

**THE AVAILABILITY OF INTERNATIONAL
JUDICIAL REVIEW OF GOVERNMENT BREACHES
OF HUMAN RIGHTS**

T h e s i s

By

ARNOLD LAOH

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In memory of my beloved mother.

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TABLE OF CONTENTS

Acknowledgments	i
Table of Contents	ii
Abstract	viii
 <i>Chapter 1- GENERAL INTRODUCTION</i>	
1. Introductory Remarks	1
2. Theoretical Overview and the Purpose of International Judicial Review ...	4
3. Questions and Issues	7
4. Purpose and Method of Study	9
5. The Arrangement of the Work	11
 <i>Chapter 2 - JUDICIAL REVIEW, GOVERNMENT ACT AND HUMAN RIGHTS</i>	
1. Judicial Review	14
1.1. The Notion of Judicial Review	19
1.2. The Purpose of Judicial Review	21
2. Government Acts and Legislation	22
3. Major Concepts of Human Rights	24
3.1. Asian concept of Human Rights	25
3.2. European Concept of Human Rights	29
3.3. Inter-American Concept of Human Rights	31
3.4. African Concept of Human Rights	34
3.5. Universal Declaration of Human Rights	35
4. Human Rights Violations	37
5. Summary	39
 <i>Chapter 3 - EXECUTIVE-HEAVY LEGISLATION, RESTRICTED JUDICIAL REVIEW AND STATE IMPUNITY: The Case of Indonesia</i>	
1. Preliminary Remarks	41
2. Indonesian Legal System	44
2.1. The 1945 Constitution and the Hierarchy of Laws	47
2.2. The Recognition of Human Rights in the 1945 Constitution	54
3. Indonesian Judicial Review System	55
3.1. Judicial Review in the 1945 Constitution	57
3.2. Reviewable Regulations	59
3.3. Exercising Institution and the Procedure	64
3.4. Judicial Review in the Administrative Court	72
3.5. Latest Developments	73
4. Records of Human Rights Violations	79
4.1. Violations against Freedom of Opinion, Expression and Speech	81
4.2. Violations against Freedom of Assembly and Association	83
4.3. Violations against Freedom of Religion	84
4.4. Other Violations against Individuals' Human Rights	84

5.	Indonesia's View of Human Rights	86
6.	Attempts at Seeking Remedy	91
6.1.	National Level	91
6.2.	International Level	93
7.	Summary	95

Chapter 4 - INDIVIDUAL ACCESS TO THE INTERNATIONAL REMEDY SYSTEM

1.	Preliminary Remarks	100
2.	Overview of the United Nations Human Rights System	101
3.	Functions and Powers of Charter-based Bodies	104
3.1.	General Assembly and the Third Committee	104
3.2.	Economic and Social Council (ECOSOC)	105
3.3.	Commission on Human Rights (CHR)	107
3.4.	Commission on the Status of Women (CSW)	109
3.5.	Sub-Commission on Prevention of Discrimination and Protection of Minorities	111
3.6.	Office of the High Commissioner for Human Rights	112
4.	Communication Procedures and Individual's Access under International Human Rights Instruments	113
4.1.	Charter-based Communication Procedures	114
4.1.1.	Communication Procedure under ECOSOC Resolutions	114
4.1.2.	The "1503" Procedure	117
4.1.3.	Critical Appraisal and Limitations of the Procedures	122
4.2.	Treaty-based Communication Procedure	125
4.2.1.	Procedure before the Human Rights Committee (HRC)	125
4.2.1.1.	The Procedure	128
4.2.1.2.	Critical Appraisal and Limitations of the Procedures ...	132
4.2.2.	Procedure before the Committee on the Elimination of Racial Discrimination (CERD)	134
4.2.2.1.	The Procedure	136
4.2.2.2.	Critical Appraisal and Disadvantages of the Procedure ...	139
4.2.3.	Procedure before the Committee Against Torture (CAT) ...	141
4.2.3.1.	The Procedure	143
4.2.3.2.	Critical Appraisal Limitations of the Procedure	144
4.2.4.	Procedure before the Committee on the Elimination of Discriminations Against Women (CEDAW Committee)	145
4.2.4.1.	The Procedure	146
4.2.4.2.	Critical Appraisal and Limitations of the Procedure	148
4.3.	Other Treaty-based Communication Procedures	149
4.3.1.	Procedure before the Committee on Economic, Social and Cultural Rights (CESCR)	149
4.3.1.1.	The Procedure	150
4.3.1.2.	Critical Appraisal of the Procedure	153
4.3.2.	Procedure before the Committee on the Rights of Child (CRC) ...	154
4.3.2.1.	The Procedure	154
4.3.2.2.	Critical Appraisal of the Procedure	156
5.	Regional Individuals Complaint Procedures	157
5.1	Procedure under the Inter-American Human Rights System	157
5.2	Procedure under the European Human Rights System	163

