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report

Peace without
justice?

The Helsinki peace
process in Aceh

Edward Aspinall

“hd | Report

The Centre for Humanitarian Dialogue is an independent and impartial foundation, based in Geneva, that promotes and facilitates dialogue to resolve armed conflicts and reduce civilian suffering.

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Introduction and overview¹

¹ This paper was written as part of the 'Negotiating Justice' series produced by the Centre for Humanitarian Dialogue (HD Centre). Prior to the 2005 Helsinki MoU, the HD Centre itself played a role as facilitator of a peace process in Aceh. This earlier process ultimately broke down and was analysed in a paper co-written by the author (Aspinall and Crouch, 2003). The current paper was commissioned by the HD Centre and written in response to a series of general questions provided by the HD Centre concerning the relationship between the peace process and justice issues in Aceh. However, it contains the analysis and views of the author, rather than those of the HD Centre. The author would like to acknowledge critical comments on earlier drafts of this report made by Kristina Thorne, and by several anonymous reviewers arranged by the HD Centre. The views in the paper, as well as any errors of fact or interpretation, are the sole responsibility of the author.

The peace process in Aceh has been lauded as a great success, both internationally and within Indonesia. And so it is. Coming in the wake of the cataclysmic Indian Ocean tsunami of December 2004, the mediators and the conflict parties pulled off what many observers had previously considered to be a virtual impossibility: a sustained end to armed hostilities. In just over six months, former President Ahtisaari of Finland succeeded in convincing the two sides to agree to a comprehensive peace settlement, the Helsinki Memorandum of Understanding (MoU), signed in August 2005.

At the heart of the agreement was acceptance by the Free Aceh Movement (GAM), of expanded autonomy for Aceh within Indonesia. For its part, the Government of Indonesia (GoI) made concessions on matters including the formation of local political parties and security arrangements in Aceh. In short order, an Aceh Monitoring Mission (AMM) sponsored by the European Union (EU), with support from ASEAN (Association of Southeast Asian Nations), deployed to Aceh, former GAM fighters disarmed, their weapons were destroyed, and government troop levels in the territory were reduced. Levels of violence dropped dramatically, and there were very few serious violations of the accord. By July 2006, a new Law on the Governing of Aceh (LoGA) embodying some, though not all, provisions of the MoU had been passed by Indonesia's national parliament. In December 2006, elections were held for local government posts in Aceh, and a former GAM strategist, Irwandi Yusuf, was elected as the territory's governor, shocking many in Indonesia's political establishment, but underlining the dramatic transformation brought about by the peace.

Within this justifiably celebrated success, however, there is one area that has attracted relatively little attention and where progress has been far less substantial: the human rights and justice agenda. During the conflict years, many gross abuses of human rights were committed, leaving a lasting legacy of bitterness in Acehnese society. There are provisions in the Helsinki MoU for dealing with these issues, including by way of economic assistance for conflict victims and through the establishment of a Human Rights Court and a Truth and Reconciliation Commission. However, with the partial exception of economic assistance, these issues have received relatively little attention from any of the principal actors, including the international community. While the human rights situation in Aceh has improved dramatically, few people expect that perpetrators of past abuses will be brought to justice. Within Aceh itself, local human rights organisations and some individual victims of past abuses have spoken bitterly about this outcome.

In response, representatives of the signatories and the former facilitators, monitors and other prominent persons in Aceh respond that the great contribution of the peace process in this area has been its success in preventing

2 Tgk Faisal Aly, the Secretary General of HUDA (Himpunan Ulama Dayah Aceh) in 'Ulama Aceh Pertanyakan Keinginan LSM Ungkit Masa Lalu', *Antara*, 13 July 2007.

continuing human rights abuses. Some who make this argument say explicitly that the past should be forgotten: in the words of one prominent religious leader in the territory, 'We have all agreed to no longer discuss the old wounds, and the parties have resolved to build a new Aceh in an atmosphere of peace and security, and in the context of the Unitary State of the Republic of Indonesia.'² Underlying such views is, often, an awareness of the practical difficulties in achieving a positive human rights and justice outcome given the Indonesian political and government context and the strong potential sources of resistance, especially in the security apparatus (This context is analysed in more detail below.). Other groups and individuals in Indonesia, while acknowledging the difficulties, say that it is all a matter of timing and sequencing, and that past abuses should – and perhaps will – be attended to at a later stage.

These debates mirror those in many other places about whether human rights are either complementary to 'or in tension with, the practical imperatives of peace-making' (ICHRP, 2006, p. 9). Rather than starting from a point of view that there is an easy right or wrong 'answer' to such a fundamental question in all contexts, this paper instead proceeds by asking two sorts of questions. First, it poses analytical questions: it seeks above all to explain the contextual factors and underlying political dynamics which gave rise to the outcome described above, as well as the details of negotiations and implementation which contributed to it. Second, the paper asks what more could have been done. In conducting the research, the author and a research assistant tried to reconstruct a general picture of the setting and dynamics of the Aceh peace negotiations and implementation. During interviews, we often also prompted individuals to think back on the process as they had experienced it, to ask whether things might have been done differently – interventions made, steps taken, or questions asked – which might have advanced the justice agenda.

To answer these questions, we interviewed about 80 people. They included negotiators and other individuals from the GoI and GAM, members of political, human rights and civil society groups in Aceh and Jakarta, as well as a wide range of individuals from the international community who were involved as facilitators, advisers, monitors and otherwise assisted in the peace process. As well as in Aceh and elsewhere in Indonesia, we conducted interviews in the Netherlands, Belgium, Finland and Sweden, and communicated with people elsewhere via email and telephone. The interviewees are not identified by name in this report; however, the author would like to acknowledge their generosity and frankness in reflecting upon the Aceh peace process and their personal involvement in it.

Most participants did point to steps that might have been taken differently to advance the justice agenda. An overall conclusion of the paper regarding the second line of inquiry above, however, is that it would have been difficult to alter the fundamental human rights picture without jeopardising the wider peace process. The reasons for this conclusion can be found in the answers to the first set of questions concerning context. Although justice issues had been prominent in the dynamic of the conflict in Aceh, there were equally strong dynamics leading to their marginalisation in the peace process. Not only did

actors on both sides of the conflict (but especially within the Indonesian security apparatus) have interests in downplaying the legacy of the past, but those who most wanted to promote a justice agenda – notably local civil society organisations – also had only limited access to the peace process itself. International actors were constrained both by the political control of the peace process maintained by the Indonesian government and by their own desire to limit their involvement. In retrospect, it is likely that international actors could only have made a difference on the margins. This does not mean, as we shall see, that nothing at all could have been done.

The remainder of this paper is divided into nine sections. Sections 1–3 discuss the broad context of how justice issues featured in the Aceh peace process. These sections explain the underlying dynamics that led to the outcome summarised above, in a largely chronological order. Section 4 examines how justice issues featured in the talks in Helsinki, while sections 5–7, on the implementation phase, deal with key justice issues (amnesty, compensation and formal mechanisms) more or less in the order in which they came up as the MoU was put into force. Section 8 looks at what more could have been done to advance the justice agenda while the AMM was on the ground in Aceh during the implementation phase. Finally, a conclusion draws together some of the main lessons and threads of analysis.

1 | The centrality of human rights and justice issues in Aceh

The overshadowing of the justice agenda since August 2005 is surprising given the central place it occupied in the conflict in Aceh, especially during its most recent and bitter incarnation, between 1999 and 2005. During an earlier round of conflict, between 1989 and the early 1990s, the Indonesian military (TNI) had responded with brutal methods to the GAM insurgency. During a period that came to be known in Aceh as the DOM (*Daerah Operasi Militer* or Military Operations Zone) era, the military was responsible for much violence against civilians suspected of supporting the insurgency. Arbitrary killing, rape and disappearances were widespread (Amnesty International, 1993; Robinson, 1998).

When the authoritarian Suharto regime collapsed in 1998, there was a dramatic opening of public political space. Two important things happened in Aceh. First, there was a brief window in which local political and civil society groups could organise. Student groups, political parties and NGOs proliferated. The defining issue of this Acehnese political renaissance was human rights. Victims emerged to give testimonies of the horrors they

had experienced at the hands of the security forces, the media began to investigate cases, and official fact-finding teams interviewed victims and unearthed mass graves. Government and military leaders apologised for past abuses. Suddenly, to many people in Aceh, and even to much of the wider Indonesian population, the Aceh story was reinterpreted as one of human rights abuses. Second, the Free Aceh Movement (GAM) began to reorganise itself. Many of its recruits were orphans and other relatives of 'DOM victims'. GAM spokespersons themselves increasingly talked about human rights, and a narrative of Acehnese suffering at the hands of the military became central to the movement's own propaganda and ideological vision.

Before long, the spiral of guerrilla war and counter-insurgency re-ignited, and the brief window of openness in Aceh closed again. The government launched a series of ever more intensive security operations in the province, culminating in the declaration of a 'military emergency' in May 2003. The TNI increasingly resorted to many of the old methods it had used to suppress the insurgency, including arbitrary arrests, forced disappearances, executions and displacement (Human Rights Watch, 2003; Amnesty International, 2004).

Despite the narrowing of political space, human rights never disappeared even from the domestic political agenda. For example, TNI commanders in Aceh went to great efforts to persuade the public that they had incorporated respect for human rights into their counter-insurgency approach. Indonesia's National Human Rights Commission (Komnas HAM) investigated military abuses even during the height of the military emergency in mid-2003.

While much domestic and international attention has focused on TNI abuses, GAM also used violence against at least some civilians. Its human rights record has never been systematically investigated, but the movement's leaders themselves openly admit that they executed people they accused of betraying the movement or collaborating with government security forces.³ GAM leaders also openly urged migrants, especially Javanese, to leave Aceh and the movement's fighters have been accused of launching violent attacks against at least some of the migrants. There are also many recorded instances of fighters using intimidation, robbery and violence in their attempts to raise money from the general population (Schulze, 2004; 2005).

Over the years of conflict, abuses against the civilian population in Aceh were both widespread and severe. Since the conflict ended, preliminary attempts to collect data have been made by government and international agencies. These reveal the extent of civilian suffering during the conflict years. The BRA (*Badan Reintegrasi Damai Aceh*, Aceh Reintegration Agency), the government agency charged with collecting data concerning conflict victims and providing them with economic assistance, indicated in June 2007 that 33,000 people were killed during the 29 years of the Aceh conflict, equivalent to approximately 0.75 per cent of the present population of approximately 4,350,000. A survey conducted by the Harvard Medical School and the International Organization for Migration (IOM, 2007) in 17 Aceh districts found very high levels of conflict-related abuses of civilians. For example, 35 per cent of respondents reported having to flee burning buildings while 46 per cent reported having

³ This statement is based on many interviews with former guerrillas in Aceh during 2006 and 2007. Former leaders of GAM and its armed wing generally admit that they executed people they believed to be *ciak* (spies or informants) and can expound at some length about the processes they used to determine guilt.

to flee danger; 38 per cent reported having a family member or friend killed, 24 per cent experienced forced labour and 40 per cent experienced the confiscation or destruction of property. Memories of these past traumatic events run deep in Aceh. Indeed, the IOM survey found that a significant proportion of the population still suffers from conflict-related trauma.

