

COMPILATION OF MOST SERIOUS CONCERNS REGARDING THE IMPLEMENTATION OF THE MoU

MOU PROVISION	COMMENTS
<p>1.1.1 A new Law on the Governing of Aceh will be promulgated and will enter into force as soon as possible and not later than 31 March 2006.</p>	<p>1) It is our opinion that the LoGA:</p> <ul style="list-style-type: none"> • is in clear violation of the MoU with regard to several stipulations, which we ask to be amended in a revised LoGA as soon as possible (highlighted below as <i>critical issues</i>); • is in clear violation of the MoU with regard to several stipulations, but we are ready to see how the respective implementation of the LoGA will materialize before deciding on whether or not they should be changed (highlighted below as <i>important issues</i>); • is unclear, vague or contradictory with regard to some issues, which we still require clarification for (highlighted below as <i>clarification required</i>). • clearly stipulates time frameworks which in several cases are not adhered to by the GoI causing considerable delay in the implementation of the LoGA (highlighted below as <i>not yet implemented</i>). <p>2) The MoU is not mentioned in the preamble of the LoGA even though the promulgation of this law is one of the essential stipulations of the MoU. We, therefore, regard the MoU as a legally binding source of the LoGA.</p> <ul style="list-style-type: none"> • The omission is in contradiction to the spirit of the MoU. For reasons explained in more detail below, the MoU needs to be reinstated in the LoGA's preamble. • In contradiction to the GoI's position that the MoU could not be mentioned in the preamble as mentioned in the letter of GoI to Pieter Feith dated 28 Aug 06, we are of the opinion that the MoU can be mentioned in the part of the preamble that describes the reasoning for promulgating the law (<i>menimbang</i>). According to Law 10/2004, this part of the preamble provides a brief explanation of the background and reasons for promulgating the law, while – again according to Law 10/2004 – the General Elucidations explain systematically the philosophical background, the purpose and the objectives of the law 'as already briefly mentioned in the <i>menimbang</i> part of the law'. This leads us to the conclusion that the substance of the General Elucidations can and should in principle be the same as the substance of the <i>menimbang</i> part of the preamble. Therefore, we see absolutely no reason why the MoU can be mentioned in the General Elucidations, but not in the <i>menimbang</i> part of the preamble. Consequently, we believe that mentioning the MoU in this part of the preamble

	<p>could not have been the basis for a judicial review. To the opposite, mentioning the MoU in the <i>menimbang</i> part of the preamble just as it is being mentioned in the General Elucidations would have been fully consistent with the stipulations of Law 10/2004, and therefore absolutely in line with constitutional requirements.</p> <ul style="list-style-type: none"> • We, therefore, are of the opinion that – for reasons of providing a consistent reference to the background of promulgating the law – in an amended version of the law the MoU must be clearly mentioned in the <i>menimbang</i> part of the preamble. <p>3) The late enactment of the LoGA by 1 Aug 06 is in contradiction to the time framework set in the MoU.</p>
<p>1.1.2 The new Law on the Governing of Aceh will be based on the following principles:</p> <p>a) Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution.</p>	<p>CRITICAL ISSUE</p> <ul style="list-style-type: none"> • See LoGA articles 7 and 11, which significantly differ from the MoU principles. <p>1) To the six sectors of public affairs, which the MoU reserves explicitly to the Central Government, the LoGA adds government affairs of ‘national character’. The definition of these affairs, which are provided in the Elucidation of the LoGA, is so inconsistent and unclear that it opens the opportunity for the Central Government to assume a wide range of authorities that would unduly limit the authority of Aceh as clearly intended by the MoU. The LoGA also stipulates that these government affairs of national character will be further regulated in a Government Regulation (article 270 (1)).</p> <ul style="list-style-type: none"> • We are of the opinion, that the Central Government authorities in others’ than the six sectors mentioned in the MoU should not be regulated by Government Regulation but that the Central Government should only implement such authorities in Aceh which are regulated in national laws as far as they do not contradict the LoGA. <p>2) The terminology of the six sectors of public affairs in the LoGA also differs from the MoU. The addition of the term “external” to the term “defense” and of the term “national” to the term “security” was not adopted in the LoGA because the GoI and DPR perceived it not to be in line with existing laws and regulations. We do not share this opinion. In particular, with regard to the issue of ‘external defense’, we refer our argumentation under article 4.11 where we ask for a revision of the respective regulation in the LoGA.</p>

