

The Need for Accountability: The Helsinki Memorandum Five Years On

Five years since the signing of this historic peace agreement, key provisions for accountability for mass crimes have not yet been implemented. Attempts to avoid the difficult truths of Aceh's recent history and to allow perpetrators of horrific crimes to remain free continue to weaken popular respect for national legal institutions and feed existing anger and divisions that could lead to a recurrence of violence.

AN UNFINISHED LEGACY

On August 15, 2005, the government of Indonesia (Gol) and the Free Aceh Movement (GAM) signed the Helsinki Memorandum of Understanding (MoU), ending more than three decades of conflict as Indonesian national forces fought separatist GAM members for control of Aceh. Over the years the conflict varied in intensity and scope, but in sum amounted to a massive level of atrocities, including the killing of tens of thousands of civilians, as well as innumerable cases of illegal detention, torture, rape, and arson. Hundreds of thousands of Acehnese people lost their livelihoods and opportunities for development, and remain poor and marginalized, suffering mental trauma and physical disabilities.

The peace agreement included a framework for the future system of governance in Aceh, including an increased degree of autonomy for the region, and attempted to address the key social, political, and economic causes of the conflict.

STEPS TO ACHIEVING JUSTICE

In the early years of the peace process, some significant gains were made. Political prisoners were released and the new government established a reintegration body (known by its acronym BRA) that managed a multimillion dollar reintegration program for former combatants and provided some form of social assistance to victims. Thousands of military and security personnel were relocated out of Aceh through this program.

LACK OF POLITICAL WILL FOR ACCOUNTABILITY

In August 2006 the Indonesian Parliament passed the Law on the Governing of Aceh (LoGA), which included implementation of many of the provisions that had been agreed to as part of the Helsinki MoU. However, LoGA differs in several key aspects from the specific terms in the MoU. While it did provide a legal framework for the promised Human Rights Court and TRC for Aceh, the LoGA limited the court's jurisdiction to crimes

committed after the date of the MoU. In addition, it stated that the Aceh TRC is an "inseparable part" of an anticipated national TRC. So, when a 2006 decision of the Indonesian Constitutional Court annulled the national TRC law, discussions on the impact of this decision on the Aceh TRC led to a deadlock. A growing body of legal experts claims that the terms of the LoGA do not prevent the Aceh TRC from functioning in the absence of a national commission, as the "inseparable part" provisions relate only to how the two bodies should be administered. However, officials representing both the Aceh regional administration and the

TRANSITIONAL JUSTICE AT HELSINKI

The Helsinki MoU contains many transitional justice elements, including:

- Amnesties for those imprisoned for their participation in GAM activities, with a reaffirmation of the government'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
- A reintegration program for former combatants, political prisoners, and "civilians who suffered a demonstrable loss"
- Provisions for the establishment of the Human Rights Court and Truth and Reconciliation Commission (TRC) for Aceh
- Specified institutional reforms to help strengthen the rule of law

national government have taken the view that there cannot be a local truth commission for Aceh until a national TRC is established.

CIVIL SOCIETY CALLS FOR JUSTICE

In the absence of official action, civil society and victims groups continue to document human rights violations and are forced to find creative outlets to push for justice and accountability. In 2009 civil society groups in Aceh prepared a draft local law to establish a TRC for Aceh. The draft law was sent to the Aceh parliament and government but it received little attention.

The main features of the draft law 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 and passed by the Acehnese parliament

- A mandate to examine human rights violations committed by all sides in the conflict, with adequate protections to ensure impartiality and independence
- Decentralized regional offices playing an important role in implementing the commission'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
- Coordination with existing mechanisms dealing with victims, such as the Aceh Reintegration Body (BRA), the national human rights commission, and if and when established, a national TRC

In March 2010 victims groups held a "public hearing," modeled on draft legislation for a local TRC, to commemorate the "KKA Junction" massacre in 1999—when Indonesian security forces at the junction of a pulp and paper factory named KKA killed 50 protesters and injured more than 100. More than 1,000 people attended the public hearing, providing a clear answer to any claim that there is little interest in truth and accountability among Acehese civilians. Five survivors of the massacre testified, presided by five "commissioners" drawn from representatives of Acehese civil society. (See <http://www.ictj.org/en/news/features/3760.html> for a brief description of the event.)

MARGINALIZATION OF HUMAN RIGHTS

During the conflict, human rights was a unifying issue that brought together a wide array of actors concerned with issues of peace and justice. However, human rights workers have observed a significant shift in the government's attitude and commitment to human rights. A hard-line approach to the implementation of Shariah law has given rise to the legalization of corporal punishment and gender discrimination, while questioning the universality of human rights. Individuals and organizations who continue to focus on accountability for past crimes—more specifically the implementation of the Helsinki promise to establish an Aceh TRC and Human Rights Court—are described by some as a threat to the peace process.

SIGNS OF RECURRING VIOLENCE

Recent data collected by NGOs show an increasing trend in violence against civilians.

The **role of military and police** in providing security for companies continues to be a source of conflict in Aceh and is one of the unresolved legacies of the past. The drive to open Aceh to investors, particularly in the area of natural resource exploitation, means that this may be a continued source of conflict.

During the period of conflict, women became **victims of sexual violence** perpetrated by the military and armed groups. There has been little recognition for victims within the peace process, including marginalization of victims of rape in the provision of compensation through Aceh's reintegration scheme. The

CONSIDERING VICTIMS

Considering Victims (2008) presents findings from interviews and focus group discussions conducted by ICTJ and Acehese civil society with 113 victims from nine districts in Indonesia. The findings reflect a situation in which many victims are grateful for the increased security that accompanied the end of the conflict, but are increasingly discontent with many aspects of the post-conflict situation. Their major grievances include:

- The peace-building process has not recognized their suffering
- Former combatants receive an unfair share of available assistance
- Victims are marginalized because BRA's criteria unnecessarily excludes them
- They have a deep desire to discover the truth regarding particular violent incidents and the locations of their loved ones who were killed or disappeared
- Justice should be done through criminal prosecutions and punishments
- They need assurance that these abuses will never happen again

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emergence of new forms of gender-based violence, in the context of the new Aceh, is another sign of unresolved issues.

Recent **anti-terrorist operations** in Aceh have re-opened trauma and fear among community members. Checkpoints, raids, the excessive use of force leading to civilian victims, illegal detention, and summary executions are patterns of the past violence which will likely re-traumatize the Acehese society.

MOVING FORWARD: RECOMMENDATIONS

- The Government of Indonesia must strengthen human rights as a pillar for democracy and peace-building in Aceh. Without delay, the government should facilitate the establishment of a local truth commission for Aceh. This commission should contribute its findings and processes to a national TRC, currently to be debated in parliament.
- Acehese authorities should ensure that victims of gender-based violence and other vulnerable victims are able to access compensation and social services provided by the BRA and other agencies in a manner that provides acknowledgment for these violations.
- The international community should play a stronger role in monitoring the implementation of provisions included in the Aceh peace process, particularly articles 228 and 229 of the LoGA, which are designed to fulfil promises on truth and accountability.

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