2

Aceh in its Indonesian setting

The overshadowing of a justice agenda in the Aceh peace process starts to become less surprising when we consider the political context in which that conflict, and its resolution, took place. Post-conflict justice measures are sometimes pursued in conditions in which the international community has a large degree of leverage, for instance in cases of widespread social breakdown or state failure and/or where there has been extensive international intervention by the United Nations (UN), the North Atlantic Treaty Organization (NATO) or some other international body. In such circumstances, the international community has greater capacity to pursue justice mechanisms on its own terms.⁴

⁴ For example, this was partly the case in the former Yugoslavia and in Liberia.

The situation in Aceh was different. Indonesia was not a failed state but rather a large and relatively stable country, with effective political institutions and a government that vigorously defended its sovereignty. There was recent experience of political disorder: the years of severe conflict in Aceh (1998–2004) that preceded the Helsinki talks coincided with tumultuous political transition for Indonesia as a whole. This transition saw the collapse of the authoritarian Suharto regime and its replacement with a democratic government. However, the Helsinki MoU, in turn, was negotiated as that transition had largely ended and when political conditions were beginning to stabilise (Aspinall, 2005b).

Furthermore, Indonesia is a very large country, and the Aceh conflict occurred in a relatively small part of it. Aceh's population is less than two per cent of that of Indonesia as a whole. Indonesia's political elites viewed Aceh's problems as only one of an array of similarly severe transitional difficulties in the country, and did not wish to turn their system of political management on its head for the sake of resolving them. International players likewise did not want to jeopardise their relations with a country important to them in economic, geo-strategic and other terms, for the sake of such an out-of-the-way conflict. Domestic Indonesian actors pursuing a justice agenda in Aceh in turn faced all the inertia of a gigantic bureaucratic and political system, within which they occupied only a small part and had relatively little influence.

However, domestic actors also had an entry point. One product of Indonesia's political transition was the establishment of a series of new justice

5 There was also a precedent for justice mechanisms in the context of a regional conflict: the Special Autonomy Law for Papua (passed in 2001 as part of the attempt to ameliorate secessionist tensions in that part of the country) included provisions for a Human Rights Court and a Truth and Reconciliation Commission, though they had never been implemented.

6 The soldiers responsible for the notorious Beutong Ateuh killings of 1999, in which they shot dead a religious teacher and over 50 of his followers in West Aceh, were tried by a *koneksitas* (joint civil-military) court. Twenty-four low-ranking soldiers and one civilian were convicted and sentenced to terms of imprisonment of between eight and ten years. The most senior officer indicted for these killings, Lieutenant Colonel Sudjono, absconded and was never re-arrested.

institutions intended to prevent further human rights violations and to deal with those of the past. For instance, a law passed in 2000 established a series of Human Rights Courts around the country. A year before the Helsinki MoU was negotiated, a law establishing the framework for a national Truth and Reconciliation Commission (TRC) was passed.⁵ These pre-existing institutions and regulations formed the framework within which justice issues were handled in the Aceh peace process.

On the other hand, and accounting for much of the tension surrounding these issues in the implementation phase, Indonesia's justice institutions have been largely ineffective, especially in dealing with gross human rights abuses. This has primarily, though not entirely, been due to resistance by the TNI, which remains a powerful veto player in the Indonesian political system even if it no longer plays a determining role in day-to-day politics (Mietzner, 2006). Indeed, it might be said that one unstated but central element of democratisation in Indonesia has been a political deal by which the military eased itself out of politics in exchange for effective impunity for past abuses.

For instance, no senior military officer has been successfully prosecuted by the new Human Rights Courts established under the 2000 Human Rights law. Some were prosecuted and convicted in relation to abuses committed in East Timor around the time of the UN-supervised poll on independence in the territory in 1999, but they were later released on appeal to the Supreme Court. No senior officer has been successfully prosecuted by any such court regarding acts in Aceh, although many of the most egregious abuses took place after at least the rudiments of the post-Suharto justice framework were established.⁶

Other factors added to the weaknesses of this institutional framework. For instance, although the law establishing the framework for a national TRC was passed in 2004, it contained loopholes that would have protected human rights abusers from punishment. Moreover, the president delayed appointing TRC members for over two years, and the law itself was eventually revoked in late 2006 by the Constitutional Court (as discussed in more detail in Section 7 below). At a deeper and more systemic level, it is widely accepted that Indonesia's justice institutions (the police, prosecutors and courts) are highly ineffective. Their members are poorly trained and in most cases dominated by a corrupt 'court mafia'.

While Indonesia's national institutions are poorly equipped to deal with human rights abuses, the mood of Indonesia's national political elite (especially but not exclusively the security establishment) is extremely hostile to any hint of international involvement in these issues. This attitude is long-standing, but was exacerbated in the post-1999 period by the prospect of an international tribunal for Indonesian military officers accused of gross human rights abuses in East Timor.

At the same time, members of GAM are also ambivalent about human rights and accountability mechanisms that might affect them. Since the late 1990s the movement has made human rights promotion central to its political

7 It should be noted, however, that the author has not heard of direct evidence, in the form of reported statements by GAM leaders for example, that this was their concern. Many individuals in Aceh, including people from the government, civil society groups and international organisations involved in supporting the peace process, speculate that GAM leaders are unenthusiastic about human rights investigations and accountability mechanisms because they fear the repercussions for themselves. But the author has never heard GAM leaders themselves making such statements; on the contrary, when they are interviewed, GAM leaders tend to stress their willingness to subject their organisation to scrutiny and punishment, provided that government security forces are treated the same way.

8 These consisted of two separate meetings in Europe involving participants from a very limited range of groups and then a larger meeting in Kuala Lumpur, where representatives were able to discuss the draft agreement but had no real opportunity to influence it, as it had already been initialled by the two sides.

programme. However, exiled GAM leaders themselves surely knew that the movement's leaders could be investigated and punished as part of effective human rights investigations.⁷ In an earlier set of talks which led to the signing of a Cessation of Hostilities Agreement (CoHA) in December 2002, GAM negotiators insisted at the last moment that a section on human rights was removed. (On this earlier process, and its failure, see Aspinall and Crouch, 2003; and Huber, 2004.) In any case, as we shall see, GAM was in some crucial respects a relatively weak actor even in the Helsinki peace process, which was largely concluded according to the Indonesian government's agenda.

A third set of domestic players consisted of the human rights groups and other civil society organisations which existed in Aceh and elsewhere in Indonesia. These have been a prominent and vocal part of the post-Suharto political landscape. But despite their influence on public debate, their real political leverage, measured in terms of the outcomes achieved, is very limited. Moreover, the Helsinki peace process was negotiated between the two parties and there were only limited opportunities for civil society input.⁸ Even some of those involved in facilitating these meetings agree that civil society contribution was token. The MoU itself did not mention civil society participation in the peace process, with the result that, during the implementation phase, these groups also had limited access to the AMM and were involved only at the margins (Lahdensuo, 2006).

In summary, the Aceh negotiations took place in a large, stable, new democracy in which justice mechanisms were already in place on paper, but did not work well in practice. This context had significant effects on the peace agreement. Government negotiators readily, and perhaps sincerely, agreed to a justice framework in the MoU, given that such a framework was already part of national political arrangements. They attempted, however, to prevent the establishment of new mechanisms that deviated from, undermined or exceeded the mandate or powers of national mechanisms. In particular, they made it clear that they would not accept any internationally constituted justice mechanisms and also did not favour application of the retroactivity principle. At the same time, broadly worded justice provisions were likely to be interpreted in accord with the existing national framework. Forces, local or international, working for a strong justice outcome in Aceh lacked the capacity or leverage to transform the workings of the leviathan of the Indonesian state. The stage was thus set for a human rights and justice outcome which replicated that which already existed in Indonesia as a whole: provisions for forward-looking and future-oriented formal mechanisms, but based on an informal understanding that serious abuses of the past would not be subjected to thorough criminal investigation or punishment. International actors involved in the process, especially at the facilitation stage, either did not fully appreciate these circumstances or viewed them as secondary to the crucial task of stopping hostilities.

3

Limited international involvement

If the domestic context was unfavourable for the justice agenda in the peace process, what of the international role? The analysis in this section shows that the international role was guided by an overall logic: it was to be limited in nature, in terms of both duration and depth. This logic tended to steer the international community away from sensitive and complex issues to do with justice and human rights.

The Helsinki peace process involved significant international participation in both the negotiation and implementation phases. The negotiations took place between January and July 2005 in Helsinki, with the MoU signed in August 2005. During this phase, the key international actor was the mediator, Martti Ahtisaari, former president of Finland, backed up by his Crisis Management Initiative (CMI). The Finnish government and the EU also provided important financial and political support behind the scenes during the negotiations. During the subsequent phase of the implementation, the key international actor was the AMM, which had the authority to oversee, monitor and adjudicate on various aspects of the agreement reached by the two parties.⁹ The AMM was formed under a ‘Council Joint Action’ of the European Union.¹⁰

⁹ In the MoU (article 5.2), the tasks of the AMM were set out as being to: (a) monitor the demobilisation of GAM and decommissioning of its armaments, (b) monitor the relocation of non-organic military forces and non-organic police troops, (c) monitor the reintegration of active GAM members, (d) monitor the human rights situation, and to provide assistance in this field, (e) monitor the process of legislation change, (f) rule on disputed amnesty cases, (g) investigate and rule on complaints and alleged violations of the MoU, and (h) establish and maintain liaison and good cooperation with the parties.

¹⁰ The full name of the document is ‘Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission – AMM)’. The text can be found in Beeck

Despite the deep involvement of international actors in both phases, three main factors limited both their ability and their willingness to promote a justice agenda more forcefully. The first two factors concern the political context in which the peace process occurred: first, the relative bargaining power that one of the negotiating parties – the Indonesian government – had in the negotiations and its hostility toward extensive international role and, second, the limited time horizon for international involvement set by the context of the Indian Ocean tsunami. These two factors in turn shaped the third factor, which was the tactics used during the negotiations by the mediator, President Ahtisaari. His decision to move very rapidly to a final negotiated agreement, which would by necessity be a rather minimalist document, had a lasting impact on the subsequent implementation of the peace process and therefore deserves separate consideration in its own right.

