

CONSIDERING VICTIMS

The Aceh Peace Process from a Transitional Justice Perspective

EXECUTIVE SUMMARY

In 2005 the conflict in Aceh officially ended with the signing of the Helsinki Memorandum of Understanding (MoU). In 2006 the Indonesian Parliament passed the Law on the Governing of Aceh (LoGA) to codify in Indonesian law many of the commitments it had made in Helsinki. However, this was not the first time in Aceh's 30 years of conflict that a peace or ceasefire agreement had been reached. Several other agreements were supposed to stop the violence in Aceh, but over time they all failed. It is therefore essential to continually monitor and evaluate current peace-building efforts in Aceh to ensure that this time peace remains stable.

Despite considerable progress, rising tensions between and among various actors have illuminated the need to evaluate peace-building efforts from a transitional justice perspective. This report, based on research conducted by the International Center for Transitional Justice (ICTJ) and Acehnese civil society, aims to provide such an evaluation, paying particular attention to the voices of victims.

Transitional Justice Framework

A transitional justice framework provides tools to strengthen the process of creating and sustaining peace. The four key elements of a transitional justice approach are truth-seeking, reparations, prosecutions, and institutional reform. By developing an integrated, comprehensive, gender-sensitive, and localized, contextual approach using these elements, societies making a transition from conflict can promote sustainable peace and reconciliation.

The ICTJ's experiences working in postconflict peace-building environments around the globe have highlighted three main lessons:

- *Successful peace building requires listening to the voices of victims.* Victims are important stakeholders in the peace process, but their viewpoints and demands are often not represented during peace negotiations.
- *Justice should be conceived of broadly.* Providing justice means not only holding formal trials for perpetrators, but also providing reparations, carrying out truth-seeking initiatives, and reforming institutions implicated in human rights violations.
- *Peace is a process.* Laying down arms is an important first step, but sustaining peace
- requires addressing the conflict's root causes as well as helping those it has
- marginalized.

Brief Background to the Conflict and Past Attempts to Forge Peace

Conflict in Aceh goes back more than 60 years. On December 4, 1976, members of the Free Aceh Movement (GAM) unilaterally declared Acehnese independence. This act ushered in 30 years of protracted conflict, as Indonesian national forces fought separatist GAM members for control of Aceh. Over the years the conflict varied in intensity and scope. There were several attempts at peace but none lasted.

The conflict's toll on civilian lives has been immense. It is estimated that thousands of civilians were killed and thousands more tortured and disappeared. Rape and sexual violence were widespread, along with arbitrary arrests, detentions, mass displacements, and recruitment of child soldiers. Everyone in Aceh was affected by the conflict, either by these direct abuses or the impact on education, health, and livelihoods.

Transitional Justice Approaches Included in the Peace Agreement

The tragic tsunami of December 2004 brought much-needed impetus for peace back to Aceh. After five rounds of negotiations, on August 5, 2005, the government of Indonesia (GoI) and GAM signed the Helsinki MoU. This peace agreement set out in general terms the future governance of Aceh and attempted to address the key social, political, and economic causes of the conflict to provide a sustainable peace. The Helsinki MoU also contained various elements relevant to transitional justice, including:

- Amnesties for those imprisoned for their participation in GAM activities, with a reaffirmation of the GoI's obligations to adhere to international human rights instruments;
- Specified benchmarks and timetables for the demobilization, disarmament, and decommissioning of GAM and Indonesian security forces in Aceh. It also established a reintegration agenda for former combatants, political prisoners, and "civilians who suffered a demonstrable loss";
- Provisions for the establishment of a Human Rights Court and a Truth and Reconciliation Commission (TRC) for Aceh;
- Specified institutional reforms to help strengthen the rule of law.

The Indonesian Parliament codified many its MoU obligations in law by passing the LoGA in August 2006. However, the LoGA differed from the MoU in a few significant ways. While establishing the Human Rights Court and TRC for Aceh, the LoGA limited the Court's jurisdiction to future abuses and made the Aceh TRC an "inseparable part" of an anticipated, but not yet existing, national TRC. It also provided no guidance for the reintegration agenda included in the MoU.

The Helsinki MoU's insufficient focus on the rights of victims and the LoGA's restrictions on the Human Rights Court and TRC created significant deficiencies in Aceh's transitional justice framework.

