

First International Conference of Aceh and Indian Ocean Studies

**Organized by
Asia Research Institute, National University of Singapore &
Rehabilitation and Construction Executing Agency for Aceh and
Nias (BRR), Banda Aceh, Indonesia**

24 – 27 February 2007

Aceh Peace Process and Justice

Leena Avonius

Renvall Institute, University of Helsinki, Finland

Leena.avonius@helsinki.fi



Not to be quoted without permission from the author

**First International Conference of Aceh and Indian Ocean Studies
24 – 27 February 2007**

Some weeks ago I attended a seminar in Europe where people from various parts of the world came together to discuss the importance of peace-building and human rights work in post-conflict areas. There were people from many of the world's hotspots, places like Russian Chechnya, former Yugoslavian states Serbia and Croatia, Rwanda and Sudan in Africa, or Chiapas in Mexico. All these places that we hear about in the news when the conflict is in flames, but that disappear from our horizon as soon as they become more peaceful. I felt privileged to be able to talk with these brave civilians, who had experienced the horrors of armed conflict themselves, who had seen how destructive it is to the society, and who had the courage and determination to start rebuilding their societies divided by warfare. Many of them worked with people who had been traumatized by the conflict: the civilians who had been caught in between the fighting parties, but also former guerrillas and soldiers who had carried arms and participated in the fighting. For that is the nature of war – it traumatizes not only those who are shot at but also those who do the shooting. A clear message emerged from the discussions in the seminar: in a post-conflict situation every single person has to deal with his/her past experiences, and to discuss the past atrocities together with others, in order to be able to move on, to build a better future both for themselves and their families but also for the society as a whole.

Last year I was equally privileged to be able to work for Aceh Monitoring Mission (AMM), and to have an opportunity to talk with so many people here in Aceh, about their past, present, and future. I heard so many stories about horrible things that happened in the past, people told me how the tsunami or the conflict had devastated their lives and left them with nothing but scratches. It was heart-breaking to listen to those stories about the horrors and injustices people in Aceh had gone through, the memories of which they had to carry with them, day and night. But these dark stories were always followed by other stories, stories on how since the peace agreement was signed in Helsinki things had turned for the better, and on what kinds of dreams and plans they had for the future. These stories taught me how brave people in Aceh are, how well people here understand that peace is not build overnight, but that peace is a process that will take for years and decades to be established and maintained. Through their stories I was also reminded that the past and the future are always bound together, and that building a just society in the future cannot be done without dealing with the injustices that have taken place in the past.

In this paper I will discuss the question of justice in Aceh post-conflict reconstruction and peace-building. I will argue that for sustainable peace in Aceh it is important to have a wide consensus on what is understood by 'justice' in the post-conflict situation. In order to stress the differences between various processes that are ongoing in the post-conflict Aceh I will differentiate between 'legal justice' and 'social justice,' even though in everyday life the two should go hand in hand, and they often mix. Post-conflict reconciliation takes place in relation to legal justice, it reconciles between the victims and the perpetrators when the laws and norms of the society have been violated. But the process of peace-building and reconstruction also has to be sensitive towards Acehnese views on how a just society would look like. And here we talk about 'social justice,' about the rights and obligations of members of a society towards each other, and towards the government and the state. Self-evidently, this also includes the rights and obligations of the government and the state towards their citizens.

I will first give a brief overview of the situation in Aceh, and examine how the two signatories of the Helsinki Memorandum of Understanding (MoU) – the agreement that ended the three decades of conflict in Aceh – defined the need and mechanisms of justice in post-conflict Aceh. I will then turn into the concepts and mechanisms of legal and social justice, and explore their importance for the process of peace-building in Aceh. In the end I will also shortly discuss where the Acehnese understanding of justice emerges from.

Current Situation and MoU

As is well known Aceh has been a scene of violence for a long time. In fact, since the Dutch entrance in the 1870s Aceh has seen much less of peace than of armed struggle, fighting, and violations of human rights (though of course 'human rights' as a term came into common use only after the second world war). The latest conflict, which began in 1976 and ended in August 2005 with the signing of the peace agreement between the Indonesian government and the Free Aceh-movement GAM, took lives of at least 15 000 Acehnese.¹ Hundreds of thousands others had to flee their homes, or suffered in other ways. Indeed, as some have stated, practically all of Aceh's population of over four million people became victims of the conflict in one way or another.