In the first place, the international actors knew that Indonesia was a powerful sovereign state, with important domestic actors hostile to international involvement. Therefore, international involvement was largely on terms set, or at least tolerated, by the Indonesian government. President Ahtisaari took up his post as mediator at the invitation of the government and, during the talks, saw his role largely as persuading GAM to explore ‘a narrow opening in the autonomy clause’, in other words to encourage the movement to bend to the government’s position (even if the government also made many important concessions) (Aspinall, 2005a, p. 25). Similarly, the Status of Mission Agreement

for the AMM was agreed between the EU and the Indonesian government, meaning that the peace process was essentially carried out on terms approved by the government.

During the implementation phase, Pieter Feith, the Dutch head of the AMM, did little more than refer some of the key political and human rights issues (such as the TRC and Human Rights Court) to the appropriate Indonesian ministers and take their assurances at face value. When it came to evaluating whether the LoGA embodied and enforced as law the key elements of the MoU, Feith had to tread warily to avoid accusations that AMM was intervening in the workings of Indonesia's sovereign law-making bodies. In short, AMM and most other international actors involved in supporting the peace process were highly aware of Indonesian government sensitivities, did not want to antagonise the government or its domestic critics, and were thus unwilling to adopt positions which ran strongly counter to a government agenda. Aggressively championing a human rights agenda would almost certainly have done this.

Second, international involvement was made possible only in the brief window of opportunity arising after the Indian Ocean tsunami. From being virtually unknown by the outside world, Aceh was catapulted to the centre of world attention. International involvement was framed in terms of how a peace process would help the post-tsunami humanitarian relief. Because of this, the process was always going to be limited in duration and intensity. One Finnish national involved in the mediation effort put it in the following terms:

‘The tsunami was the key to the context. EU interest hinged on this. Otherwise, there would have been almost no interest in such a remote place. Because it was linked to the tsunami relief, it had to be quick. It's not Sudan: who's heard of Aceh? So the position of the stars was positive, but we could expect the heavens to change in a year's time.’

EU ministers first concluded that the EU might play a role in bringing the conflict to a close only in the context of deliberations of February 2005 concerning the EU response to the tsunami disaster. Member states were interested because they thought it could be the first mission in Asia under the EU's Security and Defence Policy, and so could help it to assume a more pro-active role in world affairs (Burke and Barron, forthcoming). However, in the recollection of a senior EU official involved in the AMM, the EU was ‘not very articulate in terms of Asia, it is more focused on the Middle East, Balkans and Africa’, and there was no immediate enthusiasm in Brussels. It was only ‘when it was understood that the UN would not be available and that there were no other takers, then the EU was the candidate’. The Indonesian government had itself made it clear from the start that the UN would not be welcome, its role in East Timor being widely condemned in Indonesia because it had led to the independence of that territory. It was President Ahtisaari and his associates who played the main role in convincing the EU to participate.

Partly because of this context, international involvement was always planned to be short in duration and limited in scope. As Adam Burke and Patrick Barron put it:

‘AMM was designed as a small, rapidly deployable mechanism with a limited, realisable mandate. Concern over ‘mission creep’ into unforeseen fields, and the difficulties of a viable exit strategy, exercised AMM’s planners from its inception. This suited the Government of Indonesia, who did not want to see a long-term international presence, and the European Union, who hoped not to get bogged down in a drawn-out exercise once more (having seen how hard it can be to disengage from conflict areas in the Balkans), and who may also have hoped to develop new, nimble peace-making tools for use elsewhere.’
(Burke and Barron, forthcoming)

Another former AMM staffer was more colourful in his language, observing that the basic approach was: ‘minimum time required’ and ‘crisis management operation – boom, bang, out’.

The third factor limiting international action on justice issues came into play only during the negotiations themselves, but left a lasting legacy of influence on the implementation phase. This factor concerned the tactical instincts of the mediator, President Ahtisaari. Partly spurred on himself by the window of opportunity opened after the tsunami, but also based on his previous experience elsewhere and because he had studied the reasons for the breakdown of the previous efforts in Aceh, President Ahtisaari adopted the formula that ‘nothing is agreed until everything is agreed’ in the talks, and set a strict time limit of six months for their success. By doing this he pressured the parties (especially GAM) to focus quickly on the core issues. One person who observed the negotiations at close quarters recalled that President Ahtisaari’s basic view was that ‘the agreement should be brief and general in content, if it was too detailed, then they would never reach results.’ He added that the President saw his role as forging ‘a shared understanding that it takes common political will to arrive at the agreement, and that once the parties come together they’ll have to start living together and sort things out.’

As another observer of the talks put it:

‘He often emphasised that the agreement is not something that will cover all possible elements that are important to you. It won’t give all the answers to your problems, it’s a commitment from both of you, a start of a process where two sides need to work together and implement it together.’

Another person who was present during the talks concurred, noting that President Ahtisaari ‘repeatedly emphasized that it didn’t matter whether the agreement would be 300 or three pages, it wouldn’t work if there was no real commitment from the parties.’ Ahtisaari himself is on the record as explaining that:

‘I don’t believe in agreements that are full of details. Then you easily find yourself in a situation in which it can always be said that some or other detail has been violated. A sufficiently compact agreement gives responsibility also to those who implement it and leaves enough room to interpretation.’
(Merikallio, 2006, p. 135)

Ahtisaari's approach has been widely credited with the success of the Helsinki process (for example, in Aspinall, 2005a, p. 66; Morfit, 2006, p. 23; Merikallio, 2006). It forced the parties, especially GAM, to focus on reaching a workable compromise and to put aside unachievable maximal demands. For present purposes, however, it is important to note that the approach also had its costs. It meant that during the negotiations, if agreement was reached on an item, the discussion would move on quickly, rather than dwelling on the details or adding points of clarification. This meant that many issues, such as the powers and jurisdiction of the Human Rights Court or the Truth and Reconciliation Commission, were not elaborated in detail in the MoU. It also meant that if issues were not raised by the parties themselves, they did not make it into the agreement.¹¹ Arguably, too, this approach placed considerable faith in the goodwill of the parties and in the capacity of Indonesia's national justice institutions, rather than being based on a realistic assessment of the interests of those parties or of the record and prospects of those institutions.¹²

(2007), pp. 69–72.

11 This was the case notably on the involvement of women or of civil society in the peace process.

12 To cite one example, clause 2.3 makes it clear that the Truth and Reconciliation Commission in Aceh would be established in Aceh as part of the national TRC. By early 2005, however, Indonesia's TRC legislation in Jakarta had been intensely scrutinised and criticised by human rights advocates and experts because some of its clauses would give rise to impunity for perpetrators of gross human rights violations, in violation of international law. Such issues raise a broader question about the level of knowledge on the part of the mediation team about Indonesia's legal institutions and political context. During the course of the interviews conducted for this project, the author was sometimes struck by an apparent lack of appreciation, occasionally approaching naïveté, of how various elements in the MoU would fit Indonesia's legal and political context. One individual present during the talks recalled, 'I was not sure how much President Ahtisaari and his CMI knew about Indonesia. He said half-jokingly that his role as mediator did not stand or fall on that, and that it even made it easier for him.' Indeed, and not without some irony, it may be the case that lack of detailed knowledge of the potential pitfalls in implementation helped to steel the resolve of the mediators and hence contributed to the agreement.

When asked to reflect on this approach, and about whether more initiative could have been taken by the mediator to include more precise and exacting provisions on justice issues, most observers or participants present at the negotiating table are sceptical. As one Finnish observer put it: 'Perhaps more could have been done, but then the whole strategy could have been jeopardised; it would have been a different exercise, and it would have been surprising to see a result.' Another added:

'Since both delegations were happy about how the TRC and HRC were discussed, I don't think much more could have been done; there was not much more room for more elaborated discussion or description. When agreement was reached on a topic, it was considered to have been dealt with, and discussion would move on to the next one. HRC and such were not among the more difficult topics.'

Another observer made this frank assessment:

'It is true in a general sense that there can be no peace without justice. But in this case, peace was the great priority. My impression was even that peace was sought at the expense of justice. If the negotiations had taken place in a normal setting without humanitarian urgency, I would imagine that the justice issues would have been more prominent. But the sense of urgency demanded that we were not so detailed on them. We did not want a never-ending process.'

4

Justice issues in the negotiations

Key provisions in the Helsinki MoU that concern justice issues include:

- point 2.2: ‘A Human Rights Court will be established for Aceh’
- point 2.3: ‘A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures’
- point 3.1.1: ‘GoI will, in accordance with constitutional procedures, grant amnesty to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of this MoU’
- broad provisions for support for ex-combatants, former political prisoners and ‘affected civilians’, including point 3.2.5.c: ‘All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh’.

Several other provisions are relevant, including one which requires the GoI to adhere to UN covenants on civil and political rights and on economic, social and cultural rights (point 2.1), two which suggest a division between police and military responsibilities (‘internal law and order’ (4.10) and ‘external defence’ (4.11), respectively), and another which requires military personnel who commit civilian crimes to be tried in civil courts (1.4.5).

One problem in researching this aspect was that few of those directly involved in the negotiations clearly recollect how human rights and justice issues were dealt with in the talks. This suggests – and most participants in and observers of the negotiations agree with this assessment – that those issues were neither particularly important nor contentious in the talks, for either party. Negotiators and observers have clear memories of the shifting formulations, debates, deadlocks and breakthroughs on key issues. These crucial issues included the establishment of local political parties, as demanded by GAM but initially strongly resisted by the GoI negotiators. Security arrangements were also controversial to the end: at the last minute, the talks almost broke down on the number of TNI to be deployed to the province. However, participants mostly have only vague recollections on discussions concerning justice issues.

Given the part that human rights played in GAM’s domestic and international campaigning, it could be expected that the movement would bring strong concern for such issues to the negotiations. This was the case in the early rounds. The movement took to the talks both a maximum position and a fallback position, and both were prepared between rounds two and three. Both positions included strong human rights measures, including the

13 Nurdin Abdul Rahman, himself a former political prisoner and head of an organisation for the rehabilitation of torture victims, was especially outspoken on these issues.

establishment of an external Serious Crimes Unit, as had happened in East Timor, to investigate past abuses and a blocking of appeals from courts in Aceh to national courts in Jakarta (Kingsbury, 2006, pp. 51, 59). In the first rounds, GAM representatives spoke at length about army abuses and raised the prospect of international investigations into them.¹³ However, this thrust was soon blunted. As one person present during the talks recalled, ‘Nobody denied the importance of the human rights issues’. Indonesia’s senior negotiator, then Human Rights and Justice Minister, Hamid Awaludin, accepted that justice mechanisms and human rights issues were important: ‘but his way of looking at them was to emphasize that there was a new government in Indonesia, and that the future of Indonesia in this respect would be brighter’.

