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NEGOTIATING PEACE IN INDONESIA

Prospects for Building Peace and Upholding Justice in
Maluku and Aceh

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June 2009



INITIATIVE FOR PEACEBUILDING



THIS INITIATIVE IS FUNDED
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NEGOTIATING PEACE IN INDONESIA

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ACKNOWLEDGMENTS

The authors wish to thank Priscilla Hayner, Galuh Wandita, and Ayu Lestari Wahyuningroem of ICTJ, and Abdul Haris Semendawai, Agung Putri, Indriaswati Dyah Saptaningrum, and Otto Adi Yulianto of Elsam for their input and editorial support. Special recognition must be given to Ross Clarke for editing this report. ICTJ would like to thank the Open Society Institute, the Norwegian Government, and HIVOS for supporting ICTJ's programme in Indonesia, including additional research and workshop costs for this paper. An individual research grant from the US Institute of Peace and collaboration with the International Peace Institute also supported the research.

CONTENTS

Acronyms	6
Executive Summary	7
Background	9
Contrasting Conflicts	9
Methodology	10
Maluku	11
Background and Peace Negotiations	11
Malino Peace Agreement	12
Representation and Participation	13
Negotiation Dynamics	13
Negotiating Justice	14
Implementation	15
Aceh	17
Background and Peace Negotiations	17
Helsinki Peace Agreement	17
Representation and Participation	18
Negotiation Dynamics	18
Negotiating Justice	19
Implementation	20
Comparative Analysis and Lessons Learned	23
Conclusion	26
Additional References	27

ACRONYMS

AMM	Aceh Monitoring Mission
ASEAN	Association of Southeast Asian Nations
BRA	Aceh Reintegration Agency (Badan Reintegrasi Aceh)
CMI	Crisis Management Initiative
CoHA	Cessation of Hostilities Agreement
DOM	Military Operations Zone
ELSAM	Institute for Policy Research and Advocacy (Lembaga Studi dan Advokasi Masyarakat)
FKM	Maluku Sovereignty Forum (Forum Kedaulatan Maluku)
GAM	Free Aceh Movement (Gerakan Aceh Merdeka)
HRC	Human rights court
ICTJ	International Center for Transitional Justice
KPK	Coalition for Truth Recovery (Koalisi Pengungkapan Kebenaran)
LoGA	Law on the Governing of Aceh
MoU	Memorandum of Understanding
NGOs	Non-governmental organisations
RMS	Republic of South Maluku (Republik Maluku Selatan)
TRC	Truth and reconciliation commission

EXECUTIVE SUMMARY

Indonesia, now a decade into democratic reform, is no stranger to conflict. Its history is littered with episodes of mass violence, whether state-sponsored, communally driven or separatist in nature. But in recent times the Indonesian government has successfully negotiated several peace agreements and brought about an end to mass human rights violations. This report examines two such cases, the peace negotiations for Maluku and Aceh, with particular emphasis on issues pertaining to justice and accountability. Its aim is to uncover the dynamics of peace negotiations, to identify how transitional justice mechanisms – such as prosecutions, amnesty, truth-seeking, reparations and institutional reform – were addressed by negotiators and to assess post-agreement implementation of justice-related provisions.

While the overriding objective of peace negotiations is the cessation of hostilities, questions of justice and accountability for conflict-related crimes often remain at issue. By comparing the Maluku and Aceh processes, this report draws out key policy considerations regarding the place of transitional justice mechanisms within peace negotiations. Accountability for past violations is increasingly important as a tool to secure sustainable peace, and analysing the implementation of transitional justice at the very inception of the peace process provides significant insights.

The Maluku and Aceh conflicts were set in two very different contexts. The province of Maluku, consisting of approximately 1,000 islands in the eastern part of Indonesia, was plagued by communal violence, largely between Muslim and Christian communities, between 1999 and 2004, often with the explicit involvement of Indonesian security forces. The conflict left at least 5,000 people dead and displaced almost a third of the province's 2.1 million population; it also caused large-scale destruction of public and private property. Since the Malino peace agreement in 2002, the region has sustained an uneasy peace.

The conflict in Indonesia's most western province of Aceh was a more conventional civil war. It began in the 1970s after a declaration of independence by an Acehnese separatist group known as *Gerakan Aceh Merdeka* (Free Aceh Movement, or GAM). The conflict between several thousand GAM separatists and the Indonesian army resulted in thousands of killings, disappearances and other serious human rights violations that continued right up until the signing of a Helsinki peace accord in 2005.

When the warring parties came to the negotiation tables at Malino and Helsinki, two quite different processes took place. For Maluku, the Indonesian government initiated a domestically-driven process involving 70 members of the communities in conflict, and after two days of negotiations, a peace agreement was reached. For Aceh, negotiations took place in an international spotlight, largely because of the 2004 tsunami. Mediated by former Finnish president Martti Ahtisaari, the Helsinki agreement was negotiated in five separate rounds over eight months and provided a high-profile resolution to the long-standing conflict.

Both agreements suggest possible avenues for accountability: on close analysis, the dynamics of negotiations marginalised justice issues. Though truth-seeking, justice and reconciliation mechanisms appear in the final texts, there was surprisingly little dialogue on the relevant mechanisms and options. As a result, the role that these transitional justice mechanisms would play and the means of implementing them were extremely unclear. In the case of Maluku, an attachment to the agreement provided for a human rights court (HRC) and a truth and reconciliation commission (TRC). But remarkably, even several years later, confusion persisted over whether the establishment of these bodies constituted part of the agreement at all.

In both Aceh and Maluku, once the peace agreement was signed, transitional justice mechanisms were further marginalised. Despite robust commitments in both peace agreements, no TRC or HRC for Aceh or Maluku has ever been implemented. Even a commission of inquiry report that investigated the causes of and responsibilities for the Maluku conflict, established as part of the peace agreement, has not been made publicly available.

This report does not closely examine all aspects of the negotiations, though it provides an overview of the main actors, dynamics and issues. It does analyse in detail the peace agreements, in particular the role of civil society and international actors, the minimal consideration given to conflict victims and the absence of institutional reform provisions. The report concludes by welcoming the inclusion of transitional justice provisions in the peace accords while highlighting the continued challenges faced in terms of implementation.

Keywords: Indonesia, mediation, peacebuilding, accountability.

BACKGROUND

Democratic reform in Indonesia, commencing with the fall of President Suharto's New Order regime in 1998, was marked by an escalation of hostilities and human rights abuses in areas with long-running conflicts: Aceh, Irian Jaya (now Papua) and East Timor (now Timor-Leste). The early years of Indonesia's transition also witnessed the emergence of brutal communal conflicts in the provinces of Maluku, Central Sulawesi (Poso), West Kalimantan (Sambas) and other parts of the vast archipelago nation.

By the end of 2005 the majority of these conflicts, with the exception of Papua, had mostly subsided. In several cases – most notably Maluku, Aceh and Poso – peace agreements provided the catalyst to end mass human rights violations. To varying degrees, they also defined social, political and economic provisions for building peace. The negotiations and resulting agreements set out a framework for upholding justice and pursuing accountability for crimes committed during the conflicts.