3) We cannot accept that the GoI reserves the right to impose on Aceh and Kabupaten/Kota norms, standards and procedures for regional government affairs in general as intended in article 11 (1) and the respective eluciations of the law. The explanation of the GoI that Aceh and Kabupaten/Kota will only have to follow national norms, standards and procedures wherever Law 11/2006 explicitly mentions it, is in so far not satisfactory as there are hardly any substantial government affairs regulated in the law where national norms, standards and procedures have not to be followed. This is particularly evident in the regulation that obliges Aceh and Kabupaten/Kota to exercise important licensing authorities based on national norms, standards and procedures (article 165, 2 and 3). We believe that the indiscriminate imposition of national norms, standards and procedures on Aceh and Kabupaten/Kota unduly limits their rights to exercise their special authorities as intended by the MoU and Law 11/2006 itself.

- We therefore are of the opinion that regulations on the imposition of national norms, standards and procedures must be thoroughly reviewed and drastically reduced in an amended version of the law.

4) We understand that the GoI has sent a Draft Government Regulation (RPP) regarding the division of functions and authorities between the national and provincial level to the Provincial Government of Aceh on 12 February 2007.

- We have learnt that a preliminary screening of this RPP by the Provincial Government has shown that it is not yet in compliance with the LoGA itself.
- We have also learnt that the Provincial Government of Aceh will undertake an in-depth study and consultation process in Aceh itself involving all relevant parties.
- While we appreciate these efforts of the Provincial Government because the substance of this RPP affects the right to self-government as given to Aceh in the LoGA, we are extremely concerned that this right, one of the key achievements of the MoU, will be taken back by the GoI.
- We therefore maintain our position as explained above that the GoI authorities in others than the six sectors mentioned in the MoU should not be regulated by Government Regulation but that the Central Government should only implement such authorities in Aceh which are regulated in national laws as far as they do not contradict the LoGA.

<p>1.1.2 b International agreements entered into by the Government of Indonesia which relate to matters of special interest to Aceh will be entered into in consultation with and with the consent of the legislature of Aceh</p> <p>1.1.2 c Decisions with regard to Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh</p> <p>1.1.2 d Administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.</p>	<p>CRITICAL ISSUE</p> <ul style="list-style-type: none"> • See LoGA article 8. • An explicit alteration of the MoU principle has been made by replacing the provision that decisions of the GoI and the DPR that directly affect Aceh should be made ‘<u>in consultation with and with the consent of</u>’ the Governor respectively the DPRA by a provision in the LoGA that only foresees ‘<u>in consultation with and with the considerations of</u>’. • The stipulations that international agreements, decisions of the National Parliament and administrative measures by the Government of Indonesia with regard to Aceh require the <u>consent</u> of the legislature of Aceh respectively the head of the Aceh administration were inserted in the MoU to ensure that such decisions are not taken unilaterally by the national parliament respectively the GoI. The government has argued - as in several other cases - that these stipulations would have been in contradiction to the constitution had they been taken up by the Law 11/2006. We still fail to understand why these concerns regarding the constitutional compatibility of the Helsinki arrangements were not taken into consideration by the representatives of the GoI when negotiating the MoU, which we signed in good faith. • We therefore maintain our position that decisions that directly affect Aceh can only be taken with the consent of the relevant Aceh authorities. Consequently, the Presidential Regulation on the consultation process between the GoI and Aceh authorities as mandated by the LoGA must foresee consensus as a rule. • With view to the fact that the GoI has to issue several important implementing regulations to the LoGA, which have a strong impact on governance in Aceh, we believe that the Presidential Regulation foreseeing an appropriate way of achieving consensus must be issued as soon as possible.
<p>1.1.3 The name of Aceh and the titles of senior elected officials will be determined by the legislature of Aceh after the next elections.</p>	<p>CRITICAL ISSUE</p> <ul style="list-style-type: none"> • See LoGA article 251. • While article 251 (1) stipulates in compliance with the MoU that the name of Aceh and the titles of senior elected officials will be determined by the legislature of Aceh, article 251 (2) reduces the decision of the DPRA to a proposal that has to be enacted in a Government Regulation, which obviously leaves the final decision to the GoI.

