even though they certainly came under the heavy influence of liberal countries. However, the New Order's authoritarian character imposed limitations upon which international norms could be adopted. Given these motivating and constraining conditions, the New Order was conditioned to selectively pick the treaties that fit its core interests.

There were several ILO conventions that the previous regime had failed to ratify and the New Order was only willing to ratify four treaties: the convention on the Certification of Ships' Cooks (1992), Hygiene (1969), Weekly Rest (1972), and Tripartite Consultation (1990). The first two conventions did not address the core problem of labor and only the last two directly touch labor rights. The Convention on Tripartite Consultation that stipulated that the government be involved in negotiations between employers and employees offered leeway for the state to systematically control the labor movement (Bessell, 1995). The New Order regime was also selective in its response to international human rights law. Although the UN had begun to adopt binding international human rights laws in

1966, the New Order did not easily accept the call for their ratification. In the course of its power, only two conventions were ratified, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁶ and the Convention on the Rights of the Child (CRC).¹⁷ The other conventions, such as the Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (CAT) were rejected.¹⁸

The state's response to human rights law changed when the country entered the democratization period. The new democratic regime tended to be willing to adopt all international human rights laws. Immediately after replacing the authoritarian regime in 1998, the new regime introduced the National Action Plan for Human Rights, and pledged to ratify all international human rights instruments and establish the institutional infrastructures for their implementation. Thus, in 1998 it ratified the CAT which was followed by ratification of the two core human rights laws, the ICCPR and ICESCR in 2006. In the same period, the new democratic regime also ratified seven ILO conventions which largely deal with the fundamental rights of labor. These include the ratification of the convention on Labor Inspection (2004), Freedom of Association and Protection of the Right to Organize (1998), Abolition of Forced Labor (1999), Discrimination (1999), Minimum Age (1999), the Worst Forms of Child Labor Convention (2000), and the convention on Seafarers' Identity Documents (2008). These conventions were adopted by the ILO before the rise of the democratic regime, meaning that they had previously been rejected by both the Old and New Order regimes.

The willingness of the new regime to accept human rights treaties without conditions should be understood within the context of the transition to democracy. Public cries for political freedom and respect for human rights by the state had been voiced by the circle of NGOs, campus activists, and social associations since the authoritarian era. In the domestic realm, the state responded to the call for democracy through the amendment of the 1945 Constitution and legal reforms. However, to further demonstrate its commitment to democracy, the state also needed to ratify international human rights instruments. For the activists, pushing the state to ratify international treaties became a good strategy for “locking” the regime to international institutions. The state was expected to be more accountable not only to its citizens but also to the international community. In this context, the question about the state’s capacity to implement its idealistic promises became less important.

Reviewing the Indonesian experience with commitment to treaties, it seems apparent that the different regimes displayed a variety of responses. The authoritarian rulers had been less eager to ratify international instruments than those of the democratic regime. Nevertheless, authoritarianism itself does not sufficiently explain the state’s responses to international treaties, as demonstrated by the contrasting policies of Sukarno’s Guided Democracy and Suharto’s New Order. The first regime did not ratify any of the ILO conventions while the latter only ratified selectively. Meanwhile, as expected according to the literature on ratification, the democratic regime was more willing to ratify international human rights law than the authoritarian regime. Nonetheless, the commitment to ratifying treaties in no way implies the state’s willingness to implement them immediately.

As subsequent chapters using empirical findings will show, the implementation of a human rights treaty is not necessarily associated with the legal event of ratification.

Conclusion

This background information on Indonesia offers three relevant points that must be linked to the ongoing debate on the implementation of international human rights treaties. First, the changing political system gives us an opportunity to analyze the impact of regime types on respect for human rights. Thus far, the debate has been dominated by liberals, who view the democratic system as a necessary condition for respecting human rights, and by realists, who uphold the role of powerful democratic states. The Indonesian case could further contribute to the debate since the country also experienced a democratization process. Second, the fact that Indonesian society is plural furnishes us with empirical evidence about the impact of cultural and ideological differences on human rights practice. This is also related to the possibility that groups within the society will have different interests in the implementation of human rights treaties. The debate on the universality versus relativity of human rights norms suggests that not all aspects of human rights are acceptable to both the state and society. Some groups within society might make a stand against particular human rights norms for ideological or cultural reasons. Lastly, the ongoing relationship between Indonesia and international human rights institutions can be used to identify the role of international human rights activists in the implementation of human rights treaties. As the literature points out, the presence of international activists can directly influence the state's willingness to comply with human rights treaties. It

is the interactions between three important actors –the state, social groups, and international activists – that the following chapters will discuss.

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

² These are but a small number of the social associations created in many parts of the country. Included in this movement were the youth and women's organizations that conducted national congresses in 1928. It is worth mentioning that the youth movement, which was popular for its national Youth of Oath in 1928, was comprised of regional and religious youth organizations. However, aside from organizations reflecting local character, the women's movement was defined along secular-religious lines (Blackburn, 2004; Locher-Scholten, 2000; de Stuers, 1960). This trend toward national movements reflects quite neatly Geertz's variants in the Javanese cultures.

³ The four winners took nearly 80% of the total votes; PNI (22.32%), Masyumi (20.92%), NU (18.41%), and PKI (16.36%)

⁴ Nasakom is an acronym of the abbreviation of *nasionalisme*, *agama*, and *komunisme* (nationalism, religion, and communism).

⁵ Among the associate organizations of PKI are SOBSI (Central Organization of Indonesian Labor), Pemuda Rakyat (People's Youth), Gerwani (Indonesian Women's Movement), BTI (Indonesian Peasants' Association), Lekra (People's Cultural Organization), and HIS (Indonesia Scholars Association). The NU also has vast supporting organizations, such as GP Ansor (Ansor Youth Movement), Banser (Paramilitary Wing of GP Ansor), Muslimat (Muslim Women), Fatayat (Youth Muslim Women), Sarbumi (Indonesian Muslim Labor Association), and Lesbumi (Indonesian Muslim Art and Cultural Organization). The PNI was supported by the GMNI (Indonesian Nationalist Youth Movement), Wanita Demokrat (Democratic Women) and so forth.

⁶ The fusion was based on law no. 3/1975 on political parties and the Functional Group (Golkar) and based on law no. 4/1975 on general elections.

⁷ Government Regulation no. 35/1985 on general elections.

⁸ Law no. 8/1985 on mass organization.

⁹ Early national NGOs include the Institute for Economic and Social Information and Development (LP3ES), the Institute for Development Studies (LPS), the Indonesian Friends of the Earth (Walhi), and the Legal Aid Institute (LBH).

¹⁰ The 1945 Constitution was amended four times from 1999 to 2002. See, Department of Foreign Affairs of the Republic of Indonesia. 2006. *Supplementary Report of the Republic of Indonesia on the Implementation of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment*.

¹¹ Law no. 22/1999 on district administration.

¹² For instance, the government enacted pro-women policies but simultaneously let some district administrations issue policies inimical to the implementation of gender equality.

¹³ The preamble of the 1945 National Constitution reads, *Bahwa sesungguhnya kemerdekaan itu ialah hak segala bangsa*, namely "independence is the right of all nations."

¹⁴ The six provisions (articles 26-31) cover the rights to citizenship, equality before law, employment, association, speech, religion, national defense, and education. See Lubis (1993: 74).

¹⁵ For ILO data on the status of ratification, see <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Indonesia>

¹⁶ Law no. 7/1984 on the ratification of CEDAW

¹⁷ Presidential Decision no. 36/1990 on the ratification of CRC.

¹⁸ CAT was ratified into law no. 5/1998 on the ratification of CAT.

Chapter 3

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Moving Beyond a Good Mother

The nearly universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not necessarily suggest an acceptance of gender equality principles. Although the convention incorporates comprehensive rights for women,¹ cutting across public-private, social-political, and state-society divides, wide gaps are still prevalent between formal endorsement by the members of the United Nations (UN) and the reality in which gender discrimination continues to be a persistent phenomenon (Jones and Wachala, 2006; Welch, 1993). A significant number of countries have also expressed reservations against the treaty's substantial articles,² thereby invalidating their own commitments to the norms contained therein (Clark, 1991). As a result, the positive trend of ratification appears to be more of a diplomatic gesture than concrete support for the norms on gender equality.

To some extent, Indonesia followed the international trend. Immediately after the opening for signatures, the Indonesian government endorsed and then ratified the treaty in 1984 (Bayefski, 1997). Interestingly enough, it did not lodge reservations against any of the substantive contents, but merely against the procedural articles on settlement mechanisms and the jurisdiction of the International Court of Justice (ICJ).³ This stance deviates from mainstream Asian and Muslim countries, which share common cultures with Indonesia. These

countries not only preferred to make reservations, but also delayed the process of ratification (Dairiam, 2004; Arat, 2003). Their attitudes seem to be generated from the belief in the incompatibility between human rights norms and Asian values on the one hand (Kausikan, 1992; Peerenbum), and between human rights and Islamic teachings on the other (Brandt and Kaplan, 1995-6; Weiss, 2003).

The rather unusual decision of the Indonesian government to accept the entire contents of the CEDAW can be associated with a number of supporting factors. Prior to its ratification, Indonesian women had no legal barriers to participating in public life and holding higher positions in the non-domestic sphere (Vreede-de Stuers, 1960; Lev, 1996; Locher-Scholten, 2000). The women's movement in Indonesia was vibrant, strongly buttressed by national and international networks (Martyn, 2005). Women's participation in the social domain, with reference to education, family welfare, and the economy, was quite intensive. While acknowledging that women fell behind their male counterparts in almost all sectors, the ratification of the CEDAW did not seem to require that the state make radical reforms.

Nevertheless, the strength of women's activist networks did not translate directly into a full implementation of the CEDAW. During the New Order era, women's participation in family and social development programs increased significantly, but this was not reflected by an increase in their presence in politics and public positions. The growth of NGOs in the early 1990s challenged the regime's tendency to reaffirm the traditional role of women and was quite successful in encouraging the state to modify its perception of women. The rise of a democratic regime in 1998 offered further opportunity for progressive women's

activists to pressure the state to fulfill its responsibilities as outlined in the treaty. Yet, while activists were successful in persuading the state to enact a number of pro-women laws and policies, the presence of women in politics remained stagnate and, ironically, women's position in matrimonial affairs severely deteriorated.

Taking into account the strength of Indonesian women's networks, this chapter seeks to answer the following questions: Why did the dense network of women's organizations fail to put pressure on the state to fully implement the CEDAW? Why did the state not lodge reservations against some of the treaty's articles if it was not committed to implementing them fully? Given that transnational women's institutions were tightly connected to the domestic women's movement, what contributions did they make to the implementation of the CEDAW?

The subsequent examination begins with a brief outline of the conditions of women prior to ratification, followed by a short analysis of the ratification process. Next, the discussion will analyze the state's commitment to the CEDAW and the accompanying factors that conditioned its preference. The discussion will proceed with changes in the state's perception about women and the role of NGOs in this change. In the last part, the analysis will focus on the impact of regime change on the implementation of the treaty.

An Overview of the Indonesian Women's Movement

The first modern Indonesian women's organization was established in 1912 with the support of prominent nationalist figures (Locher-Scholten, 2000). This pioneering step was followed by the creation of many more organizations

within two decades thereafter. Early women's organizations in Indonesia developed as part of the growing awareness of the common identity among indigenous peoples. As Shiraishi (1990) shows, the first two decades of 20th century Indonesia were characterized by the rapid development of various native organizations, which eventually formed into the nationalist movement. Being part of the national awakening, women's organizations became active participants in the struggle for independence (Sunindyo, 1998). Blackburn (2004b) rightly argues that it is the early engagement in politics that enabled Indonesian women to make a strong claim for having equal political rights after independence.

Since the beginning, women's organizations were divided quite sharply into Muslim and secular camps. The division was in line with the social variance of the era, when religious affiliations became a powerful defining tool of social groupings (Geertz, 1960). However, irrespective of religio-political orientations, the core concern of early women's organizations was social in character. The issue that occupied their agendas revolved around the demand for the improvement of the social welfare of women (Locher-Scholten, 2000). Early women's activists translated this demand largely in terms of the advancement of education, the elimination of the practice of early marriage, and the creation of a just relationship in matrimonial affairs (Vreede-de Stuers, 1960). Under the colonial system, suffrage was a less relevant issue, not only for women but also for all native subjects. Even European feminists who came to the country in the early 20th century did not incorporate indigenous women into their suffrage agenda (Blackburn, 2004b). In addition, women's labor did not yet occupy

political debates, since the majority of women were still engaged in the simple, traditional agricultural economy.

In the late colonial era, the collaboration between Muslim and secular women's organizations resulted in significant improvement for women's education. The number of girls attending the government primary schools in mainland Java and Madura increased 300 percent between 1908 and 1914. In 1920, girls constituted 18 percent of the pupils in the village schools, 14 percent of the second-class schools, and 14 percent of the complementary schools (Vreede-de Stuers, 1960).⁴ The literacy rate among women on mainland Java also increased significantly from 9 to 13 percent between 1920-1930 (Locher-Scholten, 2000). Apart from government schools, some women's activists from both Muslim and secular backgrounds established their own private schools, such as Dewi Sartika and Kartini in Java island, and Rahmah el-Junusiah in Sumatra (Steenbrink, 1986).

The issue which sharply divided secular and Muslim women's organizations was polygyny, a practice that was only common in the traditional nobility and a tiny stratum of religious and peasant elites (Vreede-de Stuers, 1960; Blackburn, 2004a). Arguably, the domination of women's activists from the traditional noble background made polygyny a central theme for the women's movement. They had a markedly different concern from Muslim activists who, for religious reason, were more preoccupied with the issue of concubines (Locher-Scholten, 2000). Most of the traditional noble women had experienced the effects that multiple marriages had on a woman, and thus put the issue at the top of the women's rights agenda (Kartini, 1992). On the contrary, progressive as they may

have been, Muslim women were inclined to follow their parent organizations, which allowed men to have more than one wife (Vreede-de Stuers, 1960). This contrasting attitude discouraged some secular activists from working together with Muslims in the same association (Suryochondro, 1996). The far-reaching effects of such a division appeared in the state's repeated failures to legislate a national marriage law due to opposition from conservative Muslim groups.

Women's organizations experienced a significant transformation following the country's independence in 1945. They became strategic institutions to mobilize resources for political support by interest groups. Accordingly, women's organizations underwent rapid diversification along with the growing number of political factions. The religious-secular divide was still intact, but further sub-divided into smaller camps. Muslim women's organizations split into traditionalist and modernist groups, while secular organizations split into nationalist, socialist and leftist factions.⁵ Non-partisan women's associations continued to grow, but their leaders were often active in political parties.⁶ Some women's activists established a women's political party, the Indonesian Women's Party (PRWI), but they were not able to win support, even from women's organizations. The preference for women to surrender votes to male-dominated parties might suggest the general idea that politics was a male domain, where women were supposed to play only a complementary role.

It appears that the liberal democracy adopted in the first decade of independence only affected the dynamics of women's organizations but not their overall program orientations. Social welfare continued to occupy a central agenda, despite the fact that the national constitution recognized women's equal civil and

political rights.⁷ Even socialist activists paid more attention to social and economic rights, as illustrated by their campaigns to have the state ratify the ILO convention no. 100 on equal pay.⁸ In fact, the government was active in motivating women to engage in politics and conducted a special campaign encouraging women to take part in the first general election in 1955 (Martyn, 2005). The state also ratified the UN Convention on the Political Rights of Women (CPRW) in 1958 (Bayefski, 1997). Nonetheless, women occupying such strategic public positions as judges, ministers, members of Parliament, and other high echelons of the state's bureaucracy were an extremely tiny minority. Therefore, the problem was not a lack of opportunity but one of minimal political awareness among women living in traditional social settings.

A shift in the orientation of the women's movement began to take place when the first charismatic president, Sukarno, supplanted liberal democracy with the more authoritarian Guided Democracy in 1959. Even though not a communist, Sukarno's populist style eventually brought the communist party (PKI) and its affiliates closer to the central political arena (Hindley, 1967). With the support of Sukarno, the women's wing of the PKI, the Gerwani (the Indonesian Women's Movement), took over the leadership of the Indonesian Women's Congress (Kowani). Its leaders used this principal national women's association as a vehicle for directing the women's movement according to a socialist revolutionary agenda (Blackburn, 2004a). So powerful was the Gerwani that it could easily revoke the membership of those who opposed its policies. For reasons of disloyalty to the president, for instance, the Gerwani excluded the Indonesian Women's Socialist group and the modernist Muslim's Muslimat from the Kowani.

Despite a belligerent attitude, the populist and revolutionary tones of the Gerwani attracted a wide array of sympathizers, from women laborers in urban areas to peasants in the rural countryside. In the mid 1960s, this organization claimed to have 1.5 million members throughout the country (Wieringa, 1998). This success should not come as a surprise, since the Gerwani was the only women's organization to set a political agenda as one of its prime programs. Unlike other women's organizations, the Gerwani believed that women's liberation could only be obtained through socialist revolution. Therefore, in addition to improving women's welfare through the creation of daycare, health centers, and schools, its activists were also prominent in sponsoring the creation of labor unions, mobilizing labor strikes, and unilateral action for land reforms (Wieringa, 2002). Nevertheless, it was this militant attitude that prevented the Gerwani from making compromises with other organizations and drove itself into isolation. As a result, in the early 1960s, there was a split between the Gerwani and all the other women's movements, the first being more political and radical, and the latter more social, in character.

The conflict between the Gerwani and other women's organizations went beyond domestic political rivalries and extended to international networking. Since the early independence era, Indonesian women's organizations had had a close relationship with their international counterparts. They had participated quite actively in a number of important regional and international meetings. For instance, they attended the Pan Pacific Women's Association Conference in Christchurch in 1951, the World Congress of Women in Copenhagen in 1953, in Lausanne in 1955, and the UN Seminar on Human Rights in Bangkok in 1957

(Martyn, 2005). However, when the Gerwani took over the leadership of the country's women's associations, it tried to shift the direction of international networking toward the socialist Women's International Democratic Front (WIDF). This policy received harsh criticisms from non-socialist women's organizations, thereby exacerbating the already inharmonious relationship between the two factions (Martyn, 2005).

The journey of the Gerwani ended in 1965 following the abortive coup by the Indonesian Communist Party (PKI) and the rise of the military-backed regime that was popularly known as the New Order. As the archenemy of the communists, the new regime disbanded the PKI and all its associate organizations, including the Gerwani, immediately after assuming power. The New Order adopted a policy best described as total destruction of the communists, which covered assorted physical and psychological punishments to effectively destroy their support base (Hindley, 1967; Palmier, 1971). Many of the Gerwani's followers were detained, tortured, raped, and exiled without trial (Wieringa, 1992, 2002). In decades that followed, the regime continued to treat the Gerwani as a criminal organization and portrayed its militant activists as a band of cold-blooded murderers. This image was likely linked to the earlier distinguished character of the Gerwani as the most radical and politically aware of all the women's organizations to have emerged in Indonesia.

Thus, in the early years of the New Order regime, which later ratified the CEDAW, Indonesia could exhibit a rather multidimensional picture of women. Despite legal assurances of equal political rights, the presence of women in public positions was extremely low. The short-lived Gerwani had not yet succeeded in

transforming rural women's political awareness or encouraging them to assume non-traditional roles. Meanwhile, due to traditionalist cultural and religious understanding, some fundamental rights pertaining to civil and family affairs were still discriminative (Blackburn and Bessell, 1997; Cammack, 1989; Soewondo, 1977). However, notwithstanding the destruction of the influential Gerwani, the existing women's movement was still supported by dense networks that had been growing since the colonial period.

The Development Agenda and the Ratification of the CEDAW

As discussed in chapter 2, the New Order regime changed the state's orientation from political revolution to pragmatic economic development and political stability (Crouch, 1972; Robison, 1988). For this reason, it resumed the country's membership in the UN, which had been withdrawn by its predecessor, and worked closely with international organizations. However, contemporary Indonesian feminists criticized the New Order's policy on women as conservative (Aripurnami, 1996; Katjasungkana, 2004; Suryakusuma, 1996). They argued that, instead of promoting women as equal partners to men, the regime encouraged women to assume domestic duties at the expense of their potential to play greater roles outside the home. Furthermore, the New Order was perceived not only as constructing conservative policies, but also defending the traditionalist ideal of women (Siahaan, 2002/3; Wieringa, 2003). As a result, the trajectory of women's development during the New Order era did not experience significant progress from its previous stage.

A closer look at the regime's commitment to the international agenda, however, reveals that these criticisms were likely not well founded. Immediately

after assuming power, the New Order set up the KNKWI (National Commission on the Status of Indonesian Women) to support the UN's campaign for the elimination of discrimination against women (KNKWI, 1973). Undeniably, the decision was part of an attempt to approach donor countries for the purposes of development investment. Even so, the regime did not use the Commission simply as a diplomatic tool, but employed this institution as an instrument for collecting information on domestic women for policy considerations (KNKWI, 1981). The state was aware of the strategic position of women and reiterated expectations to work with them in various fields of development. In this context, the UN's campaign for the enhancement of the status of women converged with the state's agenda to improve social and economic welfare.

Having established the KNKWI, the regime continued supporting international initiatives by signing the Declaration on the Elimination of Discrimination against Women in the early 1970s. As part of fulfilling its obligation to the declaration, the regime asked the KNKWI to gather the data on the condition of Indonesian women and report its findings to the UN (KNKWI, 1978; Permanent Mission, 1978). The state's commitment was further implemented by sponsoring KNKWI members to take part in the UN International Conferences in Mexico (1975), Copenhagen (1980), and Nairobi (1985). This intensive international participation resulted in the introduction of a number of pro-women policies. Among the important decision made were the creation of the Ministry of Women's Roles in 1983 and the ratification of the CEDAW in 1984 (Permanent Mission, 1988; Roesminah, 1982).

In the international arena, the call for the incorporation of women into the state's programs had been voiced by the UN since the mid-1960s, when the development program began to be the mainstream agenda in Third World countries (KNKWI, 1986). The call was reiterated at the conference on women and development in Mexico City (1975), held during the same period as the first World Conference on Women. The adoption of development along with equality and peace as the core themes of the UN Decade for Women legitimized development programs as a way of integrating women into broader social participation. In keeping with this trend, the New Order adopted a strategy for eliminating discrimination against women through the incorporation of women in development activities (KNKWI, 1981). The regime began to formally accommodate women's affairs in 1978, asserting, in the General Guideline of the State Policy (GBHN), that women had the same rights and duties as men in all aspects of development projects.⁹

Nonetheless, even though the New Order was receptive to international ideas, it took its own path when it came to the implementation stage. For reasons beyond gender equality, the regime endorsed a model of women's participation that was not necessarily consonant with the idea of fighting gender discrimination. The model drew heavily on the traditional role of women as a mother, which perceived female economic activities as secondary to their duties in the domestic realm. So obvious was the model, progressive activists cynically accused the New Order as having built a state of motherhood (*ibuisme*) (Suryakusuma, 1996).

The state's conservative attitude towards women at the initial stages influenced the selection of partners to run the development programs. When the

regime was on the verge of implementing the UN's recommendations, it did not immediately invite progressive women's organizations to support the agenda. This decision was counter intuitive, given that the state had yet to develop a comprehensive women's institution. Influential women's organizations such as the Muslimat and Aisiyah among the Muslim organizations, and the Perwari, representing the biggest secular women's organization, were all available to implement the UN's recommendations (Kowani, 1985). However, the regime preferred to pick inexperienced and conservative organizations as the official partners for implementing women's programs.¹⁰ The first organization was the Family Welfare Education (Pembinaan Kesejahteraan Keluarga – PKK) and the other was the Dharma Wanita (Women's Duty – DW). Both organizations belonged to the wives of civil servants, with the PKK open to public membership (Dharma Wanita, 1990; Suryochondro, 1996).¹¹

Nonetheless, in contrast to the opinion of Indonesian feminists, preference for the PKK and DW was not likely connected with the conservative attitude of the state's apparatuses. It was the insecure position of the regime that compelled its leaders to work with the more easily controlled women's organizations than with the ones that might pose undue challenges (Buchori and Soenarto, 1996; Dharma Wanita, 1990; 2002). When the New order regime began to engage in the UN's campaign for the enhancement of the status of women in the late 1960s, it had just come to power through a bloody conflict against the communist party. The regime's success in taking over political control was mainly buttressed by the military and uneasy coalitions with Muslim groups (Hindley, 1967; Palmier, 1971). As the new ruler, the regime had to place the agenda of securing its power

position as an utmost priority. In the meantime, all influential women's organizations were part of or closely associated with the political parties that became the regime's competitors. Thus, although the regime had to spend more resources to increase and develop the small and inexperienced PKK and DW, the result was to be dependable women supporters.

The New Order never formally made the PKK and DW over into state institutions, but merely sponsored their expansion to cover the entire country. The organizations were managed through a spousal relationship and arranged hierarchically according to the state's administrative territorial levels under the auspices of the Ministry of Home Affairs (MHA) (Bianpoen, 1996). The wife of the Minister of Home Affairs automatically headed the central organization of the PKK and the wives of governors were responsible for the provincial level. This leadership went all the way down to district, sub-district, and village levels, where wives of the respective heads of territories led the lower PKK branches. The DW was not as large, but as an organization for the wives of civil servants, the structure of the DW followed the hierarchy of functional state bodies with the first lady acting as the main adviser and the wives of ministers acting as the DW leaders of the respective ministries (Buchori and Soenarto, 1996). Not surprisingly, in a relatively short period, the PKK and DW surpassed all other women's organizations in terms of network and size.

It should be emphasized, however, that the state's negligence to transform the status of women in public affairs was more political than ideological. For that reason, the opportunity to have the regime introduce progressive policies was relatively open to change. For instance, in 1974, the regime was willing to force

the parliament to pass a pro-women bill on marriage law amidst nationwide protests from conservative Muslims. The event marked a historic triumph in the women's struggle for a national marriage law that had been ongoing since the 1930s¹² (Cammack, 1989; Soewondo, 1977). The state granted the PKK and DW's requests in return for their political support and the government was willing to use authoritarian measures to repress influential conservatives (Katjasungkana, 2004). In 1983, the regime issued marriage regulation no. 10 for civil servants, obliging those who seek to marry additional women to obtain permission from the previous wife and from their superior at their work unit. Unfortunately, such events were rare, rendering the regime's willingness to issue progressive policies the exception rather than the norm. Thus, the overall policy of the state was dominated by the conservative approach of promoting women as devoted mothers and guardians of their families.

