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## **CONSIDERING VICTIMS**

The Aceh Peace Process from  
a Transitional Justice Perspective

Ross Clarke  
Galuh Wandita  
Samsidar

January 2008

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**International Center for Transitional Justice (ICTJ) - Indonesia**

Wisma Arya Unit 105

Jl. HOS Cokroaminoto No. 81

Menteng - Jakarta Pusat 10310

Indonesia

Telp : (021) 391 4864, Fax : (021) 391 4864



## **About the ICTJ**

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others.

## **The ICTJ's Work in Indonesia**

In Indonesia the Center partners with civil society groups and human rights institutions working toward accountability for past crimes. It has published reports on the ad hoc trials held in Jakarta, the atrocities committed in East Timor in 1999, and an analysis of the state's obligation to provide reparations for victims of the mass killings and detentions in 1965.

## **About the Authors**

Ross Clarke is an Australian human rights lawyer with experience in Timor-Leste, Aceh, and Indonesia. In Timor-Leste he worked with the editorial team of the Truth and Reconciliation Commission (CAVR) and the UN-sponsored hybrid court. He also has designed, implemented, and managed a broad range of legal reform projects, including judicial monitoring, support for community paralegal networks, and mediation.

Galuh Wandita is an ICTJ senior associate responsible for programs in Indonesia and Timor-Leste. Before joining ICTJ she was deputy director/program manager at CAVR and worked with civil society in conflict areas in Indonesia and East Timor.

Samsidar coordinates the ICTJ's program in Aceh and was formerly special rapporteur on Aceh for the Indonesian Commission on the Elimination of Violence Against Women. She was an investigator for the Indonesian National Human Rights Commission's inquiries into human rights abuses during the conflict in Aceh.

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# 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.<sup>1</sup>

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,

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<sup>1</sup> 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>.

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;
- 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 Aceh 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
  - Political, judicial, and legal reforms to address corruption and extortion;
  - Judicial and legal reforms to ensure equal protection for women under the law;
  - Vetting of security sector personnel;
  - Increased civilian oversight of the security sector;
  - 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.

## CONSIDERING VICTIMS

### The Aceh Peace Process from a Transitional Justice Perspective

*All sides are fighting to protect their own interests. We victims of the conflict are not considered.*

–Female victim, age unknown, Aceh Utara

#### I. INTRODUCTION

More than two years after the signing of the Helsinki Memorandum of Understanding (MoU), peace in Aceh is holding. Observers agree that the demobilization and disarmament that took place from September 2005 through December 2006 was by and large a success. Overall security across the province has improved dramatically. The national government's enactment of many of MoU's commitments through the Law on the Governing of Aceh (LoGA), combined with a successful local election in Aceh, have further increased confidence in the peace process.

However, tensions among stakeholders are beginning to surface. Providing for the long-term reintegration of former combatants is difficult; heightened community friction has resulted from the divisive implementation of reintegration assistance; political violence has flared over disputed district election results; illegal activity has increased markedly; and the victims of human rights violations continue to be marginalized. This worrying trend is causing a steady increase in local conflicts. Indeed, June 2007 recorded the highest number of violent fatalities (12) since the signing of the MoU.<sup>2</sup>

Progress made during demobilization and disarmament is at risk. Rising community tensions indicate the main threat to peace now comes from increasing horizontal, rather than vertical, conflicts among former combatants, former militia members, security forces, and conflict victims. For Aceh winning the peace now requires a renewed focus on preventing the reintegration process from exacerbating existing social cleavages. Above all the peace process must be reoriented to facilitate the rebuilding of conflict-affected communities in an inclusive, equitable, and sustainable manner. It must move beyond distributing money to providing a broad range of social assistance to all those affected by the conflict, with a specific focus on victims. An integrated and holistic transitional-justice approach can play a key role in achieving these goals.

It is therefore time to evaluate the peace process in Aceh from a transitional justice perspective. Transitional justice considerations clearly played a part in peace negotiations; the Helsinki MoU provided for a Truth and Reconciliation Commission (TRC) and a Human Rights Court. Other transitional justice mechanisms, such as a broad reparations program and institutional reform, were overlooked, however. As the reintegration process has progressed, it has become increasingly apparent that the interests of the conflict's civilian victims—in particular their rights to remedy and reparation—have not been adequately addressed. Best practice from a variety of postconflict contexts suggests that transitional justice mechanisms help countries deal with legacies of conflict, prevent recurrence of hostilities, and are essential to building sustainable peace. As local conflicts increase and peace in Aceh appears more fragile, integrating a holistic transitional-justice approach is vital.

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<sup>2</sup> World Bank, "Aceh Conflict Monitoring Update" (June–July 2007), 1.

## II. METHODOLOGY

This report aims to provide a current snapshot of postconflict Aceh from a transitional justice perspective, with particular attention to the voices of victims. A team of researchers from Aceh and Jakarta conducted interviews with key stakeholders, including government officials, members of the Free Aceh Movement (GAM) and its political party, the Committee for the Transition in Aceh (KPA), civil society, and victims' groups. In collaboration with Acehese nongovernmental human rights organizations—KontraS Aceh, Aceh Judicial Monitoring Institute (AJMI), and Women Volunteers for Humanity (RPUK)—the ICTJ conducted in-depth interviews and a series of focus group discussions (FGDs). The FGDs and interviews were conducted mainly in Indonesian or Acehese. The research took place from June to August 2007.<sup>3</sup>

The research used a case-study approach to highlight regional dynamics at the grassroots level. FGDs took place in nine districts: Greater Aceh, Pidie, Bireun, North Aceh, East Aceh, Central Aceh, Bener Meriah, Nagan Raya, and South Aceh. In total the ICTJ researchers spoke with 113 victims, 89 women and 24 men, between the ages of 20 and 72. Each FGD involved nine to 17 participants. The discussions took place between July 19 and 29, 2007. The number of male participants was lower than initially targeted as a result of prioritizing noncombatant victims and self-selection among victims who agreed to attend the discussion. In addition, a gender perspective was reflected in gender-sensitive questioning and interview structures: there were four female-only FGDs, various mixed FGDs, and individual interviews with women.

Most participants identified themselves as victims because of the killing or forced disappearance of their immediate family members.<sup>4</sup> Others spoke about surviving forced detention and torture. In one of the female-only group discussions, all 15 participants were victims of sexual assault, and the husbands of six of the 15 had been killed or disappeared. Most victims identified the perpetrators as members of the Indonesian security forces, but a small number of victims believed their assailants had been members of GAM.

Preliminary findings were discussed in an October 2007 workshop in Banda Aceh, to further strengthen analysis and make more comprehensive recommendations for the way forward.

## III. A TRANSITIONAL JUSTICE FRAMEWORK

Establishing and sustaining peace requires balancing the conditions needed to end hostilities with society's demands for accountability for wrongs committed during the conflict. This delicate balancing act has played out in political transitions around the world—Chile, Argentina, South Africa, Sierra Leone, Liberia, the former Yugoslavia, Nepal, Timor-Leste, Indonesia, among others—and creates a series of challenges for those trying to bring a permanent end to conflict.

A transitional justice framework seeks to address these challenges by providing tools to strengthen the process of creating and sustaining peace. It develops an integrated,

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<sup>3</sup> The Swiss Embassy, HIVOS and the Norwegian Government provided support for this research. The team of researchers and writers included Ross Clarke, Galuh Wandita, Samsidar, Henny Ngu, Asep, Dedy Saputra, and Lela Jauhari, with further support from Mustawalad, Asiah, Haris Azhar, and Hendra Budian. Ari Bassin assisted in editing and additional research and writing.

<sup>4</sup> In the discussions participants mentioned at least 154 violations that they or their immediate family members had experienced. A little less than half were fatal violations—killings and disappearances—followed by 22 assaults, 12 occurrences of torture, and 12 incidents of rape and sexual violence.

comprehensive, and localized, contextualized approach to promote peace and stability using four elements.<sup>5</sup>

<i>Truth-seeking</i>	<i>Prosecutions</i>
<i>Institutional Reform</i>	<i>Reparations</i>

- ***Truth-seeking and Documenting***  
Truth-seeking initiatives to determine the full extent and nature of past abuses include conducting truth commissions; engaging in historical and archival research; compiling and documenting testimonials or oral histories of victims; and collecting and cataloguing physical evidence of abuses, including exhuming the bodies of those killed.
- ***Institutional Reform***  
Institutional reforms aim to rebuild trust between society and authority structures as well as prevent similar abuses from recurring by identifying and reforming abusive institutions; removing officials who committed violations from public institutions; taking measures to ensure that public institutions will not employ individuals who have participated in abuses; and creating laws and rules to control these institutions and their officers.
- ***Prosecuting Perpetrators***  
Prosecutions of human rights abusers can take many different forms, using a variety of laws and court systems: local or national courts and laws, international courts and laws, hybrid courts (which mix local procedures, traditions, and participants with international laws and participants), the International Criminal Court, or national courts of other countries that claim universal jurisdiction over certain serious crimes.
- ***Providing Reparations to Victims***  
Reparations seek to compensate victims for their pain and suffering, restore them to the condition they were in before the abuse occurred, rehabilitate them from the injuries they suffered, or provide a symbolic gesture of contrition and recognition for the abuses. They may take the form of monetary payments, access to social services such as health or education, memorials to preserve and honor the memory of the past and victims, or a formal state apology.

Each of these activities must be designed and implemented with appropriate gender sensitivity. Conflict has a disparate impact on men and women. As a result, activities to make a transition from conflict to peace must also be gender-balanced. To help enhance justice for female victims, these activities must recognize abuses targeting women, as well as the significant effects that abuses not specifically targeting them have on women. A gendered approach also requires an awareness of how the definition of victim, or traditional beliefs and customs regarding the roles of men and women in society, may negatively affect women more than men in their efforts to recover from the violations they experienced.

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<sup>5</sup> See the ICTJ mission statement, <http://www.ictj.org/en/about/mission/>. Reconciliation, sometimes considered a fifth element, can also be seen as a goal of each of these four activities, as it is a necessary ingredient for creating a sustainable peace. Others have identified memorials as a fifth element, although they can be understood as a subset of reparations. For brevity this report will focus on four elements of transitional justice.

Any transition out of conflict and into peace and stability does not occur all at once. It is an evolution, and the strategies and tools used to support peace must evolve as the local conditions change and democratic mechanisms develop.

Although every transitional context is different, three lessons from the ICTJ's experiences around the globe apply across the board.<sup>6</sup>

- *Listen to the Voices of Victims*  
In the ICTJ's experience of working in situations of negotiated peace, too often those who suffered the impact of the conflict were not at the negotiation table. Therefore the demands and views of victims are not included in establishing priorities after the cessation of hostilities. The exclusion of victims from the process is a problem that must be addressed if peace is to last.
- *Avoid Narrow Conceptions of Justice*  
Justice should not be conceived only in terms of trials for those who committed atrocities. It includes and can be achieved through reparations for victims, truth-seeking initiatives, institutional reform, reintegration of former combatants, and other reconciliation strategies.
- *Understand that Peace is a Process*  
Peace is not only achieved by laying down arms. This is an important first step, but it must be followed by increased understanding and transformation of the root causes of the conflict. This includes addressing the perceptions of those who felt excluded or wronged, as well as combining multiple disciplines to examine layers of past trauma and historical grievances.

#### **IV. BRIEF BACKGROUND TO THE CONFLICT AND PAST ATTEMPTS TO FORGE PEACE**

Aceh's Islamic tradition, its proud history as an independent sultanate, and its resistance to Dutch colonization created a region with a distinct identity. Its protracted conflict can be traced back to the 1950s, when Acehese rebels fought Jakarta in an attempt to establish an Islamic Indonesian state. Conflict with Jakarta heightened when Soeharto's New Order regime ushered in a period of unparalleled repression. Soeharto's regime used brutal tactics to combat Aceh's rising separatist movement—led by Hasan di Tiro and GAM—which unilaterally declared Acehese independence on December 4, 1976.

Before Aceh was officially declared a Military Operations Area (DOM) in 1989, fighting in the region was part of the government's low-intensity, protracted campaign aimed at identifying GAM members and crushing the rebellion. Once Aceh was designated a DOM the Indonesian military launched Operation Red Net, intensifying the conflict with numerous military operations and counterinsurgency campaigns. The worst abuses reportedly came at the beginning of the DOM period. More than a thousand civilians were killed, tens of thousands were imprisoned and put in "training" camps, and sexual violence was commonly reported.<sup>7</sup> GAM members also committed violations during this period, targeting alleged informers and Javanese transmigrants.<sup>8</sup>

The fall of Soeharto's New Order regime in 1998 brought democratic reform across Indonesia and provided political space for initiatives to end the conflict in Aceh. The fall of Soeharto

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<sup>6</sup> For a more comprehensive discussion see the ICTJ paper presented at the "Transitional Justice and Peace Negotiations Conference," Oslo, Norway (April 16–18, 2007, on file with ICTJ).

<sup>7</sup> Human Rights Watch, *Indonesia: The War in Aceh* (August 2001), 8.

<sup>8</sup> *Ibid.*, 23.

marked the end of Aceh's DOM status and spurred a public apology by General Wiranto, the head of the Indonesian armed forces, for the suffering the military had caused in Aceh.<sup>9</sup> Between 1998 and 1999 a number of official inquiries into past atrocities by the National Human Rights Commission (Komnas HAM), a joint parliamentary fact-finding team, and the Independent Commission for the Investigation of Violence in Aceh (KPTKA), formed by President Habibie, brought the atrocities committed in Aceh to national attention.<sup>10</sup>

The national government offered autonomy packages in an attempt to quell GAM's separatist aspirations. The Special Status of the Province of Aceh Law in 1999 (later superseded by the Special Autonomy Law of 2001) mandated a flawed, yet unprecedented, move toward self-governance and increased local control over Aceh's oil and natural gas reserves.<sup>11</sup> It also provided for the implementation of Islamic law (*Sharia*) in Aceh, giving the local government authority to set policies on religious life, customs, and education through provincial regulations or gubernatorial decisions. In addition, it permitted the creation of local Sharia courts with jurisdiction over criminal, family, and property cases.<sup>12</sup>

The prospect for peace in Aceh was short-lived, however. After the initial euphoria following Soeharto's fall, the Indonesian government reinstated many of the tactics it had used during the DOM period in an attempt to fight a resurgent GAM, whose ranks had swelled with returned exiles.<sup>13</sup> Increasing numbers of Indonesian troops were deployed to Aceh, and entire villages suffered from retaliation for alleged assistance to GAM. As the conflict intensified GAM's support increased and it established parallel government structures in stronghold districts to consolidate its power.

Brief peaceful interludes in the conflict, mediated by international actors, occurred in 2000 and 2002. The Humanitarian Pause of 2000, while not a complete ceasefire, gave the parties space to begin negotiations. The Cessation of Hostilities Agreement (CoHA) in 2002 fostered substantial progress by providing a framework to resolve the conflict.<sup>14</sup> Neither attempt, however, provided a long-term reduction in human rights violations. And when GAM failed to disarm according to the CoHA timetable, the Megawati administration used it as a justification to wage a renewed and reenergized military campaign in Aceh.

Megawati's government declared a state of emergency and martial law in Aceh in May 2003, carrying out a massive military operation and increasing total government troop levels in Aceh to 50,000.<sup>15</sup> Under martial law basic civil liberties were banned and the activities of local and international organizations were restricted.<sup>16</sup> These actions effectively cut Aceh off from the rest of the world and allowed Indonesian security forces to operate against GAM and alleged GAM sympathizers without international scrutiny. Murder, disappearances, torture, and the unlawful detention of more than 1,000 people continued unabated, and Indonesian security forces acted with impunity.<sup>17</sup> The Indian Ocean tsunami, which hit Aceh on

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<sup>9</sup> Ibid, 8.

<sup>10</sup> Amnesty International, *Indonesia: A Cycle of Violence for Aceh's Children* (November 2000), 11.