Implementing Peace: Postconflict Programs in the “New” Aceh

Postconflict peace-building programs in Aceh have focused on three areas: disarmament and decommissioning, demobilization of GAM, and reintegration of former combatants. Disarmament and decommissioning took place in accordance with the MoU’s four-stage approach. Between September to December 2005, GAM turned in 840 weapons, and the Indonesian government relocated tens of thousands of “non-organic” military and police personnel and released GAM’s amnestied prisoners.¹

GAM officially demobilized by disbanding its military wing, the TNA, in December 2005 and transforming it into the political Committee for the Transition in Aceh (KPA). The extent of GAM’s true demobilization remains unclear, since the KPA has retained the military structure, hierarchy, and membership of the TNA.

Reintegration has been the focus of the peace process in Aceh. The task of implementing the long-term reintegration program envisaged by the Helsinki MoU was given to the Aceh Reintegration Authority (BRA), an organization established through cooperation of the GoI, GAM, and civil society representatives. However, internal disputes have caused civil society and KPA/GAM to withdraw from the BRA. As a result the new BRA focuses solely on social and economic programs and has been funded almost entirely by the national budget. Despite many challenges the BRA reintegration programs have managed to deliver economic assistance to former GAM combatants, former anti-separatist militia groups, conflict-affected communities, and many families of civilians killed during the conflict. Other international organizations have supported and supplemented BRA’s economic assistance with longer-term social, economic, and political reintegration programs providing skills training, health services, and educational supplies.

Listening to the Voices of Victims

Until now insufficient attention has been given to the needs and views of the civilian victims of the Aceh conflict. As a result the ICTJ, together with civil society organizations, conducted interviews and focus groups with 113 victims from nine districts in the region. The intention was to better understand victims’ views on the conflict and the peace process.

Discussions revealed many victims were grateful for the increased security at the end of the conflict. However, victims showed growing discontent. Many felt

- The peace-building process has not recognized their suffering;
- Former combatants are receiving an unfair share of available assistance;
- They are marginalized because BRA’s criteria for determining who qualifies as a “victim” unnecessarily excludes them;
- They had a deep desire to discover the truth regarding particular violent incidents and the locations of their loved ones who had been killed or disappeared;
- Justice should be done through criminal prosecutions and punishments;

¹ In Indonesia non-organic forces are those not deployed on a regular basis in a given region but dispatched when a conflict situation escalates to a level that “organic” territorial units cannot handle. Giovanni Grevi, “The Aceh Monitoring Mission: Toward Integrated Crisis Management,” *The EU Mission in Aceh: Implementing Peace*, December 2005, note 29, <http://www.iss-eu.org/occasion/occ61.pdf>.

- They needed assurance that these abuses would never happen again.

Transitional Justice Gaps

Analyzing current peace-building initiatives alongside victims' statements of their growing discontent highlights significant gaps in transitional justice in Aceh. Addressing these gaps with a holistic and integrated transitional-justice approach is necessary to avoid destabilizing the hard-fought peace.

- *Reintegration Currently Bears Too Much of the Burden*

Focus on reintegration addresses only one aspect of the transition. Current reintegration programs intensify the marginalization of vulnerable victims. They also focus too much on short-term economic assistance, not addressing more pertinent long-term needs. As a result they increase tensions among the stakeholders. Reintegration programs must be reformed to work with other transitional justice mechanisms, to ensure that victims' interests are dealt with appropriately. They must also focus more on providing greater nonfinancial assistance.

- *Truth-seeking is Essential*

Acknowledging the truth about what happened in the past is a necessary precondition for successful reintegration, reparations, and institutional reform programs. Identifying victims of human rights violations can mitigate community tension by finding those most entitled to and most in need of rehabilitation. Recognizing the harm victims suffered prevents them from interpreting compensation as an attempt to buy their silence. Identifying those responsible for abuses is a necessary precondition to ensure their removal from official positions. An independent truth-seeking process, as envisioned by the Helsinki MoU, would provide a good starting point for other urgently needed transitional-justice mechanisms.

- *Reparations Must Be Independent from Reintegration*

Although victims with urgent needs should continue to receive assistance under the current reintegration program, ultimately reparations programs must be separated from reintegration initiatives. A comprehensive reparations program should therefore be designed. It should be based on a truth-seeking process that will identify victims of human rights abuses and their needs. Reparations also should not be limited to monetary compensation but should take the form of social programs promoting health, education, and sustainable livelihoods, as well as symbolically honoring victims.