This report analyses the peace agreements in Maluku and Aceh, with particular emphasis on issues pertaining to justice and accountability. Its aim is to uncover the dynamics of peace negotiations, identify how transitional justice mechanisms such as prosecutions, amnesty, truth-seeking, reparations and institutional reform were addressed by negotiators, and to assess post-agreement implementation. Analysing these two different situations provides important lessons and raises policy considerations for future peace agreements.

CONTRASTING CONFLICTS

Old and new conflicts alike plagued the early years of the post-Suharto reform era. The former were a legacy of the regime's brutal military suppression of separatist opposition in Aceh, Papua and East Timor. Typically rebel groups resisted the Indonesian military, resulting in both combatant casualties and widespread human rights atrocities. The latter resulted from the collapse of the Suharto regime, which allowed the re-emergence of inter-communal conflict based on religious and ethnic differences. While the scale of such violence – particularly in Jakarta, Poso, Maluku and West Kalimantan – represented a new chapter in Indonesian identity politics, these conflicts had a strong historical basis. The Dutch colonial era implemented discriminative policies that favoured certain groups over others, and Suharto's regime continued this strategy throughout his 32-year rule. With the fall of Suharto and the end of military-enforced repression, it was easy to mobilise people along religious and ethnic lines in response to long-standing grievances.

The Maluku and Aceh conflicts differed significantly in terms of context, scale and dynamics. The negotiations employed to address them were also very different. The high-profile Helsinki agreement for Aceh was brokered amid international attention following the Indian Ocean tsunami of 2004. By contrast the Maluku Malino negotiations were low profile, conducted in a national process mediated by the Indonesian government that brought together 70 leaders of warring communities.

The scale and nature of each conflict profoundly shaped the peace agreement and its treatment of transitional justice issues. A comparison of these two important Indonesian peacebuilding agreements highlights how and when transitional justice was prioritised, the shortcomings in the negotiations, and the impact that negotiations had on implementation of the agreements.

METHODOLOGY

This report is based on approximately 60 interviews, many of them with people directly involved in the Maluku and Aceh negotiations.¹ It focuses on two peace agreements that now provide the hallmarks of sustainable peace in both regions. For Maluku, researchers focused on the Malino agreement of February 2002, which brought together 70 representatives of Maluku's Muslim and Christian communities as well as 10 representatives of the government of Indonesia. For Aceh, researchers analysed five rounds of negotiations between representatives of GAM and the government of Indonesia, conducted in Helsinki between January and August 2005. The report further draws on several workshops related to transitional justice, a community peace ceremony attended by the research team, and published accounts of the Aceh peace process.² The research was undertaken jointly by the Indonesian non-governmental organisation (NGO) *Lembaga Studi dan Advokasi Masyarakat* (Institute for Policy Research and Advocacy, or Elsam) and International Center for Transitional Justice (ICTJ) and conducted over a period of three months in late 2008. Workshops held at the beginning and end of the project helped to build a shared analysis and framework for the report.

1 Interviews were carried out by the authors; additional earlier interviews by ICTJ, in particular by Priscilla Hayner, on Aceh.

2 This includes a workshop by the Acehese civil society coalition on truth *Koalisi Pengungkapan Kebenaran* (Coalition for Truth Recovery, or KPK) in Banda, Aceh, to discuss a civil society draft law on a truth commission for Aceh (Banda, Aceh, 20th September 2008); a traditional peace and reconciliation ceremony between five villages, *Ina Ama Tala Batai* (Hualoi, West Seram, 25th-26th October 2008); and an ICTJ workshop, 'Building peace and upholding justice: Learning lessons from the field' (Bali, 2nd-3rd December 2008). The Aceh research was assisted by firsthand accounts of the Helsinki negotiations by Awaluddin (2008), Husain (2007), Kingsbury (2006) and Merikallio (2006) as well as by comprehensive reports, including Aspinall (2008), Feith (2007), and Large and Aguswandi (2008). Little if anything comprehensive has been written about the Malino I (Poso) or Malino II (Maluku) negotiations.

MALUKU

BACKGROUND AND PEACE NEGOTIATIONS

The “new” conflict in Maluku was ignited by an ordinary fight in the centre of its capital, Ambon City, on 19th January 1999 – the Muslim holy day of Idul Fitri – between Muslims and Christians. By early 2002, more than 5,000 people had lost their lives and one-third of the province’s 2.1 million population had been displaced. Many of the province’s institutions were struggling to function as communal violence spread from Ambon to other Maluccan islands such as Seram, Halmahera, Tidor, Ternarte and Kei. Much of the initial violence, perpetrated by armed Muslim or Christian groups, consisted of murderous attacks on areas dominated by the other religion. There was also widespread arson of public and private property, including places of worship.

Many perceived the conflict in Maluku as religiously motivated, involving a complex array of actors and characterised by several distinct phases. Perpetrators and victims alike were drawn from local Maluccan Muslims, Christians, minority religious denominations, migrants from other Indonesian islands, and religious groups from outside Maluku. After the initial outbreak of violence, the conflict drew in numerous Muslim migrants from the neighbouring province of South Sulawesi, who had settled in an area where the population had historically been evenly split between Christians and Muslims. Throughout the conflict the Indonesian security forces were often reportedly involved in the violence, rather than responding to attacks and providing security. Interviewees alleged that members of the Indonesian armed forces assisted Muslims while members of the police force sided with Christians. Interviewees also alleged that security forces sold weapons and ammunition to members of both communities and ran security rackets.

The second phase saw the scale of conflict increase, as both Christians and Muslims perpetrated acts of organised violence on their opponents. By mid-2000, when several thousand members of the Islamic armed group Laskar Jihad had entered Maluku, the conflict had further intensified. The Laskar Jihad arrived from Java and other Indonesian islands to support local Muslim militias against their Christian counterparts.³ Around this time the *Forum Kedaulatan Maluku* (Maluku Sovereignty Forum, or FKM) was formed. This Christian organisation reportedly shared aspirations with the so-called *Republik Maluku Selatan* (Republic of South Maluku, or RMS), a South Maluccan separatist group active in the late 1940s during Indonesia’s early independence. The re-emergence of RMS sympathies led to another phase of conflict characterised by derogatory labels from the opposing groups: Christians were called “separatists”, and Muslims “terrorists”.⁴

However, describing the Maluku conflict as entirely religious in nature would be a gross over-simplification. Other factors were highly influential, in particular horizontal inequality and local parties’ ambitions for key administrative posts, heightened by the central government’s decision in 1999 to split Maluku into two administrative provinces. There were also significant inter-religious efforts to improve relations and reduce conflict, initiated by civil society and former combatants across the Maluccan islands. Jointly established by members of the Christian and Muslim

3 The armed Islamic group Laskar Jihad, mostly made up of Muslims from the island of Java, was formed in 2000. A large contingent first went to Maluku in mid-2000 after allegedly receiving military training from sympathetic members of the military. Their presence in Maluku resulted in a marked change in the conflict: Christian militia groups were put on the offensive for the first time, and there was an increase in the number of Christian casualties and displaced persons. See: International Crisis Group (ICG) (2002). *Indonesia: The Search for Peace in Maluku*. Brussels, Belgium.