<sup>11</sup> Michelle Ann Miller, "What's Special about Special Autonomy in Aceh?" in Anthony Reid, ed., *Veranda of Violence: The Background to the Aceh Problem* (Singapore: Singapore University Press, 2006), 301.

<sup>12</sup> International Crisis Group (ICG), "Islamic Law and Criminal Justice in Aceh," (July 31, 2006), 4–5.

<sup>13</sup> Human Rights Watch, *War in Aceh*, 8.

<sup>14</sup> Aleksius Jemadu, "Democratisation, the Indonesian Armed Forces and the Resolving of the Aceh Conflict," in Reid, *Veranda of Violence*, 282.

<sup>15</sup> Lesley McCulloch, "Aceh: Then and Now," Minority Rights Group International (2005), 9, <http://www.minorityrights.org/download.php?id=136>.

<sup>16</sup> See Jemadu, "Democratisation," 282.

<sup>17</sup> Human Rights Watch, "Aceh Under Martial Law: Inside the Secret War" (December 2003), 18–37. The downgrading of Aceh's conflict status to State of Civil Emergency in May 2004 made minimal changes in the human rights situation.

December 26, 2004, was the catalyst that brought GAM and the government back to the negotiating table, setting the stage for the 2005 Helsinki MoU peace agreement.

The conflict in Aceh claimed thousands of civilian lives, with thousands more disappeared and tortured.<sup>18</sup> Arbitrary arrests, unlawful detentions, and mass displacements were common. Women suffered from rape and sexual violence.<sup>19</sup> They also bore the significant burden of becoming the sole income provider and caregiver when husbands were killed or disappeared. Children were recruited for auxiliary functions in GAM and thousands of children lost their fathers.<sup>20</sup>

With the mass displacement and widespread violation of basic rights, such as freedom of movement, expression, and association, as well as the right to a fair trial, combined with the impact on education, health, and livelihoods, the conflict touched the vast majority of the Acehese population. A psychosocial assessment conducted by the International Organization for Migration (IOM) in conflict-affected communities found approximately 80 percent of respondents had lived through combat experiences.<sup>21</sup> These often involved trauma and resulted in high levels of anxiety, depression, and post-traumatic stress disorder.<sup>22</sup>

#### **A Victim's Experience in North Aceh**

NN is a 60-year-old woman living in a village in north Aceh. During the fasting month of Ramadan in 2001 a group of men wearing fatigues and masks, carrying rifles, attacked her village. She talked about her experience:

My husband and two sons were tortured in front of me and my other children. We saw them being submerged in a big gutter in front of our house, stepped on, beaten with weapons, and a grenade was inserted into [the] mouth [of one of them]. Seeing this, my children and I just screamed. They brought us inside the house and we could only watch them being tortured. When they were taking my husband and sons away, I begged, “*Sir, do not take [my husband]. He is already old. [My sons] are nobodies.*” They said they were taking them away for a while but that they would bring them back. My sons and husband hadn’t even time to break their fast. Then they burned down our house. I don’t know what wrong we committed as a family, that they had the heart to do this awful thing. Can you imagine how it feels to have three people taken away, never to be returned? My family was traumatized.

For seven years I have lived in misery with my seven [other] children. We are traumatized. We do not dare leave the house. All my children left school. I had to divide [and send] them off to relatives and people who felt sorry for us just so they could eat. When my neighbors and relatives feel sorry for us, we can eat something. If not, we are often hungry. My son sometimes has to dig in the gutter when there is a road project. My daughter has to wash clothes and work at other people’s homes. We live separately. I am often sick but have no money to go to the doctor. There is no justice at all.

<sup>18</sup> McCulloch, *Aceh: Then and Now*, 20.

<sup>19</sup> See generally Amnesty International, “The Impact of Impunity on Women in Aceh” (November 2000).

<sup>20</sup> Bonn International Center for Conversion (BICC), “Repaving the Road to Peace: Analysis of the Implementation of DD&R in Aceh Province, Indonesia” (July 2007), 13.

<sup>21</sup> International Organization for Migration and Harvard Medical School, “A Psychosocial Needs Assessment of Communities in 14 Conflict-affected Districts in Aceh” (2007), 3; see also IOM and Harvard Medical School, “Psychosocial Needs Assessment of Communities affected by the Conflict in the Districts of Pidie, Bireuen, and Aceh Utara” (2006), 3.

<sup>22</sup> IOM and Harvard Medical School, “A Psychosocial Needs Assessment of Communities in 14 Conflict-affected Districts in Aceh,” 5.



## V. TRANSITIONAL JUSTICE APPROACHES IN THE PEACE AGREEMENT

### A. The Helsinki MoU

The tsunami of December 26, 2004, forever changed the physical, social and political landscape of Aceh. The deaths of more than 170,000 people, the displacement of up to 500,000, and the immeasurable destruction of infrastructure created unprecedented goodwill by both GAM and the Indonesian government. It also provided an opening to resume a peace dialogue. In the face of the overwhelming reconstruction project ahead and the massive international attention on emergency relief, GAM and the Indonesian government met in Helsinki in early 2005 to recommence peace negotiations. On August 5, 2005, after five rounds of intense negotiation, the Helsinki MoU, brokered by former Finnish President Martti Ahtisaari, was signed. In general terms it set out the future governance of Aceh and the principles that both parties agreed to adhere to during the transitional period. It further attempted to address the major social, political, and economic causes of the conflict and provide a workable basis for sustainable peace.

The Helsinki MoU contained the following elements relevant to Aceh's transitional justice framework:

- *Amnesty*  
Persons who had been imprisoned for their participation in GAM activities were freed and granted amnesty. The MoU was silent regarding amnesties for international crimes. Instead it reaffirmed the Indonesian government's obligations to adhere to international human rights instruments.
- *Demobilization, Disarmament, and Decommissioning*  
GAM undertook to demobilize all 3,000 military troops and decommission 840 firearms during a four stage process.<sup>23</sup> The Indonesian government agreed to withdraw all its "non-organic" police and military forces, leaving only 14,700 military personnel and 9,100 police in Aceh.
- *Reintegration*  
The MoU guaranteed all political, economic, and social rights of former combatants and political prisoners, with an emphasis on the right to participate freely in Aceh's political process. Reintegration focused on "economic facilitation" for affected parties. In particular the parties agreed to provide former combatants, political prisoners, and "all civilians who suffered a demonstrable loss" with suitable farm land, employment, or social security should they be unable to work. A reintegration fund was established under the administration of Acehnese authorities to finance the extensive reintegration program. Reparations for affected civilians were included in this broad reintegration strategy. Yet the MoU did not specifically use the term "victims" and did not mention other vulnerable groups, such as women and children.
- *Human Rights Court and Truth and Reconciliation Commission*  
The MoU mandated the creation of a Human Rights Court and Truth and Reconciliation Commission for Aceh, raising expectations that accountability for past violations and truth telling would form part of the peace-building process. Unfortunately the MoU stated that a national TRC (which did not yet exist) would establish the TRC in Aceh. It also failed to specify that the Human Rights Court must have retroactive jurisdiction over past crimes.
- *Rule of Law*

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<sup>23</sup> Experts who have monitored the conflict widely agree that TNA membership and arms far exceeded these numbers. See for example BICC, "Repaving the Road to Peace," 12.

Specific provisions ensured that when the legal code for Aceh was redrafted it would adhere to international human rights standards. An independent and impartial judiciary would be responsible for adjudicating civilian crimes committed by military personnel, and the police force was made accountable to the elected governor.

## **B. The LoGA**

Adopted on August 1, 2006, the LoGA enacted many of the Indonesian government's Helsinki commitments. However, as the Helsinki MoU was not considered legally binding for the LoGA, aspects of the MoU were abandoned as the LoGA was drafted and progressed through Parliament. Building on existing laws that devolved significant autonomy to the provincial level, the LoGA primarily dealt with the division of power between the central and provincial governments, the authority of various institutions, the establishment of political parties, local elections, and resource distribution. The LoGA provided no guidance on the reintegration process, so MoU provisions remained the primary point of reference for reintegration activities.

Provisions in the LoGA formally established the Aceh Human Rights Court and TRC. Unfortunately, the language of these provisions proved problematic and presented barriers to the effective functioning of both transitional justice mechanisms. In brief, the LoGA limited the jurisdiction of the Aceh Human Rights Court to future cases, prohibiting prosecutions for past violations that had occurred throughout the Aceh conflict. According to GAM, the understanding during the Helsinki negotiations was that the Court would have retroactive jurisdiction, and the LoGA therefore breached this commitment.<sup>24</sup>

In relation to the TRC, the LoGA established the Commission "by this law" but also stated that the Aceh TRC is an "inseparable part" of Indonesia's anticipated national TRC. In late 2006 the creation of a national TRC received a significant setback when the Constitutional Court struck down its foundational law. The establishment of the Aceh TRC has been hampered by a lack of legal certainty concerning the effect of these provisions while there is no national TRC.<sup>25</sup>

The Helsinki MoU's minimal attention to the rights of victims, combined with serious obstacles in the LoGA to a TRC and meaningful prosecutions, has caused significant deficiencies in Aceh's transitional justice framework. The central government's failure to enact *all* of its Helsinki commitments presents a major stumbling block on the road to sustainable peace.

## **VI. IMPLEMENTING PEACE: POSTCONFLICT PROGRAMS IN THE "NEW" ACEH**

Building foundations for peace requires unraveling and repairing the impact of decades of violence in practical, incremental steps. To the credit of all those involved in the Aceh peace process, many of the initial steps necessary for creating peace in Aceh have been taken.

### **A. Disarmament and Decommissioning**

Mandated by the Helsinki MoU to monitor the implementation of the peace agreement, the Aceh Monitoring Mission (AMM) was officially launched on September 15, 2005. Led by the European Union, AMM peace monitors also came from Norway, Switzerland, and five contributing countries from ASEAN: Thailand, Malaysia, Brunei, the Philippines, and

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<sup>24</sup> Voice of America, "Jurisdiction of Aceh's New Human Rights Tribunal in Disputes" (August 23, 2005), <http://www.voanews.com/english/archive/2005-08/2005-08-23voa19.cfm?CFID=139098959&CFTOKEN=71333502>.

<sup>25</sup> For more on the legal status of an Aceh TRC see Chapter IX (C).

Singapore. The AMM was primarily assigned to investigate and rule on complaints regarding alleged violations of the MoU and establish cooperation between both parties. The AMM's secondary functions included monitoring the human rights situation and the reintegration of GAM. However, given the lack of internal structures to deal with human rights and justice issues and the fact that neither GAM nor the GoI initiated discussions of the TRC or Human Rights Court, the AMM did not instigate action on these issues.

From September through December 2005 AMM monitored disarmament and decommissioning in accordance with the Helsinki MoU's scheduled four-stage approach. GAM's weapons were decommissioned in parallel with the GoI's scheduled relocation of all non-organic troops and police. By the last weapon-cutting ceremony in Banda Aceh on December 21, both sides had complied with their obligations, with GAM handing in a total of 840 weapons and the GoI relocating a total of 25,890 the Indonesian military, *Tentara Nasional Indonesia* [TNI], and 5,791 non-organic police. During this period GAM's amnestied prisoners were also released, and large-scale *peusijuks* (welcome-home ceremonies) were organized to reintegrate excombatants into their villages. In most cases AMM and invited military and police attended. In general the process progressed smoothly, with both parties fulfilling their commitments for each phase.

These initial achievements should not be overlooked. Security across the province improved markedly, GAM disarmed as planned, its members were generally welcomed back into their communities, and the massive troop withdrawals indicated the GoI's commitment to making the peace work. Through successful monitoring by AMM, the initial implementation of the Helsinki MoU appeared to offer all the hallmarks of sustainable peace that had been lacking.

## **B. Demobilization of GAM**

On December 27, 2005, GAM officially disbanded its military wing, the TNA, which was transformed into the political KPA, tasked with leading the demobilization and reintegration of former fighters. The KPA retained the structure, hierarchy, and membership of the TNA. The only differences appeared to be that 840 of their weapons had been decommissioned, and they now operated out of open offices.<sup>26</sup> The retention of the military command structure, the KPA's immediate establishment following the TNA's disarmament, and the lack of a formal, individual discharge process continue to raise questions about the true extent of GAM's demobilization.<sup>27</sup>

Early in the peace process it became apparent that no clear strategy existed to assist former combatants in their immediate reinsertion into community life. The IOM had planned to provide immediate assistance for demobilized TNA combatants; however, this did not materialize until 2006. The GoI distributed rupiah (Rp) 1 million per combatant through the KPA, as well as small funds for village banquets or *kenduris*.<sup>28</sup> Because of delays in making payments, during its initial reinsertion GAM received minimal financial support and primarily relied on community assistance.

## **C. Reintegration**

Reintegration has been the central concern of the peace process in Aceh. After relative success in reinserting GAM combatants and amnestied prisoners back in their communities, the agenda shifted to the long-term reintegration program mandated by the Helsinki MoU.<sup>29</sup>

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<sup>26</sup> ICG, "Aceh's Local Elections: The Role of the Free Aceh Movement (GAM)" (November 29, 2006),

<sup>27</sup> BICC, "Repaving the Road to Peace," 31.

<sup>28</sup> See Chapter VI (C), Reintegration: GAM Combatants.

<sup>29</sup> The World Bank reported that 90 percent of GAM members did not encounter any problems. See World Bank, "GAM Reintegration Needs Assessment: Enhancing Peace through Community-level Development Programming" (March 2006), 23.

The basis of this program was the concern that former combatants would return to arms if they were unable to find a sustainable source of livelihood.

The task of implementing the reintegration program envisaged in the Helsinki MoU fell to the Aceh Reintegration Authority (BRA). The BRA was established in February 2006 as a result of consultations between the former acting governor of Aceh, Azwar Abubakar, and the Joint Forum for Peace in Aceh (FORBES), an organization that brought together the GoI, GAM, and civil society representatives to develop a reintegration strategy.

BRA was initially established to address political, economic, and social reintegration. Yet because of internal disputes and politicking, which resulted in civil society's and later KPA/GAM's withdrawal from BRA, the political section of the reintegration authority shut down. As a result political issues such as the establishment of a TRC and the Human Rights Court fell outside the newly limited BRA mandate. BRA's main implementing body continued economic and social reintegration programs. These were funded entirely from the national budget with the Department of Social Services disbursing program funds.<sup>30</sup> As a result the BRA became a GoI-led agency that lacked broad-based local legitimacy.<sup>31</sup>

Despite these challenges, BRA has delivered some results. It has provided economic assistance to help reintegration, albeit with varying degrees of transparency, accountability, and success. As is often the case, the fact that BRA has provided much-needed assistance to amnestied prisoners and GAM noncombatants, and some urgent reparations to victims of the conflict, has received minimal attention, while the more controversial aspects of BRA's work have dominated public discussion.

Some of the achievements of BRA's reintegration program include:

### **GAM Combatants**

- GAM's reluctance to share an open list of excombatants with BRA in 2005 caused a delay in reintegration payments. In late 2005, in an attempt to find an interim solution, BRA instituted a stopgap measure to ensure that GAM excombatants at least received a living allowance (known as *jadup, jatah tunjangan hidup*) while the issue was being resolved.<sup>32</sup> The GoI, through the BRA, agreed to distribute payments through the KPA structure without requiring names of individuals. KPA district commanders estimated the number of the GAM combatants in their district. They then received financial transfers from the governor's office and distributed them to former combatants under their command.<sup>33</sup> Three rounds of payments, calculated at Rp 1 million (approximately \$100) per combatant, were made between October 2005 and January 2006, for a total of Rp 9 billion (approximately \$900,000). As the distribution within districts was determined by KPA, the system was subject to claims of favoritism and corruption.<sup>34</sup>
- By July 2006 the parties resolved the issue regarding the disclosure of the names of GAM excombatants by passing names through AMM. This led to BRA's delayed distribution of Rp 25 million (approximately \$2,500) to each of the 3,000 GAM

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<sup>30</sup> The GoI has budgeted approximately \$150 million to support BRA's target beneficiaries. For details on the breakdown of BRA's budgets, see World Bank, "Community-based Reintegration Assistance for Conflict Victims (BRA-KDP): Interim Report" (May 2007).

