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Aide-Mémoire

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Indonesia

Impunity must be brought to an end – all conflicts must be resolved by peaceful means

Impunity

Impunity remains one of the key issues concerning Indonesia's human rights record. There has been no progress regarding prosecution and trial of gross violations of human rights. Impunity is still enjoyed by those responsible for the 1999 violence in East Timor, despite repeated unambiguous demands and recommendations on the part of UN organs. This is above all the report of the Commission of Experts, which was appointed by the previous Secretary General with the task to review the judicial justice processes in Indonesia and East Timor. Kofi Annan then recommended that the Security Council endorse its findings. We call on the HRC to lend its support to his stance.

Also other trials before ad-hoc human rights courts have so far just continued the tradition of impunity: The trials for the 1984 Tanjung Priok massacre led to acquittals. And the first trial before a permanent human rights court, the trial for killings and torture in Abepura (Papua) in 2000, ended after more than a year without tangible results as the court declared that the case was not within its jurisdiction.

In September 2004, the well-known human rights lawyer Munir was poisoned. One person was initially found guilty for having carried out the poisoning. In September 2006, the Supreme Court overturned the verdict, acquitted the defendant of involvement in the murder, and reduced the 14-year sentence to two years for the subsidiary charges of falsifying documents. After intense lobbying, the UN Special Rapporteur for Extra-judicial, Summary or Arbitrary Executions agreed to get involved. However, the Indonesian Foreign Ministry and the police immediately ruled out any cooperation with the Special Rapporteur and any UN-sponsored probe into the murder. After being granted a further 3-months sentence remission, in December 2006 the defendant was released from prison. In a change of mind, the Attorney General's Office, which had initially ruled out any further judicial processes, then announced that it would appeal for a review of the Supreme Court verdict. Nevertheless, an independent comprehensive investigation remains urgent. Apart from the questionable proceedings, the investigation has so far not followed the leads pointing to an involvement of the State Intelligence Agency BIN, which the Presidential Fact-Finding Team on the murder had documented. We call on the HRC to urge the GoI to invite the Special Rapporteur for Extra-judicial, Summary or Arbitrary Executions and to agree to an investigation by an independent

team involving UN-mandated experts. We furthermore recommend that the Gol make public the final report and recommendations of the Presidential Fact-Finding Team.

Various institutions have been conceived to deal with past human rights violations, all of them more or less explicitly intended as a substitute to criminal prosecution: As concerns East Timor, the Governments of Indonesia and Timor Leste have jointly set up the Commission of Truth and Friendship. For dealing with the massacres committed during Suharto's rise to power in 1965/66 and other cases a national Truth and Reconciliation Commission (TRC) had already been in the making. TRCs are also envisaged for Aceh and Papua. A common characteristic of the commissions, be they already established or only conceived in law, is that they do not aim at bringing to light the truth, but at burying the past and providing amnesties for perpetrators and therefore deny victims the essential right to justice and perpetuate impunity. Such contested provisions on the national TRC were brought before the Indonesian Constitutional Court, which then declared the entire TRC law unconstitutional and invalid. We recommend that the Gol promptly draft new legislation in line with the constitution and international law and make sure that an appropriate national TRC as well as appropriate TRCs for Papua and Aceh, which are so far conceived as branches of the national TRC, are established as soon as possible.

Aceh

We welcome that the peace process in Aceh is on such good track. The elections in December, conducted with the Aceh Monitoring Mission (AMM) still present, ran smoothly and peacefully. The winner of the governorship was a former GAM member who had been involved in the Helsinki peace talks. Gol and military leaders have stated their acceptance of the outcome and the new governor his willingness to cooperate with the Gol. The latter furthermore made efforts to assure the Gol that he will not seek independence. Given the unease about the outcome in some political circles and the fragility of the achieved success, it is of utmost importance that conflicts over Aceh's further political reconstruction are handled skillfully and with care. With the departure of the AMM in mid-December 2006, it is important that the international community continues to monitor developments. In this respect, we welcome that Interpeace, an NGO chaired by former Finnish President Martti Ahtisaari who, together with his Crisis Management Initiative, was instrumental in bringing about the Helsinki MoU, will from January 2007 follow up on AMM's mission. We call on the HRC to support Interpeace's mission and stand ready to lend this NGO state backing for its task of maintaining peace, should it be necessary. One likely stone of contention between the Aceh provincial government and Gol is the Law on the Governing of Aceh. This law has all along been heavily criticised by GAM and civil society organisations for not fully living up to what had been agreed on in the MoU. The new governor has announced that he will work for its revision. We recommend a review of those provisions in the law, which preclude the prosecution of crimes committed during the 30 years of conflict, so that perpetrators and those with command responsibility for gross human rights violations can be tried before (ad hoc) human rights courts.