However, contrary to the criticisms of women activists, the New Order regime was not entirely responsible for encouraging women to concentrate more on domestic affairs. With the exception of the communist Gerwani, all the existing women's organizations made social and family programs their central agenda (Kowani, 1985). Like the PKK and DW, these organizations perceived women's roles outside the home as being of secondary importance. If the regime had chosen women's organizations other than the PKK and DW, the direction of the state's policy would not likely have been any different. In fact, it might have become even more conservative if the government had worked with religious women's institutions. It was this latter type of women's organization that staged

mass demonstrations to protest against pro-women bills of marriage in the 1930s, 1950s, and 1970s (Cammack, 1989).

Indeed, the state's decision to work with the PKK and DW created far-reaching unintended consequence for the direction of the state's policy on women's affairs. As an organization with its core membership comprised of housewives, the activities of the PKK and DW were devoted exclusively to the improvement of family and women's welfare, namely children's health, family planning, education, literacy, and so forth.¹³ Other programs dealing with the participation of women outside the domestic sphere were simply overlooked, as they fell outside the organization's primary concern. Nevertheless, their priority to improve the conditions of women and family welfare overlapped with the state's development agenda to meet the basic needs of Indonesians. In the end, the project of incorporating women into the development agenda as a means of eradicating gender discrimination was carried out almost exclusively through the enhancement of the role of women as mothers and family caregivers.

Table 3: 1

Women's Educational Attainment

Level	1961	1971	1980	1990
Primary	7.3	16.5	18.8	28.1
Secondary	1.9	5.1	9.1	20.6
Tertiary	n/a	0.2	0.3	1.0

Source: Hill (2000)

Having implemented these family and social welfare programs for several years, the state's project to incorporate women into the development agenda eventually resulted in an imbalance of women's participation in development. Substantial progress was achieved in the working areas of the PKK and DW, where the improvement of women's welfare was easily detected. As displayed in Tables 1 and 2, since the early 1970s, women's participation in education increased consistently, while maternal mortality rates decreased substantially. Concomitant with this trend, women's educational participation increased steadily and was accompanied by similar increases in their labor participation (Manning, 1998; Oey-Gardiner, 1991). This success was closely related to the enhancement of all aspects of the welfare of children, which directly pointed to the contributions made by women to family welfare.

Table 3: 2

Mother and Child Welfare

	1960	1970	1980	1990	2000	2005
Fertility rate ¹	6	5	4	3	2	2
Life expectancy ²	41	48	55	62	66	68
Mortality rate ³	216	172	125	91	48	36

Source: World Bank¹⁴

¹Total (births per woman); ² At birth, total (years); ³ Under-5 (per 1,000)

Unfortunately, a contrasting phenomenon was found in women's public participation in that it practically stalled. The number of women in political parties, parliament, cabinet, and the state's high echelons remained static.

Throughout the New Order period, their presence in these strategic positions was persistently below 2 percent. At this point, the criticisms made by contemporary Indonesian feminists that the New Order's policy tended to reaffirm the traditional role of women as mothers was not entirely wrong.

It is worth underlying, however, that the disproportionate attention to the role of women in family and social affairs was not only held by the state, but also by the majority of domestic women's organizations. In the 1970s and 1980s, the majority of international institutions that had close connections with Indonesia barely questioned this conservative policy on women. Indeed, the World Bank, the International Monetary Fund (IMF), and the Asian Development Bank (ADB), allocated a women's component in their assistance packages to development programs. Nonetheless, their support was directed at the improvement of women's basic needs and their participation in the elevation of family welfare (Dawson, 1992). These areas of concern overlapped greatly with the program coverage of the PKK and DW, which traditionally maintained a more important presence among women in the domestic arena. Influential UN such as the World Health Organization (WHO) and the United Nations Children Foundation (UNICEF) also preferred to evaluate the role of women purely from a development perspective. As a result, instead of criticizing the regime's conservative attitude, UNICEF highly praised the role of the PKK in rural development programs and awarded prestigious prizes to the organization (Roestam, 1988).

While not openly approving conservative policies, these international organizations indirectly endorsed the state's approach to development. It seems

that until the end of the 1980s, the UN CEDAW Committee was the only institution that monitored the country's compliance with the treaty. Through the mechanism of periodic reports, the Committee thoroughly evaluated the state's implementation of the treaty and offered comprehensive recommendations to remedy any shortcomings (Permanent Mission, 1988). Unfortunately, there is no indication that the state responded to the Committee accordingly, but instead continued on with its own agenda. It was evident that the formal mechanism of UN treaty enforcement could not pressure the state into complying on its own. In this situation, the legal power of the treaty disappeared altogether, rendering ratification itself a meaningless promise.

From a legal point of view, the regime clearly demonstrated its failure to keep its promises to the international community. There was no substantial transformation to the state's policy or other relevant legal implementations in the first five years of the ratification period. However, given its previous involvement in the UN's campaigns for gender equality, the regime was only partially in compliant. It had implemented international norms before the women's legal document became a binding treaty and accommodated women quite extensively in development programs. Nevertheless, the state's political interests and the lack of opposition from mainstream women's activists discouraged the state from introducing progressive policies.

New Cohort, Pushing beyond the Role of Mother

Beginning in the early 1990s, the women's movement in Indonesia experienced a fundamental change. Beyond conservative domination, a new type of women's organization, which was later popularly known as women's non-

governmental organization (women's NGO) began to offer different ideas and activities (Graham, 2005). The women's NGOs were characterized by their reliance on a limited number of core activists, rather than on large-scale followers, like traditional women's organizations, and adopted feminist principles as their basic frame of reference. The majority of activists in the new women's organizations came from the younger generation and had urban and higher educational backgrounds (Eldridge, 1995). Women's NGOs were part of a transnational women's activist network, which also experienced rapid transformation. The UN, multilateral organizations, and developed countries deepened their support for achieving gender equality worldwide. Nonetheless, the increasing number of progressive activists has only made little progress in pressuring the state to move forward with the treaty. The state persisted in sticking to its previous conservative policies with only minor modifications.

Prior to their emergence as a collective movement, progressive women who aspired to break traditional boundaries were always on the national scene. In the early days of independence, they launched the Indonesian Women's Party (PRWI), which sought to overturn the conservative view on women in politics (Blackburn, 2004a; Vreede-de Stuers, 1960). In the Old Order period, many progressive women joined leftist organizations (Wieringa, 2002, 2003). However, progressive figures were generally not associated with women's organizations and assumed careers as a personal choice. They were a minority and scattered within various institutions, which limited their ability to form a collective pressure group. The New Order regime preferred to employ them in institutions that required a

higher education level and greater experience in women's issues, rather than allow mass mobilization.

When the regime responded to international trends in the women's movement, it recruited progressive female figures to run programs. The state could not delegate the leaders of the PKK and DW, whose status was mostly that of housewives of high state officials, to deal with the international community on sophisticated women's issues. Therefore, the state assigned the running of the National Committee for the Advancement of Women (KNKWI) and the Ministry of Women's Roles (MWR) to progressive activists, a move designed to respond to international trends.¹⁵ Sen (1998) uses the term feminist-bureaucrat (femocrat) to capture the presence of progressive activists in the state's institutions during the New Order era. They represented a limited circle of educated women who shared little with the vision of the conservative leaders of the PKK and DW.

However, their tiny number and limited constituents did not allow them to take control of mainstream women's organizations. On the contrary, they were compelled to work with the conservative PKK and DW, which had gained a special place in the institution of the state. To some extent, the creation of the MWR in 1983 created a problem of coordination and power distribution concerning women's affairs. On the one hand, the PKK and DW had been part of the state institution since the early 1970s, but, on the other hand, the new Ministry was intended to be the highest institution for women's affairs. Indeed, although the Ministry was led by femocrats, who held a formal mandate from the president, the PKK and DW were led by the wives of more powerful ministers than the

Minister of Women's Roles. As a result, the leadership of the MWR could not easily subject the PKK and DW to their authority.

Due to this power constellation within the state institution, femocrats were only able to encourage slow changes in the state's policy. For instance, they succeeded in having the PKK expand their programs to cover women's roles outside the domestic sphere. Through the KNKWI and MWR, femocrats also convinced relevant ministers and heads of provincial and district governments to establish a special institution in their working units to deal with the program of the Enhancement of Women's Roles (P2W) (*Pokok-pokok*, 1982). Indeed, this transformation was still within the framework of incorporating women into development programs and did not radically transform the state's perception of the ideal role of women.

It should be noted that a new type of progressive women's organization had in fact emerged almost at the same moment as the ratification of the CEDAW. In the capital city Jakarta, a younger cohort of women's activists created Kalyanamitra and Rifka Annisa in Yogyakarta province (Eldridge, 1995). Known as women's NGOs (*NGO perempuan*), these organizations were not based on a membership system like the traditional ones, nor associated with the state or a political party such as the PKK and Muslimat, but stayed aloof from socio-political affiliations. Kalyanamitra was established by students at the University of Indonesia, Jakarta, and aimed primarily at disseminating feminist ideas among women activists.¹⁶ Rifka Annisa also promoted feminism, but its core program was providing shelters for women in trouble (Eldridge, 1995). All of the activists involved in these women's NGOs were graduates of higher educational

institutions with a strong background in urban social settings.¹⁷ Like the femocrats, however, they were too weak to create a mass movement counter to the state and society.¹⁸

As discussed in chapter 2, the New Order regime offered limited political openness in the late 1980s due to its confidence in the country's political and economic stability (Hein, 1990). This self-initiated state decision was immediately seized upon by opposition groups to intensify their movements. As a result, the first half of the 1990s witnessed a rapid growth of labor, human rights, intellectual, and student movements. The growth of women's NGOs, whose feminist ideology made them critical of the state's traditionalist perspective, was nested in this opposition movement. Not surprisingly, even though dealing specifically with gender equality, women's NGOs were closely connected to other types of opposition groups. For instance, the Yayasan Perempuan Mardika (YPM - the Foundation of Free Women) joined forces with the labor movement,¹⁹ while the Solidaritas Perempuan untuk Hak-hak Asasi Manusia (SP - Women's Solidarity for Human Rights) joined with the human rights movement.²⁰

Indeed, international women's institutions played a significant role in the development of domestic women's NGOs in the 1990s. Like transnational human rights activists, transnational women's institutions in the country also experienced substantial growth at this time. In the international arena, the women's movement itself also underwent a rapid intensification. Following the Decade for Women (1975-1985), the UN conducted a World Conference on Human Rights in 1993, in which women's issues were incorporated into human rights institutions through the notion of "women's rights are human rights". In the following year, the

International Conference on Population and Development (ICPD) mandated greater awareness of the issues of gender equality and women's empowerment. Meanwhile, the Fourth World Conference on Women in 1995 accelerated the agendas of previous conferences into the Platform of Action (Graham, 2005).

Compared to the 1980s, the impact of international events in the 1990s was more direct and extensive. Besides the changing political climate at the international level, the limited political openness that the regime entertained also seemed to strengthen the ties between transnational women's activists and domestic progressive groups. For example, in the same year as the World Conference on Human Rights, a number of women's organizations conducted a seminar on women and human rights (Hendratmoko, 1993). This was the first domestic conference to relate women with a human rights theme and had been previously dominated by development issues. After this development, the most influential human rights NGO, the Legal Aid Institute, began, in 1997, to accommodate women's affairs in its annual country report (LBH, 1997).

The intensifying presence of international campaigns could also be detected from the growing concerns of international NGOs and philanthropic organizations about women's issues. Following the ICPD, the Ford Foundation (FF) introduced a "Health and Reproductive Rights" program.²¹ This philanthropic organization provided grants to a large number of domestic NGOs to design activities with the prime goal of strengthening women's rights. Similarly, under the rubric of "Islamic Civil Society (ICS)," the Asia Foundation (TAF) sponsored not only new women's organizations, but also progressive elements of campus study groups and religious organizations focused on women

empowerment projects (Burhanuddin, 2004). Beyond networking, the development of the international women's movement made financial resources more available to progressive women's activists. In response to the UN's programs, developed countries and multilateral institutions increased the component for women in their assistance to developing nations (Pangestu 1997; World Bank, 1997). More importantly, they no longer confined cooperation to the state institution or to issues of social and family welfare. The increasing financial support from international organization was pivotal for progressive activists, who suffered from a lack of funds due to the state's preferential treatment of the PKK and DW. The financial resources from overseas did not only make progressive organizations financially secure but also helped them to multiply in number exponentially (Suryakusuma, 2004). This way, they did not have to rely on the state, like the PKK, nor on membership dues like traditional women's organizations.

Needless to say, intensive networking with international institutions increased the commitment of progressive activists to international norms. Besides the role of funding agencies, domestic women's NGOs almost always adopted the program priorities recommended by international forums. While they could not simply be positioned as an extension of metropolis women's institutions, they were the spearheads in the dissemination and institutionalization of the norms contained in the CEDAW and other international documents.

In 1994, a number of progressive activists established the Working Group on Convention Watch (WGCW). This organization was specifically designed to monitor the state's compliance to the CEDAW (Irianto and Luhulima, 2004;

Luhulima, 2006). It organized seminars, workshops, and research, and published alternative reports to those of the UN on the implementation of the treaty in Indonesia (Gandhi-Lapian, 2004; Katjasungkana and Hadiz, 1997). The emergence of the Working Group was part of the stream of new women's organizations, but its founders were not only young activists but also senior figures, who had stood behind the early campaigns for the ratification of the CEDAW in the 1980s (Permanent Mission, 1988). Some of them used to hold high positions in the Ministry of Women's Roles (MWR) or in other state institutions, implying that they were part of the femocrats' group.²² Thus, apart from becoming a meeting point between progressive activists, the creation of the Working Group also marked a shift in the strategy to struggle from within the institution of the state to a more direct monitoring of state's commitments. Instead of persuading decision-makers in private, progressive activists began to make public campaigns and became more openly critical of the government's policies.

To some extent, strengthening the network of progressive activists resulted in a shift in the state's attitude about women. However, the effect of the NGO-led new women's movement over the state was not as strong as it was in society. Indeed, the 1993 General Guideline of the State Policy (GBHN) incorporated the notion that men and women were "equal partner[s]" (*mitra sejajar*) in all aspects of development.²³ The document also reemphasized the previous statement that men and women have equal rights and duties in development programs. Nevertheless, the document maintained that women's participation in development should be conducted in accordance with their "destiny and esteem" as women. In addition, it did not modify the old conception that women were the

main persons responsible for child education and family welfare. There seem to have been heated negotiations between the conservative and progressive elements within the state, which nevertheless finally produced a compromise formulation about women's ideal roles.

Based on this slight modification, the direction of the state's programs on women did not experience a radical transformation. The PKK and DW remained at the forefront of the implementation of the state's programs on women and family welfare. The Ministry of Women's Roles (MWR) still coordinated women's programs largely intended to support women's social welfare. While maintaining the existing framework, the New Order regime tended to ignore gender biased laws and policies. There were no new breakthroughs on marriage law, citizenship, or women's participation in decision-making processes, which largely remained discriminative. As a result, women's welfare continued to progress and so did their contributions to family wellbeing; yet, they lagged behind their male counterparts in the authority to make decisions, both at home and in the public sphere.

The regime's recalcitrance to maintain old policies was not likely caused by a lack of monitoring from external institutions. The UN reporting mechanisms continued to operate as usual and gained more support with increasing campaigns by international institutions on women's rights. Multilateral organizations and developed countries also demonstrated their commitment to the issue by allocating more funds for women's causes. In the domestic arena, pressures and monitoring also intensified along with the growing influence of progressive women's activists. Aside from conducting advocacy against the state's policies,

they also made reports to the UN providing alternative information about the state's conservative behavior. The role of activists in monitoring the state's compliance to the treaty was central, for they became the main critics at home and a source of information for regional and international institutions.

In the end, the state's reluctance to change its conservative policies should be associated with the internal dynamics in the relationship between the state and domestic women's activists. First, the state was highly invested in defending the existing approach to women's issues, mainly because it has generated invaluable outcomes for the regime. The regime's long-standing collaborations with the PKK and DW resulted in enormous successes in improving the welfare of women and the family. Millions of members of the two organizations made themselves available by becoming the recipients as well as the implementing agents for the development program. For instance, the PKK and DW successfully encouraged women to become the main contraceptive users and to implement the state's family welfare programs. The organizations also functioned politically, which helped the regime to deliver its message and allowed it to extract popular support. For these reasons, the regime persistently defended the PKK in the General Guidelines of the State Policy as the official institution through which women should participate in development.

Second, the state's recalcitrance was also caused by weak pressure from domestic activists due to fragmentation in the country's women's movements. From previous experience, the state was actually ready to make compromises with women activists if this could strengthen the government's core agenda of maintaining political stability and development programs. The introduction of the

marriage law is a good case in point where the state sided with progressive ideas (Cammack, 1989). Unfortunately, the aspiration of having a full-fledged progressive policy was not yet shared by the majority of women's organizations. Influential organizations such as the Muslimat and Aisyiyah, which belonged to the traditionalist and modernist Muslim groups and had millions members, were not more progressive than the PKK and DW.

Traditional organizations were sharply divided from the progressive ones when it came to various conceptions of women's ideal roles. They could not even come up with an agreeable proposal to present at the Fourth World Conference on Women in 1995 (Suryakusuma, 2004). Van Doorn-Harder's (2006) study on the two largest Muslim organizations for women suggests that the progressive movement was not able to penetrate deeply into mainstream organizations. According to her, the movement only succeeded in converting the youth wings while leaving the established institutions uncontested. Although this limited transformation indicated the movement's early achievements, it also points to the lack of acceptance for progressive ideas at the popular level. Given this trend, the radical campaigns by the coalition of domestic and international activists were not sufficient to force the state to comply with its promises. The state preferred to go with traditional organizations as they had greater grassroots support and wider rural networks, compared to the progressive organizations, which were mostly urban-based institutions.

Democratization, Legislation with Minimum Implementation

The state's perspective on women finally changed after the fall of the New Order regime in 1998. Alongside the regime's fall, the state-sponsored women's

organizations lost the credibility to dominate the national women's movement. Women's NGO activists²⁴ took the lead by pushing the state to reintroduce legal and policy reforms that had previously stalled. Their struggle gained wider support from the international community, which increasingly perceived gender equality as the accepted norm. Unlike the New Order, the new democratic authority encouraged the activists' aspirations. Unfortunately, the transformations took place in the context of democratization, where the newly elected democratic regime had a limited capacity to rule. Moreover, conservatives were still entrenched in society and public institutions with no less influence over the state. As a result, the post-New Order era witnessed policy gaps and contradictory legal reforms, aside from weak implementation of the new regulations.

The resignation of President Suharto on May 18, 1998, not only ended the journey of the authoritarian regime, but also paved the way for progressive women to assume greater roles. The regime could not defend its power following its failure to get the country out of the monetary catastrophe. Since the beginning, progressive women's activists had been part of the opposition groups that sought the downfall of the authoritarian rulers. When the economic crisis erupted in 1997, they conducted rallies and sold cheap milk to warn the government about the worsening condition of children²⁵ (Nyman, 2006). As the situation worsened, they created the Indonesian Women's Coalition for Justice and Democracy (KPI) and staged outright protests to compel the regime to step down (Kolibonso, 1999). This political activism ran in contrast to the attitude of traditional women's activists who chose to stay away from issues other than women's social welfare.

Virtually no traditional women's organizations were involved in the struggle to end the authoritarian regime.

The decisive moment in the power shift in the women's movement occurred when the KPI took over the initiative to conduct a national congress on December 28, 1998. Traditionally, the authority to conduct such a congress was in the hands of the Kowani, the official association of the country's women organizations. Boosted by the popular outcry for democratization, the KPI congress successfully presented five hundred participants representing a plethora of women's activists, including the ex-communist Gerwani cadres (Budianta, 2003). The congress was particularly special because it marked a new moment when all types of women's organizations could voice their ideas without the state's presence (*Inside Indonesia* 58). On the last day of the congress, the participants elected Nursyahbani Katjasungkana, a legal aid NGO activist-cum-lawyer, as the first leader of the coalition (Wieringa, 2006). Participants also unanimously agreed to adopt democracy and human rights as the new foundation for the movement.²⁶ The event signaled the declining influence of traditional women's organizations, including the PKK and the DW, which were essentially sidelined.

In fact, the influence of progressive women activists had begun to take hold immediately after the fall of the New Order rulers, as illustrated in the establishment of the National Commission on Violence against Women (NCVAW) in 1998.²⁷ This Commission was endorsed by the transitional government at the request of women's activists following the tragedy of numerous cases of rape on the eve of regime change (Komnas Perempuan, 2002). The

military was reported to have masterminded the attacks against the wealthy ethnic Chinese minority and to have orchestrated numerous acts of rape against their women to spread horror in an attempt to defend the authoritarian regime (Primarianti, 1999; Strassler, 2004). While NGO activists and the new government responded to the tragedy by setting up fact finding teams,²⁸ progressive women's activists went further by pushing the government to create a permanent institution to deal with violence against women²⁹ (Jusuf and Simanjorang, 2005; Primariantari, 1999).

From this time onward, progressive groups succeeded in pushing the democratic regime to introduce pro-women policies. The newly elected president, Abdurrahman Wahid, issued instruction no. 9, 2000 on gender mainstreaming and pledged to allocate 5% of the state's total budget for its implementation. In 2003, the parliament passed the new general election bill no. 12, 2003 into law, which allotted at least 30% of the candidacy seats to women in provincial and national legislative councils (Bessell, 2005). In the following year, progressive activists celebrated the parliament's decision to pass bill no. 23 on domestic violence, despite the controversies generated by this new law. In a society where sexual relations between spouses were assumed to be voluntarily, the terms domestic sexual violence or marital rape were simply unimaginable. In addition to domestic violence, activists also succeeded in lobbying the state to pass the much-awaited citizenship law no. 12, 2006. This law granted women marrying men of other nationalities the right to retain their Indonesian citizenship, and their children's status was no longer automatically the same as their father's.³⁰ Undoubtedly, the

laws on domestic violence and citizenship radically altered the position of women in domestic and civil affairs.

The agenda of progressive activists in the post-New Order regime sought to supplant the previous approach of women in development (WID) with the gender and development (GAD) approach. WID was perceived as having failed to elevate women's status, for it did not take the fact that the objective condition and experience of women differed markedly from men into consideration. As women assumed more burdens, the activists insisted that the state should not only find a way to "incorporate" or "integrate", but more importantly also "empower", women in development programs (Parawansa, 2002). This meant that the struggle for gender equality was not confined to the revision of discriminative laws, but should proceed to the introduction of policies that could help women to achieve a full realization of gender equality.³¹ Based on this view, the struggle of progressive activists was oriented to having the state introduce affirmative action through the newly enacted laws and regulations. As a sign of this paradigmatic shift, the new democratically elected regime immediately transformed the Ministry of Women's Roles (MWR) into the Ministry of Women's Empowerment (MWE), and the Family Welfare Education (PKK) group became the Family Welfare Empowerment group (Hamid, 2002).

In many ways, democratization provided a large opportunity for progressive activists to instill their ideas into the state and society. Their relationship with the new democratic rulers, who used to share their position as the opposition in the previous era, also accelerated their success. The first elected President, Abdurrahman Wahid, and his Minister of Women's Empowerment,

Khofifah Indar Parawansa, were democrats *cum* feminists (Burton, 2002; Blackburn, 2002). While regime change paved the way for progressive reform, the role of international networks in the reorientation of the women's movement cannot be undervalued, for it acted as the nursing institution for the development of domestic activists. As mentioned earlier, the growth of the new women's organizations was made possible largely by increased access to international forums and funding agencies.

In the post-New Order period, the influence of international networks penetrated deeper into the domestic women's movement. In addition to the regular evaluation of the implementation of the CEDAW, the UN established a regional office to monitor the development of women's programs. It also sent special rapporteurs to the country to deal with cases that it deemed necessitated special attention, such as the numerous cases of rape in 1998. The UN's efforts were strengthened by the deepening commitment of powerful democratic countries and multilateral institutions to the advancement of women. For instance, Canada financed the Southeast Asian regional office of the United Nations Development Fund for Women (Unifem) to specifically monitor the implementation of the CEDAW. In the same vein, since 2000, the World Bank (WB) and the Asian Development Bank (ADB) have integrated the promotion of gender equality principles with development agendas (ADB, 2006). This trend points to the fact that gender equality has been widely accepted as an international norm.

Greater intervention by international institutions not only allowed progressive activists to advance their agendas, but also dictated the direction of

reforms. There were stark similarities between the legislation of such themes as domestic violence, gender-mainstreaming, women in politics, and the recommendations made by the UN Declaration on the Elimination of Violence against Women in 1993, the ICPD conference in 1994, and the Fourth World Conference on Women in 1995. With the exception of religious-oriented law, the legislation of the new women's agenda was relatively smooth.

Although the rapid adoption of international norms suggested the strengthening state's commitment to the CEDAW, it also generated its own unintended problems. Not because the government paid lip service to reforms, but because expectations often went beyond bureaucratic capacity. In fact, reform of the state's policy was not accompanied by similar reforms to supporting institutions and human resources. Even if reform took place, it could not match the pace of the adoption of international norms into the domestic legal system. In the end, the unsystematic transformation resulted in a huge discrepancy between formal regulations and their implementation in the field.

The law on domestic violence and the presidential instructions on gender mainstreaming provide a good illustration. The government followed up the first legal documents by setting up a commission, while the latter by creating working groups in all the state's ministries. Nonetheless, the state did not simultaneously modify the outdated Penal Code, rendering domestic violence cases ordinary crimes. Meanwhile, a lack of knowledgeable human resources and financial support seriously hampered the implementation of gender mainstreaming programs, rendering the members of working groups unable even to construct

adequate gender disaggregated data for evaluation (Mundayat, Noerdin, Aripurnami, 2006).

The absence of empirical evidence for the impact generated by the new regulations can be treated as a temporary phenomenon. Once political reform enters a maturation period, the democratic regime will likely be able to deliver on its promises. Besides gender-mainstreaming and domestic violence, the affirmative action provision of the new general election has not only failed to raise women's presence in the cabinet and parliament, but it has also been unable to prevent the decreasing number of women in these two institutions (Table 3: 3 and 3: 4). This situation affirms some findings that show that the transition to democracy often creates a level of social turbulence that in turn generates negative effects on existing political stability. Once political elites have settled their differences, a new equilibrium can prevail (Davenport and Armstrong II, 2004; Hegre et al., 2001).