<sup>31</sup> BICC, "Repaving the Road to Peace," 34.

<sup>32</sup> World Bank, "GAM Reintegration Needs Assessment," 47.

<sup>33</sup> BICC, "Repaving the Road to Peace," 25.

<sup>34</sup> The World Bank found that on average each combatant received between Rp 170,000 and 260,000 rather than the intended Rp 1 million. World Bank, "GAM Reintegration Needs Assessment," 29.

excombatants.<sup>35</sup> The total of Rp 25 million per combatant was based on an agreement in which the provision of agricultural land, as provided for in the MoU, was substituted for by increasing the payment from Rp 10 million.

### **Anti-separatist Militia Groups**

- BRA agreed to distribute Rp 10 million (approximately \$1,000) each to around 6,500 members of anti-separatist militia groups. As of 2007 a significant portion of these funds has been distributed to the leadership of various anti-separatist groups. Although leaders report giving these funds to their organizations' members, many members claim they have not received their share.<sup>36</sup>

### **Conflict-affected Persons**

- As mandated by the Helsinki MoU, the reintegration scheme also provided assistance, which could be seen as a form of urgent reparations, to victims of the conflict. After canceling a program under which BRA received more than 45,000 proposals for funding from victims and local communities, BRA entered into partnership with the World Bank to design and implement a program to reach conflict-affected persons.<sup>37</sup> The program, managed under the World Bank's national *kecamatan* development program (KDP), utilized village facilitators to mediate discussions with community members and determine development projects to be funded through subdistrict government. Beneficiaries could be individuals, groups, or the village as a whole. BRA channeled \$26.5 million for the first phase of this program, which ended in June 2007, covered 1,724 villages, and provided grants ranging from Rp 60 million to 170 million, depending on variables of conflict intensity and population size.<sup>38</sup> According to a World Bank report, this first phase saw 85 percent of BRA-KDP funds spent on living expenses, such as the purchase of seeds and cattle, and 17 percent on village infrastructure.<sup>39</sup>

### **Social Assistance to Victims**

- BRA also administered *diyat*, traditional Islamic compensation for heirs of persons dead or missing as a result of conflict. Under this scheme, initiated by the GoI in 2002, the family of a victim would receive a yearly payment of Rp 2 million to 4 million transferred directly into its bank account. The application to receive *diyat* varied depending on location; however, determination of recipients almost always required the participation of the security sector and local governments. The lack of transparency in the decision-making process led to criticisms regarding the procedures for obtaining *diyat*.<sup>40</sup>

### **Other Reintegration Activities<sup>41</sup>**

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<sup>35</sup> BICC, "Repaving the Road to Peace," 35, 44.

<sup>36</sup> World Bank, "Aceh Conflict Monitoring Update" (March 2007), 4-6.

<sup>37</sup> Initially BRA sought to fund small livelihood projects individually developed by conflict victims. BRA made a general call for proposals and received approximately 48,500, involving almost 600,000 people. Because BRA felt that it had neither the capacity nor the resources to process such a large number, the program was abandoned.

<sup>38</sup> World Bank, "GAM Reintegration Needs Assessment," 8.

<sup>39</sup> *Ibid.*, 12.

<sup>40</sup> See United Nations Development Program, "Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh" (2007), 37, 59.

<sup>41</sup> The ICTJ recognizes that a large number of programs support reintegration and conflict-affected communities in Aceh. Because of space constraints, we can raise only a few issues. A notable

- BRA's reintegration activities were both supported and supplemented by activities conducted by international organizations including the IOM, the German Society for Technical Cooperation (GTZ), the World Bank, the European Union (EU), the United Nations Development Program (UNDP), the United Nations Children's Fund (UNICEF), and the United Nations Development Fund for Women (UNIFEM), and their local partners. In contrast to BRA's cash payments, these programs often focused on provision of longer-term social, economic, and political reintegration assistance. They provided, among other things, job and skills training, physical and psychological health services, and educational supplies.<sup>42</sup>
- As of September 2007 BRA was working on more than 120 registered conflict-related projects, with a total budget across all projects of more than \$260 million. Many of these projects targeted excombatants with skills development and training. Others targeted women's groups to support advocacy and investment in small-scale initiatives.<sup>43</sup>

Perhaps under the new leadership of Nur Djuli, named head of BRA in April 2007, BRA will be able to identify a clear vision, work toward inclusive decision-making, and shift course enough to provide assistance to vulnerable groups with greater efficiency and transparency. Djuli's recent suspension of reintegration activities and subsequent evaluation may lead to positive change. Initial indications are that BRA's newly amended victim program will focus on livelihood projects, provide individual assistance, prioritize female excombatants, and be open to the entire province.<sup>44</sup> Serious questions remain, however, as to BRA's capacity to implement extensive program reform outside the World Bank's KDP mechanism.

## VII. LISTENING TO THE VOICES OF VICTIMS

Although the Helsinki MoU and the LoGA designated specific mechanisms to bring the voices of victims to the forefront during the peace-building process, to date there has been insufficient official attention to this area. In a recent attempt to give victims a voice in the Aceh peace process, Acehese human rights NGOs facilitated a victims' congress in Saree, July 20–23, 2007. The congress was an attempt to revamp an Aceh-wide victims' organization and strengthen the role of "victims [as] a strategic component in determining peace in Aceh."<sup>45</sup> Using the momentum generated by the congress, a group of representatives visited the Acehese Parliament, demanding the urgent implementation of the human rights mechanisms created by the Helsinki MoU, the TRC and the Human Rights Court.

In an attempt to better understand victims' views on the conflict and the peace process, the ICTJ's team of researchers conducted interviews and focus group discussions (FGDs) in nine districts, speaking to 113 victims between July 19 and 29, 2007.

The discussions were organized around four topics:

- *Past Human Rights Abuses*

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exclusion here is IOM's extensive work in assisting former combatants, amnestied prisoners, and conflict-affected communities. For a detailed analysis of reintegration in Aceh see ICG, "Aceh: Post-Conflict Complications" (October 2007); and BICC, "Repaving the Road to Peace."

<sup>42</sup> BICC, *Ibid.*, 37–44.

<sup>43</sup> Aceh Reintegration Authority (BRA), "Donor Matrix for Peace Building Project in Aceh" (September 2007).

<sup>44</sup> Interview with World Bank employee (August 13, 2007).

<sup>45</sup> Aceh Victims' Congress (SPKP HAM—*Solidaritas Persaudaraan Korban Pelanggaran HAM*), Press Release, Banda Aceh (July 19, 2007).

What do human rights mean to you? What were your own experiences of human rights violations? What do you think about when you remember past abuses?

- *Justice*  
What is justice according to you? Do you feel that there is justice in your life? Should those who were responsible for past abuses be held accountable? What do you think is the best way to address the past?
- *Reforming Abusive Institutions*  
Do you feel that you live free from violence now? Are persons or institutions that abused you in the past still in your community? Have you felt threatened recently? How can we guarantee that abuses are not repeated?
- *Reparations*  
Have you received any form of compensation; if so, how? Do you think that victims have received reparations? How do you think victims can be guaranteed their right to heal?

A summary of the discussions revealed that although most victims were grateful for the dramatic increase in security in their communities resulting from the end of the conflict, they also felt increasingly discontented for the following reasons:

- *Felt Ignored*  
Many victims were frustrated by the peace process's lack of recognition that they were the ones who innocently suffered the brunt of the conflict.
- *Treated Unjustly*  
Most victims felt that they were being treated unjustly. This sense of injustice has been caused in large part by a perception that former combatants are receiving an unfair share of the compensation available.
- *Marginalized by "Victim" Criteria*  
Many victims, particularly victims of rape and those who survived torture and attempted murder without permanent disabilities, were deeply insulted that BRA's criteria for determining who qualified as a victim excluded them.
- *Craved the Truth*  
Many felt a deep desire to discover the truth behind particular violent incidents, as well as the larger context of the abuses. They wanted to know why the abuses took place and desired an explanation for and information about the abduction and killing of their loved ones. Those whose loved ones were disappeared felt an urgent need to find their burial place so that they could perform religious rituals to honor the dead.
- *Desired Punishment*  
Many spoke about the desire for justice through criminal proceedings. They were pessimistic, however, about the viability or fairness of such trials should they take place.
- *Wanted Assurance of Nonrepetition*  
All victims were united in feeling that the abuses must never happen again and that those in power now must do all they can to ensure that the violations are never repeated.

Although it is difficult to succinctly convey the myriad views and feelings expressed by all the victims who participated in these discussions, the following is an attempt to present some of the most important findings in the victims' own words.

## A. Past Human Rights Abuses

To gain insight into human rights abuses committed during the Aceh conflict, interviewers first needed to clarify how victims understood human rights generally. Not surprisingly, many participants associated the concept of human rights with negative, rather than positive, feelings:

*We do not know what human rights are. What we know is that what happened to us is what is called human rights. . . . We only ask that the government pay attention to us as victims of the conflict. If you ask us what are human rights we do not know. But we are its victims.* [Female victim, 40, FGD 5, Aceh Timur, July 23, 2007]

*Human rights are how people are not abducted and killed in a random way.* [Female victim, 37, FGD 7, Bener Meriah, July 26, 2007]

*[When] the troops came, they said they were looking for people who had joined GAM. I was interrogated, hit with their hands and weapons, kicked, then submerged in a big gutter. I think human rights violations take place when people's right to life is taken away, but also [when] they are disturbed physically and economically. The government, the army, intelligence commanders, they never want to hear our reasons. They only know that their accusations are what is right.* [Male victim, 32, FGD 2, Pidie, July 20, 2007]

*Perhaps human rights are something only had by those in power and the people who have made us suffer like this.* [Female victim, 50, FGD 7, Bener Meriah, July 26, 2007]

However, others associated human rights with positive conceptions of respect and protection:

*Human rights are the rights of every human being given by God from birth. No one can take another person's rights. Every human being has the right to live and not be tortured.* [Male victim, 44, FGD 2, Pidie, July 20, 2007]

*Human rights are the protection of the rights of people who are weak and oppressed.* [Female victim, 28, FGD 6, Aceh Tengah, July 25, 2007]

All participants were united in the view that they would never forget past abuses and that people need to acknowledge and remember what happened so that it never happens again:

*We cannot accept the violence, we cannot forget the victims of the conflict because they were killed in front of our own eyes. We can accept the tsunami because that was God's will, but this . . . killed in front of my own eyes. We will never forget until Judgment Day.* [Female victim, 33, FGD 1, Aceh Besar, July 19, 2007]

*My two children were disappeared and killed. To eternity I cannot accept this. I don't want this to ever happen again. The pain is very deep.* [Male victim, 72, FGD 2, Pidie, July 20, 2007]

*It is important to remember and to be told by speaking the truth from the victims themselves, so that people, nationally and internationally, know that these atrocities happened.* [Female victim, 23 years, FGD 3, July 21, 2007]

*So this never happens again to our children, therefore we must remember.* [Female victim, 31, FGD 3, Bireuen, July 21, 2007]



## B. Justice

When asked about justice, participants had widely differing opinions. Some spoke of punishing perpetrators. An equal number felt that justice had to do with repairing what was broken in their lives. Some also believed that a combination of these measures was needed to bring about justice:

*Justice is when there are rights of the victims and there is punishment for the perpetrators. But it should not be an eye for an eye.* [Male victim, 40, FGD 4, Aceh Utara, July 22, 2007]

Many victims felt that reparations in the form of long-term social support, in particular education, were a crucial aspect of justice:

*How can we experience peace when we are still thinking about our economic problems, our children's school fees?* [Female victim, 65, FGD 1, Aceh Besar, July 19, 2007]

*I think the best way is to provide education for the children of victims, then help us victims economically.* [Female victim, age unknown, FGD 1, Aceh Besar, July 19, 2007]

*There is justice if the family and children of those who were killed can go to school so their future is assured.* [Female victim, 40, FGD 4, Aceh Utara, July 22, 2007]

Many felt that discovering the truth about what happened to those who were killed or disappeared was essential to achieving justice:

*[T]he state does not want to provide justice in accordance to the law. I still don't know where my husband's remains are. If I had that, then at least I could bury him myself. Instead, they are still hiding his body.* [Female victim, 33, FGD 1, Aceh Besar, July 19, 2007]

*The government has to explain what actually happened. We don't know why. Then show us where people were killed.* [Female victim, 42, FGD 7, Bener Meriah, July 26, 2007]

*Uncover why these abductions and killings took place, show us where the people who were taken have been buried if they are dead. There must be another registering of the real victims.* [Female victim, 32, FGD 6, Aceh Tengah, July 25, 2007]

*The government has to tell us [the location of] the graves of the people who have disappeared. It is not enough with just 3 million rupiahs. Don't cover up this wrong with money.* [Male victim, 72, FGD 2, Pidie, July 20, 2007]

Several declared that reconciliation could occur only when individuals personally acknowledged and took responsibility for their past crimes:

*The perpetrators must be found, and then they should be made to help the lives of the families of the people they killed. So that they know what they did was wrong . . . and they cannot repeat what they did.* [Female victim, 37, FGD 7, Bener Meriah, July 26, 2007]

*Don't just ask for forgiveness from behind the desk, write it down and announce it. Come and look at the victims in the face.* [Male victim, 32, FGD 2, Pidie, July 20, 2007]

Others emphasized that it was the government's obligation to hold both individuals and institutions accountable for past crimes:

*The government must find the perpetrators and they must explain to us victims why he killed, abducted, and burned people's homes without any humanity.* [Female victim, 28, FGD 6, Aceh Tengah, July 25, 2007]

*Responsibility is in the hands of the government, so we demand from the government that those who violated human rights must be punished according to the laws in Indonesia. There won't be peace when there isn't any justice for the people of Aceh.* [Male victim, age unknown, FGD 8, Aceh Barat, July 28, 2007]

*Yes, there must be accountability. It must reach the president because it was not only TNI and Polri that did these things, but the president also made policies, as well as the Parliament and others.* [Male victim, age unknown, FGD 1, Aceh Besar, July 19, 2007]

When asked about injustice, various women spoke about the prevalence of domestic violence and the veil of secrecy over gender-based violence.

*There is injustice in the family when there is domestic violence.* [Female victim, 29, FGD 3, Bireuen, July 21, 2007]

*Nobody has reported about the rapes here, as if it never happened, when it actually happened to us. This is unfair. The village head and other officials said, "Don't ever let us hear that someone reported these rapes. It brings shame to all our people and the village government. Don't spread nonsensical shame." [Female victim, 60, FGD 3, Bireuen, July 21, 2007]*

A few voiced frustration by threatening to take matters in their own hands:

*We will only feel at peace, if the government cannot act justly, when the perpetrator is brought before us. They killed our family members, so now we will kill him, too. Then we will feel at peace. Blood shall be paid in blood.* [Female victim, 40, FGD 5, Aceh Timur, July 23, 2007]

### **C. Reforming Abusive Institutions**

Many victims admitted that they still feared and distrusted security forces.

*Perpetrators are around victims. Victims still feel scared, traumatized, or hatred when they pass the military or police officers.* [Female victim, 34, FGD 7, Bener Meriah, July 26, 2007]

*There are no more threats, but I am still scared when I pass or meet a member of the TNI or police who carry weapons.* [Female victim, 60, FGD 7, Bener Meriah, July 26, 2007]

*I do not yet believe in the police; given what happened in the past, they cannot build trust and ensure safety.* [Female victim, 39, FGD 9, Aceh Selatan, July 29, 2007]

This fear has made it difficult for them to speak about the abuses they suffered.

*I am afraid to speak, afraid to talk about what happened—they have guns, they may come.* [Female victim, 37, FGD 9, Aceh Selatan, July 29, 2007]

*People feel afraid. If perpetrators are found or if their crimes are uncovered, the perpetrators may take revenge [against victims who speak out]. That is what is felt by people in the villages.* [Female victim, 28, FGD 7, Bener Meriah, July 26, 2007]

Many victims believed punishing perpetrators would help ensure their own safety by deterring future abuses.