4 The label given to Christian groups, “separatist”, was related to its perceived historical relation with RMS (which also had Muslim members). “Terrorist” was applied to Muslims because of the global and national phenomenon of Muslim terrorism post-9/11. Other derogatory labels were based on the perceived favourite foods of each religion: “dogs” for Christians and “goats” for Muslims.

communities in 2000, the Baku Bae movement conducted cross-community initiatives to build confidence and mitigate potential conflict. The Christian and Muslim grassroots leaders who formed the Baku Bae movement took great personal risk in working with activists from the opposing community. The movement held meetings outside Maluku, establishing a framework for activities in Maluku. The main aim was to strengthen the social fabric, as the state was ineffective in providing protection and/or assistance. Baku Bae's activities consisted of polling the population about their views of the conflict (which showed that the majority wanted the violence to stop), providing legal aid focused on property issues and bringing warring communities together to make communal spaces like markets and roads accessible to both Christian and Muslim communities. The movement carried on its activities beyond the signing of the Malino peace agreement. In September 2002, it facilitated a successful reconciliation meeting in Ambon between the communities of the Leh Hitu side of Ambon Island.

A group of Maluccan women also established an organisation to assist displaced women and children living in temporary camps, which helped improve relations between the Muslim and Christian communities.⁵

MALINO PEACE AGREEMENT

Against the backdrop of violence and failure to resolve the conflict, the Indonesian government arranged peace negotiations in the hill town of Malino, South Sulawesi, on 12th-13th February 2002. Seventy representatives of Maluku's Muslim and Christian communities attended along with 10 members of the Indonesian government. This report focuses on the Malino negotiation, but it cannot be characterised as the only cause of peace in Maluku. Prior to the Malino talks, some island communities had already resolved communal conflict without external assistance, while in other areas, particularly Ambon Island, violence continued well after the agreement was signed. The Malino negotiations are particularly significant, however, as the only process to include high-level state involvement. Participants were able to broach state accountability for the violence and include provisions for state-backed transitional justice approaches in the agreement.

The Malino process commenced behind closed doors; former Indonesian Coordinating Minister for People's Welfare Jusuf Kalla played a prominent role. In late 2001, fresh from negotiating a peace agreement for the conflict in Poso,⁶ Kalla commenced communications with then governor of South Maluku, Mohammed Saleh Latuconsina. Together they developed a plan to gather Maluku's Muslim and Christian leaders and undertake a similar process to the one led by Kalla in the Poso conflict. Saleh remained sceptical of the talks' success given the apparent irreconcilable tensions between the two communities. But he brought together a small group of prominent Muslim and Christian leaders to develop a framework for negotiations based on the 10-point agreement Kalla had brokered between Poso's Muslim and Christian communities.

After many night-time meetings, the group agreed to tell other prominent community leaders unaware of the process about the nature of their discussions, asking them to keep these secret. This initial secrecy severely undermined the legitimacy of the eventual agreement, however, alienating those excluded from the process, most notably Laskar Jihad. When it became clear that a Poso-style agreement was intended, Laskar Jihad's leaders attempted to derail the process through public propaganda and threats against local Muslim leaders.

Doubts over whether the Malino talks would actually occur persisted until the last minute. Members of the Muslim community disagreed over who should represent them – and even whether they should participate at all. Indeed, many of the 70 delegates who left Ambon airport for Malino on 10th February 2002 were unclear on the precise nature of the negotiations and remained concerned for their personal safety right up to the moment the plane took off.

5 Interviews with members of *Gerakan Perempuan Peduli* (Caring Women's Movement, or GPP), Ambon, October 2008.

6 As in Maluku, the Muslim and Christian communities in Poso, Central Sulawesi province, fought a bloody conflict beginning in 1999. In late 2001, the sides came together to strike a peace agreement mediated by coordinating ministers Kalla and current president Yudhoyono. Because of the location of the talks in the small South Sulawesi hill town of Malino, this became known as the Malino I Agreement. The Maluku agreement, negotiated in the same location, became known as Malino II. See, for example: ICG (2004). *Indonesia Background: Jihad in Central Sulawesi*. Brussels, Belgium.

REPRESENTATION AND PARTICIPATION

The Muslim delegates, led by Thamrin Ely, included leaders of various mass Islamic organisations (such as Muhammadiyah), academics, religious leaders and prominent civil society figures from some of the villages involved in the conflict. The Christian delegation, led by Tony Pariela, was made up of prominent figures in the Christian church, academics, and community and youth leaders. Selecting delegates for the Christian group was far easier than for the Muslims. The Protestant church plays an important role in Maluku, and several representatives of the Catholic church were also included to represent Maluku's small Catholic minority. Muslim representatives, on the other hand, proved difficult to assemble because of the lack of a unified institutional structure and Muslim leaders' affiliations with various organisations.

Though the majority of delegates were considered appropriate representatives, some were thought to be linked to inter-communal acts of violence. Animosity and distrust between the two groups remained high, especially as both sides faced significant pressure from both moderate and hard-line members of their communities to achieve a peaceful settlement with minimal concessions. This was especially true of the Muslim community, which remained divided over representation right up to the day of the talks.

The government delegation at Malino, led by Kalla, consisted of high-level Jakarta-, provincial- and district-level officials, including current Indonesian president Susilo Bambang Yudhoyono in his then role of coordinating minister for political and security affairs.⁷ A delegation of observers at the Malino talks consisted of religious representatives as well as police and military officials.

NEGOTIATION DYNAMICS

For all parties involved, the negotiations' overriding objectives were to agree on a ceasefire and to restore security. Yet the prospects for success seemed low, as many delegates had not previously participated in such talks, had never met face-to-face with members of the opposing community, or had never met with Indonesian authorities. Still, they had a firm commitment to ending the violence – which rendered other issues secondary. Many representatives were surprisingly unaware of the broader agendas for social, judicial, security and economic issues later laid out in the two attachments to the final document. As one delegate said:

'The Malino talks were essentially held to establish a ceasefire, to stop the violence. Everyone was tired of the violence, but no one saw Malino as peace talks. Indeed the word "peace" was not written in the document, and nobody present talked specifically about peace, as the situation was too volatile at the time. It was simply a ceasefire.'⁸

During the two days of talks at Malino the delegates were split into three groups. The first discussed a proposed 11-point document, which served as the primary text; the second focused on social and economic issues; and the third discussed security and legal concerns. In many respects Kalla, Governor Saleh and a small number of community representatives had agreed upon the 11-point text, but it had yet to be discussed in an open forum. Each of the latter two groups formulated an attachment to the agreement, to be implemented as post-conflict recovery projects.

Most of the discussion was focused on the Muslim and Christian communities' different narratives of the conflict and on the role of partisan groups like RMS and Laskar Jihad. As the two sides' opinions could not be reconciled, it was proposed that an independent investigation team, consisting of people from outside Maluku, look into these questions. This was an acceptable compromise, but it was predicated on the implementation of a ceasefire.