5.3 Procedure under the African Human Rights System	164
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*Chapter 5 - THE NEED OF INTERNATIONAL JUDICIAL REVIEW OF
GOVERNMENT ACTS AND LEGISLATION FOR BREACHES OF HUMAN RIGHTS*

1. Preliminary Remarks	167
2. Why Is International Judicial Review Needed?	170
3. The Power and Competence of the International Criminal Court (ICC) ...	180
3.1. Exercise of Jurisdiction	185
3.2. Analysis and Comparison	186
4. International Practices Similar to Judicial Review	188
4.1. Negotiation	190
4.2. Good Offices and Mediation	191
4.3. Inquiry	192
4.4. Conciliation	192
4.5. Arbitration.....	193
4.6. A Brief Analysis	195
5. International Judicial Review as a Complementary Procedure	195
5.1. The Complementary Function of International Judicial Review	196
5.2. Who Shall Posses the Power of Judicial Review?	198
5.3. Should There Be a Power of Judicial Review for the International Court of Justice (ICJ)?	199
5.3.1. Indonesian Example	199
5.3.2. The Inherent Competence of the ICJ	201
5.3.3. A New World Order	203
5.4. The Source of Judicial Review Power of the ICJ	204
5.4.1. The Charter of the United Nations	205
5.4.2. The Statute of the ICJ	205
5.4.3. Historical Facts	206
5.4.4. The Development of Judicial Review in Case Law	207
a. Certain Expenses Case	207
b. The Namibia Case	208
c. Lockerbie Case (Provisional Measures)	209
d. Bosnia-Herzegovina v. Federal Republic of Yugoslavia (Serbia and Montenegro)	211
6. Summary	213

*Chapter 6 - A PROPOSED PROCEDURE FOR INTERNATIONAL JUDICIAL
REVIEW*

1. Preliminary Remarks	216
2. Who Can Bring A Case?	217
3. Stages of the Procedure	221
3.1. Receipt of Communication	222
3.2. Admissibility of Communication	223
3.3. Determination on the Merits of Communication and Delivery of Judgement	228
4. Appraisal and Prospects	232

Chapter 7- CONCLUSIONS

Conclusions	235
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Bibliography	240
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Appendices:

1. Chart of the United Nations System.
2. 1945 Constitution of the Republic of Indonesia.
3. Unofficial Version of Amended Articles 28A – 28J of the 1945 Constitution
4. Model Communication (Form).
5. Country Mandates/Thematic Reports 2001.
6. Statistical survey of individual complaints dealt with by the Human Rights Committee under the Optional Protocol to the ICCPR (up to 17 April 2002).
7. Statistical survey of individual complaints considered under the procedure governed by Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (updated on 25 October 2001).
8. Statistical survey of individual complaints dealt with by the Committee Against Torture (CAT) under the procedure governed by article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (20 February 2002).
9. Status of Ratification of the Principal International Human Rights Treaties as of 28 March 2001.

Abstract

The main objectives of this thesis are to provide a description, analysis and criticism of the existing international instruments for the promotion of respect and protection of human rights, as well as to provide suggestions for the adoption of an additional legal instrument through the United Nations mechanism as a complementary procedure in order to strengthen judicial review of state actions and legislation. This, in turn, should serve to increase pressure upon State governments to bring their internal legal systems into line with international standards for the protection of human rights.

While there is some limited degree of international “review” of States’ compliance with their international human rights obligations, it is argued in this work that the current international procedures available to individuals alleging that their human rights have been abused by a State are no longer sufficient, and therefore it is appropriate to discuss whether another procedure should be introduced.

The thesis considers this issue of increased judicial review by focusing on one of Australia’s closest neighbours, Indonesia, as an example of a State whose conduct remains largely “untouchable” under current international mechanisms. Despite gross and systematic violations of human rights, one could argue that the Indonesian government is still immune due to its “executive-heavy” legislative system, restricted judicial review as a result of a corrupt judiciary, and high level of impunity of the government and other state agencies.

The thesis firstly concentrates on the procedures available at an international level for dealing with individual complaints alleging human rights violations. Different procedures both under Charter and Treaty provisions are analysed in an attempt to describe their advantages and disadvantages. Two Charter-based procedures dealt with in the discussion cover the communication procedure under the United Nations Economic and Social Council (ECOSOC) which includes the “1503” procedure. Treaty-based procedures, including the procedure before the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination

(CERD), the Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW) are given special attention in this thesis.

There follows a critical appraisal of these procedures which highlights their limitations and weaknesses, followed by the suggestion that an additional procedure to complement the current mechanisms available to individuals seeking remedies for human rights violations would be highly desirable – both theoretically and in practice. Among the most prominent limitations of these procedures are the non-binding nature of most of the decisions involved and the real obstacle that the admissibility requirement of “exhaustion of domestic remedies” presents.

Finally, the thesis considers the possibility, as has started to be discussed among some international scholars, of an “International Judicial Review” procedure by which a State’s legislation could be examined in order to determine whether or not it is in conformity with international human rights standards and norms. It will be suggested that this power of review be given to the International Court of Justice (ICJ) as the “principal judicial organ of The United Nations”.