*Fulfill our rights, and also perpetrators must be punished. By doing so, then the perpetrators will learn their lesson. Later on others who want to violate human rights will have to think about it first.* [Male victim, age unknown, FGD 1, Aceh Besar, July 19, 2007]

*Announce who the perpetrators were and punish them. If not, they will do the same thing somewhere else.* [Female victim, 35, FGD 4, Aceh Utara, July 22, 2007]

*Perpetrators who are militia are still around, they are our neighbors. In the case of TNI, I don't know if they are still here because they don't come here anymore. There are no more threats now, but I am still very hurt by what my neighbor (militia) did.* [Female victim, age unknown, FGD 10, Bener Meriah, July 26, 2007]

*The government must take action against perpetrators, and not the opposite: give honor to killers. Perpetrators of crimes should be punished. If instead he is given a promotion from corporal up, and then eventually he becomes a general. They are rewarded because they have killed honor. In the future government officials will kill because they will be awarded by a promotion.* [Male victim, 32, FGD 2, Pidie, July 20, 2007]

*The government has to educate its officials so that they understand the law and protect the people. Not act recklessly. Those who are guilty must be punished, or else they will act even worse.* [Female victim, 25, FGD 6, Aceh Tengah, July 25, 2007]

*There some perpetrators who are still here, others no longer here. I still see one of the perpetrators at the police station. But I am resigned, there will be punishment for people who are evil. The police and soldiers are a bit more friendly.* [Female victim, 54, FGD 6, Aceh Tengah, July 25, 2007]

Some victims felt that the international community must help ensure justice and prevent the recurrence of the violence.

*We have to try as best as we can to have trials, so these cases never happen again. [These trials] should involve independent people, people from the EU, or other outsiders, so someone feels ashamed. And if they try anything while trying them, they will be ashamed.* [Male victim, age unknown, FGD 8, Aceh Barat, July 28, 2007]

*Perpetrators must be punished in accordance with domestic and international laws.* [Female victim, 65, FGD 3, Bireuen, July 21, 2007]

*It is important to remember and to tell in order to find the facts that happened, directly by victims. So that people in the national and international [community] know that these atrocities took place.* [Female victim, 23, FGD 3, Bireuen, July 21, 2007]

#### **D. Reparations**

Early in the discussions, it was evident that most participants needed the facilitators to explain what they meant by reparations. Once they understood the concept, many victims declared it was unjust that former combatants received funds while victims were being overlooked.

*We hear GAM gets money and this is not just; what about us victims?*  
[Female victim, 33, FGD 9, Aceh Selatan, July 29, 2007]

*I see those who take up weapons getting all the money, all the support. We victims get nothing. I think to myself, why don't I use weapons, then at least I'll get some of the money.* [Male victim, age unknown, FGD 1, Aceh Besar, July 19, 2007]

*Those who created the conflict get help, they are given attention and respect. We innocent victims of this political conflict, we are just left like this. Is this justice?* [Female victim, 22, FGD 7, Bener Meriah, July 26, 2007]

Even those who received some form of diyat, felt that they had been treated unjustly.

*My child is dead as a consequence, then it is paid with 3 million rupiahs [approximately \$300] diyat. Is that justice? Not according to me, because my child's life has been tagged one life, 3 million rupiahs.* [Female victim, 33, FGD 1, Aceh Besar, July 19, 2007]

*Diyat is not compensation, even if it uses the language of Islam for compensation. But its implementation [is not diyat].* [Female victim, 41, FGD 10, Bener Meriah, July 26, 2007]

*I have never received anything. Diyat is not healing. According to Islamic law one life is compensated with 100 camels.* [Female victim, 62, FGD 2, Pidie, July 20, 2007]

Others noted problems with the existing procedures for distributing funds, including who decides who receives funds, how they make these decisions, and “commissions” taken by local leaders before the funds are distributed to people.

*Our village head did not take the data on victims at the kampong, but he just named people at the subdistrict office. So many names were forgotten. They only collected data from their desks.* [Male victim, age unknown, FGD 8, Aceh Barat, July 28, 2007]

*I received a new house to replace the one that was burnt, but it is nothing like what I had and not according to what was promised. I had to repeatedly ask the village and only realized my goal two months ago. This was because an official from the governor's office came last year.* [Female victim, 50, FGD 10, Bener Meriah, July 26, 2007]

*We're tired of contacting BRA. They say there are funds for victims, we were told to write proposals. As victims we are not skilled to write proposals. Still nothing has happened.* [Female victim, 28, FGD 6, Aceh Tengah, July 25, 2007]

*There is a policy from the subdistrict military commander that those accused of being GAM do not get any aid. He refuses to sign the letters required.* [Female victim, 60, FGD 10, Bener Meriah, July 26, 2007]

*I received diyat once, but the government and keucik took a cut.* [Female victim, 48, FGD 5, Aceh Timur, July 23, 2007]

*The government should form an independent team to redo the collecting of money, then give the aid directly without the village head taking his cut.* [Male victim, 38, FGD 5, Aceh Timur, July 23, 2007]

*I think we have to eradicate corruption. If not, then aid will never be fairly received by victims. If all victims get this support then there will be no more conflict. This is not what happens now. We are promised, but the money maybe is corrupted. So we continue to feel heartache.* [Female victim, 35, FGD 5, Aceh Timur, July 23, 2007]

Some warned that unjust distribution of funds would contribute to increased community tensions.

*Aid from the government has to be fair. Aid that is [distributed] unfairly will make the people fight among themselves.* [Male victim, 44, FGD 2, Pidie, July 20, 2007]

*Don't make a new conflict because aid and rehabilitation is not accurately [targeted]. Give it to people who really deserve it.* [Female victim, 44, FGD 2, Pidie, July 20, 2007]

Victims spoke about needs that could be addressed by different forms of reparations. Women victims spoke of their hardships in making ends meet and the difficulties they face when trying to pay costs related to rituals for the dead:

*All my children had to leave school. I had to divide up my children to relatives and others who felt sorry for us, so they can eat. If my relatives or someone feels sorry for us, we get something to eat. If not, we often go hungry.* [Female victim, 60, FGD 6, Aceh Tengah, July 25, 2007]

*[In order] to enter school, it is very unfair to poor people and victims of the conflict. There are so many requirements. [We] cannot fill out all the paperwork; that requires money.* [Female victim, 45, FGD 3, Bireuen, July 21, 2007]

*The government must hold a kenduri ceremony as part of the alms for the dead. This is the obligation of the family to hold a kenduri. Our life is so hard, how can we do this? So the government has to help us.* [Female victim, 35, FGD 9, Aceh Selatan, July 29, 2007]

Some victims were clear about the need for psychosocial programs as part of the peace process.

*The government has to help heal and provide health care for people who are stressed and traumatized. Don't just be quiet, as if there is no longer a problem in the community. [Male victim, 44, FGD 2, Pidie, July 20, 2007]*

*I cannot speak about it, I can go crazy remembering. My husband disappeared, who knows where. My life after that has been full of uncertainties. I am always feeling afraid. I don't want to experience what happened before; the past should never be repeated. [Female victim, 62, FGD 2, Pidie, July 20, 2007]*

Many emphasized the need to ensure consultation and victim participation in any kind of mechanism for victims.

*It should be that victims are represented in the BRA, at least one per subdistrict to ensure that the targets are met. Because they are victims themselves, then there will be economic justice. [Male victim, age unknown, FGD 8, Aceh Barat, July 28, 2007]*

*The perpetrators must be brought to trial and the government must come and ask victims directly how to help our lives, pay attention to our economic situation and the education of the children of victims. [Female victim, 29, FGD 10, Bener Meriah, July 26, 2007]*

*Compensation and healing? The authorities have never come to meet the family of victims, let alone come to hear our problems and thoughts. Maybe they think we're not fit to sit face-to-face with those officials. [Female victim, 37, FGD 10, Bener Meriah, July 26, 2007]*

Victims of alleged GAM atrocities continue to feel marginalized and unsure whether they will receive any compensation.

*My husband was tortured, beaten, blindfolded. He was taken from our house at 8 pm by GAM. They said he was an informer. His body thrown just like that with his throat slit open. Is my husband not a victim of a human rights violation? . . . Because they said my husband was an informer, I have received no information about getting any compensation. I heard that I don't deserve any. So say that my husband was wrong, but are my children then also wrong and must be punished? [Female victim, 30, FGD 3, Bireuen, July 21, 2007]*

A few victims recognized the importance of an integrated approach to dealing with the legacy of the past.

*If we forget what happened in the past, then those atrocities will be repeated if the state takes no action to bring the perpetrators to justice. We hope that there will be a court that will be fair. And that our losses will be compensated, and the trauma experienced by our children healed. If there is a chance for this, if not at least the government must ensure the education of our children. [Male victim, age unknown, FGD 8, Aceh Barat, July 28, 2007]*

*The current government in Aceh are people who understand conflict, they must know what are the wishes of victims. Don't just make promises when [campaigning] to become governor or bupati. [Male victim, 32, FGD 2, Pidie, July 20, 2007]*

Others declared that there cannot be a sustained peace without proper accounting for the needs of victims.

*If the government does not pay attention to our children, then there will be feelings of revenge because nobody cares about us.* [Female victim, 40, FGD 9, Aceh Selatan, July 29, 2007]

*If the government still fails to pay attention to us, maybe in the future we will also rebel against the government. The government only pays attention when people take up arms.* [Female victim, 28, FGD 6, Aceh Tengah, July 25, 2007]

### E. Conclusion

The input of victims puts into stark relief current problems with Aceh’s peace process. Although it may not be possible for any peace process to perfectly address the needs of all stakeholders, the consistency of disappointment and discontent in the victim community is noteworthy. Moreover, such discontent should create concern among those interested in building a sustainable peace in Aceh.

## VIII. TRANSITIONAL JUSTICE GAPS AND ANALYSIS

Examining existing peace-building programs in Aceh alongside direct input from the conflict’s victims illuminates significant failures in transitional justice that run the risk of destabilizing the hard-fought peace. An integrated and holistic transitional justice-approach, including truth-seeking, reparations, prosecutions, and institutional reform, is needed to sustain peace.

### A. Current Status of Transitional Justice Mechanisms

Truth-seeking	Prosecutions
<ul style="list-style-type: none"> <li>• Directly after the fall of Soeharto, between 1998 and 1999, the National Human Rights Commission, a parliamentary inquiry, and a presidential inquiry established by President Habibie investigated past human rights abuses in Aceh. The presidential panel recommended five cases for prosecution.</li> <li>• A report by the National Women’s Commission identified 103 cases of violence against women from the period of the military operation zone (1989) to the current transition (2006).</li> <li>• The annulment of the national TRC law by the Constitutional Court in late 2006 has stalled the establishment of a TRC in Aceh.</li> <li>• Since the Helsinki MoU, no comprehensive efforts have been made to systematically gather information about past abuses.</li> </ul>	<ul style="list-style-type: none"> <li>• As Habibie’s presidential inquiry recommended, the attorney general investigated five cases of serious crimes (including killings and rapes). One case was brought to trial, resulting in a conviction.</li> <li>• The Indonesian military reported conducting trials for more than 400 violations committed during martial law (2003–04). Among these cases in military tribunals were trials for the rape of four women in north Aceh (2003).<sup>46</sup></li> <li>• A human rights court in Aceh has been given jurisdiction only to consider future human rights violations by the implementing law for Aceh. There is little progress in its establishment to date.</li> <li>• Under existing law a human rights court based in Medan has jurisdiction over international crimes committed in Aceh after 2000. Official investigations remain stalled.</li> </ul>

<sup>46</sup> See Amnesty International, “Indonesia—Sexual Violence by the Security Forces” (2004), <http://web.amnesty.org/library/Index/ENGASA210472004?open&of=ENG-IDN>; see also “Sidang Perkosaan Tiga TNI atas Warga Aceh,” *Kompas* (July 9, 2003), <http://www.kompas.com/kompas-cetak/0307/09/nasional/417198.htm>.

Institutional Reform	Reparations
<ul style="list-style-type: none"> <li>• The implementation of the peace process began with the demobilization of hundreds of combatants and the recall of thousands of Indonesian military and police in 2005.</li> <li>• Most of the focus in Aceh has been on the economic, social, and political reintegration of former GAM combatants. Less attention has been given to reforming other security providers: the military, police, and intelligence service.</li> <li>• Legal and judicial reform is under way, but a systematic review based on past patterns of abuses has yet to be conducted—a task that could be performed by an independent truth commission.</li> <li>• The introduction of Sharia law focusing on morality has resulted in increased marginalization of women and gender-based miscarriages of justice.</li> </ul>	<ul style="list-style-type: none"> <li>• Under the reintegration scheme some 20,000 victims have reportedly received compensation through diyat ranging from \$200 to \$300.<sup>47</sup> Also, prioritized conflict-affected communities are given access to funds for development projects. However, victims are dissatisfied because of a lack of transparency about victim criteria and procedures. Victims feel that compensation is not based on acknowledgment of violations experienced.</li> <li>• Under the existing criteria for beneficiaries used by BRA, victims of sexual violence are overlooked.</li> <li>• Information regarding numbers of victims, types of violations, and harm suffered has not been systematically collected.</li> <li>• Family members of the disappeared have spontaneously exhumed mass burial sites. At least 22 exhumations were documented by human rights NGOs in 2006.<sup>48</sup></li> </ul>

## B. Reintegration: Bearing the Burden Alone

Reintegration faces multiple complex challenges but remains the main transitional-justice mechanism currently working in Aceh. Urgent reparations measures have been grafted onto the reintegration framework. However, the lack of transparency and acknowledgment of violations has left victims feeling dissatisfied. The failure to implement other measures, as provided by the Helsinki MoU and other agreements, puts an additional burden on the reintegration process. It should be reformed to work in parallel with a truth commission when the latter is established. At the same time BRA should adopt a truth-based, urgent reparations process.

To date BRA's reintegration program has provided initial benefits to former combatants and conflict-affected persons. However, staying on the current course creates a risk of re-igniting conflict in the region. Current reintegration strategies have marginalized vulnerable victims and overemphasized economic assistance. As evidenced by victim testimonies, over time these problems have been divisive and destabilizing. In summary, there are four inter-related problems with the approach to date.

### *Reintegration as the Dominant Approach*

Attempting to subsume the agendas for truth, prosecutions, and reparations under the umbrella of reintegration has impeded the transition in Aceh. Furthermore, the withdrawal of civil society and GAM from the BRA by mid-2006 and the resulting closure of BRA's political department have meant that no organization exists to oversee the establishment of the mandated TRC or Human Rights Court necessary to achieve many of its goals.<sup>49</sup>

<sup>47</sup> BRA press release, "Fakta Seputar Reintegrasi," June 22, 2007, [www.bra-aceh.org/details\\_news.php?bra=new&id=294](http://www.bra-aceh.org/details_news.php?bra=new&id=294).

<sup>48</sup> "Damai Aceh: Damai Tanpa Keadilan," *Bulletin KontraS* (04/VII-VIII/2006).

<sup>49</sup> In April 2007 the Forum for Communication and Coordination (FKK) was established, composed of 18 members (15 from the national and provincial government, three from the KPA). Under the authority of the Aceh desk of Menkopolkam (Coordinating Ministry for Politics and Security), FKK has a mandate to deal with security issues related to the peace process and to design and develop the



A predominant focus on reforming former GAM combatants has meant that reforming other pertinent institutional actors, especially the Indonesian military and police, has received less attention.

The use of a reintegration model to address the needs of victims without other remedies falls short of victims' expectations. Without systematically understanding the "universe of victims"—what violations took place, what harms were suffered, who were the victims and perpetrators—any provision of compensation risks increasing horizontal conflict.

