



United Evangelical Mission
Communion of Churches in three Continents
Rudolfstraße 137, 42285 Wuppertal
Tel.: 0202 / 8 90 04-0
Fax: 0202 / 8 90 04-79
jpic@vemission.org

Watch
INDONESIA!

Watch Indonesia! e.V.
Planufer 92d
10967 Berlin
Fon/Fax: +49/30-69817938
watchindonesia@snaflu.de

Diakonie

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Aide-Mémoire

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Indonesia

The Government must act upon its international commitments to human rights

Since the beginning of its democratic transition in 1998, Indonesia has ratified several international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). While these steps are welcomed, Indonesia has yet to act upon the obligations arising from these treaties.

Lack of Effective Habeas Corpus

Until now, 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.

Torture

As the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out after his recent visit to Indonesia, the lack of effective habeas corpus in law and practice 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. Reminded of its obligation to do so under the CAT, the Indonesian government usually claims that this question is to be addressed in the revision of the Penal Code which is currently debated in parliament. However, reform of the Penal Code has been discussed since at least two decades without observable improvements. Countless torture victims cannot wait another two decades for access to legal remedy for their sufferings.

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 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” in a country where torture appears to be the prime investigative method of the police.

Human Rights and Environmental Issues

National and international economic stakeholders exploit Indonesia’s natural resources day by day 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 a 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. Regarding agrofuels, the UN Special Rapporteur on the Right to Food recently warned “that biofuels will bring hunger in their wake. The sudden, ill-conceived, rush to convert food - such as maize, wheat, sugar and palm oil - into fuels is a recipe for disaster. There are serious risks of creating a battle between food and fuel that will leave the poor and hungry in developing countries at the mercy of rapidly rising prices for food, land and water. If agro-industrial methods are pursued to turn food into fuel, then there are risks that unemployment and violations of the right to food may result”.

Human Rights and Religious Issues

Increasing Restrictions on Personal – Especially Women’s – Rights and Freedoms

Aceh is so far the only province where the *shari’a* is officially in place. In other areas, local governments have enacted regional bylaws introducing *shari’a*-inspired regulations. These in some cases infringe on personal rights and freedoms, especially on women’s rights. For example, school girls – even non-Muslims – are forced to wear head scarves at school, and in some areas police raids and trials against unmarried couples have taken place. The implementation of inhuman and degrading punishments like public caning has been reported from Aceh. The national government evades its responsibility to ensure that regional legislation conforms to the constitution and Indonesia’s international human rights obligations by hiding itself behind an ill-conceived notion of regional and special autonomy, respectively.

Failure to Protect Religious Freedoms

The state also frequently fails to protect religious freedoms of minority faith groups. In 2007, at least 92 members of religious minorities have been arrested and at least 93 cases where the police failed to prevent religious extremists from attacking or forcibly closing down places of worship have been reported. Members of Al-Qiyadah al-Islamiyah suffered the biggest number of these violations, followed by Christians and adherents to the Ahmadiyah-faith.

Impunity

Past Abuses

Ten years into democratic transition, Indonesia has made no 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 bring justice to the victims. Numerous other cases, e.g. the slaughter of hundreds of thousands of alleged communists in 1965 or the countless abuses committed during the downfall of Suharto, have so far not been tried before an ad hoc-court due to the inaction of the attorney general, parliament and president.

In order to ensure that these cases are treated according to international criminal law standards, the authority to decide whether a certain case constitutes a gross violation of human rights, which currently lies with the parliament and the president, must be transferred to the judiciary. Moreover, as the experiences of the trials for East Timor and Tanjung Priok have shown, reforms to enhance the independence of the judiciary as well as to establish civilian supremacy over the military, police and intelligence services are needed to ensure that human rights-trials are conducted in a free, fair and objective manner.

In order to prevent future human rights violations and to fulfil the victims' right to truth and justice, Indonesia must come to terms with its violent past. Besides ad hoc-human rights courts, truth commissions provide a useful instrument for this endeavour. The 2004 Law on the Truth and Reconciliation Commission was to create such a commission but empowered it to award amnesty to the perpetrators. It also made compensation for victims contingent on their signing formal statements of forgiving the perpetrators. Last year, the law was annulled by the Constitutional Court as it deemed these provisions contradictory to the constitution and Indonesia's international obligations. As a truth commission is still mandated by national legislation, the annulment of the law provides an opportunity for its reformulation in accordance with international standards.