Table 3: 3

Percentage of Women in the House of Representatives

1971	7.8
1977	6.3
1982	8.5
1987	13
1992	12.5
1997	10.8
1999	9.0
2004	11.09

Source: Soetjipto (2005)

Table 3: 4
Number of Women Ministers in the Cabinet

1945-50	4
1962-66	4
1966-78	0
1978-83	1
1983-93	2
1993-7	2
2000-4	2

Source: Second and Third Country Report: CEDAW; Soetjipto (2005)

In Indonesia, the almost decade-long democratization process has not yet arrived at a new equilibrium. The political transition in the country covered a large segment of the state's dominion, ranging from leadership replacement and amendments to the national constitution to the decentralization of government. According to Siahaan (2002/3), political decentralization contributed greatly to the weakening of the state's capacity to rule and, hence, to its inability to keep its promise to improve the condition of women. Previously, the authoritarian system allowed the central government to control budget allocations for women's programs at all levels of the administration. The pattern changed as district administrations retained the autonomy to manage their own budgets. Each district had different priorities for women's programs and some of them preferred to

reallocate the budget for women's empowerment to finance other projects (Siahaan, 2002/3). Although regional autonomy needed to proceed within the framework of national integrity, its coordination seems to have been managed poorly.

The weakening position of the central government was also apparent in its inability to control conservative factions from imposing religious doctrines on the institution of the state. Some district heads simply used particular religious symbols to increase political legitimacy, but others went further with the promulgation of Islamic law (*sharia*). Substantially, this law not only contradicted the new gender-related regulations but also the national constitution (Siahaan, 2002/3). Among its provisions, was the prohibition for women to leave the house after 10:00 PM and the mandatory wearing of a headscarf for female civil servants (Komnas Perempuan, 2008). Against this phenomenon, the central government preferred to wait and see rather than use its prerogative authority to annul such contradictory regulations. Protests from women's NGOs abounded, but counter-protests from conservative parties and religious organizations made the central government reluctant to act.

In cases where pressure from conservative groups was strong, the regime was even inclined to disregard women's interests. For instance, upon receiving protests from influential Muslim organizations, the Ministry of Religious Affairs stopped its own working group on gender-mainstreaming from continuing its duty to re-interpret seemingly discriminative Islamic teachings (Surur, 2005). The working group proposed a Counter Legal Draft that was intended to provide an alternative legal interpretation for the Muslim community (Mulia, 2006).

Nonetheless, this pro-gender equality document was regarded by conservative Muslim leaders as being in contradiction with Islamic teachings, which eventually forced the Minister to withdraw the project. Irrespective of the presidential instruction that had been the project's foundation, and with the political backlash that might arise in mind, the Minister decided to recede from the previous plan.

At this point, state fragmentation weakened the regime's capacity to deal with opposition groups. Rather than confronting them, the regime preferred to make a decision that contradicted its own position. Given that the state could not defend its own platform, the success of legislating pro-women laws was not likely to lead to further enforcement. The weak government might welcome the progressive women's activists, but it would accommodate the conservative camp when political interests were at stake (CEDAW Working Group Initiative. 2007). In other words, the growing influence of progressive activists over the state did not imply the weakening capacity of conservative groups. In contexts where the government was weak, both camps shared the same opportunity to proceed with their agendas in the state and society.

Given these conditions, transition to democracy did not automatically offer a supporting condition where the norms of the CEDAW could be implemented fully. Progress was limited to the enactment of pro-women regulations but with discrepancies in their implementation. During the authoritarian era, the law on women's affairs was not as progressive, but the state was able to bring the rule into reality. In addition, while the authoritarian regime could control the opposition efficiently, the new democratic government was powerless to confront opposition against its own policies. As a result, aside from

the new regulations that remained frozen as written law, conservative groups continued to enjoy the freedom to exercise traditional practices, such as positioning women as family caregivers or committing polygyny without state interference (Brenner, 2006).

Conclusion

The long journey of the CEDAW's implementation in Indonesia resulted in both successes and failures. Indeed, three decades of struggle were not able to completely eradicate discrimination against women. However, compared to the period prior to the adoption of the CEDAW, women's conditions in Indonesia have progressed quite significantly. During the authoritarian era (1966-1998), the participation of women in social and family affairs increased substantially and their social welfare improved accordingly. Their roles in public positions have remained weak, even during the democratization era (1998-2006), despite new legal and policy initiatives. The country's women's movements have also experienced a fundamental transformation, from being dominated by traditional organizations to being influenced by progressive independent activists.

Both the authoritarian and democratic regimes produced conservative and progressive policies. Implicit in this trend was that regime type does not have a direct effect on the kinds of policies dealing with women. The state was less concerned with women's aspirations than with the effects that they might have on its own interests. Support for conservative organizations by the authoritarian regime was not because of ideological similarities, but because they did not pose political threats and offered an instrument for running the state's programs. The democratic government behaved the same way, accommodating both progressive

and conservative groups in the interest of preserving power. Therefore, the state's interest in women's issues was more pragmatic, swinging easily along with the power balance between conservative and progressive groups in society.

Although the state did not invest specific value in women, it was the most important agent that determined the outcome of norms implementation. The state influenced success and failure as well as the kinds of norms to be implemented. During the authoritarian era, social and matrimonial norms gained priority, while in the post-New Order period almost all pro-women norms obtained ample space. When it came to implementation, however, it was the state's capacity to rule that determined whether the norms in question could be applied in the field. This stood in contrast to international activists, whose roles were confined to norms socialization and to providing support for domestic activists. There was no instance where international institutions could compel the state to follow particular recommendations if it was not in the regime's interest. The UN periodically reviewed the Indonesian performance and recommended that the regime be more progressive, but the New Order regime did not give an adequate response to this call (Initial Report, 1988; Periodic Report, 1997). The absence of sanctions that could threaten the state's core interests seemed to discourage the regime from taking the voice of international women's activists seriously.

The influence of international actors could increase through their collaboration with progressive domestic activists. The legislation of pro-women laws during the democratization era was a good case in point. On one hand, international assistance to progressive activists has enabled the latter to increase their networks, while, on the other hand, the increasing networks of domestic

activists have deepened the influence of international norms. Arguably, by controlling the state's otherwise contradictory interests, the collaboration between international and domestic activists could expedite the institutionalization of gender equality principles in the state and society. Nevertheless, as best illustrated by the introduction of Islamic law and the withdrawal of the Counter Legal Draft, the likelihood that progressive activists will be successful also depends on the response from civil society groups. Not all opposition against progressive ideas will prevent the state from backing gender equality ideas; only those opposition groups that directly pose political threats to the regime have the potential to reverse the state's position. Therefore, gaining support from influential civil society groups would not only decrease opposition at the level of society, but also increase the activists' leverage against the state.

¹ Article 1 of the CEDAW defines the discrimination against women as:

“[a]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

For the text of the CEDAW, please see

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Last visited on October 20, 2007.

² The substantive provisions that received the most reservations include articles on matrimony (16), the state’s responsibility (2), nationality (9), and civil affairs (15). The number of reservations lodged for each article appears in brackets.

³ Article no. 29 (1) gives authority to the International Court of Justice (ICJ) to decide interstate disputes.

⁴ The categories of “village school,” “second-class,” and “complementary school” imply length of study. All are at the elementary level, with the village school consisting of a three year program, second-class five years, and complementary two years.

⁵ The first general election in 1955 resulted in four major party winners, the nationalist (PNI), modernist Muslim (Masyumi), communist (PKI), and traditionalist Muslim (NU) parties.

⁶ Some major party-affiliated women’s organizations were the Wanita Demokrat Indonesia of the Indonesian Nationalist Party (PNI), the Muslimat of the modernist Muslim (Masjumi), the Gerwani of the Indonesian Communist Party (PKI), and the Muslimat Nahdlatul Ulama comprised of traditionalist Muslims (NU).

⁷ Even before being amended in 1999, the Constitution guaranteed the equality of civil and political rights for women and men.

⁸ The ratification of this convention occurred when the Ministry of Labor was led by a socialist women’s activist, S.K. Trimurti, who was also the first woman in the cabinet.

⁹ The Decision of the People’s Consultative Assembly no. II/MPR/1978.

¹⁰ This included the Muslimat and Aisyiyah, two of the largest Muslim organizations, the traditionalist Nahdlatul Ulama (NU) and the modernist Muhammadiyah, as well as the Perwari (the Women’s Association of the Republic of Indonesia), which constituted one of the oldest independent women’s organizations in the country.

¹¹ The regime never formally liquidated the PKK into a state organ, but did sponsor its expansion to cover the entire country. The organization was managed through a spousal relationship and arranged hierarchically according to the state’s administrative territorial levels under the auspices of the Ministry of Home Affairs (MHA) (Bianpoen, 1996). The DW was not as large, but as an organization for the wives of civil servants, the structure of the DW followed the hierarchy of functional state bodies with the first lady acting as the main adviser and the wives of ministers as the DW leaders of the respective ministries (Buchori and Soenarto, 1996).

¹² Law no. 1, 1974, was not perfect in that it still allowed polygyny and positioned men as the head of the household, but it successfully allowed the state to become involved in matrimonial affairs. The law stipulated that men could no longer obtain an official

certificate of polygyny or divorce unless they could meet specific state requirements. The law also entitled women the right of divorce and allowed them to file a case in the courts if they were confronted with familial problems, such as abuse.

¹³ The PKK divided the role of women in family affairs into 10 core programs: implementing the state ideology, mutual assistance, food, clothing, housing, education and skills, health, cooperation, environment, and the health plan. The DW directed its members to fulfill five duties: supporting a husband's career and duty, procreating for the nation, caring for and rearing children, being a good housekeeper, and being a guardian of the community.

¹⁴ For development indicators on Indonesia, see <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/INDONESIAEXTN/0,,menuPK:287097~pagePK:141132~piPK:141109~theSitePK:226309,00.html>

¹⁵ The first minister, Lasyiyah Soetanto was a lawyer, a Sorbonne University graduate, while her successor, was a chairwoman of the Perwari. All members of the KNKWI and the MWR were activists and professionals with higher educational backgrounds.

¹⁶ Interview with Myra Diarsi, a founder of Kalyanamitra, March 16, 2006.

¹⁷ Ibid.

¹⁸ Among others, the Women's Solidarity for Human Rights (SP) focused on female workers and the Legal Aid Institute (LBH-Apik) offered legal services for women.

¹⁹ Interview with Yuniarti Chuzaifah, an activist of the YPM, February 2006.

²⁰ Interview with Tati Krisnawati, one of the founders of the SP, March 13, 2006.

²¹ This project was to follow up the International Conference on Population and Development (ICPD) in Cairo (1994).

²² Interview with Saparinah Sadli, March 13, 2006; Syamsiah Ahmad, April 6, 2006; Achie S. Luhulima, April 9, 2007.

²³ Decision of the People's Consultative Assembly no. II/MPR/1993.

²⁴ The term "progressive activists" is used to distinguish them from "conservative activists", who held on to the idea of the ideal women as a mother, rooted mostly in wives' organizations and women's organizations with traditional membership. Some of them were politically independent, but the influential ones were part of religious and social institutions. "Progressive activists" were politically independent, feminist in ideology, and based on NGOs, campus study groups, and professional organizations.

²⁵ Early protests by women's activists were conducted through the creation of *Suara Ibu Peduli* (SIP - Voice of the Concerned Mother).

²⁶ For more information about the KPI, see <http://www.koalisiperempuan.or.id>

²⁷ The NCVAW was established by Presidential Decision no. 181, 1998. Elected to be the first chairperson was Saparinah Sadli, a university professor and founder of the Working Group on The Convention Watch, who was formerly an expert advisor to the SMWR.

²⁸ The NGO's fact finding team found 152 cases of rape, 20 of which ended in the victims' death, but the government's team confirmed less than this number and was not able to prove conclusively that it happened systematically.

²⁹ In accordance with its name and mandate, the commission focuses the majority of its work on the elimination of violence against women. In addition to advocacy and campaign activities, it compiles and publishes annual reports on the subject through networking with NGOs, police departments, courts, and hospitals. The results have been quite impressive; they have been able to open the door for victims of violence to report their experiences. The rates of reported cases have increased overtime and so too have the number of networking organizations. The NCVAW not only cooperates with women's NGOs, but also with all institutions who share similar concerns about women's problems, such as traditional women's organizations, courts, hospitals, and police departments.

³⁰ According to the law, children can retain dual citizenship until they reach adulthood at 18 years of age, at which point they have to choose which citizenship to keep.

³¹ The Decision of the Ministry of Internal Affairs no. 132, 2003, article 1(2) explains that gender-mainstreaming was a development strategy to achieve gender equality and justice through the integration of the experiences, aspirations, demands, and problems of men and women into the planning, implementation, monitoring, and evaluation all of the policies, programs, projects, and activities in all sectors of development.

Chapter 4

The Convention Against Torture (CAT):

Ending State Violence in a Country with Military Superiority

The fight against the use of torture has always opposed the pragmatic interests of those who believe that the practice is a necessary evil. Since time immemorial, torture became a convenient technique to extract information from suspects and to punish opponents. In the 20th century, the two World Wars even made this practice a routine activity and created horrors that motivated the founders of the United Nations (UN) — at that time the League of Nations — to emphasize, in the Universal Declaration of Human Rights (UDHR) of 1948, that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹ Nonetheless, special circumstances such as “a state emergency”, “national security” or “terrorism” seemed to open a space for acts of torture that were otherwise prohibited. This reality prompted contemporary scholars to develop the idea of a limited use of torture, permitting it during these special circumstances (Derschowitz, 2004; Shue, 2004; Gross, 2004).

In Indonesia, these special circumstances are common events. The state often uses torture, cruelty, and even murder as a method to subdue perceived enemies.² This was particularly the case during the period of 1966-1998 when the authoritarian regime ruled the country. There are numerous examples of bloody tragedies, but there is an absence of sufficient data to catalogue these atrocities. Reports by human rights organizations provide information about extrajudicial arrests, arbitrary detentions, torture in custody, and violence against suspected

criminals. However, they are unable to determine the extent to which such practices were employed (US Department of State, 1999; Amnesty International, 1996b; Human Rights Watch, 1990).

Prior to the ratification of the Convention Against Torture (CAT) in 1998, Indonesia had no special regulation to prevent the use of torture. The Indonesian Penal Code (KUHP) contains prohibitions against assault and maltreatment, but nowhere in this code is such treatment at the hands of state officials clearly articulated (Basari, 2006). The definition of torture in the CAT is specifically intended for state agencies, yet its coverage is broader than assault or maltreatment.³ As a result, the incorporation of CAT into the national legal system required fundamental changes in the way public officers handled cases that could potentially lead to the use of violence. For this reason, the Indonesian authoritarian government was always reluctant to ratify this convention. They signed the treaty in 1984, but did not ratify it until 1998, at which time the more democratic government became a willing partner in this international treaty.

In the post-ratification period, the state issued some policies to institutionalize human rights norms through legislation, information dissemination, and educational activities. Human rights activists also used the newly enacted human rights laws to bring state violence cases to the courts. However, even though they succeeded in bringing in some cases, the courts failed to conduct fair, open, and impartial trials. Virtually all the tribunals on state-sanctioned brutality ended in either a lenient verdict or acquittal.

This chapter will discuss the practice of torture in Indonesia and the struggle to fight against it through the adoption of the CAT. Like chapter 3 on the

CEDAW, this chapter seeks to explain the extent to which the Indonesian state has complied with the treaty it has ratified. The difference is that the campaigns to have the authoritarian New Order ratify the CAT failed. Indeed, the treaty posed direct threats to the interests of the regime, which used violence as a strategy of political containment; yet, is this in itself a sufficient reason to explain the regime's rejection of the treaty? This is the first question that this chapter will address. The second question pertains to the implementation of the CAT following its ratification by the new democratic regime. While the new regime has fulfilled its obligation to legislate and transform the treaty into the state's policies, it has failed to implement these newly enacted laws. Given that the democratic regime has little interest in using violence, why did the implementation of the CAT not come up to the expected standard?

This chapter will begin with an outline of state violence during the authoritarian regime era when the treaty was contested and signed but not ratified. Having discussed the background, our discussion will focus on the institutionalization of the norms against state violence as mandated by the treaty in the post-ratification period. Then it will proceed to disclose the implementation of these norms, with particular attention given to the struggles to bring perpetrators to the court and to the court's decisions in the tribunals about state violence cases. The analysis will be concluded with a discussion on the role of international actors, the state, and social groups throughout the processes of treaty implementation.

Two caveats need to be made, however, before proceeding to our discussion. The first is about the type of torture cases and the second pertains to

technical terms. For reasons of data availability, this chapter focuses on torture as embedded in high profile cases and not in ordinary criminal or lesser-known cases. I define high profile cases as those in which state violence includes a significant number of victims, who were caused injury or death and who were targeted because of their affiliation or supposed affiliation with a group, rather than as individuals. Given the reality that torture in high profile cases almost always results in the death of many victims, this discussion will use the technical term “state violence” interchangeably with “torture” and “cruel, degrading, and inhuman actions” by the state.

State violence in Indonesia

Scholars generally explain away the phenomenon of state violence in Indonesia with reference to military tradition, culture, and ideology. Pointing to the wave of bloody events since independence in 1945, Liem (2002) argues that the prevalence of state brutality in this country is part of a military tradition that regards violence as a legitimate way of solving problems. Collins (2002) goes further and postulates that this military tradition has in fact created a culture of violence in society. This notion of violence as routine behavior affirms various historical analyses, which found significant similarities between past and contemporary state violence (Colombijn and Lindblad, 2002; van Dijk, 2002; Schulte Nordholt, 2002a). According to this perspective, the actions that the authoritarian regime grossly demonstrated were not a new phenomenon, but rather a recurrent practice entrenched in all the previous political systems. (Husken and de Jong, 2002; Shulte Nordholt, 2002b). For legal scholars, however, state violence was a product of the country’s political model, which gave virtually

unlimited authority to the government to act beyond the law. The Indonesian government not only subordinated, but also manipulated legal institutions for the purpose of serving their interests (Lindsay, 2006; Lev, 1999).

Undoubtedly, these perspectives explain the pervasiveness of violence in Indonesian politics well. Since independence in 1945, this country has never witnessed an era without one or more of the following disturbances: rebellions, secessionism, coups, or sectarian conflicts. Even so, this perspective tends to group together various types of state violence and thereby misses patterns that have shifted overtime. As Dittmer (2002: 542) emphasizes, state violence in the country was not a consummatory value “to be exercised as an end in itself”. Rather, it was a calculated strategy to achieve certain objectives. In other words, various regimes did not use this strategy arbitrarily against unidentifiable targets. Those opposing the government also arrived with clear demands and they participated in shaping the nature of the state’s reaction. As illustrated in Table 1, all major state violence under the New Order regime occurred in a systematic way, where the state targeted its actions against clearly identified opponents.

Table 4: 1

State violence during the Authoritarian Regime (1965 – 1998)

Year	Case	Victims	Number of dead/tortured	Rationale
1965	September 30	Communists	0.5 – 1 million/< 2,00,000	Threat to ideology
1975	Annexation	East Timorese	50,000-75,000/< 10,000	Threat to ideology
1983	Crimes	Suspected criminals	4,000/unknown	Threat to security
1984	Tanjung Priok	Muslim demonstrators	40/< 200	Threat to ideology
1989	Talangsari	Muslim militants	100/< 200	Threat to ideology
1989-92	Mil. Operation	Acehnese	2,000/unknown	Separatism
1991	Santa Cruz	East Timorese	100/ < 100	Separatism
1995	Liquica	East Timore	6	Separatism
1995	Timika	Papuans	16/Unknown	Separatism
1996	PDI	PDI supported	5/< 100	Opposition
1998	Trisakti	Univ. students	4/ < 20	Opposition

Source: Kontras, Amnesty International, Komnas-HAM, US Department of State.

Using the ascension of the authoritarian regime in 1966 as our starting point, state violence in Indonesia can be divided into three successive waves, each of which displays different characteristics. In the first wave (1965-1989), ideological laden conflicts dominated, most notably the violence against the communist and Muslim factions, as well as the annexation of East Timor. State violence in this era was closely associated with what Anderson (2001) refers to as a state making process. This was different from the second wave (1991-1998), when state sponsored violence was targeted against opposition and secessionist groups. Resistance to the government no longer questioned the legitimacy of the state, but rather opposed the growing authoritarianism of the rulers.

Ideological rivalry (1965-1989).

The bloodiest year in Indonesian history was 1965. During this period, about a half million people met their final destiny at the hands of their fellow countrymen.⁴ The event was preceded by deep-seated tensions among three influential political groups - the army, the communist party (PKI), and Muslim factions. However, it was the fierce rivalry between the army and the PKI that served as the backdrop for the events of 1965 (Mortimer, 1974). This rivalry locked the two parties into a race to gain power if the ailing charismatic President Sukarno died. Neither of the two factions had the capacity to take power from President Sukarno, who relied on personal popularity as his source of authority (Hindley 1967; Samson, 1971). The suspended tensions broke when the PKI leadership, fearing being taken over by the army, kidnapped and killed six top army generals. The PKI established the Revolutionary Council for the purposes of safeguarding President Sukarno from the army's planned coup.

General Suharto, who was second in rank to the kidnapped generals, immediately mobilized the army to crack down on the Revolutionary Council. Within a few days, his soldiers had succeeded in subduing the Council's supporters, while forcing its leaders to flee the capital city (Palmier, 1971). Several clashes between these two forces continued to flare up in some regions, but Suharto was the one to obtain an official mandate from President Sukarno to restore security and order. However, what followed was a nation-wide campaign by Suharto's soldiers to chase, detain, torture, and assassinate PKI leaders, cadres and sympathizers. The army encouraged Muslim factions to join the campaign by giving them training and equipment (Cribb, 1990, 2002). The latter group

willingly fought along with the army, since the communists constituted their fiercest ideological enemies. This collaboration between the army and Muslim factions finally resulted in the deaths of at least a half million communist cadres. Hundreds of thousands of them were illegally imprisoned, with only about a thousand ever brought to trial (Glasius, 1999).

With the complete defeat of the communists, the army and Muslims were the only major players left. The old pattern of competition between the nationalist-communist-Islamist factions transformed itself into a polar power relation, in which the military triumphed to become the backbone of the new regime, subsequently known as the New Order and led by General Suharto. Although Muslim factions had been close allies in the purging of the communists, the New Order soon pushed them to the margins of the political arena (Raillon, 1993; Samson, 1971). This new authority prevented influential Muslim figures from forming political parties. The regime also forced the various Muslim parties to fuse into a single party and compelled them to show allegiance by supplanting Islam with the official state ideology *Pancasila* (lit. five principles) (Liddle, 1996). It appeared that the New Order did not want to give the Islamists the opportunity to repeat a promotion of their sectarian agenda. The army had had bitter experiences back in the 1940s and 1950s when some Muslim factions rebelled against the central government to establish an Islamic state (Dijk, 1981).

However, restrictions against Muslim factions instead incited its activists to find alternative mediums for expression. Some of them used religious forums to voice criticisms, while others embraced violence as a strategy for resistance (Burns, 1989). The New Order was determined not to allow these forms of

expression and preferred to respond to Muslim discontent with harsher measures. According to the Legal Aid Institute (LBH), in the first half of the 1980s, more than 400 Muslim preachers were subjected to arbitrary arrest, detention, and torture (Lubis, Abdullah, Kusumah, 1981). Those caught hijacking, bombing, and attacking the state apparatus were sentenced to death (Glasius, 1999). The regime's resolute position to subdue Muslim activists was further demonstrated by its brutality in the tragedies of Tanjung Priok in 1984 and Talangsari in 1989, which together witnessed the killing of more than 140 people (Burns, 1989; *Tapol*, 1987; Widjoyanto, 2003). Both tragedies were followed by massive illegal arrests and detentions, while the remains of some of those killed were not returned to their families until 15 years later (National Commission, 2000).⁵

The way that the New Order handled their communist and Muslim rivals was typical of an authoritarian regime. Nonetheless, the rivalries between these three influential groups historically went beyond ordinary political factions. Each group represented an exclusionary ideology that rendered cooperation among them impossible (Elson, 2002). Internationalist communism and sectarian Islamism could not work together with secular nationalism, which emphasized plurality within the framework of a nation state. The three were unavoidably locked in a zero-sum-game where conflict could easily turn into a war of attrition (Fein, 1993). So fundamental was this difference that the New Order was not only belligerent to domestic rivals, but also did not hesitate to annex East Timor for the reason of preventing the communist threat. Haseman (1995) estimates about 50,000-75,000 lives were lost during the first five years of occupation, but Indonesia received little benefit beyond geopolitical stability. Thus, with the

exception of the killing of 4,000 suspected criminals in 1983,⁶ state violence during the period of 1965-1989 can be understood from the perspective of the state making process. At stake was more than increased power, for it touched the fundamental question of fighting for a legitimate state system.

Confrontation with opposition (1990-1998).

Despite the persistent use of state sanctioned violence, the New Order regime underwent significant changes after 1990. There were no instances of violence that claimed thousands lives, such as in the massacre of communists and in the annexation of East Timor. Beyond numbers, state violence shifted from its focus on suppressing ideological differences, to being centered on political-economic disputes. These changes suggested that a more fundamental transformation had taken place in the broader aspects of state-society relations. Whereas the absence of ideological violence signaled the increasing acceptance of state legitimacy, the new violence expressed the growing problems of political economy.

All the state violence that took place in this period was motivated either by secessionist or oppositional activities. The first activity had been virtually absent in the previous period, while the latter took place in the context of ideological rather than political disputes. To a greater extent, the emergence of secessionism and political opposition had been motivated by the political changes in 1989 in what was known as “political openness” (Honna, 2003). By this time, the New Order regime was aware that it had made a great contribution to economic development, recording an annual economic growth rate of about 6% on average since the 1970s (Hill, 2000). The regime was also confident that ideological

conflict was something of the past, as all organizations had accepted the state ideology of *Pancasila* (Emmerson, 1991). Therefore, addressing parliament in 1989, President Suharto underlined the need to balance economic and political developments (Hein, 1990).

The policy of political openness translated into a number of important decisions.⁷ One of them was Suharto's willingness to accept the suggestion by the Ministry of Foreign Affairs to become a member of the UN Human Rights Commission (UNHRC) (Vitikiotis, 1991). Indonesian diplomats in the UN had a hard time defending the brutality of their country's government and attempted to persuade conservative elements within the regime to realize the need to respect human rights.⁸ Unexpectedly, this new openness instead paved the way for the emergence of secessionist campaigns in the three provinces of Aceh, East Timor, and Papua. Contrary to Suharto's promises, the military quickly clamped down on these separatist movements. The central government also deployed battalions of troops to combat the Aceh Independence Movement (GAM). As a result, about 2,000 died during the clashes of 1990-1993 (Amnesty International, 1993).⁹ Similar attacks occurred in East Timor in 1991, when the army brutally assaulted a crowd holding a peaceful demonstration at a funeral in a Santa Cruz cemetery (Human Rights Watch, 1994). Although the regime succeeded in winning the confrontation, it failed to uproot the overall secessionist cells. Similar violence recurred in the years that followed, especially in these three troubled provinces (US Department of State, 1996).