#### *Marginalization of Vulnerable Groups*

A major problem with BRA's reintegration program is that adequate assistance is not given to those most in need. Vulnerable groups, such as women, children, the elderly, and the disabled, receive insufficient support. This is partly because the program lacks targeted support for women—often the sole remaining caregivers—as all assistance to conflict-affected civilians has been provided on a community grant basis. Moreover, the focus on cash payments, rather than programs supporting sustained livelihoods, health, and education, has also had a disparate impact on women, children, the elderly, and the disabled.

Victims of GAM-perpetrated abuses are also severely marginalized by the current reintegration process. As peace-building efforts have focused on the reintegration of GAM combatants and community-based support for victims, victims of GAM abuses have had little opportunity to participate in postconflict activities or obtain assistance. Moreover, as large numbers of GAM return to conflict-affected areas, victims of GAM abuses have been discriminated against and pushed further into the margins. Rather than feeling empowered by the peace, they are often afraid to even mention crimes committed against them.

#### *Too Much Focus on Economic Assistance*

From the outset of the peace process, reintegration for excombatants was defined narrowly as temporary economic assistance to develop future income. Less emphasis was placed on social reintegration, including access to health, education, and training, combined with longer-term, sustainable economic development. The resulting focus on cash payments, combined with the lack of transparency regarding distribution decisions, has generated mistrust and jealousy among beneficiary groups. Although some competition for resources is inevitable in such an environment, the adopted approach has been particularly divisive and destabilizing.<sup>50</sup> The need to rebuild cohesive communities and overcome a shared history of conflict has gotten lost in the midst of disputes and finger-pointing. Delays in the distribution of funds and the process's lack of transparency have diminished the public's trust in many of the actors providing postconflict assistance.

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Joint Commission on the Settlement of Disputes, the Truth and Reconciliation Commission, and the Human Rights Court. Given limited GAM participation, FKK is widely seen as a GoI- and TNI-dominated body. As of September 2007 FKK had taken no serious steps toward establishing a TRC or a Human Rights Court.

<sup>50</sup> World Bank, "GAM Reintegration Needs Assessment," 2.

### **Distribution of Reintegration Assistance<sup>51</sup>**

“B” is a community leader from a village in north Aceh. He is also a victim of the conflict. B is very knowledgeable about the impact of the conflict in his community. He notes that there are “600 children who have lost their fathers, 70 who died, and 70 houses burned” in his village. He describes how funds from the BRA-KDP program were disbursed in his village.

Our village has about 5,000 people in eight hamlets. . . . In north Aceh each village was given Rp 170 million. We were encouraged to use this money for village development. But among us some victims knew that the money was supposed to be for victims. In the end we decided to divide it among everyone. So each person got Rp 27,000. The money was disbursed three months ago. This is unfair to villages with lots of hamlets and a lot of people. How can they use the village and not population or number of victims as the standard of measure? What does Rp 27,000 mean to victims? Perhaps in some other villages with not many people, each person will get more money, even if they are not all victims. But because [the money] is directed toward the village, every person in the village feels that they have a right [to it], so they demand that the money be divided equally. Meanwhile, there is a victim who was tortured with electric shocks 23 times, including in his sexual organs, in 1990. He has still not received any help.

### *The Need for Development Approaches to Reintegration*

Although included in the reintegration framework in the Helsinki MoU, support for victims and their communities can be seen as an attempt to provide collective and individual reparations. Currently the nonfinancial reintegration component receiving the most substantial support from BRA is housing reconstruction. This program, a continuation of a GoI initiative to replace houses damaged in the Aceh conflict, was transferred to BRA in 2006. Yet of the estimated 59,000 houses that required rebuilding following the conflict, only 4,978 were completed in 2005 and 2006. There have been numerous complaints over the poor quality of the houses that have been built and the lack of transparency in determining beneficiaries. Since village and subdistrict heads have been instrumental in the process, allegations of corruption and favoritism are common. Fears are well founded that the widespread quality control, procurement, and corruption issues that have plagued tsunami housing reconstruction projects will be replicated in conflict-affected communities. The damage this may cause to communities already fractured by conflict and poorly targeted financial reintegration aid requires careful scrutiny.

BRA has also been providing free health care to individuals who were injured or require regular treatment as a result of the conflict. Individuals who qualify under this program receive an identification card they present at hospitals and are reimbursed for costs incurred. Individuals who are permanently disabled as a result of the conflict are entitled to Rp 10 million in addition to free health care. However, as of 2006 only 550 people were receiving these health benefits. This number raises significant concerns about whether this assistance has been accessible to those most in need.

Outside BRA are an increasing number of projects providing nonfinancial reintegration assistance. Some of the more notable social initiatives for conflict-affected communities include psychosocial projects by Medecins Sans Frontieres Holland and IOM, the AusAID- funded Communities and Education Project in Aceh (CEPA), and various capacity-building programs run by agencies such as the World Bank and GTZ. Successes in these programs provide examples of best practice to

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<sup>51</sup> From FGD 4, Aceh Utara (July 22, 2007).

develop long-term, community-based empowerment for victims and their communities and reduce the current cash-based approach.

As the current reintegration process continues to overlook the most vulnerable members of society and further divides communities, there is an urgent need to establish and incorporate additional transitional justice mechanisms. A transparent, independent reparations process should be implemented to follow up truth-seeking and lay the foundation for honoring victims, understanding who they are and what their needs are. At the same time victims' grievances would be addressed more thoroughly by integrating a truth-seeking approach to the methods of identifying conflict-affected persons in the current reintegration scheme. Lessons from other contexts in implementing collective reparations are relevant to improve provision of assistance to victims of the conflict.

### **C. Missing Truth**

The annulment of the national TRC law by the Constitutional Court in December 2006 created legal uncertainty as to whether an Acehese TRC could be established outside the ambit of a national commission. The proposed national TRC would have been limited to a case-by-case approach, could have granted amnesty to perpetrators of gross human rights violations, and had the power to make reparations for victims contingent on their accepting the granting of amnesty to perpetrators.<sup>52</sup> The Constitutional Court found that this provision went against human rights protections guaranteed in Indonesia's 1945 Constitution and declared the whole law no longer executable.

Although the LoGA established a TRC for Aceh, a provincial law (*Qanun*) is required to select its members and provide further details regarding its nature and operations. One possible legal interpretation is that the requirement in the LoGA that the Aceh TRC be an "inseparable part" of a national TRC precludes its establishment in the absence of a national body. An alternative view is that this provision was merely intended to ensure cooperation between the two and does not preclude establishment of an Aceh TRC when there is no national TRC.<sup>53</sup>

In the context of legal uncertainty surrounding the laws designed to fulfill the promises made in the Helsinki agreement, little has been done so far to clarify the truth of what has occurred in Aceh. Despite advocacy by civil society, few high-level efforts have been made to uphold the commitment of the Helsinki MoU and the LoGA to create a TRC. Justifications for inaction include fear that a TRC might negatively affect relations with Jakarta and the need to prioritize reintegration, given the threat that former combatants may represent to peace if reintegration is unsuccessful. However, the potential benefits of reintegration initiatives are jeopardized by the lack of an official recognition of the past.

While reintegration assistance is important, providing it without an acknowledgment of the past is an affront to victims' suffering. Moreover, in the absence of a thorough investigation and acknowledgment of the harm victims suffered, compensation has failed to address victims' feelings of injustice.

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<sup>52</sup> See ELSAM, "Making Human Rights a Constitutional Right: A Critique of the Constitutional Court's Decision on the Judicial Review of the Truth and Reconciliation Commission Act and its Implications for Settling Past Human Rights Abuses" (2007); and ICTJ, "Comment by the International Center for Transitional Justice on the Bill Establishing a Truth and Reconciliation in Indonesia" (June 2005).

<sup>53</sup> See Chapter IX.

### **Diyat without Truth Feels Unjust**

*“I feel sick in the heart. Information is more important, and the truth; this money is not enough.”*  
[Female victim, 37, Aceh Selatan.]

The provision of diyat has shown that payment of money without truth telling has failed to provide the intended benefits. Diyat recipients have not been determined through official investigations or acknowledgment of specific abuse, but instead have been identified by local authorities based on subjective criteria of who suffered harm during the conflict. Furthermore, many who received diyat were not told why they were given the payment. Some victims report simply being asked for their bank account details, receiving a diyat payment without any explanation, and not being told whether it was a one-time or recurring payment.<sup>54</sup> Some victims have even reported authorities taking a cut of their diyat payments.

The lack of transparency in the diyat process has led to allegations of corruption and favoritism, while the participation of local security actors in the establishment of the payment has exacerbated victims’ trauma. Since the provincial government initiated diyat during the conflict, it is generally considered to be a government handout, along the lines of social security. It is rarely considered as an aspect of justice.

#### *Demarginalizing Vulnerable Groups*

As noted above, the lack of an official truth-telling process has proven particularly problematic for vulnerable groups such as women, children, the elderly, the disabled, and victims of GAM violations. Without an accounting of the truth, the current reintegration process has pushed these vulnerable groups further into the margins of society and provided them with inadequate assistance. An official truth-seeking process would mitigate the marginalization of these groups. Basing reintegration initiatives on a shared understanding of the truth would help these victims feel more empowered to advocate for their rights and, at the very least, enable them to receive public acknowledgment of the crimes committed against them.

#### *Minimizing Community Division*

The current reintegration process is causing division in Aceh’s conflict-affected communities as various groups and individuals compete for economic assistance. Truth-seeking can play an important role in minimizing this divisiveness by developing a shared historical memory. This memory not only would provide an acknowledgment of past wrongdoing as a basis for reconciliation, it also would refocus peace programs on community building rather than individual financial gain. When the entire community acknowledges the perpetrators and victims of abuse, the likelihood is greater that assistance will be directed to those most in need and most deserving.

A systematic and independent truth-seeking process may provide a good starting point for urgently needed transitional justice mechanisms. As described below, reforming abusive institutions, prioritizing cases for prosecution, and developing a holistic reparations program should begin with the truth about what took place in the past.

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<sup>54</sup> Interview with conflict victim, Aceh Selatan (August 1, 2007).

#### **D. Reparations Independent from Reintegration**

A victim's right to a remedy and reparation is enshrined in international law. It is also generally considered vital in the transitional justice framework.<sup>55</sup> Usually consisting of material and symbolic support for victims of crimes under international human rights law, reparations generally perform a restitutionary, rehabilitative, or compensatory function. Reparations programs provide a benefit in transitional societies by focusing on victims' needs in relation to the harm they suffered.

Many of the official reparation-type initiatives that have been implemented in Aceh have been subsumed by the focus on reintegration. Thus, rather than focusing on providing compensation for harms suffered by victims, compensation has generally been provided more generally to communities, regardless of the numbers of victims of abuse and without being earmarked for programs specifically designed to help victims. As discussed above, rather than providing healing, these policies have engendered tension within and between communities.

##### *Blurred Lines between Reparations and Reintegration*

A major flaw of victim-focused assistance has been its inclusion in broader reintegration efforts. Reparations and reintegration are two distinct concepts that serve different purposes. On the one hand, reparations seek to rehabilitate, compensate, and restore the rights of victims to the greatest extent possible. On the other, reintegration is commonly understood as a social and economic process by which excombatants acquire civilian status.<sup>56</sup> In Aceh, unfortunately, the lines between reparation and reintegration have become blurred. The provision of assistance to conflict-affected persons is largely provided under the reintegration scheme established under the BRA, and transparency is lacking in the criteria and procedures for recipients of assistance. Victims undoubtedly are key stakeholders in effective reintegration as it increases security and minimizes the potential return to conflict, but their needs should be conceptualized as distinct from the broader reintegration process. Failure to do so results in victims' concerns—truth, justice, and reparations—being marginalized. Subsuming reparations under reintegration assistance further exacerbates preexisting injustice.

The lack of a victim-centered approach to reparations can be traced back to the language of the Helsinki MoU, which contains no mention of victims of human rights abuse but uses the term “affected civilians.”<sup>57</sup> As the MoU did not define affected civilians, this task later fell to BRA, which, in conjunction with GAM, established 10 broad criteria for conflict victims.<sup>58</sup> The language used precluded acknowledgment of the individual harm suffered and excluded victims of gender-based violations. All of Aceh's 4 million people can justifiably claim to be affected civilians, yet their needs vary.

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<sup>55</sup> See UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/Res/60/147 (December 16, 2005).

<sup>56</sup> UN Disarmament, Demobilization and Reintegration Resource Centre, *Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards*, 2006, [http://www.unddr.org/iddrs/iddrs\\_guide.php](http://www.unddr.org/iddrs/iddrs_guide.php).

<sup>57</sup> Helsinki Memorandum of Understanding (MoU), art. 3.2.5(c).

<sup>58</sup> These categories are: those who had a close family member die in the conflict; a widow or widower or child of someone who died during the conflict; those who had a close family member disappear during the conflict; those who had their house burnt or destroyed; those whose property was damaged during the conflict; those who were displaced by the conflict; those who suffer physical defects because of the conflict; those who suffer mental illness due to the conflict; those who suffer physical illness due to the conflict; those whose livelihood was negatively affected by the conflict. See BRA presentation (December 6, 2006, unpublished).

### *Truth as a Necessary Precondition*

Implementing a reparations program properly without a truth-seeking component has proven to be difficult. Truth-seeking is needed to delineate who qualifies as a victim. It is also necessary to clarify the harm each victim suffered so that reparations, whether individual or collective, can be properly calibrated. For reparations to be truly effective a connection must exist between the harm suffered and assistance received, or the state must acknowledge its responsibility. Therefore a TRC is essential to instituting a proper reparations program.

### *Noneconomic Reparations*

Just like reintegration assistance, reparations should not be limited to monetary compensation. Despite the fact that most postconflict assistance in Aceh has been provided in the form of a monetary payment, many victims have expressed the desire to receive reparations in the form of social programs promoting sustainable livelihoods, health, and education. Although BRA has taken note of this desire in some cases, providing communities with funding for social programs, it has been fulfilled mostly by organizations acting outside the official peace-building process.<sup>59</sup>

In Aceh the focus on reintegration has marginalized concerns over reparations in postconflict policy. Upholding victims' rights, building a sustainable peace, and ensuring that Indonesia adheres to its international obligations require that reparation programs receive increased attention.

### **E. Prosecutions: Accountability for Past Abuses**

Despite the Helsinki MoU providing for the establishment of a Human Rights Court in Aceh, prosecutions have never seriously been on the agenda. Most significantly, under the LoGA the Human Rights Court can deal only with cases that occurred after the Court's enactment.<sup>60</sup> The limitation of the Court's jurisdiction only to prospective cases makes it—if it ever becomes functional—by and large meaningless as a tool to provide accountability for abuses committed during the conflict.<sup>61</sup>

### *Law 26/2000 Adjudicating Serious Crimes*

Some have argued that Indonesia's existing human rights courts, established under Law 26/2000 with jurisdiction over crimes against humanity and genocide, have a mandate to try crimes committed in Aceh after 2000.<sup>62</sup> Under the same law an ad-hoc court could be established with retroactive jurisdiction for crimes committed before 2000.<sup>63</sup> In theory, the Human Rights Court based in Medan has a geographical jurisdiction that includes Aceh, although to date this court has remained dormant.

Even if the lack of retroactive jurisdiction can be overcome, the continued political influence of senior military commanders could render prosecutions impotent.

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<sup>59</sup> See, for example, IOM's Support for Conflict-Affected Communities Project, Village Prosperity Through Peace Project, and Psychosocial Needs Assessments and Pilot Mental Health Outreach Program.

<sup>60</sup> LoGA, Law No. 11/2006, art. 228.

<sup>61</sup> If implemented, such a court would be important in preventing future abuses and spurring institutional reform.

<sup>62</sup> Although this law adopts many of the articles in the Rome Statute, it does not provide the Court with jurisdiction over war crimes.

<sup>63</sup> The Court can try only crimes that took place after the promulgation of this law. Exceptions may be made based on a presidential decision, initiated by Parliament, as in the case of the ad hoc court on crimes committed in 1999 in East Timor.