The Malino talks were notable for three reasons besides the absence of significant international attention. First, the large number of delegates underscored the challenges of selecting leaders to adequately represent the

7 In addition to Kalla and Yudhoyono, the Indonesian government delegation included Chief of Indonesian Police Da'I Bachtiar; the head of Maluku's police force, Soenarko; the head of Maluku's Patimura Military Command, Mustopo; governor of Sulawesi Saleh Latuconsina and his deputy, Paula Renjaan; the governor of the host province of South Sulawesi, H.Z.B. Palaguna; the head of Maluku's regional parliament, Sahuburna; and the mayor of Ambon City, M.J. Papilaya.

8 Interview with community leader in Ambon, October 2008.

communities involved. Indeed, just before the talks were scheduled, 10 delegates were added, raising the number from 25 to 35, to overcome the Muslim community's difficulty in selecting representatives.

Second, the absence of some key players in the conflict threatened to undermine the legitimacy of the talks. Though there were a full 70 negotiators, leaders of key trans-migrant groups, Laskar Jihad, FKM and other armed civilian groups were not invited. While this undoubtedly reduced the effectiveness of the pact and most likely contributed to the continuation of hostilities in some areas, it may have been necessary to exclude these hard-line groups to secure an agreement.

Third, the actual role of the Indonesian government delegation was unclear. Most Malino delegates considered the agreement tripartite, bringing together the Muslim and Christian communities and the government. Crucially, this perception arose from the state security forces' active role in the conflict, the state's failure to stop the violence and its responsibility to rebuild the region. While the Maluku delegates are adamant that they signed a tripartite agreement, copies of the final text show that all government representatives signed as mediators and not as parties to the conflict.

Notwithstanding these potential difficulties, the Malino negotiations resulted in a brief 11-point agreement that included provisions to cease hostilities, uphold law and order, implement social and economic rehabilitation, and turn in weapons held by civilians. It also incorporated several references to transitional justice approaches – that is, an HRC and TRC. However, these suggestions were ambiguous and vague, limiting the impact they might otherwise have had.

NEGOTIATING JUSTICE

Since the overwhelming priority of the Malino negotiations was the cessation of hostilities, justice and accountability issues received minimal attention. Indeed, most delegates interviewed for this report were unable to recall in detail the dynamics of justice negotiations, tending instead to remember discussions on more contentious issues. This overriding bias restricted delegates' focus on accountability measures.

The main acknowledgement of the state's possible role in the conflict, though tentative, was a provision to establish an independent investigation into human rights violations during the conflict. This highlighted truth-seeking in the Malino agreement, but a lack of clarity and transparency severely undermined the benefits that the provision might have produced.

Item number six of the Malino agreement states that:

'A National Independent Investigation Team should be established to make a thorough investigation of the incidents of 19th January 2001, FKM, RMS, Christian RMS, Laskar Jihad, Laskar Kristus, forced religious conversion, human rights violations, and other violations of the law during the conflict'.

But the agreement offered no guidance as to the team's composition or terms of reference. For most delegates the national investigation team was the most effective way of initiating a truth and accountability process while not sacrificing the talks' primary objective: achieving a ceasefire. As one delegate stated: 'Let's deal with it later, whether there were human rights violations or not; later the team can prove it'.⁹

The national investigation team came into being largely to overcome the impasse over differing Muslim and Christian narratives of the conflict, especially regarding the role of civilian militia groups such as Laskar Jihad and RMS. But it also reflected the desire of both Muslim and Christian delegates to investigate the Indonesian government's responsibility for the conflict. While delegates noted that, in hindsight, a greater focus on state accountability was warranted, they reiterated that during the negotiations the primary concern was stopping the violence. The terrible impact of the conflict and the urge to bring about peace overshadowed any debate on the role of state authorities.

9 Interview with Malino delegate, Ambon, October 2008.

Other factors also undermined the attention given to justice and accountability issues. Delegates acknowledged that their limited understanding of transitional justice approaches might have compromised their capacity to negotiate a stronger position. Further, the unwillingness of many grassroots activists to recognise the Malino process hampered debate on human rights accountability. Many of those involved in Baku Bae and other activist movements during the conflict distrusted the Malino process, seeing it as a tool of the political elite. Or they saw it as a mechanism for uniting the elements of Maluku's society that had not yet made peace with one another.

Yet despite the minimal attention accorded to justice issues during the Malino negotiations, the final agreement contains a little known attachment providing for the establishment of an HRC, a human rights investigation team and a TRC. It further provides that trials should occur in both military and civilian courts and that the HRC and TRC should be established in April and May 2002, only two months after the signing of the agreement. This annex to the agreement is referred to at the end of the agreement itself, in these words:

'Follow up steps to this agreement, will comply with the agenda and plans as follows: I. Security and Law Enforcement Commission (Attachment I); II. Social and Economic Commission (Attachment II)'.

Remarkably, none of the delegates interviewed recalled the intended mechanisms in Attachment I, nor did they recall discussions about these provisions. They did, however, consider the establishment of the national investigation team as the means of beginning a process of accountability. Most interviewees noted the immense potential challenges faced by such bodies, given the blurring of lines between perpetrators and victims in the Maluku conflict. Delegates also noted that, if these bodies were established, they should depend on recommendations made by the national investigation team.

The Malino agreement did little to recognise the rights of victims of the conflict, largely because the highest priority was a ceasefire. But the omission also arose from the fact that all parties claimed they were victims in some way. While falling well short of best practice, the agreement did recognise the urgent need to deal with thousands of internally displaced persons as well as the government of Indonesia's responsibility to assist in the social, psychological and economic rehabilitation of those affected by the conflict. The primary strategies proposed were the reconstruction of homes and the rehabilitation of education, health and religious facilities.¹⁰ Neither of these provisions was linked to a judicial or truth-seeking process.

IMPLEMENTATION

It is now more than a decade after the Maluku conflict commenced, and more than six years since the Malino agreement was signed. Yet truth-seeking, justice and accountability for the violence in Maluku are still not on the political agenda. The central and local governments have made little if any attempt to establish mechanisms for truth-seeking or to prosecute human rights violations during the conflict.

On 6th June 2002, then president of Indonesia Megawati Soekarnoputri issued a presidential decision establishing the National Independent Investigation Team. Its 14 members were drawn from the security forces, the National Human Rights Commission, academia, faith-based organisations and civil society. The team was mandated to 'investigate, fact-find, and analyze incidents and issues that took place in Maluku', including the acts that led to the escalation of violence, the roles played by specific organisations, allegations of forced religious conversions, and human rights violations.¹¹

After working for almost a year, the team completed its final report in mid-2003. One member of the team has said that they chose to take a soft approach, not making recommendations for prosecutions in their report.

¹⁰ Article 7 of the Malino agreement states that 'refugees will be returned to their original homesteads, however without any compulsion, maintaining all of their legal rights. This is to be carried out in stages according to local actual conditions'. Article 8 states that 'the Government will assist the people in matters of mental and social rehabilitation, and in rebuilding the economy and public facilities, like education, health and religious facilities as well as people's houses, so that the future of the people of Maluku will return (to normal) and be free of difficulties'.