There is no exhaustive data available as yet on the damages and destruction the conflict has caused in Aceh. During conflict years it was not possible to collect such data, though some non-governmental organisations did their best to document the incidents that were reported to them by the victims and their families. Within the last year or so, there have been some initial efforts to estimate the material damages the conflict caused in Aceh. Under the BRA, the governmental body for Aceh reintegration, the representatives of the Indonesian government and GAM together with the representatives of Acehnese civil society agreed there should be a joint effort to collect the data on conflict victims.² Unfortunately this initiative has so far not led into any practical steps taken. Considering the sensitivity of such data collection process, further discussion will also be necessary to determine what kind of body would be best fitted to take up this task in post-conflict Aceh. There is no one universally correct answer to this question: in some places it is considered to be the obligation of the state, while in other places an independent documentation centre has been created to do the job.³ What is the best solution for Aceh, can only be decided by the Acehnese themselves. Others can and should offer technical assistance for the process that is time-consuming and requires special skills. This data collecting will, without a doubt, form one of the big challenges for peace-building and reconstruction in Aceh.

The two peace negotiation teams in Helsinki were well aware of the past atrocities in Aceh, and human suffering and poverty that had become part of the everyday life of Acehnese. This becomes evident in several articles that were included into the MoU to address these problems, and also to create mechanisms to handle them. These include for example Article 2.2. stating that 'a human rights court will be established for Aceh' and the following article 2.3. determining that the Indonesian Commission for Truth and Reconciliation will establish a Truth and Reconciliation Commission for Aceh, and that this

¹ This estimate is commonly used, though apparently far too low. For varying estimates, see for example Matthew Davies (2006): *Indonesia's War over Aceh: Last Stand on Mecca's Porch*. Wiltshire: Routledge.

² The ten-point criteria that was formally agreed by the three parties on March 15, 2006 is as follows: 1) a person deceased due to the conflict (diyath), 2) a person who became widow/widower/orphan due to the conflict, 3) a person gone missing due to the conflict, 4) a person whose house was burnt, broken, or destroyed due to the conflict, 5) a person whose wealth was destroyed/broken/lost due to the conflict, 6) a person who was displaced from the place of origin due to conflict, 7) a person disabled or dismembered due to the conflict, 8) a person mentally ill due to the conflict, 9) a person who is physically ill due to the conflict, and 10) a person who lost occupation due to the conflict. The data collection was planned to be uniform throughout Aceh, and conducted under BRA by representatives of GAM and the civil society.

³ According to Goran Božičević the ex-Yugoslavian states differed in this respect: while in Serbia and Bosnia-Hertzeogovina the public opinion has demanded that the state should not have anything to do with the documentation, Croatians have been equally convinced that only the state has resources to document and to make it available for all interested citizens and organisations. Goran Božičević: *Is Dealing with the Past Slow and Difficult in Our Parts?* An article to be published in 2007.

TRC will have the tasks to formulate and determine reconciliation measures. Third part of the MoU concerns amnesty, and outlines government reintegration assistance to those who have participated in GAM activities and amnestied political prisoners, as well as assistance to conflict-affected civilians. While these articles deal mostly with the past, the first part of MoU outlines how justice will best be ensured in Aceh in the future through full political participation, improved economy, the rule of law, and adherence to international covenants of human rights.

These issues were then elaborated upon, and given a legal basis in the Law on the Governance of Aceh that was passed in July 2006 by the Indonesian national parliament DPR. Further elaborations will be given through Aceh's provincial regulations Qanun in the years to come. As the processes of justice in Aceh are intertwined with those elsewhere in Indonesia, the developments at the national level will have direct influence on the Aceh peace-building.

Legal Justice and Dealing with the Past

Theoretically the documents discussed above have clearly defined that the past atrocities and injustices in Aceh will be dealt with through a human rights court (HRC) and through a truth and reconciliation commission (TRC). In practice, and this is very unfortunate though not entirely surprising, both the HRC and the TRC are still waiting even for the very first steps to be taken towards their establishment. And yet these two bodies are vital for bringing about legal justice to thousands of conflict victims in Aceh. They are also of utmost importance to enable the process of reconciliation between the victims and the perpetrators of past violence, which is needed to ensure that the peace process will remain on its track also in the future. In this section I will discuss the problems that appear to hinder the establishment of these two bodies, and possible solutions to the problems encountered.