Realizing that such openness did not go as planned, the regime tried to reintroduce restrictive policies.¹⁰ Unfortunately for the regime, opposition groups

had grown stronger and no one could turn back the clock. Since the government and opposition groups could not reach a compromise, state violence intensified accordingly. In July 1996, the regime stormed the headquarters of the Indonesian Democratic Party (PDI) to suppress opposition elements (Amnesty International, 1996b). On the eve of a general election in 1997, the Indonesian security forces arrested activists from various NGOs, labor movements, and intellectuals throughout the country on suspicion of subversive activities.¹¹ The situation became worse with the severe monetary crisis in the country, making opposition groups more determined to stage mass protests (National Commission, 1998). The last days for Suharto came when the brutality of the security forces fueled mass outrage in several cities, spreading chaos and blocking public activities.

The brutality that the state demonstrated in this period was not a novel phenomenon. State violence in the previous era had been more colossal, brutal, and unrestrictive. Nonetheless, unlike the previous era, such violence happened amid economic hardship and at a time when opposition groups had shown their strength. Moreover, while in the previous era the international community was largely silent regarding human rights violations (Chomsky, 1998; van der Kroef, 1985), by the 1990s this had become a greater concern for the world (Berg, 2001). Strong democratic states no longer endorsed whatever Suharto's regime did, but instead began to impose limited sanctions in response to state violence. Their pressure forced the Suharto regime to bring some of perpetrators of the state violence that occurred in the 1990s to court. Overall, it was the combination of these political and economic factors that finally forced President Suharto to step

down from power on May 28, 1998. His departure marked the end of the 32 year reign of the authoritarian regime.

Struggle for the ratification of the CAT

Considering the long record of political brutality in the country, the struggle to institutionalize international norms against state violence was contextualized. Given the hazardous environment, however, negotiations between the state and human rights proponents went through a complicated process. The signing of the CAT by the Indonesian government in 1985 was a cynical attempt to placate the international community through diplomatic maneuvers. Despite acknowledging its agreement with the provisions of the CAT, the mid-1980s witnessed a peak of brutal repression against Muslim factions by the New Order regime (Burns, 1989). The regime's death squads also assassinated approximately 4,000 suspected criminals without trial (Bourchier, 1990; van den Kroef, 1985). It is perhaps this contradictory reality that prompted the New Order regime to sign, but not ratify, the treaty. The decision to support the convention normatively but not legally was a mixture of diplomatic pressure and legal avoidance. This strategy was repeatedly defended and the ratification of the CAT only occurred when a more democratic regime came to power.

In the 1980s, there was no external pressure that could provide an incentive for the New Order regime to ratify the CAT. Most democratic states turned a blind eye on the bloody events in Indonesia or simply expressed regret and concern without imposing heavy sanctions (Berg, 2001; Glasius, 1999; *Indonesia*, 1986). Meanwhile, international human rights NGOs were still weak, unable to mobilize adequate pressure to influence their governments and to bring

pressure against foreign authoritarian regimes (Clark, 2001). In the domestic arena, all the opposition groups were destroyed, co-opted, or put under strict state control (Eldridge, 1995; Riker, 1998). At this point, signing the treaty sufficed to satisfy international critics, without obligating the regime to implement the treaty.

The government's need to use violence to implement its core agendas further weakened the incentive to embrace the CAT. The authoritarian regime vowed at the outset to create political stability whatever the cost, including the use of repression against opposition (Crouch, 1972; Robison, 1988). As was the case, the road to stability was largely achieved through a series of brutal and violent tactics against those who questioned state legitimacy. The regime insisted that stern measures were necessary in order to achieve stability and to secure economic development. Such rhetoric might appear misleading, but the regime's brutal approach was indeed accompanied by consistent economic growth. Even though one may cast serious doubts as to the role played by state violence in economic achievement, it at least increased the regime's confidence in the efficacy of their strategy to use violence.

The turning point occurred in 1993, when the state finally created the National Commission on Human Rights (Komnas-HAM), with the mandate to monitor and make policy recommendations on human rights issues to the government. The creation of Komnas-HAM was closely associated with the negative effects of the political openness initiated by the regime in 1989. This policy not only resulted in the growth of opposition movements, but also in intensifying separatist movements. It was in this context that the tragedies of Santa Cruz and East Timor exploded, when the army brutally attacked peaceful

demonstrators and killed more than one hundred people. The creation of Komnas-HAM was largely intended to restore the country's increasingly negative image. This became the reason that virtually no one responded positively to the government's initiative and virtually all human rights activists declined the invitation to join this institution (Human Rights Watch, 1993; Ching, 1993). Surprisingly, Komnas-HAM was able to record some significant successes thereafter, such as disclosing the military's brutality, disseminating human rights norms, enhancing the role of domestic human rights NGOs, and strengthening ties with international activists. In the words of domestic activists, Komnas-HAM became an *enfant terrible*, whose behavior badly harmed the regime (Fatwa, 2005).

Since its inception, Komnas-HAM championed the campaign for the ratification of the CAT (National Commission, 1994). In its annual human rights reports, this institution repeatedly made appeals for the state to ratify the convention. Unfortunately, the government did not give an immediate response to this recommendation, and instead continued to adopt violence as part of the ruling strategy. Interestingly, even though the state had not ratified the treaty, Komnas-HAM used this convention as the basis for legal evaluations of the state's behavior. Together with NGOs, this institution used the convention as a normative reference for dealing with state violence cases (Elsam, 1995). Despite the court's resistance to using this international treaty, growing public pressure eventually forced the regime to bring some important cases to the courts and punish perpetrators with imprisonment (National Commission, 1995).

A positive response from the government came in 1996, when the Minister of Foreign Affairs finally stated that the government planned to ratify the CAT (*Antara*, 1996, 1997). At the same time, the Minister announced the state's agenda to establish a national plan of action on human rights. Unfortunately, these pledges never fully materialized due to the political upheavals and economic crises that led to the downfall of the Suharto government. The shift in their attitude towards the CAT, however, suggests that the state could no longer ignore the demands of the growing networks of transnational human rights activists. The end of the authoritarian regime in 1998 radically altered the balance, as more parties became interested in supporting, rather than opposing, the ratification of the CAT. Komnas-HAM and the human rights NGOs remained at the forefront of the campaign, but the majority of state agencies also showed their support,¹² not only because the state had weakened, but also because the new transitional regime needed to obtain fresh legitimacy.

Implementing the CAT: Battles against state violence

To investigate the success and failure of treaty implementation, this section will discuss three areas of activity: the institutionalization of norms against state violence, the application of law on the subject, and court decisions on state violence cases. The first area covers the way the CAT was legislated and then disseminated through various activities. The second part analyzes the use of the treaty in the battle against state violence in the post-authoritarian state era. Lastly, the discussion will examine court cases and decisions on state violence as well as the factors that influenced these decisions. Prior to these discussions,

however, this section will begin by describing state violence in the post-New Order period.

State violence and the issue of territorial integrity (1998-2006).

In many cases, the transition to democracy was often paired with increasing levels of state violence. The reason lies in the government's limited choices, other than repression, to gain control over what was most frequently an extreme level of instability (Davenport and Armstrong II, 2004; Fein, 1995). In Indonesia, the road to democracy began with the unexpected fall of the long-standing authoritarian regime. The resignation of President Suharto was sudden and dramatic, without a deliberate plan for the transition of power. Vice President B.J. Habibie, then acting president, inherited a weak government with minimal legitimacy. This created a fragile situation in which various interest groups unleashed their demands with no agreed upon rules (Aspinall and Berger, 2001). As a result, clashes between the incumbent government and the opposition as well as between the central government and secessionist movements led to the prominence of violence in this era of transition. These conflicts reflected the decline of state power more than the growing strength of opposition groups, as seen in the preceding period.

Table 4: 2

State violence in the post-authoritarian Regime (1998 – 2006)

Year	Case	Victims	Number of dead/tortured	Rationale
1998	Semanggi I	Univ. students	13/ < 100	Opposition
1999	Semanggi II	Univ. students	4/ < 100	Opposition
1999	Referendum	East Timorese	1,400/ < 100,000	Separatism
1999-04	Mil. Op. II	Acehnese	< 3,000/ < 1,000	Separatism
1999-03	Papua	Papuans	< 30/< 50	Separatism

Source: Kontras, Amnesty International, Komnas-HAM, US Department of State.

The emergence of weakening state authority was evident because of the government's inability to prevent the eruption of mass conflicts at the societal level. In 1997, the state began to lose control when the indigenous ethnic Dayaks in West Kalimantan province attacked Madurese immigrants. In subsequent years, the government acted more as a bystander in similar conflicts that flared up in Central Kalimantan (2001) and East Kalimantan (2002). According to Peluso (2007), at least 1,000 Madurese died and tens of thousands of others were evicted from their homes in these waves of violence. The same failure recurred in the more brutal wars in the Maluku and Central Sulawesi provinces, where 5,000 people were killed and thousands became refugees (van Klinken, 2001; Aragon, 2001). Much of this collective violence would have been prevented if the central government had retained and exercised efficient control over political competitions at the local level (Davidson, 2005).

The transitional government lacked resources in the struggle to find new mechanisms for future politics. Radical opposition groups not only demanded the

resignation of Suharto, but also that of the entire cabinet and parliament. When a compromise could not be reached, clashes between the security forces, which backed the transitional government, and university student-led demonstrators became unavoidable. This was well documented in the so-called tragedies of Semanggi I and II, which occurred respectively on November 13, 1998, and September 24, 1999, in Semanggi, Jakarta. Thirteen people were killed in Semanggi I, four in Semanggi II, and hundreds of people were left seriously injured after being shot, beaten, and clubbed by security forces (Bonasahat, 2006; Radjab and Hasani, 2002). In each case, the radical opposition groups rejected the political initiatives proposed by the transitional government, which was seen as representing the status quo.

However, despite the occasional use of aggressive tactics, the new regime was not as violent as the previous one. This was made evident as the new rulers preferred to adopt a “persuade and compromise” approach to handling separatism. Such a decision might have been made in order to show the public that the transitional government was more democratic than its predecessor. Unfortunately, even though this lenient strategy temporarily reduced state violence, it eventually paved the way for the secessionists to increase their demands for full independence. In the end, this peaceful diplomatic strategy had a negative effect on the relationship between the government and the military. The government chose to make compromises, while the military refused to tolerate any form of secessionism. As a result, the major state violence that broke out in the troubled provinces was largely an outcome of the attempt to counter-balance the

radicalizing secessionist movements and the disharmonious relationship between the executive and the military.

In East Timor, more than 1,000 people died and 250,000 fled to seek refuge during the 1999 referendum (Tanter, van Klinken, Ball, 2006; Joliffe, 2006). This tragedy was quietly masterminded by the military, which unleashed local militias to spread terror following the success of the pro-independence camp in the referendum (Cribb, 2002; Robinson, 2002). In Aceh and Papua, the military intervened directly in order to curb the secessionist movements, regardless of the government's efforts to conduct persuasive dialogues. However, when the secessionist leaders refused to make compromises and persisted with their demands for secession, the government eventually supported the military's repressive strategy. In Aceh, for instance, the central government finally declared war by sending 40,000 troops to fight the rebels (Amnesty International, 2003). Despite huge casualties, this violent tactic proved sufficient to force the secessionist leaders to accept a compromise. By 2005, the government had solved all the secessionist issues, partly through repressive means and partly by granting more autonomy to the troubled provinces in order to retain significant portions of local revenue. Simultaneously, the crisis of political legitimacy that had hit the transitional government in 1998-9 was solved through two successful general elections in 1999 and 2004.

The institutionalization of norms against state violence.

The incorporation of the CAT into the national legal system was very much influenced by political rather than legal considerations, rendering its outcome an incomprehensive regulation. The new laws were marred by political

compromises, mainly due to the maneuvers made by the army to protect its members from being held responsible for countless brutal actions. Negotiations between political forces often resulted in modifications to the provisions or the complication of procedures. In the end, although the legislation of the CAT offered alternative legal foundations, the new provisions made little substantive breakthroughs.

The transitional government fulfilled its obligations by promulgating some relevant laws immediately after their ratification. In November 1998, the People's Consultative Assembly (MPR) issued Decree no. 17, which instructed the government and other state institutions to protect and promote human rights principles.¹³ In the following year, the acting President B.J. Habibie issued law no. 39 on human rights in 1999. The 106 articles of this law provide a sweeping legal foundation for the protection of a variety of rights according to international standards. Article 4 highlights the "right not to be tortured" as something "that cannot be diminished under any circumstances whatsoever." This principle is reiterated more thoroughly in article 33, which states that "[e]veryone has the right to freedom from torture, or cruel, inhuman and degrading punishment and treatment." So serious was the law dealing with state violence that article 34 repeats, "No one shall be subjected to arbitrary arrest, detention, torture or exile."

Decree no. 17 was issued when the MPR conducted a Special Session, which caused intense demonstrations by radical opposition groups. Some university students were shot dead and many others suffered a great deal from the military's actions. Besides the CAT, the state also ratified the convention on racial discrimination (CERD), something that Komnas-HAM had been calling for since

1994 (National Commission, 1994). It also implemented the old agenda of the Ministry of Foreign Affairs to establish the National Plan of Action on Human Rights (Eldridge, 2002). Still in the same period, the transitional government ratified a number of major International Labor Organization (ILO) treaties. Needless to say, the attempt to accommodate as many of the demands of the opposition as possible was more political rhetoric.

Following the first democratic general election in 1999, the elected President Abdurrahman Wahid, who himself was a human rights activist, promulgated law no. 26 on the court of human rights in 2000. The law specifically detailed the mechanisms for dealing with gross human rights violations. Among its provisions, the state was authorized to form an *ad hoc* court to try human rights violation cases that took place prior to the legislation of this law. The law accommodated the provision on torture and included an article on crimes against humanity.¹⁴ Other dimensions of torture were included in article 8 on genocide, which was understood as actions intended to destroy the whole or part of a social group.¹⁵

Despite the quick legislation, observers expressed concerns that the provision on torture could not be applied in ordinary cases, as this new law defined the terms of torture within the framework of genocide and crimes against humanity (Amnesty International, 1999; Basari, 2006). These concerns were legitimate, particularly considering the limited mandate of law 26, 2000, which only deals with gross human rights violation. However, a more serious flaw was found in the omission of some principle aspects of gross human rights violations. Even though the drafters made reference to the Rome Statute, they discounted the

coverage of gross human rights violations contained therein (Wiyono, 2006). They purposefully included only two types of gross human rights violations into their definition, that of crimes against humanity and genocide. The remaining two types of violations, war crimes and crimes of aggression, were omitted with no open explanation. Arguably, if these latter two crimes were to be included, the Indonesian annexation of East Timor in 1975 and the brutality the military had carried out in the troubled provinces would be convenient targets for the law.

The genesis of law no. 26, 2000, was very much a compromise between the government and the military, and also between the government and the international community (Cohen and Seils, 2003). In the aftermath of the unexpected atrocities following the East Timor referendum of 1999, the UN and strong democratic states threatened to establish an International Tribunal to try Indonesian military commanders (McBeth and Murphy, 1999). In fact, the new democratic government could have allowed its generals to be charged, but the military was too influential to be subdued in this manner. To avoid a deadlock, the military and government finally agreed to form a national court of human rights (Linton, 2004). As a form of political compromise, the law was designed in such away so as not to hurt the military unduly. For instance, authority was granted to the People's Representative Council (DPR) and the president in order to form the human rights tribunal, but not to the Attorney General's Office (AGO). As a consequence, even though the AGO found evidence of violations, the political arrangement made by the political factions in the DPR had the potential to annul any legal process.

Compromises between human rights proponents and the military also took

place in the parliament. After the democratic general election in June 1999, the new members of Parliament immediately amended the Constitution of 1945. The first amendment in 1999 was to limit executive power in order to shut the door to authoritarianism. In the second amendment in 2000, the elected MPs inserted a special chapter on human rights into the newly amended Constitution (Juwana, 2003). According to Lindsey (2002), the chapter on human rights was “the most radical change to the original philosophy of the Constitution”. The provision on torture virtually reiterated the provisions in law no. 39, 1999 on human rights. Despite this achievement, however, the military was reported to have exerted the principle of “non-retroactivity”, meaning that the chance to bring up old cases of state violence diminished accordingly (Lindsey, 2002). The only chance available was to use law no. 26, 2000 at the court of human rights by establishing an *ad hoc* tribunal, which required political support from the DPR and the president.

Until 2005, the incorporation of the CAT into the domestic legal system was always conducted as part of human rights reforms. Being part of general human rights law enabled the norms against torture to be enshrined in high-level legal sources, such as the Constitution. The drawback was that the provision on torture shared the limitations imposed on human rights laws. For instance, the article on torture would only apply if the practice occurred as part of genocide or crimes against humanity (Basari, 2006). It was this problem that made international lawyers and activists criticize the legislation of the CAT as falling short of international standards (Amnesty International, 1999).

For human rights activists, the way torture was legislated could not be applied in daily cases of state violence. For this reason they campaigned for the

incorporation of torture into the country's Penal Code (KUHP) as an independent article (Basari, 2006; Yolanda and Eddyono, 2008). The existing KUHP recognized the provision on assault and ill treatment, but not on torture in the sense implied by the CAT. The struggle to include these provisions took some time, but the draft of the revised Penal Code written in 2005 eventually included provisions on torture. Article 406 of this draft defined torture more precisely and similar to how it was defined to the CAT, threatening perpetrators with a minimum of five to a maximum of 20 years in prison. Should the parliament promulgate this revised Penal Code, the process of CAT legislation will have successfully adopted the treaty's substance.

The legislation of anti-state violence went hand-in-hand with institutional reforms. One of the most important reforms in this context was the strengthening of The National Commission of Human Rights (Komnas-HAM) as an independent institution. As stipulated in law 39, 1999, the members of Komnas-HAM are no longer appointed by the president but selected by the parliament. The law also entitles this Commission to have new authority to hear complainants and listen to the victims and the accused in particular cases deemed to have involved human rights violations. In the executive domain, reforms have been conducted through the introduction of new appointments and directorates in some state ministries to deal specifically with human rights issues. When Abdurrahman Wahid became the first democratically elected president in 1999, he immediately created the Ministry of Human Rights.

Unfortunately, aside from the Ministry of Foreign Affairs, human rights were simply alien concepts to most bureaucrats.¹⁶ These concepts were formerly

seen as being incompatible with national values and bureaucrats needed to radically alter this perception. Unavoidably, having been under an authoritarian system for 32 years, the state apparatus found it difficult to operate these new institutions. For this reason, the new regime was compelled to ask human rights experts and NGO activists for their assistance (National Commission, 2001). Their expertise was badly needed in order to draft laws, design training programs, write manuals, and reform education curricula.

In comparison to legislation, the activity of human rights promotion was more successful. The collaboration between the state and non-state institutions resulted in numerous activities filtering down to the provincial and district levels. For the public, there was a plethora of activities such as radio talk shows, lectures, publications, seminars, as well as photographic exhibitions on state violence (National Commission, 2001). More systematic programs were also aimed at targeted groups, such as human rights training for decision makers, law enforcers, business managers, and community leaders. The most enduring form of promotion was through the inclusion of human rights subjects into education curricula (Department of Foreign Affairs, 2006). In this latter form of norms institutionalization, the military and police academy were among the first educational institutions to adopt this program. In addition, these two institutions have also conducted comprehensive human rights' trainings for thousands of their members.¹⁷

Nonetheless, it would be overly ambitious to expect the immediate result of a decline in the practice of torture simply from the short process of CAT legislation. The greater picture of state violence in the post-New Order period has

remained rather bleak, especially in the troubled provinces. However, new systematic violence has largely decreased, despite the fact that field officers still often use violent tactics to handle peaceful civilian protests (Department of Foreign Affairs, 2006).

Applying the new law on state violence

Besides political compromises with the military, the new human rights laws and institutions have equipped activists to move beyond promoting anti-state violence norms. They use their cooperation with government offices to keep a closer eye on the behavior of the military and police, based on which they routinely update information on state violence (Kohno, 2002). This monitoring strategy has been pivotal in enabling Komnas-HAM to exercise its new authority in the case of *pro justitia* inquiry. As stipulated in law 39, 1999, Komnas-HAM has the authority to conduct inquiries into suspected cases of human rights abuses, and its recommendations are the basis for the Attorney General's Office (AGO) to further investigate the cases in question. Given this new mechanism, activists have been motivated to increase their struggle to bring perpetrators to justice.

In the course of 1998-2006, Komnas-HAM created more than ten Committees into the Inquiry of Human Rights Violations (KPP-HAM) to collect data on various occurrences of violence. Upon investigating these cases, the committee almost always came up with affirmative conclusions about the presence of human rights violations. Surprisingly, only two recommendations received an immediate response from the AGO and were successfully brought to court. One case was delayed for a couple of years, while the rest were left unprocessed.¹⁸ This sporadic success clearly shows that human rights proponents

face difficulties in turning the new laws into action in the field.

Some critics point to the quality of Komnas-HAM commissioners and their lack of independence from the government (Fatwa, 2005; Linton, 2006). Even though this opinion is quite right, it cannot sufficiently explain the problem. In fact, the old commissioners during the authoritarian regime were less independent than their successors, but their recommendations were acted upon. Other critics refer to the weakening capacity of the government in implementing the new laws. This latter opinion basically argues that, although Komnas-HAM was dependent during the Suharto era, it garnered full support from the authoritarian yet strong government (Mohamad, 2002). While this argument accurately locates the state as a pivotal factor in law enforcement, it cannot explain the success at conducting legal processes in the absence of a strong regime. Despite their small number, some state violence cases have successfully been brought to the court for legal processing.

In general, the cases that failed to be brought to the court did not obtain sufficient attention from influential international and domestic groups, such as established democratic countries, international human rights NGOs, or influential domestic social groups. However, not all international and domestic actors are powerful enough to ensure that the state will comply with the treaty. This was the case with the tragedies in Kalimantan in 2001 that killed civilians and police officers (National Commission, 2001). The domestic human rights NGOs were alone in encouraging the Komnas-HAM to conduct an inquiry and to push for a trial. With no support from international institutions and influential social groups, Komnas-HAM's findings on the gross human rights violations involved in the

tragedies were not considered a priority by the AGO and it did not proceed with further investigation.

In fact, even in the presence of intensive campaigns from transnational activist networks, several cases of bloody violence also failed to find legal solutions. For instance, transnational activists had for years conducted worldwide campaigns against state brutality in Aceh and Papua. Komnas-HAM also dispatched some committees of inquiry and found categorical evidence of human rights abuses (KPP-HAM Papua/Irian Jaya, 2001). Nevertheless, more cases were shelved in the AGO than brought to court.

The inability of NGO networks to compel the state was most apparent in three high-profile tragic student shootings that took place between 1998 and 1999. In these cases, a few low-ranking perpetrators were tried in a military tribunal, but NGO activists and Komnas-HAM wanted to further prosecute them in the court of human rights (Tim Asistensi, 2002). They found strong evidence of serious violations, for which Komnas-HAM needed to create a team to conduct an inquiry. However, as the inquiry was progressing, the People's Representative Council (DPR) suddenly issued a decision that these tragedies were not human rights affairs. Apparently, this premature statement was a maneuver on the part of the political parties, who were vying for the support of the armed forces (Tim Asistensi, 2002). The power of NGO networks to bring perpetrators to justice could not outweigh the influence of political parties seeking to protect the military.

Occasionally, domestic NGO activists and influential social groups succeeded in forcing the state to respect the treaty. For instance, the early military

tribunal for a student shooting in 1998 succeeded in punishing the perpetrators. Even though the new human rights laws and courts were not yet in place, the coalition of student movements and opposition groups was able to force the state to conduct a tribunal (Bonasahat, 2006). This pattern was also true in the raid against the religious cleric Tengku Bantaqiyah and his followers in 1999 and in the attack against Muslim demonstrators in Tanjung Priok back in 1984. Although these two cases were not examples of the worst state violence in the country, they were successfully brought to the court. Apparently, pressure from Muslim political parties and social organizations was successful in forcing the military to make a compromise (Sulistiyanto, 2007). In these two cases, the military was not only confronted with media campaigns by the NGOs, but also mass mobilization by Muslim organizations (Fatwa, 2005).

As far as high profile state violence is concerned, especially as investigated by Komnas-HAM, pressures from powerful democratic countries very much determined the willingness of the state to enforce human rights law. In the case of the human rights tribunal for the East Timor atrocity in 1999, strong democratic states played a more decisive role than domestic actors. Against the state sponsored brutality in the province, these states directly applied military and economic sanctions (Garjao, 2002). Together with international NGOs, they also supported the UN plan to establish an International Tribunal to try indicted Indonesian military commanders. In the domestic arena, influential opposition groups and social organizations were generally muted, while the public was instead drawn into nationalist rhetoric (Tanter, van Klinken, Ball, 2006). Nonetheless, given the reality of international condemnation and sanctions, the

state and military had to make a compromise by establishing an *ad hoc* human rights tribunal against the indicted officers and militia leaders.

Compared to the promotion and institutionalization of norms against state violence, the struggle to bring perpetrators to justice was confronted with harsher opposition. While no institutions questioned the legitimacy of the norms against torture, activists often engaged in bitter polemics with the military and conservative groups. The latter's resistance to law enforcement often turned into anger and threats against activists, such as vandalizing their offices or sending grenade packages.¹⁹ The relationship between activists, NGOs, Komnas-HAM, and the state was not as good as in the collaboration on education and information dissemination. In particular, political factions often sided with the military for political purposes, thereby weakening the attempt to bring the cases to justice. International support was inconsistent and mostly skewed to particular cases that carried greater international publicity. Thus, although Komnas-HAM conducted several inquiries, most of its recommendations did not secure positive responses from the AGO.

The trial of state violence

From the many examples of state brutality, only three cases were successfully brought to the new court of human rights. The rest were either tried in the military and *koneksitas* (connectivity) courts, or frozen by the AGO for various reasons.²⁰ Theoretically, the cases tried in the court of human rights should have resulted in a more severe verdict than those tried in the other two courts. What happened instead was that virtually all the tribunals dealing with state violence in the post-authoritarian era reached verdicts of pure acquittal or

other lenient verdicts. Success in bringing cases of state-sponsored violence to the courts was obviously not a guarantee that the rule of law would be observed. On the contrary, the military's resistance to the court system was stronger than the capability of the legal reforms to bring alleged perpetrators to justice.