¹¹ Presidential Decision (or Kepres) No. 38, 2002, specifically mentions investigations into '(a) the incident of 19 January 2001, (b) RMS, (c) Christian RMS, (d) Laskar Kristus, (e) FKM, (f) Laskar Jihad, (g) forced religious conversion, (h) human rights violations, and (i) violations of the law related to the Maluku conflict'.

They did, however, reportedly name groups and individuals responsible for the violence. President Megawati is believed to have received a copy of the report, but the official handover ceremony was postponed and never rescheduled due to the president's busy schedule before the 2004 election.

To date the report has never been released, and its contents and conclusions have been kept secret. Some Maluku community leaders have demanded that it be made public, while others have expressed fear that releasing the report could be detrimental to maintaining peace given the continued fragile and segregated state of Maluku communities.

Since 2006, in at least two private meetings between current Vice-President Kalla and the Malino delegates, Kalla reportedly said that the report is too sensitive to be released. According to one Malino delegate, the vice-president claimed that the document is now part of the national archive and cannot be released for a number of years. In any event, the central government's failure to release the report demonstrates its unwillingness to meet the Malino agreement commitments and highlights the minimal importance it places on accountability.

While there have been no serious attempts to establish truth-seeking or judicial approaches to the legacy of the Maluku conflict, significant efforts have been made to implement traditional forms of reconciliation outside the peace agreement framework. These forms of inter-communal brotherhood, which differ from island to island, predate the era of modern religious conversion. By strengthening these institutions, local authorities and civil society aim to improve social cohesion and counter the community disintegration that resulted from the conflict.

The reconciliation procedure most commonly mentioned is *pela gandong*, which connects two or more villages or areas in bonds of mutual respect and cooperation. These ties traditionally transcend religious differences, and communities across Maluku have invoked the *pela* principle to stop or prevent further conflict. This approach has proved most effective in rural areas where the majority of the population is indigenous. In urban areas, especially where large numbers of non-Maluccan migrants have settled or those displaced from other communities have sought refuge, re-establishing *pela* is reportedly more difficult.

ACEH

BACKGROUND AND PEACE NEGOTIATIONS

The “old” conflict in Aceh began on 4th December 1976, when a small group of disgruntled Acehnese led by Hasan di Tiro formed GAM and declared independence from Indonesia. GAM's separatist aspirations were based in part on a historical claim that Aceh had never acceded to Dutch colonial rule and was therefore never part of the Indonesian nation state founded in 1945. GAM also claimed ongoing discrimination and economic exploitation by the Suharto regime.

By 1978 Suharto had sent thousands of troops to Aceh to quell the separatist movement, resulting in a protracted conflict between several thousand GAM members and Indonesian security forces. In 1980 di Tiro and a few GAM leaders fled to Sweden, but the conflict continued. Suharto declared Aceh a Military Operations Area (DOM) in 1989, and some of the worst human rights abuses occurred during that period, which lasted until just after the fall of Suharto in 1998.

Efforts to attain a ceasefire commenced in 2000, brokered by the Swiss-based Centre for Humanitarian Dialogue, and resulted in the signing of the Cessation of Hostilities Agreement (CoHA) in 2002. However, by early 2003 the CoHA process had collapsed, after GAM refused to hand over its weapons and Indonesia's armed forces refused to withdraw troops at a negotiation in Japan. By May 2003, the recently installed President Megawati had put Aceh under martial law.

With the election of reform-minded former army general Susilo Bambang Yudhoyono as president in 2004, prospects for a peaceful resolution to the Aceh conflict improved. Both Yudhoyono and Vice-President Jusuf Kalla had gained valuable negotiation and conflict resolution experience while dealing with the problems in Poso and Maluku. Shortly after taking office, Kalla was asked to approach GAM leaders about a peaceful end to the conflict. Aware of potential ultra-nationalist spoilers within both the parliament and armed forces, Kalla sent Deputy Coordinating Minister for People's Welfare Farid Husain to quietly talk with GAM leaders both in Aceh and abroad.¹²

It was in this context that the devastating Indian Ocean tsunami of 26th December 2004 swept over much of Aceh. The tsunami left more than 150,000 Acehnese dead or unaccounted for, and thousands more displaced. The destruction trained an international spotlight on this relatively unknown corner of the Indonesian archipelago and prompted a massive humanitarian relief effort. The tsunami also dealt a considerable blow to combatants in both GAM and the Indonesian army. Ultimately it was the catalyst that brought both parties to the table to broker a peace agreement and facilitate the recovery process.

HELSINKI PEACE AGREEMENT

The Helsinki negotiations, held in Königstedt Manor between January and August 2005, resulted in the signing of a Memorandum of Understanding (MoU) between GAM and the government of Indonesia. The agreement consisted of six sections regarding the governance of Aceh, human rights, amnesty and reintegration, security arrangements, the establishment of the Aceh Monitoring Mission (AMM) and dispute settlement.

¹² A detailed description of the initial meetings with GAM members can be found in: F. Husain (2007). *To See the Unseen: Scenes Behind the Aceh Peace Treaty*. Jakarta, Indonesia: Health and Hospital Indonesia.

The MoU included some important justice-related elements. The human rights section included provisions for the establishment of an HRC and TRC specifically for Aceh; the TRC was to be linked to the planned Indonesian national truth commission. The amnesty section of the MoU called for the immediate release and reintegration of GAM political prisoners and detainees. The same section also stated that all citizens 'who have suffered a demonstrable loss due to the conflict' would receive an allocation of farmland or adequate social security. This is the closest the negotiations came to allowing for reparations, but the compensation claims were not linked to any judicial or truth-seeking process.

The role of former Finnish president Martti Ahtisaari in bringing peace to Aceh has been well documented, and he received significant international recognition, not least by being awarded the 2008 Nobel Peace Prize. He also influenced the choice of venue, which was conveniently close for some of the exiled GAM leaders based in neighbouring Sweden. Ahtisaari mediated in his capacity as chairman of the Finland-based NGO Conflict Management Initiative (CMI), with the first round of talks supported by CMI and the Finnish government.

After the first round, when Ahtisaari sensed that a positive outcome was attainable, he approached the EU, which agreed to fund the rest of the talks. The EU also played a key role in implementing the MoU by establishing the AMM in collaboration with the Association of Southeast Asian Nations (ASEAN). The inclusion of ASEAN representation in the AMM was thought to appease members of the Indonesian government who insisted the initiative have a more local component. Indonesia's experience with the UN in Timor-Leste made it virtually impossible to have direct UN involvement in the talks or the implementation process. However, one Indonesian negotiator recalled that the government also feared that failure to reach an agreement would undermine the continued international aid so crucial for tsunami relief efforts.

REPRESENTATION AND PARTICIPATION

The Indonesian team was for the most part led by chief negotiator Hamid Awalludin, then the minister for justice and human rights. He was assisted by Farid Husein, the minister for communication and information, Sofyan Djalil, an Acehnese and the deputy minister for people's welfare, and two officials from the ministry of foreign affairs. While neither President Yudhoyono nor Vice-President Kalla attended the talks, Kalla reportedly gave guidance from a distance at every step of the process. President Yudhoyono was not closely involved, but was reportedly called upon to affirm crucial decisions, such as the establishment of Acehnese political parties.