More importantly, President Ahtisaari himself intervened. According to another observer: ‘At the beginning of the talks, there was a lot of discussion of the past. Ahtisaari asked them: “Are you now ready to focus on the future and forget about the past?” They did this...’. Another added that:

‘GAM at the beginning tended to want to go back to the past more. President Ahtisaari tried to pull the parties back to the present time and encouraged them to forget the past, over and over again. He would tell them that the past has to be dealt with, but now is not the time.’

Others recall that Ahtisaari also stressed that international investigations or other ways of internationalising the issue were unacceptable, and would be rejected out of hand by the Indonesian side: ‘Indonesia was very allergic to anything to do with the UN or an international tribunal because of their East Timor experience. Moreover, the EU had no power to establish an international tribunal. So, it was a non-starter in those circumstances.’

As the talks progressed, however, according to the recollection of most people present, the human rights and justice issues simply became less central, less contentious, and occupied less time in both the formal and informal negotiations. Instead, the parties became preoccupied with the more contentious matters. Most people present recall that even the GAM negotiators ceased to pay much attention to the justice issues. To take an example, one GAM negotiator recalled that his side’s advocacy of a human rights court in the negotiations was just for ‘academic purposes’. GAM negotiators and their advisers agreed that any court established in Aceh would not be effective: ‘We would need the help of the Jakarta police to arrest them; even in Serbia, which is so small, the perpetrators could hide for years.’ Requesting such a court was simply a matter of underlining that GAM did not agree to ‘forgive and forget’. Even so, GAM was reconciled to not including any reference to such a court in the final agreement. It was President Ahtisaari who, during the final drafting of the agreement, remembered the court and insisted it be included: ‘We didn’t push it, knowing that to be realistic it would never be implemented’.¹⁴

14 This quotation comes from an interview with one of the GAM negotiators in Helsinki. Other individuals present at the negotiations confirmed this recollection, but stressed that the issue of the Human Rights Court had come up in an earlier stage in the deliberations but had simply been left out of later drafts.

There was more detailed discussion on the issues of an amnesty for persons involved in GAM activities, and economic assistance for conflict victims. But even these issues were not very contentious. GAM negotiators were worried that the term ‘amnesty’ involved admission of wrongdoing on their part, and

there was some discussion about how the phrase ‘GAM activities’ would be interpreted. The broad provision on assistance for ‘all citizens who have suffered a demonstrable loss’ was included as an extension of the discussion on reintegration assistance for ex-combatants. In the recollection of one observer: ‘It was realized that it was not a simple matter to describe who had suffered and to what extent; some people who suffered were not from GAM and it would create bad feelings if they were not compensated.’ The lack of substantial debate on these issues was largely because, from the start, government negotiators had indicated they were willing to include them in a settlement. Indeed, for several years, government leaders had pursued a ‘surrender and amnesty’ approach (Aspinall, 2005a, p. 11) and promised they would pardon and assist economically any GAM member who surrendered.

There was even less discussion about the Human Rights Court and the TRC. Instead, there was an early understanding from both parties that these points would be included in the MoU. This consensus was arrived at without much resistance or even discussion, again because both institutions largely accorded with the Indonesian government position and did not much expand or contravene existing justice provisions. According to an adviser to the talks:

‘The government negotiators said that Indonesia had already decided to join the UN covenants, that they already had a Human Rights Court and that they wanted to strengthen the rule of law. So it was not a big issue for them. It was within the same system.’

Moreover, these items were worked out in the fourth and fifth rounds of the talks, when the mood was positive and both sides were pushing for an agreement. On the other hand, as one adviser to President Ahtisaari recalled, ‘We never worked out any details, that was left to the Aceh provincial government.’

Even members of local human rights NGOs in Aceh say that at the time they were pleased with the content of the MoU on justice issues. However, it immediately became evident that these provisions were framed in general language and were open to multiple interpretation. As a result, many of the same people say now that, with the benefit of hindsight, they wish that the agreement had contained more details spelling out the powers of the various mechanisms to be established. As one leader of an Acehnese human rights organisation put it:

‘I was satisfied with it. Black on white, it was good. It gave rise to expectations that there would be a Human Rights Court for Aceh. The problem was that it was multi-interpretable. The HRC for example, could be the ICC, it could be national, it could be regional.’

In fact, for reasons discussed in the earlier sections of this report, these bodies were established as part of Indonesia’s prevailing national institutional framework.

5

Implementation of the amnesty

Two weeks after the MoU was signed in Helsinki, the Indonesian government moved to keep its side of the bargain on the amnesty. President Susilo Bambang Yudhoyono signed a Presidential Decree (No. 22 of 2005) granting a general amnesty to persons involved in GAM activities. Approximately 500 prisoners were remissioned and immediately released from jail on 17 August 2005. In total, more than 1400 prisoners were amnestied and released.

The amnesty typified the power configuration underpinning the agreement. It was granted to GAM members by the government, in a procedure approved by the constitution. It was never intended to be a general amnesty absolving all persons of responsibility for past crimes in the conflict and so was not as controversial as, for instance, the amnesty clause in the 1999 Sierra Leone peace accord (Hayner, 2007). During both the negotiations and the implementation of the MoU, it was never suggested by either party that the amnesty would apply to individuals from the government side. For government officials, doing so would have been an admission of culpability that would have undermined all their previous assertions that government troops had operated lawfully and that a framework for protecting human rights was already in place. That the amnesty applied only to GAM was, perhaps ironically, a sign of the government's strength.

There were, however, two major controversies concerning the amnesty. The first and most serious question was how liberally the amnesty would be applied. It soon emerged that not all persons with GAM affiliations were released from jail. It was disputed whether the amnesty should apply to GAM members imprisoned for any crime carried out on behalf of the movement, as GAM argued, or would be restricted to those imprisoned only for narrowly defined political crimes against the state. Then Minister of Justice and Human Rights, Hamid Awaludin repeatedly ruled against granting an amnesty to persons imprisoned for crimes such as robbery and murder, saying that it applied only to those convicted of *makar*, or treason.¹⁵ Initially, the government did not release from prison over a hundred individuals convicted for general or civilian crimes as diverse as murder, narcotics possession and smuggling.

¹⁵ Most GAM prisoners arrested before the May 2003 Military Emergency had been tried on normal criminal charges (robbery, arson, murder, etc); it was only after the Military Emergency that *makar* charges became common. GAM leaders thus argued that there was no substantive difference between the *makar* and non-*makar* cases (ICG, 2006a, p. 9).

The Head of the AMM was empowered by the MoU (article 5.2.f) to rule on disputed cases, but it was of course up to the Indonesian government, as the sovereign power, to release prisoners from jail and annul their convictions. Moreover, although AMM leaders knew they had a 'strong card in the fact that the Head of the AMM could actually decide whether or not a person should be amnestied', they wanted to avoid using this card because they believed it 'would not have been conducive to the peace process and the mutual trust

building between the parties' (Hygrell, 2007, p. 6). AMM leaders still wanted the parties to agree on the amnesty cases. The issue was a recurring theme at the tripartite Commission on Security Arrangements (CoSA) meetings, and a sub-CoSA working group was set-up to address the outstanding cases. While it managed to settle some cases and conduct some fact-finding exercises, it did not achieve significant progress or results.

The AMM thus brought in a Swedish judge, Christer Karphammar, to facilitate the resolution of the outstanding cases by deciding on a list of the individuals to be amnestied, to which the two parties would then agree. Working with another AMM member, he emphasised quiet diplomacy, persuasion and absolute confidentiality (even secrecy) in his deliberations, coordinating with senior representatives of the two parties and with Pieter Feith, the head of the AMM. Judge Karphammar and his assistant worked through court documents and other materials. The Judge based his decisions on two sets of criteria: connection of the crime to GAM's struggle, and its seriousness.¹⁶ On this second matter, the judge himself, largely guided by his own 'ethical judgment', determined that persons convicted of 'cold-blooded' crimes against civilians would not be pardoned. In fact, much of the time for assessment was spent on determining whether a prisoner's crime had been carried out on behalf of the movement.¹⁷

16 According to some sources, the AMM and Judge Karphammar also worked on the basis of the principles of an amnesty which had been agreed upon between the parties in Helsinki prior to the negotiation of the MoU. It is not clear, however, if these principles were the same as the two named above, which were detailed by a very senior participant in the process.

17 Thus for example, there were a number of prisoners convicted on narcotics charges who said that they had been involved in the marijuana trade to help fund GAM's struggle; some common criminals also tried to take advantage of the amnesty by claiming GAM membership.

The AMM team members expended much effort slowly persuading Minister Hamid to broaden the amnesty beyond *makar* to incorporate other crimes. But, in a few cases, Judge Karphammar also determined that individuals involved in serious violent crimes against civilians should not be pardoned. Assessing well over a hundred disputed cases, the judge decided that most of those prisoners should be released and that fewer than ten should remain in prison. A few of the more difficult cases were resolved when the government granted accelerated remissions rather than amnesties. Those who remained in prison included individuals involved in bombing the Jakarta stock exchange in September 2000, in which ten people died, and the killer of Dayan Dawood, a respected university rector. After considerable resistance, both Minister Hamid and the senior GAM leader Malik Mahmud approved this negotiated outcome. The MoU parties declared the amnesty issue closed on 14 August 2006, meaning that 'there were no disputed cases for the Head of AMM to decide upon' (Hygrell, 2007, p. 7).

Thus, a year after the signing of the MoU, the amnesty issue was finally declared closed. There was considerable bitterness and dissension in GAM ranks, however. Irwandi Yusuf, the GAM representative to the AMM was sidelined in the decision-making and was reportedly angry with Malik Mahmud because the outcome meant that some of the movement's supporters remained behind bars. Some GAM supporters say that those remaining in prison had been sacrificed in order to disassociate the movement from their acts and to absolve the leadership of guilt. A 'Forum for Justice for Acehese Political Prisoners' (Forum Keadilan Tapol/Napol GAM) was formed and, with family members of prisoners and some other civil society groups, continued to campaign for their release. This position was endorsed in late 2007 by the spokesperson of the KPA (the Aceh Transitional Committee, the

body established for former GAM combatants) and by the BRA (*Serambi Indonesia*, 5 November 2007; 14 November 2007).