The earliest case of state violence brought to the court was the kidnapping of democracy activists in 1997-1998. Initially the military adamantly denied any involvement in the kidnapping when opposition groups made this accusation. However, the military's claim of innocence was challenged when the victims being released reported their horrible experiences of being tortured to the media (Bonasahat, 2006). In response to public condemnation, the armed forces were compelled to delegate the Military Honor Council to conduct an investigation (Human Rights Watch, 1998; US Department of State, 1998). As a result, one commander at the rank of lieutenant general was forced to retire, two lower commanders were removed from their posts, and eleven officers were court-martialed. The latter group received sentences ranging from 12 to 22 months in prison and five of them were dismissed from military duty (US Department of State, 1999).

Human rights activists criticized the trial as being unfair and secretive, more of a showcase with little access to information for the public (US Department of State, 1999; Amnesty International, 1999). The military court quietly engineered the case to be a purely internal affair. Although the core problem was kidnapping, the prosecutor charged the defendants under an article of military law citing that they acted without orders. These soldiers were not tried for their cruel behavior, but rather for exceeding the commands of their superiors.

This was the same line of argument used with the three indicted commanders, who were punished for failing to make their subordinates comply with orders. According to article 103 of the Military Criminal Law Book (KUHPM), the maximum sentence for disobeying or acting without orders is only two years and four months imprisonment. In the end, all the defendants received lenient verdicts, at the expense of neglecting the central issue of kidnapping that was the original *raison d'être* of the tribunal.

Changing the subject of the trial was a convenient tactic for escaping a heavy sentence. By confining the cause to administrative affairs, the tribunal could lighten the verdict, while releasing high-ranking commanders from being charged with serious crimes. Such an incentive motivated the military court to repeat this strategy in the tribunal of the Trisakti student shootings that killed four people in 1998. The court was entirely indifferent to the severity of the crime, for which it applied exactly the same article on loyalty as in the kidnappings trial. Needless to say, the prosecutor was reluctant to see the differences between shooting and kidnapping and killing and torture. However, the results of the case were even more controversial because the judge gave lighter sentences to the accused in comparison with the kidnapping trial.

This strategy may have continued to be employed if there had been no harsh condemnation from activists and opposition groups. After facing public criticism, the military court prosecutor in the trial of the 1999 Semanggi I student shootings finally incorporated the law article on murder. The outcome was substantially different from those mentioned earlier with the court sentencing the defendants to between three and six years of imprisonment. Apparently,

modifying the indictment has helped to produce different results in the various court cases. As mentioned earlier, the raid against Bantaqiyah and his followers in 1999 was not the worst example of state violence. It was the religious flavor of the case that attracted Muslim solidarity, which in turn forced the state to quickly resolve the problem (Linton, 2006). What was so atypical in this situation was that the court not only made reference to the provisions on loyalty and murder, but also to the Rome Statute and the CAT (Department of Foreign Affairs, 2006). These last two international laws regard state violence as one of gravest crimes against humanity. As a consequence, the judges of the *koneksitas* tribunal handed down verdicts sentencing the twenty-five accused to between eight and a half to ten years of imprisonment. It was the first time human rights activists warmly welcomed a court decision on state violence, even if the military was reported to have secretly released the indicted commander while he was in custody (Amnesty International, 2000b).

However, there was also a point where a heavy indictment would not necessarily result in a heavy verdict, as shown in the trial of the East Timor atrocity in 2002. Like the Bantaqiyah case, the tribunal also received strong support and applied a serious indictment on gross human rights violations. The creation of this special tribunal was preceded by overwhelming international threats against the military establishment (McBeth and Murphy, 1999). These pressures forced the state to bring twelve people to trial in an *ad hoc* court of human rights. As a human rights tribunal, the court adopted the new human rights law as the basis of the indictment. The various defendants were charged with law no. 26, 2000, article 7(b) on crimes against humanity, 9(a) on murder, and 47(2)

on the responsibility of the commander and the leader for the conduct of subordinates. According to article 37 of this law, the perpetrators “shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison.” The prosecutors demanded a sentence of about 10 years for the eleven defendants, and urged that the highest commander, Major General Adam Damiri, be acquitted of all charges.

Surprisingly, despite the grave nature of the violence, the court decided to release half of the defendants and sentenced the other five to between three and five years of imprisonment. The only accused who received a sentence within the range of time as stipulated by the new law was the militia commander, Eurico Gutierres. Upon receiving this information, the UN voiced serious doubts about the sincerity of the Indonesian authorities to handle the case seriously. Human rights organizations called the trial a sham and intensified their lobbies to have the UN and democratic states put pressure on Indonesia (Amnesty International, 1999).

According to legal scholars, the primary factor that caused the judge to deliver a lenient verdict rested on the issuing of inappropriate indictments. It was not that the verdicts rendered were too light, but rather that the indictments did not reflect the crimes committed (Linton, 2004; Cohen, 2003). There was no evidence that the military officers participated directly in the atrocity. Their gravest crime was providing the conditions for such an atrocity to occur by setting up militia organizations and equipping them with financial support and weapons (Tanter, van Klinken, Ball, 2006). Therefore, charging the military with the articles on torture, murder, and other crimes against humanity only amounted to an

unfounded accusation. Like the adoption of lighter indictments in the military tribunals, applying heavier yet unverifiable charges might also lead to more lenient verdicts and outright acquittals.

Nonetheless, altering the indictments was not the only strategy used by the military to limit the seriousness of the charges. In the human rights tribunal of the Tanjung Priok tragedy, the military combined subtle as well as vulgar tactics to escape legal responsibility. The creation of this tribunal was due to a demand from the alliance of human rights activists and Muslim organizations (Fatwa, 2005). However, the court was able to charge ex-members of the military group that directly confronted the crowd of Muslim demonstrators in 1984. The court charged defendants with violating human rights, that is, crimes against humanity, murder, and the failure of their commanders to control their subordinates. In the end, the court also handed down verdicts far below the minimum sentence, ranging between two and three years. The higher commanders were summarily acquitted, and the only defendant who received a heavy sentence of 10 years of imprisonment was the ex-commander of the Military District.

Although the Tanjung Priok tribunal also ended in lenient verdicts, it involved more complicated processes than simply uncommitted prosecutors. Despite strong support, the Tanjung Priok tribunal set out to try a case that had happened more than 15 years earlier. In the course of this period, those suspected to be the perpetrators of the tragedy had persistently approached the families of victims to accept out-of-court settlements (Sulistiyanto, 2007). Some families accepted the offer, but a good portion of the others continued to fight for legal a solution and justice. When the campaigns for the creation of a human rights

tribunal were increasing, the military also intensified its struggles to persuade, and sometimes blackmail, the victims (Fatwa, 2005). This strategy not only resulted in dividing victims, but also created disagreements among Muslim organizations on the benefits of the tribunal. Once the tribunal was finally established, the military persistently threatened the witnesses in the tribunal, causing a massive withdrawal of those who were otherwise key informants (Linton, 2006). In addition to direct threats, the military always sent a huge delegation of officers into all the court sessions to create an atmosphere of pressure on the judges and prosecutors, who also received constant threats. It was this blend of strategies that enabled the military to gain the momentum it needed to evade legal responsibility.

Compared to the military and *koneksitas* tribunals, the court of human rights produced no special decisions. The meticulous requirements carried out in establishing this new court were not even able to prevent lower ranking officers from avoiding heavy sentences. The pessimistic view of those who believed that impunity in Indonesia continued unabated found further support in yet another human rights tribunal in 2005. This first non-*ad hoc* human rights tribunal saw two police chiefs charged with human rights violations causing the deaths of two people and injuring 27 in Abepura, Papua province (KPP-HAM Papua/Irian Jaya, 2001). As with the other cases of human rights violations, the prosecutors demanded 10-year sentences for the accused. Nonetheless, the court acquitted the defendants of all charges on the grounds that their brutal actions took place within the context of fighting the separatists. This rationale sharply contradicted the findings of international human rights NGOs and the inquiries by Komnas-HAM,

which clearly indicated the presence of the widespread torture and killing of innocent unarmed civilians (Amnesty International, 2000a, 2002).

Those who had high expectations for an end to state violence were exasperated when the court of appeals and the Supreme Court acquitted virtually all the cases of state violence. In the kidnapping tribunal, the high military court annulled the decision to dismiss the four defendants from their military positions and upheld only one conviction. By the time this decision was made in 2006, all the convicts had returned to active military duty and received regular promotions after spending a short time in prison. Their criminal records did not negatively affect their military careers in any way.²¹ In the East Timor case, the decisions made by higher judicial institutions were even more surprising. Following the acquittal of six defendants by the court of human rights, the court of appeals released three more defendants in 2005, and finally the Supreme Court acquitted those that remained. This led to the conclusion that no one was to be held accountable for the atrocities in East Timor, which killed more than 1,000 and drove 250,000 people into refugee camps.²²

If the East Timor case, which was watched closely by the international community, ended in acquittal, then one could expect that the Tanjung Priok tribunal would conclude in a similar manner. In 2005, the court of appeals acquitted all twelve defendants in the Tanjung Priok case, including the district commander, following the two other commanders who had been released earlier by the court of human rights.²³ The prosecutors in turn appealed the appellate court's decision to the Supreme Court, but the Court rejected their request and instead affirmed the decisions taken by lower courts (Fatwa, 2005). With the close

of this case, the overall result reveals that the courts of human rights sentenced none of the 28 defendants in the three cases of human rights violations. It was only *koneksitas* and the first level courts that successfully sentenced the defendants to various periods of imprisonment. At this point, as with the creation of a new court institution, adopting severe indictments did not appear to be a strategy that could hold the military sufficiently accountable. The military evidently did not hesitate to use vulgar methods if subtler tactics of manipulating the indictment did not work.

Beyond legal reforms

For human rights activists, the exclusive jurisdiction of the military courts was the greatest hindrance to punishing violating military officers (Kontras, 2003). Prior to the legislation of the human rights law, military courts were the only ones with the authority to deal with their members without the necessity of considering the types of crime they had committed (Coalition, 2001). This exclusive jurisdiction became a safe heaven for soldiers, as clearly displayed in the kidnapping tribunal and the student shootings. The court freely subverted the case by shifting it from one of torture and killing to a merely administrative issue. Such a strategy simultaneously protected its lower ranking officers from harsh punishment and its higher-ranking commanders from being charged. In the end, even if the violating officers were found guilty, they would predictably receive light sentences or be acquitted altogether, while their superiors remained untouchable.

If the court's jurisdiction was the cause, however, this practice should have ended with the enactment of law 26, 2000, on the court of human rights. The

law authorizes the creation of tribunals for gross human rights violations, whether committed by civilians or the military, irrespective of when the alleged crimes took place. To implement the law, the new court of human rights was established within the structure of a general court, where judges and prosecutors were to be recruited from outside the military institution. More importantly, compared to the regular criminal code, the new law stipulates harsher sentences for the guilty. Ironically, all these reforms could not stop the military from influencing the tribunals to eventually acquit those found guilty.

Given these outcomes, legal scholars blamed the judiciary system as a whole. With reference to the East Timor tribunal, Cohen (2003) argues that flaws plagued the trial from the pre-investigation stage all the way to the verdict. While the AGO intentionally selected cases to avoid indicting large numbers, the president confined the jurisdiction of the *ad hoc* court in the hopes of protecting the military institution. The conspiracy against successful prosecution was extended to the prosecutors who developed weak, irrelevant, and sloppy indictments (Linton, 2004). Commensurate with pressures from the military, the East Timor tribunal became a show that was systematically “intended to fail” from the beginning (Cohen, 2003). What happened in the Tanjung Priok tribunal was not radically different. The AGO lobbied victims and their families to accept out-of-court settlements before the trial even started (Fatwa, 2005). Once the trial began, many witnesses withdrew their testimony for fear of retributions from the military against their families (Linton, 2006).

International observers had long voiced concerns about the weaknesses of the country’s legal system. For instance, the UN pointed to the lack of judicial

independence as one of most serious shortcomings in the country's legal system (Cumaraswami, 2003). Judges often found themselves unable to preserve integrity, since their careers and promotions were in the hands of the government. They often needed to make compromises with the government because the Ministry of Justice held the power of administration over all the judiciary. Not surprisingly, if many tribunals suffered from multi-layered shortfalls, it is not unexpected that this led to inevitable failure (Amnesty International: 2003; Linton, 2004). This was demonstrated by weak and contradictory indictments, incompetent judges, biased prosecutors, as well as unprotected witnesses. One way or another, these helped the defendants escape responsibility by the end of the tribunals. Therefore, as Cohen (2003) emphasizes, the inability to uphold the principle of impartiality was largely rooted in systemic rather than particular factors.

These criticisms clearly disentangle the fundamental features of the country's judiciary system. Other legal scholars also voiced the same concerns about the corrupt legal institution, which was largely responsible for the inconsistent implementation of the law (Lindsey, 2006). Nonetheless, weak judiciary performances could only explain the failure, but not the variations, in the court's decisions. Even though the court results appeared random, they occurred in a systematic and chronological order. The road to impunity in the post-authoritarian era typically began with a conviction at the lower level courts and ended in acquittal at the higher level courts.²⁴ In terms of timing, most guilty verdicts were handed down during the period from 1998-2002, while the overturn of guilty verdicts took place immediately after these years. Ironically, the first

period coincided nicely with the early phase of human rights reforms; while the second occurred when the new human rights laws and institutions were already established. Such regularities obviously went beyond the confines of the transformation of the judiciary system. If anything, reform of this institution went in counter to the ideal expectation of conducting fair trials on state violence. Therefore, the thesis of weak judiciary performance could not disentangle the reasons why the courts produced different results and why these contrasting results appeared systematically in such a chronological way.

The first factor that was closely associated with the failure of these tribunals was the shift in the position of the military during these two periods. In a nutshell, it was the strengthening of military power rather than the weakening of the judiciary system that outflanked any legal reforms. According to Meitzner (2006), the military experienced a serious decline in power right after the fall of Suharto in 1998. Aside from internal friction, the military was blamed for anything related to social chaos, corruption, the economic crisis, and state violence (Lindsey, 1999). So weak was the military's position that the Armed Forces Commander, General Wiranto, made an unprecedented apology to the Acehnese in 1998 for soldiers' acts of brutality in that province (US Department of State, 1999). Another sign of weakness was the decision by the civilian government to exclude the military from participating in the crucial decision to conduct the referendum in East Timor and from negotiating with secessionist organizations (Robinson, 2002). It was during this period that the military was willing to conduct internal reform, release its indicted members to be tried, and support human rights reforms.

A reversal occurred when the democratic civilian regime failed to solve security problems and territorial integrity issues. Democratization encouraged secessionists to step up their struggles and this has been further energized by the central government's peaceful diplomatic strategies. At the same time, the demise of the authoritarian regime weakened the central government's efforts to maintain control over territory, thereby leaving unrest in the regions uncontrolled (van Klinken, 2001; Aragon, 2001; Davidson, 2005). Equally challenging was the growth of Islamic extremism and the resulting bombing campaigns that seriously paralyzed the country. It was in this context that President Megawati turned to the military to restore security and order (Honna, 2003; Meitzner, 2006). Quite predictably, success at delivering security to the people immediately brought the military back to the epicenter of national politics. As for state violence, however, the military has not only overlooked the ongoing tribunals, but also blocked attempts to bring other cases to the courts.

The growing power of the military did not correspond to a weakened position for NGOs. Quite to the contrary, the network of human rights NGOs grew stronger than before. Activists engaged intensively in information exchanges, seminars, training, and workshops in national and international forums. Likewise, campaigns by international NGOs on Indonesia's impunity tradition have remained as vibrant as ever.²⁵ In addition, the country's new democratic system has provided ample space for opposition groups and the press to express their opinions and criticisms. Unfortunately, these otherwise supportive conditions have not made the military compliant with the law.

The second factor that very likely contributed to the failures of tribunals was that pressure from the international community was weak. From 1998 to 2002, pressure from strong democratic governments against the military was strong. Following the atrocities in East Timor in 1999, U.S. President Bill Clinton harshly criticized the military for its role in the slaughter. Then Secretary of State Madeleine Albright even accused the military of having colluded with the militias to mastermind the chaos (Human Rights Watch, 1999). Given this strong criticism from the United States government, Senator Patrick Leahy successfully sponsored a bill to cut military ties with Indonesia. No less harsh was the threat from the UN, whose High Commissioner on Human Rights, Mary Robinson, prepared to create an International Tribunal for East Timor (McBeth and Murphy, 1999). The World Bank (WB) and International Monetary Fund (IMF) also decided to link financial assistance to the East Timor situation (Human Rights Watch, 1999). Following the chorus, the British Foreign Minister Robin Cook vowed that, “we won’t allow East Timor’s cry for freedom to be drawn in blood” (McBeth and Murphy, 1999).

Nonetheless, a new sign of compromise towards the military came in late 2001 when newly elected U.S. President George W. Bush praised President Megawati for her commitment to fighting terrorism (Human Rights Watch, 2001). By this time, Indonesia had to confront a series of bombings in Bali, Jakarta, and other cities that badly crippled the economy. Even though the ban was not lifted until 2005, the Bush administration used various strategies to provide military assistance and conduct training for the Indonesian armed forces (Hiebert and McBeth, 2002; McBeth, 2003). They believed that the Indonesian military was “a

truly national institution” that had “enormous potential to support or subvert” democratic progress in the country. More importantly, the military was the only institution that had a “real database on Islamic extremists” (Dhume and Hiebert, 2002). Speaking before his departure for Indonesia in 2002, Secretary of State Collin Powell made it clear that cutting military ties with Indonesia would not serve long-term U.S. interests (Plott and Slater, 2002).

With all these developments, the military has made a return to the center of the national political arena. Nevertheless, it would be misleading to assume that the strengthening of the institution of the military has incited public protests beyond human rights activist circles. Instead, the success of the armed forces in restoring order convinced civilian politicians that they could not do without the military (Meitzner, 2006). The same vision seemed to be shared by the public, who began to enjoy order after several years of turbulence. The triumph of a retired military general, Susilo Bambang Yidhoyono, in the first direct presidential election in 2004, strongly indicated public reacceptance of the military’s role in providing security and order (McBeth, 2004). Yudhoyono was the Coordinating Minister of Political and Security Affairs during the Megawati period. He was responsible for military operations in the troubled provinces and credited for his commitment to following a gradual approach of democratic reforms (Meitzner, 2006).

Conclusion

Reflecting on the efforts to end state violence, we found that there have been various degrees of success in adopting of the CAT. The institutionalization of norms against torture and other cruel treatments by the state progressed and at

the same time legislation and dissemination activities proceeded gradually without serious resistance. There were compromises with the military in particular, but the overall step of incorporating the norms on torture into the domestic legal system continued to take place. However, prior to becoming an independent article in the Penal Code, the provision on torture was contained in the more general human rights laws such as those on genocide and crimes against humanity. This tendency indicates that torture and cruel, inhuman, or degrading treatments were not yet perceived as a distinct variable, but as part of the broader category of state violence that also covered more extreme actions such as kidnapping and murder. This is understandable, because the campaigns for and adoption of this convention were historically part of the struggles to end the abusive behaviors of the state.

Since the beginning, human rights NGOs were the main driving force in the dissemination of norms against torture. Their campaigns in the UN successfully convinced the Indonesian Ministry of Foreign Affairs to bring the country into membership in the UN Human rights Commission in 1990. In the subsequent period, they stepped up their advocacy activities by monitoring violence in the country and encouraging the state to ratify the treaty. When the authoritarian regime fell, it was networks of activists who led the movement to institutionalize norms against torture in the domestic legal system, including the Constitution, and to disseminate these to the state and society.

Nonetheless, there is no evidence that the influence of NGOs went beyond convincing the state and society to embrace human rights norms. Their struggles to bring perpetrators to justice mostly ended in failure, as did their attempts to put pressure on the courts. All the cases that have been successfully brought to court

were either an outcome of the collaboration between NGOs and powerful democratic nations or between NGOs and influential social groups, such as opposition parties, university students, or religious groups. This was obviously the case with the tribunals on the kidnapping of activists, various student shootings, the East Timor atrocity, and other tragedies.

Apparently, strong democratic states commanded enormous influence on the regime's willingness to hold back from committing acts of violence. During the authoritarian New Order regime, for instance, they forced President Suharto to bring the perpetrators of the Santa Cruz tragedy, East Timor, to justice. The real sanctions that they applied, such as cutting military ties and suspending economic assistance, delivered a strong impact. Unfortunately, influential democratic countries only seriously oppose state violence when it does not contradict their own military and economic interests. When the war on terror dominated U.S. foreign policy, the Bush administration preferred to turn a blind eye to the Indonesian military's brutality in the troubled provinces. They also chose to play it safe, however, by providing financial assistance for human rights education and legal reforms.

The role of influential social groups in controlling state violence was in fact no less effective than that of powerful democratic countries. Success at forcing the state to take kidnapping and student shootings seriously was largely because of the solid collaboration between assorted social groups to challenge the remnants of the New Order regime. However, social pressure was successful when the military and the state were in a weak position. When the military regained power, the influence of social groups decreased accordingly.

Returning to the questions put forward at the beginning of this chapter, it seems obvious that the state's interest in using violence for political control has prevented the New Order regime from ratifying the CAT. This preference was followed in spite of the worldwide campaigns by transnational human rights activist networks against state violence in Indonesia. Even so, the state's freedom to adopt a violent strategy of rule was not without its limits, because direct interventions by powerful democratic countries were effective in halting state brutality. Unfortunately, such intervention was not conducted systematically, allowing the New Order regime to persist in rejecting the treaty. When democratization was finally on its way, the new regime ratified and implemented the CAT. However, it has not succeeded in bringing the new laws into practice, not because of a lack of pressure from transnational activist networks and influential social groups, but because of the fragmentation of the state, utilized by the military to thwart the reform. As a result, the implementation of the CAT under the new democratic regime has not come up to the expected standards.

¹ For international human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant of Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination (CEDAW), and the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment (CAT), see <http://www2.ohchr.org/english/law/>

² Researchers often use the more general term of “state violence” to refer to the practice of torture, cruel, inhuman, and degrading treatment as contained in the CAT. There is not a significant difference in the meaning of these two terms, for all point to the state’s adoption of a particular strategy to satisfy its interests by inflicting pain on its subjects.

³ The term torture covers, “... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

⁴ The data about the number of victims varies greatly, ranging from 100,000 to 2 million, yet the Indonesian security forces put the number at about 1 million (Cribb, 2002).

⁵ Civilians were not supposed to be detained in military prisons, but the army took control of all the judicial processes that were not initiated by the police. Later, the police only played a secondary role and did not have the capacity to inform families where the army had buried some of the dead.

⁶ In 1983, the regime secretly formed a death squad by recruiting members of the army’s Special Forces to conduct a military operation against suspected criminals. Within a few months, approximately 4,000 suspected criminals found their fate at the hands of this squad. Most of the victims were shot, but many of them also showed signs of severe beatings or clubbings (van der Kroef, 1985). According to Bourchier (1990), Suharto’s reason for resorting to this brutal approach was simply to achieve his goal quickly and efficiently. Later, in 1989, Suharto himself revealed his intention in his semi-autobiography by indicating that the death squad was to provide shock therapy to suspected criminals, who had begun to undermine the authority of the government (Dwipayana, G. and Ramadhan KH, 1989). If this was indeed the case, Suharto’s perception of criminals existing in the same category as Muslim activists and communists, as a potential group that might pose a serious threat to the state, is fascinating.

⁷ In 1990, the New Order re-opened diplomatic relations with China after a 25 year break, due to the aborted communist coup in 1965 (Hein, 1990). In the same year, the government opened East Timor to international visitors after more than a decade in isolation. These two decisions would not have been taken had the government still viewed the communists as a great danger. The regime also began to make room for open debates and allowed some freedom of the press (McKendrick, 1992).

⁸ Interview with the Minister of Foreign Affairs, N. Hasan Wirayuda, who convinced Suharto’s regime to become a member of the UN Human Rights Commission when he was a senior diplomat in Geneva.

⁹ For the Amnesty International (AI) report, see <http://www.amnesty.org/en/library>

¹⁰ In 1994, the regime banned some influential magazines and newspapers for their criticisms against the government. The rulers also extended control over NGOs by setting up new regulations to limit their cooperation with their international counterparts.

¹¹ Among those arrested were dozens from the illegal PRD party (People's Democratic Party) and its affiliated organizations, the Indonesian Student's Solidarity for Democracy (SMID), the National Peasants' Union (STN), and the Network of People's Art (JKR).

¹² Interview with Jonny Sinaga, Head of Sub-directorate for civil and political rights at the Ministry of Foreign Affairs of the Republic of Indonesia, February 20, 2007.

¹³ Enclosed in the Decree was the Human Rights Charter, which inscribes fundamental rights that are widely found in international human rights instruments.

¹⁴ Article 9: Crimes against humanity as referred to in Article 7 include any action perpetrated as a part of a broad or systematic direct attack on civilians, in the form of: a. killing; b. extermination; c. enslavement; d. enforced eviction or movement of civilians; e. arbitrary appropriation of the independence or other physical freedom in contravention of international law; f. torture; g. rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilization, or other similar forms of sexual assault; h. terrorizing a particular group or association based on political views, race, nationality, ethnic group, culture, religion, sex or any other basis regarded universally as contravening international law; i. enforced disappearance of a person or; j. the crime of apartheid.

¹⁵ Article 8: The crime of genocide as referred to in Article 7 is any action intended to destroy or exterminate in whole or in part a national group, race, ethnic group, or religious group by: a. killing members of the group; b. causing serious bodily or mentally harm to members of a group; c. creating conditions of life that would lead to the physical extermination of the group in whole or in part; d. imposing measures intended to prevent births within a group; or e. forcibly transferring children of a particular group to another group.

The punishment for committing torture was regulated in article 39, which threatened those convicted with a maximum of fifteen years imprisonment and no less than 5 years. Previously, assault under article 351 of the Penal Code (KUHP) was set at only to a maximum of 2 years and eight months maximum. Thus, law no. 26, 2000, made a radical change.

¹⁶ Personal interview with Wahyu Magiman, Jakarta March, 3, 2006 and Eddy Eddyono, Montreal, June 28, 2007. Both are activists of the Elsam human rights NGO and often act as consultants to the Directorate General of Human Rights, the Ministry of Law and Human Rights.

¹⁷ Personal interview with Koesparmono Irsan, Jakarta March 22, 2006 and Pangasihan Gaut, Jakarta March 27, 2007. The first is a retired police general and a member of the Indonesian National Commission on Human Rights, while the second is also a retired high-ranking police officer and the coordinator of human rights reform in the Indonesian Police Department.

¹⁸ Kontras' database <http://www.kontras.org/index.php?hal=data>

¹⁹ According Komnas-HAM's report (2001), human rights NGO activist Johnson Panjaitan of the Indonesia Association of Legal Aid (PBHI) had his car shot at and Munir

of the Commission of the Disappearances and Victims of Violence (Kontras) received a package that contained a grenade.