	<ul style="list-style-type: none"> • We see this as a clear deviation from the intention in the MoU and therefore ask for a revision of this stipulation. Should a decision on the name of the Aceh and the titles of senior elected officials have to be taken before a revision of the law, we will insist that the respective decision of the DPRA will be fully implemented.
<p>1.1.4 The borders of Aceh correspond to the borders as of 1 July 1956.</p>	<p>IMPORTANT ISSUE</p> <ul style="list-style-type: none"> • See LoGA article 3. • The incorporation of the reference to the borders of Aceh as in UU 24/1956 is most important to avoid misunderstandings to the border point between Aceh and North Sumatra, and also to prevent the split in the province without the consent of the DPRA and the Governor of Aceh. • The ‘Indonesian Ocean’ should be changed to ‘Indian Ocean’ since international world maps only recognize ‘Indian Ocean’.

<p>1.3.1 Aceh has the right to raise funds with external loans. Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia.</p>	<p>IMPORTANT ISSUE</p> <ul style="list-style-type: none"> • See LoGA article 186 (1) and (3). • Our interpretation of this MoU article is clearly that Aceh will have the right to directly borrow from foreign sources. We would still like to see such an arrangement materialize in an amended version of the law. However, we are ready to see the regulatory arrangements as vaguely described in the letter of the Government (dated 28 Aug 06) being tested for a transitional period of time to find out whether they prove to be of advantage for the future development of Aceh.
<p>1.3.5 Aceh conducts the development and administration of all seaports and airports within the territory of Aceh.</p>	<p>IMPORTANT ISSUE</p> <ul style="list-style-type: none"> • See LoGA articles 19, 172, 173 and 254. • The formulation of this MoU article suggests clearly that all existing seaports and airports without any exception should be controlled by Aceh. • Therefore, we would like to see respective arrangements included in an amended version of the law. However, we are ready to see how the implementation of the respective regulations of the LoGA will materialize before deciding on whether they should be changed or not. • We would like to emphasize that the arrangements for involving the Government of Aceh and Kabupaten/Kota governments in the operation of seaports and airports that have so far been owned and managed by state owned companies, will clearly have to be of advantage to Aceh. This again requires an open, fair and transparent process of negotiations to define an optimal form of joint operation of the respective seaports and airports.
<p>1.3.7 Aceh will enjoy direct and unhindered access to foreign countries, by sea and air.</p>	<p>IMPORTANT ISSUE</p> <ul style="list-style-type: none"> • See LOGA article 165 (1). • We believe that the stipulation of this article should and could have been translated into the law in clearer and more concrete terms. • However, we are ready to see the implementation of the respective arrangements of the LoGA being tested for a transitional period of time to find out whether they respond adequately to the intentions of the MoU, before deciding whether changes have to be made to the LoGA in this

	regard.
1.4.5 All civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh.	<p>CRITICAL ISSUE</p> <ul style="list-style-type: none"> • See LoGA article 203. • In the LoGA it is foreseen that criminal offences committed by members of the TNI in Aceh will be trialed in accordance with laws and regulations. • As these regulations (Law 31/97 and Law 34/2004) are not sufficiently clear regarding the treatment of civilian crimes committed by military personnel, we either expect clear provisions in this regard through the revision of these laws, or the inclusion of the respective provision of the MoU in the revision of the LoGA.
2.2 A Human Rights Court will be established for Aceh.	<p>IMPORTANT ISSUE and NOT YET IMPLEMENTED</p> <ul style="list-style-type: none"> • See LoGA articles 228 and 259. • Human Rights Court has not yet been established despite the LoGA foreseeing that ‘the Human Rights Court has to be established at the latest one year after this law has become effective’. • In view of the need to provide access to justice for victims of human rights violations in Aceh as soon as possible, we urge the GoI to expedite the establishment of the Court. • As the LoGA does not stipulate that the Human Rights Court is established by the LoGA (different from the Truth and Reconciliation Commission), and does not foresee a specific implementing regulation on the Human Rights Court, we assume that the establishment of the Court will follow the regulations of Law 26/2000 on the Human Rights Court. • We emphasize that in establishing the Court, the provisions of Law 26/2000 - which foresee that severe human rights violations that occurred before the enactment of the law (23 November 2000) will be treated by Ad-hoc Human Rights Courts (retro-active justice), – and the provisions regarding the punishments of perpetrators of human rights violations must apply. • We understand that human rights violations that occurred between November 2000 and the time when the Aceh Human Rights Court will be ultimately established will be dealt with by the Human Rights court in Medan which is responsible for the jurisdiction over Aceh during this period.