Present Abuses

Impunity is also still enjoyed by those responsible for human rights violations committed after the end of the Suharto-regime. In the most prominent case, the poisoning of reputable human rights-lawyer Munir Said Thalib in 2004, two persons have been sentenced to one and 20 years imprisonment, respectively. However, the findings of the presidential fact-finding team that strongly indicate the involvement of the state intelligence agency BIN, especially its deputy, Muchdi PR, and its former director, General Hendropriyono, have been ignored by investigators.

The ensuing climate of impunity breeds new violations. In May 2007, navy officers killed four and injured seven persons in Alas Tlogo village near Pasuruan, East Java, in a dispute over a piece land claimed by the navy. This shows that not only in conflict areas the Indonesian military still considers itself as standing above the law.

Impunity in Aceh

Impunity is also a major concern in Aceh, where decades of armed conflict have left a long legacy of abuse. The Helsinki peace agreement between the government of Indonesia and the Free Aceh Movement as well as the Law on Aceh call for 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. So far nothing has been done to implement this commitment.

Impunity in Papua

In Papua, those tried before the permanent human rights court for killings and torture during the Abepura incident in 2000 have been acquitted three years ago. For two other recent cases, the incidents of Wamena (2003) and Wasior (2001), the National Human Rights Commission has conducted inquiries concluding that gross human rights violations took place. However, the attorney general has failed to act upon these findings.

In 2007, Colonel Burhanuddin Siagian was appointed as regional military commander in Papua. He has been indicted by the United Nations for crimes against humanity in East Timor, including forming militias responsible for human rights violations.

The Situation of Human Rights Defenders

The climate of impunity and the massive deployment of military troops over the past three years make human rights violations an everyday occurrence in Papua. As UN Special Rapporteur Hina Jilani noted recently, the situation of human rights defenders is especially grave in that region. They are stigmatized as supporters of Papuan independence and face assassination, torture, arbitrary detention, intimidation and other forms of violence by the security forces. While currently the situation of human rights defenders in other parts of Indonesia may be not as severe as in Papua, they frequently face similar problems.

On the basis of the situation outlined above, we recommend the following to the 7nd UN Human Rights Council:

- to urge the Gol to introduce effective habeas corpus and other legal safeguards in order to bring the Indonesian Code of Criminal Procedure into accordance with international standards;
- to urge the Gol to criminalize torture in accordance with the definition contained in article 1 of the Convention against Torture and impose appropriate penalties;
- to urge the Gol to introduce an independent and effective complaints mechanism for victims of torture in all places of detention as well as
- to encourage the Gol to accede to the Optional Protocol to the Convention against Torture, and establish an independent national body to monitor places of detention as stipulated in the Protocol;
- to encourage the Gol to accede to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty;
- to urge the Gol to ensure the full protection of economic, social and cultural rights, especially the rights to food and adequate housing;
- to urge the Gol to protect the rights of indigenous people;
- to urge the Gol to protect individual – particularly women's – rights and freedoms in law and practice and to take appropriate steps in cases where they are violated or threatened to be violated;
- to urge the Gol to review the Law on Special Autonomy for Aceh and local bylaws establishing *shari'a*-like regulations and punishments in the light of the constitution and its international human rights obligations;

- to urge the Gol to ensure that the religious freedoms of minority faith groups are protected by the state;
- to urge the Gol to reform the law on human rights courts so that the decision to establish an ad hoc-human rights court is placed in the hands of the judiciary;
- to encourage and assist the Gol to undertake further and sustainable steps to establish an independent judiciary which is free of corruption and fear;
- to encourage and assist the Gol to establish effective civilian control over the military;
- 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 invite the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and to agree to an investigation into the murder of Munir by an independent team involving UN-mandated experts;
- to call on the Gol to establish an ad hoc-human rights court for abuses committed in Aceh during the armed conflict and to establish a truth commission for Aceh regardless of developments regarding the law on the nation-wide truth commission;
- to call on the Gol to deal with human rights abuses in Papua promptly and to ensure the adherence to fundamental human rights by the security forces in the region.