²⁰ The new court of human rights was meant to handle cases of suspected systematic and large-scale violence. Meanwhile, the jurisdiction of the military court continued to cover all cases of law infringement by the military and police officers; and the *koneksitas* court tried cases where defendants came from both military and civilian backgrounds.

²¹ Kontras. Impunitas TNI dalam Beberapa Kasus Pelanggaran HAM Berat 1997-1998. See <http://www.kontras.org/penculikan/index.php?hal=sp&id=543>

²² For a short summary of the court verdicts on human rights cases, see Kontras' database <http://www.kontras.org/index.php?hal=data>; and the Elsam database <http://www.elsam.or.id/publikasi/index.htm>.

²³ Elsam database <http://www.elsam.or.id/publikasi/index.htm>.

²⁴ Indeed, the human rights tribunal of the Abepura case in Papua in 2004-5 was an exception, as it immediately released the defendants without the need for an appeal. The *koneksitas* court in 1999 was also a unique legal event, because none of the defendants appealed despite the heavy punishments they received.

²⁵ Aside from the old established international human rights NGOs such as Amnesty International and Human Rights Watch, some regional and domestic NGOs such the Asian Legal Research Center (ALRC) and the International NGO Forum on Indonesian Development (INFID) have been more active in lobbying the UN since the fall of the Indonesian authoritarian regime in 1998.

Chapter 5

The Convention on the Rights of the Child (CRC):

Improving Welfare and Affirming Self-Determination

The adoption of the Convention on the Rights of the Child (CRC) by the United Nations (UN) General Assembly in 1989 marked a radical conceptual shift in the way children were defined. This paradigmatic shift from previous conceptions of childhood is embodied by two fundamental ideas. First, the CRC not only affirms the modern notion of childhood as a distinct social class, but also entitles children with the right to self-determination (Cohen and Naimark, 1991). Second, the convention designates the state as the primary institution that is obligated to attend to the fulfillment of children's rights, effectively doing away with the family as primary providers thereof. This transfer of responsibility from family to state is likely a consequence of the elevation of the child's status from a dependent and protected liability to a person with a set of rights guaranteeing their self-determination. The entitlement of these rights places children in an equal position with adults as fellow citizens.

This re-conceptualization of childhood is a new phenomenon even among modern Western societies. The evolution of the status of the child follows a slow process through which children gradually ceased to be seen as a family asset, but came to be regarded as individuals with inherent rights. At least until the 16th century, children were not strictly distinguished from adults, and were thereby obliged to share family and social responsibilities (Hart, 1991). By modern standards, this period was one in which children lived in a harsh social

environment. Children were valued relative to their relation to their family and parents and were thereby expected to assist in the work of their filial guardians. Zelizer (1985) records that this kind of practice only shifted with industrialization, where hazardous working conditions eventually barred children from engaging in adult jobs. As a result, the idea of children as a distinct social class whose powerlessness needed protection began to take hold in the 18th century. The more radical change, however, occurred only in the 20th century, when the status of children was associated with the survival of society and nation (Hart, 1991). They were seen as future adults whose good development would determine the fate of the coming generation, as well as the future of society and the state. In keeping with this perspective, the state, parents, and society were expected to protect and nurture children so that they would carry on the undertakings of the preceding generation.

Affirming the modern notion of children as the future of the nation, the CRC devotes a great portion of its provisions to ensuring their survival and development.¹ The bulk of the CRC provisions detail the rights of children to obtaining adequate facilities for their development, such as health services, education, and a secure environment. The distinctive character of the CRC, however, is found in the entitlement of children's right to self-determination, mainly in the form of freedom of speech, opinion, association, thought, information, and religion. Yet, it was the granting of these rights which triggered heated debates during the drafting processes of the CRC. Many societies in the world firmly believed that the status of children was under the authority of their parents, who thereby had the authority to decide important commitments for their

children, such as adhering to a religion or participating in politics (Murphy-Berman, Levesque, Berman, 1996). Despite the controversies, it is the affirmation of the right to welfare and self-determination as an inseparable package which renders the CRC an international legal document that asserts the highest normative standard on children's affairs.

Indonesia's response to the CRC was positive and prompt. It ratified the treaty only one year after its adoption by the UN in 1989. This runs in stark contrast to the international trend which saw only 20 countries who were willing to be parties to the convention immediately following its adoption.² However, the quick move to ratify the treaty was marred by the reservations this country made against several substantive articles. Indonesia placed seven important articles into reservation and added that the implementation of the CRC would be contingent to the national constitution. In other words, the CRC would only be valid should the government regard its provisions not in contradiction with the national constitution.³ This contradictory attitude towards the treaty was atypical of the authoritarian New Order regime. Given the power at its disposal, the regime could have rejected the CRC the way it declined to ratify the convention against torture (CAT). Alternately, it could have accepted the treaty with no reservation as it did with the convention on women's rights (CEDAW).

Reservation is generally invoked to avoid being responsible for the non-implementation of certain articles of the convention. Reservation against substantive articles, however, is generally regarded as an attempt to nullify the commitment that the state has already given through the act of ratification (Goodman, 2002). A strong example of this is when reservation is legitimized

through a purported adherence to the *raison d'être* of the national constitution. Indonesia employed exactly the same strategy when ratifying the CRC, reserving a substantial number of principal articles while putting forth the national constitution as the condition for treaty implementation. Nevertheless, the state's actual fulfillment of sections of the CRC did not entirely live up to the bleak expectations shown during the initial response of ratification.

Indeed, as expected, the New Order regime did not care about implementing the provisions it put on reserve. It also failed to meet its promise to protect children from exploitation, especially economic exploitation, despite its endorsement of this provision. Nevertheless, the regime recorded concrete and consistent progress in improving the basic welfare of children. Through intensive collaborations with international institutions such as the United Nation Children's Foundation (Unicef), the World Health Organization (WHO), and the United Nation's Development Program (UNDP), it succeeded in elevating the wellbeing of children. Thus, although the regime lodged a number of reservations, it still kept its promise to implement agreed upon articles. Quite unexpectedly, however, this partial commitment to the CRC has continued unchanged even with the rise of the democratic regime, when international and domestic activists obtained greater power to advance their agendas. The new democratic regime did not deepen its commitment to the treaty beyond the confines of ratifying other treaties and introducing national action plans for children.

Given this trend, the discussion that follows will focus on answering the following questions. Why did the state persistently pay attention only to welfare issues? Why did international institutions and networks of children's activists fail

to push the state to deepen its commitment to the treaty? And how did social forces in society respond to the campaigns for the implementation of the CRC? To answer these questions, the following discussion will be divided into three sections. First, it will consider the development of the children's institution in Indonesia and its relationship to the ratification of the CRC. Second, the discussion proceeds to analyze the state's commitment to improving child welfare. Finally, this chapter will discuss the struggle of proponents of children's rights to pressure the state to deepen its commitment to all of the provisions of CRC.

The CRC and the development of children's institutions

As late as the 1970s, Indonesian children received only marginal attention from the state and the public. There were no feasible formal organizations that existed to deal specifically with children's affairs. Issues pertaining to the child were largely handled by religious, charitable, and women's organizations (Munir, 1990). The state also treated children as part of family or women's affairs, for which they deserved no special institution. Such treatment is analogous to the 18th century European paradigm that perceived children as a distinct social class but one that was too weak to be separated from paternal protection. However, although children were not regarded as having autonomy, the desire to ensure their welfare was strong in Indonesian society. Religious institutions, which became one of the most important social pillars in the country, devoted a large amount of their resources to improving children's welfare, especially through charity and educational activities (Munir, 1990). In the same vein, when modern women's organizations grew in the early 20th century, child welfare was adopted

as one of the core themes of the movement. Both the secular and religious women's organizations were committed to ending the practice of early marriage and developing childhood education (Blackburn, 2004a; de Stuers, 1960).

To some extent, the Old Order regime (1945-1965) shared a similar concern for children as was already expressed by religious and women's organizations. It paid attention to the social demands for education, health services, as well as for controlling early marriage. In 1950, this regime issued law no.4/1950 to set up universal primary education (Murray, 1992).⁴ It also introduced regulations concerning the protection of children in workplaces.⁵ What the regime lacked was a comprehensive platform that could lay the foundation for long-term child development programs. There was no special organization for children in the state institution, suggesting that the government had not yet developed adequate infrastructures to implement its policy on children's affairs. This lack of systematic effort was exacerbated by political instability and unimpressive national economic performance that lingered throughout the Old Order era (Cribb, 1990; Crouch, 1978). As a result, the Old Order regime did not achieve notable results in handling children's affairs. Some basic indicators such as infant mortality and school participation rates clearly illustrate the failure of this regime in providing proper services for children. By the end of its governance in 1965, mortality rates for children under one year of age was 139 per 1,000 live births, while school participation at the primary level was well below 60%.

When the New Order regime (1966-1998) came to power, it inherited no infrastructural facilities for children's welfare. Some regulations were in place, but they were left unimplemented due to weak enforcement and scarcity of

resources. The regime had to deal with poor conditions that were starkly indicated by the high infant mortality rate (IMR) and low school participation. It also inherited the regressive consequences of an economic crisis of the previous regime, at which time annual inflation skyrocketed to 600% and 70% of population lived below the poverty line (Hill, 2000). Nevertheless, although the new regime did not find it easy to remedy the situation in a short time, it succeeded in shifting the trend only within two decades. Indonesia was able to achieve universal primary education by 1983 and reduced the IMR to 84 per 1,000 live births in 1988. In 1993 the New Order regime further introduced nine years compulsory education and reduced the IMR to 50 per 1,000 live births in 1995 (Jones and Hagul, 2001). The ability of this regime to make significant improvements in a relatively short period strongly suggests its high commitment to improving the condition of children.

As discussed in chapter two, the fundamental shift brought about by the New Order regime upon seizing power was to change the state's orientation from political revolution to economic development. Having obliterated the communist party and massacred half a million of its followers, the new regime entrusted the military with the responsibility of ensuring political stability and assigned technocrats to take the lead in managing the economic development program. This shift brought the new regime closer to Western countries and away from the Eastern bloc, which had been the previous regime's ally. The new regime was motivated to work closer with the West and international institutions such as the UN and ILO, because it was through these that investment and financial assistance arrived (Clear, 2003). Therefore, after taking the wheel of government,

it immediately resumed the country's membership in the UN that had previously been withdrawn by its predecessor. This move constituted a new initiative in the country's international diplomacy, demonstrating the new regime's willingness to work with international counterparts.

It is in this context of a new approach to diplomacy that the New Order government signed the Basic Agreement with Unicef in November 1966 to develop a national policy on children's affairs (Indonesia and Unicef, 1979). To some extent, the signing could simply be seen as a resumption of the previous cooperation that terminated in 1965 due to the country's withdrawal from the UN. Unicef had been working in the country since 1948, concentrating on fighting yaws, improving nutrition, and providing emergency relief (Unicef, 1996). Through the new agreement, both parties were expecting to advance their collaborations to enhance the quality of life of children. However, apart from resuming cooperation, the signing also marked an important turning point in the cooperation between the two institutions. For Unicef, the Basic Agreement acted as the foundation on which this international organization developed long-term programs in Indonesia, while for the state, the agreement helped to draw international support for the purposes of development. The subsequent agreements and cooperation between Indonesia and Unicef always make reference to the Basic Agreement (GOI -Unicef, 1985; GOI, 1989).

Undoubtedly, the participation of Unicef was beneficial to the new government, which gave a high priority to children's welfare. The regime's interest was clearly expressed in the General Guideline of State's Policy (GBHN), which saw children's quality of life as an important parameter of social welfare.

President Suharto himself, insisted that the high infant mortality rate would reflect the government's "failure in achieving equity in development and in improving the welfare of the people" (GOI-Unicef, 1985). This deep concern for children provided ample room for Unicef and other international agencies to go further in influencing the state's policy. In response to Indonesia's openness, Unicef pledged a substantial amount of money that made Indonesia one of the largest recipients of Unicef's funding. It also changed its approach from conducting *ad hoc* programs to adopting a comprehensive country project with a long-term strategy of intervention. In the years following the signing, Unicef no longer confined its activities to emergency health services, but extended these to cover education, community empowerment, women's participation, and advocacy (Unicef, 1996).

The way Unicef's programs were executed was illustrative of the depth of influence this UN organ exerted on the state's policy. Since the early 1970s, Unicef has been officially invited by the National Development Planning Board (Bappenas) to participate in designing the state's programs on children (Unicef, 1996). This opportunity not only enabled Unicef to shape the direction of the state's policy, but also to incorporate its own projects into the state's broader agendas. Aside from avoiding repetition, the strategy was meant to increase the likelihood of the state implementing Unicef's projects, since they had been integrated into the state's own agenda. Thus, following the development planning cycle, every five years the government and Unicef were to sit together constructing new programs and conducting annual reviews on their implementations. Obviously, the role of Unicef was immense, ranging from acting

as consultant, donor agency, project initiator and fundraiser. In fact, developed countries and international companies helped children's welfare by contributing to Unicef or putting their funds directly into financing the projects that Unicef had designed. This position made Unicef a hub for the mobilization and distribution of international funds for children in Indonesia.⁶

The impact of the collaboration with Unicef on the state was immediate and concrete. The New Order regime increased its attention to children's affairs, both through the establishment of infrastructures and legal foundations, as well as by introducing specific programs for children and youth. In the early 1970s, the government began establishing special sections in some ministries to deal with children's issues, and in 1978, it created the Associate Ministry of Youth (Office of the Minister of Coordinator for People's Welfare, 1989).⁷ Within the same decade, the state passed law no. 4/1979 on children's welfare, the first law of its kind. Largely based upon Unicef's recommendation, the state also enhanced social participation, especially that of women, in running the state's programs for children (Berman, 1984; GOI-Unicef, 1979). These progressive measures continued to take place throughout the New Order era, when more regulations and programs for children were introduced. For example, as the consequence of industrial development, the regime introduced regulations on the protection of child workers in 1987.⁸ As the country's economy improved, the regime also stipulated six years compulsory education in 1983 and then nine years compulsory education in 1993.

However, the important impact from the collaboration with international institutions that was directly related to the ratification of the CRC was the

increasing participation of the regime in the UN's events and agendas. When the UN proclaimed 1979 as the International Year for Children (IYC), the Indonesian government also celebrated the event and institutionalized the call for the improvement of children's welfare through the enactment of law no. 4/1979. In conjunction with this event, the regime supported the initiative by wives of high state officials to establish a national organization for children, the Indonesian Child Welfare Foundation (YKAI).⁹ As it developed, this foundation opened several branches in the provinces and became the mouthpiece of Indonesian children in the international arena by obtaining a special consultative status in the UN's Economic and Social Council (ECOSOC) (YKAI, 2004). Still following the UN, the regime also created a national children's day and declared 1986-1996 as the first national decade of child.¹⁰ Another important event was the World Summit for Children (WSC), at which Indonesia not only signed but also adopted its recommendations as the state's priority agenda (GOI-Unicef, 1995; UNESCO, 2003).

It is in these series of intensive interactions with the UN that the moment of the ratification of the CRC should be located. Obviously, the close cooperation with Unicef made the regime well connected with international events, which thus increased the likelihood that the state would support UN programs. In this context, the state's quick response to the CRC was largely part of its broader scheme of participation in international institutions. Nevertheless, unlike the case of CEDAW, the intense presence of international institutions and the country's dependence on international resources for its children's wellbeing forced the regime to be more cautious. As clearly shown in the collaborations with Unicef,

the government has always been subject to close surveillance and evaluation from Unicef concerning its performance in implementing their joint projects (GOI, 1989). For that reason, although the regime supported the CRC, it needed to place reservations against several substantial articles that were deemed hard to implement. Such a strategy avoided unnecessary consequences that might arise from ratification, while simultaneously ensuring continued collaborations with international institutions.

Although the presence of international institutions in Indonesia contributed significantly to the state's policy of progress, its direct influence on society was not as strong. Children's affairs were still dealt with largely by women's organizations or charitable and religious associations (Blagbrough, 1995; Irwanto, 1997). The state, instead, functioned as the agent of transition that set the general tone of change, expressed through its implementation of international standards on the wellbeing of children (GOI, 1985). New NGOs specializing in children's rights began to appear on the national scene only in the late 1980s, with the agenda of working beyond the issue of child welfare.¹¹ For instance, the LAAI in the North Sumatra province focused on children that were forced to work due to the debt bondage of their family. The Kompak in the capital city of Jakarta pioneered campaigns for the protection of child labor, while the Samin in the Jogjakarta province dealt with the problem of child prostitution and established support programs for street children.

Further development of children's NGOs took place in the mid-1990s, alongside the increasing participation of domestic activists in international forums. Yet, compared to progressive women's and political rights NGOs, the

development of children's NGOs was very slow. Unlike the case of the CEDAW, children's NGOs were barely involved in the process of ratifying the CRC.

Accordingly, their participation in holding the state accountable when it came to the treaty took place only several years after ratification.¹²

The converging interests of ensuring child welfare

The most fundamental issue in the UN documents on the child is the right of children to survive, grow, and develop. These rights have been echoed repeatedly in the Declaration on the Rights of the Child (DRC), the International Year for Children (IYC) and other international human rights treaties. The CRC is no different, as it pays special attention to these rights and outlines the supporting conditions by which these rights should be met.¹³ As detailed in the article 24-28 of the CRC, the state is obliged to provide the highest standard of welfare it can to children, in order to support their growth and development. The articles list child welfare among a plethora of basic facilities, such as health, social security, insurance and education, which are necessary for ensuring the attainment of child development.

Although the right of children to enjoy basic welfare has become a norm taken for granted, its dissemination to the public developed slowly. At the international level, the campaign was initiated in 1959, with the adoption of the Declaration on the Rights of the Child (DRC) by the UN, yet significant progress only occurred in 1979 with the proclamation of the International Year for Children (IYC). In conjunction with the proclamation, the UN sponsored several events to draw worldwide attention to the two most acute problems faced by children around the globe: malnutrition and lack of education. For Indonesia, the

event promoted a new awareness among decision makers regarding the necessity to provide children with special attention from the state. For this reason, the New Order regime enacted law no. 4/1979 on child welfare, which laid the foundation for the state's long-term policy on children's affairs. In the year that followed, the state strengthened its commitment through various measures, including institutional building and further recognition of new international norms.

Law no. 4/1979 is the first national document to clearly state a set of rights to which children are entitled. Previous laws and regulations only stipulated particular measures intended to protect children from social and environmental threats.¹⁴ A closer look at law no. 4/1979 reveals that its contents were largely drawn from the Declaration on the Rights of the Child (DRC). For example, the right of children to obtain facilities and services from the state with no discrimination on account of sex, religion, political affiliation, and social status as mentioned in article 8 of the law was a translation of Principle 1 of the DRC on non-discrimination.¹⁵ Likewise, article 1 of the law on the right of children to obtain support from family, society, and the state was an adoption of Principle 2 of the DRC. In short, the ten principles contained in the DRC have been variously incorporated into the provisions of law no. 4/1979.

Although law no. 4/1979 was derived from international norms, its contents fit very neatly into the state's agenda that was set up a few years earlier. In 1974, the state enacted law no. 6 on the principal regulations of social welfare, which outlines the right of citizens to obtain the best possible benefits from the development program. Law no. 6/1974 addresses the same principles with law no. 4/1979 on child welfare. The enactment of the later law did not put a burden on

the state. Law no. 2/1979 on child welfare could be considered as an extension of law no. 6/1974 on social welfare. Implicit in the relationship between the two laws was the recognition that the issue of child welfare is an inseparable element of the national development program.

Following international trends, the New Order regime translated child welfare almost exclusively in terms of access to education and health services.¹⁶ These two areas of concern were also the program priorities of many international children's organizations including Unicef. The regime also adopted a participatory approach through the mobilization of women and social organizations in the implementation of national projects on child welfare. In fact, since the 1960s, the UN was determined to enhance the status of women through their incorporation into development activities. The UN also urged developing countries to uphold the principle of development equity by opening up opportunities for all members of society to offer their contributions (GOI-Unicef, 1979).

The way the New Order regime adopted the participatory model can be seen from its attempt to build up the infrastructure of health services. The regime established numerous health facilities throughout the country. In addition to hospitals that were built at the district and city administration levels, the state also created community health centers (*puskesmas*) and community health sub-centers (*puskesmas pembantu*) at the sub-district level. However, the most important institution that the regime created to deal with the daily lives of children was the community-based health post or *posyandu* (integrated health post) (Shields and Hartati, 2006). These posts are run by volunteers from various communities who

have received limited training pertaining to general knowledge on nutrition, immunization, and mother-child health. Physicians and paramedics from neighboring *puskesmas* act as supervisors, but the institution that contributed the most to the operation of the *posyandu* has been the state-sponsored women's organization, the PKK (Family Welfare Education) (GOI-Unicef, 1989). This national organization was a semi-state institution, receiving funds from the government but managed by the wives of civil servants on a voluntary basis. At the village level, the wife of the village head acted as the leader, while ordinary village women became the core members (Bianpoen, 1996). Thus, unlike the hospitals and *puskesmas*, the *posyandu* was run jointly by the state and community, especially village women.

Table 5: 1

The Development of Health Facilities

Type of facility	1968	1973	1978	1983	1988	1993
Community Health Centers	207	2,343	4,353	5,358	5,642	6,954
Community Health Subcenters			6,626	13,636	17,413	19,977
Mother and Child Health Posts	5,580	6,801				
Health Posts	6,500	7,124				

Source: Presidential Address¹⁷

For the regime, cooperation with social organizations was crucial to ensure the implementation of the central government's policy. Limited state personnel and budgetary restraints did not allow the regime to rely fully on bureaucrats or paid workers. Therefore, the state badly needed volunteers, especially women,

since the issue of child health was often associated with the wellbeing of mothers. In fact, the state also mobilized independent women's organizations to take part in efforts to enhance child welfare (Munir, 1990). This rendered the role of the PKK and other women's organizations even more pivotal in the improvement of child welfare. The *posyandu* offered a variety of programs, all of which were specifically devoted to enhancing the health of mothers and children (Februhartanty, 2005). One important project was the family nutrition improvement program (UPGK), through which the state raised family awareness on family health and child nutrition (GOI-Unicef, 1989). Another important program was the monitoring of child development through the introduction of the health card (*kartu menuju sehat*) (Elfindri and Dasvarma, 1996). Families with children under five years of age were encouraged to visit a *posyandu* regularly to monitor the development of their babies and receive health treatment. The promotion of family planning and immunization were also conducted through the *posyandu*. Beyond being a health post, the *posyandu* also functioned as an information center for the dissemination of the Norms of Small, Healthy, and Happy Family (NKKBS) that became the state's core family program.

Table 5: 2

The Development of Health Personnel

Personnel	1973-4	1978-9	1983-4	1988-9	1993-4
Medical doctors	6,221	10,456	17,647	24,070	26,106
Nurses	7,736	31,061	44,651	77,935	82,425
Paramedics	24,248	35,577	47,836	67,762	71,565

Source: Presidential Address

The number of *posyandus* built by the New Order was immense, reaching 199,000 all over the country by the mid-1980s. The figure increased to 222,000 in 1990 and 257,000 in the mid-1990s. This vast network was supported by professional health institutions, especially *puskesmas* and *puskesmas pembantu*, which experienced a significant increase throughout the New Order period. As shown in Table 2, the regime also succeeded in multiplying the number of health personnel, such as medical doctors, nurses, and paramedics. The impact of the development of health facilities on child health was obvious, as illustrated by the fall of the infant mortality rate (IMR) and the increased percentage of babies born attended to by medical personnel. From the time of its ascension in 1966 to its fall in 1998, the New Order regime slashed more than 75% of the IMR (Table 3).

Table 5: 3

The Development of Child Health

Indicator	1960	1988	1993	1995	1998	2001	2004
Infant mortality rate (under 5 y)	235	119	111	75	56	45	38
Infant mortality rate (under 1 y)	139	84	71	50	40	33	30
Births attended by personnel*		31		35			
Underweight (under 5)**		51		35			

Source: Unicef

* 1988 reported from 1983-1988; **1988 reported from 1980-1988

The same development also occurred in the field of education. Table 4 shows that after the New Order regime took power, both education facilities and school participation rates grew rapidly. With regards to elementary education in particular, as mandated by the DRC and CRC, Indonesia succeeded in fulfilling its promise to implement six years compulsory education by mid-1983, seven years earlier than the ratification event (Jones and Hagul, 2001). On the heels of this success, the regime proceeded with the introduction of nine years compulsory education in the early 1990s. Unfortunately, the economic crisis that swept the country in 1997 hampered the implementation of this policy.

Table 5: 4

School Participation Rates

Level	1973-74	1978-79	1983-84	1984-85	1988-89	1989-90
Elementary	66.6	89.2	97.2	98.9	99.6	99.6
Junior Secondary	17.8	27.2	41.4	48.8	53.4	56.6
Senior Secondary	9.3	13.5	25.6	25.9	37.1	38.5
Tertiary	1.9	2.1	4.5	5.6	8.5	9.1

Source: Presidential Address

Nevertheless, the development of child health, service delivery, and school participation under the New Order cannot necessarily be associated with the ratification of the CRC. There was no sudden or extraordinary change following the ratification of this treaty in 1990. Development instead proceeded in an incremental way throughout the New Order period. This trend should be understood in relation to the broader correlation between the CRC and other documents that were introduced earlier, especially law no. 4/1979 on child

welfare and the Declaration of the Rights of the Child (DRC). The CRC was not a stand-alone instrument given that it addressed the same issues as those mentioned in the other two documents. Together, the three documents stipulated that the state must pay special attention to child welfare, especially health and education. Therefore, in the context of health and education in particular, the ratification of the CRC was simply a reaffirmation of the state's earlier commitment to the DRC and law no. 4/1979.

It is interesting to note that the state's commitment to children's right to welfare was implemented in the absence of any extensive activist networks. Throughout the 1970s-1980s, domestic movements for child welfare were still dominated by traditional associations, such as women and religious organizations, as well as by the state-sponsored women's organization, the PKK. A small number of international children's NGOs operated in the country, but they did not form a powerful pressure group (Blagbrough, 1995; Mboi and Irwanto, 1998). It would seem that the collaboration between UN institutions and the state was effective in boosting child welfare. Indeed, Unicef's role in mobilizing international financial resources and expertise was key, but the regime's determination to execute its agenda must have been the more decisive factor. Indeed, the success of the regime was not only manifested in the increasing quality of children's lives, but also in the public's increasing receptivity towards the modern notions of child welfare. When this authoritarian regime fell, attention to child welfare did not decrease, but instead received more attention from the succeeding regime.