<p>2.3 A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures.</p>	<p>IMPORTANT ISSUE and NOT YET IMPLEMENTED</p> <ul style="list-style-type: none"> • See LoGA article 229. • The Truth and Reconciliation Commission (TRC) has not yet been established despite the following provisions in the LoGA: <ul style="list-style-type: none"> - Article 229 (1) stipulates that that the TRC is established by the LoGA 11/2006 itself and - Article 229 (2) foresees that the TRC forms an integral part of the Indonesian TRC. • Considering that the Law on the Indonesian TRC (UU 27/2004) has been suspended by the Constitutional Court, we suggest two options: <ol style="list-style-type: none"> a) To revise the Law 27/2004 as soon as possible to allow for the establishment of the Indonesian TRC so that the establishment of the TRC in Aceh will not be furthered hampered by impediments on the national level; b) To issue a Government Regulation in-lieu of law (Peraturan Pemerintah Pengganti Undang-Undang) considering that this is an emergency situation. To our opinion, the peace process could be jeopardized by the mere fact that the TRC in Aceh cannot be established which prevents victims of the conflict to have access to a trustworthy process of reconciliation.
<p>3.1.1 GoI will, in accordance with constitutional procedures, grant amnesty to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of this MoU.</p> <p>3.1.2 Political prisoners and detainees held due to the conflict will be released unconditionally as soon as possible and not later than within 15 days of the signature of the MoU.</p> <p>3.1.3 The Head of the Monitoring Mission will decide on disputed cases based on advice from the legal advisor of the</p>	<p>IMPORTANT ISSUE</p> <ul style="list-style-type: none"> • We request that their cases are being taken up again in order to achieve their urgent release. • While this is being processed, we also request that they will be transferred to Aceh as soon as possible.

Monitoring Mission.	
<p>3.2.4 GoI will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh.</p>	<p>CRITICAL ISSUE and NOT YET IMPLEMENTED</p> <ol style="list-style-type: none"> 1) We request that national funding will continue to be allocated beyond the end of the fiscal year of 2007. 2) We want to emphasize that national funding cannot be stopped unilaterally before all GoI commitments towards the beneficiaries of reintegration support will be fulfilled. 3) The funds, which have been allocated by the Central Government to the Aceh Government so far and which are disbursed by the BRA are considered to be minimal and impossible to satisfy the commitments as specified in the MoU. The number of houses built - costing of 35 million Rupiah each - forms a small part of the total number required and these houses are of low quality. Furthermore, the funds had been approved very late and have to be spent within a very short period of time that it is very difficult to be effectively implemented. 4) So far, the private property is interpreted only as private houses and does not include farming land, motorcycles, cattle, etc. <ul style="list-style-type: none"> • We request that BRA, BAPPENAS and if necessary Aceh Desk consult us in order to reach a clear understanding on what really constitute private property and to give rational explanations on the definition. 5) So far there has not been any definition at all on what is the private property. <ul style="list-style-type: none"> • There is no understanding if the term public property includes infrastructure such as roads and bridges. • There is no mapping of damaged or destroyed public property. • There are no funds provided for rehabilitation of damaged or destroyed public property. • Therefore, we request that in an eventual understanding with us as stated above (4), the Government of Indonesia allocate funds to BRA and give clear direction on its implementation. • In addition, the BRA, BRR and Houses and Permukiman Services and the Government of Aceh need to cooperate in order to carry out the mapping of damaged or destroyed public property. • A clear definition of public property is a very important pre-condition.
<p>3.2.5 a All former combatants will receive an allocation of suitable farming land,</p>	<ul style="list-style-type: none"> • CRITICAL ISSUE and NOT YET IMPLEMENTED