By pointing out the need to have both HRC and TRC for Aceh the signatories of the MoU already suggested that there are various forms of violations and wrongdoings that were committed during the conflict. The two mechanisms are both dealing with the past injustices, but their work and function is separate, though they surely are related to each other in many ways. While HRC will be needed to handle the gross human rights violations that have taken place in Aceh, the TRC will deal with less serious violations, crimes that can be reconciled amongst community members. Due to their separate functions it is important that both mechanisms will be established.

Human Rights Courts are sites for retributive justice. HRCs in Indonesia like elsewhere seek punishment for injustices and wrongdoings that fall under the universally recognised category of human rights violations. Indonesian law on human rights courts (Law 26/2000) determines that these courts will handle gross human rights violations that are further defined to include genocide and crimes against humanity.⁴ Such human rights violations are considered to be so severe, so threatening to the society as a whole, that they must not go unpunished under any circumstances, and furthermore there needs to be a special court system to address them. It is important to underline that a HRC is not a tool through which the victim can get revenge, but it is a mechanism that enables the upholding of not only social order – all courts have this task – but the highest principles

⁴ The definitions are adapted from and consistent with international standards, as pointed out recently by Suzannah Linton. Indonesian law defines 'genocide' according to the lines that are consistent with the Genocide Convention, while the definition of 'crimes against humanity' follows the way these have been outlined in the Statute of International Criminal Court (ICC). Suzannah Linton, *Accounting for Atrocities in Indonesia*, in "Singapore Year Book of International Law" (2006) 10.

First International Conference of Aceh and Indian Ocean Studies
24 – 27 February 2007

of humanity. Thus, more than for the sake of individuals, the HRC is necessary for the existence of the society as a whole.

Since the late 1990s Indonesia has built up a legal framework that enables the formation and functioning of human rights courts. Together with the special legislation for Aceh that was discussed above, the national laws provide the legal base for establishing human rights courts in and for Aceh. The Law on the Governance of Aceh (LoGA) demands that a human rights court has to be established in Aceh within one year from the date the law became effective, which means that by July this year (2007) the HRC should be at its place. As far as I am aware, no preparations have been done towards the establishment of this court, and thus it seems unlikely that the deadline will be met.

Since LoGA limits the human rights court in Aceh to take up only cases that have occurred after the law became effective (July 11, 2006), other human rights courts should be used for violations that took place before that date. Indonesian law on human rights courts (26/2000) outlines a system of four permanent human rights courts that should cover the whole country, and handle gross human rights violations that have taken place after November 2000. The court in Medan would cover cases from Aceh. Unfortunately the process of establishing these courts has been delayed: even though all courts were to be established by 2003, so far only the one in Makassar is at place and functioning. In addition to these two courts, an ad hoc-HRC should be established for Aceh to handle any human rights violations that took place before November 2000. An ad hoc-court can be established if there is a recommendation from the national parliament DPR, and an approval from the President.

It is apparent from the information above that there are no legal hindrances for establishing the three types of human rights courts that could cover the past, present and if necessary future human rights violations in Aceh. Now it is the task and the responsibility of the political leaders and the relevant state institutions to start these processes. The situation is slightly different what it comes to the Truth and Reconciliation Commission in Aceh. Both the MoU and the LoGA determine that the TRC in Aceh should be established within the national TRC system that is based on the law 27/2004. The decision of the Indonesian Constitutional Court in the beginning of December 2006 abolished that legal framework by annulling the law in question. Despite this decision, it has become very clear in the public statements by Aceh's newly elected leaders, the provincial parliament members, and Acehnese civil society representatives that there is political will in Aceh to establish a Truth and Reconciliation Commission in Aceh within near future.⁵ Possible ways to move on from here include establishing the TRC in Aceh through a Presidential Decree, or amending the LoGA so that it would enable a TRC in Aceh outside the national framework.⁶

Unlike HRCs, Truth and Reconciliation Commissions are typically sites for restorative justice. The ultimate aims of this mechanism are clearly outlined in the name: the commission seeks to establish a truthful picture of events by gathering and putting together the stories of victims, perpetrators and witnesses of past violations (atrocities, crimes, injustices, or whatever you want to call them), and furthermore it aims at reconciling between the perpetrators and the victims. The importance of these two processes (establishing the 'truth' and facilitating reconciliation) for a sustainable peace

⁵ In January 2007 Acehnese and Indonesian media reported that the elected Vice-Governor of Aceh Muhammad Nazar assured that a TRC will be established in Aceh in 2007, while Mukhlis Mukhtar, the Chair of the Law and Governance Section of Aceh's provincial parliament stated that according to him the decision of the Constitutional Court did not prevent Aceh from establishing a TRC. See for example <http://www.tempointeraktif.com> on January 24, 2007.

