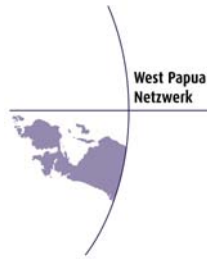


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INDONESIA!



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Aide-Mémoire

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Indonesia

The government must reign in on increasing violence and restrictions of free expression

After last year's by and large peaceful general elections, Indonesia is internationally accepted as a democratic country that upholds fundamental human rights. Within ASEAN (Association of Southeast Asian Nations), Indonesia tries to position itself as a regional vanguard of human rights protection, as last witnessed by its role in the creation of an ASEAN human rights body. However, Indonesia's domestic human rights record continues to be a cause of concern. On one hand, progress has been made, for example through a parliamentary recommendation to try incidents of disappearances that occurred in 1997/98. On the other hand, the deteriorating human rights situation in the provinces of Papua, the repression and persecution faced by human rights defenders, arbitrary limitations on the right to free expression, and the ongoing impunity for serious human rights violations are just some of the many issues that need to be addressed immediately.

Papua

The human rights situation in the provinces of Papua has deteriorated in recent years. The climate of impunity and the heavy presence of military troops that have put Papua under de facto-military control facilitate the rising level of violence. In 2009, a new climax was reached during elections when numerous peaceful demonstrators were arrested and partly put on trial. Several of these incidents were accompanied by torture and ill-treatment. Arbitrary arrests, torture and ill-treatment during detention are also reported in relation to various attacks on employees of the US-owned Freeport Mc-Coran gold and copper mine near Timika by unidentified groups. The Indonesian police so far failed to identify the perpetrators of the attacks, which continue until today. Linked to the tense situation in the Freeport areal is the extra-judicial killing of Kelly Kwalik, a leader of the Free Papua Movement OPM (Organisasi Papua Merdeka) on 16 December 2009 by the Indonesian police forces, which requires an independent investigation.

Criminalization and violent suppression of peaceful protest has also increased in the wake of the 2007 ban of the use of the Papuan flag, which violates Law No. 22/2001 on Special Autonomy for Papua. Many individuals have been prosecuted and sentenced to lengthy terms of imprisonment, some of whom were tortured in custody. The fatal shooting of Opinus Tabuni by Indonesian security forces during peaceful activities to commemorate the International Day of the World's Indigenous People on 15 August 2008 serves as an example and has yet to be investigated and prosecuted adequately. Regardless of its symbolic meaning, the raising of a flag is not a criminal act but an expression of opinion and should not be violently suppressed.

As a result from economic development policies, the ongoing political conflict as well as the massive influx of migrants from other parts of Indonesia, indigenous Papuans continue to be marginalized in their own land since the 1970s. Access to basic education and health care, to land and economic opportunity as well as to other government services remains below the bare minimum. The situation is exacerbated by institutionalized discrimination against indigenous Papuans and is expected to deteriorate in the coming years due to development plans that mainly rely on the increased and excessive exploitation of natural resources.

The government is increasingly barring international aid, NGO-workers and journalists from entering Papua in what appears to be an attempt to conceal the deteriorating human rights situation. The planned visit to Papua by the Commissioner for Human Rights and Humanitarian Aid of the German Foreign Office that was scheduled for February 2009 was cancelled in the last minute. The International Federation of the Red Cross was expelled from Papua in April 2009 after visiting political prisoners and reporting on the poor facilities of prisons. Pressure on other international NGOs in Papua is growing as well, with the immigration office refusing to reinstate work or travel permits.

Aceh

Impunity for gross human rights violations remains a major concern in Aceh, where decades of armed conflict have left a legacy of abuse. The Helsinki peace agreement between the government of Indonesia and the Free Aceh Movement and the Law on Governing Aceh that implements the Agreement envisage the establishment of an ad hoc-human rights court and a local truth and reconciliation commission to deal with human rights violations committed during the conflict. Up until today, this has not been implemented.

Aceh is also the only Indonesian province where the *shari'a* is officially in place. In 2009, the Acehese Parliament passed a law that allows offences such gambling and adultery or other sexual behaviour like homosexuality to be punished among others by caning and stoning. While so far no stoning has occurred, public canings have been reported repeatedly. International and Indonesian NGOs have strongly condemned these inhuman and degrading punishments.

