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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

Aceh

Decades of war and the devastating tsunami that struck the province in December 2005 have caused immense suffering for the Acehnese. But the window of opportunity that opened through this catastrophe has eventually led to a significant improvement of the human rights situation in this region. After initial difficulties, domestic and foreign organisations were by and large granted unrestricted access to the conflict zone which had previously been almost entirely closed off. Negotiations between the independence movement GAM and the Government of Indonesia (GoI) led to the signing of the Helsinki Memorandum of Understanding (MoU) on August 15th, 2005. Since then, armed clashes and human rights violations have occurred only in a few exceptional cases. Under the supervision of the Aceh Monitoring Mission (AMM), comprising monitors from EU- and ASEAN countries, a substantial demilitarization of Aceh has been carried out during the last months of 2005. A few contested cases notwithstanding, all imprisoned GAM members have been released from jail and rehabilitated. Programs designed to reintegrate former combatants into society are under way.

For a lasting and stable peace in Aceh it is now essential that the political and economic agreements of the peace accord are implemented as smoothly as the demilitarization. Resistance from several factions of the Indonesian Parliament (DPR) and from parts of the military has yet to be overcome. The decision to extend the AMM mandate that was scheduled to end on March 15th, 2006, for another three to six months is to be welcomed and should be wholeheartedly supported by the governments of the states participating in the mission.

Human rights instruments

In unison with others, the authors of this paper have frequently called for the ratification by Indonesia of the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). We now welcome especially that, on September 30th, 2005, the Indonesian Parliament (DPR) and Government ratified both covenants. 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 UNCHR, 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.

In view of the fact that the execution of the death penalty is imminent in several cases, the ratification of the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty is urgent. In order to demonstrate its seriousness about its commitment to human rights, we would furthermore recommend that the Government of Indonesia ratifies the Rome Statute of the International Criminal Court ahead of schedule and rejects any attempts, as recently reported, to sign an agreement with the USA that would grant citizens of the latter state immunity from prosecution.

Current conflicts: Papua, Central Sulawesi, Moluccas and terrorism

Despite the progress mentioned above, the human rights situation in Indonesia remains cause for concern. In some parts of the country it has even deteriorated.

The conflict in Papua remains unresolved. Hopes for a political solution are fading fast. One reason for this is 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. Due to a lack of mutual confidence, in 2005, Papua has gone through a number of critical situations during which an escalation of violence seemed imminent. As a result of the moderating and considerate actions by leaders on both sides clashes could so far be prevented. But the situation remains volatile. Reports on the re-deployment of troops from Aceh to Papua contribute to fears of a renewed escalation. According to first-hand information, in July and September, prisoners in Wamena were tortured. In another development, two independence supporters, Filep J.S. Karma and Yusak Pakage, 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. Reports by a parliamentary investigation commission, stating that up to 5.000 people had been either killed or expelled during a military operation in the highlands of Wamena (Mulia) in August 2004, have so far not led to any consequences for those responsible.

During 2000/01, apart from the Moluccas, 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 in both regions 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. Gruesome cruelties have since started to be part of everyday life in Central Sulawesi once again. 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. In several raids, weapons and explosives have been confiscated and a number of suspects have been detained. But so far, no clear image has emerged as to the perpetrators and their background. There are indications pointing at a possible involvement of Jemaah Islamiyah and connections with terrorist activities like, for example, on Bali where on

October 1st, 2005, 22 people were killed in an attack. But observers also consider as possible some co-operation with individual members of the security forces and the secret services. An independent commission should immediately be established to conduct an investigation into causes and background of this violence.

Religious freedom

Debates about religiously motivated terrorist violence notwithstanding, during 2005 a number of serious violations of religious freedom and human rights occurred. In July, almost 10,000 people took part in an attack on a building complex belonging to the Islamic splinter-group Ahmadiyah in Bogor during which several buildings were set on fire. Whereas the government condemned this incident, the Council of Ulema (Islamic scholars), MUI, remained silent on the violence. Days later MUI issued a fatwa underlining the ban on sectarian movements and rejecting pluralism and liberal ideas.

Part of the decentralisation process has been a redistribution of legislative authority. Numerous new provincial and regional regulations have been issued, some of them, however, not in accordance with human rights. In Tangerang (Banten) and Padang (West-Sumatra), schoolgirls were forced to wear the headscarf. In Padang, raids against unmarried couples were carried out, during which the police co-operated closely with local civilian groups that were by no means authorized to carry out such executive tasks. Aceh is the only province with Islamic law in place. Based on a strict interpretation of the Shari'a, in numerous cases gamblers have been subjected to corporal punishment in public.

Impunity

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. In this respect, especially the report of the Commission of Experts (CoE) which had been established by the UN Secretary General needs mentioning. Likewise, trials before an ad-hoc human rights court 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.

Various efforts are under way to deal with past human rights violations: The massacres committed in the aftermath of Suharto's rise to power and other cases can soon be brought before the national Truth and Reconciliation Commission which is in the making. As concerns East Timor, the Gol and the Government of Timor Leste are currently jointly setting up a Truth and Friendship Commission. For Aceh, the Helsinki MoU also envisages a truth commission. A common feature of these commissions is that they do not aim at bringing to light the truth, but at burying the past and providing amnesties for perpetrators.

On the basis of the situation outlined above, we recommend the following to the 62nd UN Commission on Human Rights:

- to ensure the Gol and GAM their full support for the peace process in Aceh and to encourage the states participating in the AMM to extend their commitment;

- to support the Gol in identifying dialogue partners for a comparable 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 urge 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 encourage the Gol to continue implementing its Human Rights Action Plan, to accede to the ICC 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 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 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 CoE to re-open cases tried before the Ad-Hoc Human Rights Court and to consider prosecuting General Wiranto.