Moreover, if the ad hoc trials for East Timor and Tanjung Priok are any indication, the Indonesian judiciary, including its most senior officials, appears unwilling or unable to prosecute military personnel in human rights trials that adhere to international fair-trial guarantees.<sup>64</sup> In the East Timor case, six of the 18 charged were convicted of crimes against humanity at trial, but five of the six were then freed by the Supreme Court on appeal. In the Tanjung Priok case the Supreme Court acquitted all four persons convicted at trial.

### *Military Justice*

Isolated attempts have been made to prosecute human rights violations that occurred during the Aceh conflict. Held following the fall of Soeharto, these trials were conducted by either military or hybrid military-civilian courts and fell well short of international standards. The most prominent were the so-called *koneksitas*, or joint civilian- military trials, of 2000. These involved military and civilian investigators and judges, with defendants prosecuted under the Indonesian Criminal Code. The trials arose from investigations by the attorney general's office into five separate cases of rape, torture, disappearance, and mass extrajudicial executions. Only the case on mass extrajudicial executions—the Bantaqiah case—ever went to trial.

The murder of religious leader Teuku Bantaqiah and 56 of his followers in West Aceh on July 23, 1999, was one of the most infamous incidents of the post-Soeharto era and received international attention. Bantaqiah and his supporters were executed on suspicion of stockpiling weapons for GAM. As a result of the trial, held from April to May 2000, 24 soldiers and one civilian were convicted of murder, with the highest ranking officer a captain.<sup>65</sup> Sentences ranged from 8½ to 10 years' imprisonment. The commanding officer, Lt. Col. Sudjono, had “disappeared,” forestalling both his prosecution and accountability further up the chain of command.<sup>66</sup>

Another prominent military trial concerned the killing of five civilian prisoners in January 1999. Five soldiers (including a major) were charged with assault and sentenced to two to six-and-a-half years' imprisonment.<sup>67</sup> In 2003 another notable military trial occurred following the rape of four women in north Aceh. Three low-ranking officers were convicted; the harshest sentence handed down was 3½ out of a maximum of 12 years.<sup>68</sup> As of May 2003 TNI Commander Sutarto reported that 429 breaches of military law had come before military courts, with 57 soldiers convicted and receiving prison sentences.<sup>69</sup>

These isolated, military-led attempts at prosecutions lacked independence and received significant criticism from human rights monitors.<sup>70</sup> Most important, the trials

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<sup>64</sup> See David Cohen, “Intended to Fail: The Trials before the Ad Hoc Human Rights Court in Jakarta,” ICTJ Occasional Paper Series (August 2003), <http://www.ictj.org/images/content/0/9/098.pdf>; Human Rights Watch, “Indonesia: Acquittals Show Continuing Military Impunity: 1984 Massacre of Demonstrators Goes Unpunished” (July 2005), [http://hrw.org/english/docs/2005/07/12/indone11309\\_txt.htm](http://hrw.org/english/docs/2005/07/12/indone11309_txt.htm). See also the more recent decision of the Human Rights Court in Makassar that acquitted defendants on allegations of crimes against humanity committed in Abepura, Papua, in 2000. Amnesty International, “Worldwide Appeal: Indonesia: Abepura Victims Still Waiting for Justice after Nearly Five Years,” <http://web.amnesty.org/appeals/index/idn-011203-wwa-eng> (accessed November 2007).

<sup>65</sup> ICG, “Indonesia: Impunity Versus Accountability for Gross Human Rights Violations” (February 2001), 4.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> McCulloch, “Aceh: Then and Now,” 21.

<sup>69</sup> Amnesty International, “New Military Operations, Old Patterns of Human Rights Violations in Aceh (NAD)” (October 7, 2004), 42.

<sup>70</sup> *Ibid.*

were insufficient to address the widespread human rights abuses committed throughout the conflict and failed to expose the systematic patterns of violations committed by security personnel. The trials appear to have been designed to provide a veneer of military accountability and deflect attention from calls for justice. Military impunity therefore persisted throughout the conflict and continues to this day. In fact, the continued failure to hold effective trials to deter security forces from committing violations has contributed to the negative human rights situation in the province today. Until military impunity is addressed, no one can guarantee that violations will not reoccur.

At present, despite Indonesia's international legal obligations to prosecute gross violations of international human rights law, no trials related to the Aceh conflict appear likely. The lack of retroactive jurisdiction for the Aceh Human Rights Court, combined with GoI and GAM complicity in past violations and the slow pace of military reform, comprise significant domestic barriers to human rights trials.<sup>71</sup> Internationally, political will is insufficient to pressure Indonesia to uphold its legal obligations or push for trials through an international or hybrid mechanism.

Notwithstanding the political and legislative obstacles to human rights trials, the issue of prosecutions is notably absent from peace-building discussions. This is despite the existence of strong arguments that prosecutions for gross human rights violations in Aceh are required under national and international law. Because of the presumed impossibility of establishing an effective trial procedure and the political sensitivity of prosecutions, the establishment of a TRC dominates discussions of transitional justice. Although this state of affairs is far from satisfactory, understanding past crimes through a truth-seeking process may assist in developing priorities for prosecution in the future.

## **F. Institutional Reform**

Institutional reform is needed to restore the communities' trust in local and national governing institutions and ensure the nonrepetition of past abuses. Institutions complicit in committing past violations must recognize and remove abusive officials; take measures to ensure they will not employ individuals who have participated in abuses; and create laws and policies to ensure that their officers will not participate in or condone future abuses. In Aceh such reforms are needed in a variety of institutions, including those in the political, judicial, and security sectors. Since political and judicial reforms have been the subject of considerable attention elsewhere, we will address them only cursorily.

### *Political Reform*

A great deal of political reform has taken place in Aceh as a result of the LoGA. Although a full analysis of the LoGA is beyond the scope of this report, it greatly increased local political control over the region and public participation in the political process. It also allowed GAM to transform itself from a separatist combatant group into a transitional political body, KPA. Through democratic elections in December 2006, KPA/GAM gained significant political power in the province. This development has helped create and sustain stability but has created additional challenges.

The transition from resistance movement to democratic political party will be difficult. KPA must encourage the participation of low-level GAM members and foster widespread feelings of ownership. If an elite few dominate GAM's postconflict

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<sup>71</sup> See Ross Clarke, "Retrospectivity and the Constitutional Validity of the Bali Bombing and East Timor Trials," *Australian Journal of Asian Law*, 5, no. 2 (2003), 2–32.



political vehicle, the rank and file's current dissatisfaction with the reintegration process will increase.<sup>72</sup>

At the same time, in its transition to legitimate authority KPA/GAM must end its tradition of extortion. Evading extortion by KPA/GAM has been an increasingly difficult task for conflict-affected communities. The appointment of KPA/GAM leaders to senior administrative positions has led to contracts and jobs going directly to KPA members or their supporters. Control over resources, a factor throughout the conflict, continues to be controversial as KPA/GAM retains access to the spoils of development contracts and reintegration assistance. Corruption across the province risks going from bad to worse.<sup>73</sup>

Reversing this trend presents immense challenges. Extortion and corruption result from poorly managed reintegration programs, the immense amounts of cash that have flooded into Aceh following the tsunami, former combatants' difficulties in securing sustainable livelihoods, and a belief that KPA/GAM members are rightfully entitled to profit individually from peace. Moreover, cracking down on extortion may prove difficult, given the need of the KPA leadership to keep KPA/GAM rank-and-file happy. Yet the task is crucial. If the KPA/GAM leadership fails to provide meaningful change and repeats practices of past elites, Aceh's cycle of injustice and violence will continue.

#### *Judicial and Legal Reforms*

Current judicial and legal reforms give more authority to local institutions and customs. However, a systematic review of past abuses still has not been conducted. The Human Rights Court, created by the MoU and limited by the LoGA to investigate and prosecute future abuses, will be of little assistance. However, even a limited Human Rights Court could deter future abuses. Like all other dispute resolution mechanisms in Aceh, it must battle a culture of corruption that is deeply rooted in the Indonesian judiciary, destroying its independence and impartiality. Attempts are currently under way to address corruption concerns, but as elsewhere in Indonesia, they appear to be making little headway.

The establishment of Sharia law and courts reflects Aceh's deep Islamic traditions, but implementation has proved controversial. In particular, such laws have institutionalized a gender gap in the justice process and may have contributed to an increase in cases of gender-based abuses.<sup>74</sup> This development has further marginalized women, who were already bearing a significant burden of the conflict. Further changes are necessary to ensure that women are not denied justice by these judicial and legal reforms.

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<sup>72</sup> See ICG, "Aceh: Post-Conflict Complications."

<sup>73</sup> In the *kecamatan* development program (BRA-KDP) alone, 16 percent of district facilitators interviewed admitted to being threatened or intimidated by former GAM members. World Bank, "GAM Reintegration Needs Assessment," 44. Alleged KPA/GAM members have raided project offices and demanded that their members be made beneficiaries and that part of project funds be paid as tax. Crime and extortion extend well beyond BRA-KDP programs and are not solely attributable to excombatants. Across the region warehouses have been robbed, NGOs' cars have been stolen, and extortion is commonplace. Perpetrators often remain unknown and free from prosecution.

<sup>74</sup> See the Women's Commission for the Elimination of Violence against Women (*Komnas Perempuan*), "Perempuan Aceh Meniti Keadilan" (January 2007).

### *Security Sector Reform*

The links between effective transitional justice and security sector reform (SSR) are gaining increasing attention.<sup>75</sup> Yet the reform of security institutions—including TNI, police, GAM, militia, and intelligence—has clearly been absent in the early stages of peace-building. Although disarmament and demobilization have progressed smoothly, and the initial reinsertion of former combatants has achieved some positive results, security incidents are on the rise.<sup>76</sup> Isolated incidents have been resolved, but cumulatively they have led to increased instability and insecurity.

Despite the obstacles to reform, the Indonesian government, with support from the international community and civil society, must identify and implement strategies to vet security-sector institutions; create transparency and open communication among government, security actors, and the community; and increase civilian oversight. The failure to prioritize SSR constitutes an important transitional-justice gap in current peace-building initiatives. The ongoing program on police reform and training conducted by the Indonesian police and IOM in Aceh is an important initiative in this area.<sup>77</sup>

### Vetting

In the eyes of victims justice cannot be achieved as long as those implicated in human rights violations enjoy impunity, with their career unaffected by illegal actions. Thus careful vetting of security personnel—removing personnel implicated in human rights violations and taking steps to avoid hiring those involved in past abuses—is a crucial aspect of SSR and an important component of transitional justice.<sup>78</sup> However, truth-seeking initiatives are an essential precondition to vetting, and since truth-seeking has not yet been part of peace building, no detailed information is available on alleged violations by individual security personnel. This has serious implications for SSR across Aceh and Indonesia. Suspected perpetrators in the police, TNI, and GAM probably remain in active service, and their actions, identity, and whereabouts are unknown.<sup>79</sup> Without serious vetting communities cannot be expected to trust security-sector institutions. Where such mistrust exists, it will be difficult to build law and order.

### Clarification of Postconflict Roles

The postconflict roles of the TNI, police, and GAM must be clarified to establish a unified security sector. The official role of the TNI in Aceh is unclear. The MoU initially limited its role to “upholding external defense,” but the LoGA expanded it, appearing to give TNI a mandate to deal with internal security measures.<sup>80</sup> It may be

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<sup>75</sup> See, for example, Eirin Mobekk, “Transitional Justice and Security Sector Reform: Enabling Sustainable Peace,” Geneva Center for the Democratic Control of Armed Forces (November 2006); and UNDP, “Security Sector Reform and Transitional Justice: A Crisis Post-Conflict Programmatic Approach” (March 2003).

<sup>76</sup> It should be noted, however, that the disarmament process has yet to sufficiently focus on disarming and demobilizing militias.

<sup>77</sup> See IOM, “Final Report on Police Needs Assessment in Nagroe Aceh Darussalam” (2006), <http://www.iom.or.id/reports.jsp?lang=eng>; and IOM, “Police Capacity-Building Statistics,” <http://www.iom.or.id/statistics.jsp?lang=eng>.

<sup>78</sup> UNDP, “Access to Justice in Aceh.”

<sup>79</sup> Note, however, that steps are being taken to improve future recruitment and train police officers in human rights principles. Interview with IOM Police Project staff (July 16, 2007).

<sup>80</sup> Article 202 of the LoGA expands the role of the TNI to “maintaining, protecting, and securing the unity and sovereignty of Indonesia in accordance with laws and regulations.” The reference to existing laws implies the application of the Law 34/2004 to the Indonesian armed forces, giving the TNI the same extensive role as in other provinces, including a mandate to deal with internal security matters.

unrealistic to limit the TNI's role purely to external defense,<sup>81</sup> but TNI intervention in local affairs destabilizes the peace process. Indeed, in some communities TNI is still routinely questioning people about their activities, expecting to be notified of any significant public gathering,<sup>82</sup> setting up military checkpoints, and demanding payment for protection.<sup>83</sup>

At the same time, parallel and sometimes competing local policing institutions appear to be operating. Following their "victory" at Helsinki, many KPA/GAM members expect to play a role in local security. After years of fighting on behalf of the people, and with the police and military still considered a threat by some members of the community, many GAM returnees consider community security their rightful domain. As one KPA member professed in an interview, "It is the responsibility of the police to work together with KPA/GAM to resolve security issues at the village level and resolve cases. . . . It is KPA/GAM jointly with the police and TNI that should ensure community security." As a result the police appear unable or unwilling to prevent, detect, and deter increasing crime on their own.<sup>84</sup> In particular, where criminal activity involves a connection with KPA, the police are rarely contacted, nor do they undertake investigations or take action.<sup>85</sup>

Multiple sources of authority and uncertainty concerning their appropriate roles create fertile ground for conflict between security institutions. Insecurity reigns in communities because when an incident occurs they do not know to whom to turn for assistance. To resolve this problem, official clarification of each institution's postconflict role is necessary.

A long-term resolution of tensions between institutions may require the carefully managed insertion of KPA in the police and military. Although this does not seem immediately feasible, given the current level of distrust between the parties, if it is not achieved KPA could continue to develop into a conflicting source of authority in the security sector. Strategies to build trust among all security actors, such as regular meetings, are not unprecedented and are an important SSR consideration.<sup>86</sup> Moreover, evaluation is needed of whether the police have adequate resources to address their law enforcement duties.<sup>87</sup>

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<sup>81</sup> Aceh remains heavily militarized (notwithstanding the post-MoU troop reduction); the TNI has a long history of off-budget revenue raising in Aceh; and Indonesia has a longstanding tradition of military involvement in civilian affairs.

<sup>82</sup> Local human rights NGO KontraS-Aceh experienced significant scrutiny and intimidation when the organization held a seminar to raise awareness on truth and reconciliation issues in the region in May 2007.

<sup>83</sup> Interview with KontraS staff (July 12, 2007).

<sup>84</sup> In July 2007 alone six serious incidents involving violence by or toward police were recorded. World Bank, "Aceh Conflict Monitoring Update."

<sup>85</sup> Recent politically motivated crimes in Bireuen and Aceh Utara, including the detonation of grenades, illustrate the inability or unwillingness of police to intervene and investigate criminal incidents, even when they turn violent. See the case study on the Nisam incident.

<sup>86</sup> In Aceh Utara, the Aceh Monitoring Mission (AMM) previously conducted security forums at the subdistrict level. The recently elected regent of the district has supported similar meetings. Initiatives such as these should be encouraged and replicated.

<sup>87</sup> ICG, "Aceh: Post-Conflict Complications," 6.

### **The Nisam Incident<sup>88</sup>**

Perhaps the most serious violent incident after MoU, and the one that best illustrates Aceh's postconflict and post-tsunami dynamics, took place in Nisam, Aceh Utara. In March 2007 four suspicious men entered Alue Dua village late at night without reporting to village authorities. They spent the night at a local school. After community members questioned them, it became clear they were TNI soldiers and were armed. Suspecting they were intelligence agents, local people beat and detained the men. KPA members were implicated in the attack. Escalating tensions between KPA and the TNI followed. Despite a guarantee that the TNI would not seek revenge, 14 villagers were beaten by TNI soldiers who came to investigate the situation. It later became clear that the four soldiers had been subcontracted to provide security for the school in which they slept. An international NGO had constructed the school as part of its tsunami reconstruction program. Tensions over security contracts going to the TNI rather than KPA may have exacerbated the conflict. The Nisam incident illustrates the community policing role some KPA members retain. It further demonstrates the impact tsunami reconstruction can have in exacerbating preexisting conflict-related tensions.