Following the fall of the New Order regime, child health and school participation rates experienced a setback. However, this negative impact was not necessarily caused by lack of commitment on the part of the new democratic regime, but can more likely be associated with the economic crisis and the state's decentralization program. Filmer and Sayed (1998), for instance, found that the overall enrolment in primary and secondary education fell by 1.6% at the height of the economic crisis in 1997-1998. Great variations occurred among regions and social classes, with the urban poor and lower income families as the most likely groups to pull their children out of school. Nevertheless, as Cameron (2001) noted, the decline in school participation during the crisis was a temporary phenomenon, rebounding the following year and even reaching a point that was higher than the pre-crisis record.

A similar trend occurred in health services, where the use of the existing *puskesmas* and *posyandu* dropped markedly (Stalker, 2000). Cameron (2001) noted that in 1997, 55% of children suffering from health problems visited these facilities to receive treatment, but only about 38% went to these centers in 1998. The biggest blow from the economic crisis on the health sector occurred with the closure of community-driven health posts, the *posyandu*. While the state hospitals and *puskesmas* only suffered from budget tightening, many *posyandu* had to terminate their services due to lack of funds and increasing levels of poverty. Based on an assessment by the World Bank (2008), in the course of 1998-2001, 50,000 out of 257,000 *posyandu* were no longer in operation. However, this figure rebounded again in 2004 to 239,000 and passed the pre-crisis numbers in 2005, reaching 316,000. This relatively quick recovery explains the absence of extreme

decreases in children's health, such as indicated by consistent numbers of babies born underweight and despite decreases in people's consumption of nutritious foods such as eggs, meat, and vegetables (Block, 2002).

Scholars argue that success at diverting the adverse impact of the economic crisis on children's wellbeing was closely related to the introduction of a social safety net (JPS) policy (Cameron, 2002; Jones and Hagul, 2001; World Bank, 2006). The government provided special funds to be used, among others, to provide scholarships and free medical services for poor families. Cameron (2002) found specifically that the JPS had helped children from poor families to stay in school longer, especially those at the lower secondary education level. Jones and Hagul (2001) also reached the same conclusion, arguing that the government's emergency fund for scholarships and grant programs (SGP) aided students to continue their education and assisted schools in running their services.

Reflecting on these achievements, it seems apparent that the transition to democracy did not change the state's commitment to child welfare. The new democratic government expressed the same concerns by strengthening the health and education institutions that the New Order regime has pioneered (Arze del Granado, 2007). Besides the economic crisis, the problem of child welfare in the democratic era was related to a decentralization policy, through which the authority of the central government was reduced and then distributed at the district administration level. Given the variety of resources and priorities that each district has, the achievements in terms of child welfare also vary accordingly between regions. However, this does not negate the fact that the state's overall commitment to the rights of children to enjoy educational and health facilities

remains the same. Such consistency suggests that the UN's efforts to instill norms for child welfare through the introduction of the Declaration on the Rights of the Child (DRC), the International Year for Children (IYC), and the Convention on the Rights of the Child (CRC) have been institutionalized in Indonesia and accepted by both the state and society.

Pushing the state forward

The New Order government confronted little if any opposition in its efforts to apply international standards of child welfare. Indeed, there were segments of society which at first were reluctant to send their daughters to school and there were local customs that were harmful to children's health, yet close cooperation with social and women's organizations enabled the state to transform traditional attitudes to be more respectful of education and health (Berman, 1984). Nevertheless, the state's commitment to child welfare was not likely to go beyond the confines of health and education. The state appeared reluctant to proceed with providing broader protection for children from exploitation, especially economic exploitation which was specifically outlined in article 32 of the treaty. It also rejected the trademark of the CRC as the only international document that stipulated the granting of self-determination rights to children. Unexpectedly however, the democratic government that replaced the New Order regime shared its predecessor's reluctance. The following section will discuss the state's response to the issue of child labor as a form of economic exploitation and the state's response to the affirmation of children's right to self-determination.

The limits of international influence

Article 32 of the CRC clearly states:

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

To this end, the article stipulates that it is the state's responsibility to regulate the minimum age for the admission to employment, the hours and conditions of employment, and penalties for those who violate the rules. Although this article neither specifies age limits or hazardous work, it recognizes the applicability of other relevant international documents. Putranto (1998) argues that ILO convention no. 138 on age limits was the most relevant international document and hence should have been taken as a foundation for setting age limits and defining safe work for children. Nevertheless, although article 32 of the CRC is clear, the New Order regime upheld its rejection to ratify ILO convention no. 138 and did not seriously accept its obligation to provide protection for children from any harmful environment that might impede their development.

In Indonesia, the economic exploitation of children is regarded as an iceberg phenomenon. Statistics on child labor are hard to come by, partly because comprehensive data is not available, and also partly due to the informal nature of the work in which children are engaged. Until 1999, the Indonesian government defined working children as those working for a wage and who were between the ages of 10-14 years (ILO/IPAC, 1994; Irwanto, 1997). Based on this definition, the data from the national workforce survey (Sakernas) shows a gradual decrease in the number of working children between the ages of 10-14 during the New

Order era. In 1976, child laborers constituted 14% of those in the category of 10-14-year-olds, fell to 9.8% in 1985, and then increased slightly to 10.9% in 1990. After this period, the percentage fell consistently to become 9.24% in 1995 and 7% in the last year of the New Order regime in 1997. Following the economic crisis and the fall of the New Order regime, child labor increased to 8% but returned to the pre-crisis point two years afterward (Dewi, 2003; Priyambada, Suryahadi, Sumarto, 2005). Given this trend, the regime successfully reduced the number of working children to about 50% in two decades, an achievement that cannot be taken lightly.

Some surveys indicate that there was an increased tendency for child labor to enter urban economic sectors such as manufacturing and service (Daliyo, 1999; Irwanto, 1995; White and Tjandraningsih, 1998). This trend should be associated with the general change in the contribution of the rural and urban sectors to employment rates. In the mid-1970s, agriculture employed about two-thirds of the total workforce, while in 1997, this contribution fell to 40%. Roughly during the same period, the contribution of large and medium industries to all manufacturing employment increased from 20% to 60% (Manning, 2000). Even so, agriculture continued to be the dominant sector that absorbed child workers. According to Sakernas, 80% of child workers were employed in agriculture in 1990, 66.6% in manufacturing, and 6.9% in the trades and services (ILO/IPEC, 1994). In 1999, the distribution of child workers changed significantly, with the agriculture sector only employing 65.67%, while manufacturing increased to 14.61%, and trade to 13.31% (ILO/IPEC, 2001). In addition to this change, Bessell (1995) also notes that there was a rapid shift in the system of agriculture from a subsistence to a

commercial system. Accordingly, children who previously worked to help their families became employees to earn regular salaries. Work was then taken with the intention of getting paid, thereby increasing the number of child workers.

While the Sakernas data offers valuable information on working children in Indonesia, it only covers one segment of child labor, that is, working children between 10-14 years of age who were no longer in school. Other categories that are not accounted for include children working before the age of 10, those who worked while still registered in school, and those who worked in the informal sector (Irwanto, 1997; Tijs, 1994; Tjandraningsih and Anarita, 2002). Although no exact data is available, it is safe to assume that the number of child laborers in these categories must have been high. Their exclusion from the official report made child labor an iceberg phenomenon, and hid the number of child laborers in the informal sector. In fact, non-agricultural and non-manufacturing jobs in which children were engaged were often more hazardous. They were paid less, exposed to a harsh environment, or simply exploited beyond their physical and psychological capacities. The domestic worker is a good case in point of how children have to work without a schedule and hence are forced to be always “on call” (HRW, 2005). Those who work in this sector generally stay at their employer’s homes, where they have to take care of virtually all household chores. According to Blagbrough (1995), conservative estimates suppose that, in the mid-1990s, there were about 1.2-1.6 million domestic workers in greater Jakarta alone, the majority of whom were children below 18 years of age.

Other jobs that were considered hazardous were those associated with street children, such as scavengers and coolies. However, the most conspicuously

exploitative job for girls was probably prostitution and for boys working in *jermal*. *Jermal* is a fishing post resembling an offshore oilrig and functions simultaneously as a place to catch fish and as a dormitory. Children between 12-15 years of age are employed to work more than 12 hours per day, pulling and lowering fishing nets every two hours, after which they salt and dry the catch. These child laborers often have to stay in *jermal* for as long as three months with barely any safety kits and few health facilities. Needless to say, some children die because of the harsh conditions, having been bitten by sea snakes or drowned by sea currents. Such fatalities also occur in the pearl industry in the Maluku province where children are employed to dive deep in the sea. Although *jermal* kids were reported to be found only in the North Sumatra province, it was estimated that about 5,000 child laborers were employed in 1,600 *jermals* in late 1990s. Indeed, there is other hazardous work found in Indonesia, ranging from exposing child laborers to dangerous chemical goods in factories to employing them in the mining industry.

According to Bessell (1995), the New Order government tended to be sensitive with the issue of child labor. The regime seemed to be fully aware that working children were a common phenomenon rooted in social norms and practices. Lacking the will and eager not to lose respect in the eyes of international children's institutions, the state covered up the existence of child labors in the country. During its time in power, the regime never issued regulations banning child labor. Not only did it refuse to ratify ILO convention no. 138 on age limits but, in the late 1980s, the regime also banned the ILO from organizing a special program on child labor. Instead of eliminating child labor, the

Ministry of Labor issued decree number 1/1987 outlining the conditions that companies should meet in order to employ children who are compelled to work. The term “compelled to work” instead of “working children” was seen as having been chosen by the regime to show that child labor was not acceptable, but that the government was compelled to accept the reality of children working for emergency reasons. This regulation was never effective, however, since the government suffered from a lack of inspectors to monitor its implementation in the field. It is not surprising that not a single company was ever brought to trial on charges of child labor, despite the prevalence of the phenomenon in Indonesia.

Bessell (1995) highlighted weak international pressure as a crucial factor that allowed the New Order regime to pay insufficient attention to the issue of child labor. Although the ILO had adopted the convention on age limits in the early 1970s, worldwide campaigns on the elimination of child labor were only conducted in 1990 through the establishment of the International Program for the Elimination of Child Labor (IPEC). Similar to Bessell, Blagbrough (1995) also emphasizes that, for long time, Unicef did not pay attention to this issue and was more preoccupied with child welfare. This UN organ only took up the issue in 1995 through the introduction of the Child in Especially Difficult Circumstance (CEDC) program. In addition, Blagbrough also refers to the limited number of international NGOs that worked on child labor in Indonesia as another contributing factor that weakened the pressure against the government.

Late international attention seems to correlate with Irwanto's (1997) findings that public attention to child labor also began to develop only in the mid-1990s. During this time, the mass media increasingly granted special coverage to

child labor issues, researchers conducted surveys on the topic, and domestic NGOs conducted campaigns on child protection. It should be reiterated in this context that, although children's NGOs appeared on the national scene as early as the late 1980s, they only began campaigning for the protection of child laborers in the mid-1990s. Previously, NGOs were more concerned with the issue of child welfare in the same way as the state and Unicef. According to some activists, the shift was mostly facilitated by close contacts with international children's organizations through conferences and seminars. These events have also transformed their framework on children from a welfare approach to a rights-based perspective as outlined in the CRC.¹⁸ However, even though NGO activists joined hands with international organizations in pressuring the government, most of them did not subscribe to the idea of eliminating child labor altogether. They were of the opinion that protecting child laborers was more important than eliminating them from workplaces. The project to eliminate child labor in Indonesia was not realistic, especially considering the economic conditions and the widely accepted practice of engaging children in economic activity.¹⁹

Although external pressures from the international community and domestic NGOs had an impact on the state's policy, it was the state's limited capacity to offer incentives to end the incidence of child labor that allowed this practice to persist. As the surveys on child labor in many provinces have consistently found, the motives of parent who allow their children to work was to help earn additional income for the family (Dewi, 2003; Priyambada, Suryahadi, Sumarto., 2005; Pardoen, 1995). Other motives such as implanting discipline and job training were marginal; thereby suggesting that the prime cause of the

incidence of child labor was poverty. This assumption is in line with the close association between child labor and parents' low educational level, women headed families and family size, all of which point to the potential for poverty. In addition to economic reasons, the local tradition also contributed greatly to the prevalence of child labor. In the agriculture and domestic sectors in particular, local traditions widely accept the practice of employing children (ILO, 2006). The state and society often did not classify children engaged in these two sectors as working; instead they considered those who employed them as noble philanthropists (Blagbrough, 1995). Indeed, to change such perceptions not only would require long-term systematic campaigns, but also material rewards to overcome poverty, which remains the driving force behind child labor. Unlike in the case of the social safety net (JPS), the state did not have enough resources to supplant the earnings of child laborers in order to keep them out of workplaces. On the contrary, the state often had to cover up the presence of child labor for the sake of economic development by allowing, for instance, companies to falsify their employees' ages.

Following the fall of New Order regime, international institutions and domestic NGOs succeeded in demanding that the new democratic government be more committed to the issue of child labor. Despite being confronted with more complicated problems, the new regime did not resort to the strategy of legalizing child labor adopted by its predecessor. On the contrary, it ratified ILO convention no. 138 on Age Limits in 1999 and ILO convention no. 182 on the Worst Forms of Child Labor in 2000. Pursuant to these treaties, the new regime theoretically banned children from engaging in paid jobs before they reached 15 years of age. It

truly seemed that the regime not only intended to limit the age of entering employment, but also went further towards the elimination of all kinds of child labor as stipulated by international instruments. In 2003, the state signed an agreement with the ILO's child labor wing, the IPAC, to set up a twenty-year National Action Plan to eliminate the practice of child labor entirely.

Needless to say, the state did not have the capacity to implement the newly enacted regulations; there was no sign that the incidence of child labor decreased following the ratification of the ILO conventions. The implementation of the treaty was so weak that most companies who used child labor simply adjusted the age of their workers and this illegal practice went undetected. The inability to implement age regulations also meant that the government continued to turn a blind eye to the fate of children working in informal sectors and who were excluded from much of the law on the matter. According to Human Rights Watch's special report (2005), the state still did not classify domestic work as employment but perceived it as a personal or familial relationship. Other informal sectors also suffered from the same neglect since the international regulations mostly extended to work that used a contract to employ children.

At this point, the growing pressures of international campaigns and domestic NGO's advocacy work succeeded in pushing the new democratic regime to commit to the struggle against the practice of child labor. Indeed, although in the 1990s NGO activists were reluctant to embrace the idea of eliminating child labor, they increasingly agreed to devise long-term projects to attain this objective. Nevertheless, the state's commitment could only be translated by the absorption of international norms into new domestic regulations. Beyond this

point, the state neither had the resources to implement nor the power to force the elimination of child labor. Furthermore, it was not only poor families who needed to send their children out to work, nor simply companies that demanded cheap child laborers; the middle class families who generally employed domestic workers also had a high interest in maintaining the practice of child labor.

The failure of radical transformation

Similar to health and education access, protecting children from economic exploitation was part of the general project of improving child welfare. Eliminating child labor, however, was a formidable task pertaining not only to the interests of children but also to those of their families. Interestingly, despite the huge challenge the regime had to meet, it accepted the mandate to end economic exploitation as contained in article 32 of the CRC. By not expressing reservations against the article, the state at least recognized protection from such exploitation as a right that children deserved to enjoy. This attitude differed markedly from the government's response to provisions that were associated with the right to self-determination, such as freedom of thought and conscience. The New Order regime made sweeping reservations that amounted to the rejection of one of the core missions of the CRC, which is to invest children with a set of rights that adults also enjoy. The regime never provided clear reasons why they advanced these reservations, except vague statements that the articles would be adjusted in conformity with the national constitution. Nevertheless, after a closer look at the consequences that the regime might have been burdened with, the decision to reject some part of the treaty seems to have been a fully a calculated strategy.

With the exception of articles 1 and 22, the provisions of the CRC that were rejected by the New Order regime largely pertained to fundamental freedoms as enshrined in the UN charter of human rights. Article 1 outlined age limits for the purpose of advancing a universal definition of childhood, while article 22 exhorts the state to give equal treatment to children who were in the process of applying or have already obtained the status of refugee. The other five rejected articles addressed a number of basic rights that included: freedom of thought, conscience and religion (art. 14), the right to be adopted (art. 21), the right to obtain information (art. 22), and the right to enjoy education valuing fundamental freedom and human rights. All of these rights fell in the category of “negative right”, which in practice only required the state to limit its power by providing more opportunities for people to participate in public affairs. Nonetheless, the state preferred not to be bound by negative rights, and was more willing to provide positive rights which required the regime to allocate more budgetary funds, build infrastructures, and expand networks for the purpose of outlining and establishing welfare parameters.

It is true that the New Order had no obligation to implement all the provisions, since the regime had only made a partial commitment to the treaty. Indeed, the regime practically ignored the fulfillment of self-determination rights throughout its stay in power. The state continued to censor all kinds of information, placed children fully under the authority of adults, and enforced various limitations on the adoption of needy children. For that reason, despite the legal status of the treaty, the UN and NGOs persistently criticized the regime for not paying adequate attention to these rights.

The first substantial article rejected by the regime was concerned with defining the age parameters of childhood. The article was intended to place limits on the extent to which the state was expected to perform its duties and the citizens to claim their rights. As outlined in article 1 of the CRC, a child is “every human being below the age of eighteen years.” This definition sounds simple and acceptable, for which Indonesia’s reservation against it prompted many questions from the UN and activists. Cautious evaluations of the national laws on children, however, reveal that the adoption of this article would have had far-reaching consequences for the regime. The national law on the child had not set out a standard age that outlined who should be considered a child or an adult. Some laws defined a child as anyone under the age of 21, while other provisions put the age of 6 or even 19 years.²⁰ This variation in interpretation was deeply anchored in such fundamental interests as religion, culture, and the economy. Adjusting the existing standard to meet treaty requirements, therefore, would place the state in confrontation with those interested in defending the existing definition.

The law that was most often criticized by the UN and domestic NGO activists was marriage law number 1, 1974, which set the legal age for marriage at 16 years of age for women and 19 years of age for men. The UN and children’s rights activists said that the law violated the CRC as well as the principle of non-discrimination (UN- CRC, 1993, 1994). For the state, however, the problem was not discrimination but the cost associated with harmonizing the law with the treaty. In Islam, there is not a set age at which an individual can marry and the only marker given is the notion of puberty. As a result, conservative Muslims in Indonesia were always against proposals for limiting the marriageable age. And it

was only by means of an authoritarian approach that the conservatives half-heartedly accept the compromise of 16 and 19 years as the eligible age for marriage (Cammack, 1989). Had the state re-adjusted this standard in order to suit the CRC treaty, it would have had to be ready for another bout of repressive measures against conservative Muslims.

The marriage law was only one of many regulations in Indonesia that did not follow the age standards of the treaty. Some of the other laws were less difficult to change than the marriage law would have been. One example was the age set for suffrage, another that for the child welfare law, which were set at the age limits of 17 and 21 years respectively. However, setting an eligible age for working was also sensitive. Since colonial times, virtually all laws on labor stipulated age requirements well below treaty standards. The state was also forced to recognize that local tradition saw working children as a normal practice and that the economic situation for many families required children to earn money. Since these cultural and historic norms would have been difficult to change without jeopardizing political stability, the New Order government chose to set a reservation against the article.

Meanwhile, it should be emphasized that accepting article 21 on child adoption and article 14 on the freedom of thought, conscience, and religion was no less explosive for conservative Muslims than changing the age parameters of childhood. These issues were considered sensitive, not only for Indonesian Muslims but also for Muslim communities in other parts of the world. As Cohen and Naimark (1991) reported, heated debates had been going on during the drafting process of the CRC between proponents of self-determination rights and

representatives from Muslim countries. In societies like Indonesia's, where religion was not only considered as a spiritual matter but also as a defining social grouping, religious conversion became a sensitive issue. Changing religion would mean leaving the primordial group and, from the perspectives of the family and the community, it implied losing a member. Therefore, granting children the right to adhere to a religion of their choice and to be adopted without conditions was thought to raise the risk of weakening the community.

Nevertheless, it should be acknowledged that some reservations were closely tied to the regime's political character. As an authoritarian regime, it would never grant its citizens the freedoms of thought, speech, and conscience. Thus, despite the criticisms of the UN and NGOs, it would be inconsistent and contradictory for the regime to grant the right to self-determination to children but not to adult citizens. Likewise, accepting article 29 of the CRC regarding the respect of fundamental rights and freedoms went directly against the regime's own policy of limiting political freedoms for all citizens. Therefore, given the above-mentioned considerations, even though enhancing child welfare first might appear to be more burdensome, the state's interest in maintaining power and political stability increased the cost of granting the right to self-determination. For this reason, the New Order preferred to mobilize domestic and international resources to support child welfare projects rather than risk potential opposition from Muslim groups.

The rise of the democratic regime has undoubtedly changed the situation greatly. As the previous sections have discussed, the new regime accommodated the aspirations of international institutions and domestic NGOs by ratifying other

important treaties such the ILO conventions. However, the landmark of the current regime in terms of the legal reform of children's affairs has been the introduction of law no. 23/2002 on child protection. Early drafting of this law was conducted by a coalition of children's NGOs with the sponsorship of Unicef (Farid et al., 2004). During the consultation period, the government and parliament also proposed their own versions, which eventually brought all parties to agree on compromise provisions. It is interesting to note that, although in 2005 the new regime formally informed the UN that it was withdrawing the reservations made by its predecessor, law no. 23/2002 had already incorporated some articles of the CRC that had been previously reserved (Kakak Foundation, 2004). Article 29 of the CRC guaranteeing respect for human rights in education was adopted and became article 50 of law no. 23/2002. Meanwhile, article 14 on the freedom of thought, conscience, and religion was adopted with modifications to become article 56 of the new law. It seemed apparent that the recognition of these rights followed the process of democratization, through which the entitlement of civil and political rights was simply a matter of time.

Nevertheless, it would be misleading to assume that the new democratic regime was willing to simply incorporate the CRC into the domestic legal system. The drafting process clearly showed that the increasingly influential international and domestic NGOs could not convince social groups to accept the new paradigm of the child as outlined in the treaty. Although the government was more receptive to the NGOs' aspirations, the parliament, which represented a plethora of political inclinations, was more conservative. For instance, the right of children to freedom of thought, conscience, and religion was translated as children being "free to hold

opinion and thought according to their conscience and religion” (Art. 56-b). The parliament also imposed religious requirements on the provisions that were deemed harmful to the preservation of religious identity. As stipulated in article 37(3) and 39(3) of law no. 23/2002, custody and adoption was only possible for those of the same religion as the child or children in question. In this context, the CRC’s principles of “child’s best interest” and self-determination were deemed less valuable than the interest of maintaining religious identity.

The most conspicuously conservative attitude on the part of the state in terms of children’s affairs has been expressed by the insertion of special articles on the duty of the child. This initiative posed a straightforward challenge to the rights-based principles of human rights discourse, which does not perceive duty as a necessary condition for claiming one’s rights. Instead of taking right and duty as mutually inseparable practices, the rights-based approach perceives humanity as the only criterion for granting fundamental rights to every individual. The parliament may not have intended to negate the rights-based approach, as it also agreed to ratify other international human rights treaties. It seems, however, that the parliament did believe that granting self-determination rights to children was inappropriate. To this day, the mission of the CRC to affirm children’s right to self-determination has not yet found a positive response.

Conclusion

It is clear from the above discussion that the role of Unicef and other international institutions has been pivotal throughout all stages of treaty adoption. They helped the New Order regime build institutional foundations toward the development of the state’s policy on children’s affairs. They also mobilized funds

and provided expertise to help execute the state's agenda on children. However, despite this considerable contribution, Indonesia's success in advancing the welfare of children can be better attributed to the convergence of interests between international institutions, the state, and social groups, especially women's organizations. The women's movement in Indonesia has a long tradition of dealing with the issue of child welfare, while the state's agenda of economic and political development also incorporated programs on child welfare. As such, the international call for enhancing child welfare did not meet any notable challenges from either the state or society.

Nonetheless, the push of international institutions and activists to pressure the state into extending its commitment to the treaty was not successful. Their failures are well illustrated by the campaigns to eliminate child labor and to grant self-determination rights to children. In the first case, international actors practically worked alone, being opposed by business circles, poor families, and middle-class communities, while receiving minimum support from domestic activists. In the second case, although domestic activists lent support to their international collaborators, opposition from virtually all influential social groups forced the state to overlook activists' efforts. As a result, not only did implementation of the CRC stagnate during the authoritarian regime's time in power, but it also experienced no significant progress during the transition to democracy beyond the ratification of other relevant international treaties and the introduction of a long-term national action plan for children's rights.

Thus, returning to the questions posed at the beginning of this chapter, the state only paid attention to child welfare because majority groups within society

opposed the idea of eliminating child labor as well as the idea of granting self-determination rights to children. Indeed, the state could have forced the implementation of these contested provisions, but the burden it would have had to shoulder later on was most likely greater than the benefits it would have claimed. In the end, strong opposition from social groups not only discouraged the state from adopting the whole treaty, but also greatly weakened the struggle of children's rights activists.

¹ The CRC consists of three parts. Part I outlines children's rights, Part II the state's obligations, and Part III the administration of the convention.

² For a detailed record of the development of State Parties to the CRC, see <http://www2.ohchr.org/english/bodies/ratification/11.htm>

³ The seven articles of the CRC that were put into reservation are articles 1, 14, 16, 17, 21, 22, and 29.

⁴ Law no. 4/1950 on the Basic Principles of Teaching and Education.

⁵ The regime introduced some regulations concerning the age of entry into employment such as Act no. 1/1948 and Act no. 1/1951.

⁶ Compared to women's NGOs or general human rights NGOs, the number of international children's NGOs that work in Indonesia is not many. Among the few are Terre des Hommes, World Vision, Christian Children's Foundation, and Oxfam. Unicef works closely with funding agencies such as USAID, AUSAID, and other European institutions.

⁷ For more information on this Ministry, see http://www.kemenegpora.go.id/index.php?option=com_content&task=view&id=124&Itemid=31

⁸ The Ministry of Manpower decision no. PER-01/MEN/ 1987 sets 14 years of age as the allowable age of entry into employment for those forced to work.

⁹ Personal interview with Lili I. Rilantono, one of the founders of YKAI (March 22, 2007).

¹⁰ See, the Decision of the Ministry Coordinator for the People's Welfare no. 4/KEP/MENKO/KESRA/III/1997.

¹¹ Among early domestic NGOs working on the issue of child labor we find: Kompak (The Education Committee for Creative Children), LAAI (The Indonesian Institute for Child Advocacy), Samin (The Association of Free Indonesian Children), all of which were established in the late 1980s.