GAM's team consisted of members of its self-appointed leadership in exile, led by Prime Minister of the Government of the State of Aceh Malik Mahmud. He was accompanied by GAM's foreign minister, Dr Zaini Abdullah, spokesperson Bakhtiar Abdullah, and political officers Nur Djuli and Nurdin Abdul Rahman. In later rounds they were joined by leaders from Aceh, including Shadia Marhaban and Irwandi Yusuf, who was later elected governor of Aceh; GAM was supported by the Australian academic Damien Kingsbury, who advised on and formulated options for negotiation throughout the process.¹³ A small number of Acehnese intellectuals also assisted from a distance. Largely because the process was conducted so far from Aceh, observers were limited to a number of Finns, EU diplomats and academic advisors.

NEGOTIATION DYNAMICS

The five rounds of Helsinki talks allowed for detailed discussion on several key issues regarding Aceh's future. In between rounds of negotiation, both sides were able to consult and gain legitimacy from their constituencies.

The agenda for the first round was initially unclear, but it soon emerged that the first session would be dominated by the Indonesian government's insistence that Aceh relinquish claims for independence and accept autonomy within the Indonesian state. Since at first no agreement could be reached on this crucial issue, the talks faced collapse. By the end of this round, however, the delegates had reached some common ground. Ahtisaari laid the groundwork for the following rounds by publicly declaring that: 'nothing is agreed until everything is agreed'.

¹³ Damien Kingsbury recounts details of the talks in his book. See: D. Kingsbury (2006). *Peace in Aceh: A Personal Account of the Helsinki Peace Process*. Jakarta, Indonesia: Equinox. This includes strategy plans he provided to GAM in various rounds of the negotiations.

Over the next two rounds GAM, the Indonesian government and the mediator eventually settled on the concept of 'self-governance', which for many impartial observers resembled the granting of autonomy. However, for GAM it meant avoiding autonomy status, which symbolically represented the suffering, oppression and empty promises experienced under Indonesia's previous provision of autonomy status in 1999.

The details of self-governance were also critical, and they became major sticking points at the end of the talks. The most difficult question was whether Acehese political parties would be allowed, a point insisted upon by GAM. But the Indonesian government considered provincial-level political parties a major threat, as historically they had never been allowed and their existence was perceived to foster separatist sympathies, threatening national unity. For GAM, however, the status of Acehese parties was a top priority. As one GAM advisor put it, 'The success or failure of the talks depended on this one issue'. For GAM, the recognition of local political parties meant that GAM representatives might be elected, and thus control both the Acehese legislature and its executive branch. This would give both democratic and legal legitimacy to their aspirations and their relations with the central government. Negotiators left this extremely sensitive political issue to the last stage of the talks, which allowed confidence to build between the parties while they addressed easier issues. In the end the decision to allow local political parties was deferred to President Yudhoyono, and he gave his approval to the concept the night before the scheduled signing of the MoU.

NEGOTIATING JUSTICE

As in the Malino negotiations for the Maluku peace agreement, justice and accountability issues were not a top priority during the Helsinki talks. But despite relatively little discussion of these subjects, the MoU clearly provided for transitional justice approaches, in particular a TRC and HRC. These provisions reflected the fact that CMI actually researched the issue of human rights abuse in Aceh.

The Helsinki MoU simply states that 'A Human Rights Court will be established for Aceh' (Article 2.2), and that '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' (Article 2.3).

Initially GAM delegates, who were vocal about the need to account for past crimes, insisted on the inclusion of these provisions. However, while many GAM members wished for state accountability, they also recognised the political reality. As one GAM delegate said: 'During the negotiations, to be frank, we thought all of this would be an academic pursuit. NATO was attempting to try perpetrators in former Yugoslavia. Would it be possible to actually bring to trial a general in Indonesia? Impossible'.¹⁴

For their part, the Indonesian delegation never objected to the inclusion of these provisions: Indonesia had already passed laws for the establishment of a TRC and a national HRC. Even so, state accountability remained an extremely sensitive issue for Yudhoyono and Kalla: both were cautious about provoking hard-line members of the military and legislature, which might have set back the government's efforts to reform the military. In fact, it was thought that establishing a TRC might appease the military, which perceived it as vehicle for forgiving and forgetting past crimes.

While human rights accountability was initially a prominent issue for GAM delegates, it was eventually overshadowed by their main objective. GAM wanted to consolidate control over the territory through the establishment of local political parties and democratic elections – something it had been unable to achieve through armed aggression. To temper GAM's initial insistence on accountability, Ahtisaari reportedly encouraged delegates to focus on the future, not to dwell on the past. GAM was also aware that, despite a provision of amnesty in the MoU, there was still a possibility their members could face trial, which would have had severe consequences within the organisation.

Compared to the major issues – the status of territory and the establishment of Acehese political parties – little time was afforded to negotiating justice. Indeed, the delegates and mediator almost forgot to include provisions

14 Interview with GAM negotiator, Banda Aceh, November 2007.

for an HRC. One GAM negotiator recalled, 'At the end they said, "You forgot to include the justice issues", and we said, "Oh yes, sure, put it in"'. Marti Ahtisaari said he thought that both a truth commission and human rights court were good ideas, but that he remembered only at the last moment to bring them up (though they had been discussed in earlier rounds). The parties agreed without much discussion.

Later, however, the wording of the article establishing an HRC generated significant controversy over whether it was intended to have jurisdiction over past crimes or only future human rights abuses. GAM negotiators and advisors remain adamant that the intention of the clause was to facilitate retroactive prosecution – but if this was discussed at the time, the text does not establish that. However, as discussed below, when the MoU was adopted into national law, trials for past crimes were explicitly prohibited.

The inclusion of an amnesty clause, which called for the immediate release of detained or imprisoned GAM members, also took up little negotiating time in Helsinki.¹⁵ The Indonesian delegation offered no resistance to the amnesty clause, pointing out that it merely continued the policy of offering amnesty to GAM fighters during the conflict. The amnesty provision did not extend to Indonesian security forces. As one GAM delegate explained, 'We didn't discuss amnesty for Indonesia. As far as they're concerned, they haven't committed crimes'.¹⁶ Other independent observers confirm that Indonesia did not seek amnesty for its armed forces – and that the Indonesian army might have rejected an accord that suggested they had committed crimes and thus needed amnesty.

The Helsinki negotiations failed to link reintegration or victim compensation to a judicial or truth-seeking process. The articles in 'Reintegration into Society' state that reintegration funds would be granted to rehabilitate public and private property and to assist former GAM combatants and prisoners. The section also states that 'All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in case of the incapacity to work, adequate social security from the authorities of Aceh' (Section 3.2).