### Increased Military Presence

The TNI is reported to have increased its organic forces and created new military compounds in Aceh.<sup>89</sup> Anecdotal reports also indicate a marked increase in the number of Indonesian intelligence agents in the region. Some of this buildup has been a natural consequence of the changing status of Aceh.<sup>90</sup> But local communities, which experienced significant abuse at the hands of GoI forces during the conflict, have noted it with suspicion and interpreted it as evidence of the GoI's lack of commitment to peace. TNI should diminish its presence in these communities and engage with them to build trust while explaining their new role. In addition the intelligence community must realize that even the perception of its presence will impede confidence building among other security actors, undermine reconciliation efforts, and could re-spark conflict. The incident in Nisam described above illustrates how easily the mere suspicion of intelligence activities can ignite small-scale conflict.

### Illegal Revenue Raising

The financial interests of security-sector institutions were major causes of and contributing factors to the protracted conflict.<sup>91</sup> Today many observers note continued extortion,<sup>92</sup> illegal tolls and levies,<sup>93</sup> and illegal logging.<sup>94</sup> Removing this

<sup>88</sup> World Bank, "Aceh Conflict Monitoring Update," March 2007, 2.

<sup>89</sup> A gradual buildup in troop strength of Acehese battalions has taken place primarily through the creation of additional territorial commands and battalions. Thirteen operative or almost completed military district commands (KODIM) now exist in Aceh. Before restructuring there were eight. This trend reflects an increase in the number of *Kabupaten* (regencies) under Aceh's civil administration, and a parallel policy of extensive TNI territorial expansion. A rough estimate based on media monitoring calculates total KODIM *Iskander Muda* troop strength at 14,750, a significant increase from 7,900 in 2002–03. E-mail interview with Matthew N. Davies, July 18–25, 2007.

<sup>90</sup> Following the martial law and civil emergency periods, the TNI undertook a gradual shift from counteroffensive operations to a consolidation of its province-wide apparatus. Ibid. For a discussion of TNI operational phases and categories, see Matthew N. Davies, "Indonesia's War over Aceh: Last Stand on Mecca's Porch" (2006), 49. The TNI appears to have compensated for the reduction in overall military strength by increasing intelligence monitoring and surveillance.

<sup>91</sup> See for example Lesley McCulloch, "Greed: The Silent Force of the Conflict in Aceh" (October 2003).

<sup>92</sup> See World Bank, "GAM Reintegration Needs Assessment."

<sup>93</sup> See World Bank and Aceh Rehabilitation and Reconstruction Board (BRR), "Trucking and Illegal Payments in Aceh," (2006) at <http://www.conflictanddevelopment.org/page.php?id=433>.

<sup>94</sup> See ICG, "Aceh: Post-Conflict Complications." According to high-level sources in Aceh Selatan, both KPA/GAM and GoI security institutions are deeply involved in illegal logging operations; the

institutionalized corruption may be difficult while salaries remain low and security-sector budgets are tight. However, the national and local government must make serious attempts to enforce moratoria on such activities in order to reestablish respect for the rule of law.

### **Illegal Logging**

Fuelled by demand for timber for tsunami reconstruction projects and the difficulty in acquiring lawful income in rural areas, chainsaws and logging trucks are common across much of Aceh's forested regions. Despite Governor Irwandi's moratorium on logging, concerns are well founded about one of Aceh's great remaining natural resources: its internationally recognized forests. Research undertaken by the International Crisis Group (ICG) shows that since the peace agreement KPA/GAM involvement in illegal logging has increased significantly, while police and military interests have declined.<sup>95</sup>

The competition over logging resources creates a serious risk of re-igniting conflict. In May 2007, after 18 people were arrested for illegal logging in Bener Meriah District in a joint operation by forest and standard police, a district and two subdistrict offices in the surrounding area were hit by improvised explosives.<sup>96</sup> Although links between the arrests and the attacks were not conclusively proven, any attempts to clamp down on illegal loggers will most likely be met with retaliation.

As police and military officials are also involved in the logging business, and given the shortcomings of the reintegration process in building sustainable livelihoods, enforcing Governor Irwandi's moratorium will prove extremely difficult. Resolving this complex issue equitably while protecting one of the world's great regions of biodiversity will be a key test of the Irwandi administration.

### *Lack of Civilian Oversight and Transparency*

The lack of provincial-level civilian control of security-sector institutions is a major SSR concern. In a positive step the LoGA gave the governor significant control and oversight over the Aceh police force.<sup>97</sup> Yet the obstacles to improving the situation are immense. These range from national and centralized structures of the TNI and police to the governor's former senior position in GAM and the suspicion it causes, as well as the lack of suitable institutions and civil authorities to provide oversight now that AMM's mandate has ended. Nevertheless, the national and local government, with support from the international community and civil society, must gradually build a greater role for Aceh's governor, Parliament and civilian controlled institutions in security-sector monitoring and oversight.

Although institutional reform is under way and appears to be helping reduce conflict, many significant challenges remain.<sup>98</sup> Addressing corruption and extortion, vetting institutions involved in past abuses, and increasing civilian oversight of the security sector are a few of the most pressing initiatives to help increase trust between the population and those in authority. Such trust is a necessary ingredient for establishing the rule of law and a sustainable peace.

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main players on both sides are known but cannot be named. Interview with KPA Sarbunis and BRA coordinator, Aceh Selatan.

<sup>95</sup> ICG, "Aceh: Post-Conflict Complications," 8.

<sup>96</sup> *Ibid.*, 7.

<sup>97</sup> The governor must approve the appointment of the head of the Aceh police force and both parties must coordinate policing policies; in law-and-order matters the police chief is responsible to the governor. See LoGA, Law No. 11/2006, arts. 204, 205.

<sup>98</sup> World Bank, "The Aceh Peace Agreement: How Far Have We Come?" (December 2006), 2; see also the World Bank's Aceh Conflict Monitoring Updates, <http://www.conflictanddevelopment.org/page.php?id=4402>. A notable exception to this trend was the Nisam incident described above.

## IX. CIVIL SOCIETY'S INITIATIVE FOR AN ACEH TRC: OPPORTUNITIES AND CHALLENGES

Creating a TRC in Aceh would be a significant step toward implementing a transitional justice approach to build sustainable peace. Discussions in civil society on a TRC in Aceh began in mid-2006. Although initially it was assumed that the TRC in Aceh would be an integral part of a national TRC, the Constitutional Court's decision in December 2006, striking down the national TRC law in its entirety, forced civil society to take a more creative approach. Soon after, a network of Aceh and Jakarta-based NGOs, calling itself the Aceh Coalition for Truth (KPK), began internal discussions to design a TRC for Aceh.<sup>99</sup> At the same time groups such as KontraS-Aceh, the Aceh Judicial Monitoring Institution (AJMI), and Woman Volunteers for Humanity (RPUK) also began conducting meetings and consultations with community leaders and victims' groups on possible models for a TRC in Aceh.

On August 7, 2007, KPK formally presented a concept paper regarding an Aceh TRC to a representative of the governor of Aceh during a seminar on the subject.<sup>100</sup> Two weeks later the KPK held a series of discussions on this topic with civil society, central government officials, and members of the diplomatic community in Jakarta. Discussions progressed further during a roundtable meeting of experts at the governor's office. Following this meeting, the local government made a commitment to establish a working group to design a local TRC for Aceh and formulate a draft *Qanun* for consideration by the Acehese Parliament. Parallel efforts continue at a national level to address this issue and the legal vacuum created by the annulment of the national TRC law.

### A. A Local TRC by and for Aceh

The concept paper by civil society provides an imaginative solution of the impasse between Aceh and Jakarta.<sup>101</sup> The main features of this local TRC are as follows:

- *Focused on Victims*  
A local truth-seeking process should be designed and implemented within Aceh, with the primary aim to listen to the experiences and hopes of victims. This is a major gap in the peace process so far. It will help enrich current understanding of the situation of victims in Aceh and lay the groundwork for other transitional-justice mechanisms. This Commission will work with existing mechanisms to ensure urgent support for victims in need and will recommend a comprehensive reparations program at the end of its mandate.
- *Established Under a Local Ordinance*  
The Commission would be established by local ordinance, designed through consultations in Aceh and passed by the Acehese Parliament. As a consequence the Commission could not exercise its powers beyond Aceh. Moreover, by design it would not have subpoena powers to compel persons to come before it. Such limitations could help the Commission focus on listening to victims within Aceh, rather than expending energy attempting to compel perpetrators to testify.
- *A Mandate to Look at Violations Committed by all Sides*

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<sup>99</sup> Aceh Coalition for Truth (KPK) members include AJMI, KontraS-Aceh, RPUK, LBH-Aceh, Solidaritas Perempuan Aceh, Flower-Aceh, PASKA, ACSTF, JKMA, Koalisi HAM, PPHAM, PHIA, Aceh Institute, Aceh Kita, SMUR, LeuHAM, ISMAHI and Imparsial, KontraS, HRWG, YLBHI, PBHI, ELSAM, and the ICTJ.

<sup>100</sup> Seminar held by AJMI and Imparsial, "Percepatan Pembentukan KKR Aceh dalam Upaya Memberikan Keadilan Bagi Korban dan Memantapkan Perdamaian di Aceh," Sultan Hotel (August 7-8, 2007).

<sup>101</sup> "Working Paper: A Proposal for Remedy for Victims of Gross Human Rights Violations in Aceh" (2007), <http://www.kontras.org/aceh/data/aceh.trc.shorter.pdf>

The Commission will inquire into human rights violations committed by all sides in the conflict. It must be able to function in an impartial and independent manner. Selection of commissioners will be by public consultation and appointment by the governor.

- *Decentralized with Regional Offices*  
The TRC would be decentralized, with regional offices that would play a critical role in implementing the TRC's mandate at the grassroots level.
- *Accompanied by a Community-based Reconciliation Process*  
Such a process would allow for local mediation of conflicts related to past abuses and would strengthen peace at the community level. People who wanted to enter into this process would do so voluntarily. This mechanism would build on existing Islamic and customary forms of dispute resolution, consistent with human rights standards.

The model proposed by civil society is the result of discussions on emerging international standards in the design and implementation of truth commissions and local potential and issues for a TRC in Aceh.<sup>102</sup> Further work and wider public consultation is needed to ensure the support of local communities and the government, as well as to develop the nuts and bolts of the model.

### **B. The Need for National Involvement**

Support from Jakarta will be critical to ensure that a local TRC in Aceh can be implemented. The fact that a national TRC has not yet been instituted should not negate the central government's commitment to create a TRC for Aceh under the Helsinki MoU. A local TRC could be integrated later into a national TRC if one were established by national legislation. The importance of truth and accountability for past violations to the continuing democratization process throughout Indonesia cannot be overstated. Although it is a difficult challenge, it remains necessary and should be a priority.

One truth commission established by virtue of political will from Jakarta is already operating. The Commission for Truth and Friendship (CTF) was established by a bilateral agreement between the governments of Indonesia and Timor-Leste in August 2005. However, the CTF has not been implemented through legislation in either country. It operates only on the basis of a bilateral agreement and terms of reference. These note that the CTF "shall work under" the principles of Law 27/2004 and Regulation 10/2001, the legal foundation of the Truth and Reconciliation Commission (CAVR) in Timor-Leste. Although Law 27/2004 has been annulled, the CTF continues to operate as usual.<sup>103</sup> It enjoys the full support of the Indonesian foreign ministry, which staffs the secretariat and has contributed more than \$4 million from the Indonesian national budget.

### **C. A Legal Basis for a Local TRC in Aceh**

According to Article 229 of the LoGA, "a Truth and Reconciliation Commission is established by this law." The same article also states that the Aceh TRC "shall constitute an inseparable part" of Indonesia's planned national Truth and Reconciliation Commission. However, in December 2006 the national TRC's foundational law was struck down by Indonesia's Constitutional Court.<sup>104</sup> For Aceh the annulment created legal uncertainty as to

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<sup>102</sup> United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (2006), 10–11. See also Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge, UK: Cambridge University Press, 2006).

<sup>103</sup> A major concern about the Commission for Truth and Friendship (CTF) is that it may recommend amnesties for perpetrators of international crimes. Consequently the UN and civil society have refused to cooperate with this Commission.

<sup>104</sup> See ELSAM, "Making Human Rights a Constitutional Right."; see also the ICTJ's comment on the Bill Establishing a Truth and Reconciliation in Indonesia, ICTJ, Amicus Brief to the Indonesian

whether an Acehese TRC could be established outside the ambit of a national TRC. A closer look is warranted at the Constitutional Court decision and the language in the LoGA regarding the establishment of the TRC in Aceh.

The Constitutional Court declared that Article 27 of the national TRC law (Law 27/2004), which provided reparations to victims contingent on the granting of amnesty, was unconstitutional. The Court further determined that striking down this article led to the annulment of the law “in its entirety.” However, in its decision the Court opened the door for new legal policies for reconciliation:

As the KKR [TRC] Law in its entirety has been declared as not having binding legal force, this does not mean that the Court has eliminated the opportunity for the settlement of past gross violation of human rights through reconciliation. *Many options can be selected for achieving such a goal, among others, by achieving reconciliation in the form of legal policies (laws), which are in line with the 1945 Constitution and universally applicable human rights instruments, or achieving reconciliation through political policies on general rehabilitation and amnesty [emphasis added].*<sup>105</sup>

In a press conference explaining this decision, the head of the Constitutional Court, Jimly Asshiddiqie, elaborated that this decision did not preclude the possibility of a political policy for reconciliation “such as that implemented in NAD [Aceh] with members of GAM.”<sup>106</sup>

In light of the Court’s decision it is important to take a closer look at the provisions in the LoGA establishing a TRC in Aceh.

**Article 229**

1. *To seek truth and reconciliation, a Truth and Reconciliation Commission shall be established in Aceh by virtue of this law.*
2. *The Truth and Reconciliation Commission in Aceh referred to in paragraph (1) shall constitute an inseparable part of the Truth and Reconciliation Commission.*
3. *The Truth and Reconciliation Commission in Aceh shall operate in accordance with prevailing laws and regulations.*
4. *In resolving cases of human rights violations in Aceh, Truth and Reconciliation Commission in Aceh may take into account the living adat principles of local communities.*

**Article 230**

*Further provisions related to the procedures for the election and affirmation of members, organization and operating procedures, office terms, and operational budget of the Truth and Reconciliation Commission in Aceh shall be governed by Aceh Qanun with guidance from prevailing laws and regulations.*

**Article 260**

*The Truth and Reconciliation Commission in Aceh referred to in Article 229 shall become effective no later than 1 (one) year following the enactment of this Law.*

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Constitutional Court, “ICTJ Written Opinion: Legality of Truth and Reconciliation Commission” (July 2006), <http://www.ictj.org>.

<sup>105</sup> Unofficial translation of decision at [www.mahkamahkonstitusi.gov.id](http://www.mahkamahkonstitusi.gov.id).

<sup>106</sup> “Dinilai Langgar Ultra Petita: Kali Kedua Lebih yang Diminta,” *Kompas* (December 9, 2006).



Article 229, Section 1, clearly says that a TRC in Aceh is established by “this law.” Thus LoGA provides for the legal formation of the TRC in Aceh. Section 2, which discusses inseparability, is neither clear nor substantive. This vagueness allows room for interpretation. “Inseparable” does not require a national TRC to exist before a TRC in Aceh. A TRC in Aceh may share the aims of a national TRC to be established in the future.<sup>107</sup> Alternatively, a TRC in Aceh may be integrated into a national TRC if one is established by law. Inseparability does not specify that one is required to exist before the other.<sup>108</sup>

Thus the fact that the Constitutional Court has annulled Law 27/2004 does not affect the establishment of a TRC in Aceh under the LoGA.<sup>109</sup> Furthermore, the LoGA explicitly states that the operational procedures of a TRC in Aceh shall be specified by *Qanun*, in accordance with prevailing laws and regulations. It also states a deadline (already missed) for the TRC in Aceh to become effective: August 2007.