While the outcome of the amnesty process arguably prevented a serious breach between the parties and preserved the principle that there would be no immunity for perpetrators of serious crimes, the secretive nature of the deal meant that it was not presented to the public in this way. Moreover, it was anomalous in that other GAM members who had not been arrested or imprisoned before the MoU, but who may have been responsible for equally serious crimes (or who even may have ordered the very crimes for which others remained in jail), did not face investigation or prosecution. It is not clear – and not widely discussed – whether such people are considered to have been amnestied for these actions.

The second controversial issue, also not widely discussed in public, concerns the one-sided nature of the amnesty and its implications for possible future human rights investigations and legal processes. Many military officers and some government officials privately argue that it would be unjust for government troops to be investigated and, in theory at least, prosecuted before a Human Rights Court while GAM members have been amnestied. During the deliberations leading to the passage of the LoGA in early 2006, members of the PDI-P (former President Megawati Soekarnoputri's Indonesian Democracy Party–Struggle) argued precisely this, and proposed a general amnesty for police and army soldiers who had been posted to Aceh (*Koran Tempo*, 8 May 2006). This proposal was not incorporated into the law. However, government or military officials sometimes make similar comments, at least privately. For instance, some officials have privately floated the idea of watering down, or even abandoning, plans for a TRC and Human Rights Court, justifying this by saying that GAM members have been amnestied while members of the security forces have not.

In fact, although this matter is far from certain legally, it appears that the amnesty granted by the Presidential Decree would not confer immunity to GAM members for crimes against civilians, even though few of their number are likely to be aware of this. After all, it was precisely on the grounds that they had committed gross or 'cold-blooded' crimes against civilians that a small number of GAM members remained in prison. Legal experts interviewed by the author have different views on this matter, but the weight of opinion seems to be that the amnesty does not close the door legally on future prosecutions of GAM members for crimes against civilians (even if the political dynamics are not leading in that direction at present). Therefore, the argument does not appear strong that the amnesty for former GAM supporters would justify protecting other parties, such as members of the TNI or police, from prosecution for human rights abuses.

6

Compensation without justice

The Helsinki MoU includes very broad provision for a right to compensation to ‘all civilians who have suffered a demonstrable loss’ in the conflict – in the form of land, employment, or social security for those unable to work. In contrast to other aspects of the justice agenda, economic assistance for victims of the conflict has received considerable attention from the main actors: the Indonesian government, GAM and the international community. This partly reflects a mindset among them, and especially within the GoI, that the fundamental issues in the Aceh conflict were economic inequality and underdevelopment. The amount of attention is also partly because compensation for victims has been bundled together and intertwined with the issues of economic reconstruction and reintegration of ex-combatants – central if problematic aspects of the peace process. The result is, especially when combined with the lack of progress in truth-seeking and institutional measures, a sort of ‘monetisation of justice’.

In many other peace processes, international funding plays a large part in the post-conflict reconstruction phase. However, the Indonesian government has taken the lead in funding and administering payments to Aceh’s conflict victims and ex-combatants.¹⁸ The provincial government established the *Badan Reintegrasi Damai Aceh* (BRA, or Aceh Reintegration Agency) to distribute funds, which were provided in large part from the national budget.

18 This is also largely unlike the post-tsunami reconstruction taking place in Aceh, where foreign funding has been very substantial.

The most difficult and contentious issues facing the BRA have concerned reintegration funds for ex-combatants. The Helsinki MoU states that reintegration support needs to be provided only to 3000 ex-combatants, while it has become universally recognised that GAM was many times larger than this. Some sources suggest that GAM negotiators in Helsinki mentioned the low figure in the negotiations as a way of minimising the number of arms the movement would be required to surrender in the disarmament phase; others say that they simply made an error. In either case, it appears GAM leaders did not anticipate the difficulties the low figure would pose for them when it later came to distributing reintegration payments among their supporters.

When the time came to arrange for payment of reintegration money, GAM leaders thus initially attempted to ensure that the payments would be made to the district leaders of KPA (*Komite Peralihan Aceh*, Aceh Transitional Committee), the body established to organise former GAM combatants in the post-Helsinki period, rather than to the 3000 ex-combatants individually. They reasoned that the district heads would be able to divide the money into smaller amounts and redistribute it to the full range of former combatants and other supporters of the movement. Government representatives, on the other hand, insisted that names and bank account details of 3000 individuals be provided

19 The distribution of reintegration funds was very complex. In addition to the 3000 ex-combatants paid by BRA, another 3000 ex-combatants and 2000 amnestied prisoners were earlier assisted by IOM, with funds provided by the Government of Japan, without crosschecking. The GoI also provided BRA with funds to assist 6200 ex-GAM members or sympathisers who were not directly involved in its ex-military wing (TNA). See the 'Donor Matrix' at <http://www.bra-aceh.org/donor.php>.

20 To track the problems in BRA and the reintegration programme generally, see: ICG, 2005, pp. 4-6; ICG 2006a, pp. 6-8; ICG, 2006b, pp. 9-11; ICG, 2007, pp. 8-13.

and that payments be made directly to them. In the end a messy compromise was reached, but not before the appearance of significant tensions within KPA ranks involving accusations of unfairness in the distribution of funds¹⁹ Another contentious issue was the payment by BRA of similar reintegration funds, on the insistence of government representatives, to 6500 members of PETA ('Defenders of the Motherland', government-sponsored militias).²⁰

Concerning payments for conflict victims, there have been two major controversies. First, defining and identifying victims has proved very difficult, and delivering payments to them has been problematic. Second, there is considerable debate about the extent to which payments represent compensation for losses, and to which they represent more general 'economic assistance'. The following two sections consider these two issues.

Broad definition and difficulties in delivery

The definition of persons theoretically entitled to some form of compensation is very broad, while the capacity of the government to pay is limited. Indeed, the definition in the MoU is so wide that almost all of Aceh's population would be notionally eligible for economic assistance. The BRA has responded to this dilemma by identifying 14 categories of loss ranging from death of a family member, through permanent disability, destruction of home, to forced displacement. It has attached a notional monetary sum to each category of loss. Hence, for forced displacement the sum is 10 million rupiah (about US\$1000) per household, for mental illness caused by the conflict, a maximum of 10 million rupiah, and so on.

In practice, few payments to individuals have been made. Some instalments have been paid to family members of individuals who were killed, a small number of homes have been rebuilt and some assistance has been provided to people with disabilities and other health problems. Rather than proceeding with the payments, and recognising the dimension of the problem and the inadequacy of government infrastructure for identifying and distributing money to individuals, the BRA has sought to integrate assistance to conflict victims with conventional community-development approaches.

This has proceeded in two rounds. First, the BRA released a call for proposals in which conflict-affected people could form themselves into groups and submit proposals for funding support for livelihood projects. Within a few weeks, the BRA had received 40,000 proposals, potentially involving an estimated 400,000 people, or 10 per cent of the population of the province. The body did not have the capacity to process this number of proposals, let alone verify their activities in the field, and the system was cancelled. This was a public relations disaster, because it first heightened expectations in affected communities and then caused consternation in them, especially because many applicants had invested considerable time, effort and expense in preparing their proposals.

The second response, which began implementation in 2006, was to use an existing World Bank programme, the Kecamatan (Sub-district) Development

Program (KDP), to distribute reintegration funds for conflict victims. The KDP is a programme running since 1998 in 30 of Indonesia's 33 provinces. It distributes money for infrastructure projects to villages. Local facilitators hold community consultations in targeted villages to seek broad community input in deciding how the money will be spent. The government and BRA decided to distribute reintegration funds for conflict victims through the KDP network, as the KDP already had a well-established mechanism for delivering money to communities and allowing those communities themselves to determine how to spend it.

Rather than identifying conflict victims through a centralised bureaucracy and allocating money to them individually, the World Bank proceeded by allocating individual villages differing sums of money depending on their size and the intensity of the conflict in that region. It was then up to the community consultations to decide how money would be allocated to conflict victims. Although the KDP programme required technically verified proposals, the whole village, individuals or small groups could submit proposals and it would be up to the village meetings to determine who got the funds (BRA, 2006, pp. 4–5, Burke and Barron, forthcoming). BRA spent US\$23 million via the KDP programme in 2006, allocating them to 1700 villages, 30 per cent of the total in Aceh (Burke and Barron, forthcoming). Some 80 per cent of the funds were spent on individual or small-group projects, with the remainder spent on projects benefiting whole villages (ICG, 2007, p. 11).

Using the KDP programme to channel reintegration and compensation funds itself gave rise to criticisms from some local civil society actors and some from GAM. Some critics allege that in some cases money was distributed to infrastructure projects in contravention of the rules, or that villagers simply divided up the grants as cash payments. World Bank officials insist that such things happened only in a tiny minority of instances. However, the new head of BRA, the former GAM negotiator in Helsinki, Nur Djuli,²¹ closed the programme because he believed it 'was not oriented directly to conflict victims' on an individual basis.²² Under his leadership, BRA has reverted to a system of individual assistance emphasising housing reconstruction (ICG, 2007, pp. 11–13). As a result, there has been a return to the challenging technical task of trying to identify and compensate individuals.²³

Compensation or assistance?

A second controversy concerns the separation of economic assistance for conflict victims from justice mechanisms. Indeed, it is not clear whether or to what extent such economic assistance for conflict victims is conceived as constituting compensation for losses they have suffered. The Helsinki MoU, article 3.2.5, does use the word 'compensation'. However, many local informants, especially NGO activists, are highly critical of the use of the term or its Indonesian equivalent (*ganti rugi*) because they feel these imply successful conclusion of a legal process and formal settlement of outstanding grievances. They prefer more neutral terms like 'economic assistance'. It is certainly the case that payments are being made in a manner separate from and prior to any process of investigation or truth telling. At the same time, at least some

21 Nur Djuli was appointed to the position by the new governor, Irwandi Yusuf, in early 2007.

22 See his comments in *Serambi Indonesia*, 27 May 2001; also the BRA press release dated 15 August 2007 at http://www.bra-aceh.org/details_press.php?bra=new&id=450.

23 For a critique of the individualised approach to reintegration programmes in Aceh, see Barron, 2007.

of the administrators designing and supporting these economic assistance programmes confess to conceiving of them as means for victims to forgive perpetrators and for closure to be reached concerning past abuses.