While this provision fell short of an effective reparations programme, it did open the door for some victims of human rights violations to gain some state assistance. Sadly, this has proved difficult for women who were victims of sexual violence during the conflict, since the criteria for victims excluded victims of rape.¹⁷

IMPLEMENTATION

In the case of Aceh, two major developments – both of which took place in Jakarta – contributed to delays in the provision of justice and reconciliation. First was the enactment of the Law on the Governing of Aceh (LoGA) – a law that transferred most provisions of the Helsinki MoU into national law. To the displeasure of some former GAM members, conflict victims and civil society, the LoGA included an article preventing retroactive justice: 'To investigate, prosecute, rule on, and resolve cases of human rights violations that take place subsequent to the enactment of this Law, a Human Rights Court shall be established in Aceh'.

This article represented a major reversal for the Acehnese, who at the time of the negotiations had interpreted the HRC provision in the MoU to include jurisdiction over crimes committed in the past and future. However, not long after the signing of the Helsinki accord, the Indonesian military and some civilian leaders in Jakarta objected to the provision, arguing that opening the past would be detrimental to building peace in the future.

Since the enactment of the LoGA, the Aceh (former GAM) leadership has kept publicly quiet about this issue, perhaps accepting the political reality that Jakarta is not yet ready to prosecute its own military for past crimes. One GAM insider suggested that the issue had not slipped from the agenda of the Aceh Party (GAM's political

¹⁵ Article 3.1.1 of the Helsinki MoU states: '[The] government of Indonesia 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 signing of the MoU'. The following clause noted that: 'political prisoners and detainees held due to the conflict will be released unconditionally as soon as possible'.

¹⁶ Interview with GAM delegate, Aceh, November 2007.

¹⁷ The Aceh Reintegration Agency (BRA), established to administer the reintegration programme, developed a definition of affected civilians that included only those killed or "disappeared" and their immediate family members, those whose homes had been burned, people whose possessions had been destroyed or lost, displaced persons, the disabled, the mentally and physically ill, and persons who had lost their main income.

incarnation), but that the issue was best avoided until after the local and national elections of 2009. In contrast to Maluku, where most civil society efforts have aimed to strengthen communal ties via traditional solidarity mechanisms, Acehnese civil society, led by a coalition of proactive NGO activists, have focused on demanding that the HRC and TRC be established as agreed at Helsinki. They generally perceive the LoGA's non-retroactive clause to be a fundamental sell-out of the MoU, but as yet they have failed to formulate an effective strategy to counter the LoGA stipulation.

As of late 2008, no Acehnese political party has raised human rights accountability as a campaign issue. Furthermore, the international community operating in Indonesia is cautious in its approach to human rights issues in Aceh, focusing not on prosecuting past crimes but on institutional reform of the military and the judiciary.

Given the lack of specificity, the MoU provision to establish an HRC is open to interpretation. Yet even if a restrictive view is taken, an existing Law on Human Rights Court, approved in 2000, theoretically provides alternative options for establishing an HRC for Aceh. If one accepts the non-retroactive LoGA provision, then it can be argued that this article has already been fulfilled through the establishment in 2001 of an HRC in Medan, North Sumatra, which also has jurisdiction over Aceh. This court, established by presidential decree as stipulated in the 2000 Law on Human Rights Court, can only try crimes committed after the Law was passed (that is, after 2000). To date it has not held a single trial.

On the other hand, if the MoU is interpreted to apply retroactively, then one possibility would be for the president, in cooperation with the national parliament, to use the 2000 human rights law to establish an *ad hoc* HRC for Aceh, which would cover abuses that occurred prior to 1999. To date this also has not happened.

The second set of developments pertains to the future implementation of a TRC for Aceh. According to Article 2.3 of the Helsinki MoU, this would 'be established by the Indonesian TRC with the task of formulating and determining reconciliation measures'.¹⁸ At the time of the Helsinki negotiations, the national parliament had already passed a National TRC Law (No. 27, 2004). By late 2006, when the Indonesian constitutional court deemed the law unconstitutional, President Yudhoyono had not appointed the national TRC commissioners anyway. The law was revoked because of a provision that required victims to accept amnesty for perpetrators before being eligible for reparations.¹⁹

The constitutional court's decision meant that the establishment of a TRC for Aceh would face long delays. Since then, Aceh's civil society has pushed, largely by way of an NGO *Koalisi Pengungkapan Kebenaran* (Coalition for Truth Recovery, or KPK), for the establishment of an Aceh TRC through provincial-level legislation (*qanun*). While some remain sceptical that this strategy will succeed, the KPK has produced a draft *qanun* and submitted it to Aceh's legislature. Aceh's administration has reservations about this approach because, without the backing of Jakarta or the stalled national TRC, establishing a purely Acehnese commission could severely damage relations between Aceh and Jakarta. Such a commission would also be unable to force senior military officials to testify.

At the time of writing, the Ministry of Law and Human Rights was developing a revised draft concept paper to establish the national TRC. But key issues remain unclear, such as the period of inquiry, the relationship between a TRC and the prosecutions for serious crimes, and provisions for victims' reparations. However, there seems to be little political momentum to drive legislators to revise the revoked TRC law.

From the perspective of transitional justice, the Helsinki MoU appeared to represent a step forward in Indonesia's attempts to address past human rights violations. But more than three years since the agreement was signed, few provisions have been implemented. Former GAM leaders have accepted this situation without public complaint, apparently because relations with Jakarta are a higher priority than state accountability for past crimes. Civil society and conflict victims, however, are unwilling to have the commitments promised them at Helsinki either fall

¹⁸ This position was strengthened with the 2006 enactment of the LoGA, which legally reinforced that Aceh's TRC should form an 'inseparable part' of the National TRC (Article 229.2) and 'shall operate in accordance with prevailing laws and regulations' (Article 229.3).

¹⁹ For a more detailed analysis of this decision and its implications, see: ELSAM (2006). *Ketika Prinsip Kepastian Hukum Menghakimi Konstitusionalitas Penyelesaian Pelanggaran HAM masa lalu: Pandangan Kritis atas Putusan Mahkamah Konstitusi dan Implikasinya bagi Penyelesaian Pelanggaran HAM*. Position Paper.

into procedural limbo or be manipulated for political purposes. These elements have been proactive, advocating for an Acehese-initiated TRC and for state authorities to take accountability and reparations issues seriously. It remains to be seen how the current failure to implement crucial justice provisions of the Helsinki MoU might affect Aceh's ability to build a sustainable peace.

COMPARATIVE ANALYSIS AND LESSONS LEARNED

The peace initiatives in Maluku and Aceh suggest numerous lessons that might be useful in the future, both in Indonesia and in other countries suffering from conflict or faced with a long, difficult reform process.

HIGHER PRIORITY AND MORE DEBATE SHOULD BE ACCORDED JUSTICE AND ACCOUNTABILITY ISSUES

Except perhaps for issues of amnesty in Aceh, the negotiating parties or mediators did not prioritise debate over transitional justice mechanisms. This is likely in cases where conflict is ongoing, but the Indonesian examples demonstrate that including justice provisions, even if they are not fleshed out, leaves the door open for further dialogue on these issues and allows civil society members not present at the negotiations to be involved later.