#### **D. Issues Yet to be Addressed**

Although civil society’s proposed model provides a good framework for a local TRC in Aceh, some details remain to be designed. These include:

##### *Limited Powers and Reliance on Community Support*

Emerging international standards recommend equipping truth commissions with legal powers such as the power to subpoena witnesses, compel handover of evidence, and order the protection of witnesses.<sup>110</sup> Establishing a TRC in Aceh using local laws will limit its powers. Therefore some imaginative work must be done to ensure that this TRC can overcome some of its weaknesses while remaining able to uncover the truth.

The lack of power to compel persons to participate in its activities will mean that this Commission must rely on acceptance by Acehnese society. A local TRC in Aceh must be accessible to local people. It will have to reach out to community, religious, and political leaders. Strong community outreach and public education strategies will be key components of its work.

##### *Making use of the National Legal Framework*

Local legislation for the TRC can and should use existing human rights protections in the Indonesian legal system. Protections in the Constitution enshrine fundamental rights, and provisions in domestic laws confirm obligations set out in human rights treaties ratified by Indonesia. The existing law on the Human Rights Court, which has jurisdiction over crimes against humanity and genocide, as well as the Supreme Court’s guidelines on the elements of crimes, might also be useful in shaping the framework for a local TRC.<sup>111</sup>

Other national laws and regulations, including the recently passed law on witness protection and the government decree on rehabilitation and restitution, are relevant to the establishment of a local TRC.

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<sup>107</sup> The Constitutional Court decision provides a clear guideline for this future institution that must be “in line with the 1945 Constitution and universally applicable human rights instruments.” See note 105 **Error! Bookmark not defined.** and accompanying text.

<sup>108</sup> Presentation by Ifdhal Kasim, chair of the National Human Rights Commission (October 2006).

<sup>109</sup> Established in 2004, Indonesia’s Constitutional Court has made dozens of decisions annulling specific articles or sections of various Indonesian laws. For example, it declared unconstitutional an article in the Law on Elections and an article in the Law against Corruption. The pruning of these unconstitutional articles has not precluded the implementation of the remaining articles of those laws.

<sup>110</sup> Mark Freeman lists 12 commissions with subpoena powers. Freeman, *Truth Commissions*, 189, annex I; see also UN OHCHR, *Rule-of-Law Tools*, 10–11.

<sup>111</sup> Law 26/2000.

### *A Localized Justice Process*

The civil society proposal also suggests a community-based reconciliation process in which perpetrators may voluntarily enter a mediation facilitated by the Commission, based on a confession of their wrongdoing. The details of this mechanism still need to be worked out, especially since the proposal urges the Commission to facilitate it for all perpetrators in the community without making an exception for those involved in more serious crimes.

The Commission in Timor-Leste (CAVR, 2002–05) conducted a similar process but disallowed perpetrators who committed serious crimes from participating. CAVR worked with the attorney general's office, which had sole jurisdiction over serious crimes, to vet statements of perpetrators, 1,300 of whom successfully completed this community-based reconciliation process.<sup>112</sup> The *Gacaca* in Rwanda is another example of such a process, in which local leaders receive basic training to conduct local trials of persons already in detention for mass murder and rape.<sup>113</sup> Any community-based process to accompany a TRC in Aceh must be based on the specific context and an examination of the social resources available.

### *Coordination and Cooperation with Existing Mechanisms*

The proposed Commission should be designed to use existing transitional-justice mechanisms. These include referring victims with urgent needs to BRA's assistance program as well as government and nongovernmental service providers. Coordination with the National Human Rights Commission, which has the mandate to investigate cases to be brought to the Human Rights Court, also needs to be considered.

## **E. A Way Forward**

Civil society's proposal for a local TRC in Aceh is a good starting point for further discussion of a truth commission designed to address the local needs and the realities of the political landscape. Further public consultation should be conducted to ensure that the model is widely discussed, victims are consulted, Aceh's TRC concept is agreed on, and a draft *Qanun* law is promulgated. All stakeholders for peace in Aceh must take practical steps to ensure the establishment without further delay of a truth commission that represents the voices of victims. At the same time efforts to revise a law mandating establishment of a national TRC should commence immediately.

## **X. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

The peace process in Aceh has reached an important moment. The initial steps of disarming, decommissioning, and demobilizing have been fulfilled for the most part. Attempts to reintegrate former combatants into local communities have had some initial success. Yet interviews with victims and other stakeholders in the peace-building process and overall analysis and assessment of the current situation in Aceh suggest that the limited focus on reintegration is giving rise to significant tensions and divisions. These threaten the stability of the peace in Aceh.

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<sup>112</sup> See [www.cavr-timorleste.org](http://www.cavr-timorleste.org).

<sup>113</sup> See Amnesty International, "Rwanda: Gacaca: A Question of Justice" (December 2002), <http://web.amnesty.org/library/index/engaf470072002>. However, note local and international criticisms of the *Gacaca* process, as in Human Rights Watch, "Rwanda," *World Report 2007*, <http://hrw.org/englishwr2k7/docs/2007/01/11/rwanda14782.htm>.

While reintegration efforts have been well intentioned, there is a limit to what such efforts can accomplish on their own. As evidenced by the testimony of victims of human rights violations, a more integrated and holistic transitional-justice approach, including truth-seeking, comprehensive reparations, and institutional reform, is urgently needed to continue to build and sustain peace.

The major findings of this study are:

- *Reintegration is not Enough*  
Focusing mainly on reintegration and ignoring other transitional-justice measures lead to addressing only one aspect of the transition and increase tensions among the various stakeholders, destabilizing the peace process.
- *Truth-seeking is Essential*  
Acknowledging the truth about what happened in the past is a necessary precondition for successful reintegration, reparations, and institutional reform. Distinguishing those victimized by the conflict mitigates community tension by clarifying who is most entitled to and in need of compensation. Recognizing the harm victims suffered prevents victims from interpreting compensation as an attempt to buy their silence. Identifying those responsible for abuses is a necessary precondition to ensuring they are removed from positions of power.
- *Reparations Should be Based on an Acknowledgment of Violations*  
Although victims with urgent needs should continue to receive assistance through the reintegration program, ultimately a comprehensive reparations program must be separated from reintegration initiatives. A comprehensive reparations program should be based on a truth-seeking process by the proposed TRC that will help identify the victims of human rights abuses and their needs. Reparations should not be limited to monetary compensation but should take the form of social programs promoting health, education, and sustainable livelihoods.
- *Prosecutions Need to Hold Perpetrators Accountable*  
Several options exist for prosecuting those most responsible for serious abuses committed during Aceh's conflict, including the existing Human Rights Court in Indonesia, established by Law 26/2000. However, weaknesses in the Indonesian judiciary mean that prosecutors will need a long-term strategy to ensure judicial independence and impartiality, along with capacity-building for all actors in the justice sector.
- *Institutional Reform is Necessary to Restore Trust and Ensure Nonrepetition of Abuses*  
If institutions do not acknowledge their complicity and the role of their policies in the commission of human rights violations, these violations may be repeated. Reform will restore the community's faith in governing institutions and ensure nonrepetition of past abuses. It should be done based on an accounting of the truth about past violations, with a focus on the most vulnerable victims.

## **B. Recommendations**

A tangible and significant first step would be to follow through with the commitment already made in the Helsinki MoU and promulgated by the LoGA: creation of a TRC for Aceh. To overcome the impasse created by the annulment of the national TRC law, implementation of a local TRC along the lines of the recommendations already presented by Indonesian civil society would go a long way toward ensuring a sustainable peace in Aceh.

## **To the Government of Indonesia**

### *Integrating Justice*

- Renew the government's commitment to implement the transitional justice mechanisms agreed to in the Helsinki MoU, a Human Rights Court and a TRC in Aceh, consistent with Indonesia's human rights obligations;
- The Department of Law and Human Rights should immediately commence consultations on the draft academic paper on reestablishing a national TRC, in accordance with Indonesia's human rights obligations and international standards.

### *Security Sector Reform*

- Engage in security-sector reform in Aceh to help reestablish trust between local communities and the various authorities. Initial reforms should include:
  - Vetting of security sector personnel to ensure that those responsible for abuses are no longer in positions of authority or at the very least are not in contact with local communities;
  - Increased civilian oversight;
  - Increased transparency and communication among the government, security actors, and the community.

## **To National Human Rights Commission/Komnas HAM**

- Immediately reopen investigations based on your mandate under Laws 39/1999 and 26/2000 of gross human rights violations committed in Aceh.

## **To the Government and Parliament of Aceh**

### *Truth*

- Immediately create a TRC for Aceh, based on *Qanun*, as a starting point for truth-seeking, reparations, and institutional reform. The TRC should be
  - Focused on victims;
  - Impartial and independent;
  - Able to look into violations by all sides in the conflict;
  - Coordinated with other transitional-justice mechanisms in Aceh;
  - Able to refer victims needing urgent attention to BRA's social program;
  - Accompanied by a community-based reconciliation and mediation;
  - Assigned to develop recommendations for institutional reform to ensure that violations of the past are not repeated.

### *Reparations*

- Ensure that the TRC is mandated to create a comprehensive, transparent, and appropriately gendered reparations program providing a holistic reparations package that emphasizes psychosocial measures and rehabilitation;
- Ensure that the TRC will refer victims with urgent needs for social assistance to BRA and other social services in Aceh.

**To BRA**

- In consultation with victims and civil society, adopt truth-telling measures as part of the process of granting compensation to victims under your urgent reparations scheme;
- Ensure that criteria for victims include gender-based violations;
- Integrate BRA programs into the work of the Aceh TRC to ensure that those with urgent needs can be immediately assisted; a comprehensive reparations program recommended by the TRC will be implemented later.

**To Civil Society in Aceh and throughout Indonesia**

- Conduct public consultations and public education on the model of the TRC proposed for Aceh and be proactive in all aspects of your work, including submitting information regarding past abuses;
- Connect the agenda for security sector reform in Aceh with stakeholders at the national level.

**To the International Community**

- Ensure sustained international engagement in the peace process and transitional justice mechanisms in Aceh;
- Maintain support for interventions based on international law, international best practices, and the strengthening of local capacity to deal effectively with past violations.

## ANNEX: LIST OF INTERVIEWS AND FOCUS GROUP DISCUSSIONS

Adriansyah, Kata Hati, July 27, 2007.  
 Penasihat, GAM, July 25, 2007.  
 Afridal Darmi, LBH Banda Aceh, June 14, 2007.  
 Aguswandi, Forbes Damai, June 15, 2007.  
 Asiah, Hendra Fadli, Mustawalad, KontraS, June 22, 2007.  
 Ali Zamzami, SPKP HAM, July 23, 2007.  
 Badruzaman, Majelis Adat Aceh, June 20, 2007.  
 Bresari, BRA, August 1, 2007.  
 Commander, GAM, July 25, 2007.  
 Hendra Budian, AJMI, June 13, 2007.  
 Islahuddin, Bappel BRA, June 30, 2007.  
 James Bean, IOM, July 16, 2007.  
 Juanda, ACSTF, June 13, 2007.  
 Lina Frodin, EU, July 16, 2007.  
 Makiko Watanabe, World Bank, August 13, 2007.  
 Marianne Kearney, IOM, July 2, 2007.  
 Matthew Davies, Researcher, July 18–25, 2007.  
 Nur Djuli, BRA, July 2, 2007.  
 Patrick Barron, World Bank, July 16, 2007.  
 Paul Greening, IOM, July 16, 2007.  
 Renaldi, IOM, August 1, 2007.  
 Renate Korber, EU, July 29, 2007.  
 Sah, Village Secretary, August 2, 2007.  
 Sarah Domingo, IOM, July 16, 2007.  
 Sarbunis, KPA, August 1, 2007.  
 Singkil, KPP HAM, August 2, 2007.  
 Sudirman, KPA, August 2, 2007.  
 Sulaiman Punto and Azahari, FKK, July 2, 2007.  
 Susan Malone, IOM, July 16, 2007.  
 Victims' conference participants, SPKP HAM, July 23, 2007.  
 Zainal, FKK, July 17, 2007.

FGD	M	F	Total	District	Date
1	2	11	13	Aceh Besar	July 19, 2007
2	5	7	12	Pidie	July 20, 2007
3	0	15	15	Bireun	July 21, 2007
4	6	4	10	Aceh Utara	July 22, 2007
5	6	11	17	Aceh Timur	July 23, 2007
6	0	10	10	Aceh Tengah	July 25, 2007
7	0	9	9	Bener Meriah	July 26, 2007
8	5	9	14	Aceh Barat	July 28, 2007
9	0	9	9	Aceh Selatan	July 29, 2007
10	0	4	4	Bener Meriah	July 26, 2007
	<b>24</b>	<b>89</b>	<b>113</b>		

## ABBREVIATIONS AND TERMS

AJMI	Aceh Judicial Monitoring Institution
AMM	Aceh Monitoring Mission
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Overseas Aid Program
BICC	Bonn International Center for Conversion
BRA	<i>Badan Reintegrasi Aceh</i> (Aceh Reintegration Authority)
CAVR	Truth and Reconciliation Commission in East Timor
CEPA	Communities and Education Project in Aceh
CoHA	Cessation of Hostilities Agreement
CTF	Commission for Truth and Friendship
DCAF	Democratic Control of Armed Forces
DOM	<i>Daerah Operasi Militer</i> (Military Operations Area)
ELSAM	<i>Lembaga Studi dan Advokasi Masyarakat</i> (Institute for Policy Research and Advocacy)
EU	European Union
FGD	Focus Group Discussion
FKK	Forum for Communication and Coordination
FORBES	<i>Forum Bersama</i> (Joint Forum for Peace in Aceh)
GAM	<i>Gerakan Aceh Merdeka</i> (Free Aceh Movement)
GTZ	German Society for Technical Cooperation
GoI	Government of Indonesia
HRC	Human Rights Court
HRW	Human Rights Watch
HRWG	Human Rights Working Group
ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
IOM	International Organization for Migration
Jadup	<i>Jatah Tunjangan Hidup</i> (Living Support Allowance)
KDP	Kecamatan Development Program
KKR	<i>Komisi Kebenaran dan Rekonsiliasi</i> (Truth and Reconciliation Commission)
KODIM	Military District Commands
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia</i> (Indonesian National Human Rights Commission)
KontraS	<i>Komisi untuk Orang Hilang dan Korban Tindak Kekerasan</i> (Commission for Disappeared Persons and Victims of Violence)

KPA	<i>Komite Peralihan Aceh</i> (Committee for the Transition of Aceh)
KPK	<i>Koalisi Pengungkapan Kebenaran</i> (Aceh Coalition for Truth)
KPTKA	Independent Commission for the Investigation of Violence in Aceh
LBH	<i>Lembaga Bantuan Hukum</i> (Legal Aid Foundation)
LoGA	Law on the Governing of Aceh
MoU	Memorandum of Understanding
NAD	Nanggroe Aceh Darussalam
NGO	Nongovernmental Organization
PBHI	<i>Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia</i> (Indonesian Legal Aid and Human Rights Association)
RPUK	<i>Relawan Perempuan Untuk Kemanusiaan</i> (Women Volunteers for Humanity)
SSR	Security Sector Reform
TNA	<i>Tentara Nanggroe Aceh</i> (Aceh State Army)
TNI	<i>Tentara Nasional Indonesia</i> (Indonesia National Armed Forces)
TOR	Terms of Reference
TRC	Truth and Reconciliation Commission
UNDP	United Nations Development Program
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
YLBHI	<i>Yayasan Lembaga Bantuan Hukum Indonesia</i> (Indonesia Legal Aid Foundation)