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Continents

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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

Eight years of democratisation and transformation in Indonesia, and victims of grave human rights violations are still waiting for justice!

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 (CoE). The UN Secretary General, who established the Commission, recently recommended that the Security Council endorse its findings. We call on the HRC to lend its support to the Secretary General's 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) 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. The proceedings in this murder case have so far only led to the conviction of the person charged with having carried out the actual poisoning. Despite obvious indications pointing to an involvement of the State Intelligence Agency BIN the investigation has so far not followed up this lead. We would recommend the Government of Indonesia (GoI) to ensure the continuation of the investigation, to make public the final report and recommendations of the Presidential Fact-Finding Team, and to take steps that the criminal defamation charges filed by the former head of BIN, General Hendropriyono, against two members of the Fact-Finding Team, Usman Hamid and Rachland Nashidik, are dismissed.

Various efforts are under way to deal with past human rights violations, which are more or less explicitly conceived 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. The massacres committed during Suharto's rise to power in 1965/66 and other cases can soon be brought before the planned national Truth and Reconciliation Commission (TRC). For Aceh and Papua, TRCs are also envisaged. A common characteristic of the commissions 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 have recently been challenged before the Indonesian Constitutional Court, whereby the outcome remains yet to be seen. We would recommend that the contested amnesty provisions be revised to bring them into accordance with international law, otherwise credible accountability cannot be achieved.

Aceh

One year after the signing of the historic Helsinki Memorandum of Understanding (MoU) between the Gol and the Free Aceh Movement (GAM) the situation of the province devastated by 30 years of conflict and the tsunami catastrophe has improved enormously. Under the supervision of the Aceh Monitoring Mission (AMM), comprising monitors from EU- and ASEAN countries, a substantial demilitarization of Aceh was carried out in late 2005. In a further move, imprisoned GAM members have been released from jail and rehabilitated. Programs designed to reintegrate former combatants into society are under way.

In July 2006, after long heated debates, eventually the Law on the Governing of Aceh was passed. GAM and civil society organisations have criticised that the law does not fully live up to what had been agreed on in the Helsinki MoU, especially as regards human rights provisions. The concerns with respect to the TRC have been mentioned; furthermore, the law precludes the prosecution of crimes committed during the 30 years of conflict. We recommend a review of the corresponding provisions in the law to enable that perpetrators and those with command responsibility for gross human rights violations be tried before (ad hoc) human rights courts.

Despite their discontent, GAM leaders have stated their commitment not to return to armed struggle. In order to keep a sustainable peace in the province it is imperative that the Gol ensures that the law is fully implemented, that the precepts of the Helsinki MoU are not eroded any further, and that the planned local elections in December run smoothly and peacefully. In this respect we welcome that the AMM mission has been extended until after the local elections.

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. The acceptance of Islamic law in Aceh is contested; it has often been termed as an "unwanted gift". The findings of a recent study, that under martial law in Aceh the military gave a boost to the religious bureaucracy, underscore the questionable legitimacy of *shari'a* in the province. We would 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.

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 this year should serve as a warning that prompt measures to deescalate the situation and to initiate steps towards sustainable conflict resolution are most urgent.

Over the past year, according to first-hand information, torture of prisoners took place in a number of cases, among others of those detained in connection with the killing of security forces' members in March. Unfair trials and political sentencing have continued to take place in Papua. The most blatant example is possibly the conviction of two independence supporters, Filep J.S. Karma and Yusak Package, who were sentenced to prison terms of 15 and 10 years respectively for treason against the state; they had organised a peaceful celebration of the self-proclaimed Papua Independence Day, which ended in clashes between the police and participants.

Past human rights violations remain unresolved. Among others, concerning the incidents of Wamena (2003) and Wasior (2001) (see previous reports), on which the National Human Rights Commission Komnas HAM conducted preliminary investigations concluding that gross human rights violations took place, 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. The efforts of today's Vice President Yusuf Kalla eventually led to the Malino I peace accord of December

2001, which then served as a model for the later accord for the Moluccas (Malino II). The fragile peace over the past years is based on near complete segregation of the conflicting parties. Occasional renewed violent clashes could not be prevented. Initial steps to reconciliation have been undertaken.

This “cold peace” has been undermined by several attacks – apparently intentionally. Two bomb blasts in Poso on April 28th, 2005, luckily without casualties, sent a clear signal: they were aimed at the NGOs „Poso Reconciliation and Conflict Resolution Center“ (PRKP) and „Civil Society Empowerment Commission“ (LPMS) and thus against conflict resolution efforts by civil society actors. One month later, on May 28th, 2005, a bomb exploded on the market of Tentena killing 22 people. On October 29th, the death of three schoolgirls, who had been beheaded with machetes, shocked observers around the world. On New Year’s Eve 2005, a bomb blast on the market in Palu killed eight people. During the six months security operation intended to keep peace in the region, hundreds of weapons as well as ammunition and explosives have been confiscated and a number of suspects detained. But so far, no clear image has emerged as to the perpetrators and their background. As the heated public debate over the imminent execution of three Christians convicted for their implication in violent clashes in 2000 shows how fragile the inter-religious relations and the “cold peace” are, it remains important to establish an independent commission to conduct an investigation into causes and background of the recent violence 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 would recommend that the authorities take appropriate steps to initiate judicial review of such regional legislation.

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 would recommend that the Gol heeds the calls of civil society organisations to abolish these and like-minded provisions from the draft law.

Human rights instruments

We welcome that, on September 30th, 2005, the Indonesian Parliament (DPR) and Government ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). This constitutes an important step in the process of human rights codification and on Indonesia’s path towards a democratic state under the rule of law. However, it is regrettable that the ratification of the two covenants has been conducted with a legal reservation concerning Article 1 stipulating the right of all peoples to self-determination. The reason for this might have been the experience with secessionist conflicts especially in Papua and Aceh as well as a different theoretical understanding regarding the concept of the right to self-determination. We thus call on the members of the HRC, to enter into a dialogue with the representatives of the Republic of Indonesia in order to clarify the concept of Article 1 ICCPR respectively ICESCR and to urge for ex-post ratification.

The Gol has stated in its Human Rights Action Plan that it envisages the ratification of the Optional Protocol to the Convention against Torture. In view of continued torture allegations we would recommend that the Gol speeds up the ratification of the Protocol and in the meantime grants the long-time request of the Special Rapporteur on Torture to visit the country.

In order to underline its seriousness about its commitment to human rights, we would furthermore recommend that the Gol ratifies the Rome Statute of the International Criminal Court earlier than envisaged in the Human Rights Action Plan.

Death penalty

The death penalty is still on the statute books in Indonesia and dozens of convicts are on the death row. Currently, a number of imminent executions have become an issue of public debate, and numerous civil society groups are calling for the abolition of the death penalty. We would recommend that the Gol

heeds these calls and takes 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 would recommend that the Gol opts for a moratorium on capital punishment.

On the basis of the situation outlined above, we recommend the following to the 2nd 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 and
- to bring the terms of reference of the planned Truth and Reconciliation Commissions and of the existing Commission of Truth and Friendship into accordance with international law, particular with regards to the amnesty provisions;
- 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, to ensure a continuation of the investigation into the murder of Munir and to make public the final report and recommendations of the Presidential Fact-Finding Team established to investigate the murder;
- to encourage the Gol to extend invitations to the Special Representative of the UN Secretary General on Human Rights Defenders and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Indonesia;
- 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 take appropriate steps in cases where they are or are threatened to be violated;
- to encourage the Gol to establish an independent commission with the task of conducting an 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;
- to ensure the Gol their full support for the peace process in Aceh.