In another alarming development, several violent attacks on foreigners occurred in recent months. For example, the head of the German Red Cross in Indonesia was shot and severely injured on his way to the airport in Banda Aceh in November 2009. These incidents cause concerns about a possibly rapid rise in violence after the withdrawal of the majority of foreign aid workers in 2008/09.

Human Rights and Environmental Issues

National and international economic stakeholders exploit Indonesia's natural resources without concern for the environmental destruction and threats to human rights they cause. The exploitation of natural resources correlates with myriads of land disputes. The national and international companies involved, often in collusion with the local police and military, force the inhabitants off their land. Rights of traditional owners, particularly indigenous people, to give their free, prior and informed consent to the development of their lands is increasingly recognized under international law but is usually still denied in Indonesia. Frequent protests from traditional land owners ensue, often resulting in heavy crackdowns from the companies' own security forces, the police or the

military. Protestors have been arrested, beaten and even killed. Moreover, the sell out of Indonesian forests threatens the mere existence of the 60-90 million people who depend on the forests for their livelihood.

The Situation of Human Rights Defenders

Human rights defenders continue to be at risk when carrying out their work. In the most prominent case, the poisoning of well-known human rights lawyer Munir Said Thalib, two low-level perpetrators have been convicted. Yet, credible allegations against high-ranking individuals in the National Intelligence Agency (BIN) have not been investigated satisfyingly. In June 2009, the acquittal of former deputy director of BIN, Muchdi Purwoprandjono, who had been accused of ordering Munir's murder, was confirmed by the Supreme Court. The preceding first-instance trial had been criticized by human rights observers as violating minimum standards of a free, fair and objective trial.

In a related case, Usman Hamid, the coordinator of the Commission for the Disappeared and Victims of Violence (KontraS), an NGO founded by Munir, faces criminal defamation charges due to his outspoken involvement in the campaign on the murder of his colleague. The complaint was filed by Muchdi after his acquittal. A police investigation of the complaint is pending. Criminal defamation carries a maximum sentence of five years imprisonment under the Indonesian penal code and has frequently been used to repress human rights defenders in recent years.

Impunity for Past Human Rights Violations

Since the inception of democratic transition in 1998, Indonesia has made little progress concerning the prosecution of gross human rights violations committed under the 33-year long reign of autocrat Suharto. The ad hoc-human rights tribunals for atrocities committed in East Timor 1999 and Tanjung Priok 1984, the only trials for past violations of international humanitarian law so far, have failed to deliver justice to the victims. Numerous other cases, e.g. the shooting of protestors in Jakarta, in the district of Semanggi and at the University of Trisakti, in 1998 and 1999, have not been adequately addressed either. The National Human Rights Commission has recommended the establishment of an ad hoc-human rights court for these cases, but neither Parliament, President, nor the Attorney General have acted upon this.

On 29 September 2009, the Indonesian Parliament issued a widely praised resolution regarding the fate of activists that were disappeared in 1997/98. The parliament recommended 1) the President to establish an ad hoc-human rights court to try the offences; 2) the President to initiate a search for the whereabouts of the 13 persons missing until today; 3) the government to provide compensation and rehabilitation to the victims and their families; 4) the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. It is now imperative that the President and the Government of Indonesia swiftly implement these recommendations.

As the experiences of past human right-trials has shown, reforms to enhance the independence of the judiciary and to establish civilian supremacy over the military, police and intelligence services are necessary to ensure that future human rights-courts are conducted in a free, fair and objective manner.

Besides ad hoc-human rights courts, truth commissions also provide a useful instrument for Indonesia to come to terms with its authoritarian legacy. The annulment of the 2004 Law on the Truth and Reconciliation Commission by the Constitutional Court in 2006 does not mean that Indonesia does not need a truth commission. On the contrary, as national legislation still mandates such a commission, the Law should immediately be reformulated in accordance with international standards.

Censorship and the Rights to Freedom of Expression and Information

It is widely recognized that since 1998 press freedom in Indonesia has reached one of the highest levels in Asia. This laudable development is contrasted by an alarming rise in censorship on books

and movies. On 29 December 2009, the Attorney General's Office (AGO) issued a ban on five books, including the Indonesian translation of John Roosa's historical analysis "Pretext for Mass Murder: The September 30th Movement and Soeharto's Coup d'État in Indonesia", claiming that they "disrupt public order". The ban was based on Law No. 4/1963 on the Security of Printed Materials whose Content May Disrupt Public Order, as well as Law No. 13/2004 on the Attorney General, which states that the AGO is involved in the monitoring of printed materials in relation to the upholding of public order.