Since the introduction of Islamic law in Aceh, cruel and degrading punishments have been implemented in the province. Dozens have been caned in public for illegal gambling, alcohol consumption, adultery, and being alone with members of the opposite sex to whom they are neither married nor related. New draft provincial legislation even envisages the possibility of hand amputations for theft. The acceptance of Islamic law in Aceh is contested; it has often been called an "unwanted gift". We recommend that the *comprehensive* application of and *compulsory* submission to *shari'a* law in Aceh be subject to an authentic democratic review process, especially concerning the aspects, which infringe on personal - particularly women's - rights and freedoms, and concerning the application in the sphere of criminal law, which includes the implementation of cruel punishments such as caning and possibly even amputations. In this respect, we welcome the announcement of the new governor to review respectively halt some of the mentioned rights violating *shari'a*-based legislation.

Papua

The conflict in Papua remains unresolved. Hopes for a political solution are fading fast. One reason for this has been the lack of implementation on the part of the central government of the political and administrative reforms provided for in the 2001 Special Autonomy Law. Mismanagement and corruption on the part of the local administration have furthermore been responsible for the fact that the population at large has not seen any benefits from the province's improved financial situation.

The situation is currently just below boiling point; eruptions of violence and bloody clashes between desperate young Papuans and the security forces can happen any time and lead to an escalation of the extremely volatile situation. The bloody clashes in March 2006 should serve as a warning that prompt measures to deescalate the situation and to initiate steps towards sustainable conflict resolution are most urgent. Demilitarisation of the province and the start of a genuine dialogue between Papuan representatives and the Gol are two necessary steps. Another is that the state authorities live up to principles enshrined in the ratified International Covenant on Civil and Political Rights as well as in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others. This includes proper judicial proceedings, without intimidation and ill-treatment of prisoners and witnesses, as have yet again only recently been reported e.g. from the trials for the March violence. It is furthermore urgent also for Papua that impunity be ended. The outcome of the trial concerning the Abepura incident in 2000 has been mentioned. Other recent human rights violations, which remain unresolved, include the incidents of Wamena (2003) and Wasior (2001) (see previous reports). For both cases the National Human Rights Commission Komnas HAM conducted preliminary investigations concluding that gross human rights violations took place. But so far no prosecution proceedings have been initiated.

Central Sulawesi

During 2000/01, Central Sulawesi had been one of the bloodiest scenes of communalist violence, leaving more than 1,000 people, Muslims and Christians, dead. The efforts of today's Vice President Yusuf Kalla eventually led to the Malino I peace accord of December 2001. The following fragile peace was based on near complete segregation of the conflicting parties, whereby violent incidents could not be entirely prevented. Over the past years, they have become ever more frequent, with several bomb blasts resulting in a large number of deaths and other gruesome crimes (see previous reports). In a six months security operation in 2006, hundreds of weapons as well as ammunition and explosives were confiscated and a number of suspects detained. But so far, no clear image has emerged as to the perpetrators and their background. In September, the much criticised execution of three Christians, sentenced to death for their implication in violent clashes in 2000, triggered a new wave communalist violence. In October, a Christian priest was killed, shot in the head while shopping. In the same month, the government formed a fact finding team, however only for one incident, namely a clash between police and armed civilians, which left one person dead. It remains important to establish an *independent* commission to conduct a *comprehensive* investigation into causes and background of the violence in Central Sulawesi – a long-time demand by civil society organisations - and to support sustainable inter-religious/inter-communal reconciliation measures.