Various forms of economic assistance have been provided to victims, including the funds distributed via the KDP programme (as outlined above), smaller-scale medical and rehabilitation assistance for people disabled as a result of their injuries, and some funds for housing reconstruction. However, the most controversial payments are those made under the government's *diyat* programme. This Arabic term refers to payments made to the next of kin of people who were killed or disappeared in the conflict. The programme was initiated in 2002 (*Analisa*, 24 October 2002) by then deputy governor Azwar Abubakar, when the conflict was very severe, but it has since been taken up and administered by the BRA as part of the overall reintegration and conflict-recovery package. The origins of the programme lie in the strong belief on the part of local government officials in Aceh in the early 2000s that a desire to avenge slain family members had been a driving force of conflict. Compensating conflict victims was thus seen as a way to ameliorate at least some of the intensity of the conflict. At the same time, Aceh was in the early stages of implementing aspects of Islamic law (*syariah*) as a concession granted by the central government to local politicians and religious scholars in the belief that it would undermine support for GAM's insurgency.²⁴

24 For a discussion of the background of formalisation of Islamic law in Aceh, see Aspinall, 2007.

It was in this context that deputy governor Azwar, well connected to Islamic scholars in the province through political and family links, introduced the *diyat* programme, borrowing the term from classical Islamic jurisprudence. In Islamic law, *diyat* are payments which may be made by a killer or his/her family to the family of a victim in murder cases, but only when the victim's family agrees to forgo the *qishas* (eye-for-an-eye) punishment. Azwar derived his plans for an Acehese programme both from classical Islamic legal sources and from studying the experiences of various Middle Eastern countries. Murder in Indonesia is prosecuted under the national criminal code as part of a system based on traditions of continental European civil law. In classical Islamic jurisprudence, the standard *diyat* payment is 100 camels. Azwar and his advisers settled on a lesser sum of 50 million rupiah (later revised to 60 million rupiah, about US\$6500), which was equivalent to the price of about ten buffaloes. They did this after taking into account various comparative sources, for example considering local maximum payments under life insurance. However, there was insufficient funding and Azwar's government determined that, as an interim measure, it would pay heirs of the dead and missing 3 million rupiah per year (Frödin, undated, p. 1).

The first instalments of *diyat* payments were made by the provincial government in late 2002 (see, for example, *Serambi Indonesia*, 19 December 2002). The BRA has made additional annual payments of 3 million rupiah (about US\$330) per victim, the most recent of which was made to 2874 next of kin in October 2007 (*Serambi Indonesia*, 12 October 2007).²⁵ Payments are made to survivors according to the principles of Islamic inheritance law. Data on victims are collected by the keuchik (village head), which is the lowest level of the Indonesian government bureaucracy. The keuchik's information is then verified by local police and civilian authorities; the identity of perpetrators is not recorded.

25 The total sum paid to individuals still falls far short of Azwar's preferred total of 60 million rupiah, and in fact neither the national nor provincial government has yet determined the total which should be paid to each person (Frödin, undated, p. 2).

Critics of the *diyāt* programme say that it forgoes the principle of justice because, unlike *diyāt* in classical Islamic law, it is made separately from any legal process. In the classical tradition it is up to the family of the victim to determine whether to accept *diyāt* payment from the family of the perpetrator instead of his or her execution. *Diyāt* supporters, however, argue by analogy from a tradition of the Prophet that it is the responsibility of the state to make *diyāt* payments in conditions where the state was not in a position to protect the victim or identify the killer. In fact, Azwar and other instigators of the programme suggest that where individuals have accepted *diyāt* this implies that they have already forgiven perpetrators and will not pursue future legal remedies. Such discourse reinforces one powerful thread of opinion among local Islamic scholars in Aceh who promote a ‘forgive-and-forget’ model. Thus, in a public discussion in April 2007 on the topic of ‘*Diyāt* in the perspective of *syariah* and Human Rights’ the head of Aceh’s *Syariah* bureau, Alyasa Abubakar stated, ‘there is no need to find the perpetrator, no need to bring up the past. We can learn from the past but we need to be positive. That’s how to achieve peace.’²⁶

26 Alyasa Abubakar, Public discussion, D’Rodya Café, Banda Aceh, 9 April 2007.

Local human rights activists thus fear that *diyāt* payments are a path to impunity, although it is doubtful that they would have any legal force in this regard. There is only anecdotal evidence to suggest what families of victims think. A few NGO and reintegration workers in close contact with victim communities say that many are now more interested in economic compensation for past losses and show little interest or faith in any sort of legal process. The dominant view among humanitarian and human rights workers, however, is that most victims still desire a justice process. One *keuchik* in a district badly affected by the conflict, and interviewed as part of the research for this paper, was unequivocal:

‘*Diyāt* cannot be accepted as justice. How can 3 million rupiah compensate us for the rape of our daughters in front of our eyes or the murder of our father? *Diyāt* is just a bit of spending money (*dana hiburan*). Murders, rapes, forced disappearances... people want answers. This will not disappear without proper legal steps and justice. We would like to forget these bad times but simply cannot. Revenge is in the air and that won’t go away until there is justice. Everything must be resolved as it is written in the MoU. We need both economic and legal justice.’²⁷

27 Interview in Bireuen.

The point, of course, is that the views of victims on such matters will not be clear without a formal investigatory or truth-telling process.

In conclusion, the overall pattern in Aceh so far in dealing with past abuses has been to provide victims with economic assistance, without simultaneously pursuing legal or truth-telling processes. This approach has arisen from a combination of genuine concern for victims’ conditions and of the perceived political need to address social resentment about their neglect. It also stems from awareness of the political difficulties inherent in pursuing legal remedies. Putting aside for the moment the question of whether this approach in principle is accepted by the victims of human rights abuse themselves, its practice has arguably exacerbated rather than ameliorated tensions on the ground. For instance, one result has been to fuel a sense of entitlement in

28 'The EU should re-build all the roads in Aceh', one village leader told the author in June 2007.

conflict-affected communities, which constitute the majority of communities in Aceh, such that even ordinary villagers in remote areas sometimes now have inflated expectations about what the national government, the new provincial government and the international community can do for them.²⁸ Such expectations will on the whole be frustrated given the difficulties in administration and because the needs are so much greater than the funds available to meet them.

7

Debates about the missing justice mechanisms

The most contentious and difficult parts of the MoU, and the ones where arguably least progress has been made, are those providing for mechanisms to deal with past abuses. As noted above, provision for both a Human Rights Court (HRC) and a Truth and Reconciliation Commission (TRC) were made in the MoU, though only in very general terms. The details were in effect left to Indonesia's existing legal framework, and to the national parliament, which had the job of passing the LoGA. The legal environment for both institutions is very complex and uncertain. At the time of writing, in late 2007, it is more than two years after the signing of the MoU, and little progress has been made in establishing either institution.

Human Rights Court

The clause on the HRC in the Helsinki MoU is minimalist in the extreme: 'A Human Rights Court will be established for Aceh'. Even so, this clause is potentially highly contentious in the Indonesian context, largely because the TNI has already demonstrated its hostility to, and its ability to obstruct, human rights trials in other cases around the country, especially those associated with East Timor.

29 One adviser to President Ahtisaari during the talks recalled that there was a discussion of retroactivity and it was made clear in the talks that this principle should not be applied and could undermine the rule of law.

Sure enough, the first public controversy about the meaning of the MoU, only one day after it was signed, concerned the interpretation of the HRC clause. GAM negotiator Nur Djuli said that the court would have retroactive authority and would be able to rule on past human rights abuses (*Tempo Interactive*, August 16, 2005).²⁹ National military and government leaders immediately countered, saying that this would not be the case, and that 'scratching open' the old sores left from the past would 'endanger the peace'. As then TNI Commander-in-Chief, General Endriartono Sutarto put it, 'It shouldn't be at the very moment we are resolving the problem, that we are always oriented to the past, with the result that we'll be unable to create the peace we desire' (*Analisa*, 26 August 2005). Retired General Kiki Syahnakri was even more blunt, reflecting an assessment of the MoU widely shared by serving officers: 'GAM, who have opposed the republic, get a pension. The

TNI soldiers who fell in battle, or whose legs had to be amputated, what do they get? They get threatened with a Human Rights Court' (*Kompas*, 20 August 2005).

Before long, it became clear that the HRC would be established as part of Indonesia's elaborate but so far largely dysfunctional national framework of human rights protection. Theoretically, national human rights mechanisms could have been used to punish human rights abusers in Aceh even prior to the Helsinki accord. Indonesia's 2000 Human Rights law provides that serious human rights crimes prior to 2000 can be tried by 'Ad Hoc Human Rights courts', which can be established for particular cases by the president in cooperation with the national parliament. Crimes taking place after the law was passed (that is, after 2000) can be tried in regular Human Rights Courts. One such court was established in Medan, North Sumatra, following a 2001 Presidential Decree and has jurisdiction over Aceh (thus fulfilling the MoU clause that a Human Rights Court be established 'for' Aceh), but it has not yet heard a single case. According to the 2000 law, the prosecution process begins with an investigation by Indonesia's National Human Rights Commission (Komnas HAM). If this body finds evidence of gross abuses, it hands its findings to the Attorney General's office for preparation of a case. In Aceh, there have been numerous Komnas HAM investigations of abuses over recent years but the Commission has not yet handed any cases to the Attorney General's office.

The LoGA, passed by the national parliament in July 2006 mandates the establishment of a Human Rights court in Aceh. It also says that such a court should be established within 12 months of the law being passed, though this had still not happened by late 2007, 18 months after the law was passed. However, the LoGA explicitly states that the court will have the authority to rule only on cases occurring *after* the passage of the law itself. This means that all the architecture outlined in the preceding paragraph of this paper remains the potential mechanism for prosecuting past human rights abuses.

Given this background, few political actors in Aceh seriously believe that prosecutions for past abuses will take place, or seriously work toward that end. Also, and as noted by one former senior AMM official interviewed for this paper, serious human rights investigations and prosecutions were simply not part of the agenda in AMM discussions with the Indonesian government during the implementation phase: 'It will take a long time before the TNI will be prosecuted. It was and still is a complete taboo. It was simply not possible to discuss or raise it.' Local legal and human rights organisations such as LBH (Legal Aid Institute) and KontraS (Commission for Disappearances and Victims of Violence) still campaign for such an outcome, and there are occasionally congresses or demonstrations by victims that call for prosecutions (for example, see *Aceh Kita*, 2 March 2006). Those involved, however, often seem to be standing up for a matter of fundamental principle without evincing optimism about the prospects. Other actors believe that human rights investigations and prosecutions would be premature and could even endanger the peace process by triggering military resistance and attempts to undermine it.

Truth and Reconciliation Commission

Given the obvious difficulties in pursuing justice through the HRC, many human rights advocates at the local level have instead invested energy in pursuing the Truth and Reconciliation Commission (TRC) option. A body called the KPK (*Koalisi Pengungkapan Kebenaran*, Coalition for Truth Recovery) involves human rights groups and other NGOs in Aceh and Jakarta and has prepared a working paper calling for the rapid formation of such a Commission (KPK, 2007).