⁶ LoGA states that also the TRC should be at place within one year after the law became effective. Considering the current difficulties this may not be possible. It is anyhow better to have a properly designed mechanism than try to follow a deadline.

has become evident in numerous post-conflict situations. The victims must be offered a forum where testimonies of their suffering are heard, properly documented, and acknowledged by the state and outside world. But it is similarly necessary for the perpetrators that they are offered a forum to confess their deeds. Through these testimonies victims and perpetrators prepare themselves for reconciliation and healing. As Johan Galtung (2001) has stated, reconciliation can be interpreted as "the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relations. The process prepares the parties for relations with justice and peace." As I said in the beginning of this paper, it will be difficult to guarantee justice in the future if the past is left unexplored.

Another big issue that needs to be discussed in Aceh is how the future TRC would look like in practice and what would be its working methods. The LoGA states (Article 230) that the selection of members, organisation, working methods, term, and funding of the TRC will all be determined by Qanuns. LoGA also characterises the nature of the TRC by stating that it will use Acehnese adat in resolving human rights violations (Article 229/4). And now that the national framework has been taken out, there is actually more space for building up a TRC that is truly based on Acehnese socio-cultural traditions and understanding of justice. Experiences elsewhere have shown that a TRC can only be successful if it is based on local culture, and enjoys wide confidence of the people.

Some have suggested that the TRC should make use the adat elders in Acehnese communities, but the problem with this suggestion is that in fact most communities in Aceh do not have a functioning adat system any longer. All around Indonesia, traditional justice systems were pushed aside first by the Dutch colonial state and then by the New Order that prioritised establishing a unified justice system in the country. In Aceh, decades of open conflict has led into a situation in which neither the state court system nor the local justice traditions function properly. Nevertheless, in the post-New Order era several Indonesian regions have started to look back into the local traditional justice systems that once prevailed in order to complement the national court system that still appears to be weak. In some regions, like in Central Sulawesi, local adat elders have for example started to reconcile minor crimes and disputes particularly in remote villages that often have poor access to the police.⁷ Initiatives like this show that local customs can be used as an asset for reconciliation and conflict prevention. Thus, it will certainly be worth the effort to map out the existing adat traditions in Aceh, and even consider the possibilities of revitalising systems that have once been there. One should however be aware that old traditions and customary systems cannot be just taken up again, but they need to be adapted to the current socio-political context.

Social Justice and normative pluralism

This will lead me to the last part of this paper, in which I will discuss the process of building an Acehnese society that is based on local understanding of social justice. The outcome of the TRC can assist in this process. Every society needs to be aware of its history, and Acehnese – unless I have not completely misinterpreted the place and its people – with their legends, songs and storytelling traditions are particularly keen on history. Most societies also have white spots in their historical maps, spaces that are left untouched. But these white spots will always disturb the social relations unless they are openly addressed. And more dangerously, they often are the elements that draw the society back to the vicious wheel of violence.

⁷ Greg Acciaioli, *Re-empowering the 'Art of the Elders': The Revitalisation of Adat among the To Lindu of Central Sulawesi and Throughout Contemporary Indonesia*, in Minako Sakai (ed.): "Beyond Jakarta: Regional Autonomy and Local Societies in Indonesia," Adelaide: Crawford House Publishing, 2002.

To establish a truthful picture of the past is to lay a cornerstone for future society, as discussing injustices that have occurred in the past will also help to picture how a just society would look like, and what would be needed to ensure that the past injustices will not happen again. The main focus should however be in the future, and not in the past. Similar processes have been ongoing throughout Indonesian regions since the late 1990s, and are usually referred to by such terms as *reformasi*, or regional autonomy and decentralisation. After some years of delay, Aceh has now joined these reform processes, and like other Indonesian regions it will need to develop its very own recipes for *reformasi* and social justice. Indonesia, with its hundreds socio-cultural systems and traditions, certainly is a proof that one size and model does not fit all.

