



## Aide-Mémoire, October 2011

### Indonesia

#### The Indonesian Government must ensure the Rule of Law

After the fall of the Suharto-Regime in 1998, Indonesia reoriented its human rights policies. Laws on human rights and human rights courts were passed, the national human rights commission was given additional powers and the Ministry of Justice was transformed into the Ministry of Justice and Human Rights. At the UN-level, Indonesia became a party to both human rights covenants and signed a range of important conventions, such as the Convention against Torture. Through its membership in ASEAN, Indonesia has participated in setting up a transnational human rights commission. The government has also commenced human rights dialogues with foreign partners, including the EU, Norway and Switzerland.

Positive changes have also been noticeable in practice, for example in terms of press freedom, freedom of assembly and freedom of expression.

Upon closer inspection, however, many of the changes in the legal frameworks are more of a cosmetic nature rather than leading to the consistent implementation of human rights principles. The Government of Indonesia (GoI) seems to be most willing to discuss those issues which are least likely to collide with the vested interests of the political elites. In the human rights dialogue with the EU, for example, the GoI wanted to discuss conditions in prisons and juvenile justice. Raising sensitive issues such as the human rights abuses committed during the regime change in 1965/66 or current cases of abuse in Papua risks being labelled as a „communist” or „separatist.”

Impunity and the human rights situation in Papua remain the two greatest challenges. Recent developments around issues of freedom of religion or belief are also alarming.

#### Torture

In the past year, video recordings of two brutal cases of torture of Papuan civilians became public via the internet, leading to a global outcry. The two cases are evidently only the top of the iceberg. Although Indonesia has signed the Convention against Torture, it has not ratified it to date. Torture is not classified as a criminal act. A comprehensive review of the Criminal Code has been delayed for years. If the perpetrators – as in the case of the two videos – are members of the armed forces, they are subject to military justice which also does not classify torture as a criminal act. This means that perpetrators, if they are sentenced at all, will only face disciplinary proceedings leading to light sentences of a maximum of several months.

## Justice and Law/Impunity

Several major scandals in the justice sector have greatly undermined the little trust the public has had in the Rule of Law. The refusal of the mayor of Bogor to implement a ruling of the supreme court on approving the construction and use of a new Protestant church (GKI Yasmin) has not lead to any consequences. The GoI is not demanding compliance with the decisions of the judiciary.

Court decisions that do not adhere to the appropriateness of means are undermining the public's sense of justice. Basic rights standards are broken when cases of torture are punished with sentences of a few months but peaceful protests such as the raising of a banned flag lead to long prison sentences of several years. It is extremely worrying as well that the instigators of a deadly attack against the Ahmadiyah religious minority group received only a light sentence of a few months in prison while a victim was sentenced to six months jail.

Following the poisoning by arsenic of the human rights defender Munir 2004 aboard a flight to Amsterdam, President Susilo Bambang Yudhoyono stated that solving the case was a top priority. He set up a commission of inquiry, which was able to unearth important indications and the direct perpetrator was sentenced to a lengthy term in jail. The trial against the man alleged to have commissioned the murder, former State Intelligence Agency deputy chairman General Muchdi, was inconsequential. Key witnesses were not heard as they did not respond to the summons. Court cases against other suspects were never opened. Nevertheless, the GoI considers the case to be „closed.“

Prior to and following the resignation of Suharto in 1998, thousands of students demonstrated in the streets of Jakarta. Several students were killed when security forces opened fire on them at the Semanggi junction. According to the investigations of the National Human Rights Commission (Komnas HAM) the case is a case of grave human rights violations as outlined by the law, and could thus warrant the establishment of an ad-hoc human rights court. This would require a decision of parliament and for the Attorney General to bring in charges. For years, however, parliament and the Attorney General's office have been passing the buck to each other over the case.

In a move in 2009, which raised high hopes, the national parliament passed a resolution on the fate of those who disappeared in 1997/98. The GoI has however not followed up on the recommendations of the resolution, such as the establishment of an ad-hoc human rights court.

## Aceh

The Helsinki MoU has effectively brought the decades-long violent conflict between the Acehnese independence movement GAM and the Indonesian armed forces to an end. The provisions of the MoU on addressing past abuses have however not been fulfilled. Six years after the devastating tsunami, most of the projects of international organisations have been completed and the province must now stand on its own two feet. The upcoming gubernatorial elections have been marked by a conflict between various factions of the former independence movement, which has already claimed several lives. An accompaniment of the process by external observers could help in reducing conflicts.

As part of its special autonomy, Aceh is the only province in Indonesia to have introduced Islamic shariah law. A law passed by the provincial parliament foresees extreme forms of punishment such as amputation of a hand for thieves or stoning for adulterers. The current governor has refused to sign the law to date. Currently, extra-marital affairs, consumption of alcohol and gambling are already punished by public caning. The shariah police force (*Wilayahul Hisbah*) enforces compliance with shariah regulations, often employing methods more reminiscent of mob justice than policing. The current form of implementing shariah in Aceh not only contravenes basic human rights and the Indonesian constitution (UUD 45) but also Islamic jurisprudence itself.

## Freedom of Religion or Belief

Civil war-like strife between religious communities, which claimed thousands of lives ten years ago in the Moluccas and in Central Sulawesi, no longer define the situation. What has been occurring instead has been an increase of religiousness amongst the public, leading to polarisation and radicalisation amongst the different communities.

Numerous provinces and municipalities have adopted restrictive by-laws based on religious tenets such as shariah law. These include for example restrictions on clothing. Although these by-laws are unconstitutional, the GoI has not stepped in to put an end to the spread of these restrictions.