An Aceh TRC is mandated by both the MoU and the LoGA. A law (No. 27 of 2004) providing for the establishment of a national TRC had already been passed by Indonesia's national parliament in 2004, well before the Helsinki MoU was signed. The MoU (article 2.3) states that 'A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation', while the LoGA (article 229(2)) describes the Aceh TRC as an 'inseparable part' of the national TRC. A TRC is thus clearly an accepted part of the national political agenda in Indonesia and there is therefore little doubt that an Aceh TRC eventually will be established, even if some elements of the government's security establishment have apparently privately pressed for the abandonment of the idea.

However, the legal context for the establishment of an Aceh TRC was thrown into deep confusion in late 2006 when the Constitutional Court (*Mahkamah Konstitusi*) revoked Law 27 of 2004, before President Susilo Bambang Yudhoyono had even appointed the members of the national TRC (a delay of over two years, for which he was widely condemned by Indonesian human rights activists). The Court took this step partly because the Law provided for amnesty and hence legal immunity for perpetrators of gross human rights abuses (for instance, article 27 stated that compensation and rehabilitation of victims would occur only when an amnesty had been granted).³⁰ Although many human rights advocates welcomed the Court's defence of the principle of accountability, they deeply regretted that revocation of the law delayed even further the formation of a national TRC. It also threw the formation of an Aceh TRC into doubt because of the provisions of the MoU and LoGA, which stated that such a body would be part of, or established by, the national TRC. Further complicating the picture, the LoGA also states that the Aceh TRC would be established 'by this law' and that it needed to be operating effectively within 12 months of the LoGA being passed, which occurred in July 2006.

There was thus through much of 2007 a debate in Aceh about whether the provincial government should go ahead and establish a local TRC by way of *qanun* (provincial legislation), or should await action by the national government. On the one hand, advocates of a locally constituted TRC noted the fading central government interest in such a process and the generally bleak situation of human rights enforcement at the national level, evidenced by paralysis on re-forming the national TRC following the Constitutional Court decision. They thus argued that political conditions may be more

³⁰ This part of the Constitutional Court's deliberations can be found on p. 21 of its decision: Putusan Nomor 006/PUU-IV/2006 (available at http://www.mahkamahkonstitusi.go.id/download/putusan_sidang_Putusan006PUUIV2006ttgKKRtgl07122006.pdf).

31 Both the governor, Irwandi Yusuf, and his deputy, Mohammad Nazar, indicated that they support the establishment of a TRC (e.g. Serambi Indonesia, 13 August 2007).

supportive for a locally initiated process and believed that the leaders of the newly elected Aceh government might support, or be persuaded to support, such a process.³¹

Others warned that a locally constituted body might be fatally compromised. Among their number were local legal experts and advisers to the provincial government, who said that the explicit wording in both the MoU and the LoGA on the question of an Aceh TRC being part of a national body would lead to great legal uncertainty if a local body were established independently. Another key issue concerned the powers of such a commission to subpoena witnesses and perpetrators, especially those from national bodies like the military and police. Presumably, a TRC established by the central government would, or at least could, depending on the political will to create such an outcome, have such powers. It is much more doubtful, indeed very unlikely, that a commission established by the provincial government in Aceh would have either the legal authority or the political weight to achieve such an outcome.

By late 2007, it appeared that those who counselled caution and insisted that any local TRC would have to be constituted in conjunction with a national body were winning the day. Even many of the local human rights advocates, such as those involved in KPK, favoured national-level backing for an Aceh TRC, as did Aceh's provincial government. The national Department of Law and Human Rights announced, for its part, that a new draft bill on the TRC would be on the government's list of bills to be considered by the national legislature in 2008 (Serambi Indonesia, 27 November 2007). However, given the history of delays and prevarication on this issue, it seems quite likely that there will be a long delay, even of several years, before a TRC in Aceh is established.

At the time of researching this paper in Jakarta (mid-2007), national policy-makers were already drafting their own version of a TRC concept paper, one that allegedly promoted 'healing' rather than emphasising a process that might lead to legal sanctions for perpetrators. Local human rights advocates feared that such a TRC might function as a means of conferring immunity on perpetrators (though the Constitutional Court has already determined that this would be unconstitutional). The proposal prepared by the KPK, in contrast, suggests disclosing 'those facts that have been intentionally hidden' which may be 'critical for resolving past crimes, including the search for victims of forced disappearances and the graves of those who were killed' (KPK, 2007, p. 16). In part, the role of the TRC would be to provide a truth-telling mechanism that could accumulate data for human rights prosecutions at a later date.

At the same time, the KPK proposal advocates forgiveness and reconciliation for local perpetrators of relatively minor crimes at the community level, and encourages the use of various customary legal mechanisms for this purpose. These include payment of *sayam* and *suloeh*, material reparations paid by the guilty party for, in the first case, physical injury and, in the second, civil disputes where no physical injuries have occurred. In both cases the reparations are

paid after a community adjudication and reconciliation process presided over by the village head and other dignitaries (KPK, 2007, pp. 23–24). However, the KPK is also adamant that such mechanisms of forgiveness and community reconciliation would not allow for serious violators of human rights. Borrowing from the South African model, they argue that any TRC should:

‘Clearly name those most responsible for gross human rights violations. There shall be no amnesty recommendations for those most responsible for gross human rights violations. The Commission shall work in a complementary manner with the courts for serious crimes, namely, crimes against humanity, genocide and war crimes. The Commission shall give legal immunity recommendations only to the perpetrators who have confessed their crimes during the process of reconciliation facilitated by the Commission.’

(KPK, 2007, p. 26)

As this paper is finalised (in December 2007), the view of national policy-makers on this issue is not yet clear. This vision is still only in the eyes of Aceh’s human rights lobby, which is vocal but not influential.

8 | The Aceh Monitoring Mission: could more have been done?

The sections above describe what has happened concerning human rights and justice in Aceh since the MoU was signed. This section asks whether more could have been done to promote this agenda, especially during the critical period between August 2005 and December 2006, when the AMM was on the ground monitoring the implementation of the MoU.

AMM staff members were occupied by a series of complex and consuming tasks through this period. As one AMM leader recalled: ‘We prioritised the key steps. First, it was stopping the killing – decommissioning and demobilisation [the final months of 2005]. Then, after four months, it was checking the number of soldiers, then in the [Northern] spring [of 2006], we started to look at the LoGA [then being prepared in Indonesia’s parliament].’ For the remainder of 2006, most players were preoccupied with preparations for the elections, which eventually took place in December 2006. The AMM’s priorities, in other words, closely tracked what both the negotiating teams and the mediator had seen as the key issues during the talks leading to the MoU. As noted above, these key issues did not include justice.

Many individuals suggest that, amid this string of high priorities, opportunities to pursue a justice agenda were lost. Members of Acehnese human rights and civil society groups have argued this especially passionately. One prominent local activist put it bluntly: ‘the AMM completely failed on human rights’. Some AMM staff, especially those with civilian rather than military backgrounds, concur, though rarely in such strong terms. Even some individuals who were in leadership positions in the Mission agree that, with hindsight, the human rights component of the mission could have been better staffed and planned.³² Others point out that there was internal discussion and debate on this issue from early on in the mission.

32 On this issue, see Schulze, 2007, p. 5.

Four criticisms – or reflections – are commonplace. First, and this view is especially common among former AMM personnel, some say that there were simply insufficient resources in terms of personnel and expertise dedicated to human rights issues in the Mission. Only a handful of people, three in most counts, specialised in this area in AMM headquarters. In contrast, a large number of AMM personnel had expertise in disarmament and security issues. One former AMM member was blunt:

‘the majority of monitors and senior staff were former military men who have a tendency to side with the state. They focused on technical issues – how to get from armed conflict to a situation where there is no more armed violence – not on anything politically sensitive.’

Second, it is often said that the AMM was simply too cautious in monitoring, investigating and following up human rights problems during the implementation of the MoU. Acehnese civil society activists tend to be most outspoken on this point, but even some former AMM personnel concur. One AMM monitor recalls that, during their pre-deployment training, they were warned that the ‘EU was worried that the peace agreement would collapse if the human rights issues were investigated or pushed too hard’. Partly as a result of this, the Mission chose not to deploy designated human rights monitors in the field offices although nine individuals were recruited for this purpose.³³ It was also insisted that the human rights monitoring mandate of the AMM staff concerned possible breaches of human rights only after the MoU was signed, with the result that, for example, AMM did not intervene when local communities dug up mass graves in some locations, presumably destroying evidence of past abuses in the process. In the view of many local actors, AMM failed to investigate thoroughly some alleged abuses by security forces, for example in Paya Bakong, North Aceh, when a man was killed during a fracas. Most senior AMM members dispute this, but one conceded on such matters:

‘We were over-sensitive about being involved more actively in these cases with human rights dimensions. These would have given a more firm basis for the post-AMM time. The AMM mandate and position was very strong, based on the MoU. Even if it had been more active it wouldn’t have been close to the limits of the corridor [of what was possible or acceptable].’

33 Another concern was that such people might become targets of intimidation or worse in the field. This was a reasonable fear considering the history of TNI-orchestrated attacks on staff and offices of the Joint Security Commission (JSC) in various districts during the CoHA (Aspinall and Crouch, 2003, pp. 40–41).

A third common criticism is that the AMM did not, in consultation with the parties, prepare a clear blueprint for how justice issues should be dealt with in future. As a result, crucial questions about the TRC and HRC remained unresolved, leading to the risk that they would simply fade from the agenda once the international presence scaled down. Once more, it is local activists who are particularly bitter on this score but, again, some individuals involved in AMM agree that, as one put it, the approach on these matters ‘was low profile because other big things were taking place which were so crucial and we wanted to safeguard them’. In this view, the prioritising of other issues meant that the AMM let pass the opportunity to secure a strong justice outcome during the period when the influence and leverage of the international community was greatest.

34 Human rights and women’s groups are especially frequently mentioned in this connection.

Fourth, members of local groups and some former AMM personnel and other international observers have said that the AMM did not sufficiently engage with local civil society groups.³⁴ This is felt to be the case in the socialisation of the MoU, which in the view of some simply became an exercise in ‘marketing’ that failed to promote local ownership, and also in preparing for the post-AMM phase. One former AMM member explained: ‘There was no development, training, workshops, funding or technical assistance for local human rights NGOs’, even though it was inevitable that such groups would take up primary responsibility for on-the-ground human rights monitoring once the AMM withdrew. A member of a local human rights group said the AMM was ‘exclusive’ and contrasted this with the earlier process designed by the Centre for Humanitarian Dialogue (HD Centre): ‘The HDC had in fact been better: it designed an all-inclusive dialogue which allowed access for civil society groups and which allowed justice issues to be raised as part of the peace process itself.’ In the case of the Helsinki MoU, because the participation of women and civil society groups was not mentioned in the text of the agreement, there was apparently little concerted effort to promote their participation in the implementation.³⁵

35 At the same time, some former AMM staff members also point out that local civil society groups were also ineffective and failed to organise a concerted lobbying campaign, either to promote civil society input in the peace process or to increase the attention paid by the AMM to human rights.