- *Prosecutions Must Hold Perpetrators Accountable*

Several options, such as using Indonesia's human rights court established by Law 26/2000, exist for prosecuting those most responsible for serious abuses committed during Aceh's conflict. However, weaknesses in the Indonesian judiciary mean that meaningful prosecutions will require a long-term strategy to ensure sufficient political will, judicial independence, and impartiality, as well as training of relevant actors in the justice sector.

- *Institutional Reform Is Needed to Restore Trust and Ensure Nonrepetition of Abuses*

Institutional reform will restore the community's faith in governing institutions. Political, judicial, and legal reforms should address corruption and extortion as well as ensure

equal protection under the law. The security sector must also recognize and remove abusive and corrupt officers and adopt policies to ensure that officers do not participate in or condone future abuses. Moreover, reforms should clarify postconflict roles of the various security-sector institutions, address illegal revenue raising, and increase civilian oversight and transparency of security-sector institutions.

Civil Society's Initiative for an Aceh TRC

Creating a TRC for Aceh would be a significant step toward filling current transitional justice gaps and creating a more sustainable peace. The Indonesian Constitutional Court's decision to strike down a national TRC law in December 2006 forced civil society organizations to think more creatively about a TRC for Aceh. The result was a concept paper that provided a framework for an Acehese TRC. The main features include

- A local truth-seeking process designed and implemented in Aceh, with the primary aim to listen to the experiences and hopes of victims;
- A commission, established by local ordinance passed by the Acehese Parliament, which could not exercise its powers beyond Aceh and would not have subpoena powers;
- A mandate to examine human rights violations committed by all sides in the conflict, with adequate protections to ensure impartiality and independence;
- Decentralization, with regional offices playing an important role in implementing the TRC's mandate at the grassroots level;
- An accompanying voluntary, community-based reconciliation process to provide mediation of conflicts related to past abuses at the local level;

Support from Jakarta will be critical to the implementation of this local Aceh TRC. Formally a TRC for Aceh has already been established under national Indonesian law (the LoGA), but its establishment requires the passage of further local laws. Although there is some legal uncertainty about the relationship between an Aceh TRC and a national TRC, a close reading of the LoGA supports the view that an Aceh TRC may be established before a national TRC. According to this legal interpretation the Constitutional Court's ruling, which struck down the national TRC law, does not prohibit or necessarily delay the creation of a TRC for Aceh.

Summary Conclusions and Recommendations

The initial steps toward establishing peace in Aceh—demobilizing, decommissioning, and disarming—have been completed for the most part. The initial reintegration of former combatants into local communities has also had some success. Yet despite these accomplishments, tensions among stakeholder groups are beginning to rise, threatening the nascent peace.

An analysis of existing postconflict peace-building programs, as well as interviews and focus group discussions with victims of the conflict, all highlight the need for a more holistic and integrated transitional-justice approach to help deal with rising tensions. Truth-

seeking, comprehensive reparations, targeted prosecutions, and institutional reform are needed to sustain peace.

This report makes the following recommendations:

- Immediately create a local TRC for Aceh, based on the civil society model, as a starting point for truth-seeking, reparations, reintegration, and institutional reform. At the same time, address legal issues at the national level to ensure that a local TRC can function effectively;
- Immediately take steps to establish a Human Rights Court for Aceh and simultaneously re-open investigations of past human rights abuses using existing legislation and mechanisms;
- Assign the TRC to design a comprehensive, transparent, and appropriately gendered reparations program. Based on the TRC's findings regarding victims, this program must provide a holistic reparations package emphasizing psychosocial rehabilitation. In the meantime the TRC can also coordinate with existing programs and refer victims with urgent needs;
- Create a long-term strategy to build judicial independence, impartiality, and professional judicial capacity, with the goal of holding fair trials of those accused of being most responsible for atrocities in Aceh;
- Engage in institutional reform to help reestablish trust between local communities and the various authorities running Aceh. Initial reforms should include
 - o Political, judicial, and legal reforms to address corruption and extortion;
 - o Judicial and legal reforms to ensure equal protection for women under the law;
 - o Vetting of security sector personnel;
 - o Increased civilian oversight of the security sector;
 - o Increased transparency and communication among the government, security actors, and the community;
- Refocus BRA's reintegration programs to provide more long-term, sustainable livelihood, health, and education assistance;
- Connect BRA programs with the Aceh TRC to ensure that assistance is targeted at those most in need;
- Invite sustained international engagement in the peace process to help ensure implementation of international best practice and strengthen local capacity.