Radical Islamist groups such as FPI (*Front Pembela Islam*) or *Hizbut Tahrir* do not enjoy the support or sympathy of the majority of the moderately Muslim population. Nevertheless, leading politicians, of the Muslim community and representatives of other civic organisations have not stood up against these groups. This has led to an increasing de facto acceptance of these groups.

Religious minority groups such as Ahmadiyah and Baha'i as well as social minority groups such as LGBT (Lesbians, Gays, Bi- and Transsexuals) are constantly under threat of attacks by these groups. Christians, Buddhists and other non-Muslim communities are also increasingly susceptible to violent attacks and face increasing obstructions from state bureaucracy, for example when seeking approval for the construction of new churches or temples.

The attack on the Ahmadiyah community in Cikeusik, Banten Province, on February 6, 2011, in which three members of the community were brutally killed, and its aftermath show that the GoI is failing in its supreme responsibility of protecting the physical integrity and security of all of its citizens.

Both the Indonesian constitution (UUD 45) and the International Covenant on Civil and Political Rights, which Indonesia has acceded to, oblige the GoI to protect the freedom of religion or belief. Numerous laws and decrees in fact violate these principles, amongst them the 1965 Law on Blasphemy (amended 2006) which only recognises six religions explicitly. A 2008 Joint Ministerial Letter by the Ministry of Religious Affairs and the Ministry of the Interior restricts Ahmadiyah activities and is used as a legitimisation for attacks against the community.

## Papua

The human rights situation in Papua (i.e. the provinces of Papua and West Papua) is extremely worrying. The special autonomy package for the two provinces is widely seen as a failure and there has been a hardening of the political fronts. Political developments such as the upcoming gubernatorial elections, the formation of the consultative MRP council and continued inflationary establishment of new administrative units increase the potential for conflicts. These are compounded by the increased presence of extractive industries such as mining, forestry and plantation projects, which in turn lead to horizontal and vertical conflicts.

The visible presence of the military and paramilitary police in the two provinces is perceived by many Papuas as being in and of itself intimidating. Numerous cases of blatant discrimination, arbitrary arrests, excessive use of force, torture of detainees and prisoners have reinforced this perception. Access of international organisations, media, foreign politicians and diplomats to Papua is severely restricted. This practice of the GoI contradicts its own reassertions that the situation in Papua and West Papua is „completely normal.”

The Indonesian Institute of Sciences (LIPI), has carried out excellent analyses of the situation in Papua which form the basis for a „road map“ for solving the conflict through a process of dialogue.

## ESC-Rights

According to statistics of the World Food Program's (WFP), fifty-two percent of Indonesians, around 125 million people, live below the poverty line of 2 US\$ per day. Urban poor are often the victims of urban development projects. Their rights of residence are ignored and they are often criminalised together with recent migrants, beggars and other marginalised groups.

## Human Rights and Environment

The largest number of human rights violations in Indonesia is related to the exploitation of natural resources. Institutionalised violations due to development policies and laws are resulting in forced eviction and relocation. The disregard of indigenous peoples' rights including the right to food, and racial discrimination, are violations of economic, social and cultural rights. Furthermore, human rights are abused when conflicts are responded with an authoritarian approach.

Indonesia promotes the expansion of food and energy estates, as well as new mining concessions, especially in the 'outer islands' (i.e. the islands beyond Java, Bali and Madura). Large segments of the population lose the access to their land, and therefore their livelihood, food security and cultural identity. Of gravest concern is the current establishment of palm oil estates in Papua and Kalimantan, where 7 respectively 10 million hectares are planned. Customary land tenure rights face great difficulties in achieving recognition as there are no procedures developed yet. Dr. Olivier De Schutter, United Nations Special Rapporteur on the Right to Food, in 2009 recommended principles and measures to discipline large scale land acquisition („land grabbing”) in order to protect indigenous peoples.

Large scale plantations and mines attract hundreds of thousands of migrant workers, which may marginalize indigenous peoples and acutely threaten their existence. Relocation of local inhabitants and transmigration create new horizontal conflicts, particularly in sensitive areas like Papua. Companies and security personnel often use force to persuade the local population to agree to the transfer of their land. Military is stationed around plantations and mines, creating an environment of fear. According to data from the Indonesian palm oil farmers union SPKS, in 2010, 129 palm oil farmers have been criminalized and 20 farmers have been murdered.

#### **Recommendations:**

The UN Human Rights Council, the EU and the German Federal Government should work towards

- GoI to immediately ratify the Convention against Torture, to criminalise torture and accede to the International Criminal Court,
- GoI to systematically address legal, juridical and administrative reasons for continued impunity
- The adherence to the principle of the appropriateness of means in court sentences and enforce compliance of all citizens with laws and court sentences,
- GoI and the provincial government of Aceh to allow a long-term observation mission for the upcoming gubernatorial elections,
- GoI consistently taking action against unconstitutional religiously inspired by-laws,
- Ensuring that the State and the GoI fulfil their obligations in protecting the lives and livelihoods of all citizens,
- GoI changing laws and practices which contravene stipulations of the International Covenant on Civil and Political Rights (ICCPR) on freedom of religion or belief
- GoI inviting the UN Special Rapporteur on Freedom of Religion or Belief,
- GoI commencing a serious and open consultation with Papuans on finding a solution to the conflict, reducing the military presence and addressing human rights violations,
- GoI to allow free access to international organisations, journalists and politicians to Papua and West Papua provinces,
- GoI to uphold its obligations under international law, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women,
- GoI to uphold the UN Declaration on the Rights of Indigenous Peoples and to revise laws, regulations and practices which discriminate against, and override the rights of indigenous peoples,
- The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples as well as the UN Special Rapporteur on the Right to Food, to visit and to report on the situation of indigenous peoples, affected by agro-industrial and mining development.