Increasing restrictions on personal – particularly women's - rights and freedoms

Not only in Aceh, which is so far still the only province where the *shari'a* is officially in place, a stricter Islamic code of dressing and demeanour is enforced. Over the past years a number of local governments have put into effect regional bylaws, which introduce *shari'a*-like precepts that impinge on personal rights and freedoms, especially for women and girls. In some districts even the implementation of caning penalties has been reported. We welcome the announcements of the Gol to review such discriminatory bylaws. We recommend conducting human rights training programs for local legislators and officials in order to enhance the protection of human rights in law and the working of key principles of a democratic constitutional state under the rule of law. The international community could be invited to give technical support to such measures.

Cause for concern are also several provisions in the draft of a new anti-pornography law, which envisage harsh penalties among others for what is considered an indecent female dress code, e.g. bare shoulders (which in some part of the country is part of the traditional way of

dressing), and kissing in public. We recommend that the Gol heed the calls of civil society organisations to abolish these and like-minded provisions from the draft law.

Death penalty

The death penalty is still on the statute books in Indonesia and dozens of convicts are on the death row. Numerous civil society groups are calling for the abolition of the death penalty. We recommend that the Gol heed these calls and take prompt steps to prepare the ratification of the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. In the meantime we recommend that the Gol opt for a moratorium on capital punishment.

Poverty

According to a recently released World Bank report almost half of the Indonesian population, 49%, live on less than 2 US Dollar a day. Aceh, Papua and (large parts of) Central Sulawesi belong to the areas with the highest poverty rates. Poverty alleviation remains an urgent task in all of Indonesia. And in regions where a desperate socio-economic situation coincides with political conflicts, violence and human rights violations or with a volatile post-conflict environment, poverty alleviation is furthermore crucial as an additional supportive measure in peace processes.

Concurrent measures should include improvements in affordable access to health care and education facilities. We call on the Gol to continue its efforts to live up to the constitutional obligation to dedicate 20% of the state budget to education so that free primary education as aimed at, among others, in the ratified ICESCR can be fulfilled. We call on the international donor community to support the Gol in eradicating poverty.

On the basis of the situation outlined above, we recommend the following to the 3rd UN Human Rights Council:

- to urge the Gol to end impunity and to undertake further and sustainable steps on the way to establishing an independent judiciary which is free of corruption and fear, particularly
- to bring perpetrators of past and present human rights violations to justice and to comply with the recommendations of the Commission of Experts to re-open cases tried before the Ad-Hoc Human Rights Court and to consider prosecuting General Wiranto;
- to encourage the Gol to promptly draft new legislation on a Truth and Reconciliation Commission, which is in line with international law and make sure that an appropriate national TRC as well as appropriate TRCs for Papua and Aceh are established as soon as possible;
- to offer the Gol technical assistance with regard to the above mentioned;
- to urge the Gol to secure the safety of human rights defenders in accordance with the relevant UN Declaration and to ensure a continuation of the investigation into the murder of Munir;
- to urge the Gol to invite the Special Rapporteur for Extra-judicial, Summary or Arbitrary Executions and to agree to an investigation into the murder of Munir by an independent team involving UN-mandated experts;
- to ensure the Gol their full support for the continued peace process in Aceh;
- to support the Gol in identifying dialogue partners for a peaceful resolution of the conflict in Papua, to support such a peaceful dialogue with all necessary means and to urge the Gol to ensure strict implementation of the Special Autonomy Law;
- to encourage the Gol to invite the Special Rapporteur on Torture to visit the country;
- to urge the Gol to protect personal – particularly women's – rights and freedoms in law and in practice and to take appropriate steps in cases where they are or are threatened to be violated;

- to offer the Gol assistance with human rights training programs for local legislators and officials;
- to encourage the Gol to establish an independent commission with the task of conducting a comprehensive investigation into causes and background of the violence in Central Sulawesi;
- to offer the Gol support for inter-religious/inter-communal reconciliation measures, esp. in Central Sulawesi;
- to encourage the Gol to continue implementing its Human Rights Action Plan, to accede to the ICC and the Optional Protocol to the Convention against Torture ahead of schedule and to ratify other international instruments, above all the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.