¹² Personal interview with Arist Merdeka Sirait (February 4, 2007), the General Secretary of the National Commission for Child Protection; Muhammad Joni (April 2, 2007), Head of Litigation of the National Commission for Child Protection; and Muhammad Farid (April 14, 2007), the founder of Samin NGO.

¹³ The rights to survive, grow, and develop are stipulated in article 6 (1-2) of CRC.

¹⁴ For example, the government ordinance of February 27, 1926 on work aboard ships, nine legislations (Mijn-Politie-reglement) no. 341/1930 on underground employment or Gazette no. 8/1949 on night work.

¹⁵ Principle 1 of the DRC states "All children, without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, are entitled to the rights set out in this Declaration of the Rights of the Child".

¹⁶ The legal reference of the state's policy on children is outlined in the General Guideline of the State's Policy (GBHN) which is formulated once every five years. See, the Decision of People's Consultative Council (TAP-MPR) no. IV/MPR/1973, no. II/MPR/1978, and no. IV/MPR/1983.

¹⁷ For the presidential address, see <http://www.bappenas.go.id/index.php?module=ContentExpress&func=viewcat&ceid=-2&catid=416&cecatid=416&cid=>

¹⁸ Personal interview with Muhammad Joni (April 2, 2007) and Arist Merdeka Sirait (February 4, 2007).

¹⁹ Personal interview with Arist Merdeka Sirait (February 4, 2007).

²⁰ Law number 4, 1979 on child welfare set 21 years and under as the definition of a child; law number 1, 1974 on marriage set 16 years for women and 19 years for men as the age at which they could marry.

Chapter 6

Understanding the Mechanisms of Treaty Implementation:

A Conclusion

This chapter aims to offer a comparative structural analysis on the implementations of three conventions discussed in the earlier chapters. This analysis will answer the two main questions of this thesis; “Why do the ratifications of human rights treaties often fail to translate into implementation?” and “Under which conditions are the ratifications of human rights treaties consequential or inconsequential?” The answers will fill a gap in the studies of human rights treaty ratification. As discussed earlier in chapter one, empirical quantitative studies find that ratification has no effect on actual human rights practices, while qualitative research points to the opposite conclusion. Despite the different parameters that each approach uses, neither attempts to compare the ratification and implementation of different fields of human rights convention. Empirical studies are too focused on state violence and political rights, while qualitative works are mostly concerned with a single issue such as women, children, or political rights. As a result, these studies cannot disclose the variety of responses and relationships between institutions and actors in the implementation of each field of human rights convention.

As shown with the empirical studies in chapters 3, 4, and 5, different fields of human rights treaties bring different consequences for the state, the international community, and social groups. For this reason, we cannot draw a

general conclusion on the success and failure of treaty implementation simply based on one type of human rights convention. Although not exhaustive, comparing the treaties on women's rights, children, and torture can also accommodate the traditional division in human rights literature between "negative" civil and political rights and "positive" economic, social, and cultural rights. While the state is required to limit its despotic power in order to fulfill negative rights, it is encouraged to mobilize its power to meet positive rights. However, both types of rights also receive different responses from social groups in society, depending on their ideological and cultural orientations.

It is based on the nuances in the implementation of the three treaties that the following analysis will draw some general conclusions. The first section will trace the process of treaty implementation during the authoritarian New Order regime, which accepted women and children's conventions while rejecting the treaty on torture. The process tracing will continue to the period of democratic government, in which all three conventions underwent substantial transformations. Based on these two different experiences, the last section will conclude by offering answers to the thesis questions.

However, before proceeding to the structural analysis of treaty implementation, it is worth highlighting the nature of human rights treaties. As displayed by the three conventions under study, an international human rights treaty is not a stand-alone or independent legal document. Prior to being international laws, all treaties begin as UN declarations that address more general principles of particular human rights fields. The process of transforming a

declaration into a convention varies, ranging from nine years in the case of the CAT to thirty years for the CRC. Following the adoption of a treaty, the UN usually issues other international documents to strengthen the treaty. For example, it conducted the ICPD conference in 1994 and the Fourth World Conference on Women in 1995, the recommendations of which were intended to strengthen and complement the CEDAW. Given the correlation of a treaty with the preceding and following international documents from the same field, it is not possible to isolate a particular treaty from other related documents on given human rights practices.

From the Indonesian experience, the ratification of a treaty is always the outcome of long processes of negotiation between the state and human rights activists. The state has never ratified a treaty without external pressures from international or domestic actors, for which ratification is better treated as a formalization of promises by the state than as the critical moment at which the state is expected to break from the past and simultaneously embark upon a new moral commitment. Therefore, the question does not hinge on the impact that ratification brings to the improvement of human rights, but rather on whether or not the conditions of ratification are consequential or inconsequential. In other words, taking ratification as an independent variable is not likely to explain the changing patterns of human rights practice, because ratification alone is powerless. This tendency has been widely found in cross-case quantitative studies, in which ratification and human rights practice are largely not correlated.

In contrast to earlier studies, this thesis positions ratification as a dependent variable instead. It assumes that ratification is a normative promise by

the state which, given certain conditions, might or might not be fulfilled.

Therefore, this thesis seeks to explain the conditions that influence the likelihood that the state will implement the treaty. It is to this end that the following section will identify the power configurations between the actors involved in treaty implementation and explain the mechanisms by which the implementation of the three treaties under study result in different outcomes.

The primacy of the state's interest

Studies on ratification have found two contrasting attitudes on the part of authoritarian regimes towards international human rights treaties. In general, these regimes are less inclined to ratify human rights treaties than their democratic counterparts. The number of authoritarian states which ratify a treaty is significantly smaller than that of democratic countries, resulting in the fact that they are perceived as being against human rights principles (Keith, 1999; Hafner-Burton and Tsutsui, 2005; Neumeyer, 2005). Nevertheless, it has also been shown that authoritarian regimes are increasingly willing to ratify treaties, and even seem more willing to do so than democratic governments (Hathaway, 2003). This new trend has been interpreted as a tendency on the part of authoritarian regimes to use human rights treaties as a tool for international diplomacy, from which they draw political and economic benefits. In this context, Indonesia's authoritarian regime seems to have followed neither of the two trends fully. Its decision to selectively pick particular types of treaties suggests that this regime was not entirely against human rights norms, nor did it use the treaty solely to appease the international

community. Had the regime wished, it could have ratified all the treaties or rejected them altogether if it was indeed opposed to human rights principles.

Although external pressure from transnational activist networks has been widely regarded as the most important factor in conditioning states to ratify a treaty (Hafner-Burton and Tsutsui, 2005; Risse, Ropp, Sikkink, 2001; Tsutsui and Wotipka, 2004; Cole, 2006), the New Order regime's selective decision is more associated with its own core interests. In all the three cases, international calls for ratification were strong, voiced either by human rights committees in the United Nations (UN), Unicef, the ILO, Amnesty International and other human rights organizations. Nonetheless, the regime only ratified the Convention on the Elimination on all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), but not the Convention against Torture (CAT). This does not mean that external pressure was not important, particularly when the regime's decision to ratify the three conventions was preceded by campaigns and negotiations by domestic and international activists. Instead, external pressure did not automatically motivate the state to accept human rights treaties, as clearly demonstrated by the rejection of the CAT.

The core interest of the New Order regime was clearly spelled out in the General Guideline of the State's Policy (GBHN), i.e., creating economic development and political stability. These two agendas were the reason behind the regime's taking over power from its predecessor, and hence became sources of political legitimacy. From this perspective, the ratification of the CEDAW and CRC served the state's interest, whereas embracing the CAT would have caused

the opposite effect. By ratifying the CEDAW, the state could employ the vast network of women's organizations in the implementation of development programs, especially those aiming at child and family welfare. In the same vein, the ratification of the CRC allowed the state to draw on international resources for the improvement of children's wellbeing. Moreover, elevating the welfare of children, women, and family was perceived by the regime as one of the main parameters of development success. On the contrary, since this regime was heavily dependent on the use of violent measures to control politics, the CAT was not considered to be an instrument serving the state's interests. Thus, although international and domestic pressure to end the use of torture was mounting, the regime kept on rejecting the CAT well until the end of its power.

The ability of the New Order to select which treaties fit with its interests indicates that this regime was highly autonomous from society and the international community. Irrespective of opposition, it had the capacity to reject or make reservations against treaty provisions that were deemed burdensome. For this reason, the state's interests explained not only the reason for ratification, but also the extent to which the regime was willing to implement the treaties it had ratified. As discussed earlier, women's participation in development programs was consistently progressing throughout the New Order era, during which their education level and economic contributions improved significantly. During the same period, child welfare also experienced the same pace of advancement. These successes should not be understood simply as consequences of ratification, but also outcomes of the converging interests between the regime and the treaty. This

runs in contrast to the case of the CAT, where the regime's recalcitrant attitude to the continued use of torture did not change despite strong opposition from transnational human rights activists. In this context, the regime's interest in maintaining political order and economic growth was more important than pressures from domestic and international human rights proponents.

Indeed, there are instances of the regime's change of attitude that cannot be explained based on their investment in development projects. In the case of the CEDAW, the state gradually recognized women's equal status to men, affirming that they had the same rights and duties in the development agenda. Initially, the state outlined that women's primary roles were to be child educators and family guardians, while increasing family income was considered to be a supplementary activity. Such progress, however, did not occur in the implementation of the CRC, which experienced no policy change after its ratification. Interestingly, a significant shift took place in the state's attitude towards torture despite its persistent rejection of the CAT. Following a number of violent tragedies, the authoritarian regime was willing to punish its military officers for committing violence against the innocent, as demonstrated in the case of the East Timor massacre in 1991 and in the murder of a number of villagers in Papua Province in 1995 (Amnesty International, 1996b; HRW, 1994).

The shift in the regime's responses to the demand for more respect for human rights suggests that the influence of the state's interests on treaty implementation was not constant. Obviously, it is one thing to change the treatment of women, and quite another to punish the state's own military officers.

The regime did not have to sacrifice its core interests by granting equal status to women, but it had to make a deep compromise when it had to punish its military officers. Despite this difference, however, both behavioral changes were the outcome of long negotiations, persuasion, and pressures against the state by women's and human rights activists. In the context of the CEDAW, lobbies by feminist-technocrats (femocrats) and progressive women's organizations have been the driving force behind legal and policy reforms on women's affairs. Similarly, it was the coalition of the National Commission on Human Rights (Komnas-HAM) and human rights NGOs which occasionally compelled the state to restrain its soldiers. In special circumstances, strong donor countries like the United States (US) and European Union (EU) also intervened directly by threatening to freeze their assistance (Glasius, 1999; Kivimaki, 1994; Berg, 2001). As a result, the state stood to lose more if it did not listen to the demands of human rights activists. Such a strong network of activists was largely absent from the social movement for children's rights, in which case no external pressure could persuade the state to move forward.

At this point, the state's interests were not static, could be extended given the influence of external factors, and could be negotiated on the condition that external forces would be stronger than the state. It should be emphasized, however, that pushing the regime to make compromises about its core interests would not be as easy as persuading it to extend commitments. For this reason, the sporadic pressures from strong donor countries did not end the New Order regime's inclination to adopt violence as a way of maintaining political stability.

In the same spirit, the regime was also reluctant to grant civil and political rights to women and children, as this was perceived as being counter-productive to its main interest of controlling opposition groups.

Table 6: 1
Treaty Implementation
During the Authoritarian New Order Regime

Convention	State's response	Activist network	Social groups	Outcome
CEDAW	Support (social and cultural rights)	International strong Domestic strong	Support (except conservatives)	Progressing
CRC	Support (child welfare)	International strong Domestic weak	Support (except conservatives)	Stagnated
CAT	Against	International strong Domestic strong	Support	Unsystematic

Table 1 illustrates the fact that during the New Order regime, the implementation of the CEDAW was more progressive than that of the CRC. The state not only improved women's welfare but also their participation in other sectors, eventually leading to the recognition of their equal status. What was missing for the CRC was strong support from domestic activists, which resulted in the state's limited fulfillment of child welfare. Meanwhile, although the CAT received strong support from both the public and activists, it did not experience systematic progress due to its rejection by the state.

Based on the experience of human rights treaty implementation during the New Order regime, the following conclusions can be drawn. First, in the context of a strong and authoritarian regime, it is the state's interests that determine not only the decision to ratify a treaty but also the extent to which the ratified treaty

will be implemented. On the one hand, the state's interests can lead the regime to undermine external pressure or, on the other, can also encourage the regime to comply with the treaty in the absence of strong external control. Second, external pressure from the network of human rights activists can change the regime's initial commitment if this does not contradict the state's core interests. Third, the regime is only likely to compromise its core interests if external pressure directly hurts the interests in question or other related interests. This last point is illustrated by the New Order's decision to try its soldiers given the economic sanctions from donor countries that were directly harming its economic development agenda.

Openness and the problem of state capacity

Following the fall of the authoritarian regime and the rise of democratic government, the three conventions underwent fundamental transformations. This clearly suggests that regime type matters in the implementation of human rights treaties. Upon assuming power, the new regime immediately ratified the CAT and inserted the provision against torture in the newly enacted human rights laws. In addition, it also introduced many new regulations and laws to lay the foundation for further implementation of women's and children's rights. This transformation was not likely the consequence of a radical shift in the state's interest in maintaining economic and political stability to a totally different agenda. As shown in the case of the CRC, the new regime still had the same commitment to enhancing child welfare as pioneered by its predecessor. The difference was, although sharing a number of interests, the new regime adopted approaches that

were consistent with the popular demand for democratization in the implementation of the state's agendas.

As a regime that was born out of the fall of authoritarianism, the new regime wanted to demonstrate its commitment to democracy. For this reason, it revoked the laws and regulations that went against democratic principles while simultaneously installing new institutions for the implementation of democracy (Juwana, 2003). The newly elected members of parliament went even further, amending the national constitution and modifying its legal foundation to be a source of democratic polity (Lindsey, 2002). Given this commitment, the state ceased to be a hurdle in the implantation of human rights norms into state institutions. Instead, the new regime promoted human rights norms as part of its commitment to democracy. It ratified virtually all principal treaties, such as the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR). Thus, unlike its predecessor, the new regime has no preference when it comes to which treaties serve its interest best.

Although the three conventions experienced significant progress, this does not mean that each treaty underwent the same depth of implementation. Indeed, all treaties have been widely adopted in the national legal system, yet not all of them have been translated into the state's programs or manifested in actual practice. The adoption of the CEDAW has certainly gone beyond legal formality, touching concrete state programs such as gender mainstreaming and budgeting. The state also stipulated that political parties must allocate at least 30% of their

candidacy seats to women, thereby not only recognizing women's political rights but also affirming their presence in public life (Graham, 2005). Meanwhile, even though torture has not been enacted as an independent provision in the Penal Code, the new human rights laws by which the CAT was adopted have succeeded in bringing perpetrators to the court and ending state violence (Linton, 2004). The least developed treaty was the CRC, which was simply reaffirmed in the new laws on child protection with no substantial progress made in its implementations.

Under the New Order regime, the variation in terms of success in treaty implementation could be explained through the state's interests. The closer a treaty is to the state's interests, the greater the likelihood of its being implemented. However, since the new democratic regime accommodated all treaties, the variation in outcomes should be associated with either the strength of activist networks or that of international actors, or with social support in general. In this context, however, the influence of international support is not likely to have contributed to different outcomes, as it was distributed fairly equally for all the treaties. Campaigns against state violence by international human rights organizations were as strong as international campaigns for women and children's rights. Especially after the demise of the authoritarian regime, Indonesia succeeded in having international institutions make more contributions for the advancement of human rights and democracy.

Instead of regime's interests and international pressure, it appears that domestic activist networks were the decisive factor in the implementation of treaties during the transition to democracy. Both human rights activists and

progressive women's activists had been part of opposition forces since the final years of the authoritarian regime. Immediately after the regime's fall, women activists pushed the new regime to create the National Commission for Violence against Women (NCVW), to transform the existing Ministry of Women's Roles (MWR) into the Ministry of Women's Empowerment (MWE), while at the same time infiltrating state institutions to introduce progressive programs for gender equality (Budianta, 2003). The same move was also adopted by human rights NGOs, which pressed the state to establish the Ministry of Human Rights (MHR) and reform the national legal system (Juwana, 2003). Such an immediate and systematic maneuver was absent from the movement for children's rights, which was largely still dependent on the role of international institutions. New children's NGOs are currently emerging, but they have not yet formed a solid movement that could pressurize the state.

Interestingly enough, even though the state no longer posed challenges to the human rights movement, the efforts of activists to push the state to further implement the treaty did not always go as expected. The struggle to reform marriage law, for instance, did not experience any progress despite the fact that the voices of progressive women's activists were becoming louder (Irianto and Luhulima, 2004). Likewise, the attempt to eliminate child labor received only lip service in the form of a twenty-year action plan. Such stalled reform was also seen in the attempt to eliminate torture in daily life through its enactment in the Penal Code. Apparently, all these difficulties were neither caused by the state's repressive attitude nor by a lack of efforts on the part of activists', but rather by

opposition from influential segments of social groups. In the case of the CEDAW, conservative Muslims were deeply interested in preserving the existing marriage laws, while in the case of the CRC, conservative groups in general were willing to limit children's rights. Such was also the case with the attempt to eliminate child labor which was opposed by poor communities, business circles, as well as by middle-class families. At this point, besides weak networks of domestic activists, opposition from influential groups within society became a crucial factor in the success and failure of treaty implementation.

In theory, conflicts of interests between human rights proponents and particular groups in society could have been resolved through the state's intervention. The authoritarian regime adopted such measures in a number of cases, either by supporting human right proponents or the contending groups. The enactment of marriage regulation for civil servants was an example of the state intervening on the side of women's activists, while the rejection of children's self-determination rights indicates the opposite. It should be noted, however, that the ability to make such a decision requires strong political power. The new democratic regime could have followed this course: exerting its power to uphold democracy by supporting human right proponents. This regime, however, did not take this path and instead also allowed opposing groups to influence the state's agenda. This clearly indicates that the new democratic regime did not have sufficient power to make independent decisions.

The consequences of the state's lack of autonomous power on treaty implementation were far-reaching, one of these being the partial

institutionalization of treaty provisions. For instance, if the regime wanted to be consistent with the agenda of democracy, it should never have allowed conservative groups to defend existing gender discriminative regulations. Nevertheless, the weak position of the state did not only compel the regime to make compromises with all groups, but also forced it to turn a blind eye to the contradictory regulations on human rights. For example, the regime issued a presidential decision on gender mainstreaming but, because of protests from conservative Muslims, the Ministry of Religious Affairs (MRA) nullified this decision made by its own superior. In this context, the state appears to have taken the safest possible decision, given the pressures from both human rights proponents and conservative groups.

Perhaps, the most perverse effect of the weakening of the institution of the state was the regime's inability to execute the official agenda to implement human rights treaties. The three conventions experienced substantial progress in the legislation and policy reform stages, but each of them confronted an extreme slowdown when it came to their actual implementations. Opposition from conservative groups has been responsible for the slowdown, yet the state's lack of resources and capacity to rule has also substantially contributed to the failure. As such, the weak democratic regime has not only failed to prevent the introduction of contradictory regulations, but also allowed for a growing gap between human rights legislation and implementation.

Table 2 summarizes treaty implementation during the transition to democracy, when the state supported all three treaties without exception. The

success of implementation was then dependent on the strength of activist networks and their relationship with influential social groups. The CEDAW and CAT were better implemented than the CRC, which received only weak support from domestic activists and was strongly opposed by conservative groups, especially on the issues of child labor and self-determination rights. The CAT was moderately implemented, especially because of the lack of attention by activists to the daily use of torture by the state's security apparatuses. Nevertheless, despite the progress that has been achieved during this period, all treaties suffered from weak enforcement due to the weak capacity of the state to rule.

Table 6: 2

Treaty Implementation
During the Transition to Democracy

Convention	State's response	Activist network	Social groups	Outcome
CEDAW	Support	International strong Domestic strong	Support (except conservatives)	Progressing (lack of actual practice)
CRC	Support	International strong Domestic weak	Support (except conservatives)	Stagnated
CAT	Support	International strong Domestic strong	Support	Progressing (lack of actual practice)

The experience of treaty implementation during the transition to democracy leads us to make the following conclusions. First, under the democratic regime, it is the strength of domestic activist networks that has determined the extent to which human rights treaties are incorporated into the state's institutions. Second, the success of domestic activists in having their agenda accommodated by the state depends on their relationship to other influential groups in society: the closer their relationship with these groups, the greater their chance of success. Third,

weak democratic regimes not only allow human rights activists to freely impose their agenda on the state, but they also encourage conservative groups to make similar maneuvers, resulting in contradictory regulations and minimum actual implementation.

The mechanisms of treaty implementation

Based on the comparison of the roles played by international actors, the state, and non-state domestic groups during the authoritarian and democratic regimes, this last section will answer the questions posed by this thesis at the outset: “Why does the ratifications of human rights treaties often fail to translate into implementation?” and “Under which conditions is the ratification of human rights treaties consequential or inconsequential?” The answer to the first question is that the ratification of different human rights treaties is supported by different conditions, thus leading to different outcomes. In other words, ratification is not a self-sufficient event that automatically leads to implementation, but is a legal process that needs to undergo specific enforcement mechanisms to be translated into actual practices.

From the above discussion, the implementation of a treaty only becomes possible if the network of international and domestic human rights activists is strong. In this context, international actors and institutions include the UN organs and other organizations with a similar status such as the ILO and international NGOs. Their strong presence is necessary for the growth of domestic human rights proponents, and their collaboration with domestic activists is required to pressure the state to ratify human rights treaties and implement them accordingly.

Therefore, networks of international, transnational, and domestic human rights activists constitute a necessary element in treaty implementation, without which the state would not likely ratify and implement its promises. Nevertheless, it is the state's interests and capacity to rule that then become key for a treaty to be adopted into the national legal system, translated into the state's policy, and transformed into actual practice. Opposing the interests of a strong state is likely to end in failure, irrespective of the strength of activist networks. Strong activist networks can indeed compel a weak regime to formally legislate and adopt a treaty into its official agenda. However, it is nearly impossible for a weak state to translate a treaty into actual practice, since it does not have the capacity and resources to execute its own programs.

The influence of strong democratic regimes on treaty implementation is thin. These countries only create indirect influence through their support for international institutions and networks of activists or by making occasional interventions. Either way, strong democratic countries do not offer sustainable support for long term and comprehensive treaty implementation. This stands in stark contrast to the role of influential groups in society, which have the capacity to deflect the struggle of activists and sway the state's preferences. For instance, the opposition of conservative groups to the idea of reforming the marriage law not only hampers the struggle of progressive women's activists, but also discourages the state from taking the risk of backing up activists. Therefore, influential groups in society can function as an intervening variable in treaty

implementation by influencing the power balance between the state and human rights activists.

Given this constellation, the answer to the second question, “Under which conditions is the ratification of human rights treaties consequential or inconsequential?” can be given as follows. The extent to which a treaty can be implemented depends on the following conditions:

- A treaty is likely to be legislated into the national legal system, incorporated into the state’s programs, and translated into actual practice, if it shares the interests of a strong state and is buttressed by a dense network of activists and has strong support from influential groups in society.
- A treaty is still likely to be legislated into the national legal system, incorporated into the state’s programs, and translated into actual practice, if it shares the interests of a strong state, despite weak networks of activists and minimum support from social groups.
- A treaty is likely to be legislated into the national legal system and adopted into the state’s programs, but not translated into actual practice, if the state has no adequate capacity to rule, despite support from a dense network of activists and influential groups in society.
- A treaty is likely to be partially legislated into the national legal system and incorporated into the state’s programs, but not translated into actual practice, if the state is weak and a strong network of activists faces opposition from influential groups in society.

- Even if a state, be it strong or weak, does not oppose a treaty, said treaty is not likely be legislated into the national legal system, incorporated into the state's programs or translated into actual practice, if it only receives support from a weak network of activists or from non-influential social groups.

These findings affirm most of the hypotheses put forward in chapter 1. It is domestic actors who count most in conditioning the implementation of international human rights treaties. The role of powerful democratic countries is not relevant; not because they do not have power, but because they do not want to exert their power for the sake of holding the Indonesian state responsible for respecting human rights. Meanwhile, although international institutions and transnational activists consistently press the state to be compliant with treaties, they simply suffer from a lack of power. Their campaigns would only be effective if powerful democratic countries gave them real and meaningful support. These circumstances suggest that theoretical perspectives that give primacy to international actors are not workable.

Indonesia's experience with three human rights treaties clearly reveals the importance of the state's interests and strength in influencing the prospect of implementation. It also demonstrates that support from influential social groups determines the likelihood of human rights activists succeeding in holding the state accountable. However, the Indonesian case only presents a zero-sum-game pattern of the relationship between state and society. Indeed, the experience of treaty

implementation during the authoritarian and democratic transition eras offers a good opportunity for evaluating the impact of the state's interests and strength. In addition, by analyzing three treaties, this thesis is also well placed to compare the variety of responses made by the state and social groups.

Nonetheless, while the state exercised power at the expense of society's weakness during the authoritarian era, during the democratic transition period, it is society that has enjoyed more power amidst the state's decreasing capacity to rule. As a result, treaty implementation in Indonesia has not achieved its ideal goals, given that it requires support from both the state and society. Sociologists have long argued that the state and society could develop synergic relations, based on which they could then produce a better common good (Hall, 1985; Mann, 1986; Evans; Lange and Rueschemeyer, 2005). For this reason, more research is still needed to analyze the implementation of human right treaties in countries where the state and society develop non zero-sum-game relationships.

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Appendix



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Research Ethics Board I
Certificate of Ethical Acceptability of Research Involving Humans

REB File #: 3-0605

Project Title: The politics of international norms: discrepancies in the state ratification and implementation of Human rights Convention

Principal Investigator: Hendro Prasetyo

Department: Sociology

Status: Ph.D. student

Supervisor: Prof. J. Ron

Granting Agency and Title (if applicable): Indonesia-Canada Social Equity Project

This project was reviewed on June 17, 2005 by

Expedited Review ☒
Full Review ☐



John Galaty, Ph.D.
Chair, REB I

Approval Period: Aug 4, 2005 to Aug 3, 2006

This project was reviewed and approved in accordance with the requirements of the McGill University Policy on the Ethical Conduct of Research Involving Human Subjects and with the Tri-Council Policy Statement on the Ethical Conduct for Research Involving Human Subjects

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- *All research involving human subjects requires review on an annual basis. A Request for Renewal form should be submitted at least one month before the above expiry date.
 - *If a project has been completed or terminated and ethics approval is no longer required, a Final Report form must be submitted.
 - *Should any modification or other unanticipated development occur before the next required review, the REB must be informed and any modification can't be initiated until approval is received.

cc: Prof. J. Ron