A few leaders of the AMM agreed with some of these criticisms, even during the mission – and more do so with hindsight, saying that more could have been done, even while they strongly disagree with particular charges (for example, that the Paya Bakong case was mishandled). It is widely acknowledged, for instance, that staffing and expertise on human rights was inadequate and that the tasks and mandate of the AMM in the area of human rights could have been more precisely delineated. Frequently, these are described as two important lessons learned.

In discussing these issues, however, most former members of AMM senior management stress the political constraints under which they operated. In short, they return to the contextual limitations of the Aceh peace process noted at the beginning of this paper. For instance, why did the AMM not do more to urge the parties to come up with a stronger and more detailed framework for an HRC and TRC? The major reason AMM officials give is that this was not explicitly included in the list of AMM tasks in the MoU (the closest the list came was in 5.2.e., ‘monitor the process of legislation

change’). In this context, AMM officials also stress the Indonesian political framework within which these institutions needed to arise. Thus, one senior AMM leader responded that the Mission had to rely ‘on the commitments by the competent Indonesian Ministers’ on these matters. The AMM raised them with then Justice and Human Rights Minister, Hamid Awaludin, who ‘gave the assurance that the court would be set up, that there was a competent court in Medan, and that there would be a later court also’. On the question of the TRC, during the AMM period, the AMM was ‘still waiting for the President to appoint its leaders’, referring to the leaders of the national TRC, later annulled by the Constitutional Court.

Moreover, once the redeployment of troops and decommissioning of weapons was completed, AMM leaders had the impression that the ‘attention from Jakarta was going down’ and that ‘as time passed, the window slowly closed, in terms of the willingness [of GoI] to discuss matters with the international mediators’. In addition:

‘As far as the AMM was concerned, there was not enormous pressure from the GAM side either. Perhaps because it [an HRC and TRC] would have been a mixed blessing for them. It was simply not on their agenda. The immediate leaders would simply not bring it up.’

During the Helsinki talks, President Ahtisaari had stressed that any peace agreement should be a minimalist, forward-looking document that would need to be owned by the parties. By the time it came to be implemented, its new ‘owners’ were not especially exercised about the minimalist articles on justice issues.

There was a second concern, however, which also drove the AMM on these matters: that of preventing ‘mission creep’. As explained in Section 3 above, from the EU perspective the AMM had always been conceived as having a limited role and lifespan. Thus, the same AMM official cited above explained that by the time it came to the negotiations concerning the LoGA ‘this was in the final stage of the mission’:

‘There were people in the EU who thought it was time to declare victory and go home. Things had generally been looking good, there were no signs of marked discontent in GAM, and little violence. It was not a matter of turning our back on the problem: the EC still had a long-term assistance package. But the EU was not willing to make a big stink with the GoI on the LoGA; we thought we could rely on the present leadership to make amendments to it if the possibility arose.’

There were thus clear dynamics pushing the AMM toward caution – arguably over-caution – on these issues. On the other hand, it should be stressed once again that there were good reasons to be cautious. Strong forces in Indonesia’s political and security establishment were opposed from the start to international involvement in the peace process and were looking for excuses to curtail it. They took umbrage at every instance of perceived interference in Indonesia’s sovereign affairs. A strong human rights emphasis

at an early stage of the process would have run the risk of prompting a backlash and perhaps even the breakdown of the peace process. After all, resistance by the security apparatus had played a crucial role in undermining the earlier HD Centre-mediated process. The AMM and its senior management navigated these dangers with some skill, and carefully kept Indonesia's civilian and military leadership involved in the peace process, even if one cost was that the justice agenda was not resolved satisfactorily in the eyes of many local groups and victims.

Even so, it does appear there were lost opportunities along the way. The preceding analysis suggests that in some areas further steps could have been taken to advance the justice agenda without seriously jeopardising the peace process, both during the negotiations and during implementation. Many of those interviewed for this paper agree for instance that the AMM might have taken a stronger position if the MoU had contained somewhat more detailed provisions on human rights, and if the tasks of the AMM outlined in it had included an explicit mandate to involve civil society and women and to monitor the establishment of the TRC and HRC.³⁶ Even without a more explicit mandate, the prevailing view is that the AMM senior management tended consistently to err on the side of caution on human rights issues, passing up some opportunities to take a more proactive role.

However, the sort of steps that might have been taken differently tended to be rather minor and would likely have affected the human rights situation only at the margins. On the TRC, for example, an AMM-facilitated blueprint might have had influence in some national and government agencies, but it would not have prevented the difficulties arising when the Constitutional Court revoked the national TRC legislation. More importantly, given the highly sensitive political context of the peace process, and the limited leverage of international actors, precisely what or how much more could have been done at any particular time is a matter of fine political and tactical judgement. The author of this paper was not a member of the AMM and was not privy to its day-to-day discussions. It is not the intention of this paper to produce a definitive conclusion about what should or should not have been done differently, but rather to derive learning that could be useful in future.

36 My conclusion here is thus different from that of Kirsten Schulze who, in a recent paper on the AMM, proposes on the basis of a similar analysis of the dilemmas and difficulties that the Mission had in dealing with the human rights issue that 'In environments where human rights have become highly politicised it may be worth considering a more limited or clearly defined human rights mandate and/or sequenced implementation schedule so that the mission as a whole will not be jeopardised by a too early or too overzealous focus on human rights' (Schulze, 2007, p. 14). While clearer definition and sequencing are surely to be welcomed, the lesson to be drawn from the AMM experience is surely not that human rights mandates should be more limited, as the problem of the AMM was not overzealousness or too-early emphasis on human rights, but rather the reverse.

Conclusion

This paper has not aimed to evaluate the overall successes and failures of the Helsinki peace process in Aceh. There were undoubtedly more successes than failures. Even on the topic of human rights, there are both positives and negatives. Although not emphasised in this paper, implementation of the Helsinki MoU has made one tremendous contribution in this area: by stopping the violence it has halted most of the gross and egregious abuses which were part of daily life during the conflict years. However, especially when it comes to dealing with past abuses, the aspect of human rights and justice has so far been one of the least successfully implemented aspects of the MoU.

Three central explanations for this outcome have been advanced in this paper.

- 1 The ability of international actors to achieve an ideal outcome was very limited. Not only did they lack (or believed they lacked) leverage on sensitive political issues, but they were also reluctant to become bogged down and hence did not seek to test the limits of that leverage.
- 2 GAM, as one of the signatories of the MoU, was not as concerned with the human rights agenda as its previous public campaigning on the issue might have suggested. This was perhaps partly because some of the movement's members themselves had reasons to fear effective justice institutions. Probably far more significant here was that, during implementation, GAM was preoccupied with other issues, including the struggle for political power, evolving tensions within the movement, promoting 'reintegration' of former fighters, and managing the funds provided for that purpose.
- 3 Most importantly, the national institutional and political framework was not supportive of speedy or effective action on human rights. Not only are there strong vested interests in Indonesia's security establishment, bureaucracy and political system which resist this agenda, but the wording of the MoU suggested – or at least was readily interpreted to suggest – that Aceh's human rights and justice mechanisms would be established as part of the existing national framework. That this national system had been largely dysfunctional – and in the case of the TRC was later thrown into fundamental question by a Constitutional Court ruling – did not augur well for progress in Aceh.

Some individuals involved in international agencies which have supported Aceh's peace process have expressed the hope that progress in Aceh on governance and justice issues under the spur of the Helsinki MoU might become a positive example and catalyst for wider change in Indonesia's national institutions and the wider political landscape. However, the prevailing flow of influence in the human rights arena so far has been in the opposite direction: the good intentions embodied in the Helsinki MoU have tended to become absorbed and blunted by the dominant national system. This was an entirely predictable outcome, given the context of the peace process in a

small part of a giant country with stabilising and increasingly consolidated (if ineffective) political and legal institutions.

Of course, it may not always be like this. Despite the problems, the Helsinki MoU and subsequent implementation kept the issues of human rights and accountability on the table. It is much better on balance that a justice agenda was part of the Aceh peace process, even if it was imperfectly implemented, rather than the alternative of it being kept out of the process altogether. It is not uncommon in other countries, such as Chile and Argentina, for truth-telling processes and investigations of abuses to take place many years after those abuses occurred. There are important actors in Indonesia's political and civil society, and even within the bureaucracy, who support progress on justice issues. While it would be unrealistic to expect too much, some are pushing particularly hard for the formation of a TRC and it is very likely that such an institution will eventually be formed in Aceh, though its scope and powers remain an open question.

While there is debate internationally about the desirability of truth telling and justice seeking in post-conflict situations, in Aceh the case is surely very strong. This is not only because of the strong moral and ethical imperatives that arise whenever people are treated unjustly and cruelly – as many thousands were in the Aceh conflict. It is also for the strong practical reason of minimising future conflict. Human rights abuses for a long time defined the Aceh conflict. A narrative of abuse and injustice at the hands of Jakarta became, and remains, central to popular conceptions of Acehnese identity. It was also a central justification for armed violence against the state, both in the ideology of the rebel movement and in the personal motivations of individual fighters. Failing to deal definitively with the legacy of the past will result in the persistence of a potent source of grievance, which will cause many Acehnese to view every error or failing of the central government as masking sinister intent, and which in the long term could help to re-ignite violent conflict.

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Acronyms and abbreviations

AMM	Aceh Monitoring Mission
ASEAN	Association of Southeast Asian Nations
BRA	Aceh Reintegration Agency (Badan Reintegrasi Damai Aceh)
CoHA	Cessation of Hostilities Agreement
DOM	Military Operations Zone (Daerah Operasi Militer)
HRC	Human Rights Court
GAM	Free Aceh Movement (Gerakan Aceh Merdeka)
GoI	Government of Indonesia
Komnas HAM	National Human Rights Commission of Indonesia
KPK	Coalition for Truth Recovery (Koalisi Pengungkapan Kebenaran)
LoGA	Law on the Governing of Aceh
MoU	memorandum of understanding
NGO	non-government organisation
TNI	Indonesian military (Tentara Nasional Indonesia)
TRC	Truth and Reconciliation Commission