Since the inception of democratic transition in 1998, the AGO has banned at least 21 book titles. 15 of these contained analyses of the alleged coup attempt of 30 September 1965 and/or the subsequent mass killings of 500.000 to 1 Mio. alleged communists. The analyses deviated from the state-sanctioned version of the events. The latter remains faithful to the historical narrative that was used during the 32 years of authoritarian rule. It denies the mass killings and was manipulated for ideological ends. 13 of these books are history textbooks that were banned in 2007. Subsequently, the AGO publicly burned at least 30.000 copies of them.

The arbitrary and unilateral bans issued by the AGO constitute a clear violation of the right to free expression and the citizens' right to information as enshrined in the ICCPR. Moreover, the apparent attempt of the AGO to censor historical debate must be viewed as a direct consequence of the failure of the state to investigate serious human rights violations committed during the authoritarian rule of General Suharto and to prosecute those responsible.

Torture

The Indonesian Code of Criminal Procedure contradicts international standards of fair trial. The lack of legal safeguards for suspects and detainees leaves them vulnerable to human rights violations. Suspects are regularly detained for unduly long periods of detention without access to judges, legal counsel and independent medical examination. They are also rarely informed of their rights but denied basic rights such as the right to an interpreter, the right to visits by family members, the right to medical care and the right to remain silent. As the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, pointed out after his visit to Indonesia in 2007, this situation facilitates the habitual torture of detainees by police and military officers. Also, Indonesia has thus far failed to criminalize torture in its Penal Code and to establish an independent complaints mechanism for victims of torture.

Death Penalty

The death penalty is still on the statute books in Indonesia. Since a few years, the carrying out of executions had resumed on a regular basis. The last reported execution was carried out in December 2009. Dozens of convicts remain on the death row. Numerous civil society groups are calling for the abolition of the death penalty and a moratorium on pending executions. UN Special Rapporteur Nowak echoed this call, "given the lack of legal safeguards and doubts as to how confessions might have been obtained".

On the basis of the situation outlined above, we recommend the following to the 13th UN Human Rights Council:

- to urge the Gol to seek genuine and open dialogue with Papuans to solve the ongoing political crisis in Papua;
- to urge the Gol decrease military presence and control over Papua, to adequately address all incidents of past human rights violations and to ensure the adherence to fundamental human rights by the security forces in the region;

- to call on the Gol to revoke Government Regulation No. 77/2007 banning the use of the Papuan flag in line with its obligations under the ICCPR;
- to urge the Gol and offer assistance to ensure access to basic health care, education and to economic opportunity for indigenous Papuans;
- to call on the Gol allow foreign journalists, NGO- and aid workers free access to Papua;
- to urge the Gol to immediately establish an ad hoc-human rights court and a truth and reconciliation commission to come to terms with human rights violations committed during the armed conflict in Aceh;
- to urge the Gol and the government of Aceh to immediately revoke *shari'a*-laws that carry cruel, degrading or other inhumane punishments;
- to call on the Gol to protect the rights of indigenous people;
- to urge the Gol to ensure a thorough investigation of the murder of Munir up to the highest levels, to ensure that criminal defamation charges against Usman Hamid and other human rights defenders are dropped and to revoke articles of the penal code on criminal defamation that facilitate the persecution of human rights defenders;
- to call on the Gol to effectively guarantee the freedom of expression and opinion of all citizens, and to create additional mechanisms to protect human rights defenders;
- to urge the Gol to immediately establish an ad hoc-human rights court for the killings of student protestors in Trisakti and Semanggi 1998/99 and for disappearances that occurred in 1997/98, to search for the whereabouts of the 13 persons still missing and to provide compensation to the victims and their families;
- to call on the Gol to ratify the Convention on Enforced Disappearances;
- to offer assistance to the Gol to reformulate the Law on the Truth and Reconciliation Commission in accordance with international standards;
- to urge the Gol to repeal Law No. 4/1963 on the Security of Printed Materials whose Content May Disrupt Public Order;
- to urge the Gol to introduce legal safeguards for detainees in accordance with international standards and to criminalize torture in accordance with the definition contained in article 1 of the Convention against Torture and impose appropriate penalties;
- to encourage the Gol to accede to and implement the Optional Protocol to the Convention against Torture;
- to encourage the Gol to accede to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.