<p>employment or, in the case of incapacity of work, adequate social security from the authorities of Aceh.</p>	<ol style="list-style-type: none"> 1) With regard to suitable farming land, we are of the opinion that in the process of consultation with us, BRA, BAPPENAS, BRR, BPN and the Government of Aceh need to agree on a policy of eradicating conflict related poverty with the intention to cover GAM ex-combatants, amnestied political detainees, members of the anti-separatists and conflict victims, in general. 2) With regard to providing employment, we are of the opinion that the provision of Rp 25 million each as being a partial capitalisation for each of the 3,000 ex-combatants; however because there was no clear capacity building, training, and access to market, etc., we are doubtful of the effectiveness of this assistance. • We request that in the said consultation with us, BRA, BRR, Public Works Department, Micro-Economic Department, ILO, FAO, GTZ, UNDP and other relevant national and international agencies to form joint centres for creating employment opportunities in all districts for the purpose of reaching a coordinated conflict sensitive development in general. 3) In the matter of social security, we request that in consultation with us, BRA and the Social Security Department form a policy, which is conflict sensitive intended in order to cover individuals involved in or who have been influenced by the impact of the conflict. 4) In sum, no land has been allocated by the GoI as required in this article; no economic facilitation for skill training and no employment for ex-combatants; funds allocated for BRA for those who have become invalids are not included in the data of incapacitated that are in need of assistance.
<p>3.2.5 b All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.</p>	<ul style="list-style-type: none"> • CRITICAL ISSUE and NOT YET IMPLEMENTED • Same as above • There is no land provided by the Government of Aceh to be distributed by the BRA as stipulated in the MoU.
<p>3.2.5 c All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming</p>	<ul style="list-style-type: none"> • CRITICAL ISSUE and NOT YET IMPLEMENTED • Same as above

<p>land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.</p>	<ul style="list-style-type: none"> • No land provided to be distributed by the BRA to the victims intended by this clause, there is no employment or adequate social security from the authorities of Aceh and in the case of those who have been given compensational funds are not compatible with the list of the beneficiaries as meant by this clause
<p>3.2.6 The authorities of Aceh and GoI will establish a joint Claims Settlement Commission to deal with unmet claims.</p>	<ul style="list-style-type: none"> • NOT YET IMPLEMENTED • We are very concerned that since the end of the mission of the AMM there has been no progress in the matter of the formation of the Joint Claims Commission. • We request that a working group be formed immediately for this purpose. Actually, this process was initiated during AMM. A mechanism to be established was agreed by all parties waiting for the formal agreement of GoI before the end of AMM’s mandate.
<p>4.7 The number of organic military forces to remain in Aceh after the relocation is 14,700. The number of organic police forces to remain in Aceh after the relocation is 9,100.</p>	<p>CRITICAL ISSUE</p> <ul style="list-style-type: none"> • We are seriously concerned about the fact that there are no legal means to ensure the adherence to this important stipulation, except for the MoU itself. • We are of the strong opinion that the number of military personnel needs to be constrained by laws. • As long as the LoGA has not been revised to include aforementioned provisions, we want to see adequate ways and means to ensure the full implementation of article 4.7 of the MoU on a sustainable basis. This should include a verification mechanism installed which will guarantee that the actual figure of security forces on the ground matches the respective MoU ceiling.
<p>4.8 There will be no major movements of military forces after the signing of this MoU. All movements more than a platoon size will require prior notification to the Head of the Monitoring Mission.</p>	<p>CLARIFICATION REQUIRED</p> <ul style="list-style-type: none"> • We do not agree with the GoI’s statement in the book ‘Perwakilan Pemerintah Republik Indonesia untuk AMM’, page 93 that no more reporting is required after AMM’s departure. • As a matter of fact, we ask for no major movements of military forces at all. • Should such movements be considered by the GoI, we insist that prior notification is still required because the MoU with its respective stipulation prevails.

	<ul style="list-style-type: none"> • We therefore insist that a new mechanism has to be introduced for such exceptional cases where more than a platoon needs to be moved. • We are ready to discuss this matter with the GoI.
<p>4.11 Military forces will be responsible for upholding external defence of Aceh. In normal peacetime circumstances, only organic military forces will be present in Aceh.</p>	<ul style="list-style-type: none"> • CRITICAL ISSUE • See LoGA article 202. • According to the MoU the role of TNI is limited to external defence only. This means the role of TNI does explicitly not cover those other duties as mentioned in Law 34/2004 on the Armed Forces. • We can particularly not accept that the TNI may be involved in internal security matters as suggested in the GoI's response (dated 28 Aug 06) to AMM's letter (dated 8 Aug 06), as this must be the sole function of the police as stipulated in article 4.10 of the MoU. • As the Constitution does not explicitly mention internal security functions of the TNI (article 30 says: ',to defend, protect and maintain the territorial integrity and sovereignty of the state'), we believe that a limitation of the TNI's role in Aceh to external defence would not have been unconstitutional. • We therefore expect that regulations on the duties of the TNI in Aceh will be adjusted to the stipulations of the MoU in an amended version of the law.

The English text is the official version.