There are nevertheless some features that appear to be common, like the prevailing normative pluralism that has also been acknowledged in the national legislation. According to this normative pluralism, in addition to the positive law also adat laws and religious laws are taken into account. Islamic law has been recognised through developing a nationwide system of religious courts since 1989. Since 2002 it has been made compulsory to all Muslims in Aceh to follow *syariah*, while elsewhere in Indonesia it is voluntary. The position of adat is far more ambiguous, and it has been to a large extent left to the judges to decide whether they will take local custom into account.⁸ It is also important to notice, as Henk Schulte Nordholt (1994: 111-112) does in respect to the Dutch colonial 'adat law school,' that an effort to codify adat would be to misunderstand its nature:

"Adat as a set of written and unwritten rules for daily affairs and collective conduct, had always been a flexible and a normative system primarily aimed at reconciliation rather than rigid verdicts. But when these rules were laid down in monographs and used in colonial courts, flexibility disappeared and the character of *adat* was transmuted into judicial prescriptions framed in timeless tradition and approved by colonial authorities."

From my discussions with people in Aceh I have understood that many people here are of the opinion that the position of local customs should be strengthened also in Aceh. They are worried that currently there is an imbalance between adat and religion. Some have also pointed out that traditionally in Aceh adat and religion have walked hand in hand, and should not be artificially separated from each other. Similar remarks are often made in West Sumatra when the decentralisation and the revitalisation of local social systems are discussed there.⁹ It is clear, nevertheless, that adat and religion are important sources for Acehnese understanding of social justice, and they will need to be considered when future society is being planned and built be it in the field of economy, education, social welfare or politics.

We have been learning during the last couple of decades how to break the vicious cycle of conflict. This global learning process has been done through some bitter lessons, but the fact is that there are fewer wars in the world today than there was twenty years ago. Amongst the lessons learnt is also a realisation that each conflict is different and requires different strategies of resolution and conflict prevention, as the President of the International Crisis Group Gareth Evans pointed out in a recent speech in Toronto.¹⁰

⁸ For a discussion on the marginalisation of adat in the New Order Indonesia see Greg Acciaoli, *Culture as Art: From Practice to Spectacle in Indonesia*, in Canberra Anthropology Vol 8:1-2, 1985.

⁹ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, *Actualising History for Binding the Future: Decentralisation in Minangkabau*, in P. Hebinck, and G. Verschoor (eds.): "Resonances and Dissonances in Development: Actors, Networks, and Cultural Repertoires," Assen: Van Gorcum, 2001.

¹⁰ Gareth Evans: *Conflict Prevention: Ten Lessons We Have Learned*. Closing Keynote Address to the University of Toronto Peace and Conflict Society Conference "Before the Crisis Breaks: conflict

First International Conference of Aceh and Indian Ocean Studies
24 – 27 February 2007

During the last two years Aceh has clearly stepped out of that wheel of violence, but measures need to be taken to stop the wheel from turning for good. There needs to be a repertoire of measures, from those dealing with the past like HRC and TRC to those that build up structures in the society that are based on democracy, equality, accountability, transparency and other globally recognised principles, as well as Acehnese culture with its Islamic values and norms. Local, national and international agencies all need to play part in the effort. While the measures and strategies have to be multiple, they all need to be based on commonly shared principles. These include a consensus over how justice is understood in Aceh. Such a consensus can only be reached through an open public discussion on justice. And it is only the people in Aceh who can determine what justice means in Aceh, even though outsiders like me can participate in the discussion and present observations and suggestions. International community, together with the Indonesian government and the Aceh government have to ensure enough funds for the peace-building and conflict prevention work in the coming years. But the ownership of peace belongs to the people in Aceh.

Prevention, Crisis Management and Preventive Diplomacy in the 21st Century,” in Toronto, 4 February 2007. Speech available at <http://www.crisisgroup.org>.

ABSTRACT

“Aceh Peace Process and Justice”

Leena Avonius (PhD), Renvall Institute, University of Helsinki

Justice is an important element of any peace process, and Aceh is no exception in this respect. Past injustices have to be dealt with by the conflicting parties and the society at large, lest peace is desired to last. These injustices concern socio-economic issues – burnt-down houses, idle farming lands and lost income – as much as they concern human suffering due to years of armed clashes and human rights abuses. They concern individuals, families, and wider communities. The Helsinki Memorandum of Understanding indicates that the two signatories intended to deal with past injustices by establishing a human rights court and a truth and reconciliation commission for Aceh. It also obliges the Indonesian government to provide assistance to GAM ex-combatants, amnestied political prisoners and affected civilians through reintegration programs. However, it is the implementation of the MoU that determines in practice how injustices are defined and justice brought about. In this process the national and international legal concepts of justice will need to be matched with local, Acehnese understandings of what is just and fair. This paper will explore the ideas of legal and social justice in post-conflict Aceh.