The Aceh case also demonstrates that any justice-related provisions must be carefully drafted and fully thought out. Linking one justice mechanism to another, as occurred with the Acehese TRC and national TRC, proved a dangerous strategy. While negotiators at Helsinki could not have known that the constitutional court would strike down the law establishing Indonesia's national TRC, in hindsight it was unwise to couple the Acehese TRC to another court that was not fully functioning. Indeed, civil society activists had already expressed strong reservations about the national TRC legislation. In any event, the result today is a legal quagmire, and neither an Acehese nor a national TRC appears likely to be established anytime soon.

Perhaps more important, however, is the need to foster political commitment to and a clear understanding of the transitional justice provisions, increasing the chance that eventually they will be implemented. Remarkably, many delegates at the Malino talks were unaware that robust transitional mechanisms were provided for in an attachment to the peace agreement. In the case of Aceh, the two parties had different opinions of whether human rights trials could operate retroactively. It seems that such fundamental areas of uncertainty could have been resolved through effective dialogue and improved drafting of the agreements. Where the rule of law is endemically weak and avenues to enforce agreements are minimal, it is critical to ensure that all parties are clear about their commitments and to foster the political will that facilitates implementation.

INSTITUTIONAL REFORM IS A CRUCIAL COMPONENT OF A BROADER TRANSITIONAL JUSTICE STRATEGY

Both the Malino agreement and the Helsinki MoU are noteworthy for the absence of significant provisions pertaining to reform of the judiciary or the security sector. The Malino agreement includes only calls to physically rebuild and re-equip the facilities of the military and police. The Helsinki MoU has only a clause calling for members of the Indonesian police force to receive special training, with emphasis on respect for human rights, and providing the governor oversight of the police force. But there is no serious examination of institutional issues in either agreement. Further, neither gives any attention to the role of non-military state actors, such as the executive branch and judiciary, or the need of reform there.

The failure of negotiators and mediators to raise these sensitive issues is politically understandable, since including provisions for serious institutional reform might be tantamount to an admission of security sector malpractice during the conflict. However, the implementation of transitional justice provisions largely depends on legal and security sector reform at the national level. Future negotiators should therefore consider securing

meaningful commitments to institutional reform, so that fair and just judicial processes and a professional military apparatus can be more readily attained.

HOW VICTIMS ARE DEFINED SHOULD BE CAREFULLY CONSIDERED

At the Malino talks, given that a ceasefire was the highest priority, the interests of conflict victims received minimal attention. At Helsinki, however, a generally worded provision promised 'all civilians who have suffered a demonstrable loss due to the conflict' either land, employment or social security. Some have suggested that potentially all Acehnese can prove a 'demonstrable loss', either through the death of relatives or the impact on livelihoods. *Badan Reintegrasi Aceh* (Aceh Reintegration Agency, or BRA) was forced to work with an incredibly broad definition of what constitutes a victim and with a commitment for reparations that was often impossible to implement. Indeed, BRA spent significant effort narrowing the criteria for beneficiaries and determining how finite resources should be allocated. At Helsinki, perhaps, the net was cast too wide, creating significant practical issues for the agency carrying out victim support.

Further, the Helsinki MoU does not refer to "victims" but to 'affected civilians'. Such general language shifts emphasis away from the individual harm suffered and thus contributes to the subsequent failure to recognise the particular harm inflicted on victims of gender-based violence. The small number of female negotiators at both talks undoubtedly contributed to the lack of gender-sensitive provisions in both the Malino and Helsinki agreements, as explained below.

CIVIL SOCIETY NEEDS TO BE ACTIVELY BROUGHT INTO THE PROCESS

Civil society and human rights NGOs did not play a major role in either set of negotiations. The massive impact of the tsunami and the geographical distance from Aceh prevented most of Aceh's NGO activists from attending negotiations. Acehnese NGOs were also perceived to be close to one party or another. In Maluku, on the other hand, most civil society activists afforded the Malino process little legitimacy, seeing it as a top-down elite project that would not make any substantial difference to the situation on the ground. And although the involvement of a range of community leaders in the negotiations was a positive development, the difficulty of selecting delegates from Muslim communities underscored how complex it is to ensure legitimate representation.

Women had limited roles in both sets of talks. The Malino negotiations included several women in the Christian delegation but none in the Muslim delegation. At Helsinki, neither the GAM nor the Indonesian government delegations included women at the start, although one woman did join the GAM team late in the negotiation process. Mediation at Malino was also mostly undertaken by men, with just one woman among the ten Indonesian government delegates.

Following the peace agreements, the role of civil society in holding the parties to account has varied. Maluku's human rights activists have been far less cohesive than their Acehnese counterparts in pushing for transitional justice measures. The continuing segregation of many parts of Maluku, as well as the lack of international funding for Maluku's NGOs, may account for activists' limited activity there. Aceh's human rights advocates have been more effective, participating in ongoing negotiations to establish Aceh's own TRC and HRC.

AN INTERNATIONALISED CONTEXT CAN PROVIDE GREATER IMPETUS FOR IMPLEMENTATION

While both the Malino and Helsinki talks took place in peaceful settings far from the bloodshed of the ongoing conflicts, only the Aceh talks had an international dimension. Yet with the exception of Ahtisaari, his small team, and a few Finnish government observers, the role of international actors in the Helsinki negotiations was kept to a minimum, largely because the Indonesian government held that peace processes were national problems to be dealt with internally. Where internationals were involved – including the mediator (Ahtisaari), GAM's advisor (Kingsbury) and the overseers of implementation (the EU and AMM) – the results were mostly perceived positively. It appears, however, that international actors did not emphasise accountability measures, as might have been expected. The international role was primarily facilitative, responding to the various parties' agendas.

By contrast, the nationally-driven Malino talks achieved a ceasefire in large part because Kalla played an instrumental role. But a severe lack of transparency following the Malino negotiations – including the failure to release the investigation report and to promote awareness of the proposed transitional justice mechanisms – undoubtedly

undermined the potential benefits of the peace agreement. In comparison to the Aceh process, the Malino talks might have seriously benefited from the active involvement of international organisations and individuals. There would arguably have been less uncertainty and more clarity to the final agreement and greater scrutiny of the failure to implement key provisions, as sharper international oversight would have spurred a more transparent view of the results and implementation.

CONCLUSION

At this point, Indonesia has been working toward political and institutional reform for a decade. The Aceh and Maluku peace negotiations provide two contrasting examples of this reform process, having helped to end violent conflict and having laid the foundations – at least on paper – for achieving accountability. Yet despite many gains in the reform era, justice and accountability for mass human rights violations remain perhaps the country's greatest political challenge, at both the local and national levels. State accountability for past crimes will be difficult to attain without the development of political, judicial, administrative and security institutions that are professional and democratic. While Indonesia has made progress in this regard, much remains to be done.

The peace negotiations for Maluku and Aceh do provide cause for cautious optimism. Though accountability was not at the forefront of negotiators' minds, the inclusion of justice-related provisions was a step in the right direction. And while the implementation of these provisions is proving very difficult – progress in Maluku is especially poor – the political reality is that this is a young democracy growing out of a 32-year military dictatorship. Although Maluku and Aceh remain relatively peaceful today, ultimately the failure to deal with past abuses makes sustaining this peace a definite challenge.

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